IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON TUESDAY THE 29TH DAY OF JULY, 2025.

BETWEEN: ***SUIT NO. B/594/2022***

UNIVERSITY OF BENIN---CLAIMANT

AND

UNITY BANK PLC ---DEFENDANT

JUDGMENT

The Claimant instituted this suit against the Defendant vide a Writ of Summons and Statement of Claim filed on the 10th day of June, 2022 seeking the following reliefs:

1) ***AN ORDER directing the Defendant to yield up and deliver to the Claimant, possession of all that parcel of land measuring approximately 81 meters by 61 meters by 60 meters by 62 meters (81m x 61m x 60m x 62m) known and referred to as Unity Bank Plc, Ugbowo Campus of the University of Benin, Ugbowo, Benin City, Edo State ('the Leased Land');***
2) ***A DECLARATION pursuant to Section 7 of the Landlord and Tenant Law Cap. 83, Laws of Bendel State, 1976 (as applicable in Edo State) that the compensation for the Defendant's use and occupation of the Leased Land as a tenant-at-will is the sum of N2,000,000 (Two Million Naira) per***

annum, same being the sum offered in the Defendant's Letter dated April 20, 2007;

3) ***The sum of N28,166,666.00 (Twenty-Eight Million One Hundred and Sixty-Six Thousand Six Hundred and Sixty-Six Naira) commencing on 1st of February, 2021 until the Defendant delivers possession to the Claimant;***
4) ***Mesne profit at the monthly rate of N166,666.00 (One Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira) commencing on the 1st of February, 2021 until the Defendant delivers possession to the Claimant; and***
5) ***Post judgment interest on the mesne profits at the rate of 20% per annum, until the Defendant liquidates the entire sum owed as mesne profits.***

At the hearing, the Claimant called one witness and closed its case.

From the evidence adduced at the trial, the Claimant's case is that the Claimant is a statutory body while the the Defendant is a company registered under the extant laws of the Federal Republic of Nigeria, and licensed to undertake banking activities, with branches all over Nigeria.

The Claimant alleged that the land which is the subject matter of this suit is the parcel of land measuring approximately 81 meters by 61 meters by 60 meters by 62 meters (81m x 61m x 60m x 62m) known and referred to as Unity Bank Plc, Ugbowo Campus of the University of Benin, Ugbowo, Benin City, Edo State which is hereinafter referred to as "*the Leased Land*".

According to the Claimant, sometime in the *1970*s, the Claimant gave its consent to the defunct NNB International Bank Plc to occupy the Leased Land for the purpose of undertaking banking operations and the defunct NNB International Bank Plc. became a tenant-at-will with respect to the Leased Land.

The Claimant alleged that in June 2003, the defunct NNB International Bank Plc moved its banking services out of the Leased Land, which prompted the Claimant to write a letter, dated June 30, 2003, wherein the Claimant requested that the defunct NNB International Bank Plc. handover the Leased Land. The said letter was admitted as Exhibit "A" at the hearing.

The Claimant further testified that by another letter dated 19th December, 2005, they reiterated their demand that the defunct NNB International Plc. handover possession of the Leased Land, in view of its abandonment of the tenancy. The second letter was admitted as Exhibit "B" at the hearing.

The Claimant alleged that by its letter dated January 25, 2006, the Defendant admitted that the defunct NNB International Plc. had abandoned its tenancy and they notified the Claimant of their intention to recommence banking operations on the Leased Land. The said letter was admitted as Exhibit “C”.

The Claimant informed the Court that by its letter dated 21st February, 2006, they notified the Defendant that before it could recommence its banking operations, it was necessary to examine the terms of the original relationship between the bank and the University. The said the letter dated 21st February, 2006 was admitted as Exhibit “C1” at the trial.

The Claimant alleged that during the process of negotiation, they notified the Defendant that its recommencement of banking operations on the Leased Land would be on the basis of a written contract, with an agreement as to rent.

The Claimant alleged that thereafter, they gave their consent to the Defendant to take possession of the Leased Land and the Defendant commenced its banking operation on the Leased Land on Monday, 1st January, 2007, and became a tenant-at-will with respect to the Leased Land.

The Claimant stated that by its letter dated 15th March, 2007, they forwarded a Memorandum of Understanding which provided for a renewable fixed term lease of 15 years; and contained a clause for rent at the rate of N3,500,000.00 (Three Million, Five Hundred Thousand Naira) per annum for the first five years. The letter and the forwarded Memorandum of Understanding were admitted as Exhibit “D”.

The Claimant alleged that by its letter dated April 20, 2007, the Defendant offered the sum of N2, 000,000.00 (Two Million Naira) as rent and the Claimant maintained that the rent was for the sum of N3, 500,000.00 (Three Million, Five Hundred Thousand Naira) per annum. The Claimant allegedly amended the Memorandum of Understanding to reflect the said sum and forwarded same to the Defendant.

