

RECOVERY OF PREMISES: PRACTICE AND PROCEDURE¹

A: INTRODUCTION:

I am delighted to be a part of this training and refresher course organized by the National Judicial Institute, FCT Abuja, for Magistrates. The National Judicial Institute in fulfillment of her statutory mandate is saddled with the task of ensuring that judicial officers sitting on the lower and higher benches are up to date in their knowledge, skill sets and grasp of the nuances of the law and latest developments. Ordinarily, this workshop would have been an “**in person**” workshop and many of the participants would have had to travel to the beautiful and serene City of Abuja, to congregate in the auspicious and imposing premises and facilities of the Institute. The Covid-19, Protocols, which is now the new norm, has temporarily put paid to such gatherings. Evidently, a critical component of such trainings namely the opportunity to network with peers and establish new friendships has been curtailed. Hopefully we would be able to return to the old norm in due course.

B: HOUSING AND SHELTER RIGHTS:

I have considered it expedient to offer some basic understanding of the subject matter of demised premises. Housing and or shelter is one of the basic and fundamental needs of every human being. It comes right after food and water. Once these **three** needs are met, the man is assured of his tomorrow as he can then live a fulfilling and purposive life. Merriam-Webster defines “shelter” as (i) “something

¹ Hon. Justice O Atinuke Ipaye, LLM (Lond) MCiArb (UK) CEDR (Mediator) UK, Judge, High Court of Lagos, being paper presented at the Virtual Refresher Course For Magistrates held 27th -29th April 2021 organized by the National Judicial Institute, (NJI) FCT Abuja.

that covers or affords protection and exposure from the natural elements of sun, rain or even danger." (ii) "an establishment providing food and shelter (as to homeless) (iii) an establishment that houses and feeds stray or unwanted animals".

The right to housing and shelter is one of the basic human rights recognized as far back as 1948 by the UN Universal Declaration of Human Rights². The United Nations identifies adequate housing as a fundamental human right defining it as a "the right to live somewhere in security peace and dignity"³. This requires "adequate privacy, adequate space, adequate security adequate lighting and ventilation adequate basic infrastructure and adequate location with regard to work and basic facilities all at a reasonable cost. Parties to the International Covenant on Economic, Social and Cultural Rights must ensure security of tenure and that access to affordable housing is free of discrimination and must progressively work to eliminate homelessness and forced evictions.⁴.

The right to housing does not mean that the State governments and actors, are compelled to provide **housing for all**, rather they are to

- (a) Devote adequate resources to prevent homelessness.
- (b) Take protective measures to prevent homelessness;

² www.un.org Article 25 of the UDHR states "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food clothing **housing** and medical care and necessary social services and the right to security in the event of unemployment, sickness disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

³ See: International Covenant on Economic, Social and Cultural Rights (ICESCR) a multilateral treaty adopted by the United Nations General Assembly on 16/12/1966 through GA Resolution 2200A. It came into force on 03/01/76 and it has been signed and ratified by 171 parties including Nigeria.

⁴ See Article 11 of the International Covenant on Economic, Social and Cultural Rights which recognizes the "right to an adequate standard of living". This includes, but is not limited to the right to adequate food, clothing, housing and the "continuous improvement of living conditions"

- (c) Take measures to prevent discriminatory practices in access to housing; and
- (d) Take measures to promote permanent stable housing.⁵
- (e) Take measures to eliminate forced evictions.

Although nowhere in the 1999 Constitution of the Federal Republic of Nigeria is the "right to housing or shelter" specifically recognized, Nigeria being a signatory to International Conventions such as the UN Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples Rights all of which in one form or the other recognize the right to shelter and housing; means that Nigeria cannot shy away from taking steps to recognize and provide this most basic of rights to human existence.

