IN THE HIGH COURT OF THE
FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT 23, APO, ABUJA.

DATED 8TH JULY, 2016.

BEFORE THEIR LORDSHIPS:

1. HON. JUSTICE A. I. KUTIGI (PRESIDING JUDGE)
2. HON. JUSTICE A. O. OTALUKA (JUDGE)

SUIT NO: DC/CV/328/2010
APPEAL NO.CVA/05/2013

BETWEEN:

1. MR. AUSTINE OKEKE
2. FRANCIS ONWURA
3. IFEANYI OGBUJIMMA
4. JUDE MPIATU **……APPELLANTS**
5. EZENAGU EDOZIE
6. BENJAMINE OKOLI

AND

MR. EZEGEORGE OKEKE……..RESPONDENT

JUDGMENT

This is an appeal against the judgment of his Worship Lamido Kabir (as he then was), Chief District Judge delivered on 5th December, 2012.

By the application for plaint dated 21st July, 2010, the Plaintiff/Respondent in this appeal sought for the following reliefs against Appellants jointly and severally as follows:

a) **An order ejecting the Defendant jointly and severally therefore from the Plot.**

b) **An order for the Plaintiff to enter and take possession of the Plot.**

c) **The sum of N90, 000 only been arrears of rent from 1st January, 2009 to June 2010.**

d) **Interest of 22% from 1st January, 2009 till the date of payment.**

e) **The sum of N50, 000 for legal fees, cost of filing and service of the processes.**

The action was defended. At the conclusion of trial, the Court granted vacant possession of Plot 30 Timber Shade, Kuje Road Gwagwalada to the Plaintiff/Respondent and ordered all the defendant's to vacate and deliver up possession of the said premises in respect of Plot 30.

Being dissatisfied with the judgment of the lower court, the Appellants filed a notice of appeal on 21st December, 2012 containing three grounds of appeal. By court order granted on 17th November, 2015, the Appellant filed an additional 6 grounds of Appeal.

Pursuant to the provisions of Order 43 Rule 10 of the Rules, the Appellant filed and served their Appellants brief of Argument dated 19th November, 2015.

In the Brief of Argument, the Appellants raised seven issues as arising for determination as follows:

1. **Whether the District Court has the jurisdiction to entertain/adjudicate on the matter when title is in issue.**

2. **Whether the joint trial of the defendants can be sustained in law and if that has not caused miscarriage of justice. (i.e. whether there was a tenant/landlord relationship) and**
3. **Whether considering the two quit notices and owners intention to recover possession issued to the defendants and admitted in evidence and relied upon by the trial court has not occasioned a miscarriage of justice.**

4. **Whether the trial court reliance on the contradicted evidence as to the nature of the property in question and in granting the plaintiff possession has not occasion miscarriage of justice.**

5. **Whether having regard to the provision of Section 36 (1) of the 1999 constitution the court was right to have foreclosed the defendants from calling their witnesses which has occasioned a miscarriage of justice and infringed on their constitutional rights of fair hearing.**

6. **Whether the delivery of the judgment five months after the adoption of written addresses by the counsel to both parties has not occasioned a miscarriage of justice.**

We shall briefly summarise the essence of the submissions made with respect to the issues.

On issue 1,it was submitted that the lower court has no jurisdiction to entertain the matter in view of the fact that title was in issue. The contention is rooted in the fact that according to counsel to the Appellant, the Plaintiff during cross-examination agreed that title was in issue between him and the Appellants. The case of **Oduyemi v. Nwobodo (1974) 11 CCHCJ 1973** was cited.

On issue 2, it was submitted that the case at the lower court was not initiated by due process in that before a joint trial can be initiated, leave of the trial court must first be prayed for and obtained by virtue of **Order XI Rules 1 and 2** of the District Court Rules and that is even where the Defendants have a joint tenancy.

