IN THE HIGH COURT OF JUSTICE (APPELLATE DIVISION)
IN THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

BEFORE THEIR LORDSHIPS:

HON. JUSTICE M. E. ANENIH (PRESIDING JUDGE)

HON. JUSTICE JUDE O. OKEKE (JUDGE)

ON FRIDAY THE 8TH DAY OF JULY, 2016
SUIT NO: FCT/CV//149/2014
APPEAL NO: FCT/CVA/187/2015

BETWEEN:

HAJIYA HAFSAT AL-MUSTAPHA……APPELLANT

AND

SKYBOUND PROPERTIES LTD……..RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE JUDE O. OKEKE (JUDGE)

The Appellant herein as Plaintiff at the Senior District Court Abuja took out a plaint against the Respondent herein as Defendant seeking for:-

"(1). Recovery of possession of her property being House No. 3, A Close, Kado Estate held of her by the Respondent under a tenancy for the period 20th March, 2013 to 19th September, 2014 at the rent of N2, 500, 000.00. She also claimed mesne profit at the rate of N133, 333 per month from 19th September, 2014 till possession was given up as well as the sum of N500, 000 as cost of the action."

After trial during which both parties called a witness each, the District Court in its Judgment delivered on 8th December, 2015 struck out the claim for possession for the reason that an invalid statutory notice for determination of the tenancy was not served and ordered the Defendant (Respondent

herein) to pay the sum of N2, 500.000 as arrears of rent for the period 19th September, 2014 to 20th September, 2015.

Feeling dissatisfied with the judgment the Appellant lodged the instant appeal against the decision in this Court. Her grounds of Appeal as disclosed in the Notice of Appeal are as follows: -

"(i). The trial Magistrate erred in law when she held that the Appellant must give the Respondent six (6) months notice on a fixed tenancy that has expired.

PARTICULARS OF ERROR.

(a). That after the expiry of a fixed tenancy the only notice due to a tenant is 7 days Notice of Owner's Intention.

(ii). Tenancy Agreement is a contract which must be mutual and consensual by making an Order that the Appellant must issue 6 months notice to the Respondent amounted to forcing the Appellant to enter into a fresh contract.

(b). ERROR IN LAW

The learned trial Court erred in law when she assumed jurisdiction over a suit wherein she held no proper notice was issued.

PARTICULARS OF ERROR

(a). Where a learned trial Magistrate holds that the Appellant did not issue proper notice she cannot grant relief no. 2 pursuant to that suit.

(b). PARTICULARS OF ERROR

The learned trial Magistrate erred in law when she refused to grant relief no. 1 vacant possession but went further to grant relief no. 2 Arrears of rent in the same suit she claimed proper notice has not been issued."

Both parties filed and exchanged their respective Briefs of Argument wherein they articulated their respective legal arguments.

They adopted their Briefs of Argument in Court on 17th May, 2016. Judgment was accordingly reserved.

We have carefully read and digested the Briefs of Argument. The fundamental issue for determination is whether or not the Appellant has made out a case to justify a grant of the reliefs she seeks in this Appeal which is for an Order of Court allowing the Appeal and setting aside the judgment of the trial Court by directing the Respondent to deliver vacant possession of the premises.

In his Brief of Argument, the Appellant raised two issues for determination by the Court, viz:-

> "(1). Whether the learned trial Judge was right when he held that the Defendant/Respondent are (sic) entitled to six months notice on a fixed tenancy that has expired.
>
> (2). Whether the learned trial Magistrate could proceed to give any relief in a tenancy matter which he held that there was no proper quit notice."

Treating issue no. 1, learned Counsel referred to Tenancy Agreement between the parties admitted as Exhibit A2 and contended that by its terms, a binding tenancy agreement was executed between the parties for term of one year six months. That at the expiration of the fixed tenancy, the only thing left is for the tenant to deliver vacant possession of the premises. He relied on ***ODUTOLA V PAPERSACK NIG LTD (2007) ALL FWLR (PT. 350) P. 2014; AFRICAN PETROLEUM LTD V OWODUNNI (1991) 8 NWLR (PT. 201) P. 391 and IHEANACHO V UZOCHUKWU (19973 NWLR (PT. 487) P. 257*** to buttress the contention that in a fixed term tenancy, the only option open to the tenant whose term has expired is to vacate the premises. If he does not, he is entitled to 7 days Notice of Owner's Intention to enter and recover the premises.