This argument can be further advanced by the fact that Sections 33 and 34 of the 1999 CFRN which respectively recognize the "right to life" and the "right to dignity of human persons", must of necessity be deemed to have incorporated the notion that if one has a "right to life one also has a right to what is required to live that life" namely housing and the opportunity to have a livelihood⁶. Our Courts have always found a way to interpret the rights enshrined in Chapter IV of the Constitution in a most expansive manner.

Aside from the international norms as enshrined in the Conventions to which Nigeria is a signatory, the law of the land has a regime of both the received common law and statutory provisions regulating the relationships inter se between the landlord and his tenant. In the

⁵. This could take the form of provision of public housing at affordable pricing, rent vouchers/allowance, rent control and legislating against summary evictions and continuous encouragement of private sector initiatives in the housing market.

⁶ Ancillary to the "right to life" are "the right to private and family life" as contained in Section 37 of the 1999 CFRN and "the right to acquire and own immovable property anywhere in Nigeria" as contained in Section 43 of the 1999 CFRN.

latter part of this paper I will be taking a closer look at the legal framework regulating the landlord and tenant relationship.

C: OVERVIEW OF THE HOUSING SECTOR IN NIGERIA:

Housing is globally recognized as one of the basic needs of man and availability or non availability, of this resource, has a profound impact on health, wealth, welfare and productivity of an individual and his family. I believe it is beneficial to examine some factors that influence the housing terrain in Nigeria. Nigeria at independence in 1960 had a largely agrarian economy and more than 80 of the population worked in the agricultural sector. In 1960 the population of Nigeria was 45.14 million, more than three quarters of whom were rural dwellers⁷. Since Independence in 1960, there has been a rapid urbanization and movement of the people to the cities and of course an explosion in Nigeria's population. Current figures for 2021, puts Nigeria's population as 219.03 million⁸. In spite of the discovery of oil and its exploitation in the country, agriculture still provides employment for 35% of the population⁹. 50.3 % of the populace now dwell in the urban centers whilst 49.7% reside in rural areas.

Studies have also shown that in spite of the policies, regulations and private sector participation in the development of the housing sector, there is still a huge shortage of housing especially for the low-income segment of the society. It is evident that in the rural areas of Nigeria, "**homelessness per se**" is not a significant problem. Of course the **quality of habitat and homes** available is a function of the economic resources of the people and it is not uncommon that in the rural areas, houses and homes are largely built with the

⁷ Populationpyramid.net

⁸ Kirk Greene, Anthony Hamilton Milard, Ajayi JF Ade "Nigeria." Encyclopedia Britannica <https://www.britannica.com>

⁹ World Bank 2020.

traditional material of mud, thatch and tin roofs with no considerations for adequate ventilation or space. The absence of pipe borne water in the rural areas also translates to the fact that sanitary conveniences are often located outside the houses.

Critical issues affecting housing in Nigeria include but are not limited to:

- i. Inadequate access to finance.
- ii. Slow administrative procedures.
- iii. High cost of land registration, titling and perfection.
- iv. Fragmentation of land tenure system.
- v. Absence of a coherent housing policy.
- vi. Huge housing deficit¹⁰.

Studies also estimate that Nigeria needs 1,000,000 housing units every year to cater adequately for her booming population and to bridge the current deficit of 18-22 million units. With this as a backdrop to the topic of discourse, it is evident that the demand for housing outstrips the supply. In such situations, where there is a gross inadequacy of supply, the cost of housing skyrockets and is no longer affordable to the average Nigerian. Furthermore, the housing market becomes skewed in favor of the landlords and encourages them into unwholesome practices such as (i) forced evictions, (ii) creating multiple tenancies in respect of the same premises at the same time and (iii) demanding for rent several years in advance.

D: LEGAL FRAMEWORK OF THE LANDLORD & TENANCY RELATIONSHIP:

¹⁰ Affordable Housing Investment Summit 2019 puts the housing deficit at 18-22 million units. See Moore EA "Addressing Housing Deficit in Nigeria: Issues Challenges and Prospects. 2019 Vol. 57 CBN: Economic and Financial Review @ p 201.

