

IN THE HIGH COURT OF SIERRA LEONE
(LAND & PROPERTY DIVISION)

BETWEEN:

FLOYD ALEX P. DAVIES

– PLAINTIFFS

JUSTICE KPUNDEH DAVIES

AND

AFRICELL (SL) LIMITED

- DEFENDANT

Counsel:

I. Jalloh (Ms.) & A Monya (Ms) for the Plaintiffs

I. I. Mansaray Esq. for the Defendant

RULING DELIVERED THIS 29TH DAY OF FEBRUARY 2024 BY HONOURABLE MRS. JUSTICE
JAMESINA E. L. KING J. A.

Introduction

1. The Plaintiffs obtained a judgment in default of defence against the Defendant dated 21st June 2022 for recovery of immediate possession of all that premises situate lying and being at a portion of the roof top and a portion of the backyard at No.76 Kroo Town Road Freetown in the Western Area of the Republic of Sierra Leone and mesne profits and costs to be assessed. The Defendant is a telecommunications company and was a Lessee who used the portions of the said property for purpose of installing communications equipment.
2. This Court refused the Defendant's application to set aside the said judgment and fixed a date for assessment of mesne profits claimed in the sum of Le150,000,000 per annum from 1st July 2020 and costs.
3. Assessment proceedings commenced and Mr. Eustace Bull, Ing. Archibald Campbell and Floyd Alex. P. Davies Esq., testified for an on behalf of the Plaintiffs in accordance with their witness statements and exhibits in the Court Bundle.
4. The Defendants witnesses also testified. They were Mr. Andrew S. Fatoma and Mr. Abayomi Johnson

Summary of the Evidence for the Plaintiffs

1. Mr. Eustace Bull an I.T. Specialist with 20 years' experience 16 of which was in the telecommunications industry in his witness statement stated that he was hired to assess

the property as to the rent per annum to be paid by telecommunication companies. Among other things he stated that for a rooftop in the Central Business District (CBD) the cost is slightly higher as compared to a cell site with towers on the ground.

2. He described the portion of the premises occupied by the Defendant which was a roof top measuring 105 feet by 30 feet and a portion of the backyard which is 12 feet 5 inches by 15 feet. He estimated the yearly rent as between NLe75,000 – NLe100,000 (new Leones) for the roof top and the backyard NLe50,000. He took into consideration the maintenance costs and other expenditures which the land owners will incur to maintain the structure of the property as well as the size of the space and type of operations the Defendant engages in such as cellular and internet services.
3. His responses during cross-examination is recorded at pages 21 – 23 of the Court records. During cross-examination, he stated that he has worked for Celtel, Zain, Airtel, Orange and C & E Solutions and in all of these companies he was employed as an I.T. specialist. He also agreed that they all had estate departments separate and distinct from the I.T. Department. He also stated that he wants the court to believe that the rent increased from Le6,825,000 to the range of N Le75,000 – Le100,000 for roof top and NLe50,000 for the backyard. Asked whether he holds qualifications in real estate management, he said no and agreed there was a marked distinction between real estate and I.T. management. He was re-examined.
4. Ing. Archibald Campbell the next witness, was hired by the Plaintiff to assess the damage and yearly maintenance required to keep the structural condition of the property in good repairs. He gave his observation of disrepair when he visited on 11th November 2022. He hired Deguray Company Limited for bills of quantity for maintenance and repair works for the said premises whose bill was in the total sum of NLe18,000.
5. The final witness for the Plaintiffs was Mr. Floyd Davies one of the Plaintiffs in the action. He referred to the registered Lease Agreement between the Defendant and his late father for a fixed term of 12 years commencing 1st July 2008. Upon the latter's death his brother Justice Kpundeh Davies and himself are the owners of the property by virtue of a will and vesting deeds. They continued with the lease which expired on 30th June 2020 and on that date the Defendant owed arrears of rent for two years.
6. After several promises from Counsel for the Defendant that they will pay the arrears and meet to renew the lease agreement to no avail, he wrote to the Managing Director of the Defendant to inform him of the current situation because he suspected that Counsel acting for them had not informed them of it. He therefore wrote the letters of 24th September 2021 demanding the arrears and vacant possession and got a response 2 months later on 5th November 2021 from Alhadi, Beoku-Betts and Gordon-Harris.
7. They sent two cheques combined, he had to cash both cheques and deducted the areas owed and subsequently returned the amount for 2021 and 2022 for which they had no subsisting lease agreement. He returned the amount on 4th February 2022. He took that long to return it as he was in touch with Counsel for the Defendant who assured him that the matter will be settled and he took him at his word which he did not keep, and prompted him to write to the M.D. He will usually sign a slip from the Defendant to acknowledge receipt of the amount paid but he refused to sign that slip and told Mr. Alhadi about it.

