# RECOVERY OF PREMISES IN NIGERIA: A LAW FOR JUSTICE OR LEGALISED BIAS AGAINST THE LANDLORD?

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**ABSTRACT**

More often than not, Landlords have had cause to throw caution to the wind by adopting various unlawful means to prevent the continuous illegal holding of the demised property by their tenants. This situation manifests in several ways, prominent amongst which are; unlawful evictions, arbitrary rent increment, and the sealing of such demised premises by the landlord. Hence, the indispensable place of the law to regulate such anomalies cannot be overemphasised. Notwithstanding its place, the question of how fair the law is, particularly with reference to the landlord, pokes the mind. The doctrinal research approach was adopted to analyse the existing legal regimes governing the recovery of premises across Nigeria. The study examined the position of the relevant legal frameworks in relation to the right of recovery of premises exercisable by both the landlord and the tenant.[4] It was observed that although the law is made to eliminate arbitrariness, especially by the landlord, it appears not to guarantee justice. It was found that the nature of tenancy determines the statutory notices that will be given to a tenant at a sooner period or the expiration of the tenancy. The cost of litigation and the undue delay in the recovery of premises were identified as some of the significant challenges to the recovery of premises processes in Nigeria. Recommendations incidental thereto were accordingly proffered.

*Keywords*: Landlord, Tenant, Land Law, Premises Recovery, Nigeria.

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[4] Although references were made to the recovery laws of a few states in Nigeria, the position is similar across all states.

## 1. INTRODUCTION

With an ever-growing population comes the need to provide adequate housing for the teeming populace by the government, corporate organisations, and individuals. This need comes to satisfy either an obligation or an economic want by building houses for lease or rent. Whatever be the case, a relationship between a landlord and a tenant is created, which requires regulation. One significant way of regulating this relationship is through the various recovery of premises laws of the different states in Nigeria. Although these laws apply to various States, they are in pari materia. They make provisions for regulating the relationship between a landlord and the tenant at the commencement, pendency, and eventual determination of the tenancy. These laws are a deliberate attempt to curb the excesses of landlords to arbitrarily increase rent and resort to self-help in evicting tenants from the lawful occupation of a property. Recovery of premises relates to the determination of a tenancy and, by implication, the reasons for the recovery. It is a process that describes how a landlord takes back possession of his premises upon the termination of the tenancy of a tenant.

### *1.1 The Concepts of Landlord and Tenant*

It is necessary to briefly consider the person of a landlord and that of a tenant. The definition of a landlord in the various tenancy and recovery of premises law across the nation are in pari materia to each other. These laws define a landlord to mean a person entitled to the immediate reversion of a premises. Such a person includes the landlord's attorney or agent and persons appointed to act on his behalf in relation to the demised property.[5]

A tenant is a person occupying any premises either by payment of rent or by operation of law. The definition of a tenant excludes persons unlawfully occupying any premises under a bona fide claim to be the owner.[6] Where the tenant is a statutory one, lawful occupation is an essential requirement.[7] A

[5] Section 2 of the Recovery of Premises Act (Abuja) Vol. 4, CAP 544 Laws of the Federation of Nigeria, 2007. Similar provision can be found in S. 47 of the Tenancy Law (Lagos) No. 14, 2011, S. 2 Rent Control and Recovery of Premises Law (Plateau) Law No. 1, 1998, S. 2 Rent control and Recovery of Premises Law (Bauchi) Cap 134, 1997, and Rent Control and Recovery of Premises Law (Cross River) Vol. 6 Cap R6, 2004.

[6] See for instance See section 47 Lagos State Tenancy Law and section 2 of the Recovery of Premises Act.

[7] *Oduye v Nigeria Airways Ltd* (1987) NWLR (pt55) 4 S.C 202.

tenant also includes a service tenant who occupies any premises as a contractual tenant during his employment. A sub-tenant who occupies a premises or a part previously occupied by a tenant in circumstances where the part is sublet to him with the landlord's consent is also a tenant. The Court of Appeal in *Bocas Nigeria Ltd v Wemabod Estates*[8] categorises the various types of tenancy as follows:

a) Tenancy at will
b) Periodic Tenancy
c) Fixed termed tenancy
d) Tenancy at sufferance
e) Statutory tenants

**a) Tenancy at Will:** A person who occupies premises with the landlord's consent without a defined term or interest in the property.[9]

**b) Periodic Tenancy:** A periodic Tenancy can be monthly, quarterly, or yearly. The selected form of periodic tenancy must be expressly stated on the face of the tenancy agreement. Where this is not contained in the tenancy agreement, it shall be determined by reference to the time the rent was paid or demanded.[10]

**c) Fixed termed tenancy:** Just as the words imply, a fixed termed tenancy contains a clearly defined tenure. Hence, it could be for a specified number of months or years. However, the terms must be clear and definite.[11] For instance, a year's tenancy commencing on the 1st January 2021 will lapse on the 31st December 2021.

