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

SUITNO: FCT/HC/CV/2014/2021

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

BARR. JOHN AWA KALU……APPLICANT

AND

1. **HIS WORSHIP, HON. MUINAT FOLASHADE OYEKA (THE PRESIDING JUDGE SENIOR DISTRICT/ MAGISTRATE COURT, DUTSE, ABUJA**
2. **MARGARET ENEBI** } **……RESPONDENT**

JUDGMENT

The applicant herein filed this motion on notice with No. CV/2014/2021 pursuant to Order 44 Rules 1(2), 3(1) and (2) of the Rules of this court and seeks for the following reliefs:

1. A declaration that the 1st respondent lacks the jurisdiction to entertain suit No. CV/1379/2020 for non-compliance with sections 7 and 8 (1) (d) of the Recovery of Premises Act.
2. A declaration that Order 5 of the District court (Increase of Jurisdiction of District Court Judges) Order 2014 does not apply or operate and cannot operate to annul or void section 6 of Cap. 544, LFN and the Magistrate/District Judge lacks jurisdiction to try the subject matter of suit No. CV/1379/2020 as the rental value is in excess of the jurisdiction of the 1st respondent
3. A declaration that the Recovery of Premises Act, Cap. 554, LFN 2004, (applicable to the Federal Capital Territory, Abuja) is the only extant, substantive and procedural law that regulates the Recovery of Premises between landlords and tenants in the FCT, Abuja.

4. An order removing suit No. CV/1379/2020 from the Chief District Court sitting at Kubwa, Abuja to the High Court for the purposes of being quashed.
5. An order prohibiting or restraining the 1st respondent from proceeding any further in the case in excess of his jurisdiction or prematurely.
6. And for such further order or orders as this Honourable Court may deem just and expedient to make in the circumstances.

The application is supported by a statement setting out the name and description of the applicants, and the reliefs sought, and also the ground upon the application was filed. One of the grounds to which this application was filed is that Order 5 of the District Court (Increase in Jurisdiction of District Court Judges) Order, 2014 does not apply or operate and cannot operate to annul or void section 6 of the Recovery of Premises Act Cap. 544, LFN, 2004 as the Chief Judge and the Minister of the Federal Capital Territory lacks the jurisdiction to administratively amend the said Recovery of Premises Act, and therefore the 1st respondent lacks the jurisdiction to entertain suit No. CV/1379/2020 as presently constituted.

It is also the ground upon which this application was filed that on the 1st of March, 2021, a preliminary objection dated 26th of February, 2021 was filed, argued and ruling delivered on 29th July, 2021 in which the 1st respondent affirmed it has jurisdiction having overruled the preliminary objection.

The application is supported by twenty paragraphed verifying affidavit, and attached to the affidavit are some documents as follows:

(a) The civil summons issued on the 9th November, 2020;
(b) The application for the plaint dated the 21st October, 2020;
(c) The record of proceedings of the Chief District Court sitting at Kubwa including the ruling on the

notice of preliminary objection dated the 29th July, 2021.

The application is accompanied by a written address of counsel to the applicant.

The 2nd respondent filed a five paragraphed affidavit and a written address in opposition to the applications, while the applicant filed a reply on points of law.

Thus, by the verifying affidavit filed by the applicant, it is stated that the 1st respondent can only award N400.00 and does not have the jurisdiction to try any tenancy matter where the rental value is N1,000,000.00 (One Million Naira).

It is stated that on the 1st March, 2021, a preliminary objection dated the 26th February, 2021 was filed, argued and ruling delivered on 29th July, 2021 in which the 1st respondent affirmed that it has jurisdiction.

It is stated that notwithstanding the non-compliance with the provisions of sections 7 and 8 (1) (d) of the Recovery of Premises Act, the 1st respondent, Chief District court Judge overruled the Preliminary Objection.

The crux of this application as extracted from the summary of the facts given by the counsel to the application in his written address is that the tenement has a yearly rental value of N1,000,000.00 (One Million Naira) only which rental value is above the jurisdiction of the 1st respondent and therefore the 1st respondent lacks the jurisdiction to entertain the suit with No. CV/1379/2020 as presently constituted and to him, this is notwithstanding the non-compliance with the provisions of sections 7 and 8(1) (d) of the Recovery of Premises Act.

In his written address, the counsel to the applicant raised these issues for determination, to wit:

1. **Whether conditions precedent to the exercise of the court's jurisdiction in accordance with sections 7 and 8(1) (d) Recovery of Premises Act was fulfilled before filing this suit and, if not,**

whether this Honourable Court has the jurisdiction to entertain same?

2. **Whether Order (2) (b) of the District Court (Increase of Jurisdiction of District Judges) Order, 2014 is not void vis-à-vis section 6; Recovery of Premises Act Cap. 544 LFN 2004?**
3. **Whether the Recovery of Premises Act, Cap. 544 LFN 2004, is not the only extant, substantive and procedural law regulating Recovery of Premises in the FCT Abuja?**
4. **Whether this case as presently constituted is not an abuse of Court process and therefore incompetent?**

On the issue No. 1, the counsel submitted that the substantive law for determination of an action is the substantive law existing at the time of the action, and he cited the case of **Oyelami V. Mil. Administrator, Osun State (1998) 4 NWLR (pt 547) 624 at 637,** and to him. Therefore the substantive governing landlord and tenant relations in the FCT is the Recovery of Premises Act Cap. 544 LFN, 2004 and no other.

