

**SUPREME COURT OF NIGERIA**  
27TH JUNE, 2008. SC. 219/2002  
**CORAM:- D. MUSDAPHER, S. A. AKINTAN,**  
**M. MOHAMMED, W. S. N. ONNOGHEN,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

JOYLAND ..... APPELLANT  
AND  
WEMABOD ESTATES LTD ..... RESPONDENT

COURTS - Monetary jurisdiction - Whether exceeded - There is uncontroverted evidence that annual rental value of property in issue is N15,000 - Trial magistrate did not exceed his powers therefore - By assuming jurisdiction (H1)

APPEALS - Judgments - Grounds of appeal - Abandonment - Contrary to allegation of appellant - Court of Appeal did not rely on abandoned ground of appeal in its judgment (H2)

**FACTS**

Appellant/applicant had by a motion on notice applied to the Lagos High Court for an order of certiorari to set aside the proceedings before Magistrate Court Grade 1, Lagos State on the ground that the magistrate acted in excess of his monetary jurisdiction by entertaining the action-subject of the proceedings. The relevant statute was section 17 (c) of the Magistrate Court Law, Cap 127, Laws of Lagos State which limited jurisdiction to matters where the annual value of rent in respect of the property does not exceed N15,000.

It was common ground that annual value of rent for the property in issue was N15,000. Yet the learned trial judge held that the proceedings before the magistrate was in excess of his jurisdiction and accordingly, set aside the proceedings. The respondent appealed to the Court of Appeal, which court allowed the appeal and reversed the decision of the High Court. Dissatisfied, appellant has brought this appeal against the judgment of the Court of Appeal.

**ISSUES FOR DETERMINATION.**

*“1. Whether the court below was right in setting aside the Ruling of High Court of Lagos State that quashed the judgment of a*

*Senior Magistrate Grade 1 in want of jurisdiction?*

2. *Whether the court below was right in holding that in the recovery of premises in Lagos State the first document that comes into force is Form F (i.e. the plaint to the tenant refusing to deliver possession)?*

3. *Having regard to the fact that court below relied on abandoned ground of appeal in its judgment, whether it was right in holding that the respondent's issue 2 at the court below was competent?"*

**HELD** (Unanimously dismissing the appeal per **MUNTAKA-COOMASSIE JSC**)

***COURTS - Monetary jurisdiction - Whether exceeded***

1. I have closely considered the issues as formulated by the appellant and agreed by the respondent in issues B1 and B2 and having looked at the leading judgment of Galadima, JCA., I hold as follows:-

*"1. There is evidence on record that the respondent as plaintiff claims possession and N15,000.00 as annual rent value no more any less.*

This evidence which has not been destroyed by the defendant disposed of the whole matter.

From the evidence of P.W.1 which the trial Senior Magistrate Grade accepted there is cogent and sufficient evidence that the actual annual rental value in this matter was N15,000: that being the case the Senior Magistrate Grade 1 in this matter acted within his powers. Again, since the annual rent value is N15,000: the law was and is still behind the action of the trial court. I resolve this issue also in favour of the respondent. (pp. 2734 H/2736 E)

***Judgments - Grounds of appeal - Abandonment***

2. It is crystal clear that the lower court is aware of what and what grounds of appeal were withdrawn.

It was clear to me that the Notice of Appeal dated 14/2/97, was not and is not among those withdrawn. That is why the court below emphasised that, *"this appeal shall therefore be argued only on the Notice of Appeal dated 14/2/97."* That Notice of Appeal is in fact extant. It is on that the lower court relied, used and utilised in reaching their decision. Issue No. 3 as formulated by the appellant cannot

therefore stand, it has no merit. It was not true that the court below relied on an abandoned ground of appeal in its judgment. The said issue 3 is therefore resolved in favour of the respondent and against the appellant. (pp. 2736 G/2737 B)

### **NOTABLE POINT OF INTEREST**

#### **MUNTAKA-COOMASSIE JSC**

##### *1. Mesne profits is an unliquidated claim*

I think there is no much difference between Mesne profit and arrears of rent, the former is only calculated monthly or yearly. It is also unliquidated while a claim of rent is liquidated already. (p. 2736 D)

### **REPRESENTATIONS**

O. E. Abang, for the Appellant.

No appearance for the Respondent but duly served.

