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The Effect of Rent Control and Recovery of Residential Premises Law of Kwara State, 2006 on the Landlord and Tenant Relationship

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Introduction

In every society, people relate with one another upon several grounds ranging from religious, educational, commercial, ethnic, sport etc. One of such relationship is that of Landlord and Tenant, basically on shelter, otherwise called accommodation. In the course of each relationship there must be the guiding rules, this, of course, is to set standard which if adhered to, will bring about hitch free relationship and if violated may lead to violence, acrimony, disorder and loss. In fact God Almighty in his relationship with human beings set down rules that His creatures are to follow and obey[1].

Law has been defined by various schools of thought such as the Natural School, the Positivist School, the Historical School, the Realist School and Sociological School among others. Natural School described law as body rules that preserves and promote what is morally right as against what is morally wrong aimed at common good in the society. That every piece of law must have as its basis morality. To Natural School, law and morality are fussed. The positivist school described law as a command of sovereign backed by sanction[2]. Realist School define law as what judges decide, everything else, including statutes, are only success of law until they pronounce upon by the court before one knows what really its legality or validity. Sociological School focused on the functions of law in the society. For the purpose of this discussion, I seek to adopt the definition of law given by the sociological school which defines law to be a social engineering and a means of balancing conflicting interest in society.[3] I adopt the sociological school definition of law because it is the definition that I believe suit the topic under discussion. Besides the above definition, Blacks Law Dictionary define Law to be the regime that orders human activities and relations through systematic application of the force of politically organized society. The aggregate of legislation, judicial precedents and accepted legal principles;... the body of rules, standards and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them The set of rules or principles dealing with a specific area of a legal system[4]. The Black's Law Dictionary definition of law covers various schools of thought definition of Law.

From all the above definitions it is clear that law is that which is laid down to regulate human conduct or behaviour. One of such laws is the Rent Control and Recovery of Residential Premises Law of Kwara State 2006 (hereinafter called "the laws") subject of discussion in this paper. Effort will be made

[1] See the Holy Quran Chapter 17, Verse 23-38 and Holy Bible Exodus Chapter 20, Verse 3-17
[2] That is Austin's definition of law quoted by J. M. Elegido in his book Jurisprudence, Spectrum Law Series, Reprinted 2007 at page 52.
[3] Roscoe Pound, "A Survey of Social Interests" (1943-1944) 57 Harvard Law Review 1. Quoted by J. M., Elegido in his book Jurisprudence, Spectrum Law Series, Reprinted 2007 page 95.
[4] Black's Law Dictionary, Eight Edition, By Bryan A. Gamer page 900.

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to see its effect in the society regarding Landlord and Tenant relationship that it sought to regula
Landlord and Tenant relationship centre on shelter or accommodation which is one of the basic needs o
life. Being that as it is the relationship is crucial, it has a lot of associated incidence making it a matter o
public concern.

Problems connected with the Landlord and Tenant relationship are many, ranging from shorta
of house to let, high rent, problem of getting standard accommodation. Increase in populating le
many people to be chasing few available accommodation and the problem of ejecting tenant and a lo
of others will be discussed in this paper. Salient features of the Rent Control and Recovery of Residen
Premises Law will be discussed while effort will be made to see whether as its title reads the law has
any way have effect on rent control in Kwara State.

DEFINITION OF KEY TERMS

Few of the words that are going to feature in this write-up have been defined in the Law and
adopt the definitions.[5]
In the said section 39(1) of the Law, *"Accommodation" is defined to "includes residence so approved by
the building approving authorities designated by the state as residences regardless of user, all buildings
used as residences as from the commencement of this law and all other buildings whether or no
approved by the building approving authorities but used as residence."*

Agent is defined as any person employed by the landlord in the letting of the premises or in the
collection of rents or authorized to act on a particular manner in writing by the Landlord. Landlord is the
person entitled to recover possession of the premises or where the property is held in joint tenancy o
tenant in common, any of the persons entitled to immediate reversion and includes the attorney o
agent of landlord or any person that is receiving rent from the tenant whether as the landlord o
attorney or agent.

