

**SUPREME COURT OF NIGERIA**  
FRIDAY 1ST MARCH, 2002. SC. 175/1996  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, A. I. IGUH,**  
**A. I. KATSINA-ALU, S. O. UWAIFO, JJSC**

BOSAH & 3 ORS ..... APPELLANTS  
AND  
PIUS OJI ..... RESPONDENT

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LAND LAW - Leases - Validity - Condition precedents - Term of the lease as well as its commencement date - Must be capable of being ascertained (H1)

LAND LAW - Leases - Validity - Commencement date - Where not expressly stated - Effect - The date is made certain by contingency - Although not expressed (H2)

**FACTS**

Sometime in 1963, defendant/respondent and plaintiffs/appellants entered into a 60 years lease agreement in writing over a property known as 49 Old Market Road Onitsha-Anambra State. Covenants in the lease includes inter alia, that respondent was to demolish and erect buildings at the premises within one year, pay the sum of £100 pounds to appellants, pay another £980 pounds to appellants and would obtain certificate of occupancy in respect of the buildings. The lease stipulated that the term of 60 years will commence from when respondent obtains the certificate of occupancy or when he converts the buildings to commercial use. However, the Nigeria civil war prevented respondent from completing the buildings as agreed.

After the war, respondent informed appellants of his intention to go on with the building project. Appellants however refused to go on with the lease agreement. Thereafter, appellants commenced this action at the High Court of Anambra State, Onitsha claiming that the lease is not binding or enforceable. Appellants relied on the Common Law Procedure Act, 1852 to claim possession of the premises, rent and mesne profit. Respondent counter-claimed that the lease is binding and subsisting and sought for an injunction restrain-

ing appellants from interfering with his right over the premises. At the end of hearing, the court dismissed appellants' claim except for the sum claimed as rent and mesne profit. Respondent was ordered to pay £980 pounds to appellants. The court nevertheless granted the counter-claim of respondent. Being dissatisfied, appellants appealed to the Court of Appeal, Enugu. The court dismissed the appeal. Appellants have again gone on appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1. Whether the learned Justices of the Court of Appeal were correct in upholding the decision of the learned trial Judge to the affect that Exhibit "A" - the Deed of lease is valid and subsisting on the ground that its commencement date is certain.*

*2. Whether the learned justices of the Court of Appeal were correct in holding that section 210 of the Common Law Procedure Act 1852 did not avail the appellants' claim for forfeiture so as to dispense with the requirement of service of Notice of breach of covenant on the Respondent, prior to the commencement of the suit.*

*3. Whether the 3rd issue for determination as framed by the Respondent arose from the grounds of appeal.*

*4. Whether the Court of Appeal was right in setting aside the default judgment of the of the trial court in respect of a claim for unliquidated pecuniary damage in which no evidence whatsoever in proof of such damages was neither tendered nor received by the trial court."*

**HELD** (Unanimously dismissing the appeal per

**KATSINA-ALU JSC)**

*LAND LAW - Leases - Validity - Condition precedents*

**1. As I have already shown the length of the term of the lease is certain. It is for 60 years. It is settled law that for a lease to be valid, the term of the lease as well as its date of commencement must be certain or capable of being ascertained.**

**From the decisions in the above cases it seems clear that if the date of commencement of the lease is certain or ascertainable from the document and its duration is also certain, then the lease is valid and enforceable. In the present**

**case the duration of the lease Exhibit A is certain.**

(pp. 519 D/520 B)

*LAND LAW - Leases - Validity - Date of commencement*

**2. Although the date of commencement of the lease was not named therein, the date has been made certain by the contingency reserved therein.**

**The result is this. The date of commencement is certain. And the duration of the term of the lease (Exhibit A) is also certain. That being so Exhibit A is a valid lease. And it is subsisting.** (p. 520 D)

## NOTABLE POINTS OF INTEREST

### **IGUH JSC**

#### ***Lease – Commencement date not very essential***

1. I must, however, quickly add that a lease for a term of years, although, it must be for a definite period in the sense that it must have a certain ending as aforesaid, this does not imply that the parties must immediately fix the exact date of commencement of the lease. The parties may agree that the lease shall commence upon the occurrence of an uncertain event, such as, upon the declaration of war by great British or upon possession of the premises being vacant. (p. 526 E)

#### ***Lease becomes enforceable on the occurrence of stated event***

2. Where parties do in fact enter into such a bargain and intend to bind themselves on those items, the agreement, though at first conditional, contingent and/or dependent upon the occurrence of an uncertain event becomes absolute and enforceable in law as soon as the stipulated event occurs. (p. 526 F)

#### ***Land law - Court will protect the interest of a lessee***

3. The principle is well establish that where a person has extended 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 is 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.  
(p. 527 F)

### **UWAIFO JSC**

#### ***The essential terms for the validity of a lease***

- B 4. The principle for a valid lease is that it must be clear that there was an intention to create a term of years with a certain beginning and a certain ending. In that regard, the essential terms upon which there must be evidence are as to: (1) who the parties are; (2) what is the extent or nature of the property; (3) the rent to be paid; (4) the period of the lease; and (5) the date of commencement.  
C  
(p. 529 E)

