

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 29TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/971/2021

BETWEEN:

ARTHUR NDIWE & CO.

CLAIMANT

AND

1. BETA FOUNDATION LTD

2. CHIEF (DR) RAMON A. ADEDOYIN

DEFENDANTS

JUDGMENT

This Judgment is on the construction of sections 7 and 8 of the Recovery of Premises Act, CAP S44, Laws of the Federal Capital Territory, Abuja, 2006.

By an Originating Summons dated and filed on the 26th of March, 2021, the Claimant invited this Honourable Court to determine the following questions:-

- 1. Whether while the annual rent of the Claimant is still subsisting (until October, 2021) and upon the interpretation/construction of sections 7 and 8 of the Recovery of Premises Act, CAP S44 Laws of the Federal Capital Territory, 2006, the Claimant is entitled to half a year's Notice to Quit before eviction from the property.*
- 2. Whether having regards to the Claimant's subsisting annual rent in the property and upon the interpretation/construction of sections 7 and 8 of the Recovery of*

Premises Act, CAP S44, Laws of the Federal Capital Territory, 2006, the 7 days Notice of Owner's Intention to Apply to Court to Recover Possession dated 18th March, 2021 and issued by the Defendants is defective and void.

- 3. Whether in the circumstance that the property subject-matter of this suit is now owned by Oduduwa University having purchased same from AMCON who was the previous owner and management thereof, the defendants lack capacity to commence eviction process against the Claimant.*

Upon the determination of the above questions, the Claimant seeks the following reliefs from this Honourable Court:-

- 1. A Declaration that the Claimant's current rent which was renewed in October, 2020 is still subsisting and may be due for another renewal in October, 2021. To this end, the eviction process of the Claimant commenced by the Defendants while the Claimant's rent is yet to elapse is unlawful and unwarranted.*
- 2. A Declaration that in the absence of any formal written tenancy agreement made between the parties, the tenancy relationship between parties which culminates to this suit would be governed by the provisions of Recovery of Premises Act, CAP S44 Laws of the Federal Capital Territory, 2006 and same must be strictly adhered and observed.*
- 3. A Declaration that upon the interpretation/construction of sections 7 and 8 of the Recovery of Premises Act, CAP S44 Laws of the Federal Capital Territory, 2006, the Claimant is entitled to be issued half a year's Notice to Quit before the subsequent 7 days Notice of Owner's Intention to Recover Possession may be*

issued considering that the Claimant is an annual tenant and its rent is still subsisting.

- 4. A Declaration that the property subject-matter of this suit was owned and managed by the Assets Management Corporation of Nigeria (AMCON) and currently by Oduduwa University Ltd pursuant to the notice of sale dated 11th February, 2021 and issued by the AMCON. To this end, the Defendants, being not the owner of the property, lack the capacity to commence and/or issue eviction process against the Claimant in this name.*
- 5. An Order restraining the Defendants, their agents, privies or any person acting under or via their instructions and/or capacity from interfering with the Claimant's occupation of the office space situate and lying at Suite A8A Patsy (Beta Foundation) Plaza, No. 359 EbituUkiwe Street, Jabi, Abuja, except otherwise determined in accordance with the law.*
- 6. An Order of this Honourable Court restraining the Defendants from holding and parading themselves as the owners and/or managers of the property and consequently harassing the Claimants in that regard, where ostensibly the property is currently owned and managed by Oduduwa University Ltd having purchased same from AMCON.*
- 7. The sum of ~~₦~~5,000,000.00 (Five Million Naira Only) as general damages for unlawful interference with the Claimant's rented property.*
- 8. The sum of ~~₦~~2,000,000.00 (Two Million Naira Only) as the cost of this suit.*

The Originating Summons was supported by a 20-paragraph affidavit deposed to by one Dominick C. Okafor, a Litigation Secretary in the Claimant's office, five exhibits and a written address.

Briefly, the facts as stated in the affidavit in support of the application are as follows: the Claimant/Applicant was a tenant occupying Suite A8A Patsy Plaza now known as Beta Foundation Plaza, had so been since 2019 and had renewed its tenancy in October, 2020. Some time in February, 2021, the Assets Management Company of Nigeria (AMCON), the previous owner of the property sold same to Oduduwa University. Shortly, after the sale, the 1st Defendant who claimed to be the new owner of the property issued a letter to the tenants urging them to renew their tenancy or risk eviction from the property. All efforts to engage the 1st Defendant proved abortive as the 1st Defendant through its Solicitors issued a Seven Days Notice of Owner's Intention to Apply to Court to Recover Possession.

In the written address in support of the Originating Summons, the Claimant adopted the three questions which it formulated for determination, viz:

- 1. Whether while the annual rent of the Claimant is still subsisting (until October, 2021) and upon the interpretation/construction of sections 7 and 8 of the Recovery of Premises Act, CAP S44 Laws of the Federal Capital Territory, 2006, the Claimant is entitled to half a year's Notice to Quit before eviction from the property.*
- 2. Whether having regards to the Claimant's subsisting annual rent in the property and upon the interpretation/construction of sections 7 and 8 of the*

Recovery of Premises Act, CAP S44, Laws of the Federal Capital Territory, 2006, the 7 days Notice of Owner's Intention to Apply to Court to Recover Possession dated 18th March, 2021 and issued by the Defendants is defective and void.

