

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA-ABUJA**  
**ON THE 8<sup>TH</sup> DAY OF OCTOBER 2021**

**BEFORE THEIR LORDSHIPS**  
**1. HON. JUSTICE CHIZOBA N. OJI**  
**2. HON. JUSTICE SAMIRA U. BATURE**

**SUIT NO: CV/89/2020**  
**APPEAL NO:CVA/696/2020**

**BETWEEN:**

**FLEXY HOMES LIMITED**

**..... APPELLANT**

**AND**

**PLATINUM INNOVATIVE LIMITED**

**..... RESPONDENT**

***APPEARANCES:***

***P.A. AYANG ESQ. WITH J.F. EDWARD ESQ., HOLDING THE BRIEF OF J.A.N OKOLI ESQ. FOR THE APPELLANT.***

***RESPONDENT ABSENT.***

**JUDGMENT**

By its plaint filed on 29<sup>th</sup> July 2020, the Appellant (as Plaintiff) sued the Respondent (as Defendant) at the Senior District Court of the Federal Capital Territory Abuja for immediate possession of a shop space with its appurtenances situate at Suite B3.1 Heroes Plaza (now CVS Plaza), Plot 145, Adetokunbo Ademola Crescent, Wuse 2, Abuja; and mesne profits assessed at ₦195,708.33 only per month from the 2<sup>nd</sup> day of May 2020, until vacant possession is given up.

The Respondent as Defendant reacted with a motion on notice filed on 23<sup>rd</sup> November 2020 seeking to strike out or dismiss the Appellant's action for want of jurisdiction.

In the affidavit in support of the motion, the deponent deposed inter alia to his belief that the Senior District Court lacked jurisdiction to entertain the Appellant's suit as the subject matter of the suit was before the FCT High Court. The Learned Senior District Judge considered the application and in his ruling on 27<sup>th</sup> of November 2020 struck out the Appellant's case.

The Appellant being aggrieved filed a notice of appeal to the High Court on 11<sup>th</sup> December 2020 seeking to set aside the ruling of the lower court and remit the Appellant's Recovery of Premises suit to the lower court for trial before another Magistrate (District Judge).

The two grounds of appeal (shorn of their particulars) are as follows:-

**"1. ERROR IN LAW**

**The learned trial Magistrate erred in law when he declined jurisdiction to entertain the Appellant's suit and held:**

**"I hasten to state from the affidavit and Exhibit. It is neater for the court to strike out this suit as parties are before the High Court in a case by the Defendant as being the Plaintiff."**

**2. ERROR IN LAW**

**The learned trial Magistrate erred in law when he held:**

**"In other words, this court cannot take any step in this matter, pending when the High Court will determine who the Defendants is to pay rent to."**

In his brief of argument, J.A.N Okoli Esq. for the Appellant raised two issues for the court's determination thus:-

**"A. Whether there was anything disclosed in the Appellant's Recovery of Premises suit, affidavits and exhibits before the lower court to warrant the court to decline jurisdiction to entertain the Appellant's recovery of premises suit and then struck (sic) out same (Ground 1)**

**B. Whether the lower court was right when it held that it cannot take any step in the Appellant's Recovery of Premises suit before it pending when the High Court will determine who the Respondent is to pay rent to. (Ground 2)."**

### **ON ISSUE A**

Learned counsel answered in the negative. He relied on Section 13 (1)(b) District Courts Act, Cap 495, LFN 1990, Section 2(b) and (c) District Courts (Increase of Jurisdiction of District Judges) Order 2014. He submitted that it is the Plaintiff's claim that determines the jurisdiction of the court – Citing inter alia **FEDERAL UNIVERSITY OF TECHNOLOGY, MINNA, NIGER STATE & 3 ORS VS OLUTAYO (2018) 7 NWLR (PT. 1617) PG 176 AT 195 PARA A, SC; FELSHADE INTERNATIONAL (NIG) LTD V TRAFUGURA BEHEER B. V AMSTERDAM (2020) 14 NWLR (PT. 1743) 107; particularly at Page 144 para E-G.**

That in this instance as the Appellant's plaint filed on 29<sup>th</sup> July 2020 before the lower court contained facts, affidavit and claims within the jurisdiction of the lower court, the Senior District Court therefore was, respectfully, wrong when it declined jurisdiction to entertain the suit and struck it out.

That a case of recovery of premises was made out at the lower court and the Defendant knew who his landlord was and who he was to pay rent to and was therefore legally estopped from denying that the Appellant is the landlord and owner of Suite B3.1, Heroes Plaza (now CVS Plaza), Plot 145 Adetokunbo Ademola Crescent, Wuse 2 Abuja. See Section 170 Evidence Act 2011.

It was further argued that the originating summons and counsel's written address purportedly filed at the High Court by the Respondent and relied on by the lower court were bad and incompetent having not been signed by the legal practitioner who filed same nor the party who filed same. He cited a number of authorities to support his submissions.

In the event that the court should rule that the originating summons could be relied upon, it was argued that even therein, the Respondent (as Plaintiff) did not challenge the title of the Appellant to the property in question. He urged the court to resolve issue A in the negative in the Appellant's favour.

### **ON ISSUE B**

It was submitted that having established from the Appellant's plaint and processes at the lower court that there was no confusion as to who the

Respondent was to pay his rent to, that the lower court was wrong when it held that:-

**“In other words, this court cannot take any step in this matter, pending when the High Court will determine who the Defendant is to pay rent to.” (See page 74 of the Records) Section 170 Evidence Act 2011.**

Thus he urged the court to likewise resolve issue B in the negative in favour of the Appellant and grant the reliefs sought.

