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**LEGAL FRAMEWORK FOR SAME-SEX MARRIAGES IN NIGERIA AND CANADA: A  
COMPARATIVE ANALYSIS.**

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**Abstract**

*This paper examined the legal framework for Same-sex marriage in both Nigeria and Canada. In so doing, the researcher adopted the doctrinal legal research methodology. The findings revealed that Same-sex marriages, which presupposes the union of persons of the same gender by way of matrimony is clearly prohibited in Nigeria even though it is lawful in Canada and other Western countries. It was found that several factors are responsible for the refusal of the Nigerian government, particularly the legislature to legalize Same-sex marriages in Nigeria ranging from socio-cultural, religious, and the general value system prevalent in the country. It was further revealed that the combined effects of these factors have led to the perception of the Same-sex practice as immoral, despicable, and against the law of nature, thus the existence of a legal framework which expressly criminalizes this abhorrent practice. Conversely, the legal framework in Canada offers protection to Same-sex couples by expanding the definition of marriage to accommodate couples of the same gender. It was concluded that the argument of same-sex advocates that love alone should be sufficient grounds for marriage irrespective of gender has no place in Nigeria given our religious, cultural and moral context in this part of the world. It was recommended inter alia that given the fact that legalizing same-sex marriage conflicts with the law of nature, it is necessary to criminalize this phenomenon considering the overall interest of the socio-cultural settings and religious beliefs of Nigerians. Keywords: Heterosexual, Human Rights, LGBT, Same-sex Marriage.*

**Introduction**

A broader understanding of the term “Lease” depends on a variety of factors which among others refers to a document creating exclusive interest in land, certainty of duration and payment of rent. The establishment of these terms and conditions gives rise to the legal relationship between a landlord and tenants. It is imperative to know from a historical perspective what lease agreements are, and how or why they are made. A lease agreement is a contract between two parties usually referred to as a “lessor” and a “lessee”, the lessor being the owner or landlord and the lessee being the one renting / leasing the property, otherwise referred to as the tenant, wherein, specific

conditions are mentioned for renting or leasing the property. It is the legal agreement which gives the lessee the right to occupy the property for the tenure mentioned on it, but which does not give them the right to own it.<sup>106</sup>

Under the Common Law, the earliest forms of landlord and tenant relationship on record had its origin in the medieval land law and were originally one of contract law.<sup>107</sup> Thus, it created rights and obligations binding only between the two parties to the agreement and did not include nor create rights and obligations binding on other parties.<sup>108</sup> In addition, landlords were highly favoured as against tenants at Common Law as the tenant had to take the property in the condition it was found at the time the lease was entered into, even if the tenant was not aware of defects at the time the lease contract was signed. The tenant also had to repair any damages resulting from natural disasters or acts of other people. In fact, the landlord's only obligation to the tenant was that of not interfering with the tenant's "quiet enjoyment". Aside these, a landlord could forcibly evict a tenant and could literally throw the tenant and his personal possessions on the street. Also at Common Law, leases were mainly used for agricultural purposes, not until late 18<sup>th</sup> and early 19<sup>th</sup> centuries when the growth in social and economic conditions as well as increase of cities in industrialized countries made lease an important form of landholding in urban areas.<sup>109</sup>

The modern law of landlord and tenant relationship brought radical changes from Common Law hardships as legislatures had enacted statutes that provide for a more equitable relationship between landlords and tenants. Such laws often required the landlord to repair and maintain the premises to certain minimum levels. This requirement is present either expressly or impliedly in the lease agreement.<sup>110</sup> Consequently, to forestall frequent violence and quarrel brought about by the Common Law position, reformers have emphasized the need to enact laws regulating the relationship of Landlord and Tenants. For instance, we have the Rent Control and Recovery of Premises Act CAP 544 Laws Federation of Nigeria, Abuja 1990, Rent Control and Recovery of Residential Premises Law CAP 118 Law of Lagos State 2003, 2011 and 2014, Rent Control and Recovery of Residential Premises Law CAP 145 Law of Benue State 1996. In Kogi State, the relevant applicable law is the Rent Control and Recovery Premises Law, Laws of Kogi State 2007. There is also the Constitution of the Federal Republic of Nigeria 1999, (as amended).<sup>111</sup>

In addition to the above, there is a plethora of Judicial Precedents commonly referred to as Case Law which are decisions of superior courts of records guiding and

<sup>106</sup> S. Vikkrom, "Lease Agreements: What it is, terms and conditions", [2017], <https://vakilsearch.com/advice2017>. Last Accessed, 17<sup>th</sup> August, 2024.

