

An Appraisal of The Tenancy Law of Lagos State, 2014

By

Josephine Aladi Achor Agbonika* and Martins Ajogwu Idachaba **

Abstract

The Tenancy Law of Lagos State of Nigeria 2014 came as relief for tenants who had been suffering untold hardship in the hands of shylock landlords who had become excessive and inconsiderate in their demands. The Law was enacted to regulate rights and obligations under tenancy agreements and the relationship between the landlord and the tenant including the procedure for the recovery of premises and for connected purposes. The objective of this paper is to appraise the tenancy law. The doctrinal research methodology which is paying attention to theory as opposed to practice was adopted. This paper contains primary and secondary sourced materials, such as laws, statutes, while other resource materials including decided cases, journals, books, and newspapers were used. The paper reveals the rights and obligations of tenants on one hand and the obligations of the landlord towards the tenants in relation to a premises. The law also provides for arbitration that can be enforceable in the court, but an arbitration clause or agreement in a tenancy or lease agreement shall not constitute an ouster of court's jurisdiction.

Keywords¹: Tenancy, Landlord, Premises, Lease, Court, Jurisdiction.

Introduction

Tenancy law is an area of law that has created a lot of concern in Nigeria before and even now. Landlords increased rents arbitrarily, while government on its part imposed statutory control for the purpose of curtailing the excesses of the landlords. To what extent has this goal been achieved, is a burning question to be answered. In Nigeria before the advent of the British, tenancy relationships were governed by the various customary laws that were in existence at that time. With the advent of the British colonialists, rent restriction law was introduced to restrict the rights of landlords.² The earliest restriction was necessitated by the shortage of houses caused by the First World War. The first enactment³ applied to Lagos, it was repealed in 1926⁴ when the pre-existing rights of landlords were restored for a time.

Restrictions were revived again during the Second World War. In 1942 the Governor exercised the power vested in him to introduce the Nigerian Defense (Increase of Rent Restrictions)

* LL.B (ABU), BL, LL.M (University of London), Ph.D (Uni-Abuja), FCTI, FCIMC, ACI Arb, LSM, JP, Associate Professor of Law, Faculty of Law, Kogi State University, Anyigba, Kogi State, Nigeria.

** LL.B (Hons.) LL.M, PGD, FCent, Ph.D (in view) Lecturer, Faculty of Law, Kogi State University, Anyigba, Kogi State, Nigeria. Idachabamartins1@gmail.com, 08032224236.

¹ Tenancy is an act of being a tenant, the occupation of a property for a period of time. Landlord is a person who owns and rents a property as a house, apartment etc. Premises is the land and the buildings on it. A Lease is a grant use or occupation of property under a term of contract. A Court is a formal place for conducting judicial business, and Jurisdiction is the territory or geographical area within which power can be exercised.

² Egute, M.A., *Essentials of Nigerian Land Law* (Makurdi Onaivi Printing and Publishing Company, 2002) p.250.

³ The Profiteering (Rent) Ordinance No.8 of 1920.

⁴ By the Profiteering (Rent) (Repeal) ordinance No.2 of 1926.

Regulations.⁵ This law was passed to deal with the problems arising out of war time, overcrowding, and rent profiteering in some towns of Nigeria. This was extended to cover some towns in Northern Nigeria by the Rent Restriction (Application) order in council.⁶ The regulations prohibited arbitrary increases of rent, imposed statutory control and recovery of possession, and established a rent assessment board to fix rents.

When Nigeria gained independence in 1960, many people moved from the rural areas to urban centers, resulting in increased strain on housing, accommodation, and utilities in the urban areas. As a result, the 1942 Law was repealed.⁷ The repeal was necessary because the former law was inadequate in meeting the changing socio-economic development in Nigeria. Consequent upon the breakout of the Civil War, which led to destruction of properties, there was further pressure for more residential accommodation. Rent rose steeply and it was difficult for low-income earners to find affordable shelter. Consequently, the military government intervened and promulgated a new rent control law.⁸ The new decree repealed the old law in its entirety. The law provided for one single board and tribunal in Lagos for the whole of Nigeria. The new decree however empowered the states government to make laws (Edicts) for the control of residential accommodation in their respective states. Today, each state in Nigeria has her rent control law to for residential accommodation.