**d) Tenancy at sufferance**: it is 'a tenancy arising when a person who has been in lawful possession of property wrongfully remains as a

[8] (2016) LPELR – 40193 (CA).
[9] See the case of *Odutola v Papersack* (Nig) Ltd (2004) 13 NWLR (PT.871) 509.
[10] Section 14 (2) of the Rent Control Law of Lagos State, section 8 (3) of the Recovery of Premises Act, section 13 (6) of the Lagos State Tenancy Law 2011 cited in Woye Famojuro, and Akinbobola Adeniyi and Amarachukwu Nedolisa, 'Overview of the Concept of Recovery of Premises Under the Tenancy Law of Lagos State <https://www.mondaq.com/Nigeria> accessed 22 May 2021.
[11] Ibid. see also, the case of UBA v Tejumola (1988) 2 NWLR pt. 79

holdover after their interest has expired.'[12] 'It may take the form of a tenancy at will or a periodic tenancy.'[13] Tenancy at sufferance is a Common Law concept designed to protect tenants holding over after their contractual rent tenure.[14]

e) **Statutory tenant**: this is a similar concept with tenancy at sufferance. The only difference is that statutory tenancy is applicable under Nigerian Law.[15] If such a tenant is forcefully ejected, the landlord can be liable for trespass.[16]

## 2. RECOVERY OF PREMISES LAW IN NIGERIATHE PRACTICE

In Nigeria, a landlord can only lawfully recover his premises if the tenancy is validly determined according to law, and the tenant delivers up possession to the landlord willingly or by order of a competent court. In *Ihenacho v Uzochukwu*,[17] the court set out the procedure for the recovery of premises in the following words:

> A landlord desiring to recover possession of premises let to his tenant shall firstly, unless, the tenancy has already expired, determine the tenancy by service on the defendant, an appropriate notice to quit. On the determination of the tenancy, he shall serve the tenant with the statutory seven days' notice of his intention to apply to the court to recover possession of the premises. Thereafter, the landlord shall file his action in court and may also proceed to recover possession of the premises according to law.

[12] Garner B.A, '*Black's Law Dictionary*' (6th Ed. St. Paul Min West Pub.) pg. 1477
[13] Ibid.
[14] Per Nnaemeka Agu JSC in *African Petroleum Ltd v Owodunni* (1991) 8 NWLR (pt 210) at 396-397
[15] Ibid. Also see the case of Pan Asian African Co Ltd v NICON Ltd. (1982) 9 SC 1 at 25-28.
[16] Ihenacho v Uzochukwu (1997) 2 NWLR (Pt. 487) 257
[17] Ibid.

To further buttress the position of the court in relation to recovery of premises, the court, in the case of *Ndielli & Another v. Eze*,[18] had this to say:

> It is the law, and it has been reiterated almost to irritation that recovery of premises must be done by due process of the law. Any other form of recovery is unlawful. It cannot be over-emphasised that recovery of possession of premises from a tenant can only be by an order of the court, obtained after hearing the parties, pursuant to the relevant recovery of premises law.

Furthermore, section 7 of the Recovery of premises Act[19] provides that for a tenancy to be validly determined, two requisite Statutory Notices must be served on the tenant. These are:

a) Notice to quit
b) Notice of owners' intention to apply to the court to recover possession.[20]

Notice to Quit

The Black's Law Dictionary[21] defines 'Notice to Quit' as a landlord's written notice demanding that a tenant surrender and vacate the leased property, thereby terminating the tenancy relationship between them. It can also be defined as an express unequivocal notification by the landlord that he desires the tenancy to be determined.[22] It is clear from the above definitions that a notice to quit is a direct and precise notice given to a tenant, informing him that his tenancy has been determined and will thus, not be renewed.[23]

We need to emphasise that a notice to quit is only necessary where a landlord and tenant relationship exist. A Landlord-tenant relationship is a legal relationship between the lessor and lessee of real estate. This

[18] (2016) JELR 48772 (CA).
[19] Similar Provisions can be found in S. 16 Lagos Tenancy Law, Section 17 in Bauchi and Cross River Rent Control and Recovery of Premises Law.
[20] *Nigeria Airways Ltd v Mahdi* (2014) 11 N.W.L.R. (Pt. 1417) 35.
[21] Garner, B.A. Ed., *Black's Law Dictionary (*8th ed. Thomas West, 2004) at 1093.
[22] Ukam, T. *Landlord and Tenant Compendium*, (3rd ed. Wise Publication, 2006) 327.
[23] Sample of Notice to Quit is provided for in the Schedules of Recovery of Premises Act and Laws of each Nigerian states.

relationship is contractually created by an agreement for lease for a period ranging from a week, a month, or on a yearly basis. At the end of the tenancy period, the premises must revert from the tenant to the landlord. Therefore, where there is the absence of a relationship between a landlord and a tenant, there is no entitlement to statutory notices.[24] This is especially the case with squatters and trespassers or where the tenancy has been determined by effluxion of time or where the tenant is in arrears of rent for a period within which he is entitled to notice. Note that a tenancy for a fixed term does not require a notice to quit before the tenancy can be determined. All that is required is for the plaint or writ to be filed after the service of the seven days' notice of owner's intention to recover possession.[25]