<sup>107</sup> E. Williams, R. Williams, B. Broack, & R. Roach, *Concise Encyclopedia of Real Estate Business Terms* London: Routledge Publishers, 2013, p. 200.

<sup>108</sup> K. A. Currier, T. E. Eimermann, *Introduction to Paralegal Studies: A Critical Thinking Approach* (4<sup>th</sup> Edn), New York: Aspen Publishers, 2009, 32.

<sup>109</sup> J. Awunde, "The Concept of Landlord and Tenants", Paper Presented at Full Gospel Businessmen's Fellowship, Port-Harcourt, 2012, p.3.

<sup>110</sup> K. A. Currier, T. E. Eimermann, *Introduction to Paralegal Studies: A Critical Thinking Approach*, *Op cit*, p.1.

<sup>111</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), hereinafter referred to as CFRN, 1999.

binding lower courts in deciding disputes involving landlords and tenants. Finally, the main object of the Recovery of Premises Law was to place limitation provisions which cover employees engaged under statutes on the Common Law rights of landlord with the object of regulating rights. These provisions are not totally severable from the obligations of a landlord on the recovery of the premises and restraining arbitrary eviction of tenants from occupied premises, a tenant in their relationship which makes rules governing contracts important as a source of landlord and tenant law. The foregoing brings us to the vital consideration of the concept of lease which forms the fulcrum of this research.

### **Definition, Nature, and terms in leases**

A **'Lease'** could be written or implied and presupposes an agreement by which an owner known as the **"Lessor"** of a specific asset such as a parcel of land, building, equipment, or machinery grants to a second party, the **"Lessee"**, the right to exclusive possession and use for a specific period and under specified conditions of the said asset, in returned for specified periodic rental or lease payments.<sup>112</sup>

Section 2 of the Recovery of Premises Laws of Kogi State, 2007 defines a landlord to include a sub-landlord or any person from time to time deriving title from the original landlord or sub-landlord.<sup>113</sup> In the same vein, section 29 of the Recovery of Premises Law, CAP 209, Laws of Rivers State 1999, defines a landlord in relation to any premises which includes the person entitled to the immediate reversion of the premises, or if the property therein is held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion, and also the attorney or agent of any such landlord, and any person appointed to act on behalf of the state in dealing with any lands, buildings, premises or corporeal or incorporeal hereditaments vested in the state.<sup>114</sup> By the above, a landlord is someone, joint persons, or government, acting by themselves or through agents, and are generally entitled to the immediate reversion of property. An agent and attorney holding a power of attorney and even persons who inherit property of the landlord when he dies are all landlords.

The definition above may not include co-owners of a family property because they are not entitled to the immediate reversion of property. Such member(s) claiming as a unit must show individually that he is entitled to the reversion of the premises. The definition of the landlord in Kogi State is similar to other Rent Control and Recovery of Premises Laws in Nigeria. At Common Law, the landlord is described in the Black's Law Dictionary,<sup>115</sup> as a feudal lord who retains the fee simple of the land. This is how the name lord over land came about. He is also described as a lessor who is capable of creating a lease and lessee capable of taking the demised premises. Parties must also include juristic persons or artificial persons such as natural persons, a registered company, a partnership, corporation, registered trustees created or recognized by law or statute as having rights and duties.

<sup>112</sup> Business Dictionary, "What is a Lease?: Definition and Meaning", [2018], [www.businessdictionary.com](http://www.businessdictionary.com)>2018 Last Accessed, 20<sup>th</sup> July, 2024.

