IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
BEFORE THEIR LORDSHIP:
HON. JUSTICE H. B. YUSUF (PRESIDING JUDGE) AND HON. JUSTICE A. A. YUSUF (HON. JUDGE)

APPEAL NO: FCT/HC/CVA/416/2019

BETWEEN:

MR. CHUKA IBILI……APPELLANT

AND

OLUBAYO KEHINDE & PARTNERS……..RESPONDENT

JUDGMENT

This is an Appeal against the decision of the Senior District Court, Dutse Alhaji, Abuja presided over by His Worship Hon. Ahmed Yusuf Ubangari, delivered on the 20th November, 2019.

By a Statement of Claim filed on the 8th January, 2019 the Respondent as Plaintiff claimed as follows:

i. **N100, 000. 00 (One Hundred Thousand Naira) as cost of marketing the property;**
ii. **N270, 000. 00 (Two Hundred and Seventy Thousand Naira) only being the unpaid 10% Agency Fees and 5% Management Fees by the Defendant.**

iii. **General damages of N500, 000 (Five Hundred Thousand Naira) for unjustly withholding the amount due to the Plaintiff by the Defendant.**

The Respondent called one witness in prove of its case and tendered two exhibits in evidence. They are:

1. **The letter of appointment dated the 15th March, 2017 marked as Exhibit A.**
2. **The demand letter dated 10th January, 2018 marked as Exhibit B.**

The Appellant as Defendant called two witnesses and tendered three (3) documents, namely:

1. **Lease Agreement between Mr and Mrs Ibili (Lessor) and Mr Femi Bamigbola (Lessee) marked as Exhibit C.**
2. **House rent receipt dated 05/06/18 issued to Mr Femi Bamigbola, as Exhibit D.**
3. **The Account statement of Olajumoke Bamigbola showing transfer of N800, 000 to Ibili Veronica Ijeoma on 05-Jun-2018 as Exhibit E.**

Both parties filed their written addresses and Judgment was entered in favour of the Respondent as Plaintiff therein on the 20th day of November, 2019.

The Appellant as Defendant being dissatisfied with the Judgment filed his Notice of Appeal on the 11th December, 2019. The grounds upon which the Appeal is based are:

GROUND ONE (1)

The Learned Senior Magistrate erred in law when he held that the mode of commencing the action of the Plaintiff/Respondent is not incompetent and does not constitute an abuse of Court process.

GROUND TWO (2)

The Learned Senior Magistrate erred in law when he held that the Plaintiff/Respondent is entitled to all of the reliefs claimed as contained in the plaint without reliance on any evidence to establish whether the Respondent performed any or all of the obligations or services as contained in Exhibit A [Letter of Appointment].

At the hearing of the Appeal on the 01/12/2020, Victor Azubuike Esq, adopted the Appellant's brief filed on the 02/09/2020, but deemed properly filed and served on 24/9/2020 as arguments of the Appellant. While P.A.N Ejiofor Esq, adopted the Respondent's brief filed on the 20/10/2020, but deemed properly filed and served on the 01/12/2020 as arguments of the Respondent in contesting the Appeal.

The fact of this case as can be deduced from the records, states that by Exhibit A, the Appellant appointed the Respondent as his lawful

Attorney to let, manage and superintend his property, situate at No. 6, Oludele Oluaja Avenue, Dawaki Extension, Abuja with a 5% Management Fees to be paid as its remuneration. Thus, for people to be aware that the property is for rent, the Respondent placed a banner on the property. The Respondent at the lower Court stated in evidence that the Appellant removed the banner and also reneged on their agreement. That the Appellant let out the property to tenants, collected rent from them, but refused to remit the Agency and Management Fees due to them, hence the plaint.