### **CASE REFERRED TO**

Madukolu v. Nkemdilim (1962) 1 All NLR 587 - 589

### **STATUTE REFERRED TO**

Magistrate Court Law, Cap 127, Laws of Lagos State, 1994, ss. 17 (1b), (c), 53(1)

### **LEAD JUDGMENT BY MUNTAKA-COOMASSIE**

This is an appeal against the decision of the Court of Appeal, Lagos delivered on the 11th day of June, 2001, in which the appeal before it was allowed. The ruling of the learned trial Judge, Rhodes-Vivour, J., (as he then was), was set aside and judgment of the Senior Magistrate Grade 1 affirmed.

The appellant filed an *ex parte* motion before the Lagos High Court to apply for an Order of Certiorari, to set aside the proceedings before Magistrate Court Grade 1, Lagos State in Suit No. MCA/1654/96. The application was granted and the appellant subsequently filed a Motion on Notice in which he sought the following reliefs: -

*“(i) AN ORDER of Certiorari to remove into this Honourable Court for the purpose of being quashed the proceedings, decisions, judgment of Mr. Isaac, learned Senior Magistrate Grade 1 made on*

24/10/96 in a Civil Suit No MCA/ 1694/96, including warrant of possession dated 6th November, 1996, plus an Order made by Mr. Abogodo, learned Chief Magistrate Court II on 3rd January, 1997, at Apapa Chief Magistrate Court 1 on the grounds that the court lacked jurisdiction to entertain the suit.

B (ii) Order of prohibition prohibiting the above named 2nd respondent from proceeding further proceeding in Suit No MCA/ 1694/96, pending at Chief Magistrate Court 1, Apapa.”

C The application was argued by both parties, and on 14/2/97, the learned trial Judge granted same, and set aside the proceedings before the Chief Magistrate’s Court Grade I. In conclusion, the learned trial Judge held as follows:-

D “By the provisions of Section 17 (c) of the Magistrate Court Law, Cap 127, Laws of Lagos State, 1994, His Worship, A. O. Isaac clearly exceeded his jurisdiction in Suit No. MCA/1694/96 as he had no jurisdiction in civil causes or matters where the annual value or rent exceeds N15,000.00. It is settled that jurisdiction is so fundamental to nullity no matter how well conducted and decided. This is to say that proceedings before a court which lacks jurisdiction is a nullity. See *Madukolu v. Nkemdilim* (1962) 1 All NLR pages 587-589. In the light of all I have been saying, the application succeeds. It is accordingly ordered as follows:-

F “The judgment of his Worship, A. O. Isaac delivered on 24/10/96, in Suit No. MCA/1954/9C together with warrant of possession dated 6/11/96, is hereby quashed.” See page 56 of the record.

G The respondent was not satisfied with this decision and appealed to the Court of Appeal (Lagos Division), hereafter called the court below, Notice of Appeal was filed on 12/11/97 and was dated 14/2/97.

At the lower court, the Notice of Appeal and Brief were discontinued and withdrawn. See p. 100 of the record.

H The following Notices of Appeal dated 14/2/97, 30/4/97 and 21/11/97, were filed respectively. Again, Notices of Appeal dated 30/4/97, and 21/11/97 together with the appellants Brief were discontinued and withdrawn. In the court below, the appeal was taken and argued mainly on the Notice of Appeal dated 14/2/97. After the hearing of the appeal, the lower court delivered its judgment on 11/6/

2001, wherein the appeal was allowed. In conclusion, the lower court held as follows on pp.137 and 138 of the record:-

(Underlining mine)

*“In an application for an Order of Certiorari, the court is guided by the following principles (even though not exhaustive): -*

*(a) Whether or not the order will (sic) issue does not only depend on whether the error complained of is errors of law or fact. The error must disclose excess of jurisdiction and error in law must be one on the face of the record;*

*(b) The superior court is to bear in mind that it is not acting in appellate capacity but in a supervisory capacity;*

*(c) The superior court is to ensure not only that inferior tribunals keep within jurisdiction but that they observe the law;*

*(d) The superior court must not substitute its own views for those of the tribunals as a Court of Appeal would do;*

*(e) A person applying for an Order of Certiorari must show that the body concerned has in one way or the other failed to act judiciously where it should;*

*(f) Where all the errors complained of are neither errors going to the jurisdiction of the inferior tribunal nor were they errors in law simpliciter, the application for an Order of Certiorari must fail.*

*I must say, with due respect to the learned trial Judge, that these guidelines were not strictly followed.*

*In the final analysis, I conclude that all the points raised and argued by the appellant in this appeal succeed. Senior Magistrate Grade 1 is therefore affirmed with N5,000 as costs to the appellant.”*