8. When the lease was signed by his dad he was old and sickly and it was prepared by the lawyer representing the Defendant. When he took over the administration of the premises in January 2013 he conducted a market survey at the time and got to know that the rent paid by the Defendant was ridiculously low. He approached Counsel for the Defendant and informed him that the rent should be negotiated. He is asking for the said amount of NLe150,000 per annum as mesne profits and this was the same amount he was asking for in 2013 when he did the market survey. He has also incurred Solicitor's costs for the action in the sum of NLe60,000.
9. He stated that after the expiration of the lease the Defendant did not give up the property and only subsequently moved out in November 2022.
10. He concluded that the Defendant has unjustly deprived them the use and enjoyment of the premises due to its unlawful occupation. He further stated that given rise in inflation, the fact that the property is within the Central Business District, it could have been leased to other telecommunication service providers at a minimum rent of NLe150,000 per annum from 1st July 2020 to date
11. He was cross-examined and agreed that in the lease signed by his dad, the annual rent for the said premises was in the sum of was Le6,500,000 for the first 4 years and for the remaining 8 years for the period up to 2020 was Le6,825,000. He wants the Court to believe that the rent was ridiculously low and from 2008 – 2022 the economic situation in the world not only in Sierra Leone has changed drastically. He presented the cheques forwarded and they were honoured. As soon as he received the cheques he called Counsel for the Defendant and informed him that they had no lease agreement for 2021 – 2022, therefore he will not sign the slip to acknowledge receipt of the amount. He did not reduce the experience he had with Counsel in writing even though he had been doing so when he had concerns with the Defendant.
12. He wanted the court to believe that the rent for both roof and backyard should be Le150,000, considering the objects erected on the premise, the portion of the premises they were erected and the location of the premises. That was the case for the Plaintiffs.
13. The Lease and other documentary evidence including correspondence between the parties and their Solicitors were produced to the Court.

Summary of the evidence for the Defendant

14. Two witnesses gave evidence in favour of the Defendant, Mr. Andrew S. Fatoma and Mr. Abayomi Johnson. The Defendant also exhibited several lease agreements in respect of various premises in the Central Business District whereby it leased a rooftop and or a portion of the back yard for the same purpose as the Plaintiffs' lease.
15. In his statement, Mr. Andrew Fatoma the Defendant's Chief Administrative and Human Resources Officer stated that the Plaintiffs are neither entitled to mesne profits nor the sum of Le150,000,000 as mesne profits having regard to the fact that the Defendant has not been in unlawful occupation, particularly for the period commencing on 1st July 2020 and ending on 30th June 2022, as rent had been paid for the said period which the Plaintiffs still retain, and the period 14th October and 14th November 2022 as the Defendant was in occupation pursuant to a Court Order dated 14th October 2022. He stated that the Plaintiffs had not issued any notice to quit save for the Court Order dated