<sup>113</sup> Rent Control and Recovery of Residential Premises Law of Kogi State, 2007.

<sup>114</sup> Rent Control and Recovery of Residential Premises Law, CAP 209 Laws of Rivers State, 1999.

<sup>115</sup> B. Garner, *Black's Law Dictionary* (8<sup>th</sup> Edn.), USA: West Group Publishers, 2004.

Strictly speaking, a tenant is one who holds or possesses lands or tenements by any kind of right or title. Under section 29 of the Recovery of Premises law of Rivers state, a tenant includes: any person occupying premises whether by payment of rent or otherwise but does not include a person occupying premises under a bona fide claim to be the owner of the premises. From the above definition, any person occupying another's premises whether on payment of rent or otherwise makes some commitment to the landlord is a tenant. A tenant includes a sub-tenant in legal parlance. It is only a person who claims bona fide title that is not a tenant.

Premises' is literally, the property being let out to the tenant by the landlord. It is usually a house or building along with its surroundings. Premises also can be land without any building on it and includes appurtenances. Appurtenances are something that belongs or attached to something else. In this case, something attached to the land like the garden surroundings of a premises, *et cetera*. The demised property must be ascertainable and described with precision which must be in existence on the commencement date of tenancy agreement, otherwise the agreement is void.<sup>116</sup>

Under section 2 of the Recovery of Premises law of Kogi State, "**Rent**" includes any money or money's worth whether in the form of crop, labour or otherwise paid or given as the case may be, in consideration of which a landlord has let his premises to a tenant. The definition of the above may appear archaic because of the mention of crops but ideally the mention of money or money's worth should remove any ambiguity. But rent in the above sense and in general is a compensation or consideration paid to the landlord either in cash or kind by a tenant for the use of the land demised to him by the landlord. Rent, whether in cash or kind must be capable of being ascertained. A rent is also construed as something which a tenant is under obligation to pay to entitle him to a right in the lease or tenancy transaction. An obligation to pay rent is determined by an expressly and mutually agreed resolve of the landlord and tenant to pay same.<sup>117</sup>

Certainty of Term or duration is crucial component of a lease. Thus a lease must be granted for a term that is certain. In other words, a lease cannot enure in perpetuity.<sup>118</sup> It must have certainty of commencement date and a certain end of duration. Its duration must not be hazy. Of note however is that a lease which is to commence at a future date may be valid if the contingent event upon which the commencement rests is certain,<sup>119</sup> but void if it is purported to take effect upon the completion of the building.<sup>120</sup> This is because, the time when the building would be completed cannot be humanly stated with any precision. An act of God may intervene to delay the completion of the building. It has similarly been held that a lease which is granted for the duration of the war is uncertain and therefore void,<sup>121</sup> the duration of the war not being a foreseeable event.

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<sup>116</sup> I. O. Smith, *Practical Approach to Law of Real Property in Nigeria*, Lagos: Ecoweteh Publications, 1999, p.26.

<sup>117</sup> J. Awunde, "The Concept of Landlord and Tenants", *Op cit*.

<sup>118</sup> *UBA v Tejumola* (1986)4 NWLR p.815

<sup>119</sup> *Brilliant v. Michael* (1945) 1 A.E.R. 121

<sup>120</sup> *National Bank Nig. Ltd. v. Campaigne Frassirel* (1948)9 NLR 4

<sup>121</sup> *Lace v. Chartler* (1944) K. B. 368

A lessee must acquire the right of exclusive possession, otherwise no lease is created.<sup>122</sup> Exclusive possession connotes occupation or physical control of land either personally or through an agent, proxy or servant. It is an exclusive power of using the right given in the land, retain same, and be entitled to undisputable enjoyment of it against all person except the persons who could establish a better titled.<sup>123</sup> A person claiming to be a lessee must establish a right of exclusive possession in the property otherwise, the status of licensee is probable.

Finally, a lease must have certainty of terms. This relates specifically to covenants which must be spelt out since such covenants will not otherwise be implied, such as covenant to pay rent, or covenant not to assign or sublet the premises.

