

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT APO, ABUJA**

ON WEDNESDAY, 7TH DAY OF JULY, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/0165/2017

BETWEEN

**SYSTEM PROPERTY DEVELOPMENT
CONSORTIUM LTD.**

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}

CLAIMANT

AND

PRINCE ABDULMALIK ADO IBRAHIM

--- DEFENDANT

JUDGMENT

This suit was instituted by the claimant on 16/11/2017 vide writ of summons. The claimant filed its amended statement of claim on 14/1/2020 wherein it claimed the following reliefs:

1. Reversion of possession of the property situate on Plot 178, described as House No. 33, Ahmed Musa Crescent, Jabi, Abuja.
2. The claimant claims rent arrears from the defendant being the sum of N11,738,430.00 [eleven million, seven hundred and thirty eight thousand, four hundred and thirty Naira] after deduction of N2,261,570.00 being

only a month and three weeks rent against the N14,000,000.00 rent money for the year dated 11th December, 2014 which got determined by effluxion of time on 10th December, 2015.

3. The claimant claims damages for use and occupation of the said property by the defendant which commenced on 11th December, 2015 to 1st April, 2016 to the tune of N4,375,000.5 [four million, three hundred and seventy five thousand Naira, five Kobo] for the period of three [3] months and three weeks the defendant has been holding-over the said property in dispute before he was served the requisite notice to quit.
4. The claimant claims *mesne profit* which commenced on 2nd April, 2016 to when possession reverse [*sic*] to the claimant at yearly rent of N14,000,000.00 [fourteen million Naira] and at monthly rent money of N1,166,666.7k [one million, six hundred and sixty six thousand, six hundred and six Naira, seven Koko] as well as at weekly rent money of N291,666.68k [two hundred and ninety one thousand, six hundred and sixty six Naira, sixty eight Kobo].
5. The claimant claims exemplary damages to the tune of N290,000,000.00 [two hundred and ninety million Naira] only for the defendant's unreasonably withholding the premises described as House No. 33 Ahmed Musa Crescent, Jabi, Abuja an action that made the claimant to eventually lose out in the sale transaction entered into with the purchaser that had already made part payment on the said property to

the claimant to the tune of N150,000,000.00 out of N290,000,000.00 being the agreed sale price.

6. The claimant claims specific damages to the tune of N2,700,000.00 [two million, seven hundred thousand Naira] incurred by the claimant in the course of prosecuting this action.

At the trial, AwolusiAyodeji testified as PW1. On 3/12/2019, PW1 adopted his statement on oath filed 22/3/2019; and on 7/7/2020, he adopted another statement on oath filed on 14/1/2020. He tendered Exhibits 1, 2, 3, 4A-4O, 5, 6, 7, 8, 9, 10A, 10B, 11 & 12. During cross examination of PW1, the defence counsel tendered Exhibits 13, 14, 15 & 16 through him.

The defendant filed his statement of defence on 8/2/2019. On 30/11/2020, the defence counsel informed the Court that the defendant does not intend to call any witness.

EVIDENCE OF THE CLAIMANT:

The evidence of PW1 is that he is the facility manager of System Property Development & Realty Ltd. and System Properties Facilities Management Ltd., subsidiary companies of the claimant. The claimant's counsel was issued a letter of instruction by the claimant dated 18/3/2016. The defendant was a tenant in the claimant's property described as Plot 178, House No. 33 situate at Ahmed Musa Crescent, Jabi, Abuja under an agreement of "a year term

tenancy” as spelt out under the terms and conditions in Re-Offer To Let Letter dated 28/10/2014. Before the defendant took possession of the said property, he was a yearly tenant in another property described as Plot 179, House No. 31, Ahmed Musa Crescent, Jabi, Abuja belonging to the claimant.

The said Re-Offer To Let Letter has attached to it details of the defendant’s monetary transactions on rent and other charges on services rendered to him when he was in occupation of the said House No. 31. The defendant vacated House No. 31 and moved into the said House No. 33 with a residue of rent of N1,350,000.00. After 7 months of verbal request for the defendant to pay his rent to no avail, the claimant served a Re-Demand For Payment of Rent Notice dated 31/7/2015 on the defendant. The sums of money which the defendant paid to the claimant in respect of House No. 33 as at 19/10/2015 stood at N4,350,000 from which the following sums were deducted as reflected in the Re: Offer to Let Letter and Re-Demand for Payment of Rent Notice: [i] 5% agency fee of N700,000.00; [ii] 7,579 litres of diesel supplied at N170.00 per litre which translates to N1,288.430; and N100,000 being the 5 months’ salary of the gardener at N20,000 a month.

