

CHAPTER ONE INTRODUCTION

1.1 Background to the Study

All Nigerian citizens are eligible to live in any part of the Country and also have the right to rent any property anywhere in Nigeria regardless of their state of origin or nationality. However, Nigerian law provides for certain rules that must be complied with in matters involving rents. These rules are contained in the various tenancy laws of most States of the Federation such as the Rent Control and recovery of Residential premises laws. Besides the Tenancy laws that governs tenancy in Nigeria, the landlord and tenancy relationship is also govern by contract that are entered between the parties. Thus two main types of tenancy exist in the landlord and tenancy relationship namely; Statutory and contractual tenancy.

A contractual tenancy is a tenancy created by agreement between the landlord and the tenant where by both of them states clearly their respective rights and obligations to each other.

In *Farajoye v Hassan*,¹ the court defined a contractual tenancy as “the usual or common one that involves agreement between the landlord and the tenant, written or oral on the terms and conditions of the tenancy.”

A contractual tenancy is a conscious effort of the landlord and the tenant which must involve all the elements of a valid contract such as offer, acceptance, consideration and intention to create a legal relation. It is purely a contract between the landlord and tenant. It is a contract of tenancy which, if written, usually contains the terms and conditions of the tenancy, together with the rights and obligations of both the landlord and the tenant. It should be noted that a contractual tenancy may also be orally made. This often happens where a landlord lets or rents his premises to a tenant on certain terms and conditions without any

¹ [2006]16 NWLR (Pt. 1006) 487

written agreement. Contractual tenancy can exist in several ways. It can be a periodic tenancy, a tenancy at Will or a fixed term tenancy.

A periodic tenant is a tenant who occupies premises subject to an agreed period between the tenant and the landlord. A periodic Tenant can be a monthly, quarterly, or yearly tenant. The selected form of periodic tenancy must be expressly stated on the face of the tenancy agreement. Where this is not contained in the tenancy agreement, it shall be determined by reference to the time the rent was paid or demanded.² A fixed term tenancy on the other hand is a tenancy that contains a clearly defined tenure. For instance, one year, five years, six months etc. as the case may be. In this type of tenancy the period of the tenancy must be specific, clear and definite.

In *Joseph v Adole*³ the Court of Appeal construed a fixed tenancy as follows:

*The position of the law is that a lease or tenancy for a fixed term automatically determines when the fixed term expires. Quit notice is usually obviated in the case of a fixed tenancy since the term of expiration is normally known unlike periodic tenancies that continues automatically from period to period until it determines by a notice to quit.*⁴

Again, a tenant at will is a person who occupies premises with the landlord's consent without a defined term or interest in the property as his continual occupation in the property is subject to the will of the Landlord. Tenancy at will arises where a tenant, after the expiration or effluxion of his tenancy, holds over with the consent of the landlord, but on the

² See. section 13 (6) of the Lagos State Tenancy Law 2011 cited in W. Famojuro, A. Adeniyi and A. Nedolisa, 'Overview of the Concept of Recovery of Premises Under the Tenancy Law of Lagos State. <<https://www.mondaq.com/nigeria>>. accessed December 22, 2023.

³ [2010] LPELP-CA/A/198/2007, Per Aboki, J.C.A. (P.16, Paras.B-C).

⁴ *Nweke v. Ibe* [1974] 4 ECSLR page 54

condition that either the landlord or the tenant may terminate the tenancy at their pleasure. It is devoid of certainty of term when the tenancy will be determined. On the nature of the tenancy at will, the Court of Appeal in the case of *Oyegbesan v Oyegbesan*⁵ held as follows:

‘A tenancy at will has built into the mutual understanding that both the tenant and the landlord can terminate the tenancy when any of them likes or at any time convenient to any of them’.

The tenancy relationship can also exist as a result of Statute. A Statutory tenancy is a tenancy that is brought about by the operation of law. This is different from a tenancy that is brought about by agreement or contract made by both the landlord and tenant. It is a tenancy that the law presumes to result by operation of law after the original contractual tenancy has expired as in the case of a fixed tenancy or has been determined as in the case of a periodic tenancy, but the tenant holds over or fails to give up possession of the demised premises. Statutory tenancy, as a type of tenancy or concept, is not directly provided for or recognized in any of the rent control and recovery of premises laws of the respective States in Nigeria.⁶ The notion of statutory tenancy in Nigeria is a judicial coinage rather than an unequivocal legislative recognition⁷. It is a creation of the court which is drawn majorly from the incidents of the obligations imposed on the landlord by the rent control and recovery of premises laws of the respective States in Nigeria in the event that the landlord seeks to recover premises from the tenant after the determination or expiration of the contractual tenancy.

One of the essential requirements for a valid tenancy is exclusive possession of the property. That is, the tenant must be in total possession of the rented property to the exclusion of the

⁵ [2014] LPELR-23358(CA) Per Ndukwe-Anyanwu, J.C.A., pp. 10-11,(Paras.G-C).

⁶ See for example Tenancy Law of Lagos State 2011; Rent Control and Recovery of Premises Law of Cross River States Cap R3, Laws of Cross Rivers State 2004; Rent Control and Recovery of Residential Premises Law of Delta State Cap R5, Laws of Delta State; Recovery of Premises Act, Abuja, LFN 1990 and other rent control and recovery of premises laws of other Nigerian States which have similar provisions. None of these laws specifically recognizes a statutory tenancy as a type.

⁷ See *Pan Asian African Co. Limited v. National Insurance Corporation Limited*[1982] 9 SC 1; *Sule v. Nigerian Cotton Board*[1985] 2NWLR (Pt. 5) 17; *Oduye v. Nigerian Airways Limited*[1987] 2 NWLR (Pt. 55) 126; *Adeponle v. Saidi* [1956] NSCC 71

Landlord, except where the tenancy agreement provides that the landlord may enter the premises to assess damages on the property or to repair damaged parts of the property.⁸ However, the right of exclusive possession as stated above is not paramount as certain circumstances may warrant the Landlord to recover and take possession of the property.

The position of the law in Nigeria is that a landlord who wishes to evict a tenant from his lawful possession must as a general rule issue the tenant with a quit notice followed by a notice of landlord intention to recover possession of premises. He must at the expiration of the notices file an action by way of summons for recovery of possession, either against the tenant or against such person so neglecting or refusing to give up possession. He must also have a valid court order directing the tenant to deliver up possession on certain specified terms and such judgment or order must be executed within the ambit of the law.

However situations arise where a landlord instead of following the laid down procedures of the law in evicting his tenant, may resort to the use of self-help in recovery of his premises. In recent times in Nigeria, the use of Self-help or forceful eviction has become common place as cases abounds where landlords' uses various crude methods to evict their tenants either because the tenant refuses to pay rent or because the tenant has some unresolved issues with the landlord. Some of these unresolved issues may include the tenant or his wife quarreling with the landlord, tenant not paying bills or other rates or that the tenant is not taking proper care of his premises. The list is actually exhaustive. Although there are laws put in place in Nigeria to cater for the landlord and tenancy relationship, many persons are not aware of their rights as tenants. Therefore where a landlord resorts to self-help to evict them, they are left helpless. It is against this background that this work tends to critically examine the landlord and tenancy laws in Delta State as well as other States in

⁸O. M. Atoyebi, O. A. Olo, U.I. Chioma, 'An Overview of the Legal Framework for Recovery of Premises in Nigeria' (Omaplex Law Firm, 2023).

Nigeria to see whether there are legal remedies to a tenant who suffers injury in the hands of a landlord that resorts to the use of self-help in evicting him from his premises. This work will also look at the existing laws to see whether the use of self-help is justified by law or not.

1.2 Statement of the Research

Over the years, cases prevail where Landlords as well as their agents' resort to self-help in evicting a tenant who refuses to deliver up possession of premises. Resort to self-help may include forceful eviction by thugs, use of Military and police personnel's in quitting a tenant, removal of roof or zinc or the pulling out of doors and windows from the premises. Other methods are; the cutting off of electricity supply, regular deprivation of the tenant of his peaceful enjoyment of his property and etc. From the year 1999 to 2023 since the return to democratic governance, there are pocket of cases in Delta State where landlord often resort to self-help to recover premises under the guise that as the rightful owner of a property or premises, they also can do anything they want with it without recourse to judicial intervention.

The position of the law in Nigeria is that a landlord desiring to recover possession of premises let to his tenant shall first of all determine the tenancy by service on the tenant an appropriate notice to quit.⁹ On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of intention to apply to court to recover possession of the premises.¹⁰ Thereafter, he shall file his action in court and may only proceed to recover possession of the premises according to law in terms of the judgment of the court in the action¹¹. The Landlord must comply strictly with the provisions of the statutes by strictly

⁹F. Woye, A.Akinbobola, N. Amarachukwu, 'Nigeria: Overview of the Concept of Recovery of Premises under Tenancy Law of Lagos State' (Famsville Solicitors, 19 April 2021).

<<https://www.mondaq.com/home/linkedindirectreferral/28002>> assessed December 22, 2023

¹⁰ *Ibid*

¹¹ *Ibid*

following all the due processes of the law otherwise he will have himself to blame. Thus in *Ndieli & Anor v Eze*¹² the court emphasized that:

It is the law and it has been reiterated almost to irritation that recovery of premises must be done by due process of the law. Any other form of recovery is unlawful. It cannot be over-emphasized that recovery of possession of premises from a tenant by a landlord can only be by an order of Court obtained after hearing the parties pursuant to the relevant Recovery of Premises Law. Where a landlord derogates from these procedures, an action can be maintained against him by the tenant depending on the level of derogation

This legal position is buttressed by the supreme Court in the case of *Ihenacho v Uzochukwu*¹³ where the Supreme Court held that resort to self-help by a landlord to evict a tenant who is in lawful occupation is not within the purview of the law and such a landlord renders himself liable to the tenant in trespass. However despite the plethora of courts decisions on the use of self-help, the issues still persist. Hence this research will proffer answers to the following two research questions:

- i. What is the approved mode of ejection of a tenant from lawful occupation of premises recognised by law?
- ii. What is Self-help or forceful eviction within the concept of landlord and tenancy law in Nigeria?

¹²[2016] LPELR-42122(CA)

¹³[1997] 1 SCNJ 117 at 128

- iii. Within the framework of the existing laws in Nigeria, what are the legal and judicial remedies to a tenant who suffers injury as a result of the unlawful use of self-help by his landlord to quit him from his premises?

To proffer answers to the above questions, this research will look at the work of various legal scholars on the topic and the view of the Courts over the years on the unlawful use of self-help in evicting a tenant.

1.3 Aim and Objectives of the Study

The main aim of this research is to examine the trends on the use of self-help and forceful eviction of tenants under the recovery of premises law in Delta State of Nigeria. This aim will be achieved by looking at the extant Laws in Nigeria and the various judicial pronouncements on the issue. In other to fully address the issue, this research will also aim at achieving the following objectives;

- a. The legal framework for the recovery of premises in Nigeria.
- b. The mode of recovery of premises recognised under the various tenancy laws of Lagos State, Edo State, Rivers State, Akwa Ibom State and Delta State of Nigeria.
- c. The consequences for resorting to self-help by a landlord in recovery of premises.

1.4 Scope and limitations of the Study

The scope of this Study is extensive. The research examines the trends on the use of self-help in the recovery of premises in Delta State of Nigeria. In analyzing this topical issue, the researcher will examine the position of the law in other States of the federation such as Edo, Lagos, Akwa Ibom and Rivers State of Nigeria. This work will also look at the existing

legal framework on tenancy law in Nigeria in order to see what can be done to proffer solution to the incessant use of self-help by landlords in the recovery of premises in Nigeria.

A major limitation of this research is inadequate scholarly materials on the topic. Some works on the topic under consideration are not from credible sources and hence cannot be cited as a research tool. Others have become too archaic and unsuitable for modern research of this nature. Coupled with this is the time frame needed for the completion of this work and the size of this work which is limited in nature. There could also arise during the course of this research some overriding variables which might prevent the researcher in presenting a flawless and perfect work on this study. These include: the shortage of judicial cases in respect of self-help and forceful eviction in the recovery of premises in Nigeria, laying hands on both foreign and local journals on the topic as well as getting the needed tenancy laws from most states in Nigeria. However, the above intervening factors will not prevent the researcher from presenting an analytical work on the topic.

1.5 Significance of the Study

The use of self-help in the recovery of premises is very common in Nigeria today as many landlords often employ this crude means to eject their tenant from lawful occupation. Interestingly, most tenants are not even aware of their rights.

This research is thus very significant in the following ways.

1. It will show that tenants have some inalienable rights under the recovery of premises law in Nigeria and one of these is that a landlord cannot unilaterally eject a tenant without following the due process of the law.
2. It will assist the Nigerian Legislators on the need to amend the existing legal framework on landlord and tenancy law in Nigeria so as to bring it into modern trends.

3. It will serve as a research tool for further studies on the landlord and tenancy law.
4. Provides information on the various tenancy laws in most states of the federation.

1.6 Research Methodology

The methodology adopted in this research is the doctrinal research methodology which involves the copious use and reliance on the library and online sources for Primary and Secondary source materials especially statutory laws and instruments, case laws and the opinion of legal text writers in the area of landlord and tenancy law in Nigeria and in other common law jurisdictions. The doctrinal research methodology is chosen above the other methods because it annexes and put together all the work that have been done on the topic and related issues by various legal writers over the years on the topic so that a holistic understanding of the use of self-help in the recovery of tenancy law in Nigeria, can be gotten.

1.7 Chapter Analysis

This research will span five chapters, chapter one deals with the introduction of the topic. This chapter covers the background to the Study, Statement of problem, aim and objectives of the Study, scope and limitations of the Study, Significance of the Study, research methodology and chapter Analysis.

Chapter two discusses the conceptual, theoretical framework and literature review on landlord and tenancy law in Nigeria. This chapter will look at the conceptual clarification of some legal terminologies in the landlord and tenancy relationship, the theoretical and historical foundation on the tenancy relationship in Nigeria as well as the literature review.

Chapter three discusses the legal and institutional framework on recovery of tenancy in Nigeria. Under this chapter, the various landlord and tenancy laws in most states of Nigeria

will be critically examined in addition to the role of the Court in the Recovery of Premises in Nigeria to see if there are limitations or gaps to be filled.

Chapter four critically examines the use of self-help and forceful eviction in the recovery of premises law in Nigeria. To gain an in-depth understanding of this research, the Meaning of Self Help and Forceful Eviction will be considered alongside other sub topics such as; Consequences for resorting to Self-help by a Landlord in the Recovery of Possession, Procedure for Recovery of Premises under the Tenancy Law in Nigeria as well as the enforcement of judgment in possession matters. It will also look at the challenges and limitations on the legal and institutional framework on the recovery of premises laws in Nigeria.

Chapter five is the conclusion. This chapter will look at the summary of Findings, recommendations, contribution to Knowledge, area for Further Studies as well as the conclusion.

CHAPTER TWO

CONCEPTUAL THEORITICAL FRAMEWORK AND LITERATURE REVIEW

2.1 Conceptual Clarification

Conceptual framework defines and explains some common terms and issues in this research. Below are some of these terms and their meaning.

2.1.1 Self-help or forceful eviction

In tenancy matters self-help can be define as the taking of matters into ones hand by a landlord who resorts to extra-legal methods to enforce a legal right. The use of self-help is commonly found in debt recovery and tenancy matters where landlords or creditors are exasperated by intransigent or stubborn tenants or debtors.

2.1.2 Landlord

Section 2 of the Rent Control and recovery of Residential premises law of Delta State 2006¹ defines a Landlord as the person entitled to the immediate reversion of the premises or if the property therein is held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion, and includes:

- (a) The attorney or agent of any such landlord or
- (b) any person receiving whether in his own right or as an Attorney or agent any rent from any person for the occupation of any accommodation in respect of which he claims a right to receive same².

A landlord is also defined as a person who is not only the owner of a premises but one who enters into a tenancy agreement with a tenant in relation to any premises. In this context it can be said that the Attorney or agent in a tenancy agreement are landlord since they act for and

¹Rent Control and recovery of Residential premises law of Delta State 2006. Cap R.5 laws of Delta State.

