

IN THE HIGH COURT OF JUSTICE  
OF EDO STATE OF NIGERIA  
IN THE AGENEBODE JUDICIAL DIVISION  
HOLDEN AT AGENEBODE  
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,  
JUDGE, ON MONDAY THE  
22<sup>ND</sup> DAY OF MAY, 2017.

BETWEEN:

APPEAL NO: HAG/2A/17

MR TIMOTHY ETIUZALE -----PLAINTIFF/RESPONDENT

AND

MR.EDWIN OKAFOR-----DEFENDANT/APPELLANT

JUDGMENT

This is an interlocutory appeal against the Ruling of His Worship E. E. Asibor, Magistrate Grade I sitting at Agenebode on the 2/2/17 in suit No. MAG/2/2015.

The facts giving rise to the ruling leading to this Appeal is that the Plaintiff/Respondent rented a commercial store to the Defendant/Appellant at the Market Square Agenebode as a monthly tenant. Following the failure of the Defendant to pay rent to the Plaintiff, the Plaintiff filed a claim against him at the Magistrate Court Agenebode, claiming among other things, mesne profit, arrears of rent and possession.

Before the hearing of the substantive suit, the Defendant through his Counsel raised a preliminary objection *vide* a motion dated 12/01/17, challenging the jurisdiction of the Court.

The Plaintiff/Respondent thereafter filed a Counter Affidavit in opposition to the motion.

The motion was argued by counsel to the parties and in a subsequent Ruling delivered on the 2<sup>nd</sup> of February, 2017; the court held that it has the jurisdiction to entertain the matter.

Dissatisfied with the Ruling, the Appellant filed his Notice and Grounds of Appeal.

The Grounds of Appeal are as follows:

#### **GROUND OF APPEAL:**

The learned trial Magistrate erred in law when he ruled that the Magistrate Court has Jurisdiction on a suit brought by the Plaintiff

#### **PARTICULARS**

The Appellant/Defendant submitted through his counsel that the enabling law has removed the jurisdiction of the Magistrate Court in Commercial stores or shop as it relates to landlord and tenant matter but the Magistrate held that he has jurisdiction.

Counsel for the parties filed and exchanged their respective briefs of argument in consonance with the rules of this Court.

In his Brief of Argument, the learned Counsel for the Appellant, A.Innih Esq., identified a sole Issue for Determination as follows:

WHETHER THE LEARNED MAGISTRATE COURT HAS JURISDICTION TO ENTERTAIN MATTERS RELATING TO LANDLORD AND TENANT IN RESPECT OF COMMERCIAL PROPERTIES/SHOPS.

On his part, learned counsel for the Respondents, G.I.Okhuoya Esq., on behalf of A.M.Aleogho Esq. adopted the sole Issue for Determination.

Upon a careful examination of the Issue formulated and adopted by the learned counsel for the parties, I agree with them that the said Issue is quite appropriate to determine this appeal and I adopt same as the sole issue for determination in this appeal.

Opening his arguments, the learned counsel for the appellant submitted that the Magistrate Court sitting at Agenebode lacks the requisite competence and jurisdiction to hear and entertain the suit.

Learned Counsel reproduced the provisions of: ***section 6(4) of the Recovery of Premises Law, Cap. R1 1977, Laws of Edo State (Landlords and Tenants Law)*** as follows:

***“An Area Court shall have power to try issues relating to recovery of rents in both Residential and Commercial premises including shops to the exclusion of Magistrate Court including recovery of Electricity, Water and Tenement rates.”***

Counsel observed that the Respondents Counsel conceded that the premises is a Commercial and not a Residential one. He maintained that the said Counsel relied on S. 40 of the Rent of Premises Law Cap R1 (sic), Laws of Edo State which he claimed

was an obsolete Law and further referred the Court to S. 19(1)(b) of the Magistrate Court Rules Order 2011(sic).

Counsel went further to quote some parts of the Court's ruling as follows:

***“The subject matter of this suit is a Commercial premises and not residential premises. By the provisions of S. 19(1) and (2) of the Magistrate Court Rules 2011. Vol. 4, Laws of Edo State of Nigeria and Magistrate Court Laws (Increased jurisdiction of Magistrates in Civil and Criminal matters. Order 2011 Laws of Edo State of Nigeria, Vol 4; I hold that this Honourable Court has the legal capacity to adjudicate on this case. The purport of all I am saying is that this application is premature, it lacks merit and it is hereby dismissed.”***

Referring to the foregoing quotation, Counsel submitted that the learned Magistrate erred in law and failed to appreciate the gamut of the law rather than the increased monetary jurisdiction of the court.

He submitted that none of the parties urged the court to make any finding on the monetary jurisdiction of the court but on the ouster of the court's jurisdiction. He therefore urged the Court to set aside the ruling of the trial Magistrate and allow this appeal.

