IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
(APPEAL DIVISION)
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE V. S. GABA - MEMBER

APPEAL NO.:CVA/343/2017

BETWEEN:

IKENNA K. EZEANI ..... APPELLANT

AND

IROHA CHIMA ..... RESPONDENT

JUDGMENT

This is an appeal against the Judgment of His Worship, **Ibrahim Mohammed** of the District Court of the Federal Capital Territory, Abuja delivered on the 19th day of September, 2017.

The Appellant approached the Lower Court vide a plaint dated the 9th day of May, 2017 and filed on the 15th day of May, 2017.

The Appellant's claim against the Respondent were as follows:-

1. An Order of Court directing the Respondent to vacate the property situate and known as House No. Flat E, Block 10, L Close, 1st Avenue, Gwarinpa II Estate, Abuja.

2. An Order of Court directing the Respondent to pay the Appellant arrears of rent and mense profit in respect of the premises from the 1st day of December, 2016 until the Respondent vacates and hands over vacant possession to the Appellant.

3. An Order of Court directing the Respondent to carry out end of lease terminal obligations of putting the property in a tenantable position by replacing

damages and missing items and interior decoration inclusive of painting of the premises.

4. An Order of Court directing the Respondent to pay the Appellant the sum of ₦500,000.00 (Five Hundred Thousand Naira) only, as general damages.

5. 10% interest of the Judgment sum from the date of Judgment until the Judgment sum is fully liquidated.

The brief facts of the Appellant's case before the Lower Court is that the Defendant has been occupying his property as yearly tenant and the tenancy of the Defendant runs from the 1st December and ends on 30th November of each year at One Million Four Hundred Thousand Naira Only.

The Appellant states that the last rent paid by the Defendant expired on the 1st December, 2016 and several demand notices were served on him and also seven days notice of owner's intension to apply to court to recover

possession was also served on him before the institution of the action.

The Judgment of the court was entered on the 19th day of January, 2017 against the Appellant hence the present Appeal.

The Appellant formulated the following grounds of Appeal in the Notice of Appeal.

GROUND ONE:

The learned Trial District Judge erred in law when he held thus:

"***In a dispute of rent, the tenant is entitled to 6 months quit notices as a yearly tenant"*** and thereby misdirected himself as to the prevailing judicial authorities that govern landlord/tenancy relationship.

PARTICULARS OF ERROR

a. There is no law that states that a yearly tenant shall be given 6 months notice to quit when he is in arrears of rent.

b. The trial district judge did not give any iota of consideration to the notorious and well established decision in the case of ***ODUTOLA VS PAPER SACK LTD (2006) 18 NWAL (Pt. 1012) PAGE. 470 at 494 paragraphs F-H*** which had clearly established that a tenant who is in arrears of rent is a tenant at will and not entitled to six months notice to quit.

c. The trial District Judge was bound to consider and follow the Supreme Court decision of ***ODUTOLA VS PAPER SCAK LTD.***

d. The trial court failed to consider the fact that the Respondent was unable to renew his rent after his rent expired on the 30th day of November, 2016 as he was still owing part of the rent of 2015 to 2016 rent in March, 2017.

e. The Appellant repeatedly demanded the rent from the Respondent, by the Respondent refused/neglected to renew his rent.

f. The Respondent became a tenant at will on the authority of ***ODUTOLA VS PAPERSACK,*** and thus entitled to a seven (7) days Notice to quit.

GROUND TWO

The learned trial District Judge erred in law when he failed to evaluate, consider and grant the Appellant's claim of arrears of rent and mense profit.

PARTICULARS OF ERRORS

a. The Respondent's last rent expired on the 30th day of November, 2016.

b. The Respondent refused/neglected to renew his rent despite repeated demands on him to do so by the Appellant.

c. There was no single evidence before the court that the Respondent had effected rent beyond the 30th day of November, 2016.

d. The Appellant claimed for arrears of rent and mense profit during trial from the 1st day of December, 2017 and there was clear evidence that the Respondent is owing rent/mense profit from the 1st day of December, 2016.

e. The trial court neither evaluated the claim of arrears of rent and mesne profit nor gave any reason to justify his dismissal of the claim of rent and mesne profit contrary to any known judicial precedent.