It is also the submission of the counsel that for the court to have or exercise jurisdiction in a matter, the suit must be commenced upon fulfillment of any conditions precedent to assumption of jurisdiction, and he cited the cases of **C.B.N. V. S.A. ratio 2; Madukolu V. Nkemdilim (1962) 2 SCNLR 341; and Sken Consult V. Ukey (1981) 1 SC 6.**

The counsel submitted that in determining a preliminary objection to jurisdiction, the court will look only at the writ of summons, statement of claim and evidence of the claimant and not that of the defence, and he cited the cases of **Kotoye V. Saraki (1994) 7 NWLR (pt 317) (2004) 3 NWLR (pt 860) 305 ratio 2.**

The counsel submitted that in view of the above submission, the counsel further submitted that a condition precedent to the exercise of the jurisdiction of the

1st respondent was not fulfilled as required by sections 7 and 8 (I) (d) of the Recovery of Premises Act, applicable to FCT, Abuja, and that the success of an action for the Recovery of Premises revolves around the strict observance of statutory prescribed due process, and he cited the case of **Aiyike Stores Ltd V. S.A. Ola Adebogun (2008) 10 NWLR (pt 1096) 612,** and to persuade this court, the counsel cited the unreported case with No. FCT/HC/CV/5302/2011 of Dr. Nnamdi Okafor V. Mr. Bonn Ngawa, to the effect that Notice to Quit and Notice of Owner's Intention to Recover Premises from tenant holding over constitute a condition precedent to competence of the action and validity of the exercise of jurisdiction by the court, and he cited the case of **Sule V. Niger Cotton Board (1985) 6 SC 52.** He argued that the testimony of the PW1 in the case before the Chief District Court Kubwa shows that the defendant is a yearly tenant and no notice to quit was served on him as required by law; and therefore this makes this action incompetent and the court cannot rightly assume jurisdiction over same. He further argued that both the plaint and the testimony of PW1 showed that the defendant was allegedly served with 7 days notice of owner's intention to recover possession by pasting, and to him, the alleged pasting did not comply with section 28 of the Recovery of Premises Act. The counsel urged this court to hold as held by Ashi J. in the unreported case of **Nnamdi Okafor V. Mr. Bonn Ngawa (supra)** and resolve the issue No. 1 in favour of the defendant and further to uphold the Preliminary Objection and to strike out the matter for being pre-mature and therefore incompetent.

On the issue No. 2, the counsel submitted that until the Recovery of Premises Act is amended by the appropriate authority, the Chief District Court Kubwa has no jurisdiction to entertain this suit with an annual rental value of N1,000,000.00, and the Chief District Court Kubwa, if at all is to assume jurisdiction, can only award N400.00k which sum shall be in full discharge of all demands in respect of the

particular cause of action, and he referred to section 6(2) (b) of the Recovery of Premises Act. He submitted further that the court is not to expand its Jurisdiction, and he cited the cases of **Mudiaga – Erhreh V. N.E.C. (2003) FWLR (pt. 137) 1066 at 1069;** and **African Newspapers Ltd &Ors V. FRN (1985) 2 NWLR (pt 6) 137;** and he then urged this court, having regard to the plaint and the evidence to resolve issue No. 2 in favour of the defendant/applicant.

On the issue No. 3, the counsel to the applicant gave the definition of the term abuse of court process which is proceeding that is wanting in bonafide or that it is frivolous, vexatious and oppressive, or improper use of legal process, and he cited the case of **Seven up Bottling Co. Ltd (1994) 5 NWLR (pt 374) 685,** and he submitted further that bringing this action before the Chief District Court Kubwa without complying with the statutory conditions precedent served no other purpose than to harass, irritate and annoy the defendant knowing fully well that nothing good will come out of the case, and he urged the court to dismiss the case and he cited the case of **Saraki V. Kotoye (1992) 9 NWLR (pt 26) 15; and Okafor V. A.G. Anambra (1991) 6 NWLR (pt 200) 659.**

In his counter affidavit, the 2nd respondent stated that by the mode of payment of his rent, the applicant is not a yearly tenant but selected on his own to pay his rent in a staggered and distorted manner, and that the applicant was served with the statutory notice to deliver possession being in arrears of rent hence he was brought before the Chief District Court Kubwa in the FCT.

It is stated that the Chief District Court of the FCT has monetary jurisdiction of up to N7,000,000.00 (Seven Million Naira) and can entertain claim of such amount contrary to N400.00 as claimed by the applicant.

It is also stated that evidence has been given by the PW1 at the District Court and the applicant has cross-examined the PW1 and same was discharged, and the PW1

closed his case being the sole witness, and the matter was adjourned for defence, and the applicant filed a Notice of Preliminary Objection challenging the jurisdiction of the District Court on the same grounds, and the preliminary objection was discountenanced with a cost of N50,000.00.

It is averred that the applicant is not entitled to service of quit notice being a tenant at will and at the mercy of the landlord, and that what the applicant is entitled to is (7) seven days notice which was served on the applicant.

