IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO – ABUJA

THIS MONDAY, THE 28TH DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

SUIT NO: FCT/HC/CV/1443/2021
MOTION NO: M/1067/2022

BETWEEN:

TRUB PROPERTIES LIMITED ----------CLAIMANT/RESPONDENT

AND

AWWAL MOHAMMED ……..DEFENDANT/APPLICANT

RULING

By a notice of preliminary objection dated 2nd February, 2022 and filed same date at the Court's Registry, the Defendant/Applicant contends that this suit is incompetent and that the court lacks jurisdiction to hear same and further prayed that the suit be struck out or dismissed. The grounds of the objection are as follows:

1. That the Applicant is a yearly tenant entitled to six (6) months notice to quit, amongst other notices.
2. The mandatory requisite notices were not served on the Defendant before the suit was initiated.
3. The mandatory conditions precedent to instituting an action of this nature were not fulfilled before this suit was filed.

The objection is supported by a 34 paragraphed Affidavit in Support deposed to by one Harrison A. Ajali, the Estate Manager in the employment of the Defendant/Applicant in compliance with the rules of the Court is a written address

dated 1st day of February, 2022. The address raised sole issue for this Honourable Court's determination thus:

> **Whether given the peculiar facts and circumstances of this case, especially having regard to the depositions in the Affidavit in support of this Objection, the grounds upon which this Objection is raised and the documents attached as exhibits thereto, this suit is not incompetent thereby robbing the Court of jurisdiction to hear and determine same.**

At the hearing, Bassey Enwang, of Learned Counsel to the Defendant/Applicant adopted the submissions in the written address, while arguing the application the Learned Counsel submitted that it has been held generally that a court to be competent and have the jurisdiction to adjudicate over a case, three features must be present, namely:

a. It must be properly constituted as regards the number nad qualification of the members of the Bench and no member is disqualified for one reason or the other; and
b. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and
c. The case comes by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

That on the above, he placed reliance on **Adams Aliyu Oshiomhole & Anor Vs. Comrade Mustapha Salihu& 7 Ors. (No. 1) (2021) 8 NWLR (Pt. 1778) 237, at 265-266.**

That the reliefs sought in this suit by the Claimant borders on recovery of possession of the premises. The combined effect of the provisions of **sections 8, 9 and 19 of the Recovery of Premises Act, Cap. 544,** Abuja laws, requires that before a court can assume Jurisdiction to hear and determine a suit of this nature, the appropriate statutory notices would have been properly served on the Defendant and same would have expired before the action is instituted.

The Counsel submitted that service and expiration of the appropriate notices to quit and of owner's intention to apply to recover possession therefore become a condition precedent that must be fulfilled before a suit of this nature can be validly initiated. That in **splinters Nigeria Limited & Anor. Vs. Oasis Finance Limited 2013) 18 NWLR (Pt. 1385) 188, at 227, the court of Appeal (Per Iyizoba, JCA)**, held thus: "In the final result, I hold that this appeal has merit. The service of valid quit notices is a condition precedent for the recovery of possession. In the absence of convincing proof of such service, the claim of the respondent was not initiated by the process and the court lacked the jurisdiction to entertain the suit. The ought to have been struck out".

That at page 228 of the same report, in the concurring judgment of Ikyegh, JCA, it was held further thus: "the proof of service of valid quit notices on the appellants by the Respondents for recovery of possession of the demised premises was not established. Service of valid quit notices on a tenant is fundamental condition precedent for the initiation of an action by a landlord against a tenant in a Court of law. That it is an issue of jurisdiction within the parameters of the landmark case of Madukolu Vs. Nkemdilim.

The Counsel submitted that the above analysis become necessary because the objection of the Defendant/Applicant hinges on the Court's lack of jurisdiction on the ground that the requisite notices were not issued and served on him before the suit was commenced.

The Counsel further submitted that the logical next question to determine is the nature of the notice the Defendant/Applicant is entitled to, and whether same was validly issued and served. That in order to clearly understand or appreciate the position of the Defendant/Applicant in bringing this objection, it is necessary to understand the case put up by each party before the court.

Firstly, that the Claimant/Respondent claims that the objector was not entitled to notice to quit, but was nevertheless given 7 days' notice to quit, possibly out of mere magnanimity.

On the other hand, that the objector insists that he is a yearly tenant over the premises and as such, he is entitled to six (6) months' notice to quit, as against the 7 days' notice purportedly given by the Claimant. That this is the main point of divergence between the parties. The Counsel further stated that it is therefore the resolution of this issue that will determine the nature of the tenancy, the type of notice to quit to be served on the Defendant/Applicant and whether the Honourable Court has jurisdiction to hear and determine this case.

