IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP	**:**	**HON. JUSTICE Y. HALILU**
COURT CLERKS	**:**	**JANET O. ODAH & ORS**
COURT NUMBER	**:**	**HIGH COURT NO. 14**
CASE NUMBER	**:**	**SUIT NO: CV/301/2019**
DATE:	**:**	**3RD DECEMBER, 2021**

BETWEEN:

ROT ULTIMATE PROPERTIES LTD…CLAIMANT

AND

MR. BODE NETUFO ……. DEFENDANT

JUDGMENT

The Claimant by a writ of summons dated the 12th day of November, 2019 approached this court for the following:-

a. Judgment of this Honourable Court, directing the Defendant to forthwith deliver up vacant possession of all that six (6) Bedroom Detached Duplex with 2 Bedroom Guest Challet lying and situate at Plot 2496 Yakubu Gowon Cresent, Cadastral Zone A4, Asokoro District, Federal Capital Territory, Abuja.

b. Judgment of this Honourable Court directing the Defendant to forthwith pay to the Claimant the sum of N5,000,000.00 (Five Million Naira) only as arrears of rent for four months calculated

from the 15th day of April, 2019 to 14th day of August, 2019.

c. Judgment in favour of the Claimant against the Defendant in the sum of N1,250,000.00 (One Million, Two Hundred and Fifty Thousand Naira) only as mesne profit per month from 15th of August, 2019 till the date of judgment and delivery of vancant possession unto the Claimant by the Defendant.

d. Any other additional relief this Honourable court may deem fit to grant in the circumstance to this suit including the sum of N500,000.00 as cost of action.

After exchange of pleadings, the matter proceeded into hearing.

The case of the Claimant as distilled from the witness statement on oath of PW1 is as thus;

That sometime in April, 2015, the Defendant indicated interest in leasing all that six (6) Bedroom Detached Duplex with 2 Bedrooms Guest Chalet lying and situate at plot 2496, Yakubu Gowon Crescent, Cadastral Zone A4, Asokoro District, Federal Ca20

pital Territory, Abuja and the expression of interest by the Defendant caused the Claimant to issue offer of lease of the property to the Defendant vide a letter dated 24th April, 2015.

That upon accepting the offer, the Defendant requested that at his own cost, some restructuring and renovation work be carried out on the property by the Claimant in Order to suit the Defendant's

unique specification and it was done. Subsequently, the Claimant communicated the Defendant and demanded the reimbursement of the sum of N950,000.00 while notifying the Defendant of the commcement date of the tenancy.

That it was a ten years' lease that was contemplated by the parties only a period of three (3) years certain was specifically guaranteed which clearly stated that ***"to hold same unto the lessee for a period of three years certain commencing from 15th day of August, 2015 to 14th day of August, 2018"*** and ***"subsequent rent for the lease period will be subject of review which shall be mutually agreed by the parties."***

It is the further deposition of the Claimant that since the expiration of the tenancy of the Defendant on the 14th August, 2018, the Defendant has only paid rent

for 8 months at the rate of N1,250,000.00 per month calculated from 15th August, 2018 to 14th April, 2019 totaling N10,000,000.00.

That the Claimant on the 3rd day of September, 2019, caused the issuance of Notice to quit personally signed by the landlord which was served on the Defendant on the 4th day of September, 2019.

That the Defendant has retained possession of the premises against the will of the Claimant despite accumulating arrears of rent of N5,000,000.00.

The following documents were tendered and admitted in evidence:-

1. Letter of Appointment dated 22nd April, 2015.
2. Letter of Offer dated 24th April, 2015.

3. Letter of Notification of Tenancy dated 30th July, 2015.
4. Letter forwarding the Tenancy Agreement dated 21st September, 2015.
5. Tenancy Agreement dated 30th July, 2015.
6. Notice of Rent Review dated 8th March, 2018.
7. Letter of Reminder of Tenancy expiration dated 14th January, 2019.
8. Letter from the Defendant dated 12th February, 2019.
9. Claimants reply dated 13th February, 2019
10. Notice to Quit dated 3rd September, 2019.
11. Notice of Owner's intention to apply to recover possession dated 17th September, 2019.