Appraisal of Lagos State Tenancy Law, 2014

The law applies to all premises including business and residential premises owned or operated by an educational institution for its staff and students or residential premises except for emergency shelter or residential premises in a care or hospital facility, or in a public, or private hospital, or a mental health facility, or one that is made available in the course of providing rehabilitative, or therapeutic treatment.⁹ Section 1 (3)¹⁰ of the law excludes Apapa, Ikeja GRA, Ikeja and Victoria Island from application of the law.

Jurisdiction under the law, where the rental value of the premises exceeds the Jurisdiction of the Magistrate Court as provided by the Magistrate Court Law, shall be to the High Court of a state. The practice and procedure of the Magistrate Court or the High Court in civil matters guide the provisions of the law.¹¹ The law recognizes the existence of a Tenancy Agreement where premises are granted by the landlord to a person for value whether or not it is express or implied, oral, or written or partly oral or partly written or for a fixed period.¹² The law renders unlawful receipt of rent from a sitting tenant in excess of six months from a monthly tenant, and one year from a yearly tenant in respect of any premises. The law disallows the offer or payment of rent by a sitting tenant or by the demand by the landlords or his agent in excess of one year for a yearly tenancy. It is also unlawful for a new or would-be tenant to offer or pay rent in excess of one year in respect of any premises. An offence is created for contravention which renders a guilty person liable to a fine of

⁵ No. 59 of 1942-Cap 116 Laws of Nigeria, 1948.

⁶ Cap 116 Laws of Northern Nigeria, 1963.

⁷ Rent Control Decree No. 15 of 1966.

⁸ Rent Control (Repeal) Law No. 50 of 1971.

⁹ S.1 (1) & (2) Lagos Tenancy Law, 2011.

¹⁰ *Ibid.*

¹¹ *Ibid* at S.2.

¹² *Ibid* at S.3.

one hundred thousand naira only (N100, 000) six months imprisonment.¹³

Receipt of Rent Payment is now also required to be given to tenants by all landlords. The receipts shall state the date on which the rent was received, names and address of the landlord and tenant, description, and location of premises in respect of which the rent is paid, amount of rent paid and period to which the payment related.¹⁴ Contravention attracts, upon conviction, a fine of one hundred thousand naira only.¹⁵

Rights of Tenants

The rights of tenants are stated in section 6 of the Lagos Tenancy Law. These are:

1. The tenant's entitlement to quiet and peaceable enjoyment of the premises including the right to:
 - a. Privacy
 - b. Freedom from unreasonable disturbance
 - c. Exclusive possession of the premises, subject to the landlord's restricted right of inspection and
 - d. The use of common areas for reasonable and lawful purposes.
2. Where a tenant with the previous consent in writing of the landlord, effects improvements on the premises and the landlord determines the tenancy, such a tenant shall be entitled to claim compensation for the effected improvements on quitting the premises.

Obligations of Tenants

The obligations of tenants are stated in section 7 and they are as follows:

1. Pay rent at the times and in the manner stated.¹⁶
2. Pay all existing and future rates and charges not payable by the landlord by law.
3. Keep the premises in good and tenantable repair, reasonable wear and tear excepted.
4. Permit the landlord and his agents during the tenancy at all reasonable hours in the daytime after previous written notice, to view the condition of the premises and to effect repairs in necessary parts of the building.
5. Not make any alterations or additions to the premises without the written consent of the landlord.
6. Not assign or sub-let any part of the premises without the written consent of the landlord and
7. Notify the landlord where structural or substantial damage has occurred to any part of the premises as soon as practicable.

Obligations of The Landlord

The obligations of the landlord are stated as follows:

S. 8 subject to any provision to the contrary in a tenancy agreement, the landlord shall:

1. Not disturb the tenant's quiet and peaceable enjoyment of the premises.
2. Pay all rates and charges as stipulated by law.

¹³ *Ibid* at S.4.