² *Ibid.*

on behalf of the owner of the property. For the sake of emphasis, a landlord includes any of the following:

- i. Any other person(s), other than the original landlord who has acquired the reversionary interest of the original landlord. This may be a bona fide purchaser of the reversion for value, a 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;
- ii. 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;
- iii. Attorney, solicitor, agent or caretaker who has been empowered or given power of attorney by the original landlord to collect rents;
- iv. Attorney, solicitor, agent or caretaker whose agency with the landlord is coupled with an interest in the rents; and
- v. 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.³

2.1.3 Right of a Landlord

Under the tenancy relationship, the right of a landlord can be defined to mean anything that a landlord is entitled to according to the law governing the tenancy relationship. Thus under the various tenancy laws in Nigeria, a landlord enjoys the following rights.

- I. Right to reversion of the demise property. This reversionary right occurs after

³Bolaji Ramos, 'Understanding the essential principles of landlord and tenant laws in Nigeria through judicial decisions' (Article in Commonwealth Law Bulletin January, 2020)

the determination of the demise property.

- II. Right to collect rent at the times and in the manner stated.
- III. Right to ensure that the tenant keeps the demise premises in good and tenantable repair, reasonable wear and tear excepted.
- IV. Right to visit the demise property during the tenancy at all reasonable hours in the day time after previous written notice, to view the condition of the premises and to effect repairs in necessary parts of the building had been given.
- V. Right to notify the tenant not to make any alterations or additions to the premises without the written consent of the landlord.
- VI. Right to be notified by the tenant before assigning or sub-letting any part of the premises.

2.1.4 Obligation of Landlord

These are the various duties expected of a landlord in the tenancy relationship. Section 8 and 9 of the Lagos State Tenancy Law⁴ provides for the Obligations of the Landlord. The Section provides thus:

Subject to any provision to the contrary in a tenancy agreement, the landlord shall-

- (i) not disturb the tenant's quiet and peaceable enjoyment of the premises;
- (ii) pay all rates and charges as stipulated by law;
- (iii) keep the premises insured against loss or damage;

⁴Section 8 and of the Lagos State Tenancy Law, 2011

- (iv) not terminate or restrict the use of a common facility or service for the use of by the tenant;
- (v) not seize any item or property of the tenant or interfere with the tenant's access to his personal property; and
- (vi) Effect repairs and maintain the external and common parts of the premises.

Section 9. (Obligations of the Landlord Regarding Business Premises)

A tenancy agreement in respect of business premises, shall be deemed to provide that where the landlord-

- (a) inhibits the access of the tenant to the premises in any substantial manner;
- (b) takes any action that may substantially alter or inhibit the flow of the customers, clients or other persons using the tenant's business premises;
- (c) causes or fails to make reasonable efforts to prevent or remove any disruption to trading or use within the business premises which results in loss of profits to the tenant;
- (d) fails to rectify as soon as practicable, any breakdown of plant or equipment under his care and maintenance which results in loss of profits to the tenant; or
- (e) fails to maintain or repaint the exterior or the common parts of the building or buildings of which the premises is comprised, and after being given notice in writing by the tenant requiring him to rectify the matter, does not do so within such time as is reasonably practicable, the landlord is

liable to pay to the tenant such reasonable compensation as shall be determined by the court, where the tenant effects the repairs or maintenance.

2.1.5 Meaning of Tenant

A tenant is a person occupying any premises either by payment of rent or by operation of law⁵. This definition excludes any person who unlawfully occupies any premises under a bona fide claim to be the owner. Where the tenant is a statutory one, lawful occupation is an essential requirement.⁶ A tenant also includes a service tenant who occupies any premises as a contractual tenant during his employment or a person that is granted a proprietary interest in a property. Again too, a tenant can also include a sub-tenant or any person occupying any premises whether on payment of rent or otherwise⁷. Going by the various definitions, a tenant may be said to be any of the following persons:

- i. A person that lawfully enters into the premises and occupies same by virtue of a tenancy agreement directly entered into between him and the landlord whether by payment of rent or otherwise;
- ii. A person(s), 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 succession⁸;
- iii. A sub-tenant to whom the original tenant has sublet or assigned all or part of his/her interests in the demised premises; and
- iv. A person occupying the demised premises by operation of law⁹

⁵ See Section 47 of the Lagos State Tenancy Law and section 2 of the Recovery of Premises Act.

⁶B. N. Omotayo, O.E. Gabriel,M. D. Paul “Recovery of Premises In Nigeria: A Law For Justice or Legalised Bias Against The Landlord?”(Achievers University Law Journal, 2021).

⁷ Rent Control and Recovery of Residential premises Law, Lagos, 2004.Section 36.

⁸ Tenancy creates an estate that is inheritable by the beneficiaries of a deceased tenant under the law of succession. The exception to this will appear to be a statutory tenancy, as it does not create any estate in favour of the statutory tenant. It only creates a privilege that is personal to the statutory tenant alone, same which cannot be transferred to a successor. See *Adeponle v. Said*(1956) NSCC 71

Aside the analysis of the definition of a tenant above, the courts have, over the years in an attempt to bring the provisions of this part of the rent and recovery of premises laws alive, consistently held that what qualifies a person as a tenant is “lawful occupation.” In the case of *Abeke v Odunsi*,¹⁰ the Supreme Court held as follows:

Who then is a tenant? Under the Rent Control and Recovery of Residential Premises Law - Section 40(i) provides thus:- "Unless the content otherwise requires "tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise but does not include a person occupying Premises under a bonafide claim to be the owner of the premises." The qualification, therefore, for becoming a tenant under the Law is lawful occupation.¹¹

2.1.6 Rights of tenant

The rights of tenant are those rights that a tenant is entitled to by law or by contract in the tenancy relationship. The rights of tenants are stated in section 6 of the Lagos State Tenancy Law, 2011 and the Rent Control and recovery of Residential premises law of Delta State 2006.¹² By virtue of these laws a tenant enjoys the following rights and privileges.

- a. The tenant is entitled to quiet and peaceable enjoyment of the premises includes the right to: Privacy
- b. Freedom from unreasonable disturbance

⁹ The phrase “by operation of law” is particular only to the Tenancy Law of Lagos State 2011. This is a new introduction that is novel to other Rent Control and Recovery of Premises Laws of the respective States in Nigeria, including the Rent Control and Recovery of Remises Law of Lagos State 1997. This phrase may cover the following situations: (a.) statutory tenancy that results after the expiration of the contractual tenancy by operation of law; (b.) succession of contractual tenancy after the demise of the original tenant; (a situation where the tenant uses his tenancy as a security for a loan which he has defaulted in refunding and the creditor has attached the tenancy.

¹⁰[2013] ALL NWLR (PART 697) 1797

¹¹ *Ibid*

¹² See section 6 of the Lagos State Tenancy Law, 2011 and Rent Control and recovery of Residential premises law of Delta State 2006.

- c. Exclusive possession of the premises, subject to the landlord's restricted right of inspection and
- d. The use of common areas for reasonable and unlawful purposes.

Also, where a tenant with the previous consent in writing of the landlord, effects improvements on the premises and the landlord determines the tenancy, such a tenant shall be entitled to claim compensation for the effected improvements on quitting the premises.

2.1.7 Obligations of Tenant

These are the things that a tenant is expected to do in the tenancy relationship. The obligations of tenants are stated in section 7 of the Lagos State Tenancy law¹³ and there are as follows:

1. Pay rent at the times and in the manner stated.¹⁴
2. Pay all existing and future rates and charges not payable by the landlord by law.
3. Keep the premises in good and tenantable repair, reasonable wear and tear excepted.
4. Permit the landlord and his agents during the tenancy at all reasonable hours in the day time after previous written notice, to view the condition of the premises and to effect repairs in necessary parts of the building.
5. Not make any alterations or additions to the premises without the written consent of the landlord.
6. Not assign or sub-let any part of the premises without the written

¹³ See section 7 of the Lagos State Tenancy Law, 2011

¹⁴*Ibid.*

consent of the landlord and

7. Notify the landlord where structural or substantial damage has occurred to any part of the premises as soon as practicable.

2.1.8 Determination of Tenancy

Determination of tenancy simply means the termination of the tenancy contract or agreement. Thus after the determination of the tenancy, the legal relation between the landlord and tenant comes to an end. Tenancy may be determined or terminated in different ways. These include; by operation of law, surrender, effluxion of time, forfeiture, frustration, rescission and notice to quit. Each of these shall be examined one after the other.

2.1.9 Notice to Quit

The Black's law dictionary¹⁵ defines a quit notice or a notice to quit as a written notice given by a landlord to his tenant, stating that the former desires to repossess himself of the demised premises, and that the latter is required to quit from same at a time designated, either at the expiration of the term if the tenant is in under a lease, or immediately if the tenancy is at will or by sufferance.¹⁶ The origin of statutory notice to quit is dated back to 1945 in Nigeria when the Recovery of Premises Act, No.45 of 1945 was enacted. The requirements of notice contained in the 1945 Rent Control Act were adopted by the defunct Eastern, Northern and Western Regions of Nigeria and later adopted by the states carved into those regions.¹⁷ Subsequent to this, several laws regulating the recovery of premises have now been enacted in Nigeria such as the 2011 Tenancy law of Lagos state, the Recovery of premises Act Abuja, the Rent Control and Recovery of Premises law of Cross River state, the Rent Control Law of

¹⁵ Bryan A. Garner, *Black's Law dictionary*, 8th edition. (St. Paul Minnesota: west printing Co, 1990).

¹⁶Bello Damilola 'An overview of the statutory notices required for the eviction of a tenant in Nigeria' (Law pavilion, November, 30th 2022)

¹⁷Adewale Taiwo, *The Nigerian Land Law* (Princeton & Associates Publishing co. Limited 2016) 92.

Edo state, and the recovery of premises laws of the various states in Nigeria.¹⁸ The object of a notice to quit is to terminate the tenancy so that the possession of the premises may go back to the landlord.¹⁹ A notice to quit constitutes a formal expression of an intention by either the landlord to the tenant or vice versa to terminate or rather determine a periodic tenancy on a given future date as may be indicated in that notice. The notice to quit is the regular method of terminating a periodic tenancy. However, it may equally be employed to bring a fixed tenancy to an end where such tenancy contains a provision to that effect.²⁰ Generally, the length of a notice to quit may be agreed by the parties (landlord and tenant) expressly in their agreement, and where there is such a stipulation in the tenancy agreement, the parties will be bound by the stipulation.

2.2. Theoretical and Historical Foundation

The landlord and tenant relationship is created either by statute or by Contract. The relationship is regarded as one of contract when it gives rise to personal rights amongst the parties, which means that only the parties to the tenancy agreement and not third parties could benefit from it²¹. But such agreement may also include others such as the family members of either the Landlord or the tenant as beneficiaries. This includes the Children of the Tenant or those living with him and at times it also includes the sub-tenant for in most cases when the tenancy agreement are entered by the parties it is often stated that it includes the heirs and assigns of the parties. However in the absence of any valid agreement, the tenancy relationship is governed by the tenancy laws of the various States in Nigeria such as the Rent

¹⁸*Ibid*

¹⁹O. Ige, 'A Compendium of Practice Notes' (Crown Goldmine Communications Limited 2013), 409.

²⁰ Chris Wigwe, 'Recovery of Premises in Nigeria: An Assessment of the relationship of Landlord and Tenant Law' (Journal of Commercial and Contemporary law, 2011). P. 69.

²¹ J.M. Male, *Landlord and Tenant* (Pearson Professional Limited, 1995). p.1

Control and recovery of Residential premises law of Delta State.²² The nature of the relationship between the landlord and the tenant has been described as follows.²³

- a) One of tenure, from which follows that the respective assignees of the original parties will be bound by the terms of the tenancy, and the tenant is estopped from denying his landlord's title;
- b) One that creates in the tenant an estate which must be less than the landlord's, which follows that for the duration of that estate, there must be two concurrent estates in the land or property (i.e. the tenancy and the reversion);
- c) One that enables the tenant to assign or mortgage his/her tenancy or create sub-tenancies (provided reversion is reserved), except otherwise restricted;
- d) One that arises between the parties by (i) agreement (expressly or impliedly as in periodic tenancy); (ii) statute or operation of law (statutory tenancy and successive tenancy); and (iii) estoppel;
- e) One that arises between persons who were not parties to the original tenancy, but later become parties by the act of the original parties through assignment of reversion of the landlord and the estate of the tenant.²⁴

The landlord and tenancy relationship is as old as the problem of housing shortages which is not a new phenomenon in human existence. For instance, Rent control by state is well known in the ancient Roman Empire. Similarly, in Europe, there were interventions by the state in the relationship between the landlord and the tenants; largely by way of decrees²⁵. Several efforts were, within this context, made by the state to ensure that greedy landlords did not take undue advantage of the scarcity of accommodation in Europe. Between the sixteenth

²²Rent Control and recovery of Residential premises law of Delta State 2006. Cap R.5 laws of Delta State

²³ D.L, Evans, *The Law of Landlord and Tenant*, (Butterworth's Publications, 1974). P. 12-13

²⁴ D.L, Evans, *The Law of Landlord and Tenant*, (Butterworth's Publications, 1974). Pp. 12-13

²⁵J. A. Nwobike, 'Interrogating the Intersection between Statutory Rent Control and Freedom to Contract in Nigeria' (Beijing Law Review, 2023). Vol.14 No.1

and the eighteenth centuries, these controls were essentially in the forms of temporary moratorium or suspension on rent payments, reduction of rents payable based on the principles of equity, extension of time or delays for the payment of rents and evictions, etc. One of the early recorded formal legislations on rent control is the Australian Fair Rents Act of 1915.²⁶

After this direct legislative experiment on rent control, a number of legislations were enacted for the same purpose across the continents. It, somehow, became the populist agitation for the state to apply its legislative authority to control rent. As a result of the world wars, housing scarcity became one of the major results of the economic difficulties imposed by the wars. This situation elevated housing shortages to social problems across the world. This was also made more prevalent by the growing population in South Africa, India, and Continental Europe.²⁷

The history of rent control in Nigeria can be traced to the racketeering and overcrowding in Lagos as a direct result of the economic effects of the 2nd World War. Consequently, the English Emergency Powers (Defence) Act, 1939 was made to restrict the increase in the rent of residential premises in Lagos. Through the Regulations made under this Act, the operations of the law were extended into parts of the Northern, Western and Eastern Regions. Due to the increase in the scarcity of housing in the urban cities and the need to protect tenants against the vagaries of these shortages, the Increase of Rent (Restrictions) Act 1946 was enacted. The extent of which these regulations and legislative interventions succeeded in addressing scarcity of housing in urban centres in Nigeria remained unrecorded.²⁸

Legislative records show that the first formal legislation on rent control in Nigeria after independence is Rent Control (Amendment) Act, 1965. This was followed by the Rent

²⁶*Ibid*

²⁷ Evans D.L. (n23).

²⁸*Ibid*

Control Edict of Lagos State upon the creation of the States in 1967. Thereafter, most States in Nigeria began the race to manage their respective new urban housing challenges by the promulgation of various rent controls and recovery of premise laws. It is on record that most of these legislations contain similar provisions.²⁹

2.3 Literature Review

This research critically examines the use of self-help or forceful eviction under the landlord and tenancy law in Nigeria. Although not much has been written on this area of research, it is pertinent that the views of several authors be examined.

*Bolaji Ramos*³⁰ in his work defined the term ‘landlord.’ According to him, a landlord is defined as the person entitled to the immediate reversion of the premises or if the premises are held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion, which will include the attorney, solicitor, agent or caretaker, receiving rent from any person for the occupation of the premises in respect of which such attorney, agent or caretaker claims a right to receive the rent.³¹ The learned author also exhaustively discussed the meaning of the term ‘tenant’ and went further to look at the principles governing the landlord and tenancy relationship. This work however did not discuss the issue of self-help in the recovery of premises.