The Claimant alleged that the Defendant refused or neglected to sign the Memorandum of Understanding, which prompted the Claimant to write its letter dated 26th May, 2009, wherein the Claimant gave the Defendant an ultimatum of twenty-one (21) days within which to sign the Memorandum of Understanding. The said letter of ultimatum was admitted as Exhibit “F” at the hearing.

Upon receipt of the ultimatum, the Defendant allegedly responded via its letter dated June 15, 2009, wherein they offered to pay an unspecified sum between

N500, 000.00 (Five Hundred Thousand Naira) and N1, 000,000.00 (One Million Naira) as rent. The said letter was admitted as Exhibit “F”.

The Claimant alleged that despite being in occupation of the Leased land, the Defendant has failed, refused and neglected to pay rent to the Claimant hence they were served with a Notice to Quit and the subsequent Notice of the Owner’s Intention to Recover Possession. These were admitted in evidence as Exhibits “G” and “I” respectively.

The Claimant alleged that the Defendant responded to the Notice to Quit vide its letter dated 25th January, 2021 wherein they offered to pay the paltry sum of N250,000.00 as rent. The said letter was admitted as Exhibit “H”, and by their letter dated 01 February, 2021, the Claimant rejected the offer. The letter of rejection was admitted as Exhibit “H1”.

The Claimant maintains that the Defendant is a trespasser on the Leased Land hence they have instituted this suit to seek redress.

In defence of this suit, the Defendant called one witness and closed their case.

From the evidence adduced at the hearing, the Defendant’s case is that they have been carrying on the business of banking on the Claimant’s land right from when the bank was known as New Nigerian Bank. They alleged that the Claimant allowed them to commence banking business on their land without any formal agreement.

The Defendant maintained that it is not a tenant-at-will on the Claimant’s land. They alleged that ever since they have been in occupation of the land in dispute, the Claimant never imposed any rent on them.

They alleged that they did not intentionally refuse to execute the Memorandum of Understanding with the Claimant and that their inability to execute same was as a result of the ongoing negotiations between the Claimant and Defendant as to the amount to pay as rent in the event of a lease or tenancy being reached.

The Defendant alleged that its entry and erection of the building on the land allotted to it by the Claimant was without any condition precedent. The Defendant further alleged that it was not indebted to the Claimant as the Claimant’s claim was targeted to obtain funds which were not due them and the action of the Claimant amounts to a compulsory acquisition of the Defendant’s building and property.

They maintained that the parcel of land which the Claimant allotted to them was never leased or rented to them so they do not owe the Claimant any rent.

The Defendant informed the Court that it had just concluded its reorganization arising from the merger of the defunct New Nigeria Bank with eight other banks in the year 2006.

They explained that due to the political situation in the university and their inability to agree on the terms of the Memorandum of Understanding, they have been unable to pay any agreed rent.

They denied owing the Claimant the amount which the Claimant is claiming as arrears of rent in this suit. They said that the Claimant is not entitled to the amount which he is claiming in this suit because the Claimant and the Defendant never agreed on the amount the Defendant should pay as rent. They alleged that the amount the Claimant is claiming is too high, that they were still negotiating the rent when the Claimant rushed to Court to file this suit.

At the conclusion of the Defendant's case, the learned counsel for both parties filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the Defendant, ***Dr. Dele Alufe*** formulated a sole issue for determination as follows:

"Whether the claimant has made out a case entitling her to judgement and/or the grant of her reliefs in her statement of claim."

Arguing the sole issue, the learned counsel submitted that the Claimant has failed to establish her case on the preponderance of evidence or balance of probability and therefore not entitled to judgment as per reliefs on her Statement of Claim.

On the proof on the balance of probabilities or preponderance of evidence, learned counsel referred the Court to the following cases: ***BAMIGBOYE & ANOR V. OWOLABI & ORS (2022) LPELR- 56885 (CA)***; ***OLONADE vs. SOWEMIMO (2014) 5 SC (PT. 11) 97 AT 122, PARA. 15-30***.

Furthermore, learned counsel submitted that it is trite law that he who asserts must prove and he referred to the case of ***ONOVO VS. MBA (2014) 5-6 SC (PT. 4) 147 AT 170 PARA 10-15*** and to ***section 131-133 of the Evidence Act 2011 (as amended).***

Counsel submitted that the Claimant did not adduce reliable and credible evidence in support of her claim. He said that the Claimant's evidence should be viewed with suspicion and disbelief.

He maintained that the Claimant has not adduced any convincing evidence before this court. He said that the evidence preponderates and weighs more in favour of the Defendant than the Claimant and he urged the Court to so hold.

He submitted that there is no lease agreement or tenancy agreement that was tendered before this Honourable Court upon which the Claimant can base her claim.

Learned counsel maintained that the Claimant has not adduced any evidence to show how the said tenancy was created especially in 1980, when the Defendant was allotted the land to build.

He pointed out that no lease agreement was tendered to enable the Court to examine same and give its interpretation and application.

