

**SUPREME COURT OF NIGERIA**  
FRIDAY 24TH MAY, 2013. SC. 35/2003  
**CORAM:- M. S. MUNTAKA-COOMASSIE, N. S. NGWUTA,**  
**O. ARIWOOLA, C. B. OGUNBIYI, S. S. ALAGOA, JJSC**

DR. MICHAEL EMUAKPOR ABEKE ..... APPELLANT  
AND  
1. BARRISTER A. A. ODUNSI  
2. SKYLINE HOTEL LTD ..... RESPONDENTS

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COURTS - Contempt of - Meaning - This is conduct that defies authority of court or legislature - And since it interferes with administration of justice - It is punishable by fine or imprisonment (H1)

APPEALS - Hearing - Contempt of court - Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2)

APPEALS - Right of hearing - Order of court - Contempt - Right to be heard differs from right to enforce a right whilst still in disobedience - And appellant on facts of the case - Cannot be denied of being heard on appeal (H3)

LANDLORD & TENANT - Landlord's title - Denial of - Tenant that denies that his landlord is the owner of the premises he lives in - Is liable to forfeit the tenancy (H4)

LANDLORD & TENANT - Appeal - Parties - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their claim of ownership of the property - As parties are bound by their pleadings (H5)

LANDLORD & TENANT - Tenant - Meaning of - Under the Rent Control Law s. 40(i) - Tenant is an occupier of any premises - Whether on payment of rent or otherwise - But not an occupier claiming to be the owner of the premises (H6)

LANDLORD & TENANT - Tenant at sufferance - Such tenancy arises where a tenant with valid tenancy holds over - Without landlord's assent - And such a tenant differs from a trespasser - And a tenant at will (H7)

LANDLORD & TENANT - Notice to quit - Entitlement - Respondents' denial of landlord's title over the property in issue - Has robbed them of entitlement to the statutory notice (H8)

LANDLORD & TENANT - Mesne profits - Meaning - These are profits that accrue between when a tenant ceases to hold premises - And the date he gives up possession (H9)

LANDLORD & TENANT - Mesne profits - Claim for - Basis - Claim for such profits is generally based on trespass - And it is inappropriate in respect of lawful occupation as a tenant (H10)

LANDLORD & TENANT - Mesne profits - Entitlement - As quit notice was not served on respondents - Appellant is not entitled to the profits - But to damages for use and occupation of the property (H11)

### ***FACTS***

Plaintiff/appellant purchased the property in issue from the estate of Michael Abiodun Joseph for the sum of N1.1 million. Defendants/respondents who were tenants in the property challenged appellant's authority and ownership of the property on the ground that the estate of Michael Abiodun Joseph ought to have given them the first option to purchase the property. In an earlier suit No. LD/3626/93 involving the parties, the court had held per Adeyinka J. (as he then was), that appellant was the beneficial owner of the property and was entitled to recover possession of same from respondent on service of the relevant statutory notice. Pursuant to the judgment, appellant filed this action at the High Court of Lagos State, claiming the ownership of the property and an order for entitlement to be paid mesne profits. 1<sup>st</sup> respondent had in his statement of defence, claimed not to have paid rent to appellant. However, the same 1<sup>st</sup> respondent made a u-turn in his evidence in chief, claiming the ownership of the property.

At the end of trial, the court declared appellant as the owner of the property and ordered respondents to pay him the mesne profits. Respondents appealed to the Court of Appeal, Lagos Division. The court set aside the judgment of trial court and dismissed appellant's claims and ordered appellant to refund the sum of N638,000.00 paid to the High Court, Lagos and collected by the appellant without order of court and also to give up possession of the property in dispute within seven days from the 26<sup>th</sup> January, 2000. Dissatisfied, appellant appealed to Supreme Court. Respondents have among other things in their preliminary objection contended that appellant is in breach (in contempt) of the aforesaid orders of the Court of Appeal and thus is not supposed to be heard.

### **ISSUES FOR DETERMINATION**

*"1. Whether the respondents denied the title of the appellant as the landlord of the property situate at No. 4 Oyewunmi Close, Surulere, Lagos and thereby incurred the penalty of forfeiture of their tenancy.*

*2. Whether the respondents are entitled to be served Statutory Notices in spite of their denial of the appellant's title to the property.*

*3. Whether from the facts of this case, the appellant in this case is entitled to mesne profit."*

**HELD** (Unanimously allowing the appeal in part per **ARIWOOLA JSC**)

*COURTS - Contempt of - Meaning*

**1. A contemnor is a person who is guilty of contempt before a government body such as a court or legislature. Contempt therefore is a conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable by fine or imprisonment. In other words, a civil contempt is the failure of a party to obey a court order that was issued for another party's benefit.** (p. 2297 F)

*APPEALS - Hearing - Contempt of court*

**2. However, generally, the common law principle which precludes persons in disobedience of the order of the court from being heard in respect of the matters in which they stand in disobedience has been settled. In *Hadikinson vs. Hadikinson* (1952) 2 All ER 567 at 573; DENNING, LJ; opined thus:**

*"I need hardly say that it is very rare for this court to refuse to hear counsel for an appellant. No matter how badly a litigant has behaved, nevertheless, generally speaking, if he has a right of appeal, he has a right to be heard, for the simple reason that, if he is not heard, his right of appeal is valueless... the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the cause of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."*

**There are however a few exceptions to the general rule. The principle does not apply to applications by an alleged contemnor challenging the order on the ground of lack of jurisdiction by the court. (p. 2299 A)**

*APPEALS - Right of hearing - Order of court - Contempt*

**3. There is a clear distinction between the right to be heard in defence of the order made and the right to enforce yet an order whilst in disobedience. The right to be heard is clearly different from the right to enforce a right whilst still in disobedience**