Nigeria is a multi ethnic and multicultural society. It is the pluralistic nature of the Nigerian society that amongst other factors compelled her to adopt Federalism as a form of government. The legal system as earlier pointed out is based on English common law, Islamic Sharia law and customary law. Nigeria has also has a three tier federal structure which consists of the Federal government, the States and Local Governments. Power is distributed amongst the tiers of government by virtue of the Legislative List. Matters on the Exclusive Legislative List are reserved for the Federal Government. Whilst with respect to matters on the Concurrent Legislative List, both the Federal Government and States may promulgate laws on such matters. With respect to matters on the Residual Legislative List, only the States are at liberty to enact laws on such matters.

In addition, the legal regime governing the formation and determination of the landlord and tenancy relationship has been influenced by

- (a) International Conventions and norms such as the
 - a. Universal Declaration of Human Rights
 - b. The International Covenant of Economic and Social Rights
 - c. The African Charter on Human and Peoples Rights¹¹.
- (b) Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria in particular Sections 33, 34, 37 and 43.
- (c) Common law principles, law of contract, aspects of the law of real property and the law of succession & inheritance.
- (d) State Legislations such as the Lagos State Tenancy Law 2011; Lagos State Rent Control and Recovery of Residential

¹¹ Article 4 of which recognizes the "right to life"; Article 14 recognizes "the right to property"; Article 22 recognizes the "right to Economic, Social and Cultural Development"

Premises Law of 1997. Recovery of Premises Law Cap 118 Laws of Lagos State 1973¹².

E: Definition of Terms:

A tenancy is a legal relationship, which exist between two or more parties by which one party known as the **tenant** occupies the property of another known as the **landlord** in exchange for a consideration, which is the payment of rent. This relationship is often times established pursuant to deliberate negotiations between the parties and is often time reduced into writing in what is called a **tenancy agreement**.

I believe it is expedient at this stage to have a clear understanding and definition of the terms "**landlord**" and "**tenant**."

(i). The Landlord.

A landlord has been defined as the "person entitled to the immediate reversion of the premises". The person so entitled to the immediate reversion could be biological persons, his agents, heirs and successors. Or it could be a juristic person in other words a company or such other fictional entity deemed in the eyes of the law as being entitled to the right of reversion of the demised premises. A landlord may be a single person or the right of immediate reversion could lie in multiple persons.

A landlord also includes the following listed persons:

- (a) Any other person (s) other than the original landlord who has acquired the revisionary interest of the original landlord. This may be a bona fide purchaser of the reversion for value, a

¹² Eg Anambra State Landlord and Tenant Law 1986; Oyo State Recovery of Premises Law, 2000;

person to whom the original landlord has taken a loan from and used his reversionary interest as security or a person who has been given the reversion as a gift by the original landlord.

- (b) Any other person(s) other than the original landlord who has succeeded the original landlord and inherited his/her estate under the law of succession.
- (c) Attorney, solicitor, agent or caretaker who has been empowered or given power of attorney by the original landlord to collect rents.
- (d) Attorney, solicitor, agent or caretaker whose agency with the landlord is coupled with an interest in the rents and
- (e) Any other person(s) other than the original landlord who is a joint or common owner and who is equally entitled to the immediate reversion of the premises just like the original landlord. (e.g. beneficial owners of family property are joint or common owners of the property where such property is let to a tenant they become common landlords to that tenant.)

(ii). The Tenant:

The tenant on the other hand can be described as the "any person occupying any premises whether by payment of rent howsoever or by operation of law". A tenant would thus include

- (a) A person that lawfully enters into the premises and occupies same by virtue of a tenancy agreement entered into between him and the landlord whether by payment of rent or otherwise.
- (b) A person other than the original tenant that entered into a tenancy agreement with the landlord who has succeeded the original tenant and inherited his/her estate under the law of succession.

- (c) A subtenant to whom the original tenant has sublet or assigned all or part of his/her interest in the demised premises and
- (d) A person occupying the demised premises by operation of law.

