IN THE HIGH COURT OF JUSTICE, FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA

BEFORE THEIR LORDSHIPS:

1. **HON. JUSTICE A. I KUTIGI (PRESIDING JUDGE)**

2. **HON. JUSTICE J. ENOBIE OBANOR(JUDGE)**

THIS THURSDAY, THE 30TH DAY OF JUNE, 2022

SUIT NO. CV/113/2016
APPEAL NO. CVA/166/2018

BETWEEN:

OTAMEJAYEN ANIDI.....APPELLANT

AND

DYNASCOPE LIMITED..... RESPONDENT

JUDGMENT

This appeal is against the Ruling and Judgment delivered on 13th February, 2017, and 7th day of March, 2017, respectively, by the District Court No. 6, Wuse Zone 2, Abuja, Coram Hon. Ahmed Yusuf Ubangari, in Suit No. CV/113/2016 between the Appellant (the Defendant at the Lower Court) and the Respondent (the Claimant at the Lower Court) herein, against which the Appellant has appealed to this Court.

The records show that the Respondent had filed a suit with No. CV/113/2016 against the Appellant at the District Court, Wuse Zone 2, claiming *inter alia* vacant possession, Mesne profit and cost of action, in respect of Flat A2, Plot 367,

Karimo District, Abuja (see pages 2 to 3 of the Record of Appeal before this Honourable Court). The Appellant (who was the Defendant at the District Court) filed a Motion on Notice dated 14/01/2017, praying the Trial Court to stay the delivery of the Judgment slated for 16th January, 2017, pending the full trial of the suit on its merit and an order setting aside the Order of the Trial Court foreclosing them from defending the suit (see pages 19 – 27 of the Record of Appeal). The Respondent opposed the Application by filing a counter affidavit of 10 paragraphs (see page 29-42 of the Record of Appeal). The Motion on Notice came up before the Trial Court who heard arguments on the Appellant's Motion on Notice and thereafter delivered a considered Ruling on 13th February, 2017, dismissing the Appellant's Motion on Notice (see page 139-147 of the Record of Appeal before this Court). The matter was subsequently adjourned to the 7th day of March, 2017, for Judgment wherein Judgment was entered in favour of the Respondent and the Appellant was ordered, inter alia, to vacate the premises and deliver up possession of the premises known as Flat A1, Plot 367, Karimo District, Abuja, to the Plaintiff, the Respondent in this Appeal.

The Appellant miffed by the Ruling and Judgment of the Trial Court, filed an amended Notice of Appeal dated 7th February, 2022. The grounds of appeal (and particulars) are reproduced hereunder:-

GROUND ONE

The Trial Court erred in law by refusing to permit the Defendant/Appellant to defend the suit but hastily proceeded to deliver judgment in the suit without adhering to the principles of fair hearing as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

PARTICULARS OF ERROR

1. The Respondent instituted the action in Suit No. CV/133/2016 against the Appellant on 16/9/2016, after which the case was mentioned on 10/10/2016 and subsequently adjourned to 26/10/2016 for hearing.

2. On 26/10/2016, hearing in the suit commenced as scheduled and the matter was further adjourned to 15/11/2016 and later 28/11/2016 for cross examination of the PW1.

3. Both Hearing Notices served on the Appellant against the respective dates of 15/11/2016 and 28/11/2016, clearly indicated that the case was slated for Cross Examination of the PW1.

4. The Honourable Trial Court was therefore wrong to have foreclosed the rights of the Appellant both from cross examining the PW1 for the absence of the Appellant in court on the respective dates and also from defending the entire suit, without notice.

5. The action of the Honourable Trial Court to treat a date which was clearly stated on the Hearing Notices for cross examination of the PW1 as a date for defence has worked miscarriage of justice on the Appellant.

6. The Learned Trial Judge failed to appreciate the necessity of doing justice in the case by giving the Appellant opportunity as sought via an application dated 11th January, 2017, to defend the action on merit.

7. The instant extension was the first ever to be asked for by the Appellant in the case and, most particularly, when the Appellant had undertaken in the affidavit thereto to diligently defend the case to a logical conclusion.

8. There was no evidence whatever that the Respondent would have been prejudiced by the grant of the application.

9. The Learned Trial Judge had by refusal to allow the Appellant to defend the case failed to exercise judicially and/or properly his discretionary power with respect to the Appellant's application to defend the suit.