**In the light of the peculiar facts of this case, I am not in the slightest doubt that the appellant cannot be said to be a contemnor who is in contempt of an order of court capable of denying him of hearing on appeal against a final judgment of the court below. Without any further ado, I hold that the preliminary objection lacks merit and should be discountenanced. (p. 2299 F)**

*Landlord's title - Denial of*

**4. On the effect of denial by a tenant of his landlord's title, it is instructive to note that the court below had agreed that a tenant that denies that his landlord is the owner of the premises he lives in is liable to forfeit the tenancy. The court below relied on Woodfall Landlord and Tenant, 27th Edition paragraph 29 at p 18. In this authority it is stated thus:**

***"Tenant is stopped from disputing landlord's title. It is one of the first principles of the law of estoppel as applied to relations between landlord and tenant that a tenant is stopped from disputing the title of his landlord. This applies to written and oral tenancy agreement as well as to leases under seal. Thus a lessee cannot dispute his lessor's title by setting up an adverse title whilst relating (sic, retaining) possession."***

**It is therefore noteworthy on this issue that not only did the respondents state that the appellant was not the owner of the property by denying his title to same as the landlord, the respondents, through the 1st respondent even claimed to be the owner of the said property. One wonders, what can be more an adverse title to same property than this claim to title by the respondents. (pp. 2301 E/2302 G)**

*Appeal - Parties - Pleadings - Consistency*

**5. There is no doubt that the position now being taken in this court by the respondents was different from their stance before the trial court. The respondents had earlier maintained that they were not tenants but rightful owners of the property in question notwithstanding the judgment of Adeyinka, J which had earlier settled the issue of ownership of the said property as between the appellant and the respondents, in favour of the appellant.**

**Interestingly, the respondents had contended that the issue of denial of appellant's title was never pleaded and not made an issue. But this is very clear from the records and it is apparent that by stating that he is not a tenant but an owner of the property, possession of which was being claimed, the respondents had raised an adverse title to that of the appellant. It is trite law indeed, that parties are bound by their pleadings.**

**The respondents had admitted that since 1992 after the appellant claimed to have bought the property from the previous owners they had not paid any rent, though they gave their reason for doing so as the dispute then over the ownership of the said property. It is trite law that parties as litigants are not permitted to approbate and reprobate in the conduct of their case. A party should not be allowed to make up a different case on appeal from what he pleaded before the trial court. (p. 2303 H)**

***Tenant - Meaning of***  
**6. Who then is a tenant? Under the Rent Control and Recovery of Residential Premises Law - Section 40(i) provides thus:-**  
***“Unless the content otherwise requires “tenant” includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise but does not include a person occupying Premises under a bona fide claim to be the owner of the premises.”***

**The qualification, therefore, for becoming a tenant under the Law is lawful occupation. (p. 2304 E)**

***Tenant at sufferance***  
**7. However, where a tenant for a fixed term refuses at the expiration of his tenancy to vacate possession and wrongfully, that is, without the consent of the landlord, continues in possession, he would at common law be a tenant at sufferance. A tenancy at sufferance arises where a tenant, having valid tenancy, holds over without the landlord’s assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from tenant at will in that his tenancy exists without the landlord’s assent. The tenancy may be determined or terminated at any time; and may be converted into a yearly or other periodic tenancy in the usual way. (p. 2304 G)**

***LANDLORD & TENANT - Notice to quit - Entitlement***  
**8. Can the respondents herein be said to be tenants of the appellant in the circumstance described above? Even though**

**the judgment of Adeyinka, J, had settled the issue of ownership of the property in favour of the appellant against the respondents, the 1st respondent thereafter still claimed to be the owner of the same property and clearly stated, not in so many words, that he is not a tenant of the appellant. If the respondents were not tenants to the appellant and by the judgment of Adeyinka, J and they are not owners of the property, I am of the opinion that they were not entitled to any statutory Notice from the appellant whose land lordship they had denied in clear terms.**

**There is no doubt that the respondents had denied being tenants to the appellant on the property in question. Indeed, as earlier stated, they claim to be the owners. By this denial the respondents robbed themselves of entitlement to statutory notices required to be served on a tenant. The court below was therefore with the greatest respect, in error to have held that the respondents did not deny the title of the appellant as held by the trial court. Accordingly, issues 1 and 2 argued together are hereby resolved against the respondents but in favour of the appellant. (p. 2305 B/G)**

*LANDLORD & TENANT - Mesne profits - Meaning*

**9. What is mesne profits? This expression simply means intermediate profits - that is, profits accruing between two points of time that is, between the date when the defendant ceased to hold the premises as a tenant and the date he gives up possession. As a result, the action for mesne profits ordinarily does not lie unless either the landlord has recovered possession or the tenant's interest in the land has come to an end or the landlord's claim is joined with a claim for possession.**

(p. 2306 D)

*LANDLORD & TENANT - Mesne profits - Claim for - Basis*

**10. Generally, a claim for mesne profits is based on trespass by the defendant in occupation and it is inappropriate in respect of lawful occupation as a tenant. It can only be maintained when the tenancy has been duly determined and the tenant becomes a trespasser. Therefore in any situation where**

**a tenancy is created by operation of law, the status of trespasser will not arise until the tenancy has become duly determined according to law.** (p. 2307 B)

*LANDLORD & TENANT - Mesne profits - Entitlement*

**11. There is no doubt that the respondents were in possession and occupation of the premises lawfully and they were not given the required statutory quit notice by the previous owners who were their landlords. Up till today they had not been given the said notice. As a result they are not liable to pay mesne profits to the appellant. In other words, the appellant is not entitled to mesne profits. What the appellant is entitled to, at best, is damages for the use and occupation of the property, which will ordinarily be the rent being paid to the previous owners up to the time the appellant purchased the said property and until possession of same is finally delivered by the respondents. This issue 3 on mesne profits is resolved against the appellant but in favour of the respondents.**