- 3. Whether in the circumstance that the property subject-matter of this suit is now owned by Oduduwa University having purchased same from AMCON who was the previous owner and management thereof, the defendants lack capacity to commence eviction process against the Claimant.*

Arguing Issues One and Two jointly, learned Counsel for the Claimant referred the Court to the averments in the affidavit in support of the Originating Summons and section 8 of the Recovery of Premises Act and contended that the tenancy having not been created by any written instrument, must, therefore, be guided by the operation of the law and, as such, the Claimant was entitled to six-month Notice to Quit. Learned Counsel drew the attention of the Court to the distinction between a fixed tenancy and an annual tenancy. Citing the cases of ***Odunsi & Anor v. Abeke (2002) LPERL-12167 (CA)***, ***Ihenacho v. Uzochukwu (1997) 2 NWLR (Pt. 487) 257, Coker v. Adetayo & Ors (1996) LPELR-879 (SC)***, ***Adejumo v. David Hughes and Company Ltd (1989) LPELR-20454 (CA)*** and ***Amah v. Ozouli (2010) LPELR-3762 (CA)***, learned Counsel urged this Court to resolve these two issues in favour of the Claimant.

On the third issue, Counsel identified owner of the plaza as Oduduwa University Ltd, who purchased same from AMCON and wondered why the Defendants could

hold and parade themselves as the owners of same. Citing the provisions of section 7 of the Recovery of Premises Act, Counsel contended that the Defendants are unknown to the Claimant. According to him, the law is that any of the statutory notices must be issued and served on the tenant by the landlord or his authorized agent.

Furthermore, he contended that Oduduwa University Ltd being the owner of the property, the Defendants who have been delegated to manage the property, could not purport to delegate the power to issue the statutory notices to Williams AbiodunAjayi Esq. of Divine Grace Law Firm without express authorization to that effect by Oduduwa University Ltd on the principle of *delegatus non potest delegare*. He cited the case of ***Omatseye v. FRN (2017) LPELR-42719 (CA)*** and urged this Court to resolve the third issue in favour of the Claimant.

The Defendants filed their joint 50-paragraph Counter-Affidavit which was deposed to by the 2nd Defendant. The Counter-Affidavit was supported by four exhibits, namely: the handover notes from AMCON which contained the list of tenants in the Plaza marked as **Exhibit 1**; a letter dated 15th of February, 2021 to the tenants urging them to regularize and renew their tenancies with the Defendants marked as **Exhibit 2**; receipts of 10 out of 70 tenants who have fully paid their rents marked as **Exhibit 3^{A - E}** and documents of incorporation of Oduduwa University marked as **Exhibit 4**.

After denying certain portions of the affidavit in support of the Originating Summons, the deponent went on to aver that he was the founder and Chancellor of Oduduwa

University, Ipetumodu, Osun State, the largest shareholder thereof, the founder and Chairman, Board of Directors of BETA Foundation Plaza; and that he purchased the plaza formerly known as “Patsy Plaza” from Assets Management Corporation of Nigeria (AMCON) on the 16th of December, 2020 through his university and renamed it “BETA Foundation Plaza” as naming it ‘Oduduwa University Plaza’ could give the impression that the university was operating a satellite campus in Abuja. He further stated that he appointed the 1st Defendant to manage the plaza for himself and the University.

He added that when he studied the hand-over notes, he saw that many of the tenancies, including that of the Claimant whose tenancy ran from 14th of February, 2020 to the 13th of February, 2021, had expired. This, he further averred, could be seen from **Exhibit 1** annexed to the Counter-Affidavit. He confirmed that he issued a Notice of Owner’s Intention to Apply to Recover Possession to the Claimant. In conclusion, he stated that the Defendants were already losing revenue in form of rent which, ordinarily, they would have received if they had rented out the suites the Claimant was occupying.

In the written address in support of the application, learned Counsel for the Defendants formulated three issues for determination. These issues are:-

- 1. Whether from the facts and circumstances of this case, particularly Exhibit 1 attached to the counter-affidavit, the Claimant’s tenancy could be said to be subsisting?*

2. *Whether the 2nd Defendant, being the founder, Chancellor and Chairman, Board of Directors of Oduduwa University cannot in conjunction with the Board of the University appoint the 1st Defendant in as the facility manager to manage their property?*
3. *Whether this suit is not pre-emptive and an abuse of the processes of this Honourable Court to overreach the Defendants?*

In his joint argument on Issues One and Two, Counsel contended that the burden of proof in a civil case was on the party who asserts a fact, more so, in a suit of this nature where the Claimant is seeking declaratory reliefs. Citing the cases of ***Longe v. FBN Plc (2006) 3 NWLR (Pt. 977) 228, Bulet Int'l (Nig.) Ltd & Anor v. Olaniyi & Anor*** and ***Akinbade v. Babatunde (2018) 7 NWLR (Pt. 1618) 366 at 388 paras E-F***, he maintained that the Claimant had not led any credible evidence such as a contractual document to establish that its tenancy ran from October, 2020 to October, 2021. Relying on section 167(d) of the Evidence Act, 2011 and the case of ***People of Lagos State v. Umaru (2014) 7 NWLR (Pt. 1407) 584***, it was the further argument of Counsel that the failure of the Claimant to join Assets Management Corporation of Nigeria (AMCON) to the suit was fatal to its case.

