IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
BEFORE
HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
AND
HIS LORDSHIP HON. JUSTICE H. BABANGIDA

ON THE 14TH DAY OF DECEMBER, 2021

APPEAL NO. CVA/641/2020
SUIT NO: CV/458/19

BETWEEN:
MR. IKEMEFUNA ----------APPELLANT
AND
MR. OGWO ----------RESPONDENT

I.C. ONWU *for the appellant*
Counsel apologized for the absence of the appellant
Respondent not in court and not represented by Counsel

JUDGEMENT

Delivered by HON. JUSTICE A. S. ADEPOJU

This is an appeal against the decision of the Senior District Court Judge Tahil Omeiza sitting in Dutse Alhaji which Judgement was delivered on 23rd day of September 2020. In the Notice of Appeal dated the 5th of October 2020, the appellant enumerated the following grounds of appeal:

1. **Error in law**

   The learned Senior District Judge erred in law when he assumed jurisdiction in this case and held that the plaintiff PW1 has the locus standi to institute the case.

Particulars of error

a. The plaintiff who is the PW1 instituted the case with a name different from his name.
b. The PW1 misrepresented himself before the court as Mr. Ogwo.
c. The plaintiff admitted under cross-examination that his name is Mr. Valentine Onyegbule.
d. The plaintiff admitted that he is not the owner of the house/premises he was recovering in the case.
e. The PW2 confirmed that PW1 is not the owner of the house in issue.
f. There is no tenancy contract existing before the court that the owner of the house who is the appellant's landlord is an adult.
g. Non existence of locus standi in a plaintiff in a suit robs the court of requisite jurisdiction to entertain the case.

2. Error in law

The learned trial court erred in law when it granted the plaintiff's reliefs before the court.

Particulars of error

a. The proper parties were not before the court to enable the court to grant the reliefs of the plaintiff.
b. There is evidence before the court that the appellant renovated the house with the consent of his landlord and

the money used for renovation was not refunded or deducted as agreed by the appellant and the his landlord.

c. The amount of money the appellant was owing his landlord was not ascertained in the evidence of the witness.
d. A non-party to a contract cannot enforce the contract or sue for the breach of the contract.
e. The PW1 lacks the legal right to recover the premises from the appellant.

3. Error in law

   The trial court erred in law when it gave its judgement in this case after ninety days from the close of evidence and final address in the case.

   Particulars of error

   a. The constitution of Nigeria provides for time frame of ninety days within which the court ought to give its judgement.
   b. The case before the trial judgement was heard via oral evidence.
   c. The trial court no longer appreciated and properly evaluated the evidence before it in giving the judgement due to effluxion of time.
   d. The delivery of the judgement after ninety days occasioned a miscarriage of justice.

Consequently, the appellant sought for an order setting aside the judgement of the Senior District Court

Both parties filed and exchanged briefs of argument. The appellant brief dated 6th day of April 2021 was filed on the 15th June 2021 while the respondent's with the leave of court and an order for extension of time dated 29/11/2021 filed his brief of argument. Let us quickly observe that the respondent's brief of argument was not by way of the lawyers whose names were listed on the process. The counsel who appeared for the respondent Mr. Festus Ntong confirmed this to the court that he signed the file copy on behalf of the counsel who prepared the process to save the fatal error committed. Apart from the non-signing of the process by the counsel who prepared it, the document was also not sealed with the Nigerian Bar Association Professional Seal. This brief of argument rightly argued by the appellant's counsel is incompetent and incurably bad. The provision of Order 10, Rule 1 of the Rules of Professional Conduct makes it mandatory for the sealing of nay process filed by a lawyer acting in his capacity as a legal practitioner. The said order provides thus:

10 (1): "A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any governmental department or any corporate shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar

Association." Similarly Order2 Rule 9 of the High Court of FCT Civil Procedure Rules 2018 also provides as follows:

"All processes filed at the registry shall bear the seal of the counsel filing the suit as provided by the Nigerian Bar Association showing the counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria."

The word 'shall' as used in the provision above makes the affixtion of seal of the counsel filing the process a condition precedent for the validity of nay court process filed at the registry of the court. The respondent's brief of argument we hold is not valid and it is hereby discountenanced.

We are therefore left with the appellant's brief of argument for consideration. In the brief of argument, the appellant's counsel I. C. Onwu Esq formulated three (3) issues for determination to wit:

1. Whether the PW1 has the requisite locus standi to institute and maintain this action and consequently whether the trial court has jurisdiction to entertain the case.
2. Whether the learned trial court was right in granting the plaintiff's reliefs (framed from ground 2).
3. Whether it was right and proper for the learned trial court to deliver its judgement in this case after ninety days from the close of evidence and final address.

