IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON WEDNESDAY THE

2ND DAY OF AUGUST, 2023.

BETWEEN: ***SUIT NO. B/8A/2022***

MRS. FLORENCE AMADASUN ……..……..... APPELLANT

AND

MRS. MARTHA OSEMONYENME ABULU …… RESPONDENT

JUDGMENT

This is an Appeal against the judgment of the Magistrates Court, Benin City, Edo State, presided over by **His Worship J.O. Uwoghiren Esq.** delivered on the 15th July, 2021.

At the trial court, the Respondent's case as the Claimant was that her mother, Madam Lami Ojezua (now deceased), rented one lock up Store to the Defendant/Appellant for a one year term, which commenced from the 25th day of June 2018 to the 24th day of June 2019 and executed a Tenancy Agreement was in respect of same. The said Tenancy Agreement was tendered at the hearing and is at pages 8-12 of the record of Appeal.

While the tenancy was subsisting, the Claimant's mother died on the 8th day of January 2019. Subsequently, the Appellant allegedly breached the Tenancy Agreement between her and the Respondent's late mother, by subletting a part of the said lock up store to another person and her failure to pay the rent as stipulated in the Tenancy Agreement.

According to the Respondent, upon the expiration of the one year rent, instead of renewing the tenancy for another year by paying the annual rent of N120, 000.00, as stipulated in the Tenancy Agreement, the Appellant allegedly transferred the sum of N60, 000.00 to the Respondent's Account as part payment for the yearly rent in breach of the Tenancy Agreement.

Furthermore, the Appellant allegedly rented a part of the lock up store to another sub-tenant without the knowledge of the Respondent while she kept her goods in a part of the store while allowing her sub-tenant to continue to use the remaining part of the store.

The Respondent made several oral demands for the Appellant to pay the balance N60, 000.00 for the one year rent and when she failed to pay, the Respondent issued one month Notice to Quit dated 13th day of May 2020 which she pasted on the door of the lock up store after several efforts to serve her personally.

After the expiration of the said one month Notice to Quit and the Appellant's whereabouts still not known, the Respondent issued seven (7) days' Notice of the Owner's Intention to Apply to Court to Recover Possession dated the 3rd day of July 2020 and also pasted same on the door of the lock up store. The Statutory Notices were tendered at the hearing and they are at pages 14 and 15 of the record of Appeal.

After the expiration of the Statutory Notices, the Respondent filed the Claim at the lower Court.

At the lower court the Appellant pleaded not liable to the claim and the Respondent led evidence in proof of her claim and closed her case. At the hearing, the Appellant did not lead any evidence in defence of the Claim but her counsel informed the Court that they were resting their case on that of the Respondent.

At the conclusion of the case, the trial court delivered its judgment in favour of the Respondent and the Appellant being dissatisfied with the judgment, filed a Notice and Grounds of Appeal against the said judgment (see pages 73 and 74) of the record of Appeal.

In accordance with the rules of this Court, the Appellant and the Respondent's counsel filed their Briefs of Argument which they adopted at the hearing of this Appeal.

In his Brief of Argument, the learned counsel for the Appellants, ***I.J. Eguakun Esq.*** formulated two issues for determination as follows:

(1) Whether the learned trial magistrate was right in law in holding that the Respondent has locus standi to institute the action. (Ground 1); and

(2) Whether the learned trial magistrate properly appraised and evaluated the evidence before the court in granting the reliefs sought by the respondent. (Grounds 2 & 3).

Thereafter, the learned counsel articulated his arguments on the two issues seriatim.

ISSUE I:

Whether the learned trial magistrate was right in law in holding that the Respondent has locus standi to institute the action.

Opening his submissions on this issue, counsel posited that the term *Locus Standi* has been variously defined as the legal capacity of a person to commence and sustain proceedings in a Court of Law and he cited the following decisions on the point: ***EMECHEBE V CETO INTERNATIONAL (NIG) LTD (2017) LPELR 45365 (AC);and SENATOR ABRAHAM ADESANYA V PRESIDENT OF THE FEDERATION OF NIGERIA & ANOR (1981) 1 ALL NLR (PT 1) (SC)***.