### **REPRESENTATION**

- D Dr. Onyechi Ikpeazu for the Appellants  
C. O. Anah Esq., for the respondent

### **CASES REFERRED TO**

- Harvey v. Pratt (1965) 2 All ER 786  
E Marshall v. Berridge (1881-85) ALL E.R. 908  
Nlewedim v. Uduma (1995) 6 NWLR (Pt. 402) 383  
Henrison Okechukwu v. Humphrey Onuorah (2000) 15 NWLR (Pt. 691) 597  
Finnih v. Imade (1992) NWLR (Pt. 219) 511  
F Lace v. Chantler (1944) KB 305  
Swift v. Macbean (1942) 1 KB 375  
Brilliant v. Michael (1945) 1 All ER 121

### **LEAD JUDGMENT BY KATSINA-ALU JSC**

- G In this action on 29th April, 1963 Mr. Pius Oji the defendant and Nnanyelugo Samuel Sampson I. Bosah, Akukalia Albert Bobo Bosah, and Augustine Aseloka Bosah, the plaintiffs, came to an agreement which they put into writing. The object was that the defendant  
H should take a lease of the premises known as No. 49 Old Market Road Onitsha for a term of 60 years. In the said lease agreement, Exhibit A, the defendant covenant to demolish an old building at the back of the plaintiff's premises and build in its place a house containing 14 rooms for the use of the plaintiffs within one year. The defen-

dant in addition was to pay the sum of N100 to the plaintiffs. Thereafter the defendant was to build for his own use another house in front of the premises and in addition pay the plaintiffs a sum of N980. The defendant, after the completion of his own house, would obtain a certificate of occupancy from the Onitsha Local Council. The document (lease) said in clauses 7 and 8: B

*"7 The term of sixty years will be counted from the time when the lessee obtains the certificate of occupancy for the building on the un-built area in front if he builds or if he chooses to convert it into a commercial use from the time he begins to make use of it."* C

*8. The defendant/lessee shall pay a sum of nine hundred and eighty pounds which if added to the one hundred pounds already paid as above will represent the three years rent in advance before he begins to build on the site or if for commercial purposes, before he begins to make use of the same."* D

Exhibit A was duly registered at the Land Registry at Enugu. It must be pointed out from the outset that the defendant built a house of 14 rooms for the plaintiffs at the back of the premises within one year from the date of the execution of the lease as demanded by the plaintiffs. He also paid the initial N100. The plaintiffs went into occupation. But before he could muster enough funds to start the erection of his own house in front of the premises, the Nigeria Civil War broke out. Like everyone else, the defendant fled Onitsha. The result was that the defendant never went into occupation of the premises. F

After the cessation of hostilities, the parties returned to Onitsha. The defendant met with the plaintiffs and intimated them he was then ready and able to commence building work on his house in front of the premises. But the plaintiffs refused to go on with the lease to the defendant. The stalemate was on for quite some time. Then the plaintiffs brought this action against the defendant. They claim that the lease was not a binding or enforceable contract. G

The plaintiffs at Onitsha High Court claimed as follows under the Common Law Procedure Act, 1852: H

*"1. Possession of the premises upon a forfeiture for non payment of rent.*

*2. N15,640.00 rent or alternatively mesne profits to the date of the service of the writ*

3. *Mesne profits from the date of the service of the writ until delivery of possession.*

4. *IN THE ALTERNATIVE*

(i) *Declaration that the said lease is void for uncertainty about its commencement*

B (ii) *Possession of the property comprised in the said lease.*”

The defendant in his statement of defence counter-claimed thus:

C “1. *An order of court that the said Deed of Lease dated 29/4/63 and registered as No. 14 at page 14 in Volume 383 of the Deed Registry at Enugu is still subsisting, valid and effective.*

D 2. *An injunction restraining the plaintiffs, their servants, agents and privies or any persons whatsoever acting on their behalf from further interfering with the defendant’s rights under the said lease which rights include erecting a building in front of the premises know as No. 49 Old Market Road, Onitsha.*”

The learned trial judge after hearing evidence and after considering the authorities on the point dismissed the plaintiffs’ claim save as to the sum of N15,640.00 claimed as rent or mesne profits. E He also ordered the defendant to pay the plaintiffs L980 (N1,960.00) as stipulated in the lease agreement Exhibit A. The learned trial Judge however gave judgment for the defendant in respect of his counter claim. Accordingly he ordered as follows:

F “1. *That the said Deed of Lease dated 29/4/63 and registered as No. 14 in Vol. 383 of the Deed Registry, at Enugu is still subsisting valid and effective.*

G 2. *An injunction to restrain the plaintiffs, their servants, agents and privies or any persons whatsoever acting on their behalf from further interfering with the defendant’s rights under the said lease which said rights include erecting a building in front of the premises known as No. 49 Old Market Road Onitsha.*”

The plaintiff’s appeal to the Court of Appeal was dismissed. Hence this further appeal to this court.