The Respondent did not file a Respondent’s brief and did not participate in the appeal, despite hearing notices served on her. That notwithstanding the court must consider the merit of the appeal as the Appellant must succeed on the strength of his own case.

See **NITEL V SANIC (2011) LPELR-4604 (CA); OOKANOLA V GOVT OF OSUN STATE & ANOR (2020) LPELR-50412 (CA).**

We think that both issues raised by the Appellant can be taken together.

The Appellant’s suit before the Senior District Judge was for recovery of premises and for mesne profit.

Without a doubt the said Senior District Court had the jurisdiction to entertain a suit for recovery of premises and mesne profit going by the provisions of Section 13 (1)(b) District Courts Act, Cap 495, LFN 1990 which provides as follows:-

**“Subject to the provisions of this Act and of any other written law, a Senior District Court Judge shall have and exercise Jurisdiction in civil causes or matters-**

**In all suits between landlord and tenant for possession of a land or house claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed one thousand naira...”**

And by Section 2 (b)(c) of the District Court (Increase of Jurisdiction of District Judges) Order 2014 by which the pecuniary jurisdiction of the Senior District Judge was increased to ₦3,000,000.

However, at the Senior District Court, the Senior District Judge was confronted with the originating summons in **SUIT NO. CV/2425/2020 PLATINUM INNOVATIVE LIMITED V FLEXY HOMES LIMITED; CVS LIMITED** wherein the Respondent (as Plaintiff) had sued the Appellant as 1<sup>st</sup> Defendant and CVS Limited as 2<sup>nd</sup> Defendant at the High Court seeking the following reliefs:-

- 1. A DECLARATION that the Plaintiff is a lawful Tenant in Suite B3.1, Heroes Plaza (now CVS Plaza) Plot 145, Adetokunbo Ademola Crescent Wuse 2, Abuja FCT measuring approximately 67.1 square meters, by virtue and considering the various payments, both rent and service charges, Tenancy Agreement of the Plaintiff and other relevant surrounding circumstances over its possession in the said Property.**
- 2. A DECLARATION that by virtue and considering the provisions of the FCT High Court Civil Procedure Rules, particularly Order 28 Rules 1, and also considering the adverse claims over the ownership of the property in which the Plaintiff is a lawful Tenant, by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, and also considering the letter of demand by the counsel to the 1<sup>st</sup> defendant dated 11<sup>th</sup> June 2020, and also the letter of demand dated 25<sup>th</sup> February, 2020 by the counsel to the 2<sup>nd</sup> defendant, both claiming same Rent from the Plaintiff, the Plaintiff will be prejudiced to pay rent to any of the adverse claiming defendants until the issue of Property ownership is resolved between the defendants.**
- 3. A DECLARATION that by virtue and considering the pending court action in the FCT High Court between the defendants in dispute regarding the title and ownership over the Property the Plaintiff occupies as a Tenant, and both defendants demanding Rent from the plaintiff at various times over the current term in the property, being 2020/2021, the Plaintiff will be prejudiced to pay Rent to any of the defendants or their agents until the issue of ownership or title is resolved amongst the said defendants.**
- 4. AN ORDER of this Honourable Court directing the Plaintiff to pay and to continue paying the designated Rents for the space it occupies into a designated account to hold it in Trust by itself for**

**the lawful owner of the property upon resolution of the dispute on title between the defendants.**

- 5. AN ORDER of perpetual injunction restraining the defendants or anyone on their behalf from taking further steps to either variously or jointly evicting the Plaintiff whereas the issue of title to the said property is a dispute between the said defendants.**
- 6. AN ORDER of this Honourable Court restraining the defendants from continuing to disturb the peaceful occupation of the Plaintiff in the property being suit B3.1, Heroes Plaza (now CVS Plaza) Plot 145, Adetokunbo Ademola Crescent Wuse2, Abuja FCT measuring approximately 67.1 square meters.**

**OR IN THE ALTERNATIVE TO PARAGRAPH 4**

- 7. AN ORDER of this Honourable Court directing the Plaintiff to be paying the designated Rent into this Honourable Court or an account provided by an Order of this Court pending the title Resolution between the 1<sup>st</sup> and 2<sup>nd</sup> defendants on who should receive rents from the Plaintiff.**

Looking at the claims of the Appellant (as Plaintiff) before the Senior District Court and the claims of the Respondent (as Plaintiff) before the High Court, it is evident that the reliefs being sought at the Senior District Court are on the same subject matter and if granted will foist a fait accompli on the High Court. In other words, the reliefs sought at the Senior District Court if granted, will leave nothing for the High Court to decide.

It must be noted that the Respondent at the High Court contends that the Defendants were laying claim to be the landlord of the premises and though she was willing to pay her rent, she did not know who to pay to.

Accordingly, the only option the Senior District Judge had was to strike out the proceedings before him pending when the issue of whom the Respondent was to pay her rent to is resolved.

The argument was raised by the learned counsel to the Appellant that the originating summons before the High Court was incompetent and ought not to have been relied upon by the Senior District Judge. We think that the learned Senior District Judge could not have determined the competence or otherwise

of processes filed at the High Court since the said processes were not filed before him.

It is the prerogative of the High Court to determine the competence or otherwise of the process before it, and not that of the Senior District Judge.

Having stated the above, we hold that issue 1 is resolved in the negative in the Appellant's favour.

Issue two is resolved in the affirmative in the Respondent's favour. The Senior District Judge was right to have struck out the matter in the circumstances of the motion before him.

Accordingly, the Appeal lacks merit.

Same is hereby dismissed.

No order as to costs.

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**Hon. Justice C.N. Oji**

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**Hon. Justice S.U. Bature**