

**SUPREME COURT OF NIGERIA**  
31ST JANUARY, 1997. SC. 203/1990  
**CORAM:- M. L. UWAIS CJN, I. L. KUTIGI, E. O. OGWUEGBU,**  
**U. MOHAMMED, A. I. IGUH, JJSC.**

BEN I. IHENACHO & ANOR ..... DEFENDANTS/APPELLANTS  
AND  
UME UZOCHUKWU & ANOR ..... PLAINTIFFS/RESPONDENTS

---

***COURT PROCESSES*** - Immunity for persons executing court order - Whether appellants who engaged in illegal recovery of possession - Can be protected.

***DAMAGES*** - Reversing the awarded damages - Whether circumstances exist - To warrant Supreme Court's interference.

***LANDLORD & TENANT*** - Recovery of premises - Need to serve the appropriate notices - And thereafter proceed to recover possession according to law.

***LANDLORD & TENANT***- Recovery of premises - Self help - Landlord that fails to obtain appropriate court order for possession - Before taking over possession - Is liable in trespass.

***LANDLORD & TENANT***- Recovery of possession - Affidavit endorsed by a Chief Magistrate - Cannot be tantamount to court order - For purposes of recovery of premises.

***TORTS*** - Detinue - Or wrongful ejectment - Landlord and tenant relation - ship - Need not exist before any of these actions can be maintained.

**FACTS**

Before the Jos High Court, the plaintiffs/respondents filed an action against the defendants/appellants claiming N80,216.04 being the value of their goods unlawfully removed by the defendants. They also claimed N119,783.96 being general and or exemplary damages for wrongful/forcible ejection. Whereas the 1st respondent was the landlord's tenant, 2nd respondent who was not a tenant, merely kept his goods within the premises with the tenant's consent.

The appellants acting on an affidavit endorsed by a Chief Mag-

istrate forcibly removed the respondent's goods from the premises in question and gave possession to the highest bidder. Respondents' claim was granted by the trial court which awarded a total sum of N84,616.04. Appellants' appeal to the Court of Appeal was dismissed. Appellants have further appealed to the Supreme Court raising 3 issues.

**ISSUES FOR DETERMINATION**

*“(1) Whether the 2nd respondent was sub-tenant of the shop and consequently had the locus standi to sue the appellants in that capacity?*

*(2) Whether the Court of Appeal properly or at all considered the Ground of Appeal No. 3 in arriving at a decision thereon? And whether evidence which is relevant is excluded merely by the way it has been obtained. Etc. see p. 248*

**HELD** (Unanimously dismissing the appeal per lead judgment of **IGUH JSC**)

***Torts - Detinue***

1. The 2nd respondent was lawfully in possession of the premises in issue with the consent and authorization of the 1st respondent. There needs be no relationship of landlord and tenant between him and the appellants before he can maintain an action in detinue or wrongful ejection against the said appellants. This is because the right to approach the courts for redress against a legally recognized wrong belongs to all and every citizen and any person who alleges an infringement of any of his legal rights may seek redress in any court of law. I agree entirely with both courts below that the respondents have locus standi to maintain the present action as their interest was clearly affected in the proceedings. (p. 250 F)

***Recovery of premises - Appropriate notices***

2. A landlord desiring to recover possession of premises let to his tenant shall firstly, unless the tenancy has already expired, determine the tenancy by service on the defendant of an appropriate notice to quit. On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to the court to recover possession of the premises. Thereafter the landlord shall file his action in court and may only proceed to recover possession of the premises according to law in terms of the judgment of court in the action. (p. 252 B)

***Recovery of premises - Self help***

3. It must also be stressed that resort to self help by a landlord, in a bid to recover the premises occupied by his tenant who is in lawful occupation

does not come within the purview of the provisions of the law. Where a landlord fails or ignores to obtain an appropriate order of court for possession after due hearing or enters the premises and takes the same without the said order of court, the landlord has invaded and committed an infraction of the rights of the tenant and renders himself liable in trespass. (p. 252 D)

