IN THE HIGH COURT OF JUSTICE

OF EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A. AKHIHIERO

ON THURSDAY

THE 24TH DAY OF OCTOBER, 2024.

BETWEEN: ***SUIT NO. B/181/2020***

NIGERIA AIRSPACE MANAGEMENT AGENCY ----------CLAIMANT

AND

EDO DEVELOPMENT AND PROPERTY AGENCY ----------DEFENDANT

JUDGMENT

The Claimant commenced this suit by writ of summons dated 16th day of March, 2020 wherein they claimed against the Defendant as follows:

1) ***A DECLARATION that the Claimant is the rightful owner of the sub-leased properties known as Plots 229 AND 230, BDPA Housing Estate, Ugbowo, Benin City, Edo State;***
2) ***AN ORDER settling aside the purported re-possession by the Defendant from the Claimant of the properties known as Plots 229 and 230, BDPA, Housing Estate, Ugbowo, Benin City, Edo State;***

3) ***AN ORDER of perpetual Injunction restraining the Defendant whether by itself, servants, privies, agents and however called from committing further acts of trespass on Claimant's properties known as Plot 229 and 230, BDPA Housing Estate, Ugbowo, Benin City, Edo State; and***
4) ***DAMAGES in the sum of 20, 000, 000.00 (Twenty Million Naira) damages for acts of trespass committed by Defendant on the Claimant's properties known as Plots 229 and 230, BDPA, Housing Estate, Ugbowo, Benin City.***

The Defendant's extant Statement of Defence is the Defendant's Further Amended Statement of Defence dated the 13th of June 2023 which was deemed properly filed and served by order of court on the 15th of June 2023. The Claimant did not file any reply to the Defendant's Statement of Defence.

In proof of their case, the Claimant called one witness and tendered several documentary exhibits.

The Claimant's case is that by a Deed of Sublease dated the 17th of January 1990, the Defendant- Sub-Lessor demised to the Claimant- Sub-Lessee all that piece or parcel of land together with the buildings thereon for a term of 99 years less 12 months for valuable consideration and for the terms/ covenants stated in the Deed of Sub- lease. The Claimant alleged that they have been in continuous possession and adhered to the clauses in the sublease.

According to the Claimant, on the 5th of March 2018, the Defendant purportedly wrote to inform the Claimant that it was conducting a recertification exercise at the EDPA Estate for the purpose of reconfirming ownership, verifying documentation and updating records.

Furthermore, on the 19th of July 2019, the Claimant received a letter informing them that she had repossessed Plots 229 and 230.Thereafter, the Claimant wrote to the Governor of Edo State, a letter dated 29th July 2019 where they urged the Governor to intervene in the matter.

However by a letter dated 8th of August 2019, the Defendant informed the Claimant that Plots 229 and 230 had been re- possessed and sold to 3rd parties and they threatened to repossess the other properties of the Claimant.

The Claimant alleged that the Defendant did not follow due process in the purported recovery of the Claimant's properties at Plots 229 and 230 at the BDPA Housing Estate in Benin City; hence they instituted this suit against the Defendant.

At the trial, the Claimant tendered the following documents as exhibits:

1) Deed of Sublease between the Claimant and Defendant–Exhibit A;
2) Letter dated 5th March, 2020 from the Defendant to the Claimant -Exhibit B;
3) Letter dated 19th July 2019- Exhibit C;
4) Letter dated 29th July 2019 –Exhibit D;
5) Letter dated 8th August 2019- Exhibit E;
6) Pre-Action Notice dated 21st January 2020-Exhibit F;
7) Photographs of the acquired property and Certificate of Compliance –Exhibits G and G1 respectively.

In defence of this suit, the Defendant called two witnesses and tendered several documents.

The Defendant's case is that as part of its programs to restructure the Agency, it carried out a recertification exercise at the EDPA Ugbowo Housing Estate, between January- February 2018 for the purpose of verifying ownership, updating its records and data base for the effective running and management of the Agency.

They alleged that during this exercise they discovered that some of the properties in the estate, including plots 229 and 230 were dilapidated, abandoned and in several stages of disrepair.

