IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA APPELLATE JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA
ONTHE 15TH DAY OF JULY, 2022
BEFORE THEIR LORDSHIPS:
HON. JUSTICE S. B. BELGORE (PRESIDING JUDGE)
HON. JUSTICE ABUBAKAR HUSSAINI MUSA (HON. JUDGE)

APPEAL NO: CVA/720/2020
SUIT NO.: CV/57/2019

BETWEEN:

EBIYE ABIGAIL JONES-ERE **APPELLANT**

AND

JABTECH LIMITED **RESPONDENT**

JUDGMENT

Delivered by the Hon. Justice A. H. Musa

This Judgment is in respect of an appeal arising from the Judgment of the Chief District Court of the Federal Capital Territory, Abuja *Coram* His Worship Mabel T. Segun Bello.

The appeal is seeking to set aside the entirety of the Judgment of the trial Court. The Appellant raised six grounds of appeal with the supporting particulars of error thereof. On the basis of these grounds, therefore, the appellant seeks the following reliefs from this Court:-

1. *An Order allowing the Appeal;*
2. *An Order setting aside the Judgment of His Worship Mabel T. Segun Bello, Chief District Court Judge of the District Court of the Federal*

Capital Territory, holden at Wuse 2, Abuja, delivered on the 11th of day of January, 2021.

The facts of the case can be seen from the record of appeal. The Respondent had instituted a suit at the Chief District Court of the Federal Capital Territory, Abuja, the trial Court, seeking the following reliefs thereat against the Appellant:-

i. An Order of this Court compelling the Defendant to pay to the Plaintiff the sum of ₦250,000.00 (Two Hundred and Fifty Thousand Naira) only being mesne profit accruable to the Plaintiff till possession is given up calculated on monthly basis from January, 17, 2019.
ii. Vacant possession of the Four (4) Bedroom Terrace Duplex and Boys Quarters situate at Block B1 Jab Luxury Homes Plot 1905 Cadastral Zone B07, Katampe, Abuja.
iii. Post-Judgment interest at the rate of 20% per month on the Judgment sum until the debt is fully liquidated.
iv. Cost of this suit at Two Hundred Thousand Naira (₦200,000) only.

The Respondent opened its case at the trial Court on the 20th of May, 2019. Its sole witness, MrAbdulkadirTajudeen, testified in-chief on that date and was cross-examined on the 6th of August, 2019. Through him, the Respondent tendered some documents which were admitted in evidence and marked as **Exhibits A1, A2, A3 and A4**. Through him, the Appellant also

tendered the receipt of payment with receipt number 0022. Same was admitted in evidence and marked as **Exhibit PWCE1**.

On the 10th of July, 2020, the Appellant opened her case. She testified in-chief, was cross-examined and re-examined. Eventually, she closed her case and the Court adjourned for the parties to adopt their Final Written Addresses. The Addresses were adopted on the 23rd of October, 2020. Thereafter, the Court adjourned for Judgment.

In its considered Judgment, the trial Court found for the Respondent. Dissatisfied, the Appellant lodged an appeal against the Judgment on the grounds set out in the Notice of Appeal. Both the Appellant and the Respondent filed and exchanged their respective Briefs of Argument, with the Appellant filing a Reply.

In the Appellant's brief of argument which was settled on the 30thof September, 2021, the Appellant formulated six issues which were distilled from the six grounds of appeal. The issues are:-

1. *Whether the learned trial Judge was right in law when he overruled the Appellant's objection challenging the competence of the suit which affects the Court's jurisdiction. Issue One is distilled from Ground One of the Grounds of Appeal.*
2. *Whether the trial Chief District Court Judge was right in law when he raised the issues of failed contract and title* suo moto *and relied on*

issue of contract to decide the case against the Defendant/Appellant without giving the Defendant opportunity to address the Court on the said issue raised suo moto*. Issue Two is distilled from Ground Two of the Grounds of Appeal.*

3. *Whether the learned trial Chief District Court Judge was right in law when he failed to decide the issues presented by the Defendant/Appellant before arriving at the judgment in this suit. Issue Three is distilled from Ground Three of the Grounds of Appeal.*
4. *Whether the learned trial Chief District Court Judge was right in law when after finding that the issue of title subsists between the parties abandoned such finding and proceeded to decide issue of possession. Issue Four is distilled from Ground Four of the Grounds of Appeal.*
5. *Whether the trial Chief District Court Judge was right in law when he held that the statutory notices served on the Appellant are not fraught with any legal inhibition. Issue Five is distilled from Ground Five of the Grounds of Appeal.*
6. *Whether the learned trial Chief District Court Judge was right in law when he held that Exhibit A2 created a valid tenancy arrangement between the parties and thus subjecting their relationship to the prescription of the Recovery of Premises Act. Issue Six is distilled from Ground Six of the Grounds of Appeal.*

Arguing the issues seriatim, learned Counsel for the Appellant submitted, on Issue One, that the learned trial Judge was wrong when he overruled the objection of the Appellant, then the Defendant, challenging the competency of the trial Court in entertaining a matter founded on title to the property known as Block B Flat 1 Jab Luxury Homes,Katampe, Abuja, the subject of the suit at the trial Court. He contended that the Respondent did not challenge the evidence which the Appellant led on the payment of the ₦26,250,000.00 (Twenty-Six Million, Two Hundred and Fifty Thousand Naira) only being the 50% part-payment of the purchase price of ₦52,500,000.00 (Fifty-Two Million, Five Hundred Thousand Naira) for the property. he urged this Court to take note of **Exhibit A3** and **Exhibit PWCE1** which are a copy of the Letter of Offer of Block B Flat 1 Jab Luxury Homes and the receipt of payment of the ₦26,250,000.00 (Twenty-Six Million, Two Hundred and Fifty Thousand Naira).