***Recovery of possession - Affidavit endorsed by a Magistrate***

4. In the present case, the appellants instead of filing on appropriate court action for the recovery of possession of the premises from the 1st respondent, resorted, if I may borrow the words of the learned trial Judge, “to the law of the jungle and by force, snatched the store from the plaintiffs and handed over to the next highest bidder (D.W.5) on the same day”. Without doubt, an affidavit, irrespective of before whom it is sworn, remains just an affidavit and can by no stretch of the imagination tantamount to an order of court for the purposes of the recovery of premises under the Recovery of Premises Law in the Plateau State or any other State of the Federation, for that matter. It does not matter that such an affidavit, as in the present case, was sworn to before or endorsed by a Chief Magistrate. (p. 252 F)

***Reversing the awarded damages.***

5. In order to justify reversing the question of the amount of damages, it will generally be necessary that this court should be convinced either that-

(i) *the Judge acted upon some wrong principle of law or*

(ii) *that the amount awarded was so extremely high or so very small as to make it in the judgment of this court an entirely erroneous estimate of the damage to which the plaintiff is entitled.*

I can find no reason in the present case to interfere with the award made by the trial court to the respondents as affirmed by the court below. In my view, issue number 2 must be resolved against the appellants (p. 253 F)

***Immunity for persons executing court order***

6. In the second place, the controversial affidavit under which the appellants purportedly acted is, without doubt, neither a warrant nor an order issued by any District Court. Thirdly, it is crystal clear that the purported execution of a so-called order of possession based on Exhibits D and E, the affidavits in issue, is manifestly illegal, unlawful and without any colour of legal justification. It suffices to state that whatever order he purportedly made was not done by him in the cause of any proceedings before him, that at no time did he believe himself to have jurisdiction to dispossess the respondents of their premises by mere affidavits and that

the purported execution in issue was manifestly unlawful, illegal and without any legal justification. I therefore entertain no doubt that section 83(1) or (2) of the District Courts Law, Cap. 33, The Laws of Northern Nigeria, 1963 cannot avail the appellants in any manner. Issue number 3 is consequently resolved against the said appellants. (p. 254 F)

B

**NOTABLE POINTS OF INTEREST**

**IGUHJSC**

***1. Claim in detinue - When does it arise***

At common law, a claim in detinue lay at the suit of a person who has an immediate right to the possession of the goods in issue against another who is in actual possession of them, and who, upon proper demand, failed or refused to deliver them up without lawful excuse.(p. 249 H)

***2. Tort of conversion defined***

On the other hand, a conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of that chattel. The tort of conversion is committed where one, without lawful justification, takes a chattel out of the possession of another, with the intention of exercising a permanent or temporary dominion over it, because the owner, is entitled to the use of his property at all times. The usual method of proving that a detention is adverse is to show that the plaintiff demanded the delivery of the chattel, and that the defendant refused or neglected to comply with the demand. (p. 250 A)

F

***3. Forcible ejection - Plaintiff need not be a tenant***

A plaintiff in an action for wrongful or forcible ejection needs not therefore be a tenant; and one in lawful possession of land may maintain an action in wrongful ejectment notwithstanding the absence of a landlord and tenant relationship between the parties. Indeed, a trespasser in possession of land may, in an appropriate case, such as where the defendant is a stranger or has no title in himself thereto, maintain an action in forcible ejectment against him. I must therefore stress that the doctrine of privity of contract does not necessarily apply to action in detinue, conversion or unlawful ejectment. (p. 250 D)

**REPRESENTATION**

Mr. G. Ofodile Okafor for the appellants  
Respondents absent and unrepresented

### CASES REFERRED TO

Torti v. Ikpabi (1984) 1 S.C. 370 at 392  
 Kuku v. Olushoga (1962) 1 All N.L.R. 618  
 Alicia Hosierey v. Brown Shipley Ltd. (1970) 1 Q.B. 195 at 207  
 Shittu v. The Solicitor-General of Kwara State (1984) 5 N.C.L.R. 661 B  
 Sule v. Nigerian Cotton Board (1985) 2 N.W.L.R. (Part 5) 17  
 Pan-African Company Ltd. v. N.I.C.O.N (Nig.) Ltd. (1982) 9 S.C. 1  
 Eliochin (Nig.) Ltd. v. Mbadiwe (1986) N.W.L.R. (Part 14) 47 at 49  
 Bola v. Bankole (1986) 3 N.W.L.R. (Part 27) 141