He contended the above principle which represents the position of the Supreme Court was submitted to the trial Court but it was not considered. That the decisions in the above case are in conformity with Section 7 of the

Recovery of Premises Act. He contended that by the tenancy agreement, the fixed term tenancy having expired the landlord's decision to serve the 7 days Notice of Owner's Intention to recover possession is in line with the Supreme Court decisions cited above and the provisions of the Recovery of Premises Act.

With respect to issue no. 2, learned Counsel submitted that the learned trial Court erred when it held that the Plaintiff ought to have served 6 months Notice to Quit during the pendency of the tenancy as agreed in Exhibit A2 and for this reason the 7 days Notice was declared invalid. That the Court misconstrued the meaning and import of the tenancy agreement between the parties. He contended that the lifespan of the tenancy was 20th March, 2013 to 19th September, 2014. During this period, the parties are bound by the terms of the Agreement. However after 19th September, 2014, the agreement has lapsed and is of no moment. For that reason the Appellant was not bound to give 6 months notice as stipulated in the Agreement. That by its decision, the trial Court drafted an agreement for the parties which it ought not to. ***BFI GROUP CORPORATION V BUREAU OF PUBLIC ENTERPRISES (1212) 7 SC CPT (PT. 111) P1*** was called in aid.

The Court was urged that clause d of the tenancy agreement is precise and accurate and is intended to apply during the pendency of the tenancy. Its implication is that the Appellant cannot issue any notice during the pendency of the tenancy Agreement but six months but where the tenancy has expired to insist that she is to issue six months notice to the tenant who has no more contract is tantamount to reviving the contract which is dead.

In conclusion, he urged the Court to uphold the Appeal and set aside the Order with regard to possession and uphold the decision with regard to the Order for arrears of rent.

In his Brief of Argument, Mr. Faruk Khamagam of Counsel for the Respondent raised two issues for determination by the Court viz:-

> *"(1). Whether the learned trial Judge duly exercised jurisdiction in granting relief no. 2 where he held in these words: "The Defendant shall immediately pay the sum of N2, 500.000 (Two Million, Five Hundred Thousand Naira) as arrears of rent from 18th September, 2014 – 20th September, 2014" when same was never prayed for?*

(2). Whether the Appellant's appeal has merit."

Treating issue no. 1, learned Counsel submitted inter alia, that the Appellant's contention that the tenancy is a fixed one for a period of one and half years is most misguided. He referred to Clause d of Exhibit A2 as having reflected the intention of the parties. That by the Clause, the Appellant is "to give the tenant 6 months notice if she doesn't want to renew the tenancy, a notice which shall run during the pendency of the tenancy agreement."

He canvassed that the length of notice to determine a tenancy is crucial to the validity of a notice to quit as non compliance renders the notice invalid. The length of notice may be subject of the tenancy agreement or as provided by law. Parties may by agreement fix for themselves any period of notice in line with the decision in ***A.P V OWODUNNI (1991) 8 NWLR (PT. 20) P. 395.*** That the parties in this case stated clearly in their agreement that where the Appellant does not intend that the tenancy be renewed she would give the tenant notice to that effect. The case of ***BFI GROUP CORPORATION V BUREAU OF PUBLIC ENTERPRISES AND BEST (NIG) LTD V BLACKWOOD HODGE NIG LTD & 2 ORS*** relied upon by the Appellant are of no moment.

He contended that by the cannon of interpretation: expressio unius exclusio est alterius, the parties intention abinitio was for a continued tenancy regardless of the fact that there is no express stipulation to the effect of renewal of same. He relied on ***COTECNA INT. LTD V CHURCHGATE (NIG) LTD & ANOR (2010) 18 NWLR (PT.1225) P. 346*** to urge that words must be given their literal meaning and none should be imported into words that are clear and unambiguous. That by this, the Appellant contention that the tenancy has determined is misconceived.