- 14th October 2022, and that the Defendant had not unjustly deprived the Plaintiffs from their use and enjoyment of the said demised premises.
16. He also stated that the rent could not have risen from Le6,825,000 as at June 2020 to Le150,000,000 (Old Leones) in the tenancy year starting 1st July 2020 which represents about 2,098% increase, that in his 9 years of experience in the telecommunications industry, he is not aware of any communication site in the CBD that the Defendant or any other telecommunications company is paying Le150,000,000 per annum and that the Defendant is currently paying rent for similar premises at the CBD between Le8,000,000 and Le15,000,000 (both old Leones) per annum referring to the Leases produced to the Court. These were for leases it had in the central business district. For a 2019 lease, the yearly rent was Le12,000,000 for a rooftop and portion of the backyard, in a 2020 lease the rent was Le8,000,000 for a portion of roof top and in a 2022 lease, the rent was Le15,000,000 for a 10 x 8 meters' land space. He also produced a receipt of Le15,000 as costs in respect of the said action.
 17. He told the Court that the Defendant has over 600 leases across the country where they build sites and they cap prices based on location, and they have a range of prices for location in the CBD. He stated that if they were to pay NLe150,000 they will not be in business, the effect will be astronomically high in terms of costs, the other lessors will want to request for similar rent, which they cannot afford and had put in place a stop gap measure which is a call site on wheels which will allow them to continue providing service.
 18. He further stated that as an institution the Defendant's costs are very high having gone up over 3000% since they last reviewed their tariff which was fixed by the Regulator in 2017, when the price of fuel was Le6,000 and now is Le25,000.
 19. He was cross-examined and in response he stated that about the time the lease expired in 2020 a verbal instruction was given to Mr. Alhadi to initiate discussions with the landlord his colleague for its renewal. The outcome was not conclusive as he did not have any communication that any offer had been accepted. He was not aware that on the expiration of the lease the Defendant owed backlog of rent.
 20. The witness was asked on what basis the Defendant proceeded to pay rent for the period 1st July 2020 – 30th June 2022, he responded that the Finance Department followed the pattern of payment they were used to. He agreed that the Department did not separate the cheques, one for 2018 – 2020 and another from 2020 – 2022. He was referred to the 3 leases presented to the Court for properties in similar location and agreed that they were not signed by all the parties, not dated and not registered.
 21. The final witness for the Defendant, Mr. Abayomi Johnson is an Estate Valuer who works for Palmersons Ltd and has been in the industry for over 20 years. At the request of the Defendant, he conducted an examination of the premises and tendered a Leasehold Valuation Report by Palmersons Limited dated 23rd November 2022. The Report had a detailed description of the demised premises with a rent valuation per annum in the sum of USD823.02 with Leones equivalent at Le18,300 to 1 USD which is Le15,061.27. He arrived at the said figure based on his assessment and is surprised that the Plaintiffs are claiming Le150,000 because it is only a roof and a garden there was nothing more

about the area and the generator room is just a small portion. He has done a lot of valuation for banks and shocked to hear about the figure claimed.

22. During cross examination he agreed that over his 20 years' experience this was the first time he did a valuation of a property for a telecommunication company. He also stated that after doing the measurement, they have a standard tariff that they use. The basis of the tariff is that if you have 13.1 you multiply 13.08 x value of the property. He confirmed that his industry has guidelines to determine value and tariff which he produced to the court at a later date.