That in this case, no leave was obtained. Further, that the Defendants all had independent holdings and that it was wrong to rope them into one suit particularly when on the records, the Plaintiff gave evidence that the Defendants were paying rent to him on an individual basis and that the visit to the locus in-quo also showed the Defendants occupying different shops and therefore, that it was not a collective tenancy and accordingly it was wrong to have sued them jointly. The case of **Ossai v. Wakwah (2000) 16 WRN169** was referred to.

On issue 3, it was submitted that the two quit notices said to have been issued on the Appellants were not valid notices and further that they were not served in compliance with the relevant provisions of Section 28 of the Recovery Premises Act which provides that service of such notices must be personal. The case of **Mohammed Marikida v. Ogunmola (2006) 6 SCN at 165** was cited.

On issue 4, it was submitted that the evidence relied on by the learned magistrate was contradictory and unreliable. That while the claim on Plaint related to a Plot, the evidence on record including the quit notices issued mentioned a shop or shade which were built up.

On issue 5, it was submitted that the court was wrong to use the failure of Appellants to produce their landlord as evidence that the Plaintiff was their landlord. It was contended that it was for the Plaintiff to produce evidence in proof of his case and not to rely on the weakness of the case of Appellant.

On issue 6, it was submitted that the failure of the court to allow the Appellants call an additional witness who is the owner of the disputed land violated the provision of Section 36 (1) of the 1999, constitution on fair hearing and thus occasioned a miscarriage of justice. The case of **Akubueze v. FRN (2003) 28 WRN 156** was cited.

Finally on **issue 7**, it was contended that the failure of the learned trial judge to deliver his judgment within 90 days also occasioned a miscarriage of justice as the learned magistrate, it was contended, lost sight of critical evidence led at trial and also referred to evidence not borne out by the Record in reaching his decision.

At the hearing, learned counsel to the Appellant **S. M. Attah, Esq.,** adopted the submissions contained in the Appellants' brief and urged the court to allow the appeal. The Respondent from the records was duly served with the brief of argument and hearing notice for this appeal. Neither the Respondent or his counsel appeared in court or filed any process in opposition.

We shall proceed therefore on the basis of the provision of **Order 43 Rule 13** to determine the merits and justice of the Appeal on the basis of the records of proceedings and the brief of Argument filed.

Now the **7 issues** raised for determination amount to an unnecessary splitting or proliferation of issues which only serve to detract from the substance of the material issue which remains to be resolved by this Court which simply is whether the Respondent has satisfied the legal requirements on recovery of possession to entitle him to the reliefs sought. The entirety of issues 2-7 can be validly situated and resolved within this issue. In **Overseas Construction Ltd v. Creek Ent, Ltd & Anor (1985) 3 NWLR (Pt.13) 407 at 418**, the Apex Court instructively stated as follows:

"By and Large, every disputed question of fact is an issue. But in every case there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however the main issue is decided in favour of the defendant, then the plaintiff's case collapses and the defendant wins."

In our considered opinion and from the record of proceedings, two issues really rise for determination to wit:

1. **Whether title was in issue in the substantive case thereby divesting the lower court of jurisdiction to entertain the matter.**

2. **Whether the Plaintiff/Respondent has on a balance of probabilities satisfied the requirements to entitle him to the reliefs he seeks on the plaint.**

It is therefore, based on these issues and the exhortation of the Apex Court above that we would proceed to now determine this appeal. These issues appear to us to have brought out with sufficient clarity the crux of the appeal.

ISSUE 1

Whether title was in issue in the substantive case thereby divesting the lower court of jurisdiction to entertain the matter?

It is not in doubt that the question of jurisdiction is paramount and an important threshold issue. Jurisdiction is the limit imposed on the power of

a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between which the issues are joined or to the kind of reliefs sought. See **A. G. Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 552 (SC).**

The contention of Appellants here is that Plaintiff/Respondent who lay claim to ownership of the plot/shop is not known to them and that during cross-examination, the Plaintiff admitted that title was in issue between him and the Appellants. Furthermore that in evidence, Plaintiff tendered **Exhibit A4** as evidence of ownership of the disputed plot. On these grounds, learned counsel submits that the issue of title to the property was raised and therefore that the lower court does not have jurisdiction to hear and determine cases bordering on legal right over landed property.