Citing the cases of ***Ayinke v. Lawal (1994) 7 NWLR (Pt. 356) 263 at 275, paras D-E, C.B.N. v. Okojie(2015) 14 NWLR (Pt. 1479) 231 at 258 paras C-B, Emeka&Anor v. Okadigbo& 4 Ors (2012) All FWLR (Pt. 651) 1426 at 1431, Dunu Merchants Ltd v. Obanye (2015) All FWLR (Pt. 765) 267 at 291, Okereke v. Yar-Adua (2008) All FWLR 626 at 660, Kalio v. Kalio (1975) 2 S.C. 15*** and***Madukolu v. Nkemdilim (1962) All NLR 587***, Counsel asserted that since jurisdiction was a threshold issue, the trial Court ought to

accord it primary consideration before arriving at its decision. He therefore urged this Court to resolve this Issue in favour of the Appellant.

On Issue Two, Counsel submitted that the trial Court erred when it formulated an issue different from what the parties had set up for themselves and then proceeded to resolve same without giving the parties the opportunity to address it on the said issue. He cited a number of authorities where the Courts held that the Court has no business setting up for the parties a case different from the one they set up in their pleadings. He therefore urged the Court to resolve this second Issue in favour of the Appellant.

It was the contention of learned Counsel for the Appellant on Issue Three that the trial Court did not address itself to the issues the Appellant formulated for determination in her Final Written Address. He added that the procedure adopted by the trial Court did not conform to the minimum standard expected of a Court in preparing its written decision. He explained that the trial Court did not evaluate properly the cases set up by the parties in their claims, pleadings, the evidence adduced in proof of the averments in their pleadings and the issues formulated in their Final Written Addresses.

Citing the cases of ***Adeyeye v. Ajiboye (1987) 3 NWLR (Pt. 61) 432 at 451, paras A – B, EFCC v. Akingbola (2015) 11 NWLR (Pt. 1470) 249 at 299, Okomalu v. Akinbode (2006) 9 NWLR (Pt. 985) 338*** and***Ndukuba v. Kolomo (2005) 4 NWLR (Pt. 915) 411 at 431 A-D*** among others, Counsel contended that this evaluative defect deprived the Appellant of her right to fair

hearing and therefore robbed the Judgment of the trial Court of its validity. He therefore urged the Court to resolve the said Issue in favour of the Appellant.

In his submission on Issue Four, learned Counsel argued that the trial Court, having found that the issue of title subsisted between the parties, was wrong to have abandoned such finding and proceeded to decide the issue of possession. Citing the case of ***Omotayo v. CSA (2010) 5 – 7 (Pt. 11) MJSC 124 at 141 – 142*** where the Supreme Court held that where ownership of a property is disputed, the Court must suspend its inquiry into the question of possession and address the issue of ownership.

He referred this Court to the evidence of the Appellant in the trial Court, the evidence of part-payment of the property in issue and the fact that the Respondent did not controvert these evidence and contended that the claim for possession was ancillary to the claim for title. He reiterated the trite position of the law on this subject as set out in ***Gafar v. Govt of Kwara State &Ors (2007) 4 NWLR (Pt. 1024) 375 at 398 paras E – F; 29 NSCQR 34***. He concluded on this Issue that the action of the trial Court in this regard was *ultra vires* and, so, urged the Court to resolve the issue in favor of the Appellant.

On Issue Five, it was submitted on behalf of the Appellant that the trial Court was in error when it upheld the validity of the statutory notices which the Respondent served on the Appellant and, indeed, acted on them. It was the contention of the Appellant that the statutory notices served on the Appellant

as well as **Exhibit A4** did not comply with the provisions of section 83 of the Evidence Act, 2011 as they were not tendered by the maker thereof. He also insisted that the Appellant actually challenged the validity of the statutory notices in her Final Written Address, contrary to the observation of the trial Court that the Appellant did not challenge the admissibility of those documents. He therefore urged the Court to resolve the same issue in favour of the Appellant.

On the last Issue the Appellant formulated in her Appellate Brief, Counsel submitted that the trial Court was not correct when he held that **Exhibit A2** created a valid tenancy relationship between the Appellant and the Respondent. He contended further that the Respondent did not discharge the burden of proving the existence of a valid tenancy between it and the Appellant.

Citing the cases of ***Imana v. Robinson (1979) 3 – 4 SC (Reprint) 1 at 6, UBA v. Tejumola (1988) 2 NWLR (Pt. 79) 662,Osho v. Foreign Finance Corporation (1991) 4 NWLR (pt. 148) 157 at 193*** and***Odutola v. Papersack Ltd (2007) 1 MJSC 129 at 145***among others, Counsel submitted that a valid lease must contain words of demise, complete agreement leaving no ambiguity as to its purport, the identification of the parties to the agreement, the precise identification of the premises, and commencement and duration of the agreement. He maintained that these elements of a valid lease were indispensable even where the lease was created orally. Counsel urged this

Court to hold that **Exhibit A2** did not create a valid lease and to resolve the sixth Issue in favour of the Appellant.

In the Respondent's Brief of Argument, learned Counsel adopted the six issues which the Appellant formulated in her Appellant's Brief of Argument. I will not reproduce the Issues heresince they are identical.