*Maxwell Nwinye*³² in his work noted that the demand for housing in urban areas is high than rural areas as most persons movement to cities is to benefit from employment, decent housing and social amenities such as water, electricity and portable roads. He also stated that the Landlord and tenant relationships in Nigeria are basically regulated by

²⁹*Ibid*

³⁰Bolaji Ramos, ‘Understanding the essential principles of landlord and tenant laws in Nigeria through judicial decisions’. (Article in Commonwealth Law Bulletin · January 2020).

³¹Section 47 of Tenancy Law of Lagos State 2011; section 55 Rent Recovery and Recovery of Premises Law of Cross Rivers State, Laws of Cross Rivers State 2004

³² Maxwell Nwinye. ‘Comparative Analysis of Landlord and Tenant Relationship in Tenancy Law, Nigeria’ (Reiko International Journal of Social and Economic Research, 2020).

applicable statutes of the various States of Nigeria and that a landlord who wishes to evict a tenant from his premises must follow the due process of the law. According to the writer, a tenant means a person who lawfully occupies the premises of landlord, a sub-tenant or any person occupying premises either by payment of rent or by operation of law and does not include persons unlawfully occupying any premises which he claimed to be the original owner. Although this work discussed in detail, the tenancy relationship, it however did not discuss the issue of self-help in the recovery of premises in Nigeria.

*Jide Bodede*³³ wrote on the danger of self-help in the recovery of premises. To him Self-help means taking a matter into one's hands and resorting to extra-legal methods to enforce a legal right. The use of self-help is commonly found in debt recovery and tenancy matters where landlords or creditors are exasperated by intransigent tenants or debtors. To him, the locus classicus on this matter is the case of *Governor Lagos State v Ojukwu*³⁴. In that case the Lagos State Government ejected the occupant of the premises while the matter was still pending in court. The Supreme Court condemned the resort to self-help as an act of executive lawlessness and held that that once a matter is pending before a court, no person has the right to take the matter into his own hands and take possession of the premises by the use of law enforcement agents. In *Akinkugbe v Ewulum Holdings*,³⁵ the landlord had forcefully ejected tenants out of their rented premises. The trial court awarded N3m as aggravated damages against the landlord for trespass. The Supreme Court said (per Aderemi JSC), "A landlord who resorts to self-help in a bid to recover possession of the premises tenanted by him runs afoul of the law and is liable in damages." This work although very related, it is however too scanty for a detailed work of this nature.

³³Jide Bodede, 'The dangers of Self-help in tenancy matters' (WhiteFields Legal, 2020).
<[https:// WhiteFieldsLegal.com](https://WhiteFieldsLegal.com)>[home](#)>[property](#)>the dangers of self-help in tenancy matters

³⁴(1986) 1 All NLR 233, 243

³⁵(2008) 4 SCNJ404

*Olusegun Onakoya*³⁶ critically appraises the various conflicts that often arise in the landlord and tenancy relationship. According to him the various tenancy laws and the recovery of premises laws of most States in Nigeria has done a lot in resolving most of these issues, however the laws does not focus on economic and sociological factors such as the inability of some tenants to finance the cost of renting another accommodation. He therefore suggested the provision of housing units (under public and private partnership, or even a wholly government owned scheme), economic empowerment scheme (which will allow many homeless persons and tenants to own their individual homes), decongestion of the urban areas (by provision of infrastructural facilities and employment in the rural areas) among others. Although this work discusses extensively the tenancy relationship, it did not discuss the issue of self-help and forceful eviction.

*Joseph C. Onyejiaka et al*³⁷ discuss the issue of eviction in Anambra State of Nigeria, the learned authors discussed some form of evictions such as actual eviction exists where one is removed from the property either by force or through the process of law, Constructive eviction when such eviction is by the due process of law, Partial eviction, where a tenant is deprived of portion of property. For example where a substantial modification is required on one side of the building, the landlord and the tenant may agree to a partial eviction from the property because of the disruption to be caused by the work and Retaliatory Evictions which occur when a landlord attempts to evict a tenant in response to some legal action taken by the tenant. While this work serves as a research tool during the cause of this research, it didn't discuss anything about the use of self-help in evicting a tenant which is the main focus of this work.

³⁶OlusegunOnakoya, 'Landlords versus Tenant: A Critical Appraisal Of Conflict In Tenancy Law In Nigeria'. (KIU Journal Of Social Sciences, Kampala International University, 2017). ISSN: 1996902-3; 3(1): 279–292

³⁷J. C, Onyejiaka, J.CChinagorom, P.C Ndivi 'An examination of tenant eviction in Anambra State, Nigeria' (Tropical Built Environment Journal. Volume 7, No. 1, 2019). www.tbejournal.com

The erudite legal scholar, *Emeka Chianu* in his book³⁸ dwells extensively on the landlord and tenancy relationship. In chapter five of the book the author discusses the recovery of possession by self-help and with the aid of affidavit. A major challenge with this work is that, the learned writer focuses on the position of self-help by the use of various judicial decisions without bringing to the fore the legal or judicial principle on the issue. It is submitted that the judgment of court without an explanatory notes may be difficult to non-legal minds or beginners in the legal profession. Hence this researcher tends to thoroughly examine concept for proper understanding on the topic.

*Osakwe*³⁹ in his work stated that the position of the Law on recovery of premises is not a matter of speculative conjectures or literary entrapment of connotative whispers rather it is the vibration of statutes echoed through the vocal cord of judicial interpretations. Therefore the sandwich of any judicial decision is not without the recipe of legislative enactment. He thus stated that by Section 2 of the Edo State recovery of premises Law, premises is defined “as a house or building whether commercial or otherwise or shops or any part thereof together with its gardens or other appurtenances and also includes water, electricity and tenements rates/installations” He thus clarified that the only Court that has jurisdiction to handle landlord and tenancy issues in Edo State under the existing tenancy law is the Customary Court pursuant to the combined effect of section 2 and 6 of the Law. In effect, where an aggrieved landlord institutes a claim for the recovery of premises at the Magistrates or any other Courts, the Court is lacks jurisdiction to handle such matters.

³⁸EmekaChianu ‘*Law of Landlord and tenant cases and comments*’ 3rd edition (Nigeria printer Publication, 2020)

³⁹OsakueOsamudiamen Isaac, ‘The Law on the Recovery of Commercial Premises- A cursory look at the recovery of premises Law, 1977 CAP. R1 Laws of Edo State of Nigeria, Law No.4 of, 1977’ (The Scripted Advocate, World Press.Com, 2023). <<https://thescriptedadvocate.wordpress.com>>. assessed January 2, 2024

As can be seen above, *Osakwe*'s work focused only on jurisdiction of Court as well as the procedures for the recovery of premises. It never discusses the use of self-help in the recovery of premises. It is this gap that this research seeks to fill.

*Ese Palmer*⁴⁰ discussed in detail the reasons while most landlords resort to the use of self-help in the recovery of premises. According to him, a nightmare that is commonly shared by property owners is that of an earring tenant unwilling or unable to pay the rent as agreed on the due date. This is simply because real estate is as much a business entity as a commercial bank. Many Landlords cannot resist the need for self-help at the perception of such an unfortunate dream.

He stated further that as a general rule of judicial interpretation, the Court frowns at the use of self-help in the recovery of premises as can be seen from the various judicial pronouncements both in Nigeria and in other jurisdictions. Recovery of premises is a delicate one. Because the law is natured to protect the weakest party in its mandate to do justice. In a recovery of premises matter, the court is seen to weigh matters so as not to render a tenant suddenly homeless. The weaker party is *prima facie* the tenant. An act of self-help usually enrages the court and serves to frustrate the landlord in the event that such tenant is fully aware of his legal right and applies it at the slightest infraction. Usually the rights of tenant asides the content of a tenancy agreement statutorily includes freedom from encumbrance and quiet possession. Once this statutory right is challenged without an order for possession in the hands of the Landlord, it is deemed an act of self-help. He therefore states that self-help should be avoided by the landlord in the recovery of premises since the recovery of premises is a delicate one. Because the law is natured to protect the weakest party in its mandate to do justice. In a recovery of premises matter, the court is seen to weigh matters so as not to render

⁴⁰Ese Palmer, 'Recovery of Premises: The Law and a Landlord's Right to Self-help' (Technology Law & Policy, 2018). <https://www.linkedin.com/pulse/recover-premises.the.law.and.the.landlord.right>. [Assessed on 2nd January, 2024]

a tenant suddenly homeless. The weaker party is *prima facie* the tenant. An act of self-help usually enrages the court and serves to frustrate the landlord in the event that such tenant is fully aware of his legal right and applies it at the slightest infraction.

Usually the rights of tenant asides the content of a tenancy agreement statutorily includes freedom from encumbrance and quiet possession. Once these statutory rights are challenged without an order for possession in the hands of the Landlord, it is deemed an act of self-help. He therefore itemized the standard procedure for recovery of premises that should be followed by all property owners. A major gap in this work however is that it never cited any statutory provisions in support of its assertions as only case law were cited. Besides, this work is not a detailed and well researched material.

O. M. Atoyebi in his work⁴¹ delves into the legal framework for recovery of premises in Nigeria. Unfortunately, this work can hardly be qualified as a research tool as only the legal framework on tenancy law of Abuja and Lagos State in Nigeria were examined and were not extensively discussed. The work did not also discuss the use of self-help in the recovery of premises in Nigeria.

Ebere⁴² examines the regulatory frameworks for the definition of tenancy agreements under Nigerian law. In doing this, he exposes the various types of tenants recognized by the Nigerian judicature while placing significant reliance on the laws of Lagos State and Abuja deemed to be the most comprehensive frameworks for the regulation of tenancy relationships within Nigeria.

He further examines the concept of the right to housing in Nigeria with a view to determining its substantives and extent of enforceability while exploring the procedures for

⁴¹ O. M. Atoyebi, 'An Overview of the Legal Framework for Recovery of Premises in Nigeria' (Omaplex Law Firm 2023)

⁴²Ebere Frankline Chisom, 'Housing and Tenancy in Nigeria: A legal Reappraisal' (Young Institute for Transnational Arbitration , 2017). <https://ssrn.com/abstract=3833092>. [Assessed on 2nd January, 2024]

the eviction of tenants by landlords cum recovery of premises with special focus on the rights attributable to tenants within Nigeria arising from the various regulatory frameworks. The work however did not discuss the use of self-help in the recovery of premises under the various laws examined. This is thus a gap that needed to be filled.

*Sylvester Eze*⁴³ critically analyzed the mode of enforcement and execution of judgments and orders of Courts in Nigeria. To him, the term "enforcement and execution" is simply referring to the ways and means by which the fruits of any judgment or order made by a Court of competent jurisdiction is realized using the coercive processes of the trial court or any other Court so empowered by the law. He also stated that the law governing the execution and enforcement of judgments and orders of Courts in Nigeria are the Sheriffs and Civil Process Act. This work although very related to this research did not discuss the use of self-help in the recovery of premises in Nigeria.

*Cynthia Tishion*⁴⁴ wrote on how to recover property by a landlord from his tenant in Nigeria. The writer stated the step by step processes to be carried out by a landlord in recovery of premises from his tenant which includes the giving of quit notice to the tenant, filing of action in Court and execution of the judgment. This work like the others before it did not discuss the issue of self-help in the recovery of premises.

*Unini et al*⁴⁵ discuss the effect of a landlord ejecting a tenant personally under the Rent control law of Akwaibom State of Nigeria. The authors stated that it is not uncommon to see scenarios where a landlord cut off the electricity supply leading to the building he/she has let to a tenant or removing the roof. Some even lock the entrance door with a key in order to cause the tenant to vacate the property and a few go to the extent of removing all the

⁴³*Sylvester N. S. Eze*, 'Enforcement and execution of Judgment and Orders of Court in Nigeria' (IBJ Journal, 2021).

⁴⁴*Cynthia Tishion*, 'How to recover property from your tenant in Nigeria' (LexPraxis Solicitors, 2023).assessed on December 24, 2023

⁴⁵*UniniChioma& Isaac Ephraim*, 'Effect of A Landlord Ejecting A Tenant Personally, Vis-À-Vis The Provisions Of The Rent Control And Recovery Of Premises Law Of Akwalbom State' (The Nigeria Lawyer, 2023).

tenant's belongings and keep outside the property either as a result of the tenant owing arrears of rents or because the landlord don't want the tenant in his/her property anymore. They therefore stated that it is unlawful for a landlord to eject a tenant from his or her property personally. Only the Court has the power to eject a tenant from a building. Thus whether a tenant is in arrears of rent for years or decades, the landlord has no power to eject the tenant. This is as provided by section 20 of the Rent Control and recovery of premises law of Akwa Ibom State.

Where a landlord ejects or attempts to eject a tenant by himself he has committed an offence and is liable upon summary conviction by the court to a maximum punishment of N5,000 and 3 months imprisonment under section 42 (2) of the Rent Control law of Akwa Ibom State.

Where a landlord removes the roof of a building inhabited by a tenant or demolishes it, or modifies it or cut the electricity supply or water supply or any such act to indirectly eject a tenant, the landlord is guilty of an offence and upon summary conviction liable to a maximum punishment of N10, 000 fine and 6 months imprisonment under the same law.

Thus a landlord cannot eject a tenant by himself. Where he wants a tenant to be ejected, he must approach the court to carryout same. Any action contrary to this is an offence which will result to the landlord on summary conviction to be fined or imprisoned or both by the court. Landlords should thus meet their lawyers to approach the court on their behalf after fulfilling all pre-action requirements.

This work however is too brief as a research tool. Besides this it didn't meet the required standard of a research tool. Although it is clear that the author was trying to convey the idea of the use of self-help in the recovery of premises, there is nowhere the word self-help or forceful eviction was mentioned. It is against this background that further research need to be carried out on this aspect of the law.

*Emeka Chianu*⁴⁶ the learned legal writer and author in his book on the law of trespass and Nuisance stated that a landlord or the owner of a land or property leased or rented out to tenants cannot unilaterally enter into same for the purpose of carrying out any activity. He can only do so after due permission from the tenant otherwise his action amounts to trespass. He also stated that a landlord can be sued for damages under the law for trespassing on his own land if the property in question has been leased or let to others. Although this book does not directly deal with the issue of self-help, the idea conveyed is similar. However a major short fall in this research is that the focus was not on the issue of self-help and forceful eviction.

*Kaananwi P et al*⁴⁷ deliberated on the challenges in the enforcement of judgment in Nigeria. The authors discussed extensively different judgments of Court and the mode of executing same. They also went further to list and discuss the various types of judgments and how they are executed pursuant to the Sheriff and civil processes act. However they did not discuss the use of self-help in the recovery of premises.

2.4 Discussion on the gaps in the literature review

It is observed that most of the literature reviewed in this work extensively discussed one aspect of the tenancy relationship or the other. However the following gaps were clearly identified in virtually all the literature reviewed.

1. The use of self-help and forceful eviction of tenant in the recovery of premises under the Delta State rent recovery and business premises law was not discussed by the writers.
2. The literatures reviewed did not discuss the institutional framework for regulating the tenancy relationship.

⁴⁶Emeka Chianu, *Law of Trespass to Land and Nuisance*, 2nd Edition, (Ambik Publishers Ltd, 2007)

⁴⁷Kaananwi P. Luke, Nuleera A. Duseon, 'Practical Challenges to the Enforcement of Judgements in Nigeria' (International Journal of Innovative Legal & Political Studies 8(2):1-12, April-June, 2020).

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON RECOVERY OF TENANCY

3.1 Legal Framework on the Recovery of Tenancy in Nigeria

Over the years, the Nigerian Government both at the Federal and State level has enacted various tenancy laws for the purpose of resolving some issues that arises from time to time in the tenancy relationship. This chapter therefore examines the regulatory and institutional frameworks on the landlord and tenancy relationship under the Nigerian law.