The law is settled that a Plaintiffs' cause of action is deciphered by reference to the claim before the court. See **Abubakar V. Akar (2006) All FWLR (Pt321) 1204; (2006) 13 NWLR (Pt 996) 127.**

The plaint before the lower court which I had earlier reproduced essentially is for recovery of possession and arrears of rent. There is nothing with respect to title been claimed before the lower court, however the imagination is stretched.

It is therefore curious, how a response to a question during cross-examination can be used to elevate the plaint which has clearly denoted or streamlined the case for recovery of possession to one now of title. It therefore, must be emphasized that the evidence elicited at trial cannot be a substitute for the plaint for purposes of determining jurisdiction. In any event, evidence even elicited at trial which cannot be situated within the structure of the plaint may have doubtful value in the context of the resolution of the substantive dispute but certainly it has nothing to do with jurisdiction.

It is also instructive that the Appellants who have been sued to give up possession have not claimed to be the owner of the property. One then wonders how title can be in issue when Appellants do not claim ownership.

At **page 101** of the record, the lower court rightly in our view held that it is the claim or plaint that determines jurisdiction and not what a person says.

This finding is unassailable. The plaint is in substance for recovery of possession and arrears of rent and not founded on title to land or on the question of true/rightful ownership of the property. There is nothing in Appellants brief which enthuses us to overturn this finding. The issues before the court have no bearing whatsoever on title and the reliefs claimed are within the jurisdiction of the lower court. We therefore resolve **issue 1** in favour of the Plaintiff/Respondent.

ISSUE 2.

Whether the Plaintiff/Respondent has on a balance of probabilities satisfied the requirements to entitle him to the reliefs he seeks on the plaint.

The Plaintiff/Respondent's principal relief from **page 2** of the record is for possession and ejection of Appellants from a certain plot. Although the precise plot No. was not streamlined or delineated, the Plaintiff however tendered in evidence, **Exhibit A4** which is a conveyance of a permit over Plot No. 30 by F.C.D.A Department of Lands, Planning and Survey, Gwagwalada, Zonal office. The permit is based on a monthly rental fee of N500 which is subject to review. I shall return to this point later on.

The substance of the case of Plaintiff is that he built up this plot and rented it out to Defendants/Appellants. The Defendants joined issue with this assertion.

Now it may be pertinent to commence a proper consideration of the issue to refer to the law which has provided strict modalities for recovery of possession. Any recovery that cannot be properly situated within the structure of this laid down provision will clearly be compromised.

The provision of **Section 7 of the Recovery of Premises Act Cap 544, LFN, 1999** hereinafter referred to as the RPA provides thus:

"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 does not actually occupy the premises or only occupies a part thereof, 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, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice."

Flowing from the above, it is apparent that before a party or Plaintiff will be entitled to recover possession, some of the essential requirements to be established include;

1. That there must be a landlord and tenant relationship.

2. That the tenancy relationship was duely determined in accordance with the above provision of Section 7.

On the first requirement above, it is clear to the court from the evidence and the records that the issue of who the landlord is and whether there is a landlord and tenant relationship is a very important issue on which parties have joined issues. Its resolution one way or the other will have a material bearing on the appeal.

It is equally important to state that in law, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. See **131 (1) of the Evidence Act. Similarly by Section 133(1),**the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side regard been had to any presumption that may arise on the pleadings. By **133(2),** if the party referred to in**133(1)** adduces evidence which ought to reasonably satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment will be given if no more evidence were established.

We have at length stated the position of the law to situate on whom the burden of proof lies in each situation.

In this case, from the records, the primary burden was on the Plaintiff in view of the contested assertions to establish that he rented out the disputed plot and the shops to the Appellants. We must now have recourse to the evidence on the Records.

