

**IN THE HIGH COURT OF JUSTICE OF FCT
IN THE ABUJA APPEAL JUDICIAL DIVISION
HOLDEN AT GUDU, COURT NO. 20
BEFORE HIS LORDSHIPS: HON. JUSTICE M. OSHO-ADEBIYI
AND HON. JUSTICE J. ENOBIE OBANOR**

DATED THE 2ND DAY OF DECEMBER 2021

**CASE NO. MC/CR/AEPB/028/2020
APPEAL NO. FCT/HC/CRA/06/2021**

BEWTEEN:

**OCCUPANT FLAT 1 NO 3 MISAU CRESCENT– APPELLANT
(CHIEF ALOY C. EZENDUKA ESQ. UNDER THE NAME & STYLE OF A. C. E. EZENDUKA &
CO)**

AND

ABUJA ENVIROMENTAL PROTECTION BOARD RESPONDENT

JUDGMENT

This is an appeal brought before this Honourable court by the Appellant against the ruling of the trial Magistrate Court sitting at Wuse Zone 2, delivered by his Worship, Hon. Theresa Nten Otu on the 26th day of February, 2021. The Appellant was the Defendant at the Lower court while the Respondent was the Prosecutor at the Trial Lower Court.

The Notice of Appeal was filed on the 8th day of March, 2021, and part of the lower Court decision appealed against is the trial Court's ruling of 26th February, 2021. The grounds of appeal and the particulars are predicated on the following:-

GROUND ONE:

The Learned Chief Magistrate, His Worship, Hon. Theresa Nten Otu of Court 12, Wuse Zone 2, Abuja, erred in law when he determined the substantive case at the

interlocutory stage after the Defendant through his Counsel entered the case in protest, objecting to the service of the criminal summons on him and went further to adjourn the case for hearing on 26th March, 2021.

PARTICULARS OF ERROR:

1. The Court lacks the power to determine the merit of the substantive case at interlocutory stage.
2. The Court denied the Appellant his constitutional right to fair hearing when he decided the substantive case at interlocutory stage without allowing the Appellant to call in his witnesses.
3. The Court further adjourned the matter for hearing on the 26th March, 2021, having delivered the Ruling that delved into the substantive matter.
4. The Appellant's right to prove his case against the Respondent was denied when the Court delved into the substance of the case and determined the substantive case against the Appellant at the interlocutory stage.

GROUND TWO:

The learned trial Magistrate erred in law and misdirected himself when he did not consider the case of the Appellant as to when he took possession of the said flat as a tenant and denied him right to fair hearing as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) by determining the substantive case at the interlocutory stage leading to a miscarriage of justice

PARTICULARS OF ERROR:

1. The Appellant was denied his inalienable right to fair hearing when the learned trial Magistrate on the 26th February, 2021, determined the substantive case at the interlocutory stage in a matter that pertains to the legal rights of the Appellant.
2. The principle of *audi alteram partem* was not observed by the trial Court in determining the matter at the interlocutory stage. The trial Court refused the

Appellant's application for summon of the caretaker of the Flat 1, Misau Crescent, S.N Ilonuba Esq., to enable the Appellant prove his case as to when he took possession of the Flat and to prove that the said accumulated solid and liquid waste disposal previous bills were not consumed by him neither was such services rendered to him.

3. The trial Court ruled that he had no business with the Owner/Caretaker, who is in the best position to give evidence as to when the Appellant became an occupier of the Flat, thereby denying the Appellant his Constitutional right to fair hearing.

GROUND THREE:

The trial Judge erred in law when he did not consider the provisions of Section 30(4) of the Abuja Environmental Protection Board Act, 1997, as to who the occupant was as at when the previous bill accumulated, when the Appellant became an occupant and when Appellant waste disposal fee became due, before ruling that the Appellant is liable to pay the said accumulated waste disposal previous bill when the bill accruing to the Appellant was from July 2020-Dec 2020.

PARTICULARS OF ERROR:

1. As at the time the Bill accumulated, the Appellant was not the occupant of the Flat 1, No. 3 Misau Crescent, Garki, Abuja. The Appellant took possession of the said Flat as a tenant on 1st July, 2020. The Appellant was served with a solid and liquid waste disposal bill covering the period of July 2020-December 2020, to the tune of Nine Thousand Two Hundred and Sixty Seven Naira, Thirteen Kobo which same accrued to him as the occupant of the Flat for the period of July 2020-December 2020, which he promptly paid for on 16th September, 2020 at UBA.
2. The Trial Court did not take into consideration the time Appellant took possession of the Flat as tenant to determine who actually was the occupant during accumulation of the said previous Bill and when the Appellant's waste disposal fee became due, before arriving at this Ruling.

3. That it amounts to an illegality to rule that the Appellant should pay for services rendered to someone else or services not consumed by the Appellant.

GROUND FOUR:

The trial Court erred in law when he ruled in considering the provision of Section 30 (4) of the Abuja Environmental Protection Board Act, 1997, that "Relying on the above provision AEPB Act, I align myself with the submission of the learned Defence Counsel to the extended(sic) the landlord the one liable and should take the responsibility of paying the bill for which the defendant was brought to Court and also that the defendant should not pay for services that was not rendered to it or services it did not consume" and went further to rule that the Defendant is liable for payment of the accumulated previous bills.

