IN THE APPELATE DIVISION OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI, ABUJA

BEFORE THEIR LORDSHIPS:

1. **HON. JUSTICE ABUBAKAR IDRIS KUTIGI – PRESIDING JUDGE**
2. **HON. JUSTICE JUDE O. ONWUEGBUZIE -- JUDGE**

THIS TUESDAY, THE 14TH DAY OF DECEMBER, 2021

SUIT NO: CV/129/82/2020
APPEAL NO: FCT/HC/CVA/771/21

BETWEEN:

RTD ASP. AHMADU JIBRIN.....APPELLANT

AND

BARR. TANKO A. ABDULLAHI.....RESPONDENT

JUDGMENT

The facts of this interlocutory appeal are largely not in dispute. Indeed it is a fairly straightforward appeal relating to whether the lower court has the requisite jurisdiction to entertain the action.

By an **amended plaint** dated 23rd June 2020 before His Worship, Hon. Y.A. Ibrahim, the Plaintiff/Respondent sought for the following Reliefs against Defendant/Appellant:

a. **Recovering of the said three(3) rooms and a parlour, toilet and eight (8) single rooms of an old building situate/lying at Sabo Adya Street, Behind Living Faith Church, Opposite Alfa and Omega Patient Medicine store, sold Kutnku, Gwagwalada, FCT., Abuja from the said Defendant**

b. That the Defendant to pay the sum of five Hundred Thousand Naira (500,000.00)as general damages for the psychological trauma, loss of time and inconvenience caused to the Plaintiff, and as a result of the Defendant's failure to comply and hand over possession

c. The sum of One Hundred Thousand Naira (N100,000)only as cost of filing this suit

d. And for such further or other orders as this Honourable court may deem fit to make in the circumstance.

The Defendant/Appellant (hereinafter referred to as Appellant) filed an application dated 21st February, 2021 challenging the jurisdiction of the court to entertain the action vide **pages 18-24** of the Record. The application was supported with a 9 paragraphs affidavit and a written address. The case made out by the appellant in the affidavit in support is encapsulated in paragraphs 3-6, and 9-12 as follows:

"**3. That the Defendant/Applicant is still the owner of his house.**

4. The Defendant/Applicant acquired his land and developed it for his family use.

5. That till today, the Defendant/Applicant is fully in possession and occupation of the house, and thus having full interest in the land.

6. That the Defendant/Applicant has never been a tenant to the Plaintiff/Respondent.

9 That the Plaintiff/Respondent as principal witness has testified and cross examined.

10 That his testimony and evidence tendered were evidence of proof of title to the land in contention through sale.

11 That power of Attorney, deed of assignment etc are all documents of transfer of title to land.

12 That my father, the Defendant/Applicant is a bonafide owner of his land in question."

The Plaintiff/Respondent (hereinafter referred to as Respondent) filed a Counter-affidavit and a written address in opposition vide paragraphs **25-29** of the Record. Paragraphs 3- 5 and 7-13 of the Counter affidavit are relevant thus:

"**3. That paragraph 3 of the Defendant/Applicant affidavit does not reflect the true position in this case.**

4. That paragraph 4, 5 and 6 of the Defendant/Applicant Affidavit are pure legal conclusion and should be struck out respectively.

5. That in response to paragraph 7 of the Defendant/Applicant affidavit, the Respondent states that the Defendant/Applicant aim is to pervert justice from taking its full course in this case.

7 That in response to paragraphs 10 & 11 the Respondent states that, the Defendant/Applicant is not the court and cannot determine or decide otherwise in this case.

8 That paragraph 12 of the Defendant/Applicant affidavit should be struck out for being a legal conclusion.

9 That the Applicant/Defendant did not disclose any reason whatsoever as to why he thinks this court lack jurisdiction to entertain this matter.

10 That this Honourable court has earlier ruled on a motion of this sought before now

11 That all the paragraphs of the affidavit before this court is mere narration of fact that can only be proved at the hearing of this suit.

12 That it will be in the interest of justice to dismiss this motion of the Applicant for lack of merit.

13 That this honourable court should proceed to hear the matter and determine same in the interest of justice of the case."