Counsel submitted that the Memorandum of Understanding relied upon by the Claimant as the basis and/or foundation of this action was not signed by the parties and does not in law amount to a contract. He referred the Court to the case of ***BPS CONSTRUCTION AND ENGINEERING CO. LTD VS. FCDA (2017) 10 NWLR (PT. 1572) 1 PAGES 28-29 Para G-A*** where the court held that: **"an unsigned document is worthless in law."**

He also referred to the cases of ***AOMOYOLA vs. ENTERPRISES BANK LTD (2013) All FWLR (PT. 698) page 914 ratio;*** and ***AIKI vs. IDOWU (2006) ALL FWLR (PT. 293) page 363 ratio 2.***

Learned counsel submitted that if Relief One fails, all other reliefs must fail; and he urged the Court to so hold, as there will be no platform for the other reliefs to stand.

Counsel submitted that the other reliefs (b) (c) and (d) of the Claims are for special damages and the position of the law is that a claim for special damages requires strict proof by credible evidence that is in line with the same particularity that is required for the pleadings. See ***MUKHTAR JSC in AMADI vs. CHINDA & ORS (2009) 172 LRCN 181 @ 191-192;*** and ***OLOYEDE vs. PROP. (2003) ALL FWLR (PT. 279) 1277 @ 1291.***

He maintained that the items for special damages require specific pleadings with particulars and strict proof. He said that the Claimant did not meet this requirement.

He said that the Claimant made an attempt to rely on the correspondence between the parties where the Defendant allegedly made an offer of (₦2,000,000.00) Two Million Naira which said offer was turned down by the Claimant.

He referred the Court to some of the different figures supplied in this suit and submitted that it is not the function of this Honourable Court to carry out any mathematical calculations because a judge is an adjudicator not an investigator. See the case of ***OGUNDELE & ANOR V. AGIRI & ANOR (2010) 18 LRCN 138 @ 169.***

Finally, he submitted that this action is premature; same having been caught by the Limitation Law of Edo State and has become statute — barred, and as such the Claimant's right of action has been extinguished, and he urged the Court to dismiss the Claim of the Claimant in its entirety with costs.

In her final written address, the learned counsel for the Claimant, ***Mrs. M.E. Otoide,*** formulated two issues for determination as follows:

1. ***Whether the Claimant is not entitled to possession of its land since the Defendant's tenancy has been validly terminated by Exhibits C and C1?***
2. ***Whether the Claimant is not entitled to compensation for the Defendant's use and occupation of the Claimant's land for over Sixteen years?***

Thereafter, the learned counsel argued the two issues seriatim.

<u>ISSUE 1</u>:

Whether the Claimant is not entitled to possession of its land since the Defendant's tenancy has been validly terminated by Exhibits C and C1?

Arguing this first issue, learned counsel submitted that it is trite law that a tenancy-at-will may be legally terminated at any time and she referred the Court to the case of ***Odutola and Anor v Papersack (Nig.) Ltd. [2006]18 NWLR (Pt. 1012) 470 at 486A-H.***

She posited that historically, the Defendant came into possession of the Claimant's land in dispute in the 1970s and in June 2003, the Defendant's predecessor (New Nigeria Bank; NNB), moved out of the leased property. She said that by **Exhibits A and B,** the Claimant wrote to the Defendant's predecessor and demanded for the handing over of possession of the land in view of its abandonment. She said that in **Exhibit C**, the Defendant tacitly admitted the abandonment of its tenancy and notified the Claimant of its intention to recommence banking operations on the leased land.

She contended that this recommencement of the Defendant's banking operation on the Claimant's land created a tenancy-at-will relationship between the Claimant and Defendant. She said that Exhibits **C1, D1** and **F** suggest that even though there was no agreement on the terms, the Defendant went into possession of the property and built on the Claimant's premises. She said that **Exhibit F** particularly shows how the Claimant wrote to the Defendant to perfect the Memorandum of Understanding but the Defendant failed to do so and rather commenced banking operations without the perfection of the Memorandum of Understanding.

She maintained that notwithstanding the absence of an agreement between the parties, the possession of the land in dispute by the Defendant resulted in the creation of a tenancy-at-will relationship between the Claimant and the Defendant.

Counsel posited that it is not in dispute that a landlord-tenant or owner-occupier relationship exists between the Claimant and the Defendant. She said that the Defendant's witness (DW1) admitted under cross examination that the Claimant's Governing Council gave the Defendant the permission to use the Claimant's premises.

She submitted that by the doctrine of estoppel, the Defendant is estopped from denying the existence of a landlord-tenant relationship with the Claimant and she relied on the cases of ***OLALEKAN v. WEMA BANK PLC (2006) LPELR-2562(SC)*** and ***THADDEUS v. ATULE (2022) LPELR-57539(CA).***

She said that the doctrine of estoppel is entrenched in ***section 169 of the Evidence Act 2011 as amended***.