PARTICULARS OF ERROR:

1. The AEPB bills are to be served on every occupied Flat as prescribed by the AEPB who served the said bill never went to the said Flat as prescribed by the AEPB Act, but rather chose to drop it with the security man by name Ibrahim Mohammed (now deceased) who kept same with him and waited for the Appellant to pack in and thereafter gave him same.
2. The trial Court denied the Appellant the right to prove that the said Flat was vacant for a period of two years preceding the time he took possession of the Flat by not giving the Appellant the opportunity of calling the caretaker to give evidence as to how long the Flat was vacant before the Appellant took possession, but went ahead to deliver a ruling that touched on the substantive matter.
3. The trial Court ruled that the landlord is the one liable to pay the previous bill and should take responsibility of paying the previous bill for which the Defendant was brought to Court and also that the Defendant should not pay for services that was not rendered to it or services it did not consume and went further to rule that the Defendant is liable for payment of the accumulated previous bill.

4. The Defendant having paid the sum of Nine Thousand Two Hundred and Sixty Seven Naira, Thirteen Kobo(9,267.30) (sic) which same accrued to him as the occupant of the Flat for the period of July2020-December 2020, when he took possession of the Flat as a tenant cannot be made to pay for services consumed by someone else or services not consumed at all.

GROUND FIVE:

The trial Court misdirected himself and erred in law when he applied Section 30(7) of the AEPB Act, 1997, which subsection does not exist in AEPB ACT, 1997.

PARTICULARS OF ERROR:

1. Section 30(7) of the AEPB Act, 1997, which the trial Court relied upon in the ruling thus: *"I therefore hold, that the Board has no business against the landlord or lessor of Flat 1#3, Misau Crescent but against the Occupier whom in some cases may be the owner, hence the nomenclature of "owner or occupier in seet Section 30(7) AEPBA"* does not exist in the AEPB Act, 1997. There is nothing like Section 30(7) in the AEPB Act, 1997.
2. The trial Court misdirected himself in law, when he aligned himself with the submission of the Appellant Counsel as thus: *"I align myself with the submission of the learned Defence Counsel to the extended(sic) the landlord the one liable and should take the responsibility of paying the bill for which the Defendant was brought to Court and also that the Defendant should not pay for services that was not rendered to it or services it did not consume"* and further went ahead to rule that *"I therefore hold that the Board has no business against the landlord or lessor of Flat 1, #3, Misau Crescent, against the occupier whom in some cases may be the owner, hence the nomenclature of "owners or occupier in seet Section 30(7) AEPBA"*

The Reliefs Sought from the Court by the Appellant are:-

1. An order allowing this Appeal and setting aside the ruling of the trial Court of 26th February, 2021, where the Court held that the Appellant is liable to pay the accumulated solid and liquid waste disposal previous bill of Two

Hundred and Five Thousand, One Hundred and Twelve Naira, Seventy Three Kobo (N205,112.73), which was consumed by someone else and services not consumed by the Defendant.

2. An Order that the Appellant was not the occupant of the said Flat as at the time of the accumulation of the said previous bill.
3. Payment of the sum of Five Hundred Thousand against the Respondent in favour of the Appellant as cost of prosecuting this appeal.

The Appellant's appeal was fixed for the 21st of October, 2021, for hearing. The Appellant and the Respondent's Counsel were served with the hearing notices; the proof of service and the certificate of service deposed to by the court bailiff were filed in court. Subsequently, the appeal was heard on the 21st October, 2021.

In the Appellant's brief of argument, Counsel to the Appellant formulated four (4) issues for determination as follows:

1. Whether the Learned Trial Magistrate was right in law by deciding the substantive case at the Interlocutory stage thereby denying the Appellant his constitutional right to fair hearing?
2. Whether the trial court was right in law by not considering Section 30(4) of the AEPB Act as to when the Appellant became the occupant/tenant of Flat and when the Appellant's waste disposal fee became due?
3. Whether it does not amount to an illegality for the trial court to rule that the Appellant is liable for the payment of the accumulated Waste Disposal bill on Flat 1 No 3 Misau Crescent Garki II, Abuja, being services consumed by the former tenant in the Flat?
4. Whether the Learned Trial Magistrate was right in law when he held that "Relying on the above provision of AEPB Act, I align myself with the submission of the Learned Defence Counsel to the extended(sic) the Landlord the one liable and should take the responsibility of paying the bill for which the defendant was brought to court and also that the defendant should not pay for services that was not rendered to it or services it did not

consume” and further ruled that the Appellant is liable for the payment of the accumulated Waste Disposal bills being services consumed by the former tenant/occupant of Flat 1, No 3 Misau Crescent Garki II Abuja?

ISSUES ONE, TWO AND THREE:

Appellant's Counsel in his brief of argument argued Issues 1, 2 and 3 together. In his submission, he stated that, it is settled law that courts should not delve into the substantive matter at the interlocutory stage. Accordingly, he cited the Supreme Court in the case of **BUREMOH V AKANDE (2017) 69 NSCQR 68 at pg 92**, Per M.D Muhammed, JSC, held thus:

“A court must avoid the determination of substantive issue at the Interlocutory stage. It is never proper for a court to make pronouncement in the course of Interlocutory proceedings on issues capable of prejudging the substantive issue before the court. Interlocutory applications, which applicant’s motion is, must remain the handmaid and aide that enable the courts reach the ultimate goal of doing substantive justice between the parties in the real issues in litigation between the parties.”

Further, the Appellant's Counsel stated that on the 9th February, 2021, the Appellant received a Court Summons from the security man at No. 3 Misau Crescent, which Summons was issued by the Magistrate Court of FCT to appear before the Chief Magistrate Court 12, Wuse Zone 2, Abuja, FCT, on the 12th of February, 2021, in respect of failure to pay Solid and Liquid Waste Disposal Bill.