10. The refusal of the Honourable Trial Judge to grant the application is a breach of the Appellant's right to fair hearing guaranteed under the Constitution.

GROUND TWO

The Learned Trial Judge erred in law in assuming jurisdiction in the action without considering the validity of the seven-day notice of owner's intention to apply to court for the recovery of possession of the premises situate and known as Flat A2, Plot 367, Karimo District, Abuja, purportedly issued and served by the Respondent's solicitor without authorization contrary to the provisions of the Recovery of Premises Act, 1990.

PARTICULARS OF ERROR

1. A proper notice of intention to proceed to recover possession is a condition precedent to bring an action for possession.

2. By section 7 of the Recovery of Premises Act, 1990 the proper person to give or serve the notice is the landlord or his agent.

3. For the landlord's agent, be he a solicitor or any other person, to be able to validly do so, he must have been specially authorized in writing.

4. The PW1, Solomon Waziri, testified and tendered a statutory notice of owner's intention to apply to recover possession of the premises occupied by the Appellant.

5. The said notice was purportedly issued and served on the Appellant by Counsel to the Respondent, Babatunde Ige, Esq., as agent to the Respondent.

6. Nevertheless, no evidence of such agency was tendered at the trial.

7. The failure to establish such agency in giving the relevant notice and also instituting this action renders void the entire suit.

8. The execution of the judgment of the lower court carried out on 24th April, 2017, by the Respondent against the Appellant was therefore improper, illegal, null and void.

GROUND THREE

The Ruling/Decision is against the weight of evidence.

The **reliefs sought** from this Court by the Appellant are as follows:-

1. The Honourable Court is respectively urged to allow the appeal and set aside the decisions of the lower court given on the 7th day of March, 2017, for lack of jurisdiction.

2. An order of the Honourable Court setting aside the writ of attachment and execution in respect of the judgment of the lower court delivered on 7th March, 2017.

3. A declaration that the ejection of the Appellant from the premises situate and known as Flat A2, Plot 367, Karimo

District, Abuja, by the Respondent on 24th April, 2017, is unlawful and therefore null and void and of no effect.

4. An order of this Honourable Court setting aside the execution of the judgment of the lower court carried out on 24th April, 2017.

5. N500.000.000 (Five Hundred Million Naira) as damages for trespass against the Respondent.

6. N2,000.000.0000 (Two Billion Naira) as exemplary and aggravated damages against the Respondent.

7. And any other consequential order(s) that the Honourable Court may deem fit to make in the circumstances of this appeal.

ISSUES FOR DETERMINATION:

The Appellant in his brief of argument, formulated 2 issues for the determination of this appeal, to wit:-

1. Whether the Appellant was given a fair hearing as guaranteed under section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) taking into consideration the conduct of the proceedings as a whole? (Distilled from Ground One).

2. Whether there was a proper and valid service of statutory notice(s) by the Respondent on the Appellant for the recovery of the premises situate and known as Flat A2, Plot 367, Karimo District, Abuja, thereby giving the Honourable Court jurisdiction to hear and determine the action? (Distilled from Ground Two).

Counsel to the Respondent on his part also formulated two issues for determination as follows:-

1. Whether the Appellant was denied the right to fair hearing guaranteed under Section 36(1) of the Constitution of the Federal Republic of Nigeria (as Amended)?

2. Whether there was proper service of the Notice of Owner's Intention to apply to recover possession on the Appellant?

We shall adopt the Respondent's issues for determination and address the Appellant's issues thereunder as the issues are the same except for the use of different semantics.

ISSUE 1

Whether the Appellant was denied the right to fair hearing guaranteed under Section 36(1) of the Constitution of the Federal Republic of Nigeria (as Amended)?