¹⁴ *Ibid* at S.5.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

3. Keep the premises insured against loss or damage.
 4. Not terminate or restrict the use of a common facility or service terminate or restrict the use of a common facility or service for the use of the premises.
 5. Not seize any item or property of the tenant or interfere with the tenant's access to his personal property.
 6. Effect repairs and maintain the external and common parts of the premises.
7. Further obligations of landlord regarding business premises are stated in section 9. A tenancy agreement in respect of business premises, shall be deemed to provide that where the landlord:
- a. Inhibits the access of the tenant to the premises in the substantial manner.
 - b. Take any action that may substantially alter or inhibit the flow of the customers, clients or other persons using the tenant's business premises.
 - c. Causes or fails to make reasonable efforts to prevent or remove any disruption to trading or use within the business premises which results in loss of profits to the tenant
 - d. Fails to rectify as soon as practicable, any breakdown of plant or equipment under his care and maintenance which results in loss of profits to the or
 - e. Fails to maintain or repaint the exterior or the common parts of the building or building of which the premises is comprised and after being given notice in writing by the tenant requiring him to rectify the matter, does not do so within such time as is reasonably practicable, the landlord is liable to pay to the tenant such reasonable compensation as shall be determined by the court, where the tenant effects the repairs or maintenance.

The provision for **RE-ENTRY** is contained in S.12. Where there is a breach or non-observance of any of the conditions or covenant of the premises, the landlord subject to contrary provisions in the agreement between parties and of process in accordance with the relevant provision of the law can institute proceedings for an order to re-enter and determine the length of notice. Where there is no stipulation as to the notice, the following applies:

- a. A week notice for a tenant at will.
- b. One month notice for monthly tenant.
- c. Three months notice for a quarterly tenant.
- d. Three months' notice for a half yearly tenant.
- e. Six months' notice for a yearly tenant.¹⁷

In the case of a license, where a person is a licensee and upon the expiration or withdrawal of his license, he refuses or neglects to give up possession, he will be entitled to seven days' notice of the owners intention to apply to recover possession in the relevant form.¹⁸ The form is form TL4. The same form is used for premises that has been abandoned which the law has defined as premises (a) which tenancy has expired and (b) tenant has not occupied since the tenancy expired and has not given up lawful possession of.¹⁹

Tenant Refusing or Neglecting to Give Up Possession

When tenant has been served with a written notice to quit in Form TL2 or TL3, and form TL4, owner's intention to recover premises may be served by the landlord or his agent on the tenant on

¹⁷ *Ibid* at S.12.

¹⁸ *Ibid* at S.13.

¹⁹ *Ibid* at S.14.

a date of not less than 7 days from the date of the notice.²⁰ The notice must be properly served. Proper service is personal service but not limited to service on the tenant in person, delivery to any adult residing at the premises, by courier on the premises and the courier providing proof of delivery, affixing the notice on a prominent part of the premises to be recovered and providing corroborative proof of service.²¹ It is good service in a business premises to serve by delivery to a person at the business premises sought to be recovered or affixing the notice in a prominent part of the premises to be recovered.²² But service of process should also be effected in accordance with the provision of the law for the time being in force relating to the civil process of Magistrate Court or the High Court of Lagos State.²³ That is also the position taken by the court in the case of *Oyegbesan v. Oyegbesan*.²⁴ Upon expiration of time stated in form TL4, if the tenant refuses or neglects to quit and deliver up possession, summons may be filed by the landlord in form TL6A and B for recovery of possession against such person in the Magistrate or High Court of a State.²⁵

If the relevant notices expires and the tenant now trespasser fails to vacate the premises, the landlord could go to court to seek the court's order to recover possession under section 16(1) of the Rent Control Law of Lagos State and section 10 Recovery of Premises Act Abuja. The following facts must be stated on the complaint or writ.

1. That the claimant is entitled to possession.
2. Accurate description and location of the premises.
3. The nature of tenancy and rent payable.
4. The date of expiration.
5. The fact that both the quit notice and the notice of intention to recover possession have been served.
6. That despite such service of notices, the tenant has refused to give up possession.
7. Arrears of rent and Mesne profit due.
8. Evidence of service of notices usually be attaching either return of service or proof of service by the court's bailiff.
9. Attach duplicate copies of notices
10. Service of court process is to the tenant. Where the tenant evades service, applicant can apply substituted service process.

Unless the landlord can prove that he has done all these, the tenant will continue to enjoy the protection of the law as a statutory tenant. Once a tenancy is determined but the order for possession has not been handed to the landlord by the court, he becomes a statutory tenant.

Grounds for Recovery Possession

The grounds for recovery of possession upon proof are arrears of rent, breach of any covenant or agreement, where the premises are required by the landlord for personal use, where the premises require substantial repair. Notwithstanding the agreement between the parties, the court can make an order for possession where: the premises is being used for immoral or illegal purposes, the premises has been abandoned; the premises is unsafe and unsound as to constitute a danger to

²⁰ *Ibid* at S.15.