3.1.1 The Constitution of the Federal Republic of Nigeria, 1999 Cap C23 LFN, 2004.

The Constitution of the Federal Republic of Nigeria, 1999 is the apex law of Nigeria¹. This simply means that all other laws derive their powers from the Constitution. Tenancy or any matters incidental to it is not mentioned in the exclusive or concurrent list of the Constitution hence it is not listed in Part I and Part II of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended).² This simply means that tenancy regulation automatically form part of the Residual list and thus within the exclusive jurisdiction of the State Houses of Assembly. This principle of jurisdictional determination has been reasonably settled in the provisions of Section 4 (7) (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria which read thus:

“(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

¹CFRN, 1999 Cap C23 LFN, 2004. S. 1

²*Ibid*

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto;”

Furthermore, this position has been given corroborating judicial affirmation by the Supreme Court where it reemphasized the exclusive jurisdiction of State Houses of Assembly on issue not itemized in Part I and Part II of the Second Schedule to the Constitution in *Attorney General Abia State &Ors v Attorney General of the Federation &Ors*³

Thus the constitution can rightly be cited as the apex legal framework on tenancy matters in Nigeria.

3.1.2 Delta State Rent Control and Recovery of Premises law, 2004⁴

This law was enacted by the Delta State house of Assembly to regulate the Tenancy relationship amongst residents within Delta State of Nigeria. The law is more or less a replica of the defunct Bendel State Rent Control and recovery of premises law, 1977 that is now applicable to Edo and Delta State. The law prohibits the incessant increase in rent, provides for security in tenancy and also provides for the steps to be taken to recover premises by a landlord from his tenant. Particularly, the law guides against the use of self-help in the recovery of premises within Delta State. Section 38 of the Law clearly provides:

‘38 (1) Subject to the provision of any law in force, any person, who demolishes, alters or modifies a building to which this law applies with a view to ejecting a tenant and without the approval of the appropriate Court is guilty of an offence and liable on summary conviction to a fine of N200:00 or imprisonment for 3months or both.

(2) (i) any person who in respect of any accommodation to whom this law applies-

³ (SC 99/2005, SC 121/2005. SC

⁴ Delta State Rent control and recovery of premises law, 2004

- (a) Attempts to eject or forcible eject a tenant; or
- (b) Harasses or molest a tenant by action or words with a view to ejecting such tenant; or
- (ii) Any person who in respect of any accommodation to which this law applies –
 - (a) harasses or molest a landlord in respect of accommodation let by him by action or words; or
 - (b) does any act or thing whatsoever calculated to stultify the provisions of this law, or fails to comply with the provision of any order made by a Court shall be guilty of an offence and liable on summary conviction to a fine of N200:00 or imprisonment for 3 months or both⁵.

Thus it can be seen above that the Delta State Rent control law prohibits against the use of self-help.

3.1.3 The Recovery of Premises Law of Lagos State, 2011⁶

This is the major legislation regulating the recovery of premises in Lagos State of Nigeria. Under this law, Statutory Notices are required for recovery of premises. Also a landlord desiring to recover his premises may rely on all or any of the following grounds;

1. Where the tenant breaches any of the covenants/terms of the tenancy agreement,
2. Where the tenant fails to pay rent and is in arrears of rent, where the rent period has expired (Effluxion of time),

⁵ Delta State Rent control and recovery of premises law, 2004. S. 38

⁶ Tenancy Law No. 14 2011 Laws of Lagos State of Nigeria.

3. Where the tenant is constituting a nuisance or misusing the premises,
4. Where the premises require immediate repair,
5. Where the premises has become inhabitable⁷

The law also provides for reconciliation and mediation for the amicable settlement between a landlord and tenant. Self-help is particularly provided for in Section 44 of the law which states as follows:

44.—(1) Subject to the provisions of any Law -

(a) any person who demolishes, alters or modifies a building to which this law applies with a view to ejecting a tenant and without the approval of the Court; or

(b) any person who in respect of any premises -

(i) attempts to forcibly eject or forcibly ejects a tenant;

(ii) threatens or molests a tenant by action or words, with a view to ejecting such tenant; or

(iii) wilfully damages any premises,

shall be guilty of an offence and is liable to a fine not exceeding Two Hundred and Fifty Thousand Naira (N250,000:00) or a maximum of six (6) months imprisonment and any other non-custodial disposition

Thus the Recovery of tenancy law of Lagos State clearly prohibits in clear terms the use of self-help in the recovery of premises in Nigeria and provides for a very stiff punishment to deter landlord from engaging in such unlawful acts.

⁷*Ibid.* S. 25.

3.1.4 Rent Control and Recovery of Premises Law, 1985 of Cross River State⁸

This law is more or less a replica of the previous tenancy laws cited in this work. However for the seek of understanding the legal position of the applicable law on the use of self-help, section 43 of the law is hereby cited thus:

43(1) Subject to the provisions of any law in force, any person who demolishes, alters or modifies a building or use of a building to which this Law applies with a view to ejecting a tenant and without the approval of the appropriate Court is guilty of an offence and is liable on summary conviction, to a fine of five hundred naira or imprisonment for six months or both.

(2) Any person who in respect of any accommodation to which this Law applies—

- (a) being a landlord, attempts to eject a tenant;
- (b) harasses or molests a tenant by action or words, with a view to ejecting such a tenant; or
- (c) being a tenant, harasses or molests a landlord by action or words in respect of accommodation let to him;
- (d) does any act or thing whatsoever calculated to stultify the provisions of this Law, or fails to comply with the requirements of any order made by a Court, is guilty of an offence and is liable on summary conviction, to a fine of two hundred naira or imprisonment for three months, or both.

⁸Rent Control and Recovery of Premises Law, 1985 of Cross River State.

The above position of the law shares remarkable similarities with the provisions of the Delta State Rent Control and recovery of premises law.⁹

3.1.5 Rent Control and Recovery of Premises Law of Akwa Ibom State¹⁰

This law enjoins the same similarities with the Cross River State tenancy law save from the minor disparities in sections and penalties for punishment for offenders. Under the rent control and recovery of premises law of Akwa Ibom State, it is unlawful for a landlord to eject a tenant from his or her property personally. Only the court has the power to eject a tenant from any building or property. Thus whether a tenant is in arrears of rent for years or decades, the landlord has no power to eject the tenant pursuant to section 20 of the Rent Control and recovery of premises law. Again Where a landlord ejects or attempts to eject a tenant by himself he has committed an offence and is liable upon summary conviction by the court to a maximum punishment of N5,000 and 3 months imprisonment by virtue of section 42 (2) of the law.

3.1.6 Recovery of Premises Law Cap R1, Laws of Edo State of Nigeria¹¹

This law is the exact model of the Delta State Rent control and recovery of business premise law. This is not surprising as both States inherits the defunct Bendel State recovery of premises law, 1977. The recovery of premises law of Edo state as prohibits in clear terms, a landlord who engages in the use of self-help in ejecting a tenant from his lawful possession.

⁹*Ibid.* S. 43

¹⁰Rent Control and recovery of premises law of AkwaIbom State, 2006.

¹¹Recovery of Premises Law Cap R1, Laws of Edo State of NigeriaLaw No.4 of 1977

3.1.7 Recovery of Premises Act. Cap 544 Laws of the Federation of Nigeria (Abuja) 1990

The main legislation on the recovery of premises in Abuja is the Recovery of Premises Act. Cap 544 Laws of the Federation of Nigeria (Abuja) 1990¹². Section 2 of the Act states that a landlord is a person entitled to immediate reversion of the premises and includes the attorney or agent of any such landlord or any person receiving (whether in his own right or as an attorney or agent) any rent from any person for the occupation of any accommodation in respect of which he claims a right to receive same. This section further states that a tenant includes any person occupying premises, whether on payment of rent or otherwise, but does not include a person occupying premises under a bona fide claim to be the owner of the premises. Under the Act, Statutory Notices are also required before a landlord may recover his premises in Abuja. The Act also criminalizes a landlord who engages in self-help in ejecting a tenant from his premises. It is important to bring to the fore the fact that the formalities for recovery of premises in Abuja are similar to those of other States hence this researcher did not go to the rigor of citing verbatim the relevant sections of the recovery of premises Act of the federal capital territory.

3.2. Institutional Framework on Recovery of Tenancy in Nigeria

In Nigeria, there are two main regulatory institutions that are saddled with the responsibility of controlling and managing the landlord and tenancy relationship. They are:

1. The Federal and States Ministry of Housing and Urban development

The Federal Ministry of Housing and Urban development is a ministry under the Federal Government of Nigeria¹³. It was established in 2007 first as the Ministry for Urban development and was later merged in 2009 with the housing division to

¹²Recovery of Premises Act. Cap 544 Laws of the Federation of Nigeria (Abuja) 1990

¹³ Ministry of Housing and Urban Development, <<https://worksandhousing.gov.ng/read>> assessed on March 12, 2024

form the present Ministry of Housing and Urban Development. Its mandates are to ensure the implementation of all government policies and programs and one of this is the tenancy relationship. As part of its mandates, they proposed laws or makes needed recommendations to the National assembly to enact needed laws that will go a long way to solving the tenancy issues in Nigeria.

2. State Ministry of Housing

Like the Federal Government, all the 36 States of the Federation has also established their Ministry of Housing to implement the various rent control and recovery of premises in their respective States. For instance, the Plateau State Ministry of Housing and Urban development was established in 2007 and has the same mandate like that of the Federal Government. Similar provisions can also be found in other States of the Federation.

3. Federal Housing Authority

The Federal housing Authority was established in 1973¹⁴. As part of its functions, the Federal housing authority makes proposal to the national assembly on housing programs, executes housing policies of the federal government and makes recommendation to the federal government on relevant issues such as urban and regional planning, transportation etc. Interestingly many States in Nigeria also have their own housing Authority.

4. The Nigeria Legislature

The National Assembly and the various States houses of Assembly as part of its mandate of making laws have risen to the challenge over the years to make needed laws regulating the tenancy relationship. The truth is that were it not for the legislature in Nigeria that enacts various laws against self-help, rent control and

¹⁴ See decree No. 40 of 1973 Cap. 136 LFN, 2004

related matters, most landlord especially in the towns or cities would have been engaging in arbitrariness in collecting rent and ejecting their tenants.

5. The Court as an Institution for regulating tenancy in Nigeria

Although it is the duty of the Court to interpret the Law was passed by the Legislature, The Courts over the years have helped to shape the legal jurisprudence through the making of new rules that have gone a long way in shaping the rule of law in Nigeria. Some of these rules in recent times include the rule against irregularity in service of quit notice, rule against self-help amongst others.

3.3. The Nigeria Courts and the issue of Jurisdiction in Tenancy Matters

It is elementary law that jurisdiction is the superstructure upon which the judicial power of a court of law is founded. In other words, jurisdiction is the life wire, the bedrock and foundation of all judicial and even quasi-judicial proceedings.¹⁵ Consequently, any decision reached without jurisdiction by a court of law or any tribunal is generally said to be null, void and of no legal effect whatsoever.¹⁶ In a recent case of *GTB v. Toyed (Nig) Ltd & Anor (2016)*¹⁷ the Nigerian Court of Appeal, per *Ndukwe-Anyawu, J.C.A* restated the elementary law thus:

The law is well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter and on which any Court tries or hears a case. It is, metaphorically speaking, the life blood of all trials, whether it be at the Court of trial or on appeal, and without which all such

¹⁵ M. A. Lateef, 'Jurisdiction of Courts in Nigeria' (*Nigeria Legal System (Ibadan: University Press Plc, 2019). Pp. 157-209.*

¹⁶ See the case of *All Progressive Grand Alliance (APGA) v. Senator Christiana N.D. Anyawwu & 2 Ors.* (2014) LPELR-22182 (SC); SC 20/2013 (20114).

¹⁷ (2016) LPELR-4181 (CA).

trials and hearings are a nullity notwithstanding how well or meticulous such a trial or proceeding had been conducted or how sound or profound the resultant judgment. It is simply a nullity.¹⁸

The preeminence of jurisdiction as a *sine qua non* in all judicial proceedings is such that an objection to jurisdiction can be raised at any time before, during and after a proceeding¹⁹ before the same court or even for the first time on appeal at the higher courts, including the Supreme Court.²⁰ Despite the clarity of the law on this point, it is still a well-entrenched daily practice in the Nigerian courts, in both civil and criminal proceedings, to see cases raising issues of jurisdiction. Such cases would thereby compel the defendant or an accused person to raise a preliminary objection to the jurisdiction of court to hear or determine the cases. Sometimes, the objection may be raised *suomotu* by the court. However such an objection is raised, it is also an elementary law that it must first be resolved by the court one way or the other before the substantive proceeding is commenced.²¹ Indeed, the Supreme Court in *Ajayi v. Adebiyi*(2012)²², per *Adekeye JSC*, held *inter alia*, that an objection to jurisdiction or an application to strike out a suit for being incompetent on the ground of jurisdiction is not a *demurrer*²³ and therefore can be filed and taken even before the defendant

¹⁸*Ibid*, p. 20, paras A-D. See also several other earlier cases including *Madukolu v. Nkemdilim* (1962) 2 All NLR 581; *PetroJessica Enterprises Ltd v. Leventis Technical Co. Ltd.* (1992) 5 NWLR (Pt. 244) 693; *Onuorah v Kaduna PRC Ltd* (2005) All FWLR (Pt. 256) 1356; *Essien v. Essien* (2010) All FWLR (Pt. 523) 1192.

¹⁹ Ordinarily, a court will not sit on appeal on a case it has already decided or a ruling it has given. However, one of the well-recognised and very limited grounds upon which a court may reverse itself is where it made an order without jurisdiction or where the order is fundamentally defective. See *National Hospital Abuja & Ors v. National Commission for Colleges of Education & Ors* (2014) 11 NWLR (Pt. 1418) 309 – 334; *Lawrence S.U. Azuh v. Union Bank of Nigeria Plc* (2014) 11 NWLR (Pt. 1419) 580; *Okafor v. Okafor* (2000) 11 NWLR (Pt. 677) p. 21; *Skenconsult (Nig) Ltd v. Ukey* (1981) 1 S.C p. 6; Other grounds include fraud and non-service on the other party.

²⁰*Madukolu v. Nkemdilim*, *supra*; *PetroJessica Enterprises Ltd v. Leventis Technical Co. Ltd.*, *supra*.

²¹*Abubakar & Ors v. Nasamu & Ors* (2012) 5 SCM 1; *A.G Adamawa State v. A.G Federation* (2014) 14 NWLR (Pt. 1428) 570.

²²(2012) All FWLR (Pt 634) 1 S.C, p. 30, para C.

²³*Demurrer*, to simply put, is a common law civil procedure and practice whereby a defendant, instead of filing a defence (if any) to a claim against him as required by the rules of court, files an objection to the jurisdiction of the court or on other ground stating in essence that the hearing of the substantive claim of the claimant be stayed

files his statement of defense or without even filling any defence at all. Furthermore, it is a standard practice for lawyers that once an originating court process such as a writ of summon is served on their clients and then passed on to them, one of the first things they do is to first search through the process and examine the content with a view to discovering possible jurisdictional loopholes by which they may quickly shut down the case of their opponents before the case gets up at all. It is therefore due to the importance of jurisdiction that every court of law undertaking judicial exercise or every tribunal exercising quasi-judicial function is required to ensure it has jurisdiction to entertain the matter brought before it to avoid embarking on a futile exercise.

This section is thus intended to examine the jurisdiction of the various Courts saddled with the responsibility of handling tenancy issues in Nigeria.

3.3.1 Meaning of Jurisdiction

Jurisdiction can be defined as the authority which a court possesses to determine a case presented before it in the manner prescribed by law.²⁴ it is the foundation or bedrock of all trials, the presence of which validates the commencement of any trial and the absence of which also invalidates such a trial.

The authority of a court to assume jurisdiction over a case is generally determined by the enabling statute which creates the particular court and vests it with specified jurisdictions.

or delayed till after the hearing of his own objection. It should be noted that the rules of most courts in Nigeria, if not all, have now abolished demurer. In other words, defendants are now generally required to file their defenses, if any, alongside or prior to filing or raising any objection by way of demurer. See for examples: Order 24 Rule 1 of the High Court (Uniform Civil Procedure) Rules 2004; Order 22 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004; and Order 22 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2012. The Lagos High Court Rules simply declare “No demurrer shall be allowed.” However, a new practice or procedure in lieu of demurrer now allowed under the various rules of courts is for a defendant to incorporate whatever point of law or objection he may have in his pleading. See Order. 22 r. 2 (1) & (2) of the Lagos High Court Rules.