H In this appeal, the plaintiffs formulated three issues for determination. They read as follows:

“1. *Whether the learned Justices of the Court of Appeal were correct in upholding the decision of the learned trial Judge to the effect that Exhibit “A” - the Deed of lease - is valid and subsisting on*

*the ground that its commencement date is certain.*

2. *Whether the learned Justices of the Court of Appeal were correct in holding that Section 210 of the Common Law Procedure Act 1852 did not avail the appellants' claims for forfeiture so as to dispense with the requirement of service of Notice of breach of covenant on the Respondent, prior to the commencement of the suit.* B

3. *Whether the 3rd issue for determination of the Respondent arose from the grounds of appeal.*

*For his part, the defendant also raised three issues namely:*

*(a) Is the lease valid and sustainable?*

*(b) Is the claim for forfeiture sustainable?* C

*(c) Whether the 3rd issue for determination as framed by the Respondent arose from the grounds of appeal."*

The main issue, in this appeal, for determination is whether the deed for lease (Exhibit A) signed by both parties is valid and subsisting. It is the case of the plaintiffs that the lease is not valid because the commencement date of the lease is uncertain. **As I have already shown the length of the term of the lease is certain. It is for 60 years. It is settled law that for a lease to be valid, the term of the lease as well as its date of commencement must be certain or capable of being ascertained.** E

In the case of *Harvey v. Pratt* (1965) 2 All E.R. 786 at 787, Lord Denning M. R. had this to say:

*"It had been settled law for all my time that, in order to have valid agreement for a lease, it is essential that it should appear, either in express terms or by reference to some writings which would make it certain, or by reasonable inference from the language used, on what day the term is to commence."* F

In *Marshall v. Berridge* (1881-85) ALL E.R. Rep. 908 at p.912 G Lush L. J. said:

*"It is essential for the validity of the lease that something should appear either in express terms or by reference to some writing or some instrument, which would make it certain on what day the term is to commence. 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."* H

In *Nlewedim v. Uduma* (1995) 6 NWLR (Part 402) 383 at 396 this court per Belgore, JSC held that:

*"A lease must be clear as to its intent and purpose and it must at least contain*

*(i) the term of years*

*(ii) the rent payable and*

*(iii) commencement date of the lease."*

**B From the decisions in the above cases it seems clear that if the date of commencement of the lease is certain or ascertainable from the document and its duration is also certain, then the lease is valid and enforceable.**

**C In the present case the duration of the lease Exhibit A is certain.** Paragraph 1 thereof creates a sixty year (60) lease.

The commencement date is provided for in clause 7 of Exhibit A. It states that:

*"The term of sixty years will be counted from the time when the lessee obtains the certificate of occupancy for the building on the un-built area in front if he builds or if he chooses to convert it into a commercial use from the time he begins to make use of it."*

**E Although the date of commencement of the lease was not named therein, the date has been made certain by the contingency reserved therein.**

**F The result is this. The date of commencement is certain. And the duration of the term of the lease (Exhibit A) is also certain. That being so Exhibit A is a valid lease. And it is subsisting.**

The plaintiffs have argued at pp. 9 and 10 of their Appellants' brief of argument that:

*"If commencement of the lease is hinged on Respondent erecting a building or utilizing the open space for commerce, it is clear that it is equally hinged on his capacity - financial or otherwise - to satisfy the contingencies. Where he is for any reason rendered incapable of satisfying such conditions, it is clear that the contingencies may never take place. The consequence of this is that from a construction of Exhibit A, the demised premises will remain encumbered for as long as the disability may last. Can it seriously be contended that when the parties agreed and executed Exhibit A, the lessors consciously elected to be bound by such an uncertain situation which would leave their reversionary interest entirely at the determination of the Respondent. Further as the rents may fall due when the term commences, that is*



*to say, after the contingencies reserved in clauses 7 and 8 of Exhibit A would have occurred, the Appellants will not have derived any rents from their premises, until whenever the Respondent decides."*

I must say that this argument is speculative. It has overlooked the reality of the situation. The fact of the matter is that after the cessation of hostilities (Nigeria Civil War) the parties returned to Onitsha. The defendant approached the plaintiffs and intimated them of his readiness to commence work on the erection of the house. The plaintiffs would have none of that. They refused. This posture was confirmed by the plaintiffs in their evidence at the trial. The 2nd plaintiff testified as PW1. In his evidence under cross-examination he said:

*"I am not prepared to allow the defendant to come and erect the building lease in the premises now if he completes the agreed sum in the lease agreement."*

The fourth plaintiff testified as PW2 Under cross-examination he said:

*"I am not prepared to accept 1,960.00, I am not prepared to abide by the terms of Exh. 'A' any more."*

I find it particularly plain from the evidence of the plaintiffs that it was the plaintiffs who refused to abide by the agreement, and chose rather to go to court.