In his written address, the counsel to the 2nd respondent formulated the following issues for determination:

1. **Whether the condition precedent to the commencement of this suit in the Lower Court has been fulfilled to activate the jurisdiction of the trial District Court Judge?**
2. **Whether from the circumstances surrounding this case, if this Honourable Court can grant this application?**
3. **Whether this case is an abuse of court process?**

On the issue No. I, the counsel to the 2nd respondent submitted that a question as to jurisdiction of a court touches on the competence of the court to hear and determine a cause or matter before it as it goes to the part of the matter such that can sustain or nullify the decision of the court in respect of the relevant subject matter, and he cited the case of **Madukolu V. Nkemdilim (supra),**and submitted that there was a service of relevant notice to the applicant, thereby invoking the jurisdiction of the trial court. He further submitted that assuming without conceding that the statutory notice was not served, as alleged by the applicant, the Supreme Court on **Pillars Nig. Ltd. V. Desbordes & Anor. (202) 12 NWLR (pt 1789) 122** held that in the absence of statutory notice, if the date the service of the plaint or writ has far surpassed the date meant to serve the statutory notice, it suffices as a real notice for the defendant

to deliver up possession and not to anchor on technicality to remain in possession especially where it is proven that the defendant is in arrears of rent, as it is in this case.

The counsel submitted that what gave rise to this case was that the plaint was served on the applicant since 2020, and he decided or vowed to frustrate the effort of the 2nd respondent not to proceed with the proceedings, and to him, this court will not allow this to continue.

On the issue No. 2, the counsel to the 2nd respondent submitted that the refusal of the applicant to defend himself in the trial court cannot be encouraged and where an opportunity to be heard was availed to the applicant and he decides not to be present in court, the court cannot be guilty of refusing the applicant fair hearing, and he referred to the case of **Mr. Augustine Ominilwara V. Mr. Obi Itam (alias Bumper) & Anor. (2009) 17NWLR.**

The counsel submitted on the issue No. 3, that all matters filed in court have their respective cause of action, and it will be safe for the court to thread with cautions, and that it is deposed in the 2nd respondent's counter affidavit that the trial court has assumed jurisdiction and is willing to dispense with the case as soon as possible as there are substantial issues upon which evidence must be led and that the trial court should refrain itself from making pronouncement on stage as that will amount to getting judgment through the back door if the applicant succeeds. He cited the case of **Nabore Properties Ltd V. Peace Cover (Nig.) Ltd &Ors (2014) LPELR – 22506 (CA)** to the effect that in the determination of interlocutory applications, the court must refrain from making pronouncements on issues to be substantive suit, and the counsel urged the court to dismiss decided in the application and to allow the trial lower court proceeds with this matter.

The counsel to the applicant filed a reply on points of law and submitted on whether the requirement of service of statutory notice to quit can be dispensed with under any

circumstance, and he cited the case of **Pillars Nig. Ltd V. Desbordes & Anor. (supra)**, and submitted that the submission of the counsel to the 2nd respondent and the position of the decision in the above case does not represent the position of the law as the lead judgment did not make the exception as interpreted by the counsel to the 2nd respondent, to him, the Supreme Court dismissed the appeal on the ground that there was ample evidence. That notice to quit was issued and served on the defendant contrary to the denial of such service, and also to him, the erudite Justice Agim in the lead judgment denied saying that statutory and proper notice to quit should not be given. He argued that that deals with the situation where the complaint is that the notice to quit was irregularly issued or irregularly served and not where no notice to quit was issued and served at all, as the PW1 stated during cross examination that he did not serve the applicant because he is not entitled to it. He argued that the pronouncement of the learned jurist is an orbiter dictum, and that assuming without conceding that the pronouncement is the position of the law, it will amount to one justice of the Supreme Court overruling the earlier judgment of the court including **AP Ltd V. Owodunmi (1991) 8 NWLR (pt 2010) 419** where the Supreme Court struck out the originating process in the Lower Court on ground that 6 months notice to quit served on the defendant was irregular in that it fell short of or did not, on the face of it, give the defendant 6 calendar months notice to quit as required by law. He then submitted that **Pillars** case **(supra)** cited by the counsel to the 2nd respondent is not helpful to his case instead supports the case of the applicant, and to him, no court or the 1st respondent has the jurisdiction to proceed with the case as the trial will amount to a nullity. He then urged the court to discontinue the argument of the counsel to the 2nd respondent.

On the issue of fair hearing raised by the counsel to the 2nd respondent, the counsel to the applicant submitted that this is incongruous and misplaced as the application never raised any issue regarding that, and therefore, urged the court to disregard it.

On the non-payment of cost by the applicant as awarded by the District Court, the counsel to the applicant agreed that cost was awarded, however, no definite date was given for the payment of such as the decision was that the sum of N50,000.00 was awarded against the defendant/applicant and to be paid during or at the end of the trial, and to him, it is grossly misleading to urge this court to hold the applicant as contempt of not paying the cost and as it has not become due.

Thus, the essence of an application of this nature is to seek to quash the decision of the Chief District Court Kubwa, FCT Abuja entered on the 29th July, 2021 wherein the preliminary objection to the jurisdiction of the said court was discountenanced and a cost of N50,000 was awarded against the applicant, therefore, it is the duty of this court to review the record and to determine the legality of the decision.