Furthermore, they alleged that while their officers were inspecting plots 229 and 230 at the Estate, there was a reported case by residents in the area of the murder of a Uniben Student within the area.

They said that as a result of the above, they wrote Exhibit B to inform the Claimant of the need to be part of the verification and certification exercise but the Claimant did not respond to their letter or make any attempt to reoccupy the said properties or bring them back to use.

The Defendants alleged that Exhibit B was served on the Claimant and they acknowledged receipt of same.

They alleged that following the approval of the Defendant's application to the State Government to revoke the title and repossess all abandoned houses in disrepair at the EDPA Ugbowo Housing Estate, the. Defendant placed adverts both in the Local and the National dailies such as in This Day Newspapers on the 2nd of May, 2018, the Nigerian Observer on the 2nd of May, 2018 and placed copies of the Public Notice on the abandoned properties. The Defendant tendered certified true copies of these publications at trial.

The Defendant alleged that by these notices, the owners of these abandoned properties were given fourteen (14) days within which to take part in the recertification exercise or risk forfeiture of their property.

They alleged that as a result of the breached clauses in the Deed of Sub-Lease dated l7th of January, 1990, the Defendant published a final public notice of Government's intention to repossess the plots in some national dailies.

The Defendant alleged that after complying with due process by informing and publicising its intention to repossess the abandoned government properties, the Defendant revoked the Claimant's Deed of Sub-Lease and informed the Claimant of the revocation and its approval for the sale of those properties via its letter dated 19th of July, 2019.

They maintained that the Claimant's actions were in breach of several clauses in the Deed of Sub-lease.

They alleged that the Claimant's properties have since been repossessed by the Defendant and sold to other willing and capable members of the public.

Furthermore, they maintained that the properties were duly advertised to the general public before the sale and the new owners purchased them in good faith and are in peaceful possession of same.

The Defendant also maintained that the proper parties are not before the court and that there is no privity of contract between the Claimant and the Defendant.

At the conclusion of their evidence, the learned counsel for both parties filed their final written addresses.

In her final written address, the learned counsel for the Defendant, ***Mrs. Fifi Omage-Dimowo*** formulated issues for determination as follows:

1) Whether this Honourable Court has jurisdiction to hear this suit as the proper parties are not before this court; and
2) Whether the Claimant has proved its case before this Honourable court.

ISSUE ONE:

Whether this Honourable Court has jurisdiction to hear this suit as the proper parties are not before this court.

Arguing this first issue, learned counsel submitted that the proper parties are not before this Court because the Deed of Sub-lease was between the Federal Ministry of Aviation and the Edo Development and Property Authority.

She posited that it is an elementary principle of law that a contract cannot confer rights and obligations on persons not party to the contract and that a contract is only enforceable at the instance of parties to it. She cited the case of ***Dunlop Pneumatic Tyre Company Ltd. v. Selfridge & Company Limited (1915) A.C 847***; and ***Makwe v. Nwukor (2001) 14 NWLR Pt. 733 Pg. 356.***

However, she maintained that there are exceptions to this general rule such as where agency relationship can be established, where a deed of sale of family land had been executed without the consent of the members of the family and where a trust is created for the benefit of a third party. See ***REGISTERED TRUSTEES OF MASTERS VESSEL MINISTRIES (NIG) INCORPORATED V. EMENIKE & ORS (2017) LPELR-42836(CA) (PP. 14-15 PARAS. D)***.

She submitted that even though in the instant case, the Claimant has alleged that it is an agency of the Federal Ministry of Aviation, this defence cannot avail them because this fact was never disclosed at the time of entering into the contract. She said that the Deed of Sub-Lease was between the Federal Ministry of Aviation (the Principal) and EDPA.

Furthermore, she submitted that when an agent is acting for a disclosed Principal, the contract is the contract of the Principal not that of the agent and the only person who can sue and be sued is the Principal. She cited the following cases on the point:

U.B.N LTD V EDET (1993) 4 NWLR PT 287 P.288, NIGER PROGRESS LTD V NORTH EAST LINE CORPORATION (1989) 3 NWLR PT 107 P.68, FENTON KEYNES FINANCE LTD & ANOR V. TRANSPLY (NIG) LTD (2010) LPELR-4156(CA)(PP. 18-19 PARAS. E), SEEISA & ORS V. A. A. RANO CONSTRUCTION LTD (2017) LPELR-46063 CA (PP. 8-16 PARAS. C).

