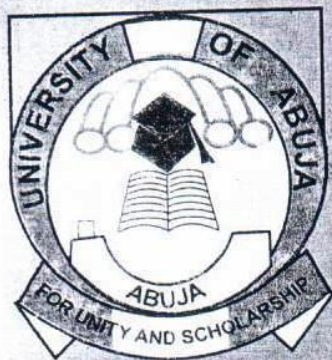




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EDITORIAL NOTE

The dream of publishing a Journal in the department of Public and International Law, Faculty of Law, University of Abuja is as old as the establishment of the University itself. Several efforts have been made by successive Heads of Department, but were all truncated by one factor or the other.

This recent attempt which has by the grace of God Almighty materialized and became fruitful is not without problems too. The Board of Editors however give God the glory that the dream of a Departmental Journal has finally been actualized.

The Department of Public and International Law, University of Abuja, Nigeria, the publisher of this Journal has taken a stand to continue with the publication of this Journal despite the problems associated with publication in Nigeria. On behalf of the Board of Editors, I congratulate the Scholars whose article were selected and published in this volume.

Dr. D.O. Odeleye

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THE INCIDENCE OF HUMAN RIGHTS ABUSES BY LANDLORD ON TENANT IN NIGERIA

BY
YUSUF ABDUL RASHEED MUSA,*
AND

BASHIR LEKE IJAIYA,**

ABSTRACT

This paper examines the incidence of human rights abuses by landlord on tenant in Nigeria. It discusses the meaning and scope of human rights generally. It further discusses the nature of human rights that are guaranteed to tenants under the Constitution as relate to tenancy matters. Further, it examines the various forms of abuses by landlord on tenant and the consequential effects of such abuses. The last section is the conclusion and recommendations.

1. Introduction

It is significant to note that one of the instances through which a private citizen abuses and infringes the fundamental human rights of another citizen as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria is through the arbitrariness of some landlords against their tenants. Notwithstanding the clear existing and standing order that under no circumstances should a citizen take law into his own hand, there are many instances whereby the rights of citizen are flagrantly violated by some landlords in an attempt to either take possession or claim the rent due of the demised premises.

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It is an established fact that, law takes no significant role especially when a tenant takes possession of an apartment except perhaps the execution of the agreement between a tenant and a landlord. However, it is absolutely the concern of the law to interfere in the manner in which a tenant is ejected from the demised premises. What we are saying here is that, many landlords have tended to abuse and infringe the right of some rights through aggressive means of ejecting tenant by merely taken laws into their hands resulting to self-help, devoid of seeking the court assistance as provided under the various Landlord and Tenant Laws in Nigeria. Consequently, therefore, the rights to dignity of the human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, peaceful assembly and association and freedom of movement are frequently trampled upon by the landlord in the circumstances. In fact, the act of inhuman treatment by the landlord on tenant is a notorious act and it is not out of place to say that those acts have serious negative effects on the life of citizens, especially tenants.

2 The Meaning and Scope of Human Rights

Human Rights are the rights possessed by all persons by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the design of social arrangements-and are universal, inalienable and indivisible. Human rights express our deepest commitments to ensuring that all persons are secured in their enjoyment of the goods and freedoms that are necessary for dignified living. Thus, human rights were defined as the Constitutional guarantees as contained in Chapter II and IV of the Nigerian Constitution.⁷³⁰

Human rights belong to all people, and all people have equal status with respect to these rights. Failure to respect an individual's right has the same weight as failure to respect the right of any other. It is not better or worse depending on the person's

⁷³⁰ N, Suleiman Ismaila, C. J. Dakas & N, Abigail Waya (1996) *The Nigerian Law Dictionary*, 1st ed. Tamaza Publishing Co. Ltd. Kongo-Zaria, Kaduna

gender, race, ethnicity, nationality or any other distinction. Human rights, being inalienable rights, can neither be taken away, nor can one give them up voluntarily. Human rights are indivisible in two senses. First, there is no hierarchy among the different kinds of rights. Civil, Political, Economic, Social and Cultural rights are all equally necessary for a life of dignity. Second, some rights cannot be suppressed in order to promote others. Civil and Political rights may not be violated to promote Economic and Social and Cultural rights cannot be suppressed to promote Civil and Political rights. A human right is realised when individuals enjoy the freedoms covered by that right and their enjoyment of the right is secure. A person's human rights are realized if and only if social arrangements are in place sufficient to protect her against standard threats to her enjoyment of the freedoms covered by those rights.