The relationship between a landlord and the tenant although largely founded on contract, also includes elements of real property law and laws of inheritance and succession. This combination of laws, detail the rights and duties of the principal parties to the contract.

(iii). The Tenancy Agreement

This is an important document, which governs the relationship between the landlord and the tenant. Although the relationship of landlord and tenancy may still be established without a written document as a contract may arise by virtue of conduct or statutory provisions.

It is settled that where the terms of a contract are written the parties are bound by the said terms and the Court will usually not allow oral evidence to add to subtract or derogate from the terms of such a contract.¹³ The terms of the contract also bind the Court, and the Court is not at liberty to import extraneous matters into the contract. Rather the Court must seek to interpret the contract by giving an ordinary literal and grammatical meaning to the unequivocal words used in the contract. As Adekeye JSC held in *BABATUNDE & ANOR vs. BANK OF THE NORTH & ORS* (2011) LPELR-8249^(SC).

"The law is that written contract agreement freely entered into by the parties is binding on them. A Court of law is equally bound by the terms of any written contract entered

¹³ *OTERI HOLDINGS LTD vs. HERITAGE BANKING COMPANY LTD* (2020) LPELR-50802^(CA).

into by the parties. Where the intention of the parties is clearly expressed in a document, a contract agreement the Court cannot go outside that document to give effect to the intention of the parties. The general principle is that where the parties have embodied the terms of their contract in a written document, extrinsic evidence is not admissible to add to vary subtract from or contradict the terms of the written agreement.¹⁴

It is also important to stress that the landlord and tenancy relation being rooted in contract must exhibit all the essential ingredients of a valid contract namely:

- (i) offer
- (ii) acceptance
- (iii) consideration or rent
- (iv) intention to enter into legal relations
- (v) absence of vitiating factors such as fraud,

One significant factor to always remember especially as concerning domestic or private dwelling tenancies is that the parties are usually not on an equal or even footing. I have already alluded to the deficit in housing units thus there are more tenants chasing the available housing units thus placing the landlord in a far superior position to the tenants on account of the fact that

- (i) The landlord as holder of the reversionary interest of the demised property is economically superior to the renter.

¹⁴ See also *AG FERRERO & CO LTD vs. HENKEL CHEMICALS NIGERIA LTD* (2011) LPELR-12^(SC); *POLARIS BANK PLC vs. MAGIC SUPPORT NIGERIA LTD* 2021 LPELR-53106^(CA).

- (ii) The landlord because of the shortage of supply is often able to dictate the terms of the agreement, which tends to be skewed more in his favor.
- (iii) The renter or tenant is vulnerable as he usually does not have the disposable resources to match that of the landlord. (Sometimes he is unable to afford legal representation to review the tenancy agreement).

It cannot be overemphasized that the landlord and tenancy relationship is rooted in the law of contract. Common law does not give much protection to the tenant, outside the terms of the formal contract or agreement. For the various reasons already identified the tenancy agreement is very often not the product of a negotiation between two parties who are on equal footing.

It is these deficiencies in common law that necessitated statutory intervention to augment the contractual protection afforded to the tenant. These pieces of legislation, passed by the various States are designed to offer greater protection to the tenant and eliminate the incidence of demand for outrageous rent and forced evictions.

F: RECOGNIZED & PROTECTED RIGHTS OF THE TENANT:

1. Right to quiet and exclusive possession of the demised premises;
2. Right to a receipt evidencing payments made by the tenant whether for rent or service charge;
3. Right to a habitable premises which fits the description;
4. Right to demand that the property is kept in a tenantable state.
5. Right to a "Notice to Quit" before an eviction.
6. Right to "7 days Notice" to Recover Possession.
7. Right to fair hearing in a Court of law.

G: RECOGNIZED & PROTECTED RIGHTS OF THE LANDLORD.

