

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/272/19
SUIT NO: TR/CVA/367/2019

BETWEEN:

TEMITOPE ALUPOGUN.....APPELLANT

AND

ENGR. VICTOR

AGBAKOBA.....RESPONDENT

JUDGMENT

The Appellant being dissatisfied with the Judgment of the Senior District Court sitting at Lugbe, Abuja delivered in Suit No. CV/367/2019 on Wednesday the 28th day of August 2019 do appeal to this Court vide his Notice of Appeal dated 28/08/19.

The following are the grounds of appeal.

GROUND ONE:

The Learned trial Judge erred in law and occasion a miscarriage of justice to the Appellant when he held that this Court had jurisdiction to entertain the Suit of the Respondent when the Respondent did not comply with the condition precedent under Section 8 of the Recovery of Premises Act Cap 544 Laws of the Federal Capital Territory.

GROUND TWO:

The Learned trial Judge erred in law and thereby occasioned a miscarriage of justice when he failed to follow and or apply the case of *MAK-TRUST PROPERTY & INVESTMENT LTD VS. CHIEF BUKKY OKUNOWO* decided on 8/04/17 to the effect that the moment a fixed term tenancy expired and the parties continued with their

relationship without any new tenancy agreement, the tenancy becomes a periodic tenancy that can only be determined under the Act.

GROUND THREE.

The Learned trial Judge erred in law and denied the Appellant fair hearing thereby occasioning miscarriage of justice in that the Appellant was not served hearing notice.

GROUND FOUR

The Judgment of the Lower Court was against the weight of evidence.

The reliefs claimed by the Appellant are:

1. Allowing the appeal

2. An order setting aside the Judgment of the Hon. District Court delivered on the 28/08/19
3. Dismissing the Suit at the Lower Court.

The Learned Appellant Counsel brief of argument is dated 18/10/19 but filed on the 21st day of October 2019.

He adopted same as his Appellant brief of argument in this appeal. He raised two issues for determination:

1. Whether the Lower Court lacks jurisdiction to entertain the Suit when the Respondent did not comply with the condition precedent under Section 8 of the Recovery of Premises Act Cap 544 Laws of the Federal Capital Territory.
2. Whether the Learned Trial District Judge was wrong not to apply the binding precedent in *MAK-TRUST*

*PROPERTY & INVESTMENT LTD. VS CHIEF
BUKKY OKUNOWO Suit No. FCT/HC/CV/2290/13
delivered on 27/04/17 PER ORIJ I J. and Suit No.
CV/110/16 ADEBAYO ADETUNJI VS. CHRISTIANA
EBIWENI ERE PER ELIZABETH J. WONI* decided
on 8/04/17.

On issue 1, Learned Counsel canvasses that from the totality of the evidence adduced at the Lower Court, the Respondent did not comply with the condition precedent set out in Section 8 of the Recovery of Premises Act based on the evidence that the tenancy of the Appellant was converted to a yearly tenancy.

That the purported 7 days Notice of Owners Intention to apply to recover possession as shown in Exhibit C is invalid and ultra vires the act.

That the Respondent by his Notice turned the Appellant's tenancy to a tenant at will or a weekly tenancy.

That the Exhibit B which is the tenancy agreement no longer regulates the tenancy.

That *ODUTOLA VS. PAPERSACK NIG. LTD (2007) AFWR (PT.350)* relied heavily upon by the Lower Court is inapplicable in this case. Learned Plaintiff's Counsel urges the Court to discountenance it.

That the decision of the Lower Court that the Appellant did not challenge the case of the Respondent therefore the Respondent is entitled to Judgment is not the position of the law.

That a Court of law will not make a declaration without cogent and compelling evidence. That a Plaintiff in an

action for declaratory reliefs succeeds on the strength of his case and not on the weakness of the defendant's case.

Learned Counsel further submits that in this case parties are *ad idem* that the tenancy is a yearly tenancy.

Learned Counsel urges this Court to allow the appeal and resolve this issue in favour of the Appellant.

On issue 2, Learned Appellant's Counsel submits that the Learned Trial District Judge refusal to follow and adopt the case of Mak-Trust Property and Investment Ltd Vs. chief Bukky Okunowa (Supra) without distinguishing same is a total disregard of this Court.

That above decision is binding on the Lower Court.

Learned Counsel further submits that it is an abuse of judicial discretion.

He urges the Court to resolve the issue in favour of the Appellant and against the Respondent.

He finally urges the Court to allow the appeal and set aside the Judgment of the Lower Court.

The Respondent brief of argument is dated 4/12/19 but filed on the 5th of December 2019.

Learned Respondent's Counsel adopts the same issues raised by the Appellant.

On issue 1, Learned Counsel canvasses that the Respondent commenced this suit in full compliance with the law and that the Lower Court rightly assumed jurisdiction.

Refers to Section 8 of Recovery of Premises Act.

That Exhibit B explicitly provided for the notices to be served on the Appellant.

That tenancy of the Appellant is for one year. That the Suit was filed in compliance with the law and that the Court below was right in assuming jurisdiction.

That the only notice provided by the Tenancy Agreement is 7 Days Notice of Owners' Intention to Recover Possession which was duly served on the Applicant.

That the agreement also contained an advance Six months Notice to Quit from 1st day of November which by virtue of the renewal clause stated above applies to each renewal for another year certain.

He urges the Court to resolve the issue in favour of the Respondent against the Appellant.

