IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 8, APO, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA

SUIT NO. CV/3352/2020

BETWEEN:

MRS. JUSTINA OKOCHA ---- CLAIMANT

AND

1. NATHAN OSUCHUKWU
2. MRS. ROSELINE AGBONIKA ---- DEFENDANTS

RULING

DELIVERED ON THE 7TH OCTOBER, 2021

Before me is a Notice of Preliminary Objection dated **30th day of June, 2021 and filed by the 2nd Defendant on the 1st day of July, 2021**, pursuant to **Order 43 and Order 52 of the Rules of this Honourable Court, Section 6(6)(b) of the amended 1999 Constitution of the Federal Republic of Nigeria** and under the inherent jurisdiction of this Court entreating the Court to favour her with the following reliefs:

1. **AN ORDER** of this Honourable Court dismissing and/ or striking out Suit No. CV/3353/2020 in its entirety on the ground that the Plaintiff/Respondent suit (sic) has not disclosed a reasonable cause of action against the 2nd Defendant in this suit in any paragraph of the Statement of Claim.
2. **AN ORDER** of this Honourable Court dismissing and/ or striking out Suit No. CV/3353/2020 in its entirety on the ground that the Plaintiff/Respondent suit (sic) lack the LOCUS STANDI to maintain

and/or continue an action on a property that is within the exclusive right, holding and sole ownership of the 1st Defendant

3. **AN ORDER** of this Honourable Court that the sole relationship been (sic) the Plaintiff and the 1st Defendant is nothing more than a mere Landlord and Tenant relationship.
4. **AN ORDER** of this Honourable Court declining jurisdiction to hear and determine this suit against the Defendants the issues in question (transaction) haven (sic) been concluded and hence it is an academic exercise.
5. **AND FOR SUCH FURTHER OR OTHER ORDER(S)** as the Honourable Court may deem fit to make in the circumstances.

Eleven (11) grounds were listed as forming the pillar and foundation of the application. There is an affidavit of twenty-four (24) paragraphs deposed to by the 2nd Defendant herself, to which are attached **exhibits AA1 [Power of Attorney and Deed of Assignment] and AA2 [Tenancy Agreement]** found at **paragraphs 10 and 15 of the Affidavit** respectively. There is also a written address [un-paginated] in support.

In opposition, the Plaintiff filed a **counter Affidavit of 15 paragraphs** deposed to by one **Ihekunna Vivian** said to be Litigation Secretary in the Law Office of **Nicholas O. Eku & CO**. representing the Claimant.

The 2nd Defendant/Applicant, in her written address, isolated three (3) issues for the disposal of the Preliminary Objection. I reproduce them accordingly:

1. Whether the Plaintiff has the LOCUS STANDI to institute this action or can maintain an action against the Defendants

2. Whether the sole and exclusive RELATIONSHIP between the Plaintiff and the 1st Defendant is not merely a LANDLORD AND TENANT RELATIONSHIP SIMPLICITER by virtue of Exhibit AA2.
3. Whether a person who is not a party to a contract can inquire into same or set aside a deed executed by two other persons and to which he is not a party.

In a rather inelegant manner of authoring a written address, the Claimant/Respondent failed to raise any issue or narrow down the controversies raised by the Preliminary Objection to any particular issue of law as is traditional of every brief. A lot has been said on the importance of a quality brief and there is an abiding duty on counsel to adhere strictly to the principles of brief writing, **ALICE VS. OKESUJI VS. F.A. LAWAL (1986) 2 NWLR (PT. 22) 417**. A counsel engaged to prepare a brief for a party to an appeal or before this Court must painstakingly apply himself to his professional duty, **UNIVERSAL VULCANIZING (NIG) LTD VS. IJESHA TRADING & TRANSPORT CO. LTD. (1992) 9 NWLR (PT. 266) 388** by always ensuring that all the salient and crucial legal arguments that would be made on behalf of that party are presented with the utmost care and diligence which are in accordance with the mandatory statutory provisions for brief writing, **AKINWUNMI VS. SADIQ (2001) 2 NWLR (PT. 696) 101 at 108 – 109**. The importance of brief writing like pleadings in the trial Court cannot be over emphasized, **OYADEJI VS. ADENLE (1993) 9 NWLR (PT. 316) 224 at 234**. Brief writing is has been held to be the life and blood of argument on appeal, as pleadings is the bedrock and cornerstone in a trial Court, **OGUGU VS. STATE & ORS (1994) 9 NWLR (PT. 366) 51 at 74.** Mention must be made that a good

