

SUPREME COURT OF NIGERIA
15TH. DECEMBER, 2000. SC. 248/1993
CORAM:- S. M. A BELGORE, I. L. KUTIGI, A. I. IGUH, A. I.
KATSINA-ALU, E. O. AYOOLA, JJSC

HENRISON OKECHUKWU APPELLANT
AND
HUMPHREY C. ONUORAH RESPONDENT

CONTRACTS - *Validity - Inducement - By the other party to enter into a contract - The benefit of which the inviting party has utilized - He cannot deny the validity of the contract.*

DOCUMENTS - *Legal agreement - The main purport - Of any legal agreement is to set out clearly what the parties agree upon.*

DOCUMENTS - *Lease - Validity - Requirements of a valid lease.*

LEASES - *Commencement - Contingency - Uncertainty as to the precise time of occurrence - How to resolve.*

LEASES - *Commencement - Upon the occurrence of an uncertain event - Where the commencement date can easily be inferred - The lease is valid.*

FACTS

In the High Court of Anambra State, holden at Onitsha, the plaintiff/appellant sued the defendant/respondent claiming inter alia that the lease agreement made on the 17th day of July, 1972 between the parties was null and void in that the agreement has no commencement date. By the said lease agreement (Exhibit 1), the appellant as lessor leased the property in dispute to the respondent and his late brother for a term of fifty years. The lessees undertook to erect at their own expense and in the name of the appellant (the lessor,), a house of two floors thereon in ac-

cordance with the specifications in the approved building plan, (Exhibit 2). The appellant, on completion of the building by the lessees would take a store on the ground floor together with one of the two flats on the first floor while the lessees would remain in possession of the rest of the building for their own use to enable them recoup their outlay in the erection of the house from the rents and profits therefrom for the demised period of fifty year.

The lease was to commence from the date the Onitsha Local Government issued its usual permission or authorization for the occupation of the building otherwise known as a certificate of occupancy. An annual rent of ₦850 (eight hundred and fifty pounds) was reserved under the agreement. And at the request of the appellant, the respondent paid him five years rent in advance covering the period, 1976 - 1981. The certificate of occupancy was duly issued by the Onitsha Local Government to the appellant on the 7th. July, 1976 on the completion of the building. The appellant went into occupation of his store on the ground floor and flat on the first floor of the building in 1976. But the appellant's contention is that the lease had not commenced to run because it was not the respondent himself that was issued with the certificate of occupancy pursuant to the stipulation in the lease hold agreement. At the conclusion of hearing, the trial judge held that the commencement date in the lease agreement was uncertain, incapable of ascertainment at the time the lease was made and that it was consequently void and unenforceable. On appeal to the Court of Appeal, the trial Court's decision was set aside, and the appellant's suit was dismissed. The appellant has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

(a) Were the learned justices of the Court of Appeal right when they held that exhibit one (i.e. the purported lease agreement) was valid?

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

Documents - Legal agreement

1. The main purport of any legal agreement is to set out clearly what the

parties agree upon. (p. 2947 B)

Documents - Lease

2. In Osho & Anor Vs Foreign Finance Corporation & Anor. (1991) 4 NWLR (Pt. 184) 157, 193 this Court sets out requirements of valid lease as :

- i words of demise
- ii. complete agreement leaving no ambiguity as to its purport
- iii. the identification of the parties to the agreement
- iv. the premises must be clearly identified
- v. commencement and the duration of the agreement.

(p. 2947 D)

Leases - Commencement

3. Where a provision of law is alluded to in an agreement the coming into operation of that legal provision, when uncertain, is as good as stating a commencement of the operative date of an agreement. The issuance of a "certificate of occupancy" i.e. the authority of the relevant council that a new building is fit for occupation after inspection, is a date always uncertain, but the authority certainly will be given if the building complies with all the health and structural regulations. Thus, the agreement, Exhibit 1, is clear as to its terms when it provides:

"From the day the lessees are issued with a certificate of occupancy in respect of the whole property or any part thereof "

Thus the commencement date of Exhibit 1 can easily be inferred. (p. 2947 H)

Contracts - Validity

4 Where parties agree in a solemn contract they are supposed to fulfil all the conditions therein faithfully and honestly. Parties who enter into a contract are expected to honour its terms. A party who induced the other party to enter into a contract, which contract provides benefits for the inviting party which he has utilized without complaint, he cannot be found to deny the validity of that contract. (p. 2948 F)

Leases - Commencement - Contingency

5 Where a contingency is uncertain as to precise time of occurrence, the issuance of authority to occupy the premises by local council, the mere B statement that the time the authority is issued is the commencement is enough. (p. 2948 H)

NOTABLE POINTS OF INTEREST

C IGUHJSC

1. Essentials for the validity of a lease

It seems to me plain that for an agreement for lease to be valid there must be, among other essentials, agreement on the date of commencement of the term; and in the absence of this date, validity will not be given to the D agreement. See Harvey v. Pratt (1965) 2 All E.R. 786 C.A. In order to have a valid agreement for a lease, it is essential that it should appear either in express terms or by reasonable inference from the language used in the instrument on what day the term is to commence. Indeed, E both the commencement and the maximum duration of the term must be either certain or capable of being rendered certain before the lease takes effect. See Lace v. Chantler (1944) K. B. 368 at 370 - 371. (p. 2953 A)