Defendant/Applicant Counsel contended that from the case put forward by the Claimant, the Defendant/Applicant's initial tenancy was for a fixed term which commenced on 30th day of May, 2019, and ended 29th day of May, 2019. That tenancy agreement forms part of the documents sought to be relied upon by the Claimant in its pleadings; it is also Exhibit B attached to the affidavit in support of this objection. That from the pleadings of the Claimant, there is evidence agreement, the Defendant/Applicant remained in occupation of the premises and paid rent therefore thereafter.

It was the Counsel's submission that the position of the Defendant/Applicant is that after the expiration of the fixed term tenancy, he did not renew the tenancy in line with terms of the tenancy agreement relied upon by the Claimant, but wrote, vide Exhibit C (attached to the supporting affidavit) proposing new terms to the new tenancy, which the Claimant agreed to in Exhibit D (Attached to the supporting affidavit). Then after payment of the initial installment of $50,000.00, the Claimant acknowledged the said payment view Exhibit E as part payment of the rent for the 2020/2021 tenancy period. That it follows from these

correspondences that a new tenancy relationship had been created by conduct and agreement of parties, namely: a yearly tenancy in which the applicant would be payment the annual rent in two installments of &50,000.00 each. The Defendant/Applicant Counsel relied on the following cases in support of his arguments; ***Duncan Maritime Ventures Nig. Ltd. Vs. N. P. A (2019) 1 NWLR (Pt. 1652) 163, at 183;*** **County & City Bricks Development Co. Ltd Vs. Minister of Environment & Anor. (2019) 5 NWLR (Pt. 1666) 484, at 502; Nigerian Bottling Co. Plc Vs. Suleiman 92019) 18 NWLR (Pt. 1703) 80, At 96;** ***Dr. Atiku Aderonpe Vs. AlhajaSobalajiEleran& 2ors. (2019) 4 NWLR (Pt. 1661) 141 at 160; Odutola Vs. Papersack (2006) 18 NWLR (Pt. 1012) 470, at 493 and Integrated Finance Ltd. Vs. N. P. A. & Anor. (2019) 17 NWLR (Pt. 1700) 131, at 158***

The Defendant/Applicant's Counsel finally submitted that as can be seen from the above authority, there was no need to bring the Defendant/Applicant to court in the first place, not having first fulfilled the conditions precedent to doing so. That the law remains, as exposited in the above authority, that in such a situation, the suit against the Defendant/Applicant must be dismissed with punitive costs in his favour. He then urged the court to dismiss or strike out the action.

In opposition, the Claimant/Respondent filed a 10 paragraph Counter-Affidavit deposed by one Anne Ajobi a solicitor in the law firm of the Counsel to the Claimant/Respondent with a written address attached to the Counter-Affidavit dated 1st day of March, 2022 and filed same date in the Court's registry. The Claimant/Respondent Counsel submitted that the grounds for the reliefs sought by the Defendant/Applicant are based on facts that can only be resolved at the hearing of the suit. This is more so when **Order 23 of the FCT High Court Rules** has abolished demurrer.

That it is trite that applications for dismissal of suits in *limine* can only be made on points of law and not where facts are disputed as in the Defendant/Applicant's

application to which the Claimant has filed a Counter-Affidavit denying averments of non-service of the statutory notices.

The totality of the grounds upon which the Defendant/Applicant's application was brought is on non-service of the statutory notices stated to have been served when the courts were on strike. These revolve around facts. The instructive words of the Supreme Court in **Woherem Vs. Ehereuwa (2004) 13 NWLR (Pt. 890) At 418-419 H.G per Iguh JSC** are apt and relevant here.

> *The principle of law is well established that an application by way of preliminary objection for the dismissal of a suit in limine way be made on point of law and where there are no facts in dispute for the purpose of determining such an objection. See* ***Bello Adegoke Foko and other Vs.OladolkunFoko*** *and* ***Another (1968) NMLR 441.*** *The application relies only on the facts as stated by the plaintiff in the writ of summons and statement of claim. There facts stated by the plaintiff in this writ of summons and statement of claim are for that purpose deemed to have been admitted by the defendant/applicant.* ***See Ayanbode Vs. Balogun (1990) 5 NWLR (Pt. 151) 392 at 407.*** *Where, however, disputes as to facts appear on the pleadings of the parties, as is the case in the present application on the face of the plaintiff's writ of summons if the said Defendant accepts the plaintiff's averments of fact either on the writ of summons or on his statement of claim but submits that even in those circumstances no cause of action would appear to have been disclosed or that the court has no jurisdiction to entertain the suit or that the action is statute barred by virtue of some limitation law. But, if facts exist, which must first be adduced in or established by evidence to enable a point of law to be sustained, the preliminary objection may not be properly taken.*

See ***Banjo and others Vs. Eternal Sacred Order of Cherubim and Seraphim (1975) 3 SC 37.*** *Similarly, if the facts to sustain the preliminary point are obscure or at large, a preliminary objection may not properly be taken, A matter, therefore, which is raised by way of preliminary point but which may be answered if evidence is adduced cannot be properly raised as a preliminary objection, such a mater is more properly answered by evidence during the trial and shall constitute an issue for determination the trial.*

The Claimant/Respondent's Counsel further submitted that the Defendant/Applicant's preliminary objection, as it is, is incompetent as same contravenes the requirement of **Rule 10(1) of the Rule of professional Conduct for legal practitioner 2007** which mandates a legal practitioner who signed the legal process to affix his stamp and seal thereon.