12. Receipt of payment of N500,000.00.

PW1 was cross – examined and subsequently discharged.

Plaintiff closed it case to pave way for defence. The Defendant upon his defence called DW1 (AfolabiOluwasogo).

Defendant on his part, denied the claims of the Claimant.

He further stated that it is not the practice anywhere to execute agreements whilst negotiation are yet ongoing and before parties arrive at a consensus. Nevertheless, the Defendant as an exhibition of utmost good faith expended more than N20 Million Naira in improving the property even as negotiations were on.

That a long lease of at least 10 years was contemplated by parties and to show good faith,he started paying pending the conclusion of negotiation, and that he has paid more than N10,000,000 (Ten Million Naira) only, to the Claimant to date contrary to Claimant's averment.

That the notices issued by the landlord and referred to by the Claimant are irregular, null, void and of no consequence having been issued in bad faith.

DW1 was cross – examined and subsequently discharged. Parties filed their final written addresses.

Defendant's counsel adopted its final written address and formulated two issue for determination to wit;-

i. ***"Whether the Claimant has capacity and the locus standi to institute and maintain this action."***

ii. <u>Whether the Claimant is entitled to the relief on the preponderance of evidence."</u>

On issue 1, learned counsel contends that it is apparent on the face of this suit that the Claimant purports to be suing as the lawful attorney to AlhajiSadiqAbubakar Bello. The law is trite that a party must prove the capacity in which he/she sues. ***RUTHLINZ INTER'L INVEST. LTD. VS IHEBUZOR (2016) 11 NWLR (Pt. 1524) 409, was cited.***

Counsel argued further that in the entire gamut of the Claimant's evidence including tendered and admitted documents, there is no power of attorney. This explains why the purported Quit Notice was issued by the landlord himself, as admitted in paragraph 12 of the statement of claim. Thus, it is

clear and in simple terms thatthe Claimant cannot prove the capacity in which he is suing in the instant case.

ADETONA VS ZENITH INTER'L BANK PLC. (2011) 18 NWLR (Pt. 1279) 627; BAKARE VS AJOSE ADEOGUN (2014) 6 NWLR (Pt. 1403) 320 were cited.

On issue 2, counsel argued that the law is trite that in civil cases, the party who makes an assertion has the onus of proving the truth of that assertion in order to succeed in the action.

CHUKWU VS AMADI (2009) 3 NWLR (Pt. 1127), 56 was cited.

Counsel submits that the Claimant is relying on an agreement executed only by a single party who was

never called as a witness. ***CONOIL VS NWUKE (2017) 4 NWLR (Pt. 1555), 294 was cited.***

On the whole counsel submits thatthe Claimant failed to lead credible and cogent evidence on the relevant issues as to entitle him to the reliefs sought and counsel urged the court to so hold.

On their part, Claimant formulated 3 issues for determination wit;

Whether the Claimant has capacity and the locus standi to institute and maintain this action?

Whether this Honourable Court can sit on appeal even its own decision?

Whether the Claimant has proved its case to warrant the entry of judgment in its favouragainst the Defendant?

Learned counsel submits on issue 1 that it is the statement of claim of the Claimant that determines the jurisdiction of a court to entertain a suit.

MR. SUNDAY ADEGBITE TAIWO VS SERAH ADEGBORO & 2ORS (2011) 5 SC (Pt. 11) 179 was cited.