She maintained that where the principal of an agent is known or disclosed, the correct party to sue or be sued for anything done or omitted to be done by the agent is the principal. See ***PROGRESS LTD V. NEL CORPORATION (1989) 3 NWLR (PT. 107) P. 58, LEVENTIS TECH. LTD V. PETROJESICCA ENT. LTD (1992) 2 NWLR (PT. 234) P. 459; UKPANAH V. AYAYA (2010) LPELR-8590(PP. 28-29 PARAS. E)***

She submitted that in instant case, the contract was entered into by the Principal and the "supposed" Agent cannot sue or be sued as a Party even if it has derived benefit from the Contract or it was acting within the scope of its authority. She maintained that the suit is therefore incompetent and liable to be struck out and cited the case of ***IBRAHIM V. MUSA (2019) LPELR-47757(CA) (PP. 18-21 PARAS. D).***

Furthermore, counsel submitted that where proper parties are not before the Court, the Court is without jurisdiction to adjudicate in the matter and she cited the case of ***PLATEAU STATE V. A. G. FEDERATION (2006) 1 SC (PT. 1) 64, POST MASTER GENERAL & ORS V. MR. MAC-CAJETAN AGBASI (2006) LPELR - 11926***.

Again, counsel submitted that the necessary parties who are the third parties whom the Defendant sold to were not made parties to this suit. She submitted that a necessary party is one whom the judgment of the Court or Tribunal will affect or be binding and she relied on the case of ***SENATOR DAHIRU BAKO GASSOL V. ALHAJI ABUBAKAR UMAR TUTARE & ORS (2013) LPELR - 20232***

She submitted that in the instant case, the Defendant gave evidence and tendered exhibits showing that the plots 229 and 230 had been sold and or allocated to 3rd Parties who were not joined as parties in this suit. She submitted that any order made by this Honourable court will amount to an exercise in futility since the said party will not be bound by the outcome of the case and the claim cannot be fully and effectively determined. She cited the case ***OKWU V.UMEH (2016) 4 NWLR***

PT.1501, p.120 at 144, para D and urged the Court to resolve this issue in favour of the Defendant and hold that this Honourable court lacks the jurisdiction to hear this suit and to strike out same.

ISSUE TWO:

Whether the Claimant has proved its case before this Honourable court.

Opening her arguments on this second issue, learned counsel referred to Clause 2 of the Deed of Sub-lease which provides as follows:

> ***"(a) To pay the Sub-Lessor the said yearly rent N50.00 hereby reserved without any deductions whatsoever;***
>
> ***(b)To keep the demised land/premises externally and internally and all fixtures and fittings thereon (including the sanitary and water apparatus and electric fittings) in good and tenantable repair and condition and properly decorated (fair wear and tear and accidents by fire, earthquake and tempest excepted;***
>
> ***(k) Not to do or permit to be done upon the demised premises or any part thereof any act or thing which may be or become a nuisance damage annoyance to the Sub-Lessor or to the occupier/s of any of the adjoining or neighbouring premises or to the neighbourhood nor use or permit to be used the demised premises or any part thereof for any noxious or offensive trade or business whatsoever and in particular not to permit petty trading in front of or on the demised premises not to keep or allow to be kept upon the demised premises any guinea fowl, goat, sheep or pig for purposes of a poultry .***
>
> ***3(a) provides;***
>
> ***a. If the yearly rent hereby reserved or any part thereof shall be in arrears for one calendar month whether legally demanded or not or if the Sub-Lessee shall become bankrupt or compounded with his/her effects or if any assign being a Company shall enter into liquidation whether compulsory or voluntary(not being a voluntary liquidation for the purpose of amalgamation or reconstruction) or if any covenant on the***

Sub-Lessee's part shall not be duly performed and observed it shall be lawful for the Authority to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demised premises shall absolutely determine but without prejudice to the right of action of the Sub-Lessor in respect of any breach of the Subleases' covenants herein contained and without being liable to pay any compensation whatsoever."

