IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

APPEAL NO: FCT/HC/CVA/220/17
SUIT NO: CV/110/16

BETWEEN:

BARTHOLOMEW EKOBE……APPELLANT

AND

MARY SUMANU……RESPONDENT

JUDGMENT

This appeal emanates from the Ruling of His Worship Mabel Segun Bello sitting as Chief District Judge II at Wuse Zone 2, delivered on the 5th of June, 2017. The Respondent as Plaintiff had filed before that Court a Plaint wherein she sought for the recovery of a shop which was rented to the Appellant as a tenant and payment of mense profit.

After hearing, evidence of the Plaintiff/Respondent, the Defendant/Appellant filed a Motion on Notice to challenge the jurisdiction of the Court and contended that the condition precedent to the institution of this case had not been fulfilled. After the Court heard arguments from parties and held that the objection was

premature. The Judge then overruled the counsel to the Appellant and dismissed the motion in a Bench Ruling.

The Appellant was dissatisfied with the Ruling of the lower Court and has now appealed to this Court vide a Notice of Appeal containing two grounds of appeal. The two grounds are:

GROUND ONE,
OMNIBUS GROUND

The Ruling is against the trite principles of law with due regard being had to the records of proceedings and the Appellant's unchallenged affidavit in support of the Motion on Notice through which the jurisdiction of the Court below was challenged.

GROUND TWO

The Respondent as the sole witness testified and tendered notice to quit and the notice of the owner's intention to recover possession, she thereafter closed her case and the Appellant relying on Order XV of the District Court's Rules, Sections 8, 9 and 28 of the Recovery of Premises Act challenged the propriety of statutory notices which bothers on the jurisdiction of the trial Court to entertain the action.

The Appellant's brief of argument which was settled by his counsel Mr. Charles Uche Ezeukwo Esq was filed on the 10/09/2018 while the learned counsel to the Respondent Mr Martins Opara settled the

Respondent's brief on the 11/09/2018. Learned counsel to the Appellant also filed a reply brief in response to the argument of the learned counsel to the Respondent. Learned counsel to the parties adopted their processes before me at the hearing of the appeal on the 24/10/2018.

Before I take the arguments of parties in this appeal it is imperative to state the brief facts of this case. The Appellant was a tenant to the Respondent on her property known as Shop C10 Area 7 Garki, Abuja. Parties agreed orally for a yearly tenancy. After sometimes, the Appellant stopped paying his rents. The Respondent in her attempt to recover possession issued a 7 days quit notice and followed this with seven day's notice of intention to recover possession.

At the expiration of these notices, the Respondent took out a Plaint in the District Court to recover possession. The matter went on for hearing and at the end of the case for the Respondent, the Appellant filed a Motion on Notice to challenge the jurisdiction of the Court and contended that the matter was premature as the condition precedent has not been fulfilled. The Court heard arguments from parties on this point and held that the objection was premature and accordingly dismissed the motion.

Learned counsel to the Appellant distilled two issues for the determination of the appeal:

(1) Whether the trial District Judge was right to rely on the decision in **IWUAGOLU VS AZYKA (2007) 5 NWLR (PT. 1028) 620** in dismissing the motion challenging its jurisdiction even when evidence had been given.

(2) The Respondent having failed to formally controvert the affidavit evidence in support of the Motion on Notice dated 1st of June 2017 and admitting during trial that the Appellant is a yearly tenant, but issued only seven (7) days' notice as against six months, whether it was wrong for the trial District Judge not to have declined jurisdiction since the notice fell short of statutory provision.

The argument of the learned counsel on issue one is to the effect that the learned District Judge was wrong to have held that the motion challenging jurisdiction of the Court was premature and that a Ruling on the motion would amount to pronouncing on the substantive matter. Counsel submitted that the decision in **IWUAGOLU VS AZYKA (Supra)** which the Court relied upon in dismissing his motion was misconstrued by the Judge and erroneously applied. Counsel further submitted that the case of **IWUAGOLU** which the District Judge relied upon to dismiss the

Appellant's motion did not decide that a challenge to the appropriateness of statutory notices in a tenancy case can only be taken at the conclusion of the case. That the decision of the Court of Appeal was that the issue of service of relevant notices in a suit of landlord and tenant for possession of premises can only be resolved at the trial after hearing of evidence. Counsel submitted that the evidence of the Plaintiff was taken and it was clear from her testimony that relevant statutory quit notice was not given as prescribed by the law and that robbed the Court below of requisite jurisdiction to entertain the case.