Summary of submissions by Counsel for the Defendant

23. Mr. Mansaray, Counsel for the Defendant referred to the claim for mesne profits of NLe150,000 or Le150,000,000 and cost of NLe60,000 or Le60,000,000. He submitted that the Plaintiffs have not produced an independent expert evidence to justify the sum claimed as mesne profits and that the closest the Plaintiff came to bringing an expert was a Civil Engineer not an estate agent or an expert in real estate development or valuation. He referred to paragraph 8 of his witness statement where he only made reference to a bill of quantities that he prepared in the sum of Le18,000 in respect of maintenance work to be done on the property.
24. Mesne profits he submitted is a name given for damages for trespass against a Defendant who hold over a demised premise after lawful determination of the tenancy. He also submitted that the tenancy was not lawfully determined having regard to the fact that the Defendants received and accepted rent for the period spanning from 1st July 2020 – 30th June 2022. He conceded that no written lease or tenancy agreement was entered into by the parties for that period, but by receiving and accepting rent, a new tenancy relationship was created and the late attempts made by the Plaintiff after 5 months to return the amount that was paid to them, using a different cheque did not and cannot lawfully amount to a lawful determination of the tenancy that was created.
25. He said that the new tenancy created started on 1st July 2020 and ended on 30th June 2022. He referred to the witness statement of Andrew Fatoma at page 29 and noted that the rent for 1st July 2020 – 30th June 2022 was paid on 5th November 2021 and only returned on 4th February 2022. Upon receipt of the cheque on 11th February 2022, the erstwhile Solicitor for the Defendant immediately sent the cheque to the Plaintiffs and to date he submits it is with them and a tenancy existed that was not lawfully determined, and no evidence was led to suggest that any step or reasonable steps were taken by them to remit the rent back to the Defendant, either by Bank transfer or by way of payment into court when the matter was taken to court.
26. He noted that Counsel for the Plaintiffs may want to rely on Clause 4.3 of the lease which says that if the Lessee is desirous of taking a new lease it should give a notice of 3 months. However, he stated a new lease was not created but it was a new tenancy that was created.
27. He submitted that if in the most unlikely event this Court were to consider awarding mesne profits to the Plaintiffs, it should be for the period commencing on 1st July 2022 and ending in November 2022 when the Defendant delivered possession to the Plaintiff. But even for that period, Counsel submit that no proper notice was given to the

Defendant save for the Writ of Summons. The proper notice he submits having regard to the nature of the yearly tenancy should be 6 months noting that the Writ was issued on 19th May 2022 when the new tenancy was still subsisting with no regard for the new tenancy.

28. Counsel further submitted that within the period of 1st July 2022 – November 2022, an order for stay of execution was granted and within that period they were in possession by virtue of an order of this court which cannot be said to be unlawful occupation.
29. On the issue of quantum, Counsel submitted that the demised premise is a portion of the roof top and the backyard where the generator is installed. The rent by the lease dated 9th March 2008 was Le6,500,00 for the first 4 years and for the remaining 8 years for the period up to 2020 was Le6,825,000. The vexing question according to him is how did the Plaintiff arrive at the sum of NLe150,000 and no evidence has been shown how they arrived at that sum.
30. He referred to the evidence of Mr. Fatoma the Defendant's Chief Administrative Officer who has been in the business of renting premises for over 10 years who stated at best the rent will be pegged around Le8,000,000. He referred to the valuer's report who was more generous by pegging the rent at Le15,061.27. Mr. Johnson he stated, is an expert in this area so assuming Plaintiffs are entitled to mesne profits it will be around the region of NLe15,000 or Le15,000,000. For this, he relied on the leases of the Defendant around the CBD to enable the Court to do a comparable analysis.
31. He referred to *Hill & Redman* on mesne profits, 15th Edition on page 597, that it can only be claimed from the date when the Defendant ceased to hold the demised premises as tenant and became a trespasser. He asked the question whether the Defendant was a trespasser having regard to the fact that it had paid rent for the period immediately after the lease and submitted that the answer is no.
32. Counsel therefore asked the Court to find that the Defendant is not liable to pay any mesne profits at all to the Plaintiffs or if in the most unlikely event the Court finds otherwise, that the assessment takes into account the factors the Defendant has advanced including the testimony of an expert witness regarding the quantum of rent for the premises.
33. On the issue of costs of Le60,000,000 requested, he refers to Order 57 of High Court Rules 2007, and stated that the Court is enjoined to look at the length and complexity of the proceedings, the conduct of the parties and it should be awarded for expenses reasonably incurred by a successful party. He maintained that it is a straightforward case for recovery of possession and there are no complex issues, the parties have actually cooperated, there has not been any animosity. He referred to *Frances Ansumana v Sierra Leone Shipping Co* instituted in 2019 and judgment delivered on 29th June 2022, where witnesses were called, evidence led, closing addresses delivered and witness statements filed, this Court awarded Le22,500,000 and it lasted for 2 years. He also referred to *Madam Sento Kamara v Isatu Kamara* the matter started in 2016 this Court awarded costs of Le15,000,000. He therefore suggested costs of Le10,000,000.