Counsel next referred to the need to have a tenancy determined in line with Section 7 of the Recovery of Premises Act and contended that at the commencement of this suit to recover possession, the tenancy had not been determined as the condition required to determine it had not yet been fulfilled. ***ODUTOLA V PAPERSACK; AFRICAN PETROLEUM V ODODUNNI and IHEANACHO V UZOCHUKWU*** relied upon by the Appellant were therefore unavailing.

Dwelling further, Counsel contended that the fact that rent has expired does not necessarily mean that the tenancy relationship is extinguished as contended by the Appellant. That the Respondent was ready and willing to pay the new rent as understood by the spirit and intendment of the agreement but the Appellant unilaterally sought to extinguish it. That the tenancy was not determined by any way at the time of commencing the suit. He urged the Court to uphold the Judgment of the trial Court per its Order relating to possession.

With respect to the issue of arrears of rent of N2, 500, 000 granted by the Court, Counsel submitted that a calculation of the sum claimed as mesne profit by 12 months and 2 days within which period the Court made the Order for arrears of rent, the actual sum stood at N1, 600, 000 and not N2, 500, 000 ordered by the Court. As the law is that the Court does not grant orders not prayed for, the Court is urged to set aside the Order or vary same.

He urged the Court to dismiss the appeal.

The Appellant filed a Reply Brief wherein she contended inter alia, that upon determination of the tenancy by effluxion of time, the Appellant needed only to serve a 7 days Notice and not 6 months notice. The rest was that the Respondent having spent more than two years in the premises and to order the Appellant to have serve 6 months notice will be unjust.

We have given due consideration to the contentions of the parties. The critical issue that needs to be resolved is whether or not by the terms of the tenancy agreement between the parties the trial Court was right in holding that the Appellant ought to give the Respondent six months notice to validly determine the tenancy failure of which resulted to a refusal of the prayer for possession.

A perusal of the records of Appeal, per the Judgment of the trial Court shows the parties had a tenancy relationship as shown in the Tenancy Agreement which was tendered by the Appellant as Exhibit A2 (see pages 13 and 23 of the record). Both parties are settled the document guided their tenancy relationship. While the Appellant contended that under it, the tenancy relationship being one for a fixed term and having expired by effluxion of time, she validly served the Respondent with a 7 days notice of Owner's Intention to recover possession and as such is entitled to

possession, the Respondent contended that the tenancy relationship was not one for a fixed term and that by the terms of the Agreement, where the Appellant does not intend to review the tenancy she should give the Respondent a Notice to that effect which is six months notice. That the fact that rent has expired does not translate to the tenancy relationship having been extinguished. That the Respondent being willing to pay rent, the Appellant could only validly determine the tenancy by service of a six months notice. Having failed to do that, she did not validly determine the tenancy before commencing the action hence the trial Court was right in striking out the prayer for possession.

From all the contention of the parties, it is apparent that a resolution of this matter lies in the interpretation of the words or terms of the tenancy Agreement which is the contract willingly entered into by the parties as guiding their tenancy relationship and what transpired in relation to it. In this regard, it needs be recalled that under Section 128 of the Evidence Act 2011, where a contract has been reduced to the form of a document or series of documents, no evidence maybe given of the terms of the contract except the document itself neither may the contents of the document be contradicted, altered, added to or varied by oral evidence except under any of the exceptions provided for under the section. It needs also be recalled that under the Golden rule of interpretation in our adversarial legal system, where the words of a contract are plain and unambiguous, the Court while interpreting them is to give them their ordinary and literal meaning except where to do so will lead to an absurdity. The Court is not to read into them words or meanings not manifest in them as the terms of contract willingly made by parties are sacrosanct and binding on the parties and even the Court. See: ***ARTRA INDUSTRIES LTD V NIGERIAN BANK FOR COMMERCE AND INDUSTRIES (1997) 1 NWLR (PT. 483) P. 574; NATIONAL SALT CO. OF NIG. LTD V INIS PALMER (1992) 1 NWLR (PT. 218) P. 422 and MARYAM V IDRIS (2000) FWLR (PT. 23)P.1227.***

It needs be remembered too, that under Section 8 of the Recovery of Premises Act, the parties can agree as to notice to be given by either party to determine the tenancy. It is when there is no such agreement that the period of notice provided under the Section will become applicable.

