IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT NO. 20 GUDU-ABUJA
ON THE 1ST DAY OF JUNE, 2022

BEFORE THEIR LORDSHIP:

HON. JUSTICE MODUPE OSHO -ADEBIYI (PRESIDING JUDGE)
HON. JUSTICE A.A. FASHOLA (HON. JUDGE)

SUIT NO: CV/22/2018
APPEAL NO: CVA/19/2019

BETWEEN
MR. JAMES EXPENSIVE ---------- APPELLANT
AND
MR. FIDELIS OYAKHILOMEW (DIG RTD.) ---------- RESPONDENT

JUDGMENT

Appellant filed a Notice of Appeal together with Appellant brief of arguments and accompanying processes. Appellant being dissatisfied with the judgment delivered by the District Court Kubwa on 14/10/2019 filed this appeal on the following grounds:

1. That the trial Magistrate erred in law in granting the sole relief of the Respondent even when the Respondent failed to prove vide credible evidence the facts in support of the said relief and as such against the rule of law that he who asserts must prove.

2. The trial magistrate erred in law in arriving at the finding that the properties left in the house in question were valueless based on a presumptuous conclusion that the appellant never complained to any authority until the case was brought to court, against the rule of lawthat he who assorts must prove.
3. The trial Magistrate erred in law when he failed to properly evaluate the facts and testimony in support of Respondentcase but relied solely on the facts and testimony of Appellant in drawing all his conclusion and judgment.

4. The trial Magistrate erred in law when he held that the Appellant failure to file statement of defence and counter-claim in a court of summary jurisdiction showed that the Appellant had no defence and as such assisted the Respondent in proving his case against the rule that the respondent cannot rely on the weakness of the appellants/ defence in prove of his case.

5. The trial Magistrate erred in law when he ordered that the Appellant should immediately remove the remaining belongings from the house at 26 Apo Mechanic Village belonging to the respondent termed rickety against the admission by respondent in cross-examination that he took his caretaker and Police to the said house and locked it, which made the alleged order of court to be against the weight of evidence and impossible to obey.

Respondent on his part filed a Preliminary Objection along with his brief of argument. The Preliminary Objection is dated 25/11/2019 challenging the competence of their appeal on the grounds that grounds of appeal 1,2,3,4 and 5 as distilled from appellants grounds of appeal were not formulated from the ratio or decision of the trial court hence they are incompetent having not called from any competent grounds of appeal. Appellant in response stated that his reply brief of argument dated 18/3/2020 be adopted by the court in response to his Preliminary Objection. We will take the Preliminary Objection first. Counsel to the Respondent in his Preliminary Objection submitted that a grounds of appeal must relate to the decision of the lower court, but that all the grounds as contained in the notice of appeal dated 5/2/2019 do not reflect or correlate with the ratio or decision of the trial court as they bear facts which are extraneous to the judgment of the trial court. Appellant in his reply brief of argument invited the court to read the judgment complained of viz-a-viz the grounds of appeal and that the court would come to the conclusion that Respondent's Preliminary Objection is misconceived and imaginary.

We have critically looked at Grounds 1,2,3,4 &5 from the appellant's brief of argument and grounds of Appeal, Appellant is of the view that Respondent failed to prove vide credible evidence the facts in support of his sole relief as

court relied on testimony of Respondent which was denied by Appellant. That Respondent stated under oath that he locked the property which is contradictory to his solerelief seeking for an order that Appellant had locked up the apartment wherein he claimed property he met there were rickety and valueless. That by locking it up, property was in his possession hence seeking for an order that Appellant vacates the apartment was futile.Grounds 3 Appellant submitted that if the properties were indeed not of value why would Respondent take inventory and lock up same. While grounds 5 that order of the trial judge that Appellant vacates his property becomes impossible to effect as respondent had stated in his evidences that he had taken inventory of the items in the apartment along with some Policemen, locked up same and held unto the keys.

It is trite law that an issue for determination derives support from grounds of Appeal. The issues for determination of appeal must flow from and relate to the grounds of Appeal which must in turn derive from and be founded on the ratio decidendi of the judgment appealed against.**CBN VS NJEMANZE & ORS (2014) LPELR-2406 (CA)** the Court of Appeal held that:

> ***"It is trite law that where an issue is formulated and which cannot be related to any grounds of Appeal filed, the court will strike it out and all the arguments presented in its support will be discountenanced"***

We have critically examined the grounds of Appeal as filed by the appellant and highlighted above viz-a-viz the judgment of the lower court and we do not see how issues formulated for determination do not arise from the decision of the lower Court; on the contrary every issue formulated for determination indeed arose from the decision of the lower court that formed the ratio decidendi of the lower court as against the obiter. It is on this premise that we hereby strike out preliminary objection of the Respondent.