Fundamental human rights, which are guaranteed in the Constitution of the Federal Republic of Nigeria, 1999 are not privileges in the sense that, they could not be withdrawn at the whims and caprices of the government of the day. They are rights, which the executive, the legislature and the judiciary are all enjoined to protect. It is gratifying to note that there has never been successful attempt to alter any of the provisions of the Constitution relating to fundamental human rights during the democratic rule in Nigeria since their inclusion in our Constitution. It is pertinent to note that the fundamental human rights were enshrined in the Constitution in order to assemble the existing human rights in one entrenched Chapter, which could not be easily amended.

In considering the statement above, it is imperative to state that all fundamental rights, in the final analysis, impose limitations on the functioning of the executive government and are accordingly easily justiciable.

3. The Fundamental Human Rights of Tenants

Be it noted that, there are many rights guaranteed tenants under the Nigeria Constitution; these include the right to dignity of human person, the right to personal liberty, right to fair hearing, right to private and family life, freedom of thought, conscience and religion, freedom to peaceful assembly and association and

freedom of movement.⁷³¹ It is intended here to discuss how each of these rights is to be sacredly guarded by the landlord, and how the same rights are being and have been infringed and trampled upon by some landlords.

With respect to the right to dignity to life, it implies that the landlord should accord respect to the inherent dignity of all members of the human family, which is the foundation of freedom, justice, peace and all human rights. The guiding principle of the dignity of the individual goes beyond the prohibition of torture degrading treatment and encompasses the obligation of States to ensure that all human beings have the necessary means to at least a minimum level of a respectable standard of living, including food, clothing and housing. To this end, a tenant is to be protected from all sorts of inhuman treatment from his landlord, notwithstanding that such a tenant is in arrears of rent. The law frowns against any act subjecting a tenant to torture or inhuman treatment on the ground that a tenant has failed to pay his house rent.

Further, the right to personal liberty is to the effect that where individuals or groups are subject to death threats, violent attacks, harassment, intimidation or severe discriminatory treatment, States have a positive obligation to provide a minimum standard of protection for their life, integrity and personal security. Similarly, a tenant should be protected from all sorts of threats from a landlord, even where a tenant owes landlord arrears of rent or for whatever reasons.

Also, it is significant, at this juncture, to state that the right to fair hearing is also to be enjoined by a tenant. This right is usually explained under two heads, namely: -

(a) The right to be heard-*audi alteram partem*. The purport of this principle of law is that, a tenant is entitled to be given fair hearing whenever a claim is brought against him whether in form of order of ejection or with respect to the claim of house rent or of mesnes profit. The Supreme Court in the case of *Abou v. State*⁷³² stated the importance of this principle as

Sections 34, 35, 36, 37, 38, 40 and 41 of the Constitution of the Federal Republic of Nigeria, 1999.

(2005) 1 N.C. C 578

fundamental and indispensable requirement of any judicial decision.

(b) The right that a person should not be a judge in his own case-*nemo judex in causa sua*. Our Courts in many cases have highlighted this principle of law, particularly in *Garba & Others v. The University of Maiduguri*,⁷³³ where the Deputy-Vice-Chancellor who happened to be a victim of the consequence of the student riot at the university was eventually made a member of the panel to investigate the remote causes of the riot. The Court held that there could not be fair hearing. Thus, where there is a dispute between a landlord and a tenant with regard to the demised premises, the landlord is not qualified to participate in the process of determining the dispute. This is because there can be no justice in whatever decision that would be arrived at where the landlord is actually involved since he is also a party to the dispute.

It is to be further noted that the right to private and family life is the birth right of all citizenry and should be treated as mutually reinforcing. Unless the right is viewed to constitute and likely to constitute threat, and/or affect the public safety, public order, public morality and public health⁷³⁴, the right must be fiercely protected and secured. Thus a tenant and his family having possession of the landlord' demised property shall be entitled to privacy and under no circumstances should a landlord interfere, disturb or intrude into the privacy of his tenant either through physical appearance in their apartment, or tampering with the means of communication like correspondence, telephone, conversations and telegraphic communications. Thus a tenant and his family are entitled to privacy in his premises unless with express approval and consent of such a tenant, otherwise such landlord may be held culpable for trespass.

