

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 8TH DAY OF DECEMBER, 2020.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH(PRESIDING JUDGE)
AND HON. JUSTICE A.S ADEPOJU (HON. JUDGE)

SUIT NO:CV/76/2019

APPEAL NO: CVA/317/19

BETWEEN

ISSAC YIROM.....APPELLANT

AND

SEIGHA YIROM.....RESPONDENT

Delivered by Hon. Justice Maryann E. Anenih

JUDGMENT

This Appeal is in respect of the Ruling of His Worship Theresa N. Otu of the Senior District Court Wuse Zone 2 declining Jurisdiction to hear the case No:CV/76/2019. The Appellant as plaintiff therein sought the following reliefs:

An order allowing the appeal and setting aside the ruling of the trial court delivered by **Hon. Theresa N. Otu on the 20th day of September, 2019 in suit No.CV/76/2019** wherein the trial court struck out the action of the Plaintiff for want of jurisdiction and being an abuse of court process.

An order vacating the award of N20,000 cost against the Plaintiff/Appellant.

An order restoring the jurisdiction the Lower Court was not sure of and denied itself.

Upon the preliminary objection of the defendant now respondent, the District Court declined jurisdiction and struck out the case. Dissatisfied with the ruling and striking out of the suit, the plaintiff as Appellant has appealed to this court.

The preliminary objection in this case was based on the following grounds.

The suit as presently constituted is an abuse of court process.

There is a subsisting judgment of Customary Court of Federal Capital Territory, delivered on 11/08/14 between the parties on the same subject matter of the present suit.

The suit as presently constituted did not disclose any reasonable cause of action against the defendant.

The suit is an academic exercise which the court cannot entertain as the plaintiff is not sure of the relationship that exists between himself and the defendant.

There is no live issue to be decided by the Honourable court.

That this suit is incompetent

That this suit is also an abuse of judicial process.

The suit as presently constituted is incompetent and should be struck out.

In addition to the averments in her affidavit, the Defendant/objector/Respondent raised two issues for determination in her address before the District court thus:

1. Whether in the circumstances of this case as presently constituted the plaintiff has not abused the process of this Honourable Court.
2. Whether this suit as presently constituted is not an academic exercise.

In response the Plaintiff/Respondent/Appellant in response to the objection filed a counter affidavit and written address. He raised therein three issues for determination as follows:

1. Whether or not this Honourable court has jurisdiction to adjudicate on this matter.
2. Whether or not the suit of the plaintiff is an abuse of court process and
3. Whether or not the present suit constitute the principle of res judicata.

The lower court after hearing both parties in a considered ruling declined jurisdiction and struck out the case.

It is pursuant to the Ruling striking out this matter that the plaintiff appealed to this court on the 8th October, 2019 via the instant Notice of Appeal No. CVA/317/19 on the grounds stated below:

GROUND ONE

The trial court erred in law when it held that there was no tenancy relationship between the parties as contained on the plaint without taking the evidence of the other parties.

PARTICULARS OF ERROR

- a. The trial court held that there is no clear cut relationship between the parties as established on the face of the Plaint to clothe the Court with Jurisdiction.

- b. The trial court misdirected itself when it considered that the Jurisdiction of the Court was in doubt.
- c. The action filed by the plaintiff was clearly a claim against the defendant as a person who occupies the premises without a formal tenancy relationship and her being there without the consent of the owner of the premises is no longer tenable.
- d. The Trial Court misdirected itself in law when it set out the action of the plaintiff as forum shopping.

GROUND TWO

The trial Court erred in law when it held that the action is an abuse of Court process thereby concluding the case without hearing evidence of the parties.

PARTICULARS OF ERROR

- a. There was no evidence led on the subject matter of recovery of premises for the Court to determine the action as an abuse of court process as the Parties were borne from an earlier matter.
- b. The conclusion of the trial court on the outcome of the case is fatal to the proceedings before the court in an interlocutory application.
- c. The trial Court misdirected itself when it held that it is the same issues that are being canvassed before it negating the fact that this suit is what shall give vent to the decision of the Customary Court as to the occupation of the premises of the Plaintiff by the Defendant.