²⁴Lateef M. A (n15)

In *ArjayLtd v. AIMS Ltd*²⁵ the court held that “Jurisdiction of a court is a matter of law and it is vested on a court by the Constitution and the statute establishing the court.”²⁶

Further, jurisdiction has been described as the “...fulcrum, centre pin, or the main pillar upon which the validity of any decision of any court stands and around which other issues rotate. It cannot be assumed or implied, it cannot also be conferred by consent or acquiescence of parties.”²⁷ Therefore any exercise of judicial power without jurisdiction is an exercise in futility.

3.3.2 Types of Jurisdictions

Essentially, three types of judicial jurisdictions have been identified by legal scholars. They are: personal, territorial and subject-matter jurisdictions. In *Ibrahim v. INEC*²⁸ this classification was somewhat echoed by the court in the following words: “There must be jurisdiction on the subject matter and the person or an instrument establishing the court.” Personal jurisdiction is the authority that a court of law exercises over persons regardless of the location of such persons²⁹. For example, a High Court in Lagos State may make an order that will bind a defendant in Kano State provided certain due process of law such as due service of the court processes in Lagos State have been made on that defendant in Kano State or wherever he is.³⁰ Usually, the powers of a court to exercise jurisdiction over persons are contained in the statutes and rules of courts.

Territorial jurisdiction is the exercise of jurisdiction within a clearly defined territory and over specified subject matter. This appears the most tenacious or common basis of exercising jurisdiction both in civil and especially in criminal cases. Subject matter

²⁵ (2003) 7 NWLR (Pt. 820) 879

²⁶ *Ibid*

²⁷ *Shell Petroleum Development Company Nigeria Ltd v. Isaiah* (2001), *supra*.

²⁸ (1999) 8 NWLR (Pt. 614) 334 @ 341.

²⁹ Lateef M. A (n15)

³⁰ *Ibid*

jurisdiction is the authority over the subject of the legal questions given rise to the proceedings. For example, only the High Court of a State in Nigeria has jurisdiction over the subject matter of a divorce proceeding pursuant to the provisions of the Matrimonial Causes Act, 2004.³¹ Further, jurisdiction of courts can also be classified in terms of category or hierarchy of courts or nature of subject matter. That is: original, appellate, concurrent and exclusive jurisdictions. Original jurisdiction relates to the right of a court to be the court of first instance over a subject matter or party.

3.3.3 Original Jurisdiction of Courts in tenancy matters

As earlier discussed jurisdiction can arise as a result of statutory provisions. Thus under the various tenancy and recovery of premises laws in Nigeria various Courts have been empowered by statutes to handle tenancy issues. These Courts includes the Customary Courts, Magistrates Courts, sharia Courts and the high Courts depending on the applicable tenancy law in the State. For instance, section 2 of the Lagos State Tenancy law provides thus:

- (1) A court shall have jurisdiction to determine matters in respect of the tenancy of any premises let before or after the commencement of this Law.
- (2) The jurisdiction of a court shall not be ousted by the defendant or respondent setting up the title of any other party.
- (3) The parties' agreement to resort to court connected alternative Dispute Resolution (ADR) or other facilities such as the Lagos Multi-Door Court House or to the Citizens' Mediation Centre for amicable dispute resolution shall not however be construed as an ouster of Court's jurisdiction.

³¹ CAP. M7 L.F.N. 2004

(4) Proceedings shall be brought under this Law at the High Court where the rental value of the premises exceeds the jurisdiction of the Magistrate Court as provided by the Magistrates' Courts Law.

(5) Subject to the provisions of this Law, a Court shall be bound by the practice and procedure in civil matters in the Magistrates' Court or the High Court of Lagos State.

Thus under the Lagos State tenancy law, only the Magistrate and high Courts has jurisdiction to entertain tenancy matters.

However in Delta State, it is the Area and District Customary Courts that has jurisdiction as Courts of first instance to entertain suit related to tenancy issues pursuant to section 2 and 36 of the Delta State Rent control and recovery of residential premises law.³²

Again section 3 of Cross River State Rent Control And Recovery of Premises Law, Cap. R3, 1985 provides.

'The Court shall be an integral part of the Magistrates' Court system and shall be presided over by a magistrate who shall be a qualified legal practitioner and shall have been so qualified for at least three years before the appointment.'

Hence under the Cross River State Rent control law, only the Magistrates has jurisdiction to handle tenancy and rent issues at the lower Court level.

³²Delta State Rent control and recovery of residential premises law, Cap. 180 DSL, 2006. S. 2, 36

3.3.4. Appellate Jurisdiction in tenancy matters

Pursuant to section 6(5) (a) – (k) of the 1999 Constitution (as amended) the following courts are recognised as superior Courts of record in Nigeria:

- (a) The Supreme Court of Nigeria;
- (b) The Court of Appeal;
- (c) The Federal High Court;
- (cc) The National Industrial Court;³³
- (d) The High Court of the Federal Capital Territory, Abuja;
- (e) The High Court of a State
- (f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- (g) Sharia Court of Appeal of a State;
- (h) The Customary Court of Appeal of the Federal Capital Territory, Abuja;
- (i) The Customary Court of Appeal of a State;
- (j) Such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws;³⁴

In tenancy matters, the Supreme Court is the final Court of Appellate Jurisdiction in Nigeria. Thus an aggrieved party can appeal his case from the Customary or Magistrates Court to the High Court and then to the Court of Appeal culminating at the Supreme Court whose

³³The National Industrial Court (NIC), it must be noted, was only introduced into the 1999 Constitution (as amended) as a superior court of record pursuant to the provision of section 254A – 254F of Constitution of the federal Republic of Nigeria (Third Alteration) Act, 2010.

³⁴ This sub-section relates generally to other courts that may be established from time to by the Acts of the National Assembly on matters over which they may legislate.

decision is final. This is the position of the The Supreme Court in *Adegoke Motors v Adesanya* (1983)³⁵ where late Justice Chukwudifu Oputa, JSC stated thus:

We are final not because we are infallible; rather we are infallible because we are final. Justices of this Court are human beings capable of erring. It will be short sighted arrogance not to accept this obvious truth.” The Court is the only Supreme Court in the entire federation of Nigeria. Although the Court only sits in the Federal Capital Territory, Abuja, “there is no provision in the Constitution of any statute that prohibits the Supreme Court from sitting or holding session outside Abuja or any of the States of Nigeria.”³⁶

³⁵ (1983)3 NWLR (Pt 109) 250 @ 274-275.

³⁶ Lawal Pedro, *Jurisdiction of Courts in Nigeria: Materials and Cases* 1st edition, (Lagos State Ministry of Justice Law Review Series, 2006). 19.

CHAPTER FOUR

EXAMINATION OF THE USE OF SELF-HELP UNDER THE DELTA STATE TENANCY LAW IN NIGERIA

4.1 Meaning of Self Help and Forceful Eviction

The Oxford Advance learners Dictionary ¹ defines the term ‘Self-help’ as the ‘Act of relying on your own effort and ability in other to solve your problem rather than depending on other people for help.’

Similarly the Black Law Dictionary² defines Self-help as ‘An attempt to redress a perceived wrong by one's own action rather than through the normal legal processes.’

In tenancy matters self-help can be define as the taking of matters into ones hand by a landlord who resorts to extra-legal methods to enforce a legal right. The use of self-help is commonly found in debt recovery and tenancy matters where landlords or creditors are exasperated by intransigent tenants or debtors.³

From the foregoing where the term self-help is used with respect to tenancy law, it refers to the forceful eviction of a tenant by the landlord without recourse to the Court or to the law. It is a tool used by the landlord to forcefully evict a tenant from his premises after the tenancy has been determined but without resorting to the law. As a general rule, the use of self-help is prohibited by law. However cases abounds in Nigeria where landlords resort to self-help in many situations, some of which includes by executing physical ejection of the tenant by forcefully removing the tenant’s belongings from the premises or by frustrating the tenant via cutting off water supply to the tenant’s apartment and also via some extreme

¹ A. S. Hornby ‘Oxford Advance Learners Dictionary of current English 10th edition, (Oxford University Press, 2020).

² Bryan A. Garner, *Black’s Law Dictionary 8th edition*, (St. Paul Minnesota: west printing Co, 2004).

³Jide Bodede, ‘The dangers of Self-help in tenancy matters’ (WhiteFields Legal, 2020).

<<https://www.whitefieldslegal.com/the.dangers.of.self.help.in.tenancy.matters>>. assessed December 23, 2023.

measures like removing the roof of the building and exposing the tenant to the elements of nature. The position under Nigeria law is that self-help or forceful eviction is illegal and frowns against by law. This is the position of the Supreme Court in *Prof. Ajibajo Akinkugbe v. Ewulum Holdings Nigeria Limited & Anor*⁴

where the Court stated the law thus:

Even where a tenancy has come to an end, the landlord is not entitled to go out into the premises and physically throw out the tenant but must give the statutory notice required to the person in possession. The laws of all civilized nations have always frowned at self –help. The law forbids it.⁵

In the words of Emeka Chianu⁶

The legal policy is that a person should not seek to enforce his right if such enforcement would be contrary to the rule of the person against whom the right are being enforced and will as a result involve the use of force. Such rights should be enforced through the Court.

In the case of *Mclaren v Jennings*⁷ the plaintiff was a Controlling shareholder and a Director of the Company which was indebted to the Defendant. The Creditor in order to collect his rent employed the service of the Police to forcefully arrest and imprison the Plaintiff. The creditor was held liable to the plaintiff for false imprisonment. The Court of appeal stated the law thus:

⁴[2008] 4 SCNJ404

⁵*Elochin (Nig) Ltd v. Mbadiwe* [1986] 1 NSCC 42.

⁶EmekaChianu, *Law of Landlord and Tenant cases and comments 3rd edition*, (Ikeja Lagos: Nigeria printer publication, 2020).

⁷[2003] 3 NWLR (Pt. 808) 470.

Section 4 of the police Act which deals with the general duties of the Police does not empowers the police to enforce a contract or to collect rent or common debt. It is false imprisonment, unlawful, wrongful and illegal for a person to use the service of the police to arrest and detain another where no crime is alleged

In the celebrated case of *Military Gov. Lagos State v Ojukwu*⁸ the Supreme Court per Obaseki, J.S.C., held thus:

In the area where rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world, even in the third world, which proclaims loudly to follow the rule of law, there is no room for the rule of self-help by force to operate... If the government of Lagos State wants possession from Chief Odumegwu Ojukwu, it should apply for an order of possession from the competent Court of law

These above-mentioned procedures are clear and must be complied with. The law is that when a particular way/method of doing a thing and unless such a law is altered or amended by a legitimate authority, then whatever is done in contravention of those provisions amounts to a nullity and of no effect whatsoever.

4.1.1 The Use of Self –help during Tenancy matters

The position of the law in Nigeria is to the effect that a person who first engages in self-help cannot later seek the assistance of the court on the same matter. Furthermore, that person not only runs the risk of legal action but may also incur aggravated damages for the

⁸[1986] 1 All NLR 233, 243,

misconduct. In *Eloichin v Mbadiwe*⁹ while the tenancy was sub-subsisting the landlord entered the premises to forcefully eject the tenants and throw out their property. The tenants sued the landlord for trespass for unlawful entry into the premises and for trespass to their goods and claimed aggravated damages. The Court granted the tenants relief. In that case Aniagolu JSC as he then was stated thus:

The laws of all civilized nations have always frowned at self-help if for no other reason that they engender breaches of 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 too little for his holding, or keeps the premises untidy, or is irregular in his payment of rents 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. It is settled law that even where a tenancy has come to an end the landlord cannot go into the premises to eject the tenant without first issuing statutory notices and obtaining an order of court for possession

4.1.2 The use of Self-help during legal proceedings

The use of self-help during legal proceedings is highly frowning against by the Court as a person cannot approbate and reprobate at the same time. Thus a person cannot at the same time commence legal proceedings and resort to self-help. In *Duwin Pharmaceuticals v Beneks Pharmaceuticals*¹⁰ Duwin sued Beneks for infringement of their registered trade mark

⁹[1986] 1 NSCC 42.

¹⁰ [2008] All FWLR (Pt.414) 1420 at 1437

and obtained an interim injunction against them. The trial court later vacated the injunction and granted an accelerated hearing of the matter. Duwin was aggrieved with the order of the trial court and decided to report the matter to the police and also went on appeal. The Supreme Court held that the resort to self-help was contrary to the rule of law. Aloma Mukhtar JSC (as he then was) stated thus:

It is disturbing that the appellant (Duwin) after obtaining the above orders should proceed to petition the police on the same matter. The order as can be understood was restraining the respondents (Beneks) from *inter-alia* “manufacturing the product in controversy, and so should cover whatever the appellant deemed to be the respondents interference with the product in controversy, albeit adulteration of the product. The argument of learned counsel for the appellant that the report lodged to the police was on adulteration of the product does not reduce the gravity and consequence of the action of seeking police intervention and self-help. The argument is not at all persuasive. The appellant sought the court’s intervention, and the court adequately intervened by giving the reliefs and orders sought, but then the appellant has proved that, that was not enough for it was not satisfied, but resorted to self-help. This action definitely was contrary to the principle that a litigant will not abuse a court’s process that is already in existence by resorting to self-help, and the courts will not tolerate such action or abuse.¹¹

¹¹*Duwin v Benek*(n10). Per AlomaMukhtar JSC

Again in *Oyegbemi v Aromire*¹² there was a chieftaincy dispute between the parties. However the position of the Court of Appeal is very instructive. In that case of Ogunwumiju JCA (as he then was) held thus:

Once parties have turned their dispute over to the court for determination, the right to resort to self-help ends. So it is not permissible for one of the parties to take any step during the pendency of the suit which may have the effect of foisting on the court a situation of complete helplessness or which may give the court the impression that the court is being used as a mere subterfuge to tie the hands of one party while the party helps himself extra-judicially. Both parties are to await the result of the litigation and other appropriate orders of court before acting further.¹³

4.1.3 Recovery of premises with the aid of affidavit that the tenant has abandoned

Possession

According to *Emeka Chianu*,¹⁴ a common practice in some magistrates Courts and other Courts jurisdictions of landlord and tenancy matters is for a landlord to depose to an affidavit stating that the tenant has abandoned possession for a number of months or years. Based on this affidavit, a simple application is made to the Court for an order to enter the demise premises with the assistance of the police and Court bailiff, take inventory of the chattels in the premises, keep them in a same place and restore possession to the landlord. With this the landlord is able to rent the premises. It is submitted here that this action

¹²[2012] LCN/5373 (CA). See also. [2012] LPELR-7942CA.

¹³*Ibid.* per Ogunwumiju JCA

¹⁴EmekaChianu, *Law of Landlord and Tenant cases and comments 3rd edition*,(Ikeja Lagos: Nigeria printer Publication, 2020).

amounts to self-help because it does not put the tenant on the know before such decisions are taken.¹⁵

In the illustrative case of *Ihenacho v Uzochukwu*¹⁶ the appellant upon becoming the caretaker of the premises in dispute, depose to an affidavit, presented it to a chief magistrates who in turn endorsed thereon authorizing him to recover possession of the shop where the Respondent was a periodic tenant. In company of the chief Magistrates' police orderly and a Court bailiff, the appellant broke into the shop, took inventory of the wares and removes them. He then proceeded to let the premises to a third party. On appeal to the Supreme Court, the Court heard thus:

in the present case, the appellant instead of filling an appropriate Court action for the recovery of possession of the premises from the first respondent, resorted to the law of the jungle and by force, snatched the store from the plaintiff and handed it over to the highest bidder on the same day...The controversial affidavit under which the appellant purportedly acted is without doubt neither a warrant, nor an order issued by any district Court. The purported execution of a so-called order of possession based on the affidavit in issue is manifestly illegal, unlawful and without any colour of legal justification¹⁷

¹⁵*Ibid*

¹⁶[1997] 2 NWLR (PT.487) 257

¹⁷*Ihenacho v Uzochukwu* (n16).