On the first Issue, learned Counsel for the Respondent submitted that, indeed, the trial Court was right when it overruled the Appellant's objection challenging its jurisdiction. Counsel further submitted that the claim of the Plaintiff, and not the Defendant's statement of defence vested jurisdiction on the Court. He cited and relied on several cases such as ***United Bank for Africa Plc v. BTL Industries Ltd (2006) 19 NWLR (Pt. 1013) 61 at 103, paras B-G, Minister of Works & Housing v. AlhajaKuburatShittu&Ors (2007) 16 NWLR (Pt. 1060) 351 at 372, paras E-H, Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423 at 588-589, paras H-C*** among others.

He maintained that the claim before the trial Court was that of recovery of premises, adding that the assertion of the Appellant that she was the equitable owner of the property was irrelevant as the Respondent had revoked the sale of the property to her, while she also created a tenancy agreement between her and the Respondent by virtue of **Exhibit A2**. He submitted that the Respondent complied with all the steps necessary for the trial Court to assume jurisdiction. He insisted that the trial Court determined the question of jurisdiction contrary to the contention of the Appellant. He

referred this Court to page 115 of the record of appeal. He therefore urged this Court to resolve the Issue in favour of the Respondent.

Submitting on the second Issue, learned Counsel contended that the trial Court did not formulate a new issue *suo moto*, adding that the issue which the trial Court formulated had been canvassed in the pleadings of the parties. He referred this Court to pages 57, 58, 76, 77, 80 – 83, 92 and 93 of the record of appeal and **Exhibits A1, A2, A3** and **A4**. Citing cases such as ***EngrChinedum O. Anya v. Barr Onwuchekwa O. Anya&Ors (2020) LPELR-49386 (SC), AlhajiRasakiAbiolaEkunola v. Central Bank of Nigeria &Anor (2005) LPELR-11414 (CA)*** among others, learned Counsel urged this Court to resolve this issue in favour of the Respondent.

In his arguments on Issue Three, learned Counsel asserted that the trial Court decided all the issues presented by all the parties before arriving at his decision. Referring this Court to pages 101 – 106 of the record of appeal, learned Counsel submitted that the trial Court captured the gamut of the Appellant's case before it. Counsel quoted copiously from the Judgment of the trial Court to buttress his position. He relied on the case of ***Udo v. Ekpo&Anor (2016) LPELR-41383 (CA)*** and ***Saburi Adebayo v. Attorney-General of Ogun State (2008) LPELR*** among others to urge this Court to resolve this issue in favour of the Respondent.

On Issue Four, learned Counsel submitted that the trial Court was right to have abandoned the issue of title and proceeded to decide the issue of

possession and recovery of premises as set out by the Respondent in his plaint before him. Counsel urged this Court to take note of pages 1 – 2, 77 and 115 of the record of appeal as well as **Exhibit A2** in this regard. He also cited and relied on the cases of ***Adeyemi&Ors v. Opeyoru (1976) LPELR (SC) Oba Aremo II v. Adekany& 2 Ors (2004) 7 SCNJ 231*** among others in this regard, while also urging the Court to discountenance the case of ***Gafar v. Govt of Kwara State (2007) 4 NWLR (Pt. 1024) 375 at 398*** for being inapplicable to the instant case as what the Court decided in that case bordered on enforcement of fundamental rights.

In his submissions on Issue Five, learned Counsel maintained that the trial Court was right to hold that the statutory notices served on the Appellant were competent.He submitted that the law that a document must be tendered by the maker thereof did not apply to cases where the party is a corporate entity that, by reason of the legal abstraction that is the doctrine of corporate personality, must act through human agents. He also argued that a certified true copy of any document can be tendered by anybody and not necessarily by the maker thereof. He cited and relied on the cases of ***Paul Ordia v. Piedmont (1995) 2 SCNJ 175, Anyakora v. Obiakor (1990) 2 NWLR (Pt. 130) 52, Bassey Albert Akpan v. Hon. BasseyEtim&Ors (2017) LPELR-43728 (CA), Comet Shipping Agencies Ltd v. Babbit Ltd (2001) FWLR (Pt. 40) 1630, Kate Enterprises Ltd v. Daewoo (Nig.) Ltd (1985) 2 NWLR (Pt. 5) 127, First Bank of Nigeria Plc v. Tsokwa (2003) FWLR (Pt. 153) 205***

at 235 CA among others to advance his argument in this regard. He invited the Court to note that the Counsel for the Appellant did not object when Counsel for the Respondent sought to tender **Exhibits A1, A2, A3 and A4**, adding that the Appellant could not be heard to change her case at this point. He therefore urged the Court to resolve this issue in favour of the Respondent.

In his submission on Issue Six, it was the case of the Respondent that the trial Court was right when he held that **Exhibit A2** created a valid tenancy relationship between the parties. According to learned Counsel, the tenancy came into being on the 16th of December, 2016 when the Appellant was let into possession of the subject matter. Referring to pages 76, 78 and 92 of the record of appeal, **Exhibit A2** whose content he reproduced verbatim as well as the cases of ***Enekwe v. I.M.B. (2007) FWLR (Pt. 349) 1053 at 1073, Fast Approach Construction Limited v. Guaranty Trust Bank Plc&Ors*** as well as ***Icecon Nigeria Limited v. Salini Nigeria Limited &Anor (2021) LPELR-55820 (CA)*** among others, he urged the Court to hold that the Appellant was bound by the content of **Exhibit A2**. He therefore prayed the Court to resolve the sixth Issue in favour of the Respondent.