After the above deductions, the defendant’s actual rent paid to the claimant stood at N2,261,570, which was just adequate to pay for a month and 3 week’s rent. The rent for a month in the property is N1,666,666.7 while the rent for a week is N291,666.68 at N14,000,000 per year. The claimant waited to no avail during the subsistence of the agreed one year rent period for the

defendant to pay the outstanding balance of N11,738,430.00 before issuing a tenancy agreement to him. His failure to pay the said balance of the rent hindered the issuance of a tenancy agreement to the defendant.

PW1 further testified that a sale notice dated 19/1/2016 was served on the defendant to the effect that the property he is occupying has been sold and the purchaser wanted to take vacant possession. Later, when the facts of the transaction were made available to the claimant's counsel and after perusal of documents involved, he said what transpired was a contract in *es-crow* between the claimant and the purchaser because only part payment of N150 million had been made by the purchaser out of the agreed purchase price of N290 million with an outstanding balance of N140 million. Part of the terms of the sale agreement dated 18/12/2015 with the intended purchaser of the said House No. 33 was that the claimant [seller] will only deliver possession to the purchaser upon the purchaser's completion of balance of payment.

The claimant could not "*hold his own part of the bargain due to the defendant unreasonably withholding possession*" whilst the purchaser had shown readiness and willingness to complete the balance of the sale price of N140 million. This caused the claimant to loss N290 million on the said property. The claimant introduced another property described as House No. 16, Ali Baba Crescent, Jabi by a letter dated 1/8/2016. The said property had the same market value of N290 million with House No. 33 Ahmed Musa Crescent Jabi, Abuja. The purchaser opted to buy that property in place of the said House No. 33 due

to the defendant's unreasonable refusal to vacate. Hence, the equitable right that passed to the purchase on the said House No. 33 reverted to the claimant on 25/8/2016 being the day the purchaser completed payment on House No. 16, Ali Baba Crescent Jabi, Abuja.

The further evidence of Awolusi Ayodeji is that with the above development, the Ruling delivered on 24/10/2017 by this Court in *Suit CV/1779/16* where the suit was struck out "*has turned out to be an academic exercise*" because by the date the Ruling was delivered, the equitable and legal rights on House No. 33 Ahmed Musa Crescent Jabi, Abuja "*had long reversed back to the claimant*". Since the expiration of the one-year rent on 10/12/2015, the defendant "*had been holding-over the property in question to date as a tenant at will consequently a tenant at sufferance*".

Although 7 days' notice of owner's intention to proceed to recover possession would have been the most appropriate notice to serve the defendant "*but in order for the claimant to err on the path of abundance a 7 days quit notice*" dated 1/4/2016 was served on him by pasting on the same date. The notice expired on 8/4/2016. The defendant was served 7 days' notice of owner's intention to proceed to recover possession on 18/4/2016, which expired on 24/4/2016. The 2 receipts dated 24/3/2016 and 26/3/2016 are for payment of the total sum of N2,700,000 made by the claimant to its counsel in furtherance of prosecuting this action. PW1 tendered the following documents:

1. Letters dated 28/10/2014, 31/7/2015 and 19/1/2016 from System Property Development & Realty Ltd. to defendant: Exhibits 1, 2, & 3 respectively.
2. 15 manager's cheques: Exhibits 4A-4O respectively.
3. Sale Agreement dated 18/12/2015 between the claimant and Mrs. Margaret Benson Idahosa: Exhibit 5.
4. Notice to Quit dated 1/4/2016 and the attached documents: Exhibit 6.
5. Owner's Intention to Recover Possession dated 18/4/2016 addressed to the defendant and the attached documents: Exhibit 7.
6. Statement of account in the name of SYS Properties FAC Mgt. Ltd.: Exhibit 8.
7. Letter dated 18/3/2016 from System Property Development & Realty Ltd. to the Principal Partner, SIM Abarshi Legal Services: Exhibit 9.
8. Receipts dated 24/3/2016 and 26/3/2016 issued by SIM Abarshi Legal Services: Exhibits 10A & 10B respectively.
9. Letter dated 1/8/2016 from System Property Development & Realty Ltd. to Mrs. Margaret Benson Idahosa: Exhibit 11; the attached cheques: Exhibit 12.