The Appellant through his Counsel, appeared on protest and raised an objection on the propriety of Respondent demanding him to pay the accumulated previous bill, Two Hundred and Five Thousand, One Hundred and Twelve Naira, Seventy Three Kobo(N205,112.73) consumed on the Flat by the former occupant/tenant before the Appellant took possession of the Flat sometime in July 2020 – December 2020, to the tune of Nine Thousand, Two Hundred and Sixty Seven Naira, Thirteen Kobo(N9,267.30) from the time he took possession of the said Flat as a tenant.

The Appellant's Counsel submitted that it is illegal for the Appellant to be made to pay for accumulated Solid and Liquid Waste Disposal Bill, being services consumed by a former occupant/tenant in the said Flat. The trial court delved into the substantive case at the Interlocutory stage without giving the Appellant right to defend himself thereby denying the Appellant his constitutional right to fair hearing.

To further buttress the point, he referred the Court to the case of **A.G KWARA STATE V LAWAL (2017) 70 NSCQR 444** where PER E. EKO, JSC, at pages 474-475 held thus:

“The law is settled that at Interlocutory stage, no court, whether trial or appellant, is allowed to delve into the substantive matter or pending matter and decide it. The court below had done that which is prohibited in our jurisprudence. Its decision and all the orders made touching the merits of the originating summons, being null and void, are hereby set aside.”

According to Appellant's Counsel, it is clear from the facts and circumstances of the Appellant's case, that the trial court delved into the substantive case and decided same at Interlocutory stage by holding at the interlocutory stage that the Appellant is liable to pay for the accumulated Waste Disposal fees, being services consumed by the former tenant/occupant of the Flat, thereby denying the Appellant fair hearing. Therefore, the adjournment of the case by the trial court for hearing only amounts to **‘administering medicine after death.’**

Aloysius Chukwuma Ezenduka, Esq., Counsel for the Appellant, contended that the effect of the Supreme Court's decision in **A.G KWARA STATE V LAWAL (supra)**, in the Appellant's case, is that the decision and Orders made by the trial court which touches the merit of this case is null, void, and should be set aside. He urged the Court to so hold. He also referred the Court to the case of **BRAITHWAITE V DALHATU (2016) 66 NSCQR 212 at pg 219.**

On the issue of fair hearing, Appellant's Counsel submitted that the right to fair hearing is a constitutionally guaranteed right and forms the threshold of every trial in our jurisprudence. In law, it is fundamental and grave that the effect of such

breach renders the trial and every Order or decision reached a nullity. He referred to the case of **EKPENETU V OFEGOBI (2012)15 NWLR (Pt 1323) 276**. The Appellant's right to fair hearing was denied when the trial court delved into the substantive case and decided same at the interlocutory stage, thereby denying the Appellant the opportunity of calling witnesses and tendering documents to defend his case. Appellant's Counsel therefore urged the Court to set aside the decision of the trial court in favour of the Appellant.

In defining the word 'occupant', Counsel for the Appellant cited the New Webster's Dictionary of the English Language International Edition, which defined 'Occupant' as "*someone holding temporary or permanent rights of ownership or tenancy over a place or building which he occupies*". Counsel for the Appellant argued that it is on record at the trial court, that the Appellant took possession of the Flat on the 1st July, 2020, as a tenant. He submitted that the issue that agitates the mind is, can the Appellant be said to be the occupant of that flat during the accumulation of the Waste Disposal fees bearing in mind the date and period the Appellant took possession of the Flat as a tenant? Appellant's Counsel in response to the question said the answer is 'No'.

Appellant's Counsel also argued that the decision of the trial court that the Appellant is liable to pay the accumulated Waste Disposal fees was perverse having failed to consider when the Appellant became the occupant of the flat and the period of the accumulated Waste Disposal Fees in interpreting the provision of Section 30 (4) of the AEPB Act. He cited the case of **CSS BOOK SHOP LTD V REGISTERED TRUSTEES OF MUSLIM COMMUNITY IN RIVERS STATE (2006) 4 SCM 310**, where the Supreme Court stated succinctly inter alia when a decision of a court is perverse thus: "*A decision of a court is perverse when it ignores the facts or evidence adduced and admitted before it and when considered as a whole amount to miscarriage of justice. In such a case, an appellant court is bound to interfere with such a decision and set it aside*". He also referred the Court to the case of **UBN PLC V CHIMEZIE (2014) LPELR 22699 (SC)**. According to the Appellant's Counsel, the trial court was more concerned of the provision of Section 30 (4) of the AEPB Act 1997, without considering the interpretation of the section vis-à-vis the facts and evidences adduced by the Appellant at the interlocutory stage. He cited the provision of Section 30 (4) of the AEPB Act which provides thus:

"The owner or occupier of any tenement shall pay his waste disposal fees as and when due to the Board".

Counsel to the Appellant also submitted that the very crucial questions, which the trial court ought to have considered for the just determination of this case is, 'at what point in time did the Appellant become the occupant of the flat and when did the Appellant's waste disposal fee become due?' In answer to this vital question, he submitted that the Appellant became an occupant of the flat on the 1st July, 2020, and his waste disposal fee became due from the 1st July 2020, when he took possession of the flat as a tenant and paid the sum of Nine Thousand Two Hundred and Sixty Seven Naira, Thirteen Kobo (N9,267.30) being waste disposal bill due on the flat for the period of July 2020 – December 2020.

