IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE THEIR LORDSHIPS:

(1). HON. JUSTICE C. N. OJI
(2). HON. JUSTICE S. U. BATURE

APPEAL NO. CVA/102/2022
SUIT NO. CV/GW/265/197/2021

ON THE 28TH DAY OF FEBRUARY, 2024

BETWEEN:

BARR. ANAYO OKEREKE.....APPELLANT

AND

MR. JOSEPH MAIGERI.....RESPONDENT

APPEARANCES:
Appellant appears in person.
Respondent absent.

JUDGMENT

(DELIVERED BY HON. JUSTICE S.U. BATURE)

By a plaint filed on 28th of July, 2021, the Appellant (as Plaintiff) sued the Respondent (as Defendant) at the Chief Magistrate Court of the Federal Capital Territory, Abuja seeking for the following reliefs:-

"(a) . Eviction of the Defendant from the property (subject matter of this suit) being a one bedroom flat.

(b). Mesne profit of N12, 500.00 per month commencing from 15th March 2021 till possession is delivered.

(c). 20% interest per annum from the day of Judgment till the judgment sum is fully paid.

(d). N50, 000.00 cost of action."

In a considered judgment delivered on 26th April, 2022, the learned District Judge held among other things that the case between the parties was an agency relationship and not tenancy agreement. Thus held, the claims of the Plaintiff failed in its entirety.

Dissatisfied with the said Judgment, the Plaintiff (now Appellant), filed a Notice of Appeal dated 25th May, 2022 filed same day.

However, the Appellant subsequently, filed an Amended Notice of Appeal dated 20th March, 2023 but filed on 21st March, 2023 on 5 grounds of Appeal, (shown on their particulars) as follows:-

"GROUND OF APPEAL
GROUND 1.
The learned trial District Judge erred in law when she held that the relationship between the Plaintiff and the Defendant is that of agency and not Landlord and Tenant relationship.

PARTICULARS OF ERROR

i. There was no enough material evidence placed before the Court in proof of the said Agency relationship.

ii. The trial Court ignored overwhelming evidence of Landlord and Tenant relationship presented before it.

GROUND OF APPEAL
GROUND 2.
The trial Court erred in law when it failed to consider and make specified findings on the core issues raised by the Plaintiff in his Written Address thus occasioned a miscarriage of justice.

PARTICULARS OF ERROR

a. The Plaintiff in his Written Address raised two issues for the determination of the Court to wit:

i. Whether the Plaintiff has established a valid and enforceable contract against the Defendant?

ii. Whether there is a privity of contract between the Plaintiff and the Defendant and/or indeed any other person?

b. The Defendant on his own part raised the issue of Agency and whether the Defendant was a tenant of the Plaintiff.

c. The trial Court in its judgment made specific findings on this dual issues raised by the Defendant but failed to make any specific findings and holdings on the two issues raised by the Plaintiff.

GROUND OF APPEAL
GROUND 3
The trial Court erred in law when it held "from the definition of who a tenant is and who an agent is as provided or under Section 2 RPA, the Defendant cannot strictly be called the tenant of the landlord as he is not in any way occupying the premises of the landlord as this fact was evidenced by the oral testimonies of Dw1 and Dw2 and also by testimony of Pw2 who testified that he served the notices on the Defendant in his shop and not at the demised premises and also the testimony of the Plaintiff under cross-examination where he answered that he did not know who is living in his property. "Thus occasioned a miscarriage of justice.

PARTICULARS OF ERROR

a. The trial Court with due respect misinterpreted and misapplied Section 2 RPA as relates the definition of tenant.

b. The trial Court relied on wrong assumptions and conclusions as regards evidence before it.

c. The trial Court equally relied on unproven facts in arriving at its conclusion.

d. The trial Court also did not advert its mind to the issue of de-facto and de-jure possession/occupation before arriving at its conclusion.

GROUND OF APPEAL
GROUND 4.
The trial Court erred in law when it held thus "it is unfortunate to note that this alleged agreement between the parties i.e Landlord and his agent was a gentleman agreement, nothing was written on paper or signed by parties, but the Court has also taken judicial notice of the facts that around the Gwagwalada Area, tenancy related matters are mostly transacted on the basis of trust and relationships i.e "Gentleman agreement (as referred in common parlance) and so the Court is left with no option but to infer from surrounding circumstances, evidence placed before it and previous transactions to draw a conclusion as to the truth or otherwise of the implied agreement." Thus occasioned a miscarriage of justice.