Learned counsel contended that the fundamental feature of *locus standi* is that it focuses on the party seeking to have his complaint heard by the Court and not the substance of the complaint itself and he cited the following cases: ***TIAWO VS ADEGBORO & AMPI ORS (2011) LPELR (3133)SC; NNOLI V NNOLI 2013 LPELR 20633 (17-18 F-A).***

He posited that a person has *locus standi* to sue in an action if he is able to show to the satisfaction of the Court that his civil rights and obligations have been or are in danger of being infringed and he relied on the case of ***RT. HONOURABLE IGO AGUMA V. ALL PROGRESSIVES CONGRESS & 2ORS 2021 14 NWLR (PT. 1796) 351 @ 366.***

He contended that applying the above principles of law, the Respondent does not have the *Locus Standi* to institute this action. He submitted that the question whether or not a Plaintiff has the *Locus Standi* is determined from the averments contained in the Statement of Claim and he cited the case of ***OJUKWU V YARADUA & AMP ANOR (2008) NWLR (PT 1078) 435.***

He posited that in a matter where pleadings are not ordered like at the trial court, the only material before the courts is the Plaintiff's claim which is the initiating process. He posited that trials are conducted in the Customary Court/Magistrate Courts in a summary manner and in summary trials; the only way to know if the Respondent has *Locus Standi* is based on his oral evidence before the Court. See ***ERHUNMWUNSE V EHANIRE 2003 13 NWLR (PT. 837) 353 @ 361362 or 377 para C-G.***

He submitted that from the Respondent's evidence at the trial court, the Tenancy Agreement was between the Appellant and one **MADAM LAMI OJEZUA.** He maintained that the Respondent was acting as an agent to the Landlady, **MADAM LAMI OJEZUA**. He submitted that an Agent of a disclosed principal cannot sue or be sued on the contract and he relied on the following decisions: ***OKAFOR V EZENWA 2002 LPELR 2417(SC); ATAGUBA & CO. V GURA NIG LTD 2005 8 NWLR (PT 927)436.***

Counsel contended that it is clear from Exhibit 'A' that **MADAM LAMI OJEZUA** was the disclosed principal, while the Respondent is the agent of the Principal, thus he maintained that the Respondent does not have the *Locus Standi* to sue and be sued in respect of Exhibit 'A'.

Furthermore, he submitted that since the said **MADAM LAMI OJEZUA** died in 2018 before the institution of this suit, it is settled law that a dead person

ceases to have legal personality and such a person cannot sue or be sued personally or in a representative capacity and he relied on the cases of ***CHIEF JOHN EHIMIGBAI OMOKHAFE V CHIEF JOHN ILAVBAOJE IBOYI ESEKHOMO 1993 LPELR 2649 SC;*** and ***NZOM V JINADU (1987) 1 NWLR (PT 51) 533 @ PG 539.***

Counsel submitted that Exhibit 'A' died with **MADAM LAMI OJEZUA,** as her legal right is no more in existence since she was the disclosed principal in the said Agreement. Furthermore, he submitted that assuming without conceding that **MADAM LAMI OJEZUA** was alive, that the Respondent cannot sue personally by putting herself forward as **MRS. MARTHA OSEMONYENME ABULU** but, only acting as agent to **MADAM LAMI OJEZUA** but she failed to do that.

Furthermore, counsel maintained that by virtue of Exhibit 'A', the Respondent is an agent to **MADAM LAMI OJEZUA** and she ought to have sued as the Agent of **MADAM LAMI OJEZUA** and failure to do so renders the claim incompetent and liable to be struck out for lack of *Locus Standi*. See ***EMECEBE V CETO INTERNATIONAL (NIG) LTD (2017) LPELR 45365 (CA).***

He submitted that the Respondent did not lead any evidence to show that she inherited the said house or that she was acting for herself and on behalf of the Estate of late **MADAM LAMI OJEZUA**. He submitted that the import of these is that the Respondent has no locus to institute this action.

Learned counsel posited that generally depositions in an Affidavit not denied are deemed to be admitted but a Court of law is entitled to examine the veracity and authenticity of such depositions in the light of documentary evidence in the case. That where a deposition is in conflict with documentary evidence in the case, a Court of law is entitled to reject the deposition even though there is no Counter Affidavit and he relied

on the case of ***C.C. ONYMELUKWE V WEST AFRICAN CHEMICAL CO. LTD & ANOR 1995 4 NWLR (PT 287) 44 @ 55***

He posited that the Learned Trial Magistrate relied on Exhibit 'A' in his Judgment 'but if the Court looks at Exhibit A and paragraph 3 of the Written deposition of Respondent, and her claim, the Court will see flagrant inconsistency as to the ownership of house No. 2, Etete Road, G.R.A., Benin City; apparently as the Respondent appears to vary or discredit Exhibit 'A' with her oral evidence. He maintained that the law will not allow her to do so and he relied on the case of ***NAMMAGI V AKOTE (2021) 3 NWLR (PT 1762) 170 @ 176 ratio 7.***

He therefore urged the Court to resolve this issue in favour of the Appellant and strike out the claim of the Respondent at the Lower Court.