By the ruling of the Chief District Court Kubwa dated the 29th July, 2021 the applicant filed a Notice of Preliminary Objection dated the 26th February, 2021 and sought for the following orders:

1. An order striking out the suit as constituted for want of jurisdiction and or abuse of court process.
2. And for such further order or orders as this Honourable Court may seen just to make in the circumstances.

The grounds upon which the objection was predicated were:

1. That the tenancy between the applicant and the 2nd respondent herein runs from year to year.

2. That no notice to quit formally determining the tenancy was issued or served as required by law.
3. That 7 days' Notice of Owner's Intention to apply to recover possession was not signed by the landlady who issued it.
4. That the said seven (7) days notice of intention to recover possession was never served on the defendant (who is the applicant herein) as required by law.
5. The annual rental value of the tenement is a sum above the jurisdiction of this court under the Recovery of Premises Act, the annual rental value being N1,000,000.00

The counsel to the defendant/applicant in that application raised three issues for determination, thus:

1. Whether conditions precedent to the exercise of the Court's jurisdiction in accordance with sections 7 and 8 (l) (d) of the Recovery of Premises Act was fulfilled before filing this suit and if not, whether the Chief District Court has the jurisdiction to entertain same.
2. Whether the Chief District Court has jurisdiction to entertain a matter under the Recovery of Premises Act applicable to the FCT Abuja where the annual rental value of the tenement is N1,000,000.00
3. Whether this case as presently constituted is not an abuse of court process and therefore incompetent.

The learned District Court Judge adopted the issues raised by the defendant/applicant and in that application ruled that the plaintiff/2nd respondent herein, having served the defendant/applicant with the seven days' notice of owner's intention to recover possession has fulfilled the condition precedent to the commencement of the suit which automatically activates the jurisdiction of the District

Court to adjudicate upon the suit, thereby resolving the issue No. I. however, the learned District Court judge left the issue whether the defendant/applicant is a yearly tenant or not as such an issue is triable upon which evidence must be led and thereby refrained from making pronouncement on at the interlocutory stage relying on **Nabore Properties Ltd V. Peace Cover (Nig.) Ltd &Ors (supra).**

The learned District Court Judge resolved the issue No. 2 that by Order 5 of the District Court (Increase of Jurisdiction of District Court Judge) Order 2014, the rental value to be recovered by the Chief District Court is N5,000,000.00 only, and it is clearly within the jurisdiction of the Chief District Court.

The learned District Court Judge also resolved issue No. 3 in favour of the plaintiff/2nd respondent that the suit is clearly not an abuse of court process, and the defendant's/applicant's was dismissed.

Now, let me adopt the issues formulated in this application by the counsel to the applicant as they are similar to the ones raised in the preliminary objection filed before the Chief District Court, to wit:

1. Whether conditions precedent to the exercise of the Court's jurisdiction in accordance with sections 7 and 8 (l) (d) of the Recovery of Premises Act was fulfilled before filing the suit, and if not, whether the Chief District Court has the jurisdiction to entertain same?
2. Whether Order 2(6) of the District Court (increase of jurisdiction of District Judges) Order, 2014 is not void vis-à-vis section 6, Recovery of Premises Act, Cap. 544 LFN 2004?
3. Whether the Recovery of Premises Act, Cap. 544 LFN 2004, is not the only extant, substantive and procedural law regulating recovery of premises in the FCT, Abuja?

4. Whether this case as not presently constituted is not an abuse of court process and therefore incompetent?

In this application it is the contention of the applicant on issue No. I that for a court to have or exercise jurisdiction in a matter, the suit must be commenced upon fulfilment of any conditions precedent to assumption of jurisdiction, and he cited the cases of **CBN V. SAP. Nig. Ltd (supra); Madukolu V. Nkemdilim (supra); and SKEN Consult V. Ukey (supra).**That in determining whether conditions precedent to the exercise of jurisdiction exist, the court will look at the writ of summons, statement of claim and evidence of the claimant, and he relied on the cases of **Kotoye V. Saraki (supra);** and **FGN V. Oshiomhole (supra).**

The counsel contended that the condition precedent to the exercise of the 1st respondent's jurisdiction in the said case was not fulfilled as required by sections 7 and 8 (I) (d) of the Recovery of Premises Act, Cap. 544 LFN 2004 applicable to the FCT Abuja as the success of the said case revolves around the strict observance of the statutorily prescribed due process, and he referred to the case of **Aiyike Stores Ltd V. S.A. Ola Adebogun (supra)** and to persuade this court he cited the case of **Dr Nnamdi Okafor V. Mr. Bonn Ngana (supra),** the judgment which was delivered by late Hon. Justice V.B. Ashi (of blessed memory).