F 2. Lease to commence upon the occurrence of an uncertain event

It must, however, be stressed that a term of years, although, it must be for a definite period in the sense that it must have a certain beginning and a certain ending, this does not necessarily mean that the parties must immediately fix the exact date of commencement of the instrument. G has been recognised that it is properly open to the parties to agree that the lease shall begin upon the occurrence of an uncertain event, as for example, upon the declaration of war by Great Britain . See Swift v. Macbean (1942) 1 K. B. 375 or (1942) 1 All E. R. 126. It has also been held that H the parties may, quite validly, agree that the lease shall commence upon the occurrence of other uncertain event, such as "upon possession of the premises becoming vacant". See Brilliant v. Michaels (1945) 1 All E. R. 121. Such an agreement, though at first conditional and dependent upon

the occurrence of an uncertain event becomes absolute and enforceable as soon as the stipulated event occurs. See too Brilliant v. Michaels (supra) at page 126 and Cheshire and Burns Modern Law of Real Property By E. H. Burn (1982), 13th Edition, pages 368 - 369. (p. 2953 G)

B

3. *Equity arising from the expenditure of money by the lessee*

Where a person has expended money on the land of another in the expectation, induced or encouraged, by the owner of the land that he would be allowed to remain in occupation thereof, an equity was created such that the court would protect his occupation of the land and the court has power to determine in what way the equity so arising could be satisfied. See Ibadan City Council v. Ajanaku (1969) NSCC 44 at 49. (p. 2957 D)

D

AYOOLA JSC

4. *Test for determining whether there is certainty of the commencement of term*

When a term is made to commence upon the occurrence of a future contingent event, the test whether there is certainty of the commencement of the term is whether the happening of the contingent event itself is certain. The point was made in Lace v. Chantler [1944] 1 ALL ER 302, 306 per Lord Greene M.R thus:

"A term created by a leasehold tenancy agreement must be a term which is either expressed with certainty and specifically or is expressed by reference to something which can, at the time when the lease takes effect, be looked to as a certain ascertainment of who the term is meant to be."

F

Lace v. Chandler (supra) was a case on the duration of the lease, but the same common sense view applies where the question is whether a contingent event with reference to which the commencement of the lease is to be determined is certain. I venture to think that where the contingent event is vague, or highly speculative or illusory, or its happening can be postponed indefinitely, or is itself dependent on innumerable contingencies, such contingent event will not be regarded as certain. (p. 2964 E)

G

H

*5. Obligation to obtain a certificate of occupancy by another party -
Consequence of when obtained*

The intention of the parties in fixing the date of commencement as the date on which the certificate of occupancy is obtained must have been to
B make the lease commence from the earliest date from which the pre-
mises is certified lawfully fit for occupation. Regardless of who ob-
tained the certificate the intention has been fulfilled. If the obligation to
C obtain the certificate of occupancy was that of the respondent but it had
been discharged by the appellant, that would not lead to an uncertainty in
the commencement of the lease or postpone its commencement but,
may, rather, lead to a claim by the appellant to the cost of obtaining the
certificate. (p. 2965 F)

D **REPRESENTATION**

V. J. O. Azinge (Mrs.), Uju Ikeazor (Mrs.) and C. Ikegwuonu for Appel-
lant

M. M. Osuman Esq., for the Respondent.

E

CASES REFERRED TO

National Bank of Nigeria Ltd. v. Campagne Frassinet (1948) N. L. R. 4.
United Bank for Africa Ltd. v Tejumola and Sons Ltd. (1988) 2 N. W. L.
R. (part 76) 662

F

Ibadan City Council v. Ajanaku (1969) NSCC 44 at 49.

Lace v. Chandler (1944) K. B. 368

Inwards v. Baker (1965) 2 W. L. R. 212

United Bank for Africa Ltd. v. Tejumola & Sons Ltd. (1988) 2 NWLR
G (pt. 79) 662

Brilliant v. Michaels (1945) 1 All E. R. 121.

LEAD JUDGMENT BY BELGORE JSC

H The plaintiff now appellant in this Court was the respondent at
the Court of Appeal. He was given judgment at the trial High Court of
former Anambra State sitting at Onitsha. He is the son of a retired Min-
ister of religion. The respondent is a businessman and was the defendant

at the trial court and appellant at the Court of Appeal.

By a deed of lease made on 17th day of July 1972 between the Plaintiff/appellant and the defendant/respondent and his late brother Davidson Orizu Onuorah and registered in Deeds Registry as No. 12 at page 12 in volume 8 the parties agreed as follows :-

"(i) To build on the site demised a storey building containing on the whole 8 (eight) shops and 6 (six) rooms and conveniences on the ground floor and 2 flats and conveniences on the first floor containing 8 (eight) rooms, that is, parlour and three bed rooms with conveniences on the second flat all in accordance with the approved building plan No.s.OPA/No. 754, OUCC: 179/72 prepared in the Lessors name within one calendar year from the date the building plan is approved subject to unforeseen circumstances.

(ii) To give to the Lessor one shop, at the junction of Aljen lane And Old Market Road on the ground floor free of rent and one flat containing parlour, 3(three) bed rooms, latrine, bath toilet and kitchen on the first floor for his own use or the use of other person or person authorised by him.

(iii) To pay to the Lessor a monthly rent of /14:5 - (Fourteen pounds five shillings) per month for the areas of land and the building and convenience occupied by him on the leased.? For the time being to pay to the Lessor the sum of /855 (eight hundred and fifty five pounds) representing five years rent paid in advance on executing this lease.

(iv) To pay rent half yearly/in advance after the expiration of five years rent having been paid in advance. The building plan No. OPA/No. 754 OUCC,179/72 is hereby pleaded".

As a result of the covenants in the lease the respondent erected a one storey building on the premises situated at 30 old Market Road Onitsha. But the respondent was never in peace right from when he started developing the land. The plaintiff/appellant apparently invited the Town Engineer of Onitsha Local Government by a letter that the respondent was erecting an illegal structure whereby the initial structures erected were demolished by the Council. The appellant referred to respondent as "unknown person" in his letter to the Town Engineer of Onitsha Council.

