IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE HIGH COURT OF THE APPELLATE DIVISION
HOLDEN AT COURT NO. 8, NYANYA ABUJA
ON THE 20TH DAY OF MAY, 2020

BEFORE THEIR LORDSHIPS: HON. JUSTICE U.P. KEKEMEKE
HON. JUSTICE K.N. OGBONNAYA

APPEAL No: CVA/169/17
SUIT NO: TR/CV/10/2016

BETWEEN:

CHEKWUBE EBUBEALOR.....APPELLANT
AND
MR. E.A. EZEBILO.....RESPONDENT

JUDGMENT

The Appellant being aggrieved and dissatisfied with the ruling/decision of His Worship Mrs. Khadeja Mounir delivered on the 12th day of July 2017 in *Suit No. CV/1521/2016 BETWEEN MR. E.A EZEBILO VS CHEKWUBE EBUBEALOR* thereby appealed to this Court vide a Notice of appeal dated 9/02/18 on the following grounds:

GROUND ONE:

That the Learned District Judge erred in law in assuming jurisdiction to entertain the Suit in the absence of the fulfilment of a fundamental condition precedent to the institution of this Suit.

PARTICUALRS:

1. Service of valid statutory Notices on Tenants by Landlord is a condition precedent that must be fulfilled prior to the institution of an action for recovery of Premises as in the instant case.
2. That yearly tenants are entitled to be served 6 months Notice to Quit to determine their tenancies.
3. That applicant was a yearly tenant let to him by the Respondent from 1st day of March to 28th of February.
4. The Respondent never served the Appellant with any six months Notice to quit the premises before taking out a plaint.

GROUND 2:

The Learned Trial Judge of the District Court erred in law when he suo motu raised the issue of lack of jurisdiction by the Court to entertain the Respondent's Claim pending before the Court without giving the parties especially Appellant an opportunity to address the Court on the issue so raised and thereby denied the Appellant his constitutional right to fair hearing.

GROUND THREE:

The Learned Trial Judge of the Court below erred in law when he struck out the claim of the Respondent at that stage of proceedings when the Appellant had almost concluded his defence, after the Learned trial Judge discovered from the Appellant's evidence that the Court had no jurisdiction to entertain the Claim hence denied the Appellant of his constitutional right to fair hearing.

GROUND FOUR:

The Learned Trial Judge of the District Court erred in law when he struck out rather than dismiss the Respondent's claim without considering the stage of the trial which error occasioned a gross miscarriage of justice.

That the said Order has caused him serious mischief and irreparable harm as he is now being vexed again by the same Respondent over the same subject matter which he had since 11/02/17 delivered possession of .

The Appellant prays for the following reliefs:

1. An Order allowing the appeal.
2. An Order setting aside the ruling of the lower Court which merely struck out the Suit when Appellant had almost concluded his defence.
3. An Order dismissing the Suit having been partheard.

The Defendant was served with the Notice of appeal on 3/11/17.

Records were further compiled and served on the Respondent on the 9th day of March 2018.

The Appellant subsequently filed Appellant's brief of argument dated 10th day of April, 2019 which was served on the Respondent on the 15/05/19.

The Respondent failed, neglected and or failed to respond to the said brief of argument.

He was further served with hearing Notice of this appeal.

The Appellant adopted his Appellant's brief of argument and raised four issues for determination:

1. Whether the Court must call parties to address it on issues raised suo motu and the effect of failure to do so.
2. Whether the Order made by the Trial District Judge was the proper Order considering the stage of the matter after issues have been joined by the parties.
3. Whether the Respondent being a public officer has the locus standi to institute this Suit or can legitimately be given a power of Attorney to manage real property for a consideration contrary to Section 2(b) of the Code of Conduct for public officers.
4. Whether the failure of the Respondent to serve the statutory notices prior to the institution of this Suit

deprived the lower Court the jurisdiction to entertain the Suit.

On issue 1, Learned Appellant Counsel canvasses that failure of the Court to accord parties the opportunity to address it on the issue of the Respondent's locus standi to institute this Suit which was raised suo motu by the lower Court is a breach of the Appellant's constitutional right to fair hearing.

That the failure of the Trial District Court to give the parties an opportunity to address it on the said issue raised suo motu before delivering its ruling amounts to a breach of the Appellant's right to fair hearing.

He argued relying on *AHMED VS. JINADU* that a jurisdictional issue may be raised at any time and requires no leave of Court, however once raised, even by the Court on its own, parties must be heard before a determination by a Court.

