

AN APPRAISAL OF THE MODES OF TERMINATING TENANCY AGREEMENT IN NIGERIA

BY

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ABSTRACT

This paper examines the meaning of tenancy and the various modes of terminating tenancy agreement in Nigeria. It further discusses the nature of each of the modes and their application to the tenancy agreement. Also examined are the various forms of each of the modes and conditions precedent for the occurrence of each of the modes. The last section is the summary and recommendations.

1. Introduction

The relationship between a landlord and a tenant contractual in nature. The mode of creating a tenancy agreement between a landlord and a tenant depends on the type of the tenancy being created. Thus tenancy has been defined as the rights, duties and obligations of a tenant in respect of the land which he holds from another person.¹³⁰ Tenancy may either be created orally or in writing (by deed). A tenancy not exceeding three years could be created orally and not necessarily by a deed as much as it takes effect in possession and reserves the rent reasonably obtainable.¹³¹ On the other hand, a tenancy exceeding three years must be created in writing and by deed; otherwise, it will not be valid as a legal tenancy. To this end, if the foregoing has succinctly described how

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¹³⁰ N, Suleiman Ismaila, C. J. Dakas & W, Abigail. N (1996) *The Nigerian Law Dictionary*;

¹³¹ 1st ed Tamaza Publishing Company Ltd, Kongo-Zaria, Nigeria. P. 316
C. Emeka (1990) *Nigerian law of landlord and Tenant*, Nigerian Printer Publication, Lagos P. 45

a tenancy agreement could be created, suffice to say that it will not be out of place to also examine how such tenancy agreement could be terminated. It is then the desire of this paper to critically appraise the various modes by which tenancy agreement could be terminated.

2. The Modes of Termination of Tenancy

The term "termination of tenancy" could be described as bringing to an end, to make to cease or to stop the interest of a tenant with respect to possession of the demised property.¹³² Thus tenancy could be terminated in any of the following ways and the parties need not give reasons for such determination except there is contrary agreement to that effect.

(a) By Effluxion of time

Where the term of years granted in a tenancy expires by effluxion of time, the estate is altogether determined and the tenant or his assigns must thereupon quit possession, unless he is entitled to hold over as prescribed by the law. Note also that, effluxion of time is only applicable to a term certain or fixed tenancies. In *Tinuola v. Okon*¹³³, the Court held that in the case of term certain tenancy, there is need for notices except if otherwise agreed between the parties. What is only required is the seven days' notice of owner's intention to recover possession.

Put differently, where a tenancy is created for a fixed period, it automatically determines at the expiration of that period without the landlord necessarily serving notice to quit on the tenant. He may only serve seven days' notice of owner's intention to recover possession where the tenant refuses to quit after the effluxion of the period of the agreement. For instance, where a tenancy is created for ten years it is automatically determined at the effluxion of the years or by the landlord exercising his right of re-entry reserved in the tenancy unless a new tenancy is created.¹³⁴

¹³² N. Suleiman Ismaila (note 1 above) P. 317

¹³³ (1966) 2 ALL N.L.R

¹³⁴ F. Libby & J. D. Jessup (1974) Landlord and Tenant, Oceans Publications Inc. New York P. 289

In the case of *Nweke v. Ibe*¹³⁵, a tenancy agreement was initially created from year to year but was later changed to a year fixed tenancy. When a dispute arose to enable the tenant to get an alternative accommodation, the tenant's contention was that he was entitled to six months notice was rejected by the Court. The Court held that, he was only entitled to the notice of the landlord's intention to recover possession. However, a tenancy may contain a proviso that either party may terminate the agreement before the effluxion of the time and in this case the party terminating the agreement must give notice of intention to terminate to the other party.¹³⁶

(b) By Surrender

Sometimes, a tenancy agreement may contain a proviso whereby the tenant is obliged to offer to surrender the term before he is entitled to seek the landlord's consent to assign the term. A tenancy agreement may be determined where the tenant yields up the remainder or unexpired portion of the term created to the person that has immediate reversion of the estate. This mode of termination is not only applicable to a term fixed tenancy but also to a periodic tenancy, so a periodic tenant can also surrender his unexpired residue of the term created.¹³⁷ For a surrender to validly determine a tenancy agreement, it must be made directly to the immediate landlord. Surrender may be express or implied. It is express where the tenant hand over the keys to the premises to the landlord coupled with the necessary intention to surrender. Where it is a vacant land or undeveloped land, the tenant may give up possession, control and occupation to the landlord unequivocally. Where a tenancy is determined by surrender expressly, the same formalities for its creation is required; that is, where the tenancy is created by deed, then, it must be surrendered by deed of surrender.¹³⁸ In *Foster v. Robinson*¹³⁹ the Court held that surrender