There was no evidence of any variation of the lease agreement between the parties but it seems the appellant created difficulties for the respondent during and after development of the land. Certainly the respondent, even though carried out all his obligations under the lease, was not in quiet possession due to harassment from the Onitsha Urban Council through instigation by the appellant. Despite paying the rent due and allowing the appellant to take possession of a flat on the first floor and one shop on the ground floor the appellant finally resorted to holding that lease agreement itself was null and void.

The appellant's contention on nullity is predicated on the agreement not having a commencement date. The respondent's argument is that the appellant (lessee) obtained the permission of Onitsha Urban Council to occupy the building after completion. This permission is referred to as "certificate of occupancy", not a term of art as in Land Use Act, but were use of words to describe the permission to occupy a newly completed building if found by the relevant supervisory authority to be ten-antable and habitable. The trial Court upon all the evidence before it gave judgment for the appellant taking refuge in the belief that the lease agree-ment had no commencement date and was therefore null and void.

On appeal to the Court of Appeal, trial Court's decision was set aside, and plaintiff's suit was dismissed. The appellate Court held that Exhibit 1, the lease agreement, was valid and was not vitiated by absence of commencement clause because the date of commencement could easily be inferred from the agreement, right from the date of its execu-tion. The plaintiff has now appealed to this Court. The following issues have been formulated for the appellant :-

"(a) Were the learned justices of the Court of Appeal right when they held that exhibit one (i.e. the purported lease agreement) was valid?

(b) Whether exhibit 1, which the Justices of the Court of Ap-peal held was valid actually contained the legal essential requirements that will make a lease valid?

(c) Whether the learned Justices of the Court of Appeal were right to have held that the Certificate of Occupancy obtained by the Lessor was sufficient to make the lease operational when in fact no such

term or condition was contained in exhibit 1.

(d) Was the learned trial judge right to have considered other reliefs not in the alternative claim after he has pronounced and based his judgement on the alternative relief?

(e) Were the learned Justices of the Court of Appeal adversely influenced by the above method adopted by the trial court which affected them in so holding that exhibit 1 was valid ?"

The main purport of any legal agreement is to set out clearly what the parties agree upon. The agreement clearly states :-

"The lessor demises to the lessees all that parcel of land known as and called No. 30 Old Market Road, Onitsha to hold the same unto the lessees for a term of 50 (fifty) years from the day the lessees are issued with a certificate of occupancy in respect of the whole building or any part thereof".

In Osho & Anor vs Foreign Finance Corporation & Anor. (1991) 4 NWLR (pt. 184) 157,

193 this Court sets out requirements of valid lease as :

- i words of demise**
- ii. complete agreement leaving no ambiguity as to its purport**
- iii. the identification of the parties to the agreement**
- iv. the premises must be clearly identified,**
- v. commencement and the duration of the agreement.**

In Exhibit 1, the words of demise are clearly set out. The lease agreement is clear as to its purport, that is to say, giving on lease a plot of land to be developed by the defendants to a clear specification and on completion to have portions of the building for the plaintiff's use absolutely without any charge. Parties to a suit must only plead facts and facts only and not law; similarly **where a provision of law is alluded to in an agreement the coming into operation of that legal provision, when uncertain, is as good as stating a commencement of the operative date of an agreement. The issuance of a "certificate of**

occupancy" i.e. the authority of the relevant council that a new building is fit for occupation after inspection, is a date always uncertain, but the authority certainly will be given if the building complies with all the health and structural regulations. Thus, the agreement, Exhibit 1, is clear as to its terms when it provides:

"From the day the lessees are issued with a certificate of occupancy in respect of the whole property or any part thereof "

As I mentioned earlier, a "Certificate of occupancy" alluded to in the Exhibit 1 is not the same as in Land Use Act. It is clear by Exhibit 1 that there is certainty that the local authority would not fail issuing the authority or consent to enter the building for purpose of habitation once there is certificate certifying that it was built to specification. **Thus the commencement date of Exhibit 1 can easily be inferred.** The premises, No. 30 Old Market Road, Onitsha is clear on the agreement.

It is clear the plaintiff did everything to frustrate Exhibit 1, and at his instance by letter to local authority, delayed issuance of authority to enter into the premises. He however collected all rents due to him; he moved into a flat on the premises and similarly took possession of a shop as provided in the agreement without payment of any rent. When entering into an agreement of this nature the parties must be uberrimae fidei and I find nothing in the Exhibit 1 to defeat this presumption. This contract was subject to a contingency not for validity but for commencement and as I said earlier the authority to occupy the building was not forthcoming. **Where parties agree in a solemn contract they are supposed to fulfil all the conditions therein faithfully and honestly. Parties who enter into a contract are expected to honour its terms.** **A party who induced the other party to enter into a contract, which contract provides benefits for the inviting party which he has utilized without complaint, he cannot be found to deny the validity of that contract.** The appellant has enjoyed five years rent, he is still enjoying the occupation of a flat and a shop on the demised premises, it is not for him now to assert the invalidity of the contract. To my mind the invalidity is self-induced but it does not make the contract invalid. **Where a contingency is uncertain as to precise time of occurrence, e.g. the**

issuance of authority to occupy the premises by local council, the mere statement that the time the authority is issued is the commencement is enough.

The appellant, has benefited immensely from Exhibit 1 and he cannot now resile from it. All these years he collected all the rents due, and had the benefit of occupying portions of the building erected on the land in question free of charge as provided in the agreement. He has no case against the respondent.

I therefore find no merit in this appeal and I dismiss it with N10,000.00 costs to the respondent.

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother, Belgore JSC. I agree with his reasoning and conclusions. I also dismiss the appeal and hold that the lease in question was a valid lease. The judgment of the Court of Appeal is affirmed. Costs of N10,000.00 are awarded to the Respondent.

IGUHIJSC

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Belgore, JSC. and I am in complete agreement with him that there is no merit in this appeal and that the same ought to fail.

