

SUPREME COURT OF NIGERIA

15TH JULY, 2005. SC. 302/2000

**CORAM:- S. M. A. BELGORE, S. U. ONU, A. O. EJIWUNMI,
D. MUSDAPHER, D. O. EDOZIE, JJSC**

PHILIP EBHOTA & 3 ORS.

(Suing for themselves and on APPELLANTS

behalf of the members of the Federal

Low Cost Housing Estate Phase 1 Miango

Road, Jos Tenants Association)

AND

PLATEAU INVESTMENT AND

PROPERTY DEVELOPMENT CO. LTD. RESPONDENT

PLEADINGS - Germane facts - Though parties are bound by their pleadings - It is not expected that all facts germane to a party's case - Must be pleaded - And pleaded facts that raise a reasonable inference of law - Cannot be exclude from the consideration of the court (H1)

LEGAL DRAFTING - Leases - "Subject to" used in a sub-lease - Has same effect as when used in a Statute - As a phrase which introduces a condition or limitation (H2)

LANDLORD & TENANT - Sub-lease - Increase in rent - Use of the phrase "subject to" - Has the effect of making increase in rent - Subject to the approval of the Federal Government - Where appellant obtains such approval - Then increase in rent is properly done (H3)

APPEALS - Pleadings - Finding of lower court - Contention that it was not pleaded - Is not of any moment - Where the finding was properly raised from facts pleaded (H4)

LEASES - Documents - Parties to an agreement - Tenants' contention that they have priority of interest - To buy government houses occupied

by them - Is not tenable - As they are not parties to Exh. 2 sought to be relied upon (H5)

FACTS

The plaintiffs/appellants commenced an action against the defendant/respondent. The appellants sought the following reliefs - a declaration that:- (a) the Federal Low Cost Housing Estate Phase 1 Miango Road, Jos, is the property of the Federal Government of Nigeria. (b) By virtue of the deed of sublease made between the plaintiffs and defendant, the defendant as Agent for the Federal Ministry of Works and Housing cannot increase the rentage on the premises without approval of the Federal Government and therefore the defendant's Notice of increase in rent to the plaintiffs is null and void. (c) The plaintiffs are entitled to be given first option of outright purchase of the units occupied by them respectively. (d) An order of injunction restraining the defendants from increasing the rentage on the premises or ejecting the plaintiffs therefrom save by due process of law.

The trial Court in a well considered judgment upheld the claims of the appellants. The respondent being dissatisfied with the judgment appealed to the Court of Appeal. The appeal succeeded. The appellants being aggrieved with the decision of the Court of Appeal have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the appellants discharged the onus of proof that the estate belongs to the Federal Government of Nigeria.

2. Whether the respondent could increase the rent on the estate without the prior approval of the Federal Government and if the answer is in the negative, whether the respondent acted outside the scope of its authority by the unilateral increase of rent.

3. Whether the learned Justices of the Court of Appeal were right to hold that the respondent is an agent of a disclosed principal and therefore incurs no liability when parties did not join issues on this vital defence at the trial.

4. Being allottees of the houses and having lived there for over

three years, can the appellants seek to protect their interest as allottees in Exhibit 2 and be given the first option to purchase the houses occupied by them? If the answer is in the affirmative, whether the learned Justices of the Court of Appeal were right when they held that the findings of the trial Judge that the appellants are entitled to the first option of outright purchase is perverse.

5. Whether the learned Justices of the Court of Appeal were right when they held that the learned trial judge did not properly appraise and evaluate the evidence before him.”

HELD (Unanimously dismissing the appeal per **EJIWUNMI JSC**)

PLEADINGS - Germane facts

1. While there is no doubt that parties are bound by their pleadings, it is not expected that all the facts germane to the case of a party must be pleaded. See *George & Ors. v. Dominion Flour Mills Ltd.* (1963) 1 All NLR 7 at 77. However, where facts are pleaded which raise a reasonable inference of law, that inference cannot be excluded from the consideration of the court. I therefore do not consider that the appellant needed to have pleaded that the respondent acted in excess of her duty. It is for the purposes of this action sufficient for the appellants to have pleaded as it did with regard to the increases of rent made by the respondent. (p. 2235 F)

Leases - "Subject to" used in a sub-lease

2. Now the phrase, “subject to” which occurs in Exhibit 1, and has to be construed to determine what effect if any the phrase has on the provisions of Exhibit 1 will first be considered. This phrase is not uncommon in the context of its use in statutes and was construed in the decision of this court in *Labiya v. Anretiola* (supra) at pp. 163-164 thus:-

“The phrase “subject to” in the section is significant. The expression is often used in statutes to introduce a condition, a proviso, a restriction and indeed a limitation - See Oke v. Oke (1974) 3 S.C. (Reprint) 1;(1974) 1 All NLR (Pt. 1). The effect is that the expression evinces an intention to subordinate the provisions of the subject to the section referred to which is intended not to be affected by the provisions

of the latter. See *Aqua Ltd. v. Ondo State Sports Council* (1988) 4 NWLR (Pt. 91) 622. In other words, where the expression is used at the commencement of a statute, as in Section 1(2) of the Decree No. 1 of 1984, it implies that what the subsection is “subject to” shall govern and prevail over what follows in that section or sub-section of the enactment. See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 529.” (p. 2236 D)