The Appellant filed her Reply to the Respondent's Brief of Argument. Learned Counsel addressed the six Issues upon which the Appellant's and Respondent's Briefs of Argument revolve. The positions canvassed in the Reply were, basically, iterations of the positions adopted in the Appellant's

Brief of Argument. In conclusion, learned Counsel urged the Court to allow the appeal.

In determining this appeal, this Court considers the record of appeal, the supplementary record of appeal, the Appellant's Brief of Argument, the Respondent's Brief of Argument as well as the Appellant's Reply to the Respondent's Brief of Argument. In resolving this appeal,this Honourable Court will adopt and modify the Issues formulated by the parties in this appeal, while according primacy to the issue of jurisdiction. The Issues before me, as I see them, are set out hereunder:

1. ***Whether the trial Court, considering the facts of the case as disclosed in the pleadings of the parties before himand the evidence adduced in proof of same, did not have the jurisdiction to hear and determine the suit before him as the suit was then constituted?***
2. ***Whether the trial Court did not fail to resolve all the issues presented before him by the parties for adjudication?***
3. ***Whether the trial Court did not raise fresh issues* suo moto *without inviting the parties to address it on the said fresh issues?***

Issue One is on jurisdiction and flows from Issues 1, 5, and 6 which the parties canvassed in their respective briefs. By way of prefatory remarks, I must say that jurisdiction is the sustaining virtue of any suit. In the case of ***Ogbuji v. Amadi (2022) 5 NWLR (Pt. 1822) 99 at pp. 131, paras.D-F; 151,***

paras.F-G; 152, para.Fthe Supreme Court proclaimed that "***The importance of jurisdiction in any adjudication cannot be over-emphasised. It is often described as the life wire of the adjudication process. Without it, every step taken in the case amounts to a nullity, no matter how well conducted and no matter how erudite the decision emanating therefrom. The jurisdiction of a court to adjudicate on a matter is a necessary issue. Consequently, without the necessary jurisdiction, a court cannot make any valid order. Without it no court can entertain a matter***."

The primacy of jurisdiction in any matter pending before the Court has been established in a long line of judicial authorities. Jurisdiction is so important that once the jurisdiction of the Court is challenged, the Court abandons every other procedure and embark on an inquiry into its jurisdiction. In the case of ***Madukolu v. Nkemdilim(1962) 2 SCNLR 341***, the Federal Supreme Court per VaheBairamian FJ held that:

> ***"…I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when***
>
> ***(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and***

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and

(3) the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication."

The principle therein has been followed in a number of judicial authorities such as the very recent Supreme Court cases of ***Karshi v. Gwagwa (2022) 9 NWLR (Pt. 1834) 139 at 179 paras D-G and Orakul Resources Limited v. N.C.C. (2022) 6 NWLR (Pt. 1827) 539 at 578 parasD-G*** as well as in other cases such as ***Emenike v. PDP (2012) 12 NWLR (Pt. 1315) 556; P.D.P. v. Ezeonwuka (2018) 3 NWLR (Pt. 1606) 187*** among others.

In order to determine the extent of the jurisdiction of a Court, the statutes as well as the Constitution must be considered. See ***Ogbuji v. Amadi (2022) supra at 153 paras E-H***. Once the constitutional and statutory jurisdictional province of the Court has been delineated, the Claims of the Plaintiff will be considered to ascertain whether they fall within this constitutional and statutory province. In ***Skypower Exp. Airways Ltd. v. U.B.A. Plc (2022) 6 NWLR (Pt. 1826) 203 S.C. at 242 paras B-G***, the Supreme Court held that:

"***It is the claimant's case that vests jurisdiction on the court. A valid writ of summons is*** **sine qua non** ***to the assumption of the requisite jurisdiction by a court to entertain or adjudicate over a matter commenced by that process. The court will not look at a defendant's processes to determine whether it has jurisdiction. The onus is on the claimant to ensure that his action at the trial court was originated by due process of law. That duty has never been that of the defendant***."

With this in mind, therefore, I return to the records before me. As I have stated earlier in this Judgment, the claims of the Respondent, then the Plaintiff, were principally for mesne profit and vacant possession of the property identified as a four-bedroom terrace duplex and boys' quarters situate at Block B1 Jab Luxury Homes Plot 1905 Cadastral Zone B07, Katampe, Abuja. See page 3 of the record of appeal. According to the Respondent, in paragraph 4 of the Application for the Issuance of Plaint, the tenancy commenced on the 16th of December, 2016 and the rental value of the property was ₦3,000,000.00 (Three Million Naira) only. The Respondent relied on **Exhibit A2**, which is a letter from the Appellant to the Managing Director/Chief Executive Officer of the Respondent dated the 26th of September, 2016 and titled 'Conditional Lease/Rent'. See page 76 of the record of appeal. The relevant portions of the letter read:

"Borne out of my desire to own a home and live in your luxury estate (Jabtech Luxury Home Katampe) and owing to the fact that I am yet to complete my payment on the unit of Duplex I am currently buying and paying for in the said estate, I appeal to your management to kindly grant me a chance to lease or rent one of the unit (sic) *you are putting out for rent.*

"However, this will be on arrangement that rental payment be based on deduction from my initial deposit on the unit (Block B Unit 1) which I am paying for.

"This become expedient as it will afford me the opportunity to be close to the one I am buying while I put in more effort to complete and assume possession."