**The decision of the court below which set aside in totality the judgment of the trial court which granted possession to the appellant is set aside while the part of the decision of the court below on mesne profit is affirmed.** (p. 2307 G)

**NOTABLE POINT OF INTEREST**

**ARIWOOLA JSC**

**1. “Mesne profits” and “Damages for use and occupation” - Difference**

One of the differences between mesne profits and damages for use and occupation is the date of commencement. While mesne profits begin to run from the date of service of the process for determining the tenancy, damages for use and occupation start to run from the date of holding over the property. It is therefore the duty of the court to ascertain an amount which may constitute a reasonable satisfaction for the use and occupation of the premises held over by the tenant. It has been held that while previous rent may not be conclusive, it may sometimes be a guide. (p. 2306 H)



**REPRESENTATION**

Osahon Idemudia, Esq., for the Appellant

A. A. Odunsi Esq., for the Respondent

**CASES REFERRED TO**

Military Gov. of Lagos State v. Ojukwu (1986) 1 NWLR (pt. 18) 621 B

Hadikinson v. Hadikinson (1952) 2 All ER 567

First African Trust Bank Ltd vs. Ezegebu (1992) NWLR (pt. 264) 132

Oketade v. Adewunmi (2010) 8 NWLR (pt. 1224) 253

Ezomo v. A-G Bendel (1986) 4 NWLR (pt. 36) 448

Kayode v. Odutola (2001) 11 NWLR (pt. 725) 659 C

Osuji v. Ekeocha (2009) 10 SCM 72

Odunje v. Nigeria Airways Ltd (1987) NWLR (pt. 55) 126

Ahmed Debs v. Cenico Nig. Ltd (1986) NWLR (pt. 32) 846

Bramwell v. Bramwell (1942) 1 KB 370 D

Ayinde v. Lawal (1994) 7 NWLR (pt. 356) 263

Omotosho v. Oloriegbe (1988) 4 NWLR (pt. 87) 225

**STATUTE REFERRED TO**

Rent Control & Recovery of Residential Premises Law Cap. 167, ss. E  
15(1), 22(i)(e), 40(i)

**BOOKS REFERRED TO**

Black's Law Dictionary, 9<sup>th</sup> Ed. p. 360

Woodfall Landlord and Tenant, 27<sup>th</sup> Ed. para. 29 at p. 18 F

Megarry & Thompson, A Manual of the Law of Real Property 319,  
6<sup>th</sup> Ed. 1993

**LEAD JUDGMENT BY ARIWOOLA JSC**

This appeal is against the decision of the Lagos Division of the Court of Appeal, hereinafter called, the court below. The appellant herein was the plaintiff at the trial High Court of Lagos State while the respondents were the defendants. The appellant had claimed at the High Court, the following reliefs: H

*"1. An order of possession of that property known, addressed and described as No.4 Oyewunmi Close, Surulere, Lagos, which property is presently being held over and detained by the defendants in this suit.*

2. *An order directing the defendants to pay the sum of N600,000 (six hundred thousand naira) as mesne profits on the said property in dispute from the 1st of April, 1992 to the 1st of April, 1996 at the rate of N150,000.00 per annum and thereafter at the said rate pro rata up to and after the judgment of this court until vacant possession is granted.*"

The facts of this case are as follows: The appellant had purchased the property known and described as No.4 Oyewunmi close, Surulere, Lagos, hereinafter referred to as the property, from the estate of Michael Abiodun Joseph for the sum of N1.1 million (One million, one hundred thousand naira).

Consequent upon the purchase, the respondents herein who were tenants in the property challenged the appellant's authority and ownership of the property on the ground that the estate of Michael Abiodun Joseph ought to have given them the first option to purchase the property.

By the judgment of Adeyinka J. (as he then was) in suit No. LD/3626/93, the High Court declared as between the appellant and the respondents, that the appellant was the beneficial owner of the property and was entitled to recover possession of same from the defendants on service of the relevant statutory notice. Pursuant to the judgment of Adeyinka, J. (as he then was), the appellant filed another suit, the subject of this appeal, wherein he claimed as earlier stated in this judgment. In their statement of defence, the respondents admitted that they had not paid any rent to the appellant since 1992 because there was a dispute as to the ownership of the property.

In the trial, both parties called evidence. The 1st respondent in his evidence in chief testified that he was not a tenant in the property in dispute but the owner of the said property, notwithstanding the judgment of Adeyinka, J. (as he then was) which had declared the appellant the rightful owner of the property. The 1st respondent however admitted that he had no title documents to the said property. Based on the denial of the appellant's title to or ownership of the said property, the trial Judge ordered as follows:

*"(i) Possession of No. 4 Oyewunmi Close Surulere, Lagos is hereby granted to the plaintiff.*

*(ii) The defendants shall pay to the plaintiff mesne profit at the*

*rate of N50,000 per annum from 1/4/94 - 1/4/96 and thereafter at the rate pro rata up to and after this day until vacant possession is granted to the plaintiff."*

The judgment of the trial court was later set aside upon appeal to the court below by the respondents and the appellant's claims were dismissed. That decision has led to this appeal predicated on five grounds of appeal. Upon the receipt of records of appeal, pursuant to the rules of this court, parties filed and exchanged their briefs of argument. Both parties subsequently amended their respective brief of argument and the appeal was finally argued on 26/2/2013.

From the five grounds of appeal, the appellant formulated the following three issues for determination of this appeal.