34. Ms. Monya, Counsel for the Plaintiff, submitted that they are asking for Le150,000,000 for the premises and the issue is whether the Defendant is entitled to 6 months' notice being a fixed term tenant, thirdly whether the payment of rent for the period 1st July 2020 and 30th June 2022 and Plaintiff receiving and cashing out the cheque there has been created a new tenancy.
35. She submitted that the lease dated 9th March 2010 expired by effluxion of time and were owing in arrears of rent in the sum of Le13,650,000 for the period 1st July 2018 – 30th June 2020. By that time, she stated the Defendant were in arrears and refused to pay while being in occupation, depriving the Plaintiff's landlord from the said premises. Being a fixed tenant she maintained they are not entitled to notice to quit. She referred to Halsbury's Laws of England Vol. 23 at page 1186 pg. 531 and noted the Defendant did not take any steps to renew the Lease as stipulated in Clause 4.3. She referred to the correspondence between the parties and their Solicitors.
36. On the issue of mesne profits, Counsel referred to Halsbury's Laws of England 3rd Edition Vol 23 at para 1230 which defines mesne profits. Counsel for the Defendant referred to lease agreements which are neither signed or registered and therefore cannot ascertain whether they are authentic or not.
37. She referred to the witness statement of Andrew Fatoma that Plaintiff is not entitled to such amount. Counsel submitted that the premises in the CBD attracts a lot of potential telecommunications Co and they are therefore entitled. She relied on *Nazih Hassaniyeh v Satori* unreported 2006. Since 2021 Counsel pointed out that the Plaintiff communicated to Defendant that the commercial value of the said property had increased since 2018.
38. She referred to the quantity surveyor Ing. Archbold Campbell whose report is in the court bundle and submitted that the amount for the repairs is reasonable. Concluding on costs Counsel urged this Court to award Le50,000.

Analysis and Decision

39. I have carefully reviewed the evidence and considered the submissions by both Counsel and the several authorities cited some of which I will refer to. I note that even though the Plaintiffs did obtain a default judgment which included mesne profits and costs, I am to determine whether in fact the Defendant is liable to pay mesne profits and if so what is the quantum to be paid and the period for which it is to be paid. This is because this Court in an earlier decision, refused the Defendant's application to set aside the Judgment in default of Defence, a Writ of Possession issued and possession was delivered in November 2022 in compliance with the court's order.
40. In *Elliott v Boynton* 1924 The Law Reports p.250 it was stated that damages [mesne profits] can only be recovered as from the determination of the lease, whatever form it may take, whether by effluxion of time or by re-entry under a proviso for that purpose. Such an entitlement can also happen when a proper notice has been given determining a tenancy or by a writ to recover possession.

Was a new tenancy created?