The learned counsel stated further that the objection being an attack on the jurisdiction of the Court could be raised at any stage of the proceedings. The case of **AJAYI VS ADEBIYI (2012) 11 NWLR (PT. 1310) 202** was cited in support. Counsel finally argued on this point that this case being a claim for recovery of premises once the notices relied upon have been tendered in evidence, it is apt to challenge the jurisdiction of the Court at that stage if they are found not to have met the statutory requirement as a precondition for bringing the action. On this note, counsel urged the Court to resolve issue one in favour of the Appellant.

ISSUE 2

Here the argument of the learned counsel is that since the averments in the affidavit of the Appellant in support of the motion to decline jurisdiction was not opposed, the trial District Judge ought to have granted the application by declining jurisdiction as what is unrebutted is deemed to have been admitted. **MABAMIJE VS OTTO (2016) 13 NWLR (PT. 1529)** was called in support.

According to learned counsel the testimony of the Plaintiff revealed that the tenancy between parties is annual tenancy and that the quit notice given to the Appellant was 7 days. That at that level it became clear that the requisite notice stipulated by the Recovery of Premises Act was not complied with. Section 8 of the Recovery of Premises Act was referred to. It was therefore the contention of learned counsel to the Appellant that the Respondent did not comply with the precondition for recovery of premises and that the Judge should have declined jurisdiction. The following cases were cited **PAN ASIAN AFRICAN CO. LTD VS NIGERIAN INSURANCE CORP. NIG LTD (1982) 9 SC 1 at 72; CHAKA VS MESSR AEROBELL NIG LTD (2012) 12 NWLR (PT, 1314) 296 at 319; and AYINKE STORES LTD VS ADEBOGUN (2008) NWLR (PT. 1096) 630.**

The brief of argument filed on behalf of the Respondent encapsulates an objection which complains about the competence of

the two grounds of appeal in the Notice of Appeal filed by the Appellant and invariably the competency of the two issues raised by learned counsel to the Appellant in his brief of argument.

Presenting argument in support of his preliminary objection learned counsel submitted that the two grounds of appeal filed on behalf of the Appellant are not competent. He told the Court that a ground of appeal must as a matter of law attack or challenge the Ruling or Judgment of the Court whose Order or Ruling is being complained of. That where as in this case the ground of appeal failed to so attack, the ground is bound to be declared incompetent. He further told the Court that the two grounds of appeal filed in this case do not challenge or attack the reason or reasoning of the District Court. Learned counsel drew the attention of the Court to the gist of the Ruling delivered by the trial Court and came to a conclusion that the grounds of appeal filed by the Appellant did not attack the reasoning of the trial Court. The learned counsel therefore urged this Court to declare the grounds incompetent and strike out the appeal. On this point learned counsel relied on the case of **SHETIMA VS GONI (2011) 18 NWLR (PT. 1279) 413 at 440 and TINUBU VS IMB SECURITIES PLC (2001) 16 NWLR (PT. 740) 670.**

Counsel further argued that even if the grounds of appeal were competent those grounds have been abandoned as the two issues raised for determination do not stem from the grounds of appeal. He

also argued that two issues cannot be drawn from one ground of appeal. That issue one and two for determination were carved from ground two of the grounds of appeal and are therefore incompetent. For the above proposition of law, counsel referred this Court to the following cases: **MICHAEL UZOAGBA & ANOR VS COP (2014) 5 NWLR (PT. 1401) 441; OSAHON VS FRN (2003) 16 NWLR (PT. 845) 89; ADESOLA VS AKINDE (2006) 12 NWLR (PT. 887) 295; AJIBULU VS AJAYI (2014) 2 NWLR (PT. 1392) 483; and CBN VS NJEMANZE (2015) 4 NWLR (PT. 1449) 276 at 288.**

On the account of his objection learned counsel urged this Court to dismiss this appeal and award cost of N1, 000, 000. 00 (One Million Naira) against Appellant's counsel personally.

