

COURT OF APPEAL LAGOS DIVISION
THURSDAY 10TH JULY, 2014. CA/L/354/2012
CORAM:- U. I. NDUKWE-ANYANWU, S. C. OSEJI,
J. Y. TUKUR, JJCA

MRS. AGATHA OYEBGESAN APPELLANT
AND
DR. OLUFEMI ADELEKE OYEBGESAN RESPONDENT

LANDLORD & TENANT - Tenancy at will - Notice to quit - By Rent Control Law s. 14(1)(a) - Appellant is only entitled to 7 days notice - And it does not matter which format the notice takes (H1)

EVIDENCE - Admissibility - Basis - Evidence Act governs the admissibility of evidence in court - And once a piece of evidence is relevant it is admissible - Irrespective of how it was obtained (H2)

PROPERTY LAW - Notice to quit - Evidence of - Failure of respondent to tender Exhibit P16 is of no moment - As appellant never denied that notice was given (H3)

FACTS

Before the High Court of Lagos State, plaintiff/appellant instituted this action against defendant/respondent, seeking inter alia for a declaration that appellant is a joint owner of and has a valid and subsisting interest in the property in dispute situate at LSDPC Medium Cost Housing Estate, Ogba, Lagos State. Respondent counter claimed that he is the owner of the property. He tendered all the documents showing how he purchased the property. At the trial, the parties tendered several documents in support of their case.

At the end of hearing in the matter, the court found in favour of respondent and ordered that he is the sole owner of the property in issue and that appellant has no subsisting interest in the property whatsoever. The court also ordered appellant to vacate the property immediately. Appellant was equally restrained from trespassing into the property. Dissatisfied, appellant appealed to the Court of Appeal.

ISSUES FOR DETERMINATION

i. Whether a Tenant at Will is legally entitled to be served a notice to quit the premises as well as a seven days notice of intention to recover possession before the tenant can be legally evicted.

ii. Whether a Clamant is required to include a document on its list of documents before such a document can be admissible at trial.

HELD (Unanimously dismissing the appeal per **NDUKWE-ANYANWU JCA**)

LANDLORD & TENANT - Tenancy at will - Notice to quit

1. The Appellant is only entitled to a 7 days notice as the tenancy is at will. S.14(1)(a) provides that-

“In the case of a Tenancy at will or a weekly Tenancy a week notice.”

The Respondent by a letter dated 7th of November, 2007, Exhibit P16, gave the Appellant a notice that he would repossess the property on the 20th of November, 2007. The notice gave more than 7 days. The Respondent recognized that the Appellant is the mother of his three children who are still living in the property with her and hence offered to assist her in relocating to another property.

Exhibit P16 serves as a quit notice of 7 days that is envisaged by S. 14(1)(a) of the Rent Control and Recovery of Residential Premises Laws of Lagos State 2003.

The Law does not prescribe any form or format this notice must take. I think the most important aspect of this notice is the number of days. As stipulated, seven days: nothing short of seven days will suffice. It does not matter which form or format the notice takes. It is, however, important that the tenant knows that the landlord wants to repossess his premises after 7 days.

This 7 days notice to quit is enough for any peace loving human being. However, when the tenant fails to quit, the landlord will thereafter apply to the court of his intention to repossess his house.

The landlord, vide Exhibit P16, had given the statutory 7 days notice to the Appellant to quit and his intention to re-

possess his property.

The Respondent is mindful of the fact that the Appellant resides in the premises with the children of the marriage. The Respondent did comply with S. 14(1)(a) of the Rent Control Law in giving the Appellant adequate notice to quit or intention to repossess his property. This issue is, therefore, resolved against the Appellant. (pp. 2378 H/2380 A)

EVIDENCE - Admissibility - Basis

2. Exhibit P16 is a document that the Respondent counsel tendered through the Respondent and was admitted. What determines admissibility or otherwise of a particular piece of evidence or document at the Court of law is the Evidence Act. It is settled law that admissibility of evidence is governed by S. 6 of the Evidence Act.

Once a piece of evidence is relevant; it is admissible in evidence, irrespective of how it was obtained. (p. 2381 C)

PROPERTY LAW - Notice to quit - Evidence of

3. Exhibit P16 was a notice to repossess his property written by the counsel to the Respondent to the Appellant. It is true that the Respondent did not list it as one of the documents he is relying on. The Appellant listed it as one of the documents she was relying. The Appellant did not lead evidence. The Respondent, therefore, led evidence and tendered documents of which Exhibit P16 was one of them.