The Appellant in this Appeal distilled two issues for determination to wit;

(1) ***Whether from the totality of evidence before the Trial Court, the Trial Court was Right when he held***

that the 7 days notice to quit served on the Respondent was invalid.

(2) ***Whether the Learned Trial District Judge was Right when he failed to consider, evaluate and grant the Appellant's claims of Arrears of Rent and mense profit.***

Arguing on issue one, learned counsel submitted that the Learned Trial Judge held in his words that ***"No evidence is established by the Plaintiff to show whether orally or in writing that the Plaintiff is entitled to 7 days quit notice***

in the event of non-payment of rent or any envisaged circumstances".

It is the argument of Learned Counsel that the Trial Judge did not avert his attention to the Locus Classicus case of

ODUTOLA VS PAPER SACK LTD. (2006)18 NWLR (Pt. 1012) Page 470 at 494 Paragraph F – H. Wherein the Supreme Court held as thus; "***A tenancy at will can be converted to a yearly tenancy and vice versa. In the instant case, the yearly tenancy that came into existence between the parties when the Respondent started paying yearly rents ended when the Respondent stopped paying its rent, and the Respondent became a Tenant at will by remaining in possession of the property. In other words, the Respondent at the stage was holding over the property and in that capacity became a Tenant at will. Holding over with the consent of the Landlord makes the Tenant a Tenant at will".***

Learned Counsel submit that by virtue of Section 8 of the Recovery of Premises Act Cap 544 1990, the requisite length of notice to quit for a Tenant at will is 7 days notice of quit and that it has fulfilled all the obligation.

On issue two, ***whether the learned trial District Judge was right when he failed to consider, evaluate and grant the Appellant's claims of Arrears of Rent and mense profit.***

It is the argument of the Appellant that he led evidence to the fact that the last payment of rent the Respondent made to him was for the tenancy term of 2015 – 2016 thereby establishing the indebtedness of the Respondent to him from the period of 1st December, 2016.

Learned Counsel submit further that, the trial court has failed to evaluate evidence before it thereby occasioning miscarriage of justice.

Learned Counsel urge the court to evaluate the evidence in line with the case of ***AFOLABI VS ALAREMU (2011)LPELR 8894 CA*** where it was held as thus;

> '***The law is that findings of fact are matters peculiarly within the province of and reserved for***

the trial court. However, where there is ample evidence and the trial court failed to evaluate it and make correct findings, the Court of Appeal is at liberty to evaluate such evidence and make proper findings unless the finding rest on credibility of witnesses.'

Court was urged to uphold the Appeal. Upon service, the Respondent filed Notice of Preliminary Objection and the Respondent brief of argument.

The Notice of Preliminary Objection is to the competence of this appeal on the following grounds to wit:

1. That by virtue of Order 50 Rule 3 of the Rules of this Honourable Court, the Appellant ought to have compiled the Record of Appeal in this appeal within 3 months of the decision appealed against.

2. That the Judgment of the Lower Court was delivered on 19th September, 2017 and the last time Record of

appeal ought to have been compiled is 19th December, 2017 as against the one compiled in this appeal on 22nd March, 2018. A time well out of the prescribed period and no leave nor penalty paid for this non compliance by the Appellant.

3. That the Record of Appeal was not certified according to the Evidence Act and as such this appeal cannot be predicated upon same.

4. That the Appellant's brief of argument was filed out of time and no leave of court was sought to regularize same.

Learned Counsel contended that this court lacks jurisdiction to hear and determine this appeal on the ground that the Record of Appeal upon which this Appeal is predicted is defective same being an uncertified public document. ***NDAYAKO VS MOHAMMED (2006)17 NWLR (Part 1009)655.***

Learned Counsel submits that in the absence of a duly certified Record of Appeal known to law, the court should strike out the case.