In support of the above submission, Appellant's Counsel referred the court to the case of **WIKE NYESOM V PETERSIDE (NO. 10 (2015) 64 NSCQR 795 at 836-837**, wherein it was held that the court should not give an interpretation in a statute that will defeat the intention of the Legislature or lead to absurdity or injustice. The trial court's interpretation of Section 30 (4) of the AEPB Act amounts to absurdity and injustice on the Appellant.

Aloysius Chukwuma Ezenduka, Esq., Counsel for the Appellant, argued that the decision of the trial court that the Appellant is liable and should pay for the accumulated waste disposal fees of Two Hundred and Five Thousand, One Hundred and Twelve Naira, Seventy Three Kobo (205,112.73) being services consumed on the flat by the former occupant/tenant of the flat before the Appellant took possession of the flat sometime in July 2020, amounts to grave injustice and illegality. It is the position of Appellant's Counsel that an unpaid waste disposal bill is not/cannot be transferrable to new tenant as in the case of the Appellant. Such liability cannot and should not be imposed on the new user of the flat as in the case of the Appellant.

He submitted that the Appellant became an occupant of Flat 1, No. 3, Misau Crescent, Garki, Abuja, on the 1st July, 2020, and his waste disposal fee became due from July, for which he was served with a bill of Nine Thousand Two Hundred and Sixty Seven Naira, Thirteen Kobo (N9,267.30) covering the period of July

2020 – December 2020, which he has paid for. He urged the Court to so hold and resolve Issues 1, 2, and 3 in favour of the Appellant.

ISSUE FOUR:

In support of the fourth issue for determination, Counsel for the Appellant submitted that it is settled legal position that neither the Court nor party can approbate and reprobate. He cited the case of **JAFAR ABUBAKAR V ALHAJI IBRAHIM HASSAN DANKWAMBO (2015) LEGALPEDIA (CA) 31911; NIGERE V OKURUKEY (2014) LPELR (22883) 1 AT 30; ABEKE V ODUNSI (2013) LPELR (20630) 1 AT 25.**

Further, Appellant's Counsel referred to the case of **JULIUS BERGER NIGERIA PLC V. ALMIGHTY PROJECT INNOVATIVE LIMITED AND ANOR (2018) LEGALPEDIA (CA) 12130**, where the Court of Appeal held that since equity follows the law, even the Court cannot blow hot and cold.

Flowing from the above submission, Counsel for the Appellant contended that from the ruling of the trial Court, the trial Magistrate aligned himself to his submission and held thus:

"Relying on the above provision of AEPB Act, I align myself with the provision of the learned Defence Counsel to the extended(sic) the landlord the one liable and should take the responsibility of paying the bill for which the defendant was brought to Court and also that the defendant should not pay for services that was not rendered to it or services it did not consume".

However, according to Appellant's Counsel, the trial Court in affirming his submission, approbated and reprobated, when he further ruled thus:

"I hold for the complainant and hold that the occupier of flat 1#3, Misqu(sic) Crescent is liable for the bills to his apartment and shall pay same"

Stemming from the above, the Appellant's Counsel submitted that the trial court cannot blow hot and cold at the same time and urged the Court to set aside the

ruling of the trial Court for lacking in merit and grant all the reliefs set out in paragraph 4 of the Appellant's Notice of Appeal in the interest of justice.

The Respondent's Counsel on the other part, filed its respondent brief of argument on the 12th August, 2021, and formulated two issues for determination as follows:

- 1. Whether in the circumstances of the case, the lower court denied the Appellant his right to fair hearing?**
- 2. Whether the Magistrate Court was right to have held that "the occupier of Flat 1 No. 3 Misau Crescent is liable for payment of the bills accruing to its apartment and shall pay same"?**

ISSUE NO. 1:

On Issue No. 1, the Respondent's Counsel answered the issue raised in the negative. He submitted that it is trite that the principle of fair hearing, also known as *audi alteram partem*, is a basic foundation of our jurisprudence, and is enshrined in **Section 36 of the Constitution of the Federal Republic of Nigeria, 1999** (as amended).

The Respondent's Counsel further submitted that a glaring feature of fair hearing is whether the court heard both parties or sides on the material issues in the matter before reaching a decision. He referred this Honourable Appellate Court to the case of **PETERSIDE V FUBARA (2013) VOL. 218 LRCN (Pt. 2) 216** and the case of **ZAKARI V NIGERIA ARMY (2012) 5 NWLR (Pt.) 478**, where the Court of Appeal held:

"It is wrong and improper to approach the issue of fair hearing by placing reliance on any prior assumption as to its technical requirement. The simple approach is to look at the totality of the proceedings before the court and then form an opinion on the subjective standards whether or not equal opportunity has been afforded to parties to fully ventilate their grievances before the court. The principle of fair hearing cannot be applied as if it were a technical rule based on prescribed prerequisite".

To further buttress his argument, Respondent's Counsel, stated that a cursory look at the Record of Proceedings, **at page 3 to 5 of the Record of Appeal**, shows that at **Page 3 of the Record of Appeal**, the Defendant (now the Appellant in this appeal) was represented in court by Counsel who raised an objection, at the interlocutory stage, contending that the Defendant was not the proper party to be sued for the offence of failure to pay waste disposal fees as and when due to the Complainant (now the Respondent in this appeal) but that it was the Landlord. That it is also evident at **Page 4 of the Record of Appeal** that the grounds whereupon Counsel to Defendant placed reliance to argue the preliminary objection were:

- (1) The Defendant came into occupation of the property in July, 2020
- (2) The Defendant was only liable to pay the bill for July to December, 2020.
- (3) The Landlord is liable to pay the bills accruing to the property up to June, 2020.