Being thus guided, we have critically examined the terms of the Tenancy Agreement (Exhibit A2). Against known standard legal drafting requirements, the Agreement did not contain a distinct and separate clause

made solely with regard to how the tenancy can be determined by either party. Nevertheless, under the Landlord's covenants, the parties agreed that the landlord is to give the tenant six months notice, if she doesn't want to renew the tenancy which notice shall run during the pendency of the tenancy agreement. The clause provides inter alia, thus:

> "***THE LANDLADY HEREBY*** covenants with the tenant as follows: -
>
> a. …..
>
> b. ….
>
> c. ….
>
> d. To give the Tenant six months notice if she doesn't want to renew the tenant; a notice which shall run during the pendency of the tenancy agreement".

This clause being the main provision in the Agreement touching on how the tenancy may be determined though with particular reference to the landlord, constitutes the major guiding provision with regard to how the tenancy may be determined. The Court's understanding of its implication when considered in relation to the other clauses of the Exhibit particularly clause 2j is that the tenancy relationship between the parties is renewable but where the landlord does not want to renew it, the landlord is to give the tenant six months notice. The notice however is to run during the pendency of the tenancy agreement.

The main contention in this case is whether or not the Appellant (as the landlord) ought to have given the Respondent (as the Tenant) six months notice instead of 7 days notice after the expiration of the tenancy by effluxion of time on 19th September, 2014. Whilst the Appellant contends the 7 days Notice she issued to the Respondent at the expiration of the tenancy by effluxion of time on 30th September, 2014 validly gives her right to seek for possession of the premises, the Respondent, relying on the Clause d under the landlord's covenants contends it ought to have been served with a six months notice. The lower Court agreed with the Respondent and declared the Appellant's 7 Days Notice (Exhibit A4) invalid in the circumstances in determination of the tenancy.

We have given a serious thought to the foregoing contentions. A resolution of the issue calls for a consideration of the type of tenancy relationship the parties had in place vis-à-vis what transpired between them.

A reading of Exhibit A2 (i.e. the Tenancy Agreement) between the parties shows their tenancy relationship is expressed in clause 1 as being "for the term of 1 YEAR 6 MONTHS". In Clause 2a, it was also stated that the tenant was to pay rent for "1 YEAR 6 MONTHS" on the commencement of the tenancy. Now, whilst the Appellant contends the tenancy as expressed above is one for a fixed term or term certain, the Respondent, though it described the Appellant's contention as being "most misguided" did not identify or say categorically what the nature of the tenancy is. Its position as disclosed in its Brief of Argument is that by Clause d of the Agreement, the Appellant was under a duty to give the Respondent 6 months notice, if she does not want to renew the tenancy, a notice which shall run during the pendency of the tenancy agreement. That the agreement between the parties having stated that the landlord is to give the tenant 6 months notice if she does not wish to renew the tenancy, that the tenant ought to have been given 6 months notice which was expressly provided, to the exclusion of all other notices in the Agreement.

We have given a thought to these contentions. The learned author and jurist, A. Obi Okoye at page 27 of his book ***"ESSAYS ON CIVIL PROCEEDINGS"*** Volume1 briefly explained the term "Fixed Term Tenancy" in these words: "Fixed Term of Tenancy includes when it is agreed that the tenancy would be for a certain number of months or years or till a particular day, or contingent on an event upon which it is to end." Yielding to the persuasive effect of this opinion, the parties in Exhibit A2 having described their tenancy in the introductory part of Exhibit A2 as being for "a period of 1 YEAR AND 6 MONTHS FROM THE 20TH MARCH, 2013 TO 19TH SEPTEMBER, 2014" and in the habendum as being "for the a term of 1 YEAR 6 MONTHS" clearly have in mind a tenancy that would run for a term of 1 year 6 months commencing from 20th March, 2013 and ending on 19th September, 2014. By this, the tenancy relationship between the parties is one for term certain or fixed period of 1 year 6 months.

The Court having found the tenancy is for a term certain period of 1 year 6 months, the next issue is how it can be determined.