With respect to issue 1, the appellant contended that the PW1 signed and issued Exhibit PWA and PWB, the notice to quit and Notice of Owners intention to recover possession respectively. He also stated that the PW1 initiated signing the application for issuance of plaint. That the PW1 did all these in the name and as Mr. Ogwu (See pages 1, 2 and 3 of the Record of Appeal). That under cross-examination, the PW1 admitted that his name is Valentine Onyegbule (See page 11 of the Record of Appeal). That the name and the identity of the PW1 was also confirmed by the PW2 (See page 12 of the Record of Appeal). That the PW1 misrepresented facts and misled everybody to believe that he is Mr. Ogwu, the owner of the property and appellant's landlord. He referred to page 18 of the Record of Appeal were the learned trial District Court Judge held as follows:

"For the avoidance of doubt, it is not the PW1 name that is on the face of the plaint, the name on the plaint is 'Mr. Ogwu' while the name of the PW1 is 'Valentine Onyebgule.'"

It is not in doubt that it is only the landlord or his agent that is in the position to issue a valid notice to quit. One may therefore ask; who is a landlord? A land lord has been defined in the case of **ADETAYO V COKER (1996) 6 NWLR (PT. 454) @ 259** as the person entitled to the immediate reversion of the premises. The word landlord also include an agent who has the express or implied authority of the owner of

the property to so act. The agent must be seen to have acted and related to the tenant either by collecting rent or exercising control on the property in terms of maintenance and other related acts that may be conferred on him by the landlord or owner of the property. See also the case of **ODUTOLA V PAPERSACK (2006) LPELR 2259 SC.** The terms landlord, agent or owner have been used interchangeably in varied circumstances depending on the nature of the control being exercised. The owner of a property is of course the landlord while the agent may also be referred to as the landlord if given the authority to so act for an behalf of the landlord/or owner of the property.

It is very obvious that the PW1 is not the landlord/owner of the property and neither is he an agent to the landlord/owner of the property. Furthermore neither the PW1 nor PW2 had the authority of the landlord/owner of the property to act on his behalf. The PW2 who testified that he gave the PW1 the authority to act on behalf of the landlord did not have the vire to do so; The maxim Delegatus non poter delegare is apt in this circumstance. A delegate cannot sub-delegate. The PW1 misrepresented himself to the court that he is the landlord to the property. And in the light of the contradicted testimonies of both the PW1 and PW2, the learned District Judge ought not to have upheld the claim of the respondent for recovery of premises. We agree with the submission of the learned counsel to

the appellant that the PW1 is not clothed with the locus standi to institute the action for recovery and other claims against the appellant. We therefore resolve issue 1 in favour of the appellant.

ISSUE 2:

The appellant contended that respondent have failed to discharge the burden of proof of his case on balance of probabilities. He relied on the case of **ONEMU V COMM AGRIC AND NATURAL RESOURSES ASABA (2019) 11 NWLR (PT. 1682), IFEDIORA V OKAFOR (2019) 16 NWLR (PT. 1698) 322 @ 337 PARA A-B.** The learned counsel submitted that the law is elementary that for the respondent to succeed on his claim for possession, he must prove the service of necessary notices on the appellant. That there is nothing to show that the Exhbits PWA and PWB were served on the appellant. And the respondent's witness failed to show or state on whom the said exhibits were served. That the none of the witnesses sated when, where and how the exhibits were served especially Exhibit PWB which must be proved to have been served before respondent could succeed to recover possession in the circumstance of this case. He further argued that there was no explanation as to whether the documents were personally served or served by substituted means as they must be served in line with the laws before there could be a valid service.

Other pertinent issues which the respondent failed to prove as argued by the appellant's counsel which include the nature of the premises, the monetary claim and how the District Court Judge arrived at the sum awarded. The award made by the Honourable Court the appellant's counsel submitted was not supported by the evidence before the court.

We agree with the observations of the learned counsel to the appellant in respect of the issues raised above. It is trite that in civil matters, a plaintiff must prove his case on balance of probabilities and he must do this by leading credible and convincing evidence in order to entitle them to reliefs sought. See Section 131 of the Evidence Act, **OFOLE V OBIORAH & ORS (2015) LPELR 24530 CA**. it is important in tenancy matter that the plaintiff proved that there was proper service of valid notices on the tenants. The issuance of valid notices terminating the tenancy and the proper service thereof are foundation upon which the claim for possession by the landlord/agent/owner rest. A defect in service of the notices will automatically rob the court of the jurisdiction to adjudicate on the claim of the landlord.

The learned Trial District Judge obviously did not properly assess the testimonies of the plaintiff's witness and neither did he apply the necessary law before arriving at decision. The evaluation and ascription of probative value to evidence adduced is the duty of the

trial Court, however where the trial court fails in its duty to appraise and evaluate the evidence before it to arrive at the correct decision, the appellate court which hears the appeal arising from the judgement of the trial court has the duty to ensure that the error of the trial court is corrected by re-evaluating the evidence on record and enter judgement in favour of the party which succeeds on that evidence. See **DARAMOLA & ORS V A. G. ONDO STATE (2000) LPELR 9135 CA; GAIDA & ORS V KITTA (1999) LPELR 13095 (CA); MINISTER FCT & ORS V KAYDEE VENTURES LTD (2000) LPELR 9897 CA.**

We hold that the decision of the trial district court judge is perverse; it is against the weight of evidence and therefore cannot stand. Issue No. 2 is resolved in favour of the appellant.