brief is as important as a bad brief is annoying to the Court and makes the work of a judge difficult, stressful and a Herculean task, **NWOKORO VS. NWOSU (1994) 2 N.A.C.R. PAGE 13 at 20, (1994) 4 N.W.L.R. (PT. 337) PAGE 172**.

In situations like this, where Counsel has muddled up everything, it has been held by the Court in **ERIKI V. ERIKI & ORS [2017] LPELR-42423(CA)** that it is the duty of Courts to identify and decide on issues in dispute between the parties.

I recall that in **Plateau State Health Services Management Board & Anor. vs. Insp. Goshwe (2013) 2 NWLR (Pt.1338) page 383 at 399**, the Supreme Court re-affirmed that a Court of law has an unfettered discretion to re-arranged or formulate issues for determination by the parties to meet the justice of the case. Yet again, in **A.I.B. Ltd. vs. I.D.S. Ltd. (2012) 17 NWLR (P1.1328) page 1031 -1032**, the Apex Court held that, where a Court finds that there is proliferation of issues or the issues formulated or posed for determination are clumsy or not clear, it is empowered to re-formulate the issues so as to give the issue or issues distilled by a party or the parties precision and clarity.

The purpose of reframing issue issues is to lead to a more judicious and proper determination of a case. In other words, the purpose is to narrow the issue or issues in controversy in the interest of accuracy, clarity and brevity, so long as it will not lead to injustice to the opposite side. Thus, the Court is not bound to prefer the style of the respondent to that of the appellant in the formulation of issues for determination. In **Ezeugo vs. State (2013) 9 NWLR (pt.1360) page 5080**it was held that a Court in the determination of issues has the discretion to adopt the issues

formulated by the parties in their respective briefs of argument or in special circumstances formulate such issues it deems relevant for the determination of the case.

I have earlier alluded to the tripod issues proffered by the 2nd Defendant/Objector. I realize, by my systematic dissection and intimate study of the entire processes of the parties and all the interconnected issues that the entirety of the issues raised can be taken care of by the resolution of issue one which is:

> *Whether the Plaintiff has the LOCUS STANDI to institute this action or can maintain an action against the Defendants*

If it is found out that the Claimant is disabled in law to have brought this suit, the Preliminary Objection mounted by the 2nd Defendant/Objector succeeds. The lack of *locus standi* alleged by the Objector against the Claimant is tied around the tenancy relationship the Claimant has with the 1st Defendant and the alleged lack of privity of contract on the part of the Claimant in the Deed of Sale between the 1st and 2nd Defendant. That is the prop, the thrust, the epicenter and hub of the Preliminary Objection on which the prayers of the Motion are pillared. To get our bearings right, we must start from reproducing the endorsed claims of the Claimant as appear on the Claimant's Statement of Claim found at paragraph 20 thereof containing the following:

WHEREOF THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT AS FOLLOWS:

(1) AN ORDER setting aside the Notice of Owner's intention not to renew rent for shop STCR 368 Victory Line, Utako Market, Abuja as

same is improper, incompetent and not in compliance with the Recovery of Premises Act.

(2) AN ORDER restraining the Defendant from selling and or disposing shop STCR 368 Victory Line, Utako Market, Abuja, to any third party without first giving the Plaintiff the option of first refusal thereof. AND IF ALREADY SOLD, an order revoking the sale forthwith.

(3) AN ORDER granting leave to the Plaintiff to purchase the property and acquire same from the Defendant in view of the enormous high degree of improvement made on the shop with the consent and knowledge of the Defendant.