It is also the contention of the counsel to the applicant that both the plaint and the testimony of the PW1 show that the applicant is a yearly tenant and no notice to quit was served on him as required by law, and the non-service of the Notice to Quit makes the case incompetent and the 1st respondent cannot rightly assume jurisdiction over same. It is contended that the defendant was allegedly served with 7 days Notice of Owner's intention to recover possession by pasting, and to him, the service by pasting did not comply with the provisions of section 28 of the Recovery of Premises Act as there is no evidence as to service by pasting was

done in accordance with section 28 of the Recovery of Premises Act, and therefore urged this court to resolve the issue No. I in his favour, and to strike out the matter for being premature and therefore incompetent while by the record in the ruling, the Chief District court maintained that the case before it deals with the recovery of premises and the condition precedent to the exercise of its jurisdiction, that is the service of the requisite notices on the defendant and not its validity which is a substantive issue and it is clear from the evidence of the PW1 that the defendant was allegedly served seven days' notice of owner's intention to recover possession, and in consideration of the case of **Madukolu V. Nkemdilim (supra)**, the service of notices on a tenant is a condition precedent to the exercise of jurisdiction. The District Court also held that the defendant/applicant contended before it that the Notice served on the defendant is not valid because the defendant is a year to year tenant who ought to be served quit notice to determine the tenancy but only 7 days notice of owner's intention was issued which was not even served in accordance with section 28 of the Recovery of Premises Act and same robbed the District Court of the jurisdiction to entertain the suit.

The Chief District Court further held on issue No. I that the plaintiff having served the defendant with the seven days notice of owner's intention to recover possession has fulfilled the condition precedent to the commencement of the suit and this automatically activates its jurisdiction to adjudicate upon it, and case of **Ayinke Stores Ltd V. Adebogun (supra)** was commended, and to that issue No. I was resolved in favour of the plaintiff against the defendant/applicant.

Thus, both the applicant herein and the 1st respondent in its ruling agreed that in cases of recovery of possession of premises, the service of notices on a tenant is a condition

precedent to the exercise of court's jurisdiction, and this I am in total agreement with them in line with the decision in **Sule V. Nigeria Cotton Board (supra).**

Now, it is the contention of the applicant that on the 22nd February, 2021 the 2nd respondent's attorney as PW1admitted that no notice to quit was served on the applicant, and it is also averred in the verifying affidavit that the applicant was not served with the 6 months' notice to quit or any notice at all to formerly determine the tenancy before the 2nd respondent commenced the suit, which is the subject matter of this application. While the learned District Court Judge in his ruling did not address as to whether the quit notice was served or not, but went further to state the position of the law as in the case of **Eleja V. Bangudu (supra)** to the effect that in the absence of service of notice to vacate any premises under the law, the claim of a plaintiff would not be properly constituted and a claim should be struck out so as to afford him the opportunity of bringing a new action after complying with the requirement of serving the required notices. The District Court Judge went further and stated that the defendant/applicant contended that the notice served on the defendant is not valid because the defendant/applicant is a year to year tenant who ought to be served with quit notice to determine the tenancy. To my mind, the learned District Judge did not address in his ruling whether there was service of the quit notice or not.

The applicant relies on sections 7 and 8 (I) (d) of the Recovery of Premises Act which provide:

> **"7. When and so soon as the term or interest of the tenant of any premises, held by him at will or for any term either with or without being liable to the payment of any rent, ends or is duly determined by a written notice to quit as in Form B, C or D, whichever is applicable to the case, or is otherwise duly determined, and the tenant, or, if the tenant does not actually occupy the premises or only**

occupies a part thereof, a person by whom the premises or any part thereof is actually occupied, neglects or refuses to quit and deliver up possession of the premises or of such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served, in the manner herein, after mentioned, with a written notice, as in Form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice"

By the above lengthy quoted provision of section 7 of the Recovery of Premises Act, it can be inferred that it covers the importance or purport of the two notices, that is to say the quit notice and the notice of owner's intention to recover possession of the premises. On the notice to quit, it can be inferred that when the term or interest of the tenant of any premises, held by him at will or for any term either with or without being liable to the payment of any rent ends or is determined by written notice to quit as in Form B, C or D, whichever is applicable to the case, or is otherwise duly determined, it can be therefore be inferred to mean that at the expiration of the tenancy for any term or is determined by a written notice to quit as provided in Form B, C or D that is to say the tenancy is determined by way of serving the tenant with a notice to quit, or is otherwise duly determined by effluxion of time or expiry of rent or there is a breach of covenant or the tenant is in arrears of rent for a particular period of time.

Thus, in the case of the former, the notice is required to be in Form B, C or D of the schedule to the Recovery of Premises Act. While, in the case of the later, notice become unnecessary. Where notice is required, then the provisions of section 8(l) of the Recovery of Premises Act will come to limelight. How to determine whether the applicant is entitled

to statutory notice or otherwise is a matter of evidence, and the Chief District Court held that it could not determine whether the applicant is a year to year tenant as it is one of the substantive issues before it which cannot be dealt with at the interlocutory stage, and it commended the case of **Nabore Properties Ltd V. Peace Cover (Nig.) Ltd &Ors (supra)**. To this, I agree with the learned District Judge on this. See the case of **Gov. of Ebonyi State V. Isuama (2003) FWLR (pt 169) p. 1229, para E, per Mrs – Acholowu, JCA**

> **"I hold that an attempt by the trial court to convert a mere preliminary point taken to a wholesome trial on the merits is wrong."**

See also the case of **Onwuta V. Attorney General, Anambra State (2006) All FWLR (pt 333) p. 1727 at 1784, paras. F-G** where the Court of Appeal, Enugu Division held that under the rules, certain preliminary objection and demurrer may be heard provided that inter alia, preliminary objections which are capable of determining and disposing of the entire suit would not be tried. If further light or evidence or material beyond those existing at the state of the application would be required. In the instant suit, the trial court has to go further to determine whether the applicant is a yearly tenant or not, and whether he is entitled to any statutory quit notice or not, this is because no evidence of the Tenancy Agreement is exhibited, if any as evidence before this court to show whether there was a breach of the payment of rent or that the tenancy will determine by effluxion of time.

