IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT JABI

BEFORE THEIR LORDSHIP: HON. JUSTICE A.I KUTIGI
(PRESIDING JUDGE)
HON. JUSTICE J.O. ONWUEGBUZIE (HON. JUDGE)

SUIT NO: FCT/HC/CVA/528/2020
DATE: 14-12-21.

BETWEEN:

DR. EDEMA UDOH.....APPELLANT

AND

SOLOMON OLUGBEMIGA AJALA .....RESPONDENT

JUDGMENT

This is an appeal from the Judgment of Chief District Court No.3 of Federal Capital Territory.

In the Chief Magistrate Court No. 3, Life Camp, Abuja, presided over by His Worship, Nwecheonwu Chinyere Elewe.The Plaintiff, one Solomon Olugbenga Ajala the Respondent in this appeal file a Plaint at the lower court dated 3rd Day of October, 2018, praying the court for:

1. That the Defendant delivers up immediate vacant possession of 3-bedroom flat at Plot 1171, Flat 1, Adebayo Adedeji Crescent, Cadastral Zone BO5, Utako District, Abuja.
2. That the Defendant pays the Plaintiff all arrears of rent and mesne profit at the rate of #1066,666 (One Million and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira) only per month from 19th May, 2018 until vacant possession is delivered.

3. That the Defendant pays the Plaintiff service Charge of #41,667 only per month from 19th May, 2018 till vacant possession of the apartment is delivered.
4. That the Defendant carries out repairs of the broken fixtures and fittings and repairs the interior of the 3-bedroom apartment or in the alternative pay the Plaintiff the sum of # 120, 000 as general damages caused in the apartment.
5. That the Defendant pays #120,000 only, being the sum the Plaintiff paid to the law firm of kelechukwu Okoroafor & Associates for instituting this action.

In a way of reaction, the Defendant now the Appellant, filed a defence and counter-claim, dated 25th Day of June, 2019, Counter-Claiming against the Plaintiff as follows:

1. That the Plaintiff pays the Defendant the sum of #1,740,400.00 (One Million, Seven Hundred and Forty Thousand Four Hundred Naira) only, for the repairs/renovations, pulling down and fixing of new tiles, screeding and painting, fumigation of the entire apartment in the Plaintiff's house.
2. That the Plaintiff also pays the Defendant #45,000.00 (Forty Five Thousand Naira) only for the repairs of waste leakages from first floor and tilling at flat 3 in the Plaintiff's house.
3. That the Plaintiff pays the Defendant #50,000.00 (Fifty Thousand Naira) only, for survey and repairs of electrical fault and replacement of electrical fittings in the Plaintiff's house.
4. That the Plaintiff pays the Defendant #95,000.00 (Ninety Five Thousand Naira) only for the repairs and replacement of kitchen marbles, broken woods and industrial cleaning in the Plaintiff's house.

5. That the Plaintiff pays the Defendant #2,000,000.00 (Two Million Naira) only as general damages caused by the Plaintiff refusal to renovate the defendant apartment.

At the conclusion of trial, the claims of the Respondent succeeded partly. In a judgment delivered on the 6th Day of May, 2020, the learned trial Chief Magistrate adjudged at page 190 of the records of appeal as follows:

1. The Plaintiff recovers from the Defendant immediate and vacant possession of the 3-bedroom flat occupied by the Defendant at Flat 1 Plot 1171 Adebayo Adedeji Crescent cadastral zone B05, Utako, District, Abuja.
2. That the Plaintiff recovers from the Defendant the sum of #4,000,000.00 being the mesne profit for the period of 19-05-18 to the 18-05-2020.
3. That the Plaintiff recovers the sum of #1,000,000.00 being the service charge for the tenancy period of 18-05-2018 to the 18-05-2020.
4. The sum of #100,000.00 as award for cost against the Defendant.

Dissatisfied with the judgment of the lower court coram, Chief Magistrate Nwecheonwu Chinyere Elewe (Mrs.), the appellant has appealed to this court. In the Notice of Appeal dated 2nd June, 2020 and filed the same day, four (4) grounds of appeals were enumerated to wit:

Ground 1:

ERROR OF LAW

The learned Trial Magistrate erred in law when she held that Exhibit "A" and Exhibit "B" served on the Appellant were valid and sufficient in law.

PARTICULARS OF ERROR

a. PW1 testified that the Respondent is a yearly tenant.

b. DW1 is entitled to six months' notice to quit in accordance with section 8 of the Recovery of Premises Act.

Ground 2:

ERROR OF LAW

The learned Trial Magistrate erred in law when she misconstrued the provision of Section 15 of the Recovery of Premises Act and held that the Appellant did not obtain a written consent or approval from the Landlord to carry out any improvement in the premises.

