IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA APPEAL JUDICIAL DIVISION
HOLDEN AT JABI COURT NO. 12
BEFORE HIS LORDSHIPS: HON. JUSTICE D.Z. SENCHI (PRESIDING JUDGE)
HON. JUSTICE M.B IDRIS (JUDGE)
DATED:-16/12/2020

BETWEEN APPEAL NO. FCT/HC/CVA/305/17

1. XAMXIRAX PROPERTIES DEVELOPMENT COMPANY LIMITED
2. BELLO MAARUF } **APPELLANTS**

AND

MR. DAHIRU TATA .... RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE D.Z. SENCHI PRESIDING JUDGE)

This is an appeal against the Judgment delivered on 7th December,2016 by the Chief District Court, Wuse Zone 2, Abuja (Coram Ahmed UsmanShuaibu, Chief District Court Judge) in Suit No. CV/46/2015 between the Appellants and the Respondent.

The Record of the instant appeal is before this Honourable Court. According to the records, the Respondent instituted Suit No. CV/46/15 before the lower Court via a plaint dated and filed on 30th September, 2015 claiming the following:-recovery of possession of a 4 bedroom detached duplex (with 2 bedroom boys' quarters) at Block D7/No. 1 Sanar Street, Wuse 2, Abuja and various sums of money as arrears of rent and mesne profit. The matter proceeded to trial with the Respondent testifying as PW1. The Appellants who had notice of the proceedings at the lower Courtdid not file a defence nor did they make use of the opportunity to cross-examine the Respondent's witness. They were foreclosed and the lower Courtsubsequently delivered its judgment on 7th December,2016 in favour of the Respondent by granting his claims. Aggrieved by the lower Court's decision, the Appellants have appealed to this Honourable Court vide notice of

appeal dated and filed on 18th September,2017 (see page 30 of the Record of Appeal). With leave of this Court granted on 10th November,2020, the Appellants amended their said notice of appeal. For ease of reference, the grounds of the Amended Notice of Appeal filed on 5th July, 2018 (with particulars thereof) are reproduced hereunder:-

"(1) ***GROUND ONE***

Error in law

The trial District Court Judge erred in law when he ordered thus: "Consequently the judgment is hereby entered in a favour of the plaintiff and I order as follows:

1. *The Defendants are hereby ordered to vacate and hand over the four bedroom detached duplex with 2 bedroom boys quarters at block D7 No. 1 Sanar Street Wuse Zone 2 Abuja.*
2. *The Defendants are ordered to pay the arrears of rent of N4,000,000.00 for the period of 2nd June,2014 to 1st June,2015.*
3. *The Defendants are also ordered to pay mesne profit of N333.33 monthly from 2nd June,2015 till possession is given up.*
4. *The Court awarded N20,000.00 cost of this action.*

PARTICULARS OF ERROR:-

(a) The case of the Plaintiff as can be gathered from his plaint is founded on a landlord tenant relationship and claims for payment of arrears of rent, recovery of possession and payment of mesne profit.

(b) The trial Judge in his judgment did not state or review the facts of the case as can be found from the plaint and evidence adduced at the trial.

(c) There was no evaluation of the evidence adduced at the trial or
ascription of probative value to these evidence in the said judgment.

(d) It was not reflected in the judgment how the trial Courtfound the Defendants to be liable to the Plaintiff in order for it to make the orders it did in its judgment.

(e) The judgment so delivered is incurably defective in form and substance and ought to be set aside.

(2) GROUND THREE

Error in law

The trial District Court Judge erred in law when he ordered thus: "Consequently the judgment is hereby entered in a favour of the Plaintiff and I order as follows:-

1. *The Defendants are hereby ordered to vacate and hand over the four bedroom detached duplex with 2 bedroom boys quarters at block D7 No. 1 Sanar Street Wuse Zone 2 Abuja.*
2. *The Defendants are ordered to pay the arrears of rent of N4,000, 000.00 for the period of 2nd June,2014 to 1st June,2015.*
3. *The Defendants are also ordered to pay mesne profit of N333.33 monthly from 2nd June,2015 till possession is given up.*
4. *The Courtawarded N20,000.00 cost of this action.*

PARTICULARS OF ERROR:-

(a) The case of the Plaintiff as can be gathered from his plaint is founded on a landlord tenant relationship and claims for payment of arrears of rent, recovery of possession and payment of mesne profit.

(b) The Defendants did not file any statement of defence to contest the claims of the Plaintiff.