The Appellant's counsel had argued that Exhibit P16 was one of the two notices expected that the Respondents must issue to the Appellant to suffice as adequate notice. The Appellant's counsel never denied the existence of Exhibit P16 but that it was just not listed by the Respondent as documents he was relying on. Moreover the trial Judge did not order or direct otherwise but he rightly stated this as a mere irregularity that is not fatal to the case.

The Appellant had already listed this document and it formed part of the case of the Appellant. When she did not lead evidence, the Respondent, therefore, tendered it and was received in evidence without objection. Like the trial Judge

stated:

“The days of technicalities is over” It is indeed over. Exhibit P16 was rightly presented and received in evidence as P16.

B Even if this Exhibit P16 is expunged as inadmissible, the Appellant never denied that the Respondent did not give her 7 days notice to repossess. Therefore, this Exhibit P16 was rightly admitted.

C Whether admitted or not, the Appellant never denied that the notice was given.

The important thing is that a 7-days notice was given by the Respondent to the Appellant.

D Exhibit P16 was rightly admitted by the lower Court and used in the determination of this case. This issue is therefore, resolved against the Appellant. (p. 2381 F)

REPRESENTATION

O. A. Akerele with A. F. Makan, for the Appellant

E L. Ojo, for the Respondent

CASES REFERRED TO

Pan Asian Ltd. v. Nikon Ltd. (1982) 12 NSCC

Cedar v. M.G.A. Plc. (2001) 18 WRN 144

F Iheanacho v. Uzochukwu (1997) 2 NWLP (pt. 487) 257

Odutola v. Papersack (2006) 11-12 SC 60

Olaniyan v. Shokunbi (1997) 6 NWLR (pt. 509) 446

Fawehinmi v. NBA (No. 2) (1989) 2 NWLR (pt. 105) 558

B.O.N v. Salah (1999) 9 NWLR (pt. 618) 331

G Anozie v. Obiechere (2000) 3 NWLR (pt. 981) 145

FBN Plc v. Jibo (2006) 9 NWLR (pt. 985) 261

Klifco (Nig) Ltd. v. NSITFMB (2005) 6 NWLR (pt. 922) 44

Jadesimi v. Egbe (2005) 10 NWLR (pt. 827) 1

R. v. Hule (1961) 2 SCNLR 183

H

STATUTES REFERRED TO

Rent Control & Recovery of Residential Premises Law of Lagos State

Cap R6 Laws of Lagos State 2003, s. 14(1)

Evidence Act, s. 6

LEAD JUDGMENT BY NDUKWE-ANYANWU JCA

This is an appeal against the judgment of the High Court of Lagos State delivered on 23rd of June, 2011. In it the learned trial Judge held as follows:-

(i) The court hereby makes a declaration that the Claimant (Defendant) is the sole owner of the Flat 1 Block 141 LSDPC Medium Cost Housing Estate Ogba Lagos State and that the Defendant (Claimant) has no subsisting interest in the property whatsoever. B

(ii) It is also declared that the Claimant (Defendant) has an inextinguishable right to do whatsoever he desires do so with his property. C

(iii) The Defendant (Claimant) is ordered to vacate the Property immediately to enable the Claimant (Defendant) an unfettered access to the Property. D

(iv) A perpetual order of injunction is granted restraining the Defendant (Claimant) by herself, servant, agents or assigns from encumbering the Assigns of the Claimant (Defendant).

The Defendant (Claimant) being dissatisfied with this judgment filed a notice on 11th of October, 2012. This notice was amended and filed on 21st of February, 2014, but deemed properly filed and served on 3rd of June, 2014. E

The facts of this case are that the Appellant, as claimant in the lower Court, claimed against the Respondent as defendant in these terms: F

(i) A Declaration that the Claimant is a joint owner of and has a valid and subsisting interest in the property known as and situate at Block 141, Flat 1, LSDPC Medium Cost Housing Estate, Ogba, Lagos State. G

(ii) A Declaration that the Defendant is not entitled to sell, lease, transfer, alienate or otherwise deal with the property without the consent of the Claimant.

(iii) A perpetual order of injunction restraining the Defendant by himself, servants, agents or assigns from selling, leasing, transferring, alienating or dealing with the property situate at Block 141, Flat 1, LSDPC Medium Cost Housing Estate, Ogba, Lagos without the consent and approval of the Claimant. H

(iv) A perpetual order of injunction restraining the Defendant

by himself, servants, agents or assigns from removing or ejecting the Claimant and her children from the property.