4.1.4 Consequences for resorting to Self-help by a Landlord in the Recovery of Possession

The consequences of resorting to self-help are very severe and damaging especially for a landlord. This is because it may result to both civil claims against the landlord as well as criminal prosecution. Aderemi (JSC) as he then was, in *Prof. Ajibajo Akinkugbe v. Ewulum Holdings Nigeria Ltd. & Anor*¹⁸ clearly stated this position thus: “A landlord who resorts to self-help to recover property leased by him runs afoul of the law and is liable in damages”

This position is reaffirmed by Section 44 of the Lagos State Tenancy Law, 2011. The said Section provides:

44(1) Subject to the provision of any law.

(a) Any person who demolish or alter or modifies a building to which this law applies with a view to evicting a tenant and without the approval of the Court; or

(b) Any person who in respect of any premises

(i) Attempt to forcibly eject a tenant

(ii) Threatened or molest a tenant by action or words with a view to ejecting such tenant; or

(iii) willfully damages any premises commits an offence and is liable to a fine not exceeding Two hundred and fifty thousand Naira

¹⁸(2008) 12 NWLR (Pt. 1098) 375

(N250,000:00) or a minimum of Six months imprisonment and any other non-custodial disposition.

Thus the process whereby some landlords deliberately removes the door of the tenant's apartment, pull off the roof, or harass the tenant with thugs so as to evict them is not only unlawful but may result in the landlord paying damages to the tenant. In the illustrative case of *Ihenacho v. Uzochukwu*¹⁹ the first respondent was the tenant of the first appellant in respect of a premises with the second appellant as caretaker. The first respondent was at a time in arrears of rent and the first and second appellant sought to repossess the premises. In a bid to do so, they deposed to an affidavit which was purportedly endorsed by a Chief Magistrate. Armed with the said affidavit, the respondents broke into the appellant's store and removed all his goods. The respondent sued for, among other things, forcible ejection. The learned trial judge found in favour of the plaintiffs (respondents) and awarded damages. The decision was affirmed by both the Court of Appeal and the Supreme Court. At the apex court, Iguh JSC put it thus:

It cannot be over-emphasized that recovery of possession of a premises from a tenant in lawful occupation thereof by a landlord must only be obtained in the Plateau State, as indeed, in most other States of the Federal Republic of Nigeria, by virtue of an order of court obtained after hearing the parties pursuant to the provisions of the Recovery of Premises Law.²⁰

It should be stated that a tenant whose rent has expired is still in lawful occupation as he initially entered the premises with the permission of the landlord and for this reason can

¹⁹[1997] 2 NWLR (Pt.487) 257

²⁰*Ibid.* Iguh JSC

only be removed from his premises by a valid order of the Court and nothing else. The celebrated case of *Akinkugbe v Ewulum Holdings Nigeria Ltd. &Anor*²¹ (Supra) clearly illustrates this point. In that case, the appellant as landlord had leased his property to the respondents as tenants. A dispute arose when the period of the lease expired and the respondents failed to vacate the leased property and give back possession to the appellant. The appellant successfully brought an action in the Lagos High Court claiming possession and obtained judgment in his favour. The respondents applied for extension of time to leave the property. The application was set down to be heard in January 1994, but before the hearing the appellant took possession of the property. The respondents brought an action claiming that their eviction by the appellant was unlawful, while the appellant counterclaimed for damages. The trial court dismissed the counterclaim and entered judgment for the respondents and awarded them special damages in the sum of N3 million. The judgment was affirmed by both the Court of Appeal and the Supreme Court. Onnoghen JSC stated the law thus:

In rejecting the respondent the appellant committed an act of trespass against the respondents and was therefore liable to the respondents in damages. It is important to note that in this case, the landlord had succeeded in an action for recovery of premises. All that was left was for the court to hear the appellants' application for extension of time to leave the property. The landlord only needed to exercise a little patience; instead he incurred himself a liability of N3, 000,000. The court detests that parties interfere with matters already before it. Indeed the Supreme Court per Eso JSC held in *Military Gov. of Lagos State v. Ojukwu*

²¹[2008] 12 NWLR (Pt. 1098) 375

(1986) 1 NWLR (Pt. 18) 621 that: “Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court, thereby invoking the judicial powers of the state, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its full course.”²²

The position under the Nigerian case law and legislative enactment clearly shows that resorting to self-help can lead to dangerous consequences that are very detrimental to the landlord. Some of these consequences are;

- i. It exposes the landlord to liability of damages.
- ii. If the matter is already before the court, the defaulting landlord could be committed for contempt of court.
- iii. It can lead to the criminal conviction which may lead to payment of fines or even imprisonment.

4.2 Procedure for Recovery of Premises under the Tenancy Law in Nigeria

Pursuant to the tenancy laws of most states and the different pronouncements of various Courts decisions in Nigeria, there are laid down procedures for evicting a tenant from his lawful occupation. The procedures are discussed below.

4.2.1 Services of a valid quit notice and Notice of owners’ intention to recover property

A landlord desiring to recover the possession of premises let to his tenant shall first of all determine the tenancy by the service of an appropriate notice to quit. This is the most

²²[2008] 12 NWLR (Pt. 1098) 375. Per Onnoghen(JSC)

common way of determination of tenancy. The Black's law dictionary,²³ defines a quit notice or a notice to quit as a written notice given by a landlord to his tenant, stating that the former desires to repossess himself of the demised premises, and that the latter is required to quit from same at a time designated, either at the expiration of the term if the tenant is under a lease, or immediately if the tenancy is at will or by sufferance.²⁴ The origin of statutory notice to quit is dated back to 1945 in Nigeria when the Recovery of Premises Act, No.45 of 1945 was enacted. The requirements of notice contained in the 1945 Rent Control Act were adopted by the defunct Eastern, Northern and Western Regions of Nigeria and later adopted by the states carved into those regions.²⁵ Subsequent to this, several laws regulating the recovery of premises have now been enacted in Nigeria such as the 2011 Tenancy law of Lagos state, the Recovery of premises Act Abuja, the Rent Control and Recovery of Premises law of Cross River state, the Rent Control Law of Edo state, and the recovery of premises laws of the various states in Nigeria.²⁶

The object of a notice to quit is to terminate the tenancy so that the possession of the premises may go back to the landlord.²⁷ A notice to quit constitutes a formal expression of an intention by either the landlord to the tenant or vice versa to terminate or rather determine a periodic tenancy on a given future date as may be indicated in that notice. The notice to quit is the regular method of terminating a periodic tenancy. However, it may equally be employed to bring a fixed tenancy to an end where such tenancy contains a provision to that effect.²⁸ Generally, the length of a notice to quit may be agreed by the parties (landlord and tenant) expressly in their agreement, and where there is such a stipulation in the tenancy

²³ Bryan A. Garner, *Black's Law dictionary*, 8th edition. (St. Paul Minnesota: West Printing Co, 2004)

²⁴ Bello Damilola 'An overview of the statutory notices required for the eviction of a tenant in Nigeria' (Law Pavilion, November, 30th 2022).

²⁵ Adewale Taiwo, *The Nigerian Land Law* (Princeton & Associates Publishing co. Limited 2016) 92.

²⁶ *Ibid*

²⁷ O. Ige, *A Compendium of Practice Notes* (Crown Goldmine Communications Limited, 2013). 409.

²⁸ Chris Wigwe, 'Recovery of Premises in Nigeria: An Assessment of the Relationship of Landlord and Tenant Law' (*Journal of Commercial and Contemporary law*, 2011). P. 69

agreement, the parties will be bound by the stipulation.²⁹ However, in the absence of such stipulation section 16 of the Rent Control and Recovery of Residential Premises Law 1976 provides that the following will apply to a notice to quit:

1. The length of notice shall be one week in the case of tenancy at will.
2. One week for a weekly tenant.
3. One month for a monthly tenant.
4. Half a year for a yearly tenant.³⁰

Section 13(1) of the Tenancy Law of Lagos state 2011,³¹ provides the length of:

1. A week's notice for a tenant at will.
2. One month's notice for a monthly tenant.
3. Three months' notice for a quarterly tenant.
4. Three months' notice for a half-yearly tenant.
5. Six months' notice for a yearly tenant.

On the determination of the tenancy, he shall serve the tenant with the statutory 7 days' notice of his intention to apply to the court to recover possession of the premises. Where a tenant after receiving these documents but still refuses to deliver up possession of the premises, the landlord shall file his action in court against him.

4.2.2 Institution of Proceedings to Recover Possession

Upon the expiration of the time stated in the notice of owners intention to recover possession served on a tenant who neglects or refuses to quit and deliver up possession, the landlord may file a claim by way of summons for recovery of possession, either against the

²⁹*Ibid*

³⁰Ige O. (n27)

³¹Lagos State Tenancy Law, 2011. S. 13 (1).

tenant or against such person so neglecting or refusing, in the Customary, Magistrate or High Court depending on the applicable Tenancy law in the State. Under the Lagos State Tenancy law a landlord can institute a case against a tenant at the Magistrate or High Court.³² As a general rule, the summons must be filed within the jurisdiction where the premises are situated. By the provision of Section 25 of the Lagos State Tenancy law,³³ the following shall constitute ground for recovery of premises;

- (a) Arrears of rent;
- (b) Breach of any covenant or agreement;
- (c) Where the premises is required by the landlord for personal use; or
- (d) Where the premises requires substantial repair.

Notwithstanding any agreement between the parties, the court shall have power to make an

Order for possession upon proof of any of the following grounds where—

- (a) The premises are being used for immoral or illegal purposes;
- (b) The premises have been abandoned;
- (c) The premises is unsafe and constitute a danger to human life or property; or
- (d) The tenant or any person residing or lodging with him or being his sub-tenant constitutes by conduct, an act of intolerable nuisance or induces a breach of a tenancy agreement.

During the trial in a case for recovery of premises, a plaintiff must lead evidence either written or oral in the open court. To be entitled to judgment plaintiff evidence must be cogent and coherent. He must also tender the relevant exhibits which includes evidence of rent

³² See section 24 of the Lagos State Tenancy law, 2011.

³³ *Ibid.* S. 25.

payment in the past by the landlord, duplicate copies of the quit notice served and duplicate copies of the owners intention to recovery premises to mention a few. A landlord may be represented by a legal practitioner or may file alone.

4.2.3 Judgment/Orders of Court

A judgment is usually the decision reached by a competent Court at the end of the trial process after hearing from the parties or party and such decision must be capable of being enforced. The Supreme Court, in the case of *Okoya v. Santilli*³⁴ defined judgments and orders as follows:

Judgments and orders are usually determinations of rights in the actual circumstances of which the court has cognizance, and give some particular relief capable of being enforced.

Mere pronouncement by the courts during trial cannot constitute the judgment of Court. To constitute a judgment such pronouncement or orders must have a particular relief that is capable of been enforced. Basically there are two types of judgment/orders namely; the unenforceable and the enforceable judgments/orders.

Unenforceable Judgments/Orders

This includes the following;

i. Declaratory Orders:

A Declaratory order is one that proclaims or declares the existence of a legal relationship, but does not contain any order which may be enforced against the defendant. The Supreme Court in the case of *Oba Rasheed Ayotunde Olabomi & Anor .v. Olabode Oyewinle & Ors*³⁵ held that:

A Declaratory judgment or order is one that proclaims or declares the existence of a legal relationship, but does not contain any order which

³⁴ [1990]2 NWLR (pt.131) 172

³⁵ [2013] LPELR – 20969 (SC)

may be enforced against the defendant. Once rights declared in a declaratory judgment are infringed fresh proceedings are needed for enforcement. Declaratory judgments cannot be enforced by execution, as there is nothing to enforce. So, where a court delivers a declaratory judgment, the party appealing may be granted an injunction if he deserves it but never a stay of execution pending the determination of the appeal

ii. Interlocutory Orders:

Interlocutory Judgment or orders are orders made in between trial or while the case has not matured to judgment. They are on the same footing with declaratory Orders because they are unenforceable for the reason that, at the stage of making the order, the rights of the parties are yet to be finally determined. However, in some cases an interlocutory order which terminates part of a case can be enforced while the rest of the case goes on.³⁶

Enforceable Judgments and Orders

Enforceable judgments/ orders are also known as executor judgments/orders. Executory judgments are judgments which declare the respective rights of the parties and then proceed to order the defendant to act in a particular way or restrain them from so acting. These judgments are by their nature enforceable immediately.³⁷ Unlike declaratory judgments/orders, an executory judgment/order is mandatory, with its wordings clearly and unambiguously directing a particular step or restraining a particular action. It is that clear directive that is to be enforced if flouted. It is not merely interpretative or expository. It implies an emphatic directive or order.³⁸ This is because judgments of courts are meant to be

³⁶ See the case of *Afuwape v Shodipe*. [1957] 2 FSC 62 @ 64; *Tomas (Nig) Ltd. v. Minister of Works And Housing*[2001] 10 NWLR (Pt. 721), 287 @ 294.

³⁷ See the case of *Osho v. A.G Ekiti State*[2001] 46 W.R.N 22 @ 42

³⁸ *Idika&Ors v. Offia&Ors* [2017] LPELR - 4228

obeyed without demand, and failure to obey same would make the party entitled to judgment to apply to enforce same accordingly.³⁹

The focus of this work however is on enforcement judgment/orders.

4.2.4 Enforcement of Judgment in Possession Matters

In the case of *Okoya v. Santilli*⁴⁰ the Supreme Court itemized the methods of enforcing different kinds of judgments as follows:

- (i) A judgment/order for payment of money may be enforced by a writ of fierifacias, garnishee proceedings, a charging order, a writ of sequestration or an order of committal on a judgment debtor's summons.
- (ii) A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or a committal order.
- (iii) A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution of their value, a writ of sequestration or writ of committal.
- (iv) A judgment ordering or restraining the doing of an act may be enforced by an order of committal or a writ of sequestration against the property of the disobedient person.

Thus in possession matters enforcement of the judgment is by a writ of possession. Section 43 of the Lagos State Tenancy Law⁴¹ supported this position. The section provides thus;

At the expiration of the time ordered by the court, if an order of possession of the court is not obeyed, the court at the instance of the

³⁹ Ibid.

⁴⁰[1990] LPELR. 2504 (SC)

⁴¹ See Section 43 of the Lagos State Tenancy Law, 2011.

landlord shall, where such order can be proved to have been served on the tenant, issue a warrant for possession, and if the order is that possession of the premises be given up by the tenant to the landlord, the court shall immediately at the instance and at the cost of the landlord, issue a warrant for possession to the landlord

4.2.5 Stages in enforcement of judgment in possession matters

There are two major stages in the enforcement of judgment in possession matters or suit. This is often referred to as the pre-execution stage and the execution stage.

i. pre-execution stages in the enforcement of judgment in possession cases

This is also referred to as the preparatory stage. Under this stage a judgment creditor working in collaboration with the Registrar of the Court and the bailiff or sheriff where the judgment is given to put in place all necessary measures to carry out the execution. This stage includes the following;

1. Moving the Case File to the Registrar of the Court.

This is a very important stage. It is not as if the legal practitioner will by himself take the file by himself and take it to the registrar rather he may do so by requesting the Clerk of Court to forward the Case file to the Registrar of Court for necessary action. Before sending the file to the Registrar application for the certified true copy of the court judgment must have been duly obtained by the Plaintiff or his Counsel.