It is further the submission of the Learned Counsel that by virtue of Order 50 Rule 3 of the Rules of this Honourable Court, record of Appeal ought to have complied within 3 months of the decision appealed against. The judgment of the lower court was delivered on 19th September, 2017 and this record was compiled on 22nd March, 2018.

Counsel further contended that, where a rule of court has clearly and unambiguously provided for a particular act or situation, the courts have a duty to enforce the act or situation. ***PDP VS OKOROCHA (2012) 15 NWLR (Pt. 1323).***

On the main appeal, counsel formulated two issues for determination to wit;

1. ***Whether the lower court was right when it held that it lacks jurisdiction to entertain the suit of the Appellant when the Appellant has not complied with the condition precedent under section 8 of Recovery of Premises Act, Cap 544 Laws of Federal Capital Territory, (called from ground one of the Notice of Appeal).***

2. ***Whether the learned Trial District Judge was Right to have Refused the Reliefs of the Appellant when its jurisdiction has not been properly invoked (called from ground two of the Notice of Appeal).***

On issue one, learned counsel submit that from the totality of the evidence adduced at the Lower Court, the Appellant has not complied with the condition precedent set out in section 8 Recovery of Premises Act Cap 544 Laws of FCT.

Counsel submits that the decision of the lower court that it lacks jurisdiction to entertain the Appellant's suit

isintendentwith the principle of law that if an act prescribed the mode of doing a thing, any other made is false. ***BAKOSHI VS CHIEF OF NAVAL STAFF (2004) 15 NWLR (Pt. 896) 268, 290 F-H.***

On issue two, whether the learned Trial District Judge was Right to have Refused the Reliefs of the Appellant when its jurisdiction has not been properly invoked (called from ground two of the Notice of Appeal).

Counsel submitted that the learned trial District Judge was right to have refused the Appellant's reliefs as his claim for possession has failed having not fulfilled the condition precedent to activated the jurisdiction of the court.

Counsel contended that service of Notice to quit is a pre-condition for the institution of an action for recovery of premises. ***IHEANACHO VS UZOCHUKWU (1997) 2 NWLR (Pt. 487) 257.***

Counsel urge the court to dismiss the Appeal.

Upon service, the Appellant filed a reply brief wherein the Appellant submitted that once a motion for extension of time with a deeming prayer is grantedits settled the matter.

Learned counsel argued further that time for filing the Appellant's Brief of Argument starts to count after the transmission of the Record of Appeal and that by Order 50 Rule 10(b) of the Rules of this court once motion for extension of time to transmit the records of Appeal out of time and a deeming order regularized is made and granted the process is valid.

On the issues whether the record of Appeal was certified in accordance with section 102 (a)(1) and 105 of the Evidence Act, 2011, counsel submit that a close look at page 1 of the records of Appeal will reveal that it was properly paid for and duly certified.

On the part of Court, before delving into the Substantive Appeal, we shall first of all consider the Notice of Preliminary Objection as filed by the Respondent.

On ***whether by virtue of Order 50 Rules 3 of the Rules of this Court, the Appellant ought to have compiled the Record of Appeal in this Appeal within 3 months of the decision appealed against.***

The Law is trite that once a Motion for extension of time with a deeming prayer is granted the said process, though filed out time becomes regularized. ***MANA VS PDP & ORS (2011)LPELR 19754 (CA).***

It is on record that the Appellant by a Motion on Notice dated the 12th November, 2018 and filed the 15th November, 2018 sought for an Order of this Honourable Court for extension of time for which the Applicant may transmit record in this Appeal. And an Order deeming the record of appeal as properly filed.

The said Motion was granted by this Honourable Court on the 22nd October, 2019.

Indeed, the effect of a deeming Order is to regularize the process in question and where that is done, the process is proper before the Court.