Counsel submitted that the implication of the above clause is that the Defendant can enter into the abandoned properties, take possession;

a. if the yearly rent is arrears for one month;

b. If the sub lessee becomes bankrupt or

c. If any assign being a company shall enter into liquidation

d. If any covenant on the sub lessee's part is not duly performed and observed

e. And this shall be without prejudice to the right of action of the sub-lessor (Defendant in respect of any breach of the sub-lessees covenants herein contained and without being liable to make or pay compensation.

She submitted that it is trite law that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement because a party cannot ordinarily resile from a contract or agreement just because he later found that the conditions of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement. She cited the following cases in support: ***NORTHERN ASSURANCE CO. LTD. V. WURAOLA(1969) NSCC 22;; ODUYE V. NIGERIA AIRWAYS LIMITED (1987) 2 NWLR (PT. 55) 126; NIGER DAMS AUTHORITY V. CHIEF LAJIDE (1973) 5 SC 207; ARJAY LTD. & ORS V. A.M.S. LTD (2003) LPELR-555(SC) (Pp. 67 paras. A)***.

Furthermore, counsel submitted that in the instant case, they have established the following facts:

I. That the rent of the Claimant has been in arrears for several years, Clause 2a,3a)

II. Several covenants on the Sub-Lessee's (Claimant's)part have not been duly performed and observed such as

a. the covenant to keep the demised land/property and all fixtures and fittings thereon in good and tenantable repair and condition(clause 2b)

b. not to do or permit to be done on the demised premises anything which may become a nuisance, damage or annoyance to the Sub-lessor or the occupiers of adjourning premises(Clause 2k)

c. not to keep or allow to be kept any guinea fowl, goat, sheep or pig for the purposes of a poultry(clause 2k)

She said that the Defendant tendered Exhibits H, M, O, O1 and P in proof of the above facts. She submitted that these alleged breaches were not controverted by the Claimant in any way as they failed to file a Reply to the Defendant's Statement of Defence. She maintained that it is trite law that facts which are not denied or controverted are deemed admitted.

She posited that during cross examination, the DW1 confirmed that Plots 229 and 230 were highly dilapidated that was why it was captured. That the Claimant herself in Exhibits O and O1 had this to say about the property:

"*However due to the nature of the present condition of the properties, a concrete arrangement has been finalized by the Agency to give the properties a face lift within the shortest possible time"*

That also during cross examination the CW stated thus:

"I was at the meeting with the M.D of EDPA. The Defendant advised the Claimant to pay the outstanding ground rent and to renovate the remaining properties. I paid for other three that had not been re-possessed pending when the 229 and 230 will be resolved"

She posited that it is trite law that a fact admitted or deemed admitted by a party reduces the burden of proof cast on the other party, as admitted fact needs no further proof and relied on the case of ***O.A.N. OVERSEAS AGENCY (NIG) LTD V. BRONWEN ENERGY TRADING LTD & ORS (PP. 51 PARAS. A)***.

Counsel submitted that Exhibit G (picture of the alleged properties) tendered by the Claimant is not a true reflection of the state of the properties. She maintained that the said exhibit is a photograph of another property entirely because it is not the same picture frontloaded by the Claimant. Furthermore, she posited that the photograph does not state the date the photograph was taken neither does Exhibit G1 (the Certificate of Compliance) state the date the photograph was taken. She urged the Court not to rely on the said pictures and cited the case of ***NWABUOKU V. ONWORDI (2006) ALL FWLRPT331,P.1236 at 1252, para C-F***

Counsel submitted that the Defendant acted within the terms of the Deed of Sublease and the law when it re-possessed the Defendants properties for breach of the covenants in the Agreement.

She submitted that in a claim for declaration of title, the onus is on the Claimant to satisfy the court on the evidence adduced by him through cogent and credible evidence and the Claimant must rely on the strength of his own case and not on the weakness of the Defendant's case. She cited the cases of ***DIM V ENEMUO (2009) 4 SCNJ 199; OKE & ORS V. EKE & ORS (1982) LPELR-2426 (SC), HAMID V. HAMADU (2013) LPELR-22138(CA) (PP. 38 PARAS. D).***

She urged the Court to refuse all the Claimant's reliefs and dismiss the suit.