1. Right to the reversionary interest in the demised property.
2. Right to payment of agreed rent as and when due.
3. Right to enter the demised property to effect repairs.
4. Right not to have his title challenged or denied by his tenant.
5. Right to peaceful surrender of the property at the expiration of tenor.

H: LEGAL FRAMEWORK FOR THE RECOVERY OF PREMISES:

As with any other contract, a tenancy contract is designed to come to and end at some point in time. A tenancy agreement is not an agreement in perpetuity. The relationship may come to an end

- (a) By effluxion of time;
- (b) Breach of a fundamental term of the tenancy.
- (c) Occurrence of an untoward event or force majeure such as a collapse of the demised premises or sale.

It cannot be over-emphasized that the termination of the tenancy relationship must always be in compliance with the agreed terms of the contract. The Courts will not usually stand idle and allow parties to breach the terms of the agreement as it relates to termination. Where there is such a unilateral breach, the party in breach is penalized in damages. Each of the 36 Federating States including the Federal Capital Territory, (FCT) Abuja has the jurisdiction to promulgate laws to govern the procedure for recovery of premises. This paper will not attempt to examine in-depth the laws as passed by each of the State Assemblies to do so would render the paper unwieldy.

I however propose to examine the some of the laws as passed by the Lagos State House of Assembly, as it relates to the recovery of demised premises. I have elected to do so because a copy of the relevant State Laws was readily available for my perusal and secondly, the laws passed in Lagos are not only robust they have put in place a regime of protection for the tenant which overrides the common law principles. Recovery of premises in Lagos State is governed by

- (a) Lagos State Tenancy Law 2011;
- (b) Lagos State Rent Control and Recovery of Residential Premises Law of 1997.
- (c) Recovery of Premises Law Cap 118 Laws of Lagos State 1973.
- (d) Magistrate Court Law.

The most up to date and comprehensive piece of legislation in Lagos State is the Tenancy Law of 2011.

(i). Scope:

This law is made applicable to all premises in Lagos State including business and residential premises. Exempted premises that is premises to which the law is inapplicable are

- (a) Residential premises owned or operated by an educational institutions for its staff and students.
- (b) Residential premises provided as emergency shelters;
- (c) Residential premises in a care center or hospice facility;
- (d) Residential premises in a public or private hospital or mental health facility and
- (e) Premises made available in the course of providing rehabilitative and or therapeutic treatment.¹⁵

(ii). Coverage:

¹⁵ Section 1(2) Lagos State Tenancy Law of 2011.

In addition the Tenancy Law of 2011 also does not apply to premises, business or residential located in the following areas: Apapa, Ikeja GRA, Ikoyi and Victoria Island¹⁶. These are the highbrow areas of Lagos and the property prices both rental and sale is in the millions.

It is important to immediately point out that disputes relating to premises in any of the excluded areas (Apapa, Ikeja GRA, Ikoyi and Victoria Island) and those excluded by type are governed by the Lagos State Rent Control and Recovery of Residential Premises Law of 1997 and the Recovery of Premises Law Cap 118 Laws of Lagos State 1973 or the terms as provided in the tenancy agreement executed between the parties.

(iii). Procedure:¹⁷

The landlord who seeks to recover possession of his demised premises from his tenant must comply with the due process of law and he must follow the procedure to the letter as stipulated in the applicable Tenancy Law. Any form of recovery, which is not in accordance with the laid down procedure, will be an illegal recovery and leaves the landlord open to punitive damages and other serious liability including criminal charges such as criminal damage to property, trespass and assault. Courts of law have always resisted and frowned at self-help measures.¹⁸ Aniagolu JSC in *ELOCHIN NIGERIA LTD vs. MBADIWE* (1986) 1 NWLR [Pt. 14] @ 47 esp. @ 60 had this to say:

¹⁶ Section 1(3) *ibid*. The Governor may by a gazzetted order exclude the application of the law in any other area to premises.

¹⁷ With particular reference to the provisions of the Lagos State Tenancy Law 2011.