That apart, I think the plaintiffs gambled on the fact that it might or might not take some time for the defendant to erect the building in question. I say this because in respect of their own building they stipulated a time frame. They gave the defendant one year within which to put up the building. The defendant complied and the plaintiffs occupied the same before the outbreak of the Nigerian Civil War. I believe the plaintiffs knew the probable consequences of not providing the time (period) within which the defendant should complete the second house which was tied to the commencement of the term of the lease. They cannot now be heard to complain.

I come now to the issue of rent and mesne profits. As I have already stated the defendant has not gone into occupation of the premises. The reason is clear. By clause 8 of Exhibit A it is only after the defendant had completed his building in front of the premises, and had obtained a certificate of occupancy from the Local Council that he would move in. Again by clause 8, the defendant would pay a sum of 980 before he commenced work on the building. No work

has commenced yet on the building. This is because the plaintiffs refused to be bound by the lease agreement.

Now the sum of L980 and the sum of L100 already paid by the defendant was to count for three months rent in advance. But rent would only fall due after the contingencies reserved in clauses 7 and 8 Exhibit A would have occurred. The plaintiffs appreciated this fact when in their brief they said:

*“Further as the rents may fall due when the term commences, that is to say, after the contingencies reserved in clauses 7 and 8 of Exhibit A would have occurred, the Appellants will not even derive rents from their premises, until whenever the Respondent decides.”*

Surely it must be seen that rent on the premises was not yet due. It follows therefore that at the stage when this action was brought the claim for rent was premature. A demand for rent does presuppose that rent was due. This is clearly not the case. Be that as it may, there is no appeal against the award of rent in the sum of N15,640.00 to the plaintiffs. I shall therefore say no more.

In the result this appeal fails and I dismiss it. The plaintiffs’ claim is dismissed. I affirm the judgment of the court below. There shall be costs to the defendant which I assess at N10,000.00.

### **BELGORE JSC**

I find no merit in this appeal and for the reasons contained in the judgment of Katsina-Alu, JSC 1 also dismiss it with N10,000.00 costs to respondent.

### **KUTIGI JSC**

I read in advance the judgment just rendered by my learned brother Katsina-Alu JSC. I agree with his reasoning and conclusions. I find no merit in the appeal. It is dismissed with N10,000.00 costs in favour of the Defendant/Respondent. The judgments of the two lower courts are affirmed.

### **IGUH JSC**

I have had the privilege of reading in draft the judgment just

delivered by my learned brother, Katsina-Alu, J.S.C. And I agree entirely that this appeal is without merit and ought to be dismissed.

The background facts leading to this appeal have been fully set out in the leading judgment and no useful purpose will be served by my recounting them all over again. I propose in this judgment to refer only to such facts as are directly relevant to the main issue in this appeal about which I desire to say a word or two of my own. B

Without doubt, the central issue for determination in this appeal is whether the deed of Building Lease, Exhibit A, executed by both parties in respect of the premises known as No. 49 Old Market Road, Onitsha for a term of 60 years is valid and subsisting. There is a second and subsidiary question that flows from the main issue. This is whether even if Exhibit A is void, this ipso facto deprives the respondent of all rights in and over the property in issue. It is the case for the plaintiffs that the lease is void for uncertainty with regard to the date of its commencement. The contention of their learned counsel, Dr. Onyechi Ikpeazu is that for a lease to be valid, its duration as well as the date of its commencement must be certain or capable of being ascertained. It was his submission that a term which stipulates that the commencement of the duration of a lease shall be calculated from the date a certificate of occupancy is procured in respect of the building to be erected on the land is as bad as not fixing a commencement date at all. The position cannot be any different from where the condition is that the lease will commence when the lessee starts to utilize the demised premises for a commercial purpose. Dr. Onyechi Ikpeazu made reference to the decision of this court in *Henrison Okechukwu v. Humphrey Onuorah* (2000) 15 N.W.L.R. (Part 691) 597 but stressed that the facts of that case are distinguishable from those of the present case. He finally submitted that the commencement date of Exhibit A being uncertain, the leasehold agreement cannot be valid or subsisting in law. C  
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E  
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The defendant, on the other hand, contended that the lease agreement, Exhibit A which was entered into and was duly executed by the parties voluntarily is valid and not void ab initio. It was submitted on his behalf that the said lease has a commencement date in futuro, the contingent event being the date the defendant obtains Certificate of Occupancy from the Onitsha Local Government in respect of a second building to be erected by him on the vacant por- G  
H

tion of land in the frontal area of the demised premises or, if he chooses to convert the said area for commercial use, from the time he begins to make use of it. Learned counsel for the defendant, C. O. Anah Esq. also argued that the defendant whose operational activities on the demised land were interrupted by the Nigeria Civil War between 1966-1970 did, in fulfillment of the lease agreement, complete the erection of the first 14 rooms decked apartment on the premises into which the plaintiffs, as agreed, went into immediate possession. When the defendant thereafter prepared to commence the erection of the second building for his own use under terms stipulated in Exhibit A, the Nigerian Civil War started in 1966 as a result of which Onitsha was evacuated. The defendant returned to Onitsha at the cessation of hostilities to commence the erection of the second building but was stopped by the plaintiffs who claimed that Exhibit A did not favour them any longer. He argued that the defendant had always been ready to commence the erection of the second building in fulfillment of the lease agreement but was persistently frustrated in this venture by the plaintiffs. Learned counsel contended that the justice of the case, equity and fair play are all very much on the side of the defendant and that the validity of the lease cannot be questioned.