The Appellant's Counsel in his submission contended that by the rule of ***audi alteram partem***, a party must be given adequate opportunity to answer the case made against him. In other words, the rule of ***audi alteram partem*** postulates that the court or other tribunal must hear both sides at every material stage of the proceedings before handing down a decision. He referred the Court to Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He also referred the Court to the cases of ***UNION BANK OF NIG. LTD VS. OGBOH (1991) 1 NWLR (PT. 167) 369; FINNIH VS. IMADE (1992) 1 NWLR (PT. 219) 511; ADENIYI VS. GOVERNING COUNCIL OF YABA COLLEGE OF TECHNOLOGY (1993)6 NWLR (PT. 300) 476; ALSO, THE CASE OF ADENE VS. DANTUMBU (1988) 4 NWLR (PT. 88) 309; EKUMA VS. SILVER EAGLE SHIPPING AGENCIES (PH) LID (1987) 4 NWLR (PT. 65) 472; OBETA***

VS. OKPE (1996) 9 NWLR (PT. 473) 401, 449A-E and AKULEGA VS. B.S.C.S.C (2002) FWLR (PT. 123) PG. 225 AT 298 RATIO 17.

It is the Appellant's main contention that his right to fair hearing as enshrined in Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has been breached and therefore the entire proceedings and the judgment of the lower court delivered on the 7th day of March, 2017, as well as the execution of the judgment carried out on 24th April, 2017, are a nullity.

Appellant contended that the action of the Trial judge to treat a date, which was clearly stated on the hearing notices for cross examination of the PW1 as a date for defence, and particularly, without affording the Appellant an opportunity to address the court at the close of evidence by the Respondent, has greatly occasioned a miscarriage of justice against the Appellant and accordingly renders the entire proceedings and the judgment subsequently obtained a nullity. He cited the cases of **LBRAHIM VS. HABU (1993) 5 NWLR (PT. 295) 574; FALADU VS. KWOI (2002) FWLR (PT. 113) PPG 365 AT 373 RATIO 1; KANO VS. BAUCHI MEAT PRODUCTS CO. LTD (1978) 9-10 SC 5, AND GENERAL ELECTRIC CO. VS. AKANDE (2012) 16 NWLR 593.**

He further argued that the Trial Judge also failed in his duty to judicially and judiciously exercise his discretionary power with respect to the Appellant's application. The Trial Judge was therefore wrong to have refused the Appellant's application for extension of time to defend the action on merit. By Order II Rule I of the District Court Rules, the Appellant is entitled to at least seven days from the date of service of civil summons within which to appear in court to answer to the plaint but was denied that right.

The Respondent in its submission, stated that the principle of fair hearing has been expatiated to mean that where a party has been given an opportunity to be heard by the Court, and such party does not utilise the opportunity, the party cannot complain that he was denied a right to fair hearing. He recommended the case of **EZEIGWE & 2 ORS. VS. CHIEF SIR BENSON CHUKS (2010) 4 NWLR (PT. 1183) 159 AT PAGE 207**.

He buttressed his point further by stating that the Respondent was given the opportunity to defend himself through the hearing notices served on him but he failed to use it by absenting himself from Court. He drew the Court's attention to Rule 4(1) of the District Court Rules 1960.

In response to the Applicant's argument that the Lower Court failed in its duty to judicially and judiciously exercise its "discretionary power" with respect to the Appellant' s application, the Respondent submits that it was not within the discretionary powers of the Court to grant the Appellant's application seeking to arrest the judgment of the Court. He referred the Court to the case of **BOB-MANUEL VS. BRIGGS (1995) 7 NWLR (PT. 409) 537 AT 552 - 553;** and the Supreme Court decision in the case of **NEWSWATCH COMMUNICATION LIMITED VS. ATTA (2006) 12 NWLR (PT. 993) 144 AT 178, PARAGRAPHS B B**.

ISSUE TW0

Whether there was proper service of the Notice of Owner's Intention to apply to recover possession on the Appellant?

Appellant in response to issue 2, vehemently contended that once a tenancy is created, it must be determined one way or the other before a landlord can re-take possession. Accordingly, no court of law is competent to make an order for possession of premises

where the tenancy is not validly determined. **SEE A.O. OYEKOYA VS. G.B. OLLIVANT NIG. LTD (1969) ALL NLR 77**.

He buttressed further that a proper notice to quit and notice of intention to proceed to recover possession are conditions precedent to bring an action for recovery of possession. Failure to serve any of the notices robs the court or tribunal of jurisdiction. See **AP VS. OWODUNMI (1991) 8 NWLR (PT. 210) 391; GAMBARI VS. GAMBARI (1990) 5 NWLR (PT.152) 572 AND AYINKE STORES LTD VS. ADEBOGUN (2008) 10 NWLR (PT. 1096) 612.**

Counsel for the Applicant posited that there was no evidence (written authorization) of any agency relationship between BABATUNDE IGE ESQ or the film of BABALAKIN & CO. and the Respondent during the trial. It is also crystal clear from the face of 'Exhibit B' that the same was never served personally on the Appellant but purportedly received by one HILDA ANIDI, which is not in consonant with Exhibit A (Tenancy Agreement).