¹⁸ *CHRISTAIN SPIESS vs. JOB ONI* (2016) LPELR-40502^(SC); *OKOCHHI & ORS vs. ANIMKWOI & ORS* (2003) LPELR-2455^(SC) and *ALL STATES TRUST BANK PLC vs. REGISTERED TRUSTEES OF MISSION HOUSE INTERNATIONAL* (2018) LPELR-44.

"The laws of all civilized Nations have always frowned at self help if for no other reason than that they engender breaches of the peace. It is no doubt annoying and more often than not frustrating for a landlord to watch helplessly his property in the hands of an intransigent tenant who is paying little for his holding or keeps the premises untidy or is irregular in the his payment of rent or is otherwise an unsuitable tenant for the property. The temptation is very strong for the landlord to simply walk into the property and retake immediate possession. But that is precisely what the law forbids".

Thus any forced eviction will be sanctioned by the Courts. Recovery of premises is made pursuant to an order or judgment of Court obtained after a hearing afforded to both parties pursuant to the relevant Law.¹⁹

The recovery procedure to follow depends on the nature of the tenancy whether for a fixed term or a periodic tenancy. Where the tenancy is for a fixed term. The tenancy relationship comes to an automatic end at the expiration of the term. In such a situation the landlord is not obliged to give a statutory "notice to quit" as it is deemed that the tenant is aware of his obligation and in any event his legitimate occupation of the demised premises as come to an end. Where the tenant fails to yield possession at the expiration of his contract or tenancy, the landlord is obliged by law to issue and serve a "7 days notice of intention to recover possession"²⁰. This is designed to put the tenant on notice of the fact that the landlord intends to commence legal action against him for holding over possession and for breaching the terms of his tenancy. At the

¹⁹ See Section 65 of the Landlord and Tenant Law Benue State;

²⁰ Section 13(5) *ibid*.

expiration of the "7 days notice" the landlord may proceed to initiate legal action either at the Magistrate Court or High Court.

Where the tenancy has **not expired** and the landlord is desirous of recovering possession of the demised premises, he is obliged to give **the two** statutory notices to the tenant. This is designed to insulated the tenant from forced evictions, afford the latter with sufficient time to make alternate arrangements or enter into negotiations with his landlord. The landlord in this situation first serves the "notice to quit" this is to bring the tenancy to an end. It is the unilateral action of the landlord.²¹ The length of the "notice to quit" served on the tenant is usually dependent on the periodic nature of the tenancy.²² For instance where the tenancy is a yearly, then the tenant is entitled to a six months "notice to quit". Where the tenant is a tenant at will then one week's notice to quit will suffice. Where the tenancy is a monthly, one month's notice to quit shall be served on the tenant. Where the tenancy is quarterly or half yearly then a "three months notice to quit" shall be served on the tenant.²³

Where at the expiration of the "notice to quit" the tenant still holds over the property, the landlord is obliged to give a "7 days notice of owner's intention to recover possession" as provided in Section 16 of the Tenancy Law of 2011 Where the tenant is still recalcitrant and fails to deliver and or yield possession of the demised premises to the landlord, the latter's right to take legal action kicks in. Such a landlord is at liberty to commence legal action in the High Court or at

²¹ Section 13 (1) Lagos State Tenancy Law 2011

²² Where the tenancy agreement is silent as to the length of notice to be given then the statutory provisions will apply. See e.g. Section 13 (1) (e) of the Lagos State Tenancy Law 2011, which provides that where the tenancy is a yearly tenancy, the tenant is entitled to 6 months notice to quit.

²³ Section 13(1) *ibid.*

the Magistrate Court.²⁴ His claim shall be for an order of possession, arrears of rent and or mense profit as the case may be. ²⁵

It is after the expiry of the statutory notices either a "notice to quit" and or the "7 days notice of intention to recover", that the landlord may file his action in a Court of law and proceed to recover possession of the premises. A licensee upon the expiration or withdrawal of his license is entitled to "7 days notice of owner's intention to recover the premises" as provided in Section 14 of the Law.