C Sub-lease - Increase in rent

3. In the instant case, though the phrase occurs at the beginning of the Deed of Sub-lease Exhibit 1, but at the end, it does not make any difference to the fact that the use of that phrase was inserted in its provisions in order to make the increase of rent in respect of the allotted housing units to be subject to the approval of the Federal Government. The appellants have argued that the respondent did not receive any such approval. But throughout the proceedings in the case, there is no positive evidence or indeed any pleading to that effect. Without any challenge concerning this aspect of the case, it must be presumed in favour of the respondent that as it was aware of the provisions of Exhibit 1, which requires the approval of the Federal Government of Nigeria to effect the increase in rent payable by the appellants, such approval had been obtained by the respondent. In the absence of evidence to the contrary, I will for the above reasons hold that each of the increase in rents levied by the respondent against the appellants for each of their housing units was done properly within the stipulations in the provisions of Exhibit 1. (p. 2236 H)

G Pleadings - Finding of lower court

4. The other aspect of this appeal relates to the finding of the court below that the respondent was an agent without liability. It is my view that it is no longer germane to the determination of this appeal having regard to what I have said above. Be that as it may the contention that that was not pleaded is not of any moment. This is because the finding was properly raised from the facts pleaded. I therefore resolve this issue against the appellants. (p. 2238 E)

LEASES - Documents - Parties to an agreement

5. The last issue which I need to consider in this appeal is the contention of the appellants that by virtue of Exhibit 2, the appellants were entitled to have the various housing units they were allotted and are living in the right of the first option to buy the said housing units. On the other hand, the respondent's contention is that the appellants not being a party to the document, Exhibit 2, cannot sue on it. There is merit in that submission. It must be said also that with the changes that had occurred with the status of the respondent as the successors to the original managers of the housing unit, the appellants ought to have sought and obtained a new sublease from the respondent. This they did not do. In the result, this issue must be resolved against the appellants. (p. 2238 G)

NOTABLE POINT OF INTEREST

EDOZIE JSC

1. Appellants have no privity of contract

If it was an agreement between the Federal and State Governments or their agencies, the appellants cannot maintain an action thereunder, they being strangers to the agreement. This is the principle of privity of contract which recognizes that only parties to a contract can maintain an action thereunder. As the appellants entered into no contractual relationship with anybody by virtue of Exhibit 2, their contention for option to outright purchase of the housing units is not well founded. (p. 2243 B)

REPRESENTATION

O. J. Ochigbo, (with him, F. A. Ogbe and B. A. Adikwu), for the Appellants. O. Akobundu, for the Respondent.

CASES REFERRED TO

Vanderwells Trusts (No.2) White & Ors v. Vanderwell Trustees Ltd H (1974) Ch. 269, 322; (1974) 3 All ER 205
 Oke v. Oke (1974) 3 S.C. (Reprint) 1; (1974) 1 All NLR (Pt. 1)
 Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622.

Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 529

City Eng (Nig.) Ltd. v. N.P.A. (1999) 6 S.C. (Pt. II) 41: (1999) 11 NWLR (Pt. 625) 76 at 86

B Matari v. Dangaladima (1993) 3 NWLR (Pt. 281) 266 at 279 SC

Labiya v. Anretiola (supra) at pp. 163-164

Dunlop v Self ridge (1915) AC 847

C

LEAD JUDGMENT BY EJIWUNMI JSC

This action was commenced by the appellants in a representative capacity as indicated above, against the defendant, now respondent to this appeal. The following are the reliefs sought by the appellants.

D “A declaration that:-

(a) *The Federal Low Cost Housing Estate Phase I Miango Road, Jos, is the property of the Federal Government of Nigeria.*

E (b) *By virtue of the Deed of Sub-lease dated 13/4/77 made between the plaintiffs and the defendant, the defendant as Management Agent for the Federal Ministry of Works and Housing cannot increase the rentage on the premises without the prior approval of the Federal Government of Nigeria, and therefore the defendant’s Notice of Increase in Monthly Rent and Revocation of Application Forms/Tenancy Agreement Ref. No. PHC/S/GEN/86/6 dated 28/11/89 as it pertains to the plaintiffs is null and void*
F *and of no effect whatsoever.*

(c) *The plaintiffs are entitled to be given first option of outright purchase of the units occupied by them respectively at the Federal Low*
G *Cost Housing Estate Phase I Miango Road, Jos, by virtue of circular Ref. No. HS/2/140 dated 9/4/76 issued by the Federal Ministry of Housing, Urban Development and Environment.*

(d) *An order of injunction restraining the defendants, their agent*
H *or servants howsoever from increasing the rentage on the premises or ejecting the plaintiffs therefrom except in accordance with the Deed of Sublease dated 13/4/77 or by due process of law.”*