GROUND THREE

The trial court erred in law when it held that it was a marriage that was dissolved as against a tenancy relationship.

PARTICULARS OF ERROR

- a. The Trial Court misdirected itself when it held that the fact of a tenancy relationship ought to have been established without the benefit of the evidence of the parties.
- b. The court misdirected itself when it abdicated its status as a court of summary jurisdiction and substantial justice to appropriate the right or other wise of the parties without taking evidence.
- c. The trial Court erred in law when it considered extraneous facts to base its decision on the case before it.
- d. The court did not take into consideration the evidence led in respect of the fact that the cause of action which could accrue to the plaintiff at the trial court accrued from the facts he pleaded and the claim he had before the Court.
- e. The trial Court misdirected itself when it did not consider the argument advanced by the plaintiff in its affidavit that the Defendant is at best a tenant at will.
- f. The trial Court did not consider the fact that the parties had made their claims and any question to be settled would require the taking of evidence.

GROUND FOUR

The trial Court erred in law when it held that the suit is a waste of juridical time without determining the issue of the relationship of the parties, that required evidence to be taken.

PARTICULARS OF ERROR

- a. The trial court misdirected itself when it made anstriking out the action.

The trial court ought not to speculate on the mind of plaintiff in bringing the action without taking the evidence of the parties, the requisite notices for recovery of premises having been served through the processes of the Court.

And the Appellant seeks from this court the following reliefs:

- i. An order allowing the appeal and setting aside the ruling of the trial court delivered by Hon. Theresa N. Out on the 20th day of September, 2019 in the suit No. CV/76/2019 wherein the trial court struck out the action of the plaintiff for want of jurisdiction and being an abuse of court process.
- ii. An order vacating the award of N20,000 cost against the Plaintiff/Appellant.
- iii. An order restoring the jurisdiction the Lower Court was not sure of and denied itself.

Pursuant to his Notice of appeal the Appellant filed Brief of Argument on 24th January, 2020.

The Respondent reacted by filling her Brief of Argument on 22nd June, 2020.

Both parties addressed the court and adopted their briefs of argument on the 25th November, 2020.

The issues formulated for determination and summary of the Counsel's address in their respective Briefs are set out hereunder:

The Appellant in his brief of argument filled on the 24th January, 2020 formulated three issues for determination;

1. Whether in the circumstances of this case the trial court is vested with the jurisdiction to determine the matter.

2. Whether the suit as presently constituted is an abuse of court process.

3. Whether having regards to the pleadings on record, the trial court was right to have determined that there was no tenancy relationship between the parties without taking evidence of the parties.

On issue 1, the counsel to the appellant submitted that doubt is not the reason envisaged in the law as a premise to decline jurisdiction in a matter and that the attempt to use it as a premise is escapist and falls short of the requirement of law. And also that the jurisdiction of the District Court is not in doubt. He cited **Madukolu V. Nkemdilim (1962) SC**

On issue two he submitted that the process of this court has been used bona fide and properly. No vexation or irritation has arisen from the action before the court as the plaintiff has opted for judicial remedy rather than self help. That the trial court gives vent to the judgment/ruling of the customary court. And the plaintiff has not sought to give himself any undue advantage that he is not entitled to by right.

He further submitted that contrary to the contention of the respondent, commencing an action to recover possession of the premises which the defendant occupies by reason of the plaintiff bringing her into possession, cannot amount to an abuse of court process.

He urged the court to hold that the decision of the trial court was in error and allow this appeal.

On issue three, the counsel to the appellant submitted that the holding of the trial court that there was no tenancy relationship between the parties in determining the preliminary objection was premature. And that the trial court was beclouded by the need to determine at the early stage whether there was a tenancy relationship or not. This is more evident

when the trial court stated that it was a marriage issue and not a tenancy issue. That clearly the court employed extraneous considerations in arriving at its decision to decline jurisdiction to entertain the matter. And that it was gross and ought to be set aside by this Honourable Court.

He urged the court to allow the appeal.

