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IN THE COURT OF APPEAL
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU

ON FRIDAY THE 12TH DAY OF APRIL, 2019
BEFORE THEIR LORDSHIPS

MONICA B. DONGBAN-MENSEM - JUSTICE, COURT OF APPEAL
IGWE IGNATIUS AGUBE - JUSTICE, COURT OF APPEAL
ABUBAKAR SADIQ UMAR - JUSTICE, COURT OF APPEAL

APPEAL NO: CA/E/204/2017

BETWEEN

MTN NIGERIA COMMUNICATION LTD - APPELLANT
AND

1. SUNSHINE & PARTNERS W.A. LTD
2. CHIEF CHRIS U. OKEKE - RESPONDENTS

JUDGMENT

(DELIVERED BY MONICA BOLNA'AN DONGBAN-MENSEM, JCA)

1. Whether he who asserts must prove

The general principle of law is that he who asserts must prove. See

ALADE V. ALIC (NIG.) LTD. (2010) 19 NWLR (Pt. 1226) 111

S.C and ORLU V. GOGO-ABITE (2010) 8 NWLR (Pt. 1196) 307

S.C. (P.7).

2. On Contradictions In Oral And Documentary Evidence –

How Resolved

The law is clear on the weight to be attached to documentary evidence and oral evidence. Where there is both documentary and

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N.M. Ugwu (Judge)

COURT OF APPEAL

Signature.....

Date.....

30/11/2020

COURT OF APPEAL
ENUGU

OFFICIAL

Signature.....

Date.....

30/11/2020

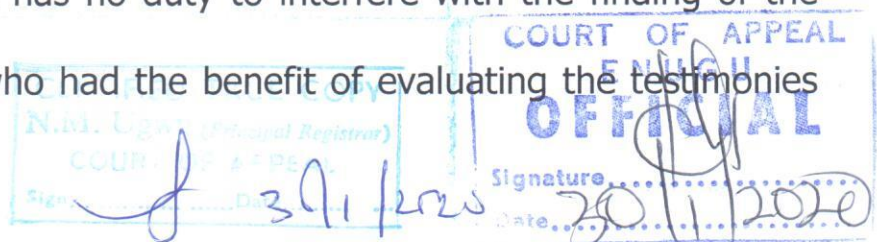
oral evidence before the court which contradict each other, the documentary evidence takes precedence as against the oral evidence which is meant to support the documentary evidence and not take precedence over it. See **Section 132 (1) (b) of the Evidence Act, 2011** and **EGHAREVBA V. OSAGIE (2009) 18 NWLR (Pt. 1173) 299.** (P.8).

3. On the Need To Give Words Their Ordinary Meaning

The courts have been enjoined in **ODUTOLA V PAPER-SACK (NIG) LTD. (2007) ALL FELR (PT. 350) 1222** and **DIAMOND BANK LTD V. UGOCHUKWU (2007) ALL FWLR (PT. 384) 293** as cited by both parties that where the terms of a written contract are clear and unambiguous, effect must be given to the contract and it is not the duty of the court to rewrite contracts for the parties. The courts are expected to give documents before them the literal meaning and interpretation and that is exactly what the learned trial court did in finding that there is an existing valid contract between the parties, this court cannot fault it for that. (P.9).

4. On the Attitude Of the Appellate Court Towards Finding Of the Trial Court – When It Will Interfere With

With this, this court has no duty to interfere with the finding of the learned trial court who had the benefit of evaluating the testimonies



of the witnesses and the evidence before it. This is because this court ought not to interfere with the findings of the learned trial court which is based on the evaluation of evidence unless such finding is perverse. See **ANYEGWU V. ONUCHE (2009) 3 NWLR (Pt. 1129) 659 SC** and **EDOHO V. STATE (2010) 14 NWLR (Pt. 1214) 651 SC.** (P.13).

5. On the Award Of Damages

The grant of reliefs on **paragraph 17(1)** and **(2)** of the Statement of Claim is sufficient to restore the Respondents to a position as if the breach never occurred. Hence, the grant of relief in **paragraph 17(3)** was unnecessary.

The learned trial court having found and held that the payment of arrears of rent will continue until the Appellants vacate the property, there is no justification for further compensation. The special damages of N5, 000,000.00 (Five Million Naira Only) granted to the Respondents is incomprehensible and indefensible. (P.14).