(4) IN THE ALTERNATIVE, an order directing the plaintiff who is the sitting tenant, to continue with her tenancy and possession of the shop for additional five years from the 30th day of January 2021

(5) The sum of N5, 000, 000 (Five Million Naira) as general damages against the defendant for the inconvenience, financial and economic losses the plaintiff has suffered and will continue to suffer if the defendant is allowed to sell the shop to another third party.

(6) And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances of this suit.

(7) The cost of this action and cost of legal services.

It is the above listed claims as formulated by the Claimant both in her Amended Writ of Summons and Statement of Claim that the 2nd Defendant/Objector by the instant Preliminary Objection vigorously contends that she has no *locus standi* to institute. The Claimant/Respondent contends otherwise. I have perused in depth the

disparate depositions (as per the diverse affidavits) and written submissions of the parties to this dispute. I shall make references to the said processes where and when necessary in arriving at a just determination of the issue agitated before this Court.

Notwithstanding the vast divergence in the affidavit and counter affidavit of the parties in the instant combat, I find that there are significant areas of agreement from which standpoint the issues agitated by the Preliminary Objection could be disposed off.

To examine whether the Claimant can or has the *locus standi* to institute this suit, have to very carefully examine the Tenancy Agreement between the Claimant and the 1st Defendant. The said Tenancy Agreement is attached as **Exhibit AA2** by the 2nd Defendant/Objector at **paragraph 20 of the Affidavit in support of her Preliminary Objection**. Of relevant to the disposal of this Motion are the following provisions found therein:

(1) This tenancy shall be for a fixed period of one year commencing from the 1st day of February, 2018 to 31st day of January, 2019 and subject to option to renew.

(2) …..

(3) This tenancy shall be renewable **at the option of the Landlord** subject to a prior notice of the intention to renew the tenancy given to the Landlord by the tenant which shall not be less than two (2) months before the expiration of the current tenancy.

(4) This tenancy shall be automatically determined at the expiration of the current tenure in the event of the Landlord not willing to renew same.

At **paragraph 15 of the 2nd Defendant/Objector's Affidavit**, the following deposition is found:

> That I know as a fact that the relationship of the Plaintiff and the 1st Defendant is nothing but a mere LANDLORD and TENANT RELATIONSHIP nothing more. Marked hereto is a copy of their TENANCY AGREEMENT as Exhibit AA2.

Did the Claimant/Respondent traverse this assertion of fact? I see none, at least none appears on its counter-affidavit. This remains an unchallenged or uncontroverted piece of evidence, **Balogun v. E.O.C. B (Nig) Ltd. (2007) 5 NWLR (pt. 1028) 584 at 601**. Effect of uncontroverted facts in an affidavit is well known in our jurisprudence as revealed in the case of **Hamza v. Lawan (1998) 10 NWLR (pt. 571) 676**. The well-known and often cited case of **Long John v. Blakk (1998) 6 NWLR (pt. 555) 524** teaches us as a trite law that an uncontroverted or unchallenged fact in an affidavit evidence must be accepted and relied upon by the Court.

From my intimate reading of paragraph (3) of the Tenancy Agreement reproduced above as **Exhibit AA2**, I have no doubt that whether or not the Claimant's tenancy shall be renewed is left completely "**at the option of the land**". Then again, paragraph (1) of the same Tenancy Agreement expressly state that the "*tenancy shall be for a fixed period of one year commencing from the 1st day of February, 2018 to 31st day of January, 2019"* These were/are the unequivocal terms that the Claimant signed up for on the **27th day of January, 2018** without any duress, fraud, misrepresentation and or such other vitiating elements of a contract alleged in the proceedings before me. They are binding on the Claimant. In her counter Affidavit to the Affidavit in support of the Preliminary