PARTICULARS OF ERROR

a. The provision of Section 15 of the Recovery of Premises Act referred to "improvements" and not "repairs"
b. PW1 and DW1 in evidence testified that it was "repairs" that were carried out in the premises, and not "improvements".
c. There was never evidence of "improvements" of the premises before the Trail Magistrate.

Ground 3:

ERROR OF LAW

The learned Trail Magistrate erred in law when he relied on Section 15 of the Recovery of Premises Act in refusing the Respondent's Counter claim for the sum of #1,900,000.00 expended in the repairs of the apartment.

PARTICULARS OF ERROR

a. Evidence before the learned Trail Magistrate was to the effect that the Respondent was aware of the defects to the premises and supervised the repair works.

Ground 4:

The decision of the Trail Court is against the weight of evidence adduced at the trail.

In compliance with the rules, the Appellant Counsel on the 14th Day of July,2020 filed and served his Appellant brief of Argument dated the same 14th day of July 2020. In a way of response,the Respondent's Counsel filed and served his Respondent's brief of argument dated 27th July, 2020 and filed on the same day in the Court's Registry. The Appellant on the other hand filed and served her Appellant reply brief of argument dated 1st September, 2020 and filed on the same date.

On the 6th Day of October, 2021, the Appellant's Counsel Orji Steven Esq., with the leave of court adopted his Appellant's brief of Argument. The Respondent's counsel L.N Chiadikaobi Esq., also adopted his Respondent's brief of argument. The matter was thereafter reserved today for judgment.

The learned Counsel to the Appellant in his brief of argument, formulated three issues for the determination this court.

i. Whether Exhibit B (Notice to quit) issued on the 23rd June 2018 and Exhibit A (7 days' notice) issued on 12th July 2018 are valid and sufficient in law to vest Jurisdiction on the trial court.
ii. Whether the order to pay the service charge and cost is against the weight of evidence?
iii. Whether the section 15 of the Recovery of Premises Act was properly applied in denying the Respondent's Counterclaims for repairs carried out on the apartment.

In his submission the leaned counsel stated that the Appellant's main contention is that the quit notice that is the Exhibit A is not valid in law, as such the court lacked jurisdiction to entertain the suit in the first place.

He submitted that from the inception of the suit, the Respondent did not tender any tenancy agreement to prove nature of the tenancy, he went further in his evidence in chief to testify that the Appellant is a yearly tenant, and as such the tenancy is regulated by the **Recovery of Premises Act Cap. 544 LFN (Abuja) 1990, particularly Section 8(1) (d) and (3).** That the implication is that the Appellant being a statutory periodic tenant is entitled to a six months' notice to quit. Once there is an incidence of statutory tenancy, the tenant is given the security of possession at the instance of prescription of statute. He referred the Court to the case of **AFRICAN PETROLEUM V. OWODUNNI (2004) AFWLR (Pt. 208) 77 @ 793 S.C**.

The Counsel submitted that Exhibit "A" quit notice commenced on the 29th of June, 2018 to 6th of July, 2018, which gives the Appellant in total seven days' notice which falls short of the requirements of **Section 8(1)** (d) **of the Recovery of Premises Act Cap. 544 LFN (Abuja) 1990**, which requires a six months' notice to quit a yearly tenant, in the absence of an agreement. Such defective notices have held to be ineffective and invalid in law. He referred the Court to **Section 9 of the Recovery of Premises Act Cap. 544 LFN (Abuja) 1990 and AWE V. THAM SAIDI (1965) 1 ANLR 163 @ 167.**

The Learned Counsel to the Appellant further submitted that, the award of #100,000:00 cost and #1,000,000:00 service charge is against the weight of evidence. That throughout the Respondent's evidence at the trial court, the only time he mentioned the issue of service charge was when he stated the amount the appellant pays as service charge at page 164 of the Record of Appeal. That there is no evidence what so ever that the Appellant is in arrears of service charge. The only evidence in relation to service charge is Exhibit "I" at page 133 of the Records, which showed that such service has been discontinued by the Respondent, this evidence was not controverted. The learned trial Magistrate failed to evaluate or make any reference to this exhibit when she awarded a whooping some of One Million Naira as service charge against the Appellant.