In his Ruling on the above application dated 3rd March, 2021 at **pages 87-92** of the Record, the learned trial judge held thus:

"In determining the issues of jurisdiction, because of its sensitive nature, the court must take cognisance of the general meaning of the word jurisdiction as the authorities which a court has decide matters that are litigated before it, or take cognisance of matters presented in a formal way for decision. What is before this court is a recovery of premises suit which this court is competent to trying pursuant to district court laws and (Recovery of Premises Act) R.P.A to determine otherwise. Evidence must be completely taken.

On a whole, flowing from the reasoning of the superior in the above decided cases analyses and the legal arguments above, I find no point in the application, its dismissed."

Being dissatisfied with the Ruling of the lower court, the Appellant filed a Notice of Appeal dated 17th March, 2021 against the decision containing two grounds of Appeal.

In compliance with the Rules of Court, the Appellant filed and served his brief of Argument dated 13th August, 2021 and filed on 16th March, 2021. In the said brief, two issues were raised as arising for determination as follows:

1. **"Whether or not dispute between a bonafide owner in occupation of land with alleged purchaser of same, is a dispute on land and or interest in land.**

2. **Whether or not a senior district court lacks jurisdiction to hear and determine a matter relating to interest in land and or title to land as canvassed in our application between bonafide owner in occupation and an alleged purchaser."**

The two issues were argued together in the brief. The substance of the submissions which forms part of the Record of court is to the effect that the subject matter of dispute before the lower court relates to a determination of questions relating to interest or title on land between a bonafide owner in occupation and an alleged

purchaser and not a landlord/tenant dispute and that in such circumstance, the senior district court lacks the requisite jurisdiction to entertain the extant action.

On the other side of the aisle, the Respondent filed a Respondent's brief of argument dated 30th August, 2021 and filed same date. In the brief, two issues were raised as arising for determination to wit:

1. **Whether or not dispute between a bonafide owner in occupation of land with alleged purchaser of same, is a dispute on land and or interest in land.**

2. **Whether or not a senior district court lacks jurisdiction to hear and determine matter relating to interest in land or title to land as canvassed in our application between bonafide owner in occupation and an alleged purchaser.**

The substance of the arguments which forms part of the Record of Court is simply to the effect that the case before the learned trial magistrate has nothing to do with title or transfer of interest on land but a simple landlord and tenant relationship over which the lower court has jurisdiction to determine. It was contended that the Defendant/Appellant did not place any material before the court to situate his claim of bonafide claim of Right over the property and as such there was nothing to divest the lower court of jurisdiction to entertain the action.

The Appellant then filed an Appellant's Reply Brief dated 6th September, 2021

At the hearing, Counsel on either side relied and adopted the submissions in their Briefs of Argument in urging the court to on one hand allow the appeal and strike out the matter for want of jurisdiction and on the other hand, that the Appeal lacks merit and should be dismissed.

We have carefully considered the Records and the Briefs of Argument on both sides of the aisle. The issues raised on both sides in substance are the same and all boils down to whether the learned trial magistrate has the requisite jurisdiction to entertain the action now on appeal. That really is the crux of this appeal and it is therefore on the basis of this issue that we will shortly proceed to resolve the appeal.

Now before dealing with the substantive question, we will like to make some prefatory remarks. We note that from the records, the Defendant/Appellant had by an application dated 25th June, 2020 vide **pages 6-9** of the Record filed an application challenging the jurisdiction of the lower court to determine the action. The Respondent opposed the application by filing a counter-affidavit vide **pages 13-14** of the Record.

Again, from the Record vide **pages 59-64**, the lower court heard the application and refused it. The implication of the failure of that challenge by Defendant is that the lower court found that it has the requisite jurisdiction to entertain the matter.

On the Record, this **Ruling** was not challenged **on appeal** or set aside by the lower court. It therefore remained a binding decision on the issue of the jurisdiction of the lower court to entertain the matter.