The length of notice in determining a tenancy is so vital that non-compliances nullify the notice. The law allows parties to a tenancy to agree on the terms of their contract and on the length of notice that would determine the tenancy.[26] However, if parties do not agree on the length of notice, the length of notices provided under the recovery of premises statutes automatically applies. Some of the enabling statutes[27] provide that: where there is no express stipulation as to the notice to be given by either party to determine the tenancy, the following periods shall be given:

- In the case of a tenancy at will or weekly tenancy, a week's notice;
- In the case of monthly tenancy, a month's notice;
- In the case of a quarterly tenancy, a quarter's notice; and
- In the case of a yearly tenancy, half a year's notice

Please note that the Lagos Tenancy Law additionally provides three (3) months' notice for half a year tenancy. As we have mentioned earlier, the above length of notices is as prescribed by statute, which takes effect where parties to a rent agreement fail or elect not to agree on the length of notice. However, if parties elect to agree on the period of notice they

[24] *Odutola v Samuel* (1956) FSC 76, see also the case *Ugonabo v Nwokoye* (1973) 3 E.C.S.L.
[25] *Alokolaro v Mawdow Ventures Ltd* (1975) 12 C.C.H.C.J. 2029
[26] *African Petroleum Ltd v Owodumni* (1991) 8 N.W.L. R (Pt. 210) at 395
[27] Section 8 (1) Recovery of Premises Act, 2004, S. 13 Lagos Tenancy Law, Sections. 17 and 18 of the Plateau and Bauchi States Rent Control and Recovery of Premises Laws respectively.

require a period of notice higher than that specified above can be chosen as the above merely represents the minimum requirement.[28]

Who May Issue Statutory Notices?

For a statutory notice to be valid in proceedings for recovery of premises, it must be issued by the appropriate person; failing which the validity of the notice and its service, as well as the determination of the tenancy, will be vitiated. Section 7 of the Recovery of Premises Act[29] unequivocally provides that statutory notices may be given either by the landlord or his agent. This provision has been judicially noticed in many cases.[30] An agent is any person employed by the landlord in the letting of a premises or in the collection of rents. It is a person specially authorised to act on behalf of the landlord in a particular manner. Usually, the authority is by writing under the hand of the landlord.

It, therefore, follows that caretakers or solicitors are agents of a landlord. During a tenancy proceeding, evidence must be led to establish that the landlord employs the agent or solicitor to let out the premises and collect rents. In *Balogun v Lagos Executive Development Board*,[31] the court held that unless a solicitor is specially authorised in writing by the landlord, he could not serve statutory notices required under section 7 of the Recovery of Premises Act. Therefore, it is safer to always issue a letter of authority to a solicitor or a firm of solicitors before they can act as agents. Where a letter of authority is given to a firm of solicitors, evidence must be led to establish that the solicitor that signed the notice on behalf of the landlord is a member of the firm.[32] A Letter of Authority must first be issued before a person or solicitor can act as an agent.[33] Notice to quit or notice of intention to recover possession served by a solicitor before the landlord issues a letter of authority to him to so act in that capacity is null, void,

[28] *Ochie v Ajosie* (1959)2 All N.L.R. 17. See also *Odutola v Papersack (Nig) Ltd* (2006) 18 NWLR (Pt. 1012) at 470 and 495

[29] This Act is applicable to the Federal Capital Teritory, Abuja.

[30] See for instance, *Papersack Nig. Ltd v Odutola & Anor* (2006) 18 N.W.L.R. (Pt. 10.12) pp 474-475

[31] (1963) ALL N.L.R.

[32] *Omogunkoya v Martin* (1975) 3 C.H.C.C.J 939

[33] *Fayemi v Simons* (1977) 3 C.C.H.C. 381. See also *Wada v Bryan* (1973) 3 C.C.H.J 59

and of no legal effect.[34] One issue that requires addressing is the content of a letter of authority. The following are some of the most critical contents:[35]

- The name of the solicitor or firm of solicitors;
- The premises sought to be recovered;
- The act or acts that needed to be performed;
- The name of the tenant;
- The date the letter of authority was issued and,
- The landlord's signature.

Non – compliance with these requirements renders both the letter of authority and any purported action by the so-called agent invalid.

Effect of Invalid Notice to Quit

The service of a valid notice to quit is a condition precedent to the lawful recovery of premises. Needless to say that where a valid notice to quit is not properly served on a tenant, the tenancy relationship between the landlord and the tenant subsists. This implies that a court can neither make an order for delivery of possession nor payment of mense profit in favour of the landlord. The only order the court can make in the circumstance is the payment of rent arrears. It is also important to note that where a landlord serves a defective notice to quit or notice of owners' intention to apply to the court, the proper order the court should make is for striking out the suit, not dismissal. In that instance, all the landlord needs to do is to issue and serve a proper notice and subsequently commence the proceedings properly.[36]

## 3. TERMINATION OF TENANCY

A tenancy is either terminated by effluxion of time or by notice to quit. Where the notice required is six months, the court interprets it to mean 182 days and not as six calendar months; and in computing the days, the day of service is not included.[37] Similarly, the notice must determine the tenancy