It is equally submitted by the Applicant that a document can only be tendered by a party who made it or by one who has proper custody of it. He referred us to the case of ***MICHAEL DAN UDO VS. CHIEF CHRISTOPHER U. ESHIET (1994) 8 NWLR (PT. 363) 483 AT 500.*** The Trial Court was therefore wrong in admitting Exhibits 'A' and 'B' through the PW1 who is neither a party and so not privy to Exhibit 'A' nor the maker of Exhibit 'B' but purportedly acted as an agent in instituting the suit and also tendering the Exhibits on behalf of the Respondent without authority (in writing). During his evidence-in-chief, the PW1 merely told the Trial Court that he was the property manager of the Respondent but woefully failed to lead any scintilla of evidence in proof thereof. Appellant finally urged the Court to allow the Appeal.

On issue two, Respondent's Counsel posited that Counsel to the Applicant misconceived the Court of Appeal in the case of ***COKER***

VS. ADETAYO (supra). According to Counsel, the decision of the Court in that case was that a letter of instruction must be issued to a solicitor before the solicitor can issue either a notice to quit, or notice of owner's intention to apply to recover possession. The decision of the Court was not to the effect that there must be proof of a written authorisation that a solicitor was authorised in writing to serve the notices. The rationale of the Court in that case was that an agent cannot "jump the gun". In essence, where an agent issues a notice before he is instructed to do so, certainly, the notice would be invalid, since he did not have the authorisation of the owner of the property to do so. In such a case, he was a meddlesome interloper.

Respondent contended that in the instant appeal, it was never an issue in contention that the Respondent's agent had not been authorised by the Respondent before the notice of owner's intention to apply to recover possession was issued by the Respondent's agent. To this end, the Respondent was not under any obligation to tender the letter of instruction or authorisation in evidence before the Court. The Respondent submitted that it sufficed that the Respondent's representative (a property manager of the Respondent) testified to the effect that the Respondent's agent issued the notice of owner's intention to apply to recover possession. The Appellant contending that there was no evidence that the Appellant was authorised in writing to issue the notice is a simple case of a person "crying more than the bereaved", since the Respondent did not deny giving its agent authorisation to issue the notice.

According to Counsel for the Respondent, the argument of the Appellant that the notice of owner's intention was not personally served on the Applicant, but rather on "one Hilda Anidi" ought to be voided/discountenanced as a mere technicality aimed at defeating substantial justice. He further stated that the said Hilda is the wife of the Appellant who is a witness in the tenancy agreement.

Furthermore, it was pursuant to service of the said notice that the Appellant appeared in Court personally on 10th October, 2016, when the suit was mentioned. It is therefore puzzling that the Appellant is challenging the validity of service of the notice on the basis that it was not served on him "personally". He stated further that it is not an excuse in our judicial system that a process was not served on a litigant personally, where such litigant subsequently becomes aware of the existence of that process.

The Respondent also argued that the PW1, the Property Manager of the Respondent can tender Exhibit 'A' and 'B' since proper foundation had been established notwithstanding the fact that he was not the maker of the document. See Section 125 of the Evidence Act. He finally urged the Court to disallow the Appeal.

RESOLUTION OF ISSUES

As said earlier, we shall adopt the issues formulated by the Respondent in his brief of argument. We shall therefore take the issues one after the other.

ISSUE ONE

Whether the Appellant was denied the right to fair hearing guaranteed under Section 36(1) of the Constitution of the Federal Republic of Nigeria (as Amended)?

Under this issue, the Appellant's complaint is that his right to fair hearing as guaranteed by the Constitution of the Federal Republic of Nigeria was breached. His contention stems from the proceedings of the Trial Court.