The case was eventually tried on the pleadings filed and exchanged

between the parties. In the course of the trial, parties called witnesses in respect of what they perceived as their respective positions and each side also tendered documents, which were admitted as exhibits. At the conclusion of the hearing of the evidence and after addresses by learned counsel for the parties, the learned trial Judge in a very well considered judgment upheld the claims of the appellants. B

The respondent, being dissatisfied with the judgment, appealed to the court below, i.e., the Court of Appeal holden at Jos. In that court, the appellant, the respondent in this appeal succeeded. And as the respondents to that appeal were not satisfied with the judgment and orders of that court, they appealed to this court. The Notice of Appeal pursuant thereto, was filed by C. Ofodile Okafor, SAN., learned counsel and who had been representing the appellants from the inception of the suit. It consists of seven grounds of appeal. They read without their particulars of errors, as follows:- D

“1 The learned Justices of the Court of Appeal erred in law when they found and held,

On the totality of evidence before the trial court, it seems to me the issue of ownership of the estate did arise and the respondents did not discharge the onus of proof that the estate belongs to the Federal Government. E

And this occasioned a miscarriage of justice.” F

2 The learned Justices of the Court of Appeal erred in law when they found and held:

“The phrase ‘subject to further changes in respect of the rent by the Federal Government of Nigeria’ used in Exhibit I does not seem to me to mean that the sub-lessor, i.e., the appellant, must seek for and obtain approval of the Federal Government of Nigeria before it can increase the rents as it did. All it means is that any rent fixed by the sub-lessor can be changed or reviewed by the Federal Government.” G

And this occasioned a miscarriage of justice.” H

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

(a) *“Since such evidence shows that the appellant acted on behalf*

of a known and disclosed principal, namely, the Federal Government, the appellant incurs no liability.”

(b) *“In view of Exhibit 1, I am of the opinion that the respondents have challenged the title of the appellant in respect of the estates and consequently have committed a gross misconduct which automatically would disentitle the respondents to the right and privileges to remain as tenants.”*

(c) *The issues are the legal consequences of the challenge the appellant did not counter-claim... It is therefore my view that it is not necessary for the appellant to obtain leave of court to raise the issues”*

4. The learned Justices of the Court of Appeal erred in law when they found and held:

“Exhibit 2 was a guideline from the Federal Government to the predecessors-in-title of the appellant. Even if Exhibit 2 was for the benefit of the respondent, they cannot enforce it...”

5. The learned Justices of the Court of Appeal misdirected themselves the law when they held:

“The finding of the trial Judge that Exhibit 2 entitled the respondents to the right of first option of outright purchase of the housing units is perverse and not supported by evidence.”

6. The learned Justices of the Court of Appeal misdirected themselves on the fact when they held:

“I have carefully read through the Further Amended Statement of Claim. Nowhere in the Further Amended Statement of Claim did the respondent say that the appellant had no power to grant the sublease Exhibit 1 or challenge the appellant’s authority to execute the sub-lease. Similarly there is no averment in the respondent’s pleading that the appellant acted outside the scope of its authority.”

7 The learned Justices of the Court of Appeal erred in law when they held that:

“..... the learned trial Judge did not properly appraise and evaluate the totality of the evidence before giving judgment to the respondent as claimed and neither did he ascribe or give the right probative value to the said evidence before his decision.”

8. The judgment is against the weight to (sic) evidence.”

Brief of Argument was subsequently filed and served on the respondents who in turn also filed the respondent’s brief. The appellants, upon being served with the said brief, caused their learned counsel, Okafor, SAN., to file a reply brief for them. Now, that was where the preparation for the hearing of this appeal stood until the 6/12/04 when the matter came up for hearing. On that day, Barrister H. M. Liman with Messrs O. J. Ochigbo, O. J. Ogomo, and H. N. Bello appeared for the appellants while Barrister Okay Akun Bundu appeared for the respondent. The appellants by their counsel then informed the court that they have a motion for leave to tender a further document. And he also informed the court that a counter-affidavit has been filed against it. He therefore asked for an adjournment. The court then enquired from counsel as to whether his clients have been paying their rents. As it was not clear whether in fact the rents were being paid in obedience to an earlier order by the court, the matter was thereafter adjourned to the 28th April, 2005, for hearing. When Mr. Ochigbo appeared on that day, he referred to a motion he wished to move without complying with the earlier order of the court and also asked that the hearing of the case be further adjourned. The learned counsel for the respondent opposed the application for adjournment. The court then informed counsel that as the case has been set down for hearing, the hearing of the appeal would proceed. Mr. Ochigbo, counsel for the appellants, then informed the court that he would refuse to argue the appeal.