PARTICULARS OF ERROR

a. The trial Court relied on what it called "unfortunate" and "alleged agreement" between the parties i.e landlord and his agent" to infer a "gentleman agreement" and that nothing was written on paper or signed by both parties.

b. The Court took judicial notice of the fact that around the Gwagwalada Area, tenancy related matters are mostly transacted on the basis of trust and relationship without any legal basis.

c. By virtue of the definition of an agent quoted by the Court, Section 2 RRA which defined an agent as any person

usually employed by the landlord in the letting of the premises or in the collection of the rent, thereof or specially authorized to act in a particular manner by writing under the hand of the landlord.

d. RPA stated that agreement with an agent of the landlord must be specifically authorized in writing under the hand of the landlord.

e. The issue of gentleman agreement was raised by the Court sou motu and not by any of the parties.

f. The Court agreed that there was no written or verbal confirmation of agency relationship and yet held that the Defendant was an agent of the Plaintiff.

GROUND OF APPEAL
GROUND 5.
The trial Court erred in law when it held thus: "The Court therefore holds that the statutory notices was served on the Defendant in error as he was not a tenant of the Landlord but an agent. The relationship that existed between the parties is that of principal/agent which is fiduciary in nature and not a landlord/tenant relationship, and therefore whatever breach or seeming breach in that relationship cannot be rectified via recovery of premises procedure". Thus occasioned a miscarriage of justice.

PARTICULARS OF ERROR

a. If Defendant acted as agent of the Landlord, did he take or show anybody to the Landlord as the tenant in the house.

b. Did the Defendant collect any receipt from the Landlord to be issued to prospective tenants or did he issue any receipt to any tenant as a agent of the Landlord.

c. Why was the twin/second flat not accessible to the Defendant. If he was indeed an agent of the Landlord.

d. There was no person known to Landlord, other than the Defendant as the tenant, as he is the only person that transacted with the Landlord.

e. Any renovation or alteration on the house ought to be with the Landlord's consent obtained in writing and not inferred as the Court did.

In his brief of argument, the Appellant Anayo Okereke Esq (representing himself) formulated 4 issues for determination to wit:-

"Issue One: ***Whether there was enough material evidence placed before the trial Court to justify the inference of Agency relationship between the parties; and if the answer is in the affirmative, was Landlord/Tenant relationship established before the trial Court.***

Issue Two: ***Whether the trial Court was right when it failed to make specific findings on the dual issues raised by the Plaintiff to wit:***

i. Whether the Plaintiff has established a valid and enforceable contract against the Defendant

ii. Whether there is a privity of contract between the Plaintiff and the Defendant and/or indeed any other person?

Issue Three: ***Whether the trial Court was right in its interpretation and application of S.2 RPA to the facts of this case in relations to who a tenant is?***

Issue Four: ***Whether the trial Court was right when it relied on pieces of evidence it described as unfortunate and proceeded to take judicial notice of facts not supportable by law and evidence in arriving at existence of gentleman agreement?***

The four issues were argued seriatim.

Likewise, on the part of Respondent, three issues were formulated in the Respondent's brief by A. A. Igah, Esq to wit:-

> ***"(1). Whether there was enough material evidence placed before the trial Court to justify the inference of Agency relationship between the parties; and if the answer is in the affirmative, was Landlord/Tenant relationship established before the trial Court.***
>
> ***(2). Whether the trial Court was right when it failed to make specific findings on the dual issues raised by the Plaintiff to wit:***
>
> ***i. Whether the Plaintiff has established a valid and enforceable contract against the Defendant***
>
> ***ii. Whether there is a privity of contract between the Plaintiff and the Defendant and/or indeed any other person?***
>
> ***(3). Whether the trial Court was right in its interpretation and application of S.2 RPA to the facts of this case in relation to who a tenant is?"***

The issues were equally argued seriatim.

We shall adopt the issues raised by the Appellant in this appeal. While we have resolved to treat issues 3 and 4 together.