C

### STATUTE REFERRED TO

District Courts Law Cap. 33 Laws of Northern Nigeria 1963 s. 83(1)

### LEAD JUDGMENT BY IGUH JSC

This is an appeal against the decision of the Court of Appeal, Jos Division, delivered on the 26th day of February, 1990 dismissing the defendants appeal in a claim in detinue and/or conversion in respect of the plaintiffs goods unlawfully removed by the defendants from the plaintiffs store together with damages for wrongful and forcible ejection of the plaintiffs from the said store. E

The respondents as plaintiffs had in the High Court of Justice of Plateau State, holden at Jos, instituted an action against the defendants, who are now the appellants, claiming as follows:-

*“(a) Total value of the goods and materials unlawfully removed by the defendants from the 1st plaintiff’s store at 31 Rwang Pam Street, 105 on the orders of the 3rd defendant* N80,216.04

*(b) General damages and/or exemplary damages for wrongful and forcible ejection* N119,783.96

*Total* N200,000.00”

Pleadings were ordered in the suit and were duly settled, filed G and exchanged with the same amended by various orders of the court.

At the subsequent trial, both parties testified on their own behalf and called witnesses.

The straight forward facts of this case are that the 1st plaintiff H was at all material times a tenant in respect of the one store and premises situate at No. 31 Rwang Pam Street, Jos which he rented for the purpose of his business as a general contractor and trader in building materials. He moved into the store in 1970 and paid his rents regularly. The store was stocked with various wares and electrical materials, some of which belonged to his in-law,

the 2nd plaintiff. The 1st plaintiff had permitted the 2nd plaintiff to pack his wares and other electrical materials inside his said store.

In 1985, the 1st defendant became the caretaker of the said premises. On the 6th August, 1985, the 1st plaintiff duly paid is rent in respect of the premises for the months of January to July 1985 to the 1st defendant. Receipt, Exhibit C. was issued to the 1st plaintiff or this payment. In July, 1985, prior to the said payment, the 2nd defendant swore to an affidavit in a bid to repossess the said store. On the 26th July, 1985, the 3rd defendant, a Chief Magistrate, purportedly endorsed the affidavit ordering repossession of the store. It would appear that armed with this affidavit which was endorsed as aforesaid without or in excess of jurisdiction, the 1st and 2nd defendants with the 3rd defendant's orderly and a court bailiff broke into the 1st plaintiff's store on the 11th September, 1985 and removed all the plaintiffs goods therein.

The defendants produced Exhibit F which they claimed is an inventory of the goods found in the store when it was broken into in the absence of the plaintiffs. The 1st plaintiff was neither served with any notice to quit or the seven days notice of intention to recover possession of the premises by the defendants. No action for the recovery of possession of the premises under the Recovery of Premises Law was filed or instituted by the defendants against the plaintiffs and no order for the recovery of possession thereof was made against the plaintiffs by any court of competent jurisdiction or at all pursuant to the provisions of the Recovery of Premises Law, Cap. 115, Laws of Northern Nigeria, 1963.

Following a letter of demand by the plaintiffs to the defendants for the return of their goods or payment of their value which was ignored, the plaintiffs filed this action claiming the sum of N200,000.00 as general and special damages for detainue and/or conversion as well as forcible ejection.

At the conclusion of hearing, the learned trial Judge Emefo, J. after an exhaustive review of the evidence on the 25th November, 1988 found for the plaintiffs and ordered as follows:-

*"There shall therefore be judgment for the plaintiffs against the defendants jointly and severally as follows:-*

*(a) N80,216.04 - being the total value of the plaintiffs goods and materials wrongfully removed or converted by the defendants.*

*(b) N4,000.00 - being damages for the wrongful and forcible ejection from the plaintiffs' store.*

*I assess costs to the plaintiffs at N450.00 as follows:-*

*N22.00 - being the summons fee. N50.00 - for filing of motions, subpoena. N180.00 - for over 18 appearances. Grand total awarded to*