(c) The only documentary evidence that established the relationship between the plaintiff and the 1stDefendantis a renovation agreement whereby the parties therein agreed for the 1stDefendantto rehabilitate the Block D7 No. 1 Sanar Street, Off Yalinga Street, Wuse 2 Abuja "the subject property",

let out same to tenants for valuable consideration in order for it to realize the resources it expended in the rehabilitation of the subject property.

(d) The renovation agreement is not a tenancy agreement and the plaintiff did not tender or relied on any tenancy agreement in order to found its claims on the fundamental basis of a landlord tenant relationship.

(e) The evidence adduced by the plaintiff was not sufficient for him to succeed in an action for payment of arrears of rent, recovery of possession and payment of mesne profit.

(f)The trial Judge was in error then to found for the plaintiffs and to make the orders it made in its judgment.

(3) GROUND THREE

Error in law

The trial District Court Judge erred in law when he ordered thus: "Consequently the judgment is hereby entered in a favour of the plaintiff and I order as follows:-

1. *The Defendants are hereby ordered to vacate and hand over the four bedroom detached duplex with 2 bedroom boys quarters at block D7 No. 1 Sanar Street Wuse Zone 2 Abuja.*
2. *The Defendants are ordered to pay the arrears of rent of N4,000,000.00 for the period of 2nd June,2014 to 1st June,2015.*
3. *The Defendants are also ordered to pay mesne profit of N333.33 monthly from 2nd June,2015 till possession is given up.*
4. *The Courtawarded N20,000.00 cost of this action.*

PARTICULARS OF ERROR:

(a) The Plaintiff/Respondentclaim was founded on landlord-tenant relationship.

(b) The Plaintiff/Respondentdid not tender during the trial the notice to quit purportedly served on the Defendants/Appellants as the tenant.

(c) There is no evidence before the lower Court that the Plaintiff/Respondentas the landlord ever served on the Defendants/Appellants as the tenant any notice to quit.

(d) It is the service of a notice to quit on the tenant that gives the Court the requisite jurisdiction to entertain an action founded on landlord-tenant relationship.

The Appellants seek the following relief from this Honourable Court:-

"To allow the appeal and set aside the Judgment of the lower Court delivered on the 7th December, 2016."

Briefs of argument were filed. The Appellants' brief of argument is dated and filed on 16th July,2018. The Respondent's brief of argument is dated and filed on 27th July, 2018 to which the Appellants filed a Reply brief dated 2nd August,2018. On the 10th November, 2020 both the Appellants and the RespondentCounsel adopted their respective briefs of argument.

The Appellants' Counsel formulated two issues for the determination of the appeal in his brief of argument as follows:-

(A) Whether the lower Court properly evaluated the evidence before it before coming to the conclusion that the Respondent has established his claims and is entitled to Judgment. (Grounds 1 & 2 of the Amended Notice of Appeal).

(B) Whether the lower Court did not err in law in assuming jurisdiction to entertain the claims where there is not before it the Landlord's letter of instruction to the solicitors and proof of service of the notice to quit on the Appellant's. (Ground 3 of the Amended Notice of Appeal).

The Respondent's Counsel adopted the issues as formulated by the Appellants above. I shall also adopt the said issues in order to determine this appeal.I will however deal with the second issue first because it relates to jurisdictional issue of the Lower Court.

> ***Whether the lower Court did not err in law in assuming jurisdiction to entertain the claims where there is not before it the Landlord's letter of instruction to the solicitors and proof of service of the notice to quit on the Appellant's.***

On this issue, learned Counsel to the Appellants submitted in his brief of argument that since the Respondent's suit before the lower Court was one of landlord and tenant for reliefs of vacant possession, arrears of rent and mesne profit, the condition precedent that must be satisfied for the lower Court to assume valid jurisdiction was service of written notice to quit the demised premises and written notice of intention to proceed to Court to recover possession. He relied on a number of authorities including the case of***PAN ASIAN AFRICAN CO. LTD V. NICON LTD (1982) 9 SC 1***. Counsel submitted that where the landlord is acting through an agent in serving these two statutory notices, the third document that must accompany the landlord's writ is his letter of instruction to his agent. He cited the case ***of EZEAMA V. EJIDIKE (1962) 6 ENLR 185***. He submitted that from the Record of Appeal before this Court, it is obvious that the Respondent did not tender a statutory notice to quit or his written instruction to his solicitors to act as his agent in recovering possession of the demised premises from the Appellants. He submitted that the Respondent's solicitor's written notices to the Appellants (which were admitted in evidence as Exhibits D and C by the lower Court) show that the Respondent delegated his responsibility of proceeding to eject the Appellants to his solicitors. Counsel argued that the Respondent's failure to serve notice to quit on the Appellants and satisfying the condition precedent in initiating the action before the lower Court had divested that Court of jurisdiction to determine the suit. He relied on the cases of ***GAMBARI V. GAMBARI (1990) 5 NWLR (PT. 152) P. 572 and SAVOCHI M & F CO. LTD V. ALABI (1996)***

7 NWLR (PT. 462) P. 627. Finally, on this issue, he urged this Court to resolve same in the Appellants' favour and set aside the lower Court's judgment on the ground that it was delivered without jurisdiction as the Respondent did not satisfy the condition precedent for an action founded on landlord/tenant relationship.