On the substantive appeal learned counsel framed a lone issue for its determination. That is: whether the Hon. Trial Court was wrong in relying on the case of **IWUAGBOLU VS AZYKA (2009) 5 NWLR (PT. 1028) 613 at 630** in holding that the Appellant's objection was premature.

The argument of the learned counsel to the Respondent in support of this issue is that the trial Judge was correct in relying on the decision of the Court of Appeal in its Ruling as the decision of the Court of Appeal is binding on the trial Court. That on the principle of stare decisis the trial Court had no option than to follow it as doing

otherwise would be a disobedience to judicial precedents which would amount to judicial rascality. Counsel cited the case of **SHETIMA VS GONI (Supra)** in support. Counsel finally urged the Court to dismiss the appeal with cost.

In his reply brief counsel to the Appellant told the Court that the grounds of Appeal filed by the Appellant has actually challenged the Ruling of the trial Court. He submitted that in determining whether a ground of appeal has challenged the decision of the Court, it is important to consider the grounds together with the particulars. The second arm of the Appellant reply brief deals with whether or not the principle in **IWUAGOLU VS AZYKA (Supra)** was not misapplied by the trail District Judge in coming to a conclusion that the Appellant's preliminary objection was premature.

This submission in my respectful view is not a reply on point of law. It is a repetition of argument earlier canvassed by the learned counsel to the Appellant in his main brief. The law is trite that a reply brief must as of necessity deal with fresh issue raised in the address of the opponent. It is not an opportunity to reopen or improve on an earlier submission or reroute an argument that should have been canvassed by a party in the first place. It is rather an opportunity to reply to new issues that have arisen in the Respondent's brief of argument. See **KOMOLAFE VS FRN (2018)**

LPELR 444; and STATOIL NIG LTD VS INDUKON NIG LTD & ANOR (2018) LPELR 44387 SC.

Now I should begin the determination of this appeal by first addressing the concerns of the Respondent on the competency of the grounds of appeal filed by the Appellant which invariably translates to the competency of the appeal. The learned counsel to the Respondent has submitted that the two grounds of appeal filed by the Appellant do not attack the Ruling of the trial Court which formed the basis for the appeal. He is of the view that they are incompetent and should be struck out.

I have considered this submission and the cases cited in support and I agree that the law is trite that a ground of appeal must challenge the Ruling or decision appealed against and if it does not, the ground is treated as incompetent. The Supreme Court dealt with this point with utmost clarity in the case of **MERCHANTILE BANK OF NIG PLC & ANOR VS NWOBODO (2005) LPELP 1860** when it said:

> **"It is always an elementary law that grounds of appeal must of necessity arise from the Judgment, Ruling or decision or any pronouncement of the Court below. When a ground has not, the remotest connection with what the Court below decided and which agitated the mind of the Appellant to seek for a review and overturn the decision,**

but he misconceived what he ought to complain against and confuse himself by setting up a case not in existence, the Appellate Court would naturally throw away the incompetent appeal."

Similarly in the case of **BELLO VS ARUWA** the Court of Appeal held thus:

"It is a well settled proposition of the law in respect of which there can be no departure that grounds of appeal against a decision must relate to the decision being appealed against and should constitute a challenge to the ratio of the decision."