According to the Appellant, on the 26/10/2016, hearing in the suit commenced as scheduled and the matter was further adjourned to 15/11/2016 and later to 28/11/2016, for cross examination of the

PW1. He further stated that both Hearing Notices served on the Appellant against the respective dates of 15/11/2016 and 28/11/2016, clearly indicated that the case was slated for Cross Examination of the PW1. According to him, the Honourable Trial Court was therefore wrong to have foreclosed his rights of cross examining the PW1 for his absence in court on the respective dates and also from defending the entire suit, without notice.

Arguing *par contra* on this issue, Learned Counsel to the Respondent submitted in his brief of argument that the Respondent was given the opportunity to defend himself through the hearing notices served on him but he failed to use it by absenting himself from Court.

Now to resolve this issue, which forms the crux of this Appeal, it is pertinent to look at the Record of Proceedings of the Trial Court and Hearing Notices served on the Defendant who is the Appellant in this Appeal.

The position of the law is that Records of Proceedings bind the parties and the Court until the contrary is proved. The simple rational for this rule is the presumption though rebuttable of the genuineness of Records of Court. See the cases of **EDIBI VS. STATE (2009) LPELR-8702(CA)** and **CHIEF S. O. AGBAREH & 1 OR VS. DR. ANTHONY MIMRA & 2 ORS (2008) 2 NWLR (PT. 1071) 370 AT 411**.

We have thoroughly evaluated the entire Record of Appeal to resolve this issue. It is true that hearing in the subject of this Appeal commenced on the 26th day of October, 2016, at the Lower Court, when PW1's testimony was taken. On the said date, the Record also revealed that O. Aff (sic), Esq. appeared for the Plaintiff who was represented in Court. The Defendant was absent and was not represented. We did not see any letter showing the reason for his absence. To be fair, we looked at the previous sitting being 10th October, 2016, when this matter was adjourned to the

26th day of October, 2016, it was obvious that the Defendant was in Court and indeed took his plea of not liable to the particulars of the claims read to him (see pages 113-114 of the Record of Appeal). Subsequently, the matter was adjourned to 15th November, 2016, for cross examination.

On 15th November, 2016, from the Trial Court's Record, the Defendant was in Court but left the Court unceremoniously, without a formal application when in fact the Court sitting of that day was meant for him to cross examine PW1. However, the Trial Court was still magnanimous enough to grant him another adjournment to the 28th day of November, 2016, for definite Cross Examination and caused a hearing notice to be issued on the Defendant who was in Court and left unceremoniously (see pages 117-118 of the Records of Appeals). We have also seen the hearing notice served on the Defendant on 16th November, 2016, for Definite Cross Examination (see page 23).

When the matter came up on the 28th day of November, 2016, neither the Defendant nor his Counsel was in Court. Consequently, the Trial Court foreclosed the Defendant from conducting a Cross-Examination and entering their Defence in this matter on the application of the Learned Counsel for the Claimant (see page 121 of the Records of Appeal). Then the case was adjourned to 16th January, 2017, for Judgment. We have equally seen the hearing notice served on the Defendant for Judgment (see page 24).

Worthy of note is that from the compiled Records of Court, it is manifest that the Defendant did not file any statement of defence.

Now, having set the record straight, the coast is now clear to decipher whether the right to fair hearing of the Applicant was breached. From the Records, it is obvious that the Appellant was given all the opportunity to defend himself but failed to do so. His present chorus or song of fair hearing repeatedly will not avail the Appellant no matter how loud, sonorous and melodious it sounds.

Fair hearing is not a one-way traffic. It is in fact, a three-way traffic that gives fairness/justice or opportunity for the parties in a suit to state their case before a Court. The first traffic belongs to the Claimant who is given the opportunity to present his case and the second is meant for the Defendant who enjoys the opportunity to cross examine the witness(es) of the Plaintiff and to defend his case while the 3rd road/traffic is the view of an ordinary person who in his observation of the proceedings, the Court was fair in giving the parties the opportunity to defend or state their case.