For his part, the submission of learned Counsel to the Respondent on this issue is that the Appellants did not raise the issue of jurisdiction properly and urged this Court to strike out the issue. He contended that the ground and issue did not emanate from the decision of the lower Court appealed from. He relied on the case of ***EGBE V. ALHAJI (1990) 3 SC (PT. 1) 63***. He submitted that the Appellants cannot approbate and reprobate on the issue of tenancy relationship between them and the Respondent. He posited further that the failure to raise the objection to jurisdiction before the lower Court is fatal to the Appellants' case. He contended that the issue of jurisdiction can be raised at any stage of proceedings even at the Supreme Court. It is his position that the lower Court had jurisdiction to determine the case and the issue of the landlord acting through his agent requiring letter of instruction to his agent was raised by the Appellant to spring surprise on the Respondent. He posited that the Recovery of Premises Act 2007, applicable in Abuja, does not mention a letter of instruction as a condition precedent to instituting an action for recovery of premises and urged this Court to discountenance the Appellants' submission. Learned Counselfurther stated that a Court does not inquire into a lawyer's authority to appear where he appears in Court and says he is instructed to do so. He submitted that the Appellants' tenancy expired by effluxion of time and is therefore not entitled to notice to quit but only a notice of owner's intention to apply to Court to recover possession. He relied on the case of ***SPLINTERS (NIG.) LTD V. OASIS FINANCE LTD (2013) 18 NWLR (PT. 1385) P. 188***. He stated that the tenancy between parties had not reached the stage of being renewed annually and as such expired in its first tenancy on 1st June, 2014. It is Counsel's submission that service of quit notice was therefore not relevant. He maintained that the

Appellants delivered possession of the demised premises to the Respondent on 24th October,2016 before Judgment was delivered by the lower Court and as such, the instant issue is an academic one to waste the time of this Court.

In reply to the Respondent, the Appellant's Counsel submitted that an attack on jurisdiction does not need to arise from any grounds of appeal or relate to the Judgment under attack before it can be raised or form a valid issue before the appellate Court. He contended that parties and the Court are bound by the record of appeal. He said the Respondent was not in any way misled by the inclusion of the issue of requirement of agent's letter of instruction. He maintained that under Section 7, 8(1) and 9 of the Recovery of Premises Act, where the landlord's responsibilities are carried out by any other person than the landlord (as in this case), it behoves on that person to satisfy the Court that he has the authority of the landlord to act in the manner he did. He argued that the mandatory nature of service of notice to quit on a defaulting tenant by a landlord has been established by judicial authorities. That the effect of failure to serve same on the jurisdiction of the trial Court is also settled. He relied on a plethora of cases including the Supreme Court case of ***A.P. LTD. V. OWODUNNI (1991) 11 SCNJ 8.*** He contended that a tenancy cannot be determined by effluxion of time and that this Court cannot prefer the decision of the Court of Appeal in the case of ***SPLINTERS (NIG.) LTD. V. OASIS FINANCE LTD. (SUPRA)*** over the decision of the Supreme Court in ***A.P. LTD. V. OWODUNNI (supra*****).** He relied on the principle of judicial precedents. He submitted further that the tenancy is a yearly one and not one for a fixed term because the Respondent wrote a letter to the Appellants to renew same. He posited that even though the Appellants are not complaining of denial of fair hearing, the lower Court still had a duty to evaluate the only evidence before it.

After considering the arguments of both Counsel, in the resolution of this issue, it is the position of the law that the issue of jurisdiction is so important that it can be raised at any time and

stageeven for the first time on appeal. See the case of ***ANYOHA & ORS V. CHUKWU (2007) LPELR-5152(CA*)**. This much has been conceded by the Respondent's Counsel in his brief of argument. I do not however agree with Counsel to the Appellants that an attack on jurisdiction does not need to arise from any grounds of appeal or relate to the Judgment under attack before it can be raised or form a valid issue before the appellate Court.

