IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2018

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2693/17

BETWEEN:

UNIVERSAL ESTATE LIMITED …….……PLAINTIFF

AND

MR ABUBAKAR ABDULMALIK ……..……..DEFENDANT

JUDGMENT

The claims of Plaintiff against the Defendant as endorsed on the writ of summons and statement of claim dated 14th August, 2017 and filed in the Court's Registry on 17th August, 2017 are as follows:

i. **An Order of this Honourable Court mandating the Defendant to vacate from the premises situate at No. 20 Nike Lake Street, Maitama, FCT, Abuja.**

ii. **An Order of this Honourable Court mandating the Defendant to pay the sum of N10, 000, 000.00 (Ten Million Naira Only) to the Plaintiff as arrears of rent from the 14th day of June 2015 to the 13th day of June, 2017.**

iii. **An Order of this Honourable Court mandating the Defendant to pay the sum of N13,699.00 (Thirteen Thousand, Six Hundred and Ninety-Nine Naira Only) per day as mesne profit calculated from the 14th day of June, 2017 until the Defendant vacates and hands over the property to the Plaintiff.**

iv. The sum of N2, 000, 000.00 (Two Million Naira Only) being the sum of money paid to the plaintiff's counsel to institute the action.

The Defendant was duly served with the originating court processes but he did not immediately file a defence in Response. Instead an application challenging the jurisdiction of court to entertain the action was filed and same was dismissed vide Ruling dated 25th April, 2018.

In the light of the failure to file a defence in compliance with the Rules, the plaintiff opened its case on 19th June, 2018 and called its only witness, **Ikechukwu Uzuegbu**, a legal practitioner in the law office of Ikechukwu Uzuegbu & Co, the firm authorised by the owner of the property to manage the property in question. He testified as PW1 and adopted his witness deposition dated 17th August, 2017. He then tendered in evidence, the following documents, to wit:

1. Tenancy Agreement between plaintiff and defendant was admitted as **Exhibit 1**.

2. Two (2) copies of United Bank for Africa (UBA) cheques dated 10th March, 2017 and 11th July, 2017 were admitted as **Exhibit P2 a and b.**

3. Notice of Owners Intention to apply to recover possession dated 7th August, 2017 together with a DHL way bill and a document showing delivery were admitted as **Exhibits P3 a, b and c.**

4. Cash Receipt issued by the Law firm of Ikechukwu Uzuegbu & Co dated 10th July, 2017 was admitted as **Exhibit P4.**

At the conclusion of the evidence of PW1, the court granted the application of plaintiff to foreclose the right of cross-examination by defendant and to foreclose his defence and for the court to order for the filing of final address.

It was at this point that defendant changed counsel who sought leave to be allowed to cross-examine PW1 and to file a defence. The application was granted. The defendant then filed his defence dated 6th August, 2018 and filed same date at the Court's Registry. PW1 was recalled and cross-examined.

For the defence, the defendant equally testified as DW1 and the only witness. He adopted his witness statement of oath dated 6th August, 2018 and tendered in evidence the following documents to wit:

1. The statement of accounts of Malakia Oil and Gas with Zenith Bank Plc and UBA Plc were admitted as **Exhibits D1 a and b.**

2. Copy of EFCC invitation letter dated 25th June, 2018 was admitted as **Exhibit D2.**

3. Letters by the law firm of Kunle, Senior, Suleiman & Co dated 27th June, 2018, 23rd July, 2018 to EFCC were admitted as **Exhibits D3 a and b.**

DW1 was then cross-examined and with his evidence, the defendant closed his case.

At the conclusion of trial, parties filed and exchanged final written addresses. In the address of defendant dated 30th May, 2020 and filed on 1st June, 2020, four (4) issues were raised as arising for determination as follows:

i. **Whether this Honourable Court has jurisdiction to entertain this suit having regards to the Plaintiff's non-compliance with the provisions of Section 7 and 8 of the Recovery of Premises Act, Cap 544, L.F.N. (Abuja), 1990 and the existing case law?**

ii. **Whether a Counsel is competent to testify in a case he is handling; and if not so, whether the incompetence of the Plaintiff's Counsel to testify in a matter he is handling does not bereave the originating process of the statutorily required accompanying documents?**

iii. **Assuming without conceding the fact that this Honourable Court sees merit in the claims of the Claimant in this case, whether the judgment of this Honourable Court would not amount to double jeopardy on the defendant who has paid the sum of N2, 750, 000.00 which constitute part of the claims of the claimant without amending the claims pending before this Honourable Court?**

iv. **Whether the plaintiff can rely on the tenancy agreement without paying the stamp duty on it?**