On the nature of a tenancy at will, learned counsel referred the Court to the following cases: ***Pan Asian African Co. Ltd. v National Insurance Corporation (Nig.) Ltd. (1982) All NLR 229 at page 243*****;** ***Efrede and Ors v Ita and Anor (2020) LPELR-51342; (2021) 9 NWLR (Pt 1780) 89 at 112***.

She said that in the instant case, the Defendant recommenced operations and came into possession of the Claimant's land on the 1st day of January 2007 as shown by **Exhibit C,** and failed to secure a tenancy agreement and has been in use and occupation of the Claimant's land without paying rent for more than Sixteen years before the institution of this suit. She cited the cases of ***Procton Group Africa Ltd. V Ayuba (2020) LPELR-51189, pages 33-34, paras. D-B)*** **and** ***AP Ltd. V Owodunni, (1991) LPELR-213 (SC).***

Furthermore, learned counsel submitted that the Defendant has been enriched and received benefits as a financial institution carrying out banking activities within the

Claimant's premises. She submitted that based on the equitable principle of unjust enrichment, the Claimant is entitled to compensation from the Defendant for the use of their land over the years and relied on the decision of the Supreme Court in the case of ***FBN PLC v. OZOKWERE (2013) LPELR-21897(SC)***. She said that the position was also restated in the case of ***SULEIMAN v. JIMBASH NIGERIA LTD & ANOR (2014) LPELR-24615 (CA)*** where the court held that

"... it is inequitable for a person who has benefited from an agreement to turn around and say that the agreement is void and unenforceable; the Court would not uphold such a contention - Solanke v. Abed (1962) l SCNLR 371, Yola v. Agogo (1975) 5 ECSLR 391, Oil Field Supply Center v. Johnson (1987) 2 NWLR (Pt. 58) 625, Adedeji v. National Bank of Nig. (1989) 1 NWLR (Pt. 96) 212, Awojugbagbe Light Industries Ltd v. Chinukwe (1995) 4 NWLR (Pt. 390) 379, Adebola v. Omisola (2005) 2 NWLR (Pt. 909) 149.

Counsel contended that from the foregoing, it is evident that it is contrary to the established equitable principle of unjust enrichment for the Defendant to enjoy possession of the Claimant's premises for Sixteen years without payment of rent while conducting business throughout the entire period and subsequently assert that the Claimant is not entitled to repossession of its premises and compensation for use of same.

Counsel submitted that it is trite law that a landlord desiring to recover possession of premises let to his tenant must determine the tenancy by service on the Defendant of an appropriate notice to quit, and on the determination of the tenancy, the tenant should be served with the statutory Seven days' notice of intention to apply to the court to recover possession of the premises.

She said that in this case, the Defendant is a tenant-at-will and was served with the statutory notices to terminate the relationship that existed between it and the Claimant. She said that the relationship was terminated vide Exhibits **G and I**; (Notice to Quit and Owner's Intention to Recover Possession respectively).

She relied on the case of ***Ayinke Stores Ltd v Adegbogun (2008)10 NWLR (Pt. 1096) at 618.***

She submitted that the Claimant complied with the relevant provisions of the law and is therefore entitled to recovery of its premises from the Defendant.

She maintained that the contention of the Defendant that there was never an agreement as to rent between the parties right from the onset is of no moment. She said that the issue of rent does not give the Defendant the right to retain possession of the Claimant's land and she relied on the case of ***Raphael Udeze v Paul Chidebe & Ors (1990) 1 SCNJ 104 at 210-121, (1990) 1 NWLR (Pt. 125) 141.***

Counsel contended that the Defendant cannot turn around to challenge the title of its landlord by claiming proprietary interest in the building affixed to the land. She referred the Court to ***Section 170 Evidence 2011 (as amended)*** which estops a tenant from claiming possession of immovable property.

She urged the Court to resolve issue one in favour of the Claimant and hold that the Claimant is entitled to recover possession of its land from the Defendant.

ISSUE 2:

Whether the Claimant is not entitled to compensation for the Defendant's use and occupation of the Claimant's land for over Sixteen years?

Arguing this issue, learned counsel posited that it is not in dispute that the Defendant has remained on the Claimant's land without any payment of rent from 2007 till date. She submitted that even though there was no express agreement reached, the negotiations for rent payable creates an implied agreement to pay for the use of the land thereby entitling the claimant to compensation for the use of its land.

She referred the Court to the cases of ***Metal Construction (W.A) Ltd. v Aboderin (1998) LPELR-1868 (SC)***, ***Nigeria Airways Ltd (In Liquidation) v Mahdi (2014) 11 NWLR (Pt 1417) 32.***

She posited that the Defendant admitted that there was indeed an actual benefit enjoyed by using the land of the Claimant, to wit; defendant's banking business. She submitted that having enjoyed the benefit of using the Claimant's land for business purposes, the Defendant is liable to pay compensation to the Claimant for the use and enjoyment of the Claimant's land.