### **Types of Lease**

**Tenancy for a Fixed Term** - A tenancy for a fixed term or term certain is that prototype lease with definite beginning and end such as two years or ten years certain. The idea is that when the time lapses, the relationship of landlord and tenant automatically terminates and if the landlord so wish, he may take possession through the due process of law after serving on the tenant a Notice of Owner's Intention to Recover Possession otherwise referred to as a Seven Days Notice under the Nigerian Legal System.<sup>124</sup> Where upon the expiration of the maximum period fixed under the tenancy, a new tenancy is not created by the parties, the tenant holds over and becomes a Tenant at Will or a Tenant at Sufferance or a Statutory Tenant depending on the applicable law.<sup>125</sup> But where the tenant holding over pays rent at the rate reserved under the expired tenancy, he shall be deemed to be a tenant from year to year on the same terms as the expired tenancy, provided that the terms are applicable to and not inconsistent with a tenancy from year to year.<sup>126</sup>

**Periodic Tenancy** - A periodic tenancy is measured either in terms of periodicity of payment of rent<sup>127</sup> or in terms of occupational unit of time such as yearly, monthly or weekly. A periodic tenancy like tenancy for a fixed term has certainty of duration in the sense that the maximum duration of the term is known for instance yearly, monthly, *et cetera*. Unlike a tenancy for a fixed term, periodic tenancy carries with it an option for automatic renewal of the term created such that upon the expiration of the maximum duration, it automatically continues for another definite term of the same period and so on, until it is determined by a proper notice to quit.

**Statutory Tenancy** - A statutory tenancy arises by operation of law. A statutory tenant therefore is an occupier or tenant whose initial entry upon the premises or property was lawful, but who upon expiration thereof holds over and continues in possession by virtue of special statutory provisions laying down procedure and processes for the repossession of the premises held over by the tenant, and also making his forcible

<sup>122</sup> *London & North West Railway Co v. Buckmaster* (1874) 1 QB p.70

<sup>123</sup> *Ciroma v. Suwa* (1986) 1 NWLR (pt.19)

<sup>124</sup> See Section 20(1) of the Rent Control and Recovery of Residential Premises Laws of Kogi State 2007.

<sup>125</sup> I. O. Smith, *Practical Approach to Law of Real Property in Nigeria*, *Op cit.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

ejection by force of arm unlawful and criminal. However, being a tenant protected from eviction by the law, he has no estate in the premises, but merely a personal right of occupation, under the English Law. In Nigeria he retains a statutory right to retain possession of the property until he voluntarily gives up possession, or the court on cause shown, makes an order against him to deliver up possession.<sup>128</sup> The position of a statutory tenant has thus been described as a status of irrevocability.<sup>129</sup> He is a protected tenant<sup>130</sup> and as such the landlord's right to recovery of possession of the premises occupied by the statutory tenant is restricted to the procedure laid down by the Recovery of Premises Laws.

**Tenant-At-Will** - A tenancy-at-will arises, where the premises is occupied by the tenant on the terms that either himself or the owner of the premises may determine the tenancy at any time.<sup>131</sup> A tenancy-at-will may arise in the following ways: by express agreement of the parties;<sup>132</sup> when a tenant holds over with the landlord's permission without having paid rent on a periodic or any basis;<sup>133</sup> where a tenant takes possession under a void lease or under a mere agreement for a lease and has not paid rent;<sup>134</sup> where a person is allowed to occupy a house rent-free and for an indefinite period;<sup>135</sup> where a purchaser has been let into possession pending completion of sale.<sup>136</sup>

It is clear, from the foregoing that tenancy-at-will is a mere relationship of tenure unaccompanied by any estate and consequently a personal relationship which can exist only as a right in-rem. This explains why it cannot survive death of or alienation by the lessor.<sup>137</sup> However, where the tenant-at-will begins to pay rent which is accepted by the landlord, then the tenancy-at-will is converted to a periodic tenancy. The tenant is however in law protected against forcible ejection.