The Appellant had sought to retain the property in issue, claiming that she was a joint owner of the property. The Defendant/Respondent put in his defence and counterclaimed that he is the owner of the property. He tendered all the documents showing how he purchased the property in issue.

At the end of the trial, the trial court found for him. The claimant was dissatisfied with the judgment, hence this appeal.

The Appellant filed her brief on 18th of November, 2013 but deemed properly filed and served on the 27th of November, 2013.

In it, the Appellant articulated two (2) issues for determination as follows:

i. Whether a Tenant at Will is legally entitled to be served a notice to quit the premises as well as a seven days notice of intention to recover possession before the tenant can be legally evicted.

ii. Whether a Claimant is required to include a document on its list of documents before such a document can be admissible at trial.

Also filed is the Appellant's reply brief on the 21st of February, 2014 but deemed properly filed and served on 3rd June, 2014.

The Respondent filed his brief on 30th of December, 2013 but deemed properly filed and served on 3rd of June, 2014. In it, the Respondent adopted the two issues articulated by the Appellant.

ISSUE 1

The learned counsel to the Appellant submitted that in order to legally evict a tenant from the premises, the tenancy must first be determined by the service on the tenant of a notice to quit. By virtue of the Rent Control and Recovery of Residential Premises Law of Lagos State Cap R6 Laws of Lagos State 2003, the required length of notice necessary to determine a tenancy at will is 7 days.

S.14 (1) of the said law provides that:

"(1) where there is no express stipulation as to the notice to be given by either party to determine the tenancy the following periods of time shall be given -

(a) in the case of a tenancy at will or a weekly tenancy, a week's notice."

To recover possession from a tenant at will, a landlord is required to issue two statutory notices. The first is a notice to quit,

which determines the tenancy. The second is a notice of intention to apply to court to recover possession. Counsel stated that this requirement is fundamental to any action to recover possession. Non-compliance invalidates the said action. See *Odutola vs. Papersack (Nig.) Ltd. (2006)*. Counsel referred the court to *Pan Asian Ltd. Vs. Nikon Ltd. (1982) 12 NSCC Pg. 293* *Cedar vs. M.G.A. Plc. (2001) 18 WRN PT. 144*. Counsel argued that a tenant at will is to be served with the notice to quit which as stipulated in the law, is a week's notice, after which the tenant can be given the 7 days notice of the landlord's intention to apply to the court to recover possession of the premises. See *Iheanacho vs. Uzochukwu (1997) 2 NWLR Pt. 487 Pg. 257*, *Odutola v. Papersack (2006) 11-12 SC Pg. 60*.^B^C

Counsel to the Respondent submitted as follows:-

That the only notice required of a landlord in the case of a tenant at will is seven days notice of intention of the landlord to recover possession.^D

That the law states that a tenancy is determined by only seven days notice and not two statutory notices as contended by Defendant's counsel.

That Exhibit P16 dated 7th of November, 2007 giving the Defendant up till 20th day of November; 2007 to give up possession was more than 7 days. See S. 14 (1) of Rent Control and Recovery of Residential Premises Law of Lagos State 2003 which provides.^E

(a) In the case of a Tenancy at will or a weekly Tenancy, a week notice.^F

S. 14(2)

"The nature of a Tenancy shall, in the absence of any evidence in the absence of any evidence to contrary, be determined by reference to the time when rent is paid or demanded."^G

S.15

"Notices referred in S.14 may be given at any time prior to the date of termination of current term of tenancy but they shall not be effective if the time between the giving of the Notice and the time when Tenancy is to be determined is less than the respective periods set out in subsection (1) of S. 14."^H

Counsel submitted that the Respondent gave the Appellant 14 days notice more than the 7 days stipulated in S. 14. The Appellant, the tenant, is not a rent paying one and as such was she entitled to be

served any notice on the strength of the decision in Olaniyan v. Shokunbi (1997) 6 NWLR Pt. 509 pg. 446 where Uwaifo JCA as he then was held as follows.

B *“Where there has been non payment of rent, the landlord has no obligation to serve quit notice or notice to recover possession of the premises.”*

C Counsel aligns himself to the decision in Odutola vs. Papersack (supra) and stated that there was no where the Supreme Court specifically stated that two notices were required in respect of a Tenant at will. All the Supreme Court held was that a tenant at will is entitled to 7 days. *“Owners intention to recover Possession.”*

D In the case of Odutola vs. Papersack (supra) all that the Supreme Court said was *“This is however subject to proper “Notice emanating from the landlord.” If the Supreme Court envisaged 2 notices it would have said “Proper notices”.*

Counsel, therefore, urged the court to hold that the notice issued on 7th of November, 2007 is proper notice and resolve this issue in favour of the Respondent.

