

IN THE CHIEF MAGISTRATE COURT V KOGI STATE OF NIGERIA
IN THE KOGI STATE MAGISTERIAL DISTRICT
HOLDEN AT SMALL CLAIMS COURT, LOKOJA

ON THE 2ND DAY OF SEPTEMBER, 2024

SUIT NO:- CMCL/CV10/2023

BEFORE: HON. MEDINAT UMAR - SMALL CLAIMS JUDGE

BETWEEN:

ZAINAB MOHAMMED DANGANA - PLAINTIFF
AND

1. ALEX AYEGBA AGADA
2. ABDULKARIM ZULEIHAT
3. ALIDU JOY } DEFENDANTS

CAUSE OF ACTION: WHEREOF THE PLAINTIFF CLAIMS JOINTLY AGAINST THE DEFENDANTS AS FOLLOWS:

1. RECOVERY OF POSSESSION OF THE SHOP APARTMENT AND ITS APPURTENANCES.
2. ₦25,000.00 (TWENTY-FIVE THOUSAND NAIRA) MONTHLY AS DAMAGES FOR USE AND OCCUPATION OF THE PREMISES FROM THE DATE OF SERVICE OF THE NOTICE OF TRANSFER OF PROPERTY UNTIL POSSESSION IS DELIVERED BY THE DEFENDANTS.
3. ₦100,000.00 (ONE HUNDRED THOUSAND NAIRA) ONLY AS THE COST OF ENGAGING THE SERVICE OF A COUNSEL TO PROSECUTE THE MATTER.
4. THE COST OF FILLING THE SUIT.

Official



JUDGMENT

The plaintiff took out plaint against the defendant where he claims against the defendant as follows:

- (1) Recovery of possession of the shop apartment and its appurtenances.
- (2) ₦25,000.00 (Twenty-Five Thousand Naira) monthly as damages for use and occupation of the premises from the date of service of the Notice of Transfer of property until Possession is delivered by the defendant.
- (3) ₦100,000.00 (One Hundred Thousand Naira) only as the cost of engaging the service of a Counsel to prosecute the matter.
- (4) The cost of filling the suit.

The defendants through their counsel denied liability and upon that, the plaintiff called 2 witnesses to prove their case, PW1 and PW2 respectively and this Court will summarize their evidence.

PW1 in his evidence told this Court that he bought the shop in question from Kogi Investment and Property Ltd for his sister the plaintiff in this case and after payment Kogi Investment and Property Ltd transferred ownership to the plaintiff and letter transferring ownership of the property to them was given to them and a letter notifying the defendant of the said transfer and urging the defendant

to approach them for refund was equally served on the defendant and both letters were admitted in evidence and marked Exhibit P1 and P2 respectively.

PW1 continued that the defendants were still in possession and they issued Form 'D' which was served on the defendants by substituted means and the enrolled order of this Court was equally admitted in evidence and marked Exhibit P3. And he urged the Court to grant their claims.

Under cross-examination he said the plaintiff is his sister and Kogi Investment Property Ltd served notice of transfer on the defendants and J.U. Usman Esq. served quit notice on the defendants. And that the defendant filed a suit in respect of same property at Chief Magistrate Court 3 which was struck out for abuse of Court processes.

PW2 is the Court bailiff, he testified that he served Form 'D' on the defendants by substituted means by the order of this Court and he deposed to an affidavit of service which was admitted in evidence and marked Exhibit "P4".

Under cross-examination he told the Court that he did not attempt service before the order of substituted service was granted.

The plaintiff closed their case and the defendants called a sole witness as DW1.



In his evidence he said the shop was allocated to him by Kogi Investment and Property Ltd and a quit notice was served on him and he filed a case which was struck out for abuse of Court processes and the quit notice served on him was admitted in evidence and marked Exhibit "D1" and the ruling of the court striking out the case was admitted and marked Exhibit "D2".

Under cross examination he acknowledged the letter of notice of transfer of ownership to the plaintiff served on him by Kogi Investment and Property Ltd Exhibit "P1" and he acknowledged that he did not comply with the instruction and equally did not challenge the institution because his rent was still pending. And that he was in receipt of the quit notice served on him.

That he doesn't have any transaction with the plaintiff. And stated that the rent value of the shop is ₦100,000.00 (One Hundred Thousand Naira) and his rent with Kogi Investment and Property Ltd expired in June 2023 and he did not renew same.

The defendant closed his case and both parties filed written addresses and adopted same.