[34] *Coker v Adetayo* (1992) 6 N.W.L.R (Pt 249) 612 at 613
[35] *Bello v Salami* (1969) 2 LL N.L.R 291
[36] *Eleja v Bangudu* (1994) 3 N.W.L.R. (Pt 334) 526
[37] *Awobiyi & Sons v Jgbalaiye Brothers* (1965) All N.L.R. 169

at midnight of the day preceding the anniversary of the tenancy.[38] For a notice to quit to determine a yearly tenancy validly, it must terminate at the end of the current term of the annual tenancy.[39] A monthly tenancy is determined by a month's notice, a calendar month.[40] The court held in *Johnson v Mobil Oil Nig. Ltd*[41] that the calendar month required is calculated from the date the one-month notice was served, not the date it was fixed at the court registry, neither is it the date on the notice. Upon the expiration of a valid notice to quit, a seven-day notice of owners' intention to apply to recover possession must be served.[42]

## 4. NOTICE OF OWNERS' INTENTION TO APPLY TO COURT TO RECOVER POSSESSION

Notice of owners' intention to apply to the court, otherwise called seven days' notice is the notice served on a tenant who remains in possession after a valid notice to quit has been served on him. It is essential to state that the seven days' notice of owners' intention to recover possession need not be the same as what is prescribed in the forms of the various recovery of premise laws. What is important is that it must contain the following ingredients:[43]

a) The determination date of the tenancy;
b) The mode of service of the notice to quit;
c) The date for which an application is to be made to the court for a warrant;
d) The description of the premises; and
e) The signature of the landlord or his agent.

It should be noted that wrongly stating the date of determination of tenancy would not render a notice invalid as this is in no way prejudicial to the defendant's case.[44] Therefore, it is clear that whether the court will

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[38] *Nigerian Joint Agency Ltd v Arrow Engineering and General Transport Ltd* (1970) 1 ALL N.L.R. 324

[39] *African Petroleum Ltd v Owodunni* (Supra) at 391

[40] *Aruku v Fayose* (1970) ALL N.L.R. 445

[41] (1965) W.N.L.R. 128

[42] *Almaganated Press of Nig. Ltd v Haastrup* (1966) All N.L.R. 346

[43] Anyalafulude, T. *Principles of Recovery of Premises in Nigeria through cases.* (Snap Press Ltd, 2010) 30

[44] *Nigerian Joint Agency Ltd v Arrow Engineering and General Transport Company* (n 25).

invalidate a seven days' notice due to irregularities will depend on whether such irregularity is material and prejudicial to the defendant's case. It is crucial to further state that failure to serve statutory pre-action notices or any one of the notices before commencing a recovery of premises action renders the action incompetent, thus ousting the court's jurisdiction to entertain such a matter.[45] For emphasis, pre-requisite notices that must be served on a tenant before a landlord can validly institute a recovery of premises proceedings are: notice to quit and notice of owner's intention to apply to the court to recover possession.

## 5. RIGHTS OF THE TENANT

Over the years, the various regulatory frameworks and judicial authorities donated several corresponding rights to the tenant, which helps guarantee his peaceful occupation of a demised property. The following are some rights that accrue to a tenant:

I. **Right to a Written Agreement:** On concluding negotiations to a premises, the tenant has a right to ask for a written agreement and be comfortable with its clauses before executing same. This is advisable because it will be easier to prove the terms of the tenancy, which creates the rights and obligations of the parties.

II. **Right to the Issuance of Payment Receipt:** Upon payment of rent, the tenant has the right to request a receipt of payment signed by either the landlord or any of his authorised agents. The receipt is proof of the tenant's right of occupation and use of the property, to the exclusion of any other person, the landlord inclusive.

III. **The Premises must be in a Habitable Condition:** It is the duty of the landlord to ensure that the property, which is the subject matter of the tenancy, is fit for the purpose and in a habitable condition. By this, all latent defects in the demised premises must be fixed by the landlord prior to the commencement of the tenancy.

IV. **Right to Quiet Possession:** Once an agreement is reached and payment is made, possession is granted to the tenant, who now has the right of

[45] *Mobil v L.S.E.P.A (*2001) 24 W.R.N. 42 at 45

exclusive and quiet possession of the property. This means the landlord or anyone acting in his stead can be liable for trespass if he enters the demised property without the tenant's permission or express provision of the agreement allowing such entry.

V. **Right to Notice to Quit**: A landlord is prohibited from using self-help to evict a tenant in lawful occupation of a demised property.[46] Irrespective of express contravention of any covenant of the tenancy, written or unwritten, express or implied, by a tenant, the landlord is compelled by law to issue the tenant a notice to quit, except where the tenancy is for a fixed period of term, or he is in arrears of rent for a period for which he is entitled to notice. It should be noted that neither the landlord nor the tenant can by agreement waive or reduce the minimum stipulation of the period of notices provided by the law.[47]

VI. **Right to 7 Days' Notice to Recover Premises:** After issuing and serving the requisite notice to quit on the tenant, the landlord must cause to be issued a compulsory seven days' notice of owner's intention to apply to recover premises.