The background facts leading to this appeal have been fully set out in the leading judgment. I propose in this judgment to refer only to such facts as are directly relevant to the issues I desire to examine.

It is clear to me that the central issue for determination in this appeal is whether the decision of the court below reversing the judgment of the trial court and holding that the building lease, Exhibit 1, was valid is right in law.

There is a second and subsidiary question that arises. This is whether even if the building lease, Exhibit 1, is void, this ipso facto de-

prives the respondent of all rights in and over the property in issue known as and described as 30 Old Market Road, Onitsha. I will deal with the central issue first.

It is common ground from the building lease, Exhibit 1, that the respondent and his late brother, as lessees, would take possession of the plot of land in issue and erect, at their own expense and in the name of the appellant, the lessor, a house of two floors thereon in accordance with the specifications in the approved building plan, Exhibit 2. The appellant, on completion of the building by the lessees would take a room or store on the ground floor together with one of the two flats on the first floor, while the lessees would remain in possession of the rest of the building for their own use to enable them recoup their outlay in the erection of the house from the rents and profits therefrom for the demised period of fifty years. The lease was to commence from the date the Onitsha Local Government issued its usual permission or authorization for the occupation of the building. This authorization, under the Onitsha Local Government Bye Laws is described as a Certificate of Occupancy. It has, however, nothing to do with the Certificate of Occupancy created under the provisions of the Land Use Act, Cap. 22, Laws of the Federation of Nigeria, 1990. It is a mere declaration by the Onitsha Local Government that a new building has been inspected, that it complies with the approved building plan and that it is fit for human habitation under its Bye-Laws.

An annual rent of N1,700.00 was reserved under Exhibit 1. At the request of the appellant, the respondent paid him five years' rent in advance. The receipt of this payment was duly acknowledged by the appellant. On the evidence of the said appellant the five years' rent covered the period, 1976 to 1981.

The appellant testified that in 1976, he added a second floor to the structure put up by the respondent on the demised premises. He went into occupation of his apartment in the property as stipulated under Exhibit 1 in 1976. It is clear that as the appellant was still building the second floor of the house early in 1976, the Certificate of Occupancy by the Onitsha Local Government could not possibly have been issued or

granted before then. It is also significant that the Certificate of Occupancy in respect of the new house was issued to the appellant on the 7th July, 1976 on the completion of the entire building. This certificate is Exhibit 7. The learned trial Judge, Onwuamaegbu, J. at the conclusion of hearing was of the view that the commencement date in Exhibit 1 was uncertain, incapable of ascertainment at the time the lease was made and that it was consequently void and unenforceable. He declared :-

"It is a principle of law that for a lease to be valid, it must have a certain beginning and a certain end If a lease is to commence at a future date, such future date must be capable of ascertainment at the time the lease is made and if it is not ascertainable at that time, then the lease is void for uncertainty. Therefore, in law, Exhibit 1 is not a lease at all and the defendant cannot claim any rights thereunder."

The Court of Appeal, for its own part, was unable to agree with the trial court on its conclusion that Exhibit 1 was void. It said :-

"It is also settled law that even if the terms of the lease are uncertain at its commencement, the fact that at some future date it will be made certain is sufficient to make it a good lease. In other words, the determining factor in each case is the certainty in future of the commencement date, since id certum est quod reddi protest. In the instant appeal, the commencement date was to be the date on which the appellant obtained the Certificate of Occupation in respect of the premises. In the Nigerian context, one is tempted to take judicial notice of this practice."

A little later in its judgement, the Court of Appeal went on :-

"In the instant appeal, however, the Respondent claimed to Have obtained the Certificate of Occupancy on 7th July, 1976 - barely four years after Exhibit 1 was executed. In view of this, the validity of Exhibit 1 is beyond reproach, and it is hereby so declared."

It is against this finding that the appellant has now appealed to this court. The main submission of learned counsel for the appellant, Mrs. V. J. O. Azinge is that the court below was in error when it held that the lease, Exhibit 1, entered into between the appellant and the re-

spondent was valid in that its commencement date was uncertain and incapable of being determined at a future date. In this regard, she called in aid the decision in National Bank of Nigeria Ltd. V. Campagne Frassiniet (1948) N. L. R . 4. Learned counsel argued that from the evidence before the court, the respondent had not yet obtained the Certificate of Occupancy which, according to her, is the event that will commence the lease. She cited the decision in United Bank for Africa Ltd. v Tejumola and Sons Ltd. (1988) 2 N. W. L. R. (part 76) 662 at 682 and 686 and contended that the contingency upon which the lease would become operational and enforceable was yet to happen. She therefore submitted that the lease Exhibit 1, is void for uncertainty as the commencement date at the time of its execution was incapable of ascertainment. She contended that being thus void, no rights or obligations were created thereunder and that the parties were consequently returned to their original position before the execution of the purported instrument.

Learned counsel for the respondent, M. M. Osuman, Esq. in his reply argued that the commencement date of Exhibit 1 was ascertainable when it was made and that the same was in fact fixed by the parties several years before the institution of this suit on the 16th day of April, 1981. He conceded that it is correct law that a term of years must be for a definite period in the sense that it must have a certain beginning and a certain ending. He, however, drew the attention of the court to a statement of the law in Cheshire's Modern Law of Real Property to the effect that although the parties may agree that a lease shall begin upon the occurrence of an uncertain event, such an agreement, though at first conditional, becomes absolute and enforceable as soon as the event occurs.

In this connection, learned counsel pointed out that the appellant pleaded and testified that the relevant certificate of occupancy was issued by the Onitsha Local Government on the 7th July, 1976. There is also evidence that the appellant collected five years' advance payment of rent as stipulated in Exhibit 1 for the period 1976 - 1981. In his view, it is clear that the parties were completely ad idem that the 50 year term commenced on the 7th July, 1976 on which date Exhibit 7, was issued. He submitted that Exhibit 1 could by no stretch of the imagination be said

to be void.