#### Issues for Determination

*"1. Whether the respondents denied the title of the appellant as the landlord of the property situate at No. 4 Oyewunmi Close, D Surulere, Lagos and thereby incurred the penalty of forfeiture of their tenancy.*

*2. Whether the respondents are entitled to be served Statutory Notices in spite of their denial of the appellant's title to the property.*

*3. Whether from the facts of this case, the appellant in this case is entitled to mesne profit."*

It is note worthy that the respondents raised preliminary objection to the hearing of this appeal with their Notice filed on 04/02/2010. As required, the preliminary objection has to be dealt with first before proceeding to the appeal on merit if need be. The objection is based on the following grounds:

1. That the appellant is in contempt of the order of the Court of Appeal dated 20th January, 2000 and

2. That the appellant is also in contempt of the order of the Supreme Court dated 22nd September, 2003 striking out appellant's application for stay of execution of the judgment of the Court of Appeal dated 2nd December, 2002.

In support of the said objection is an affidavit of 4 paragraphs of which were attached and marked Exhibits AA01 and AA02 respectively.

In response and in opposing the preliminary objection of the respondents the appellant filed a counter affidavit of 4 paragraphs

deposed to by the Litigation Executive in Libra Law Office of the appellant's counsel. Attached to the said counter affidavit are 4 documents marked as Exhibits A, B, C and D respectively.

1. The facts relied upon by the respondents as deposed personally by the 1st respondent are as follows:

B *"1. That on the 26th of January, 2000 the Court of Appeal, Lagos made a mandatory order on the appellant to refund the N638,000.00 paid to the High Court, Lagos and collected by the appellant without order of court.*

C *2. That the court also ordered the appellant to give up possession of the property in dispute, 4 Oyewunmi Close, Surulere, Lagos within 7 days but the appellant has failed to comply with the said order. Copy of the ruling of the Court of Appeal is now shown to me marked AA01.*

D *3. That the Supreme Court on the 22nd September, 2003 struck out appellant's application for stay of execution of the judgment of the Court of Appeal dated 21st January, 2000 setting aside the judgment of the High Court on which appellant levied execution. Copy of the ruling of the Supreme Court is now shown to me marked*  
E *"AA02".*

*4. That I know as a fact that the appellant has not obeyed the orders of the Court up till today."*

F In the written argument on the preliminary objection the respondents submitted the following issues for determination of the objection:

(1) Whether the appellant being in contempt of the order of Court ought to be permitted any hearing.

G (2) Whether the fact that the matter from which the interlocutory order of which the appellant is in contempt has been determined is a bar to the punishment of the appellant for contempt.

H The learned counsel for the respondents submitted that the appellant being in unrepentant contempt of the order of court, that is, the Court of Appeal Order of 26th January, 2000 ought not to be heard in this appeal. He submitted that a contemnor will not be heard while he remains in contempt of an order of court, as a contemnor cannot be allowed to disregard the court in one breath and turn around to taunt the court by seeking relief from the court in another breath. He cited Military Governor of Lagos State Vs. Ojukwu (1986)

1 NWLR (Pt.18) 621.

On the second issue of this objection it was submitted by the respondents that the mere fact that the matter from which the order the appellant is in contempt of has lapsed is not a bar to the punishment of the appellant for the said contempt. The respondents however contended that the part of the judgment of the Court of Appeal directing the respondents to pay a balance of N300,000 no longer applies since the respondents won the appeal and the lower court's judgment was overturned. B

It was finally submitted by the respondents that the order of the Court of Appeal made on 26/01/2000 being a mandatory order remains in force until set aside or obeyed by the appellant. The judgment of the Court below of 2nd December, 2002 does not affect the earlier mandatory order of the court, rather it reinforces the order, as the judgment of the trial court in favour of the appellant was set aside. In conclusion the respondents submitted that the court should not entertain the appeal by virtue of the appellant's contempt of the order of the court. C D

As I stated earlier, the appellant in response to the objection filed counter-affidavit and annexed a few documents as Exhibits including the Ruling of the court below dated 6th July, 1999 and judgment of the same court dated 2nd December, 2002 marked Exhibits A and C respectively. Indeed, the appellant denied being a contemnor in contempt of court orders capable of rubbing him of the constitutional right of appeal to this court and be heard on appeal. To this end, it may be asked, who is a contemnor? E F

***A contemnor is a person who is guilty of contempt before a government body such as a court or legislature. Contempt therefore is a conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable by fine or imprisonment. In other words, a civil contempt is the failure of a party to obey a court order that was issued for another party's benefit.*** See Black's Law Dictionary, Ninth Edition page 360. There is no doubt that in its Ruling of 26/01/2000, the court below had, sequel to the respondents' application ordered the appellant as respondent to the application to: G H

i. pay over to the Deputy Chief Registrar the Court of Appeal,

Lagos Division within seven (7) days from the day of the ruling, the sum of N638,000 (Six hundred and thirty-eight thousand naira) which was the sum of money withdrawn from the Chief Registrar of High Court of Lagos, and

ii. give up possession of the said property in dispute at 4,  
B Oyewunmi Close, Surulere, Lagos within 7 days from the day of the ruling.

However, it is noteworthy that the court below added a strong proviso or condition to the giving up possession of the property by the appellant. The proviso was that, the respondents must within 7  
C days from the 26/01/2000, date of the ruling, pay over to the Deputy Chief Registrar of the court, the balance of the judgment sum, which is N300,000 (Three hundred thousand naira). The court below further ordered the court's Deputy Chief Registrar to comply with the  
D order of the court earlier made on 6th July, 1999.