ISSUE II:

Whether the learned trial magistrate properly appraised and evaluated the evidence before the court in granting the reliefs sought by the Respondent.

Arguing this issue, learned counsel submitted that where the trial Court fails to evaluate evidence at all or properly the Court of Appeal can intervene and evaluate or re-evaluate such evidence. That as a general rule, when the question of evaluation of evidence does not involve credibility of witnesses but against the non-evaluation or improper evaluation of the evidence, the Appellate Court is in as good a position as the Trial court to do its own evaluation and he cited the case of ***JIBRIN V FRN 2018 13 NWLR (PT 1635) 20 @ 30 para E-F.***

Counsel submitted that civil suits are decided on the preponderance of balance of probability as he who asserts must prove. See: ***Section 135 Evidence Act***.

He posited that the laid down procedure for Recovery of premises is that a Landlord desiring to recover possession of premises must first determine the tenancy by service on the Appellant of an appropriate Notice to Quit followed by the 7 Days' Notice of the Owners Intention to Recover the Possession of the

Premises. See: ***PAN – ASIAN AFRICA COMPANY LTD V NINCON NIG. LTD 1982 9 SC 1; and Section 2 of the Recovery of Premises Law Cap 142 of Laws of Edo State***. He said that an agent is any person usually employed by the Landlord in the letting of a premises or in the collection of the rents thereof or specially authorized to act in a particular manner by writing under the hand of the Landlord in relation to the premises. See ***OMAR A LABABEDI & 4 ORS V KOLA JAMES 1962 2 ALL NLR (PTS 2-4) @ 30-34.***

He contended that there is no evidence that the Solicitor in this case was employed by the Plaintiff in the Letting or Collecting of rents from the premises in dispute, and no evidence that he was authorized in writing by the Plaintiff to issue and serve on the Defendant the Notice of the Landlord of the Intension to proceed to Recover Possession.

He maintained that from the evidence of the Respondent, she was all through relying on Exhibit 'A' in giving instructions in issuing the Statutory Notices when indeed she had no power to do so. He said that all the Statutory Notices issued are therefore null and void and the issue of *Locus Standi* again comes to the fore. He said that the Respondent has failed to show any document in writing that authorization was given to **BARRISTER OSAMWONYI .A. IBUDE** to issue the 7 Days' Notice of intention to recover possession as required by law. He relied on the following decisions on the point: ***EJEDE V ADOD 1995 SCNLR 32; IHENOCHO V UZOCHUKWU 1997 2 NWLR (PT 487) @ 264-270 HAMIDU V SHAR VERENTERS 2004 7 NWLR (PT 873); SULE V NIGERIA COTTON BOARD 1985 2 NWLR (PT 5) @ 17.***

Furthermore, learned counsel pointed out that the service of the processes by pasting same on the wall of the shop, without an order of substituted service is contrary to ***Section 31 of the Recovery of Premises Law of Edo State*** and ***Order 5 Rule 4 of the Magistrate Court (Civil Procedure)Rule 2018***.

He therefore urged the Court to resolve this second issue in favour of the Appellant.

In his Respondent's Brief of Argument, the learned counsel for the Respondent, ***S.O. Osazuwa Esq.*** adopted the same issues formulated by the Appellant's counsel and argued them seriatim.

ISSUE 1:

Whether the learned trial Magistrate was right in Law in holding that the Respondent has locus standi to institute the action.

Arguing this first issue, learned counsel submitted that the Learned trial Magistrate was right when he held that the Respondent had the locus standi to institute the action for the Recovery of her Late mother's property. He referred to the case of ***Emechebe V. Ceto International (Nig) Ltd (2017) LPELR 45365 (CA)*** cited by the Appellant's Counsel and the case of ***CITECH International Estates Ltd & Others V. Josiah Oluwole Francis & Others (2021) LPELR (SC) 55219*** where the Supreme Court defined *locus standi* as the capacity to institute an action in the Court of Law.

He submitted that it is settled law that for a Claimant to have *locus standi*, he must have sufficient interest in the suit. For instance, it must be evident that the Claimant would suffer some injury or hardship or would gain some personal benefit from the litigation. He relied on the following cases: ***B.B. Apugo & Sons Ltd V. O.H.M.B (2016) 13 NWLR (pt.1529) 206-Per M.O. Kekere – Ekun JSC Inakoju V. Adeleke (2007) 4 NWLR (pt. 1025)423 at 601 – 602.***

He submitted that in this case, the Respondent while answering questions under cross examination stated thus: "**Lami Ojezua was my mother. She is late. My mother died on the 8/1/2019. This case was filed in 2020. I came to this Court after the death of my mother**". See page 39 of the record of Appeal.