Opposing the appeal, the learned counsel for the respondent, submitted that it is settled law that jurisdiction is the live wire or blood of any Court to adjudicate on any matter brought before it. Adjudication in any proceeding without jurisdiction, no matter however brilliantly conducted by the Court cannot be valid. For a court to have jurisdiction to hear and determine any matter before it, it must satisfy the following ingredients:

***(a) It must be properly constituted as to the number or qualification of its membership;***

***(b) The subject-matter of the case must be within its jurisdiction;***

***(c) Any condition precedent to its exercise of jurisdiction must have been fulfilled; and***

***(d) The case or matter must have been brought to the Court by the due process of the law.***

He referred the Court to the case of: **CHIEF IKEDI OHAKIM V AGBASO (2010) 189 (LRCN) 74 at 101 PEE**

Counsel submitted that the Magistrate Court has the jurisdiction to entertain and determine all suits relating to landlord and tenant in respect of commercial properties/shops.

He argued that the provisions of a statute must be read in full and not taking one provision or section and ignoring other provisions of the same statute.

He quoted the said ***section 6(4) of the Recovery of Premises Law, Cap. R1 1977***

and submitted that the section has become obsolete when read in conjunction with S.40 (2) and (3) of the same law which he reproduced as follows:

***S 40 (2) The Recovery of premises law is hereby repealed to the extent that it relates to accommodation in residential premises***

***S. 40 (3) The provisions of Magistrate Court law to the extent that it relates to all actions between landlord and tenant in Respect of residential accommodation is hereby repealed.***(underlined by counsel)

Counsel submitted that by section 40 (2) above, the Recovery of Premises Law only relates to Residential premises and by implication, the law does not apply to commercial properties/shops. He relied on the maxim of law ***EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS*** which means that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been excluded by implication.

He also relied on the case of: **HONOURABLE GOODLUCK NANA OPIA V INEC & ANOR (2014) 233 LRCN 159 at 191 paras AF**

He maintained that by virtue of Section 40 (2), the Law only relates to residential premises. Furthermore, he maintained that S. 40(3) of the same law clearly ousted the jurisdiction of the Magistrate Court law in respect of residential accommodation alone and by the *principle of the maxim of law: Expressio Unius est exclusio alterius*, the Magistrate Court has the jurisdiction to entertain matters relating to landlord and tenant in respect of commercial properties/shops.

He argued that **Section 19(1) (b) Magistrate Court law of Edo State** relates to the jurisdiction of the court on the subject matter and reproduced it as follows:

***“Section (19) (1) subject to the provisions of this law or any other law or Act, a Chief Magistrate shall have and exercise jurisdiction in civil causes:***

***(b) In all suits between landlord and tenant for possession of any lands or houses Claimed under agreement or refused to be delivered up where the annual value of rent does not exceed one thousand naira”.***

He submitted that the learned trial Magistrate was therefore right when he held that the Magistrate Court has jurisdiction in respect of commercial premises.

In conclusion, he urged the Court to resolve the sole issue for determination in favour of the Respondent and dismiss the appeal.

The issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: ***Katto vs. C.B.N (1991) 11-12 S.C 176.***

A Court can claim to have jurisdiction in respect of a matter if:

- (1) It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;***

- (2) ***The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and***
- 3) ***The case comes up before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of the jurisdiction.***

In support of the foregoing, see the following decisions on the point:

***Madukolu vs. Nkemdilim (1962) 1 All NLR 587; Dangana & Anor vs. Usman & 4 Ors (2012) 2 S.C. (Pt.111) 103; and WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.***

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: ***Okorochoa vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.***

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that court. See: ***Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja (1998) 7 S.C.(Pt.1) 1 at 21.***

The crux of the matter in this appeal is actually on the interpretation of the provisions of ***sections 6(4), 40(2) & (3) of the Recovery of Premises Law, Cap. R1 1977*** and ***Section 19(1) (b) of the Magistrates Courts law of Edo State*** as they relate to jurisdiction in respect of tenancy matters for commercial premises.

It is settled law that in the interpretation of statutes, where the language of the statute is plain and unambiguous, the court will give effect to the plain and ordinary meaning unless this would lead to absurdity or be in conflict with the provisions of the constitution. See: ***Nyame vs. FRN (2010) 7 NWLR (Pt.1193) 344 at 399.***

The duty of the court is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meaning, without any addition or subtraction. See: ***Action Congress vs. Independent National Electoral Commission (2007) 12 NWLR (Pt.1048) 220 at 318; Adewunmi vs. A.G. Ekiti State (2002) 2 NWLR (Pt.751) 474 at 511-512.***

Coming to the relevant provisions of the statutes, ***section 6(4) of the Recovery of Premises Law, Cap. R1 1977, Laws of Edo State*** provides as follows:

***“An Area Court shall have power to try issues relating to recovery of rents in both Residential and Commercial premises including shops to the exclusion of Magistrate Court including recovery of Electricity, Water and Tenement rates.”***

The above provision is quite clear and unambiguous. It has vested exclusive jurisdiction on the Area Courts in respect of rent matters in both residential and commercial premise.