As aforesaid, save for Clause d, the Agreement did not make any other provision with regard to how the tenancy can be determined. Clause d provides thus: -

> "*THE LANDLADY HEREBY covenants with the tenant as follows: -*
>
> *(a). ….*
>
> *(b). ….*
>
> *(c). ….*
>
> *(d). To give the Tenant 6 months notice if she doesn't want to renew the tenancy; a notice which shall run during the pendency of the tenancy agreement."*

By the above clause, the landlord is required where she does not wish to renew the tenancy for the tenant, to give it a 6 months notice. The notice must however run during the pendency of the Agreement.

The Appellant's contention is that much as by the above provision she is to give the tenant a 6 months notice where she does not wish to renew the tenancy and which notice is to run during the tenancy, that she did serve the tenant a 7 days notice after the expiration of the tenancy relationship by effluxion of time on 30th September, 2014. The tenant (as Respondent) contends the notice is invalid as the landlord ought to have given it 6 months notice in line with Clause d above.

The general position of the law as held in ***TINUOLA & ORS V OKON (1966) 2 ALL NLR P. 188, LEMON V LARDEUX (1946) 2 ALL ER P 329; JOSEF V ADOLE (2010) LPELR 4367 (CA)*** and even ***ODUTOLA V PAPERSACK NIG LTD (2006) 18 NWLR (PT. 1012) P. 470*** is that where by the agreement of the parties the tenancy is for a fixed term, a notice to quit is unnecessary and the landlord may proceed with a 7 DAYS NOTICE after the expiration of the period of the tenancy.

In this case, a perusal of the records and Exhibit A2 shows the tenancy between the parties was for a period of 20th March, 2013 to 19th September, 2014. After the expiry of the tenancy on 19th September, 2014 the landlord by a letter dated 30th September, 2014 gave the tenant 7 days

notice to vacate the premises ie Exhibit A3. The tenant (Respondent) in response, by a letter dated 16th October, 2014 (Exhibit A4) applied to the landlord (Appellant) for an extension of the tenancy to enable it source for an alternative property. There is nothing in the records to show the Landlord heeded to this appeal. She rather on 21st October, 2014 filed the suit at the lower Court seeking for a grant of vacant possession of the premises, mesne profit and cost of the action.

Under cross examination, the Appellant's witness testified the tenancy was for 19th March, 2013 to 20th September, 2014. He tendered 7 Days Notice as Exhibit A3. The Respondent's Dw1 also testified that the tenancy was for 20th March, 2013 to 19th September, 2014 and the Respondent was served with a 7 Days Notice on 30th September, 2014 and another one on 14th October, 2014. The witness tendered the Respondent's letter of appeal for extension of tenancy as Exhibit A4. He admitted under cross examination that the tenancy had expired on 19th September, 2014. See pages 25 and 26 of the record.

From the foregoing, it is apparent to the Court, consistent with the submissions of the Appellant's Counsel and admission of the Respondent's Dw1 that the tenancy expired on 19th September, 2014 and the Respondent was served with a 7 Days Notice of Owner's Intention to Apply to Recover possession on 30th September, 2014.

As earlier said, the general position of the law is that where a fixed term tenancy expires by effluxion of time at the end of the tenancy, the only duty the landlord owes to the tenant to recover possession of the premises is service of a 7 Days Notice to Tenant of Owner's Intention to Recover possession. In this case, it is the contention of the Respondent that given the provision in clause d of Exhibit A2 which guides the relationship the landlord is to serve it with a 6 months notice in the event she does not wish to renew the tenancy and that the notice is to run during the term of the tenancy and the Appellant (Landlord) having not done that but served it with only 7 Day's Notice, that the Notice is invalid and that the tenancy has not been validly determined hence the lower Court was right in striking out the prayer for possession.
We have carefully considered this contention and hold the respectful view that the tenancy relationship having been found to be a fixed term one which was to and did expire on 19th September, 2014 (as clearly admitted by the Pw1 and Dw1 in their respective testimonies before the lower Court)