Thereafter, learned counsel for the respondent, O. A. Bundu, addressed the court by referring to the respondent’s brief filed for the purpose of the appeal. Before the matter was adjourned for judgment, we observed that as the conduct of Mr. Ochigbo, who appeared for the appellants had been most unbecoming and as Mr. Ofodile Okafor, SAN., who prepared the appellant’s brief had not formally withdrawn from the matter, he should be invited to explain his role in the matter and with particular reference to the conduct of Mr. O. J. Ochigbo. The matter was then adjourned to the 15/7/05 when judgment would be delivered. In the appellants’ brief, five issues were raised for the determination of the

appeal and which are:-

“1. Whether the appellants discharged the onus of proof that the estate belongs to the Federal Government of Nigeria.

2. Whether the respondent could increase the rent on the estate without the prior approval of the Federal Government and if the answer is in the negative, whether the respondent acted outside the scope of its authority by the unilateral increase of rent.

3. Whether the learned Justices of the Court of Appeal were right to hold that the respondent is an agent of a disclosed principal and therefore incurs no liability when parties did not join issues on this vital defence at the trial.

4. Being allotees of the houses and having lived there for over three years, can the appellants seek to protect their interest as allotees in Exhibit D 2 and be given the first option to purchase the houses occupied by them? If the answer is in the affirmative, whether the learned Justices of the Court of Appeal were right when they held that the findings of the trial Judge that the appellants are entitled to the first option of outright purchase is perverse.

5. Whether the learned Justices of the Court of Appeal were right when they held that the learned trial judge did not properly appraise and evaluate the evidence before him.”

For the respondent also, issues were raised in its brief. They are clearly similar in terms as those raised for the appellants and could have been adopted by the respondent in its brief. They are set down as follows:-

“(a) Whether the lower court was right in finding that ownership of the Estate was in dispute and that the plaintiffs failed to discharge the onus of proof.

(b) Whether the finding of the lower court that the defendant did not need the approval of the Federal Government before reviewing rent is justifiable. “

(c) Whether the finding of the lower court that the defendant having been held by the trial court to be an agent of the plaintiff, cannot incur liability is proper.

(d) Whether the Court of Appeal was right in her decision that

Exhibit 2 is unenforceable by the plaintiffs against the defendant.

(e) Whether the Court of Appeal can appraise and evaluate the evidence on record, where the trial court did not properly do so.”

As I have already observed, the issues raised by the respondent for the determination of this appeal are not dissimilar to those raised and canvassed in the appellants’ brief. I will, however, consider the appeal upon the issues raised for the appellants. But before doing so, I will review briefly the facts that have led to this appeal.

The appellants are among a number of persons who were allocated various properties at the Federal Low Cost Estate Phase I Rantya Miango Road, Jos, sometime in June 1977. The Estate was a development of the Federal Government of Nigeria through its parastatal/agent, the Federal Housing Authority. The Miango Road project was among several of such estates built and largely funded by the Federal Government of Nigeria to provide housing for its citizenry. In this case under consideration, each of the beneficiaries of the allotted properties executed a deed of sub-lease, Exhibit 1, with the sub-lessor, the Plateau State Housing Authority. Exhibit 1 is dated 13/4/77. The subsequent events which led to the litigation under consideration, being the main reason that led to this action will be discussed later in this judgment.

Issue 1

Under this issue, the contention of the appellants is that the appellants discharged the onus of proof that the estate belongs to the Federal Government. The basis of this contention appears to be that in paragraphs 3, 6 & 10 of their Further Amended Statement of Claim, they duly averred that the estate in dispute was constructed and owned by the Federal Government of Nigeria. The respondent by its paragraphs 5,7 & 12 and its Further Amended Statement of Defence admitted the fact that the ownership of the estate lies with the Federal Government of Nigeria. In support of this contention, reference was made to these cases: *Oyekanmi v. NEPA* (2000) 12 S.C. (Pt. I) 70; (2000) 15 NWLR (Pt. 690) 418 at 429; *Orawole v. Coker* (1994) 5 NWLR (Pt. 345) 416 at 429; *Ornoni & Ors v. Biriyah & Ors.* (1976) 6 S.C. (Reprint) 34; (1976) 6 S.C. 59 at 54; *Thomas v. Holder* (1946) 12 WACA 78 and *Sanyaolu v. Coker*

(1983) ANLR 157 at 173.

For the respondent, however, it is argued in the respondent's brief that the appellants failed to establish their claim that the Federal Government of Nigeria owned the estate in dispute as pleaded. In other words, the respondent has denied that it admitted by its pleadings that the Federal Government of Nigeria owned the building as it built the estate in dispute. For my part, it seems to me that this argument as to whether the estate belonged to the Federal Government of Nigeria is a non-issue. The question before the Court of Appeal was, whether the issues of ownership of the estate was raised by the pleadings of the parties. Clearly, the court below considered the question as follows in this context.

"The respondents know or at least believe that the Federal Government is the owner of the Housing Units and that the appellant is an agent in respect thereof. The respondents called evidence to support their averments that the said Housing Units in dispute is the property of the Federal Government and that the appellant is a mere agent of the Federal Government in respect of the property."