Now from the evidence of Plaintiff or PW1 running from pages 67 to 75 of the record, there is no document or evidence or indeed anything presented showing the terms of a landlord and tenant relationship with the Appellants. There is therefore no concrete template that the court can properly evaluate to determine the basis of the mutual reciprocity of legal obligations between Plaintiff and Appellants.

In evidence PW1 or Plaintiff stated that after he was allocated Plot 30 vide **Exhibit P4**, he built up the Plot and gave it out and that he initially did not collect rent but that he later started collecting rent. He tendered **Exhibits A1, A2 and A3** as evidence of receipts for payment of rent.

Now these Exhibits at pages 33 to 35 of the records are clear with respect to whom rents were collected from. **Exhibit A1** is dated 11th May, 2007 and was issued by **"*Main Timber Dealers multipurpose Co-operative Society*"** and the payment was by **"*M. T. D multipurpose cooperative.*"** The payment of rent was for two years from 2005 – 2006.

There is nothing indicating what was rented out here and whether it is related to Plot 30or even the Plaintiff. No mention was made of Appellants.

Exhibit A2 has the same features as **Exhibit A1** but the date on it is 27th February, 2009 and the payment was described for **"20 sheds for the year 2008".**

The final Receipt is **Exhibit A3** issued also by **"Main Timber Dealers Multipurpose Cooperative Society"** dated 1st February, 2008 to **"M. T. D Cooperative Gwagwalada Timber Shed"** for **"16 sheds for the year 2007".**

There is absolutely nothing in the entire trajectory of the evidence how either the Plaintiff or Appellants featured in this so called evidence showing that the Plaintiff rented out any plot or shed to Appellants.

Exhibits A1 to A3 presented by Plaintiff to court does not refer to any Plot 30 which he was permitted to use by F.C.D.A Gwagwalada office.

Indeed these exhibits show that **"Main Timber Dealers Multipurpose Cooperative Society"** are the **"owners, Shade Timber Shade, Kuje Road, Gwagwalada Abuja,"** which they rented out to different organisations as stated above.

There is nothing in evidence explaining what relationship, if any, that plaintiff has with this cooperative society which rented out the shops covered by **Exhibits A1 to A3**. Most importantly, the names of Appellants never featured in **Exhibits A1 to A3**. Even if their names has featured, it is the **"*Main Timber Dealers Multipurpose Cooperative Society*"** as owners of the Timber Shed that would have properly being the landlord through their trustees and with requisite standing to institute the action to recover possession.

The Plaintiff cannot legally and factually be situated within **Exhibits A1-A3**. It is therefore patently wrong on the part of the learned magistrate to use **Exhibit A4**, the permit to the Plaintiff over Plot 30 as a basis to hold that there is a landlord and tenant relationship when there is absolutely no evidence, that the said Plot 30 was rented out to anybody, not to talk of Appellants. The documentary evidence tendered by Plaintiff to show rent payments has no nexus with either Plaintiff or Appellants.

When the evidence on the other side of the issue is added to the mix, the case of Plaintiff on any relationship with Appellants is further undermined. The case of the Appellants as stated earlier is that they do not know Plaintiff as their landlord and have never dealt with him in that capacity. DW1 the 1st Appellant tendered **Exhibits D1A and D1B** showing he paid rent for the shed he occupies to one **Shedrack Nnatu** who is described on the receipts as the landlord. The two receipts covered periods from 2009-2011. There is nothing on those receipts showing any link with Plot 30. These documents were also not in any manner challenged at trial. Indeed in evidence, DW1 stated that individual landlords owned the sheds that each of the Appellants occupied and the different receipts tendered by Appellants justify the position.

DW2, the 6th Appellant similarly stated that he does not know Plaintiff and has no business with him. He tendered **Exhibit D2** which shows one **"U.O. Peters"** as the person who collected the yearly rent for shed B. 6 and the expiry date on it was11th July, 2006.