It was the contention of the Defendants that the Claimant's rent expired on the 13th of February, 2021, adding that **Exhibit A** attached to the affidavit in support of the Originating Summons lacked probative value as the maker thereof was not called as a witness. It was on the basis of this fact that learned Counsel further contended

that the Notice of Owner's Intention to Apply to Court to Recover Possession was in substantial compliance with section 7 of the Recovery of Premises Act.

Learned Counsel for the Defendants urged this Honourable Court to discountenance the argument of learned Counsel for the Claimant that Counsel who issued the said Notice lacked authorization to issue same. He described the Claimant as a tenant at sufferance who could be evicted at any time. He also described as misconceived the Claimant's claim that the Defendants lacked the capacity to commence the process of recovery of the premises the subject of this suit. He referred the Court to ***Bocas Nig. Ltd v. Wemabod Estates Ltd (2016) LPELR-40193 (CA) pp. 28 – 29 paras F-B and Abeke v. Odunsi & Anor (2013) LPELR-20640 (SC) p. 26 paras C-F, Gumel & Anor v. Sambo (2014) LPELR-24607 (CA) p. 21 paras A-C, Chevron Nigeria Ltd v. Titan Energy Ltd (2013) LPELR-21202 (CA) p. 49-50, paras F-C, Standard Trust Bank Ltd v. Interdrill Nig. Ltd (2007) All FWLR (Pt. 366) 757 at 771 and Saleh v. Bank of the North Ltd (2006) NWLR (Pt. 976) 316 at 326 – 327.***

On Issue Three, learned Counsel for the Defendants submitted that the present suit was an abuse of Court process because it was meant to overreach the Defendants who had already commenced the legal process of evicting the Claimant from the property. It was his position that the Claimant could have deposed to the facts contained in the affidavit in support of the Originating Summons in its defence at the Chief District Court of the Federal Capital Territory. He relied on the case of ***Africa***

Re-Insurance Corporation v. JDP Construction Nig. Ltd (2003) NWLR (Pt. 838) 609 at 635. He therefore urged this Court to dismiss the suit with substantial cost.

Both parties filed further affidavits in support of their affidavit and counter-affidavit respectively. Summarily, the facts as contained in the Claimant's further affidavit are that the property in dispute was purchased by Oduduwa University Ltd and not Beta Foundation Ltd; that if there was a need to rename the plaza, then it had to be with the approval of the Governing Council of the University evinced in a resolution to that effect; that the Claimant's rent commenced on the 14th of October; that KachiOkpara & Co had been the estate and facility managers appointed by AMCON to manage the property and it was to them that payments were made; that the Defendants rebuffed all efforts by the Claimant to meet with the Defendants over the management of the property and that the Claimant's quiet enjoyment of the property had been breached by the Defendants.

In the written address in support of the further affidavit, learned Counsel for the Claimant raised four issues for determination, to wit:-

- 1. Whether the Claimant has discharged the evidential burden of proof that her rent is still subsisting and will expire on the 14th October, 2021;*
- 2. Whether the non-joinder of AMCON in this suit is fatal and implies withholding of evidence against the Claimant under section 167 of the Evidence Act, 2011;*
- 3. On whether the Defendants have the legal capacity to commence eviction process against the Claimant; and*

4. *Whether the instant suit constitutes abuse of judicial process.*

On the first issue, learned Counsel conceded that while it is true that the burden of proof is on the party who asserts the existence of a fact and that a Claimant who seeks declaratory reliefs must rely on the strength of his cases and not on the weakness of the case of the Defendants, he submitted that this burden of proof is not static but swings from one party to the other according to their pleadings. To this end, he contended that the Claimant has established that it is an annual tenant of AMCON, having entered into a *viva voce* agreement with AMCON through KachiOkpara & Co in 2019, which rent was renewed on October, 2020. He asserted that the Defendants failed to discredit this evidence adduced by the Claimant. He relied on ***Buhari v. ANPP (2005) Vol. 8 MJSC; Mario Jose Enterprises Ltd & Anor v. Dangado (2021) LPELR-53215 (CA)*** and ***Nsa&Ors v. Enene&Ors (2015) LPELR-40271*** among other authorities in support of this Issue.

On the second Issue, learned Counsel submitted that **Exhibit 1** attached to the Counter-Affidavit upon which the Defendants placed reliance had no probative value. He insisted that the Defendants misconceived the position of the law on this subject. He referred the Court to ***Dantsoho v. Mohammed (2003) 6 NWLR (Pt. 817) 457; PDP v. Ntuen&Ors (2021) LPELR-53307 (CA)*** and other cases and concluded that AMCON had no interest in the subject matter of the suit as the suit would not confer any interest on AMCON and, as a result, AMCON would not be affected by the outcome of the suit.