On Issue 2, Learned Respondent's Counsel canvasses that the case of *MAK-TRUST PROPERTY & INVESTMENT* is

not on all foresh with this case. He urges the Court to also resolve this issue in favour of the Respondent.

He finally urges the Court to dismiss the appeal with cost.

We have carefully read the records and considered the various briefs of Counsel.

On issue one whether the Lower Court lacks jurisdiction because the Respondent failed to comply with the condition precedent to the initiation of the Suit under Section 8 of the Recovery of Premises Act by serving the requisite Notices, Exhibit B is the tenancy agreement in the Lower Court It is on page 12 of the record of appeal.

On page 10 of the record of appeal is the 7 days Notice of Owners intention to Recover Possession marked as Exhibit C at the Lower Court.

Section 8(1) of the Recovery of Premises Act Cap 544 Laws of the FCT, Abuja states:

“Where there is no express stipulation as to the Notice to be given by either party to determine the tenancy, the following periods of time shall be given.”

The said periods are in subparagraphs (a) – (d).

Exhibit B is the Tenancy agreement between the parties.

The law is that an agreement or contract is a bilateral affair, which needs the ad idem of the parties.

A Court of law such as this, must always respect the sanctity of the agreement reached by parties. It must not

make a contract for them or reverse the one they have already made for themselves.

See *SONA BREW PLC VS. PETERS (2005) 1 NWLR (PT.908) 478.*

S.E. CO. LTD VS. N.B.C.I (2006) 7 NWLR (PT.878) 201 SC.

It is not the function of the Court to make contracts between the parties. The Court's duty is to construe the surrounding circumstances including written and oral statements as to effect the intention of the parties.

The construction of the terms of the contract, the meaning to be placed on it, is that which is the plain, clear and obvious result of the term used.

A contract or document is to be construed in its ordinary meaning as a question of fact, thus where the words of a contract or document are clear, the operative word in it should be given their simple and ordinary grammatical meaning.

OMPADEC VS. DALEK NIG. LTD. (2002) 12 NWLR (PT.781) 384.

U.B.N. LTD. VS. SAX (NIG.) Ltd. 1994 8 NWLR (PT.361) 402 S.C.

UNION BANK OF NIGERIA LTD. VS. OZIGI (1991) 2 NWLR (PT.176) 677 C.A.

From the construction of Section 8(1) of the Recovery of Premises Act, the period of time contained in 8(1) can only apply where there is no express stipulation as to the Notice to be given by either party to determine the tenancy.

In other words Section 8(1) (a) – (d) is suspended or to use a stronger term expelled once there is an express stipulation as to the notice to be given by either party to determine the tenancy.

The relevant portions of the contract between the parties on pager 14 of the records of appeal states:

“(i) This Tenancy agreement expires at the end of one year and that by this agreement, the tenant is hereby notified to vacate the premises at the expiration of the tenancy of which the statutory six

months quit notice is hereby given with effect from
1st November 2015.

(ii) That at the expiration of the one year and the
tenant refuses to vacate the premises as expressly
agreed above, the landlord shall pursuant to the
terms agreed above (i), only take out 7 days notice
of landlord intention to recover his property.

(iii) The provisions in Clause (i) (ii) notwithstanding, in
the event that the tenant wishes to continue with
the tenancy at the expiration of one year, the tenant
shall write/notify the landlord 7 months before the
expiration of the current tenancy informing the
landlord of his intention to continue with the tenancy
and if the landlord so wishes, may grant another
one year certain upon same terms and conditions

*contained in this agreement with the exception of
the rental fee which is subject to review.....”*

The above term has clearly and unequivocally stated the period of time to be given in a notice.

There is also an agreement that the statutory six months Quit Notice is already embedded in the agreement to run from the 1st of November 2015.

It is also clear and unambiguous in the agreement that the only Notice to be given by the landlord is the 7 days Notice of Owners Intention to Recover Possession.

The law is that where the intention of the parties to the contract are clearly expressed in a document such as the tenancy agreement, the Court cannot go outside the document.

See *NNEJI VS. ZACHEM CON. NIG. LTD. (2006) 12 NWLR (PT.994) 297 SC.*

In our humble view, the Appellant suspended his entitlement to a six months notice when he executed Exhibit B the tenancy agreement.

The Respondent was right when he issued and served the Appellant the only Notice he was entitled to as contained in the tenancy agreement.

It is obvious that the case of Mak-Trust (supra) decided by ORJI J. does not apply in this case. The facts of that case are not the same with the facts of this case. The

content of the Tenancy Agreement in this case are not the same with the Tenancy Agreement in the other case.

In the circumstance, the Court below was right in not following it.

We must put on record our disappointment with the Learned Counsel to the Appellant in citing to this Court a Judgment of a Chief District Court in **ADEBAYO *ADETUNJI VS. CHRISTIANA EBIWENI ERE*** to advance his argument.

Is it that Learned Counsel completely lost his knowledge of the principle of stare decisis? He is advised to quickly find it.

It is our view and we so hold that the Lower Court rightly assumed jurisdiction as it did in compliance with Section 8(1) of the Recovery of Premises Act.

In the circumstance of this case, the appeal lacks merit.

It fails and it is accordingly dismissed.

The Judgment of the Lower Court in Suit CV/367/19 delivered on Wednesday the 28th day of August 2019 by the Senior District Court sitting at Lugbe is hereby affirmed.

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**HON. JUSTICE U.P. KEKEMEKE
JUSTICE K.N. OGBONNAYA**

HON.

**(PRESIDING JUDGE)
JUDGE**

(HON.