In conclusion he submitted that the appeal be allowed because:

The suit is not an abuse of court process.

The defendant is a tenant of the plaintiff

The matter is properly before the District court and the District court is clothed with jurisdiction to determine same.

The Respondent to this Appeal in his brief of argument filled on 22nd June, 2020 adopted appellant's three issues for determination;

Whether in the circumstances of this case the trial court is vested with the jurisdiction to determine the matter.

Whether the suit as presently constituted is an abuse of court process.

Whether having regard to the evidence on record, the trial court was right to hold that there was no tenancy relationship between the parties without taking evidence of the parties.

On issue 1 and 2 the counsel to the defendant/respondent submitted that the appellant in his plaint had already presented a circumstance that had already divested the district court of jurisdiction and the appellant had created a maze of jumbled stories via his plaint which made it absolutely impossible for the district court to sit and exercise jurisdiction over the suit. The respondent counsel also submitted that all the elements of abuse of court process are present in the suit before the district court of the Federal Capital Territory for which the district judge was right to

strike out the suit for lack of jurisdiction. And that the trial court having found that the appellant abused the process of court cannot have any rightful justification to proceed into the hearing of the suit. That the only option open to the trial court was to strike out the suit. And this option the trial court has exercised.

He prayed the court to resolve this issue against the Appellant and dismiss the Appeal.

On issue 3 the counsel to the Respondent submitted that issue 3 as canvassed by the appellant is unsustainable, being that it was founded on a ground of notice of Appeal that is incompetent. That the trial court never in its judgment held that there is no tenancy relationship between parties. But the Appellant formulated a ground of appeal on decision based on tenancy relationship. That this makes ground one that does not arise from the judgment of the trial court to be incompetent. He urged the court to strike out ground one of the notice of appeal, and that issue 3 was also formulated from the incompetence of ground one of the notice of appeal. That where an issue is formulated based on an incompetent ground of appeal the said issue becomes incompetent and must be struck out. He referred the case of *UMANAHA (JNR) V. N.D.I.C (2016) 14 NWLR pt. 1533 pg. 458 at pg.481 para c.*

In conclusion the respondent urged the court to uphold the decision of the trial court and dismiss this appeal with substantial cost.

In response to the Respondent's brief of argument, the Appellant on the 23rd June, 2020 filed a counter affidavit before the court. This would be further referred to when found necessary.

We have considered the contention of parties in this Appeal via the issues formulated for determination by the Appellant which were also adopted by the Respondent.

The three issues have been succinctly set out above and they would be resolved in reverse order for the purpose of this judgment.

The first one to be resolved is Issue three which is whether having regard to the evidence on record, the trial court was right to hold that there was no tenancy relationship between the parties without taking evidence of the parties.

A careful glean of the grounds of Appeal with attendant particulars clearly reveals that this issue is formulated from ground one and ground three which have been reproduced above already.

A ground of Appeal basically is meant to challenge the ratio decidendi of the Court's decision appealed against. That means invariably that a ground of Appeal must arise from the decision appealed against. In support of this position of the law which is well settled, I refer to the case of

HANI AKAR ENTERPRISES LTD V. INDO(NIG)MERCHANT BANK LTD (2010)LPELR-4229 (CA) Pg 22

MUTU V. REALVINE CONNECTIONS LTD (2016) LPELR-41807(CA) Pg 12 paras B-D

AND

ALHAJI BASHIR AHMAD DAN MALLAM & ORS V. THE REGISTERD TRUSTESS OF INDEPENDENT PETROLEUM MARKETERS (2016) LPELR-41606(CA) pg 13-14 para B-D

We have carefully gone through the Ruling complained of at the Lower Court complained of. And on that note have juxtaposed it with grounds one and three of the Notice of Appeal which are relevant to issue three formulated by Appellant. The relevant portion of the ruling of the trial court at pages 72-73 of the record is reproduced below:

“I have gone through the application of the plaint as well as the particulars of claim thereof as filled by plaintiff. And I understand every paragraph therein. It is a marriage that was dissolved as against a tenancy relationship been determined. Assuming but not conceding that the Plaintiff/Respondent and the objector were in tenancy relationship the question here will be:

When was the commencement of the tenancy?