Thus, as there is no Tenancy Agreement exhibited by the applicant in this application, it will be difficult for this court to determine whether the applicant is entitled to a quit notice or not, and to this I therefore so hold, and I align myself with the decision taken by the learned Chief District Judge on this, that it can only be determined alter the full hearing or trial.

The other segment of the provisions of section 7 of the Recovery of Premises Act is the use of Form E or the schedule to the Recovery of Premises Act which provides:

> **"and the tenant, or, if the tenant does not actually occupy the premises or only occupies a part thereof, a person by whom the premises or any part thereof is actually occupied, neglects or refuses to quit and deliver up possession of the premises or such part thereof respectively, the landlord of the premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served in the manner herein alter mentioned with a written notice, as in Form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice."**

By the above quoted portion of the provisions of section 7 of the Recovery of Premises Act, it can be inferred that after the expiration of the notice to quit it served on the tenant, and he continue to hold unto the property, then seven (7) days' notice of the intention of the owner of the property to recover possession of the premises must be served as a condition precedent to the filing of the matter before the court. However, in the instant suit, the applicant averred that he was not served with the Form E to the schedule to the Recovery of Premises Act, while it is in the record of the 1st respondent that the applicant was only alleging that the service of the Form E was not in accordance with section 28 of the Recovery of Premises Act, and thus, the applicant challenged the validity of the service and not that he was not served at all. To my mind, there is a distinction between improper service and non-service. See the case of **Garuba V. State (2014) All FWLR (pt. 756) p. 427 at 440; paras. C-D.** In the instant application and by the record of proceedings and more particularly the

ruling, the learned District Court Judge did not take decision as to whether there is non compliance with the provisions of section 28 of the Recovery of Premises Act regarding the service of the 7 days' Notice of Owner's intention to recover the premise, which he said that that has to do with the validity of the same or not and which can be dealt with while dealing with substantive matter, and to this, I also align myself with the position taken by the learned District Judge. In addition, the learned District Judge made its finding that the 7 days notice has been served and there is an affidavit of service to that effect, which the applicant has also exhibited and attached the certified true copy of it to his affidavit in support of this application.

The certificate of service is a conclusive proof of service, and I agree with the position of the learned District Judge on this. See the case of **Jaja V. Calabar Urban Development Authority (2021) All FWLR (pt 1107) p. 892.**

In the circumstances, I hold the view that there are instances where notice to quit is not necessary, and that can be determined at the conclusion of the matter before the Chief District Court as evidence and materials are required, and where it is established that the applicant is not entitled to be served with the notice to quit, the service of same is no longer a condition precedent to the initiation of the proceedings before the Chief District Court. The service of the 7 days notice of owner's intention to recover the premises is deemed to have been effected based upon the finding of the Chief District Court having taken into consideration the affidavit of service of the process server, and to my mind, this is in order. The validity of the service can be determined by the Chief District Court at the end of the trial, and therefore, issue No. 1 is resolved in favour of the respondents.

On the issue No. 2, whether Order 2(b) of the District Court (Increase of Jurisdiction of District Judges) Order 2014

is not void vis-à-vis section 6 of the Recovery of Premises Act Cap. 544, LFN 2004.

It is the contention of the applicant that the 1st respondent can only award N400.00 and does not have the jurisdiction to try any tenancy matter where the rental value is N1,000,000.00 (One Million Naira), and when the tenancy has not formally determined.

The counsel to the applicant contended that tenancy matters are govern by the Recovery of Premises Act Cap. 544 LFN, 2004, and by the provisions of section 3 of the Act jurisdiction has been conferred on any court of competent jurisdiction, and by section 2 of the said Act, court was defined to include High Court and Magistrate Courts but does not include a Customary Court; and therefore submitted that the jurisdiction has been conferred on High Court and Magistrate Court of the FCT and no other court.

The counsel submitted that the 1st respondent sits as a District Judge and also as a District Judge and also as a Magistrate when exercising his civil and criminal jurisdiction respectively, and the 1st respondent in the exercise of its civil jurisdiction is governed and regulated by the District Court Act Cap. 495 LFN 1990, applicable to the FCT.

What is germen in the argument of the counsel to the applicant is that ordinarily tenancy matters, such as the instant case, are civil in nature and ought to be within the civil jurisdiction of the 1st respondent as a District Judge, but as has been stated earlier, the jurisdiction to handle tenancy matters was given by Cap. 544 to the High Court and the Magistrate Courts of the FCT and not to the District Court of FCT. In other words, when sitting to handle tenancy matters the 1st respondent sits as a Magistrate and not as a District Court Judge even though tenancy matter is civil in nature, and section 6 of the Recovery of Premises Act, Cap. 544 LFN limits the financial jurisdiction of the Magistrate court to the sum of N400.00 only.