In his judgment, the learned trial Judge said inter-alia at pages 126-127 of the record -

"What therefore is the role of the defendant as a Corporation or an Organ of the Plateau State Government in respect of the said Housing Estate? The role of the defendant is contained in Exhibit 5. Exhibit 5 is a reply to the letter of counsel for the plaintiffs, R. O. Yusuf and Co, by the Legal Officer to the General Manager, Federal Housing Authority, replying to another letter from the Legal Officer. Legal Division of the Federal Ministry of Works and Housing on the issue."

"Paragraphs two and three of the second letter is as follows: Please be informed that the Federal Low Cost Housing Estate Phase 1, Miango Road, is not under the management and control of the Federal Housing Authority but Plateau State Housing Corporation. You may therefore wish to advise Messrs R. O. Yusuf and Co., to channel their clients cause to the appropriate authorities, namely, the Plateau State Housing Corporation in whom the powers of management and control of the estate, including the powers to entertain mode of redemption of

mortgage on the houses vest. It is therefore very clear that the role of the defendant and its powers thereon are powers of management and control on behalf of the Federal Housing Authority, and I so hold."

By this finding, the trial Judge seems to have accepted the position of the respondents that the appellant was an agent of the Federal Housing Authority.

The court below, per Obadina, JCA., then went on to say thus:-

"The question arises; whether the appellant as an agent of the Federal Housing Authority can be sued personally for acts done in that capacity."

Thereafter, he went on to review the arguments of learned counsel with regard to whether the respondent as an agent had rightly acted within the meaning of Exhibit 1, the deed of sub-lease executed by each of the respondents after they were each allotted property within the estate. On this question, the court below, per Obadina, JCA., answered the question after a review of relevant authorities, thus at page 234 of the printed record:

"I have carefully read through the further amended statement of claim. Nowhere in the further amended Statement of Claim did the respondent say that the appellant had no power to grant the sub-lease Exhibit 1 or challenged appellant's authority to execute the sub-lease."

Then after referring to the provisions of the Deed of sub-lease. Exhibit 1, the learned Justice of the Court of Appeal then said:-

"The phrase "subject to further changes in respect of the rent by the Federal Government of Nigeria" used in Exhibit 1 does not seem to me to mean that the sub-lessor, i.e., the appellant, must seek for and obtain approval of the Federal Government before it can increase the rent as it did. All it means is that any rent fixed by the sub-lessor can be changed or reviewed by the Federal Government. Such a review may even be upwards or downwards. From provisions of Exhibit I, it is my view that the appellant did not need to obtain the approval of the Federal Government for increasing the rent in respect of the housing unit in dispute. In the circumstances, the finding of the trial Judge that the appellant as an agent of the Federal Housing Authority acted outside the scope of its authority is perverse and not supported by evidence. All the

appellant did were in exercise of its powers as a sub-lessor in respect of the said housing units.”

Issue 2

In my respectful view, the above finding and the reasoning that led to it is that which is under attack by the appellants in issue 2. The question raised by the appellants in this issue is, whether the respondent can increase the rent on the estate without prior approval of the Federal Government of Nigeria. And if the question is answered in the negative, whether the respondent acted outside the scope of its authority by the unilateral increase of rent.

For the determination of the first part of this question, it is the submission of learned counsel that the court is required to construe the provisions of Exhibit 1- the Deed of Sub-lease executed by the appellants when they were allotted the housing units in dispute. As Exhibit 1 is a document, learned counsel argued that its interpretation should be governed by the settled principle of law that words are to be given their ordinary meaning except if doing so will lead to absurdity. In support of that submission he referred to *City Eng (Nig.) Ltd. v. N.P.A.* (1999) 6 S.C. (Pt. II) 41; (1999) 11 NWLR (Pt. 625) 76 at 86; *Matari v. Dangaladima* (1993) 3 NWLR (Pt. 281) 266 at 279 SC. With regard particularly to the interpretation that attaches to the phrase “subject to” which occurs in the provision of Exhibit 1, learned counsel refers to *Black’s law Dictionary*, 6th Edition, page 1425 which states that it could be any of the following; ‘liable, subordinate, subservient, inferior, obedient to, governed by, affected by, provided, answerable to.’ Reference was also made in this regard to the following cases: *Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139 at 163 - 164; *Aqua Ltd. v. Ondo State Sports Council* (1988) 10-11 S.C. 31; (1988) 4 NWLR (Pt. 91) 622 at 655; *Tukur v. Government of Gongola State* (1989) 9 S.C. 1; (1989) 4 NWLR (Pt. 117) 517 at pp 542 & 565. On the basis of the above authorities with regard to the interpretation to be given to the phrase ‘subject to’ in Exhibit 1, it should be interpreted to mean that any review of rent in respect of the Housing Units must be made subject to the approval of the Federal Government as the ultimate owners of the Estate. And if, as argued by learned counsel for the

appellants, that the respondent acted without the approval of the Federal Government its principal, then the respondent must be held to have acted beyond the scope of its actual or apparent authority. For this proposition, he cited Bowstead on Agency (1976) Article 80 at page 250; Mercantile Bank of India Ltd. v. Chartered Bank of India and Australia and China B (1937)1 All ER 231.