The Respondent's Counsel also contended that the Record shows at **Page 5 of the Record of Appeal** that after the submission of the Prosecution, the Defendant was given an opportunity to reply on point of law before the court adjourned the case for ruling.

Umanah Udeme, Counsel for the Respondent, stated that it is evident from the record of proceedings that the Defendant was informed of the allegations against him, was represented in court during the proceedings, and the Defendant (now the Appellant) made an interlocutory application, which the court heard both sides before adjourning for ruling.

From the above, Counsel for the Respondent, posited that the court complied with the requirement of *audi alteram partem* and the Defendant was not denied fair hearing.

He further submitted that the contention of the Appellant in **Ground 1 of the Notice of Appeal** that the lower court determined the substantive case at the interlocutory stage is misconceived. He stated that the Courts are duty bound not to determine substantive matters at the interlocutory stage. Buttressing his position, he cited the case of **OSUU ODUKO V GOVERNMENT OF EBONYI STATE**

OF NIGERIA (2009) 9 NWLR (Pt. 1147) 439, where the Supreme Court had this to say:

"Courts are duty bound not to determine substantive matters at the interlocutory stage of the proceedings. In dealing with interlocutory matters, as the instant matter, the court has to limit itself within the scope of the motion before it and not to prejudice a crucial point which is to be tried in the substantive matter in due course".

Counsel for the Respondent submitted that the question the Appellant posed before the lower court for determination by way of preliminary objection was, in other words:

"Whether or not the Defendant before the lower court was the party liable to pay the waste disposal fees for which he was sued or the Landlord"?

In answering the poser, the court held:

"The occupier of Flat 1 No. 3 Misau Crescent is liable for payment of the bills accruing to its apartment, and shall pay same".

The Respondent's Counsel respectfully submitted that in the entire gamut of the interlocutory proceedings, there is nowhere the lower court delved into the substantive matter when the court delivered its ruling in the application.

According to the Respondent's Counsel, in view of the contention of the Appellant, the Appellant was not the proper party to be sued for failure to pay waste disposal fees but the Landlord, on ground that Appellant was not the party liable for payment of the waste disposal fees accruing to Flat 1 No. 3 Misau Crescent prior to July 2020, but the Landlord. The determination as to who is liable, as between the Appellant and the Landlord, became imperative, before the hearing of the substantive matter.

Respondent's Counsel also submitted that if the court had found in favour of the Appellant, then the proceeding would terminate at that stage, and the substantive matter struck out. On the other hand, the court found against the Appellant, therefore, the court is meant to proceed into the substantive matter, and the court adjourned the case for continuation. On the next adjourned date, the Prosecution may open their case against the Appellant.

In response to the Appellant's submission at **Ground 3 of the Notice of Appeal**, the Respondent's Counsel submitted that the contention of the Appellant is misconceived and merely calculated to mislead this Honourable Appellate Court, as it is evident in **Paragraph 3 of page 17 of the Record of Appeal**, that the lower court took cognizance of the provisions of Section 30 (4) of the AEPB Act, 1997, when the court stated that **Section 30 (4) of the AEPB Act, 1997** provides thus:

"The Owner or Occupier of any tenement shall pay his waste disposal fees as and when due to the Board"

The lower court went further to particularly state:

"Relying on the above provisions of the AEPB Act, I align myself with submission of the learned Defence Counsel to the extent that the landlord should be the one liable and should take responsibility of paying the bill for which the Defendant was brought to court. ... However, the provisions of the act, as quoted above, is very clear and unambiguous..."

Accordingly, Respondent's Counsel cited the case of **SHETTIMA V GONI (2012) ALL FWLR (Pt. 609) 1023 @ 1050-1051, PARAS F-A.**, where the court decided as follows:

"Where the words of a statute are clear and unambiguous, a court can only expound it and give effects to those words in their ordinary meaning. The words themselves alone in such a case best declares the intention of the law giver. Words are not to be construed to their meaning by embracing or excluding cases merely because no good reason appears why they

should not be embraced or excluded. The duty of the court is to expound the law as it stands".

ISSUE NO. 2:

Respondent's Counsel submitted that the answer to Issue No. 2 is in the affirmative.

To buttress his argument, Counsel cited Section 30 (4) of the AEPB Act, 1997 (supra).

Waste disposal fee is a form of utility bill, like electricity bill or water rate, and is paid to the Respondent for waste management services rendered to the occupant of any tenement.

Therefore, the bill is addressed to "the Occupant" of a property. The occupant may either be the owner of the tenement or an occupant, *simplicity*.

He stated that whether the owner is the occupant or the occupant is a mere tenant, if the waste disposal fee is paid, it is the occupant of the tenement, who is responsible for payment that has actually paid the fees.

Respondent's Counsel further buttressed that the occupant is also regarded as being responsible for the payment and is deemed to have actually paid the fees, in the circumstance where the owner agrees with the occupant to be responsible for payment and instructs the occupant to forward the bill served on the occupant to the owner for payment for and on behalf of the occupant, and the owner actually pays the bill.

Flowing from the above, Respondent's Counsel predicated his submission upon the fact that the bill is the responsibility of, and is addressed to the Occupant, by reason that the occupant is the beneficiary of the services. The payment by the owner is on the basis of the personal tenancy arrangement existing between the owner and the occupant, to the exclusion of a third party.

He stated further that in another scenario, the owner is responsible for payment of the fees, where the owner instructs the Board (i.e. the Respondent), in writing, to

issue the bill meant for occupant of a tenement, to the owner and in the name of the owner.

In the above foregoing circumstance, Respondent's Counsel stated that the owner is regarded as being responsible for payment, and may make payment for the occupant and in turn receive the payment from the occupant in form of service charge or as part of the rent.