Objection, the Claimant exhibited no document showing that she gave the Landlord (1st Defendant) *a prior notice of the intention to renew the tenancy not less than two (2) months before the expiration of the current tenancy*. Tenancy Agreement without more does not and cannot in law fetter the right of the owner of a property to sale same. At least no authority exists to that effect. Whether the 1st Defendant (the Landlord here) sold the property to the 2nd Defendant or not cannot possibly be of any moment in the peculiar circumstances of the instant case where the Claimant (the Tenant) refused, failed and or neglected to give the Landlord at least two months notice of intention to renew prior to the *expiration of the current tenancy* as demanded by the Tenancy Agreement as per its clause three (3). In any event, even if the Claimant herein had served the Landlord with such Notice of Intention to renew, the binding clause remains that "*this tenancy* ***shall be automatically determined at the expiration of the current tenure in the event of the Landlord not willing to renew same****".* The Claimant (as Tenant) clearly was/is aware of these clauses and their unpretentious implications. It can safely be deduced that by serving the Claimant (the Tenant) with **Notice of Owner's intention not to renewrent** for shop STCR 368 Victory Line, Utako Market, Abuja, the "***Landlord was/is not willing to renew same"*** meaning that the tenancy agreement has automatically been determined. With this state of affairs, as at the **31st day of January, 2019**, the Claimant no longer had any business with and at **shop STCR 368 Victory Line, Utako Market, Abuja** since its possession has reverted to the owner which is the Landlord (the 1st Defendant herein). I so find and hold. At **paragraphs 6, 11, 13 and 14 of the Claimant's**

Counter Affidavit to the 2nd Defendant's affidavit supporting her Preliminary Objection, the following interesting depositions appear:

> That the 2nd Defendant/Applicant is unknown to the Plaintiff/Respondent and did not bring her into this suit as a defendant, rather the 2nd Defendant/Applicant voluntarily opted to be joined as the 2nd Defendant/Applicant
>
> That the 2nd Defendant/Applicant is just a busy-body who does not know what he wants in this case and rightly has no interest at all in the case
>
> That this case is rightly between the Plaintiff/Applicant who is in possession of the subject matter and the 1st Defendant who is the rightful owner of the subject matter and the 2nd Defendant/Applicant has no case in this matter.
>
> That if the 2nd Defendant/Applicant has any interest at all, then it is left for her to prove it with properly registered title documents and not otherwise

It is noteworthy that following the joinder application brought by the 2nd Defendant, this Court on the **11th day of March, 2021** joined the 2nd Defendant. On the principles and cardinal consideration which guides the Court in joining a party, this is what the Supreme Court [Per Iguh, J.S.C.] said in **IGE & ORS V. FARINDE & ORS (1994) LPELR-1452(SC)**:

> "I will conclude by re-emphasizing that the cardinal principle of law governing the issue of joinder of parties is whether the interveners are necessary parties to the action and whether they will be directly affected or bound by the decision of Court in the suit by interfering with their legal rights over the matter in dispute. The trial Court

> hearing such an application for joinder of parties should only be concerned with whether a prima-facie case for joinder has been established and should not wade into the merits of the case. This is because the true test for joinder does not so much lie in the analysis of the constituents of the applicants' rights but rather in what would be the result on the subject matter of the suit if those rights were to be established. As Devlin, J. put it briefly but certainly more succinctly in Amon v. Raphael Tuck and Sons Ltd., (supra) at 290: As Wynn-Parry, J. said in Dollfus Mieget Companies S.A. v. Bank of England (1950) 2 All E.R. 605 at 611 "It seems to me that the true test lies not so much in the analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established." I respectfully agree with that. I think that the test is: May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

It is additionally instructive, gleaning from the records of the Court, that on the **11th day of March, 2021**when the Motion for joinder filed by the 2nd Defendant/Objector was heard, the Claimant offered no objection to the 2nd Defendant/Objector being let into the suit. In the light of the foregoing, those depositions of the Claimant/Respondent found at **paragraphs 6, 11, 13 and 14 of its Counter Affidavit** fall to the ground and are patently false.

On the back of the foregoing analysis, I come to the firm view that the Claimant whose tenancy was properly determined has no business in this Court seeking the disturb the 1st Defendant in the quiet enjoyment of **shop**

STCR 368 Victory Line, Utako Market, Abuja or any other person the 1st Defendant wishes to give the said property, be it the 2nd Defendant or otherwise.