²¹ *Ibid* at S. 16.

²² *Ibid* at S. 17.

²³ *Ibid* at S. 18.

²³(2014) LPELR-23358

²⁵ *Ibid* at S. 24.

human life or property, or the tenant or any person residing or lodging with him or being his sub tenant constitute by conduct; an act of intolerable nuisance or induce a breach of a tenancy agreement.²⁶

The law also provides for **Arbitration**. S. 30 of the law provides that a valid agreement to arbitrate shall be upheld and be enforceable in the court but, an arbitration clause or agreement in a tenancy or lease agreement shall not constitute an ouster of court's jurisdiction.²⁷ An arbitration award shall be enforceable as a judgment or order of court upon registration.²⁸ S. 32 allows the court to promote reconciliation, mediation, and amicable settlement between the parties. The court is enjoined to refer tenancy proceedings or any part of it to a citizen mediation Centre or to Lagos Multi-Door Court House.²⁹

A major highlight of the law is that it frowns at unreasonable increase in rent. A tenant may apply in form TL11 to the court for an order declaring that the increase in rent payable under a tenancy agreement is unreasonable. In making any order, the court shall take into consideration, the general level of rents in the locality or a similar locality for comparative grounds; evidence of witness of parties and any special circumstances relating to the premises. The court if satisfied, may charge the rent to a specific amount as appropriate. It shall be unlawful for a landlord to eject a tenant from any premises pending the determination of the action.³⁰

Where a landlord is entitled to possession of any premises, the court may issue a warrant of possession.³¹ The certificate of warrant of possession shall be as in form T1 10. The warrant shall have a life of three months from the date it bears provided that it can be reviewed for no more than three months each.³²

Offences and Penalties

The law in S.44 creates offences. It renders a crime, the action of anyone who demolishes, alters or modifies a building to which the law applies with a view to ejecting a tenant and without the approval of court, attempts to forcibly eject or which forcibly ejects a tenant, threatens or molests a tenant by action or willfully damages any premises. Upon conviction, such a person shall be liable to a fine not exceeding two hundred and fifty thousand naira (N250,000) or a maximum of six months imprisonment and any other non-conditional disposition. This, no doubt has already, within the short span of life of the legislation, served as a deterrent.

The court has power to punish for contempt in the face of the court but may in other cases order arrest of a person and bring him before the court, any person who has committed contempt and is tried.³³ Resistance, molestation, assault or obstruction of any officer of the court from carrying out any order of the court to serve any process or execute a warrant or unlawfully retakes possession

²⁶ *Ibid* at S. 20.

²⁷ *Ibid* at S. 25.

²⁸ *Ibid* at S. 30

²⁹ *Ibid* at S. 32.

³⁰ *Ibid* at S.37.

³¹ *Ibid* at S. 37.

³² *Ibid* at S. 37(4).

³³ S. 39.

of premises after been evicted by an order of court, shall be guilty of contempt and is liable on conviction to a fine, not exceeding two hundred and fifty thousand naira only or a maximum of six months and any other non-custodial disposition.³⁴

The grant of order of possession for any premises to a landlord under the law, by the provision of false information by a landlord constitutes an offence punishable under the Criminal Code.³⁵ The denial of the landlord, possession, by a tenant using false information constitutes an offence under the Criminal Code also. The court will order the landlord to pay reasonable compensation, upon discovery by the court that it acted on false information provided by the landlord. Appeals from the decisions of the Magistrate Court is to the High Court for proceedings at the High Court, appeals lie to other courts in accordance with the provisions of the Constitution.

Jurisdiction of Courts

Proceedings for recovery of premises may be commenced in magistrate/District Courts depending on the state premised on-

1. Where title is not in issue.
2. In all suites between landlord and tenants for possession of any lands or houses claimed under any agreement or refused to be delivered up. Where the amount of the value of the property does not exceed the monetary jurisdiction of the trial Magistrate. To ascertain whether a magistrate has jurisdiction, the amount claimed for rent and mesne profits should not be added to the annual rental value of the premises, the subject matter of the claim for possession, as each claim is under a different claim of jurisdiction.³⁶

Jurisdiction of Trial Magistrate/District Court in Respect of Claims For Arrears of Rent and Mesne Profit

In recovery of premises proceedings, a claim for arrears of rent and that of mesne profits are to be regarded as one claim.³⁷ Consequently, a trial Magistrate may validly make an order for arrears of rent and mesne profits in the following circumstances:

1. The claim for arrears of rent is not above the monetary jurisdiction of the Trial Magistrate or
2. The claim for mesne profits is not above the monetary jurisdiction of the Trial Magistrate or
3. The cumulative claim for arrears of rent and mesne profits is not above the monetary jurisdiction of the trail magistrate.