¹³⁵ (1974) E. S. C. L. R. P. 54

¹³⁶ Ibid

¹³⁷ D. Yates & A. J. Hawkins (1981) Landlord and Tenant Sweet & Maxwell, London P. 423

¹³⁸ Ibid p. 424

¹³⁹ (1981) 1 K. B p 149

is by operation of law where the parties do some act showing the intention to terminate the tenancy by surrender and the circumstances and the conduct of the parties are such that it would be inequitable to hold otherwise.

(c) **By Valid Notice**

A tenancy agreement can also be determined by notice to quit or valid quit notice by either party to the agreement. In fact, it is a prerequisite to a landlord's right of action for recovery of possession. In *Soucchi Marble & Flooring Co Ltd v. Alhaji Alabi*¹⁴⁰, the Court held that the service of statutory notice is a condition precedent to a landlord's right of action for the recovery of possession. It is to be noted that the requirement of a valid notice to quit is mostly applicable to periodic tenancy which cannot be determined at the end of duration of the tenancy unless by service of a valid quit notice. Where the tenancy is for a fixed term, no notice is required except as expressly agreed upon by the parties. Where the tenancy is regulated by statute, notice to quit must comply with the specific statutory provision. The requirement of a valid quit notice is vital and failure to comply with the statutory provision is fatal to the claim of possession by the landlord. Where there is no express length of notice in the agreement the statute provides for six months' notice for a yearly tenant.¹⁴¹ In *Cobra Ltd v. Omole Estate & Investment Ltd*¹⁴², the Court held that a yearly tenancy requires half a year's notice to quit for its valid determination, one month notice for a monthly tenancy, and a week notice for a weekly tenancy. Also in *Shugaba V. T'A Abu*¹⁴³, the Court held that a weekly tenant is entitled to a week's notice. However, it is not unusual for a tenant to accept a notice shorter than that provided by statute. Thus, in *Cobra Ltd. v. Omole Estate & Investment (supra)*, the Court further held that

¹⁴⁰ (1996) N. W. L. R. (Pt. 462) p. 267

¹⁴¹ Section 16 (1) of the Rent Control and Recovery of Residential Premises Law, Cap 139, Laws of Kwara State, Nigeria, 1994. Note that similar provision is contained in other Statutes of the other States of the Federation of Nigeria on the subject

¹⁴² (2000) 5. N. W. L. R. (Pt.655) C. A

¹⁴³ (2000) F.W. L. R 12 C. A

parties could by agreement accept a notice of a shorter period than that provided by the statute.

(d) **By Frustration**

A tenancy agreement as a form of contract can also be determined and frustrated like any other contract; and where this arises, the tenancy agreement is said to be terminated and frustrated by either intervening occurrence of any natural forces or other unforeseen circumstances. In *Araka v. Monier Construction Co. Ltd*¹⁴⁴, it was held that civil war frustrated the lease/tenancy agreement between the parties, and as a result, that automatically terminated the tenancy agreement.

(e) **By Compulsory Acquisition**

A tenancy agreement may also be terminated and determined by compulsory acquisition of land. This mode of termination of tenancy can be likened to that provided under the Constitution of the Federal Republic of Nigeria, to the effect that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -

- (a) retain the prompt payment of compensation therefore, and
- (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(2) Nothing in subsection (1) of this Section shall be construed as affecting any general law:

- (a) for the imposition or enforcement of any tax, rate or duty;
- (b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;
- (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;

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(1978) 9 & 10 S. C. P.9

- (d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound up;
 - (e) relating to the execution of judgments or orders of court;
 - (f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
 - (g) relating to enemy property;
 - (h) relating to trusts and trustees;
 - (i) relating to limitation of actions;
 - (j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
 - (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
 - (l) providing for the carrying out of work on land for the purpose of soil-conservation; or
 - (m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.
- (3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.¹⁴⁵