Premises is defined to include a house or building or any part thereof together with its garden
or other appurtenances i.e. the surroundings. Tenant includes a sub-tenant or any person occupying the
premises whether on payment of rent or not but not the owner of the premises.

HISTORY OF RENT CONTROL AND RECOVERY OF RESIDENTIAL PREMISES LAW IN KWARA STATE

It must be mentioned that, before tracing history of the law in Kwara State, rent control was firs
addressed in the colony of Lagos in 1920.[6] Subsequently, legislations were made for the whole country
up to when the country was divided into Regions. Each Region made Law to address the situation. In the
Northern Region, there was the Recovery of Premises Law as well as Rent Restriction Law.[7]

Though there are laws on rent control the landlord and tenant relationship remains
controversial, the controversies stemmed from the fact that their rights and obligations were never
adequately settled by the law. Landlords have continued to dictate the terms which the tenants are
forced to either accept and if not the tenant will fail to secure the premises.

Landlords too cannot be blamed for imposing high rent on their houses, the reasons among
others are high cost of building materials, problem of securing a piece of land to build on is noticeably
enormous. Accommodation been a commodity that has no alternative, of cause, one must get a place to
retire to after the daily activity, Tenants are often constrained to accept the terms set down by the
Landlord just to secure the premises.

Population increase is another factor as it is natural that man must procreate and once a child
grows up and become matured many would want to settle independent of their parents. Another aspect
is migration from village to urban centres with the aim of securing job, making good business, getting
better education and that getting other opportunities are proximate in urban centres than in the
villages. All these among others lead to increase in demand for houses to rent in urban centres.

The Government approach has not solved the problems as the housing estate built by the
Government cannot go round the teaming population of people looking for house. The recent style of
government which is to give license to private estate developers to develop estate and allocate it to the
people do not solve the problems. The estate developers in most cases build with substandard materials
and sell it to individuals at a cost higher than what it takes to build an equivalent standard apartment.

[5] See Section 39 of the Rent Control and Recovery of Residential Premises Law, Cap R2 Laws of Kwara State, 2006.
[6] See the Profiteering (Rent) Ordinance No. 8 of 1920 that was applied for the first time to the Colony of Lagos.
[7] The 2 laws are contained in Cap 115 and Cap 116 Laws of Northern Nigerian 1963 respectively.

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this Government-Private partner approach many individuals are made to subscribe for a house, pay money but not allocated a house or get a refund of the deposit already paid.

All these problems relating to accommodation are peculiar to all States and urban centres throughout Nigeria.

Kwara State inherited all the problems relating to accommodation upon its creation in 1967 from Northern Region. Thereafter the Law as applicable in the defunct Northern Nigeria was applicable to Kwara State, while in 1977 the Rent Control and Recovery of Residential Premises Law and the Rent Restriction Law were made.[8]

It is important to note that the Law was reprinted and re-enacted from time to time, its contents are the same,[9] while the 2006 edition of the Laws of Kwara State is the current edition. In fact, as earlier on said, the incidence associated with Landlord and Tenant relationship remained rancorous. In fact it is taking a stiffer dimension as the demand for house to rent keep increasing, because not many people are able to build houses for themselves due to high cost of building materials.

More pressure is therefore on the available accommodation which many Landlords exploit to demand high rent. The emergence of Agent/Caretaker add to the problems, they do demand high amount apart from the rent as commission and at times deceive Tenant by getting money from them and end up not securing accommodation for them nor a refund of the Tenant money.