The Applicant, having enjoyed such an opportunity, cannot turn around to complain that he was not given fair hearing and I so hold. Thus, the submission of Counsel that both Hearing Notices served on the Appellant against the respective dates of 15/11/2016 and 28/11/2016, clearly indicated that the case was slated for Cross Examination of the PW1 and therefore the Trial Court was wrong to have foreclosed the Defendant was grossly misconstrued as there was no Statement of Defence or anything to show his intention to defend the suit. In this regard, His Lordship, Amina Augie, JSC, puts the position of the law clearly as follows:

> ***"... It is a formidable and fundamental constitutional provision available to a Party, who is really denied fair hearing because he was not heard or that he was not properly heard in the case. Let litigants, who have nothing useful to advocate in favour of their case, leave the fair hearing constitutional provision alone because it is not available to them just for the asking. In this case, it is quite clear that the trial Court bent over backwards to accommodate the Appellants, who were nonchalant about the case. They failed to utilize the opportunity given to them by the trial Court, and cannot be heard to say that their right to fair hearing was violated."*** See the case of **GOVERNOR OF IMO STATE & ORS VS. E.F. NETWORK (NIG) LTD & ANOR (2019) LPELR-46938(SC)**

Accordingly, we therefore hold the view that the Appellant was given ample opportunity to defend his case but he did not harness it and we so hold. In the circumstances, the argument of the Appellant that the Trial Court was wrong to have refused his application for extension of time to defend the action on the merit was grossly misconceived and of no moment. He who comes to equity must come with clean hands and equity only aids the vigilant and not the indolent.

ISSUE 2

The main contentions of the Appellant under this issue are:

1. Exhibit B, Notice of Owner's Intention to apply and Recover possession written and issued by Babalakin & Co as agent to the Respondent without tendering the Written authorization in Court goes to no issue.

2. Exhibit B (Notice of Owner's Intention to apply to Recover possession) was not served personally on the Appellant but served on one Hilda Anidi unknown to the Appellant.

We have already stated the legal argument canvassed by the Appellant and the Respondent on the above complaint of the Appellant. We shall not be weary of carefully looking at the Record of this case and the position of the Law to resolve the above issues. In doing so, we have diligently digested the proceedings of 26th October, 2016. It is manifest that one Solomon, PW1, testified on behalf of the Respondent as its Property Manager. It is true that he did not tender any letter of authorisation given by the Respondent to Babalakin & Co as agent to the Respondent empowering them to issue Quit Notices (see pages 114-117 of the Records of Appeal). There is also nowhere in the record of the Trial Court that we found any contention existing between the agent and the Landlord who authorised the former to act on its behalf. We therefore find it difficult to yield to the argument of the

Appellant that the PW1's refusal to tender a letter authorising Babalakin & Co. to write and issue Notice of Owner's intention to Recover Possession, is fatal and does not proof agency relationship. We are of the humble view that the refusal or the non-tendering of a letter of authority authorising Babalakin & Co. to issue Notice of owner's Intention to Recover Possession is a mere technicality that does not affect the substance of the Judgment delivered by the Lower Court and we so hold. We rely in the wisdom of Per ***PHILOMENA MBUA EKPE ,JCA*** in the case of ***UHUANGHO V. EDEGBE (2017) LPELR-42162(CA***) where the Court of Appeal when faced with a similar situation decided as follows:

> ***"I also throw my weight behind the reasoning of learned counsel for the Respondent that the Appellant's counsel's contention that the Respondent did not specifically appoint the Solicitor S.O. Longe & Co. under his hand in writing as his agent to manage the property in question within the purport of the definition of "agent" in line with S. 2(1) of the Recovery of Premises Laws is delving into the realm of technicalities as rightly held by the lower Courts. A distinction must however be drawn between mere or unsubstantial technicality in competent proceedings and within the jurisdiction of a trial Court and substantial technicality which amounts to a condition precedent of the commencement of an action which renders a proceedings manifestly incompetent thereby affecting the jurisdiction of the Court and also renders the same incurably defective. I dare say that in the case at hand, the former may be waived as no substantial injustice will have been done by failing to reduce in writing the Landlord's instruction to the Solicitor to handle his affairs. His viva voce evidence had already established the fact that the required permission was manifestly obtained even though not***