Now, the brief facts of the case as highlighted in the Appellant's brief of argument, is that sometime in February, 2020, the Respondent indicated interest in the property of the Appellant, a one bedroom flat, located at University of Abuja Teaching Hospital Corner Shop, Gwagwalada Abuja. That after both parties reached agreement on some issues to be repaired on the house as well as rental value per year, the Respondent paid the agreed rent, while the Appellant on his own part concluded the agreed repairs on the house and handed over same to the Respondent.

That at the expiration of the term granted to the Respondent, the Appellant reached out to the Respondent for peaceful delivery of premises which was rebuffed by the Respondent. Hence the institution of the suit via plaint dated 28th July, 2021 (as seen on page 1 of the Record of Appeal).

From the submissions of Appellant in his brief of argument, it is clear that Appellant contends that the provision of Section 2 of the Recovery of Premises Act 2007, is inapplicable in this case. That from the evidence on record it is clear that the Plaintiff rented the said house to the Defendant and nothing more.

Moreso, Appellant further contends that there's no evidence in this case to show the existence of an agency relationship between the parties. Appellant however made reference to evidence of the Defendant as seen on page 33 of the record of Appeal thus:

> ***"He (Plaintiff) came across to me that my house is directly opposite his house, please if I see anyone interested in the property I should let him know. Many people have been coming and sometimes collect the rent and pay same into his account some other times, they will pay directly to him."***

To further buttress his arguments, Appellant relied on authorities cited on record including the case of ***SPDC V UMEHERU (2006) 33 WRN 151.***

However, Appellant submitted in paragraph 4:13 of his brief, that assuming but not conceding that the evidence of the Defendant as quoted earlier (page 33 of the record of appeal), by the trial District Judge, the Defendant can only be seen as a mere meddlesome interloper errand boy or conduit pipe in the absence of any concrete evidence of agency relationship.

Further in paragraph 4:17, Appellant again submitted, that assuming but not conceding that the trial Court was right in affirming the establishment of agency relationship between the Appellant and Respondent, was landlord and the tenant relationship established?

On this, reference was made to the evidence of the Appellant as seen at page 28 of the Record of Appeal. It is further contended by the Appellant with reference to Section 2 of the Recovery of Premises Act, that the agent

in question must be specifically authorized to act in a particular manner by writing under the hand of the landlord that in the instant case, there's no such authorization in writing mandating the Defendant to act in respect of the subject matter.

Reference was made to cross examination of DW1 (the Respondent) at page 35 of the Record of Appeal, to argue that all the Respondent did in this case was in the exercise of his right as a tenant having paid his money to the landlord and never as an agent which only extended in the realm of his imagination.

Appellant urged the Appeal Court to so hold.

Meanwhile, it was argued for the Respondent, in his brief that from the evidence of the Defendant (now Respondent) on page 33 of the record, the relationship between the Appellant and the Respondent is that of Agency relationship.

Reliance was equally placed on Section 2 of the Recovery of Premises Act as well as cases cited on record including ***NIGER PROGRESS LTD V N.E.L CORP (1989) 3 NWLR (Pt.107) 68 at 92, Paras E – G. (SC) .***

It is therefore argued, that from the conduct of the Appellant and by giving the Respondent the sum of N5, 000, from the rent an agency relationship was created between the Appellant and the Respondent.

That rectification by the principal of acts done on behalf of the Appellant is one of the modes of creating agency relationship such as in this case.

Moreso, learned Respondent's Counsel had argued that landlord and tenant relationship was never established before the trial Court as the Appellant agreed during cross examination that the Respondent has his own personal apartment and that Pw2 equally affirmed the same position under cross examination.

Reference was made to pages 28 and 30 of the record of Appeal.

Likewise, Counsel posed the question as to whether the Respondent was in occupation of the Appellant's house at any point in time that could

warrant him to apply to the Court to evict the Respondent or claim mense profit from him? Counsel answered in the negative.

Reference was made to pages 28 and 30 of the Record of Appeal on the evidence of Pw1 and Pw2. That from page 37 of the Record of Appeal, it is clear that one Suleiman Yusuf (Dw2) is the one in occupation of the house.

The Court is urged to hold in favour of the Respondent.