During cross examination of PW1, he said the letter [Exhibit 1] established the relationship between claimant and defendant. System Property Development and Realty Ltd. manages the property known as House No. 33 Ahmed Musa

Crescent, Jabi, Abuja; but he does not know the owner of the property. Before this case was filed, the claimant had filed 2 other cases against the defendant on the same subject matter; one of them is *Suit No. CV/1779/2016*. The letter of instruction [Exhibit 9] was given to I. S. M. Abarshi by System Property Development and Realty Ltd. The first offer of the property to the defendant was for 2 years but subsequent renewal made him a yearly tenant.

The documents tendered by the defence counsel through PW1 are:

1. Writ of Summons in *Suit No. CV/1779/2016* and the attached documents: Exhibit 13.
2. Motion No. *M/6245/2017* filed on 8/5/2017 in *Suit No. CV/1779/2016*: Exhibit 14.
3. Notice of preliminary objection with Motion No. *M/9202/16* filed on 26/7/2016 in *Suit No. CV/1779/2016*: Exhibit 15.
4. Ruling of *His Lordship, Hon. Justice O. O. Goodluck, J. [as he then was]* delivered on 24/10/2017 in *Suit No. CV/1779/2016*: Exhibit 16.

ISSUES FOR DETERMINATION:

At the end of the trial, I. S. M. Abarshi Esq. filed the claimant's final address on 24/3/2021. C. U. Onyeukwu Esq. filed the defendant's final address on 1/4/2021. On 21/6/2021, the counsel for the parties adopted their respective final addresses.

I. S. M. AbarshiEsq., learned counsel for the claimant, formulated these three issues for determination:

1. Whether the relationship between System Property Development and Realty Ltd. that instructed the counsel to prosecute the matter and System Property Development Consortium Ltd., the claimant in this matter, is that of agent and his principal.
2. Whether *Suit No. CV/0165/17* is an abuse of court process being the later in time to *Suit No. CV/1776/16*.
3. Whether by defendant abandoning his defence after cross examining CW1 by conduct he has rested his case on claimant's case.

On the other hand, C. U. OnyeukwuEsq., learned counsel for the defendant, posed two issues for determination. These are:

1. Whether this suit does not amount to an abuse of process of this Honourable Court considering the decision of this Court in *Suit No. FCT/HC/CV/1779/2016* [Exhibit 16] AND whether this Honourable Court can sit on appeal over the decision of his Learned Brother, my Lord, *Honourable Justice O. O. Goodluck*, a Court of Coordinate Jurisdiction.
2. Whether by the evidence led in this matter, the claimant has proved that he *[sic]* is entitled to the reliefs claimed.

From the evidence adduced by the claimant and the submissions of both learned counsel, the Court is of the view that the first issue to determine is:

1. Whether the claimant has established that it has *locus standi* to institute this action.

If the above issue is resolved in the affirmative, then the Court will determine two other issues, namely:

2. Whether this suit is an abuse of court process in the light of the Ruling of His Lordship, Hon. Justice O. O. Goodluck, J. [as he then was] delivered on 24/10/2017 in Suit No. CV/1779/2016 [*i.e.* Exhibit 16].
3. Whether the claimant is entitled to its reliefs.

ISSUE 1

Whether the claimant has established that it has locus standi to institute this action.

Learned counsel for the defendant argued that there no nexus whatsoever between the claimant and the documents admitted in evidence in this suit. From the facts presented, the claimant has not produced “*sufficient, cogent and consistent*” evidence to entitle it to judgment even if this suit is not defended. C. U. Onyeukwu Esq. referred to the definition of the words “*landlord*” and “*agent*” in the Recovery of Premises Act; and submitted that the documents tendered in this suit were written by System Property Development and

Realty Ltd., an entirely different legal entity from claimant, and no link was established between it and the claimant. No letter was tendered to show that the claimant appointed System Property Development and Realty Ltd. as its agent in accordance with the law.

Mr. C. U. Onyeukwu stressed that to make matters worse, PW1 stated that he did not know the owner of the property known as No. 33 Ahmed Musa Street, Jabi, Abuja. It was further submitted that claimant could not establish any relationship with the said property or any legal interest in the property. Learned defence counsel urged the Court to strike out the suit.