The appellant being dissatisfied with the above decision has appealed to the Supreme Court. He filed a Notice of Appeal dated 7/9/2001; four grounds of appeal were raised against the decision of the lower court. The grounds of appeal without their particulars are herewith reproduced:-

A. The Court of Appeal erred in law when it held at page 3 of the judgment:-

*“The cheque for N20,000” was considered by the learned trial Judge. It is this applicant has contended in its Brief that it is an extraneous document. Besides that it was annexed to the Motion on Notice argued by the parties. It is in view of this that I hold that the 3rd*

*ground of appeal and the second issue for determination distilled therefrom are not incompetent and cannot be dismissed..... I hold this view because of reliance placed on Exhibit A1 by the learned trial Judge in arriving at the conclusion in his Ruling.”*

B The Court of Appeal erred in law when it held at page 6 of the judgment thus:-

*“It is clear and obvious from the above section that the first document which comes into force is Form F. This is a plaint entered by the landlord as the plaintiff. It entered by the landlord as the plaintiff. Form G is issued from the Registry only to the tenant or person so neglecting. It entered by the landlord as the plaintiff. It would appear to me that in his ruling, the learned trial Judge restricted himself to the originating process alone. He did not consider the judgment of the Senior Magistrate Grade 1 to see whether he exceeded his jurisdiction or acted in want of jurisdiction”*

C The Court of Appeal erred in law when it held at page 7 of the judgment thus:-

*“If the tenancy runs from 14th March yearly and terminates on March the succeeding year, then the judgment is for 12 months and not 13 months.”*

D The Court of Appeal erred in law when it held at page 8 of the judgment thus:-

*“I must observe that in reaching decision that the learned Magistrate exceeded his monetary jurisdiction of N15,000.00 as prescribed by Section 17(4) of the Magistrate Court Law, Cap 127, of Lagos State, 1994, the learned Judge failed to consider the judgment of the Magistrate on pages 30 - 31..... Mesne profit is calculated on monthly basis when it is a monthly tenancy and yearly for yearly tenancy. It would amount to misconception of that where the cumulative Mesne profit is over monetary jurisdiction of the court, the plaintiff has to abandon the excess. The difference between Mesne profit and rent is what, claim for rent is liquidated whilst a claim for Mesne profit is unliquidated. If the sum of N20,000:00 was mentioned in Exhibit A1, it is the domestic affair of the court. It is at best a joinder of the arrears of rent and/or Mesne profit with the annual rental value. Each is a different and severable and distinct head of jurisdiction.*

In compliance with the Rules of this court, both parties filed and exchanged Briefs of Argument. The appellant in its Amended Brief of Argument formulated three (3) issues for determination as follows: -

*"1. Whether the court below was right in setting aside the Ruling of High Court of Lagos State that quashed the judgment of a Senior Magistrate Grade 1 in want of jurisdiction?"* B

*2. Whether the court below was right in holding that in the recovery of premises in Lagos State the first document that comes into force is Form F (i.e. the plaint to the tenant refusing to deliver possession)?"* C

*3. Having regard to the fact that court below relied on abandoned ground of appeal in its judgment, whether it was right in holding that the respondent's issue 2 at the court below was competent?"*

The respondent in its Brief of Argument adopted the issues for determination as formulated by the appellant:- D

*"(1) Whether the court below was right in setting aside the Ruling of High Court of Lagos State that quashed the judgment of a Senior Magistrate Grade 1 in want of jurisdiction?"*

The grudge of the appellant under this issue is that the lower court did not accept that the trial Senior Magistrate Grade 1 has exceeded his jurisdiction by ordering the appellant herein to pay the respondent the total sum of N53,400.00 over and above his statutory limitation of N15,000.00. Learned counsel strenuously contended that the Senior Magistrate Grade 1 had no power under Sections 17 (1)(b); 53 (1) of the Magistrate Court's Law, Laws of Lagos State, 1994, Cap 127. E  
F

He submitted that a Senior Magistrate Grade 1, in Lagos State Magisterial District can only exercise jurisdiction in respect of a property where the annual rental value or rent does not exceed N15,000.00. These provisions, learned counsel added, do not include mesne profit. The provisions only relate to annual rental value of the property or its rent not exceeding N15,000.00.

Learned counsel insisted that the learned Senior Magistrate Grade 1, not only gave judgment for arrears of rent which was over his jurisdiction but also awarded N1,250.00 mesne profit from April until possession was given up. H

B Learned appellants counsel argued extensively against the consideration of the arrears of rent and mesne profit by the trial Magistrate especially when they exceed his civil monetary jurisdictional limit which is N15,000.00. He submitted further that the lower court should have affirmed the decision of the High Court of Lagos State that declared the decision of the trial Senior Magistrate a nullity for exceeding its jurisdiction. He urged this court to resolve issue one in favour of the appellant.