However, ***sections 40(2) & (3)*** of the Law are not too clear. They provide as follows:

***“S. 40 (2) The Recovery of premises law is hereby repealed to the extent that it relates to accommodation in residential premises***

***S. 40 (3) The provisions of the Magistrates Courts law to the extent that it relates to all actions between landlord and tenant in Respect of residential accommodation is hereby repealed.”***

The above provisions appear quite incongruous when juxtaposed with the aforesaid ***section 6(4) of the Recovery of Premises Law, Cap. R1 1977, Laws of Edo State***. In the first place, it is not clear what section 40(2) means when it purports to repeal the Recovery of premises Law in relation to accommodation in residential premises. The Respondent has interpreted it to mean that the law now applies to only residential premises and it no longer applies to commercial premises. I do not think that interpretation can be given to the said provision. Rather, I think the provision seems to be taking residential (not commercial)

premises from the ***Recovery of premises law***. The question then is: What is the law regulating residential premises? This is because the clear and unambiguous meaning of section 40(3) is that the same residential premises has been taken away from the Magistrates Courts. In any case, we are not concerned with residential premises in this appeal but commercial premises.

It is evident that the provisions of ***sections 40(2) and (3) of the law*** does not seem to be in harmony with the entire provisions of the law. Those provisions have introduced some ambiguity into the entire statute.

One of the accepted canons of interpretation of statutes is that the enactment must be construed as a whole. See: ***Ifekwe vs. Madu (2000) 14 NWLR (Pt.688) 459 at 479; and Nigerian Ports Authority Plc vs. Lotus Plastics Ltd. (2005) 2 NWLR (Pt.959) 158 at 182.***

Looking at the entire provisions of the ***Recovery of Premises Law***, will it be safe to conclude that the purpose of the law is to vest exclusive jurisdiction on recovery of both residential and commercial premises in the Area Customary Courts? That is the issue before us now. The uncertain nature of ***sections 40(2) and (3) of the law*** has not helped matters.

It is settled law that any provision which seeks to oust the jurisdiction of the court or deprive a citizen of his rights would be strictly construed and any ambiguity therein will be resolved in favour of the vesting of jurisdiction in the court. See: ***Utih vs. Onoyivwe (1991) 1 NWLR (Pt.160) 166 at 220.***

Furthermore, a statutory provision which tends to oust the jurisdiction of a court of law must be strictly construed. For the jurisdiction of a court to be ousted, ambiguity or doubts in the statute vesting jurisdiction in the court should not be entertained. See: ***Olaleye-Ote vs. Babalola (2012) 14 NWLR (Pt.1279) 574 at 593; and A.G.Lagos vs. A.G. Federation (2003) 14 NWLR (Pt.833) 1 at 231.***

Coming to the Magistrates Court's law, **Section 19(1) (b) Magistrate Court law of Edo State** relates to the jurisdiction of Magistrates courts on the subject matter and it is reproduced as follows:

***“Section (19) (1) subject to the provisions of this law or any other law or Act, a Chief Magistrate shall have and exercise jurisdiction in civil causes:***

***(b) In all suits between landlord and tenant for possession of any lands or houses Claimed under agreement or refused to be delivered up where the annual value of rent does not exceed one thousand naira”.***

Furthermore, by virtue of the provisions of the **Magistrate Court Laws (Increased jurisdiction of Magistrates in Civil and Criminal matters. Order 2011 Laws of Edo State of Nigeria, Vol 4**, the civil jurisdiction of the Magistrate Grade 1 is now in matters with monetary value of up to N200, 000.00 (two hundred thousand naira).

As earlier stated in this judgment, it is the statute creating the Court that determines the jurisdiction of that court. See: **Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja (1998) 7 S.C.(Pt.1) 1 at 21.**

Clearly, the Magistrates Courts Law which created the Magistrate Courts Grade 1 has vested jurisdiction in the court ***in all suits between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up where the annual value of rent does not exceed two hundred thousand naira.***

The **Recovery of Premises Law Cap, R1 of 1977** which seeks to oust the jurisdiction of the Magistrates Courts in respect of commercial premises is an ambiguous statute. The provisions appear quite uncertain in respect of the salient aspects already highlighted in this judgment.

***On the whole, I resolve, the sole issue for determination in favour of the respondent. Consequently, this appeal is dismissed and the ruling of the trial***

*court is affirmed. Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the respondent.*

P.A.AKHIHIERO  
JUDGE  
22/05/17

**COUNSEL:**

A.Innih Esq.....Counsel for the Appellant.

M.A.Aleogho Esq..... Counsel for the Respondents.