The Appellant's case is that, he appointed the Respondent vide Exhibit A as his Property Manager at a Fee of 5% Management Fees of the rent collected. He stated that prospective tenants tried reaching the Respondent, but to no avail. He had no option than to deal with the tenants without recourse to the Respondent. He testified that the rent received by him was N800, 000.00 (Eight Hundred Thousand Naira) without any input from the Respondent. He urged the Court to allow the Appeal and set aside the Judgment of the Senior District Court.

Learned counsel to the Appellant formulated two issues for determination: These are:

1. **Whether the Respondent is entitled to any of the reliefs claimed against the Appellant having failed to render any service?**

2. **Whether the mode of commencing the action is not incompetent and does not constitute an abuse of Court process?**

The Respondent on the other hand, also formulated two issues for determination, they are:

1. **Whether the mode of commencement of the Respondent Suit at the lower Court misled or deceived the Appellant on the substance of the Respondent's claim?**
2. **Whether the Respondent is entitled to the reliefs claimed against the Appellant?**

We have considered the two grounds of Appeal filed in this Appeal. The two issues raised by the learned counsel to the Appellant in his brief of argument are in support of the two grounds. The issue one is distilled from the second ground of the Appeal, while the issue two is predicated on the first ground of Appeal. We shall therefore determine this Appeal based on the two issues formulated by the parties, as they are the same. We therefore adopt the issues formulated by the Appellant for the determination of the Appeal. We shall, however, begin with the second issue.

Whether the mode of commencing the action is not incompetent and does not constitute an abuse of Court process

In arguing this issue, the Appellant challenged the competence of the mode of commencement of the Suit at the lower Court. He argued that the statement of claim filed by the Respondent is against the provisions of the District Court Rules. He stressed further that Rules of Court must be obeyed. He relied on the cases of **OJONYE VS ONU (2018) LPELR-44212(CA); NOGA HOTELS INTERNATIONAL SA VS NICON HILTON HOTELS LIMITED (2006) LPELR-11811(CA); AZUDIBA VS INEC (2008) LPELR-3836 (CA); N.N.B PLC VS DENCLAG LTD (2005) 4 NWLR (PT. 916) 549.**

It is the argument of the Appellant that the originating process titled "Statement of Claim" was not properly dated by the Respondent and as such, it is incompetent and an abuse of Court process.

The Respondent on the other hand, argued that the process of the lower Court headed "Statement of Claim" is purely technical, which does not touch on the substance of the facts and claims before the trial Court. That the wrong heading is a mere misnomer and same should not be used to defeat the justice of the case. Learned counsel to the Respondent stated that the Appellant was not deceived into believing any set of fact other than the fact upon which this case was tried and determined. Learned counsel called our attention to page 1 of the Record of Appeal, in order for us to note the date the originating process and summons were filed. He referred the Court

to the case of **OGOHAN VS IKWENU (2018) 21 WRN (P.166)** and Order III Rule 5, Order II Rule 1 and Order XXIII Rule 4(1) of the District Court Rules.

RESOLUTION OF THE ISSUE

It is not in dispute that the mode of commencement of a civil suit in the District Court is by way of plaint, as well as the issuance and service of Summons on the Defendant (Form A). The plaint note contains the summary of the Plaintiff's claim against the Defendant. By this, the Defendant is aware of the case in Court and prepares for his defence, if any.

Having stated rightly, we agree with the Appellant's counsel that there was a deviation by the Respondent to what is stated in the District Court Rules. In the Record of Appeal before us, it is stated that the Appellant was served with Form A and a plaint note. (See page 4 of the Record).

However, the questions that arise here are, was the Appellant misled throughout the trial? Did the Appellant understood the claims against him during trial, whether the process was titled Statement of Claim or Plaint? The answer to these posers is in the affirmative.

