

*Action for Recovery of Premises – Propriety of Commencing same by
Originating Summons*

In the Court of Appeal
In the Abuja Judicial Division
Holden at Abuja
On Friday, the 29th Day of November, 2024

Before Their Lordships
Adebukunola Adeoti Banjoko
Peter Chudi Obiorah
Okon Efreti Abang
Justices, Court of Appeal

Appeal No: CA/ABJ/CV/518/2022

Between

Leader And Company Limited ... APPELLANT

And

Abuja Investment Company Limited ... RESPONDENT

(Lead judgement delivered by Honourable Adebukunola Adeoti Banjoko, JCA)

Facts

The Appellant entered into a tenancy agreement dated 31st August 2009, with the Respondent as the landlord, in respect of the property at Plot 702 Cadastral Zone A00, Central Business District, Abuja. The duration for the tenancy was for a two-year term certain. Further to an alleged breach of the terms as agreed by parties, the Respondent commenced an action against the Appellant for recovery of the premises at the High Court of the FCT in Suit No. FCT/HC/CV/568/2012. The court found in favour of the Respondent, informing an appeal by the Appellant herein to the Court of Appeal. The appeal was also determined in

favour of the Respondent, with the Appellant thereby appealing to the Supreme Court in Appeal No. SC/1044/2016, which is still pending at the apex court.

In the course of the appeal, parties met and opted for an out-of-court settlement, involving the payment of arrears of rent with an understanding that the Appellant herein discontinue the appeal at the Supreme Court. The parties also renegotiated and agreed to an execution of a new tenancy agreement dated 14th December 2018, for a one-year term certain. The Appellant was alleged to have breached the terms of the new agreement on the ground of non-renewal after expiration and subletting. The Respondent, therefore, commenced a new action for recovery of the premises at the High Court of the FCT, by way of Originating Summons, praying the court to interpret the tenancy agreement dated 14th December 2018.

The Appellant filed a Notice of Preliminary Objection challenging the jurisdiction of the trial court to determine the suit on the ground that a similar suit for recovery of the same premises, between the same parties, and on same subject matter was pending before the Supreme Court; hence, the suit as constituted was an abuse of court process. The Appellant equally challenged the mode of commencement of the suit as not being suitable in the face of the material conflicts/substantial disputes, relying on Section 10(1) of the Recovery of Premises Act.

The trial court determined the Preliminary Objections in favour of the Respondent and proceeded to determine the Originating Summons as being unchallenged for failure of the Appellants to file separate counter-affidavit to the affidavit in support of the Originating Summons. The court thereby, granted most of the reliefs sought by the Respondent. Dissatisfied with the decision, the Appellant filed the present appeal. At the Court of Appeal, the Respondent filed a Preliminary Objection on the ground that the Notice of Appeal and the Grounds of Appeal are not derivable from the ratios in the judgement of the lower court, and that the grounds were full of arguments and narratives in contravention of Order 7 Rules 2(1-3) of the Court of Appeal Rules, 2021.

Issues for Determination

The Appellant formulated four issues for determination of the appeal, while the respondent raised two issues. The appellate court adopted the issues of the Appellant in its determination of the appeal, thus:

1. Whether the recovery of premises can be commenced by way of originating Summons.
2. Whether the lower court was right in assuming jurisdiction over a matter which is still pending at the Supreme Court, and if same is not an abuse of court process.
3. Whether the failure of the trial judge to analyse the defence of the Appellant occasioned a miscarriage of justice.
4. Whether the judgement was not against the weight of evidence adduced before the trial court.

Arguments

On issue one, the Appellant submitted that the suit was for recovery of premises but the procedure stipulated in the Recovery of Premises Act was not adhered to. The Act, according to the Appellant, prescribed the mode of commencement to be by "Writ" and this means Writ of Summons; hence, the Originating Summons used by the Respondent did not comply with due process of law. The Respondent countered the submission stating that the action before the lower court was for interpretation of the tenancy agreement of 2018 entered into by parties and the rules of court allows the use of Originating Summons, especially where there are no substantial dispute of facts. Also, the word "Writ" provided for in Section 10(1) of the Recovery of Premises Act is a reference to originating processes generally and not specifically/solely to a Writ of Summons.

Regarding issue two, the Appellant contended that the Respondent commenced an action against the Appellant for recovery of the same premises (Plot 702 Cadastral Zone A00, Central Business District, Abuja in Suit No. FCT/HC/CV/568/2012, which appeal went up to Supreme Court and is still pending before the court. The action leading to the instant appeal is also against

the Appellant for recovery of the same premises; as such, the action leading to this appeal was an abuse of court process. More so, there is an application for Stay of Execution and motion for injunction restraining the Respondents from executing the judgement, motion for settlement, briefs of argument and motion for dismissal of the suit, all pending before the Supreme Court. The Respondent argued otherwise, positing that action leading to the appeal before the Supreme Court was based on the Tenancy Agreement dated 31st August 2009 while the action leading to the present appeal was filed further to the Tenancy Agreement dated 14th December 2018. As such, the suit is not an abuse of court process.