The final address of plaintiff is dated 9th March, 2020 and filed on 11th March, 2020 at the Court's Registry. Two (2) issues were raised for determination thus:

i. **Whether the Witness Statement on Oath deposed to by Ikechukwu Uzuegbu Esq. is competent in law?**

ii. **If the answer to the issue is in the affirmative, then; whether the Plaintiff has established or proved his claims/reliefs as contained in the Statement of Claim.**

I have set out above the issues as distilled by parties as arising for determination. On a careful consideration of the pleadings, the evidence and submissions of counsel, I am of the considered opinion that the two issues raised by the plaintiff which will be slightly modified or altered adequately captures the crux or essence of this dispute that will shortly be resolved by court. **Issue 1** raised by the plaintiff above appears clearly to be a major threshold issue and is in substance the same issue raised by the defendant in his **issue 2** relating to the competence of the plaintiff(s) counsel to depose to and adopt his witness deposition in the same matter he is appearing as counsel for the plaintiff. **Issues (i), (ii)** and **(iv)** raised by defendant can be fully accommodated and addressed under **issue (ii)** raised by plaintiff relating to whether the plaintiff has fulfilled all legal requirements to entitle them to the reliefs sought.

The **two issues** identified as the **key issues** has in the courts considered opinion brought out with sufficiently clarity and focus, the pith of the contest which has been brought to court for adjudication. **Issue 1** on the **competence of counsel giving evidence in a case he is appearing as earlier stated appear to me a threshold issue** in the context of this case because **plaintiff called only one witness who happens to also be his counsel**, so a negative determination of the validity and competence of his evidence may ultimately compromise the case of plaintiff abinitio and indeed undermine the need to continue with the inquiry or further enquiries with respect to the other contested assertions.

As a logical corollary, let me then add the necessary point that it is now settled principle of general application that whatever course the pleadings take, an examination of them at the close of pleadings should show precisely what are the issues upon which parties must prepare and present their cases. At the conclusion of trial proper, the real issue(s) which the court would ultimately resolve manifest. Only an issue which is decisive in any case should be what is of concern to parties. Any other issue outside the confines of these critical or fundamental questions affecting the rights of parties will only have peripheral significance, if any. In **Overseas Construction Ltd V. Creek Enterprises Ltd &Anor (1985)3 N.W.L.R (pt13)407 at 418,** the Supreme 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."

It is therefore guided by the above wise exhortation that I would now proceed to determine this case based on the issues I have identified above and also consider the evidence and submissions of counsel. In furtherance of the foregoing, I have carefully read the final written addresses filed by parties. I will in the course of this judgment and where necessary make references to submissions made by counsel.

ISSUE 1

Whether the witness statement on oath deposed to by counsel to the plaintiff and adopted at hearing is competent?

Now this case is obviously involves a **landlord and tenant dispute**. The plaintiff on record is the owner of the property situate at No. 20 Nike Lake Street, Maitama FCT, Abuja which he rented out to the defendant sometime in 2009. On the pleadings and evidence, the plaintiff authorised the **law office of Ikechukwu Uzuegbu & Co** to manage the property and also instructed the law office to institute this action. It was on the basis of this authority to manage the property

that enabled or allowed the **managing partner** of **"Ikechukwu Uzuegbu & Co"** (the managers of the property in question), **Mr. Ikechukwu Uzuegbu** to depose to the **one and only witness deposition of the plaintiff** in this case and which **he adopted at plenary hearing**.

It is also important to situate the fact that the **writ of summons and statement of claim** in this case was issued by this same law firm of **Ikechukwu Uzuegbu & Co**.