in writing in issuing the last invoice. See CITY ENGINEERING (NIGERIA) LTD V. NIG. AIRPORTS AUTHORITY 1999 11 NWLR (Pt. 625) 76. The Apex Court has held that whenever it is possible to determine a case on its merit, the Court should not cling to mere legal technicalities as in the case before us, to refuse a complaint be it Appellant or Respondent, the opportunity of being heard from fear of delay in disposal of a case. See NNEJI & ORS V. CHUKWU & ORS. (1988) NWLR (Pt. 81) 184. The Courts are enjoined to apply their discretional powers to relax the strict application of procedural law to enable it hear and decide matters on its merit. See also the following: 1. JOSEPH AFOLABI 7 ORS V. JOHN ADEKUNLE 7 ANOR. (1983) 8 SC 98. 2. OKONJO V. MUDIAGA ODJE & ORS (1985) 10 SC 267. I also refer to the dictum of the renowned jurist of Blessed memory - Niki Tobi where he stated in the case of OKETADE V. ADEWUNMI (supra) at 517 Paras F - 11 as follows: "why and why, I ask? Is he the owner of the property? Why is he so adamant? The appellant's bluff and use of the Court process must stop, whether he likes it or not. And it must stop today because I cannot see how a tenant will struggle for supremacy or hegemony over a property that he did not build, and perhaps did not know when and how the property was built. I do not blame the Appellant, but I blame the law that has given the appellant such a latitude and effrontery to use the processes of the Court to stay on a property he does not own for a period of fourteen years. This looks to me as a typical example of the aphorism or cliche that the law is at times an ass. I must quickly remove the ass content in the law and face the reality of the law. So be it."
Per PHILOMENA MBUA EKPE ,JCA (Pp. 19-21, paras. B-E)

On the 2nd complaint, the Appellant submitted that Exhibit 'B' (Notice of Owner's Intention to apply to Recover possession) was not served personally on him but on one Hilda Anidi unknown to the Appellant. However, the Respondent on its part argued that the said Hilda Anidi is the wife of the Appellant as well as a witness in the Tenancy Agreement (Exhibit B) between the Appellant and the Respondent.

Upon recourse to the Tenancy Agreement, at pages 6 - 12, particularly page 12 of the Records of Appeal, we can see Hilda Anidi as a witness to the Appellant in the address of Plot 367, Karimo District, Abuja, which is the subject matter of this case. Therefore, the Appellant was very economical with the truth when he stated that Hilda Anidi is unknown to him. To be more lucid, the Appellant was in Court on the day the matter came up for mention which is an indication that he was aware of the matter brought against him. Consequently, the argument of Counsel on technical grounds that the Appellant was not personally served with Notice of Owner's Intention to Recover Possession is a mere Legal gymnastic that will not avail the Appellant in this Appeal and I so hold. To give credence to this position of the law, the Supreme Court in a recent case has buried the dirty and unethical games of technicality when **Ogunwumiju, JSC,** held in the case of **Pillars (Nigeria) Ltd. vs. Desbordes (2021) 12 NWLR (Pt.1789) 122** as follows:

> ***"The justice of this case is very clear. The appellant has held on to the property regarding which it had breached the lease agreement from day one. It had continued to pursue spurious appeals through all hierarchy of courts to frustrate the judgment of the trial court delivered on 8/2/2000, about twenty years ago. After all, even if the initial notice to quit was irregular, the minute the writ of summons dated 13/5/1993 for repossession was served on the appellant, it served as adequate notice. The ruse of***

faulty notice used by tenants to perpetuate possession in a house or property which the landlord had slaved to build and relies on for means of sustenance cannot be sustained in any just society under the guise of adherence to any technical rule. Equity demands that wherever and whenever there is controversy on when or how notice of forfeiture or notice to quit is disputed by the parties, or even where there is irregularity in giving notice to quit, the filing of an action by the landlord to regain possession of the property has to be sufficient notice on the tenant that he required to yield up possession. I am not saying here that statutory and proper notice to quit should not be given. Whatever form the periodic tenancy is, whether weekly, monthly, quarterly, yearly, etc., immediately a writ is filed to regain possession, the irregularity of the notice, if any, is cured. Time to give notice should start to run from the date the writ is served. If for example, a yearly tenant, six months after the writ is served and so on. All the dance drama around the issue of the irregularity of the notice ends. The Court would only be required to settle other issues if any, between the parties. This appeal has absolutely no merit and it is hereby dismissed."

In the same breath and on the whole, we find that this appeal has no scintilla of merit, it fails and is hereby dismissed. The decisions (in both the Ruling and the Judgment) of the lower Court are hereby affirmed.

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HON. JUSTICE A. I KUTIGI (PRESIDING JUDGE) **HON. JUSTICE J ENOBIE OBANOR (HON. JUDGE)**