Jurisdiction of Rent Tribunals in Lagos State

S. 7 of the Rent Control Law³⁸ provides

A tribunal shall have jurisdiction on application made to it by a landlord or tenant or any interested person to determine in respect of any residential

³⁴ *Ibid* at S. 41 Enforcement of Court Order is contained in Section 43.

³⁵ *Ibid* at S. 44.

³⁶ See *Oku v. Awanah* (1961) All N.L.R.116.

³⁷ See S. 18 Rent Control and Recovery of Residential Premises Law Cap R6, Laws of Lagos State.

³⁸ Cap A6 Laws of Lagos State

accommodation let before or after the commencement of this law, the standard rent payable in respect of such accommodation within the limit of the rent prescribed in the schedule to the order made under section 1 of this law.

Consequently, a tribunal in Lagos has power to:

1. Determine the standard rent payable in respect of premises which are objects of the rent law, S. 7
2. Determine issues relating to the recovery of premises, arrears of rent and mesne profits of residential premises within its monetary jurisdiction of N250, 000.
3. Determine issues relating to Residential premises whose annual rental value in 1996 did not exceed N250, 000. S. 1

Jurisdiction of The High Court

A party may conveniently commence proceedings for the Recovery of Premises in the High Court. In some jurisdictions where proceedings under the two laws aforesaid may conveniently be instituted in the High Court, it does not include areas where, by a special provision of statute, High Court is excluded from entertaining proceedings under the Rent Control and Recovery of Residential Premises Law. Where the annual rental value of the property is within the jurisdiction of the Magistrate, it is better to commence the proceedings in the Magistrate Court. This is because in such a situation, the plaintiff will not be conferred with any advantage in the High Court including cost of proceedings. However, proceedings for recovery of premise are better commenced in the High Court if:

1. The defendant claims title or *bona fide* claim of right in the premises.
2. A declaration of title is joined with other claims
3. The rent claimed or annual rental value is above the jurisdiction of the magistrate.
4. The proceedings are likely to involve questions of law.

In any case, the High Court has unlimited Jurisdiction, and nothing may stop a party from commencing proceedings for the recovery of premises in the High Court.³⁹

Determination of Residential Tenancy in Nigeria

When a tenancy agreement has been determined either by effluxion of time or breach, certain statutory notices are required to be served as a prerequisite for approaching the court or tribunal.

a. Statutory Notices

Both the Rent Control and Recovery of Residential Premises Laws and Recovery of Premises Laws have provisions on the determination of tenancies. The following issues emerge from S. 13.⁴⁰

1. A term granted to a tenant may be determined by effluxion of time or by service on the tenant of an appropriate quit notice.

³⁹ Anyafulude, T. *Principles of Recovery of Premises in Nigeria through the Cases* (Enugu, Snaap Press Ltd.) 2007,p.476.

⁴⁰ Rent Control and Recovery of Residential Premises Law, Cap. R6 of Lagos State, 2003.

2. The form of either of the quit notices to be served on the tenant is shown in Forms B, C or D in the schedule to the Rent Control Law.
3. There is no provision on who signs the quit notice, or to whom it should be served except as indicated in the forms
4. At the expiration of the quit notice, notice of intention to recover possession shall be served on the tenant or a person refusing to deliver possession.
5. The second notice is to be signed by the landlord or his agent and as shown in Form E.

Failure to serve relevant notices can make it difficult for a tenant to be ejected.