**A Squatter** - A squatter is one who without any form of right or claim of right enters on and occupies a house or land intending to stay there as he can before the holder or occupier of the right of occupancy throws him out of the place. By having no interest over the land, a squatter could justifiably be ejected from the land, without recourse to the court. In *Mcphail v. Persons Unknown*,<sup>138</sup> Lord Denning described a squatter thus: "he is one who, without any color of right enters on an unoccupied house or land intending to stay there as long as he can"<sup>139</sup>

**Tenancy at Sufferance** - A tenancy at sufferance is one in which the original grant by the landlord to the tenant has expired, usually by effluxion of time, but the tenant holds

<sup>128</sup> L. A. Umezulike, *ABC of Contemporary Land Law in Nigeria*, (Revised & Enlarged Edition), Enugu:, Snaap Press, 2013, p.375.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Elakhame v. Osemabor* (1991) 6 NWLR (pt.196) p.170

<sup>132</sup> *Mensfield ad Sons Ltd v. Burchin* (1970)2 O.B 612

<sup>133</sup> *Naye v. Electric Transmission Ltd* (1942) CH.D 290

<sup>134</sup> L. A. Umezulike, *ABC of Contemporary Land Law in Nigeria*, *Op cit.*

<sup>135</sup> *Wheeler v. Mercer* (1957) A.C 416

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> *Elakhame v. Osemabor*, *Supra.*

<sup>139</sup> *Ibid.*

over the premises without the assent or consent of the landlord.<sup>140</sup> A tenant at sufferance therefore is “one who comes in by right and holds over without right.” Although, such a tenant holding over at the expiration of the contractual term no longer has an estate, the law will deem his right to possession to have continued on the same terms and conditions as the original grant until possession is duly and properly wrested from him by the landlord.<sup>141</sup>

If the landlord in any way agrees to the tenant remaining as for instances when a new lease is being prepared, the tenancy at sufferance becomes converted into a tenancy-at-will. Where rent is paid and accepted or if an agreement to pay is entered into, a regular tenancy will be created. While the tenant remains at sufferance, he has no liability under the expired contract of tenancy as to the payment of rent but he is liable to damages for the use and occupation of the premises.<sup>142</sup> It is noteworthy that tenant at sufferance is an adverse possessor and time runs in his favor under the limitation law such that after 12 years, the right of the landlord to recover possession may be extinguished.<sup>143</sup>

### **Creation of Leases**

There are two methods of creating a lease. Essentially, it must be evidenced in writing and it must be by deed. It is the deed that creates the estate. The deed must contain the words of demise, identify the parties to the transaction namely the lessor and the lessee and describe vividly the premises and the dimensions of the demised premises. Secondly, a lease could be created orally. Leases for short durations not exceeding three years may be created orally. It could also be reduced into writing if the parties desire. However, if the duration of the lease is more than three years, the law requires it be by deed.<sup>144</sup>

### **Contents of a Lease**

A lease usually contains express or implied covenants which regulate the tenurial relationship of landlord and tenant. The parties are bound by these covenants:

**Express covenants:** The landlord usually expresses to keep the tenants in quiet enjoyment of the demised premises; to pay ground rents, rates and other outgoings, and to enter with the consent of the tenant to effect repairs in the demised premises. On the other hand, the tenant usually covenants to pay rents; to keep the premises in good tenantable state of repairs; and not to assign or underlet or part with possession without the consent of the lessor.

**Implied Covenants:** The usual implied covenants are that the landlord would put the tenant into possession of the demised premises at the commencement of the term, even where a demise was made without of formal lease; the lessee must have quite enjoyment of the premises; and, the landlord must not derogate from the grant.<sup>145</sup>

<sup>140</sup> *Sule v. Nigeria Cotton Board* (1985) 2 NWLR (pt. 5) p.17

<sup>141</sup> *African Petroleum Ltd. v. Owodunni* (1991) JELR 51573 (SC)..