In order to competently challenge the decision of the lower Court on any ground (including jurisdiction) before this Court, a notice of appeal must be filed at the lower Court stating the grounds (such as jurisdiction). This is because, at the hearing of an appeal, an appellant cannot be heard by this Court to rely on any other ground except those stated in the notice of appeal. See **Order XXVII Rule 11 of the District Courts Rules**. The implication of this is that an Appellant cannot formulate an issue from a ground of appeal not contained in the notice of appeal. Thus, where jurisdiction has not been made a ground of appeal in a notice of appeal, an appellant cannot formulate an issue in respect of jurisdiction of the lower Court and where so formulated, this Court cannot competently entertain such an issue. The position of the law still remains that the proper way to raise an issue of jurisdiction on appeal is to make the issue of jurisdiction a ground of appeal and then formulate an issue thereon. See ***ANYOHA & ORS V. CHUKWU (supra)***.

I have looked at the Amended Notice of Appeal in this appeal. It would appear that from Ground three therein and the particulars thereunder, the Appellants are complaining of defect in the jurisdiction of the lower Court arising from failure to serve quit notices. They formulated the instant issue from that ground of appeal. It is my considered view and I hold the view that the Appellants have competently raised the issue of the jurisdiction of the lower Court and I so hold. They however not only addressed the issue of failure to serve notice to quit but also issuance of letter of authority by a landlord to his agent. This is not included in the particulars of Ground Three of the Amended Notice of Appeal. The issue however is one that relates to issuance of

statutory notices and thus goes to jurisdiction as well. I shall therefore consider the issue as formulated.

From the plaint at the lower Court, the Respondent's action against the Appellants before the lower Court was *inter alia* for recovery of possession of demised premises (see page 1 of the Record of Appeal).

Now, the Respondent's position that possession of the demised premises has been handed over by the Appellants, thus making the instant issue an academic one, cannot avail the Respondent in the instant circumstances. There is no record that parties settled amicably at the lower Court or that the claim for recovery of possession was withdrawn. In its Judgment, the lower Court did grant the relief of recovery of possession claimed by the Respondent in his plaint. Until set aside on appeal, that judgment of the lower Court remains valid. I therefore do not agree with the Respondent that the issue is an academic one. It is one that must be considered by this Court.

By virtue of **Section 7 of the Recovery of Premises Act Cap 544 Laws of FCT Nigeria 2006,** at the end, or determination by notice to quit, of a tenancy, a tenant is entitled to be served with a 7 day's notice of the landlord's intention to recover possession of the demised premises. It is after the proper service of these notices that a landlord may proceed to institute an action for the recovery of possession of his premises under **Section 10 of the Recovery of Premises Act**.Thus, the service of statutory notices is a condition precedent to the exercise of a landlord's right of action in recovery of possession and the jurisdiction of the Court to entertain such a claim. See the cases of ***IWUAGOLU V. AZYKA (2007) 5 NWLR (PT. 1028) P. 613***, ***AYINKE STORES LTD. V. ADEBOGUN (2008) 10 NWLR (PT. 1096) P. 612*** *and* ***UKWUOMA V. OKAFOR (2016) LPELR-41505(CA)***. See particularly the Supreme Court's decision in the case of ***IHENACHO V. UZOCHUKWU(1997) 2 NWLR (PT. 487) P. 257***; ***(1997) LPELR-1460(SC)***.

For the lower Court to have appropriate jurisdiction to entertain the Respondent's claim, the Respondent must have served the appropriate statutory notices. The question is; what are the appropriate statutory notices in the instant case? The issue is to be determined upon facts made available and established by the Respondent before the lower Court.

I have looked at the proceedings at the lower Court as contained in the Record of Appeal before this Court. The facts as per the evidence of the Respondent before the lower Court is that he originally had a renovation agreement with the Appellants in respect of his house at Block D7/No. 1 Sanar Street, Wuse 2, Abuja (the subject matter of the action). At the end of the renovation agreement, the Appellants approached the Respondent and they agreed for the Appellants to rent the subject matter for one year from June 2013 to June 2014 for the sum of N4 Million Naira. The Appellants thus paid the sum of N2,750,000.00 to the Respondent's account as shown by his statement of account with Zenith Bank (admitted in evidence as Exhibit B by the lower Court). The Respondent's evidence is that after the tenancy expired he approached his solicitor Abdulrahman& Co. and requested him to give the Appellants a 7 days' notice which was admitted in evidence as Exhibit D.

The only evidence before the lower Court is that of the Respondent who testified as PW1. The Appellants' who were represented at the proceedings at the lower Court had opportunity to cross-examine the Respondent at trial but they did not.