On the part of the Tenants some Landlords do complained that Tenant are always owing rent for several months or that Tenants do used the premises in an untidy and rough manner that makes the building dilapidate quickly. That many Tenants after paying the first round of rent and get into the house refused to pay subsequent rent. And when the Landlord has exhausted his patience then served such defaulting Tenants with statutory notices, many tenants do refused to pack out until been taken to court and court order their ejection. Another point is the situation when Tenant mostly those who are living alone without any family living with them locked up and desert the apartment rented and his/her whereabout remained unknown. In such situation, the Landlord is made to resort to court for assistance to force open the premises after waiting for several months to no avail.

Having observed earlier in this write-up that law exist to regulate human relationship, effort is going to be made to see how the Rent Control and Recovery of Residential Premises Law, Laws of Kwara State 2006 (hereinafter called "the law") has addressed the issue of rent and others issues pertaining to Landlord and Tenant Relationship highlighted above.

FEATURES OF THE LAW

The Law though contained in Cap R2 Laws of Kwara State No. 4 of 2006 its short title and citation read: "Rent Control and Recovery of Residential Premises Law, 1995 and its commencement date was 21st September, 1995.[10] Its title is the same with the 1977 Law which had been re-enacted many times before the 2006 edition. Unlike other laws, no section in the law state its object, but a community reading of its title with its other provisions show that its object relate to rent control, laying the procedure to be followed to recover possession of premises let out to Tenant. The law also Zone the state into two Zones i.e Ilorin and Omu-Aran Zones and states the court that has jurisdiction to handle Tenancy matters.

APPLICATION OF THE LAW

The Law applies to all residential accommodation throughout Kwara State.[11] Residential accommodation in ordinary language means a house that people live in, but the law has defined accommodation under three categories as follows:

1. Where a house is approved by the building approving authorities of the state as residence regardless of what is been used for.
2. All buildings used as residence from the commencement of the law and;
3. All other buildings whether approved or not but used as residence[12].

The first part of the definition of accommodation made the law to apply to house(s) approved

[8] See the Laws of Kwara State No. 20 of 1977
[9] See the Laws of Kwara State Vol. 3 1980 Laws of Kwara State No. 1, 1982, Law of Kwara State No. 17, 1984 and Law of Kwara State 1995.
[10] See Section 1 and 40 of the Law
[11] Section 2(1) of the Law
[12] Section 39(1)

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as residence even if not used as such. The clause "regardless of user" in section 39(1) is an encompassing clause which envisaged situation that a house will be approved as residence but turned to other uses. Whatever the house is been used for, once it is approved as residence, the law is applicable.

On the second and third segments of the definition of accommodation, they are related. If a house is used as residence from the commencement of the law and all other buildings whether approved or not but used as residence the law applies. In this segment all buildings used as residence whether it is so approved or not the law applies. It means that houses approved as Shopping Complex, Shops, Industrial factories, schools and religious building, whereas people live in are subject to the provisions of the law.

Going by the literal meaning of accommodation in section 39(1) in combination with section 2(1) all buildings used as residence whether so approved or not and buildings approved as residence but used for other purpose are subject to the provision of the law. The exceptions are houses approved for other purposes not as residence and which no body live in. To mention but few are houses approved and used for commercial purposes, shops, shopping complex, schools, religious buildings and others. The question then is if a house is approved not as residence and tenant rented a shop, workshop or a place of worship, what law will govern their relationship?

While there is no separate law applicable to such house, experience show that, people do not reckon with the seemingly difference pointed out and once issue of tenancy comes up, it is presumed the provision of the law applies to all houses.

STANDARD RENT

The Governor under the law has power to classify types and categories of residential accommodation, zone the area of the state and fix standard or maximum rent and can equally exempt any particular accommodation or areas.[13] Likewise the tribunal or court may upon the application of either the landlord or the Tenant determine the standard rent payable for any accommodation, and the standard rent so fixed by the tribunal or court supersede the rent agreed upon by the Landlord and Tenant.[14]

Fixing of standard rent for an accommodation contained in the law has apart from been unrealistic, not been embarked upon by Governor. The reason been that since the government has not been able to fix price for building material, it will be illogical to attempt to fix 'standard' rent for any accommodation which is end product of high cost of building materials. Ordinarily market forces dictate the rate of building materials as well as rent for any accommodation.