The learned trial judge at the conclusion of hearing was of the view that the lease, Exhibit A, is not valid for uncertainty. He said  
*"In the instant case the maximum duration, is 60 years and so it is certain. The bone of contention is the commencement of the term. Clause 1 of Exhibit 'A' grants the lessee a term of 60 years. Clause 8 states that the term of 60 years will be counted from the time when the lessee obtains the certificate of occupancy for the building. It is in evidence that the building in front has not been built. It is only after the building has been completed and the Onitsha Urban County Council approves the building that the lessee can get a certificate of occupancy.*

*...I therefore declare that the lease admitted as Exhibit 'A' is valid and subsisting. The commencement is ascertainable and the lease is for sixty years."*

For its own part, the Court of Appeal in upholding the above view of the trial court put the matter thus:

*"When it is said that the commencement date of a lease must*

*be certain or capable of being made certain it need not be a fixed date or day, month and year. Its commencement may take effect on the happening of an event in the future. So long as the event on which the commencement of the lease is certain, the lease is valid and proper. In the case in the instant appeal, there is no difficulty with the certainty of the duration of the lease. It is for 60 years certain. The appellant however contends that the commencement date is uncertain.*

*A certificate of Occupancy takes effect from the date of its issue - See Finnih v. Imade (1992) N.W.L.R. (Pt 219) 511 at 533. In the alternative, if he does not want to put up any building in front, the lease shall begin to run as soon as the lessee begins to use the open space in front for commercial purposes after he had paid the N1,960. The commencement date or event for the lease to begin to run is therefore certain and crystal clear. I find no room for doubt, D equivocation or argument on the certainty of the commencement date or event of the lease erected by Exhibit A. The learned trial judge was therefore right when no declared the lease as valid and subsisting."*

Clauses 7 and 8 of Exhibit A which are relevant for the de- E termination of the main issue in dispute in this appeal provide as follows:-

*"7. The term of sixty years will be counted from the time when the lessee obtains the certificate of occupancy for the building on the un-built area in front, if he builds, or if he chooses to convert F it into a commercial use, from the time he begins to make use of it.*

*8. The defendant/lessee shall pay a sum of nine hundred and eighty pounds which if added to the one hundred pounds already pad as above will represent the three years' rent in advance G before he begins to build on the site or if for commercial purposes, before he begins to make use of the same."*

It can thus be said that under the terms of Exhibit A, the term of sixty years therein reserved would start running from the date the certificate of occupancy in respect of the second building is issued by H the Onitsha Local Government or, if the defendant chooses to convert the place into a commercial use, from the date he begins to make use of it. The real question in issue is whether the above stipulations can be said to indicate with any degree of certainty the com-

ment commencement date of the lease.

It is long settled that for an agreement for a lease to be valid, there must be, among other essentials, an agreement either in express terms or by reference to some writings which would make it certain, or by reasonable inference from the language used on what day the term is to commence. In the absence of this, validity may not be given to such a leasehold agreement. So in *Harvey v. Pratt* (1965) 2 All E.R. 786 C.A., the agreement for a lease did not contain any date on which the term should commence nor any facts from which the commencement date could be ascertained. The Court of Appeal (England) rightly held that the lease was not valid. Indeed, in order to have a valid agreement for a lease, both the commencement day and the maximum duration of the term must be either certain or capable of being rendered certain. See *Lace v. Chantler* (1944) K.B. 305 at 306-307. As Lush, L.J. put it as early of 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 for a lease must, in order to satisfy the Statute of Frauds, contain those elements.”*

I must however, quickly add that a lease for 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 as aforesaid, this does not imply that the parties must immediately fix the exact date of commencement of the lease. The parties may agree that the lease shall commence upon the occurrence of an uncertain event, such as, the premises being vacant. See *Swift v. Macbean* (1942) 1 K.B. 375 and *Brilliant v. Michael* (1945) 1 All E.R. 121. Where parties do in fact enter into such a bargain and intend to bind themselves on those terms, the agreement, though at first conditional, contingent and/or dependent upon the occurrence of an uncertain event becomes absolute and enforceable in law as soon as the stipulated event occurs. See *Henrison Okechukwu v. Humphrey Onuorah* (supra) at page 614, *Brilliant v. Michael* (supra) at page 126 and *Cheshire and Burns Modern Law of Real Property* by E. H. Burn (1982), 18th Edition, Pages 368-369. Accordingly, where a contract for a lease is subject to the happening of an event, that contract becomes enforceable notwithstanding the fact that the commencement of the term is expressed by reference to the happening of an uncertain contingency provided

that, at the time the contract is sought to be enforced, the contingency has occurred. To put it differently, 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 on point of time, until the contingency happens, there is no enforceable lease. See United Bank for Africa v. Tejumola and Sons Ltd. (1988) 2 N.W.L.R (Part B 79) 662 at 686 where this court per Obaseki, JSC put it this way:

*"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 has happened. Where a 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 too *Henrison Okechukwu v. Humphrey Onuora* (supra) at pages 614-615. C D

Having examined the position of the general law on the issue under consideration, it is now left for me to ask myself whether or not clause 7 of Exhibit A which makes provision for uncertain contingencies that have not yet happened may be said to constitute a certain commencement day of the lease, Exhibit A as at the time of the institution of this action. With profound respect to the court below, I think not. E

It is at this stage that I must now turn to the equities of the case. This must be so as a resolution of the validity of Exhibit A seems also to involve principles of equity which I will now proceed to consider. F

In this regard, the principle is well establish that 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 is 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. So, in *Ibadan City Council v. Ajanaku* (1969) N.S.C.C. 44 at 49 where it was contended that the lease was void for uncertainty on the ground that it was for an indefinite term, this court held that the equity arising from the expenditure of money by the lessee would be satisfied by allowing the plaintiff and his successors to remain on the land for an indefinite period free of rent as agreed upon in the G H

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, commented:

B *“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.”*

He went on:

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

D In the present case, the defendant with the agreement and concurrence of the plaintiffs expended his own money in the erection of a 14 rooms house in the expectation, induced and encouraged, by the plaintiffs that he would remain in occupation of part of the premises in issue for sixty years. I think the court in such circumstances, is bound to protect the equity created in favour of the defendant so that the same would not be unduly frustrated or defeated as the plaintiffs now appear to be doing. In that event, there is an equitable jurisdiction in the court to determine in what way the equity so arising could be satisfied. See *Henrison Okechukwu v. Humphrey Onuorah* (supra) at page 616. I think it is grossly inequitable for the plaintiffs to have induced and encouraged the defendant to commence and to compete the erection of a 14 rooms house at his own expense on the demised premises into which the said plaintiffs immediately moved on the understanding that the said defendant would develop and remain in occupation of part of the premises for 60 years but now turn round to refuse him entry into the said premises.

G It is for the above reasons that I, too, find no substance in this appeal which I hereby dismiss with costs as assessed in the leading judgment.

H

### UWAIFO JSC

I have had the advantage of reading in advance the judgment of my learned brother Katsina-Alu JSC. I am in agreement with



it that the appeal be dismissed.

There is some troubling aspect upon which I intend to express my view. This is in respect of when the commencement date of a lease is expressed to take effect from the happening of an apparently uncertain event. The crucial issue in the present lease agreement executed in 1963 is whether the term of 60 years' lease created by the agreement had a certain or ascertainable beginning. The facts of the case have been narrated in the leading judgment and I do not need to go over all of them. Clause 7 of the deed of lease provides for the term of years and the commencement (or likely commencement) thereof as follows:

*"The term of sixty years will be counted from the time when the lessee obtains the certificate of occupancy for the building on the un-built area in front if he builds or if he chooses to convert it into a commercial use from the time he begins to make use of it."*

As can be seen, two alternative conditions for ascertaining the commencement date of the lease are stated in clause 7. They are (a) when the lessee obtains a certificate of occupancy for building if he chooses to build, or (b) if he chooses to convert the land to commercial use from the time he begins to make use of it. I do not think that there is any argument that the commencement date depends on wholly uncertain contingencies lying entirely with the defendant and his ability or disposition to take the necessary steps.

The principle for a valid lease is that it must be clear that there was an intention to create a term of years with a certain beginning and a certain ending. In that regard, the essential terms upon which there must be evidence are as to: (1) who the parties are; (2) what is the extent or nature of the property; (3) the rent to be paid; (4) the period of the lease; and (5) the date of commencement: see *Harvey v. Pratt* (1965) 2 All ER 786 at 788; *Ekpanya v. Akpan* (1989) 2 NWLR (pt. 101) 86 at 97. See also *Nlewedim v. Uduma* (1995) 6 NWLR (pt. 403) 383.

The commencement of the term of years must be certain but when it appears that an uncertain commencement date is stated in a lease agreement, the court will consider whether the date can be ascertained in order to regard it as certain. In *Swift v. Macbean* (1942) 1 All ER 126, by an agreement dated 30 August, 1939, the plaintiff agreed to let certain premises, together with the furniture, fixtures

and effects therein, to the defendants in the event of war being declared by Great Britain within a period of one year from the date of the agreement. It was further agreed that in this event the tenancy was to commence upon the date of such declaration of war but not before September 16, 1939, and terminate upon the date on which  
B hostilities ceased.