It is also correct to state that the purpose of a preliminary objection is to halt, end or fundamentally change the nature of an action, **IWUJI & ORS v. GOVERNOR OF IMO STATE & ORS (2014) LPELR-22824(CA)**. In the case of **EFET v. INEC & ORS (2011) LPELR-8109(SC) (Pp.20-21, Paras F-B)**, the Supreme Court, per Muhammed JSC, aptly held that:

> **"The aim/essence of a preliminary objection is to terminate at infancy, or as it were, to nib it at the bud, without dissipating unnecessary energies in considering an unworthy or fruitless matter in a court's proceedings. It, in other words, forecloses hearing of the matter in order to save time."**

This was the same view arrived at by the Supreme Court in **PDP v. SHERRIF & ORS (2017) LPELR-42736 (SC)** and earlier followed by the Court of Appeal in **IHEDIOHA v. OKOROCHA (2015) LPELR-25645(CA)**. The present Preliminary Objection of the 2nd Defendant/Applicant, to my dispassionate consideration, satisfied the purpose it is ordained for as reflected in ***YARO V. AREWA CONSTRUCTION LTD. & ORS. [2007] 6SCNJ 418***. It therefore succeeds, **IHEDIOHA v. OKOROCHA (supra)**. I find that the Claimant has no *locus standi* to have brought this action as presently constituted, **ADEKUNLE v ADELUGBA (2011) 16 NWLR (Pt 1272) p.154**.

The law is that to determine the locus standi of a Plaintiff in a particular case, it is the Statement of Claim that the Court will resort to, **AROWOLO**

v OLOWOOKERE (2011) 18 NWLR (Pt.1278) p.280. The Court is therefore expected to meticulously peruse or examine the statement of claim to see if it discloses the *locus standi* of the Plaintiff, **ADETONA v ZENITH INT'L BANK PLC (2011) 18 NWLR (Pt. t2Z9) p.627**. It is the reliefs claimed by the Plaintiff in the Statement of Claim that will reveal whether or not the Plaintiff has disclosed his locus standi or legal rights and obligations that entitle him to institute the action, **ANOZIA v. A.G, LAGOS STATE (supra) at p.238 paras. F-G**. I have done, meticulously, that which the law commands to be done in the circumstances the parties and the case before me have found themselves. My finding from the clinical examination of the claims tabled by the Claimant herein as projected by the Statement of Claim is that the Claimant is destitute of the standing to bring this matter, **WILSON v OKEKE (2011) 3 NWLR (Pt. 1235) p.562**. She lacks the *locus standi* to file this suit. Accordingly, the claims of the Claimant herein must be and is hereby struck out. Absence of locus standi in the Claimant means equally absence of jurisdiction on the part of the Court to proceed with the hearing of the suit. In this connection, we recall the elucidation of the law by the Court in **AMAECHI V. GOVERNOR OF RIVERS STATE & ORS (2017) LPELR-43065(CA)** where it was lucidly re-echoed thusly:

> The law is equally very well settled that, "locus standi" is the legal capacity to institute proceedings in Court. Literally, it means, a place of standing or right standing. It is thus used to denote a right of appearance in a Court of Justice on a given question. The concept signifies that a Court will not provide remedy for a claim in which the plaintiff has a remote, hypothetical or no interest at all. Hence, where

a plaintiff has no "locus" to institute the action, and not minding that the statement of claim or an originating summons discloses a cause of action, the Court is precluded from embarking on the adjudication of the action and would lack jurisdiction to make a pronouncement on the merits on the disputed facts.

I find that this Court lacks the jurisdiction to hear this matter by virtue of lack of locus standi on the part of the Claimant. I enter an order striking out this suit. Parties are to bear their respective costs. I make no order as to cost.

This shall be my Ruling which I earlier reserved on the **7th day of July, 2021**.

APPEARANCE

O. Alhassan Idoko Esq. for the 2nd Defendant.

The 1st Defendant are not in court.

Sign

Hon. Judge

07/10/2021