It is equally worthy of note that the earlier order of the court below referred to by the court in its order now being alleged to be in contempt of by the appellant, a stay of execution of the lower court's judgment had been granted on condition that the applicants/respon-  
E dents "*pays the entire or whole judgment debt within 30 days from the 6th July, 1999, to the Registrar of the Court of Appeal. Which money was to be deposited in an interest yielding account with any of the reputable banks*".

There is no doubt that the respondents did not comply with  
F the condition contained in the proviso to the order of the court. This is clearly evident in the letter of the Deputy Chief Registrar of the court below, Lagos Division dated 18th February, 2010 (Exhibit B attached to the appellant's counter affidavit) to oppose the objec-  
G tion. The respondents were said to have failed to comply with the order of court that the sum of N300,000 be paid over to the Registrar of the court.

As earlier stated the respondents had admitted that they did not comply with the order that the balance of N300,000 be paid up  
H as condition precedent to the giving up of possession by the appellant. Their reason was that having won the appeal the court order no longer applies. In other words, the respondents not having complied with the order of the court below, as condition precedent to the compliance with the same court order by the appellant, it cannot be said

justifiably that the appellant failed to comply with the order of court and therefore not entitled to be heard. He can then not be said to be in contempt of court.

**However, generally, the common law principle which precludes persons in disobedience of the order of the court from being heard in respect of the matters in which they stand in disobedience has been settled. In *Hadikinson vs. Hadikinson* (1952) 2 All ER 567 at 573; DENNING, LJ; opined thus:**

*“I need hardly say that it is very rare for this court to refuse to hear counsel for an appellant. No matter how badly a litigant has behaved, nevertheless, generally speaking, if he has a right of appeal, he has a right to be heard, for the simple reason that, if he is not heard, his right of appeal is valueless... the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the cause of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.”*

There are however a few exceptions to the general rule. The principle does not apply to applications by an alleged contemnor challenging the order on the ground of lack of jurisdiction by the court. There is a clear distinction between the right to be heard in defence of the order made and the right to enforce yet an order whilst in disobedience. The right to be heard is clearly different from the right to enforce a right whilst still in disobedience. See *First African Trust Bank Limited & Anor vs. Basil O. Ezegbu & Anor* (1992) NWLR (Pt 264) 132, (1993) 6 SCNJ 122; (1992) LPELR 1278.

**In the light of the peculiar facts of this case, I am not in the slightest doubt that the appellant cannot be said to be a contemnor who is in contempt of an order of court capable of denying him of hearing on appeal against a final judgment of the court below. Without any further ado, I hold that the preliminary objection lacks merit and should be discountenanced.**

Accordingly, it is overruled. I shall now proceed to consider the

appeal as argued by both parties. In the respondents' amended brief of argument, two issues were distilled for determination of the appeal but I am of the firm view that the three issues formulated by the appellant from the grounds of appeal as earlier stated are more apposite than that of the respondents even though both are saying the same thing but only differently couched.

Issues 1 and 2 are to be taken together as treated by the appellants. They are: whether the respondents denied the title of the appellant as the landlord of the property situate at No. 4 Oyewunmi Close, Surulere, Lagos and thereby incurred the penalty of forfeiture of their tenancy. And whether the respondents are entitled to be served Statutory Notices in spite of their denial of the appellant's title to the property.

In arguing these issues together, learned appellant's counsel referred and quoted extensively the concurrent findings of the court below on the events that culminated in the dispute over the title to the property at No. 4 Oyewunmi Close, Surulere Lagos. How the respondents became tenants on the premises vide the agreement Exhibit F in 1982 and the tenancy was for a fixed term of five years but was not renewed formally though the respondents continued to pay the agreed annual rent up to 1991. The respondents stopped paying rents in 1992. The respondents reached an agreement with the owners that when the property was to be sold, they would be given the first choice to purchase.

According to the appellants, the respondents were indeed given the first option to purchase but failed to come up with the purchase price demanded by the owners. The appellant then bought the property in 1992. The respondents were tenants of the previous owners. After the sale, an ownership dispute ensued between the appellant and the respondents as to whom between them had validly acquired title to the property from the previous owners. The appellant won before the High Court and the respondents appealed to the court below. The court below noted then that the respondents' resistance to the appellant's title was based on an agreement which they claimed to have reached with the agents of the previous owners.

In its judgment the court below had further noted as follows:

*"The defendants never challenged the title of the previous owners' and since it was the title of the previous owners that the*



plaintiff acquired, the defendants inferentially could not be seen as challenging the title of his landlord". (See page 275 of the record).

The appellant contended that in holding that the respondents did not deny ownership of the appellant the court below stated thus:

*"The defendants on the evidence never set up an adverse title against the plaintiff. The defendants only acknowledged the title which the plaintiff acquired from the previous owners and wanted that title for themselves. It is a contradiction in terms to say that the defendants who were contending that their former landlords were the previous owners sold to them and not the plaintiff, to say that they were challenging the same title which the plaintiff claimed to have acquired from the same source. The judgment of Adeyinka J, would appear to have resolved the issue of title as between the plaintiff and the defendants until it is reversed by a higher court."*

With the greatest respect with the above, there is a misconception on this point. As the court below had acknowledged the fact that as at the time the instant case was being fought at the trial High Court, the issue of who owns the property as between the appellant and the respondents had been put to rest and settled by the Adeyinka, J's judgment then there was nothing left of the interest of the previous owners of the said property upon which the respondents can be said to be relying. It is clear that the respondents were contesting and challenging the title of the appellant to the said property.