In his final written address, the learned counsel for the Claimant, ***B.O. Oisamoje Esq.*** formulated two issues for determination as follows:

1) ***WHETHER THIS HONOURABLE COURT HAS JURISDICTION TO HEAR THIS SUIT AS THE PROPER PARTIES ARE NOT BEFORE THIS COURT;***
2) ***WHETHER THE DEFENDANT HAVING NOT FOLLOWED DUE PROCESS IN THE RECOVERY OF POSSESSION OF THE CLAIMANT'S PROPERTIES KNOWN 229 AND 230 BDPA, HOUSING ESTATE, UGBOWO, BENIN CITY, EDO STATE, THIS HONOURABLE COURT CAN SET ASIDE THE PURPORTED RE- POSSESSION.***

Thereafter, the learned counsel argued the two issues seriatim.

ISSUE ONE:

WHETHER THE CLAIMANT HAS PROIVED ITS CASE BEFORE THIS HONOURABLE COURT.

Arguing this first issue, the learned counsel for the Claimant referred the Court to paragraphs 1 and 2 of their Statement of Claim where they stated that the Claimant is an agency under the Federal Ministry of Aviation established by Acts of Parliament as Nigerian Airspace Management Agency and saddled with the responsibility of provision of Air navigational facilities and management of Nigerian Airspace to ensure the safety of flight.

He submitted that the Defendant knew that the Claimant is the owner of the properties in dispute and admitted that fact as shown in the letters of the Defendant to the Claimant **Exhibits 'J', 'M' and 'N1".**

He further submitted that the Claimant by its letters written to the Defendant showed clearly that he recognized and admitted the fact that the Claimant is the owner of the properties in dispute as shown in Exhibits 'O' and 'O1'.

He submitted that since the Defendant has admitted that the Claimant is the owner of the property, by virtue of ***Section 123 of the Evidence Act 2011***, there is no need for any further proof. He posited that the general principle of law is that where facts are admitted they become binding on the party admitting them and he cited the following cases: ***Kamalu v. Umunna (1997) 5 NWLR (Pt.505) 321 at 326; Nzeribe v. Dave Eng, Co. Ltd (1994) 8 NWLR (Pt.361) 124; Omoregbe v. Lawani (1980) 3-4 SC 108.***

Again, he relied on the case of ***Federal Inland Revenue Service (FIRS) V. Nigerian National Petroleum Corporation (NNPC) (2015) LPELR-24761 (CA),*** where the Court of Appeal held that FIRS, formerly known as the Federal Board of Inland Revenue, remained the same entity despite the change in name.

ISSUE TWO:

WHETHER THE DEFENDANT HAVING NOT FOLLOWED DUE PROCESS IN THE RECOVERY OF POSSESSION OF THE CLAIMANT'S PROPERTIES

KNOWN 229 AND 230 BDPA, HOUSING ESTATE, UGBOWO, BENIN CITY, EDO STATE, THIS HONOURABLE COURT CAN SET ASIDE THE PURPORTED RE- POSSESSION.

Arguing this second issue, the learned counsel submitted that the Deed of sub-lease cannot override the provisions of the law on recovery possession which is the Tenancy law of Edo State.

He submitted that it will sad for every individual to take laws into its hands after the expiration of a leasehold interest without serving the statutory notices and instituting an action for recovery of possession of the premises.

He referred to the case of ***IHENACHO V UZOCHUKWU (1997) 2 NWLR (Pt. 487) 257*** where 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."

He also relied on the case of ***Ndielli & Another v. Eze (2016) JELR 48772 (CA)***.

Counsel submitted 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.

He submitted that based on the Statutes and Cases mentioned above, that the Defendant never complied with the Law Governing Recovering of Possession of a Property.

He submitted that the Claimant breached the Sub-lease, agreement by purportedly recovering the possession of the properties from the Claimant without following the due process of law.

He referred to the Case of ***Anyaegbunam v Ifeduba (2013) LPELR-21268 (CA) 14-15*** where the Court held that a landlord who forcefully takes possession by resorting to self-help in purported exercise of a right of re-entry acts unlawfully.