In the case of *The Military Gov. of Lagos State v. Ojukwu*,⁴¹ an *ex parte* application was brought before the High Court by the respondent seeking *interim* injunction restraining the Military Governor of Lagos State, the Commissioner of Police, Lagos State and the Attorney-General, Lagos State from ejecting him and members of his family from No. 29 Queens Drive, Ikoyi. The trial Judge granted the *interim* order for injunction on the grounds of the respondent's ownership of the house and impending threat to evict him. When the motion on notice was filed, the Court refused to grant the equitable relief of injunction against Lagos state government on the ground that the property is an abandoned property and that the respondent had failed to show that he had a legal right to or interest in the property. While the matter went on appeal, the notice of leave to appeal having been filed and served on the respondent (Lagos state government), the government resorted to self-help and evicted the respondent notwithstanding the fact that his application was pending before the Court of Appeal. The Court of Appeal therefore held that the right of self-help ended when issues were turned over to the Court and therefore ordered the reinstatement of the respondent into the premises.

The Lagos State Government refused to comply with this order and instead appealed to the Supreme Court on the ground that the remedy of interlocutory injunction is not available for an act which had been carried out and concluded.

The Court in dismissing the application held per *Kayode Eso, J.S.C.*-

1. "I think it is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court, the contempt of the court is by the Executive. Under the Constitution of the Federal Republic of Nigeria 1979, the Executive, the Legislature (while it lasts) and Judiciary are equal partners in the running of a successful government... The organs wield powers, and one must never exist in sabotage of the other or else there is chaos."
2. While the contempt of the Court of Appeal by the applicants is still subsisting, it would be inequitable to give consideration to the application of the applicants.
3. It is trite law that a party has no right to take matters into his own hands once the court is seized of it.

Some tenants have tried to take undue advantage of the protection to frustrate court processes. In *African Petroleum v. Owodunmi*⁴² a tenant refused to give up possession 14 years after the tenancy

⁴¹ (1986) JELR 51747 SC; (1986) 1 NWLR (Pt. 18) 621

⁴² (1991) 8 NWLR (Pt. 210) 391

was terminated but resorted to all forms of maneuvers to prevent being evicted. An employee of the Plaintiff occupied premises belonging to the Plaintiff, for as long as his employment subsisted. Upon determination of his employment, the company sought to evict him from the premises. There was an issue as to what type of notice the defendant was entitled to.

The Supreme Court held that whenever a person holds premises at the expiration of his original grant against the will of his landlord he becomes a tenant at sufferance. That by virtue of the Rent Control and Recovery of Residential Premises Law⁴³ of Lagos State, which defined a tenant to include anybody in lawful occupation, a tenant at sufferance is equally a statutory tenant and is protected by statute.

Mr. Owodunni having had his employment terminated had by his prior contractual tenancy with the Plaintiffs become a tenant at sufferance and by extension a statutory tenant when he failed to vacate the premises as agreed upon in his employment contract.

In determining the type of notice to be given to evict him the court stated that it was to be construed by reference to the terms of the original grant. The terms of the original grant between Mr. Owodunni and his employers, as to whether he was a periodic yearly tenant, a monthly yearly tenant or a fixed term tenant was not express. The Court had to construe the type of tenancy by reference to the mode of his paying rent which was yearly.

The common nightmare shared by landlords is that of defaulting tenants who are either not willing to pay their rents as agreed when due or give up possession to enable the landlord to rent the property to someone else. The temptation of most landlords is a resort to the use of self-help which could range from forceful eviction to removal of roof and in extreme cases, the burning down of the house. It is for such reasons that the court frowns at the use of self-help and insist that due procedure is followed to evict a tenant.

In *Hemmings v. Stoke Pages Gulf Ltd*,⁴⁴ *Scrutton LJ* stated that, when the grievance complained of is the removal by no more force than is necessary of a trespasser and his property from the premises which the landlord has a right to enter for the purpose, the justification covers not only the entry but the forcible expulsion which is the object of the entry and which moves the entry a forcible one.

Also, in *McPhail v. Persons Unknown*⁴⁵ Lord Denning stated, if a tenant remains in possession after the expiration of his tenancy, there is high authority for saying that the owner is not entitled to take the law into his own hands and remove the tenant by force. He should go to court and get an order for possession.

In *Oni v. Dada*,⁴⁶ a tenant breached the terms of his tenancy agreement. As a result, the landlord wrote him to terminate the agreement of tenancy. Shortly thereafter, he let the premises. It was

⁴³ (NO.9) of 1976

⁴⁴ (1920) 1 KB 720

⁴⁵ (1973) 2 Ch 447, 458-9

⁴⁶ (1957) SCNLR 258

held that the breach did not justify the trespass without following due process. Since the tenant is the prima facie weaker party, the law seems to give them more protection.