When was tenancy determined?

How was it determined?

Exhibit C and D are undoubtedly before the court, but to the very best, they are like giving a Baptismal name to living thing other than a human being, that I must say, is the most inappropriate thing to do. It goes to no issue.

On issue one as raised by the Plaintiff/Respondent this court held that, there is no clear cut relationship between the Plaintiff/Respondent and the Defendant/Applicant established on the face of the plaintiffs plaint for which the court can be clothed with jurisdiction, assume same and adjudicate upon. I therefore hold that the jurisdiction of this court to hear and determine this suit is in doubt”

In our humble view the first ground is not reflective of any holding of the trial court in the Ruling delivered and specifically not in the portions

of the said Ruling reproduced above. There is no such statement made, that could even pass as an obiter attributable to the said Ruling.

It is settled law that a ground of Appeal is ordinarily meant to attack a decision of a court and not on a misleading premise that is none existent in the decision of the court complained of. We find support for this view in the case of:

REV MINAIBIM HARRY & ANOR V BARRISTER WIKE EZENWO NYESOME & ORS (2105) LPELR-25998(CA) pg 9 paras A-B

And in LADOJA V AJIMOBİ & ORS (2016) LPELR-40658(SC) pg 6-7 para F-C his Lordship Ogunbiyi JSC, resonated the position of the law on the determinant of the competence of a ground of Appeal as follows:

“In determining whether or not a ground of appeal is competent, it has been held times without number that the proper approach is to focus on the substance of the complaint with a view to determining whether the ground contains a genuine complaint which correctly arises from the judgment. The paramount intention is to ensure that the adverse party is in clear understanding of the exact complaint against the judgment.

Elegance in couching a ground of appeal is not of material significance. It should be specifically described so as to avoid vagueness, repetition, narration or argument. See the cases of: Bango V. Chado (1998) 9 NWLR (Pt 564) 139 at 148; Sosanyo V. Onadeko (2005) 8 NWLR (Pt 926).186 at 226.

See also:

CHIEF CLEMENT O.C OKAFOR V ANTHONY ABUMO FUANI (2016) LPELR-40299(SC) pg 15, para A-B

The said first ground cannot constitute a competent ground in the circumstance.

The other ground from which the issue three appears to have been formulated is the third ground of Appeal. This ground has also been juxtaposed with the Ruling complained of by the Appellant. This third ground is vague when compared with the statement made by his Worship at the trial court in it's Ruling, which has been incompletely reproduced as a ground of Appeal by the Appellant. It is vague, incomplete, a misconstruction of the trial court's observation apropos of the Ruling complained, of particularly at pg 72 of the records thus:

“it is a marriage that was dissolved as against a tenancy relationship been (sic) determined”

The import of the preceding quotation is altered by removal of the last two words of the sentence by the appellant. Even if the sentence had been completely reproduced it would only still amount to an obiter which should not of it's own form a ground of Appeal except it is shown to be interwoven with the ratio decidendi. For support of this position see:

MUTU V REALVINE CONNECTIONS LTD (supra)

CORPORATIVE & COMMERCE BANK PLC & ANOR V EKPERI (2007)LPELR-876(SC) pg 16-17 para G-B

In view of the foregoing, on competence of the grounds set out we find Ground one and Ground three of the Appeal to be incompetent. And the position of the law is that such grounds found to be incompetent ought to be struck out. See authorities referred to herein before (SUPRA) on this issue.

It therefore means that issue three formulated from these two incompetent grounds has no ground to stand on. And it is trite law that an issue distilled without reference to any valid grounds of Appeal is incompetent. See

MBADUCE & ORS V LAGOS INT. TRADE FAIR COMPLEX MANAGEMENT BOARD & ORS (2017) LPELR-41968(CA)

Thus, suffice to say Grounds one and three of the Appeal and issue number three formulated thereof are found to be incompetent and accordingly struck out.