He referred to the judgment of the trial court at page 66 of the record of Appeal where the court stated thus:

*"**Therefore, it is in evidence that the original owner of the one (1) lock up Store at No.2, Etete Road, G.R.A, Benin City is the Claimant's mother, who is now deceased. It is also in evidence that the deceased Claimant's mother died on the 8th day of January 2019. It is equally on record that the claim filed in this suit was filed on the 14th day of September 2020, a year and eight months after the demise of the Claimant's mother".***

Counsel posited that from the above evidence, it is clear that the original owner of the one lock up store was the Respondent's mother and the Respondent

stepped into her mother's shoes upon her mother's demise and became the Appellant's landlady.

Counsel submitted that it is trite law that the death of a landlord does not terminate a periodic tenancy or a lease for a term certain. He referred to **Professor Emeka Chianu's book:** ***"Law of Landlord and Tenant" cases and comments (Second Edition 2006) page 111, lines 1-3*** where the learned author posited thus: ***"Except in the case of tenancy at will, the death of the landlord does not terminate a periodic tenancy or lease for a term certain. His heirs are bound by the terms of the lease".*** He also referred to the case of ***Udih V. Izedonmwen (1990) 2 NWLR (pt. 132) page 357 particularly at page 364 paras A-B.***

Responding to the submission that the Respondent should have instituted this action in the name of her late Mother, Madam Lami Ojezua instead of her name, counsel posited that it is settled law that a dead person cannot commence action in the Court of Law but only the living person can. He referred to the case of ***LASTMA V. Esezobo (2017)5 NWLR (pt 1559) 350 at 385-386 para F – A, Ratio 4,*** where the Court stated the position of the Law as follows:

"***As a general rule, a Plaintiff commencing an action and the person to be made Defendant to the action must be juristic persons or natural persons existing at the time the action was commenced, otherwise the action is incompetent and the court lacks the jurisdiction to entertain the matter***."

He also referred to the case of ***Bajehson V. Otiko (2018) 14 NWLR (Pt 1638) 138 at 152-155 paras C-E, Ratios 3 and 4*** on the point.

He posited that since the Respondent's mother, Madam Lami Ojezua died long before the action was instituted, the Respondent is legally right to have instituted the action in her own name as late Madam Lami Ojezua could not have instituted the action from the grave as argue by the learned Appellant Counsel and he urged the Court to so hold.

He therefore submitted that from the totality of the evidence, the Respondent has sufficient interest in this suit and he the Court to resolve issue 1 in favour of the Respondent.

ISSUE 2:

Whether the learned trial Magistrate properly appraised and evaluated the evidence before the Court in granting the reliefs sought by the Respondent.

Counsel submitted that the learned Trial Magistrate properly appraised and evaluated the evidence before the Court in granting the reliefs sought by the Respondent in this Appeal. He referred the Court to the decision of the the Supreme Court in the case of ***Ihenecho V. Uzochukwu (1997) 2 NWLR Pt 487 page 257 particularly page 269-270 paras H-A*** where they stated the procedure for the recovery of premises. He submitted that submit that the Respondent complied strictly with the procedure laid down by the Apex Court.

He posited that in Exhibit A, there is an express stipulation as to the length of notice to be given by either party to determine the tenancy by one month notice by either party to determine this tenancy in the absence of any breach of the covenant therein. He referred to the case of ***Ajayi V. Harry (2015) ALL FWLR (Pt 770) page 1302 particularly 1306 Ratio 4*** where the Court held that **"parties are bound by the terms of the contract they sign"**

He said that after the expiration of Exhibit A, Exhibits B and C (one month notice to quit and seven days' notice of owner's intention to apply to court to recover possession) were issued by the Respondent to the Appellant, thus complying fully with the procedure for the Recovery of premises.

On the complaint that the Respondent should have obtained a court order before pasting Exhibits B and C on the the door of the one lock up store, counsel submitted that Section 31 of the Recovery of Premises Law of Edo State which is substantially the same in meaning and in word with section 28 of the Recovery of Premises law and section 30 of the Rent control law, 1976 (Lagos) provides that: ***"Service of any notice under the provisions of this Law or any Summons, warrant or other shall be effected in accordance with the provisions of the law for the time being in force relating to the service of the civil process of Magistrate's Court and if the Defendant cannot be found, and his place of dwelling shall either not be known, or admission thereto cannot be obtained for***

serving any such process, a copy of the process shall be pasted on some conspicuous part of the premises sought to be recovered, and such pasting shall be deemed good service on the Defendant."