It is the law that the form of commencement of an action does not make it incompetent. The Courts have far moved away from

technical justice to substantial justice. See the case of **FAMFA OIL LTD VS AG FED & ANOR (2003) LPELR-1239 (SC) OGOHAN VS IKWENU (SUPRA).**

Having looked through the processes filed by the Respondent at the trial Court, as well as the evidence adduced in that Court, it appears to us that the Appellant was not mistaken as to the facts stated in the originating process. The facts/claims of the Respondent are clearly stated on the process titled "Statement of Claim". The fact that the originating process was titled statement of claim, will not vitiate the proceedings, rather same will be treated as a misnomer. The District Court Rules is a procedural law which governs the practice and procedure in that Court. It is the position of the law that the non compliance with the Rules of Court will not necessarily result in the setting aside of a Judgment of a Court, especially where it is seen that steps were taken by the party complaining about the breach.

We have carefully examined the record before us, it is not shown anywhere that the Appellant as Defendant therein raised any preliminary objection to the process titled "Statement of Claim" at the lower Court. The Appellant who noticed this procedural defect participated in the proceedings without any objection. He is therefore seen to have waived his right to complain about the defect.

Rather, his objection was raised at the address stage and the trial Judge was fair to have dealt with same in his Judgment. In any event, the failure to comply with the Rules shall not vitiate the proceedings of the lower Court. See the case of **WATYEM- DKS ENTERPRISES LTD & ORS VS AMCON [2018] LPELR 45838 CA.**

Therefore, the reasoning of the trial Judge cannot be faulted on this issue and same is hereby resolved against the Appellant.

ISSUE ONE (1)

Whether the Respondent is entitled to any of the reliefs claimed against the Appellant having failed to render any service.

Learned counsel to the Appellant argued that for a party to be entitled to any relief under a contract, such a party must have performed the obligation imposed on him in the contract and where he failed to perform the duty imposed on him in the contract, he is not entitled to any award. He cited the cases of **ACHONU VS OKUWOBI (2017) 14 NWLR (PT. 1584)142; OGUNDALU VS MACJOB (2015) 8 NWLR (PT. 1460) 96; SAVANNAH BANK OF NIGERIA PLC VS OLADIPO OPALUBI (2004) LPELR-3023.**

It is the argument of the Appellant's counsel, that since the Respondent failed to abide by the obligations, terms and conditions

stated in Exhibit A, it's not entitled to the 5% Management Fee. He referred the Court to the cases of **ECOBANK (NIG) LTD VS KEY PRODUCT LTD (2019) LPELR-48239(CA); TSOKWA OIL MARKETING COMPANY LIMITED VS BON LIMITED (2002) 11 NWLR (PT. 777) 163**.

He stressed further that since the Respondent's only effort to put a tenant in the property was the placement of the banner, it's not entitled to any relief as the Respondent cannot put something on nothing and expect it to stand.

On the award of the reliefs, the Appellant called this Court to review the Records of Appeal in order to do substantial justice. He urged the Court to set aside the awards entered in favour of the Respondent.

The Respondent's counsel argued that by Exhibit A, the Appellant appointed the Respondent to collect rent, manage the property and eject tenants, and in compliance with the appointment letter, promptly advertised the property through its banner placed on the property. It was this banner that attracted tenants to the property. He argued further that by the placement of the banner, the Respondent has discharged its duty and thus entitled to the claims.

RESOLUTION OF ISSUE

The duties and responsibilities of each party in this Appeal are as contained in Exhibit A and for purpose of better understanding, Exhibit A is hereby reproduced:

MR. CHUKA IBILI
NO. 6, OLUDELE OLUAJA AVENUE DAWAKI EXTENSION, ABUJA
08064526095

15th March, 2017

The Partners,
Olubayo Kehinde & Partners,
Estate Surveyor & Valuers,
Suite C10, Faisalmas Plaza,
No. 2, Mitchika Street,
Garki, Area 11,
Abuja.