It is in the context of this precisely defined scenario or relationship that the defendant has predicated the present interesting challenge that **Ikechukwu Uzuegbu**, as counsel in the matter is not competent to depose to a witness statement on oath and testify or adopt same as done in this case. That if the court finds that the statement of oath so adopted is incompetent, the implication is that the plaintiff has not led evidence in support of its claims and same stands irredeemably undermined or compromised.

On the other hand, the case of the plaintiff's counsel while not disputing the essence of his relationship with plaintiff is that his evidence in this case is competent to the extent that it relates solely to the **nature and value of legal services** rendered by his law firm and based on facts peculiarly within his knowledge. That the evidence he gave in this case relates to the management of the property where defendant is a tenant and that all the transactions between the plaintiff and defendant were done by the law firm on behalf of the plaintiff and as such that counsels deposition was competent in law.

Let me start by saying that this issue is not completely free from controversy or debate in legal circles. Now on general principles, it is true that the basic objective of any trial is to ascertain the truth of the grievance submitted for resolution. The whole trial process is entirely evidence driven, oral or documentary given by witness(es). Anyone who has personal knowledge of the facts relevant to any issue in the case is by and large competent to give unless otherwise excluded by law. See **Elabanjo V Tijani (1986) 5 NWLR (pt.46) 952.**

Section 175 (1) of the Evidence Act uses the phrase **"All persons"** to describe persons that are generally competent to give evidence in a court. As a logical corollary, a legal practitioner is generally competent to give evidence in court be it

documentary or oral. Indeed where a person does not suffer from any disabilities as streamlined under **Section 175 (1) and (2) of the Evidence Act**, then such a person is a competent witness in the matter he is handling. See **Abubakar V Chuks (2008) All FWLR (pt.408) 207 at 224 and 225 SC.**

Although there is nothing in the Evidence Act which prevents a counsel from giving evidence for his client, it has been held by judicial authorities that a counsel should not put himself in the embarrassing position where he has to be both counsel and in witness in the same matter. The reasons for this include (1) Every litigant must feel safe when making disclosure to his counsel and (2) That counsel must remain detached and impersonal in his attitude to the case so that his judgment of the matter may not be clouded by personal feelings. This position is the same whether counsel is giving oral or affidavit Evidence.

As far back as the case of **Horn V Richard (1963) NWLR 67**, where a counsel swore to an affidavit on behalf of his client, it was held that the counsel should have withdrawn from the case if his deposition is considered as necessary. Holden J. held:

> ***"There would be no harm in counsel swearing to an affidavit setting out formal facts required to be established to support a purely formal ex parte application where there is no possibility of those facts being disputed, but even in such a case there will be little need for counsel himself to swear the affidavit as some member of his staff could easily depose to the same fact as a matter of information and belief."***

If on the other hand, counsel finds himself in the position where he is the only person with knowledge necessary to swear the affidavit, and where the facts to which he is to swear are likely to be in dispute, then he should for the purposes of that application withdraw from the case and brief other counsel.

Also in **Gachi and Others V. State (1965) NMLR 333** where the defence counsel gave evidence in support of an alibi on behalf of the accused person who was acquitted. It was held that although a counsel is a competent witness in law, it is highly undesirable that he should give evidence in a case in which he is appearing professionally. If his evidence is thought necessary he should decline to appear as counsel.

See also the cases of **Obadara V President Ibadan West District Grade B Customary Court (1965) NWLR 39; Idowu V Adekoya (1960) NWLR 210.**

In the case of **Elabanjo V Tijani (supra) 952 at 962,** the Supreme Court introduced an interesting dynamic to the conversation of competency of counsel to give evidence for his client. The Apex court distinguished between the competency of counsel to give evidence for his client and the propriety of doing so. That a counsel is competent and should not be debarred from testifying, what may be questioned however, is the propriety.

Oputa JSC (of blessed memory) stated instructively as follows:

> **"*Whether counsel can give evidence, that is his competence to give evidence is one thing, whether by the etiquette and practice in the bar he should give evidence is another different matter. One deal with the legal capacity to give evidence, the other with his propriety of his so testifying. It is necessary to keep this distinction, in view. If counsel is a competent witness, it will be wrong to expunge his evidence from the record as the court below suggested. If in so testifying counsel broke any rule of professional conduct then that would be a matter for the disciplinary committee of the bar and that principle should have nothing to do with the outcome of the case.*"**

A counsel may give evidence on a minor or straight forward matter but on a controversial or material point, he should withdraw. The general principle as can be discerned however from all the authorities is that counsel cannot give material evidence on behalf of his client so as to identify himself with his client's case.