He submitted that pursuant to the above section, there is no need to obtain an order of court for substituted service to paste Exhibits A and B as erroneously argued by the learned Counsel for the Appellant. He referred to the case of ***Chiwete V. Amissah (1957) LLR page 1;*** and ***Emekwuru V. Inyama (1980) IMSLR 74.***

He said that the Claimant gave an unchallenged and uncontroverted evidence before the Court that since the Defendant could not be found and her whereabouts was unknown, she pasted Exhibits B and C on the door leading to the one locked up store.

He submitted that it is trite law that where evidence adduced by a Plaintiff is unchallenged and uncontroverted by the Defendant, the standard of proof required by the Plaintiff becomes minimal, See ***Odeyemi V. Nitel plc (2009) LPELR (4982) CA; Asafa Food Factory Ltd V. Alraine (Nig) Ltd (2002) 5 SC page 1; and Balogun V. UBA Ltd (1992) 6 NWLR (pt 1191) 474.***

He submitted that in the instant case, the Appellant never challenged or controvert the evidence of the Respondent and the position of the Law is that they are deemed admitted and he urged the Court to so hold and resolve issue 2 in favour of the Respondent and dismiss this Appeal.

At the hearing of this, the learned counsel for the Respondent, ***S.O. Osazuwa Esq.*** in further adumbration submitted that any irregularity in the notice to quit or the owner's intention to recover possession will be regularized by the Claim for possession at the Magistrate Court and he relied on the following decisions on the point: ***BANKOLE & ANOR V OLADITAN (2022) LPELR 56502 CA*** affirmed by the Supreme Court in the case of ***PILLARS NIGERIA LTD V WILLIAM KOJO DESRORDES & ANOR (2021) 12 NWLR (Pt-1789) 144 par C-H.***

Upon a careful examination of the issues formulated by both counsel, I am of the view that the two issues adopted by both counsel are quite germane to the

just determination of this appeal. I therefore adopt them as the two issues for determination in this Appeal and proceed to resolve them seriatim.

ISSUE 1:

Whether the learned trial Magistrate was right in Law in holding that the Respondent has locus standi to institute the action.

Going by judicial authorities, the term *locus standi* denotes the legal capacity to institute legal proceedings in a Court of law. The fundamental aspect/feature of *locus standi* is that it focuses on the party seeking to get his complaint laid before the Court - ***Ojukwu V Ojukwu (2008) LPELR-2401 (SC)***.

Locus standi was defined by the Supreme Court in the case of ***Taiwo V Adegboro (2011) SCM 159, 175*** by ***Rhodes-Vivour, J.S.C.*** in these terms: ***"Locus standi means standing to sue or competence of a party to sue."***

For a fuller expression of the term, the Supreme Court again in the case of ***B.B. Apugo & Sons Ltd V OHMB (2016) LPELR-40598(SC) per Kekere-Ekun, J.S.C. 23, B-E,*** defined *locus standi* thus:

"Locus standi is the legal right of a party to an action to be heard in litigation before a Court or tribunal. The term connotes the legal capacity of instituting or commencing an action in a competent Court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever. It is also the law that to have locus standi to sue, the plaintiff must have sufficient interest in the suit. For instance, one of the factors for determining sufficient interest is whether the party seeking redress would suffer some injury or hardship from the litigation..." See also the case of ***Inakoju V Adeleke (2007) LPELR-1510(SC) 74-75, G-A.***

Thus *Locus standi* is a threshold issue. A party must have the *locus standi* to institute or commence a suit. Where a party has no *locus standi* to institute an action, the Court would have no jurisdiction to adjudicate on the matter brought before it; See ***Basinco Motors Ltd v. Woermann-Line & Anor (2009) 13 NWLR (Pt. 1157) 149 S.C.; Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669, Opobiyi v Muniru (2011) LPELR-8232 (SC).***

In the instant case, the thrust of the Appellant's objection on locus standi is that since the Tenancy Agreement (Exhibit 'A') was between the Respondent's deceased mother, a disclosed principal and the Appellant, upon the demise of her mother, the Respondent cannot step into her shoes to institute this suit. He maintained that right to enforce Exhibit "A" ended with the demise of the Respondent's mother.

The question which must be resolved at this juncture is, whether the right of action of the deceased mother of the Respondent as encapsulated in Exhibit "A" is an "action in personam", that is, a personal action or an action "in rem". For if it is a personal action then the must have abated upon her demise and cannot be activated or sustained by the Respondent or any other person. However, if it is not a personal action, then it must survive and be inheritable by whoever succeeds to the estate of the deceased.