Now because that Ruling of **15th September, 2020** is not subject of the present appeal, we are constrained not to say much on it. The exercise of our powers as an appellate court is rightfully circumscribed by the Complaint or grounds of Appeal against the said decision as formulated by the Appellant. It does not appear to us clear how in the light of this decision of **15th September, 2020,** the same court will now hear a similar application dated **1st February, 2021** containing the same prayer on which there is already a decision vide paragraph 18-19 of the Record which led to the Ruling of 3rd March, 2021 which is subject of the present appeal.

We note that in the first **Ruling** vide **pages 62-63** of the Record that the learned trial magistrate gave room for this rather strange procedure for the refiling of a similar application on which there is a binding decision which he has not set aside and which has not been overruled on appeal when he stated that because the issue of jurisdiction is sensitive that it safer to **"take evidence before ascertainment"** and also "**that jurisdiction cannot be fairly and adequately be determined without hearing evidence or part-hard evidence for proper determination."** The question of jurisdiction as we understand it takes precedence in adjudication. It is a threshold issue. Whenever it is raised, it ought to be given preference by the court before taking any further step(s). This is to avoid wasting precious judicial time if it turns out that the court is incompetent to hear the matter. See **Ofia V. Ejem (2006)11 N.W.L.R (pt.992)652 at 653.** We say no more.

Now from the Record, after **commencement of hearing**, the Appellant perhaps taking hint from what the learned trial judge stated above then filed a new application again containing the same prayers which he ruled on 3rd March, 2021 which is now subject of Appeal. We are inclined to the opinion that since the learned trial judge had already indicated his position on the question of jurisdiction, perhaps he would have kept the issue in abeyance and then take or make a considered position on the issue when he gives his final judgment. The strange procedure adopted has produced this confused situation.

As stated earlier, neither party has raised any complaints about the earlier Ruling and the entire procedure leading to the second Ruling on the same jurisdictional question earlier raised and determined. So, we keep our peace. Our concerns here will ultimately be of no moment. We say no more.

Now to the substance of the extant appeal. The narrow issue is **whether the lower court has the requisite jurisdiction to entertain the extant action**.

Now it is merely stating the obvious that jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. Lack of jurisdiction cannot be waived by one or both parties as it is a hard matter of law clearly beyond the compromise of the parties. The law on the point is graphically captured by the oft-cited dictum of Bairamian, FJ in the leading case of **Madukolu V Nkemdilim (1962) 1 All NLR 587 at 595** as follows:

"A Court is competent to adjudicate when –

(a) It is properly constituted as regards numbers and qualifications of the members of bench, and no member is disqualified for one reason or another; and

(b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction; and

(c) The case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication."

Jurisdiction is the threshold of judicial power and judicialism; and the very lifeline of all proceedings in a court or tribunal without which the entire proceedings, trial, findings, orders and pronouncements are futile, invalid, null and void *ab initio* however brilliantly they must have been conducted. Once the jurisdiction of a Court in respect of a cause or matter is ousted, the court will lack the competence to entertain and determine that cause or matter. See **Rossek V ACB Limited (1993) 8 NWLR (Pt.312) 382 at 437 C-G; 487 G-B; AG, Lagos V Dosunmu (1989) 3 NWLR (Pt.111) 552.**

It is equally settled that the source of jurisdiction of a court is the organic law (the constitution) or the statute or law creating or establishing the court. In deciding whether a court has jurisdiction or not, we must reach for the constitution where necessary or the statute creating it. In **Dangana V Usman (2012) All FWLR (pt.627) at 612,** it was held as follows:

> **"Courts are set up by the constitution, decrees, Laws, Acts and Edicts. They cloth the courts with the powers and their jurisdictions of adjudication. If the constitution, decrees, laws, Acts, and Edicts do not grant jurisdiction to court or tribunal, the courts and the parties cannot by agreement endow itself with jurisdiction. The jurisdiction of the court is confined, limited and circumscribed by the statute creating it."**

In this case, the lower court is a **Senior District Court** and its jurisdictional powers are no doubt conferred by the **District Court Act, Cap 495, LFN, 1990**. This Act provides for the establishment of District Courts for the Federal Capital Territory Abuja and Part IV of the Act provides for the jurisdictional powers of the court, thus:

Sections 5(1) and (2) of the District Court Act provide as follows:

"5(1):Every District Court shall have such jurisdiction as is conferred upon it by this Law or any other written law.