The above positions highlights the prevailing positions of our Courts at least prior to the coming into operation of the Rules of professional conduct for legal practitioners 2007 which now categorically streamlined clear guidelines for conduct of legal practitioners in the discharge of their professional duties and therefore binding on all legal practitioners in Nigeria.

Let me quickly add that this 2007 Rules is a subsidiary legislation made pursuant to the legal practitioners Act, Cap L11, LFN 2004. On the authorities, a subsidiary legislation when validly made as in this case has effect and force as the principal or

enabling Act. See **Trade Bank Plc V L.I.L.G.C (2003) 3 NWLR (pt.806) 11 at 27**.

Here again we equally have judicial authorities from our superior courts that have interpreted salient provisions of the rules and also made clear pronouncement on the issue. Before streamlining the provisions of the Rules 2007, let us remind ourselves of the admitted facts in this case and then situate the application of the Rules.

In the instant case, the **sole witness** for the plaintiff who **deposed** to and **adopted** the witness deposition of the plaintiff at plenary hearing is **Mr. Ikechukwu Uzuegbu**. From his depositions, Mr. Ikechukwu Uzuegbu described himself as the Managing partner of **"The law firm of ikechukwu Uzuegbu & Co",** managers appointed by the owner to manage the property in question. The same **Ikechukwu Uzuegbu & Co** is the law firm that filed the originating process and conducted the entire trial through their counsel in the substantive action for the plaintiff.

Indeed from the **deposition of Ikechukwu Uzuegbu**, the law firm were in charge or participated in the core processes or elements legally required to support the case of plaintiff for **possession of the premises**, **arrears** of rent and **mesne profit**. **The law firm** was a constant and present dynamic in the landlord tenant relationship between **plaintiff and defendant** and played a key facilitating role in the relationship and dispute between the two parties as the trajectory of the evidence on record showed.

On the **pleadings and or defence** filed by the **defendant**, those core facts were disputed and issues joined and learned counsel **Ikechukwu Uzuegbu** was equally subjected to cross-examination.

It is in the context of the above established facts that we will now situate the application of the relevant provisions of the **Rules of Professional conduct 2007 (RPC)** and the pronouncements of our Superior Courts. The Relevant provisions are **Rule 20(1), (2)** and **(3)** as follows:

"20. (1) Subject to sub-rule (2) of this rule a lawyer shall not accept to act in any contemplated or pending litigation if he knows or ought reasonably to know that he or a lawyer in his firm may be called or ought to be called as a witness.

(2) A lawyer may undertake an employment on behalf of a client and he or a lawyer in his firm may testify for the client –

(a) if the testimony will relate solely to an uncounted matter;

(b) if the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(c) if the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; or

(d) as to any matter if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as lawyer in the particular case.

(3) When a lawyer knows, prior to trial that he would be a necessary witness except as to merely formal matters, neither he nor his firm may conduct the trial."

The above provisions appear to me clear and unambiguous. In such situations, the authorities are clear to the effect that such provisions be given there literal and or grammatical meaning. In F**idelity Bank Plc V Monyo (2012) 10 NWLR (pt.1307) 1 at 31** the Supreme Court per Adekeye, JSC stated thus:

> **"*It is a cardinal principle of interpretation of statute that where the provisions are clear and unambiguous, effect must be given to them in their plain and ordinary meaning without the court resorting to any aid, internal or external. It is the duty of the court to interpret the words of the law maker as used. The court should adhere to the purposes of a provision where the history of the legislation indicates to the court the object of the legislature in enacting the provision.*"**

By the provision of **Rule 20(1)** above, it is provided that a lawyer **shall** not accept to act in any contemplated or pending litigation if he knows or ought to reasonably to know that he or a lawyer in his firm may be called or ought to be called as a witness.