It seems to me plain that for an agreement for lease to be valid there must be, among other essentials, agreement on the date of commencement of the term; and in the absence of this date, validity will not be given to the agreement. See Harvey v. Pratt (1965) 2 All E. R. 786 C. A. In order to have a valid agreement for a lease, it is essential that it should appear either in express terms or by reasonable inference from the language used in the instrument on what day the term is to commence. Indeed, both the commencement and the maximum duration of the term must be either certain or capable of being rendered certain before the lease takes effect. See Lace v. Chantler (1944) K. B. 368 at 370 - 371. As Lush L. J. put it as early as in the case of Marshall v Berridge (1881) 19 CH. D. 233 at 245 :-

"There must be a certain beginning and a certain ending, otherwise it is not a perfect lease, and a contract must in order to satisfy the Statute of Frauds, contain this reference".

More recently in Harvey v. Pratt, (supra) at page 788, Lord Denning reemphasized the above principle of law as follows :-

"It is settled beyond question that, in order for there to be a valid agreement for a lease, the essentials are that there shall be determined not only the parties, the property, the length of the term and the rent, but also the date of its commencement".

Accordingly, though a lease may be limited to endure for any specific number of years, however many, it cannot validly be limited in perpetuity. See Sevenoaks, Maidstone and Tunbridge Railway Co. v London Chattam and Dover Railway Co (1879) 11 Ch. D. 625 at 635 - 636. It must, however, be stressed that a term of years, although, it must be for a definite period in the sense that it must have a certain beginning and a certain ending, this does not necessarily mean that the parties must immediately fix the exact date of commencement of the instrument. It has been recognised that it is properly open to the parties to agree that the lease shall begin upon the occurrence of an uncertain event, as for example, upon the declaration of war by Great Britain . See Swift v. Macbean (1942) 1 K. B. 375 or (1942) 1 All E. R. 126. It has

also been held that the parties may, quite validly, agree that the lease shall commence upon the occurrence of other uncertain event, such as "upon possession of the premises becoming vacant". See Brilliant v. Michaels (1945) 1 All E. R. 121. Such an agreement, though at first conditional and dependent upon the occurrence of an uncertain event becomes absolute and enforceable as soon as the stipulated event occurs. See too Brilliant v. Michaels (supra) at page 126 and Cheshire and Burns Modern Law of Real Property By E. H. Burn (1982), 13th Edition, pages 368 - 369.

In this connection, attention must be drawn to the provisions of section 37 of the Landlords and Tenants Law, Cap. 76, Revised laws of Anambra State of Nigeria, 1991 which deal with the essential requirements of the class of contract, such as the one in issue in the present case. Section 37(1) of this Law which re-enacts a statement of the general law provides that a sublease shall satisfy certain essential requirements, otherwise it shall be void. Section 37(1)(e) of that Law, in particular, provides as follows :-

"the term granted shall be sufficiently defined to be certain or ascertainable as regards its commencement and duration".

There is also the provision of section 37 (2) of Cap. 76 (ibid) which stipulates thus :-

"A sublease may be created to commence on the occurrence of a contingent event".

It is crystal clear that under section 37 (2) of the Landlords and Tenants Law, Cap. 76 of Anambra State, a sublease may validly be created to commence on the occurrence of a contingent event as in Exhibit 1.

More importantly is the provision of section 37 (3) of the same Law which stipulates as follow :-

"A thing shall not be regarded as omitted or uncertain in a sublease if the sublease contains sufficient facts or materials from which it can reasonably be supplied or ascertained".

Applying all the above principles of law to the facts of this case, it is not in dispute that under Exhibit 1, the appellant demised unto the respondent and his late brother all that piece or parcel of land known as

and called No.30, Old Market Road, Onitsha :-

"To hold the same unto the Lessees for a term of 50 (fifty) years from the date the lessees are issued with a Certificate of Occupancy in respect of the whole building or any part thereof "

There can be no doubt that the parties under Exhibit 1 did not pretend to have immediately fixed the exact date of commencement of the lease. All they did, and quite rightly in my view, was to agree that the lease shall begin to run upon the occurrence of an event, in this case, from the date Certificate of Occupancy in respect of the building is issued by the Onitsha Local Government. It is clear to me that the date of commencement of the term of the lease was conditional upon the issuance of Certificate of Occupancy in respect of the building that is the subject matter of the lease. It is equally plain that the law does permit parties to enter into such agreement notwithstanding the fact that their commencement dates are dependent upon the occurrence of some uncertain future event. However, such conditional agreements, as I have stated, became absolute and enforceable the moment the event in question occurs.

So, in United Bank for Africa Ltd. v. Tejumola and Sons Ltd. (1988) 2 N. W. L. R. (Part 79) 662 at 682 and 686, this court per Obaseki, J.S.C. explained this aspect of the law very succinctly as follows :-

"It is settled by authorities that where a contract is subject to the happening of a contingency, that contract only becomes enforceable provided the event has occurred or the contingency happened. Where the date for the commencement of a lease is not specified but stated by reference to the happening of a contingency which is uncertain in time, until the contingency happens, there is no enforceable lease".

In the present case, it is the evidence of the appellant that after the respondent had completed the ground and first floors of the building in issue, the said appellant in 1976 added a second floor to the structure erected by the respondent. The said 2nd floor was not completed until in the same 1976 when the appellant moved therein. It is crystal clear that since the appellant was still building the second floor of the house early in 1976, the issuance of a Certificate of Occupancy in respect of the premises by the Onitsha Local Government could not possibly have taken

place before then. It was on the completion of the said second floor by the appellant that he obtained the Certificate of Occupancy in respect of the building on the 7th day of July, 1976. This certificate is Exhibit 7. It is my view that the date for the commencement of the lease having been
B stated by reference to the happening of a contingency which was uncertain on point of time, the term of the lease, Exhibit 1, began to run as soon as Exhibit 7, the Certificate of Occupancy in respect of the building was issued. In other words, Exhibit 1 fully matured to an enforceable
C lease on the 7th day of July, 1976 on which date the said Certificate of Occupancy was issued by the Onitsha Local Government. I think that the court below cannot be faulted in its finding that the commencement of the lease Exhibit 1, was with effect from the 7th July, 1976 on which date Certificate of Occupancy in respect of the premises was granted by
D the Onitsha Local Government.