On whether **Exhibit A** relied on by the Claimant has any probative value, Counsel referred the Court to section 83(1) and (4) of the Evidence Act, 2011 and the case of ***Irimagha v. Brown & Ors (2018) LPELR-44623 (CA)*** and submitted that the Claimant has satisfied the requirements stipulated therein. He also added that section 167 (d) of the Evidence Act, 2011 was inapplicable to the case as there was no tenancy agreement between the Claimant and AMCON.

On the third issue, learned Counsel submitted that Oduduwa University Ltd is the owner of the property the subject of this suit. He invited the Court to take note of the fact that the claim that the Oduduwa University appointed the 1st Defendant was made without any proof of the said appointment or resolution. He referred the Court to ***Maihaja v. Gaidam (2017) LPELR-42474 (SC)*** and ***Agbabiaka v. First Bank (2019) LPELR-48125 (SC)*** and urged the Court to discountenance the argument of the Defendants on this issue.

On the last Issue, Counsel argued that the Defendants have yet to file any suit before any Court against the Claimant to justify the description of the present suit as an abuse of Court process. Referring to the cases of ***Ojo & Ors v. Olawore & Ors (2008) LPELR-2379 (SC)***, ***Scheep & Anor v. The MV "S.Araz" & Anor (2000) LPELR-1866 (SC)*** and ***NJC v. Agumagu & Ors (2015) LPELR-24503 (CA)***, Counsel submitted that the suit of the Claimant was neither instituted in bad faith nor did it constitute a multiplicity of suits. Reminding the Court that the present suit sought the interpretation of certain provisions of the Recovery of Premises Act, Counsel urged the Court to resolve the questions in favour of the Claimant.

I have taken the time to review the facts and arguments of the parties in this suit so as to situate the Judgment within its appropriate context. The issues which the parties have formulated for the resolution of this dispute are similar, though not identical. I shall modify them as follows:-

- 1. Whether the tenancy of the Claimant is not subsisting at the time the Defendants commenced the process of recovery of the premises the subject of this suit?***
- 2. Whether the Defendants have not complied with the provisions of the Recovery of Premises Act regarding the process of recovery of premises?***
- 3. Whether the suit of the Claimant is not an abuse of Court process?***

On Issue One, the Claimant and the Defendants have adduced conflicting evidence on this question. The Claimant in paragraph 5 of the affidavit in support of the Originating Summons and paragraph 9 of its Further Affidavit claimed that its current tenancy commenced on 14th of October, 2020 and would end on the 13th of October, 2021. In proof of this assertion, it attached **Exhibit A** to the affidavit in support of the Originating Summons. **Exhibit A** is the receipt of payment for rent and service charge issued by KachiOkpara & Co. on the 14th of October, 2020 and executed by both the Manager of KachiOkpara & Co. and Arthur Ndiwe of the Claimant. The Defendants, on the other hand, insisted in paragraphs 10, 11, 12, 25, 28, 32, 42 and 44 of their Counter-Affidavit and paragraph 6 of the Further Counter-

Affidavit that based on **Exhibit 1**, the Claimant has been in arrears of rent since the 13th of February, 2021 when its tenancy expired.

On the other hand, the Defendants in their joint further counter-affidavit averred that the Claimant lacked the capacity to challenge the title of the Defendants since it is not a member of the Board of Directors of Oduduwa University or a shareholder therein. They also asserted that the 1st Defendant was, indeed, authorized by the management of Oduduwa University to manage the property. In support of these depositions, the Defendants attached two exhibits, namely Confirmation of Acknowledgement of the Handover Note marked as **Exhibit 6** and the Letter of Appointment by the Management of Oduduwa University marked as **Exhibit 7**.

Section 8(3) of the Recovery of Premises Act stipulates the principle that will guide the Court in determining the commencement date of a tenancy. The said subsection provides that “***The nature of a tenancy shall, in the absence of any evidence to the contrary, be determined by reference to the time when the rent is paid or demanded.***” The Courts have given effect to this statutory provision in a number of cases. For instance, in ***Obijiaku v. Offiah (1995) 7 NWLR (Pt. 409) 510 SC at p. 519, paras D-G***, the Supreme Court, in construing corresponding provision in the Anambra State Recovery of Premises Law, held that “***By virtue of Section 8(1) and (2) of the Recovery of Premises Law, the time when rent is paid and received is determinant of the nature of the tenancy.***”

To prove that its tenancy commences on the 14th of October of each year, the Claimant exhibited the receipt of payment of rent and service charge for the rental

period 2020/2021. The receipt of payment was issued on the 14th of October, 2020. This the Claimant marked as **Exhibit A**. Having asserted a fact, and led evidence in proof of same, the burden of proof logically shifts to the Defendants to adduce contrary evidence, if they have any. This they did when they attached **Exhibit 1**. This document is titled “Physical Handover of Property at Plot 359 EbituUkiwe Street, Jabi District FCT Abuja (Patsy Plaza)”. Attached to this letter is a schedule of tenants occupying the property. The Claimant is found at serial number 57. From the entry therein, the Claimant’s tenancy commenced on the 14th of February, 2020 and ended on 13th of February, 2021. From the entries, the rent *per annum* is ~~N~~405,000.00 while the service charge *per annum* is ~~N~~67,500.00. The entries in red ink are for ‘amount due current and previous rent’ and ‘outstanding rent’ while the entries in green were for amount received.