In determining this tenancy, the Respondent claimed that it issued a six-month Notice to Quit on the Appellant, then the Defendant, on the 25th of June, 2018 before the expiration of the 2017/2018 tenancy period and, thereafter served a seven-day Notice of Owner's Intention to Apply to Court to Recover Possession. See paragraphs 6 and 9 of the Application for Plaint at page 2 of the record of appeal.

In her defence, the Appellant contended that there was no tenancy relationship between her and the Respondent, and that she moved into the property as an equitable owner, having paid 50% of the purchase price for the

property.during her cross-examination, the Appellant stated at page 95 of the record of appeal that it was wrong to say that she wrote **Exhibit A2** because she could not pay for the property.

Learned Counsel for the Appellant in Issue One in the Appellant's Final Written Address before the trial Court invited the Court to hold that the suit was incompetent because there was no tenancy relationship between the Appellant and the Respondent, as what existed between the parties was a contract for the sale of the property. see pages 47 – 48 of the record of appeal. On the other hand, the Respondent asserted that **Exhibit A2** created a novation of contract which converted the contract of sale of land to a tenancy agreement.

Apart from statutory tenancy and tenancy at will, a tenancy is a contractual relationship between a person called the landlord and another person called the tenant. Like all contractual relationships, a tenancy must possess the basic constituent elements of a contract. These are offer, acceptance, consideration, intention to create a legal relationship and the capacity to contract. See the cases of ***Chaka v. Messrs Aerobell (Nig) Ltd (2012) 12 NWLR (Pt 1314) 296 at 316 paras E-F, Farajoye v. Hassan (2006) 16 NWLR (Pt. 1006) 463 C.A. at 487, paras. A-D*** and ***Udih v. Izedonmwem (1990) 2 NWLR (Pt. 132) 357***. In the case of **Cobra Ltd v. Omole Estates Inv. Ltd (2000) 5 NWLR (Pt 655) 1 CA**, the Court of Appeal held at p. 15 para D that "**The relationship between a landlord and tenant**

is contractual and based on the agreement between the parties which may be express or implied. Consequently, the terms of the relationship between a landlord and tenant, including the rent payable by a tenant, cannot be altered by either party without the consent of the other."

For a valid tenancy to exist, the following conditions must exist: the words of demise must be definite and categorical as to the nature of the relationship being created, there must be a complete and unambiguous agreement to that effect and the said agreement must embody all the covenants expressly stated, the parties to the agreement must be identified and specific, the premises demised must be specifically identified and the commencement date, the duration of the lease created and the termination date of the lease must be stated specifically. In the case of ***Odutola v. Papersack Ltd(2006) 18 NWLR (Pt. 1012) 470*** the Supreme Court in adumbrating the features of a valid lease, whether written or oral, held***at pages 492 – 493, parasH– C***that,

"And what is more, a lease is an exact legal transaction affecting an estate and the law requires some basic requirements. They are (1) The words of demise. (2) The agreement must be complete. (3) The lessor and the lessee must be clearly identified. (4) The premises and dimensions of the property to be leased must be stated clearly. (5) The commencement and duration of the term of the lease must also be clearly stated. See Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157. In Nlewedim v. Uduma (1995) 6 NWLR (Pt. 402) 383, this

court held that a lease to be valid and enforceable, must contain the following (1) The parties concerned. (2) The property involved. (3) The term of years. (4) The rent payable. (5) The commencement date. (6) The term as to covenants and (7) The mode of its determination."

This principle was followed by the Court of Appeal in the case of ***Mofa Ltd. v. University of Ibadan (1998) 5 NWLR (Pt. 549) 225 CA at 239, paras. A-D***where the Court held that, "***Under the common law, for a tenancy or lease to be valid it must contain the following ingredients:- (a) the parties concerned; (b)the property involved; (c) the term of years; (d) the rent payable; (e) the commencement date; (f) the terms as to covenants; and (g) the mode of its determination. In the instant case, the tenancy agreement contains all the above ingredients of a valid lease.***"

The argument of the Respondent is that **Exhibit A2** created a valid tenancy. I have reproduced the contents of the said **Exhibit A2**. The contents are lucid and unambiguous. The Appellant did not, by **Exhibit A2**, create a tenancy relationship. At best, **Exhibit A2** was an offer to the Respondent to create a tenancy relationship between it and the Appellant. At worst, it is an expression of a desire for a tenancy relationship to come into existence. The Appellant did not, by the contents of **Exhibit A2** modify or, in any way, extinguish the contract of sale which she entered with the Respondent in 2014 in pursuance of which she made the 50% part-payment of the total

purchase price. Nor can it be said with any air of certitude that the said **Exhibit A2** satisfied the basic requirements of a valid tenancy as enumerated in the decided cases cited above.

The learned trial Court, in his Judgment, had stated at page 115 of the record of appeal that the issue of jurisdiction was paramount and proceeded to assume jurisdiction on the basis of the claims of the Plaintiff. According to the learned trial Court,

> "*I believe it is important to keep first things first and the issue of jurisdiction ranks first in all matters of adjudication.*
>
> *"Without much ado, it is succinctly the law that only the plaintiff's claims confer jurisdiction on the Court and the claims of the plaintiff before this Court is for mesne profit, vacant possession and post-judgment interest*"

The trial Court, however, conceded that the issues of title subsisted between both parties. In assuming jurisdiction, the learned trial Court held on to **Exhibit A2** and held that the said exhibit, together with the conduct of the Plaintiff, now the Respondent, created a valid tenancy which "*is of necessity subject to the prescription of the Recovery of Premises Act upon any need to determine or otherwise the tenancy arrangement.*"

I have a problem with this reasoning for two principal reasons. First, by virtue of the case of ***Madukolu v. Nkemdilim (1962) supra***, the Court ought to

have satisfied itself that***"the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction."*** Having found that the issues of title subsisted between the parties, the trial Court ought not to have assume jurisdiction to hear and determine the suit.