Even though they were afforded the opportunity, they did not file any defence and as such did not call any evidence in rebuttal. The onus of proof on the Respondent was therefore watered down and he was bound to succeed on minimal proof adduced in support of his claims in the circumstances. The Appellant's Counsel seems to concede to this point in his briefs. See the cases *of* ***S.P.D.C., NIG. V. OKONEDO (2008) 9 NWLR (PT. 1091) P. 85*** *and* ***OGUNJUMO V. ADEMOLU (1995) 4 NWLR (PT. 389) P.***

259where the Supreme Court held that it is indisputable that where a Defendant took no part in a proceedings or offered no evidence in his defence, the evidence before the Court goes one way and there would be nothing to put on the other side of the imaginary scale or balance as against the evidence for the plaintiff. The onus of proof in such a case is therefore discharged on a minimal of proof. See also the case of ***ASAFA FOODS FACTORY V. ALRAINE (NIG.) LTD. (2002) 12 NWLR (PT.781) P. 353***.

The Respondent's evidence in support of his claim was neither challenged nor subjected to discredit under cross-examination. In the circumstances, the lower Court must believe and act on his evidence.See the cases of ***EGBUNIKE V. A.C.B LTD (1995) 2 NWLR (PT. 375) P. 34***, ***BALOGUN V. E.O.C.B. (NIG.) LTD. (2007) 5 NWLR (PT. 1028) P. 584*** *and* ***S.P.D.C.N. LTD V. ESOWE (2008) 4 NWLR (PT. 1076) P. 72***where it was held that an uncontradicted or unchallenged evidence must be used against the party who ought to have contradicted or challenged the evidence but failed to do so.

I am not unmindful of the position of the law that uncontradicted and unchallenged evidence must itself be credible and not one fraught with inconsistencies and contradictions or is insufficient to sustain the claim. See the case of ***ARCHIBONG V. UTIN (2012) LPELR-7907(CA)***.

I have looked at the Respondent's claim which he brought before the lower Court. I have looked at the evidence which he adduced in support of same at the lower Court. I cannot come to the conclusion that the Respondent's evidence is inconsistent or incredible in itself. I hold the view that the evidence is credible and the lower Court was right in relying on such evidence and I so hold.

Thus from the established facts before the lower Court, the tenancy between parties was for one year which had since expired. The implication of the provisions of **Section 7 of the**

Recovery of Premises Act is that a tenancy could either come to an end or be determined by notice to quit. A tenancy which has come to an end or expired does not require to be determined by service of a notice to quit. This was the firm position of the Supreme Court in the case of ***IHENACHO V. UZOCHUKWU(supra).***See also the cases of***HILDA JOSEF V. CHIEF A. S. ADOLE (2010) LPELR-4367(CA)*** *and* ***SPLINTERS NIGERIA LIMITED & ANOR V. OASIS FINANCE LIMITED(2013) LPELR-20691(CA)****.*

The Appellants have argued in their brief that the tenancy between parties was not for a fixed term that could have expired and Appellant Counsel relied on the case of A***.P. LTD. V. OWODUNNI (supra).***

Granted, A***.P. LTD. V. OWODUNNI (SUPRA***) is a Supreme Court decision. But so is **IHENACHO V. UZOCHUKWU(supra)** which is a more recent decision and which the Court of Appeal followed in the case of ***SPLINTERS NIGERIA LIMITED & ANOR V. OASIS FINANCE LIMITED(supra)****.*

Be that as it may, the law is the law. A tenancy which has come to an end requires no quit notice to determine it. I refer again to **Section 7 of the Recovery of Premises Act**. In the instant case, there is no evidence of a tenancy from year to year before the lower Court. The evidence before the lower Court is clear and it is that the tenancy was for a year which had since expired. In the circumstances, the requirement of a notice to quit is quite unnecessary. All that was necessary is a notice of the intention of the Respondent (as landlord) to recover possession of the Subject Matter from the Appellants.
The evidence before the lower Court is to the effect that the Respondent approached his solicitor by name Abdulrahman& Co. and instructed him to serve the Appellants with a 7 days notice i.e. Exhibit D. I have looked at Exhibit D. It is dated 14th September,2015 and was thus issued long after the tenancy between the parties had expired in June 2014. Exhibit D gives the Appellants 7 days' notice of the solicitor's intention to apply to

Court to recover possession of the Subject Matter on behalf of the Respondent. It is obvious that Exhibit D was not prepared and served by the Respondent personally. It was done by him through his solicitor.