DW3, the 2nd Appellant tendered **Exhibit D3** showing evidence that he rented his shop or shed from one **Ugochukwu Ezenwaka** from 12th April, 2009 – 11th march, 2010 and not the Plaintiff.

DW4, the 5th Appellant similarly stated that he has his landlord and does not know Plaintiff. **Exhibits D4 and D5**, the rent receipts he tendered all show that the landlord to whom he paid rent to was one **"Onyebuchi Mpiatu"**. The payments covered the period February, 2009 to March, 2011.

All the documentary evidence, to wit **Exhibits D1 to D5** cover different duration of terms and there is absolutely no link or nexus with Plot 30 or the Plaintiff.

As stated earlier, the Plaintiff never tendered any agreement showing the relevant contracting parties and the terms regulating the tenancy relationship. The issue was therefore, left to be resolved on the credibility and weight of evidence proffered on both sides. On the evidence which we have extensively evaluated above, there is absolutely no iota of evidence to show that the Plaintiff rented out any Plot or shed from his Plot 30 to Defendants/Appellants and or that they had any landlord and tenant relationship.

The contention therefore, by the learned magistrate at **page 102** of the record that the Defendants failed to produce their landlord to testify and this inures to the benefit of the Plaintiff on the question of possession is with profound respect completely misconceived and ignores the relevant principles on burden of proof we earlier stated.

It is because the lower court completely misconceived that the burden was on Plaintiff to establish his entitlement to the claim sought by credible and not disjointed, contradictory and incredible evidence that led, amongst others to the erroneous conclusion arrived at that the Plaintiff has successfully proved his entitlement to the reliefs sought. The evidential burden may shift but only to the extent that credible evidence is first led and established before the evidential scale then shifts.

In this case, there is absolutely no evidence of such quality showing any landlord and tenant relationship between Plaintiff and Defendants and therefore, there was really nothing to rebut by Defendants/Appellants.

Section 143 of the Evidence Act therefore has no application in the present circumstances.

The issue here has nothing to do with ownership but who has reversionary interest of the premises the Appellants occupy. See Section 2 of the Recovery of Premises Act. Where a Plaintiff cannot establish as in this case, a landlord/tenant relationship of any kind, over a clearly identified property, it is difficult to see the basis of the invocation of Section 143 as the learned trial magistrate did in this case. There is again at the risk of prolixity, absolutely nothing to show that the Plots or sheds Appellants are occupying is on Plot 30 said to belong to Plaintiff. Having held that there is no landlord and tenant relationship between parties, this appeal stands wholly compromised. Any consideration of any other issue(s) will merely be in the nature of an academic exercise. Indeed without an established landlord and tenant relationship, any so called notices issued cannot have legal and or statutory validity.

Let us however still make some further comments.

Now from the evidence three quit notices were purportedly issued in this case. The first notice was admitted on **Exhibit A5** vide **page 72** of the record. The quit notice was issued by the law firm of Ikechukwu C. Eze & Co. dated 9th September, 2009 and it was addressed to the Chairman, **"*Main Timber Dealers Cooperative Association*"**. It is obvious here that the notice is not directed at any of the Appellants. If the exhibit discloses anything; it is absence of clarity on the part of Plaintiff as to who he gave out his property to. There is no delineation on **Exhibit A5** as to even the Plot rented out.

The other quit notices served by PW2 from the records are on pages 40, 41, 54, 56 and 58 and these show the names of 1st, 2nd, 3rd, 4th and 5th Appellants on the notices. All are dated 26th March, 2010 and giving them one month notice to quit. These notices strangely did not refer to any property of Plot let out and indeed did not refer to any Plot 30.