On the other hand, learned counsel for the claimant referred to page 186 of Oxford Dictionary of Current English where the word "*consortium*" is defined as "*an association of several companies*". He also referred to page 47 of the said Dictionary where "*association*" is defined as "*a group of people organised for a joint venture*". Mr. Abarshi submitted that System Property Development and Realty Ltd. is an "*agent company of the claimant*". He referred to the case of **Leventis Tech. Ltd. v. Petrojessica Ent. Ltd. [1992] 2 NWLR [Pt. 224] 459** to support the principle that the act of the agent for a particular purpose is the act of the principal because he who does an act through another is deemed in law to do it himself.

I. S. M. Abarshi Esq. also relied on **A.C.B. Ltd. v. Apugo [1995] 6 NWLR [Pt. 399] 65** to support the principle that where the principal of an agent is known

or disclosed, the correct party to sue for anything done or omitted to be done by the agent is the principal. He submitted that *“where the agent was the one wronged and his scope of responsibilities doesn’t include litigating on behalf of his principal the principal will be the one to sue for the wrong done to his agent”*. The claimant’s counsel further argued that SPD&R Ltd. [i.e. System Property Development and Realty Ltd.] issued the Offer To Let Letter dated 28/10/2014 [Exhibit 1] introducing the property in issue to the defendant. On 19/10/2015, the defendant paid N3 million in two instalments into the claimant’s account as shown in the statement of account [Exhibit 8] without complaining that it was not the claimant that offered and let the said property to him.

Learned counsel for the claimant also referred to Exhibits 4A-40 & 12 being evidence of the payments made to claimant by the purchaser of the property known as No. 16 Ali Baba Crescent [i.e. Mrs. Margaret Benson Idahosa], which was offered to her in place of the property, subject matter of this suit. The said property was offered to Mrs. Margaret Benson Idahosaby System Property Development and Realty Ltd. I. S. M. AbarshiEsq. then submitted in paragraph 3.6 of the claimant’s final address thus:

“... from the foregoing empirical evidence before the Court which shows that SPD&R Ltd. does the ground work but the bulk stops at the claimant’s table we submit that SPD&R Ltd. is a subsidiary of the claimant a relationship of agent and a disclosed principal hence SPD&R Ltd.’s scope of responsibility inter alia is to instruct any of the claimant’s external solicitors on the nature of

the legal services to be engaged also, matters arising out of SPD&R Ltd. and System Property Facilities Management Ltd. [SPFM Ltd.] business engagements are initiated and litigated in the claimant's name which we humbly urge the Court to so hold."

Now, the term *locus standi* means the legal capacity or competence to institute proceedings in a court of law for redress. See **C. N. Ekwuogor Investment [Nig.] Ltd. v. Asco Investment Ltd. [2011] 13 NWLR [Pt. 1265] 565** and **Pam v. Mohammed [2008] 16 NWLR [Pt. 1112] 1**. In order to establish *locus standi* to institute an action, the claimant must show that he [or it] has sufficient legal right or interest in the subject matter of the suit. Where a claimant lacks the *locus standi* to institute an action, the court is robbed of the jurisdiction to entertain and determine the suit. *Locus standi*, being an issue of jurisdiction, can be raised at any stage of the proceeding in a suit or even at the Court of Appeal. See the case of **Ajayi v. Adebisi [2012] LPELR-7811 [SC]**.

It seems to me that the determination of the claimant's *locus standi* or legal standing to institute this action against the defendant turns upon the answer to these three questions: [i] whether the claimant has established that it is the defendant's landlord in the property known as House No. 33 Ahmed Musa Crescent, Jabi, Abuja; [ii] whether the claimant has established any link with the defendant's tenancy in the said property; and [iii] whether the claimant adduced any evidence to establish that System Property Development and Realty Ltd. acted as its agent when it let the said property to the defendant.

In the introductory paragraph of the amended statement of claim filed on 14/1/2020, it is averred that *“defendant entered into occupation of the claimant’s property, a two wing service apartments, described as plot 178, House no. 33, situate at Ahmed Musa Crescent, Jabi District, for a year’s rent, valued at N7,000,000.00 per wing ...”*

The critical question is whether there is any evidence to prove this averment. Let me refer to the definition of the words *“landlord”* and *“agent”* in section 2 of the Recovery of Premises Act, to wit:

Landlord in relation to any premises means the person entitled to the immediate reversion of the premises or if the property therein is held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion, and includes the attorney or agent of the landlord, and also any person appointed to act on behalf of the State in dealing with any land, building, premises or corporeal hereditament vested in the State.

