

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION (APPELLATE
DIVISION)**

**HOLDEN AT COURT 14, APO ABUJA ON THE 27TH DAY OF
SEPTEMBER, 2016.**

BEFORE THEIR LORDSHIPS:HON. JUSTICE U.P. KEKEMEKE (PRESIDING JUDGE)

HON. JUSTICE V. V. VENDA (HON. JUDGE)

APPEAL NO: CVA/8/15

COURT CLERK: AMINU ZAKARI

BETWEEN:

JAMES OGBODO.....APPELLANT

AND

MRS. MARTHA SULE.....RESPONDENT

JUDGMENT

By a Notice of Appeal dated the 4th day of March, 2015, the Appellant being dissatisfied with the Judgment of Her Worship Mrs. S. O. Adeniyi delivered on the 18th day of February, 2015 doth appeal to this Court upon the following grounds:

1. GROUND ONE.

That the Court erred in law when it entered judgment in favour of the plaintiff who did not issue and serve adequate statutory notices to the defendant before instituting this suit.

2. GROUND TWO:

The Court erred in law when it did not serve the Defendant Notice of Judgment contrary to Order XXV of the District Court rules before proceeding to deliver Judgment.

The Appellant sought an Order of this Court setting aside the Judgment of the Chief District Court delivered by HER WORSHIP (Mrs.) S.O. Adeniyi and allow the appeal.

The record of appeal dated 18/02/15 was compiled and transmitted to this Court while the appellant brief is dated and filed on the 2nd day of July, 2015. Learned Counsel to the Appellant adopted his brief of argument and urged the Court to allow the appeal. The Appellant raised two issues for determination:

1. Whether the Learned Trial District Judge was right in holding that the Respondent has issued and served the Appellant valid statutory Notices as required by law to enable her order for the recovery of the premises.
2. Whether the Court was right by not serving the Appellant Notice of Judgment before proceeding to deliver its Judgment contrary to Order XXV Rule 1 (1-3) of the District Court rules.

Learned Counsel submits that the Appellant is a tenant of the Respondent who is entitled to statutory Notices under the law before an action can be instituted for recovery of premises.

That in the instant case, the Respondent did not issue and or serve the Appellant statutory Notices; refers to Section 7 of the Recovery of Premises Act. That in Page 70 of the records PW1 stated that he instructed his Lawyer to issue Quit

Notice but did not mention the name of the Lawyer and the type of Notice. He did not state whether the Notice was issued or not. That PW2 tendered the Notice of Owner's Intention to Recover Possession prepared by *M.A. Ebute & Co.* who is not the agent of the Respondent without a letter of authority from the landlord. Learned Counsel contends that as a result of the above, the Notice to Tenant of Owner's Intention to Recover Possession is invalid; refers to Page 53 of the records.

That the Respondent has not terminated the tenancy of the Appellant till date. That her Worship misdirected herself when she arrived at a conclusion that at the end of the tenancy, the tenant is bound to yield up possession and that if he fails, he becomes a trespasser, refers to Page 90 of the records. That no Quit Notice was tendered in evidence.

That in the absence of the service of statutory notices, the claim of the Respondent would not be properly constituted and such claim should be struck out.

On issue 2, Learned Counsel submits that on 22/10/14 parties were represented but their respective Counsel adopted their Written Addresses and the Court adjourned for Judgment. On the later date fixed for Judgment, the Respondent's Counsel was not notified. No Hearing Notice was served. That rules of Court are meant to be obeyed. He finally urges the Court to set aside the Judgment and order a retrial.

The Respondent also adopted his Respondent's brief dated 16/10/15 but filed on the 16th.