The Learned Counsel to the Claimant/Respondent finally submitted that, the Defendant's contention that he was not served with the statutory notices is not borne out of the evidence before this Honourable Court. Not only did the Claimant depose to the service of the notices, **Exhibits B** is the certificate of service for the notices to which is even attached a picture of the bailiff of this Honourable Court pasting the said processes bedside the address of the leased property.

Okwudili Anozie of Counsel to the Claimant/Respondent adopted the submissions in the written address attached to the Counter Affidavit dated 1st March, 2022 and urged the Court to discountenance the Defendant/Applicant's submissions and dismiss the Preliminary Objection.

I have carefully considered the processes filed on both sides of the aisle and the oral submissions in expatiation. I wish to immediately state that parties on both sides have proceeded and made extensive submissions touching on the substance of the case when the court is yet to hear the grievance submitted for resolution. Parties seem to forget that this is a simple interlocutory application and while they

may enjoy the luxury or liberty to make submissions as they deem fit, the court does not enjoy such liberties to at the interlocutory level make pronouncement on matters touching on substance of the main action which is yet to be heard. This is trite principle for which no authority need be cited. I will therefore be circumspect and not allow the court to make the same mistakes made by counsel on both sides of the aisle. Having made these prefatory remarks, the fundamental issue arising relate to the question of alleged failure to serve Quit Notice or Statutory Notices and how this then impacts on the substantive case.

For this Court to adjudicate on the issue of alleged failure to serve Quit Notice on Defendant/Applicant. In doing so, it is critical to state that the Defendant/Applicant in the eyes of the law has not filed a defence to the Satement of Claim filed and served on him by the Claimant/Respondent. This stance has its implications as it only means that it is only the Statement of Claim that is available in resolving the contentious issues raised. Also, the facts contained in the Statement of Claim are deemed admitted for this purpose.

Now while the service of requisite Quit Notices is critical in Recovery of Premises matter but the fundamental question is whether the court can even resolve the issue on the basis of the materials before the court and at the interlocutory stage bearing in mind as already alluded to, the only substantive process before the court is the Statement of Claim.

On the materials, some of the critical facts raised particularly in the Statement of Claim is the type of tenancy created, its tenure and the fact that the Statutory Notices were served. Let me allow the Claim speak for itself as follows:

3. **By the terms of the attached tenancy agreement, the Defendant's tenancy was for a definite term of one 1 year, effluxing on the 29th day of May, 2020.**
4. **Following the expiration of the Defendant's tenancy in May, 2020, the Defendant once again refused to vacate the property neither did he pay the rent for the renewal of the leaving the Claimant with no other option than to institute eviction proceeding by serving the requisite statutory notice on the Defendant.**
5. **Upon receipt of the statutory notice, the Defendant reached an agreement with the Claimant for payment of his tenancy renewal in 2 installments. The correspondence between the parties' solicitors are hereby pleaded.**

6. **The failure of the Defendant to abide to the payment agreement caused the Claimant to institute an action for payment of the outstanding rent owed it in Suit No. FCT/HC/CV/234/2021 between the parties wherein the parties reached an out of court settlement on the understanding that the Defendant will vacate the premises at the expiration of the tenancy by the 29th of May, 2021. The Terms of Settlement between the parties is hereby pleaded.**
7. **At the determination of the tenancy on the 29th of May, 2021, the Defendant refused/failed to vacate the premises and deliver up possession thereof.**
8. **The Claimant had earlier instructed its solicitor to take all necessary steps towards the recovery of possession of the property being occupied by the Defendant. The Claimants' letter of instruction to their solicitor is hereby pleaded.**
9. **The Claimant's solicitor's letter to the Defendant's solicitor reminding him of the expiration of his tenancy did not elicit any response from the Defendant. The letter dated 10th June, 2021 is hereby pleaded.**
10. **Notwithstanding there was no requirement for a quit notice to be served on the Defendant, the Claimant caused its Solicitor to effect the issuance and service of a seven (7) days quit notice dated 7th June, 2021 to the Defendant. The seven (7) days quit notice, the certificate of service thereof by a bailiff and a picture of the bailiff affixing same are hereby pleaded.**
11. **After the expiration of the quit notice, the Defendant refused, neglected and failed to vacate the premises.**
12. **The Claimant further caused their solicitor to issue and serve on the Defendant a seven (7) days notice of owner's intention to recover possession. The seven (7) days notice of owner's intention to recover possession, the certificate of service thereof and a picture of the bailiff affixing same are hereby pleaded.**
13. **The Defendant failed, neglected and refused to deliver up possession of the demised premises and has continue to be in occupation despite the aforesaid statutory notices being served on him.**