***On the effect of denial by a tenant of his landlord's title, it is instructive to note that the court below had agreed that a tenant that denies that his landlord is the owner of the premises he lives in is liable to forfeit the tenancy. The court below relied on Woodfall Landlord and Tenant, 27th Edition paragraph 29 at p 18. In this authority it is stated thus:***

***"Tenant is stopped from disputing landlord's title. It is one of the first principles of the law of estoppel as applied to relations between landlord and tenant that a tenant is stopped from disputing the title of his landlord. This applies to written and oral tenancy agreement as well as to leases under seal. Thus a lessee cannot dispute his lessor's title by setting up an adverse title whilst relating (sic, retaining) possession."***

Still on whether or not the respondents denied the title of the appellant as the landlord of the property in question, it is further

instructive to note the testimony of the respondents in-chief and under cross examination before the trial court. The first respondent testified as DW1, inter alia, as follows:

B *"I as A.A. Odunsi have no contract with the plaintiff. Plaintiff has never shown me Certificate of Occupancy on this property. I never agreed on any rent to be paid to the plaintiff. I am not owing the money claimed in the Writ of Summons. He is not my landlord. He only claims to be the owner of the place."* (See page 20 lines 8 - 13 of the records).

C Under cross examination, DW1 stated, inter-alia, as follows:  
*"I am not a tenant in the premises. Yes I am the owner. I do not have title documents to the property."* (See page 20 lines 25 - 27 of the records).

D It is interesting to note that the above testimony by the respondents was given in the subsequent action for possession in Suit No. LD/1940/96 which has led to this appeal, after the judgment of Adeyinka, J. in Suit No. LD/3626/93, earlier instituted had settled conclusively the issue of ownership of the property in question as alluded to earlier. The court below in its judgment acknowledged  
 E that the judgment of Adeyinka, J had settled the issue of ownership of the property and the respondents so agreed in their subsequent statement of defence save that they had appealed the said judgment.

Rather amazingly, the court below still found as quoted earlier  
 F that the respondent never set up an adverse title against the appellant. Perhaps, it must be clearly stated that the title of the original owners of the premises which the court below laid emphasis on as being the title recognized by the respondents had been extinguished with the sale of same to the appellant which title or ownership was  
 G confirmed by the judgment of Adeyinka, J. It is on record that the original owners gave evidence in support of the sale of the property and transfer of title to the appellant in the earlier suit that settled the issue of ownership of the property.

H ***It is therefore noteworthy on this issue that not only did the respondents state that the appellant was not the owner of the property by denying his title to same as the landlord, the respondents, through the 1st respondent even claimed to be the owner of the said property. One wonders, what can be more an adverse title to same property than this claim to title***

**by the respondents.**

However, in supporting its decision that the respondents did not challenge the appellant's title nor create an adverse title, the court below had opined as follows:

*"The plaintiff did not put the defendants in possession of the property as tenants. The defendants were tenants of the previous owners into whose shoes the plaintiff stepped by succession having purchased the interest of the previous owners."*

The court below relied on Rent Control and Recovery of Residential Premises Law, Section 22(i) (e) in particular to hold that under that law a landlord has a duty to prove his title if such title has accrued since the letting of the premises. And that a defendant who says that a new owner is not his landlord is only daring him to show what the law requires the landlord to prove.

On the issue of statutory notices, the respondents in their brief of argument had argued that a landlord is required by law to issue notices to determine a tenancy and that on production of such notices in court, he is entitled to judgment for the recovery of the premises. They relied on Oketade Vs Adewunmi (2010) 8 NWLR (Pt. 1224) 253.

The respondents went further and contended that the length of notice required in Lagos State is governed by the Rent Control and Recovery of Residential Premises Law, Cap 167. They referred to paragraph 8 of the appellant's statement of claim on page 3 of the record to show that the appellant had pleaded only 7 days Notice of Intention to recover possession. They contended that the appellant did not plead the issue of notice to terminate the tenancy although it pleaded in paragraph 3 of the Statement of Claim that the respondents had a leasehold that had since been determined. The court below however found that the respondents were entitled to six (6) months notice as required by Section 15(1) of Residential Premises Law. They submitted that the findings of the court below was the correct position of the law and should be upheld by this court.

***There is no doubt that the position now being taken in this court by the respondents was different from their stance before the trial court. The respondents had earlier maintained that they were not tenants but rightful owners of the property in question notwithstanding the judgment of Adeyinka, J which***

***had earlier settled the issue of ownership of the said property as between the appellant and the respondents, in favour of the appellant.***

***Interestingly, the respondents had contended that the issue of denial of appellant's title was never pleaded and not made an issue. But this is very clear from the records and it is apparent that by stating that he is not a tenant but an owner of the property, possession of which was being claimed, the respondents had raised an adverse title to that of the appellant. It is trite law indeed, that parties are bound by their pleadings.***

***The respondents had admitted that since 1992 after the appellant claimed to have bought the property from the previous owners they had not paid any rent, though they gave their reason for doing so as the dispute then over the ownership of the said property. It is trite law that parties as litigants are not permitted to approbate and reprobate in the conduct of their case.*** See; Ezomo vs. AG Bendel (1986) 4 NWLR (Pt 36) 448 at 462; Kayode vs. Odutola (2001) 11 NWLR (Pt.725) 659; (2001) 7 SCM 155 Osuji Vs Ekeocha (2009) 10 SCM 72 at 93. ***A party should not be allowed to make up a different case on appeal from what he pleaded before the trial court.***

***Who then is a tenant? Under the Rent Control and Recovery of Residential Premises Law - Section 40(i) provides thus:-***

***"Unless the content otherwise requires "tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise but does not include a person occupying Premises under a bona fide claim to be the owner of the premises."***

***The qualification, therefore, for becoming a tenant under the Law is lawful occupation.*** See Ibiyemi Odunje Vs Nigeria Airways Ltd (1987) NWLR (pt. 55) 126, (1987) 4 SC 202, (1987) All NLR 398, (1987) LPELR - SC 135. ***However, where a tenant for a fixed term refuses at the expiration of his tenancy to vacate possession and wrongfully, that is, without the consent of the landlord, continues in possession, he would at common law be a tenant at sufferance. A tenancy at sufferance arises where a tenant, having valid tenancy, holds over without the***