The Court²⁶ as provided under the Tenancy Law of 2011, refers to the Magistrate Court and High Court, they both have jurisdiction to deal with landlord and tenancy issues. It should however be noted that where the rental value of the property exceeds the jurisdiction of the Magistrate Court which in Lagos State is capped at ₦10 million, the landlord will have to initiate his action in the High Court. Furthermore all recovery of premises matters in the areas excluded by from the ambit of operation of the Tenancy Law of 2011 is commenced in the High Court.

I: TYPICAL GROUNDS FOR RECOVERY OF PREMISES²⁷:

- (a) Where the premises is being used for an immoral or illegal purpose.
- (b) Where the premises has been abandoned.

²⁴ Where the action is initiated at the Magistrate Court, there has to be a full compliance with the rules of procedure of the said Court. Most Magistrates Courts may entertain claims not exceeding ₦10 million.

²⁵ See: *NDIELE vs. GILBERT EZE* (2016) LPELR 42122^(CA); *IHENACHO & ANOR vs. UZOCHUKWU & ANOR* (1997) LPELR-1460^(SC) and *SULE vs. NIGERIA COTTON BOARD* (1985) 2 NWLR [Pt. 5] @ 17.

²⁶ Section 2 Lagos State Tenancy Law of 2011.

²⁷ Section 25 *ibid*.

- (c) Where the premises has become unsafe or unsound as to constitute a danger to human life and property.
- (d) The tenant or subtenant by his conduct has constituted himself into an intolerable nuisance.
- (e) Where the tenant is in breach of the covenants of the tenancy agreement such as non payment of rent. ²⁸
- (f) Where the premises is required for personal use of the owner.

J: ROLE OF THE MAGISTRATES IN RECOVERY OF PREMISES LITIGATION.

It is not in doubt that justice administration has in the course of time witnessed a huge paradigm shift. It is now firmly entrenched that disputes may be settled by means other than litigation. Settlement of disputes and conflicts outside of the familiar courtroom is now the norm and new standard. This change in has been propelled by the obvious inadequacies of the adversarial system for example (i) the failure of the system to deliver timely and cost effective solutions to conflicts, (ii) the increasing frustration and perceptions of disputants that the Courtroom only favors the most expensive lawyers in town. (iii) The fact that litigation fractures almost irredeemably, the relationship between the disputants has engendered the acceptance of alternative dispute mechanisms.

Traditionally, the judge/magistrate wore the toga of an impartial umpire throughout the proceedings; he ultimately makes a decision based on facts presented before it. He is not to descend into the arena of the dispute, he is not to ask any questions himself or seek to unearth the truth. He must allow the parties to conduct their case in the way and manner they deem fit within the confines of the rules of

²⁸ See Section 25(2) *ibid*.

his Court. His interactions with the claimant or the defendant is kept to the barest minimum.

The 21st century or modern day judex is firmly in control of proceedings in his court, he has an advantage of being in a superior position to the lawyers and the parties. His position of authority ought to be leveraged upon so that he elicits cooperation from the lawyers and the parties to submit to methods of settling the dispute in a manner other than by litigation. The judicial officer must be ready to work hard and prepare for the case, familiarize himself with the facts and be ready to spend a little more time explaining the benefits of the proposed ADR method to the parties and counsel appearing before him/her.

Section 28 of the Lagos State Magistrates Courts Law 2009, enumerates the civil jurisdiction of the magistrates and it includes personal actions arising from contract, tort or both where the amount claimed does not exceed ten (10) million Naira; landlord and tenancy matters where annual rent values does not exceed ten (10) million Naira, appointments of guardians ad litem, appeals from customary courts, and recovery of statutory penalties, charges rates etc not exceeding ten (10) million Naira, and statutory offences as stipulated under the Urban and Regional Planning and Development Laws, Environmental Sanitation Law Personal Income Tax Law to mention a few.