In this case, the Ruling of the trial Court as borne out on page 43 to 44 of the record of appeal is:

"It is also clear that what the Court is called upon to determine is the issue of propriety or otherwise of the statutory notices served in this suit on the Defendant. The Defendant has called upon the Court to declare the service of same as void which act automatically necessitates the consideration of evidence and possibly the hearing of witnesses. A declaration emanating from such a consideration in my view necessarily determines this case one way or the other. And it is on the strength of this that I am minded at agreeing with the Court of Appeal in the case

cited by Plaintiff's counsel IWUAGOLU VS AZYKA (2009) (Supra) that the issue of service of relevant notices in a suit for possession of premises can only be resolved at the trial after hearing evidence. I also agree that any pronouncement on the issue would amount to the Court pronouncing on a substantive matter at the interlocutory stage. Therefore this Court would leave and reserve the determination of this fundamental and cardinal issue of law for the address stage after trial when same can properly be taken."

As could be seen from the extract of the trial Court Ruling reproduced above, the ratio of the Ruling is that Ruling on the application of the Appellant would involve a pronouncement which in the view of the trial Court determines the case one way or the other or pronouncing on a substantive matter at the interlocutory stage. The Court placed reliance on the case of **IWUAGOLU VS AZYKA (Supra)** which was cited by counsel to the Respondent. That being the case a competent ground of appeal must attack the above reasons given by the trial Court and not otherwise.

At this point I need to look at the two grounds of appeal filed by the Appellant to determine if they are competent.

GROUND ONE

The Ruling is against the trite principle of law with due regard having had to the record of proceedings and the Appellant's unchallenged affidavit evidence in support of the Motion on Notice through which the jurisdiction of the Court below was challenged. This ground was titled Ominus ground.

In the case of **ANACHUNA ANYAOKE KORE VS DR. FELIX G. ADI & ORS (1986) 3 NWLR 371 Uwais JSC** in a lead Judgment of the Court correctly explained the scope and nature of omnibus ground at page 742 where he said:

> **"It is true that an omnibus ground of appeal implies that the Judgment of the trial Court cannot be supported by the weight of the evidence adduced by the successful party which the trial Judge either wrongly accepted or that the inference drawn or conclusion drawn by the trial Judge based on the accepted evidence cannot be accepted."**

See **MOGAJI & ORS VS ODOFIN & ORS (1978) 4SC 91 at 93.**

In the case at hand, the Ruling complained about was a decision of the trial Court not to consider the motion filed by the Appellant on the merit. The Ruling did not involve the weighsting of evidence of parties or evaluation of same. To that extend it was incompetent of the Appellant to have filed an omnibus ground of appeal. Ground

one of the grounds of appeal does not apply to the scenario at hand and I find it incompetent. It is struck out.

Similarly, ground two of the grounds of appeal did not attack the Ruling of the Court rather it appeared to be telling a story as it merely gave a narrative of what transpired in the course of trial. As a matter of fact it does not challenge or attack the Ruling of the lower Court in any way. To me it is just nebulous.

For a ground of appeal to be competent it must quote a passage from the Judgment where the misdirection or an error in law is alleged to have occurred, and also specify the nature of the error in law or misdirection before setting out the particulars. The law is settled that when a ground of appeal does not challenge the ratio in a Judgment or Ruling of the lower Court or Tribunal such ground or appeal is rendered incompetent and thus liable to be struck out. **See SALIHU VS DANJUMA (2015) LPELR 4062. See also OBA VS OGBERONGBE (1999) 8 NWLR (PT. 615) 485** where it was stated thus:

> "**It is clear from the ground of appeal and the issue formulated purportedly therein that the Appellant had completely ignored the reason given by the Court below for refusing the application for extension of time. It is a well settled proposition of law in respect of which there**

can hardly be a departure that the ground of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decision."

For the above reason this ground of appeal is also rendered incompetent by me and liable to be struck out. The end result is that the two issues raised from the grounds of appeal are of no moment, for the law is settled that where a ground of appeal is incompetent any issue for determination based on the incompetent ground goes to no issue and should be struck out as incompetent. An issue for determination derives support from the ground of appeal. It automatically collapses when the ground of appeal cease to exist. See **OBA VS OGBERONGBE (1999) 8 NWLR (PT. 615) 485.**

It seems to me that this appeal can be determined on the preliminary objection of the Respondent. The appeal is clearly incompetent and is hereby struck out.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
11/05/2020