Now, let us first of all begin by considering when a Principal/Agent relationship may arise. In the case of ***PROCTER GAMBLE CO V G.S & D IND LTD (2013) 1 NWLR (Pt.1336) PP. 456, PARAS C –E, PARAS E –G PER OGUNWIMUJU J.C.A*** where it was that that:

> ***"The relationship of principal and agent may arise in three ways viz:***
>
> ***(a). By agreement whether contractual or not between the principal and agent which may be express or implied from the conduct or situation of the parties.***
>
> ***(b). Retrospectively by subsequent ratification by the principal acts done on his behalf.***
>
> ***(c). By operation of law under the doctrine of agency of necessity and in certain other cases.***
>
> ***The relationship of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents to act. Authority may also be implied from the subsequent assent of the principal. Therefore, agency arises mainly from a contract or agreement between parties, express or implied."***

See the cases of ***UTC NIG LTD V WEMA BANL PLC (2002) 12 NWLR (Pt.781) 211, Ratio 1; NIGER PROGRESS LTD V N.E.L CORP (1989) 3 NWLR (Pt.107) 68 at 92, Paras E – G. (SC).***

From the evidence-in-chief of the Appellant as Pw1, as seen at page 24 of the Record of Appeal, there was indeed an agreement between him and the Respondent, to rent out his flat the subject matter of this appeal.

Pw1 states:-

> ***"...We negotiated and agreed for N150, 000 (One Hundred and Fifty Thousand Naira) year fee for rent. I told him that we will only give out the apartment for a one (1) year definite term because thereafter we would want to put the apartment to personal use. He said that was exactly what he wanted and that the person he intends to occupy the place is coming to do a one (1) year programme at the University of Abuja Teaching Hospital Having agreed on terms, we asked him to credit our bank account as we would need the money to assist us in doing the renovation. He credited our bank account to the tune of N150, 000 (One Hundred and Fifty Thousand Naira). When I asked him about the balance, he said I should not worry that he will pay me later. So we proceeded with the renovation work. Upon completion, we handed over the keys to the Defendant with a commencement date of 15th March, 2020 to end 15th March, 2021.***
>
> ***I gave him the keys on the 12th March 2020. Sometimes in March 2021 before the expiry date, I looked for him because he was not at home, then I called him to remind him of the need to yield possession as agreed. After the expiration of the term granted, I went back with the bid to takeover possession, he wasn't there, I called him on phone also, he started telling stories, indicating that he wasn't prepared to deliver peaceful possession. After much pressure on him to do so without achieving result, we resulted to legal option. We proceeded to serve him with the statutory notices through the bailiff of the Court, thereafter we applied for a plaint note, which commenced this action."***

Pw1 proceeded to tender his first bank statement of account showing he received the sum of N145,000 from the Respondent for tent.

He equally admitted same under cross examination. On the part of the Respondent, as seen at page 33 of the Record of Appeal, testifying as Dw1, he stated that he and the Appellant have known each other for years

and that he has been collecting rent and paying same to the Appellant by himself and sometimes the rent is paid directly to the Appellant to the persons interested in Appellant's property.

With reference to this matter, Pw1 testified that having agreed to rent out his property, he asked Dw1 (the Respondent) to pay the sum of N150, 000 That when he wanted to send it, the Appellant asked him to take N5, 000 for his calls up and down.

Dw1 said he then sent the sum of N145, 000 to Appellant's account Dw1 states:-

> ***"He came and started the renovation and then the money finished, all the Chambers of the toilet was not flowing, no nets, no light, no paint. The people that were supposed to move into the house started mounting pressure on me because admission has started, I put a call to Plaintiff and he told me the money is finished, he does not have money to continue the renovation. I had to give the tenant my personal house in my compound just to save myself from the pressure. I called the Plaintiff and told that since I had given the tenant a room in my house because of the pressure, anytime I rent this house, I will keep the money. The tenant is writing her final exams if not she would have been in Court today.***
>
> ***I finally got a tenant on the 13th October 2020, and I told the tenant that the house is not finished but I am ready to use my money to do the finishing, and he paid me N150, 000 I have the statement of account on the date he paid and how much he paid. I called the Plaintiff after my discussion with the new tenant that I have gotten a new tenant to recover my money and he said to go ahead. I promised the new tenant that he should hold on till I finished the work on the house, that even though he paid me on the 13th October 2020, his rent will start reading on 1st November 2020.***
>
> ***I was in my house in March when the Plaintiff called me that my rent has expired, and I asked him why? He" He himself have been bringing people to come and check the house, if they will take it, so he can recover my money, so he is fully aware that the***

house was not completed. The tenant is enjoying light directly from my house, he pays me light bill and he fetches water in my house."