The common law principle is expressed in the Latin maxim: ***"actio personalis morituri cum persona"***; i.e. that personal action dies with the person. It is settled law that the maxim applies only in respect of personal actions founded on the tort of defamation, seduction or enticement of a wife, etc. It does not apply where the subject matter of the suit is an interest which accrues to the estate of the deceased. See the following cases on the point: ***WANIKO V. ADE-JOHN (1999) 8 NWLR (PT. 619) 401; CBN v. Igwillo (2007) 14 NWLR (Pt. 1054) 393, Eyesan v. Sanusi (1984) 4 SC, 115, Nzom v. Jinadu (1987) 1 NWLR (Pt. 51) 563, Ironbar v. C.R.B.R.D.A. (2004) 2 NWLR (Pt. 857) 411, APC v. INEC (2015 8 NWLR (Pt. 1462) 531 @ 565; paragraph C-D.***

For the avoidance of doubts, the actions that will automatically abate upon the death of a party are actions that are strictly personal in nature such as:-

(i) action to enforce a contract of personal service;

(ii) action for breach of promise to money, or seduction;

(iii) action for defamation;

(iv) action for enticements and harbouring." See: ***OJO V. AKINSANOYE (2014) LPELR-22736(CA) (PP. 49-50 PARAS. B-B).***

In the instant suit, the action is not against the private person of the deceased but involves the interest of her estate. I am of the view that the cause of action survives her and her heirs are entitled to institute the present action. See ***IN RE: ADEGOROYE (2019) LPELR-49522(CA) (PP. 4-5 PARAS. E-E).***

On the specific challenge that the Respondent has no locus standi to institute this suit against the Appellant, I observed that at the trial court, the Respondent led evidence to show that the Appellant became a tenant on the premises vide the agreement with her mother contained in Exhibit 'A'. The tenancy was for a fixed term of one year. Before the expiration of the tenancy, the Respondent's mother passed on. When the tenancy expired, it was not renewed formally but the Appellant paid rent for six months contrary to the provisions of the Tenancy Agreement; the Appellant also sub-let a part of the store in breach of the Agreement. Sequel to the alleged breaches of the Tenancy Agreement, the Respondent invoked the provisions of the Agreement and terminated same, giving one month's notice as stipulated in the Agreement. The Respondent subsequently issued the seven days' notice of the owner's intention to recover possession of the premises.

At the trial, the Appellant did not lead any evidence to controvert any of the foregoing facts. She simply rested her case on that of the Respondent and tried to challenge the authority of the Respondent to institute this proceedings to recover possession of the store. According to her, the tenancy agreement is between the Respondent's mother and herself and with the demise of the Respondent's mother, nobody can enforce the tenancy agreement against her.

As already stated, the Appellant did not call any witness. She rested her defence on the Respondent's case. It is well settled that in a circumstance, such as in the instant case, where the Appellant elected not to call evidence, she must be taken as admitting the facts of the case as stated by the Respondent and must stand or fall based on the Respondent's case. The Appellant shall be taken as having abandoned her defence. See: ***AKANBI vs. ALAO (1989) LPELR (315) 1 at 53-54***. A situation where a Defendant elects not to lead evidence in defence but rests on the case of the Plaintiff, is a legal strategy which if it succeeds enhances the case of the defendant, but where it fails, it would be *Nunc Dimittis* for his case. See the following cases: ***THE ADMIN AND EXECUTOR ESTATE OF GEN SANI***

ABACHA (DECEASED) VS. EKE-SPIFF (2009) LPELR (3152) 1 AT 59-60 AND NEWBREED ORGANISATION VS. ERHOMOSELE (2006) LPELR (1984) 1 AT 53-54; KOLOKO & ANOR V. NKWONTA (2020) LPELR-52195(CA) (PP. 18-19 PARAS. D).

In further support of his challenge on the ground of locus standi, the learned counsel for the Appellant disputed the title of the Respondent and maintained that she did not lead any evidence to show that she inherited the said house or that she was acting for herself and on behalf of the Estate of late **MADAM LAMI OJEZUA**.

It is settled law that a tenant is ordinarily estopped from disputing his landlord's title. On this point, the learned authors of ***Woodfall Landlord and Tenant 27th Edition Para. 29 at page 18*** *inter-alia* stated thus:

"It is one of the first principles of the law of estoppel as applied to relations between landlord and tenant that a tenant is estopped from disputing the title of his landlord. This applies to written and oral tenancy agreement as well as to leases under seal. Thus a lessee cannot dispute his lessor's title by sitting up an adverse title whilst retaining possession."