The understanding of a statutory tenant was determined by the case of *Odutola Ano. v. Papersack Nig. Ltd.*⁴⁷ The subject matter of the litigation was a property located at No. 44 Eric Moore Road, Iganmu Industrial Estate in Lagos State. The first plaintiff now the appellant is the original owner of the property. He is the founder and principal shareholder of the 2nd plaintiff, now the 2nd appellant. The 2nd appellant is the assignee of the unexpired term and interest in the property with effect from 13th December 1991. The 1st appellant is the Managing Director of the 2nd appellant. The fact in issue is that Thoresen and Co. (Nig) Ltd rented the property and not Papersack Nigeria Limited. Although the tenancy expired in 1980, the respondent still occupied the property. They paid rent to the 1st appellant, though not regularly. The 1st appellant issued receipts for payments made to the respondent. Following the failure on the part of the respondent to pay the rent, the appellants filed an action. They claimed possession, outstanding rent, and mesne profit. The respondent made a counterclaim. The learned trial Judge gave judgment to the appellants as follows:

1. The defendant shall give up possession of the warehouse and office premises situate at No. 44, Eric Moore Road, Iganmu Industrial Estate Lagos FORTHWITH and shall pay mense profit at the rate of ₦808,861.64 (eight hundred and eighty thousand and sixty-one Naira and sixty-four Kobo) from the 1st day of June 1994, until possession is given up.
2. For the sum of ₦2,975,143.23(Two million nine hundred and seventy-five thousand, one hundred- and forty-three-naira, twenty-three kobo) with interest at the rate of 21% per annum from the 1st day of June 1989 to the 31st day of May 1994 being the amount owed by the defendant for the use and occupation of the plaintiff's warehouse and office premises at No. 44 Eric Moore Road, Iganmu Industrial Estate, Lagos State.

The case went on appeal to the Court of Appeal, the appeal was allowed while the judgment of the High Court was set aside, and the following orders were made:

1. The arrears of rent of the sum of ₦808, 419.95 for the period of 1977-1982 is set aside.
2. The appellant shall pay rent of ₦ 200,000.00 for the period of 1st June 1984 to 31st May 1985. The rent from 1989 to 1994 shall be at the rate of ₦ 20,000.00 per annum as there was no proper increase of rent proved by the respondent.

The total arrears of rent due as of 31st May, 1994 is the sum of ₦ 1,000,000.00 (One million Naira only).

3. The order of payment of mesne profit is set aside on the ground that the notice to quit was not valid and could therefore not determine the tenancy.

Evidence led showed that the original tenant of the first appellant was Thoresen & Co (Nigeria) Ltd whose tenancy was to terminate on 31 May 1980 by virtue of a letter dated 6 December 1976 admitted in evidence as Exhibit P1. However, by another letter dated 24 April 1982 from Chief

⁴⁷ (SC 280/2003) 2006 NGSC 46 (15 December 2006); (2006) 2 All NLR 248

Aboderin who is stated to be the owner of both Thoresen & Co (Nigeria) Ltd and the respondent, the said Chief Aboderin pleaded with the first appellant that time for the said Thoresen & Co (Nigeria) Ltd to vacate the property be extended to 31 December 1982 and the said request was acceded to. The letter in question was received in evidence as Exhibit P2.

While the High Court held the view that the appellants were right, the Court below (Court of Appeal) held otherwise since the respondent was now paying rent on yearly basis. Hence, it became a yearly tenancy determinable at six months' notice of intention to recover possession, thereby rendering seven days' notice improper.

Upon dissatisfaction with the judgment of the Court of Appeal, an appeal was made to the Supreme Court and the appeal was allowed on the ground that it has merit. Consequential orders were granted along with costs.

The Supreme Court held the view that, from the expiration of Thoresen & Co (Nigeria) Ltd's extended tenancy, the respondent became a trespasser on the property. The moment a year's rent became due and payable, a respondent who continues to remain in possession ends the yearly contract by his conduct through effluxion of time and becomes a tenant at will.