2. Obtaining the necessary forms

The forms to be completed and filed in the process of execution are as follows;

- a) Judgment form
- b) Writ of Execution of ‘Fifa’
- c) Writ of Attachment of Immovable Property (Notice of attachment)
- d. Recovery of premises form (Warrant for possession)

e) Request for Police Assistance

a). Writ of Fieri Facias (Fifa)/ Attachment & Sale of Goods: Writ of fieri facias, otherwise known as writ of fifa is a writ issued to enforce a judgment or order for the payment of money to any person, or for the recovery of money by any person. Strictly speaking, service of a court order on judgment debtor who is deemed aware of the court decision or any order prior to execution, may just be a mere surplusage. In the case of *Olatunji v. Owena Bank Plc*⁴² the Supreme Court held that:

The practice which is well established for many years, is clear, that a Writ of fifa may issue immediately upon payment becoming due upon a pronouncement in a judgment and as a matter of course without leave and without the necessity of a prior notice to; or for prior service of the judgment or order upon the judgment debtor. Per Musapher, JSC.
(Pp.13-14, Paras. G-A)

This writ is also known as writ of attachment and sale of goods. A writ of attachment authorizes the seizure of any valuable moveable property of the judgment debtor whosoever they may be found within the relevant judicial/magisterial division, and such includes money, bank notes, cheque, bill of exchange, promissory notes and or other security for money with the exception of wearing apparels, beddings and tool and implement of trade to the value of Ten Naira (N10).

This is in line with Section 25⁴³ of the Sheriff and civil processes Act that states:
‘Every sheriff or officer executing any writ of execution issued from a court against the goods or chattels of any person may by virtue thereof seize.

- a. any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and

⁴² (2008) 8NWLR(pt. 1090) 668 at 680

⁴³ Sheriff and Civil Processes Act, 1959.LFN, 2004. S. 25

implements of his trade, to the value of ten naira, which shall to that extent be protected from seizure; and

- b. any money, bank-notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.⁴⁴

b) Warrant for Possession: The warrant for possession is a form used to carry out execution for the recovery of premises. It is used to recover possession from a tenant to land that refuses to deliver or give up possession even after judgment had been entered against him and all notice has also been served on him in the matter. This will be discussed in detail later.

c). Writ of Attachment of Immovable Property: The Sheriff and Civil Process Act⁴⁵ provides for the requisite guides for attachment of immovable property. The writ of attachment of immovable property is as prescribed in form 38 of the Act. This form is used to attach and dispose the immovable property of a judgment debtor. However, this form is hardly issued in the first instance, in fact, as a pre-condition for its issuance, the applicant must, as a requirement, satisfy the court that he has taken every step towards liquidating the debt by levying execution on the movable property of the debtor, which in some instances could not be found or those found were not reasonable enough to satisfy the judgment sum. It is important to mention that, unlike the warrant for possession, in executing a writ of attachment against an immovable property, it is not necessary to vacate everything found in the property, however, in practice, the property must be vacant or vacated for ease of disposal.

⁴⁴*Ibid*

⁴⁵ See the Sheriff and civil processes Act. Sec. 44 & 46

d) Request for Police Assistance

In all execution to be carried out, the Registrar or the Deputy Sheriff must always rely on police assistance to be successful in carrying out such orders. The reason for this is to enable the Police stem any violence that may result from the execution of the warrant. The form or letter titled 'request for police assistance' usually contains the following information

- a. The Suit number of the case and the parties.
- b. The date of judgment and a copy of the judgment attached
- c. The date to carry out the execution as well as the time
- d. The number of Policemen requested for.

ii. Execution Stages in the enforcement of judgment in possession matters

This is the stage where the judgment or orders of the Court is carried out properly. Under this stage, the Bailiff and the Police goes to the Judgment debtor apartment or building to carry out the execution of the Judgment using the warrant of possession. The purpose of this warrant as the name implies is to recover possession of a property. It could be a tenancy matter for the recovery of possession or upon declaration of title. The warrant for possession is the most straight forward form amongst all the forms because it recovers possession whether or not the judgment debtor is found in the said premises. All the bailiff needs to do is paste a copy of the warrant on the property to be recovered and then proceed to open it or in some instances, where necessary, break the door to gain access, and if such a property is occupied by a tenant or anyone else the bailiff will have to evacuate all the property before handing over vacant possession to the judgment creditor. Also, the said warrant in some instances could be issued against a vacant land (undeveloped land), in such instance, the bailiff executes it by pasting/placing the warrant at a conspicuous place on the property and possession is taken and handed over to the judgment creditor.

4.3 Challenges in the legal framework on tenancy in Nigeria

Nigeria is not lacking in tenancy laws as a lot of laws has been enacted to regulate the tenancy relationship. However what is lacking is that most of these laws does not meet the challenges of modern reality and thus makes it possible for landlords who engage in unlawful acts such as the use of self-help in ejecting a tenant out of premises to walk free in the society while the tenant who is unlawfully ejected suffers. The following are thus some of the challenges identified with specific reference to the use of self-help in the recovery of premises.

4.3.1 Constitutional challenges in tenancy issues

Tenancy or any matters incidental to it is not mentioned in the exclusive or concurrent list of the Constitution hence it is not listed in Part I and Part II of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended).⁴⁶

This means that tenancy regulation automatically form part of the Residual list and thus within the exclusive jurisdiction of the State Houses of Assembly. As a result of this, tenancy laws are not given prominence or the priority it deserves. This is one main reason why a lot of people are not unaware of the existence of tenancy laws in Nigeria. Nigeria is the most populous Country in Africa and with this comes the challenges of housing and tenancy especially in the towns and Cities of Nigeria. Therefore including tenancy law in the concurrent list of the Constitution will enable both the Federal and State government to see the need to take tenancy issues seriously and give it the necessary priorities it deserves.

4.3.2 Delta State Rent Control and Recovery of Premises law, 2004⁴⁷

The Delta State rent control and recovery of business premises law can be said to be a good law. The law prohibits the incessant increase in rent, provides for security in tenancy and also provides for the steps to be taken to recover premises by a landlord from his tenant.

⁴⁶F.C.Ebere, 'Housing and Tenancy in Nigeria: a legal reappraisal' (2020). <https://ssrn.com/housing.and.tenancy>. assessed February 21, 2024.

⁴⁷ Rent control and recovery of Residential premises law, Cap R5 2008

The law also prohibits a landlord from resorting to the use of self-help in the recovery of premises. However the following challenges have been identified in the law.

- a. The Penalty specified in section 38 is too minimal to deter a landlord from the use of self- help in the recovery of his chattel from his adamant tenant who refuse to deliver up possession.

Section 38 of the Delta State rent control and recovery of premises Law provides:

(1) Subject to the provision of any law in force, any person, who demolishes, alters or modifies a building to which this law applies with a view to ejecting a tenant and without the approval of the appropriate Court is guilty of an offence and liable on summary conviction to a fine of N200:00 or imprisonment for 3months or both.

(2) (i) any person who in respect of any accommodation to whom this law applies-

(a) Attempts to eject or forcible eject a tenant; or

(b) Harasses or molest a tenant by action or words with a view to ejecting such tenant; or

(ii) Any person who in respect of any accommodation to which this law applies –

(a) Harasses or molest a landlord in respect of accommodation let by him by action or words; or

(b) does any act or thing whatsoever calculated to stultify the provisions of this law, or fails to comply with the provision of any order made by a Court shall be guilty of an offence and liable on summary conviction to a fine of N200:00 or imprisonment for 3

months or both⁴⁸.

It is submitted that the fine of N200:00 as a punishment under the law is too minimal to deter a landlord from resorting to self-help. As a result of lack of awareness, most Nigerians do not take the issue of payment of fines seriously. Some are not even aware that such payment of fines amounts to their conviction for life. Therefore they pay this fine and go home happily on the ground that they've succeeded in ejecting their tenant through unlawful means. It is thus submitted that a more punitive fine such as the sum of N250,000:00 as it is under the Lagos State Tenancy law will help in deterring landlord from engaging in the use of self-help.

- b. The Delta State Rent Control law does not make any provisions on an itinerant and stubborn tenant who deliberately refuses to deliver up possession.

A major challenge also observed in the law is its inability to specify punitive punishment for tenants who refuse to deliver up possession but choose to litigate or go to the Court with the landlord and stop paying rents during the period. Because the law is tilted to favour the tenant, it becomes difficult for a landlord to recover his premises, hence a landlord may resort to self-help instead of following the due processes of the law. It is submitted that this aspect needed to be looked into.

4.3.3 Rent Control and Recovery of Premises Law, 1985 of Cross River State⁴⁹

The rent control and recovery of premises of Cross River State has similar provisions like the rent control law of Delta State save for the differences in sections. Section 43(1) of the law provides:

⁴⁸Delta State Rent control and recovery of premises law, 2004. S. 38

⁴⁹Rent Control and Recovery of Premises Law, 1985 of Cross River State.

Subject to the provisions of any law in force, any person who demolishes, alters or modifies a building or use of a building to which this Law applies with a view to ejecting a tenant and without the approval of the appropriate Court is guilty of an offence and is liable on summary conviction, to a fine of five hundred naira or imprisonment for six months or both.

(2) Any person who in respect of any accommodation to which this Law applies—

- (a) being a landlord, attempts to eject a tenant;
- (b) harasses or molests a tenant by action or words, with a view to ejecting such a tenant; or
- (c) being a tenant, harasses or molests a landlord by action or words in respect of accommodation let to him;
- (d) does any act or thing whatsoever calculated to stultify the provisions of this Law, or fails to comply with the requirements of any order made by a Court, is guilty of an offence and is liable on summary conviction, to a fine of two hundred naira or imprisonment for three months, or both.

It is thus submitted that the sum of five hundred naira and two hundred naira respectively are too minimal. The law should therefore be looked into.

4.3.4 Rent Control and recovery of premises law of Akwa Ibom State⁵⁰

Section 42 (2) of this law also provides for a maximum punishment of N5, 000 and 3 months imprisonment for a landlord who resort to the use of self-help. This punishment to my mind is not enough to deter a landlord from using illegal means to quit his tenant. The law should therefore be addressed.

4.4 Challenges in the Institutional Framework on Recovery of Tenancy in Nigeria

There are no doubt various institutions saddled with the responsibility of regulating the tenancy and housing issues and implementation of government policies in Nigeria. However some of these challenges have been identified.

- I. Some of these agencies only happen in the book as their role are not felt in Nigeria. Many Nigerians are not even aware of their existence as they only carry out paper work in the office.
- II. Poor implementations of the various laws by the institutions saddled with the responsibility to do so. Because most of these institutions under the Federal and State Ministry of housing and urban Development often fail to implement the various laws, the general public are not even aware whether these laws exist.
- III. Lacks of awareness campaign by the regulatory agencies are another clog in the wheel of progress in the landlord and tenancy relationship.

4.5 Judicial Challenges in the Recovery of Premises and the attainment of justice in Nigeria

Over the years in Nigeria, the Court has played an important role in the landlord and tenancy relationship in an effort to do justice. This is because the attainment of the law is justice.

⁵⁰Rent Control and recovery of premises law of AkwaIbom State, 2006.

The word justice is one of the most critical moral and political concepts⁵¹. It is derived from the Latin word ‘jus’, meaning right or law⁵². It connotes the proper administration of the law; the fair and equitable treatments of all individuals under the law. Justice can also be described as a scheme or system of law, including natural and legal rights⁵³. According to Plato, justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of the other part. Similarly, Rawls analysed justice in terms of maximum equal liberty regarding basic rights and duties for all members of the society, with socioeconomic inequalities requiring moral justification in terms of equal opportunity and beneficial results to all.⁵⁴ It has also been defined as the concept of moral rightness based on ethics, rationality, law, natural law, religion, fairness, or equity. It is the proper implementation of laws.

Law, on the other hand, is the means by which justice is attained. Within the context of this research, the law is an instrument of social control and a means of regulating social order. This, by implication, is the regulation of the relationship between the landlord and the tenant⁵⁵. The essence of such a regulation would be to achieve justice for which the law is a vehicle.

In fact, ‘without justice, law labours in vain.’⁵⁶ This position is aptly captured in the words of Justice Kayode Eso, JSC in *Trans bridge Trading Company Ltd v Survey International Ltd*⁵⁷ in the following words:

⁵¹B.N. Omotayo, O.E. Gabriel, & M.D. Paul ‘Recovery Of Premises in Nigeria: A Law For Justice Or Legalised Bias Against The Landlord’ (Achievers University Law Journal Aulj Volume 1 2021)

⁵²P. Wayne, Pomerleau, ‘Western Theories of Justice’ <https://iep.utm.edu/justwest> accessed 17th December, 2023

⁵³West’s Encyclopaedia of American Laws (2nded. The Gale Group Inc; 2008), <<https://www.thefreelibrary.com>> accessed on the 17th December, 2023

⁵⁴ John Rawls, ‘*The Theory of Justice*’ (Harvard University Press; 1971) cited in Wayne P. Pomerleau, ‘Western Theories of Justice’ <<https://iep.utm.edu/justwest>> accessed on 17th December, 2023.

⁵⁵Wayne P. (n52).

⁵⁶Kayode Eso, cited in Dakas CJ Dakas, ‘Beyond Legal Shenanigans: Towards Engendering A Symbiotic relationship between Law and Justice in Nigeria.’ (Conference Proceedings, Nigerian Association of Law Teachers’ 51st Annual Conference, 2018).

⁵⁷ (1986) 4 NWLR (Pt. 37) 576 at 596-7

It would be tragic to reduce judges to a sterile role and make an automation of them. I believe it is the function of judges to keep the law alive, in motion, and to make it progressive for the purpose of arriving at the end of justice, without being inhibited by technicalities, to find every Conceivable, but acceptable way of avoiding narrowness that spells injustice. Short of being a legislator, a judge, to my mind, must possess an aggressive stance in interpreting the law.⁵⁸

So, the foundation and purpose of the law is to serve justice. This perhaps is the concept behind christening some laws as unjust. A law that does not birth justice may be regarded as an unjust law⁵⁹. This is why States consider it critical to their functions to ensure justice between their citizens. Every state is expected to possess the capability to administer justice to its citizens according to its legal system. This principle was also applicable to ancient states, where one of the primary duties of their rulers was to guarantee justice to their subjects. Therefore, where a law is made to regulate their relationship between parties, it must inherently be fair, placing each person in equilibrium with the other based on their circumstances⁶⁰.

Since the foundation of the law is to bring about justice in the society where both the landlord and tenant can be seen to be given equal treatment, this section therefore considers whether the law and the courts over the years has favoured the landlord or tenant. An understanding of this will therefore give an insight to why in most cases some landlord resorts to self-help instead of the Court for justice.

⁵⁸*Transbridge v Survey (n57)*

⁵⁹Kayode E. (n56)

⁶⁰*Ibid*

4.4.1 The law and the legal system, tilted to favour the tenant

Although the various recoveries of premises laws in Nigeria contain provisions that regulate the relationship between the landlord and the tenant, the laws however is geared towards offering more protection to the tenant than the landlord. For instance the seven days' notice of owner's intention to recover possession must be given by the landlord after giving the tenant the required notices to quit. Ordinarily a tenant who refuses to pay his rents or breaches some specific terms of the covenants clearly show that he no longer wishes to remain in the demise premises. In most cases however the landlord serves a quit notice, the tenant does nothing about it and the landlord serves the 7 days' notice of owner's intention to recover possession. Even with this, the tenant still refuses to quit until an action is filed at the Court and Judgment is given before it done on the tenant to quit. All of this process takes time and consumes finance that would have been channeled into other useful purposes. It is submitted here that the 7 days' notice of owner's intention to recover possession may not be necessary in all circumstances especially after the required quit notice has been served on the tenant. In most cases where the landlord feels that the process is too cumbersome, he may resort to self-help as a way of getting quick access to justice.

4.4.2 The Cost of litigation and award for damages by the Courts

In an adversarial system such as ours, the judges are not inquisitors saddled with the responsibility of making inquiries to ascertain the truth of a case before them⁶¹. They pass judgment on the evidence produced before them by the parties on the balance of probabilities. This means parties must prove their cases. Discharging this obligation comes at a considerable cost. Although parties can prosecute or defend any suit in person; they are more comfortable and indeed feel safer to engage the services of a lawyer. Where a landlord

⁶¹Kayode E. (n56)

chooses the option of employing a lawyer to recover his premises, the process begins with the cost of employing a lawyer to prepare and file the case, assembling witnesses, and sometimes paying their transportation to and from the court to payment of appearance fees, and other ancillary costs. All of these run into thousands. Just like any other service in Nigeria, the cost of litigation is also on the rise. Understandably, while no law particularly provides for this cost, the court's reluctance in awarding the cost of litigation against erring defendants in appropriate circumstances is quite saddening. For instance, in *Ihekwoaba v ACB Ltd*⁶² the Court of Appeal refused to award legal fees (aspart of the cost of litigation) because there was no system of costs taxation to get a realistic figure since, by the rules of court, such cost is subject to tax.