The counsel further submitted that the District court (Increase in Jurisdiction of District Judges) Order, 2014 made pursuant to section 17 of the District Court Act Cap. 495 LFN 1990, and section 18 of the FCT Act Cap. 503 LFN 2006 (Abuja) applies only to the financial jurisdiction conferred on the District Court by the District Court Act and not jurisdiction conferred on the Magistrates' Court by the Recovery of Premises Act.

The counsel submitted that Order 2 (b) of the (Increase in Jurisdiction) Order 2014 is ultra vires, void and of no effect whatsoever and is incapable of increasing the financial jurisdiction conferred by section 6 of the Recovery of Premises Act on a Magistrate in tenancy matters as no power was given by the Recovery of Premises Act to amend or make such order touching on or regarding the recovery of premises between landlord and tenants and further submitted that relying on the doctrine of covering the field as far as recovery of premises is concerned and no other legislation including the District Court Act can make any provisions regarding recovery of premises let alone a contrary provision, and to him, until the Recovery of Premises Act is amended by the appropriate authority, the 1st respondent lacks the jurisdiction to entertain the subject matter of this suit with an annual rental value of N1,000,000.00 and the Court, and if at all it assumes jurisdiction, can only award N400.00 which sum shall be in full discharge of all demands in respect of the particular cause of action, and he referred to section 6(2) (b) of the Recovery of Premises Act.

It is in the ruling of the Chief District Court that by Order 5 of the District court (Increase of Jurisdiction of District Court Judges) Order 2014 the monetary jurisdiction of the Chief District Court Grade II is N5,000,000.00 Naira only, and therefore the rental value of the premises sought to be recovered is N1,000,000.00 (One Million Naira) and it is within the jurisdiction of the Chief District Court to entertain.

Thus, I agree with the submission of the counsel to the applicant that the 1st respondent sits as a District Judge and also as a Magistrate when exercising his civil or criminal jurisdiction respectively, and that ordinary tenancy matters, such as the instant suit, are civil in nature and ought to be within the civil jurisdiction of the 1st respondent, even though his argument is that the jurisdiction to handle tenancy matters was given to the High Court and the Magistrate Courts of the FCT and not District Court of FCT. To my mind, the counsel to the applicant having agreed that ordinary tenancy matters are civil in nature and ought to be within the civil jurisdiction of the 1st respondent, he cannot turn around to argue that by the Recovery of Premises Act, it is only the High court and Magistrates Court of the FCT that have jurisdiction to entertain tenancy matters, this amounts to probating and reprobating, and this is inappropriate. See the case of **SCOA (Nig) PCC V. TAAN (2019) All FWLR (pt 981) 817.**

Now the question that agitates in the mind of this court is:

> **Whether the District Courts have jurisdiction to entertain tenancy matters notwithstanding the provisions of section 2 of the Recovery of Premises Act?**

I answer the above question in the affirmative, and I refer to section 13 (l) (b) of the District Court Act Cap. 495 LFN 1990 which provides:

> **"Subject to the provisions of this Act and of any other written law, a Senior District Court judge shall have and exercise jurisdiction in civil causes and matters:**
> **(b) In all suits between landlord and tenant for possession of a land or house claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed one thousand naira".**

The expression "subject to" used in the above quoted provisions is to subject or subsume the provision of a subject statute, be it substantive or adjectival, to the provisions of a master enactment. See the case of **Adesegun A.V. Biyi (2016) All FWLR (pt 85) p. 333 at 1354, paras G-H.** In this circumstance, the subjects statutes are the District Court Act and the Recovery of Premises Act, this is because of the expression subject to the provisions of the Act and of any other written law" and the Recovery of Premises Act is a written law. I therefore hold that notwithstanding the provisions of section 2 of the Recovery of Premises Act Cap. 544 LFN 2004, the District Court Act Cap. 495 LFN 1990 also confers the jurisdiction on the District Courts to entertain landlord and tenant matters.

One may argue that the monetary jurisdiction confirmed upon the Senior District Court Judge is only that it does not exceed N1000.00 (One Thousand Naira), however, the expression "subject to the provisions of this Act" in section 13(l) of the District Court Act covers the other provisions of the Act. If that is the position, then the provisions of section 17 of the District Court Act comes to limelight which provides:

> **"(1) The president may, on the recommendation of the Chief Judge, by writing under his hand authorise an increased jurisdiction in civil matters to be exercised by a District court Judge to such extent as the Chief Judge may on the recommendation specify, and the authority may at any time be revoked by the president by writing under his hand.**
>
> **(2) An order by the president under subsection (l) of this section authorising an increased jurisdiction in civil matters to be exercised by any District Court Judge shall specify the maximum sum which is to replace the maximum sums mentioned in sections 13, 14 and 15 of this Act.**

(3) On the Order being made, the jurisdiction of the District Court Judge under sections 13, 14 or 15 of this Act, as the case may be, shall be deemed to be increased by the substitution of the maximum sum so specified at each of the places where a particular sum is mentioned in those sections".