Now having already noted the three ways by which principal and agent relationship may arise, from the evidence as borne on the Record of Appeal, it is evident that such a relationship existed between the Appellant and the Respondent which could be implied from the conduct of the parties.

Morso, Section 2 Recovery of Premises Act defines an Agent thus:-

"Any person usually employed by the Landlord in the letting of the premises, or in the collection of the rents thereof, or specifically authorized to act in a particular manner by writing under the hand of Landlord."

The above provision is clear and unambiguous. It paints three scenarios where a person may be defined as an agent. The word 'or' in the above provision signifies that it could be in either of the above scenarios, while in our respectful view, the third category is preferred strictly for written authorization to act in the said capacity. It is our considered view that the 1st two may be with or without written authorization. Therefore, we do not agree with the arguments of the Appellant, in paragraph 4:4 of his brief that he reliance on Section 2 Recovery of Premises Act by the trial Court in arriving at its decision that there was clearly an agency relationship herein, will amount to standing logic on its head. The agrement itself need not be contractual. Moreso, subsequent ratification by the Appellant in this case of acts done on his behalf by the Respondent, further proves the implied agency relationship, as well as the conduct of the parties herein. We so hold.

On whether there was a Landlord and Tenant relationship between the Appellant and Respondent, we again refer to Section 2 of the Recovery of Premises Act, on who is a Tenant which includes:-

"Any person occupying premises whether on payment of rent or otherwise but does not include a person occupying premises under a bona fide claim to be the owner of the premises."

Now, while it is not disputed in this case that the Appellant is the owner and Landlord of the subject matter, it is also not in dispute that the Respondent herein is not occupying the subject matter nor is there any evidence seen on the Record of Appeal to show that he has ever been in occupation of Appellant's property.

Indeed, from the evidence on record, particularly at page 28 of the Record of Appeal, the Appellant as Pw1, stated while adamant that the Respondent (as Defendant) is his tenant, admitted that he is aware that the Defendant has his own personal house.

When asked if the Defendant is living in his house he said:-

> ***"Pw1: I don't know who is living there. I just know he is my tenant."***

Again. The following ensued under cross examination thus:

> ***"Question: Since you do not know who is living in your house, then you will not know who you are trying to evict before the Court?***
>
> ***Answer: The person I am trying to evict is the Defendant.***
>
> ***Question: From your experience as a legal practitioner, can you evict a person who is not occupying your house?***
>
> ***Answer: I can evict my tenant or any person occupying my house."***

Indeed at this juncture, we make bold to state that as a legal practitioner who is conversant with the law, it is rather surprising to observe that the Appellant would insist that the Respondent is his tenant, going by the evidence borne on record.

Likewise, it is clear that the occupier of the premises is not the Respondent. The Defendant in the suit at the Court below, even presented the said tenant as Dw2.

Dw2 testified that he is currently occupying the subject matter. Therefore, relying on the provision of Section 2 of the Recovery of Premises Act, on

whom a tenant is, our respectful view is that the Respondent is not a tenant occupying the subject matter. You cannot ask the Court to evict a person who is not occupying the property nor can you ask for mense profit since no Landlord/Tenant relationship exists between the Appellant and the Respondent in this case.

The Court of Appeal per ***OYEWOLE J.C.A in the case of ORHUNHUR V IVEVER (2015) 1 NWLR (Pt.1439) PP. 205, PARAS C – E,*** defined a tenant to mean thus:

> ***"By virtue of Section 2 of the Recovery of Premises Act, a tenant is defined as including any person occupying premises whether on payment of rent or otherwise but does not include a person occupying a premises under a bonafide claim to be the owner of the premises."***

Issue 1, is hereby resolved against the Appellant.

ON ISSUE 2.