The word used in **Rule 20 (1)** is **"shall"** which is a word of command. In **Odusote V Odusote (2012) 3 NWLR (pt.1288) 478 at 479 to 498**, Garba JCA stated as follows:

> **"*The use of the word "shall" ordinarily means that the provisions are mandatory because the word is used to express command directive which does not admit of a discretion.*"**

Also in **Nwankwo V Yara'dua (2010) 12 NWLR (pt.1209) 18 at 589** Adekeye JSC similarly stated:

> **"*The word shall when used in a statutory provision imports that a thing must be done. It is a form of command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to denote obligation.*"**

By the nature of the **relationship** between the **law firm of Ikechukwu Uzuegbu & Co** and **the plaintiff** on one hand and **the defendant on the other hand** as highlighted earlier, I am in no doubt that learned counsel **Ikechukwu Uzuegbu** having actively participated in the context or in relation to the subject matter of dispute becomes a potential witness in cases of this nature precisely because he knows or ought reasonably to know by the role the law firm played in the relationship of parties and the dispute that he or a lawyer in his firm may be called or ought to be called as a witness. **Rule 20 (3)** then categorically provides in unambiguous terms that in such a situation when a lawyer knows, prior to trial that he would be a necessary witness except as to merely formal matters, neither he nor his firm may conduct the trial.

In **Okatta V Reg'd Trustess of the Onitsha Sports Club (2007) LPELR – 8347 (CA),** the learned Egonu, S.A.N had participated in the settlement of a dispute between the parties to the suit prior to the institution of the suit in court. In court, objection was raised as to the appearance of the learned silk for the respondent and upon appeal, the Court of Appeal held that:

> **"*The learned Egonu, S.A.N having participated in the subject matter of the dispute becomes a potential witness in the dispute. Rule 20(3) does not contemplate express indication but rather the likelihood of the counsel***

being a necessary witness as in the circumstance of this case. There is strong likelihood that the senior counsel is a necessary witness at the trial and that fact unwillingly disqualified him and any counsel in his firm from appearing or continuing appearing on behalf of the respondent. His appearance is improper and will amount to the breach of professional misconduct."

The implication of the above clearly is that neither learned Counsel **Ikechukwu Uzuegbu** or any counsel in his firm can legally and properly play a dual role of prosecuting the case of plaintiff through the law firm and also appearing as a witness to give evidence which clearly are not in respect of formal or uncontested issues or matters. Indeed **Rule 20 (2) (b)** reinforces this position that the lawyer may only give evidence if the testimony relates solely to a matter of formality and there is no reason to believe that substantial evidence will not be offered in opposition to the testimony.

Here in this case, the core of the case of plaintiff and evidence of counsel was contested or challenged and evidence offered in opposition to his testimony.

Again, but for purposes of clarity, on the basis of the same **Rule 20 (3),** none of the lawyers in the law firm of Ikechukwu Uzuegbu & Co can properly handle and conduct the prosecution of the case as done in this case particularly in the context of the severely contested assertions in this case. See U**.F.P. (Nig) Ltd & Anor V Opibiyi & Anor (2012) 6 NWLR (pt.1297) 429 at 448 per Mbaba J.C.A.**

The Supreme Court in **Garam V Olomu (2013) 11 NWLR (pt.1365) 227 at 253,** described a situation where counsel appears both as counsel and a witness as a "fundamental irregularity" particularly where the evidence he gives as in the extant case will form the fundamental fulcrum on which any decision the court will give will certainly be predicated on. The Respected lordship **Onnoghen JSC** (as he then was) stated thus:

"It is contrary to the practice of trial courts, and it is a fundamental irregularity, for counsel to appear both as counsel and as a witness in the same case, particularly where the evidence he gives is so material that it forms the basis of the decision of the trial court on the matter. In the instant case, however, this principle is not applicable, where the document

which counsel tendered in evidence from the witness box as PW6 was already in evidence and tendered by the maker of the document himself as Exhibit A."

This principle on the authorities was extended to even apply in criminal cases. In **F.R.N V Martins (2012) 14 NWLR (pt.1320) 287 at 311 G-H**, the Court of Appeal per Nwodo J.C.A. (of blessed memory) stated as follows:

"In regards to issue of ethics, a lawyer cannot be a witness in a case that is not personal and then proceed to prosecute in the same matter. On the other hand in a personal case, a legal practitioner can testify and represent himself. The reasoning is that a counsel cannot prosecute and be put on the witness box to be cross-examined at the same time as it is not tardy and not in tandem with the Rules of Professional Ethics and Morals."