For avoidance of doubt, Order 50 Rule 6 of the Rules of this Court provide as thus; "***the time prescribed in Rule 1, may be enlarge at any time by the Court on such terms as it may deem fit, after Notice is given to the Respondent by the Appellant of his application for enlargement of time".***

From the above provision therefore, we hold that the Respondent's argument on this arms must fail, it fails and is hereby dismissed.

On whether the Records of Appeal in this Appeal is incompetent as it was not certified in accordance with Section 102 (a) and 105 of the Evidence Act, 2011.

The basis of the Respondent argument is that, there is no indication that fees was paid for the certification of the Records of Appeal.

We have looked at the said Record of Appeal before us, it is obvious that the said Record of Appeal was duly paid for and receipt issued.

In the said Record of Appeal, the fees for the Certified True Copy is N500,00, Teller No. 53622.The date is 15th December, 2018.

From the above finding, the Respondent argument is mere technicality we so hold.

On the whole, the Notice of Preliminary Objection is refused and dismissed accordingly.

On the main appeal, we have carefully considered the totality of the grounds of appeal and briefs of argument filed by Appellant on the one hand and Respondent on the other hand.

We shall endeavour to make specific references to the said processes filed by the parties as we deem necessary in the course of this judgment.

On our part, it seems to us that the crux of this appeal can be resolved by issue one formulated by the Appellant, which we hereby adopt, to wit:-

Whether from the totality of evidence before the Trial Court, the Trial Court was right when it held that 7 days Noticeto Quit served on the Respondent was invalid.

Indeed, it is trite that the inherent jurisdiction of court is not exercisable when the court lacks jurisdiction. What this means is that the inherent jurisdiction of court only comes in where it has jurisdiction, and where same is being challenged as in the present case, it has to determine first whether it has jurisdiction before being called upon to

exercise its inherent jurisdiction.***IWUJI & ORS VS GOVERNOR OF IMO STATE & ORS (2014) LPELR 22824 (CA).***

It is the contention of the Appellant that the Lower Court has section 8 of the Recovery of premises Act of FCT was complied with. And that the Trial Court was in error when it dismissed the case of the Appellant. For avoidance of doubt, where tenancy relationship between landlord and tenant is governed by Tenancy Agreement, the said tenancy becomes, contractual which is subject to the terms and condition therein contained.

It is the case of the Appellant in the Lower Court that the Respondent's tenancy expired since 1st December, 2016 and that he refused to renew his rent and neglect to vacate the premises despite service of 7 days notice. This situation was well put to rest by Supreme Court in the case of ***ODUTOLA VS PAPER SACK (NIG.) LTD (2006) NWLR (Pt. 1012) 470 (Page 27) where it was***

held that that, "An act of a new tenancy is conscious and specific one which must be a subject of bilateral conduct on the part of the landlord and tenant. As a matter of law, the parties must clearly and unequivocally express their willingness to enter into the new tenancy at the termination of the old one. As a specific act emanating from the landlord and the tenant, it cannot be a subject of guess or speculation. An agreement or contract is a bilateral affair which needs the ad-idem of the parties. Therefore where parties are not ad-idem, the court will find as a matter of law that an agreement or contract was not duly made between the parties."

It is in evidence before the lower court (as shown in Page 1 Paragraph 2) of the Record ofProceedings that the Respondent's rent has expired on the 1st December, 2016 and that the last rent paid by the Respondent was in 2015 without the Respondent renewing same.

Indeed, where parties enter into agreement in writing, they are bound by the terms thereof.

The court and indeed any other party will not allow anything to be read into the agreement, terms on which the parties were not in agreement or not ad-idem. Above underscore the significance of sanctity of contract.

LARMIE VS DATA PROCESSING MAINTENANCE AND SERVICE LTD (2005) 12 SC (Pt. 1) 93 at 103.

Indeed, he who comes to equity must come with clean hands or must do equity. ***ALALADE VS NBN LTD (NO. 2) (1997) 8 NWLR (Pt. 517).***

It is instructive to state here that for there to be a valid lease such agreement shall have the following:-

a. Commencement and duration of terms

b. Word of demise

c. Description of premises

d. Parties

e. Agreement and

f. Payment of rent.