The next issue in reverse order as earlier adopted is whether the suit as presently constituted is an abuse of court process. Clearly this issue is distilled from the second ground of Appeal.

The appellant contends that this suit is not an abuse of court process as held by the trial court in the Ruling precisely at page 73 of the record of Appeal.

The Appellant in her brief of argument submitted that the process of the court has been used bona fide and properly. That no vexation or irritation has arisen from the action before the trial court. And that the subject matter in this action is not the same as that before the Customary court which has been determined over 5 years ago. He argued that the action at the trial court rather gives vent to the Judgment/Ruling of the Customary court, for which he approached, the trial court for vacant possession of his premises.

The respondent on the other hand in her written brief argued inter alia that the action of the Appellant at the trial court is an abuse of court process because the decision of the Customary court which is still valid and binding is between the same parties, on the same issues and that the

same reliefs are sought in the action filed at the District Court by the Appellant. That the appellant rather than obey the order of the Customary court has approached the District court for the same issues. Both Counsel made extensive arguments on this issue and cited several authorities, which have been carefully considered and would be specifically referred to where the need arises.

In order to properly determine this issue, it would be expected for this Court to reproduce herein the names of parties at the Customary Court, the subject of their suit and the prayers sought. For clarity these would be reproduced from the record of Appeal as endorsed on the relevant processes. The parties reflected on the first page of the customary court judgment of are:

MR. ISAAC YIROM AND MRS SEIGHA YIROM

And the claims of the petitioner as reflected therein are:

1. An order of dissolution of the customary marriage between the petitioner and respondent on grounds that the marriage has broken down irretrievable (sic) due to irreconcilable differences.
2. An order granting the petitioner custody of the children having been solely responsible for their upkeep till date.
3. An order relocating the respondent from the petitioner's residence.

A sole issue was distilled for determination in that judgment by the court as follows:

“The only issue for determination thereof is whether the petitioner is entitled to his claim for custody”.

And judgment was eventually entered as follows:

1. The marriage between the parties is hereby dissolved and a certificate of divorce is to issue accordingly.
2. Custody of Nungtso Isaac Yirom and Emmanuella Isaac Yirom is hereby awarded the respondent.
3. The petitioner is to pay a monthly amount of fifty thousand Naira (N50,000) for the feeding, clothing and toiletries of the children.
4. The petitioner is also to provide a befitting accommodation for them, commensurate with the standard they are accustomed to. They are to remain in the old accommodation until such is proved.
5. The petitioner is to continue paying for their school fees and providing for their pocket money.

The aforestated orders as reflected above are in respect of the suit at the Customary Court.

The suit instituted at the lower Court (District Court) on the other hand indicates as follows:

That the parties are the same vis: ISAAC YIROM AND SEIGHA YIROM

The particulars of claim at the District Court are as follows:

1. The plaintiff is the landlord of the premises Block 21, Flat 11 Matadi Street, Wuse Zone 3, Abuja FCT within the jurisdiction of this Honourable Court.
2. The Defendant is a former wife of the landlord and she occupies a room of the said premises at the premises Block 21, Flat 11 Matadi Street, Wuse Zone 3, Abuja FCT within the jurisdiction of this Honourable Court.
3. The plaintiff avers that the marriage of the parties was dissolved by the Customary Court of the FCT sitting in Garki since 11th August, 2014.

4. The Plaintiff in giving vent to the judgment of the Court allowed the Defendant to continue to live in the premises until the Children attend the age of 18 years.
5. The plaintiff has since obtained an order for leave to apply to enforce the judgment of the Customary Court.
6. The Defendant has defied the Judgment of the Court and has continued to be in possession of the said premises.
7. The Plaintiff further avers that all attempts to get the Defendant to vacate the premises fell on deaf ears.
8. The plaintiff further avers that it caused to be served on the Defendant 7 days Notice to quit and 7 days Owners intention to apply to recover possession but the Defendant has refused, failed, neglected to vacate the premises. The said notices are pleaded and shall be relied upon at the trial.
9. The defendant still holds on to the property and has refused to vacate same in defiance to the order of Court.
10. The Plaintiff avers that the action of the Defendant has occasioned hardship on him and loss of revenue which is crucial to the well being of his family.