Counsel argued further that the Claimant in this suit, suing as the lawful attorney to **AlhajiSadiq Bello** has not only by documentary evidence shown that it can bring this instant action as it is empowered to carry on the responsibilities of the landlord as the authorized lawful attorney but also by conduct of acting as the manager and agent of the landlord in collecting rent, interfacing with tenant, making formal and informal decision with respect to the premises, injecting and ejecting tenants, receiving

and decisively responding to correspondence with respect to the premises, counsel posit that the Claimant as presently constituted has the locus standi to institute this action as it has sufficient interest and legal right in the subject matters as well as an obligation to protect which would be adversely affected and counsel urge the court to so hold. ***BENEDICT OJUKWU VS LOUISA CHINYERE OJUKWU & ANOR (2008) 12 SC (Pt. 111) 1 was cited.***

On issue 2, counsel submit that once a court of competent jurisdiction decides any issue one way or the other, such decision remain valid until a higher court rules otherwise. This aspect of our law is comprehensively settled and this court having given a decision vide its ruling of 5th of February, 2020 striking out the preliminary objection of the

Defendant, this court became functus officio and consequently lacks the jurisdiction to revisit an issue already decided.

OKWARANONOBI VS MBADUGHA (2013) 17 NWLR (Pt. 1383) 255 at 272 paragraph A; F.B.N PLC. VS T.S.A IND. LTD (2010) 15 NWLR, (Pt. 1216) page 247 were cited.

On issue 3, counsel submit that generally in civil cases the burden of establishing a case as can be gleaned for the pleadings lies ultimately on the Claimant since if no evidence is adduced, he would lose his case.Thereafter, the burden of establishing the contrary would shift to the Defendant who has judgment given against him if nothing is said to rebut the evidence given by the Claimant.

ADISA VS ADISA (2012) 15 NWLR (Pt. 1324) page 538; SPDC(NIG.) LTD VS CHIEF TIGBARA EDAMKUE & ORS (2009) 6-7 SC 74; NIGERIA AIRWAYS LTD. VS OKOTUBO (2002) 15 NWLR (Pt. 790) page 376 were cited.

Learned counsel strongly posit in summation that the totality of the evidence adduced by the Claimant and in the absence of any contrary evidence, and the said evidence being unchallenged, counsel urged the court to grant the Claimant's reliefs.

Learned counsel to the Defendant replied on points of law on the issue of whether the court can revisit the question of the competence of this suit, having ruled on the preliminary objection. Counsel submit that being a challenge to the capacity of parties, it is a question of jurisdiction and therefore goes to the

root of the matter. It is trite law that jurisdiction can be raised at any point, even at the Supreme Court for the first time without leave. Furthermore, a careful reading of the ruling of 5th February, 2020 will disclose that the Honourable court basically decided that the issue raised by the preliminary objection (absence of a power of Attorney) could only be determined after evidence has been adduced. Having had the opportunity of adducing evidence and tendering documents, the Claimant still failed to tender any Power of Attorney. Counsel respectfully submitsthat even if the Claimant producea Power of Attorney, he cannot as donee sue on behalf of the donor in his own name as presently done. The proper Claimant in this case ought to have been "AlhajiSadiqAbubakar Bello (suing by his Attorney Rot Ultimate Properties Ltd.)".

MUSTAPHA VS CAC (2019) 10 NWLR (Pt. 1680) 355 at 359; BAKARE VS AJOSE ADEOGUN (2014) 6 NWLR (Pt. 1403) 320 were cited.

Court was urged to dismiss the case of the Claimant.

I have carefully read the written addresses of the Claimant and the Defendant on the one hand, and gone through the evidence adduced i.e documentary and viva-vice, on the other hand.

A community reading of issues afore-formulated by Claimant and Defendant seem to be dwelling on same and one thing. I therefore adopt all the issues formulated by Defendant and issue "2" formulated by Claimant as issues for determination i.e;

1. ***<u>Whether the Claimant has capacity and the locus standi to institute and maintain this action?</u>***

2. ***Whether the Claimant is entitled to the reliefs on the preponderance of evidence; and***

3. ***Whether this Honourable Court can sit on appeal on its own decision.***

It should be noted that, there are different categories of tenancy recognized by the law.

These include contractual tenancy, statutory tenancy, tenancy at sufferance or tenancy at will.