The competence of Exhibit D has been put in issue by the Appellants through their submission that there was no written letter of authority produced at trial to show that the Respondent authorised his solicitor to act in respect of recovery of possession of the Subject Matter.

By virtue of **Section 7 of the Recovery of Premises Act** a notice of landlord's intention to proceed to recover possession of premises may be signed by either the landlord of such premises or his agent. An agent is described in **Section 2** of the same Act to mean inter alia any person specially authorised to act in a particular manner by writing under the hand of the landlord. The implication of these two provisions therefore is that an agent of a landlord who purports to issue or sign a notice of such landlord's intention to recover possession must have been authorised to do so in writing by the landlord. See the case of **AYIWOH V. AKOREDE (1951) 20 NLR P. 4**.

In the case of ***AYINKE STORES LTD. ADEBOGUN (supra*)** Uwa JCA held as follows:-

> *Firstly, the landlord has to prove that he gave authority to Counsel to act on his behalf. In the present case there is nothing on record to show that such authority was given by the Respondent as plaintiff to his solicitor, in writing as required by law before Exhibits 'C' and 'D' were issued.*

In the instant case the Respondent himself who is the Appellants' landlord has stated in evidence before the lower Court that he approached his solicitor and instructed him to issue the 7 days' notice (Exhibit D) to the Appellants at the end of the tenancy. This is the undisputed evidence before the lower Court. To my mind, the requirement of the landlord's authority (to issue a

notice of owner's intention) to be in written form is for the purpose of proof that such authority was indeed given. Where the landlord himself appears in Court to state before the Court on oath that he did give such an authority to the agent, does it not amount to undue dependence on unnecessary technicalities to say that he should produce such authority in writing? Would it not be a pervasion of the justice that we strive so hard to uphold to posit that his oral evidence that he gave his authority to his Counsel/solicitor to issue a notice of owner's intention to recover possession amounts to naught? It is my firm view andhold that the Respondent's oral evidence at trial before the lower Court that he instructed his solicitor to issue the 7 days' notice is sufficient to make Exhibit D competent and I so hold. In the peculiar circumstances of this case, it would not serve the interest of justice to say that failure to produce a written copy of the instruction renders his authority incompetent and thus the lower Court was right to have acted on the oral evidence of the Respondent and exhibit D in arriving at his decision.

In any event in the case of ***UHUANGHO V. EDEGBE (2017) LPELR-42162(CA)*** in which case the contention arose that the notice of owner's intention to recover possession was issued by solicitor without the written authority of the landlord. The Court of Appeal per Ekpe JCA (delivering the lead judgment) held as follows:-

> *"If the Landlord has not complained of the services of the Solicitor/Agent, then the Tenant has no business complaining on behalf of the Landlord.*
>
> *This is not the case of joint ownership as in the case of **COKER V ADEBAYO** (supra). This is indeed a case of single ownership of a Landlord's property clearly spelt out in the tenancy agreement Exhibit A. The Landlord/Respondent has an unfettered legal right to terminate the tenancy upon the issuance of the relevant notices as contained in the lease agreement as long as he abides by the provision of the said agreement, and the law."* I also throw my weight behind the reasoning of learned Counsel for the Respondent that the

Appellant's Counsel's contention that the Respondent did not specifically appoint the Solicitor S.O. Longe& Co. under his hand in writing as his agent to manage the property in question within the purport of the definition of "agent" in line with S. 2(1) of the Recovery of Premises Laws is delving into the realm of technicalities as rightly held by the lower Courts. A distinction must however be drawn between mere or unsubstantial technicality in competent proceedings and within the jurisdiction of a trial Court and substantial technicality which amounts to a condition precedent of the commencement of an action which renders a proceedings manifestly incompetent thereby affecting the jurisdiction of the Court and also renders the same incurably defective. I dare say that in the case at hand, the former may be waived as no substantial injustice will have been done by failing to reduce in writing the Landlord's instruction to the Solicitor to handle his affairs. His viva voce evidence had already established the fact that the required permission was manifestly obtained even though not in writing in issuing the last invoice. See **ENGINEERING (NIGERIA) LTD V. NIG. AIRPORTS AUTHORITY (1999) 11 NWLR (Pt. 625) 76.**

The Apex Court has held that whenever it is possible to determine a case on its merit, the Court should not cling to mere legal technicalities as in the case before us, to refuse a complaint be it Appellant or Respondent, the opportunity of being heard from fear of delay in disposal of a case. See **NNEJI & ORS V. CHUKWU & ORS. (1988) NWLR (Pt. 81) 184.**

The Courts are enjoined to apply their discretional powers to relax the strict application of procedural law to enable it hear and decide matters on its merit. See also the following:-