However, from the time the respondent started to pay rent, which was on yearly basis and in advance, a yearly tenancy by conduct of the parties may have been created and continued in existence until when the respondent stopped paying the rent as and when due or failed to secure a tenancy agreement in respect of the property.

b. Ejection

The Recovery of Premises Law or the Rent Control and Recovery of Residential Premises Law empower the Court or Tribunal to make an order for possession. The court or tribunal may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith on or before such day as the Court or Tribunal shall think fit to specify. Where the Court or Tribunal had made such an order, the plaintiff becomes entitled to the possession of the premises named in the plaint. Consequently, the court or tribunal may issue a warrant of possession notwithstanding that the defendant's counter claim is yet to be determined or unsatisfied.⁴⁸

c. Determination by Operation of The Law

In Lagos State, a term of tenancy may be determined by operation of law without the necessity of the landlord serving notice to quit. Under S. 14(1)⁴⁹ where a monthly tenant is in arrears of rent for three months after the commencement of the law, the tenancy shall determine, and the tribunal shall on the application of the landlord make an order for possession and arrears of rent. A party seeking an order of possession under section 14(1) of Cap R6 on three months arrears rent must prove:

- a. That it is reasonable to make the order.
- b. That three months of lawful rent is in arrears.
- c. That it has not been tendered at the commencement of proceedings.

⁴⁸ S. 21 Rent Control and Recovery of Residential Premises Law, Cap R6 Laws of Lagos State, 2003.

⁴⁹ Rent Control and Recovery of Residential Premises Law, Cap R6 Laws of Lagos State, 2003.

Conclusion and Recommendations.

a. Conclusion

The enactment of the Lagos Tenancy Law of 2014 came as respite for tenants who had been suffering in the hands of shylock landlords with their excessive and brutal demands. The Law is intended to regulate rights and obligations under tenancy agreements and the relationship between the landlord and the tenant including the procedure for the recovery of premises and for connected purposes. This law which applies to all premises within Lagos State including business and residential premises however exempts residences owned by educational institutions for its staff and students, those provided for emergency shelter, residential premises in a care or hospice facility, in a public or private hospital or a mental health facility. Law courts have also been given jurisdiction to determine matters in respect of the tenancy of any premises let – a jurisdiction which cannot be ousted by the defendant or respondent setting up the title of any other party.

The parties' agreement to resort to Court connected Alternative Dispute Resolution (ADR) or other facilities such as the Lagos Multi-Door Court House or to the Citizens Mediation Centre for amicable dispute resolution will not be construed as an ouster of Court's jurisdiction, while proceedings are to be brought under this Law at the High Court where the rental value of the premises exceeds the jurisdiction of the Magistrate Court as provided by the Magistrates' Courts Law. Subject to the provisions of this Law, a Court is bound by the practice and procedure in civil matters in the Magistrates' Court or the High Court of Lagos State.

A tenancy agreement shall for the purposes of this Law, be deemed to exist where premises are granted by the landlord to a person for value whether or not it is; express or implied, oral, or written or partly oral or partly written or for a fixed period. Also, it shall be unlawful for a landlord or his agent to demand or receive from a sitting tenant, rent in excess of six months from a monthly tenant and one year from a yearly tenant in respect of any premises without prejudice to the nature of tenancy held at the commencement of the tenancy, a sitting tenant cannot offer or pay rent in excess of one year for a yearly tenant and six months for a monthly tenant in respect of any premises then a landlord or his agent cannot demand or receive from a new or would be tenant rent in excess of one year in respect of any premises.

Furthermore, it is unlawful for a new or would-be tenant to offer or pay rent in excess of one year in respect of any premises, and any person who receives or pays rent in excess of what is prescribed in the law will be guilty of an offence and liable on conviction to a fine of One Hundred Thousand Naira, or to three months imprisonment. All landlords are required by law to issue a rent payment receipt to their tenants upon payment of rent in respect of such payments. The receipt shall state the date on which rent was received, names and addresses of the landlord and the tenant, description, and location of premises in respect of which the rent is paid, among other things. Any landlord who errs contrary to the provisions of the law shall be liable on conviction to a fine of One Hundred Thousand Naira. The law offers tenant's entitlement to quiet and peaceable enjoyment of the Premises. This includes privacy, freedom from unreasonable disturbance, exclusive possession of the premises, subject to the landlord's restricted right of inspection, and the use of common areas for reasonable and lawful purpose.

b. ***Recommendations.***

We recommend that

1. The scope of the law should cover all areas and places within Lagos state. No area or part of the state should be excluded or exempted from compliance with the law.
2. Instead of transmitting the notice to be served to an adult member within the premises, an *ex parte* application be brought to court for service by substituted means, by pasting the notice on the last known address of the tenant.