<sup>142</sup> I. O. Smith, *Practical Approach to Law of Real Property in Nigeria*, *Op cit.*

<sup>143</sup> *Ibid.*

<sup>144</sup> L. A. Umezulike, *ABC of Contemporary Land Law in Nigeria*, *Op cit.*

<sup>145</sup> L. A. Umezulike, *ABC of Contemporary Land Law in Nigeria*, *Op cit.*

**Arrears of Rent:**

Arrears of Rent, is the unpaid liquidated sum against the tenant incurred before the tenancy was determined. For example, if rent was paid on the 1<sup>st</sup> of January 2022 in a yearly arrangement, to expire on the 31<sup>st</sup> December 2022, if the tenant has not paid from January-March, 2023, rent owed during this extended period is called arrears of rent. A tenant in arrears of rent renders himself vulnerable to eviction from the premises. This is because a tenant is deemed to have breached a fundamental obligation creating his relationship with the landlord. In the decided ease of *Odutola v. Papersack Nigeria Limited*,<sup>146</sup> a tenant in arrears of rent is entitled to be served only 7 Days' Notice of owner's intention to apply to recover possession. Note however, that a person in arrears of rent is described as a tenant-at-will and by the provisions of the Recovery of Premises law he is entitled to 7 Days' Notice to quit before any other notice.

The remedies open to the landlord upon breach of covenant depends on whether the covenant relates to: (1) payment of arrears of rent; (2) assignment, subletting or parting with possession of the demised premises; or (3) any other covenants. Remedies for breach of covenant to pay rent may be in the form of distress for rent, action for arrears of rent, or an action for forfeiture. A landlord or his personal representative may bring an action to recover arrears of rent from the tenant or his personal representatives where the tenant or his personal representatives refused to pay such arrears upon demand made by the landlord or his personal representatives. Where a monthly tenant in occupation of residential accommodation owes arrears of rent for 3 months or more, the tenancy automatically determines by operation of law, under the rent control and recovery of residential premises law.<sup>147</sup>

A lease may be determined in the following ways: By expiry; by notice, by forfeiture, by surrender, by merger, by enlargement, or by frustration. For the purposes of this study, our focus shall be centered on forfeiture. Forfeiture literary means the deprivation of a person of his or her property as penalty for some act or omission. Forfeiture arises were a tenant disputes the landlords titles, whereupon landlord has the right of re-entry or ejection of the lessee for breach of a condition in the lease. Every lease or tenancy contains express or implied covenants. Forfeiture of a lease cannot be implied but it must be specifically expressed in the lease. It is usually expressed in terms that if the lessee commits a breach of the covenant or condition in the lease, the lessor shall re-enter upon the premises and determine the lease. The court however possesses the inherent and statutory powers to grant a tenant relief against forfeiture in certain circumstances.

In *Koya v. Babayola*,<sup>148</sup> the parties entered into an oral yearly tenancy agreement. When the tenant failed to pay rent, the landlord sought to forfeit the tenancy. It was held that the payment of rent being a covenant and not a condition of a lease, in order to take the advantage of the right of re-entry, the landlord must show that the lease contained a provision for re-entry and this, the landlord failed to show in an oral

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<sup>146</sup> (2007) All FWLR (pt. 350) p.1214.

<sup>147</sup> I. O. Smith, *Practical Approach to Law of Real Property in Nigeria*, *Op cit*.

<sup>148</sup> (1980) 20 YSCH (Pt. 1) p. 342

tenancy agreement. However, in the case of *Seaview Investment Ltd. v. Murris*<sup>149</sup> the eminent jurist, Adeneken Ademola J.C.A. vividly and appropriately stated the position thus:

**“whereas under the law of the states in Ogun, Oyo, Ondo and Bendel, where the Conveyance and Law Property Act 1881-`1882, had been repealed and these State had their own conveyance and property laws, relief against forfeiture can be granted if there has been a breach against the covenant, against assignment, under letting and parting with the possession of the land lease without the consent of the lessor first had and obtained.”**