The Respondent raises a Preliminary objection to the competence of the appeal. That the appeal is incompetent and should be dismissed. That where a Notice of

Appeal is filed, it carries the heading of the superior Court and not the Court which Judgment is being challenged. That the error is not a mere irregularity. It is fundamental and goes to the root of the case. The appellant by the rules of Court is expected to file his brief of argument within 21 days after transmission of records. Order 43 Rule 10. Appellant transmitted record on the 14/04/15 but filed his brief on the 02/07/15, a clear period of three months interval. That the Appellant's brief is not stamped and sealed.

In his reply brief dated 26/10/15, Learned Counsel stated that by Order 43 Rule 4 of the rules of Court, Notice of Appeal from District Court to High Court must be headed as such.

On the 2nd issue he contends that he is a qualified Legal Practitioner of the Supreme Court. That at the time Appellant's Counsel filed his brief, the issue of NBA Stamp and Seal is not operative. Learned Counsel urges the Court to discountenance the objection.

I am surprised that the Respondent's Counsel still argued the Notice of Preliminary Objection in his Respondent's brief despite the fact that it was argued in this Court at the last appeal session and a considered ruling delivered on 24/11/15 by my Learned brothers **J.O. Okeke J.** and **D.Z. Senchi J.** The attitude of Counsel is condemnable and an abuse of Court process. We shall therefore ignore the argument on the Preliminary Objection.

Learned Counsel submitted that the Appellant's position in law is that of a tenant at will and is only entitled to a 7 Days' Notice or Notice to Tenant of Owner's Intention to Recover Possession. Learned Counsel therefore contends that the Notice to Tenant of Owner's Intention to Recover Possession is valid. Learned Counsel canvassed that the issue of the authority of Counsel to issue the

Notice was not an issue during trial. He urges the Court to resolve the issue in his favour.

On the issue of hearing Notice, Learned Counsel canvassed that there is no where this fact was enunciated in the records of appeal. Furthermore, equity does not aid the indolent. A litigant ought to be vigilant and not indolent. That Appellant fully participated in the trial. The failure of the Court Registrar to serve hearing notice on the Appellant cannot be visited on the Respondent.

We have read the Appellant and Respondent's brief and considered the issues raised thereto. The issues are straight forward and simple.

1. Whether the Appellant was duly served with the requisite/valid statutory notices.
2. Whether the right to fair hearing of the Appellant was breached by the non-service of the notice of Judgment.

The contention of the Appellant is that the Respondent did not issue and or serve the Appellant statutory notices. Learned Counsel refers to Section 7 of the Recovery of Premises Act and Page 90 of the Records of Proceedings. On the other hand, the Respondent canvassed that the Appellant's position in law is that of a tenant at will and is only entitled to a 7 Days' Notice or Notice to Tenant of Owners Intention to Recover Possession.

We have perused the records of proceedings. At Page 70 of the records PW1 at the Lower Court stated in evidence he instructed his Lawyer to issue Quit Notices and that this case was instituted when he still refused to vacate. The PW1 is the Plaintiff at the Lower Court and the Respondent in this Court.

In Page 41 of the records of proceeding, the PW1 stated in evidence under cross-examination that there is a tenancy agreement stipulating the term. That there was no time her title was revoked. The original title document was marked Exhibit M3.

At Page 42, the PW2 gave evidence at the Lower Court and stated that he is Isaac Mogaji Umar. That he was formerly a bailiff but now an Assistant Registrar. That he remembers effecting service of a Quit Notice of Owner's Intention to Recover Possession on 07/11/12 at Shop No.4 Block 21 Section B. He deposed to an Affidavit.

The Notice of Owner's Intention and Affidavit of service was admitted by the Lower Court as Exhibit M4(a) and M(4b) respectively. At page 53 of the record is the said 7 Days' Notice to Tenant of Owners Intention to apply to Recover Possession.

The evidence on record as earlier enumerated is that the landlord instructed her Solicitor to issue the Defendant/Appellant a Quit Notice. I shall reproduce the Quit Notice.

“I, Famokun Adedamola, Solicitor to your Landlord hereby give you Notice that unless peaceful possession of.....”