1. ***JOSEPH AFOLABI 7 ORS V. JOHN ADEKUNLE & ANOR.****(1983) 8 SC 98.*

2. ***OKONJO V. MUDIAGA ODJE & ORS*** *(****1985) 10 SC 267.***

I also refer to the dictum of the renowned jurist of Blessed memory – Niki Tobi where he stated in the case of ***OKETADE V. ADEWUNMI*** *(supra) at 517 Paragraph F – 11 as follows:-*

> *"Why and why, I ask? Is he the owner of the property? Why is he so adamant? The appellant's bluff and use of*

> *the Court process must stop, whether he likes it or not. And it must stop today because I cannot see how a tenant will struggle for supremacy or hegemony over a property that he did not build, and perhaps did not know when and how the property was built. I do not blame the Appellant, but I blame the law that has given the appellant such a latitude and effrontery to use the processes of the Court to stay on a property he does not own for a period of fourteen years. This looks to me as a typical example of the aphorism or cliché that the law is at times an ass. I must quickly remove the ass content in the law and face the reality of the law. So be it."*

In the instant case, if the Respondent as landlord has not complained that he didn't authorise his solicitor to recover possession, I do not believe that it lies in the mouth of the Appellants as tenants to complain that authority was not given. In any case, the landlord (Respondent) has stated in his evidence before the lower Court, which evidence was neither contested nor contradicted, that he authorised his solicitor to issue 7 days' notice to the Appellants. This substantially satisfies the requirement of the law.See ***UHUANGHO V. EDEGBE (supra)***.

Thus, based on the foregoing I hold the view that the 7 days' Notice of the Respondent's intention to recover possession of the Subject Matter i.e. Exhibit D (albeit issued through his solicitor) was competently issued to the Appellants and I so hold. Hence therefore,having found that the necessary valid statutory notices were issued by the Respondent, I hold the view that the Respondent had therefore done all that was required of him in law to commence the action before the lower Court for recovery of possession of the Subject Matter from the Appellants and I so hold. The lower Court thus had jurisdiction to entertain and determine the matter before it.

Pursuant to all the foregoing, the second issue for determination is hereby resolved against the Appellants and in favour of the Respondent.

Whether the lower Court properly evaluated the evidence before it before coming to the conclusion that the Respondent has established his claims and is entitled to Judgment.

On this issue, learned Counsel to the Appellant submitted that it is the duty of the Court to evaluate every issue raised by the parties in accordance with the evidence and in line with the pleadings. He cited the case of ***ADEYEYE & ANOR V. AJIBOYE & ORS (1987) 2 NSCC P. 1084***. He contended that the Respondent's case at the lower Court was based on landlord and tenancy but he failed to tender a tenancy agreement in evidence to establish the terms which parties agreed and which were breached by the Appellants. He submitted that there was therefore nothing to establish that the parties actually entered into an agreement for letting of the demised premises. He said what was in evidence before the lower Court was payment of N2,750,000 by the 2nd Appellant but there was no further proof to establish the purpose of the payment and the mere *ipse dixit* of the Respondent was insufficient. He relied on the cases of ***EGESIMBA V. ONOZURUIKE (2002) 15 NWLR (PT. 791) P. 466 and RAJCO INTERNATIONAL LTD V. LE CAVALIER MOTELS AND RESTAURANTS LTD & ORS (2016) LPELR-40082(CA***).Counsel submitted that there was no evidence before the lower Court that there was a tenancy agreement between parties and there is no resolution before the Court showing that the 1stRespondent company authorized the 2ndRespondent to enter into the tenancy relationship with the Respondent. He finally urged this Court to uphold the appeal by setting aside the judgment of the lower Court because the Respondent was not able to establish his claim on the balance of probability.

On the otherhand, learned Counsel to the Respondent submitted on this issue that the law is certain that where evidence before a trial Court is unchallenged, it is the duty of that Court to accept and act on it as it constitutes sufficient proof of a party's claim in proper cases. He cited the case of ***EBIENWE V. STATE (2011) 7 NWLR (PT. 1246) P. 402*** and a plethora of other judicial decisions on this point. Counsel contended that the lower

Courtevaluated the evidence before it in arriving at its decision. It is his position that the Appellants had ample opportunity to cross-examine the Respondent and open their defence. That instead of doing this, they waited for the lower Court to give its judgment then the later alleged that the lower Court did not properly evaluate the evidence before arriving at its decision. He contended that this is fatal to the Appellants case and in conclusion, urged this Court to dismiss this appeal with cost of N200,000.00

In resolving this issue, I have carefully looked at the Record of Appeal in this case. I have looked at the Respondent's plaint before the lower Court and his evidence in support of same. It is my opinion that the Respondent gave credible evidence of a tenancy agreement between him and the Appellants. He also gave details of the terms i.e. the demised premises, the duration and agreed rent sufficient enough for the lower Court to make a finding in favour of his claim. The position of the law is that an agreement (such as tenancy agreement) could either be written or oral. See the case of ***ODUTOLA V. PAPERSACK (NIG.) LTD (2006) LPELR-2259(SC).***Thus, the mere fact that the Respondent did not produce a written tenancy agreement at trial does not itself mean that a tenancy agreement did not exist between the parties.