In a nutshell, the purport of the above quoted provisions of the entire section 17 of the District Court Act is to give the president on the recommendation of the Chief Judge under his hand authorise the increase of the monetary jurisdiction of any grade or Magistrates until otherwise revoked by him, in civil matters including the landlord and tenant matters, and the Order shall specify the maximum sum which is to replace the maximum sums mentioned in sections 13, 14 and 15 of the District Court Act, that is to say, the N1000.00 (One Thousand Naira) mentioned in section 13, is to be replaced by maximum sum mentioned in the (Increase in Jurisdiction of District Court Judges Order 2021 made pursuant to section 17 of the District Court Act. To my mind, the increase also include that of the Chief District Court, this is because by section 17(2) of the Act, the expression "civil matters to be exercised by any District Court Judge", and therefore, the Chief District Judge is not left out in the increase of the monetary jurisdiction. The power of the Minister of the Federal Capital Territory, Abuja to increase the monetary jurisdiction of the District Court Judge on the recommendation of the Chief Judge is derived from the provisions of section 302 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Based upon the above analyses and consideration, I hold that the jurisdiction to handle land or tenant matters is also given to the Chief District Court Judge II sitting at Kubwa, and the maximum sum is N5,000,000.00 (Five Million Naira) which is beyond the rental value of N1,000,000.00 (One Million Naira) being the subject of the claim in the suit before the Chief District Court sitting at Kubwa. Section 6 of

the Recovery of Premises Act Cap. 544, LFN 2004 is not applicable as it is in relation to the jurisdiction in respect of rent other than in money. While in the suit before the Chief District Court is with respect to the recovery of possession and arrears of monetary rental value. See the marginal note of section 6 of the Recovery of Premises Act Cap. 544 LFN 2004. See also the case of **A.N.A.C.O.W.A. V. Lagos State Government (2017) All FWLR (pt 870) p. 1149, paragraphs B – F** on the use of marginal note in understanding the meaning and scope of the content of a statutory provisions where the provisions is ambiguous. In the instant suit, it appears the applicant could not appreciate the purport of the provisions of section 6 of the Recovery of Premises Act.

I therefore answer the issue No. 2 in the affirmative.

On the issue No. 3, whether the Recovery of Premises Act Cap. 544 LFN 2004, is not the only extant, substantive and procedural law governing recovery of premises in the FCT Abuja?

To this, I answer the above issue in the affirmative too, and I refer to the provisions of section 13(I) (b) of the District Court Act Cap. 495 LFN 1990 and to add that District Court Rules made pursuant to section 89 of the District court Act Cap. 495 LFN 1990 is also part of the procedural rules regulating the recovery of premises in the FCT Abuja. I hold that Recovery of Premises Act Cap. 544 LFN 2004 is not the only extant, substantive and procedural law regulating recovery of premises in the FCT Abuja.

On the issue No. 4, whether the case before the Chief District Court Kubwa as presently constituted is not an abuse of court process and therefore incompetent?

The counsel to the applicant contended that an abuse of court process of the court may occur where a party improperly uses judicial process to the harassment, irritation and annoyance of his opponent, and he cited the case of **Pave International Co. Ltd V. IBWA (1994)5 NWLR (pt 347) 685.** He submitted further that in the case before the Chief District

Court bringing the action without complying with the statutory conditions precedent serves no other purpose than to harass, irritate and annoy the defendant/applicant knowing fully well that nothing good will come out of it while in the ruling of the Chief District Court, it was held that this suit is not an abuse of court process.

Let me add that there is no evidence in the affidavit, showing that by filing the suit, the defendant is harassed, is irritated or that it caused his annoyance. I therefore align myself with the position of the Chief District Court that the suit is not an abuse of court process, and to this, I therefore so hold.

On the whole and in the circumstances of this application, it is hereby dismissed, and let the proceedings before the Chief District Court Kubwa continue.

Hon. Judge
Signed
7/6/2023

Appearances:

J.A. Kalu Esq appeared in person as the applicant.

Isaiah Ashubi Esq appeared for the 2nd respondent.

2nd RC-CT: The matter is for judgment, and I want to draw the attention of the court to some vital issues, as this matter was adjourned to 2nd day of May, 2023 for judgment, and according to the rules of this court judgment must be delivered within 90 days after adoption of final written address, to 2nd of May, 2023, it was 90 days, and for the judgment to be delivered today, it has exceeded 90 days after the adoption of final written address, and this will form the basis of an appeal, and we pray to this court to readopt our final written addresses before the delivery of the judgment.

AC-CT: The final written address was adopted on the 1st day of February, 2023 and it was adjourned to 2nd of May, 2023 for judgment.

CT-RC: Have you suffered any miscarriage of justice for not delivering the judgment in excess of one month and five days of the date of the delivery of the judgment?
RC-CT: No, I have not suffered any miscarriage of justice.
CT-AC: Have you suffered any miscarriage of justice as a result of the non-delivery of the judgment within 90 days that is in excess of the one month and five days?
AC-CT: As a matter of fact from the 2nd of February, 2023, I have not suffered any miscarriage of justice.
CT; The Judge is on National Assignment on election tribunal cases, and that is what led to the delay in the delivery of the judgment, however, for the fact that the two parties have expressed that they have not suffered any miscarriage of justice, the judgment will be delivered accordingly.

Hon. Judge
Signed
7/6/2023