To Tenant it may seem a good law that standard rent be fixed for types of accommodation but such tenant would soon realize the true position when he too becomes a landlord feeling the impact of high cost of building material. Another factor that would prevent fixing of standard rent is the inflation which has devalued our currency to the extent that an amount used to build a house will be less than an amount to carry out minor repair two years after building the house, thirdly it will not be practicable to enforce any standard rent by the government or court.

With all these obstacles, it is my view that fixing of rent be better left in the hand of landlord and the tenant subject to the negotiation power of the tenant. Any attempt by the Government to fix it will not work, likewise no tenant that want to remain in a premises can successfully apply to court for the court to fix standard rent for the premises.

COURT JURISDICTION

The law provides for the establishment of Rent Tribunals with powers to hear and decide rent matters.[15] No Rent Tribunal is set up by the state government instead magistrate sitting as District Court entertain Tenancy matters in Kwara State. Magistrates sitting as District Courts on tenancy matters derived their jurisdiction under section 6(1) of the law. Section 6(1) provides that despite the provision of section 3 cases relating to the provision of the law can be initiated in any other court of law of the state or a tribunal or court established pursuant to section 3 of the law. Since no tribunal or court is

[13] see section 2 (2 & 3) of the law
[14] Section 5 (1), (3) of the law
[15] Section 3 of the law

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specifically established pursuant to section 3 of the law, Magistrates sitting as District court being a court of law of the state is competent to handle tenancy matters by virtue of section 6(1a) of the law. As to practice and procedure the District Court Rules apply.[16]

The Jurisdiction of the court can not be ousted where the defendant (tenant) is setting up the defence that a 3rd party has title to the house and not the Plaintiff.[17] But if a tenant is able to establish by credible evidence like payment of rent to 3rd party not to the plaintiff, the onus is on the plaintiff to convince the court by credible evidence how he become entitled to reversionary possession of the house. The issue of title goes to the jurisdiction as a person who is not entitled to the reversionary right of the property lacks locus to sue as the landlord on the house.

On the other hand it can also be argued that section 6(2) of the law is a good law as it will not allow a recalcitrant tenant to unnecessarily frustrate the landlord attempt at ejecting him from the house. And that if truly title in the house lies in a 3rd party and if such 3rd party had knowledge of the suit but decided to standby, it is at his peril. Rather than the tenant setting up the defence of a 3rd party title the tenant ought to inform such 3rd party of the existence of the suit who can then apply to be joined if truly he has title to the house.

Matters over which the court has jurisdiction to adjudicate upon are: recovery of possession, claim for arrears of rent, determination of standard rent and mesne profit.[18] If the tenant made any improvement in the house with the Landlord's consent in writing, the tenant is entitled to claim compensation for such improvements when vacating the house. The landlord in practice is entitled to claim arrears of water and electricity bills as well as damages for items destroyed in the house by tenant even though the law do not provide for that.

I have stated above matters that the law allows the court to adjudicate upon, one of such is the determination of standard rent in respect of any accommodation upon the application of either the landlord or the tenant or any interested person. The law also makes it unlawful for landlord to accept rent in excess of standard rent and that tenant are not to pay any rent higher than the standard rent prescribed for the type of the accommodation. Also that whether agreed, standard or maximum rent it is unlawful to demand or receive more than one or two years of such rent from individual and commercial or institutional tenants respectively.[19] In determining what the rent will be, it is at the discretion of the landlord and no landlord would apply to court for the determination of the rent he intends to fix for his house and I wish to re-emphasis that the provisions in the law relating to standard rent has never been practiced or enforced. We need to realized that landlord and tenant relationship is purely private contract, it only attracts public attention when the landlord is complaining that the tenant is owing rent and has refused to pay despite repeated demands or when for whatever reason the landlord want to recover possession but the tenant refused to vacate after the expiration of statutory notices served on the tenant.