Agent means any person usually employed by the landlord in the letting of the premises or in the collection of the rents thereof or specially authorised to act in a particular manner by writing under the hand of the landlord.

The letter of Offer to Let the said property dated 28/10/2014 [Exhibit 1] was from System Property Development and Realty Ltd. to the defendant. The first paragraph of Exhibit 1 reads: *“Further to your expression of interest in respect of the above captioned property, we are pleased to offer to you on behalf of our*

client, the under described property in our portfolio for LEASE PURPOSE, under the following terms and conditions however "Subject to Contract". In Exhibit 1, System Property Development and Realty Ltd. stated that it is making the offer *"on behalf of our client"* but it did not disclose the claimant as its client.

Exhibit 2 dated 31/7/2015 is a letter of demand for rent while Exhibit 3 is a letter titled: *Outright Sale of Property Located at No. 33 Ahmed Musa Crescent, Jabi District, Abuja*. Exhibits 2 & 3 were written by System Property Development and Realty Ltd. to the defendant. There is nothing in Exhibits 1, 2 & 3 to show that the claimant is the owner of the said property or that System Property Development and Realty Ltd. acted on behalf of the claimant when it offered and eventually let the property to the defendant. As rightly pointed out by the defence counsel, the evidence of PW1 during cross examination is that System Property Development and Realty Ltd. manages the property but he does not know the owner of the property.

The claimant did not adduce any evidence to prove that it authorised System Property Development and Realty Ltd. to act as its agent in respect of the property occupied by the defendant as tenant. I am of the humble but firm opinion that the argument of learned counsel for the claimant that System Property Development and Realty Ltd. is the agent of the claimant is not supported by the pleadings or the documentary evidence relating to the tenancy relationship between System Property Development and Realty Ltd. and the defendant in respect of the property, subject matter of this action. The

evidence of PW1 is that System Property Development and Realty Ltd. is a subsidiary of the claimant. In my view, this evidence does not automatically make System Property Development and Realty Ltd. the claimant's agent in respect of the defendant's tenancy.

Learned counsel for the claimant argued that on 19/10/2015, the defendant paid N3 million in two instalments into the claimant's account as shown in the statement of account [Exhibit 8]. This submission was put forward in order to establish a nexus between the claimant and the defendant in respect of the tenancy of the property. I have looked at the statement of account. I am unable to see any link between the claimant and the statement of account. Exhibit 8 is the statement of account of SYS PROPERTIES FAC MGT LTD.

It is also pertinent to refer to the letter of instruction to I. S. M. Abarshi Esq. dated 18/3/2016 [Exhibit 9] titled: *Brief for Representation*. By this letter, System Property Development and Realty Ltd. stated in part: "*We hereby authorize the law firm of SIM ABARSHI LEGAL SERVICES to represent our interest in the recovery of PREMISES lying and situate at No. 33 Ahmed Musa Crescent Jabi and the rent arrears ...*" Exhibit 9 did not state that the property belongs to the claimant or that his instruction was to act on behalf of the claimant. One therefore wonders the basis for filing this action in the name of the claimant.

From the foregoing, the decision of the Court is that the answers to the above three questions are not in the affirmative. For the avoidance of doubt, the

Court holds that: [i] the claimant did not establish that it is the defendant's landlord in the said property; [ii] the claimant failed to establish any link with the defendant's tenancy in the said property; and [iii] the claimant did not adduce any evidence to establish that System Property Development and Realty Ltd. acted as its agent when it let the said property to the defendant.

The result of the above is that the claimant failed to establish that it has *locus standi* to institute this suit against the defendant to seek the reliefs in the amended statement of claim. The case of the claimant is that the defendant has not paid rent for the property since 2015 till date and has refused to deliver possession of same. As unfair and improper as that conduct may be, the claimant has not shown that it is the proper party to approach the Court to seek redress in respect of the property.

Having found that the claimant lacks *locus standi* to institute the action, it follows that the Court lacks jurisdiction to determine the merits of the case. In my respectful view, it will not serve any useful purpose to consider Issues 2 & 3 formulated by the Court. Also, it is proper not to delve into Issues 2 & 3 in order not to prejudge any issue that may arise for determination in any subsequent proceeding in respect of the said property. The suit is hereby struck out. The parties shall bear their costs.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

I. S. M. AbarshiEsq. for the claimant.

Chioma L. Ekene-OkwunmaEsq. for the defendant.