The thrust of the response of the respondent in the respondent's brief is mainly to the effect that the interpretation given to the phrase "subject to" by the court below be upheld. That court, it may be noted, had C held that:

"The phrase 'subject to further changes' in respect of the rent by the Federal Government used in Exhibit 1 does not seem to me that the sub-lessor i.e., the appellant, must seek for and obtain approval of the Federal Government before it can increase the rent as it did." D

And as part of his argument, he referred to the case of Olaniyan v. Shokunbi (1997) 6 NWLR (Pt. 509) 447 for the proposition that rent review clause is normally inserted in an agreement of this nature to ensure that rents paid keep pace with inflation and what is paid in respect of E comparable properties. Finally, it is the contention of the respondent that in any event, it was never the case of the appellants that by increasing the rent, the respondent acted in excess of her duty.

I will begin with the determination of this question by dealing with F the last contention of the respondent. **While there is no doubt that parties are bound by their pleadings, it is not expected that all the facts germane to the case of a party must be pleaded. See George & Ors. v. Dominion Flour Mills Ltd. (1963) 1 All NLR 7 at 77. However, where facts are pleaded which raise a reasonable inference of law, G that inference cannot be excluded from the consideration of the court. See Vanderwells Trusts (No.2) White & Ors v. Vanderwell Trustees Ltd (1974) Ch. 269, 322; (1974) 3 All ER 205. I therefore do not consider that the appellant needed to have pleaded that the H respondent acted in excess of her duty. It is for the purposes of this action sufficient for the appellants to have pleaded as it did with regard to the increases of rent made by the respondent.**

I now turn to consider whether the court below was right in the interpretation given to the provisions of Exhibit 1 which reads:-

“And whereas the sub-lessor has agreed to lease to the sub-lessee ALL THAT Office/Shop/Dwelling House being the building erected on the said plot for a term of years from the 1st day of March, 1977, at rent at the rate of N30.00 (Thirty Naira) Nigerian currency per annum (sic) payable as hereafter specified as stipulated by the Plateau State Rent Edict subject to further changes in respect of the rent by the Federal Government of Nigeria.”

In clause 2(a) of the Deed of Sub-lease, Exhibit 1 reads:-

“(a) To pay rent for the term of one month in advance the sum of Thirty Naira representing one month rent having being (sic) paid by the Sub-lessee to the Sublessor on or before the execution of these present the receipt whereof the Sub-lessor hereby acknowledges.”

Now the phrase, “subject to” which occurs in Exhibit 1, and has to be construed to determine what effect if any the phrase has on the provisions of Exhibit 1 will first be considered. This phrase is not uncommon in the context of its use in statutes and was construed in the decision of this court in Labiyi v. Anretiola (supra) at pp. 163-164 thus:-

“The phrase “subject to” in the section is significant. The expression is often used in statutes to introduce a condition, a proviso, a restriction and indeed a limitation. See *Oke v. Oke* (1974) 3 S.C. (Reprint) 1; (1974) 1 AII NLR (Pt. 1). The effect is that the expression evinces an intention to subordinate the provisions of the subject to the section referred to which is intended not to be affected by the provisions of the latter. See *Aqua Ltd. v. Ondo State Sports Council* (1988) 4 NWLR (Pt. 91) 622. In other words, where the expression is used at the commencement of a statute, as in Section 1(2) of the Decree No. 1 of 1984, it implies that what the subsection is “subject to” shall govern and prevail over what follows in that section or sub-section of the enactment. See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 529.”

In the instant case, though the phrase occurs at the beginning

of the Deed of Sub-lease Exhibit 1, but at the end, it does not make any difference to the fact that the use of that phrase was inserted in its provisions in order to make the increase of rent in respect of the allotted housing units to be subject to the approval of the Federal Government. The appellants have argued that the respondent did not receive any such approval. But throughout the proceedings in the case, there is no positive evidence or indeed any pleading to that effect. Without any challenge concerning this aspect of the case, it must be presumed in favour of the respondent that as it was aware of the provisions of Exhibit 1, which requires the approval of the Federal Government of Nigeria to effect the increase in rent payable by the appellants, such approval had been obtained by the respondent. In the absence of evidence to the contrary, I will for the above reasons hold that each of the increase in rents levied by the respondent against the appellants for each of their housing units was done properly within the stipulations in the provisions of Exhibit 1.

Issue 3

The question raised in this issue turns again on whether the pleadings disclosed that the respondent was merely a management agent and no more. The pleadings, as disclosed in paragraphs 3, 6 & 12 of the Further Amended Statement of Claim, are as follows:-

"3. In or about 1975 the Federal Government of Nigeria through the Federal Ministry of Housing, Urban Development and Environment, Lagos, constructed housing units under phase 1 of the Federal Government Housing Scheme in all States of the Federation and along Miango Road, Jos, Plateau State.