Contractual tenancy is the usual or common one that involves agreement between the landlord and tenant, written or oral on the terms and conditions of the tenancy. A statutory tenancy is a creation of statute for the benefit of the tenant and does not depend on the will or acceptance of the landlord or on the existence of a contractual tenancy. Tenancy at sufferance results from initial lawful occupation or

possession either by contractual tenancy or license given by the owner or person entitled to the right of occupancy of premises and occurs when the tenancy or license expires and the tenant or license holds over possession.

See the case of ***FARAJOYE VS. HASSAN (2006) 16 NWLR (Pt. 1006) Pg. 487, Paragraphs A – D; PAN ASIAN – AFRICAN CO. LTD. VS. NATIONAL INSURANCE CO. (1982) FNR 360, (1982)9 SC. 1; AFRICAN PETROLEUM VS. OWODUNNI (1991)8 NWLR (Pt. 210) 391.***

Where tenancy relationship between landlord and Tenant is governed by Tenancy Agreement, the said tenancy becomes contractual which is subject to the terms and conditions therein contained in the agreement.

Jurisdiction, as we all are aware, is a threshold issue that once raised ought to be determined, unless the Court, Litigants and Counsel want to labour in vain.

I have carefully read the argument of learned counsel for the Claimant who made hearing on the issue of a Court not being allowed to sit on appeal over its decision.

This argument is predicated upon an earlier ruling of this Court which was made sequel to a preliminary objection filed by Defendant's counsel, challenging the jurisdiction of this Court.

The said ruling was delivered on the 5th February, 2020 wherein the preliminary objection was dismissed. Suffices to note that the preliminary objection was on the following grounds:-

1. That the legal Practitioner who signed the process did not have National Identity Number;
2. That the Claimant did not have the capacity to sue; and
3. That Claimant hadn't the locus standi to sue.

The Court dismissed ground 1 of the Preliminary Objection dwelling on National Identity Number as contained in the body of the said ruling.

On grounds 2 and 3 of the Preliminary Objection touching on capacity to sue and locus standi, the Court had this to say:-

> "***From above, it is obvious that the issue of Power of Attorney is part of the claims of the Claimant and, therefore, cannot be determined at this preliminary stage.***

<u>On the whole, I find no merit in this preliminary objection and shall dismiss same, same is hereby dismissed in part.”</u>

Whereas I am in agreement with Claimant’s counsel that a court of law shall become functus – officio once judgment is delivered or Ruling is delivered in limine, there are exceptions to the general rule.

In the present case, the issue of appointment of the Claimant as Estate Manager hence attorney to the real owner was made an issue in the Preliminary objection, which I deliberately refused to determine at the embryo stage, as could be gleaned from exertof my ruling, afore reproduced, whereof I dismissed the Preliminary Objection in part.

I am morethan satisfied that Defendant’s counsel who has now raised the locus standi and capacity of

the Claimant to sue in its final written address, has all the support of law to raise the issues. The argument of Claimant's counsel on this score is a non – starter, weak and indeed most compromised in law. Same is refused and dismissed.

Agency relationship in law can be created by agreement, whether contractual or not between a principal and agent which may be express or implied from the conduct or situation of the parties; retrospectively, by subsequent ratification by the principal of acts alone on his behalf, or by operation of law under the doctrine of Agency of necessity and in certain other cases.

See ***NIGER PROGRESS LTD VS N.E.Z CORP (1989) 3 NWLR (Pt. 107) 68 at 92.***

The best form of evidence is documentary evidence.

See ***MLYA VS MSHELIZAH (2004) 14 WRN 128.***

NGIGE VS OBI (2006) 14 NWLR.

Claimant on record, Rot Ultimate Properties Ltd, standard Plaza, Plot 1248, Kutsi Close, Wuse II, Abuja, was appointed by one AlhajiAbubakar Bello, the owner of the property lying and situate at Plot 2496, Yakubu Gowon Crescent, Asokoro, Abuja, the subject matter of lease in issue, to manage the said property.