For the Claimant’s row, ~~N~~405,000.00 was entered under the column for ‘amount due current and previous rent’, the same ~~N~~405,000.00 was entered under one of the columns for ‘amount received’ and ~~N~~128,000.00 under another column for ‘amount received’. The entries, and I am being charitable here, lack coherence, and, certainly, do not establish that the Claimant is in arrears of rent as the Defendants claim. This Court cannot rely on this document to determine the commencement and terminal dates of the tenancy. Further to this, **Exhibit F**, that is, the Seven Days Notice of Owner’s Intention to Apply to Recover Possession, attached to the affidavit in support of the application proclaims 31st December, 2020 as the terminal date of the tenancy. Interestingly, the Defendants did not exhibit this

particular document whose content, most spectacularly, is at variance with their **Exhibit 1**.

In view of this manifest contradiction, therefore, I have no hesitation in discountenancing the two exhibits in so far as they touch on the commencement and terminal dates of the tenancy. Conversely, I accord high probative value to **Exhibit A** attached to the Claimant's affidavit in support of the Originating Summons. To this end, therefore, I find that the commencement date of the Claimant's current tenancy was 14th of October, 2020. The tenancy, was therefore, subsisting when the Defendants took the steps they took in evicting the Claimant from the property. I hereby resolve Issue One in favour of the Claimant.

On Issue Two, that is, "*Whether the Defendants have not complied with the provisions of the Recovery of Premises Act regarding the process of recovery of premises?*", it bears stating at the very beginning that having found that the Claimant's tenancy is still subsisting as at the time the Defendants embarked on the process of recovery of premises, the Claimant, in the absence of a tenancy agreement to the contrary, was entitled to the length of notice to quit stipulated in the Recovery of Premises Act. This observation is necessary because the length of notice to quit issued to the Claimant would have been different if the Claimant's tenancy had come to an end. Depending on whether the nature of the tenancy was fixed tenancy or periodic tenancy, and whether the nature of the holding over made the Claimant a statutory tenant or a tenant at will, the length of the notice to quit would have varied.

Section 8(1) of the Recovery of Premises Act provides thus:

“Where there is no express stipulation as to the notice to be given by either party to determine the tenancy, the following periods of time shall be given –

(a) In the case of a tenancy at will or a weekly tenancy, a week’s notice;

(b) In the case of a monthly tenancy, a month’s notice;

(c) In the case of a quarterly tenancy, a quarter’s notice;

(d) Subject to subsection (2) of this section, in the case of a yearly tenancy, half a year’s notice.”

The question, then, is: what is the nature of the tenancy of the Claimant? The Claimant in paragraph 5 of the affidavit in support of the Originating Summons averred that *“The Claimant was an annual tenant of the Assets Management Corporation of Nigeria (AMCON) when it rented the property subject-matter of this suit sometime in October, 2019. Subsequently, in October, 2020, the current rent was renewed and will be due for another renewal in October, 2021.”* **Exhibit A** was annexed in proof of this averment.

The Defendants, in their joint counter-affidavit, averred in paragraph 10 that *“...among the tenants whose tenancies has (sic) expired is the Claimant, whose tenancy ran between 14th of February, 2020 to the 13th of February, 2021.”* Though differing in the details relating to the commencement and termination dates of the tenancy, both averments are agreed that the Claimant was an annual tenant. The

Claimant is not only an annual tenant; he is also an annual tenant in a periodic tenancy.

Upon this Court's finding in Issue One that the Claimant's tenancy was still running at the time it was served with the Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession, the Claimant was entitled to six-month notice to quit. Upon the service of the notice to quit, the next step the law envisages where the tenant refuses, fails or neglects to deliver vacant possession of the premises is the service of the Seven Days Notice of Owner's Intention to Apply to Court to Recover Possession. These statutory notices must be served on the tenant before a summons can be issued from the Court vested with jurisdiction. The Court was quite definitive when it held in *D.M.V. (Nig.) Ltd. v. N.P.A (2019) 1 NWLR (Pt. 1652) 163 at pp. 184, para. A; 185, paras. C, F-G; 186, paras. E-F* that "***A landlord is entitled to recover his premises from a tenant after due compliance with the requirement of giving adequate notice to the tenant for that purpose...***"