C The respondent decided to argue together both issues 1 and 2 and termed same as issue B1 and B2 as follows:-

B1- *“Whether the court below was right on setting aside the Ruling of the Lagos High Court that quashed the judgment of a Senior Magistrate Grade 1 in want of jurisdiction?”*

D *Issue B2- Whether the court below was right in holding that in the recovery of premises in Lagos State the 1st document that comes into force is Form F (i.e. the plaint to the tenant refusing to deliver possession)?”*

E In arguing these issues, learned respondents counsel referred to the Record of Proceedings of the Magistrate Court and Form F which was filed on the 16th August, 1996. This Form F was the determining factor in the magistracy. The appellant being a yearly tenant and only N15,000.00 per annum was stated on Form F and according to the respondent herein N15,000.00 is within the powers of the Magistrate concerned. The mesne profit on Form F, which F cumulatively amounted to N15,000.00 annually. That being the case, the claim is perfectly in order and well within the jurisdiction of the Senior Magistrate Grade 1 .

G On this issue B1, learned respondent counsel in their Brief, page 5 thereof submitted that the originating process in the court of first instance is Form F and that N15,000.00 is the annual rental value having regard to the originating process and the judgment of the Magistrate, for that reason the issue must be resolved against the appellant. He urged us to refuse this issue and to dismiss the appeal.

H ***I have closely considered the issues as formulated by the appellant and agreed by the respondent in issues B1 and B2 and having looked at the leading judgment of Galadima, JCA., I hold as follows:-***



***“1. There is evidence on record that the respondent as plaintiff claims possession and N15,000.00 as annual rent value no more any less. I refer the evidence of P.W.I, one Akin Odidi, she says:- “.....I am the plaintiff company’s legal officer in the plaintiff company’s legal department. I know the defendant. He is our tenant occupying one storey building with boys quarter situate 12/14 Ashanti Street, Apapa. Defendant is a yearly tenant paying N15,000.00. Defendant is a bad tenant.....”***

***This evidence which has not been destroyed by the defendant disposed of the whole matter.***

The defendant is a yearly tenant paying N15,000.00 yearly. The issue all along has been to recover the annual rent, no less any more. What the law say?

Section 17 (1b) of Magistrate Court’s Law, Cap 127, Laws of Lagos State, referred to by the appellant in their Amended appellant’s Brief page 4 thereof provides thus:-

*“Subject to the provisions of the Constitution and this and any other enactment, a Chief Magistrate Grade 1 shall have and exercise jurisdiction in civil causes or matters;*

*‘(a) .....*

*(b) In all actions between landlord and tenant for possession of any land or have claimed under an agreement or refusal to be delivered up, where the annual rental value or rent does not exceed twenty-five thousand naira.’*

Descending down, Section 17 (4) (A) of Magistrate Courts provides-

*“Senior Magistrate Grade 1 and 2 and Magistrate Grade 1, 2, 3 shall have and exercise jurisdiction in civil causes set out in subsection 3 save thou subsection (1) shall have effect as if for the references therein to Twenty-Five Thousand Naira that were substituted:*

*‘(a) In relation to a Senior Magistrate Grade 1 reference to Fifteen Thousand Naira.”*

It is amazing that the appellants counsel on p. 4 of their Brief submitted that Magistrate Grade 1 in Lagos State Magisterial District as at the time judgment was entered can only exercise jurisdiction in respect of a property where the annual rental value or rent does not exceed N15,000:00:-

“In a way, the appellant, the respondent and the law are speaking the same language; that our concern and that of the law is the annual rental value simpliciter. That being the case. Form F and or writ talked about the annual rent value, the relevant law, referred to above also talks within the issue of annual rental value. The decision  
B of the trial Senior Magistrate Grade 1 confines itself within the content of the law. The lower court saw it that way and held that the Senior Magistrate Grade orders and decisions are quite in order and did not exceeds its limit of N15,000.00. The said court below referred  
C to the judgment of the learned Senior Magistrate on pages 30 -31 of the record where he postulated and posited thus: -

“*The plaintiff claim from the defendant possession of one storey building with boys quarters of N15,000.00 being arrears of rent for March, 1993 to March, 1994, and Mesne profit thereafter at the rate  
D of N1,250 per month from 1st April, 1994.*”

I think there is no much difference between Mesne profit and arrears of rent, the former is only calculated monthly or yearly. It is also unliquidated while a claim of rent is liquidated already.