Finally, on this first issue, as rightly submitted by the learned counsel for the Respondent, it is trite law that the death of a landlord cannot terminate a periodic tenancy. The tenancy will be binding on the heirs of the landlord. See: **Professor Emeka Chianu's book:** ***"Law of Landlord and Tenant" cases and comments (Second Edition 2006) page 111, lines 1-3*** and the case of ***Udih V. Izedonmwen (1990) 2 NWLR (pt. 132) page 357 particularly at page 364 paras A-B*** aptly relied upon by the said counsel**.**

From the foregoing, I hold that the trial court was right when it held that the Respondent has the locus standi to institute this action. Issue one is therefore resolved in favour of the Respondent.

ISSUE 2:

Whether the learned trial Magistrate properly appraised and evaluated the evidence before the Court in granting the reliefs sought by the Respondent.

It is an established principle of law that evaluation of evidence is primarily the function of a trial Court. It is only where and when it fails to evaluate such evidence properly or at all that an appellate Court can intervene and re-evaluate such evidence. See the case of ***DIAMOND BANK V. OKPALA (2016) LPELR-41573(CA) (PP. 7-8 PARAS. F).***

In the case of ***FALANA & ORS V. ADEDEJI & ORS (2020) LPELR-50162(CA) (PP. 31-32 PARAS. C)***, the Court of Appeal exposited that the evaluation of evidence comes in two forms:

(a) Findings of fact based on the credibility of witnesses; and

(b) Findings based on evaluation of evidence.

In (a) they posited that an appellate Court should be slow to differ from the trial judge because it was he that saw and heard the witnesses, he watched their demeanour and so his conclusion must be accorded some respect.

But in respect of (b), they maintained that an appellate Court is in a good position as the trial Court to evaluate the evidence. They posited that in both (a) & (b), the conclusion of the trial judge should be accorded much weight except if found to be perverse. According to them, trial Courts receive evidence, which is perception. It is then the duty of the Court to weigh the evidence in the context of the surrounding circumstances of the case, which is evaluation. They said that a finding of fact involves both perception and evaluation.

In the case of ***OKE V. NWIZI (2013) LPELR-21252(CA) (PP. 67-69 PARAS. C),*** the Court of Appeal elucidated more on evaluation of evidence when they exposited thus: ***"An evaluation goes beyond restating the evidence led by each side. It involves an appraisal, assessment or analysis of the evidence on each issue determined in the case. An evaluation must demonstrate the view of the Court on the probative value of each evidence and the preponderance of evidence on each issue tried in the case."***

Again in the case of ***GILSOD ASSOCIATES LTD V. ALGON (2011) LPELR-4197(CA)(PP. 54-55 PARAS. C),*** the Court exposited thus: ***"It should be noted that there is a world of difference between a summary of evidence, known as review of evidence by a trial Court, and the evaluation or assessment of such***

evidence for the purpose of ascribing value to it. A summary of evidence simply means what it says, i.e. restating the oral testimony of witnesses in brief or shortened form or setting out the material points or effect of the evidence without repeating every words used by the witnesses. It is merely a condensation, abridged or concise restatement of the testimony of a witness by a court in writing or considering its judgment in a case. A summary of evidence represents a court's review of the key or vital points in the oral evidence of a witness on material facts in issue in the case."

Applying the foregoing principles to the instant case, I observed that the trial court embarked on a comprehensive review of the evidence before him. He carried out some evaluation of the evidence and made salient findings of fact. At this stage I intend to carefully examine the evaluation of the evidence carried out by the trial court together with the salient finding of facts to ascertain whether they were in order.

It is pertinent to refer to the extant claim of the Respondent at the trial court. For the avoidance of doubt, the Respondent's Claim at the lower court was seeking the following reliefs:

1. ***Possession of the One (1) Lock Up Store at No. 2, Etete Road, G.R.A., Benin City; and***
2. ***Mense Profit at the rate of N10,000.00 (Ten thousand Naira) monthly from the month of July, 2020 till whenever possession is delivered.***

It is a trite principle of the law of evidence, that facts admitted need not be proved. See Section 123 of the Evidence Act 2011. See also ***DR. HENRY EFFIONG BASSEY v. ATTORNEY-GENERAL, AKWA IBOM STATE & ORS (2016) LPELR-41244(CA); and MOZIE V. MBAMAU (2006) 15 NWLR (1003) 466, 493; ATTORNEY-GENERAL OF ABIA STATE v. PHOENIX ENVIRONMENTAL SERVICES NIGERIA LIMITED & ANOR (2015) LPELR-25702(CA).***

As earlier stated in this judgment, where there is oral evidence which involves an admission by the adversary, or there is an unchallenged piece of evidence, an appellate Court should consider itself to be in as good a position as

the trial Court, in the evaluation of the evidence. See: ***Ebba Vs. Ogodo (1984) 1 SCNLR 372; Ogundepo Vs. Olumesan (2011) 18 NWLR (pt 1278) 54; and RUDMAN V. OLUDE STORES LTD (2013) LPELR-22627(CA) (PP. 27-28 PARAS. E-E).***

The gravamen of the Appellant's complaint under this issue is that the procedure adopted by the Respondent in the recovery of the lock up store was defective.