Dear Sir/Madam,

RE: LETTER OF APPOINTMENT

I, Mr. Chuka Ibili, of No. 6, Oludele Oluaja Avenue, Dawaki Extension, Abuja, hereby appoint your Firm, Messrs Olubayo Kehinde & Partners of Suite C10, Faisalmas Plaza, Garki Area 11, Abuja as *my lawful Attorney to let, manage and superintend management* of my property at No. 6, Oludele Oluaja Avenue, Dawaki Extension, Abuja.

By this appointment letter, you are to collect rent, attend to complaints and evict tenants who are not fit to reside in my property.

I shall pay you 5% Management Fees as your remuneration.

This appointment takes effect from 16th day of March, 2017.

Thank you.

Yours faithfully,
Signed
MR. CHUKA IBILI

It is not in dispute that via Exhibit A, the Appellant appointed the Respondent as his lawful Attorney. What is in contention is whether the Respondent is entitled to the 5% Management Fees stated in Exhibit A, as well as the other reliefs granted by the trial Judge. By Exhibit A, the obligations of parties are quite clear. There is no ambiguity to it. It is clear that the Appellant instructed the Respondent to let, manage and superintend the subject matter in question. See paragraphs 1 and 2 of the Exhibit A. The Respondent testified that in furtherance of these duties, it's placed its banner on the property and this evidence was confirmed by the Defendant/Appellant. See pages 49 & 58 of the records. It is therefore clear that it was the banner placed on the property that attracted tenants to the property.

By this singular act, it is not out of place to reward the Respondent for its effort in attracting tenants to the property. It was for the Appellant to refer or direct the tenants to the Respondent for proper documentation as agreed. The Appellant had the contact number

and office address of the Respondent. He did not place sufficient evidence before the trial Court to show that he tried to contact the Respondent. His reason that he couldn't reach the Respondent on their phone number is not tenable. We hold that the Appellant is duty bound to honour his own part of the agreement.

It is trite, that parties are bound by the agreement they voluntarily entered into and no Court or either party is allowed to be read anything into such document or subtract from the content of the document. In the case of **EMMANUEL OLAMIDE LARMIE Vs DATA PROCESSING MAINTENANCE & SERVICES LTD (2005) LPELR-1756(SC),** the Supreme Court held thus:

> **"The law is trite regarding the bindingness of terms of agreement on the parties. Where parties enter into an agreement in writing, they are bound by the terms thereof. This Court, and indeed any other Court will not allow anything to be read into such agreement, terms on which the parties were not in agreement or were not ad-idem".**

Furthermore, it is the law, that parties are entitled to rely on the evidence of an opponent to support their case. In the case of **CHIEF FALADE ONISAODU & ANOR Vs CHIEF ASUNMO ELEWUJU &**

ANOR (2006) LPELR-2687(SC), the Supreme Court held as follows:

> **"...When the evidence of a witness supports the case of the opponent against whom he purports to give evidence, that opponent can take advantage of that evidence to strengthen his case, if it is consistent with, and corroborates his case, as in this case".**

Olajumoke Bamigbola who testified as DW2 gave evidence that it was the banner of the Respondent that attracted her to the property and currently two tenants are on the property at an annual rent of N800, 000. 00 (Eight Hundred Thousand Naira) per Flat. She confirmed that it was the banner that attracted her to the property. The DW1 also in his evidence in chief corroborated the above evidence. He stated that there are two tenants on the property and each pays N800, 000. 00 (Eight Hundred Thousand Naira) per annum. (See page 51 of the record).

In the absence of any contrary evidence, we hold that the Respondent is entitled to 5% of the sum of N1, 600, 000. 00 (One Million, Six Hundred Thousand Naira) being the amount of the rent for the two tenants, which is N800, 000. 00 (Eight Hundred Thousand Naira).

We find that there is no evidence to support the Marketing and Agency Fees granted in favour of the Respondent at the lower Court. Thus, the two awards cannot stand. We hereby set aside the reliefs.