Stressing further, Respondent's Counsel argued that where waste bill is addressed to, and served on "The Occupant", but the occupant fails, refuse and or neglect to pay the bill as and when due, if, and when the occupant intends to vacate the property, the owner is obligated to ensure that the occupant has discharged all outgoing accruable to the property the occupant occupied.

As a general rule, Respondent's Counsel stated that in tenancy contract, where an occupant vacates a property without payment of waste disposal fees, except where the bill was in the name of the person who occupied the property, the landlord becomes liable to pay the fees.

Accordingly, Respondent's Counsel stated that the aforesaid general rule was aligned to, by the lower court when the court held, at **page 7 of the Record of Appeal** thus:

"... I align myself with submission of the learned Defence Counsel to the extent that the landlord should be the one liable and should take responsibility of paying the bill for which the Defendant was brought to court and also that the Defendant should not pay for services that was not rendered to it or services it did not consume"

The learned Prosecutor (now the Respondent's Counsel) further articulated that the lower court aligned itself with the general rule, as submitted by the Appellant, nevertheless, the court went ahead to give reasons why in the instance of the case, it would hold that the Board has no case against the Landlord, and that *the occupier of Flat 1 No. 3 Misau Crescent is liable for payment of bills accruing to its apartment and shall pay*, which, for ease of reference, he itemised as follows:

- (a) By the provisions of the AEPB Act, 1997, payment of waste disposal fees is the obligation of either the owner or the occupier.
- (b) The Appellant, occupant of Flat 1 No. 3 Misau Crescent, may be the owner, as well as the occupier, as there was nothing before the court to show that Appellant was only an occupant.
- (c) The Appellant, who is the current occupant of Flat 1 No. 3 Misau Crescent, may be one and the same as the alleged previous occupant who generated the waste for which the previous bills were served.
- (d) The issue of who is responsible for payment of the previous balance, as between the Appellant and the owner of the property, is a tenancy issue, which is ultra vires the Board (i.e. the Respondent) and not within the purview of Section 30 (4) of the AEPB Act, 1997.
- (e) The Appellant is under an obligation to exercise due diligence by ascertaining that the premises he intends to take up occupation is not encumbered, financially.
- (f) It is the responsibility of the Appellant when he knows of the encumbrance to prevail on the owner, to take up the responsibility of settling the bills prior to his occupation of the tenement.

Finally, Respondent's Counsel urged the court to resolve Issue No. 2 in his favour and discountenance this appeal as same is baseless and a waste of the precious time of this Honourable Appellate Court, affirm the decision of the lower court and dismiss this Appeal.

In response to the Respondent's brief of argument, the Appellant filed its reply brief on point of law, dated and filed on the 20th August, 2021.

Appellant Counsel stated that is a known principle of law that an uncontroverted or unchallenged evidence is deemed admitted and the court can act on it. **In OYIBO IRIRIR & ORS. VS. ESERORAYE ERHURUOBARA & ANOR. (1991) 1 SC. Pg 1, the Supreme Court Per Olatawura JSC; held thus:**

"Where the evidence of a witness is not inadmissible in law, uncontroverted and unchallenged evidence a court of law can act on it and accept it as a true version of the case it seeks to support".

In response to the Respondent's Reply Brief, Appellant Counsel submitted that the fact adduced by the Appellant that the Appellant moved into the said flat in July, 2020, was never controverted by the Respondent at the trial court. Furthermore, there is nothing in the record of proceedings support the assertion of the Respondent in paragraph 2.4 of his Reply Brief, neither was there anything in the ruling of the trial court to support such assertion of the respondent.

Further, the appellant adduced evidence to prove that he made a payment of **N9,267.23 (Nine Thousand Two Hundred and Sixty Seven Naira, Thirteen Kobo)**, as Solid and Liquid Waste Disposal fee covering the period of July 2020 - December 2020, when the appellant moved into the said Flat. We refer My Lords to page 1 of the Record of Appeal.

Further, Appellant response to **paragraph 5.51 - 5.54** of the Respondents Reply Brief, submitted that facts admitted needs no further proof. That the Respondent has clearly admitted that in the circumstances of the present case, the landlord is liable to pay for the accumulated waste disposal fees. He refers us to **pages 4 and 5** of the Record of Appeal wherein the Respondent admitted to this fact.

Counsel further reply on point of law that criminal proceedings are *in personam*. He said for criminal proceeding to be valid, it must be instituted against the person who has committed the alleged offence. The Supreme Court in the case of **PML (NIG) LTD V FRN (2017) LPELR-4380**, held that criminal liability is personal and cannot be transferred because the mens rea or actus reus is on the accused who is before the court. We refer My Lord also to the most recent case of **FEDERAL ROAD SAFETY COMMISSION & ORS. V. BARR. OSUOBENI EKOI AKPOS (2021) LPELR-52917 (CA)** wherein the court held that the liability of a passenger who did not have his seat belt on cannot be transferred to the driver.

Having considered the various issues distilled for determination by both parties, in our considered opinion, the issues are principally the same. Thus, therefore for a

just determination of this appeal, we shall consider the issues formulated by the Respondent's counsel and we shall adopt same in consideration of this Appeal.