Of significant importance is **Section 35 (1)- (3)**²⁹, which provides thus:

1. In civil cases a Magistrate shall, so far as there is proper opportunity, promote reconciliation among persons over whom

²⁹ Magistrates Court Law 2009.

he has jurisdiction, also encourage and facilitate settlement in an amicable way of matters in difference between them

2. The Magistrate **may thus refer proceedings** in relation to any action, part of or any matter out of it, for mediation to the Citizens' Mediation Centre established under the Citizens' Mediation Centre Law and or Lagos Multi-Door Court House.
3. Reference to mediation under the provisions of subsection (2) of this section shall be made with the consent of the parties to the proceedings.

I dare say this, and or similarly couched provisions are found in the Magistrate Courts Law applicable in the various States. I am persuaded that these provisions give sufficient teeth to the agenda of mainstreaming ADR on the lower bench. Your Honors are therefore encouraged to think outside of the box, and use all the powers at your disposal to encourage settlement of disputes by means other than litigation. The litigants will be happier because the alternative means are timely, pocket friendly and usually does not alienate or fracture too deeply the relationship that has existed between the parties before the commencement of hostilities. Let me also add that a dispute settled amicably between the parties, which culminate in execution of terms of settlement, is likely to be adhered to by the parties. An efficient use of judicial time and resources ought to be pursued and the doorway of litigation should rather be left open for the more complex cases.

K: PITFALLS TO AVOID.

Where a recovery of premises litigation commences, the magistrate is ensure that all statutory notices are served in strict compliance with the applicable law. A common provision found in most of the Recovery of Premises legislation is that the statutory notices e. g "notice to quit and or " 7-days notice of intention to recover" are to

be **served personally** on the tenant. The laws usually also provide alternate means of service, such as delivery on any adult on the demised premises or service by courier dispatch or affixing the notice on a conspicuous part of the demised premises.³⁰ It is imperative that the magistrate not only ensures that the relevant statutory notices have been served he must also ensure that suit to recover possession of the demised premises was commenced in accordance with the provisions of the Rules of his Court ie by due process. In addition, the tenancy agreement and the applicable tenancy law are to be **interpreted in a purposive manner** without the importation of extraneous matters. Finally, let me add that the magistrate is expected to be in full control of his Court and must be ready to move the case along with dispatch so that recovery litigations do not suffer from inordinate adjournments, delays and backlogs. **Expeditious determination of cases** is the hallmark of a an efficient judiciary. Parties have a legitimate expectation that their cases shall be determined with dispatch.

L: NEW FRONTIERS AND CONCLUSIONS:

A new form of dispute resolution is emerging in the dispute resolution sphere, namely Online Dispute Resolution (ODR). This is seen where primary methods of resolving disputes are complemented with **Information and Communication Technology (ICT)**. It is also sometimes referred to as Internet Dispute Resolution, Electronic Dispute Resolution (eDR), online ADR to mention a few. The introduction of ICT in dispute resolution is currently growing to the extent that the difference between **in-person** dispute resolutions and ODR slowly disappearing. The growth of ODR has been given much impetus by the Covid-19 pandemic which has forced most judiciaries around the world including Nigeria to embrace ICT in the administration of justice. When the process is conducted mainly

³⁰ See Sections 18 and 19 of the Lagos State Recovery of Premises Law.

online it is referred to as ODR. ODR could commence from the initial filing, the neutral appointment, evidentiary processes, oral hearings if needed, online discussions, and even the rendering of binding settlements. ODR is a wide field, which may be applied to a range of disputes - interpersonal disputes including consumer disputes, or marital separations small claims, legal advice, e-commerce transactions, non complex matters such as recovery of premises.

My final words are that the justice sector will make measurable and significant improvements in justice delivery by the increased use of ADR mechanisms. Litigation will always have its place in the scheme of things but it will not remain the first and only port of call. Other ports are now available and they are to be embraced by all.

I thank you all for your kind attention.

Hon. Justice O Atinuke Ipaye
HC Lagos.