In the case of **DIAMOND BANK VS PAMOB WEST-AFRICA LTD (2014) LPELR-24337(CA),** the Court of Appeal held thus:

> **"It is settled that the measure of damages for breach of contract is the loss flowing naturally from the breach and is reasonably within the contemplation of the parties at the time of contract. Apart from damages naturally resulting from the breach, no other form of general damages can be contemplated. See CHITEX INDUSTRIES LTD VS OCEANIC BANK LTD (2005) 8 SCM PAGE 53 AT 59-60, where the Supreme Court stated the principle governing damages recoverable for breach of contract as follows: "Generally the amount of damages to be paid to a person for breach of contract is the amount it will entail to put that person in the position he would have been if there had not been any breach of contract. See IDAHOSA VS ORONSAYE (1959) 4 F.S.C. 166. In the case of OMOUNUWA VS WAHABI (1926) 4 SC 37, this Court**

per Idigbe JSC said: "It is settled that the governing purposes of damages is to put the party whose rights have been violated in the same position, so far as money can do as if the rights have been observed, xxxxxx. In cases of breach of contract, the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach. What was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or, at all events by the party who later commits breach of contract xxxxxxxxx In cases of breach of contract, a Plaintiff is only entitled to damages naturally flowing or resulting from the breach. See SWISS NIGERIAN WOOD INDUSTRIES LTD VS DOGO (1971) 1 UILR 337; AGBAJE VS NATIONAL MOTORS (1971) 1 UILR 119. The measure of damages, in such cases of breach of contract, is in the terms of the loss which is reasonably within the contemplation of the parties at the time of contract. See WROUGHT IRONN (1970) NCCR 295; ATRAINE VS ESHTETTT (1977) 1 SC 89. When considering damages arising

from a breach of a contract there is no room for damages which are merely speculative or sentimental unless these are specifically provided for by the express terms of the contract."

The Appellate Courts will ordinarily not substitute its view with the award of damages made by the trial Court, except it is shown that it is excessive or the position of the trial Court was premised on wrong factors. In the case of **JACOB OKU-PEVI VS P.A. DAPO SOYINKA & ANOR (2017) LPELR-41951(CA),** the Court of Appeal held thus:

"In ARAB CONSTRUCTION LTD & ANOR VS ASUQUO SUNDAY ISAAC (2012) LPELR - 9787 (CA) 16 - 17, PARAS E- C, this Court, by GARBA, JCA held thus: "At the onset, I would want to restate the principle of law that ordinarily, an Appellate Court does not make a practice of casually interfering with the award of damages made by a trial Court. An Appellate Court only interferes with the award of damages by a trial Court or lower Court in recognized circumstances which include: (a) when the trial Court or lower Court had acted under wrong principles of law in the award. (b) When the trial Court had taken into account in its

assessment, immaterial factors or (c) Failed to consider material factors in the award of damages. (d) When the amount awarded was either too low or high as to make it an entirely erroneous estimate of the damages".

Flowing from the above, we are of the view that the award of the sum of N500, 000, 00 (Five Hundred Thousand Naira) is excessive and punitive. After all, the only cost incurred by the Respondent, as can be deduced from the evidence at the trial Court is the banner placed by the Respondent on the property and for this, we are of the view that the sum of N20, 000. 00 (Twenty Thousand Naira) will be adequate compensation.

In all this, the Appeal succeeds in part. The Orders of the trial Court are hereby set aside. The sum of N80, 000. 00 (Eighty Thousand Naira) only is awarded to the Respondent being the agreed 5% Management Fees on the sum of N1, 600, 000. 00 (One Million, Six Hundred Thousand Naira) the rent for the two tenants on the property and the sum of N20, 000. 00 (Twenty Thousand Naira) as general damages for breach of contract. Parties are to bear their cost.

Signed
Hon. Justice H. B. Yusuf (Presiding Judge), and
Hon. Justice A. A. Yusuf (Hon. Judge)
17/12/2020