- 1. Whether in the circumstances of the case, the lower court denied the Appellant his right to fair hearing?**
- 2. Whether the Magistrate Court was right to have held that "the occupier of Flat 1 No. 3 Misau Crescent is liable for payment of the bills accruing to its apartment and shall pay same?"**

On issue one; it is trite that by virtue of section 36(1) Of the 1999 Constitution as amended, right to fair hearing is guaranteed. Thus, Agbo, JCA, held as follows:

“By virtue of section 36(1) of the 1999 constitution, in e determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitle to a fair hearing within a reasonable time by a Court or other tribunal established by law and construed in such a manner as to secure its independent and impartiality” (Kaumu vs shita-Bey (2006)17NWLR 372 at 390 CA)”

In determining the test for fair hearing and fair trial, the Court further held:

“Fair hearing and fair trial are one and the same thing the test for the breach is the view of a reasonable person who has been present and has witnessed the proceedings as to whether the Court or Tribunal was fair.” (Kaumu vs shita-Bey (2006)17NWLR 372 at 390 CA)

The Appellant in this Appeal contended it was denied the right to fair hearing when the trial Court delve into the substantive case and decided same at the Interlocutory stage thereby denying the Appellant the opportunity of calling witnesses and tendering documents to defend his case and urge the Court to set aside the decision of the trial Court. On the part of the Respondent, the glaring feature of fair hearing is whether the Court heard both side on the material issues in the matter before reaching a decision.

Let us quickly state that from the record of proceedings filed in this Court, no hearing has yet taken place before the lower Court. It was only a preliminary objection that was taken. So it is premature at this stage for the Appellant to raise the issue of fair hearing having been given the opportunity to present his purported preliminary objection (which shall be addressed hereunder) and the Respondent was equally given same opportunity to give his purported reply. Thus, the record of proceedings is hereby reproduced to buttress the aforesaid.

"Prosecutor – U. Umana

Defendant – Nnenna C. O. Okoli Ezeke for the occupant, Flat 1, No. 3, Misau Crescent. We are appearing in protest.

Prosecutor – This matter is for failure to pay waste disposal fee contrary to S. 30 (4) AEPB Act, 1997, the notice was served on the Defendant demanding the payment of the sum of N205,112.73k. The total amount is accumulation of arrears of waste disposal fee in the sum of N156,855.60k and the amount due for the period of January to June, 2020, for the sum of N6,267.13k.

The notice was received by one Ibrahim Mohammed on the 16/3/2020 and despite the 21 days period of grace granted the Defendant to make payment, the demand is yet to be paid and that is why the Defendant is here.

Defendant – We moved into the flat sometime in July 2020 and I before we moved in we made enquiry from the Caretaker who informed us that there was no outstanding bill for any waste. After we moved just two weeks later, we were served with this bill.

The Counsel in-charge of the building informed us that there was no outstanding bill. Barr. S. N. Ilonuba is the Counsel. We paid N9,267.13k for July 2020 to December, 2020, which covers the period we packed into the said flat. It is our position that Counsel cannot compel us to pay for service that was not rendered to us or services that we did not consume. It is the duty of the Landlord or the Caretaker to ensure payment by a person whom services was rendered to and where he fails to do that he takes responsibility. The Landlord had informed us that the flat has been vacant for the past two years and there could not have been an accumulation of such bills on the premises. We are not in position to know for how long the

premise had been vacant. It is a fact within the knowledge of the Landlord. The Landlord should be the one to come to court and answer for it, we shall be asking that the name of the occupant of Flat 1 be struck out from this suit because we are not in default and shall not be made to pay for someone else.

Prosecutor – *We are aligning ourselves with position of the law as submitted by the Defendant but not completely with the contention of the Defendant. It is trite that where a tenant vacates a premises without settling all outgoing accruing to that premises, the burden falls on the Landlord because the Landlord owes himself a duty to ensure that all outgoing accruing to his property is settled by a tenant before vacating this premises. In fact, it is so important that it forms part of the clause in a tenancy agreement. A proposed tenant also owes a duty to himself to ascertain that all outgoing accruing to a property he proposes to take up tenancy is settled before payment of rent where the tenant enquire and the Landlord presents to the tenant that there is no indebtedness, upon being aware that the representation of the Landlord was false and misleading, the tenant has a right in action for misrepresentation against the Landlord. In the case at hand, the AEBP (waste management) bill served on the Defendant, the occupant of Flat 1, Misau Crescent is a waste disposal bill that attaches to that flat. The Complainant is not a wizard to know at anytime when a tenant has taken up occupation if the flat or vacated the flat it is the duty of the Landlord/or the Caretaker to communicate such vacancy to the Complainant so as to enable the complaint to put the bill running on that flat on suspension and to be re-activated when it is occupied even the Defendant has informed this Hon. Court that they cannot tell whether that flat was vacant and for the period alleged by the Landlord. Even the AEPB bill read out to this Hon. Court shows that somebody collected the Bills on the 16/3/2020 at that flat.*

The AEPB only knows the flat in which it renders services to, it does not know the Landlord or the person who occupies the flat that is why it is in the nomenclature “the occupant”. The complainant would not want to deal with anybody it does not know. We therefore submit that it is the duty of the Defendant to resolve tenancy issue with the

Landlord because if and order is given by this court it will affect the occupant. It is duty of the occupant to solve their issue with the Landlord and ensure that the bill is paid.

Defendant – *It is not within our personal knowledge to know whether the flat was vacant for two years. The complainant has agreed that it is the liability of the Landlord. Since the complainant has admitted the liability of the Landlord, we will ask that the Defendant be discharged and let the AEPB go after the Landlord whom he has admitted is liable.*

Court – *Case is adjourned to 26/2/2021 for Ruling”.*

From the above record, there is no place where the Defendant was denied the right to present his case. In fact, even where the Magistrate should have restricted him to restrict himself within his preliminary objection, Appellant’s Counsel and the Respondent’s Counsel were allowed to delve into the substantive matter in their submission, which became a bait for the Learned Magistrate in making perverse ruling thereby delving into the Substantive matter by deciding who is to pay the said bills. Thus the Lower Court said as follows”

"In conclusion, and given the above reasons, I hold for the complainant and hold that the occupier of flat 1#3, Misqu(sic) Crescent is liable for payment of bills accruing to its apartment and shall pay same..."