This could be without difference.

***From the evidence of PW.1 which the trial Senior Magistrate Grade 1 accepted there is cogent and sufficient evidence that the actual annual rental value in this matter was N15,000 that being the case the Senior Magistrate Grade 1 in this matter acted within his powers. Again, since the annual rent value  
F is N15,000 the law was and is still behind the action of the trial court. I resolve this issue also in favour of the respondent.***

On the 3rd issue, I have meticulously gone through the sub-  
G missions of both the appellant and the respondent vis-a-vis the decision of the lower court. In the course of this exercise I thought this is plainly and hopefully, a mistake of fact and I should not have dissipated further energy on this issue. ***It is crystal clear that the lower court is aware of what and what grounds of appeal were with-  
H drawn.*** From the onset on page 128, learned Justice of the lower court who delivered the leading judgment has this to say:-

“*The appellant was dissatisfied with the Ruling and gave Notice of Appeal filing originally three grounds of appeal, ground two of*

*which was later abandoned. The appellant gave notice to discontinue the Notice of Appeal (dated 30/4/97 pages 75 - 78) and 21/11/97 (pages 90 - 92) of the records. This appeal shall therefore be argued only on the Notice of Appeal dated 14/2/97."*

The lower court by the above statement shows and displays knowledge and awareness of those grounds of appeal the respondents sought to withdraw. ***It was clear to me that the Notice of Appeal dated 14/2/97, was not and is not among those withdrawn. That is why the court below emphasised that, "this appeal shall therefore be argued only on the Notice of Appeal dated 14/2/97." That Notice of Appeal in fact is extant. It is on that the lower court relied, used and utilised in reaching their decision. Issue No. 3 as formulated by the appellant cannot therefore stand, it has no merit. It was not true that the court below relied on an abandoned ground of appeal in its judgment. The said issue 3 is therefore resolved in favour of the respondent and against the appellant.***

Since I hold that all the issues formulated by the appellant failed I hold the view that the lower courts resolutions on the matter before it were decided correctly. Their decisions cannot be faulted. The law is behind them. The Senior Magistrate Grade 1 was perfectly in order to have assumed jurisdiction in a claim of annual rental value of N15,000.00, and was also very correct, when he made the said orders. Appeal is therefore dismissed for lacking in merit. N50,000.00 costs to the respondent.

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### MUSDAPHER JSC

I have read before now, the judgment just delivered by my Lord, Muntaka-Coomassie, JSC., with which I agree. For the same reasons contained therein which I respectfully adopt as mine, I too, find the appeal unmeritorious and I accordingly dismiss it and I abide by the order for costs proposed in the aforesaid judgment.

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### AKINTAN JSC

The appellant commenced this action at the Lagos High Court by filing an ex parte motion in which he prayed the court for an Order of Certiorari to set aside or quash the proceedings of the Se-

nior Magistrate Grade 1 delivered on 24/10/96 in a civil Suit No. MCA/1694/96. The dispute that formed the subject-matter of the case was an application made by the respondent for possession of a property and mesne profit let by the respondent to the appellant. The annual rental value of the property was given by the plaintiff (now respondent) as N15,000.

The learned Senior Magistrate granted the plaintiff's request. But the order made by the Senior Magistrate was set aside by the High Court on the ground that the learned Senior Magistrate exceeded the jurisdiction conferred by law on his court. An appeal to the court below from the decision of the High Court was allowed and the orders made by the learned Senior Magistrate were restored. The present appeal is from the judgment of the court below.

The main issue canvassed in the appeal is whether the learned Senior Magistrate had jurisdiction to entertain the claim. I had the privilege of reading the draft of the leading judgment prepared by my learned brother, Muntaka-Coomassie, JSC. He has fully discussed the subject-matter and came to the conclusion based on the statutory provision which set up the court, that the court had jurisdiction to entertain the claim. In the result, I agree with that conclusion and I accordingly dismiss the appeal with N50,000 costs in favour of the respondent.

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**ONNOGHEN JSC**

I have had the advantage of reading in draft the leading judgment of my learned brother, Muntaka-Coomassie, JSC., just delivered and I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

My learned brother has exhaustively dealt with all the relevant issues raised in the appeal and resolved same. I therefore have nothing useful to add.

The appeal is accordingly dismissed. I abide by the consequential orders made in the said leading judgment including the order as to costs.