(2) No District Judge shall exercise any jurisdiction and power; in excess of those conferred upon him by his appointment."

The jurisdiction of the District Court is therefore expressly limited to the remit of sphere of matters as streamlined under the Act or any other written law. The word used is **shall** which is a word of command and therefore no interpolations or additions can be made to extend the jurisdiction conferred by the Act or any identified written law. Now **Section 13(1)a-g of the Act** streamlines causes or matters over which they have civil jurisdiction.

Section 13(2)(a)(i-iii) of the Act then provides as follows:

"(2)(a): Subject to the provisions of paragraph (d) of subsection (1) and of any other written law a Senior District Jude <u>shall not</u> exercise original jurisdiction in any suit or matter which:

(i) raises any issue as to the title to land, or to any interest in land
(ii) raises any issue as to the validity of any devise, bequest or limitation under, any will or settlement;
(iii) is subject to the jurisdiction of a native court relating to marriage, family status, guardianship children, inheritance or disposition of property on death."

The above provision is clear, unambiguous and must be given its ordinary literal meaning. Again the word **"shall"** appears which is a word of command obviating any element of exercise of discretion. By the cannons of statutory interpretation which include the Constitution, a Judge's duty which is even a command on him, is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meanings and he must not add to or remove any words therefrom; The well-established cannon of interpretation requires that, if the intention of the framers of a Statute or Constitution must be ascertained, it can be from no other source than the words used by them in couching the provisions and it is there their intention is entrenched. See **Action Congress V Independent National Electoral Commission (2007) 12 NWLR (Pt. 1048) Page 220 at page 318**, paras E-H per Aderemi JSC.

The provision of **Section 13(2)(a)** situates clearly that a senior district court judge **shall** not exercise original jurisdiction in a suit or matter which:

"raises an issue as to title to land, or to an interest in land."

Now in determining the question of jurisdiction is usually dependent on the materials before the court which has to be carefully looked at and not solely the statement of claim which was hitherto the traditional view as the determinant document in determining jurisdiction.

In **NDIC V. CBN (2002)7 N.W.L.R (pt.700) at 272 at 256, Uwaifo J.S.C** instructively made the point on the materials to be looked at in determining jurisdiction as follows:

"To say therefore...that objection to jurisdiction should only be taken after the statement of claim has been filed is a misconception. It depends on what materials are available. It could be taken on the basis of the statement of claim. It could be taken on the basis of the evidence received... or by a motion supported by affidavit giving the fact upon which reliance is placed. But certainly it could be taken on the face of the writ of summons where appropriate..."

In this case, in determining whether the lower court has jurisdiction, we have to carefully look at and examine the averments in the materials filed including the plaint in this case. We shall here situate the case made out by Respondent in its processes visa-vis the enabling statute earlier highlighted vesting the court with jurisdiction. If the claims do not come within the domain of the jurisdiction of the court, then it has no jurisdiction. The corollary is also true in that where the case made out are within the purview of the court's jurisdiction, then it has the power to hear the matter.

We take our bearing from the Amended Plaint at **page 3-5 of the Record** and we shall reproduce the salient averments in some detail thus:

"**3. The Plaintiff's cause of action is that the Defendant transferred his right and interest with respect to a property containing three(3)Rooms and a Parlour, toilet and eight(8) single Rooms in an old building situate/lying at Sambo Adya Street, Behind Living Faith Church, Opposite Alfa and**

Omega Patient Medicine Store, Old Kutunku, Gwagwalada, FCT-Abuja via a Deed of Assignment and a Power of Attorney dated the 26th day of July, 2018

4. **That the Plaintiff thereafter paid the Defendant the sum of One Million and One Hundred Thousand Naira (N1,100,000.00)only the receipt of which the landlord acknowledged on 1st March, 2018.**

5. **That the Plaintiff upon payment demanded for evidence of ownership wherein the Defendant said he could not find the document with which he acquired the property and he deposed to a court affidavit to that effect and thereafter a police extract promising to do all he could be re-obtain a re-placement for the lost document.**