Secondly, the finding of the Court that "*the parties by the content of* ***Exhibit A2*** *and by the conduct of the plaintiff in giving possession to the defendant, had in my opinion created a valid tenancy arrangement between themselves…*" is unsupported both by the evidence before the Court and by the law. Though the Respondent had stated in paragraphs 4 and 5 at pages 1 and 2 of the record of appeal and the Respondent's witness did swear in paragraph 6 of his Witness Statement on Oath at page 3 of the supplementary record of appeal that the Respondent acted on **Exhibit A2** and rented out Block B1 Jab Luxury Homes to the Appellant at the rate of ₦3,000,000.00 (Three Million Naira) only per annum on the 16th of December, 2016, there is nothing in the record subsequent to **Exhibit A2** that suggested that the Respondent did accept the offer of the Appellant in **Exhibit A2.**

Learned Counsel for the Respondent has argued both at the trial Court and in this Court that **Exhibit A2**novated**Exhibit A3**, that is, the Provisional Letter of Offer dated the 19th February, 2014 through which the parties entered intoa contract for sale of the property particularly known as Block 1 Unit 1 Jab Luxury Homes, Plot 1905 Cadastral Zone B07, Katampe, Abuja and

specifically described as a unit of four-bedroom terrace duplex with 1-bedroom boys' quarters. I do not agree with him. A contract which is executed in writing can be varied only through another written contract. **Exhibit A2** does not qualified as a document upon which the doctrine of novation could be founded.

Section 128(1) of the Evidence Act, 2011 provides that "***When a judgment of a court or any other judicial or official proceeding, contract or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceeding or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under this Act; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence.***"

I have considered carefully the provisos to the section. The Act requires thateach subject covered by the proviso must be proved. The proviso inparagraph (d) which comes very close to the facts of the case as presented by the Respondent; but did the Respondent establish that fact before the trial Court? Paragraph (d) provides that "***the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property***." may be proved. The burden, in this case, is on the Respondent who contended that **Exhibit A2**novated**Exhibit A3**.

This burden was not discharged in the proceedings before the trial Court. During his cross-examination at page 93 of the record of appeal, the PW1 stated, when asked a question on **Exhibit A2**, that "*the Defendant made a proposal for rent/lease. We did not accept the proposal*." When he was queried on the existence of a tenancy agreement, he answered, "*Yes, we did not sign any tenancy agreement*." On whether there was any agreement to deduct the sum of ₦6,000,000.00 (Six Million Naira) only from the part-payment made by the Appellant for the property pursuant to the contract of sale as rent, he answered, "*Yes, we have an agreement to deduct the ₦6,000,000.00 but don't have the copy of the agreement here*."

From the foregoing, therefore, it becomes obvious that the trial Court did not evaluate properly the evidence before him before arriving at his finding. This is against the evidential principle guiding such situations. On how oral agreements that modify written may be proved, the Supreme Court,in ***Odutola v. Papersack (Nig.) Ltd (2006) supra***, held *inter alia**at page 491, paras G – H*,***page 492, para C***that

> "***It is the generally accepted practice that tenancy agreement is made in writing. In order to play safe, I do not want to say that it is invariably made in writing; but I can say that it is mostly made in writing. Accordingly, where a party alleges the existence of an oral agreement, which is a unique method and procedure, he must give credible evidence as to the modalities***

of such agreement. In other words, a party alleging an oral agreement is duty bound to prove such an agreement to the hilt.Did the so-called oral agreement comply with or satisfy the above requirements or ingredients of a valid lease? In the absence of any evidence to that effect, this court cannot speculate or conjecture as to the contents of the so-called oral agreement."

This Court cannot depart from the reasoning of the Supreme Court per Tobi JSC of blessed memory as reproduced above. It is for this reason, too, that I find that **Exhibit A2** did not, and cannot purport to novate**Exhibit A3**.

The trial court sunk further into the mire of error when it relied on the doctrine of estoppel to hold that the Appellant created a tenancy relationship through **Exhibit A2**. This reasoning becomes untenable, and the principle of estoppel as provided for in section 169 of the Evidence Act, 2011 inapplicable, when it is considered that tenancy is a contractual relationship, and, accordingly, subject to the law regulating formation of contracts. The law does not presume the existence of a contract when the parties are not in consensus *id idem*. To hold that **Exhibit A2** created estoppel by conduct is unsustainable.

When the evidence adduced before the trial Court is set up against the backdrop of the law, it becomes immediately obvious that there was no tenancy relationship between the Appellant and the Respondent. The finding of the trial Court that **Exhibit A2** created a tenancy relationship between the

Appellant and the Respondent was in error and against the weight of evidence adduced before the trial Court. I so hold.

Since there was no tenancy relationship between the parties, then, the service of the statutory notices on the Appellant was superfluous and unnecessary since one cannot put something on nothing. In other words, since no tenancy relationship existed between the parties, the service of the statutory notices on the basis of that non-existent tenancy is like suspending a mansion in mid-air; it is not only insupportable, it is inconceivable.

Even if, for the sake of argument, a tenancy relationship existed between the parties, then the validity of the statutory notices has to be examined. According to the Respondent at pages 1 and 2 of the record of appeal, the tenancy was created on the 16th of December, 2016 while the six-month Notice to Quit was issued and served on the Appellant on the 25th of June, 2018.