E Both parties in the trial court agreed that the tenancy was one at will.

“A tenancy at will has built into the mutual understanding that both the tenant and the landlord can terminate the tenancy when any of them likes or at any time convenient to any of them.”

F In other words, in a tenancy at will, the lessee (the tenant) is the tenant at will because the lessor (the landlord) can send him packing at any time the lessor pleases, subject only to issuance of proper notice by the lessor. Odutola vs. Papersack Nig. Ltd. (supra).

G It would be pertinent to note how the Appellant came to be a tenant at will in the premises in issue. Both parties were a married couple until the dissolution of their marriage. The Appellant after the dissolution continued to live in the house with the three children of the marriage whereby she claimed to have a right as part owner of the premises. The trial Judge found as a fact that she had no claims to the property. The court declared the Respondent, owner. The Respondent thereafter gave the Appellant notice to quit. The Appellant is contesting that the notice was not proper.

The Appellant is only entitled to a 7 days notice as the tenancy is at will. See Odutola vs. Papersack (Nig.) Ltd (supra).

S.14(1)(a) provides that-

“In the case of a Tenancy at will or a weekly Tenancy a week notice.”

The trial court had already declared the Respondent the safe owner of the premises. The Appellant invariably knew that at any moment, as held by Niki Tobi JSC, that the Respondent would give her 7 days notice to quit. B

The Respondent by a letter dated 7th of November, 2007, Exhibit P16, gave the Appellant a notice that he would repossess the property on the 20th of November, 2007. The notice gave more than 7 days. The Respondent recognized that the Appellant is the mother of his three children who are still living in the property with her and hence offered to assist her in relocating to another property. C

The learned counsel to the Appellant had argued strenuously D that the Appellant is entitled to be served first with a “quit notice” which determines the tenancy while the second is a notice of intention to apply to court to recover possession.

Exhibit P16 serves as a quit notice of 7 days that is envisaged by S. 14(1)(a) of the Rent Control and Recovery of Residential Premises Laws of Lagos State 2003. E

The Law does not prescribe any form or format this notice must take. I think the most important aspect of this notice is the number of days. As stipulated, seven days: nothing short of seven days will suffice. It does not matter which form or format the notice takes. It is, however, important that the tenant knows that the landlord wants to repossess his premises after 7 days. F

This 7 days notice to quit is enough for any peace loving human being. However, when the tenant fails to quit, the landlord will thereafter apply to the court of his intention to repossess his house. G

The landlord, vide Exhibit P16, had given the statutory 7 days notice to the Appellant to quit and his intention to repossess his property. H It is instructive to refer to Uwaifo JSC in the case of Olaniyan vs. Shokunbi (1997) 6 NWLR Pt. 509 Pg. 446 where he held as follows:

“Where there has been non payment of rent, the landlord has

no obligation to serve quit notice or notice to recover possession of the premises. With the above case the tenant is not even entitled to the 7 days notice to quit."

The Respondent is mindful of the fact that the Appellant resides in the premises with the children of the marriage. The Respondent did comply with S. 14(1)(a) of the Rent Control Law in giving the Appellant adequate notice to quit or intention to repossess his property. This issue is, therefore, resolved against the Appellant.

ISSUE 2

Learned counsel to the Appellant submitted that the trial Judge erred in law when she struck out the Appellant's claim in the lower Court and went ahead to still rely on Exhibit P16 filed by her. Counsel argued that the said Exhibit P16 was not listed by the Respondent in this appeal. Counsel referred the Court to O.3 R.2(1) of the High Court of Lagos State (Civil Procedure) Rules 2004 which requires all originating processes to be accompanied by copies of all documents to be relied on at the trial. It provides as follows:

"All civil proceedings commenced by writ of summons shall be accompanied by

(a) Copies of every document to be relied on at the trial"

O. 32 R. 4 however provides:-

"Unless at or before trial, a Judge for special reasons otherwise orders or directs, no document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along pleadings of the parties under rules."

Counsel argued that the Respondent did not file P16 along with his pleadings and the trial Judge had not otherwise ordered or directed that Exhibit P16 was admissible for special reasons. Counsel, therefore, urged the Court to discountenance Exhibit P16 and refuse to admit it in evidence and resolve issue 2 in favour of the Appellant.