6. **Following the acknowledgement receipt was a letter of undertaking and an agreement for handing over possession both dated the 26th day of July 2018 where the Defendant undertook in writing to deliver vacant possession of the property within three(3) months and not later than the 31st day of October, 2018.**

7. **That the Defendant having failed to so comply with his first undertaking, he was reported at the Gwagwalada Police Station where he further undertook again via another letter of undertaking dated the 25th February, 2019 to give up possession not later than the 31st May, 2019, still, he failed to comply.**

8. **That on the 31st May 2020, there was yet another undertaking at the Gwagwalada Police Station, having failed to comply with an earlier undertaking, yet he failed.**

9. **That since the expiration date of the undertakings respectively, the Defendant has refused, failed and neglected to vacate the property neither has he approached the Plaintiff for explanation, despite of expiration of his undertaking to do so in 2019.**

10. The Defendant was thereafter served a letter to vacate the said premises stating the intention of the Plaintiff to take over possession, yet he has refused, neglected to vacate the said property and deliver up possession to the Plaintiff.

11. That the Defendant has been served with all the necessary notices as required by law to wit notice to quit and notice of owners' intention to recover possession, yet he has refused, neglected to vacate the said property and deliver up possession to the Plaintiff hence this action."

It was based on these averments that he claimed the reliefs earlier highlighted at the beginning of this judgment.

Now in the affidavit in support of the application challenging the jurisdiction of the court at page 18 of the record, it was deposed to as follows:

3. That the Defendant/Applicant is still the owner of his house.

4. The Defendant/Applicant acquired his land and developed it for his family use.

5. That till today, the Defendant/Applicant is fully in possession and occupation of the house, and thus having full interest in the land.

6. That the Defendant/Applicant has never been a tenant to the Plaintiff/Respondent.

10 That his testimony and evidence tendered were evidence of proof of title to the land in contention through sale.

11 That power of Attorney, deed of assignment etc are all documents of transfer of title to land.

12 That my father, the Defendant/Applicant is a bonafide owner of his land in question.

Now, a careful evaluation of particularly the claim or plaint of Respondent show clearly that his cause of action is essentially rooted on **alleged sale and transfer of Appellant's right and interest over a property containing 3 rooms and a parlour, toilet and eight (8) single rooms in an old building situate/lying at Sambo Adya Street at old Kutunku, Gwagwalada vide a Deed of Assignment and a Power of Attorney and for valuable consideration.** He averred that the Appellant essentially refused or reneged on his undertaking to hand over possession despite repeated undertakings.

Even without going in some detail into the contrary assertions of the Appellant in his counter-affidavit that he is the owner of the house with full interest having acquired it and developed it for his family to use, it is difficult for us on the basis of the averments in the Amended Plaint to situate a landlord tenant/relationship to allow for the application of the provisions of the Recovery of Premises Act, Cap 544, LFN, 1990.

There is absolutely nothing in the averments in the plaint situating any landlord tenant relationship and the streamlined terms governing the relationship. There is equally nothing situating rent or a defined period of the tenancy. Indeed on the plaint, the case of Respondent is that he bought the property in question vide a deed of assignment and Power of Attorney but the Appellant refused to hand-over the premises. This relationship *abinito* is not a landlord tenant transaction but that of a vendor or owner of land and the purchaser. It is difficult to situate how this sale or transfer of interest makes the seller a tenant and the buyer, a landlord. It is a different thing where after the sale, there is an established new relationship where the buyer is allowed to continue in occupation as a tenant whether on payment of rent or otherwise which then introduces a different dynamic. Indeed even if as contended, the requisite notices to quit are ultimately tendered, we really wonder how this changes or affects the structure of the established relationship between the parties.

In this case, having refused to hand over on the ground that he is still the owner, and in possession, and by the nature of the averments streamlined on the Plaint, the learned trial district court judge must necessarily in resolving the extant dispute inevitably determine the critical question of who **has the title or interest over the disputed property or land.** The documents of title so far tendered by the

Respondent was not for fun, but to establish this **transfer of interest on the land**. The court will have to determine that the Appellant indeed transferred his interest in the property or land to the Respondent before it can really make a determination of whether the reliefs sought by Respondent are availing.