Having gone through processes filed by both parties, the issue for determination is

> ***"Whether the appellant has been able to prove its case to warrant the prayers sought"??***

Having gone through the judgment of the court it is pertinent to state that civil cases are not won on a proof beyond reasonable doubt; rather civil cases are won on a balance of probabilities. It is the duty of the trial judge to put evidence of both parties on an imaginary scale, see which is heavier and find in favour of the one with credible evidence. Although the general burden of proof in a civil case is on claimant to prove his case through credible evidence and not rely on the weakness of the defendants case even where defendant did not lead evidence. **HEALTH CARE PRODUCTS (NIG) LTD VS BAZZA (2004) 3 NWLR (Pt.861) Pg.582 at 605-606 Para H-D per Sanusi** JCA. From evidence before the trial court, the following facts are the gravamen of the suit.

a. That Appellant moved into premises of respondent and therefore took possession of the said premises with the consent of the Respondent.
b. That parties had come to an agreement and Appellant had decided to vacate premises with the payment of ₦850, 000.00 to the Appellant by the Respondent.
c. That Respondent paid the said sum of N850,000.00to Appellant.
d. That Appellant did not vacates in line with the agreement reached by both parties.
e. That after the expiration of the due date for vacation of premises by Appellant, Respondent had sent some of his boys to Appellant premises and was informed that appellant had vacated but left the door open with some rickety and broken down tables and chairs and broken computers.
f. That Respondent had in company of somePolicemen visited the house, took inventory of items found therein, bought a lock and locked upAppellant premises.

First and foremost, the uncontroverted fact that Appellant had properties left in the premises whether rickety or not, broken or not, tattered or not, it is important to state that those rickety, broken and tattered properties remain the property of the Appellant. In that wise, appellant in law can be said to beconstructive possession of premises not minding that Appellant was no longer physicallypresent in the premises as alleged by the respondent. From the facts of this case, Respondent and Appellant had a contractual relationship which resulted into Appellant being in **lawful occupation** of premises.

A person can be said to be either in physical or constructive possession of premises. The Appellant in this case was hitherto in physical control of the premises when he was in actual control or possession of the premises by controlling the keys to the locks of the premises and was living there. On the other hand, Appellant is said to be in constructive possession when he has authority or legal ownership over premises without being in physical possession. Hence, a situation where an individual completely packs out his property from premises but locks up and holds unto the keys makes the individual to be in constructive possession. Likewise a situation where an individual has vacated most of his properties but retain some property in demised premises makes such an individual in constructive possession whether or not the doors to the house was locked or open. The only legal option left for the Respondent was for respondent to have sought on order of court for recovery of premises from the court. The Respondent resorting to fixing a lock on the door of premises and locking out appellant from premises can betermed **"self-help"**it is very strange that Respondent who had fixed a lock on his premises and locked out appellant from the premises, can thereafter get an order of trial court seeking that Appellant evacuates his property (whether rickety or not) from the premises. Respondent by the action of fixing a lock and locking the door and holding unto the keys had resorted to self-help as he had locked Appellant out of the premises. The point here which Respondent failed to realize is that Appellant was still in possession as at the time Respondent affixed a lock on his door. Respondent'sstatement that Appellant had vacated due to the facts that door was open and item belonging to the Appellant were found therein holds no water. In the first instance, it is not the prerogative of the Respondent to determine whether items found inside premises are rickety, tattered or broken down items. Once it is established that items belong to Appellant it remains property of Appellant whether rickety, broken or tattered. The only act of delivery of possession of such premises by the Appellant under the circumstances would have been a surrender of the keys to the premises by the Appellant to the Respondent otherwise Appellant was/is in lawful possession of premises. It is not the law of this country that the owner of premises has the unbridled right to invade the premises of a person whom he put in lawful occupation and affix a lock on such premises under the guise of safekeeping without his consent. The only avenue open to the Respondent is to seek redness in a court of law to possess or reposes his

property. Consequently, it is our view that Respondent had no legal right to have fixed a lock on Appellant's property, locked it up and retained the key. By Respondent action Appellant no longer had a right of ingress and egress to theproperties; By Respondent action, Appellant would be at the mercy of Respondent before he could access his property. In effect the rights ofAppellant over that property had been extinguished by the Respondent action of self- help. Respondent by locking the door and locking out appellant had put himself into physical and exclusive possession of the property.

Hence,it is strange that the trial court granted Respondent prayer as it is trite that a person cannot at the same time commence legal proceedings and resort to self-help neither can a person benefit from wrong. There is simply no justification for respondent locking premises and holding unto the keys.See **ELIOCHIM NIG. LTD VS MBADIWE (1986) 1NWLR (Pt.14) 47.**It is important to statethat it does not matter whether Appellant is a tenant or not, once it can be proved that Appellant is in lawful possession. **See IHENACHO VS UZOCHUKWU (1997) 2NWLR (Pt.487) at 257 where Iguh JSC held** that a claim for forcible ejection does not necessarily involve the existence of a Tenancy relationship such claimant need not be a tenant but simply be in lawful possession.

Consequently, Appeal humblysucceeds. Appeal is hereby allowed, judgment of the lower court is hereby set aside and case/prayers of Respondent is accordingly struck out.

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Hon. Justice Modupe Osho-Adebiyi
(Presiding Judge)
01/06/2022

Hon. Justice A.A. Fashola
(Hon. Judge)
01/06/2022

Parties: Absent
Appearances: Chukwuma Ozougwuappearing for the Appellant. JohnbullAdaghaappearing forthe respondent