And the main Claims against the defendant are:

1. A Declaration that the tenancy relationship (if any) of the parties has been determined.
2. An order of this Honourable Court granting the plaintiff vacant possession of the premises Block 21, Flat 11 Matadi Street, Wuse Zone 3, Abuja FCT forthwith.
3. The sum of N300,000 (Three Hundred Thousand Naria) monthly being the amount of rent owed to the Plaintiff from the date of holding over from the 20th May, 2019 until vacant possession is handed over to the Plaintiff.

4. Ten Percent (10%) interest monthly on the judgment sum till the amount is liquidated.
5. The sum of N400,000 (Four Hundred Thousand) naria being the cost of this action.

We have carefully set out the gist of the two actions as presented before the Customary Court and the District court. The grit of both claims as set out does not admit of any ambiguity. They are clear and precise.

The question arising therefrom at this juncture are:

1. Whether the parties are the same.
2. Whether the subject matter is the same.
3. Whether the reliefs are the same.

This is the basis of the holding of the district court that the suit constitutes an abuse of court process. The trial court adopted the argument of the defendant/ Applicant now Respondent herein and held the suit to be an abuse of court of court process and a waste of judicial time.

The argument of the defendant therein as objector was that the suit at the trial court constitutes multiplicity of actions and was an attempt by the plaintiff to relitigate the same issues and same claim.

It is trite that the institution of multiple actions by same parties on same issues and reliefs would amount to an abuse of court process.

The term abuse of court process has received judicial interpretation in several decided cases such as:

CUSTOMARY COURT OF APPEAL BENUE STATE V ABURA TSEGBA & ORS (2017) LPELR-44027(CA) Pp. 37-38, paras D-A

OOGBVORU & ANOR V UDAGHAN & ORS (2013) LPELR – 20805V pg 9 para B-D

CHIEF B.A ALLLANAH & ORS V MR. KANANYO KPOLOKWU & ORS (2016) LPELR – 43480 (SC) pg 13-14 para C

In the case of PML (NIG) LTD V FRN 92017) LPELR-43480 (SC) at page 58 para. B-F his Lordship Augie JSC reiterated inter alia that

“To amount to an abuse of court process, the proceedings or step in the proceeding complained of, will, in any event, be lacking in bona fides, it has to be an improper use or perversion of process after it had been issued.”

And in OKAFOR & ORS V AG & COMMISSIONER FOR JUSTICE & ORS (1991) LPELR-2414(SC) his Lordship Karibi –Whyte JSC at pg 34 paras A-D reiterated that it is the law that multiplicity of actions on the same matter may constitute an abuse of the process of the Court, But that it must be in respect of the same parties with respect to the same subject matter. And that the Court has a duty to interfere to stop such an abuse of its process.

Suffice to state at this juncture without further ado or any further academic exercise that it is our humble view that this is not such a case where the actions in the two courts have the same parties and the same subject matter.

A careful and thorough scrutiny of both proceedings as highlighted reveals that though the parties are the same, the subject matter of both actions is clearly different. Thus the action before the trial court does not amount to multiplicity of actions and as such doesn't constitute an abuse of court process.

The customary court suit reveals an action for dissolution of marriage, custody of children of the marriage and relocation of the defendant. The District court plaint on the other hand reflects an action for determination of tenancy and recovery of premises with consequential monetary reliefs.

The final orders of the Customary Court judgment do not form any of the prayers sought in the suit before the District court.

There is no simpler language to highlight the difference in the subject matter of the two cases.

We are mindful that this Appeal is founded on the Ruling of an interlocutory application via a preliminary objection. We will therefore cautiously avoid making any pronouncement that may prejudice or dabble into the issues arising action. Courts have been urged time and time again to refrain from doing this. See:

OKOMO & ORS V. UMOETUK & ORS (2003) LPELR-7231 (CA) pp. 19-21, paras. C-B his Lordship Opene J.C.A postulated that;

"It is settled law that in an interlocutory application that the Court must confine itself to issues necessary for disposing of the application and avoid pronouncement on any matter which touches the substantive suit..."