Finally, he submitted that the Claimant has proved its case and urged the Court to grant their reliefs.

I have carefully considered all the processes filed in this suit, together with the evidence led in the course of the hearing and the address of the learned Counsel for the parties.

Upon a careful examination of the issues formulated by the counsel for the parties, I am of the view that the two issues formulated by the Claimant's counsel are quite comprehensive enough to determine this suit. I will therefore adopt the two issues with some simple modifications as follows:

1) ***Whether the proper parties are before this Court; and***
2) ***Whether the Defendant followed due process in the recovery of possession of the Claimant's properties known as 229 and 230 EDPA, Housing Estate, Ugbowo, Benin City, Edo State.***

I will proceed to resolve the two issues seriatim.

ISSUE ONE:

WHETHER THE PROPER PARTIES ARE BEFORE THIS COURT?

This is a civil case and the standard of proof is on the balance of probabilities and the preponderance of evidence.

The law is firmly settled that in a civil suit, the burden of proof lies on the person against whom the judgment of the Court would be given if no evidence was led on either side. However, the burden of proof of particular facts in a civil suit is not static, as the initial burden is on the person who asserts a particular fact and once that fact is established to the satisfaction of the Court, the burden shifts to the other party

and so on until all the issues in controversy between the parties have been disposed of. See ***Sections 131, 132, 133 and 134 of the Evidence Act, 2011*** and the cases of ***Iroagbara v. Ufomadu (2009) LPELR-1538(SC);*** and ***Oyetunji v. Awoyemi & Ors (2013) LPELR-20226(CA).***

Essentially, in the instant case, the Claimant is challenging the Defendant's alleged wrongful re-possession of the Claimant's properties known as Plots 229 and 230, EDPA, Housing Estate, Ugbowo, Benin City, Edo State.

At the trial, the Claimant led evidence of how they acquired the aforesaid properties vide a Deed of Sub-lease dated the 17th of January 1990, wherein the Defendant-Sub-Lessor demised to the Claimant- Sub-Lessee all that piece or parcel of land together with the buildings thereon for a term of 99 years less 12 months for valuable consideration and for the terms/ covenants stated in the Deed of Sub- lease. The Deed of Sub-Lease was admitted as Exhibit "A" at the trial. The Claimant alleged that they have been in continuous possession and adhered to the clauses in the sublease.

They led evidence to show that on the 19th of July 2019, they received a letter from the Defendant, informing them that they had repossessed Plots 229 and 230.Thereafter, the Claimant protested to the Governor but they received another letter from the Defendant informing them that said Plots 229 and 230 had been sold to 3rd parties and they threatened to repossess the other properties of the Claimant.

The Claimant has alleged that the Defendant did not follow due process in the purported recovery of the Claimant's properties at Plots 229 and 230 at the BDPA Housing Estate in Benin City; hence they instituted this suit against the Defendant.

The Defendant has raised a two pronged defence to this suit.

Their first line of defence is that the entire suit is incompetent because there is no privity of contract between the Claimant and the Defendant. The Defendant's position is that the Deed of Sub-Lease was between them and the Federal Ministry of Aviation.

The Claimant's response to this objection on privity of contract is that they are the agents of the Federal Ministry of Aviation. They referred to paragraphs 1 and 2 of their Statement of Claim where they stated that the Claimant is an agency under the

Federal Ministry of Aviation, saddled with the responsibility of provision of Air navigational facilities and management of Nigerian Airspace to ensure the safety of flights.

The Claimant also maintained that the Defendant knew that they are the owners of the properties in dispute as shown in the letters of the Defendant to the Claimant in **Exhibits 'J', 'M' and 'N1".**

From the totality of the evidence adduced at the trial, it is apparent that the Claimant is actually an agency under the Federal Ministry of Aviation. Under the principles of agency, the Federal Ministry of Aviation is the Principal while the Claimant, Nigerian Airspace Management Agency is the Agent.

It is significant to note that the contract of Sub-Lease was actually between the Federal Ministry of Aviation (the Principal) and the Defendant. The Nigerian Airspace Management Agency (the Agent) was never mentioned in any of the provisions of the Sub-Lease. The question which is to be determined at this stage is whether the agent of a disclosed Principal can institute an action in its own name without the name of the disclosed Principal. Furthermore, can a person such as the Nigerian Airspace Management Agency, who was not a party to a contract, sue under the contract?