## 6. RIGHTS OF THE LANDLORD

Like the tenant, the landlord has some rights that the various regulatory frameworks and judicial authorities guarantee. Prominent amongst which is the reversionary rights in the demised property, others include the following:

i. **Right not to Issue a Quit Notice:** A landlord may not issue a quit notice where a tenant has waived his right to a quit notice in the tenancy agreement or where a tenant is in arrears of rent for a period for which he is entitled to notice. However, the landlord must issue a seven days' notice of owner's intention to recover possession.

ii. **Right to Review Rent and Renew Tenancy:** While the landlord reserves the right to review or renew rent payable on the demised property, including a rent review clause in the tenancy agreement before execution is advisable.

[46] *Ihenacho v Uzochukwu* (1997)1SCNJ 117 at 128.
[47] See the case of *Motayo v Nigerian Fibre Industries Co. Ltd.* (1974) 4 ECLR at 570

iii. **Right not to reimburse a Tenant:** A landlord may refuse to reimburse a tenant for any repair done on the demised property if there was no previous agreement to that effect or where the initial agreement does not cover such repairs.

## 7. COURTS WITH JURISDICTION

The jurisdiction to entertain recovery matters is vested in the Magistrate Courts (District Court in the North) and the High Courts.[48] Section 2 (4) of the Lagos State Tenancy Law 2011 provides that proceedings shall be instituted under the law at the high court if the annual rental value of the premises exceeds the jurisdiction of the Magistrate Court.[49] Accordingly, the grounds on which the landlord can invoke the jurisdiction of the court in the recovery of premises to recover possession includes the following:

a. Arrears of rent.
b. Where the landlord requires the premises for his use.
c. Breach of an express covenant contained in an agreement.
d. Where substantial repairs are to be done on the premises.[50]

## 8. EVICTION OF A TENANT FOR BREACH OF COVENANT

Most written tenancy agreements contain covenants that bind the parties. A covenant in a lease is an agreement or promise in which a party pledges himself to do or refrain from doing a thing. Covenants in a lease may also provide for the truth of specific facts. Such covenant may be implied, usual or express.[51] While an express covenant is stated explicitly in the lease agreements and duly executed by both parties, an implied covenant is not expressly stated or agreed by the parties. Still, it can reasonably be inferred from the agreement and the surrounding circumstances to its execution. Usual covenants are covenants that are proper and enforceable, evidence of which must be given to the court.[52] The process of evicting a tenant for breach of covenant will depend on the nature or type of covenant breached. Where the breach relates to an express covenant in a tenancy agreement

[48] *Akpan v Julius Berger Plc* (2002) 52 WRN 50. See also Section 2 of the Recovery of Premises Act, Abuja.
[49]The Lagos State Tenancy Law 2011.
[50] See Section 25 of the Lagos State Tenancy Law.
[51] Y.Y Dadem, '*Property Law Practice in Nigeria*' (3rd edition, Jos University Press, 2015) P. 105.
[52] ibid

that is not illegal or unlawful, the court may order for possession.[53] Where the breach relates to user covenants such as prescribes the particular use of the property, the tenant may be liable to an order of forfeiture. Forfeiture arises when a landlord is entitled to retake the demised property and prematurely end the lease.[54] Forfeiture will also be ordered where the tenant denies the landlord's title to the demised property.[55] However, it should be noted that the deed of lease or lease agreement must give the lessor a right of forfeiture or re-entry in the event of a breach of condition or covenant by the lessee.[56] A landlord can also take steps toward re-entry or recovery of possession where the tenant breaches the covenant to pay rent[57] or repair.[58]

It is also worthy of note that the lessor has no automatic right of re-entry, notwithstanding the nature of the breach.[59] Therefore, the right of re-entry for breach of covenants in a tenancy agreement cannot override the processes for recovery of premises prescribed by the law. A landlord who forcefully takes possession by resorting to self-help in purported exercise of a right of re-entry acts unlawfully.[60] The proper procedure is for a seven-day notice to be issued and served on the tenant, followed by filing an action for forfeiture, re-entry, or possession. In some cases, the court will determine and require a notice to quit to be issued and served tenant upon filing the action.

[53] Tom Anyafulude, '*Principles of Recovery of Premises in Nigeria Through the Cases*' (Revised edition, 2010) Page 367.
[54] *OKPALA v OKPU* ( 2003) 5 NWLR ( PT 812) 183
[55] Alhaji Sunmonu *Sdiq & Ors v Chief Fasheun & Anor* (2016) LPELR – 41473 (CA) PP. 41 -48. See also section 170 of the Evidence Act 2011 which estops the tenant from such adverse claim.
[56] *Helios Towers (Nig) Ltd v Mundili Investments Ltd* (2014) LPELR-24608214 (CA) 22-24.
[57] *Akpan & Anor v Akpan & Anor* (2014) LPELR 22637 (CA) 14. Also see *Coker v Adetayo & Ors* (1996) LP & LR -879 (SC) 8.
[58] *RCC (Ng) Ltd v. Rockonoh Properties Co. Ltd* (2005) LPELR – 2947 (SC) 14-15.
[59] *Lawani v Tadeyo* (1944)10 WACA 37
[60] *Anyaegbunam v Ifeduba* (2013) LPELR-21268 (CA) 14-15

## 9. UNDERSTANDING JUSTICE

The word justice is one of the most critical moral and political concepts. It is derived from the Latin word 'jus', meaning right or law.[61] It connotes the proper administration of the law; the fair and equitable treatments of all individuals under the law. Justice can also be described as a scheme or system of law, including natural and legal rights.[62] According to Plato, justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of the other part.