A case as presented by Plaintiff/Respondent which clearly raises the fundamental question of title to land or related to transfer of interest in land which underpins the case of Respondent clearly is a matter falling within the purview of **Section 13(2)(a) of the District Court Act,** and is undoubtedly a matter outside the jurisdictional sphere of the learned trial District Court. We note that the Respondent in his address at **Page 4 Par. 3.10** has contended that at trial that they have so far tendered their **title documents** but that the Appellant merely asserted that he is a bonafide owner of the land without telling the court whether the documents tendered by Respondent has divested the title of the Appellant.

We do not understand the basis of this contention because at page **6 of the brief par 3.15,** the Respondent stated that the case between parties has not concluded as the Plaintiff/Respondent **has not closed his case** as other witnesses have not been called to give evidence and to tender other vital documents like the statutory notices. If the Plaintiff/Respondent is yet to conclude his case, it meant that the Appellant is yet to put up a case in rebuttal. It therefore appears to us premature and presumptuous to assume that nothing will be put forward to support the contention of Appellant.

What however the **submissions of Respondent** above shows is a **subtle recognition** that the trial District Court must necessarily determine whether the Appellant divested its interest to the land to Respondent. If it happens that the Appellant is not able to establish its case of bonafide owner, the trial court must still decide by the title documents tendered, that interest on the land now vest in Respondent. Any foray by the District Court into these matters will clearly be over matters it has no jurisdiction over.

On the basis of the confluence of facts as demonstrated above, the **Recovery of Premises Act, Cap 544** has no application as contended by the Respondent and the trial court. The said **Act** clearly makes provisions for Recovery of possession and does not provide a template for determination of question or issues of title to

land or questions relating to who owns interest on land. At the risk of sounding prolix, on the basis of the complaints of claimant bordering on determination of questions of alleged transfer of interest and or title over the disputed land, the Recovery of Premises Act has no application.

It is true that **Section 3 of the Recovery of Premises Act** defines a court to include a magistrate court but the exercise of the jurisdictional powers must be understood in the context of Recovery of possession of premises between the landlord and tenant. Again, **Section 3** does not by any stretch of the imagination extend the jurisdiction of the district court or derogate from the extant provisions of the **District Court Act** which streamlines and delimits the jurisdictional powers of the District Court.

The application of the **Recovery of Premises Act** must be understood and applied in the context of a landlord and tenant relationship. Where there is no landlord and tenant relationship as the extant case exemplifies, it is difficult to situate the basis of the application of the Act. This point is underscored by the provision of **Section 2 of the Act** which defines a tenant to include any person occupying premises whether on payment of rent or otherwise but does not include a person occupying premises under a bonafide claim to be the owner of the premises as contended by Appellant. **Section 19(3) of the Act** equally has no application. This case did not situate facts showing that the premises was let out at anytime and that title then accrued after the letting out. In any event, this provision would only be availing after parties have all presented their cases and not here where on the records, the Respondent is still leading evidence.

On the whole, we are not convinced that this case falls within the jurisdictional sphere of the lower court. The lower court lacked the jurisdiction to entertain the extant Action. The lack of jurisdiction is fatal, however well the lower court may have conducted the proceedings. The law is settled that where a court finds that it has no jurisdiction to hear and determine a matter before it, the proper order to make is that of striking out the action. See **NDIC V. CBN (Supra) 272 at 300; Okolo V. UBN Ltd (2004)3 N.W.L.R (pt.859)87 at 110.**

The Appeal has considerable merit and it is allowed. For the avoidance of doubt, the consideration of the case so far by the learned trial judge was done without the

requisite jurisdiction to entertain the action. The case filed by Respondent against Appellant is accordingly struck out.

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Hon. Justice A.I. Kutigi **Hon. Justice J.O Onwuegbuzie**

Appearance:

1. **Adamu M. Wakili, Esq., for the Appellant**

2. **Lucky Okpeahior, Esq., for the Respondent**