6. The defendant is the Management Agent of the said Federal Housing Units Phase 1, Miango Road, Jos, for and on behalf of the Federal Government of Nigeria, by virtue of Section 10(1)(g) of Plateau State Housing Corporation Edict, 1988, and also Section 2(1) of the Plateau State Investment (Takeover of Other Government-Owned Investments) Law 1992. By a letter dated 9/12/91 from the General Manager Federal Housing Authority to the Legal Adviser, FHA, it was emphasized that the house now in dispute is being managed by the defunct Plateau

Housing Authority.

12. The plaintiffs aver that the defendant does not own the Federal Low Cost Housing Estate Phase 1, Rantya Miango Road, Jos but are merely managing same for the Federal Ministry of Works and Housing.”

B And the respondent by paragraphs 5 & 12 of the Further Amended Statement of Defence joined issues with the appellants thus:-

“5. The defendant admits paragraph 3 of the Statement of Claim.

12. The defendant denies paragraph 12 of the claim and puts the defendant (sic) to their strictest proof thereof. And in further answer the
C *defendant avers that by circulars on interval directives and policies, the entire housing estate was first handed over to the Plateau State Ministry of Works for management. And it was from then the ownership was dissolved (sic) through the defunct Plateau Housing Corporation to the*
D *present defendant. All relevant documents towards the said devolution to the defendant are hereby pleaded and shall be relied upon at the hearing of this suit.”*

There is therefore no doubt that the pleadings clearly disclosed what
E the appellants considered to be the position of the respondent as management agent.

The other aspect of this appeal relates to the finding of the court below that the respondent was an agent without liability. It is my view that it is no longer germane to the determination of this
F **appeal having regard to what I have said above. But be that as it may the contention that that was not pleaded is not of any moment. This is because the finding was properly raised from the facts pleaded. I therefore resolve this issue against the appellants.**

G **The last issue which I need to consider in this appeal is the contention of the appellants that by virtue of Exhibit 2, the appellants were entitled to have the various housing units they were allotted and are living in the right of the first option to buy the said**
H **housing units. On the other hand, the respondent’s contention is that the appellants not being a party to the document, Exhibit 2, cannot sue on it. There is merit in that submission. It must be said also that with the changes that had occurred with the status of the**

respondent as the successors to the original managers of the housing unit, the appellants ought to have sought and obtained a new sublease from the respondent. This they did not do. In the result, this issue must be resolved against the appellants.

In the result, this appeal lacks merit and is dismissed by me. I award costs in the sum of N10,000.00 against the appellants.

BELGORE JSC

I agree with the lead judgment of my learned brother, Ejiwunmi, JSC. For the reasons set out on all the issues in this appeal in the said judgment, I also find no merit in this appeal and I dismiss it. I award N10,000.00 costs against the appellants in favour of the respondents.

ONU JSC

Having been privileged to read in draft before now the judgment of my learned brother, Ejiwunmi, JSC., just delivered, I agree with him that the appeal lacks merit and ought therefore to fail.

Appellants were tenants who lived on an estate on Miango Road near Jos in Plateau State of Nigeria and to which they sought the under-listed reliefs against the respondents in the trial court but failed, as follows:

“A declaration that :-

(a) The Federal Low Cost Housing Estate Phase I Miango Road, Jos, is the property of the Federal Government of Nigeria.

(b) By virtue of the Deed of Sub-lease dated 13/4/77 made between the plaintiffs and the defendant, the defendant as Management Agent for the Federal Ministry of Works and Housing cannot increase the rentage on the premises without the prior approval of the Federal Government of Nigeria and therefore the defendant’s Notice of Increase in Monthly Rent and Revocation of Application Forms/Tenancy Agreement Ref. No. PHC/ S/GEN/86/6 dated 28/11/89 as it pertains to the plaintiffs is null and void and of no effect whatsoever.

(c) The plaintiffs are entitled to be given first option of outright

purchase of the units occupied by them respectively at the Federal Low Cost Housing Estate, Phase I, Miango Road, Jos, by virtue of circular Ref. No. HS/2/140 dated 9/4/76 issued by the Federal Ministry of Housing, Urban Development and Environment.

B (d) *An order of injunction restraining the defendant, their agent or servants howsoever from increasing the rentage on the premises or ejecting the plaintiffs therefrom except in accordance with the Deed of Sublease dated 13/4/77 or by due process of law.”*

C The respondent being dissatisfied with that decision appealed to the court below, i.e., the Court of Appeal sitting in Jos premised on eight grounds.