In *Chaka v. Messrs Aerobell (Nig) Ltd (2012) 12 NWLR (Pt 1314) 296*, the Court of Appeal reinforced the statutory provisions relating to the length of notice that can be given to a tenant. Speaking at *p. 319, paras. B-E*, the Court held that "**where there was no express stipulation as to the notice to be given by either party to determine a tenancy, the following period of time was required to be given: In the case of a tenancy at will or a weekly tenancy, a week's notice; In the case of a monthly tenancy, a month's notice; In the case of a quarterly tenancy, a**

quarter's notice; and in the case of a yearly tenancy, half a year notice. In *African Petroleum Limited v. Owodunni (1991) 8 NWLR (Pt 210) 391 at Pp.414-415, paras.D-F* the Supreme Court held that ***"A notice of six months is necessary to determine a yearly tenancy and such notice must terminate the tenancy at the end of the current term of tenancy. So any notice given and due to end at the middle of the term will be invalid."*** See also *Abdulaziz v. Garba (2021) 3 NWLR (Pt. 1764) 379 at p. 394, para. D* where the Court held that ***"In a tenancy relationship, the nature of the tenancy determines the length of notice to be given before the Landlord can apply for the recovery of the demised premises."***

Besides, there is the issue of the proper person to issue the statutory notices in a recovery of premises proceeding. It is settled that, tenancy relationships being a form a contract, only the landlord, or his agent authorized in that regard in writing, can issue the statutory notices to commence proceeding for recovery of premises. Section 7 of the Recovery of Premises Act provides that,

"When and so soon as the term of interest of the tenant of any premises held by him at will or for any term either with or without being liable to the payment of any rent, ends or is duly determined by a written notice to quit as in Form B, C or D whichever is applicable to the case, or is otherwise duly determined, and the tenant, or, if the tenant does not actually occupy the premises or only occupies a part thereof, a person by whom the premises or any

part thereof is actually occupied, neglects or refuses to quit and deliver up possession of the premises or of any part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served, in the manner hereinafter mentioned, with a written notice as in Form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice."

Section 2 of the same Act defines an agent as "***any person usually employed by the landlord in the letting of the premises or in the collection of the rent thereof or specially authorized to act in a particular manner by writing under the hand of the landlord.***" A community reading of the above provisions will show that issuing of the statutory notices and initiation of legal proceedings for the recovery of premises are removed from the quotidian assignments of '*letting out the premises and the collection or rent thereof*'; as such come within the specialized realm of particular tasks for which special authorization in writing is required. See ***Ayiwoh v. Akorede (1951) 20 NLR 5; Coker v. Adetayo (1992) 6 NWLR (Pt. 249) 612.*** Specifically, in ***Coker v. Adetayo (1992) supra at p. 625 paras. C - D,*** the Court of Appeal held that "***The law is that a Letter of instruction by a landlord instructing a solicitor to recover possession of premises on the landlord's behalf must be issued before the notice to quit is issued by the solicitor otherwise, the solicitor has no authority to act. Any notice to quit or***

notice of intention to apply to recover possession issued by any such solicitor before the Letter of instruction is null and void and of no effect.”

Similarly, the Court of Appeal in *Ayinke Stores Ltd. v. Adebogun (2008) 10 NWLR (Pt. 1096) 612 at p. 629, paras. D; F-G* held that “*In an action for recovery of premises, the landlord has to prove that he gave authority to counsel to act on his behalf...*” I have carefully perused the contents of this file and I cannot find any letter authorizing the solicitor to issue any of the statutory notices.

The facts disclosed in the affidavits before me and the exhibits attached thereto establish that Oduduwa University Limited purchased the property known as Patsy Plaza or Beta Foundation Plaza the subject matter of this suit from AMCON. See paragraph 13 and 17 of the affidavit in support of the Originating Summons, **Exhibits B and C** annexed thereto, paragraphs 6, 11, 13, 28, and 34 of the Counter-Affidavit, **Exhibits 1 and 2** attached thereto, paragraphs 4 and 5 of the Claimant’s Further Affidavit, and paragraph 8 of the Defendants’ Further Counter-Affidavit. The Claimant, therefore, became the tenant of Oduduwa University Ltd after Oduduwa University Ltd purchased the property from AMCON. The Defendants, in view of this contractual relationship between the Claimant and Oduduwa University Ltd, lack the legal standing, or *locus standi*, to institute the process of recovery of premises against the Claimant. This is notwithstanding the fact the 2nd Defendant, as evinced in **Exhibit 4** attached to the Counter-Affidavit, is the majority shareholder of Oduduwa University Ltd and the *de facto* owner. The

concept of corporate personality makes a corporate entity a legal personality distinct from its promoters, shareholders, directors or officers. See ***Bulet International Nigeria Limited & Anor v. Dr. Mrs. Omonike Olaniyi & Anor (2017) LPELR-42475(SC)*** where the Supreme Court per Kekere-Ekun, JSCat pp. 39-40, paras. F-D held *inter alia* that

“The concept of corporate personality was established a long time ago in the case of Salomon Vs Salomon & Company Ltd. (1897) AC 22 to the effect that a company is a legal entity distinct from its members. It has a distinct legal personality and is capable of suing and being sued in its corporate name. A company is a different person altogether from the subscribers to the memorandum and is neither an agent nor trustee for them. It also has the capacity to enter into any agreement in its corporate name. See: Marina Nominees Ltd. V. F.B.I.R. (1986) NWLR (Pt.20) 48; Afolabi & Ors. V. Western Steel Works Ltd. & Ors. (2012) 17 NWLR (Pt.1329) 286. See also Section 37 & 38 of the CAMA. A subsidiary company has its own separate legal personality. In general, the acts of a subsidiary company cannot be imputed to the parent company and vice versa. See: Union Beverages Ltd. V. Pepsi Cola International Ltd. & Ors.”