That it is trite law that averments on which no evidence is adduced are deemed abandoned and do not constitute proof of such facts unless such facts are admitted. He cited **IFETA V. SPDC (NIG) LTD (2006) 8 NWLR, (Pt. 983), (2006) LPELR – 1436 (SC) and AKINBADE & ANOR. V. BABTUNDE & ORS (2017) LPELR-43463 (SC).**

The Appellant's Counsel also submitted, on the issue of cost that the Respondent tendered Exhibit "C" an acknowledgement receipt for the sum of N70, 000:00 issued to him by his Counsel being the cost of the action and nothing more, the learned trail Magistrate erroneously awarded the sum of #100,000:00 as cost. That it is trite law that the court of law is not a Father Christmas to grant a relief not specifically asked prayed for. He relied on **UNION BANK LTD V. OWOLANI (1988) 1 NWLR (Pt. 68) pg. 125 @135.**

The Counsel further submitted that the learned trial Magistrate erroneously applied **Section 15 of the Recovery of Premises Act Cap. 544 LFN (Abuja) 1990** to deny the Appellant's Counterclaim for a cumulative sum of #1,930,400 being the cost of Repairs carried out in the Appellant's flat. That **Section 15 of the Recovery of Premises Act Cap. 544 LFN (Abuja) 1990** explicitly referred to **"improvements"** and not **"repairs"**. That the Black's Law Dictionary (9th edition) defines improvements as "***an addition to real property, whether permanently or not, especially one that increases its value or utility or enhances its appearance".*** That Oxford English Dictionary on the other hand defines "**repairs"** as;

i. Fix or mend (a thing suffering from damage or fault (verb)
ii. The action of fixing or mending something. (noun).

The learned Counsel to the Appellant submitted further that a look at Exhibit "F (iv)" shows that the faults complained of were present as at 18th September 2017 and the landlord's agent was aware, also Exhibit "F iii" shows that the Respondent acknowledged the Faults which the Appellant complained of, and actually agreed to fix it the coming week, as at 17th November, 2017, two

months after the agent acknowledged the fault. It is also his evidence that he sent persons to go and evaluate the situation; this was confirmed by the Appellant during Cross examination. That however, the landlord neglected, refused and failed to effect the repairs as promised because as at 3rd January, 2018 the said repairs were yet to be effected, and that it was contrary to the landlord's evidence that he did not delay before commencing the repairs.

The counsel concluded that Exhibit H1-H4 being the receipts for the repairs were tendered and admitted, that these exhibits were neither challenged nor controverted, despite the overwhelming evidence, that the trail court ignored these evidence before her. That the trial court did not evaluate the evidence or make reference to them in her judgment. It is trite law that a decision or finding of Court is said to be perverse "when it runs counter to the evidence and pleadings or where it has been shown that the trial judge took into account matters which he ought not to have taken into account or shuts his eyes to obvious, or when the circumstances of the findings of fact in the decision are most unreasonable. He relied on **KAKULU V. KAKULU (2016) LPELR-41552 (CA); MAZANG V. MASHINKPEN & ANOR. (2018) LPELR-46144 (CA) and MAMONU & ANOR. V. DIKAT & ORS. (2019) LPELR-46560 (SC)**

Respondent's Counsel, in his own brief of argument formulated three (3) issues for determination, to wit:

1. Whether issues not raised and tried by the trial court can be raised on appeal.
2. Whether this appellate court will not discountenance an issue for determination which is of facts which is without leave of court to do so.
3. Whether the trial court misconstrued Section 15 of the Recovery of Premises Act when it held that the Appellant did not obtain the prior written consent of the Respondent before carrying out the nature of the so

–called repairs/renovations the Appellant claimed to have done in the Respondent's property she occupies.

On issue one, the Respondent's Counsel submitted that the Appellant is not allowed in law to raise on appeal any issue that is not raised and tried by the trial court. The Appellant's ground 1 is on the validity and insufficiency of Exhibit A and B, that is, the quit notice and seven days owner's intention to recover possession. That the validity and insufficiency of Exhibit A and B were never raised as an issue during the trial at the lower court. Besides, the two exhibits were tendered and admitted without any objection from the Appellant. Therefore, the issue of validity and insufficiency of the two Exhibits A and B is a fresh issue which the Appellant is not allowed to raise on appeal. He relied on the cases of **SHELL PET.DEV. CO. v. TEIBO V11 (2005) 9 MJSC 158 @ 163, DABO v. ABDULAHI (2005) MJSC 57 @ 66, and SHEKSE v. PLANKSHAK (2008) 10 MJSC 90 @ 93 ratio 4**

The learned counsel further submitted that when a yearly tenancy expires by effluxion of time and such tenant continues to hold over, such tenant becomes a tenant at will requiring only 7 days' notice to quit. He relied on the cases of **ODUTOLA v. PAPERSACK LTD (2010) 1 MJSC 129 @ 135 ratio 7 and BULET v. HON. MINISTER FCT (2010) ABJ 1 @ 7 ratio 16 & 17**. That the requisite period of notice to quit to be given to a tenant at will is 7 days. He cited **Section 8 (1) (a) of the Recovery of Premises Act, 1990 Cap. 544 LFN.**