**Mesne Profits** - Mesne-profits is used to describe the sum due to a Landlord from the time his tenant cease to hold the premises as tenant to the time such tenant gives up possession.<sup>150</sup> While rent is liquidated and operative during the subsistence of the tenancy, mesne-profits are not, but only would start to run when the tenancy expires and the tenant holds over. It is also the name given to the immediate profits or value for the use and occupation of the land during the time it is held by someone who is in wrongful possession or who has not agreed on any rents with the landlord even though such an occupier cannot strictly speaking be described as a trespasser.<sup>151</sup> It has been described as intermediate-profits, or profits accruing between two points of time that is between the date when the tenant ceases to hold the premises as a tenant and the date he gives up possession.

While rent is liquidated, mesne-profits are not. Similarly, rent is operative during the subsistence of the tenancy while mesne-profits starts to run when the tenancy expires and the tenant holds over or refuses to deliver possession. A statutory tenant being a statutorily protected tenant cannot be liable for mesne-profits unless and until tenancy has been determined by law. Whilst mesne-profits start to run from the date of service of the process for determining the tenancy, mesne-profits is an integral component of forfeiture proceedings. The duty of the court is to ascertain an amount which may constitute a reasonable satisfaction for the use and occupation of the premises held over by the tenant. The current position of the law is stated in sections 21-22 of the Rent Control and Recovery of Residential Premises Law of Lagos State 2017.

#### **Forceful eviction and resort to self-help**

As a principle, the law frowns at self-help and on no condition should the landlord forcefully eject, break into, or invite police to forcefully take over his property from a tenant. He will be liable in trespass and the tenant will be entitled to damages for the actions of the landlord. Lord Denning, reaffirmed this view thus in the case of *McPhail v. Unknown Persons*<sup>152</sup>: “If a tenant remains in possession after the expiration of his tenancy there is high authority for saying that the owner is not entitled to take

<sup>149</sup> (1991) 6 NWLR (Pt. 195) p.67,82

<sup>150</sup> *Ahmed Debs v. Cenico Nig. Ltd* (1986) 3 NWLR (Pt. 32) p. 847. & *Omotosho v. Oloregbe* (1988) 4 NWLR (Pt. 87) p.255.

<sup>151</sup> *Sabalemotu Ayinke v. Muniru Lawal* (1994) 7 NWLR (pt. 356) p. 263

<sup>152</sup> 1973(2) Ch 447 at 458.

law into his own hand and remove the tenant by force. He should go to court and get an order for possession.”

Also in the case of *Oni v. Dada*.<sup>153</sup> The court held that the breach of the covenant on the part of the tenant did not in any way justify the trespass to the premises. The landlord cannot take possession with strong hands or by a multitude of people. An aggrieved landlord must apply to court for recovering of possession and act only on the authority of the court. The court frowns at self-help or extra-judicial action taken by the landlord to evict the tenant from premises. In *Governor of Lagos State v. Ojukwu*<sup>154</sup> and other cases, the courts have in deserving circumstances awarded damages or such appropriate reliefs for forceful eviction.

### **Courts with jurisdiction to entertain recovery of premises cases**

The position of the law regarding jurisdiction to entertain tenancy matters is totally dependent on the enabling laws creating the court before which a case is heard. Most Recovery of Premises Laws refer such matters to Magistrate and High Courts.<sup>155</sup> It has been held that Customary and Area Courts have no jurisdiction to hear tenancy matters.<sup>156</sup> It may appear however that customary courts in Rivers State have jurisdiction to entertain matters of customary tenancy only, but not statutory or other contractual tenancies. Ordinarily, most landlord and tenant matters are heard and entertained in the Magistrate courts within the jurisdiction where the premises are located. Where however the rent claimed is above ₦5,000,000.00 (Five Million Naira) it is advisable to go to the High Court as a Magistrate may not have jurisdiction to hear matters involving such amount.