The Supreme Court re-echoed this trite law when it held in ***I.T.B. Plc v. Okoye (2021) 11 NWLR (Pt. 1786) 163 at p. 193, paras. A-C*** that ***“A limited liability company is a distinct legal personality that can sue and be sued in its own***

name. It is a separate legal entity from the subscribers to its Memorandum and Articles of Association. It is an artificial person although it can only act through its human agents and officers... [Trenco (Nig.) Ltd. v. A.R.E.I. Co. Ltd. (1978) 4 SC 9; Marina Nominees Ltd. v. FIRS (1986) 2 NWLR (Pt. 20) 48; Bulet International (Nig.) Ltd. v. Olaniyi (2017) 17 NWLR (Pt. 1594) 260 referred to.]”.

Exhibit B attached to the affidavit in support of the Originating Summons and **Exhibit 2** attached to the Counter-Affidavit merely appoints Beta Foundation Ltd as managers – or agents of the landlord, that is, Oduduwa University Ltd, in the words of section 2 of the Act – of the property for ‘*the letting of the premises or in the collection of the rent thereof*’. These exhibits did not purport to appoint Beta Foundation Ltd to issue the statutory notices and to initiate the proceedings for recovery of premises. In so far as the Claimant’s occupation of the premises is concerned, there is no privity of contract between the Claimant and the Defendants. In other words, in so far as the tenancy relationship between the Claimant and Oduduwa University Ltd is concerned, the Defendants are unknown to the Claimant. They, therefore, lack the *locusstandi* to initiate recovery of premises proceeding against the Claimant.

The same can be said of the solicitor who issued **Exhibit F** attached to the affidavit in support of the Originating Summons. **Exhibit F**, written on the letterhead of ‘Divine Grace Law Office’ and signed by Abiodun Williams, is the Seven Days Notice of Owner’s Intention to Apply to Court to Recover Possession. Since there is no evidence before this Court that the said Abiodun Williams was appointed qua

solicitor to issue the statutory notices, this Court will rely on paragraph 8 of the Further Counter-Affidavit and treat Abiodun Williams as a Solicitor acting qua agent in relation to the property the subject of this suit. In that case, the landlord ought to have authorized the said Abiodun Williams in writing to issue the statutory notices. This was not done.

After a circumspective examination of the affidavits and exhibits before this Court, I find that the Defendants did not comply with the statutory requirement of service of the notice to quit on the Claimant before they served him with the Seven Days Notice of Owner's Intention to Apply to Court to Recover Possession. This is a fundamental oversight which struck at the root of the entire procedure undertaken by the Defendants. In view of the preceding authorities already highlighted above, it is my considered view, and I so hold, that the Defendants did not comply with the mandatory requirements of the Recovery of Premises Act prior to the service of the Seven Days Notice of Owner's Intention to Apply to Court to Recover Possession. To this end, therefore, I hereby resolved, against the Defendants, the second Issue I have formulated.

On the last Issue, that is, whether the suit of the Claimant is not an abuse of Court process, I must take cognizance of the legal arguments of the learned Counsel for the Defendants that the province of what constitutes an abuse of Court is not closed. It is the argument of the Defendants that the present suit of the Claimant is an abuse of Court process because this suit, according to the Defendants, is pre-emptive; and that if the Claimant believes it has a defence to the recovery of

premises, it should have waited till the summons from the District Court is served on it to present whatever defence it has to the action of the Defendants. The Claimant, on the other hand, contends that the suit is not an abuse of court process, as there is no pending suit that would have made its suit to amount to a multiplicity of action.

I have carefully studied the authority cited and relied upon by learned Counsel for the Defendants and I am constrained to hold that it did not envisaged the nature of the Claimant's cause of action. ***Africa Re-Insurance Corporation v. JDP Construction Nig. Ltd (2003) supra*** defines an abuse of court process as “***abuse of legal procedure or improper use of legal process.***” In ***Ojo&Ors v. Olawore&Ors (2008) supra***, cited by Counsel for the Claimant in the Claimant's reply on point of law, the Supreme Court held that “***...the abuse of Court process or abuse of judicial process as the case may be, may be manifest in both a proper or improper use of the judicial process in litigation. However, the employment or use of judicial process is only regarded generally as an abuse when a party improperly uses the issue of judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice...***”