The defendant raised two issues for determination by this Court which are:

1. *Whether the service of a plaint for possession of a property on an irregular 7 days notice to quit is valid?*



Under his submission as to the effect that a landlord who desires to recover possession of his property must serve the statutory notice and cited the case of *Splinters Nig. (Ltd) V. Oasis Finance Ltd (2013) 18 NWLR (Pt. 1385) 188.*

And submitted that the 7 days notice to quit served on the defendants is void and cited Order 18 (1) (d) of the Kogi State Rent Control and Recovery of Residential Premises Law 2007 and urge the court to hold that the defendants is entitled to 6 months notice to quit.

On the second issue the defendant submitted that there was no attempt to serve the defendants personally before attempting to serve by substituted means and cited Order 5 Rule 2 (1) (a) and (3) of Kogi State Magistrate Court Rules 2021.

And they urged the Court to dismiss this suit for an abuse of Court process as same is already before Chief Magistrate Court 2.

The plaintiff on their part formulated one issue for determination to wit;

"Whether the plaintiff has proved her case to warrant the grant of her claims before this Honourable Court".

In his submission, he stated that statutory notice was earlier served through J.U. Usman which is the 7 days Quit Notice and that



defendants acknowledged the receipt of same as they even tendered same in evidence before this Court and Form 'D' was equally served on the defendant and cited the case of *Splinters Nig. Ltd V. Oasis Finance Ltd (2013) 39 WRN Pg. 173* and *Essentials of Logistics Ltd V. Odili (2014) 37 WRN @ Pg. 96* particularly @ Pg. 103.

And on the issue of substituted service, they submitted that there must not be an attempt to serve before order for substituted service can be granted and cited *Zakari V. Muhammed (2017) NWLR Pt. 1594 Pg. 181 @ 192.*

And submitted finally that the plaintiff do not have any tenancy relationship with the defendant. That the defendant had same with Kogi Investment and Property Ltd which was terminated by notice and the defendant acknowledged same and for a tenancy to be created there must be an ad idem.

That whatever issue they have should be with Kogi Investment and Property Ltd.

And urge the Court to grant their claim.

The first issue this Court will consider is the issue of abuse of Court process as it bothers on jurisdiction, before the Court can consider other issues.



The defendant during their defence before this Court tendered the ruling of Chief Magistrate Court 3 striking out the suit for abuse of Court process stating that the case is already pending before this Court and should continue with this. As it stands, no case is pending before any Magistrate court to warrant abuse of Court process. If the defendants was of strong opinion that this present case was filed after the one that was struck out they should have appealed the ruling striking out the suit.

Based on that, no abuse of Court process and this Court has jurisdiction to determine this suit on merit.

On the issue of substituted service, the wordings of Rules of this Court is clear, Order 5 Rule 1 (a) and 2 (e) of Magistrate Court Rules 2021 and I quote:

"where it appears to the Court either with or without an attempt at service in accordance with the provisions of Rule 1 of this order that for any reason service of any process after being satisfied by an affidavit that is necessary so to do may order that service be effected by substituted means".

This Court was satisfied by the affidavit in support of the motion ex-parte filed before granting the order for substituted



service and attempt to serve first was not made a condition precedent to grant order of substituted service.

And be that as it may, the plaintiff through PW1 under cross-examination stated their attempt to serve the defendant before they filed the motion ex parte.

See the case of *Zakari V. Muhammed* (2017) NWLR Pt. 1594 as cited by the plaintiff.

Based on that, the order of substituted service granted by this Court is in order and valid.

And the last issue bothering to be decided by the Court is the issue of the statutory notice served on the defendants. The plaintiff served 7 days quit Notice dated 9th day of May 2023 and later the Form 'D' dated 26th day of July 2023 and the defendant is of the opinion the quit notice is supposed to be for 6 months being a yearly tenant.

For the Court to determine the relevant notice to be served on the defendant this Court will first analyze the relationship that exist between both parties to know the nature of the notice required by law to be given in such situation.

The plaintiff said they bought the shop from Kogi Investment and Property Ltd and notice of transfer of ownership to the plaintiff



was issued on the 27th day of April 2023 on the defendant which he acknowledged and is in evidence before this Court he still acknowledged same and he never complied with the notice served on him nor challenge it.

And the notice specifically stated that he should come for the refund which was supposed to be 2 months rent then as the defendant's tenancy with Kogi Investment and Property Ltd was to be determined by June 2023 which was made known to this Court by the defendant himself.