Now on then evidence, there is absolutely nothing showing the nature of the relationship to enable the court properly even determine when the tenancy would end. There is nothing presented showing whether the tenancy relationship is weekly, monthly, yearly or even a quarterly tenancy vide **Section 8(1) of the Recovery of Premises Act**. There is similarly no

template to determine nature of tenancy by reference to the time rent is paid or demanded within the purview of **Section 8(3) of the Recovery of Premises Act.**

In the light of this absence of evidence and or clarity on the issue, one really wonders how the lower court arrived at the decision or conclusion that the Quit notices were validly issued. This is more so when, all the evidence of rent payments by Defendants/Appellants vide **Exhibits D1-D5** show that they are all yearly tenants of different landlords and the tenancy covered different periods of time. The question now is if there clearly is no evidence of any joint tenancy, how come the Quit notices bear the same date?

In any event, even the **Exhibits A1-A3** tendered by Plaintiff as evidence of rent payment, which we have held to lack value in this case, showed that two years rent was collected in respect of **Exhibit A1** while a year's rent each was collected with respect to **Exhibits A2 and A3**. If that is the position, it is difficult to situate the legal validity of a month's quit notice when the time rent is paid is at best yearly.

It is in the light of these convoluted plot or narrative that we must also situate the purported notice to tenant of owners intention to apply to recover possession said to have been issued to the Appellants. They are also all similarly dated the same day and in the absence of a valid legal foundation of a Landlord and tenant relationship, these documents clearly lack value too.

From the provisions of Section 7 referred to earlier on, it is only where a term of interest of a tenant is lawfully determined in accordance with the provision and he refuses to deliver up possession before the notice of owners intention to apply to recover possession can validly even arise. The entitlement to rent and the corollary right of issuance of quit notices are rights flowing to the landlord in a landlord and tenant relationship properly established. It is not a matter of guess work or speculations or shooting in the dark.

As we have sought to demonstrate, no case was made out with respect to a landlord and tenant relationship between Plaintiff and Appellants. The clearly invalid notices allegedly issued predicated on a non-existing landlord tenant relationship must as of necessity collapse.

The law is settled that an appellate court does not ordinarily disturb the findings of facts made by a trial court, particularly where such findings and conclusions are supported by credible evidence. This principle is premised on the fact that the duty of appraising of evidence is a function of the trial court that had the pre-eminent position of seeing, hearing and watching the witness(es). See **Ezeanuna V. Onyema (2011) WRN 21 at 60 – 61.**

It is however equally settled law that where a trial court fails to properly evaluate the evidence on record or erroneously does so or the conclusion reached is not supported by the evidence on record, then a Court of Appeal in the interest of justice must exercise its own powers of reviewing those facts and drawing appropriate inferences from the proved facts particularly where such evaluation does not involve the credibility of witnesses. See **Anyanru V. Mandilas Ltd (2007) Vol. 147 LRCN 1036 at 1058.**

We have carefully considered the evidence on record and the conclusions unfortunately arrived at by the Learned Magistrate is not supported by the clear proved evidence on record. Where there is such glaring failure in the basic duty of evaluation of evidence and findings of facts as in the case, the failure signifies an open invitation to the appellate court to make its own findings from the evidence available on record and interfere with the findings of the lower court.

This is what the dictates of justice has compelled us to do in this case. We therefore resolve issue 2 in favour of the Defendants/Appellants. With this decision, we do not consider it germane or necessary to determine the question of the propriety or otherwise of the judgment been given by the Learned Magistrate after 90 days; it clearly has no bearing on the final outcome of this appeal.

On the whole, the appeal has considerable merit and it is allowed. The decision of the lower court delivered on 5th December, 2012 is hereby set aside. The Plaintiff/Respondent having not creditably established his entitlement to the reliefs sought at the lower court, the proper order was to have dismissed the claim. The Plaintiffs claims are hereby accordingly dismissed.

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HON. JUSTICE A.I. KUTIGI	**HON. JUSTICE A.O. OTALUKA**
(PRESIDING JUDGE)	**(JUDGE)**

Appearances:

S. M. Attah, Esq., with C. N. Ezeugu (Mrs) for the Appellants.