41. It is not in dispute that the lease agreement expired in June 2020, the Defendant did not give notice to renew as provided in the said lease and continued in possession. At the end of the lease, the Defendant were in arrears of rent for two years. The Plaintiffs brought this to Defendant's attention by letters dated 24th September 2021, 15 months after the expiration of the lease; 2 months later the Defendant sent 2 cheques to the Plaintiffs stating it was rent for 3 years, comprising payment of the arrears of 2 years and rent for one year.
42. Besides the late payment of rent the Defendant now proceeded without any consultation, engagement or agreement and failing to comply with the renewal clause, to initiate a new tenancy, after the lease expired, by paying rent for two years. This was in a bid to legitimize its occupation of the premises for the period after June 2020.
43. The crucial question is whether in fact a new tenancy was created. A tenant who holds over after the expiration of his lease and pays rent, in the absence of facts pointing to a contrary conclusion, is held as a matter of law impliedly to have agreed to hold as tenant from year to year upon such terms of the old lease as are applicable to such tenancy. Payment of rent is not conclusive as to the creation of a tenancy from year to year it is only evidence of such tenancy and either payer or receiver of rent may prove the circumstances in which the payment was made and by such circumstances rebut the presumption which would arise from the receipt of rent unexplained. Whether the circumstances exclude the implication of a yearly tenancy is a question of fact to be decided on the circumstances of the case. See *Halsbury's Laws of England*, at page 514, 3rd Edition Volume 23 under the rubric *Landlord and Tenant*.
44. I am therefore bound to review the facts and circumstances to make a determination whether in fact the rent paid after expiration of the lease created a new tenancy. The Defendant's evidence that the Plaintiffs' cheque returning the "rent" is still with their Solicitors has not been controverted. Was a new tenancy created after the lease expired and did the cheques for payment of rent forwarded evidence of a new tenancy? My answer is no, based on the facts of this particular case. The lease expired on 30th June 2020. The Plaintiffs sent two letters to the Defendant both dated 24th September 2021. One demanded payment of the arrears of rent and the second letter titled "reminder to vacate premises..." This letter stated as follows:
- "I wish to remind you that the Lease Agreement signed on March 9, 2010 for the use of the above-mentioned premises ended on June 30, 2020 through effluxion of time. And you have been illegally occupying the premises.*
- You are hereby requested to vacate the said premises immediately. As you may be aware, the commercial value of the said property has increased since 2008. As you have been in illegal occupation of the said premises for fifteen (15) months, you are required to pay the sum of One Hundred and Fifty Million (Le150,000,000) for the period 1st July 2020 to 30th September, 2021 as mesne profits.*
- Failure to adhere to this notice will lead to legal action instituted to evict you therefrom"*
45. In response to the aforesaid letter, by letter dated 5th November 2021, the Defendant forwarded two cheques, one in the sum of Le19,280,000.00 representing full and final payment of rent for the period 1st July 2018 to 30th June 2021 (3 years) and another cheque in the sum of Le6,825,000.00 for the period 1st July 2021 to 30th June 2022 (1

year). In response, by letter dated 4th February 2022 the Plaintiffs' Solicitors responded that at no time had they entered into any agreement with the Defendant for the renewal of the lease after its expiration on 30th June 2020 or any tenancy agreement whatsoever and were taken aback by the presumptuous conduct of forwarding rent for the period 1st July 2020 to 30th June 2022 as if its lease or tenancy still subsists. They in that letter enclosed a cheque for Le13,251,000 which the Defendant took upon itself to forward as rent for the period 1st July 2020 to 30th June 2022. The Defendant's Solicitors by letter dated 11th February 2022 refused to accept the Plaintiffs' cheque returning the amount of Le13,251,000 and returned the said cheque.

46. The above correspondence explains the circumstances under which the said "rent" was paid for the period after the lease. It is clear that there was no agreement for a new tenancy. One of the cheques forwarded by the Defendant was for the arrears of rent owing and payment for one year after the Lease. It was not unreasonable for the Plaintiff to deduct arrears of rent and return the rest. What was clear before payment for the period after the lease, the Plaintiffs demanded the Defendant to deliver possession of the premises and as such they had no intention to even enter into any new agreement with the Defendant.
47. I therefore do not accept the Defendant's position that a new tenancy had been created whilst I accept that the Plaintiffs should have taken more steps to have the money which the Defendant paid as "rent" returned more promptly or even paid into court.
48. I find that the Plaintiffs are entitled to mesne profits for the period 1 July 2020 until delivery of possession in November 2022. May I hasten to state that this Court's order granting a stay of execution of the Judgment obtained in default and giving time to the Defendant to vacate the premises does not in any way absolve them from paying for their occupation of the premises. It should be recalled that this Court ordered the Defendant to deliver possession within a month of the order so that they can safely remove their telecommunication installations which would not have been the case if they were to be removed by the bailiffs when executing the writ of possession.