ISSUE 3:

On whether it was right and proper for the learned trial court to deliver its judgement after ninety days from the close of evidence and final address; the appellant's counsel relied on the provision of Section 294 (1) of the 1999 Constitution as amended which provides that;

"Every Court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final address and furnish all parties to the cause or

matter determined with duly authenticated copies of the decision within seven days of the delivery thereof."

He also referred to Section 294 (5) of the Constitution which provides;

"The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provision of Sub-Section (1) of this Section unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof."

The appellant's counsel submitted that non-compliance with Section 294 (1) from the facts and circumstances of this case occasioned a heavy miscarriage of justice against the appellant. He argued that the trial court delivered judgement eight months after final address of the parties. That the trial court had forgotten the evidence of witness and no longer appreciate and properly evaluate the evidence before arriving at its decision. He urged that the judgement of the trial court is a nullity and ought to be set aside.

We have scrutinized the record of appeal and agree with the appellant's counsel that trial judge in appraising the evidence of the plaintiff's witnesses resorted to what can be described as *"fill in the gap."* The facts or evidence that were not adduced by the witness

were inputted by the learned trial judge in the judgement. For instance the issue of offer authority which the judge stated was given to the PW1 by the PW2 was never in evidence before the court. The appellant's counsel in par 6.07 submitted also; *"The court forgot that the PW1 never said that the PW2 was the caretaker of the house and that the PW2 never mentioned and or tendered a letter of administration as an administrator or any document as an executor of the estate of the owner of the property whom he said was dead."* He reiterated further that the court forgot that both PW1 and PW2 admitted that Ifeanyi Ogwo inherited the property and was as such the owner of the property and there is nothing before the court to show that he ever authorised the suit or the action of PW1. All these he submitted greatly occasioned miscarriage of justice against the appellant.

The learned appellant's counsel also stated that the award of money by the trial judge was not supported by evidence before the court and this he said was a clear manifestation that the trial judge was not in touch with the facts of the case it gave its judgement. Furthermore, it was contended on behalf of the appellant that the miscarriage of justice suffered had gone beyond the delivery of the judgement of the trial court long after the constitutionally provided period. The counsel narrated that on 5th October 2020 the appellant filed the notice of appeal in this case within time and applied to the

trial court on same day for the record of appeal. That on the 7th October 2020 the appellant filed a motion for stay of execution before the trial court and notwithstanding the pendency of these processes, the trial district judge on the 12th October 2020 issued a warrant of possession for enforcement of the judgement even though there was no application for enforcement of judgement before the court on that date. That the application for the enforcement of the judgement was made by the respondent's counsel on 10th November 2020 (See pages 21 and 22 of the Record of Appeal). He submitted that it means that the application for enforcement was made almost one month after the court had started enforcing the judgement without application to that effect and without any regard to the processes (Notice of Appeal and Motion for stay of Execution) pending before the court. The learned counsel to the appellant stated that the notice of appeal and motion for stay of execution were served on the respondent and the motion fixed for hearing on the 8th February, 2021, however on 28th January 2021, the respondent led the court staff to enforce the judgement of the court by carrying away the appellant's properties to the court.

From the graphic narration of the appellant and the facts as contained in the record of appeal, it is not in doubt that the learned trial judge have failed to properly evaluate the evidence of the plaintiff's witness due to effluxion of time. The delay and the

eventual delivery of the judgement has apparently occasioned a miscarriage of justice. See the case of **ALLOYSINS & ANOR V OKIKE & ANOR (2018) LPELR 4657 (CA)** where the Court of Appeal held:

"It should however be added that a judgement is not necessarily a nullity simply because it was delivered by the court after 90 days from the date of the final address by counsel. By the requirement of Section 294 (1), (5) of the 1999 Constitution (as amended), the appellant has to go further to prove and satisfy the appellate court that the failure to deliver the judgement within the time stipulated occasioned a miscarriage of justice to the appellant. See the case of AKOMA & ANOR V OSENHOKWU & ORS (2014) LPELR 22885 (SC). "However by Section 294 (5) of the said Constitution, delay alone will not lead to setting aside the judgement unless there is evidence of miscarriage of justice." – Per Okoro JSC. See also AKPAN V UMOH (1999) 7 SC (PT. 11) 13. OWOYEMI V ADEKOYA (2003) 12 SC PT. 1."

Let us also state that the right of an aggrieved party to appeal the decision of a trial court is not negotiable, it is a constitutional right that cannot be wished away. The act of executing the judgement of the court during the pendency of the Motion for Stay of Execution and filing of a Notice of Appeal is a breach of the fundamental right of the appellant to appeal the judgement of trial court. Why the hurry in executing the judgement of the court, when the law allows

the plaintiff 30 days within which to appeal the decision of the court. We hold that the entire decision of the trial court occasioned a grave miscarriage of justice. We allow the appeal and hereby set-aside the entire decision of the trial District Court Judge. The file is to be remitted to the Deputy Chief Registrar (Magistrate) for reassignment to another District Judge.

SIGN **SIGN**

HON. JUSTICE A. S. ADEPOJU
HON. PRESIDING JUDGE
14/12/2021

HON. JUSTICE H. BABANGIDA
HON. JUDGE
14/12/2021