In response, the learned counsel to the Respondent submitted that Exhibit P16 was properly admitted in evidence without any objection by the Appellant's counsel. See Record of Appeal Pg. 174.

The lower Court properly admitted Exhibit P16 and, therefore, need not make any further direction or order concerning it. Since the Appellant's counsel did not object to the tendering of Ex-

hibit P16, the issue that the Exhibit was wrongly admitted can no longer be raised on appeal.

Counsel argued further that Exhibit P16 is a relevant document to the Respondent's case so it was properly admitted. See *Oyediran v. Alebiosu* (1992) 5 NWLR (Pt. 249) pg. 550; *Monopix (Nig.) Ltd v. Okenwa* (1995) 3 NWLR (PT. 383) pg. 325. B

Counsel, therefore, urged the court to hold that Exhibit P16 was properly admitted by the lower Court. The fact of not listing as part of the documents sought to be relied on is just a mere irregularity. C

Counsel urged the court to resolve this issue in favour of the Respondent.

Exhibit P16 is a document that the Respondent counsel tendered through the Respondent and was admitted. What determines admissibility or otherwise of a particular piece of evidence or document at the Court of law is the Evidence Act. D

See *Klifco (Nig) Ltd. v. NSITFMB* (2005) 6 NWLR (Pt. 922) pg. 44, *Jadesimi v. Egbe* (2005) 10 NWLR (Pt. 827) pg. 1, *R. v. Hule* (1961) 2 SCNLR Pg. 183.

It is settled law that admissibility of evidence is governed by S. 6 of the Evidence Act. E

Once a piece of evidence is relevant; it is admissible in evidence, irrespective of how it was obtained. See *Fawehinmi vs NBA* (No. 2) (1989) 2 NWLR Pt. 105 Pg. 558, *B.O.N Vs Salah* (1999) 9 NWLR (Pt. 618) pg. 331, *Anozie vs Obiechere* (2000) 3 NWLR (Pt. 981) pg. 145, *FBN Plc V. Jibo* (2006) 9 NWLR (Pt. 985) pg. 261. F

Exhibit P16 was a notice to repossess his property written by the counsel to the Respondent to the Appellant. It is true that the Respondent did not list it as one of the documents he is relying on. The Appellant listed it as one of the documents she was relying. The Appellant did not lead evidence. The Respondent, therefore, led evidence and tendered documents of which Exhibit P16 was one of them. G H

The Appellant's counsel had argued that Exhibit P16 was one of the two notices expected that the Respondents must issue to the Appellant to suffice as adequate notice. The Appellant's counsel never denied the existence of Exhibit P16

but that it was just not listed by the Respondent as documents he was relying on. Moreover the trial Judge did not order or direct otherwise but he rightly stated this as a mere irregularity that is not fatal to the case.

The Appellant had already listed this document and it formed part of the case of the Appellant. When she did not lead evidence, the Respondent, therefore, tendered it and was received in evidence without objection. Like the trial Judge stated:

“The days of technicalities is over” It is indeed over. Exhibit P16 was rightly presented and received in evidence as P16.

Even if this Exhibit P16 is expunged as inadmissible, the Appellant never denied that the Respondent did not give her 7 days notice to repossess. Therefore, this Exhibit P16 was rightly admitted.

Whether admitted or not, the Appellant never denied that the notice was given.

The important thing is that a 7-days notice was given by the Respondent to the Appellant.

Exhibit P16 was rightly admitted by the lower Court and used in the determination of this case. This issue is therefore, resolved against the Appellant.

All the two issues articulated by the Appellant have all been resolved against her. This appeal is unmeritorious and, therefore, dismissed. The judgment of the lower Court is affirmed. The notice given by the Respondent to the Appellant is good notice. The Respondent is entitled to repossess his house forthwith.

I make no orders as to costs.

OSEJI JCA

I had read before the judgment just delivered by my learned brother U. I. NDUKWE JCA.

His Lordship has fully and exhaustively dealt with the issues raised in the appeal and I agree with the reasoning and conclusion reached therein.

The appeal is indeed unmeritorious and I also dismiss it and

affirm the judgment of the lower Court.

I make no order as to costs.

TUKUR JCA

I have had the opportunity of reading before now the lead B
judgment of my learned brother Uzo I. Ndukwe-Anyanwu JCA just
delivered.

I agree that the appeal is unmeritorious and it is dismissed by
me. I abide by the consequential orders in the lead judgment includ- C
ing the order as to costs.

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