The purport of the above provision of the Constitution does not affect the termination of tenancy between the landlord and the

tenant. In addition, by the provision of the Land Use Act¹⁴⁶, the effect of such acquisition is that, all subsisting lease/tenancy on the land is terminated. However, the Act provides that, where a lease/tenancy is terminated in this manner, the tenant is entitled to compensation for the loss of his interest and the landlord can also claim for the loss of reversion.¹⁴⁷

(f) By Merger

A lease/tenancy for years may be determined by merger, which is, when there is a union of the term with the immediate reversion, both being vested at the same time in one person in the same right. In such a case, the reversion merges with or drowns the term, because they are inconsistent and incompatible. This is in agreement with maxim *Nemo potest esse tenes et dominus*—meaning a person cannot be at the same time, both the landlord and tenant of the same premises. It may be laid down as a general rule that whenever the particular estate and that immediately in reversion are both legal or both equitable, and by any act or event subsequent to the creation of the particular estate become for the first time vested in one person in the same right, their existence will cease and a merger will take place.¹⁴⁸ Thus, the effect of a merger is, *inter alia*, to extinguish the covenant of lease/tenancy. So a landlord's covenant not to build (save as expressed) on an adjoining plot was extinguished by the merger occasioned by the assignee of the tenancy purchasing the reversion in the demised land, and could no longer be enforced against the purchaser of the adjoining plot.

3. Summary and Recommendations

It is manifestly clear from the foregoing that the law allows either party to the contract of tenancy relationship to exercise his or her right of determining the relationship especially when the

¹⁴⁵ Section 45 of the Rent Control and Recovery of Residential Premises Law, Cap 139, Laws of Kwara State, Nigeria, 1994. Note that similar provision is contained in other Statutes of the other States of the Federation of Nigeria on the subject

¹⁴⁶ Section 28 (7) Land Use Act, Cap 202, Laws of the Federation of Nigeria, 1990

¹⁴⁷ Section 29 (1) Ibid.

¹⁴⁸ V. G. Wellings (1978) Woodfall's Law of Landlord and Tenant; Sweet & Maxwell, London, P. 2134

going is no longer at ease between the parties or any other ground that warrants either of the parties to move on such as when the landlord is desirous of converting the apartment for his personal use or when he is desirous of undergoing some renovations in the demised premises and that it will be unsafe for the tenant to still remain in the apartment when the renovation is still going on. The right may also be exercised by the landlord when the tenant has breached any of the conditions and covenants of the agreement. In most cases, there are instances where some landlord must have disposed of the demised property to a third party without informing the tenants. This idea should be discouraged as the tenant is entitled to adequate and sufficient notice to look for an alternative accommodation. On the other hand, the tenant too is enjoined by the law to initiate the process of determining the tenancy, maybe as a result of securing his own accommodation or securing another befitting and better accommodation than the one he occupies at present.

Against the backdrop of the above, parties to the tenancy agreement are enjoined by the law that while these rights to terminate are being exercised, they should ensure that they do so within the confines of the law. The landlord is not allowed to resort to self-help as it is commonly done by most landlords wherever they desire to take possession of their premises. In determining or terminating the tenancy relationship, the landlord is still enjoined by the law to commence proceedings in the court of law to obtain court order for ejection. This order, if granted by the court, is to be executed on the tenant by the court bailiff, wherein the tenant has no other option than to vacate and quit the demised premises. Under no circumstances is the landlord or his agent allowed by law to forcefully eject a tenant notwithstanding that the tenancy has expired. On the other hand, a tenant who is desirous of vacating an apartment out of his volition should ensure that the demised premises are kept in a tenantable condition before leaving the apartment. Similarly, he is also enjoined by law to give adequate and sufficient notice of his intention to vacate the premises to the landlord so that the landlord will not be caught by surprise and also enough time for the landlord to inspect the premises whether or not there is damage done to the premises that will need to be repaired

before the tenant eventually vacates the premises. To this end, it goes without saying that the landlord shall always have a reversionary interest in the demised premises, no matter how long a tenant holds over the demised premises; but it is just, fair and equitable that whenever the landlord is exercising such right, same should be exercised without actually infringing the fundamental human rights of the tenant, as guaranteed in the Constitution of the Federal Republic of Nigeria¹⁴⁹

¹⁴⁹ Such rights as rights to Dignity of Human Person, Personal Life, Fair Hearing, Private and Family Life, Freedom of T Conscience and Religion, Peaceful Assembly and Association Freedom of Movement as contained in Sections 34, 35, 36, 37, 38. the Constitution.