and the tenant sought for renewal of the tenancy not during but after expiration of the tenancy, the landlord was not under a duty to issue and serve the tenant with a 6 months notice though provided for in Exhibit A2. This is because under Exhibit A2, the landlord was under a duty to serve the tenant with the 6 months notice where she did not wish to renew the tenancy and the notice was to run during the lifetime of the tenancy. The tenancy having expired on 19th September, 2014 by effluxion of time and the tenant vide its letter (Exhibit A4) made on 16th October, 2014 sought for elongation of the tenancy (which implies renewal of the tenancy) but the landlord was not so minded and given particularly that the request for renewal was made after the expiration of the tenancy relationship by effluxion of time on 19th September, 2014 the landlord was no longer under a duty to serve him with 6 months notice. The Respondents contention would have been sustainable if it had sought for a renewal of the tenancy during its currency and the Landlord declined and proceeded to serve it with 7 days Notice instead of the 6 months provided for in the Agreement.

It needs be pointed out that after the expiration of the tenancy by effluxion of time on 19th September, 2014, and the tenant still remained in possession, it became a tenant at sufferance who is entitled in law to only a 7 Days Notice. As pointed out by the Court in ***TINUOLA & ORS V OKON supra*** and ***ODUTOLA V PAPERSACK NIG LTD supra***, and **JOSEF V ADOLE surpa**, at this point in time in which the tenancy has come to an end by effluxion of time, the landlord is within his right to proceed with a 7 Day's Notice. We hold the view that in the present circumstances, the Clause for service of 6 months notice on the tenant which clearly stipulates the notice is to run during the period of the tenancy will no longer apply as the tenancy relationship within which duration the agreement contemplated the notice would run has come to an end. The relationship having come to an end, the notice cannot be issued to run within the period of a non existing or expired tenancy. It is said that one cannot put something on nothing. See: ***UAC V MACFOY (1961) 3 ALL ER 1169; (1962) AC 152***

Beyond these, the tenancy agreement having provided that the tenancy is renewable and that if the landlord is not minded to renew it she should serve the tenant with a 6-months notice which will run during the currency of the tenancy relationship, this implies the tenant has a right to apply for the renewal during the currency of the tenancy so that should the landlord not be minded to renew, she would give it a 6-months notice which will run during the currency of the tenancy. The tenant having however not applied

for renewal during the currency of the tenancy, it cannot complain against denial of 6-months notice when it applied for renewal inconsistent with the intendment of the Tenancy Agreement. In coming to the above view, the Court is not unmindful of the decision of the Court of Appeal in ***FELIX GEORGE & CO LTD V L.A. AFRINOTAN (2014) LPERLR – 22982 (CA)*** where the Court of Appeal, in a situation almost similar but distinguishable from the instant case found that a landlord ought to have given the tenant a year's notice as contained in their agreement in determination of a 15 year fixed term tenancy relationship and the 1 year notice was to run within the period of the tenancy. The distinguishing factor in that case vis-à-vis the instant case is that in that case the landlord who was supposed to give the tenant a year's notice which would run during the pendency of the fixed term tenancy contrary to the agreement gave the tenant a 4 days notice towards the end of the tenancy.

For this reason, the Court of Appeal held that the landlord ought to have given the tenant the one year notice as contained in their agreement. In order words, the factor which vitiated the notice issued by the landlord in that case was the fact that it was only a 4 days notice which is not the full 1 year the parties agreed in the Tenancy Agreement. The situation is different from the instant case in which the landlord was supposed to issue a 6 months notice during the pendency of the tenancy relationship should she not wish to renew the tenancy but a request to renew the tenancy was only made after the expiry of the tenancy by effluxion of time. The landlord in the circumstances issued 7 days notice on the tenancy given that the tenancy relationship within which the 6months notice was to run had expired by effluxion of time and the tenant only applied for renewal of the tenancy after its expiry. Even in the ***FELIX GEORGE & CO LTD V L.A. AFINOTAN case, supra,*** the Court of Appeal made the point that if the fixed tenancy relationship had expired by effluxion of time the tenant would become a tenant at sufferance who would be entitled to only 7 days notice.