*the plaintiffs is N84,616.04"*

Earlier on in the proceedings, the learned trial Judge had passed strictures against the 3rd defendant, the Chief Magistrate, who purportedly endorsed the defendants affidavits and who testified for the plaintiffs as P.W. 3 and for the defendants as DW 7 as follows:-

*"I have to state at once that I was not at all impressed by the evidence of the Chief Magistrate - both as PW 3 and as DW 7. He did not appear to me to be a truthful witness and his demeanour in the witness box was most nauseating. He had no confidence in himself and in the testimonies that he was giving because he knew that he was not telling the truth. I reject his testimony - both as PW 3 and as DW 7 and also the statement that he made to the police i.e. "Ext. M", in connection with the matter."*

He was however obliged, upon a preliminary objection, to strike out the 3rd defendant's name from the suit on the ground of immunity pursuant to the provisions of section 83(1) of the District Courts Law, Cap. 33. The Laws of Northern Nigeria: 1963 as it was not established that his act, as a result of which this action arose, was done in bad faith. No appeal was filed against this decision of the trial court striking out the name of the 3rd defendant from the suit.

Dissatisfied with the decision of the trial court in favour of the plaintiffs, the 1st and 2nd defendants lodged an appeal against the same to the Court of Appeal, Jos Division which in an unanimous judgment on the 26th day of February, 1990 dismissed their appeal and affirmed the decision of the trial court.

Aggrieved by this decision of the Court of Appeal, the defendants have further appealed to this court. I shall hereinafter refer to the plaintiffs and the defendants in this judgment as the respondents and the appellants respectively.

Three grounds of appeal were filed by the appellants against the said decision of the Court of Appeal. These grounds of appeal, without their particulars complain as follows:-

*"1. The learned Justices of the Court of Appeal erred in law when they held:*

*".....the 2nd respondent's assertion that he paid some rents to the 1st appellant for the period he used the shop was not denied by the appellants. This provides the consideration for the 2nd respondent staying in the shop. The appellants cannot resile from that commitment to say that he was not a sub-tenant.....the 2nd respondent was subtenant of the shop by the fact and acceptance of the owner or of 1st respondent.,*

*although the term of his tenancy was not fixed. He was a tenant at will He therefore had the locus standi to sue the appellants”*

And this led to a miscarriage of justice.

2. The learned Justices of the Court of Appeal erred in law in failing to consider ground of appeal No.3 particularly the import of Exhibit F and thereby B affirmed that special damage of N80,216.04 instead of the value of the actual goods removed from the store as shown in Exhibit F.

3. The learned Justices of the Court of Appeal erred in law when they held that:-

*“the action of the Chief Magistrate may be ignored. It was not C relevant in the determination of the real case on the merit”*

When one of the issues that fell to be decided by the court of 1st instance was the liability of the appellants who acted on the orders of the Chief Magistrate, who was adjudged by the same court as not liable. And this occasioned a miscarriage of justice:’

D The appellants, pursuant to the rules of this court. filed their brief of argument in which three issues were identified for the determination of this court. These are as follows:-

*“(1) Whether the 2nd respondent was sub-tenant of the shop and consequently had the locus standi to sue the appellants in that capacity?*

E *(2) Whether the Court of Appeal properly or at all considered the ground of appeal No.3 in arriving at a decision thereon? And whether evidence which is relevant is excluded merely by the way it has been obtained.*

*(3) Whether the interposition of the judicial act of the Chief Magistrate between the 2nd appellant’s complaint and the execution of the order F by the court bailiff and policemen relieved the appellants of liability for the execution whether or not the Chief Magistrate had jurisdiction to make the order having regard to section 83(1) of the District Court Law?”*

G The respondents, although served with the appellants’ brief of argument failed to file their respondents brief.

At the hearing of the appeal before us, learned counsel for the appellants, G.Ofadile Okafor, Esq. adopted his brief of argument on behalf of the appellants and proffered oral submissions in amplification thereof. His contention under issue No. 1 is that the 2nd respondent, not being the H appellants, tenant in respect of the premises in issue, could not maintain any action against the appellants. He argued that the 2nd respondent in the absence of any relationship of landlord and tenant between him and the appellants had no locus standi in his action against the appellants.