She submitted that the Claimant is also entitled to mesne profits from the Defendant for the occupation and use of her land. She said that by **Exhibits G and I;** the Notice to Quit and Owner's Intention to Recover Possession, served on the Defendant by the Claimant, the tenancy-at-will of the defendant was terminated on the 31st day of January 2021, therefore, the Claimant is entitled to mesne profits from the 1st day of February 2021 until the Defendant delivers up possession of the Claimant's land. She referred the Court to the case of ***Pan Asian African Co. Ltd. V National Insurance Corporation (Nig.) Ltd. (supra).***

Responding to the Defendant's contention that the Claimant is not entitled to compensation and that the arrears of rent and mesne profits claimed are special damages which has not been proved, counsel contended that the issue of arrears of rent and mesne profits is a corollary of an action for recovery of premises. That as a matter of procedure, states' Recovery of Premises Laws provide for recovery of possession of premises alongside claims for arrears of rent and mesne profits.

Counsel submitted that in assessing the amount of compensation due to the Claimant, notwithstanding the non-agreement on a fixed rent and non-payment of rent, cognizance should be taken of the hitherto prevailing rate obtainable in that environment and the length of time the Defendant has used and occupied the Claimant's land. She referred the Court to the provision of ***Section 7 of the Landlord and Tenant Law Cap 83, Laws of Bendel State, 1976 (as applicable in Edo State)*** which provides that if there is no actual evidence of rent payment, the court can refer to the documents and evidence before it to arrive at a valuation.

She posited that the DW1 under Cross Examination identified Exhibits F1 and E as rent which was proposed during the period of negotiation of rent payment between the Claimant and the Defendant. She said that by **Exhibit F1**, the defendant offered to pay rent in the range of N500,000-1,000,000 (Five Hundred Thousand to One Million Naira) for the first Five years and in **Exhibit E**, DW1 stated that the Defendant offered to pay a rent of N2,000,000 (Two Million Naira) for a period of Five years. She said that this was a counter offer to the Claimant's offer of the sum of N3,500,000 (Three Million Five Hundred Thousand Naira) as stated in the Memorandum, **Exhibit D1.**

She maintained that from a careful examination of **Exhibits D1, F1, and E**, as well as the evidence of the parties, the rent payable on the property can be inferred.

She made copious references to the correspondences between the parties during the negotiations for the rent and submitted that the Claimant is entitled to the sums claimed as arrears of rent and mesne profits.

In response to the Defendant's argument that this action is statute barred by virtue of the ***Limitation Law of Edo State***, she contended that by virtue of ***Section 4(1) of the Limitation Law of Bendel State 1976 (applicable in Edo State),*** an action founded on simple contract or tort shall not be brought after the expiration of Six years from the date on which the right of action accrued.

She submitted that the Defendant's continuous occupation of the Claimant's premises from 2007 till date and failure to pay rent on a periodic basis gives rise to a fresh cause of action on each occasion. He said that by their continuous occupation, the Defendant act constitutes a situation of a continuous act of damage or injury and she relied on the case of ***Commissioner of Finance, Imo State & Ors v Kojo Motors Ltd. (2018) LPELR-45075 (CA)***.

Finally, she urged the Court to resolve this second issue in favour of the Claimant.

I have carefully considered all the processes filed in this suit, together with the evidence led, the exhibits admitted in the course of the hearing and the addresses of the respective Counsel to the parties.

Upon a careful examination of the Issues formulated by learned counsel for the parties, I am of the view that the sole issue for determination in this suit is:

Whether the Claimant has proved its Claims on the preponderance of evidence to enable the Court to grant its reliefs?

I will now proceed to resolve the sole issue for determination.

In all civil suits, the burden of proof is on the Claimant. ***Section 131(1) of the Evidence Act, 2011*** states thus:

"Whoever desires any Court to give judgment as to any legal right to liability dependent on the existence of facts which he asserts must prove that those facts exist."

Furthermore, ***Subsection (2) of the same section*** provides: ***"when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."***

It means that 'He who asserts must prove his assertion.' The judicial decisions on this point are innumerable. See the following cases: ***Kwasalba (Nig.) Ltd. Vs. Okonkwo (1992) 1 NWLR (Pt. 218) 407 @ 417; Imana Vs. Robinson (1979) 3 - 4 SC. 1 and Osawaru Vs. Ezeiruka (1978) 6 - 7 SC 135.***

From the evidence adduced by the parties in this suit, succinctly put, the Claimant's case is that the Defendant is their tenant at will and owes them arrears of rent and mesne profits.

However, the Defendant has denied being a tenant to the Claimant.

It should be noted that, a tenancy agreement can arise in any of the following ways:

(a) by contractual agreement;

(b) by creation of statute; and

(c) by tenancy at sufferance or at will.