In the light of the Courts' findings above, the Court agrees with the learned Appellant's Counsel that the lower Court erred when it held that the Appellant ought to have served the Respondent with a 6 months notice and consequent upon that declared the 7 days notice invalid and struck out the prayer for possession of the premises. Even if it can be said the tenant has in the circumstances become a tenant at will by virtue of the provision of Clause d, the Respondent having admitted service of 7 Days Notice at first and then 7 Days of Owner's Intention to Recover Possession, the Appellant

still has complied with the requirement of Sections 7 and 8 of the Recovery of Premises Act. In the circumstances, the Court resolves the sole issue raised above in favour of the Appellant against the Respondent. In consequence, the Order of the lower Court striking out the Appellant's Claim for possession is set aside. The Respondent having acknowledged service of 7 Day's Notice and a 7 Days Notice of Owner's Intention to Apply to Recover Possession on it after which the Appellant instituted this action, the Appellant had fulfilled the requirement of Sections 7 and 8 of the Recovery of Premises Act and is accordingly entitled to an Order of Court for possession of the premises. Accordingly, the Respondent is ordered to give up forthwith vacant possession of the premises being House NO. 3, A Close, Kado Estate Abuja to the Appellant.

With regard to the Appellant's contention that the trial Court erred when it assumed jurisdiction and granted relief no. 2 after holding valid notice was not serve on the Respondent, the position of the law is that factors which guide recovery of possession of a premises are different from those which can justify a grant of order for payment of arrears of rent. Where a tenancy relationship has been validly determined by service of requisite notices as provided under Sections 7 and 8 of the Act, a Court will validly grant an Order for possession. Service of valid statutory notices is a condition precedent for grant of order for possession. Where the reverse is the case, an order for possession, as the trial Court held, cannot be made. In that circumstance that Court would not have the jurisdiction to grant the prayer for possession. See: ***AYNIKE STORES LTD V ADEGBOGUN (2008) 10 NWLR (PT. 1096) P. 612***. The lack of jurisdiction here would however be with respect to the claim for possession. Where there is in addition to the claim for possession, a claim for accumulated arrears of rent, the Court will rightly exercise jurisdiction to entertain it if the totality of the rent claimed falls within its monetary jurisdiction. Section 12 of the Recovery of Premises Act provides that landlord may together with his writ or plaint for recovery of possession claim to recover rent accruing in respect of the premises since the end of the tenancy. In ***NNADOZIE V OLUOMA (1963) 7 WNLR P. 77,*** the Court held that both a claim for arrears of rent and possession can be pursued in one and same action and they are separable. Hence unlike a claim for mesne profit a claim for arrears of rent does not fail with the failure of a claim for possession. In ***UDIH V IZEDOUNWEM (1990) 2 NWLR (PT.132) P. 357,*** the point was made that a landlord is entitled to arrears of rent up to the date the tenancy is effectively determined by notice to quit. In this case, the trial Court having

held that the Appellant did not validly determine the tenancy could ordinarily make an order for payment of arrears of rent to her until the tenancy is validly determined. Be this as it may be, this Court having however held that the tenancy was validly determined and ordered for possession, the order of the trial Court with regard to rent ought not to be for arrears of rent, but mesne profit which is to be calculated at the prevailing rent from the time the tenancy was determined by the 7 Day's Notice until possession is given up. In line with this, the mesne profit shall be as claimed by the Appellant. The trial Court's Order on arrears of rent is in the circumstances overruled. In its place the Appellant's prayer for mesne profit is granted as prayed. The Respondent is directed to pay mesne profit at the rate of N133, 333 per month from 19th September, 2014 till possession is given up to the Appellant.

In totality and by reasons of all we have said above, this Appeal succeeds in the main. The judgment and Orders of the Lower Court are set aside. The Respondent is to pay a cost assessed and fixed at N50, 000.00 to the Appellant.

The Registrar of this Court is directed to furnish the parties in this Appeal with Certified True Copies of the Judgment within 7 days from today.

SIGNED **SIGNED**
HON. PRESIDING JUDGE **HON.JUDGE**
8/7/2016 **8/7/2016**

LEGAL REPRESENTATIONS:

(1). Mr. Musa A. Adamu/Mr. O. J. Anas for the Appellant.

(2). Mr. Aniah Ikwem for the Respondent.