I should, perhaps, stress that there is ample evidence on record in support of the above finding of the court below. In the first place, the appellant himself testified that he went into occupation of his room/store
E on the ground floor and flat on the floor of the building in 1976 and that he let the same out to one Adimora about March or April of that year. In the second place the appellant also admitted that in 1976 the respondent paid him the reserved rent under Exhibit 1 for five years in advance for
F the period 1976 to 1981. It seems to me that both parties could not have been under any illusion on the basic fact that the term of the lease, Exhibit, 1 commenced to run from 1976 as rightly found by the Court of Appeal.

But the appellant then argued that the lease had not commenced
G to run merely because it was not the respondent himself that was issued with the Certificate of Occupancy, Exhibit 7, pursuant to the stipulation in the leasehold agreement. I think it is a matter of common knowledge, if not notoriety, that at the conclusion of the erection of any new building
H in the Onitsha local Government Area, the same may not be moved into or occupied until it has been duly inspected by the Local Government officials and certified to be in accordance with the specifications in the approved building plan and that the same is therefore fit for human habi-

tation. The certificate is always issued in the name of the owner of such a new building. It is an authorization or permit under the Council's by-laws that the building is fit for human occupation and it does not seem to me to be any matter of great moment whether it is a lessor, a lessee or , indeed, any one else that is issued with the relevant certification. I agree B entirely with the submission of learned counsel for the respondent that it is, with respect, sheer pedantry on the part of the appellant to argue, as he did in his brief of argument, that the term of the lease in Exhibit 1 had not commenced to run merely because it was not the respondent himself C to whom the Certificate of Occupancy, Exhibit 7, was issued. I am satisfied that the lease, Exhibit 1, is valid and enforceable in law. Issue 1 is accordingly resolved in favour of the respondent.

The second or subsidiary issue poses the question whether even D if the building lease, Exhibit 1, is void, and I clearly do not so hold, this ipso facto deprives the respondent of all rights in and over the property known as and called No. 30, Old Market Road, Onitsha. In this regard, the principle of law is well established that where a person has expended E money on the land of another in the expectation, induced or encouraged, by the owner of the land that he would be allowed to remain in occupation thereof, an equity was created such that the court would protect his occupation of the land and the court has power to determine in what way the equity so arising could be satisfied. See Ibadan City Council v. Ajanaku F (1969) N.S.C.C 44 at 49. In that case the contention was that a lease which stipulated that a party to the agreement would occupy the land "for as long as he shall occupy the same" was void for uncertainty on the ground that it was for an indefinite term. Reliance was placed on the G decision in Lace v. Chandler (1944) K. B. 368 in support of this contention. This court held that the equity arising from the expenditure of money by the lessee would be satisfied by allowing the plaintiff and his H successors to remain on the land for an indefinite period free of rent as agreed upon in the lease contended to be void. See too Inwards v. Baker (1965) 2 W. L. R. 212 where in similar circumstances, Lord Denning, quite rightly in my view, observed as follows :-

"So, in this case, even though there is no building contract to

grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money".

The noble Lord then continued :-

B *"All that is necessary is that the licensee should at the request or with the encouragement of the landlord have spent the money in the expectation of being allowed so stay there. If so, the court will not allow the expectation to be defeated where it will be inequitable to do so".*

C In the present case, it is not in dispute that the respondent with the agreement and concurrence of the appellant expended his own money in the erection of the ground and the first floors of the house in issue in the expectation that he would remain in occupation of the appellant's said property for a term of 50 years. It is also common ground that the said D appellant duly moved into his own sections of the building as agreed under Exhibit 1. I cannot but agree with submission of learned counsel for the respondent that the court, in the circumstances, is bound to protect the equity created in favour of the respondent so that the same would E not be unduly frustrated or defeated. Issue 2 must again be resolved in favour of the respondent.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Belgore, JSC, that I, too, dismiss this appeal with costs as therein assessed. F

KATSINA-ALU JSC

G I had the privilege of reading in advance the judgment of my learned brother Belgore, JSC. I entirely agree with it .

On 17th July, 1972, Venerable Archdeacon Henry Louis Okechukwu, entered into an agreement with Humphrey Chinugo Onuorah and Davidson Orizu Onuorah whereby he demised to the brothers his H plot of land situate at 30, old Market Road, Onitsha. By the agreement the brothers were to build a two floor structure in accordance with an agreed building plan in the name of the Archdeacon. On completion the Archdeacon was to be given a flat on the first floor and a store on the

ground floor. The written agreement was received in evidence as Exhibit 1.

The parties further agreed that the brothers would go into and remain in possession of the remainder of the building for 50 years reckoned from the date the Onitsha Local Government Council issued its permission for occupation of the building. An annual rent of N1, 700.00 was reserved. The Archdeacon requested and was paid 5 years rent from 1976 - 1981. All the terms of the agreement were fully carried out before the institution of this case against Humphrey C. Onuorah alone because his brother was dead.

In the High Court the Archdeacon claimed the following relief :-

"1. N10,000.00 as damages for breached of covenants.

2. Possession of the said house No. 30 old Market Road, Onitsha, upon a forfeiture for inter alia, non-payment of rent, and/or denial of plaintiff's title to the land.