The general principle of law is that, a contract made by an agent, acting within the scope of his authority and for a disclosed principal is, in law, the contract of the principal and the principal and not the agent is the proper person to sue or be sued upon such a contract. The common law rule is, ***qui facit per allium, facit per se*** which means that, he who acts through another, is deemed in law to act himself.

In other words, where a contract discloses the existence and name of a principal on general principles, the contract is deemed to be that of the disclosed principal and not that of the agent who may be acting on behalf of the principal. Thus the principal is the proper person to sue or be sued upon such contract. See ***CARLEN v. UNIJOS (2000) 19 W.R.N. Pg.167 at 189; VINZ INT'L (NIG.) LTD. v. MOROHUNDIYA (2009) 11 NWLR (Pt.1153) Pg.562; U.B.A. PLC. v. OGUNDOKUN (1138) Pg. 450; UKPANAH v. AYAYA (2011) 1 NWLR (Pt.1227) Pg.61; AMADIUME v. IBOK (2006) 6 NWLR (Pt.975) Pg.158; BAYERO v. MAINASARA & SONS LTD (2006) 8 NWLR (Pt.982) Pg. 391 and OSIGWE v. PSPLS MGT CONSORTIUM***

LTD. (2009) 3 NWLR (Pt.1128) Pg.378.

From the above stated legal principles, it is evident that, an action instituted by an agent on behalf of a known and disclosed principal is incompetent. See the case of ***FAIRLINE PHARMACEUTICAL INDUSTRY LTD & ANOR V. TRUST ADJUSTERS NIG. LTD (2012) LPELR-20860(CA) (PP. 25-26 PARAS. E).***

Furthermore, it is settled law that where a party is declared incompetent to sue, his claim is not justiciable and any decision made in respect of that claim is null and void. See the cases of ***EZEAFULUKWE V. JOHN HOLT LTD (1996) LPELR-1196(SC) (PP. 11 PARAS. C); and OKAFOR VS. EZENWA (2002) LPELR-2417(SC) (PP. 19 - 20 PARAS. E).***

Coming to the issue of privity of contract, it is settled law that the doctrine of privity of contract postulates that only parties to a contract can sue or be sued on it with a view to seeking its benefit. The rule will therefore not allow a stranger to sue or seek to enforce a contract or assume liabilities or obligations under it because there is in law said to exist privity of contract only between the contracting parties. In this wise, privity of contract upholds and protects the sanctity of contracts. See the following cases on the point: ***Oshevire Ltd vs. Tripoli Motors (1997) 4 SCNJ 246, Reichi vs NBCI (2016) 8 NWLR (Pt. 1514), 274, John Davis Construction Co. Ltd v. Riacus Co. Ltd & Anor (2019) LPELR CA/C/179/2017.***

Upon a careful examination of the contents of the Sub-Lease, Exhibit "A", as I earlier stated, the Claimant was not a party to the contract, they were not even mentioned in any part of the contract. The fact of the Claimant being unknown to the contract is further highlighted by the correspondence from the Defendant to the Claimant wherein they requested the Claimant to come forward to verify their ownership of the alleged properties, which the Claimant failed to do.

In the light of the above principles of law, I hold that the Claimant is not the proper party to institute this action. Issue one is therefore resolved against the Claimant.

ISSUE TWO:

WHETHER THE DEFENDANT FOLLOWED DUE PROCESS IN THE RECOVERY OF POSSESSION OF THE CLAIMANT'S PROPERTIES KNOWN

AS 229 AND 230 EDPA, HOUSING ESTATE, UGBOWO, BENIN CITY, EDO STATE.