Suffice to say therefore with due respect, we cannot agree with the respondents counsel that the instant suit before the District Court is of the same or similar subject matter as the one decided before the Customary Court.

Again with due respect to the lower Court, the District Judge erred in law when he held the action to be an abuse of court process and a judicial waste of time. Thus the issue two on whether this matter

constitute an abuse of court process is hereby resolved in favour of Appellant.

The next issue is the first one which is whether this court (that is the District Court) is the court vested with the jurisdiction to determine the matter.

The trial court in the Ruling complained of had this to say at pg 73:

“I therefore hold that the jurisdiction of this court to hear and determine this suit is in doubt. In concluding on this issue I hold that jurisdiction is what any competent court of law must have to be able to sit and adjudicate on matters of law before her. And been in doubt here, I consequently decline jurisdiction.

On issue two as raised by the plaintiff, this court adopts the argument canvassed by the defendant/Applicant and objector herein and hold that the suit as presently constituted is an abuse of court process. See the case of BRIGGHA V. P.D.P supra

The court also read through the Defendants/objectors reply on point of law and hold that his court does not have jurisdiction to sit and determine this suit.”

The lower court had earlier held at pg 72 that:

“On issue one as raised by the plaintiff/respondent this court held that, there is no clear cut relationship between the plaintiff/Respondent and the Defendant/applicant established on the face of the plaintiff’s plaint for which the court can be clothed with jurisdiction to assume same and adjudicate upon.”

The Appellant contends that the court wrongly declined jurisdiction in this matter without giving the opportunity of calling evidence on the

subject matter of parties claims. The respondent argued conversely that the court rightly declined jurisdiction a fortiori on the facts canvassed in the plaint which forms the pleadings before the court. And that jurisdiction is determined from the case of the plaintiff as set up in the plaint.

The fact that the respondent's counsel contends that the issues and claims are the same in both courts does not ipso fact make that the correct position.

It is conceded that no matter how brilliantly a proceeding in a case is conducted, where the court did not at the time of adjudication have requisite jurisdiction to determine the matter, such proceedings would end up an exercise in futility, as it would amount to a nullity. See:

EMERALD ENG. SERVICES LTD & ANOR V INTER CONTINENTAL BANK (2010) LPELR-19782 (CA) pg 8-9 paras F-A

“The issue of jurisdiction of a court to try a suit is a fundamental and threshold one. If a Court, has no Jurisdiction to determine a subject matter, the proceedings thereof are and remain a nullity, however well conducted and brilliantly decided”

See also: OBAHIAGBON V OSAGIE & ORS (2009) LPELR-4664 (CA) pg 7 paras A-B

AND NATIONAL UNION OF ROAD TRANSPORT WORKERS (NURTW) & ANOR V RTEAN & ORS (2012)10 NWLR PT . 1307 Pg. 170 or LPELR- 7840(SC) Pg 46 D-C

BUREMOH V AKANDE (2017) LPELR-41565 (SC) PG. 22-23 Paras. E-C per Muhammad Jsc ;

“The place of jurisdiction the adjudication process cannot be over-emphasized. The fundamental nature of jurisdiction explains the various descriptions given to it by jurist and the Courts themselves. Jurisdiction has thus variously been described as the life blood, the fiat, the stamp of authority which necessarily ensures to the court or tribunal and empowers either to adjudicate. Learned applicants counsel is right in his submission that the fundamental nature of the issue of jurisdiction underscores the liberty allowed in competency raising it even orally and for the first time by any of the parties or the court suo moto at whatever level in the adjudication process. See: OLORIODE V OYEBI (1984) 6 SC (Pt II)1 AND LADO & 43 ORS V CPC & 53 ORS (2011) 12 SC (Pt III) 113.”