That is to show that the landlord sold his reversion to the plaintiff and introduced him to the defendant (tenant) via the letter transferring the property yet, the defendant refused to recognize the plaintiff's title.

See *Summonu V. Olayemi* (1955) 21 NLR 45.

Where a landlord sells a property to a purchaser and there is a pending tenancy between the tenant and the old landlord the new owner inherits, takes over the property with the asset and liability in it. So, the tenancy agreement between a tenant and his landlord will automatically be deemed to have been inherited by the new purchaser/owner of the property. See *Chuka V. Messr Aerobell (Nig) Ltd* (2012) 12 NWLR (Pt. 1314) Pt. 296 @ 320 CA.

But in the instance case at hand, the landlord terminated the tenancy simultaneously with the sale of the property. It means the plaintiff did not inherit the tenancy agreement between the old landlord and defendant.

And the defendant informed this Court that his rent expired in June 2023 and has not renew same.

If there is no tenancy created by the new owner and the defendant, the plaintiff can issue statutory notice on the defendant.

The Form 'D' was issued on the defendant on the 26th day of July, 2023 when his pending tendency with Kogi Investment and Property Ltd has been determined and the defendant did not honour this notice this case was filed before this Court on 25th day of August 2023.

Even the October 2023 the defendant was of the view that 6 months' notice was supposed to expire had long passed without the defendant taken any action.

Tobi JSC held in the case of *Odutola V. Papersack (Nig) Ltd (2006) 18 NWLR (Pt. 1012) 470* that;

"An act of a new tenancy is conscious and specific one which must be a subject of bi-lateral conduct on the part of the landlord and tenant. As a matter of law,

the parties must clearly and unequivocally express their willingness to enter into the new tenancy at the termination of the old one. As a specific act emanating from the landlord and the tenant, it cannot be a subject of guess or speculation. An agreement or contract is a bilateral affair which needs the *ad idem* of the parties. Therefore, where parties are not at *ad idem* the court will find as a matter of law that an agreement or contract was not duly made between parties.

When a person is in possession by the consent of the owner and his possession is not that of a servant or agent and is not enjoyed by virtue of any freehold estate or of any tenancy for certain term he impliedly becomes a tenant at will. See *Oduyoye V. Oshodi (1978) 2 Nigeria Court of Appeal 544, 547*"

In this case, there is no tenancy for a specific term between both parties, and the defendant did not deny the plaintiff been the new owner of the shop, and thereby becomes a tenant at will.

Since the defendant is a tenant at will from the analysis of this Court, the right notice is 7 days notice to quit followed by 7 days notice of Owner's Intention to Apply to Court to Recover Possession. See Section 18 and Section 20 of Kogi State Rent Control and



Recovery of Residential Premises Law 2007. And both notices served on the defendant are valid.

On the issue of the amount of rent to be paid is ₦300,000.00 (Three Hundred Thousand Naira) as claimed and not ₦100,000.00 (One Hundred Thousand Naira) as alleged by the defendant as burden of proof lies on who alleges, he should have led evidence to show that his rent was ₦100,000.00 (One Hundred Thousand Naira) with the Kogi Investment and Property Ltd.

In all the plaintiff is entitled to the judgment of this Court having followed due process of law and it is hereby adjudged that the defendant should deliver up possession of the shop at No 235 Opposite Federal Medical Centre Lokoja and its appurtenances on or before the 30th day of September, 2024.

It is equally adjudged that the defendant should pay the sum of ₦25,000.00 (Twenty-Five Thousand Naira) monthly as damages for use and occupation of the shop from the 27th day of April 2023 until possession is given.

It is equally adjudged that the defendant should pay the sum of ₦100,000.00 (One Hundred Thousand Naira) as the cost of engaging the service of a Counsel.

And it is equally adjudged that the defendant should pay the sum of ₦340.00 (Three Hundred and Forty Naira) as the cost of filling this suit.



The defendant have the right of appeal within 30 days from the date of this judgment.

SGD.
MEDINAT O. UMAR
SENIOR MAGISTRATE
02/09/2024

2ND SEPTEMBER, 2024

Partiers absent.

Shuaibu Ibrahim Esq. With K.Y. Ibenma Esq. for the plaintiff.

D.A. Olorunmaiye Esq. for the defendant.

Court: This case is for judgment, and judgment delivered in open Court.

Shuaibu: Appreciate the Court for the judgment.

Olorunmaiye: We are equally grateful.

SGD.
MEDINAT O. UMAR
SMALL CLAIMS JUDGE
02/09/2024

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Umar.