It is settled law that when an agreement between parties is in writing, it is that agreement that the Court will look into in order to determine the rights and/or obligations of each of the parties to the contract. Where there is dispute, it is the terms of the agreement as stipulated in the contract that will guide the Court to determine whether or not such contract has been breached by any of the parties. None of the parties can unilaterally alter the terms of such contract. It therefore means, that the terms of the contract which determine the rights and obligations of the parties to the contract, are binding on the parties. See the following decisions on the point: ***Agbareh & Anor v. Mimora & Ors (2008) LPELR-43211 (SC); Edilcon (Nig) Ltd v. UBA (2017) LPELR-42342 (SC); A. G., Rivers State v. A. G. Akwa-Ibom State (2011) 8 NWLR (pt. 1248) 31 at 81; Oforishe v. Nigerian Gas Co Ltd (2017) LPELR-42766 (SC); and I.M.N.L vs. Pegofor Ind. Ltd (2005) 15 NWLR (pt. 947) 1 at 8. See also H.S.H.M. Co., Ltd v. Jaffar (2004) 15 NWLR (pt. 896) 34.***

The duty of the Court is to construe the terms of the contract so as to give effect to the intention of the parties. In the construction of the contractual document, the Court should limit or restrict itself to the words that define the terms of the contract. The Court is not permitted to add to or subtract from the words that define the terms of the contract. See ***Shell Pet. Dev. Co. (Nig) Ltd v. Allaputa (2005) 9 NWLR (pt. 931) 475; Osumili & Anor v. CNPC/BGP International (2019) LPELR-46950 (CA); Warri Refining Petrochemical Co. Ltd v. GECMEP (Nig) Ltd (2017) LPELR-42664 (CA) and JFS Investment Ltd v. Brawal Line Ltd (2010) 18 NWLR (pt. 1225) 496.***

In the instant case, the contract is contained in the Deed of Sub-Lease admitted as Exhibit "A". The parties are bound by the terms of the Deed of Sub-Lease.

By Clause 2 of the Deed of Sub-lease, the Sub-Lessee is inter alia to:

"(a) To pay the Sub-Lessor the said yearly rent N50.00 hereby reserved without any deductions whatsoever;

(b)To keep the demised land/premises externally and internally and all fixtures and fittings thereon (including the sanitary and water apparatus and electric fittings) in

good and tenantable repair and condition and properly decorated (fair wear and tear and accidents by fire, earthquake and tempest excepted;

Furthermore, ***Clause 3(a) provides*** stipulates that

"If the yearly rent hereby reserved or any part thereof shall be in arrears for one calendar month whether legally demanded or not or if the Sub-Lessee shall become bankrupt or compounded with his/her effects or if any assign being a Company shall enter into liquidation whether compulsory or voluntary(not being a voluntary liquidation for the purpose of amalgamation or reconstruction) or if any covenant on the Sub-Lessee's part shall not be duly performed and observed it shall be lawful for the Authority to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demised premises shall absolutely determine but without prejudice to the right of action of the Sub-Lessor in respect of any breach of the Subleases' covenants herein contained and without being liable to pay any compensation whatsoever."

In the instant case, the Defendant led evidence to establish the following facts:

1) That the rent of the Claimant has been in arrears for several years;
2) That several covenants on the Sub-Lessee's (Claimant's) part have not been duly performed and observed such as:
    i. the covenant to keep the demised land/property and all fixtures and fittings thereon in good and tenantable repair and condition;
    ii. not to do or permit to be done on the demised premises anything which may become a nuisance, damage or annoyance to the Sub-lessor or the occupiers of adjourning premises; and
    iii. not to keep or allow to be kept any guinea fowl, goat, sheep or pig for the purposes of a poultry.

These alleged breaches were not controverted by the Claimant in any way as they failed to file a Reply to the Defendant's Statement of Defence.

In the light of the above breaches, under the Sub-Lease, it was lawful for the Defendant to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon determine the contract of sub-lease forthwith.

In the event I hold that the Defendant followed due process in the recovery of possession of the properties known as 229 and 230 EDPA, Housing Estate, Ugbowo, Benin City, Edo State. Issue two is therefore resolved against the Claimant.

Having resolved the two issues against the Claimant, I hold that this suit lacks merit and it is dismissed with the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs in favour of the Defendant.

P.A.AKHIHIERO
JUDGE
24 /10/2024

<u>COUNSEL:</u>

B.O. Oisamoje Esq. ----------Claimant.

Mrs Fifi Omage-Dimowo----------Defendant.