3. Mesne profits from the date of the service of the writ till possession of the house is delivered to the plaintiff.

4. In the alternative a declaration that the plaintiff is the landlord and/or owner of, and is in full possession of the premises, No. 30 Market Road, Onitsha, being inter alia a holder of the certificate of occupancy No. 109/76, in respect of the said premises."

In the trial Court, the learned Judge delivered a judgment in favour of the plaintiff declaring, inter alia, that lease was void in law for not having a certain beginning.

The defendant's appeal to the Court of Appeal was allowed. That court set aside the decision of the trial Court that the lease Exhibit 1, was void and declared same valid.

The appeal to this court is by the plaintiff. The plaintiff contended that in 1972 when Exhibit 1 was executed the commencement date was incapable of ascertainment. It is correct law that a term of years must be for a definite period in the sense that it must have a certain beginning and a certain ending. The parties may however agree that the lease shall begin upon the occurrence of an uncertain event. Such an agreement, though at first conditional becomes absolute and enforceable

as soon as the event occurs. In United Bank for Africa Ltd. v. Tejumola & Sons Ltd. (1988) 2 NWLR (pt. 79) 662 this Court per Obaseki, JSC stated the law in the following terms:

"It is settled by authorities that when a contract is subject to the happening of a contingency, that contract only becomes enforceable provided the event has occurred or the contingency happened. Where the date for the commencement of a lease is not specified but stated by reference to the happening of a contingency which is uncertain in time, until the contingency happens, there is no enforceable lease See Brilliant v Michaels (1944) 1 AER 121 at 127 - 128."

Exhibit 1, the lease provides, inter alia, "that the Lessor demises to the Lessees all that piece or parcel of land known as and called No. 30 old Market Road, Onitsha to hold the same unto the lessees for a term of 50 (fifty years) from the day the Lessees are issued with a certificate of occupancy in respect of the whole building or any part thereof."

It is clear, from the above that the time within which the lease was to commence was predicated upon the issuance of a certificate of occupancy by the Local Government Council. There is evidence that the certificate of occupancy was granted on 7th day of July 1976. This means that the lease became enforceable upon the issuance of the certificate of occupancy. It does not matter whether it was issued to the appellant or to the respondent. What is important is that it was issued in respect of the property No. 30 old Market Road, Onitsha.

One more point. Even if the agreement were void the Respondent built with the express consent of the Appellant. There is clearly no equity in throwing out the Respondent. He is entitled to enjoy what he expended his money on at the direction of the Lessor. The Respondent had, with the consent and encouragement of the Appellant, spent the money in the expectation of being allowed to stay there. The court has a duty to protect the equity created in favour of the Respondent so that the expectation of the Respondent will not be defeated.

For this and the fuller reasons given by my learned brother Belgore, JSC I also would dismiss the appeal with N10, 000.00 costs to the Respondent.

AYOOLA JSC

I agree that this appeal should be dismissed. By an instrument made on 17th July, 1972 between the parties, the appellant, as lessor, leased the property in question to the respondent and his brother (now deceased) for a term of years. The respondent undertook to erect buildings, as stated in the instrument, on the property and to pay monthly rent in sums stated. The parties agreed as to their several occupation of parts of the building so erected.

The grievances of the appellant that led to this case as contained in his further amended statement of claim (paragraph 9 & 10) were that the respondent erected illegal structure on the property and failed to pay rent. However, the averment which spawned the main issue on this appeal, was contained in paragraph 11 of the appellant's further amended statement of claim wherein it was averred that "there was no lease property in existence between the parties in that the purported lease signed by the parties has not commenced (reference to paragraph (1) of the said document made on 17th. day of July, 19 72). The defendant has no right whatsoever either as lessee, tenant-at will or otherwise over the said premises: 30 Old Market Road, Onitsha".

The instrument of lease contained the habendum clause in the following terms:

"To hold the same unto the lessee for a term of 50 (fifty) years from the day the lessee are issued with a Certificate of Occupancy in respect of the whole building or any part thereof"

Commenting on this clause the learned trial judge said :

"In law, the duration of a lease must be definite and however long it may be, it cannot be limited in perpetuity or for a period that will not be readily determinable."

Relying heavily on Lace v. Chantler [1944] 1 ALL ER 396 he concluded that "in law Exhibit 1 (that is the instrument of lease) is not a lease at all and the defendants cannot claim any rights thereunder." He found in the alternative, breaches of covenants of the lease, should the lease be valid. In the result, he granted a declaration "that the purported lease Exhibit 1

made between plaintiff and the Defendants is void in law and that the plaintiff is the landlord and /or owner of, and in full possession of the premises known as and called No. 30 Old Market Road, Onitsha."

The issue which dominated the respondent's appeal to the Court of Appeal is whether the trial judge was right in the view he held that the lease was void by reason of uncertainty of the date of commencement. I pause to observe, in passing, that it is not quite clear how this came to be an issue at the trial having regard to paragraph 11 of the further amended statement of claim in which the question raised was whether or not the lease had commenced. The averment in that paragraph, quoted earlier in this judgment, was that the lease had not commenced and therefore the lease was not yet properly in existence. To say that a lease has not yet commenced because its commencement was contingent on an event, which has not yet occurred, is not the same thing as saying that the entire transaction is void. Also, the declaration sought by the appellant was based on his being the holder of a Certificate of Occupancy granted him on 7th July 1976 in respect of the property.

The Court of Appeal (Awogu, Oguntade, and Akintan, JJ.C.A.) considered the issue of the validity of the lease. Awogu, JCA, who delivered the leading judgment of that court, said :

"It is also settled law that even if the terms of the lease are uncertain at its commencement, the fact that at some future date it will be made certain is sufficient to make it a good lease. In other words, the determining factor in each case is the certainty in futuro of the commencement date, since id certum est quod reddi potest. In the Nigerian context, one is tempted to take judicial notice of this practice. Thus, if it is obtained within a reasonable period, then there is a certainty in futuro of the commencement date; if not, the delay would become an issue at the trial."