Here he first contended that the Respondent did not authorize one ***BARRISTER OSAMWONYI .A. IBUDE*** to issue the 7 Days' Notice of intention to recover possession as required by law.

It is settled law that when a counsel signs a process as representing a party there is a presumption that he is authorised to act for that party unless there is a contrary indication by the party. Thus once a counsel appears in a case ex-facie, the process filed or announces his appearance in open Court, the Court assumes that he has the authority of his client for the conduct of the case and being a question of fact the burden of proving otherwise is on the person asserting the contrary vide ***Section 131(1) of the Evidence Act, 2011***. See ***Martins and Ors. v. The Federal Republic of Nigeria (2018) 13 NWLR (pt. 1637) 523 at 535 – 536***.

I am of the view that the Appellant is estopped from challenging the authority of the said Barrister Osamwonyi Ibude in respect of the notice purportedly issued by him. Moreover, the Appellant did not lead any evidence in this suit so he failed to discharge the burden of proof incumbent on him by virtue of ***Section 131(1) of the Evidence Act.2011.***

Furthermore, learned counsel pointed out that the service of the processes by pasting same on the wall of the shop, without an order of substituted service is contrary to ***Section 31 of the Recovery of Premises Law of Edo State*** and ***Order 5 Rule 4 of the Magistrate Court (Civil Procedure)Rule 2018***.

On this ground of objection, I agree entirely with the learned counsel for the Respondent that by virtue of ***Section 31 of the Recovery of Premises Law of Edo State*** which is substantially the same in meaning and in word with ***section 28 of the Recovery of Premises law and section 30 of the Rent control law, 1976***

(Lagos), there is no need to obtain an order of court for substituted service to paste the statutory notices on the door of the lock up store. See the cases of ***Chiwete V. Amissah (1957) LLR page 1;*** and ***Emekwuru V. Inyama (1980) IMSLR 74*** cited by learned counsel.

Finally on the issue of irregularity of statutory notices in respect of recovery of premises as aptly submitted by the learned counsel for the Respondent, any irregularity in the in the notice to quit or the owner's intention to recover possession will be regularized by the claim for possession before the Court.

In the case of ***PILLARS (NIG) LTD V. DESBORDES & ANOR (2021) LPELR-55200(SC), OGUNWUMIJU ,J.S.C*** exposited thus:

"The justice of this case is very clear. The Appellant has held on to property regarding which it had breached the lease agreement from day one. It had continued to pursue spurious appeals through all hierarchy of Courts to frustrate the judgment of the trial Court delivered on 8/2/2000 about twenty years ago. After all, even if the initial notice to quit was irregular, the minute the writ of summons dated 13/5/1993 for repossession was served on the appellant, it served as adequate notice. The ruse of faulty notice used by tenants to perpetuate possession in a house or property which the landlord had slaved to build and relies on for means of sustenance cannot be sustained in any just society under the guise of adherence to any technical rule. Equity demands that wherever and whenever there is controversy on when or how notice of forfeiture or notice to quit is disputed by the parties, or even where there is irregularity in giving notice to quit, the filing of an action by the landlord to regain possession of the property has to be sufficient notice on the tenant that he is required to yield up possession. I am not saying here that statutory and proper notice to quit should not be given. Whatever form the periodic tenancy is whether weekly, monthly, quarterly, yearly etc., immediately a writ is filed to regain possession, the irregularity of the notice if any is cured."

From the foregoing observations of the Apex Court on the point, it is evident that this complaint of any alleged defect in the service of the statutory notices cannot sustain this Appeal. I hold that the Respondent followed the procedure for the recovery of the lock up store by issuing all the notices as required by law and

effecting service of same on the Appellant following due process. Issue two is therefore resolved in favour of the Respondent.

Having resolved the two issues in favour of the Respondent, I hold that this Appeal lacks merit and it is accordingly dismissed with N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Respondent.

P.A.AKHIHIERO

JUDGE

02/08/2023

<u>COUNSEL:</u>

I.J. EQUAKUN ESQ----------APPELLANT

S.O. OSAZUWA ESQ----------RESPONDENT