That a resolution of an issue raised suo motu and without having heard the Appellant's stands in breach of the Appellant's right under Section 36(1) of the 1999 Constitution. The Court is without jurisdiction to proceed on the fruitless exercise.

Proceedings resulting from such an exercise being a travesty of justice must be vacated.

On issue 2, Learned Appellant's Counsel argues that where pleadings have been filed and issues joined and a matter part heard, as in the instant case, the proper Order to make when the Court realised it had no jurisdiction to entertain the action is a dismissal. Learned Counsel urges this Court to set aside the judgment of the Court below and in its place make an Order dismissing the action against the Appellant.

On Issue 3, Learned Counsel argues that the Respondent does not have locus standi and cannot institute or commence this action against the Appellant.
That on record the Respondent is a public officer and an agent of a disclosed principal. That a public officer under Section 2(b) of the Code of Conduct for public officers is restricted from engaging in any private business or profession other than farming.

On Issue 4, he contends that by Section 8(1) (a) and Section 9 of the Recovery of Premises Act, notices must be served to determine a tenancy.
That the notices were backdated particularly Exhibit P1 dated 30/06/15.
That the notice of non renewal of tenancy referred to as Exhibit P2 in the record of appeal dated 31/01/16 is not a valid notice.

That there was no service of 7 days Notice to Tenant of Owner's Intention to Recover Possession which are conditions precedent to the filing of an action for recovery of premises.

That no letter of authority was issued to the Respondents by the landlord.

He urges the Court to dismiss the Suit of the lower Court and allow the appeal.

The Appellant formulated four issues for determination:

The first issue relates to the failure of the Court to afford parties an opportunity to address it on the issue of the Respondent's locus standi to institute this Suit which was raised suo motu by the Court which Appellant canvasses breached his right to fair hearing.

We have read the record of the lower Court, we shall reproduce the relevant portions.

It was the answers given by the DW1 during cross-examination.

"*…..The second letter was signed by E. Ezebilo the Plaintiff. The content of the letter says 'move out upon expiration'. The Plaintiff served both letters on 29/02/16 and acknowledged by me. I tried to approach the Plaintiff. I have no money to pay' but on the letter, he wrote 'I cannot pay again, he said he is no longer the agent of the landlady, he gave me the house and therefore having terminated the tenancy, he has no business. I*

should call my landlady. I called her and asked to pay for six months and move out. She said I should go away with my money. I started calling her, she stopped picking my calls. As a result of that, I went to her office and met with her 'begged' her, we are from the same place, please forgive me. I don't have money to move out, she turned me down and I kept sending her messages. The agent, Mr. Ezebilo has been harassing me."

Court: Is he the landlord or agent?

No, agent.

Mr. Ezebilo is the agent.

Yes.

> ***"The Suit is incompetent; the agent ought to sue in the name of the landlord. The claims are struck out to avail the Plaintiff the opportunity of complying with the provisions of the law regarding locus standi. The Court is bereft of jurisdiction."***

The law is that locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a Suit even on appeal at the Court of Appeal by any of the parties without leave of Court or by the Court suo motu.

See ***A.G AKWA IBOM STATE VS ESSIEN (2004) 7 NWLR (PT.872) 288***.

The burden is on the Claimant to prove that he has locus standi to commence an action. It is not on the Defendant/Applicant as in this case and failure to discharge the burden, the action must fail.
See ***EZECHIGBO VS. GOV. ANAMBRA STATE (1999) 9 NWLR (PT.540) 27.***

The law is that it is the Statement of Claim or evidence adduced and not the Writ of Summons that must be gleaned to find out whether or not a litigant has locus standi to sue.
See ***EBONGO VS. UWEMEDIMO (1995) 8 NWLR (PT.411) 22. DOUGLAS VS. SHELL PETROLEUM DEV. CO. LTD (1999) 2 NWLR (PT.591) 466.***

In the instant case, the Learned District Court at page 26 of the Records came to the conclusion that it had no jurisdiction when evidence was elicited from DW1 that the Plaintiff in the case was not his landlord but rather an agent. A further question was put at the DW1 as follows:
"Mr Ezebilo is the agent."
The answer is yes, consequent upon which the Suit was struck out for lack of jurisdiction.
It is therefore not correct in our view to say the Trial District Judge raised the issue of locus standi suo motu.

It is the evidence of DW1 who is the Appellant in this Court that necessitated the case being struck out.

Locus standi or legal capacity to institute proceedings in the Court of law is not dependent on the success or merit of a case. It is a condition precedent to a determination of a case on the merit.