This is premised on two issues formulated by the Appellant (as Plaintiff) in his Final Written Address, as seen at page 15 of the Record of Appeal, for determination of the trial Court.

Relying on cases cited on record, the Appellant submitted that regrettably the trial Court did not consider the case presented by the Appellant worthy of any attention or consideration.

Consequently, Appellant submitted that failure of the trial Court to consider and pronounce on the dual issues as raised by the Appellant i.e whether the Plaintiff has established a valid and enforceable contract against the Defendant as well as issue of privity of contract, has therefore occasioned a miscarriage of justice on the Appellant.

However, it was argued for the Respondent in his brief of argument, that none of the issues formulated by the Appellant before the trial Court was abandoned by the trial Court as alleged by the Appellant.

Further arguing that the trial Court has the right to formulate or raise issues for determination so far as it does that in line with the evidence before it.

Counsel relied on the case of ***ENEKWE V INTL. MERCHANT BANK (2006) 28 SCCQR, P. 594 at 597, Ratio 5 (SC).***

Submitted moreso that the case of the Plaintiff is for recovery of premises and mense profit of N12, 500 per annum against the Defendant, while the Defendant maintained in his defence that he is not a tenant of the Plaintiff.

Learned Respondent's Counsel equally made reference to page 43 of the Record of Appeal, to argue that the lone issue formulated by the trial Court is in line with the facts and evidence placed before it.

The Court is urged to so hold.

Indeed, it is trite law that a Court when considering a matter before it, is not in any way restricted to considering the issues formulated by parties. The Court has the right to either adopt the issues raised or formulate its own issues for determination, in line with the evidence placed before it.

See: ***ABUAH V OKOSI (2015) 16 NWLR (Pt.1484) P. 163, PARAS F – G PER YAKUBU J.C.A*** where it was held that:

> ***"Where issues are expressly formulated by parties, the Court has the discretion to adopt any of the issues so formulated or formulate its own issue for determination of the matter before it."***

Moreso, Appellant conceded to this fact in paragraph 3:2 of his reply brief where he submitted that Courts are empowered to recouch the issues raised by the parties, provided they are all encompassing to address issues raised by the parties before the Court.

The trial Court at page 43 of the Record of Appeal held thus:-

> ***"It is the opinion of the Court that all issues formulated by the parties are inter-woven and so the determination of one is the determination of all. Therefore the Court after listening and understanding all issues raised plus the facts and evidence placed before it formulates a lone issue for its determination to wit; "whether the relationship between the parties is that of***

landlord and tenant to warrant the service of Statutory Notices on the Defendant, or is the Defendant simply or at best an agent of the Landlord"

However, the Appellant further argued in paragraph 3:3 of his reply brief that Respondent's Counsel did not refer to the portions or pages of the Record of Appeal where the trial Court addressed the dual issues.

Now, we have observed that the trial Court had formulated a single issue for determination as seen at page 43 of the Record.

We have equally looked at the claims of the Appellant as contained on the plaint, and the evidence adduced on both sides. It is our respectful view that the dual issues raised by the Appellant in his final Written Address did not form part of the claims as endorsed on the plaint before the trial Court.

He was merely claiming reliefs for eviction of the Defendant from the property, mense profit of N12, 500, 20% interest as well as N50, 000 cost of action.

It must be recalled that we have earlier held (while considering issue 1) that as regards Principal/Agent relationship, it need not be contractual. This is contrary to the Appellant's position as argued and seen on page 15 of the Record of Appeal, on the two dual issues raised.

Besides, the evidence on record must be in line with the claims as endorsed on his plaint. This cannot be introduced in the address of Counsel.

It is a trite principle of law that the address of Counsel no matter how brilliant, cannot take the place of evidence.

See: ***B.S.J.S.C V DANJUMA (2017) NWLR (Pt.457), PARAS B –C PER ABDULLAHI J.C.A.*** where it was held that:

"No matter how beautiful a Counsel's Written Address is, it cannot take the place of evidence. A Court is bound by the evidence before it and not the address of Counsel not supported by material evidence."

It is therefore our considered view that the sole issue formulated by the trial Court is all encompassing and adequately captured all issues raised in line with the evidence before the trial Court.

We equally find that there's no miscarriage of justice in this case. Issue 2 is resolved against the Appellant.