Similarly, Rawls analysed justice in terms of maximum equal liberty regarding basic rights and duties for all members of the society, with socio-economic inequalities requiring moral justification in terms of equal opportunity and beneficial results to all.[63] It has also been defined as the concept of moral rightness based on ethics, rationality, law, natural law, religion, fairness, or equity. It is the proper implementation of laws.

Law, on the other hand, is the means by which justice is attained. Within the context of this paper, the law is an instrument of social control and a means of regulating social order. This, by implication, is the regulation of the relationship between the landlord and the tenant. The essence of such a regulation would be to achieve justice for which the law is a vehicle. In fact, 'without justice, law labours in vain.'[64] This position is aptly captured in the words of Justice Kayode Eso, JSC in *Transbridge Trading Company Ltd v Survey International Ltd,*[65] in the following terms:

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[61] Wayne P. Pomerleau, 'Western Theories of Justice' <https://iep.utm.edu/justwest> accessed 7 June 2021.

[62] *West's Encyclopaedia of American Laws* (2nd ed. The Gale Group Inc; 2008), <https://www.thefreelibrary.com > accessed on the 6 June 2021.

[63] John Rawls, *The Theory of Justice* (Harvard University Press; 1971) cited in Wayne P. Pomerleau, 'Western Theories of Justice' <https://iep.utm.edu/justwest> accessed 7 June 2021.

[64] Kayode Eso, cited in Dakas CJ Dakas, 'Beyond Legal Shenanigans: Towards Engendering A Symbiotic Relationship Between Law and Justice in Nigeria.' (2018) *Conference Proceedings, Nigerian Association of law Teachers' 51st Annual conference.* 18.

[65] (1986) 4 NWLR (Pt. 37) 576 at 596-7

> It would be tragic to reduce judges to a sterile role and make an automation of them. I believe it is the function of judges to keep the law alive, in motion, and to make it progressive for the purpose of arriving at the end of justice, without being inhibited by technicalities, to find every conceivable, but acceptable way of avoiding narrowness that spells injustice. Short of being a legislator, a judge, to my mind, must possess an aggressive stance in interpreting the law.[66]

So, the foundation and purpose of the law is to serve justice. This perhaps is the concept behind christening some laws as unjust. A law that does not birth justice may be regarded as an unjust law. This is why States consider it critical to their functions to ensure justice between their citizens. Every state is expected to possess the capability to administer justice to its citizens according to its legal system. This principle was also applicable to ancient states, where one of the primary duties of their rulers was to guarantee justice to their subjects. Therefore, where a law is made to regulate the relationship between parties, it must inherently be fair, placing each person in equilibrium with the other based on their circumstances.

## 10. THE LEGAL BIAS

It is commendable that the various recovery of premises laws in Nigeria contain provisions that regulate the relationship between the landlord and the tenant. However, the law is geared towards offering more protection to the tenant than the landlord. While the tenant is relaxed, the landlord must do everything necessary to enjoy legal support. Arguably, a seven days' notice given to a tenant, in appropriate situations, will be short to secure alternative accommodation, and a tenant may not seem to lie on a bed of roses. However, a tenant who fails to renew his rent or breaches specific covenants, which entitles the landlord to a right of re-entry, forfeiture or possession, may be deemed to have made up his mind to secure alternative accommodation. In this circumstance, seven days appear more than enough. The situation is worse for a fixed tenure tenancy.

[66] However, this does not mean a judge can innovate at pleasure, or pursue his own ideal of beauty or goodness. He must exercise his discretion judicially and judiciously. See Benjamin Cardozo, quoted in Dakas CJ Dakas (n 32) 19.

Furthermore, most tenants served with seven days' notice do not quit and deliver up vacant possession. They will only do so pursuant to an appropriate action filed for possession, forfeiture, or re-entry. In addition to the seven days' notice, the delays in the determination of the proceedings affords the tenant more than sufficient time to secure alternative accommodation. So, notwithstanding the conduct and behaviour of the tenant, the landlord must comply with provisions of the law or suffer legal setbacks in recovering his premises. This is a situation that engenders legalised bias against the landlord. We will consider this bias in relation to the process of recovery of premises as a whole, with particular reference to the requirement for notices to be served on the tenant, the cost of litigation, and the demeanour of the court. There are other factors that weigh heavily on the landlord, which may not necessarily be legal but considerable. These include the court's psychological effect and impact, societal perception of the landlord, and obtaining justice through the court.

It may also appear contestable that some of the issues this research considers bottlenecks to the landlord's access to justice are similar to those required in civil suits. This seems so because the Claimant/Plaintiff instituting an action would also fulfil some condition-precedents in deserving situations. These conditions may include serving pre-action notice, writing demand letters, filing and hearing preliminary applications for leave of court. However, the grouse of this work is that recovery of premises law is primarily tailored to protect the tenant. However, in other civil suits generally, there is no apparent tilting of the law to protect any party. Secondly, all the preliminary issues in other civil suits such as pre-action notice, demand letters, and even application for leave of court span a period ranging from one to three months maximum in most cases, after which there is no further requirement of additional notice save to proceed with the substantive action. In the recovery of premises, however, upon the expiry of the statutory notice to quit, an additional seven days' notice is required in many instances. We will now proceed to consider the issues of bias in the practice of recovery of premises.