On the face of it, this service is invalid for the simple reason that the six-month Notice to Quit ought to terminate on the eve of the anniversary of the tenancy. In other words, the Notice to Quit, which the Respondent purported to serve on the Appellant ought to terminate on the 15th of December, 2018. Of equal consequentiality, the length of time, between the date of service and the termination date should not be less than six months. A simple arithmeticwill show that the period between the 25th of June, 2018 to the 15th of December, 2018 was five months and twenty days. This is short of the

statutorily required six months as stipulated in section 8(1) of the Recovery of Premises Act.

This statutory requirement has been given judicial amplification in the case of ***African Petroleum Limited v. Owodunni (1991) 8 NWLR (Pt. 210) 391***.At *pages 414-415, paras. D-H*, the Supreme Court per Nnaemeka-Agu, JSC held that "***A notice of six months is necessary to determine a yearly tenancy and such notice must terminate the tenancy at the end of the current term of tenancy. So any notice given and due to end at the middle of the term will be invalid.As the period of notice for determination of a yearly tenant provided for in the law is a statutory right, if it must be taken away, it must be by very clear words evidencing an agreement not to insist on a half-year's notice.***"

The principle elucidated in this *locus classicus* has been followed in a number of decisions such as ***Obijiaku v. Offiah (1995) 7 NWLR (Pt. 409) 510 SC at Pp. 12-13, paras. G-A*** and **Chaka v. Messrs Aerobell (Nig) Ltd (2012) 12 NWLR (Pt 1314) 296 at *P. 319, paras. B-E, in Obijiaku v. Offiah (1995), supra***, the apex Court explained that "***A half year or six months notice to quit required for the determination of a yearly tenancy may be given at any time earlier than the date which would fit in for six months of the current term of the tenancy sought to be determined.***"

In view of this therefore, I have no hesitation in holding that the entire suit at the trial court was fraught with incompetence, same having not come "***before***

the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction."The judgment of the trial Court founded on same cannot, therefore, stand.

Having found that the suit at the trial Court was incompetent, this Judgment, ordinarily, would have ended here. However, since there are two other appellate Courts after this Court, it is pragmatic this Court resolves the other two issues formulated in this Judgment. In doing that, this Court will resolve Issues Two and Three formulated herein jointly. The Issues respectively are "***Whether the trial Court did not fail to resolve all the issues presented before it by the parties for adjudication in its Judgment***" and "***Whether the trial Court did not raise fresh issues* suo moto *without inviting the parties to address it on the said fresh issues***." Perhaps, there is no point to begin a joint resolution of these two issues than the sole issue formulated by the learned trial Judge in his Judgment at page 114 of the record of appeal. The sole issue is this: "*Whether this case qualifies to be described as a recovery of premises matter between a landlord and a tenant, a case of failed contract or simply a matter that bothers solely on title*."

I have dwelt at length on the issue of recovery of premises in Issue One above. I will focus on the question of failed contract and the issue of title while determining whether the trial Court failed to resolve all the issues presented before it by the parties for adjudication. At the trial Court, the Appellant, then the Defendant, formulated three Issues, namely, "(i) *Whether the Defendant*

having paid 50% part-purchase sum of the subject matter/premises the receipt of which sum the Plaintiff acknowledged, the Defendant could be said to have acquired equitable interest over the subject matter/premises known as Block B Flat 1 Jab Luxury Homes; (ii) *Whether the Plaintiff's suit is competent in the same having been commenced under Recovery of Premises Act, while before the Court is issue of ownership of house/title over Block B Flat 1 Jab Luxury Homes*; (iii) *Having regard to the facts and evidence in this suit, whether the Plaintiff could be said to have established her claims in this suit*."

The grouse of the Appellant is that the trial Court did not resolve these Issues, but proceeded to formulate an Issue totally different from what the parties set up for themselves and then resolved that issue without inviting the parties to address it on the alleged new Issue which it had formulated *suo moto*. The Respondent, on the other hand, contends that the issue which the Court formulated and determined flowed naturally from the pleadings of the parties and, as such, it was not a new Issue such that the trial Court would have been obligated to invite the parties to address him on it.

I have carefully considered the Judgment of the trial Court. The issue that the trial Court formulated touched on all the issues the parties raised in their pleadings and in their Final Written Addresses. The trial Court did not go outside the facts before him to formulate a new issue. In finding that a contract of sale of land did exist between the parties, the trial Court noted that

the Appellant did make a payment of ₦26,250,000.00 (Twenty-Six Million, Two Hundred and Fifty Thousand Naira) only which represented 50% of the purchase of the property known as Block B Flat 1, Jab Luxury Homes, Katampe, Abuja. This fact was alluded to in paragraph 4 of the Respondent's Application for the Issuance of Plaint at page 1 of the record of appeal and in paragraphs 2, 3, and 4 of the Appellant's Statement of Defence at pages 8 and 9 of the record of appeal. These same paragraphs also disclosed the question of ownership of the said property.Evidence before the trial Court also sustained this contention. See **Exhibits A2 and A3**. See also the answers from the PW1 during cross-examination at page 94 of the record of appeal and the answers of the Appellant during cross-examination at page 95 of the record of appeal.

The issue of whether the contract of sale of land had failed was evinced in the evidence adduced in proof of the facts averred in the pleadings. **Exhibit A3** is the letter of revocation of the offer to purchase the property. **Exhibit A2** is the Letter of Conditional Lease/Rent from the Appellant to the Respondent. The Respondent during his cross-examination at page 94 of the record of appeal confirmed that there was a contract of sale of land.