In fact, in *Guinness Nig. Plc. v. Emmanuel Nwoke*⁶³ the Court of Appeal held while refusing to award legal fees that it is unethical and an affront to public policy to pass on the burden of solicitor's fee to the other party. So, when a landlord successfully recovers possession through the court, he does so at a huge loss even when manse profit is ordered⁶⁴. This is because the landlord will not have to spend on legal and other fees if he secures possession without recourse to the court. On the other hand, the defendant, through the delay in trials, is given more than sufficient time to secure another accommodation, and in the worst scenario, pay for menseprofit; an amount which he is ordinarily obligated to pay even if the matter was not before a court for determination. Apart from legal and other costs of prosecuting the case, if upon termination of the case, mense profit was ordered and the defendant neglects or fails to pay, the landlord would have to apply for a writ of attachment, at another cost which adds to the cumulative loss of the landlord even if he eventually succeeds. We must state that in practice, the cost of litigation in tenancy proceedings is not only monetary. It also involves time, energy, and even the psychological effect on the

⁶² (1998) 10 NWLR [Pt. 571] 590 at 610-611

⁶³ (2000) 15 NWLR [Pt. 689] 135

⁶⁴ *Ibid.*

landlord. It is submitted here that most landlords opt for the option of self-help to avoid the above processes which consumes time and money.

4.4.3 Judicial Remedy for Tenant

Generally, every judge sitting to do justice in tenancy matters for the recovery of premises must first look at the face of the claim or plaint and the relevant documents to see whether the required notices has been served and if they are served whether they were properly served or in most cases the appropriate notices have been served. The searchlight is first beamed on the landlord before any consideration is given in respect of the defendant. These procedures are strict and if it is established that a landlord has not followed the due process of the law, the case is liable to be struck out. All of these decisions are taken without recourse to the tenant attitude. Besides this even after the case has been properly commenced in Court and the bailiff of Court has deposed to an affidavit of service but the Defendant still deliberately failed to appear in Court, the Court may still order that a fresh hearing notice be served on the Defendant. All of these involves money and consumes valuable times on the part of the Plaintiff or landlord. It is therefore submitted that this approach of beaming search light on the landlord without the tenant should be look at for the sake of justice and equity.

Still related to this is the issue of a solicitor issuing quit notice on behalf of a landlord. Over the years, this has posed a very big challenge because except the Landlord can show by a written letter that he authorized him to act, the case fails. Thus *in Balogun v Lagos Executive Development Board*⁶⁵ the court held that unless a solicitor is specially authorized in writing by the landlord, he could not serve statutory notices required under section 7 of the Recovery of Premises Act. Therefore, it is safer to always issue a letter of authority to a solicitor or a firm of solicitors before they can act as agents.

⁶⁵[1963] ALL NLR.

Where a letter of authority is given to a firm of solicitors, evidence must be led to establish that the solicitor that signed the notice on behalf of the landlord is a member of the firm.⁶⁶ A Letter of Authority must first be issued before a person or solicitor can act as an agent.⁶⁷ Notice to quit or notice of intention to recover possession served by a solicitor before the landlord issues a letter of authority to him to so act in that capacity is also null, void and of no legal effect.⁶⁸

One can therefore imagine a landlord who puts in place the motion of evicting a tenant but fails to actualize same as a result of mere technicalities. Thus a lot of landlord will choose the path of self-help other than the path of justice.

One issue that requires addressing is the content of a letter of authority. The following are some of the most critical contents⁶⁹

- i. The name of the solicitor or firm of solicitors;
- ii. The premises sought to be recovered;
- iii. The act or acts that needed to be performed;
- iv. The name of the tenant;
- v. The date the letter of authority was issued and,
- vi. The landlord's signature.

Non – compliance with these requirements renders both the letter of authority and any purported action by the so-called agent invalid.

The service of a valid notice to quit is a condition precedent to the lawful recovery of premises. Needless to say that where a valid notice to quit is not properly served on a tenant, the tenancy relationship between the landlord and the tenant subsists. This implies that a court can neither make an order for delivery of possession nor payment of mense profit in favour of the landlord. The only order the court can make in the circumstance is the payment

⁶⁶*Omogunkoya v Martin* [1975] 3 C.H.C.C.J 939

⁶⁷*Fayemi v Simons* [1977] 3 C.C.H.C. 381. See also *Wada v Bryan* [1973] 3 C.C.H.J 59

⁶⁸*Coker v Adetayo* [1992] 6 N.W.L.R (Pt 249) 612 at 613

⁶⁹*Bello v Salami* [1969] 2 LL N.L.R 291

of rent arrears. It is also important to note that where a landlord serves a defective notice to quit or notice of owners' intention to apply to the court, the proper order the court should make is for striking out the suit, not dismissal. In that instance, all the landlord needs to do is to issue and serve a proper notice and subsequently commence the proceedings properly again.⁷⁰

4.4.4 Delay in the dispensation of Justice by the Nigerian Court

Another major challenge that is faced by landlord in getting justice is the delay in the dispensation of justice by the Nigeria Courts. This was what happens in the recent decision of the Supreme Court in *Pillars (Nigeria) Ltd v Desbordes*.⁷¹ This case took 28 years from 1993 when it was filed in the High Court to 2021 when the final judgment was delivered by the Supreme Court. It was in the High Court between 1993 and 2000 (seven years), in the Court of Appeal between 2000 and 2009 (nine years) and in the Supreme Court between 2009 and 2021 (twelve years). According to Ebun-Olu Adegboruwa,⁷² This is how the judiciary works in Nigeria, where litigants who file their cases in Court are not sure that they will still be alive when the case is finally decided⁷³. By default, the courts serve the interests of the defendant, in this case the lessee who must have remained in the property for the duration of the cases, for 28 years from the High Court to the Supreme Court, perhaps without paying rent. This is why impunity practitioners taunt their victims to go to court, knowing that the system is damn too slow to deliver real justice to most people⁷⁴. And to imagine that this could have been a commercial transaction where time is of the essence. Which investor would commit his money into an economy where it takes twenty-eight years to resolve an issue as simple as breach of a lease agreement? This is why something needs to be done urgently to address the

⁷⁰*Eleja v Bangudu*(1994) 3 N.W.L.R. (Pt 334) 526

⁷¹ [2021] 12 NWLR (Pt.1789) 122

⁷²Ebun-OluAdegboruwa, 'Legal reprieve for landlord' (Sahara reporters Newspaper January 18, 2022).
assessed December, 23, 2023

⁷³ *Ibid*

⁷⁴ *Ibid*

rot that is currently plaguing the judiciary across the States and even in the federal judicial sector⁷⁵.

⁷⁵ *Ibid*

CHAPTER FIVE CONCLUSION

5.1 Summary of Findings

This research has critically appraised the use of self-help and forceful eviction in the determination of tenancies by landlords in Nigeria. Self-help was defined as the taking of matters into one's hand by a landlord who resorts to extra-legal methods to recover possession from his tenant without recourse to the Court or any legal means. It was also shown that some of the methods used by landlords to forcefully eject or evict a tenant includes cutting off water supply or electricity, removal of roof from the building, incessant quarreling with the tenant to mention a few. It was shown that the use of self-help is prohibited by law. Even where a tenancy has come to an end, the landlord is not entitled to go out into the premises and physically throw out the tenant but must give the statutory notice required to the person in possession. The legal framework on tenancy in Nigeria was also examined and it was clearly shown that the recovery of premises law in most States of the Federation including the Federal Capital Territory has provisions that guide against self-help and thus makes a landlord liable to punishment either by payment of fines or to imprisonment or both. However some States do not have strict punishments for landlord who engage in self-help. A critical examination of the rent control and recovery of premises law of Delta State, Cross River State and Akwa-Ibom State of Nigeria shows that the punishment provided in the laws are too minimal to deter landlords from the use of self-help unlike the tenancy law of Lagos State which provides for strict punishment.

Findings also show that the various institutional framework or regulatory agencies on tenancy issues have not really lived up to their duties. Some of these agencies only happen in the book as their role are not felt by Nigerians. Many Nigerians are not even aware of their existence as they only carry out paper work in the office especially the Federal and States Ministry of housing. Again the challenge of poor implementations of the various laws by the

institutions saddled with the responsibility to do so. Because most of these institutions under the Federal and State Ministry of housing and urban Development often fail to implement the various laws, the general public are not even aware whether these laws exist. Coupled with this is the lack of lack of awareness campaign by the regulatory agencies. All of these have led to the incessant cases of the use of self-help in recovery of premises in Nigeria.

The researcher also looks at the role of the Court over the years in Nigeria and it was seen that the Courts has contributed in no small way to the development of tenancy law in Nigeria. From the various legal framework examined, it was shown that the Customary Courts, Magistrates Courts and high Courts depending on the enabling laws has original jurisdiction to handle or entertain tenancy issues in Nigeria. However an aggrieved party can appeal up to the Supreme Court in Nigeria as the final Court of Appeal.

Despite the contribution of the Courts over the years in resolving tenancy disputes, it was observed that the administration of justice through the Court system in Nigeria is also fraught with some challenges which includes, delay in the dispensation of justice, too much adherence to forms and procedures that often work in favour of the tenant, uncooperative attitude of the Court in the award of legal fees to Landlords and so on. It was shown that as a result of the above challenges a landlord may resort to illegal means to recover possession from his tenant.

5.2 Recommendations

In order to fully address the apparent challenges both in the legal framework as well as the judicial challenges identified, the following recommendations should be implemented.

- i. Need create awareness to the general public on the existence of the Recovery of premises Laws by the various States of the Federation

There should be need for awareness campaign on the existence of the various recoveries of premises and tenancy laws among States and the Federal Capital territory to make landlords and tenants become aware of their rights and obligations. This will no doubt make it possible for individuals to enforce their rights if such are violated.

ii. Amendments to the various recovery of premises laws of most States of the Federal Republic of Nigeria to provide for more Stringent punishment for landlords who resort to self-help

Most States of the Federation and even the Federal Capital territory provides for lesser punishment for landlords who resort to self-help in the recovery of premises. The Lagos State Recovery of tenancy law, 2011 that provide for a fine of two hundred and fifty thousand Naira (N250, 000:00) or a maximum of six (6) months imprisonment and any other non-custodial disposition should be used as a template for such amendments.

iii. Quick dispensation of Justice in the Nigerian Court

It is hereby recommended that the excessive delays in recovery of promises proceedings injected by unnecessary adjournments of cases and applications be proactively dealt with. This will help curtail recourse to self-help by landlords in recovering their premises.

iv. Provisions for alternative dispute resolutions (ADR) by States in the Recovery of Premises

The Recovery of Premises laws of the various States of Nigeria should make provisions for the Multi-door Court House where landlord and tenancy issues can be proactively dispense with as quickly as possible. It is when such mechanism fails that

resort will be made to the Court for adjudication. This will enhance faster and prompter solution of dispute and also help to decongest the Court.

v. **The Court should endeavor to do Justice instead of too much adherence to technicalities**

Technicalities in most cases prevent the Court of the ability to do Justice in a case. In Nigeria, most tenancy cases over the years have been struck out on the ground of technicalities. A court should therefore endeavor to do justice by looking at the merits of a case so that justice can be seen to have been done in a matter before it.

vi. **Implementations of the relevant laws by the various regulatory agencies**

The institutions saddled with the responsibility of implementing tenancy laws in Nigeria such as the Federal and State Ministry of housing and urban Development should endeavour to perform their duties so as to make the general public become aware of their existence.

vii. Tenancy issues should form part of the concurrent list of the Constitution so as to enable the Federal and State Government give it the needed priority it deserves

5.3 Contribution to Knowledge

This research has exposed to the general public and to the Nigerian Legislators that there are a lot of cases of Landlords who resorts to self-help and forceful eviction in the recovery of premises in Nigeria. A lot of tenants have suffered as a result of this draconian way of termination of tenancy. The research has clearly shown that only a few of these cases are reported while for many Nigerians, they are not even aware of their rights not to talk of enforcing same. The research therefore contributes to knowledge in the following areas:

1. It has brought to the fore the need for awareness campaign to the general public to know that there are laws governing tenancy issues in Delta State as well as in other States of Nigeria.
2. It will also be helpful to the Nigerian legislatures to amend the various tenancy laws so as to provide for stiffer punishment for Landlords who resort to self-help.
3. These researches also contributed to knowledge by showing the present judicial position on the use of self-help in Nigeria and thus serve as a research tool for further research.

5.4 Area for Further Studies

The goal of this research was to critically examine the use of self-help in the recovery of premises by landlord. Although this issue was exhaustively discussed, some critical issues related to this were not discussed. The following thus constitutes area for further research.

1. The reasons why landlord's resorts to the use of self-help was not exhaustively discussed. Although this issues were briefly touched during the Course of this research, further studies can be carried out on this issues by subsequent research to see how the rights of the landlord can also be protected.
2. The present judicial approach to the issue of irregularities in services of quit notices serve by landlords to tenants in the recovery recover possession.
3. Statutory tenancy and employee service occupation will also constitute an area for further research to find out whether an employer can unilaterally quit his employee from his occupied premises at the termination of the employment without resort to the Court.

5.5 Conclusion

Self-help is simply defined as the taking of a matter into one's hands and resorting to extra-legal methods to enforce a legal right. The use of self-help is commonly found in tenancy matters where landlords are infuriated by the actions of stubborn tenants who despite repeated warning or notices to deliver possession refuse to do so.

The use of self-help or forceful eviction in the recovery of premises in Nigeria is highly prohibited both by the extant tenancy laws in most states of the federation as well as by virtue of the various Court pronouncements in Nigeria. Thus a tenant who resorts to self-help runs afoul of the law in Nigeria and may be liable to both payment of damages or even criminal convictions. A landlord should therefore endeavor to follow the due process of the law when it comes to the determination of tenancy and recovery of premises. This simply means that he must serve the necessary quit notices. He must also serve the mandatory seven (7) days' notice of owner's intention to recover property or premises; he must also file his case at the appropriate Court and must allow the Court to play its role of doing justice culminating in the delivering of judgment and execution of same by the Court Bailiff and other officials of Court.

A person who first engages in self-help cannot later seek the assistance of the court on the same matter. Furthermore, that person not only runs the risk of legal action but may also incur serious damages for the misconduct. It is therefore settled law that even where a tenancy has come to an end a landlord cannot go into the premises to eject the tenant without first issuing statutory notices and obtaining an order of court for possession.

Also a person cannot at the same time commence legal proceedings and resort to self-help at the same time. The legal position is that once parties have turned their dispute over

to the court for determination, the right to resort to self-help ends. So it is not permissible for one of the parties to take any step during the pendency of the suit which may have the effect of foisting on the court a situation of complete helplessness or which may give the court the impression that the court is being used as a mere subterfuge to tie the hands of one party while the party helps himself extra-judicially. The above position already canvassed in the research has shown that self-help should be avoided by landlords in the recovery of premises.

The high rate of disagreement between landlord and tenants are unavoidable because of the economic hardship that some tenants are facing after entering the tenancy relationship. The nature of humans is dynamic and unpredictable that often prompts some landlords to settle their conflicts with tenants through litigation at the court of law. Thus instead of using self-help or forceful eviction, courts are the most appropriate institution for the resolution of the conflict between landlords and tenants.

The law of landlord and tenant in Nigeria cannot be better understood without due recourse to judicial decisions and the Rent control and recovery of premises laws across the States in Nigeria. Over the years the Courts have made several pronouncements that have no doubt regulated tenancy relationship in Nigeria. An understanding of these legal and institutional frameworks on tenancy relationship will thus go a long way in making members of the public to avoid the danger of self-help and rather follow the dictate of the law instead of extra-legal means.

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