I rely on ***ODUTOLA & ANOR VS PAPERSACK NIGERIA LTD (2006) 11-12 SC.. 60., STAR FRANCE AND PROPERTY LTD VS NDIC (2012) LPELR 8394.***

Above condition are conjunctive in law.

Qst.. Was there payment for the new rent?

Our answer is in the negative.

Question..why is Defendant insisting on the issue of service of statutory notice which ought to have formed a fundamental part of the tenancy had he paid rent?

<u>The conduct of the Respondent was succinctly captured by Niki Tobi (JSC) of blessed memory, in the case of</u>

ADEWUNMI & ORS VS OKETADE (2010) 8 NWLR (Pt. 1195) 63 SC, where it was held that a land lord has an unfettered legal right to terminate a tenancy upon giving notice. Afterall, the property is his and he can at any stage retrieve it subject to the conditions in the agreement if any.

The position of the law is clear. It is almost like the day and the night changing places... what usually brings problem between landlord and tenant is the giving of adequate notice..what constitutes adequate notice is spelt out in the lease or tenancy agreement.

In other words, the landlord must give the tenant the quick notice as provided in the tenancy agreement if the tenant refuses to quit, a court of law can on an action by the landlord, force him out of the premises.

Here we are faced with an appeal arising from the decision of a Trial Magistrate who delivered Judgment in favour of a Tenant who has refused to renew his rent and

who has lost all the rights of a tenant on account of failure to renew his rent by paying consideration, but yet still staying in occupation.

We wish to observe and indeed it is our judgment that payment of rent amongst other conditions is a sine qua nonfor any valid lease agreement to have the force of law. Where a tenant whose lease expires, fails and or ignored to pay rent, regardless of any earlier agreed condition with the landlord, such a tenant loses such right to lay claim to such condition.

As soon as a tenant is in arrears of rent, he becomes a tenant at Will who shall be served only seven days (7) notice. We rely on ***ODUTOLA VS PAPERSACK (SUPRA)***

We do not blame the Respondent, but the law that has given him the latitude and effrontery to use the process of the court to the dismay of the Appellant.

It is without gain saying that lower courts are bound by decisions of higher courts even where there are flaws,supposedly in such a decision.

Any such deviation from such a decision by a lower court certainly amounts to judicial insubordination and crass rascality.

The decision in ***ODUTOLA VS PAPERSACK LTD*** on this note becomes binding.

It is our judgment that the decision of the District Court presided by His worshipIbrahim Mohammed is perverse and a misdirection and application of the settled law.

The era where judicial processes are used to frustrate and annoy landlords is over.

The desire and determination of Respondent in the present appeal to continue to remain on Appellant's property which he never contributed in building shall never be condoned.

Era of technical justice is long gone.

This Appeal succeeds. The decision of the trial court is hereby set aside.

Consequently, the following Orders are hereby made:-

1. An Order of Court directing the Respondent to vacate the property situate and known as House No. Flat E, Block 10, L Close, 1st Avenue, Gwarinpa II Estate, Abuja **is hereby granted.**

2. An Order of Court directing the Respondent to pay the Appellant arrears of rent and mense profit in respect of the premises from the 1st day of December, 2016 until the Respondent vacates and hands over vacant possession to the Appellant **is hereby granted.**

3. Respondent is **hereby Ordered** to carry out end of lease terminal obligations of putting the property in a tenantable position by replacing damages and

missing items and interior decoration inclusive of painting of the premises.

4. The Respondent**is hereby Ordered** to pay the Appellant the sum of N500,000.00 (Five Hundred Thousand Naira) only, as general damages.

5. 10% interest of the Judgment sum from the date of Judgment until the Judgment sum is fully liquidatedis **hereby granted.**

HON JUSTICE Y. HALILU
Presiding Judge
5th December, 2019

HON JUSTICE V.S GABA
Hon. Judge
5th December, 2019