The parties also made the same argument in their respective Final Written Addresses at pages 45 – 75 of the record of appeal. It is not correct, therefore, to say, as the learned Counsel for the Appellant did, that the trial Court raised a new issue *suo moto* without inviting the parties to address it on

same. I agree with learned Counsel for the Respondent that the learned trial Court Judge was right to have formulated the issue which, in his view, arose from the evidence adduced by the parties. It is my considered opinion, and I so hold, that the trial Court did not raise any new issue *suo moto* as the issue it formulated arose from the facts contained in the pleadings, evidence and legal submissions of the parties before him.

Though it did not raise any new issue *suo moto*, the learned trial Court did not, however, address the issues it had identified in the course of the proceedings. At page 115 of the record of appeal, the trial Court held that "*The defendants have (sic) argued that before the Court lies the issues of title of the property subject matter of this suit and while it may be true that issues of title subsist between both parties, I am of the opinion that such as issue is not before this Court for determination. What is before this Court primarily is recovery of premises*." Further down at the same page, the trial Court continued: "*The issues of equitable interest and equitable remedy open to the defendant together with the issues of property of the initial purchase contract between parties or novation of contract are all not matters before this Court and cannot be foisted upon this Court for determination. Hence, this Court shall strictly circumscribe itself to the issues of recovery of premises and the property of same*."

Having identified possible challenges in its jurisdiction to hear the suit of the Respondent, then the Plaintiff, the trial Court ought to have resolvedthose

issues it identified conclusively before it could satisfy itself that it, indeed, was vested with the requisite jurisdiction to hear the suit. Its haste to assume jurisdiction is indicative that it was merely paying lip service to the issue of jurisdiction when it stated that "*I believe that it is important to keep first thing first and the issue of jurisdiction ranks first in all matters of adjudication*." The Courts have been held to expound their jurisdiction and not to expand it, reduce it or in any way prescribe jurisdiction for themselves. See the cases of ***Ikuforiji v. F.R.N. (2021) 6 NWLR (Pt. 1772) 249 CA at 274 – 275, paras H – A,Babington-Ashaye v. E.M.A.G. Ent. (Nig.)Ltd. (2011) 10 NWLR (Pt. 1256) 479 at p. 520, paras A – B, A.-G., Federation v. Abubakar (2008) 16 NWLR (Pt. 1112) 135 at 158, paras.A-B, Crestar Int. Nat. Res. Ltd v. S.P.D.C.N. Ltd (2021) 16 NWLR (Pt. 1800) 453 at 472, paras A – B***.In ***Oni v. Fayemi (2013) 12 NWLR (Pt. 1369) 431 at 457, paras C – D***, the Supreme Court held that "***The court does not hunger after jurisdiction. It can expound, but should not under any circumstances, such as the one presented in the instant appeal, expand its jurisdiction***."

Besides, the trial Court should have made definite pronouncements on each of the sub-issues it identified in its sole issue for determination seeing that it was but the trial Court and that there were three appellate Courts above it. The Courts have laid down the ratio for this approach in a number of cases. See, for instance, ***Ogungwa & Ors V. Williams & Anor (2019) LPELR-47536(CA) at pp. 21 – 24 paras F – C*** **per Shuaibu, JCA** and ***Hamman v.***

Baba (2019) LPELR-48932(CA) at Pp. 48-50 paras. E **per Bayero, JCA.** In the case of ***Musa v. State (2021) LPELR-57772(SC) at Pp. 8-9 paras. B***, the Supreme Court per Aboki JSC reiterated this principle when it held that,

> "***Let me, as a preliminary point, state that the law is well settled that, it is the duty of a Court either of first instance or appellate jurisdiction to consider all the issues joined and argued by the parties before the Court and where it failed to do so, valid reasons must be advanced for the neglect. Particularly for penultimate Courts whose decisions are subject to appeal, there is need for them to pronounce on all issues articulated before them so that the appellate Court may have the opportunity of being seised of the facts and to assess the decisions on each such issues in order to avoid situations where the ultimate Court may have to remit a case to the lower Court for hearing. It is only the apex Court that can determine a case on a single issue which terminates the proceedings or appeal. See: Honeywell Flour Mills Plc v. Ecobank (2018) LPELR 45127(SC), (2019) 2 NWLR (Pt.1655) 35***."

In view of the foregoing therefore, I hereby find that the trial Court did not resolve all the issues it identified in its Judgment conclusively. Accordingly, I hereby resolve Issue Two formulated in this Judgment in favour of the Appellant. Issue Three, however, which is, whether the trial Court raised a

new issue *suo moto* without inviting the parties before it to address it on same, is hereby resolved against the Appellant and in favour of the Respondent. This is because, as I have stated in the preceding paragraphs of this Judgment, the issue which the trial Court formulated in its Judgment flowed from the facts disclosed in the pleadings of the parties, the evidence adduced in support of same, and the legal arguments of the parties in support of their respective positions.

I find this appeal meritorious and same is accordingly allowed. The Judgment of the trial Court *coram* His Worship Mabel T. Segun Bello delivered on the 11th of January, 2021 is hereby set aside as same was delivered without jurisdiction. All the orders made consequent upon the said Judgment are equally set aside.

This is the Judgment of this Court delivered today, the 15th day of July, 2022.

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HON. JUSTICE S. B. BELGORE
PRESIDING JUDGE
15/7/2022

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HON. JUSTICE A. H. MUSA
HON. JUDGE
15/7/2022