A ***contractual tenancy*** involves an agreement between the landlord and tenant, which may be written or oral. A ***statutory tenancy*** is one created by statute for the benefit of the tenant and does not depend on the will or acceptance of the landlord or the existence of any contractual agreement. A ***tenancy at sufferance*** on the other hand, results from an initial lawful occupation or possession either by contractual tenancy or licence given by the owner or person entitled to the right to occupy premises when the tenancy or essence expires and the tenant or licensee holds over possession. See ***African Petroleum v. Owodunni (1991) 1 NWLR (pt. 210) 391; Ezenwa v. Oko (1999) 14 NWLR (pt. 637) 95; Farajoye v. Hassan (2006) 16 NWLR (pt. 1006) 487 and Pan Asian African Co. Ltd v. National Insurance Corporation (Nig) Ltd (1982) ALL NLR 229.***

A ***tenancy at will***, which is held by a tenant at will, generally conveys a mutual wish or intention on the part of the tenant and the landlord in the occupation of the estate. There is general understanding that the estate may be legally terminated at any time. A tenancy at will is built into the mutual understanding that both the tenant and the landlord can terminate the tenancy when any of them likes or at any time convenient to any of them. In a tenancy at will, the lessee (the tenant) is the tenant at will because the lessor (the landlord) can send him packing at any time the lessor pleases. In other words, the tenant occupies the estate at the pleasure or happiness of the landlord. This is however subject to proper notice emanating from the landlord.

In the case of ***Wheeler v. Mercer (1956) 3 All ER 631, Lord Simonds*** said at page 634: ***"A tenancy at will though called a tenancy is unlike any other tenancy except a tenancy at sufferance to which it is next of kin. It has been properly described as a personal relation between the landlord and his tenant; it is determined by the death of either of them or by one of a variety of acts, even by an involuntary alienation, which would not affect the subsistence of any other tenancy."***

See also the case of ***Pan Asian African Co. Ltd. v. National Insurance Corporation (Nig.) Ltd. (1982) All NLR 229***.

A tenancy at will arises whenever a tenant with the consent of owner occupies land as tenant (and not merely as servant or agent) on terms that either party may determine the tenancy at any time. This kind of tenancy may be created expressly or by implication, common examples are where a tenant whose lease has expired holds over with the landlord's permission without having yet paid rent on a periodic basis. See the cases of ***ODUTOLA & ANOR V. PAPERSACK NIG. LTD (2006) LPELR-2259(SC)(PP. 16-18 PARAS. D).***

In the case of ***EFREDE AND ORS V ITA AND ANOR (2020) LPELR-51342***, the Court of Appeal held that a tenancy at will may also arise ***"once a tenant stops paying rent as at when due or fails to secure a tenancy agreement for the property from the landlord"*** See also the case of ***Odutola v. Paper Sack (Nig.) Ltd. (2006) 18 NWLR (Pt 1012) 470.***

In the instant case from the totality of the evidence adduced by both parties, it is clear that the land in dispute is the property of the Claimant and the Defendant was given the permission to to carry on banking operations on the land in dispute.

At the trial neither party was able to produce the initial documents containing the terms of the original relationship between the University and the Bank. There is even no documentary evidence to show that the Defendant actually erected the building on the land in dispute.

More fundamental is the fact that from the beginning of the activities of the Defendant on the land in dispute, there is no evidence of any agreement on the payment of rent by the Defendant to the Claimant for the use of the land for its banking operations.

From the evidence adduced at the trial, with the consent of the Claimant, the Defendant's original parent company, the defunct New Nigeria Bank carried on banking operations on the land up till sometime in June 2003 when they moved their banking services out of the Land. This prompted the Claimant to write a letter dated June 30, 2003 requesting the defunct Bank to handover the Leased Land to the University. The said letter was admitted as Exhibit "A" at the hearing.

The Claimant further testified that by another letter dated 19th December, 2005, they reiterated their demand that the defunct bank should handover possession of the Leased Land, in view of its abandonment of the tenancy. The second letter was admitted as Exhibit "B" at the hearing.

The Claimant alleged that by its letter dated January 25, 2006, the Defendant admitted that the defunct NNB International Plc. had abandoned its tenancy and they notified the Claimant of their intention to recommence banking operations on the Leased Land. The said letter was admitted as Exhibit "C".

The Claimant informed the Court that by its letter dated 21st February, 2006, they notified the Defendant that before it could recommence its banking operations, it was necessary to examine the terms of the original relationship between the bank and the University. The said the letter dated 21st February, 2006 was admitted as Exhibit "C1" at the trial.

The Claimant alleged that during the process of negotiation, they notified the Defendant that its recommencement of banking operations on the Leased Land would be on the basis of a written contract, with an agreement as to rent.

The Claimant alleged that thereafter, they gave their consent to the Defendant to take possession of the Leased Land and the Defendant commenced its banking operation on the Leased Land on Monday, 1st January, 2007.

From the foregoing correspondences between the parties, it is safe to hold that the formal agreement between the Claimant and the Defendant for the use of the Defendant for their banking operations was from the 1st of January, 2007.