ON ISSUES 3 AND 4.

It is the Appellant's contention, by making reference to the holding of the trial Court at page 45 of the Record of Appeal, that the Court described the evidence of agency agreement as unfortunate and yet proceeded to rely on it in making findings.

That the learned District Judge again described the evidence as (this alleged agreement between parties) which is an acknowledgment that the evidence of agency agreement placed before her still remained in the realm of allegation and not proven before the Court. That the trial Court further described it as "unfortunate" and "alleged agreement" between the parties i.e Landlord and agent as a "gentleman agreement."

On the issue of the Court taking judicial notice as argued in paragraphs 7:8 – 7:14 of Appellant's address, the Appellant referred to Section 122(1)(2) & (3) of the Evidence Act and cases cited on record, to argue that the Court cannot take judicial notice of facts within the personal or particular knowledge of the Judge.

The trial Court held at page 45 of the Record of Appeal as follows:-

> ***"It is unfortunate to note that this alleged agreement between parties i.e Landlord and his agent was a gentleman agreement, nothing was written on paper or signed by parties, but the Court has also taken judicial notice of the fact that around the Gwagwalada Area, tenancy related matters are mostly translated on the basis of trust and relationships. i.e gentleman agreement as it is referred in common parlance and so no option but to infer from the surrounding circumstances, evidence placed before it and previous transaction to draw a conclusion as to the truth or otherwise of the implied agreement."***

Well, it is our respectful view that although the learned District Judge had referred to the agreement as "the alleged agreement between the parties" (as reflected on page 45 of the record), the learned District Judge promptly confirmed its position on the issue when it held at the same page 45 of the record thus:-

> ***".....i.e gentleman (as it is referred to in common parlance), and so the Court is left with no option but infer from surrounding circumstances, evidences placed before it and previous transactions to draw a conclusion as to the truth or otherwise of the implied agreement. it is the finding of the Court that the gentleman agreement established between parties is an implied contract/agreement which is legally binding and derives from the actions, conducts or circumstances of one or more parties, it is assumed to exist but with no written or verbal confirmation. It is therefore an implied-in fact contract as it was created by the past conduct of the Plaintiff and Defendant in their previous transactions."***

Well, the learned District Judge made reference to the said agreement as "unfortunate" because, it was not a written agreement.

We see no issue with the trial Court referring to the agreement as a "gentleman agreement".

Now one may ask what is a gentleman's Agreement?

A gentleman's agreement is an informal, often unwritten agreement or transaction backed only by the integrity of the counterparty to actually abide by its terms.

In the instant case, this trial Court in its decision, considered the entire evidence adduced before it, and concluded that the Agency Agreement between the parties may properly be inferred from their conduct. (See page 45 of the Record of Appeal).

Morso, on the issue of judicial notice pursuant to Section 122(1)(2) & (3) of the Evidence Act 2011 (as amended in 2023), the trial Court is at liberty to take judicial notice of its own records, which includes matters, that have come before it previously/or even pending for adjudication.

Therefore, it is our candid view that the argument of the Appellant on this issue is rather misconceived. Hence, it is accordingly discountenanced.

On the whole, having thoroughly considered this appeal, it is our considered opinion that the Appellant ought to have joined the actual tenant in occupation of the property, as a necessary party to the suit before the lower Court. This is for the effective and effectual determination of the suit. No doubt, the Appellant is entitled to recover his property.

However, even if the tenant was unknown, as the Appellant claimed, the law allows a litigant to sue persons unknown. This was not done in this case.

In addition, we agree with the finding of the leaned trial Judge at page 45 of the record, where the Court held thus:-

> ***"Consequently, the claims of the Plaintiff fails in its entirety and the Plaintiff is advised that if he intends to recover his property which the Agent rented out, he should determine the said tenancy by the service of the appropriate notices on the real and identified tenant."***

Therefore, we are in total agreement with the findings of the learned District Judge. We see no reason to disturb the findings.

Consequently, we affirm the decision of the lower Court.

We find no merit in this appeal. The appeal fails and it is accordingly dismissed.

No order as to cost.

Hon. Justice C. N. Oji
Presiding Hon. Judge
28/2/2024

Hon. Justice S. U. Bature
Hon. Judge
28/2/2024