On issue No.2, learned counsel argued that the Court of Appeal

was in error by failing to consider ground 3 of their grounds of appeal and thereby failed to give adequate or any attention to the inventory. Exhibit F. Citing the decision of this court in *Dr. Torri Ufere Torti v. Chief Chris Ukpabi & ors.* (1984) 1 SCNLR 214; (1984) 1 SC 370 at 392, he contended that relevant evidence ought not to be excluded from the records or discountenanced merely because of the way it was obtained. He was of the view that Exhibit F. if it had been considered, would have reduced the damages awarded in favour of the respondents by the trial court as affirmed by the court below. B

Learned counsel finally addressed issue No.3. He stressed that it was the act of the Chief Magistrate by endorsing the affidavit of the 2nd appellant, that resulted in the breaking into the respondents store upon C which the respondents' claims were grounded. He submitted that the action of the Chief Magistrate being a judicial exercise was relevant to the determination of the appellants liability, particularly as the repossession of the premises was executed by officers of the court. Relying on-the decision in *Wuraola Kuku v. Fatumo Olushoga* (1962) 2 SCNLR 373; D (1962) 1 All NLR 625, learned counsel submitted that the said Chief Magistrate having been adjudged not liable on ground of judicial immunity, the court below was in error in affirming the trial court's judgment against the appellants. He argued that the interposition of the judicial act of the Chief Magistrate relieved the appellants of all liability for the execu- E tion complained of whether or not the Chief Magistrate had jurisdiction to make the order. He urged the court to allow this appeal.

The respondents, as I have already indicated, filed no brief and were unrepresented at the oral hearing. I will now consider the issues as formulated and argued by the appellants. F

Turning to the first issue, the respondents claims before the trial court were in detinue and/or conversion concerning their goods or articles of merchandise unlawfully, removed from the 1st respondent's store together with damages for wrongful and forcible ejectment. On the evidence of the respondents which was accepted by the trial court and G affirmed by the Court of Appeal, the 1st respondent's goods removed from his store by the appellants included a large stock of his plumbing materials. Those of the 2nd respondent similarly removed from the said store included assorted electrical equipment, goods and fittings.

At common law, a claim in detinue lay al the suit of a person H who has an immediate right to the possession of the goods in issue against another who is in actual possession of them, and who, upon proper demand. failed or refused to deliver them up without lawful excuse. See: *Alicia Hosiery Ltd. v. Brown Shipley & Co. Ltd.* (1970) 1 QB 195 at 207;

Garrett v. Arthur Churchill (Glass) Ltd. (1970) 1 QB 92. On the other hand, a conversion is an act of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of that chattel. See: Caxton Publishing Co. Ltd. v. Sutherland Publishing Co. B (1939) AC 178 at 202. The tort of conversion is committed where one, without lawful justification, takes a chattel out of the possession of another, with the intention of exercising a permanent or temporary dominion over it because the owner, is entitled to the use of his property at all times. The usual method of proving that a detention is adverse is to show C that the plaintiff demanded the delivery of the chattel, and that the defendant refused or neglected to comply with the demand, See: Capital Finance Co. Ltd. v. Bray (1964) 1 WLR 323.

It is clear that the issue of tenancy or sub-tenancy is totally irrelevant to and has no direct relationship whatever with the tort of either D detainee and conversion. Similarly, a claim for damages for wrongful or forcible ejection does not necessarily involve the existence of a tenancy relationship nor does such tenancy relationship constitute an essential precondition or ingredient to a successful prosecution of the action. A plaintiff in an action for wrongful or forcible ejection needs not therefore E be a tenant; and one in lawful possession of land may maintain an action in wrongful ejectment notwithstanding the absence of a landlord and tenant relationship between the parties. Indeed, a trespasser in possession of land may, in an appropriate case, such as where the defendant is a stranger or has no title in himself thereto, maintain an action in forcible F ejectment against him. I must therefore stress that the doctrine of privity of contract does not necessarily apply to actions in detainee, conversion or unlawful ejectment. **The 2nd respondent was lawfully in possession of the premises in issue with the consent and authorization of the 1st respondent. There needs be no relationship of landlord and tenant between him and the G appellants before he can maintain an action in detainee or wrongful ejectment against the said appellants. This is because the right to approach the courts for redress against a legally recognised wrong belongs to all and every citizen and any person who alleges an infringement of any of his legal rights may seek redress in any court of law.** See: Chief Shittu v. The Solicitor H General of Kwara State (1984) 5 NCLR 661. I agree entirely with both courts below that the respondents have locus standi to maintain the present action as their interest was clearly affected in the proceedings.