In the Supreme Court case of ***Igoin v. Ajoko (2021) 17 NWLR (Pt 1804) 90 at 106, paras B – C***, the apex Court per Abdu Aboki, JSC held that “***abuse of process of the court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. Abuse of process can also mean abuse of legal procedure or***

improper use of legal process.”The Supreme Court elaborated on this concept in the case of *Optimum C.& P. Dev. Ltd. v. Ake Shareholdings Ltd. (2021) 18 NWLR (Pt. 1807) 148 at p. 179, paras. A-E*. The apex Court per Agim, JSC quoted with approval the following dictum of the erudite Oputa, JSC in *Amaefule & Anor. v. The State (1988) LPELR - 450 (SC); (1988) 2 NWLR (Pt. 75) 156* where the eminent jurist held thus: “*Abuse of process of court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. Abuse of process can also mean abuse of legal procedure or improper use of legal process. The term has an element of malice in it. Thus, it has to be a malicious perversion of a regularly issued process, civil or criminal, for a purpose and to obtain a result not lawfully warranted or properly attainable thereby.*”

In the present case, the Defendants’ actions and conduct put the Claimant in reasonable apprehension that its defenestration from the suites it was occupying was imminent. **Exhibit B** attached to the affidavit in support of the Originating Summons is a letter from the 1st Defendant to the Claimant dated 15th February, 2021. Part of it read: “*If you desire to retain the shops/suite that you are presently occupying, kindly take a new tenancy agreement from the Beta Foundation Ltd Management Office within seven days and submit same... Note: if we don’t hear from you after 7 days, we would assume that you do not need (the) suite again and we would proceed to let out the space.*” **Exhibit E** is another letter from the 1st Defendant to each of the tenants in the property. It is dated 19th February, 2021.

Part of it read: *“We prefer to have our own (un-inherited) tenants, hence we asked you to apply as our tenants, if you wish to...I advise you to legalise your stay with us or quit as your prolonged stay will obviously lead to legal tangle and we would claim damages.”*

The belligerence the tone of the letters exuded was enough to put the Claimant, and, indeed, any reasonable person in apprehension as to its right to continue to occupy the premises it has been occupying. Furthermore, declaring the advertisement by AMCON putting up the property for sale as a valid notice to quit is nothing less than mischievous. It is even appalling that a solicitor in the Seven Days Notice of Owner’s Intention to Apply to Court to Recover Possession served on the Claimant could refer to same as a valid notice to quit. This is illegality taken too far. The Claimant is therefore right in approaching the Court for redress. Accordingly, I resolve the third Issue herein in favour of the Claimant. The present suit of the Claimant is not an abuse of court process. I so hold.

Having resolved the issues in favour of the Claimant, I hereby answer the three questions formulated for determination in this suit in the affirmative. Accordingly, all the reliefs sought by the Claimant are hereby granted with the following modifications as follows:-

- 1. THAT the Claimant’s rent which was renewed in October, 2020 was still subsisting at the time this suit was instituted and would terminate in October, 2021.**

- 2. THAT in the absence of any formal written tenancy agreement made between the parties, the tenancy relationship between the parties which culminated to this suit is governed by the provisions of the Recovery of Premises Act, CAP S44 Laws of the Federal Capital Territory, 2006.**
- 3. THAT upon the interpretation/construction of sections 7 and 8 of the Recovery of Premises Act, CAP S44 Laws of the Federal Capital Territory, 2006, the Claimant as an annual tenant is entitled to be issued half a year's Notice to Quit before the subsequent Seven Days' Notice of Owner's Intention to Apply to Court to Recover Possession may be issued.**
- 4. THAT the Defendants, not being the owners of the property the subject matter of this suit, lacks the *locus standi* to commence any legal process for the recovery of the premises occupied by the Claimant as the property which is the subject-matter of this suit was owned and managed by the Assets Management Corporation of Nigeria (AMCON) before its transfer through sale to Oduduwa University Ltd who are the current owners.**
- 5. THAT the process of recovery of the premises the Claimant is occupying commenced by the Defendants while the Claimant's rent is yet to elapsed is unlawful and unwarranted.**
- 6. THAT an Order of this Honourable Court is hereby made restraining the Defendants, their agents, privies or any person acting under or via their instructions and/or capacity from interfering with the Claimant's**

occupation of the office space situate and lying at Suite A8A Patsy Plaza, also known as Beta Foundation Plaza, No. 359 EbituUkiwe Street, Jabi, Abuja, except otherwise determined in accordance with the law.

7. THAT an Order of this Honourable Court is hereby made restraining the Defendants from holding and parading themselves as the owners and/or agents of the owner of the property and consequently harassing the Claimants in that regard.
8. THAT the sum of ₦1,000,000.00 (One Million Naira Only) is hereby awarded against the Defendants and in favour of the Claimant as general damages for unlawful interference with the Claimant's right of undisturbed enjoyment and quiet possession of the rented property.
9. THAT the sum of ₦1,000,000.00 (One Million Naira Only) is hereby awarded to the Claimant and against the Defendants as the cost of this suit.

This is the Judgment of this Honourable Court delivered today, the 29th of March, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
29/03/2022

APPEARANCE

For the Claimant:
C. M. Umesie Esq.

For the Defendants:

**Williams A. AjayiEsq.
C. A. MbanusiEsq.**