War broke out between Great Britain and Germany, and the defendants entered into possession of the premises under the agreement. There were other intervening circumstances. In a subsequent  
C litigation, the defendants argued that the lease agreement was only to become operative if Great Britain declared war against any power or State and therefore the date of its beginning was contingent and uncertain. Upon the fact that the defendants indeed entered into possession after war broke out between Great Britain and Germany,  
D the learned trial Judge (Birkett, J) said at page 131;

*"The agreement did come into being, the defendants did enter into possession as tenants of the plaintiff and paid the rent reserved by the agreement. On Mar. 7, 1941, the agreement was in full operation, and had been since Sept. 16, 1939."*

E On that basis it was held that the lease agreement could no longer be held to have an uncertain commencement date.

That would appear to look at the matter factually from the rear to say that what was uncertain had become certain. I think this was brought out further in *Brilliant v. Michael* (1945) 1 All ER 121. In  
F that case the defendant, owner of a block of flats, agreed with the plaintiff to let to him the flat occupied by a tenant, when vacated by that tenant. The defendant paid the plaintiff various sums as deposit, rent in advance, costs of decoration and other charges, and got re-  
G cepts from the plaintiff which stated inter alia that the rent was to commence from the date of possession and that a tenancy agreement was to be signed in due course. The tenant went out of possession of the flat in June, 1943. The defendant refused to grant a lease of the flat to the plaintiff. He contended among others that there was  
H no enforceable agreement at law or equity by reason of the absence of any sufficiently ascertained date for the commencement of the proposed term.

The learned trial judge (Evershed, J.) reviewed a number of authorities and observed at pages 126 to 127:

*“The present case is in a sense novel and, perhaps, may be said to go a little further than any actually decided case, because the event here subsisting was, as I have stated, one which might not occur for a very long time indeed - if, indeed, ever within the life-time of the plaintiff or of the defendant.*

*In some of the cases it appears that the condition, if it was the happening of some contingency, was a condition which must happen, if at all, within some reasonable limited time; but I have come to the conclusion that is not essential to the validity of the contract, and I cannot see any matter of principle which ought to distinguish the case of a contingency which must happen within, say, 10 or 20 years, and a contingency which may not happen for a very long time indeed, if at all.”*

Then, later in the judgment, the learned judge observed further and concluded the issue as follows:

*“As I have stated, it seems to me that it is highly improbable that persons would bind themselves firmly and conclusively to each other for a period which might almost be of indefinite duration, because the event, the happening of which is to be regarded as a condition, might never occur at all, but, on the other hand, it might occur at almost any length of time. I do not feel that the fact that such an agreement is highly improbable is in principle a sufficient answer. If two persons do in fact make such a bargain and really intend to bind themselves on those terms, I cannot see why a court should not enforce the bargain made, provided that at the time when the one party or the other comes to the court to enforce it, the condition has in fact been satisfied and the contemplated event has occurred. My opinion, therefore, is 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. The result is that, if the matter has rested upon that line of defence, I should have been prepared to find in favour of the plaintiff.”*

How does this apply to the present case? It was the plaintiffs who, on 12 January, 1987, i.e. some 26 years after the lease agreement was executed, filed a writ of summons against the defendant, and in the statement of claim stated the reliefs sought in paragraph

18 thereof thus:

“18. WHEREOF the plaintiffs claim under the Common Law Procedure Act 1852 as follows:

1. Possession of the premises upon a forfeiture for non payment of rent.

B 2. N15,640.00 rent or alternatively mesne profits to the date of the service of the writ.

3. Mesne profits from the date of the service of the writ until delivery of possession.

C 4. IN THE ALTERNATIVE

(i) Declaration that the said lease is void for uncertainty about its commencement.

(ii) Possession of the property comprised in the said lease.

The basis for the arrears of rent claimed was pleaded in paragraph 15 of the statement of claim as follows:

“15. The defendant has not paid any further sum of money as rent and before the writ in this action was issued the sum of N15,640.00 representing arrears of rent for twenty-two years was due and unpaid and no sufficient distress was to be found on the premises countervail the said arrears of rent then and still due.”

In the next paragraph, it was pleaded that clause 7 and 9 of the lease agreement made the commencement date of the lease uncertain and unascertainable. Unless the plaintiffs assumed arbitrarily that the duration of the leased had commenced on any given date, they were in obvious difficulty as to the effect of clauses 7 and 8 to be able to justify their entitlement to the arrears of rent they claimed. The trial court awarded the said amount as arrears although he did not indicate when such rent commenced. He also concluded that the lease was not void for uncertainty of the commencement date. He seemed to have said the lease would commence when the defendant obtained a certificate of occupancy. That clearly would be inconsistent with the notion that arrears of rent had become due for some twenty-two years. The court of Appeal per Ubaezonu JCA who read the leading judgment also said:

*“Thus, it is clear to me that under the agreement of both parties, the lease shall begin to run as soon as the respondent obtains a Certificate of Occupancy in respect of the building he has to put up in the open space in front after he had paid a sum of N1,960 before*

*commencing the building... In the alternative, if he does not want to put up any building in front, the lease shall begin to run as soon as the lessee begins to use the open space in front for commercial purposes after he had paid the N1,960. The commencement date or event for the lease to begin to run is therefore certain and crystal clear."* B