In either of the instances if the tenant's excuse is that the rent is outrageous, the remedies available to the tenant is either to appeal to the landlord for a reduction in the rent or if the landlord is rigid the tenant is to check out of the house for an alternative that is affordable. Neither would the tenant, nor would anyone advise the tenant to, apply to court to determine standard rent in respect of such accommodation. This shows the ineffectiveness of section 5(1) of the law relating to standard rent.

The position of the landlord's discretion at fixing rent remain unfettered because apart from high cost of acquiring land, high cost of building materials, inflation, the landlord also has the right to eject a tenant at anytime without stating the reasons once the procedure is followed. This last point is mostly resulted to when landlords want to increase rent and no authority has ever challenged the discretion of the landlord from doing so.

Another provision of the law over which court has jurisdiction but which suffer the same faith like the standard rent is the provision making it unlawful to receive more than one or two years rent from either an individual or commercial and institutional tenant respectively.[20] The provision though may be said to aim at checking landlords excesses from making harsh demands of rent from tenant, it

[16] Section 6(3) of the law
[17] Section 6(2) of the law
[18] Sections 5(1), 19, 21 and 22 of the law
[19] Section 5 (1-6)
[20] Section 5 (6) of the law.

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also lacks efficiency like the provision on standard rent. Any tenant who can not pay for the number of years demanded by the landlord is either to appeal to be allowed to pay for a short period of time or out rightly look for alternative accommodation.

Payment of rent that covers many years is to the tenant's advantage. Firstly the tenant would have a long time to prepare for the next rent, secondly, the landlord cannot increase the rent until the expiration of the advance deposit already paid and thirdly due to inflation whereby the value of naira keep depreciating on daily basis, where rent is paid for about three to five years or more such amount paid for the premises may, due to inflation, be lesser than what other tenant would be paying for the same type of accommodation in the same area before the expiration of the long period.

On forum, the law divides Kwara State into two zones and that a court can only sit on matters within its zones except if the state Attorney-General direct otherwise.[21] Kwara State comprises of 16 Local Governments which is divided into two zones, can a landlord who is living with the tenant in one local government sued the tenant in another local government though in the same zone? To me the law do not forbids it, but if there is a court of competent jurisdiction in the local government where the landlord and tenant reside, filing the suit in another local government even though in the same zone would be in bad faith and it amounts to forum non conveniences. Such action ought to be struck out for it to be refilled at a court within the local government where the landlord and the tenant reside. The law did not state maximum amount of money a court can adjudicate upon, since the magistrate hearing tenancy matters is sitting as district Court, District Court Rules apply. Where the amount claimed either as arrears of rent or mesne profit is higher than the maximum amount a chief magistrate can entertain such matter ought to be filed at the High Court been a court with unlimited jurisdiction on monetary claim.

PROCEDURE TO EJECT TENANT

This aspect is the most effective part of the law been used regularly. Provisions on procedure to eject tenant start from section 16 which provides for notices to be given to a tenant, the notices are called statutory notices and are two in nature. One to determine the tenancy otherwise called quit notice and the other that follows is to show the landlord's intention of apply to court to recover possession. It is also called seven (7) days notice.

The length of notice to determine the tenancy depends on the type of the tenancy, or mode of payment of rent or any agreement in writing between the landlord and the tenant.[22] The law state that for a tenant at will or weekly tenant, it is a week notice, a monthly tenant, a month's notice, a quarterly tenant, a quarter's notice and a yearly tenant, half a year (six months) notice. If a monthly tenant is owing rent for 3 months the tenancy automatically ends and the tenant is only entitled to seven days notice of landlords intention to apply to court to recover possession.