It is apparent from the above that the Quit Notice/Notice of Owners' Intention to recover Possession was issued by the Respondent's Solicitor.

Section 7 of the Recovery of Premises Act states: ***“When and so soon as the term or interest of the tenant of any premises held by him at will or for any term either with or without being liable to the payment of any rent ends or is duly determined by a written Notice to quit as in Form B, C or D whichever is***

applicable to the case or is otherwise duly determined and the tenant or if the tenant.... a person by whom the premises or any part thereof is actually occupied neglects or refuses to quit and deliver up possession of the premises or of such part thereof respectively, the Landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served in the manner hereinafter mentioned with a written notice as in Form E, signed by the Landlord or his agent.”

There is no doubt from the evidence that the Defendant/Appellant was a tenant for a term certain which said tenancy determined by effluxion of time at the end of the term.

From the Section 7 of the Recovery of Premises Act Form E is the appropriate Form to be used. Form E, attached to the Recovery of Premises Act by Section 31 states:

“I, (Owner or agent to the owner, as the case may be do hereby give you Notice that unless peaceable possession of the premises situate at”.

What the above means is that the Quit Notices and or the 7 Days’ Notice to Tenant of Owner’s Intention to Recover Possession must be issued and or signed by the Landlord or his agent.

By Section 2 of the Recovery of Premises Act Chapter 544, Laws of the Federation, agent means any person usually employed by the Landlord in the letting of the premises or in the collection of the rents thereof or specially authorized to act in a particular manner by writing under the hand of the Landlord.

The Respondent's evidence as borne by the record is that she instructed her Solicitor to issue Notices. He, Solicitor thereafter issued the said Notices which were served by PW2 the Bailiff. It is now clear that the Notice to Quit or and the Notice to Tenant of Owner's Intention to Recover Possession must be issued and signed by the Landlord or his agent. The position of the law is that a letter of instruction by a landlord instructing a Solicitor to recover possession of premises on the landlord's behalf must be issued before the notice to quit is issued by the Solicitor, otherwise the Solicitor has no authority to act. Consequently, any notice to quit or notice of intention to apply to recover possession issued by any such Solicitor before the letter of instruction is null and void and of no effect.

See *COKER VS. ADETAYO (1992) 6 NWLR (PT.249) 612*.

Thus, only the Landlord or his authorized agent is in position to issue a valid notice to quit.

See *PAPER SACK (NIG) LIMITED VS. ODUTOLA (2004) 13 NWLR (PT. 891) 509*.

It is clear from the Recovery of Premises Act that what the Appellant is entitled to be served is a 7 Days' Notice to quit or Notice to Tenant of Owner's Intention to Recover Possession in this case and nothing more as the tenancy was determined by effluxion of time but such notice must be valid.

See *PAPER SACK (NIG) LIMITED VS. ODUTOLA (Supra)*.

The 7 Days' Notice, Exhibit M4(a) was not issued by the Landlord. There is no evidence on record that it was issued by any person usually employed by the Landlord in the letting of the Premises or in the collection of the rents thereof neither is there any evidence that the Solicitor who issued Exhibit M4(a) was specially authorized to act in the aforesaid manner by writing under the hand of the Landlord. This issue was raised by the Appellant in the Lower Court but

was not properly considered. In the circumstance, the 7 Days' Notice of Owner's Intention to Recover Possession Exhibit M4 (a) was not validly issued having not been issued by the Landlord or his agent.

Having come to this conclusion, it would be unnecessary to consider the second issue as it has become academic. For the totality of reasons given, the appeal succeeds and it is hereby allowed.

The Judgment of the Chief District Court delivered by Her Worship (Mrs.) S.O. Adeniyi delivered on 18/02/15 is hereby set aside.

HON. JUSTICE U.P. KEKEMEKE
(PRESIDING JUDGE)

27/09/16

HON. JUSTICE V.V. VENDA
(HON. JUDGE)

27/09/16.