As resonated in the above authority, the place of jurisdiction in the adjudicatory process cannot be over emphasized, as it is like the blood that gives life to a case. And jurisdiction as rightly observed by the learned respondent’s counsel is deducible from the Writ of Summons, pleadings and Claim of the plaintiff and not evidence of the parties. See:

B.B. ADUGO & SONS LTD V ORTHOPEDIC HOSPITAL MANAGEMENT BOARD (2016 LPELR- 405980 (SC) Pg 29 Paras C-D

And also the locus classicus on this:

ADEYEMI & ORS V OPEYORI (1976) LPELR-171 (SC) Pg 23 paras D-E per IDIGBE JSC:

“At the risk of over-emphasizing the point we repeat that it is a fundamental principle of law that is the claim of the plaintiff which determines the jurisdiction of a court entertaining same, this is

because only too often this point is lost sight by Courts of trial, as has happened in the instant case”.

The originating process in the instant case at the lower court is by way of an application for plaint, where the particulars and claims are stated. It is therefore the said application for plaint which is tantamount to a pleading, that is the proper process to consider as determinant of the Courts jurisdiction in the matter.

It is imperative at this juncture to point out that jurisdiction is not determined by the precise or clear cut relationship between the plaintiff and the defendant as held by the Lower Court. Rather there are well settled principles for the fundamentals of jurisdiction in a case. These principles have been relied on over time and We refer to the conditions that must be satisfied for a court to assume jurisdiction as laid out in.

GABRIEL MADUKOLU & ORS V JOHNSON NKEMDILIM (1962)
LPELR-244023 (SC) pg 9-10 paras F-D per BAIRAMIAN JSC as :

“Before discussing these portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when;

It is properly constituted as regards numbers and qualifications of the members of the bench and no member is qualified for the for one reason or another; and

The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and

The case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.”

From the above highlighted conditions, the main determinants of jurisdiction of the court are that the court is properly constituted, the subject matter is within the jurisdictional competence of the court and that the case was initiated by due process of law.

A close examination of the plaint before the District Court reveals that the constitution of the Court is not in question.

The subject matter of the action vis: determination of Tenancy, recovery, recovery of premises and consequential monetary claims are within the scope of the Courts jurisdiction and;

There’s no indication that the due process of law was not followed in the initiation of the action.

The foregoing are what the court ought to have considered in determining whether it is vested with requisite jurisdiction to determine the case and not the quality of the relationship between the parties.

Be that as it may even if jurisdiction is predicated on a clear cut relationship as the lower court puts it (though this is not conceded) it does appear that the trial judge did not properly consider the plaint.

A scrutiny of the averments in the plaint leaves us wondering what plaint the District court was referring to in it’s holding that ‘there is no clear cut relationship between plaintiff/respondent and the defendant/applicant established on the face of the plaintiffs plaint for which the court can be clothed with jurisdiction, assume same adjudicate upon’.

By our own observation almost every paragraph of the plaint in the slightest infers a relationship between the parties.

It suffices to say that it is our considered view that the plaintiff's application for plaint clearly reveals as earlier observed that the District Court is properly constituted, the subject matter is within its jurisdictional scope and there's nothing before the court showing that it was not initiated by due process of law. Thus we find that the District court erred in its ruling that it is not clothed with jurisdiction to determine the case.

Issue two is also hereby resolved in favour of the Appellant.

In the final analysis therefore, the two valid issues for determination are hereby resolved in favour of the appellant. The action at the District Court as presented is not an abuse of court process and the court is seized with the jurisdiction to determine same. This Appeal is found to be meritorious and it hereby succeeds.

Consequently this Appeal is allowed. The Ruling of the District Court by His Worship Theresa N. Otu on 20th day of September, 2019 declining jurisdiction and striking out the suit with the cost of N20,000.00 against the plaintiff is hereby set aside.

Accordingly, the case is to be remitted back to the Chief Registrar or Deputy Chief Registrar (Magistrates) for re-assignment to another district court within jurisdiction, for hearing and determination of the suit.

Signed:

Signed:

HON. JUSTICE M.E ANENIH
(PRESIDING JUDGE)

HON. JUSTICE A.S ADEPOJU
(HON. JUDGE)

Representation:

G.E Adole Esq with Patricia Otsima Ms for appellant.

E.J Ayinmode Esq for Respondent