On the facts established before the trial court, Emefo, J. commented as follows:-

*“From the pleadings of the parties and the Evidence before the court, I agree with the learned counsel for the plaintiffs O.B. James, Esq. that the following facts have been established and are not in “issue” between the parties viz:*

*(a) That the 1st plaintiff was a yearly tenant at No. 31 Rwang Pam Street Pos up to 11/9/85, when his tenancy was forcibly determined B and his store forced open and all his goods removed.*

*(b) That on that 11/9/85, when the 1st plaintiff’s store was forced open, the 2nd plaintiff, with the knowledge and consent of the 1st plaintiff, had deposited his goods in the said store and that the 2nd plaintiff’s goods were all carted away, from the store.*

*(c) That all the goods C carted away from the 1st plaintiff’s store at No. 31 Rwang Pam Street Jos were carried to the house of the 1st defendant at No. 36 Secretariat Approach, Jos.*

*(d) That on that 11/9/85, when the plaintiff’s goods were forcefully removed from No. 31 Rwang Pam Street, Jos, there was no Recovery of Premises Suit/Case in any court between 1st plaintiff and any of the defendants.*

*(e) That the plaintiffs goods and materials were all removed in their absence and that the plaintiffs have not, as yet recovered their said goods.”*

E

Earlier on in his judgment, the trial court had observed:-

*“It is also not in dispute that before the plaintiffs goods and materials were carted away from the store in their absence, there was no Recovery of Premises case/suit filed by any of the defendants against the 1st plaintiff; nor did any of the defendants issue any notice to quit on the 1st plaintiff or of Intention to Recover possession of the store nor did any of the defendants file any action in any court, to recover the store from the 1st plaintiff. Infact there was no suit pending in any court of law against any of the plaintiffs by any of defendants in respect of the plaintiff’s store; yet inspite of that and inspite of the payment of N825.00 by the 1st plaintiff and also inspite of the fact that the 1st plaintiff was a yearly tenant and required 6 months Notice to quit, the 2nd defendant on the 11/9/85 on an affidavit only went and forcefully broke open, the plaintiff’s store and removed away all the plaintiffs’ goods therein, as well as forcefully ejected the plaintiffs and handed over the store to DW 5; the goods H were thereafter handed to the 2nd defendant, who carried them to the house of the 1st defendant, at No. 36 Secretariat Approach, Jos.”*

The above findings of the trial court were affirmed in their entirety by the court below.

It cannot be over-emphasised that recovery of possession of a premises from a tenant in lawful occupation thereof by a landlord must only be obtained in the Plateau State, as indeed, in most other States of the Federal Republic of Nigeria, by virtue of an order of court obtained after hearing the parties pursuant to the provisions of the Recovery of Premises Law. See: The Recovery of Premises Law, Cap. 115 Laws of Northern Nigeria, 1963. See too *Sule v. Nigerian Cotton Board* (1985) 2 NWLR (Pt.5) 17 and *Pan-Asian African Company Ltd. v. NICON (Nig.) Ltd.* (1982) 9 SC 1. **A landlord desiring to recover possession of premises let to his tenant shall firstly; unless the tenancy has already expired, determine the tenancy by service on the defendant of an appropriate notice to quit. On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to the court to recover possession of the premises. Thereafter the landlord shall file his action in court and may only proceed to recover possession of the premises according to law in terms of the judgment of court in the action. It must also be stressed that resort to self help by a landlord, in a bid to recover the premises occupied by his tenant who is in lawful occupation does not come within the purview of the provisions of the law. Where a landlord fails or ignores to obtain an appropriate order of court for possession after due hearing or enters the premises and takes the same without the said order of court, the landlord has invaded' and committed an infraction of the rights of the tenant and renders himself liable in trespass.** See *Eliochin (Nig. Ltd. v. Mbadiwe* (1986)1 NWLR (Pt.14) 47 at 49.