The Counsel argued on issue 2 that it is a settled law that for the Appellant to successfully appeal against the findings of fact, he must first of all obtain the leave of court to do so. That the Appellant's issue (ii) which is formulated from Ground 4 of the Notice of Appeal which is that the decision of the trial court is against the weight of evidence adduced at the trial, is purely an issue of fact which requires that the Appellant must first obtain the leave of the court before stating it on appeal. He cited **CALABAR v. EKPO (2008) 11 MJSC 104 @**

111. That a ground of appeal which complains that the decision of the trial court is against evidence or weight of evidence or contains unresolved contradictions in the evidence of witnesses, it is purely a ground of facts which requires leave for an appeal. He relied on the authority of **BOARD OF CUSTOMS AND EXCISE v. BARAU (1982) 10 SC 48 and OGBECHIE v. OMOCHIE (1980) 2 NWLR (Pt. 23) 484.**

On issue 3, the Respondent's Counsel submitted that the leaned Trial Magistrate was very right in the application of Section 15 of the Recovery of Premises Act, Cap. 544 LFN (Abuja) 1990 in holding that the Appellant failed to obtain the consent of the Respondent before embarking on the repairs, renovations or improvements she alleged to have done in the flat she occupies. That whether repairs or improvements or any terminology used to describe them by the Appellant means one and the same. He also applied the definition of Black's Law Dictionary (9th Edition) quoted by the Appellant in her brief in defining improvement, which means; "…***an addition to real property, whether permanently or not, especially one that increases its value or utility or enhances its appearance",*** that the learned Trial Magistrate correctly interpreted and rightly applied the provisions of **Section 15 of the Recovery of Premises Act**.

The Counsel submitted further that the Appellant's Statement of Defence and Counter Claim, paragraph 21 which extends from page 17 to 18 of the Records of Proceedings, she stated the nature of work done to include: pulling down the POPs and laying of new POPs in her apartment; pulling and fixing of new tiles; screeding and painting, fumigation of the entire apartment; survey and repairs of electrical faults and replacement of electrical fittings; replacement of kitchen marbles, broken woods and industrial cleaning. That if these jobs were actually done by the Appellant, surely they have increased the value and the utility of the flat and enhanced its appearances. That nothing could be more improvements

than these works. That these jobs will surely not fit into the definition of "repairs" as defined by the Appellant from the Oxford English Dictionary which defines repair as "fixing or mending a thing suffering from damage or a fault.

The Counsel stated that **Section 15 of the Recovery of Premises Act, Cap. 544 LFN (Abuja) 1990** clearly states that: "***A tenant Shall not be entitled to compensation in respect of any improvement, unless He Has Executed it with the Previous Consent in Writing of the Landlord."***The Counsel submitted that the above stated jobs are improvements on the state of the flat as built by the Respondent. It will be noted that the Appellant was the first tenant in the flat (ground floor) after the competence of the building in 2013, which she admitted under cross-examination.He referred the court to paragraph 5 on page 175 of the Record of Proceedings). So, the flat could not have fallen to such disrepair to require the type of the job the Appellant claimed to have done in flat. The Counsel further submitted that the Respondent under cross-examination stated that after the Appellant paid her three years accumulated rent arrears that she talked about another repairs and he gave money to his facility manager to do therepairs, but the facility manager reported back to him that before he got there the Appellant had started the repairs and he told the Appellant that she did not get his authority to do that and would not be responsible. He referred the court to paragraph 5 and 6 on pages 166 of the Records.

On the Appellant's Counter Claim, the Respondent's Counsel submitted that the Appellant tendered Exhibit H1 which is a quotation for the job to be done which may cost #1,740,400.00 that this quotation is not a receipt for the actual payment made. That the Appellant admitted that there was no receipt for the payment. See paragraph 43 on page 179 of the Record of Proceedings. The counsel concluded by submitting that there is no perversion in the judgment of the Trial Court having properly interpreted the applicable laws and evaluated

the evidence correctly and humbly urged the court to dismiss this appeal with substantial cost against the Appellant.

The Appellant's Counsel in a way of response, filed his reply brief of argument and submitted that in the first issue of the Appellant's brief, it was contended that the Court below lacked Jurisdiction to entertain the suit in the first place. That it is trite in the Nigerian legal jurisprudence that the issue of jurisdiction can be raised at any time even on appeal. He cited **TEGA ESABUNOR & ANOR. V. DR. TUNDE FAWEYA & ORS (2019) LPELR -46961 (SC); WEMA SECURITIES AND FINANCE PLC v. NAIC (2015) LPELR-24833 (SC); OBIAKOR ABD ANOR. v. THE STATE (2002) 10 NWLR (Pt. 776) 612,626 etc. That in TEGA ESABUNOR & ANOR. V. DR. TUNDE FAWEYA & ORS** supra, the court held that the issue of Jurisdiction could be raised for the first time before an appellate Court, with or without leave. The Counsel stated that the issue of jurisdiction being fundamental and Constitutional in nature, can be raised on appeal. That it will be wrong for the Respondent to allege that the Issue 1 of the Appellant's brief was not raised and tried by the trial court. That it was indeed raised and tried by the trial Court, albeit *suo motu*