### **Procedure for recovery of premises**

This area with due respect constitutes the technical aspect relating to the concept of landlord and tenant matters. Recovery of premises is an area of law fraught with technicalities. As such, there must be strict compliance with the rules governing recovery of premises, or else the whole proceedings will be rendered a nullity. A landlord is statutorily required to issue 2 notices to a tenant who does not voluntarily relinquish possession of property, to wit: a ‘Notice to Quit’ which is the first Notice a landlord is required to issue and serve his tenant before a tenancy is lawfully determined. The effect of the notice is that once properly served and the timeline expires on the notice, the tenant is no longer recognized as a lawful tenant.

Under the Recovery of Premises Law of Kogi State for instance, section 20(1) thereof provides for service on a tenant a Notice to Quit either in form B, C or D. Form B is Notice issued by the landlord himself. Form C is a format of Notice to quit given by his agent or solicitor, while Form D is a format of landlord Notice to quit lodgings. Form E is Notice to Tenant of Owners Intention to Apply to Recovery of Possession. The content of these notice are similar. Although in law, the landlord is required to issue these

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<sup>153</sup> (1957) SCNLR 252.

<sup>154</sup> (1986) 1 NWLR (pt. 18) at 621.

<sup>155</sup> Section 16 of Rent Control and Recovery of Residential Premises Law, Lagos State, and Section 10 of Recovery of Premises Act, Abuja

<sup>156</sup> *Izundu v. Onwualu and Anor* (1999) 6 ENLR 152

notices, the law however allows him to delegate the duty to his lawyer or agent. In practice due to the technical nature of contents, procedure and calculation of length of Notice, it is most appropriate to instruct a legal practitioner to issue the said notices. It is equally important for a landlord to officially write to his lawyer instructing or giving him authority to issue notices.

Regarding the length of Notice to Quit, Section 6 of the Recovery of Premises Law of Rivers State, provides for the length of notice to determine tenancy thus: (a) a tenant at will or a weekly tenancy is validly determined by a week's Notice; (b) in the case of a monthly tenancy, a months' or one month Notice; (c) in the case of Quarterly tenancy, 3 months' notice; and, (d) in the case of a yearly tenancy, six months' Notice. In each of these instances, the tenant will be served personally by the court sheriff. However, where it appears he is evading service, an application for substituted service is appropriate and may be ordered by the court.

### **Conclusion**

The entire research focused on the relationship between landlords and tenants with respect to the nature of lease agreements. Although this relationship has its root in the Common Law feudal system of land use, the hardship that ensued on the part of the tenants made it vital for reformers to introduced a radical change by enacting laws regulating this relationship as captured in lease contracts. This laissez-fair philosophy has now been brought under control consequent upon which most states of the federation have provided legal guidelines governing the relationship between landlords and tenants. Thus, the Rent Control and Recovery of Residential Premises Act, CAP 544 Laws of the Federation of Nigeria Abuja 1990, the Rent Control and Recovery of Residential Premises Law, CAP 118 Laws of Lagos State, the Rent Control and Recovery of Residential Premises Law of Kogi State 2007 *et cetera* all have their focal points on examining how leases are created *inter alia*. They examine the terms and conditions certain incorporated into leases, the types of leases existing between landlords and their tenants, the legal implications of default in the terms by either party, how leases are determined, and which court has jurisdiction in recovery of premises matters regarding rent, mesne-profit, forfeiture, self-help, *et cetera*.

### **Recommendations**

A lot of Nigerians have misconceptions about some of the principles and laws regarding leases. Having gone through an elaborate appraisal of what lease agreements entail, it you will agree with me that frequent trouble is obvious that there are a plethora of challenges. It is in the light of this, that the following recommendations are proffered:

- Sensitization programme of the rights and duties of landlord and tenants under the legislation should be frequently made through the media and religious gathering.
- The court being the last hope of the common man is the most appropriate institution to resolve issues between landlords and tenants and should be embraced by citizens to forestall any form of self-help that could lead to anarchy.

- Landlords especially non-lawyers are advised to get a solicitor to properly manage their estates and avoid potential pitfalls and brawl with their tenants.
- Landlords' and tenants' yearly for a should be encouraged to engender healthy engagement and avoid negative outbursts.

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