Now counsel to the plaintiff has argued that the evidence he gave falls under the exceptions under **Rule 20 (2) (a), (b), (c) and (d) of the Rules of Professional Conduct** and thus ought to be countenanced. Let us analyze the provisions.

Now it is true that **Rules 20 (1**) commences with the phrase **"subject to sub rule (2) of this rule…"** In law where the expression "subject to" is used at the commencement of a statute, it is an expression of limitation. It implies that what the section or subsection is subject to shall govern, control and prevail over what follows in that section or subsection. In other words, the expression is used to introduce a condition, a proviso, restriction or a limitation. The phrase subordinates the provisions of the subject section to the provisions of the latter.

See **Odjegba & ors V Odjegba (2004) 2 NWLR (pt.858) 566 at 582, Alh. Muhammed D. Yusuf V. Obasanjo (2003) 4 NWLR (pt.847) 554 at 602 and FRN V Osahon (2006) 5 NWLR (pt.973) 361 at 429.**

As highlighted already, the basis of the submissions of counsel to the plaintiff is predicated on the provisions of **Rule 20(2) (a), (b), (c) and (d)** which provides thus:

"(2) A lawyer may undertake an employment on behalf of a client and he or a lawyer in his firm may testify for the client –

(a) if the testimony will relate solely to an uncounted matter;

(b) if the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(c) if the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; or

(d) as to any matter if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as lawyer in the particular case."

I start with **Rule 20 (2) (c)** above which again is self explanatory. Let me quickly add that the construction of this Rule 20(c) will have bearing on the interpretation of **Rule 20 (a) and (b)**. The logical question that arises in relation to **Rule 20 (c)** is simply whether the testimony given by counsel relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

In resolving this question, we must take our bearing from the **pleadings and evidence of the PW1 or counsel**. A careful perusal of the case show clearly that it is on anchored on a landlord and tenant relationship with counsels (PW1) law firm appointed as **"managers of the property"**. See **paragraph 2 of the claim and paragraph 1** of the witness deposition. There is no clear job description of what **"managers of the property"** does but this assignment from the narrative in the **pleadings and evidence** essentially entail controlling or running of all matters relating to the property including amongst others brokering and collection of rentals vide **Exhibit P5**, ensuring the property is used for the purpose it was rented out; to see that taxes, charges and assessments which may be charged on the property are paid; to ensure that alterations, additions, installation or structural improvements are not made on the rented premises without the prior consent in writing of the landlord etc.

To avoid unnecessarily cluttering this judgment, the job mandate of the law firm of **Ikechukwu Uzuegbu & Co. on behalf of the landlord** can be garnered from the **Tenancy Agreement vide exhibit P1** prepared by the same law firm **Ikechukwu Uzuegbu & Co.** This agreement provides a clear insight of what the duties of the law firm as "managers" entail.

It is true that the assignment may entail or involve preparation of tenancy agreement and issuance of Quit notice(s) but the **core assignment of Ikechukwu Uzuegbu & Co** is simply that, of "managers of the property" and I have highlighted the remit of the assignment and it is difficult for one to situate the testimony related to this job description as relating **"solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client"** within the purview of **Rule 20 (c) of the Rules of Professional Conduct**. The word used in the provision is **"solely"** and this is instructive.

In the **Oxford Advanced Learners Dictionary at page 1132**, solely is defined as **"only: not involving somebody/something else."**

The implication here is that the evidence of counsel that may be allowed under the circumstances is strictly limited only to **"nature and legal value of legal services"** rendered by such counsel and must not involve anything or something else not related to or in the nature of legal services. The legal service here must logically relate to matters of legal practice for which the legal practitioner is necessarily allowed to engage in. The point to perhaps underscore is that a legal practitioner in Nigeria shall not practice at the bar simultaneously with any other profession unless with the approval of the General Council of the Bar. See **Rule 7 (1) of the Rules of Professional Conduct**. This Rule applies to situations where a legal practitioner who practices at the Bar engages in other professional activities which are not part of legal practice.