Instead of going the whole hog to consider all five issues formulated and submitted as arising for determination of this court by the appellant,
D I am of the view that a brief treatment of issue 3 thereof will do to dispose of this appeal as follows:-

That question (issue 3), which turns on whether the pleadings (in the case as made) queried if the respondent was merely a management
E agent and no more. To answer the question, it is pertinent to examine the pleadings as disclosed in paragraphs 3, 6 and 12 of the Further Amended Statement of Claim in which it was averred thus:

“3. *In or about 1975 the Federal Government of Nigeria through
F the Federal Ministry of Housing Urban Development and Environment, Lagos, constructed housing units under phase I of the Federal Housing Scheme in all States of the Federation and along Miango Road,’ Jos, Plateau State.*

6. *The defendant is the Management Agent of the said Federal
G Housing Units Phase I, Miango Road, Jos, for and on behalf of the Federal Government of Nigeria by virtue of Section 10(1)(g) of Plateau State Housing Corporation Edict, 1988 and also Section 2(1) of the Plateau State Investment (Takeover of Other Government, owned Invest-
H ment) Law 1992, by a letter dated 9/12/91 from the General Manager Federal Housing Authority to the Legal Adviser FHA it was emphasized that the houses now in dispute is (sic) being managed by the defunct Plateau Housing Authority.*

12. The plaintiffs aver that the defendant does not own the Federal Low Cost Housing Estate, Phase 1, Ramtya Miango Road, Jos, but are merely managing same for the Federal Ministry of Works and Housing.”

By paragraphs 5 and 12 of the Further Amended Statement of Defence the respondent joined issues with the appellants by pleading thus:

“5. The defendant admits paragraph 3 of the Statement of Claim.

12. The defendant denies paragraph 12 of the claim and puts the defendant (sic) to the strictest proof thereof. And in further answer, the defendant avers that by circulars on interval directives and policies the entire housing estate was first handed over to the Plateau State Ministry of Works for Management. And it was from then the ownership was dissolved (sic) through the defunct Plateau Housing Corporation to the present defendant. All relevant documents towards the said devolution to the defendant are hereby pleaded and shall be relied upon at the hearing of this suit.”

From the foregoing, it is manifest that the pleadings clearly disclosed what the appellants considered to be the position of the respondent, to wit: as management agent.

The other aspect of this appeal relating to the finding of the court below to the effect that the respondent was an agent without liability being superfluous is no longer of any purport to the decision of this appeal and so becomes otiose.

For these reasons and the more compelling ones proffered in the leading judgment of my learned brother. Ejiwunmi. JSC., I too dismiss the appeal as lacking in merit and I make a similar award as to costs as contained therein.

It is noteworthy to stress that the apology of learned counsel for the appeal though belatedly sent to this court in atonement for his arrant impertinence is accepted provided that such is not repeated in future.

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MUSDAPHERJSC

I have read before now the judgment of my Lord Ejiwunmi, JSC., just delivered with which I entirely agree. For the same reasons so clearly and comprehensively set out in the aforesaid judgment which I respectfully adopt as mine, I too find this appeal unmeritorious and it is accordingly dismissed by me. I abide by the order for costs contained in the said judgment.

EDOZIEJSC

The controversy between the parties in this appeal centres around the property described as the Federal Low-cost Housing Estate Phase I, Miango Road, Jos. Admittedly, the estate comprising of several housing units was part of the estate established by the Federal Government throughout the States of the Federation under its housing programme. The Estate at Miango Road, Jos, hereinafter referred to as the property in dispute, was subsequently handed over for management to the defunct Plateau State Housing Authority, the predecessor-in-title of the Plateau Investment and Property Development Company Limited, the present respondent, which claims that it has become vested with the ownership of the said property in dispute. According to the Federal Government circular letter No. HS2/140 of 9/4/76, (Exhibit 2), the housing units were, inter alia, to be allocated to civil servants and other interested Nigerians. The appellants are representatives of about 88 allottees of units of houses in the property in dispute who have sued the respondent for reliefs set out in the leading judgment. One of the dominant issues agitated by the parties on which I wish to express an opinion relates to the appellants' claim to be given the option of outright purchase of their respective housing units. Their claim is predicated on Exhibit 2, paragraph 3 thereof which reads inter alia as follows:-

"3. The Federal Executive Council has decided that 15% of all houses built in phase 1 should be allocated to civil servants for use as Government Quarters. All houses (other than those used as Government

Quarters) will be let on tenancy basis for a period of three years after which all tenants considered suitable will be given option of outright purchase of such houses"

In my humble view, the above excerpt of part of paragraph 3 of Exhibit 2 is merely a policy statement or guideline, the non-implementation of which does not entitle the appellants to a legal redress against the respondent. It did not create a contractual relationship between the parties to this appeal. If it was an agreement between the Federal and State Governments or their agencies, the appellants cannot maintain an action thereunder, they being strangers to the agreement. This is the principle of privity of contract which recognizes that only parties to a contract can maintain an action thereunder: See *A-G of the Federation v. A.I.C. Ltd.* (2000) 6 S.C. (Pt. I) 175; (2000) 10 NWLR (Pt. 675) 293 at p. 297; *Dunlop v. Selfridge* (1915) AC 847; *Chuba Ikpeazu v. A.C.B Ltd.* (1965) NMLR 374. As the appellants entered into no contractual relationship with anybody by virtue of Exhibit 2, their contention for option to outright purchase of the housing units is not well founded.

It is for the foregoing, in addition to the detailed reasons given in the leading judgment of my learned brother, Ejunmi. JSC., that I also dismiss the appeal with an endorsement of the order as to costs contained in the said judgment.

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