**landlord's assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from tenant at will in that his tenancy exists without the landlord's assent. The tenancy may be determined or terminated at any time; and may be converted into a yearly or other periodic tenancy in the usual way.** See Megarry & Thompson, *A Manual of the Law of Real Property* 319, sixth edition 1993. B

**Can the respondents herein be said to be tenants of the appellant in the circumstance described above? Even though the judgment of Adeyinka, J, had settled the issue of ownership of the property in favour of the appellant against the respondents, the 1st respondent thereafter still claimed to be the owner of the same property and clearly stated, not in so many words, that he is not a tenant of the appellant. If the respondents were not tenants to the appellant and by the judgment of Adeyinka, J and they are not owners of the property, I am of the opinion that they were not entitled to any statutory Notice from the appellant whose land lordship they had denied in clear terms.** C D

In Woodfall on Landlord and Tenant, 25th edition at page 1072 E on this point, the learned author states thus:

*“A disclaimer by a tenant from year to year of the title of his landlord or of the person for the time being entitled to immediate reversion as assignee etc of the landlord will operate as a waiver by the tenant of the usual notice to quit and will in effect, determine the tenancy at the election of the landlord of other person for “a notice to quit is only acquiescent(sic) where a tenancy is admitted on both sides and if a defendant denies tenancy there can be no necessity to end what he says has no existence”* F G

**There is no doubt that the respondents had denied being tenants to the appellant on the property in question. Indeed, as earlier stated, they claim to be the owners. By this denial the respondents robbed themselves of entitlement to statutory notices required to be served on a tenant. The court below was therefore with the greatest respect, in error to have held that the respondents did not deny the title of the appellant as held by the trial court. Accordingly, issues 1 and 2 argued together are hereby resolved against the respondents** H

**but in favour of the appellant.**

The next issue is whether the appellant is entitled to mesne profit from the respondents on the property. The appellant had earlier before the trial court claimed mesne profits on the said property along with claim for possession and the trial court granted the appellant mesne profit “*at the rate of N50,000 per annum from 1st April, 1994 to 1st April, 1996 and thereafter at the said rate pro rata up to and after this day until vacant possession is granted to the appellant*”. On appeal, the court below had held that as the appellant herein had not determined the tenancy between him and the respondents, he could not be entitled to mesne profits. That the trial court ought to have refused the claim for mesne profits. The judgment was then set aside by the court below.

The respondents had contended that having failed to serve the required statutory notices to formally determine the tenancy the appellant cannot be entitled to mesne profit. They urged the court to resolve the issue in favour of the respondents that the mesne profits awarded by the trial court was wrong and was rightly set aside by the court below. ***What is mesne profits? This expression simply means intermediate profits - that is, profits accruing between two points of time that is, between the date when the defendant ceased to hold the premises as a tenant and the date he gives up possession. As a result, the action for mesne profits ordinarily does not lie unless either the landlord has recovered possession or the tenant's interest in the land has come to an end or the landlord's claim is joined with a claim for possession.*** See Ahmed Debs & Ors Vs. Cenico Nigeria Ltd (1986) NWLR (pt. 32) 846, LPELR 183/1984 per Oputa JSC.

In *Bramwell vs Bramwell* (1942) 1 KB 370; (1942) 1 All ELR 137 at 138, Goddard L.J had earlier described the expression “mesne profits” as follows:

*“Only another term for damages for trespass arising from the particular relationship of landlord and tenant.”*

One of the differences between mesne profits and damages for use and occupation is the date of commencement. While mesne profits begin to run from the date of service of the process for determining the tenancy, damages for use and occupation start to run from the date of holding over the property. It is therefore the duty of

the court to ascertain an amount which may constitute a reasonable satisfaction for the use and occupation of the premises held over by the tenant. It has been held that while previous rent may not be conclusive, it may sometimes be a guide. See Ayinde Vs. Lawal & Ors (1994) 7 NWLR (Pt.356) 263.

***Generally, a claim for mesne profits is based on trespass by the defendant in occupation and it is inappropriate in respect of lawful occupation as a tenant. It can only be maintained when the tenancy has been duly determined and the tenant becomes a trespasser. Therefore in any situation where a tenancy is created by operation of law, the status of trespasser will not arise until the tenancy has become duly determined according to law.*** See Omotosho vs Oloriegbe (1988) 4 NWLR (Pt.87) 225, Ayinde vs Lawal (supra).

In the instant case, even though the respondents did not specifically claim ownership of the property in their pleadings. By their refusal to recognize the title of the appellant after being aware of the sale by and transfer of title from the previous owners of the said property, the respondents cannot be said to be tenants of the appellant, as earlier alluded to, deserving of the required statutory notices to quit. In other words, having been put in possession by the previous owners as their landlords, the respondents can be said to have remained as such until the Adeyinka, J's judgment which settled the issue of ownership between the appellant who purchased the said property from the previous owners and the respondents who were their tenants. Therefore, not having appreciated and recognized the title or ownership of the appellant as the new landlord who stepped into the shoes of the previous owners as landlord, in my view, the respondents are not entitled and could not have expected to be given the statutory notices to determine a tenancy he failed to recognize was in existence between both parties.