The Appellant's Counsel further submitted it is wrong for the Trial Court to rely on the authority in the case of **ODUTOLA & ANOR. v. PAPERSACK NIG. LTD** (supra) as in that case, the Supreme Court held that the tenancy between the parties in the case was a tenancy at will. The Trail Court never came to the conclusion that the tenancy between the parties in this suit was a tenancy at will, and submitted that it is wrong for the Respondent to rely on a case of**ODUTOLA & ANOR. v. PAPERSACK NIG. LTD** (supra) the facts are succinctly different.

The Appellant's Counsel stated that from the evidence before the trial court in this suit, the Notice to Quit served on the Appellant is dated 23rd day of June,

2018 see page 74 of the Records, that in the judgment of the lower Court, His Worship stated that the case was mentioned on the 12-11-18 see page 184 of the Records, that the Your Worship also stated **" …the Defendant's last rent by the evidence before the Court expired on the 18-05-18…"** see page 189 of the Records. That the mater having mentioned on 12-11-18 at the lower Court, and the last rent by the Appellant from the evidence before the lower Court having expired on the 18-05-18, it is evidently clear that a year's rent had not become due and payable by the Appellant and so none had remained unpaid as at the time the suit was instituted at the lower Court. He submitted that a year's rent having not been due as at the time this suit was filed at the lower Court, the authority in **ODUTOLA & ANOR. v. PAPERSACK NIG. LTD** (supra) could not and cannot apply in this case. That from the evidence before the Court the trial Court, Appellant at the initial time of renting the apartment, paid her rent in advance, that subsequently she paid it partly in advance and partly in arrears see page 175-176 of the Records and these payments were accepted by the Landlord. That from the evidence before the Trial Court also, the Appellant sometimes paid her rent in arrears. Hence the rent being in arrears for few months, at the time when the suit commenced at the lower court is not sufficient to determine the tenancy.

The Counsel further submitted on Issue 2 raised by the Respondent's Counsel in his brief that the mere fact that a ground of appeal is called a ground of law, fact or mixed law and fact by either party to the dispute does not mean it would answer. He cited the case of **UNILORIN & ORS v. OBAYAN (2018) LPELR – 43910 (SC)** on how to determine whether a ground of appeal is one of law, facts or mixed law and facts. The stated further that from an examination of Ground 4 of the Appeal, together with its particulars, and the Issue ii of the Appellant's brief, it is evident that what is dealt with was a matter of inference. That hence the ground of law and it is limited to establish facts in the suit.

The Appellant's Counsel on Issue 3 of the Respondent's brief, finally submitted that in order to conclude as to whether or not the works done by the Appellant were improvements or repairs, the vital question to ask is : what was the aim of carrying out the works in the first place? The Counsel stated that the aim of the woks carried out by the Appellant being to remedy the unfortunate situation of broken pipes and others, then the work done was a repair and not a renovation. He therefore urged the Honourable court to allow the appeal and hold in favour of the Appellant.

We have painstakingly gone through the records of this appeal, Appellant's Brief of Argument, Respondent's Brief of Argument and Appellant's Reply Brief.

In our view, we have selected and adopted three (3) issues formulated by both parties to be determined by this Court to wit:

1. Whether issues not raised and tried by the trial court can be raised on appeal.
2. Whether the trial court misconstrued Section 15 of the Recovery of Premises Act when it held that the Appellant did not obtain the prior written consent of the Respondent before carrying out the nature of the so –called repairs/renovations the Appellant claimed to have done in the Respondent's property she occupies.
3. Whether the order to pay the service charge and cost is against the weight of evidence.

Going through pages 192 to 194 of the Notice of Appeal before this Court, the Appellant brought this appeal on four (4) grounds.

On issue 1 of both briefs which is distilled from Ground 1of the Notice of Appeal, the leaned Counsel to the Appellant complained that the learned Trial Magistrate erred in law when she held that **Exhibit "A"** and **Exhibit "B"**

served on the Appellant were valid and sufficient in law. In its particulars stated that PW1 testified that the Respondent is a yearly tenant and that the DW1 is entitled to six months' notice to quit in accordance with section 8 of the Recovery of Premises Act. The leaned Respondent's Counsel joined issue with the Appellant in his Issue 1 seeking for determination whether issues not raised and tried by the trial court can be raised on appeal.