Another significant right which must be protected by the landlord and enjoined by tenant is the right to freedom of thought, conscience and religion including freedom to change his religion or belief and freedom either alone or in community with others and in public or in private to manifest and propagate his religion or

⁷³³

(1986) 3 S. C

⁷³⁴

Section 45 of the Constitution of the Federal Republic of Nigeria, 1999

belief in worship, teaching, practice and observance.⁷³⁵ The relationship of this particular right to the relationship between landlord and tenant comes to bearing with respect to some practices in some part of Nigeria where the landlord, upon releasing ownership and given out possession to the tenant, does take steps to eject the said tenant simply because the latter is practising his religion in the demised premises within the confines of the law. Some landlords will not even allow the tenant of another faith to be given accommodation in the apartment. It is common to the two major religions in Nigeria that the adherents may either practise their religion in public or in private. Where a tenant who is of different faith with landlord decides to practise his religion in his private apartment as guaranteed by the law, this may be a ground for landlord to eject him. Simply put, the issue of religion should not be involved in the matter relating to the fundamental right of a citizen as doing so may lead to chaos as the consequence is always unmanageable in terms of crisis it generates.

More importantly is the freedom to peaceful assembly and association.⁷³⁶ It is also common with some landlords to inform the tenant upon taking possession the type of people he can invite into his apartment. The issue now is where such a tenant is a politician or a scholar of either of the faiths which requires people to visit him for consultation or deliverance; this will dangerously cause a breach to the right to peaceful assembly of people in such a tenant's apartment. Given this situation, conditions and covenants disallowing tenants to enjoy a peaceful assembly and association in their apartment are not recognised by law. A tenant upon taking possession of an apartment is free subject of course to not disturbing his landlord with the mammoth crowd to enjoy this right within and outside his premises.

It is also of equal importance to note that the tenant is entitled to the right of freedom of movement⁷³⁷. This is another right that is most commonly violated by landlord in Nigeria. Some

Section 38 Ibid

Section 40 Ibid

Section 41 Ibid

landlords in Nigeria are fond of inserting conditions and covenants in the tenancy agreement requesting tenant that there is time for egress and ingress into the apartment. Sometimes tenant is locked outside simply because he or she has inadvertently refused to meet the time specified by the landlord; and in the case of tenant whose nature of work requires him to leave his house as early as possible in order not to be late for the work, the landlord will not open the gate until he so desires. This is very common especially in the South-Western part of Nigeria. This attitude is a serious breach of the right of free movement of citizens as guaranteed by the Constitution. A tenant whose rights are thus infringed is always constrained to seek redress in the court of law because of the scarcity of good accommodation or because the accommodation being occupied at present by him is most conducive to him in terms of closeness to his work place, that of his wife and even to the school of his children. Thus, he continues to endure and suffer in the premises of the unscrupulous landlord.

4. The Incidences of Human Rights Abuses by Landlord in Nigeria

It is a notorious fact that most landlords in Nigeria are exploiters and so callous that their attitude towards tenants is so inhuman and degrading. In the circumstances, the rights of tenant are trampled upon. It is not out of place to see some landlords impose some covenants and conditions in the tenancy agreement to deprive tenants those rights as contained and guaranteed under the Constitution. In some cases movement is restricted and sometimes intrusion into the privacy of the tenant in the guise of coming to demand for house rent or assess the rate of electricity consumption. It is significant to note that, some landlords are fond of issuing verbal anti-regular quit notices to tenants prior to the expiration of the tenancy. In some cases, landlords often inform the tenants their desire to eject them forcefully; and if the latter refuse to vacate the premises, they more often than not subject these tenants to inhuman treatment and torture like cutting and obstructing the electricity supply to the tenants' apartments as well as denying them access to water flow from the pipe-borne water. These attitudes of the landlords, apart from being barbaric and inhuman,

are serious infringements on the rights of tenants, as guaranteed by the Constitution.

Furthermore, it is significant to note that some landlords are also fond of exhibiting the habit of obtaining false court orders without the knowledge of tenants and use same to eject tenants forcibly. Imagine where a person other than the tenant of the landlord appears in court as if he is the original tenant whereas the real tenant is not aware that a suit has been filed against him for ejection in the court of law. What such a real tenant will just see are the court bailiff and the police coming to park out all his belongings to the court premises that is in the case he is even in arrears or leave with him outside with his properties and his family. This example is usually achieved in connivance with the court bailiff who assists the landlord to depose to false affidavit that the tenant has been adequately and sufficiently served with the court summons and he has deliberately refused to appear in court. The Judge, oblivious of the conspiracy between the landlord and the court bailiff, will have no other option than to believe the depositions in the affidavit and go ahead and deliver judgment against a party who has not been given a fair hearing.