The issue to determine at this stage is the nature of the contract between the parties on the use of the property. The Claimant has maintained that they are the Landlord while the Defendant is a Tenant at will. They further maintain that they have since terminated the tenancy because of the refusal of the Defendant to pay the recommended rent.

Meanwhile, the Defendant has denied any valid tenancy relationship between them on the ground that they did not sign any tenancy agreement and that the rent has not been agreed upon by the parties.

The question is whether, the Defendant can deny the Claimant the payment of rent and other sums which they are claiming in this suit for carrying on their banking operations on the land.

From the evidence adduced in this suit, the Defendant is not claiming the ownership of the land in dispute, there is no evidence that they ever purchased the land from the Claimant. Furthermore, they are not statutory tenants on the land; neither can they be classified as contractual tenants since they did not enter into any formal contract whether oral or written.

At the very best, the Defendant appears to be a tenant at will which is quite similar to a tenant at sufferance.

A tenancy at will, which is held by a tenant at will, generally conveys a mutual wish or intention on the part of the tenant and the landlord in the occupation of the estate. There is general understanding that the estate may be legally terminated at any time. A tenancy at will is built into the mutual understanding that both the tenant and the landlord can terminate the tenancy when any of them likes or at any time convenient to any of them. In a tenancy at will, the lessee (the tenant) is the tenant at will because the lessor (the landlord) can send him packing at any time the lessor pleases. In other words, the tenant occupies the estate at the pleasure or happiness of the landlord. This is however subject to proper notice emanating from the landlord. The 15th Century English Jurist, ***Sir Thomas Littleton*** succinctly described a tenant at will in a medieval language as follows:

"Tenant at will is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called tenant at will, because he hath no certain or sure estate, for the lessor may put him out at what time it pleaseth him." See ***Litt. s. 68.***

In the old English the case of ***Wheeler v. Mercer (1956) 3 All ER 631, Lord Simonds*** said at page 634: ***"A tenancy at will though called a tenancy is unlike any other tenancy except a tenancy at sufferance to which it is next of kin. It has been properly described as a personal relation between the landlord and his tenant; it is determined by the death of either of them or by one of a variety of acts, even by an involuntary alienation, which would not affect the subsistence of any other tenancy."***

In the case of ***ODUTOLA & ANOR V. PAPERSACK NIG. LTD (2006) LPELR-2259(SC) (PP. 16-18 PARAS. D), Tobi JSC*** exposited as follows:

"A tenancy at will arises whenever a tenant with the consent of the owner occupies land as tenant (and not merely as servant or agent) on terms that either party may determine the tenancy at any time…examples are where a tenant whose lease has expired holds over with the landlord's permission without having yet paid rent on a periodic basis".

The above exposition seems to suit the present case where the Defendant has been holding on to the premises since 2007 without paying any rent. From the records, the Defendant has never paid any rent for the use of the premises for commercial purposes. I hold that the Defendant qualifies as a tenant at will on the land in dispute.

As I have already stated above, in a tenancy at will, the Tenant is the tenant at will because the Landlord can send him packing at any time he pleases provided he gives him reasonable notice to quit.

At the hearing, the Claimant led un-contradicted evidence to show that when the Defendant refused to pay the recommended rent to the Claimant, they were served with a Notice to Quit and a subsequent Notice of the Owner's Intention to Recover Possession. These were admitted in evidence as Exhibits "G" and "I" respectively.

I agree with the learned counsel for the Claimant that the tenancy at will was terminated vide Exhibits **G and I**; (the Notice to Quit and Owner's Intention to Recover Possession respectively). See the case of ***Ayinke Stores Ltd v Adegbogun (2008) supra,*** aptly relied upon by the learned counsel for the Claimant**.**

In this suit, apart from seeking for repossession of their land, the Claimant is also seeking *inter alia*, a declaration that the Claimant is entitled to the payment of the sum of N2,000,000 (Two Million Naira) per annum as arrears of rent same being the sum offered in the Defendant's Letter dated April 20, 2007. They are also claiming the total sum of N28, 166,666.00 (Twenty-Eight Million One Hundred and Sixty-Six Thousand Six Hundred and Sixty-Six Naira) commencing on 1st of January, 2007 until the 31st of January, 2021; and Mesne profit at the monthly rate of N166, 666.00 (One Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira) commencing from the 1st of February, 2021 until the Defendant delivers possession to the Claimant.

I agree entirely with the learned counsel for the Claimant that based on the equitable principle of unjust enrichment, the Claimant is entitled to compensation from the Defendant for the use of their land over the years. See the cases of ***FBN PLC v. OZOKWERE (2013) LPELR-21897(SC)***; and ***SULEIMAN v. JIMBASH NIGERIA LTD & ANOR (2014) LPELR-24615 (CA).***

On the computation of the amount of Compensation, the provision of ***Section 7 of the Landlord and Tenant Law Cap 83, Laws of Bendel State, 1976 (as applicable in Edo State)*** provides as follows:

"7. Where the agreement for the demise of any premises is not by deed, the landlord may recover a reasonable satisfaction thereof in an action for the use and occupation of the said premises."