In this view Oguntade and Akintan, JJ.C.A, concurred. The Court of Appeal allowed the appeal and set aside the declaration made by the trial judge.

On this appeal by the appellant the burden of the submission by learned counsel on his behalf is that the Court of Appeal was wrong in its

view as above stated. It was argued that the event upon which the commencement of the lease was predicated was not capable of ascertainment at the time the lease was being made. Learned counsel put her case on this issue, interestingly, this way:

"This is so because the contingency upon which the commencement of the lease is based is further based upon the happening of another contingency the actualization of which is based upon the opinion and conviction of an individual which also give room for disagreement."

She further expatiated on this thus:

"The first contingency is the issuance of Certificate of Occupancy to the lessees in respect of the building or part thereof. It is an established fact that the body which will issue the Certificate of Occupancy is the Local Government Authority which body does not issue such Certificate as of course"

The second contingency, it would appear in the counsel's opinion, is that the issuance of the Certificate depended on the judgement of the inspector assigned the duty of inspecting such buildings.

There is substantial agreement on the principle applicable to this case and the area of disagreement is much narrower than first appear - that area of disagreement being in application of principle to the facts of this case. A term of years, like any other periodic tenancy must have a determinate duration. A tenancy for a term of years must have a commencement and a duration. The present case is not concerned with the duration of the term but with the commencement. In regard to the requirement that the commencement must be certain or ascertainable, the law has been succinctly put thus in Halsbury's laws of England (4th Edition) Vol. 27 (1), paragraph 205 :

"A tenancy for a term of years arises by express contract or by statute; and it is essential to the contract that the commencement and duration of the term should be so defined as either to be certain in the first instance, or to be capable of being afterwards ascertained with certainty"

Then at paragraph 207:

"It is sufficient if the commencement of the term is ascertained

with certainty at the time when the lease is to take effect in possession. Hence the term may be made to commence after the failure of specified lives, or upon the occurrence of a future contingent event".

Coming nearer home, these principles have been received into our law in several cases. In United Bank for Africa Ltd v. Tejumola & Sons Ltd [1988] 1 NSCC 945 this court, per Agbaje, JSC, cited the opinion of Evershed, J., in Brilliant v. Michael [1945] 1 ALL ER 121, 121 at 127-8 that :

"..... a contract for a lease is enforceable notwithstanding that the commencement of the term may be expressed by reference to the happening of a contingency which is at the time uncertain provided that at the time that the contract is sought to be enforced, the event has occurred and the contingency has happened."

Brilliant v. Michael (supra) was distinguished from United Bank for Africa Ltd v. Tejumola & Sons Ltd (supra) because in the latter case the contingency on which commencement of the tenancy depended namely :giving of physical possession, did not occur before the defendant "called off everything" (see per Agbaje JSC at p. 958). It may well be noted that in the United Bank for Africa Ltd case there was found to be no agreement even on the contingency.

When a term is made to commence upon the occurrence of a future contingent event, the test whether there is certainty of the commencement of the term is whether the happening of the contingent event itself is certain. The point was made in Lace v. Chantler [1944] 1 ALL ER 302, 306 per Lord Greene M.R thus:

"A term created by a leasehold tenancy agreement must be a term which is either expressed with certainty and specifically or is expressed by reference to something which can, at the time when the lease takes effect, be looked to as a certain ascertainment of what' the term is meant to be."

Lace v. Chandler (supra) was a case on the duration of the lease, but the same common sense view applies where the question is whether a contingent event with reference to which the commencement of the lease is to be determined is certain. I venture to think that where the contingent

event is vague, or highly speculative or illusory, or its happening can be postponed indefinitely, or is itself dependent on innumerable contingencies, such contingent event will not be regarded as certain.

In the present case learned counsel for the appellant argued that the contingent event, which is the obtaining by the lessee of a certificate of occupancy, is uncertain because it is, itself, contingent on the judgment of the building inspector. That argument ignores the fact the building inspector, a public officer performing a public duty, has an obligation to act reasonably and not arbitrarily or whimsically and that the lessee had a right to demand that a certificate be issued if he has satisfied all condition for its issuance. B C

In the context of this case the argument is purely academic. On the evidence, the certificate of occupancy has been obtained by the lessor, the appellant, whose interest it must have been to see that the lease commenced expeditiously. I am in agreement with the view of the Court of Appeal that it is inconsequential that the certificate of occupancy was obtained by the appellant and not as provided in the lease by the respondent. I agree with Awogu, JCA., when he said that: D E

"This, to my mind, smacks of the 'pound of flesh' justice in Shakespeare's Merchant of Venice. In other words, the Respondent see Exhibit 7 as good enough for his being declared the Landlord and /or owner of, and in full possession of the premises in Exhibit 1 but not good enough to satisfy the commencement date of the lease in Exhibit 1". F

The intention of the parties in fixing the date of commencement as the date on which the certificate of occupancy is obtained must have been to make the lease commence from the earliest date from which the premises is certified lawfully fit for occupation. Regardless of who obtained the certificate the intention has been fulfilled. If the obligation to obtain the certificate of occupancy was that of the respondent but it had been discharged by the appellant, that would not lead to an uncertainty in the commencement of the lease or postpone its commencement but, H may, rather, lead to a claim by the appellant to the cost of obtaining the certificate. G

For all I have said it is obvious that I am in full agreement with

my learned brother Belgore, JSC., that this appeal should be dismissed. I have only endeavoured to comment on aspects of the appeal. For the fuller reasons he states in his judgment which I was privileged to read in advance and the reasons I state in this judgment, I too would dismiss the B appeal with costs as ordered in the leading judgment.

C

D

E

F

G

H