Significantly, as has been earlier on stated this practice is very common in the South-Western part of Nigeria. This is so because of the homogeneity of the region. Specifically, Landlords in Lagos State are fond of indulging in this kind of malpractice, and this is because it is usually difficult to ascertain whether or not the defendant standing trial for ejection is actually the tenant that is ordered to be ejected. Imagine where such a fake tenant is asked whether or not he is liable to the claims of the landlord and he unequivocally answers in the affirmative. There are lots of manifestations of the callous behaviour of landlords in Nigeria that tend to trample and infringe the fundamental human rights of tenants. For instance, Tell⁷³⁸ has exposed how landlords treat their tenants, thereby violating the fundamental human rights of these tenants in the circumstances. In the Magazine, it was reported that the tenants had protested the arbitrary increment of rent by their landlords and when the parties could not reach an amicable

Tell Magazine of the 2nd January 2006

settlement, the landlord getting wind of the plans of the tenants to seek redress in the court of law penned an indicting petition to Ketu Police Station in Lagos State, Nigeria, in August 2005, accusing all the tenants of planning to kill him and burn his estate. The tenants were all arrested and charged to court and they were freed on bail. Dissatisfied, the landlord went ahead to engage the services of some soldiers who on the 4th day of December, 2005, dispensed "justice" against all the tenants. The soldiers acting on the instruction of the landlord mercilessly beat all the tenants and also threw out their belongings thereby making the tenants homeless. Undoubtedly, this scenario is one of the various ways by which landlords in Nigeria are violating the fundamental human rights of tenants. It is therefore evidently clear that the right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to peaceful assembly and association as well as the right to freedom of movement are *sine qua non* and such must be safeguarded and protected at all times.

Against the backdrop of the above, the Supreme Court in *Chief Odumegwu Ojukwu v. The Military Governor of Lagos State*⁷³⁹ laid down the principle of fair hearing thus, that, the landlord or his agent does not have any right to enter into premises wherein a tenant resides to forcefully eject such a tenant unless there is court order. Where any landlord is guilty of this, the tenant can sue for trespass because the law does not allow the landlord to resort to self-help but to allow the necessary procedure laid down by the law for the ejection of the tenant to have its course. To this end, self-help adventures are not the best means of reversing or regaining possession of premises. In *Adelaja v. Ogunlade*,⁷⁴⁰ Oguntade J. S. C. stated that:

"It seems to me that what the applicant wants to do is to gain possession of the premises, which by law should be in possession of the Plaintiff/Respondent, they merely want to use an order for stay of execution as subterfuge to enable them established that the plaintiff/Respondent had employed self-help to regain

⁷³⁹ (1988) 2.N.W.L.R. (Pt. 10) P. 808

⁷⁴⁰ (2002) 2. F. W. L. R. (Pt 645) C. A.. P.645

possession of the premises, but the procedure to reverse that situation is not by an order for stay of execution”.

It is against the backdrop of the above that, the right of fair hearing is made sacred not only to tenants with regard to the demised premises but also to the generality of the citizenry.

5. Conclusion and Recommendations

Without prejudice to the limitations and derogations to the all the aforementioned rights as guaranteed tenants by the Constitution, no landlord is expected or allowed under the law to infringe, trample and/or abuse any of these sacrosanct rights. Should the need arise for a landlord to recover possession of his demised premises; the proper procedure laid down by law should be followed without necessarily adopting self-help. It needs therefore to be mentioned here that the scope of human rights is all embracing as it covers all spheres of human endeavour. It is thus recommended that both landlord and tenant should conduct their tenancy matters within the confines of the law, so as to always allow peace, harmony and tranquillity to prevail. Most importantly, it does also appear that neither party is aware that all these rights are protected by law, and that tenant can enforce them in the court of law and landlord too could be held culpable for the violation of any of the said rights. Given this situation, there should be a form a enlightenment to members of the public to make them know their limitations and boundaries especially when dealing with individual groups and/or authority.