### *10.1 Notices Required*

Notices in recovery of premises, when required, are construed in a strict sense. This means the necessary period of notice must be given in

accordance with the provision of the law. Therefore a notice that runs afoul of the period, will fail as much as that which does not terminate on the eve of the tenancy. It should be noted that although parties to a tenancy agreement are at liberty to determine the period of notice the tenant is entitled to in terminating the tenancy, where they neglect or fail to, the length of notices stipulated above is construed strictly. Even when there is such an agreement, it is strictly interpreted in its legal context.

In *Odutola & Another v Papersack Nigeria Ltd*,[67] the Apex court held that;

> Parties to an agreement may mutually but wrongly come to an understanding as to the legal content of it. That notwithstanding, a court of law can only interpret the agreement strictly in its legal content and arrive at a conclusion on the law and the law alone in respect of it. A court of law cannot construe the agreement to convey the meaning "as understood" by the parties if it is different from the real legal meaning of the agreement. While there are instances where the principles of equity may assist a party wronged by a strict application of the construction of the agreement, in the application of the doctrine of estoppels, this is not one of such cases.

In most recovery of premises' cases, the statutory notices apply, as parties often do not determine shorter or longer periods of notices by their agreement. Where this is the case, there must be no agreement to the contrary. It does not matter the behaviour or conduct of the tenant; he is entitled to statutory notices. For instance, if a tenant whose yearly tenancy requires six months' notice, badly defaces the premises, attempts to erect a structure or sublets the premises without the consent of the landlord, the landlord is mandated and must give him the statutory six months' notice which must terminate on the eve of the current tenancy. Where the time falls short of six months within the current tenure, such a notice can be given, but only on the grounds that it must terminate on the eve of the next tenancy. This will result in a period of notice well over the six months

[67] (2006) 2 All N.L.R. 248

required and maybe over a year's notice by extension. By this, the tenant is placed in an advantageous position over the landlord, notwithstanding his destructive conduct, leaving the landlord in a helpless quagmire of immediately recovering his premise from a destructive or self-imposing tenant. This situation also applies to cases where a yearly tenant wilfully or deliberately pays the rent in unreasonable instalments to the disagreement or displeasure of the landlord. Therefore, irrespective of the bad conduct of the tenant in respect of the demised premises, he enjoys the maximum protection of the law as to the requirement of notices, particularly where statutory notices are applicable.

### *10.2 Cost of Litigation and Awards*

In an adversarial system such as ours, the judges are not inquisitors saddled with the responsibility of making inquiries to ascertain the truth of a case before them. They pass judgment on the evidence produced before them by the parties on the balance of probabilities. This means parties must prove their cases. Discharging this obligation comes at a considerable cost. Although parties can prosecute or defend any suit in person, they are more comfortable and indeed feel safer to engage the services of a lawyer. Where a landlord chooses the option of employing a lawyer to recover his premises, the process begins with the cost of employing a lawyer to prepare and file the case, assembling witnesses, and sometimes paying their transportation to and from the court to payment of appearance fees, and other ancillary costs.

Just like any other service in Nigeria, the cost of litigation is also on the rise. Understandably, while no law particularly provides for this cost, the court's reluctance in awarding the cost of litigation against erring defendants in appropriate circumstances is quite saddening. For instance, in *Ihekwoaba v ACB Ltd***,**[68] the Court of Appeal refused to award legal fees (as part of the cost of litigation) because there was no system of costs taxation to get a realistic figure since, by the rules of court, such cost is subject to tax. In fact, in *Guinness Nig. Plc. v. Emmanuel Nwoke,*[69] the Court of Appeal held while refusing to award legal fees that it is unethical and an affront to public policy to pass on the burden of solicitor's fee to the other

[68] (1998) 10 NWLR [Pt. 571] 590 at 610-611
[69] (2000) 15 NWLR [Pt. 689] 135

party. So, when a landlord successfully recovers possession through the court, he does so at a loss even when mense profit is ordered. This is because the landlord will not have to spend on legal and other fees if he secures possession without recourse to the court. On the other hand, the defendant, through the delay in trials, is given more than sufficient time to secure another accommodation, and in the worst scenario, pay for mense profit; an amount which he is ordinarily obligated to pay even if the matter was not before a court for determination.

Apart from legal and other costs of prosecuting the case, if upon determination of the case, mense profit was ordered and the defendant neglects or fails to pay, the landlord would have to apply for a writ of attachment, at another cost which adds to the cumulative loss of the landlord even if he eventually succeeds. We must state that in practice, the cost of litigation in tenancy proceedings is not only monetary. It also involves time, energy, and even the psychological effect on the landlord.

***10.3 The Demeanour of the Court***

Once a matter is filed for recovery of premises, the court, by the law, is poised more to look at whether the tenancy is properly determined either by notice to quit or by effluxion of time. No consideration is giving to the conduct of the defendant while the tenure of tenancy subsists. This situation appears not to change even where a defendant has breached an express provision of an agreement. The searchlight is first beamed on the landlord. He is required to do all he is required before any consideration is given in respect of the defendant.