See ***OWODUNNI VS. REGISTERED TRUSTEES OF CCC (2000) 6 SC (PT. 111) 60.***

In our view, in the circumstance of this case, the Trial District Judge found as a fact on evidence before her that she lacks jurisdiction.

It is therefore unnecessary to call on Counsel to address her on the subject matter.

It was not raised by her suo motu. It became evident during cross-examination of DW1.

Where a necessary party such as a landlord in this instant case is not joined in the case, the Court or tribunal lacks jurisdiction to entertain same. The appellant did not suffer any injury.

See ***AMUDA VS. AJOBO (1995) 7 NWLR (PT. 406) 170.***

TAFIDA VS. BAFRARAWA (1999) 4 NWLR (PT.597) 597.

AYOOLA VS. BANIWA (1999) 11 NWLR (Pt. 628) **595.**

This issue fails. It is resolved in favour of the Respondent against the Appellant.

On the 2nd issue whether the Order made by the Trial District Judge was the proper Order considering the stage of the matter.

In ***NNAMELE & ORS. VS. NJOKU & ORS. (2018) LPELR - 43987 (CA)***

The Court of Appeal held ***"... I cannot see any of the above, or any likely vice that can support a Claim of abuse of the Court process. In a Claim wrongly initiated by a party who acts in the honest belief that he has a Claim to pursue in Court. Where he is adjudged to lack the requisite locus standi to sustain the action, I think the proper Order to make in such a circumstance is to strike out the Suit not dismissal."***

See also

EMEZI VS. OSUAGWU (2005) 12 NWLR (PT. 939) 340.

OLORIODE VS. OYEBI (1984) 1 SC NLR 11.

THOMAS VS. OLUFOSOYE (1981) 1 NWLR (PT.18) 609.

In ***BAMISILE VS. OSASUYI (2007) LPELR-8221 (C.A).***

The Court held:

> "***Where the Court lacks jurisdiction, the proper Order to make is an Order striking out. A dismissal given without hearing the merit of the case is in effect an Order of striking out."***

In the present case therefore, it is our view and we so hold that the trial District Court made the proper Order striking out the Suit notwithstanding the stage of the case, having not considered the case on the merit.

Issue 2 also fails. It is accordingly resolved in favour of the Respondent against the Appellant

On Issue 3 whether the Respondent being a public officer has the locus standi to institute the action.

This issue has become academic as the lower Court struck out the case because the Claimant lacks locus standi. The issue is not borne out of the ruling appealed against. The lower court did not decide on the issue in the ruling appealed against. An appeal should be a Complaint against the decision of the trial court. In the absence of a decision on a point, there cannot be an appeal.

However, from the records, particularly page 19 of the records of proceedings, the Appellant raised an objection when the PW1 was giving her evidence in-chief. He said he was relying on rule 8 of (2) and (4) of the rules of Professional Conduct.

The Court ruled that the said provision was inapplicable. That the Defendant/Respondent was prosecuting the claim pro-bono.

This decision was not appealed against. There is also no evidence that Defendant/Respondent received pecuniary gain for the prosecution of the Plaintiff's case.

This issue has been overtaking by event because the Court below lacks jurisdiction to entertain the case in the first place.

Locus standi and jurisdiction are interwoven, in the sense that locus standi goes to affect the jurisdiction of the Court before which an action is brought. Thus where there is no locus standi to file an action in the first place, the Court cannot properly assume jurisdiction to entertain same.

On issue 4, whether requisite notices were given. This issue has also become academic.

It was not decided upon in the ruling appealed against. It is being raised afresh in this appeal. However an issue challenging the jurisdiction of a trial Court can be raised on appeal for the first time.

See ***IFABAYI VS. ADENIYI (2000) 5 SC 31 at 42.***

We have gone through the records. No notices were served as required by Sections 7 and 8 of the Recovery of Premises Act. Therefore the jurisdiction of the Court cannot be invoked pursuant

to Section 10 of the Recovery of Premises Act. In the circumstance, the Court ought to have reached the same conclusion, strike out the matter to enable the landlord initiate a fresh action after fulfilling the condition precedent to the institution of the action.

A Landlord or the Claimant in this case cannot be forced by law to keep a tenant he does not want.
In totality, the appeal lacks merit and it is dismissed.

The Ruling of the Senior District Court delivered on 12th July 2017 is hereby affirmed.

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HON. JUSTICE U.P. KEKEMEKE	**HON. JUSTICE K.N. OGBONNAYA**
(PRESIDING JUDGE)	**(HON. JUDGE**