Court's Judgement and Rationale

In line with decided authorities on consideration of Preliminary Objection before issues raised by parties, the appellate court determined the objection of the Respondent first - **GUSAU v APC & ORS. 209 (LPELR-46897 (SC))**. The court held that a Ground of Appeal is to give the Respondent the necessary notice of the grudges the Appellant has against the judgement appealed against, while the particulars only provide specific details to fill in the yearning gaps in an inexplicit ground. Once the Respondent understands or appreciates the import of the grounds, the grounds will not be struck out. More so, an incompetent ground will not automatically lead to dismissal of the other grounds and once there is a ground that can sustain the appeal, the competency test is passed - **INTERNATIONAL TRUST BANK PLC v LOUIS OKOYE (2022) ALL FWLR (PT. 1127) 100 AT 120**. The rules of court is required to be obeyed in terms of precision and ambiguity of Grounds of Appeal. Once the court and/or the other side appreciates the nature of the Appellant's complaint, technicality should be put aside in favour of substantial justice. Grounds 1, 2 and 3 question the mode of commencement of the action at the lower court, alleged non-compliance with the requirement of Section 10(1) of the Recovery of Premises Act, and the issue of abuse of court process. These are grounds which challenge the jurisdiction of the lower court and they can be raised at any time, even for the first time at the Supreme Court. In any case, the issues were argued before the lower court and the court made findings thereon. The court found grounds 1 to 5 competent and all the objections in that regard were dismissed.

Deciding issue one, the appellate court emphasised that in civil proceedings, a cause of action is principally found in a Plaintiff's Statement of Claim or affidavit in support of an Originating Summons and not in the Statement of Defence/Counter-affidavit. Where the objection to the jurisdiction of court is premised on the subject matter of the claim, it is the reliefs sought as contained in the Originating Summons and the Affidavit that will provide an answer to the objection raised – **7UP BOTTLING COMPANY LIMITED & ORS. v ABIOLA & SONS BOTTLING COMPANY LIMITED (2001) 6 SCNJ 18**. Evaluating the questions raised in the Originating Summons and the reliefs sought, the court raised the question of whether the averments and the reliefs can be granted under Originating Summons. Noting the contention on breach of the tenancy agreement by subletting same, the court found that a Deed of Sub-lease was not attached to the affidavit to convince the court. The alleged sub-lessee was also not joined as a party to the suit, highlighting the importance of this as the Respondent sought declaratory orders which if granted, would definitely affect their rights. The appellate court acknowledged that Originating Summons is one of the modes of commencing a civil proceedings, but same is only applicable in such circumstances where there is no dispute on questions of fact or the likelihood of such dispute. An Originating Summons should not be used to commence a hostile proceedings in which facts are in dispute – **DOHERTY v DOHERTY (1967) 1 ALL NLR 245**. Where the disputed facts are substantial, the proper mode of commencing such an action is by Writ of Summons, so that pleadings can be filed. Where it is evident from the affidavit before the court that there would be “an air of friction” in the proceedings, an Originating Summons is no longer appropriate. The affidavits presented before the lower court by both parties were in sharp contrast to each other and the parties were adamant in their positions taken, with no common ground of agreement leading to a logical conclusion that the facts are contentious. Further, the allegation of sublet and claim for mesne profit are weighty in law, needing specific proof and therefore, cannot be glossed over lightly. The court concluded that the claims/reliefs of the Respondent before the lower court was already suggestive of hostility and further that there was a major contention/dispute between parties relating to sublease, mesne profit and non-renewal. Therefore, Originating Summons was not appropriate for the commencement of the suit before the lower court.

Construing the provisions of Section 10(1) of the Recovery of Premises Act, the court held that the provision relates to procedure for recovery of premises which are usually based on facts. Also, the Act stipulates procedure for recovery of premises and court action becomes imperative where the occupier still holds over, already suggestive of dispute. The foregoing notwithstanding, *a tenancy dispute could also be resolved through an Originating Summons if the issue involves the interpretation of laws or undisputed facts where there are no substantial disputes and the resolution primarily requires the court to interpret a tenancy agreement, statute or other clauses or provisions in the Agreement or in Tenancy Laws or Regulations, then such an action can be commenced by an Originating Summons. Where the dispute as in this case, involves complex factual disagreements, such as allegations of breach of contract, unpaid rent with defences or claims for damages, the case would require the filing of a Writ of Summons.* The issue was thereby resolved in favour of the Appellant.

Regarding issue two, the court relied on various judicial interpretation of what constitutes an abuse of court process. Evaluating the two tenancy agreements, the court found that though the parties and subject are the same; the date, issues and terms of the agreements are clearly different; thus, filing the present suit does not constitute an abuse of court process. This issue was resolved against the Appellant.

Resolving issues three and four together, the Court of Appeal held that the affidavit of the Appellant in support of its Preliminary Objection did not only contain facts in support of the Preliminary Objection, but also included facts that controverted some of the averments in the affidavit in support of the Originating Summons. The Appellant controverted the allegation of subletting, non-renewal of tenancy. Their Lordships faulted the decision of the lower court which disregarded these averments because they were not filed separately as counter-affidavit to the Originating Summons, stating that the interest of justice will not allow the facts to be deemed as abandoned, especially when it was adopted and relied on heavily as defence against the averments pleaded by the Respondents. These issues were resolved in favour of the Appellant.

Appeal allowed; Case remitted for retrial.

Representation

Dr. Frank Ike Chude, MCIARB (UK) for the Appellant.

J.S. Okutepa, SAN for the Respondent.

Reported by Optimum Publishers Limited

Publishers of the Nigerian Monthly Law Reports (NMLR)

(An affiliate of Babalakin & Co.)