A profound observation is that in a bit to avoid an unnecessary challenge of her decision in tenancy matters, the courts tend to follow the requirements of the laws even more than required in tenancy proceedings. For instance, when a defendant is aware of the hearing date of his case but refused to attend in person or by representation, he ordinarily does not need to be served hearing notice on the next adjourned date. However, in practice, the court often orders a hearing notice to be issued and served on the defendant. The landlord will have to 'mobilise' (pay some money to) the court officers for service. It thus always appears that tenancy law and the court in tenancy matters are there to protect the tenants more than the

landlords. But the Laws and the courts are meant for the service of justice to all.

## 11. SOCIETY'S PERCEPTION OF JUSTICE THROUGH THE COURTS

The essence of the law and its enforcement in the court is to attain justice. This crucial role may be hampered if determining matters before the court is bedevilled by needless delay. There is no gainsaying that justice delayed is justice denied. Delay is one of the major clogs in the wheel of justice and judicial proceedings. The court system is so slow that parties and people who have contact with the court are consistently discouraged from bringing a matter before it for determination. Despite several meaningful efforts by the courts of superior records at fast-tracking proceedings, the Magistrate courts (District courts in the North), where most of these tenancy matters are decided, are still inundated with procedures that occasion delay in proceedings, a situation most landlords consider a leading factor to the attractiveness of resort to self-help.

In recovery of premises, landlords view the court system as being too slow and thus denying them justice. Many landlords view the processes of issuing and serving Statutory Notices, filing a matter before the court, and the endless adjournments and many other issues as frustrating. Many tenants, on the other hand, enjoy being taken to court, especially in tenancy matters. Some go to the extent of challenging their landlords to sue them to court. This is because they almost have a settled assurance that the proceedings will be protracted before the matter is determined. A period sufficient for them to secure another premise. They also have the wrong belief that since they have been served with a quit notice, they will not have to pay rent.

## 12. SOCIETAL PERCEPTION OF THE LANDLORD

Another factor to consider is the sociological view of the landlord. Members of society usually view a landlord who institutes tenancy proceedings against a tenant as being wicked. They believe he is financially better placed than the tenant, and he does not need the rent after all. While this has nothing to do with legal bias, it weighs heavily on the

landlord and sometimes affects his decision in filing a case before the Court.

## 13. THE WAY FORWARD

From the foregoing, we have examined the law relating to the recovery of premises and discussed whether such guarantees justice or legalised bias against the landlord. It is clear that the rules and proceedings in recovery of premises substantially protect the tenants' rights and guarantees his security of tenure with little protection for the landlord. The huge protection the tenant enjoys against that which is available to the landlord apparently engenders legalised bias rather than ensuring justice. The following recommendations are made to aid achieving a balance in the practice of recovery of premises in Nigeria:

a) While it is necessary to retain the periods of statutory notices required to determine a tenancy where the tenant has not breached any terms of the tenancy, such notices should be abridged to lesser periods of more than half of what is ordinarily required where there is a breach. This should be applicable whether it is a breach of express terms in an agreement or a violation of implied terms by the law, such as the tenant's duty not to sublet without the landlord's consent. This is because the tenant is already aware of the consequence of breaching any of these terms, being the termination of the tenancy.

b) It has been observed that the courts are reluctant in granting the claim for legal fees or solicitors fees generally. The situation is worse when the matter is tenancy-related. The court will usually order possession and mense profit in appropriate circumstances but will decline to grant any claims for solicitor's fees. It is recommended that the courts should grant the cost of prosecuting a tenancy matter, especially where, despite the proper determination of the tenancy by appropriate notices, the defendant refuses or neglects to deliver vacant possession of the premises.

c) It is here recommended that an amendment be made to abridge the current period of statutory notice in cases of breach of express or implied term by the tenant to a period no more than half the current

length of notice. This will help improve the demeanour of the court in tenancy matters.

d) Being a body that promotes the rule of law, the Nigerian Bar Association should mandate its members, especially property consultants, to create a platform to assist in educating landlords and tenants in tenancy matters.

e) We further recommend that Recovery of Premises laws of the various States provide for the Multi-door Court House. Alternative Dispute Resolution (ADR) plays a pivotal role. Resort should only be made to litigation when ADR fails. This will enhance faster and prompt resolution of tenancy disputes with a capacity to remove the feeling of a battle between landlords and tenants. The Multi-door Court House will also help in decongesting the court.

f) It is here recommended that the excessive delays in recovery of promises proceedings injected by unnecessary adjournments and applications be proactively dealt with. This will help curtail recourse to self-help by landlords in recovering their premises.

Conclusively, therefore, aside from recourse to self-help by the landlord, which the law frowns at, the extant regulatory framework creates a disequilibrium position for the landlord, who, despite being the owner of a demised property, cannot unilaterally demand the reversion of his premises from a tenant without first instituting an action before a court of law, against a tenant who is holding over the demised property and have refused to renew his rent for a sufficient length of time. It appears that the law has continued to orchestrate injustice against a landlord whose only crime was letting a tenant into his property in the name of a tenancy relationship.