A legal practitioner may therefore not be allowed to practice another profession simultaneously with his practice as a lawyer. Where he intends to combine the two, he shall first seek the authorization of the General Council of the Bar.

This Rule applies to situations such as the present case where a legal practitioner who practices at the Bar engages or appears to be engaging in other professional activities which are not part of legal practice. Such activities may include estate agents, estate valuation, accounting, etc. The Appointment of the law firm of **Ikechukwu Uzuegbu & Co** as **"Managers of the property"** in question when it is not an estate firm or agent and engaging or carrying out duties as earlier streamlined in respect of the property at the same time while engaged in legal practice would appear under the provision of **Rule 7 (3) of the Rules of Professional Conduct** to be conduct incompatible with the practice of law.

The platform of legal practice would appear not to provide basis to even allow for a legal practitioner to engage in property management and to broker flat or property rentals in the first place. The rationale for this was captured by the legal practitioners disciplinary committee of the Body of Benchers in the case of **N.B.A V Anozie A. Ibebunjo (2013) 18 NWLR (pt.1386) 413 at 429** in a matter involving a legal practitioner engaged in the business of selling land. The exhortation on the need for legal practitioner not to engage or carry on business incompatible with the practice of law is relevant and I will quote them *in extenso* as follows:

> ***"This case exemplifies the wisdom of the founding fathers in prohibiting legal practitioners from carrying on trade or business incompatible with the practice of law. This was to forestall a situation where the profession of law will be robbed of its luster and brought into odium, opprobrium and disrepute by allowing the ethics of other professions to fuse or intermingle with the noble ethics of the legal profession. Legal practitioners must make up their minds whether or not they desire to practice law. The profession will not tolerate those who in the morning are lawyers and in the afternoon and evening of the same day, members of other businesses and professions. The streams of the ethics of our profession must be kept clear and sparkling unpolluted by the understanding of our members of the business practices and ethics of other professions. Indeed it is a matter of choice for a person to practice law or any other profession and no lawyer should stand by and watch so-called members of our profession bring the profession into disrepute."***

The bottom line here is that however the matter is looked at, it is difficult to validate the dual actions of Ikechukwu Uzuegbu & Co acting as counsel for the plaintiff and for the same Ikechukwu Uzuegbu of counsel to give evidence in the same action on behalf of his client, the plaintiff. The **nature of the evidence** and the **services it covers** gravely further undermines, unfortunately, the role of Ikechukwu Uzuegbu as counsel in the matter. The evidence learned counsel gave clearly do not relate to uncounted matters or merely formal matters but bordered on seriously contested assertions and evidence was given or offered in opposition to his testimony. Flowing from our consideration of **Rule 20 (c), Rule 20 (a) and (b)** clearly does not avail plaintiff's counsel in the circumstances.

In the circumstances, **Rules 20 (a), (b) and (c)** does not provide legal cover to allow **Ikechukwu Uzuegbu** to act as counsel and witness for the plaintiff on seriously contested matters forming the crux of the case and providing the necessary factual template to grant the claims of plaintiff. See **Garam V Olomu (supra).**

Now with respect to **Rule 20 (2) (d),** it is difficult to see what hardship that will be occasioned to the plaintiff in the circumstances if another law firm other that Ikechukwu Uzuegbu & Co is engaged to conduct the extant proceedings.

If the law firm of ikechukwu Uzuegbu & Co and indeed Ikechukwu Uzuegbu of counsel feel compelled to give evidence, then the engagement of another law firm would be most ideal in the circumstances to lead him in evidence since the evidence is not on a minor or straight forward issue(s) but on controversial and contested assertions or points relating to alleged failure to amongst others; issue Quit notices; alleged part payment of rentals by defendant e.t.c which are all defined issues joined on the pleadings requiring resolution by court. That way and on one hand, Ikechukwu Uzuegbu will be in order to give his evidence while on the other hand, the proper Administration of Justice will be enhanced. See **Rule 20 (6) of the R.P.C.** Indeed on the authorities, the practice requiring counsel to withdraw as counsel before appearing as a witness in the case is a rule of practice designed to ensure proper administration of justice.