A scrupulous analysis of both the Appellant's Statement of Defence with the Reliefs, the Defendant's Final Written Address with the Issues raised there in, and the Record of Proceedings of the lower Court, there is no place the Appellant (then as the Defendant) raised any issue of Ground 1 in the trial court over "Exhibit A and B". On the 20th day of August, 2019 "Exhibit A and B" was tendered and admitted without any objection from the Appellant. See page 164 of the Records of Appeal. In evidence in chief of the PW1 at page 165 of the Records of Appeal, the PW1 stated thus "***…The defendant's tenancy expired on 18-05-18. Since the defendant's rent expired, she has not paid any other rent. When the defendant's tenancy expired I called my lawyer to serve the defendant with a quit notice which she did not acknowledge. Subsequently I asked the lawyer to set the process in motion for possession of the property through another notice which the defendant did not acknowledge."***

We have taken our judicious time and painstakingly gone through all the evidence of the DW1 there is not place in the above quoted evidence of the PW1 was contradicted. The said notices were thereafter tendered but was not objected to, and were admitted in evidence and marked Exhibits "A and B". even in the final written address the counsel still did not raise or address the trial court on the validity or otherwise of Exhibits 'A and B" Hence the trial Magistrate was right in law to rely on the authority of **ODUTOLA & ANOR. v. PAPERSACK NIG. LTD** (supra) and made her findings and conclusion.

It is a settle law that any issue notraised and canvased at the lower court cannot be raised on appeal without the leave of court. See **OFORISHE v. NIGERIAN GAS CO. LTD (2017) LPELR-42766 (SC)** Where the Supreme Court held that:

> ***"An issue which was not raised and determined by the trial Court cannot be raised as an issue for determination in an Appeal Court. The reason is simple. Such an issue is incompetent, since an Appeal Court considers only issues heard by the trial court or with leave of the Court."***

The Appellant did not raise any objection at the lower court over the kind or type of Notice to quit issued and served to him. He rather chose to ask or claim for a refund of money he spent on the repairs on the Respondent's house.

This Court sits as an appellate court in this issue,hence the Appellant did not raise this issue at the lower Court, as least; whether the trial court made pronouncement on it or not is immaterial. This court cannot entertain ground 1 without leave. See the case of **NDIC v. MOHAMMED & ORS (2018) LPELR-44744 (CA); ORGAN & ORS v. NIGERIAN LIQUEFIED NATURAL GAS LTD & ANOR. (2013) LPELR 20942 (SC); OBIOZOR v. NNAMUA (2014) LPELR 23041 (CA)**

However, the law compels the court to accord premier attention to issue of jurisdiction, which is *numero uno* in adjudication, when raised in any proceeding. See **OKWU v. UMEH (2016) NWLR (Pt. 1501) 120; BRITTANIA-U (NIG.) LTD. v. SEPLAT PET. CO. DEV. LTD. (2016) 4 NWLR (Pt.1503) 541.** We will obey this legal commandment so as not to insult the law.

Jurisdiction, a mantra in adjudication, connotes the authority/power of a court to determine a dispute submitted to it by contending parties in any proceeding. See

AJEMOLE v. YADUAT (No. 1) (1991) 5SCNJ 172; MOBIL PRO.CO. UNTLTD. v. LASEPA (2002) 18 NWLR (Pt. 798) 1; NDAEYO v. OGUNNAYA (1977) 1 IM SLR 300.

In **MAIFATA v. UPPER SHARIA COURT, KOFAR KUDU & ORS. (2017) LPELR-45128 (CA**) the Court of Appeal held thus:

> **"It is settled law that what primarily convers jurisdiction on a court of law is the statute that creates the court and other enabling laws to that effect. The subject matter of the cause of action may as well be of relevant in determining the jurisdiction of a Court"**

Section 13 (b) of the District Court Laws of the Federal Capital Territory (Increased in Jurisdiction of District Court Order, 2014) Cap.33convers jurisdiction to the Chief Magistrate to entertain this suit. It provides thus:

13. (1) Subject to the provisions of this law and of any other written law, a senior District Judge shall have and exercise jurisdiction in civil causes or matter;

(a) …

(b) in all suits between landlord and tenant for possession of any lands or house claimed under agreement or refused to deliver up, where the annual value or rent does not exceed five hundred pounds."

The suit before the lower court is for possession and recovery of premises therefore we found that the Chief District Court Judge had jurisdiction to try the suit and we so hold.

To this end, we resolve issue 1 in favour of the Respondent.