For any action to eject the tenant to be competent, the landlord or his agent must have served the tenant with appropriate notices. Failure to serve the tenant with the required length of notice renders the action in court in competent.[23]

Section 17(1) of the law permit the landlord and the tenant to agree in writing the length of notice to determine the tenancy and such agreement is binding notwithstanding that the length of time agreed is shorter than the length of time prescribed by the law for determination of such tenancy. Once the tenancy is properly determined if the tenant refused to vacate after been served with the seven days notice of landlord intention to apply to court the landlord is entitled thereafter to file suit in court to recover possession as well as arrears of rent and mesne profit. Notice to determine the tenancy can be given unto the tenant before the rent paid expires but must cover the length of time prescribed by the law except where there is a prior agreement between the landlord and the tenant for a shorter length of notice.[24] Another point is that notices as well as court processes are to be served on the tenant personally except where order for substituted service is granted.[25]

The Landlord can claim possession of the premises, arrears of rent, mesne profit, arrears

[21] Section 3(10) of the Law.
[22] Section 17 of the law
[23] See A. P. Ltd Vs. Owoduni (1991) 11 SCNJ 81 where the Supreme Court held that where the landlord failed to serve the tenant with appropriate notice the suit filed in court to eject the tenant is not competent.
[24] Section 18 of the law
[25] Section 31 of the law.

water (if applicable) and electricity bills as well as cost of repairs of items destroyed and cost of filing the suit. It needs to be pointed out that many tenants have wrong impression that once a tenant is served with quit notice the tenant ought not pay rent for the remaining month it takes the tenant to vacate the house. This is a misconception, a landlord is entitled to claim the rent for whatever months it takes the tenant to vacate the house after been served with quit notice, except if the landlord on compassionate ground waive it. Where the landlord do not waive it and the tenant vacate but failed to pay the arrears of rent either for those months within which he was served with quit notice or more, the landlord is entitled to proceed against the tenant in court to recover the arrears of rent and when judgment is entered against the tenant the landlord can enforce it by issuance of writ of fifa against the property of the tenant. Such property will be seized and later on be auctioned to realize the amount owed if the tenant refused to pay. Another important point is that landlord must not for any reason resort to self help at ejecting a tenant. Such is trespass and the tenant is entitled to damages[26].

Mesne profit is the rent or profit a tenant who refused to vacate would have to pay to the landlord as compensation for remaining in possession until the tenant vacate. In practice it starts to run from the month an action to recover the premises is filed in court.

On the period it takes to conclude tenancy matter in court the law did not state time, but it is observed that at times due to workload of magistrates court and antics of some tenants cases span more than a year in court which ought not be.

CONCLUSION AND RECOMMENDATION

The discussion has in brief review the Rent Control and Recovery of Residential Premises Law, Cap R2 Laws of Kwara State, 2006. The discussion has shown that in reality no proactive measure has been made towards rent control in the law. Though the law talked of fixing standard or maximum rent for categories of accommodations, that has not and cannot be done for the obvious reason that it will not work. Such issue is a national matter to be addressed such as inflation and cost of building materials. The Law apply to all residential accommodation and by the meaning of accommodation in the law it means all buildings approved as residence whether it is so used or not and all other buildings used as residence whether so approved or not. The law did not say anything about buildings approved for other purpose not as residence and which are not used as residence. On this the law is better amended to apply to all buildings and whether or not they are approved or used as residence or not. Another point is that considering the period it takes to complete a tenancy matter in District Court, it is high time that a special tribunal as envisaged by the law is established to handle solely tenancy matters. This will facilitate efficient and quick dispensation of tenancy matters and avoid stubborn tenant from unnecessarily delaying delivering up possession once such tenant has been duly served with required statutory notices. Landlord are advised to follow the law and avoid self help in the attempt to eject tenant.

Finally the law "Rent Control and Recovery of Residential Premises Law of Kwara State, 2006" which according to sociological school of thought ought to find a means of balancing conflicting landlord and tenant relationship has not adequately addressed the issues.

[26] See Prof. Ajibayo Akinkugbe Vs. Ewulum Holdings Nig. Ltd. & 1 Or (2008) All FWLR Part 423 Page 1269

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