On the whole, and as demonstrated above, it is not competent or open for counsel, **Ikechukwu Uzuegbu** in the context of the facts of this case to act as both counsel and witness for the plaintiff. The entire deposition and or evidence of Ikechukwu Uzuegbu, unfortunately as a logical consequence of the above analysis is accordingly incompetent and must be struck out. It is so struck out. The unavoidable implication is that the plaintiff has not presented evidence providing template to evaluate its case and then putting the court in a commanding height to grant the claims. The court clearly in the circumstances cannot properly proceed with the consideration of issue 2.

What then is the appropriate order to make in the circumstances, if the evidence proffered is abinitio one that should not have been given at all. The implication is that there is no proper witness statement on oath in the first place accompanying the originating process which is a clear requirement as provided for under the

provision of **Order 4 Rule 13 of the FCT Rules of Court 2004**. This case abinitio would appear not to have been initiated by due process of the law and upon fulfillment of a condition precedent to the exercise of jurisdiction. In addition, the failure to file a competent deposition is equally a feature which has prevented the court from exercising its jurisdiction in the matter. See **Madukolu V Nkemdilim (1961) NSCC (vol.2) 374 at 379**. Where a jurisdictional point as raised here has validity, the proper consequential order to make is to strike out the matter and not to dismiss same.

Indeed the phrase "dismissal of action" generally presupposes that the action has been heard on the merit and the dismissal was based on the facts or on the law applicable to the facts which is clearly not the situation in this case. See **Afuru Ogar V. Topman James (2001) 10 NWLR (pt.722) 621 at 635**; the **Merchantile Group AG V. Aiyela (1995) 8 NWLR (pt.414) 450 at 472.**

In law dismissing an action means the court was competent to entertain the matter and that it went into the merits of the matter before it was dismissed while striking out signifies that the action was not properly constituted. See **Hassan Yakubu V. The Governor of Kogi State (1997) 7 NWLR (pt.511) 66 at 94.**

Most importantly, this is a landlord and tenant matter. A landlord should not be eternally stopped from further ventilating his grievance and establishing his entitlement to his property on such technical even if fundamental irregularity of the incompetence of the evidence of counsel. It cannot be right or fair or even reasonable the suggestion that the case of plaintiff be dismissed and in the process create *estoppel per rem judicatam* against plaintiff in such circumstances to put an end to his right to properly now file an action to reclaim his property from a difficult or recalcitrant tenant.

I find support for this position in the case of **Eleja Vs Bangudu (1994) 3 N.W.L.R (pt 334) 534 at 542** where the Court of Appeal per Mohammed J.C.A instructively observed as follows:

"Indeed the Supreme Court had held in Sule Vs Nigeria Cotton Board (1985) 2 N.W.L.R (pt 5) 17 at 36-37 that in cases of recovery of possession such as the instant case, the service of the notice of intention to recover premises on the tenant is a condition precedent to the exercise of jurisdiction. In other words, in

the absence of service of valid quit notice under the law, the claim of the appellant for the recovery of possession was not properly constituted and on the authority of Ekpere Vs Afrije (1972) 3 SC 113, the appellants claim should have been struckout so as to afford him the opportunity of bringing a new action after complying with the requirement of serving valid quit notices''.

Even if the facts of this case may be different from that in the above appeal, the principle resonates and is availing in the extant case.

Having determined the fundamental threshold issue of the incompetence of the evidence of the sole witness for the plaintiff, there would appear to be no further basis to conduct any further investigation or inquiry with respect to the other issue as to whether the plaintiff has made a case to entitle it to the Reliefs sought. I must confess that it crossed my mind to make pronouncement(s) on the second issue but in the light of the clear pronouncements by the Superior Courts on the incompetence of evidence of counsel, I was conflicted as to the propriety or otherwise of going further with the consideration of issue (2). As stated earlier, it is the quality of evidence given that provides both factual and legal template to allow court make a fair determination on the contested assertions. Without this critical evidence, any case for that matter will necessarily be compromised. That unfortunately is the situation the plaintiff finds itself. I leave it at that.

On the whole, the proper Order to make is to strike out the plaintiff's action. The case is hereby accordingly struck out. No order as to cost.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **Amaka Eke, Esq., for the Plaintiff.**

2. **Ishaq M. Bashir, Esq., for the Defendant.**