In the present case, the appellants instead of filing an appropriate court action for the recovery of possession of the premises from the 1st respondent, resorted, if I may borrow the words of the learned trial Judge, *"to the law of the jungle and by force, snatched the store from the plaintiffs and handed over to the next highest bidder (DW 5) on the same day"*. Without doubt, an affidavit, irrespective of before whom it is sworn, remains just an affidavit and can by no stretch of the imagination tantamount to an order of court for the purposes of the recovery of premises under the Recovery of Premises Law in the Plateau State or any other State of the Federation, for that matter. It does not matter that, such an affidavit, as in the present case, was sworn to before or endorsed by a Chief Magistrate. I entirely agree that such an affidavit has no legal basis and cannot be a substitute for an appropriate order of court obtained pursuant to the provisions of the Recovery of Premises Law, Cap. 115, Laws of Northern Nigeria, 1963. Accordingly,

I am of the firm view that the question of privity of contract between the respondents and the appellants is clearly of no significance in the establishment of the respondents' claims in the present action. Consequently issue number 1 is resolved in favour of the respondents.

Issue number 2 primarily concerns whether the court below properly or at all considered ground 3 of the appellants' grounds of appeal before arriving at its decision. The relevant ground of appeal called for a determination of whether the court below was right in disregarding Exhibit F, the discredited inventory made by the appellants in respect of goods said to have been found in the store in issue. In this regard it cannot be disputed that the trial court after an exhaustive consideration of Exhibit F described it as unreliable and discountenanced it. The court below for its own part, was not oblivious of the said Exhibit F for it stated inter alia as follows:-

*"A court clerk, Josephat Nwantu (DW3) went to the 1st respondent's shop in the company of 2nd appellant and a policeman. An inventory of the 1st respondent's articles was taken with instruction to the 2nd appellant to find a place to keep them. the inventory is Exhibit p' After a further consideration of the issue, it concluded:-*

*"In view of the foregoing, we are in agreement with the conclusion of the learned trial Judge that the 2nd respondent can maintain an action against the appellants. Issues No.1 and 2 in the appellant's brief therefore fail along with grounds 1 and 3 of the appeal."*

In my view it is more than uncharitable to accuse the court below with failure to consider ground 3 of the appellants' grounds of appeal.

The appellants' argument is that if the court below had considered Exhibit F, the damages awarded to the respondents would have been much less in quantum. But as I have pointed out, Exhibit F was amply considered by the court below before it affirmed the award made by the trial court to the respondents against the appellants.

**In order to justify reversing the question of the amount of damages, it will generally be necessary that this court should be convinced either that:-**

*(i) the Judge acted upon some wrong principle of law or;*  
*(ii) that the amount awarded was so extremely high or so very small as to make it in the judgment of this court an entirely erroneous estimate of the damage to which the plaintiff is entitled. See: Idahosa H v. Oronsaye (1959) SCNLR 407; (1959)4 FSC 166; Bala v. Bankole (1986) 3 NWLR (Pt.27) 141; Ijebu Ode Local Government v. Balogun & Co. Ltd (1991) 1 NWLR (Pt.166) 136. etc. I can find no reason in the present case to interfere with the award made by the trial court*

**to the respondents as affirmed by the court below, .In my view, issue number 2 must be resolved against the appellants.**

There is finally issue number 3 pursuant to which the appellants have sought to take cover under the provisions of section 83 of the District Courts Law, Cap. 33, The laws of Northern Nigeria, 1963. The argument of the appellants is that having held that the store in issue was opened on the orders of the Chief Magistrate, the Court of Appeal was wrong in not relieving them of liability when the said Chief Magistrate himself was struck out of the suit on ground of immunity.