The amount to be paid as mesne profits

49. The next issue is what amount should be paid by the Defendant for their occupation of the premises after 30th June 2020 which are damages by way of mesne profits as the Defendant wrongfully withheld possession from the Plaintiffs. I am guided by the principle in *Clifton Securities, Ltd v Huntley and others* 2 All E.R. 1948 at page 284 by Denning J as he then was as follows "When the rent represents the fair value of the premises, mesne profits are assessed at the amount of rent, but if the real value is higher than the rent, then the mesne profits must be assessed at the higher value". This principle was adopted and followed in *Hassanyeh vs Satori* Court of Appeal of Sierra Leone unreported decision 2006.
50. In the *Satori* case the Court went further to state that the rate the mesne profits are to be assessed would depend on the evidence in respect of it and the evidence required is one that will tell the Court the market value of the property.
51. The evidence put forward by the Plaintiffs is that they could have rented the property occupied by the Defendant to another telecommunication company for between

NLe75,000 – 150,000 per annum hence the Plaintiff's claim for the highest end of the scale. This evidence is borne out by the testimony of Mr. Eustace Bull who has worked in the telecommunications industry for 16 years. He is not an estate valuer and is not involved with negotiating rents for similar places but he is knowledgeable about the rates for such premises used for such purposes. The engineer of the Plaintiffs, Mr. Campbell's evidence is not very helpful for the assessment of mesne profits as it speaks to the state of disrepairs of the premises and costs of repairing same.

52. The period the Plaintiffs are entitled to mesne profits will be from 1st July 2020 to 14th November 2022 (two years and 5 months). What is the fair value of rent to be paid for similar premises in 2020, 2021 and 2022? Mr. Bull who has been in the telecommunications industry gives a range of Le75,000 – Le150,000 per annum. Mr. Johnson an experienced estate valuer says such premises will be rented for about Le15,061.27 and the signed leases already entered into by the Defendant indicate a yearly rent of Le8,000 and Le15,000. The Plaintiffs are categorical that they wanted rent of Le150,000 for the premises. I am of the view that they may or may not have received this rent depending on the pockets of the potential tenant and the agreement arrived at and I am not convinced it is the fair value as at 2020. In a similar vein, I am also fully aware that the rent may well be above Le15,061.27.
53. I am of the view that Le40,000 is a fair value per annum as mesne profits. This is my view, based on the evidence of all the witnesses for both the Plaintiffs and Defendants in respect of the fair value, and all of the surrounding circumstances particularly what transpired after the lease expired leading to the failure of the Defendant to respond to the Plaintiff's offer for negotiations.
54. The Plaintiffs are also entitled to costs of the action. I note the invoice for provision of legal services submitted by the Solicitors to the Plaintiffs in the sum of Le60,000,000 and also note the payment of Le15,000,000 accepted as costs to the Plaintiffs in respect of the interlocutory application and will take this into consideration in awarding costs of the assessment proceedings to be paid by the Defendant.

Conclusion

55. In conclusion an assessment is made in favour of the Plaintiffs and I hereby order as follows:
1. The Plaintiffs are entitled to recover from the Defendant mesne profits from 1st July 2020 until possession was delivered in November 2022 at the rate of Le40,000 per annum for the demised premises described in the expired lease and interest thereon at the rate of 15% per annum until judgment.
 2. The sum of Le13,251,000, already retained by the Plaintiffs should be deducted from the mesne profits above.
 3. Costs of the assessment proceedings to the Plaintiff to be paid in the sum of Le30,000.

.....
HON. MRS. JUSTICE JAMESINA E. L. KING J.A.