The above is clear. These are positive assertions by the Claimant/Respondent which have to be creditably established at plenary hearing within the required legal threshold. As stated earlier, the Defendant/Applicant has not joined issues with the

Claim on any or all of the relevant and germane issues critical to a resolution of recovery of premises matters.

The objection filed and the elaborate submissions made in the address equating the Statement of Claim and frontloaded documents as if they were evidence before the court is with respect rather misplaced. First the objection is no conduit or medium to join issues on pleadings. The objection is not a Statement of Defence and cannot be construed as such. Secondly, the Statement of Claim on its own is no evidence. Evidence must be led in proof of the averments on the pleadings because without forensic evidence at trial, the pleadings is deemed as abandoned and of no utility value, I so hold. Thirdly, the frontloaded documents for example the quit notices on which extensive submissions was made are equally not yet evidence before the court**.** A frontloaded document gives an insight to the case of a party, but until it is tendered and admitted, it is not evidence. All that is before the court on the issue is the unchallenged paragraph 4,5,10 and 12 of the Statement of Claim that the notices were given and served. Any evaluation of what it contains and whether it meets the requirement of the law must await its legal reception first. It is difficult to situate the basis of the attack on a document not yet tendered before the court. Frontloaded documents until tendered and admitted are not yet admissible evidence.

The point is that the issue of the type, tenure and duration of the tenancy and the issue of the propriety of statutory notices are all matters on which Claimant/Respondent has made affirmative statements on. These are matters that can only be resolved by taking oral evidence at trial**.**

In the absence of a defence, the threshold of proof will be that of minimal of proof. That does not however mean that the court can at the interlocutory level be seen to be determining or commenting on issues that clearly has a bearing with the substantive action. The case is made worse by the paucity or clear absence of materials to resolve the contested issues. All the submissions of Defendant/Applicant as I have demonstrated cannot take the place or be a substitute for evidence elicited at trial. They are with respect premature, misconceived and discountenanced without much ado.

As I round up, I call in aid the instructive pronouncement of the Supreme Court in **Woherem V Ehereuwa (supra)** per Iguh J.S.C which are apt and relevant in the circumstance as follows:

"…The principle of law is well established that an application by way of preliminary objection for the dismissal of a suit in limine may be made on points of law and where there are no facts in dispute for the purpose of determining such an objection. See Bello Adegoke Foko and others V Oladokun Foko and Another (1968) NMLR 441. The applicant relies only on the facts as stated by the plaintiff in the writ of summons and statement of claim. The facts stated by the plaintiff in his writ of summons and statement of claim are for that purpose deemed to have been admitted by the defendant/applicant. See Ayanbode V Balogun (1990) 5 NWLR (pt.151) 392 at 407. Where, however, disputes as to facts appear on the pleadings of the parties, as is the case in the present application, it is only open to a defendant to raise a preliminary objection on the face of the plaintiff's writ of summons if the said defendant accepts the plaintiff's averments of fact either on the writ of summons or on his statement of claim but submits that even in those circumstances no cause of action would appear to have been disclosed or that the court has no jurisdiction to entertain the suit or that the action is statute-barred by virtue of some Limitation Law. But, if facts exists, which must first be adduced in or established by evidence to enable a point of law to be sustained, the preliminary objection may not be properly taken. See Banjo and others V Eternal Sacred Order of Cherubim and Seraphim (1975) 3 SC 37. Similarly if the facts to sustain the preliminary point are obscure or at large, a preliminary objection may not properly be taken. A matter, therefore, which is raised by way of preliminary point but which may be answered if evidence is adduced cannot be properly raised as a preliminary objection. Such a matter is more properly answered by evidence during the trial and shall constitute an issue for determination at the trial." (Underlining for emphasis)

I need not add to the above.

It would therefore not be wise at this stage to be making pronouncements on the propriety or otherwise of the proof of services of the statutory notices, I am afraid that cannot be properly inquired into at this point unless oral evidence is taken in support or against such assertion.

On the whole, this application lacks merit at this point and it is accordingly dismissed.

Hon. Justice Jude O. Onwuegbuzie

<u>Appearances</u>:

1. **Okwudili Anozie Esq., for the Claimantf/Respondent.**

2. **Bassey Enwang Esq., for the Defendant/Applicant.**