I must say, with due respect, that I find this view entirely unsatisfactory as a way of resolving the question whether clause 7 of the deed of lease stipulates a certain or ascertainable date of commencement of the lease. What the Court of Appeal observed contains nothing C other than a combination of uncertainties. It seems to me that both courts below were unable to postulate a rational approach to a problem created by such an unusual lease agreement which had a collateral agreement already virtually executed. This collateral agreement made the defendant to build a 14 room house for the plaintiffs and D deposit part of rent for three years in advance requested by the plaintiffs as a first step towards creating the lease agreement. The trial court held that the commencement of the lease agreement was to take effect on a future date, yet considered that payment of rent had E become due several years back. On its part, the Court of Appeal held that the commencement date of the lease, which depended on double uncertain events, was "*certain and crystal clear.*" A close study and careful understanding of the authorities relied on by Ubaezonu JCA, such as Harvey v. Pratt (1965) 2 All ER 786, Lace v. Chandler (1944) F 1 All ER 305 and National Bank of Nigeria Ltd. v. Compagnie Frassinete 19 NLR 4, do not lead to any conclusion that the type of clause 7 in the present case can be regarded ipso facto as certain or ascertainable. In Lace v. Chandler (supra), a lease which was granted "*for the duration of the war*" was held to have created a term that was uncertain G and therefore void. In National Bank of Nigeria Ltd. v. Campagnie Frassinete (supra), the lease was "for the term of three years from the date on which the premises will be ready to be occupied by the lessees." It was held that the date of commencement of the lease was H left uncertain as the fitness of the premises for occupation was a matter of opinion on which the parties may differ. In Harvey v. Pratt (supra), the agreement for a lease was for it to commence at a date not specified or defined. It was held that the agreement was void as the date of its commencement was uncertain.

In the present case, the condition for the commencement of the sixty years' lease is from the time when the defendant obtains the certificate of occupancy for the building on the un-built area if he builds, or if he chooses to convert it into commercial use from the time he begins to make use of it. I cannot find anything as uncertain  
 B as the happening of any of the events upon which the commencement of the lease would be based. In either of those events, it depends as I have already said, on the ability or disposition of the defendant: it is if he decides to build and then proceeds to obtain a  
 C certificate of occupancy or make use of it. It will, in my respectful view, be laying down a curious law if an uncertain contingency, such as is contained in clause 7 of the lease agreement, were to be declared certain or ascertainable just by interpreting it, without the occurrence or probable occurrence of an event which helps in arriving  
 D at its ascertainment. I am certainly not in a position to do so.

There is the averment by the defendant in his statement of defence that after the Nigerian Civil War he came back to Onitsha from where he had fled as a result of the war. He then approached the plaintiffs with the sum of N1,960.00 which was the balance out  
 E of the so-called three years' rent in advance demanded by them in 1963 and told them he was prepared to start building on the land but that the plaintiffs refused saying the terms of the lease agreement were no longer acceptable to them. He led evidence to this and although the plaintiffs denied this in the course of their evidence,  
 F portions of their evidence under cross-examination seem to betray this denial. First PW1 (2nd plaintiff), when cross-examined, said:

*"I am not prepared to allow the defendant to come and erect the building lease (sic) in the premises now if he completes the agreed  
 G sum in the lease agreement."*

Then, PW2 (4th plaintiff) also said:

*"I am not prepared to accept the N1,960.00. I am not prepared to abide by the terms of Exh. 'A' any more".*

It seems to me that the observation of Evershed, J., in *Brilliant v. Michael* (supra) at pages 126-128 may be applied here. That  
 H is the only way it can, in my view, be said that at the time it was still open for the fulfillment of the condition for making the term of the lease to commence, i.e. by the defendant building on the vacant portion of the land in order to obtain a certificate of occupancy, the

plaintiff had made up their minds not to permit him to accomplish that condition. This was, logically, before this action was brought. At that point it would have been possible to make ascertainable the commencement date of the lease. I think it will be right to say that the plaintiffs having refused to be bound by the agreement, shut the door against the defendant who was willing to enforce the condition of the lease, but rather they brought this action against him. As will be recalled, Evershed, J.'s observation is 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 that time that the contract is sought to be enforced, the event has occurred and the contingency had happened. In my view, the contingency would have happened in the present case before action was brought by the plaintiffs if they had permitted the defendant to embark upon the building in order to enforce the lease agreement when he sought to.

The contingency which would have occurred at the time that contract was sought to be enforced in the present case is the commencement of the building which would eventually have led to the obtainment of the certificate of occupancy. I think the *raison d'être* of Evershed's, J observation in *Brilliant v. Michael* (supra) applies here to make what was originally an uncertain time of commencement of the lease ascertainable and certain just at the point in time the plaintiffs became the stumbling block. On that basis and for the reasons already stated, I too find that there is no merit in this appeal and dismiss it with N10,000.00 costs to the defendant/respondent.

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