***There is no doubt that the respondents were in possession and occupation of the premises lawfully and they were not given the required statutory quit notice by the previous owners who were their landlords. Up till today they had not been given the said notice. As a result they are not liable to pay mesne profits to the appellant. In other words, the appellant is not entitled to mesne profits. What the appellant is en-***

***titled to, at best, is damages for the use and occupation of the property, which will ordinarily be the rent being paid to the previous owners up to the time the appellant purchased the said property and until possession of same is finally delivered by the respondents. This issue 3 on mesne profits is resolved against the appellant but in favour of the respondents.***

***The decision of the court below which set aside in totality the judgment of the trial court which granted possession to the appellant is set aside while the part of the decision of the court below on mesne profit is affirmed.***

In the final analysis, this appeal succeeds in part and it is so accordingly allowed. There shall be costs of N100,000 to the appellant against the respondents.

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### **MUNTAKA-COOMASSIE JSC**

I had the privilege of reading in draft the lead judgment as delivered by my learned brother Ariwoola JSC.

I entirely agree with the conclusion reached by my learned brother Ariwoola JSC. I do not intend to add anything. I agree that the appeal succeeds in part. I allow the appeal in part. I abide by the consequential orders made by my Lord Ariwoola JSC including order as to costs.

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### **OGUNBIYI JSC**

I read in draft the lead judgment just delivered by my learned brother Ariwoola, JSC and I agree that the appeal should succeed in part. Briefly and on the preliminary objection raised by the respondents, same is predicated on the following two grounds.

1. That the appellant is in contempt of the order of the Court of Appeal dated 26th January, 2000 and
2. That the appellant is also in contempt of the order of the Supreme Court dated 22nd September, 2003 striking out appellant applications for stay of execution of the judgment of the Court of Appeal dated 2nd December, 2002.

Sequel to the objections raised by the respondents, the pertinent two questions posed against the hearing of the appeal are as



follows:-

1. Whether the Appellants being in contempt of the order of court ought to be permitted any hearing?

2. Whether the fact that the matter from which the interlocutory order of which the Appellant is in contempt has been determined is a bar to the punishment of the Appellant for contempt? B

In summary the totality of the preliminary objection is centered on the question whether the appellant is, as a matter of fact in contempt of the orders made by the lower court and this court as alleged? The law is well settled that an order of court must be obeyed regardless of the attitude of a litigant towards the validity thereof. See *Nigerian Army V. Mowarin* (1992) 4 NWLR (Pt 235) 345. It is not expedient that a contemnor of a court's order should be heard and obliged any favour either by the same court which he holds in contempt or any other court of law so ever. It is trite and reasonable. I C  
hold that he who comes to equity must come with clean hands. See *Military Government of Lagos State V. Ojukwu* (1986) 1 NWLR (Pt. 18) 621. D

For the court to determine the allegation levied against the appellant on the preliminary objection, the facts deposed to on the affidavits of both parties are relevant materials for consideration. The appellant in defence on his counter affidavit for instance, heavily relied on Exhibit "B", the letter dated the 18th of February, 2010 wherein the Deputy Chief Registrar of the lower court said: "the Respondent has not paid N300,000.00 (Three hundred thousand Naira) as directed". It would appear from all indications that the Respondents themselves are more in contempt than the appellant by not fulfilling the condition upon which the order of court is predicated. E  
The respondents in the circumstance have shown that they would want to eat their cake and have it. Without them first complying with their side of the bargain as condition precedent, they could not therefore have expected any action on the part of the appellant. By their very own making, the respondents have made the order sought to enforce as ineffectual and of no consequence. They have no moral or legal justification in accusing the appellant of the very act for which they are adjudged guilty. In other words, their preliminary objection has no substance but baseless. The appellant cannot be held in contempt of an order that is inchoate. The conditional stay of execution F  
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granted by the Court of Appeal was subject to the Respondents first paying the judgment debt to the Chief Registrar of the Court, which they had failed to do.

On the totality of the preliminary objection, it is lacking in merit and overruled. On the merit of the appeal, my learned brother B Ariwoola, JSC has adequately dealt with same and I hereby adopt his judgment on the reasoning and conclusions arrived thereat as mine. I also allow the appeal in part and in terms of the lead judgment inclusive of the order made as to costs.

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### NGWUTA JSC

I have read in draft the lead judgment delivered by My Lord, Ariwoola, JSC.

D The respondents raised a preliminary objection to the appeal on the ground that the appellant was a contemnor, having disobeyed the order of the Court below made on 26/2/2000. By the said order, appellant was to:

E *“(i) Pay over to the Deputy Chief Registrar of the Court of Appeal, Lagos Division within seven (7) days from the day of the ruling, the sum of N638,000... which was the sum of money withdrawn from the Chief Registrar of the High Court of Lagos, and*

F *(ii) give up possession of the said property in dispute... within 7 days from the date of the ruling.”*

The order of the Court reproduced above was not absolute. It was conditioned upon the respondent paying to the Chief Registrar within the stipulated time the sum of N300,000 as the balance of the judgment sum. Appellant cannot be held in contempt of the order of G 26/1/2000 since the Respondents failed to comply with the condition upon which the order was made.

On the appeal itself, there is evidence that the Respondent (DW1) challenged the title of his landlord. At pages 25-27 of the record of the trial Court, the DW1, under cross-examination, stated H in part:

*“I am not a tenant in the premises. Yes I am the owner...”*

By claiming to be the owner of the property wherein he was a tenant, the DW1 denied the title of his overlord and that is a ground for forfeiture. In the circumstance, appellant had no duty to issue

him a notice to quit. See *Owume v. Inyang* 11 NLR 111. Based on the above and the more comprehensive reasons in the lead judgment, I also allow the appeal in part. I adopt the order for costs.

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***ALAGOA JSC***

I read before now in draft the lead judgment just delivered by my brother Olukayode Ariwoola, JSC., and I entirely agree with his reasons and conclusion reached. I have nothing more to add. I too allow the appeal in part and abide by the order on costs contained in the lead judgment.

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