On Issue 2 which flows from ground 2 and 3of the Appellant's grounds of appeal. The learned Appellant's Counsel alleged that the learned Trial Magistrate erred in law when she misconstrued the provision of **Section 15 of the Recovery of Premises Act** and held that the Appellant did not obtain a written consent or approval from the Landlord to carry out any improvement in the premises. In its particulars of error the Counsel stated:

a. The provision of Section 15 of the Recovery of Premises Act referred to "improvements" and not "repairs"

b. PW1 and DW1 in evidence testified that it was "repairs" that were carried out in the premises, and not "improvements".

c. There was never evidence of "improvements" of the premises before the Trial Magistrate.

Section 15 of the Recovery of Premises Act, Cap.544 LFN (Abuja) 1990 state thus:

"***A tenant shall not be entitled to compensation in respect of any improvement, unless he has executed it with the previous consent in writing of the landlord."***

From the argument of the Learned Appellant's Counsel at page 4 of the Appellant's Brief of Argument. The issue is narrowed down to the difference between the word " improvement" used by the Recovery of Premises Act and the word "repairs" or "renovation" used by the Appellant in her Statement of Defence at the lower court. See paragraph 21 which starts from page 17 to 18 of the Record of Appeal and paragraph 5 on page 14 and paragraph 26 on page 19 of the Records of Appeal.

Considering the definition of the word "improvement" in the Black's Law Dictionary, 9th Ed. the word improvement means "***an addition to real property,***

whether permanently or not, especially one that increases its value or utility or enhances its appearance".

A juxtaposition of the meaning or definition of the word "improvement" used by **Section 15 of the Recovery of Premises Act Cap.544 LFN (Abuja) 1990**and the kind or nature of work the Appellant said she did in her Statement of Defence at the lower court at paragraph 21 which starts from page 17 to 18 of the Record of Appeal and paragraph 5 on page 14 and paragraph 26 on page 19 of the Records of Appeal. It is to our conviction that what the Appellant did was **"improvement"** which is *inter dem* with the purports or intention of **Section 15 of the Recovery of Premises Act Cap.544 LFN (Abuja) 1990.**

Moreover, the Appellant at page 173 of the Records of Appeal before this court, said ***"So I did renovation of the general premises and the company gave me receipt"***. It beats our imaginations how a tenant would "renovate" a landlord's house to that magnitude without the landlord's express permission.

In the light of the above, the trial Magistrate was right when she held that the Appellant did not obtain a written consent or approval from the Landlord to carry out any improvement in the premises. Hence we resolve issue 2 in favour of the Respondent. Consequently, ground 2 and 3 hereby fails and accordingly dismissed.

On issue 3 which flows from Ground 4 of the Appellant's Grounds of Appeal. The Appellant's Counsel complained that the judgment of the lower court is against weight of evidence adduced at the trail. The Court of Appeal in SHOLA & ORS v. SUNDAY (2016) LPELR-40519(CA) the Court held thus:

> **The contention of the appellants is that the judgment of the trial Court is against the weight of evidence adduced before that Court. Where the complaint is that a judgment is against the weight of evidence adduced by him is balanced against that adduced by the respondent, the judgment given in favour of the**

respondent is against the weight which should have been given to the totality of the evidence. In the face of such complaint, the appellate Court is to consider the admissibility, relevance, credibility, conclusiveness and probability of the evidence by which the weight of the evidence of both parties determined. See NWOKIDU v. OKANU (2010) 3 NWLR (Pt. 1181) 362, 394-395 para.11-12.

After a thorough examination of the Record of Proceedings and the Judgment of the trial Court, we noticed that the Respondent testified that the Defendant (Appellant) has been in his house for six years. The Defendant occupies 3 bedroom and pays #2million as rent and # 500,000.00 as service charge. That Defendant's tenancy begins on the 18th Day of May every year and expires on the 18th Day of May the following year. That the Defendant's tenancy expired on the 18-05-18, since then the Defendant has not paid any other rent. That when the Defendant's tenancy expired the Plaintiff called his lawyer to serve the Defendant with quit notice which she did not acknowledge. That subsequently the Plaintiff asked the lawyer to set the process in motion for possession of the property through another notice which the Defendant did not acknowledge. That if he sees the notices he will recognise the first notice with his lawyer's letter head and the second with court's stamp. That the two seven days' notices were applied to be tendered. That the Court asked the Defendant's Counsel if he has any objection and he said No Objection. That the7 Days' Notice dated 23-06-18 and the 7 Days' Owner's Intention to recover possession dated 12-07-18 were tendered, admitted in evidence and marked as Exhibit "A" and "B" respectively. The Plaintiff prayed the court to assist him recover the arrears of rent from May 19th 2018 until the Defendant vacates possession. He also prayed for possession of the premises. See page 165 of the Record of Appeal.