Section 83 of the District Courts Law, Cap. 33. The Laws of Northern Nigeria, 1963 provides thus:-

*“83(1) No district judge shall be liable for any act done or ordered to be done by him in the course of any proceedings before him whether or not within the limits of his jurisdiction provided that at the time he, in good faith, believed himself to have jurisdiction -to do or order to be done the act complained of (Italics supplied for emphasis)*

(2) No person required or bound to execute any warrant or order issued by a District Judge shall be liable in any action for damages in respect of the execution of such warrant or order unless it he proved that he executed either in an unlawful manner.

I think the first observation that must be made is that whereas section 83(1) of the said law is meant to cover a District Judge under circumstances therein stipulated, section 83(2) concerns persons required or bound to execute any order or warrant issued by a District Judge, again, in circumstances therein laid down. It is clear that the appellants who are merely persons purportedly executing a so called order issued by a District Judge are in this appeal invoking the provisions of section 83(2) of the said Law in their defence.

**In the second place, the controversial affidavit under which the appellants purportedly acted is, without doubt, neither a warrant nor an order issued by any District Court. Thirdly, it is crystal clear that the purported execution of a so-called order of possession based on Exhibits D and E, the affidavits in issue, is manifestly illegal, unlawful and without any colour of legal justification. Said the Chief Magistrate as PW 3:-**

*“I did not grant the 2nd defendant’s permission as sought for in his affidavit to open the said shop; I never ordered any court Bailiff or any police-officer to go and open the said shop and if there was such a permission, the affidavit would have been so endorsed by me”.*

Later in his evidence as DW 7, the Chief Magistrate testified thus:-

*“.....it is true I signed the original copies of “Exts D and E (i.e. the two affidavits, and under cross-examination, DW 7, said:-*

*“I am aware that if the tenant is alive, one cannot recover premises from the tenant, unless by the Recovery of Premises Law. I am not aware of any Law that allows or permits of recovery of premises, by means of affidavit. It is true that I gave evidence in this case for the plaintiffs on the 29/1/88. I still maintain that I endorsed the original copies of “Exts D & E (i.e. the two affidavits)*

*..... I made a statement to the police in writing over this matter when the police contacted me (i.e. “Ext M” ) It is true that I did not say in that statement that I made to the police (i.e. Ext M”) that I endorsed the original copies “Exts. D & E (i.e. the two affidavits). I did not say so in my evidence in court on the 29/1/88 as PW 3.”*

Both the trial court and the court below justifiably passed severe strictures on the said Chief Magistrate and I do not intend to say any more about him in this judgment. **It suffices to state that whatever order he purportedly made was not done by him in the course of any proceedings before him, that at no time did he believe himself to have jurisdiction to dispossess the respondents of their premises by mere affidavits and that the purported execution in issue was manifestly unlawful, illegal and without any legal justification. I therefore entertain no doubt that section 83(1) or (2) of the District Courts Law, Cap. 33, The Laws of Northern Nigeria, 1963 cannot avail the appellants in any manner. Issue number 3 is consequently resolved against the said appellants.**

All the issues having been resolved against the appellants, this appeal accordingly fails and the same is hereby dismissed with costs to the respondents against the appellants which I assess and fix at N1,000.00.

---

#### UWAIS JSC

I have had the privilege of reading in draft the judgment read by my learned brother Iguh, J.S.C. I agree with the judgment. I too hereby dismiss the appeal with N1,000.00 costs to the respondents.

---

#### KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Iguh, JSC. I agree with his conclusion that the appeal lacks merit and ought to be dismissed. It is accordingly dismissed with no order as to costs, the respondents having completely failed to play any part in the

H

appeal in this court.

**OGWUEGBU JSC**

I have had the advantage of reading the draft of the judgment just read by my learned brother Iguh, J.S.C. and I entirely agree that he has fully dealt with all the issues canvassed. I will also dismiss the appeal B with costs as assessed in the lead judgment.

---

**MOHAMMED JSC**

I have had the privilege of reading in draft the judgment of my C learned brother, Iguh, J.S.C. and I agree with him that this appeal has no merit and ought to be dismissed. I have gone through all the issues raised for the determination of this appeal and I adopt the opinion of my learned brother in the way he ably resolved those issues. I have nothing more I can usefully add. The appeal is dismissed. I also award N 1,000.00 in D favour of the respondents and against the appellants.

Appeal dismissed

E

F

G

H