I shall reproduce paragraph 3 of the said letter dated the 22nd April, 2015;

> "***You are to manage the property in the best way to enhance my investment and create harmonies relationship between the tenant and the landlord to ensure good tenure in the property.***

You are to collect rents, admit and discharge tenants, etc, as case may be."

The said letter was tendered by the Claimant on record and admitted as Exhibit "I".

By the letter in question, Claimant on record is clearly the agent of the landlord who held himself out as such in the afore – reproduced paragraph "3" of the letter of appointment.

The law is settled per-adventure on the issue of whether an agent can sue on behalf of its principal.

It has been stated, through a long line of judicial authorities that an agent acting under the instruction of his principal, should, as a general rule, act in the name of the principal. Such an agent can sue but it has to be in the principal's name.

See ***VULCAN GASES LTD. VS G.F. IND. A.G (2001) 9 NWLR (Pt. 719) page 610.***

MELWANI VS FIVE STAR INDUSTRIES LTD. (2002) 3 NWLR (Pt. 753) 217.

Fromthe available evidence before me, Claimant on record is agent of the landlord. Claimant was given the authority to liaise with the tenantsof the principal i.e the landlord.

Claimant who put Defendant in occupation of the subject matter, as Tenant for the agreed period, decided to commence the present action for recovering of the premises in its name and not that of the principal i.e the landlord, hence the objection raised in the final written address in line with procedure and law.

Jurisdiction as I earlier said in the preceding part of this judgment, is a threshold issue in view of its infectious nature. It would be a mommental waste of judicial time to embark on judicial journey where the court abinitio does not have jurisdiction.

The fact that Claimant filed the present action in its name and not that of its principal remain the infectious virus that has infected the jurisdictional competence of this court to hear and determine the suit;Eventhough Defendant's counsel raised the issue earlier in time in its Preliminary Objection, the argument was jettisoned in part in view of the facts stated in the ruling dismissing the preliminary objection in part.

Eventhough Claimant did not tender any Power of Attorney in evidence appointing them as agent or

Attorney, the said Exhibit “I” aforementioned has comprised the suit of the Claimant as one that cannot stand in the eyes of the law.

I am most satisfied that this suit is fundamentally infected by jurisdictional bacteria and would need to be cured first before returning back to court. Before I put a full stop, I’ll like to observe that Defendant who though has raised the issue of jurisdiction on account of the argument evaluated earlier, must understand the need to liaise closely with his landlord to keep to term with the terms of their agreement.

This, I must say, is not just a matter of law, but conscience rooted in fear of God.

As I stated earlier, jurisdiction is very fundamental as it goes to the competence of the court.

If a court, arising from a mistake either from the parties before it, subject, the court shall address the issue first and decline jurisdiction where necessary to avoid waste of time and energy. You can't put something on nothing and expect it to stand.

See ***UAC VS MCFOY (1961) 3 ALL ER 1169.***

PETRO JESICA ENTERPRISES LTD. VS LEVENTIS TECHNICAL CO. LTD (1992) 5 NWLR (Pt. 244) 675 at 690.

Eventhough I have gone very deep into the facts of the case in issue, I cannot allow my desire to ensure justice is done to becloud my thinking ability and make my vision blurred… not suing in the name of the landlord who appointed Claimant as agent, to manage the property, is a vice that cannot be cured.

The jurisdiction of this court could not have been properly ignited.

This present action is infected. In view of all I have said, I shall decline to go further..said suit No. **FCT/HC/CV/301/2019** is liable to be struck – out. Same is hereby struck – out.

The authority of ***MADUKOLU VS NKEMDILIM (1962) LPELR 24023 – SC,*** is most instructive here.

Justice Y. Halilu
Hon. Judge
3rd December, 2021

<u>APPEARANCES</u>

U.C Ezechukwu, Esq. – for the Claimant.

ChuksUdo-Kalu, Esq. – for the Defendant.