The Respondent also gave credible evidence of payment of N2,750,000 out of the agreed rent of N4 Million. He gave oral evidence as well as produced his statement of account as evidence of the payment of N2,750,000 by the Appellants (see Exhibit B). The Appellants have suggested in their brief of argument that the sum of N2,750,000 paid by them could be for some other purpose other than rent payment. Well, the only evidence before the lower Court is that the N2,750,000 paid by the Appellants was for part payment of the agreed N4 Million for one year rent of the Subject Matter. This Court cannot act on the speculations being suggested by the Appellants in their brief at the expense of the hard evidence on record. See the case of ***R.E.A.N. PLC V. ANUMNU (2003) 6 NWLR (PT. 815) P. 52.***

On the issue of whether the 1st Appellant company authorised the 2nd Appellant to enter into the tenancy agreement with the Respondent, the Respondent had averred in his plaint that the 1st Appellant is a company of which the 2nd Appellant is its alter ego. The Appellants did not file any process disputing this. The Respondent further gave evidence that the Appellants approached him to rent his premises for a year at a rent of N4 Million. Whether or not the 1st Appellant authorised the 2nd Appellant to enter the tenancy agreement is an issue of fact which ought to be presented by the Appellants in their defence to the Respondent's claim. The issue of existence of the tenancy agreement must be distinguished from the issue of validity of the tenancy agreement. The Respondent has established the existence of a tenancy agreement. The issue of the 1st Appellant giving authority to the 2nd Appellant to enter into the tenancy agreement goes to the validity of the tenancy agreement and not its existence. It can only be raised vide the defence at the lower Court. Unfortunately, the Appellants did not present any defence to the claim against them. Since the issue was not raised by the defence, it was not the business of the lower Court to delve into that considering the evidence before it. In the circumstances, the issue of the 1st Appellant-company's authority to the 2nd Appellant is not one which can avail the Appellants at this stage of appeal.

The Respondent adduced sufficient evidence to establish his claim against the Appellants at the lower Court. I have stated earlier while addressing the second issue for determination that the Respondent's evidence before the lower Court is credible. The Appellants did not challenge or controvert the Respondent's evidence or claim at the lower Court in any way. In the case of **D*.S.A.D.P.I. V. OFONYE (2008) ALL FWLR (PT. 402) P. 1068*** the Court of Appeal held that when a plaintiff adduces oral evidence to establish his claim against the Defendant in terms of his writ and that evidence is not rebutted by the defence, the plaintiff is entitled to judgment. See also the Supreme Court's decision in the case of ***NEWBREED ORG. LTD. V. ERHOMOSELE (2006) 5 NWLR (PT. 974) P. 499***.

In its Judgment (at pages 25 – 27 of the Record of Appeal), after setting out the claim and the evidence before it, the lower Court observed that the only evidence before it was that of the Respondent’s and that the Respondent had proved its case. The lower Court then entered judgment in favour of the Respondent. The lower Court evaluated the evidence and applied the principle of law. Thus, I hold the view that the Appellants have failed to establish any error on the part of the lower Court in its Judgment and I so hold. Accordingly the first issue is hereby resolved in favour of the Respondent and against the Appellants in the instant appeal.

Having resolved both issues for determination against the Appellants and in favour of the Respondent, all the grounds of the instant appeal failed as there is no merit in same. The relief claimed is hereby refused and the Appellants’ instant appeal is accordinglydismissed in its entirety.
Cost of N100,000.00 is hereby assessed in favour of the Respondent and against the Appellants.
That is the decision of this Honourable Court.

---------------------------- ------------------------------

HON. JUSTICE M.B IDRIS	**HON. JUSTICE D.Z. SENCHI**
(HON. JUDGE)	**(PRESIDING JUDGE)**
16/12/2020	**16/12/2020**

G.U Nwaneri:- For the Appellants
Amos Nenine:-For the Respondent

Sign
Judge
16/12/2020