Flowing from above, although, the Applicant’s Counsel was given the opportunity to present his purported preliminary objection, the right to fair hearing was violated when the Lower Court concluded his ruling by delving into the main substance of the case as revealed in the summons served on the Defendant (now the Appellant). it is our view that it would only have been fair if the Lower Court had listen to all parties and be given right to cross examination before the vital issue raised at the interlocutory stage can be judicially, judiciously and fairly determined. Accordingly, we hold the view that the right to fair hearing of the Appellant was violated and we so hold. Therefore, the first issue is hereby resolved in favour of the Appellant and we so hold.

On the second issue for determination, i.e. **“Whether the Magistrate Court was right to have held that "the occupier of Flat 1 No. 3 Misau Crescent is liable for payment of the bills accruing to its apartment and shall pay same?"**

I have looked at the Summons dated 8th February, 2021 served on the Defendant wherein his attention was drawn to answer to a charge of failure to pay waste disposal fees contrary to section 30(4) and section 5 AEPB Act, 1997. We have equally perused the evidence of payment of the sum of N9,276,13 (nine Thousand Two Hundred and Seventy Six Naira, Thirteen Kobo made by the Occupant and we have also perused the record of proceedings and the ruling delivered by the learned trial Court.

From the arguments canvassed by both the Defendant and the Respondent in the Interlocutory proceedings, the subject of this appeal, it is glaring that both Counsel delved into the substantive suit by asking the Court to determine who is to make payment of the bill in dispute which forms the crux of the substantive matter. Thus, the lower Court, in the course of its ruling, made pronouncements on issues very fundamental to the determination of the substantive matter which is still pending before the lower Court. This is wrong and offends against the well-established principle of law that a Court should not determine substantive issues at an interlocutory stage.

Therefore, we find it incredibly absurd that the Appellant would file a preliminary objection (before the trial of the case) inviting the lower Court to determine the issue of who is **liable for payment of the bills accruing to its apartment and shall pay same.**

It is even more appalling that the lower Court would allow itself to be baited into considering the issue without first hearing evidence at trial. The determination of the said issue by the lower Court was an error and it amounted to determining substantive issues at a very premature interlocutory stage. For the purpose of clarity, let us still reproduce part of the ruling of the learned lower Court where he said in the final part of his ruling as follows:

“In conclusion, and given the above reasons, I hold for the Complainant and hold that the occupier of flat 1#3, Misqu(sic) crescent is liable for payment of bills accruing to its apartment and shall pay same. This is my ruling any aggrieved party has a

right of appeal. Case adjourned to 26/3/2021 for continuation.”
The rhetoric question to ask is continuation of what?

To underscore the foregoing point, we refer to the case of *ADENUGA V. ODUMERU (2002) 8 NWLR (pt. 821) P. 163 at P. 188 paragraphs F-G* wherein Courts were admonished to refrain from determining issues meant for trial at a rather premature stage. also, IN RE: ABDULLAHI (2018) LPELR-45202(SC) the Supreme Court held as follows:

“...the law frowns seriously on a Court taking on substantive issues fit only for the appeal, when hearing interlocutory applications. In other words, care must be taken to avoid making observations in its Ruling on that application, which might appear to pre-judge the main issue in the proceedings relative to the said application”

see **Mortune V. Gambo (1979) LPELR-1913(SC)** and **Buremoh V. Akande (2017) LPELR-41565(SC)**, wherein **M. D. Muhammad, JSC**, aptly observe -

"A Court must avoid the determination of a substantive issue at the interlocutory stage. It is never proper for a Court to make pronouncement in the course of interlocutory proceedings on issues before the Court. Interlocutory applications - - must remain the handmaid and aid that enable the Court reach the ultimate goal of doing substantial justice between the Parties in the real issues in litigation between Parties."

The Appellant, and the Respondent learned as they are, were manifestly and ostensibly wrong to have asked the Court to determine the issue before trial. They are also wrong to have brought the issue before this Court vide the instant appeal asking this appeal Court to determine same before the trial of the matter. This Court will not fall into that same error committed by the lower Court. This Court must refuse to determine such an issue as a determination of same is premature. Accordingly, I hold the view that the trial Court was wrong in his ruling when he said that the occupier of Flat 1 No. 3 Misau Crescent is liable for payment of the bills accruing to its apartment and shall pay same as same was premature to make and I so hold. Therefore, reliefs 1 sought by the Applicant, succeed in part. Reliefs 2 hereby fails as such reliefs cannot be determined at this stage. Accordingly, it is hereby dismissed.

Having however found that the lower Court was wrong to have considered the substantive issue of who pays the waste disposal bills before trial in its interlocutory Ruling of 26th day of February, 2021, the said Ruling is hereby set aside as a nullity. The suit is remitted to another Magistrate Court to consider afresh the suit. This is the consequential order made in this appeal.

No award as to cost parties to bear their respective cost.

Parties: Absent

Appearances: Nnenna C. O. Okoli-Ezike for the Appellant.

HON. JUSTICE M. OSHO-ADEBIYI HON. JUSTICE J ENOBIE OBANOR

(Presiding Judge)

(Judge)