During Cross examination the Plaintiff admitted he was aware of the damage. That Defendant repaired it in 2016 without his consent and deducted the money

from the rent. That on the second damage he sent his agent to the apartment with the quotation and money to repair it, but the Defendant had already repaired it and he told the defendant that she did not get his authority to effect any repairs and he will not be responsible for that. See page 167 of the Record of Appeal.

On the 30th day of September the Defendant now the Appellant, opened her defence. That the Plaintiff now the Respondent is her landlord, she entered his house in 2013, that she noticed fumes and so much unpleasant odour, leakages from the pipes and walls of the apartment when she entered and she was amongst the very first set to occupy the premises, because it was a new building. That she reported to the agent he promised to do something about it. After the Defendant narrated the extent of damage in the apartment and she decided to repair the damages. She tendered "Exhibit D1-D8" which are the receipts of the items she bought and used to fix the damages in the apartment. See pages 14-19 and 168 – 182 of the Record of Appeal.

At page 170 of the records of appeal before this court, it is in evidence that Appellant admitted that she pays service charge as part of her terms of contract with her landlord the Respondent. The Appellant as DW1 stated at page 170 thus:

> ***"Because I paid rent for two years and utility bill for one year which is from 2013 to 2015, the agent, Mr. Olugbada Ajala told me that the landlord refused to refund my expenses. When it was time to pay my utility bill for the second year, because it was =N=500,000.00, I demanded for a refund of the expenses I made."***

The Exhibit"1" the Appellant was relying on to say service charge was discontinued was properly rejected in evidence by the trial Magistrate. There is

nothing to show in that rejected exhibit "1" that it has connection with the Appellant neither was it addressed to the Appellant. Therefore, the trial Magistrate rightly held at page 190 of the Record of Appeal before this court that "***it is also adjudged that the plaintiff recovers the sum of =N=1,000,000.00 being the service charge for the tenancy period of 18-05-2018 to 18-05-2020"***.This service charge if for the two years period the Appellant was in arrears of rent.

From a meticulous evaluation of all the evidence before the lower court, the exhibits admitted therein, we found that the trial Court properly admitted all the exhibits tendered and the ones marked rejected on either sides. The trial Court rightly accessed all the evidence before it and placed the proper probative value on them, required in law. The Trial Magistrate judiciously used the imaginary scale of justice to weigh all the evidence on its preponderance, before her including all the exhibits admitted during trial. See the case of **EDET v. EYO & ORS (1999) LPELR -6652 (CA)** the Court held thus:

> ***The main complaint of the appellant against the decision of the Tribunal is that there was no proper evaluation of evidence by the Tribunal to warrant the Tribunal arriving at the decision it reached and that if the evidence had been properly evaluated the judgment would have been otherwise. In other words, what the appellant is saying is that THE judgment is against the weight of evidence. When an appellant complains that the judgment is against the weight of evidence, all he means is that when the evidence adduced by him is balanced against that adduced by the respondent the judgment given in favour of the respondent is against the weight which should have been given to the totality of the evidence before himself. See Mogaji v. Odofin (1978) 4 S.C 91 @ 93-95. In any case where a judgment is attacked on the ground of being against the weight of evidence, the Court of Appeal in its primary role in considering a judgment on appeal in a civil case in which the finding or non-finding of facts is questioned will seek to know the following : (a) The evidence***

before the trial Court; (b) Whether it accepted or rejected any evidence upon the correct perceptions; (c) Whether it correctly approached the assessment of the evidence before it and placed the right probative value on it; (d) Whether it used the imaginary scale of justice to weigh the evidence on either side. (e) Whether it appreciated upon the preponderance of evidence which side the scale weighed having regard to the burden of proof. See Agbonifo v. Aiweroba (1988) 1 NWLR (Pt. 70) 325 @359. See also Mirs (Nig.) Ltd v. Ibrahim (1974) 5 S.C 53 @ 62; Egonu v. Egonu 12 - 12 S.C. 111@129.

The Plaintiff has proven his case on the balance of probability as required by law. We found that instead of the Defendant to attack the evidence of the Plaintiff lead at trial court, she was busy proving repairs and renovation she did on her apartment without the authority and approval of her Landlord as required by **Section 15 of the Recovery of Premises Act Cap.544 LFN (Abuja) 1990**; hence running on afrolic of her own. See page14 – 35 and 186 – 1888 of the Records of Appeal.

In the final examination, we find no considerable merit in this appeal
The judgment of the learned Chief Magistrate is hereby upheld.
The appeal is accordingly dismissed. We make no award to cost.

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HON. JUSTICE A.I. KUTIGI ***HON. JUSTICE J.O.*** **ONWUEGBUZIE**
(PRESIDING JUDGE) ***(JUDGE)***

Appearance:

1. ***ORJI STEVEN, Esq., for the Appellant.***
2. ***L.M. CHIADIKAOBI, Esq., for the Respondent.***