As the learned counsel for the Claimant pointed out, at the hearing, by **Exhibit F1**, the Defendant offered to pay rent in the range of N500, 000 to N1, 000,000 (Five Hundred Thousand to One Million Naira) for the first Five years and in **Exhibit E**, the Defendant offered to pay a rent of N2, 000,000 (Two Million Naira) for a period of Five years. This was a counter offer to the Claimant's offer of the sum of N3, 500,000 (Three Million Five Hundred Thousand Naira) as stated in the proposed Memorandum of Understanding, **Exhibit D1.**

From the amounts suggested by the parties during the negotiation as reflected above, the Court can arrive at a reasonable computation of the compensation that can be awarded to the Claimant.

Generally, the basis of the compensation of the kind claimed is the absence of consensus ad-Idem between the parties on the issue of the specific rent payable, the Landlord may recover a reasonable satisfaction or compensation for the use and occupation of such premises held or occupied by the Tenant, or by his permission or sufferance. In the case of ***Pan Asian v. NICON (1982) 9 SC1***, ***Obaseki. J.S.C.*** explained the position as follows: ***"The compensation is usually recovered as damages for breach of an express or implied agreement to pay for the use of the land or premises, and where the rent has been fixed, this, invariably, is evidence of the amount of damages to be recovered. But the landlord is not limited to such fixed rent; he may recover all the loss which had resulted from his dispossession of the land."***

In the instant case, since the parties were unable to arrive at a fixed sum as rent, I will use the figures which they suggested during their negotiations to arrive at a reasonable sum as compensation to the Claimant for the Defendant's use of the premises from January, 2007 till when the tenancy was terminated on the 31st day of January, 2021. Thereafter, the Claimant is entitled to mesne profits from the 1st of February, 2021 until the Defendant delivers up possession of the Claimant's land.

This position of the law was properly exposited in the said case of ***Pan Asian African Co. Ltd. V National Insurance Corporation (Nig.) Ltd. (supra),*** where ***Obaseki J.S.C*** stated thus: ***"after the service of a written notice or at the end of the term granted and the tenant holds over without the permission of the landlord, the tenant is liable to pay mesne profits for the use and occupation of the premises till he delivers up possession."***

In defence of this suit, the learned counsel for the Defendant submitted that this action is premature; same having been caught by the Limitation Law of Edo State and has become statute — barred, and as such the Claimant's right of action has been extinguished. As clearly shown from the evidence adduced at the hearing, the injury or damage which the Claimant is complaining about is the continuous unlawful occupation of their land without payment of rent.

It is settled law that time cannot run out in a situation of a continuous act of damage or injury. Furthermore, I think it would be immoral and legally offensive for a party to seek to invoke the rule of statute bar when they are still enjoying the benefit of the contract by carrying on banking operations on the premises for which the Claimant is claiming arrears of rent and mesne profits. See the case of ***COMMISSIONER FOR FINANCE, IMO STATE & ORS V. KOJO MOTORS LTD (2018) LPELR-45075(CA) (PP. 30-31 PARAS. D).***

From, the foregoing, I hold that the Claimant is entitled to the reliefs which they seek in this suit. The sole issue for determination is resolved in favour of the Claimant and their claims are granted as follows:

1) ***AN ORDER directing the Defendant to yield up and deliver to the Claimant, possession of all that parcel of land measuring approximately 81 meters by 61 meters by 60 meters by 62 meters (81m x 61m x 60m x 62m) known and referred to as Unity Bank Plc, Ugbowo Campus of the University of Benin, Ugbowo, Benin City, Edo State ('the Leased Land');***
2) ***A DECLARATION pursuant to Section 7 of the Landlord and Tenant Law Cap. 83, Laws of Bendel State, 1976 (as applicable in Edo State) that the compensation for the Defendant's use and occupation of the Leased Land as a tenant-at-will is the sum of N1,500,000 (One Million, Five Hundred Thousand Naira) per annum;***
3) ***The sum of N21,125,000.00 (Twenty-One Million One Hundred and Twenty Five Naira) commencing from the 1st of January, 2007 until the 31st of January, 2021;***
4) ***Mesne profit at the monthly rate of N125,000.00 (One Hundred and Twenty Five Thousand Naira) commencing on the 1st of February, 2021 until the Defendant delivers up possession to the Claimant; and***
5) ***Post judgment interest on the mesne profits at the rate of 20% per annum, until the Defendant liquidates the entire sum owed as mesne profits.***

The Defendant shall pay the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs for this action

P.A.AKHIHIERO
JUDGE
29 /07/2025

<u>COUNSEL:</u>

Mrs. M.E. Otoide--Claimant.

Dr. Dele Alufe--Defendant.