A TALE OF TWO JUDGEMENTS:

AN ANALYSIS OF THE EFFECT OF THE DECISION IN BANKOLE & ANOR V OLADITAN AND PILLARS NIGERIA LIMITED V WILLIAMS KOJO DESBORDES & ANOR

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INTRODUCTION

The position of the law on the recovery of premises has been well-settled beyond peradventure in a legion of authorities. It is an elementary principle of law that unless a statutory tenant gives up possession voluntarily, possession can only be wrestled from him by an order for possession made against him by the Court after the due notices have been served on him as required by law.[1] The Supreme Court in **Iheanacho v Uzochukwu** made this crystal clear and held thus:

> *''A Landlord desiring to recover possession of premises let to the Tenant shall firstly; unless the tenancy has already expired, determine the tenancy by service on the defendant of an appropriate notice to quit. 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. Thereafter the landlord 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 court in the action''*[2]

However, the Court seems to be moving from the strict application of this principle to the side of equity. It is said that equity imputes an intent to fulfil an obligation, perhaps this was the rationale adopted by the Court in Bankole & Anor v Oladitan and Pillars Nigeria Limited v William Kojo Desbordes & Anor. However, the decision of the Courts has raised clamour and uncertainty as to the need to serve the statutory notices. This article seeks to determine whether the position of the law as it relates to the recovery of premises has been altered by the decision in Bankole & Anor v Oladitan which was decided on the strength of Pillars Nigeria Limited v William Kojo Desbordes & Anor.

THE FACTS OF BANKOLE & ANOR V OLADITAN

The late Chief Oladipo Oladitan was the owner and landlord of a storey building situated at No. 19, Nnobi Street, Lagos, which he let out to the Appellants for use as an office and a school. Following the failure of the Appellants to pay their rents regularly, the late Chief started the process of recovering possession of the property from the Appellants before his demise on 17/06/2002. The Respondent took out a Writ of Summons for possession of the property, arrears of rent, mesne profit and interest on the total sum owed. The trial Court's judgment was given in favour of the Respondent. Dissatisfied with the decision of the Court, the Appellants appealed to the Court of Appeal. The main issue for determination in this Appeal was whether failure to serve a notice personally where personal service is required nullifies the notice served.

THE DECISION IN BANKOLE & ANOR V OLADITAN

The Court of Appeal dismissed the appeal. Muhammad Ibrahim Sirajo, JSC in his leading judgement stated thus:

> *"The suit lasted over 5 years. From the commencement of the proceedings in August, 2008 to the delivery of judgment in March, 2014, the Appellants have more than enough notice that the landlords are desirous of possession of their property and recovery of arrears of rent.* ***Gone were the days when cantankerous, troublesome and unpleasant tenants hold on to technicalities of service of statutory notices to defeat the claim of property owners by illegally holding unto such properties.*** *The Supreme Court has now responded to the sad occasion by coming to the rescue of landlords and property owners whose cantankerous and recalcitrant tenants have over the years been clinging on to the issue of improper service of statutory notices to unjustifiably hold on to the landlords' properties without payment of agreed rent or complying with the terms of the lease agreement."*[3]

The Court of Appeal based its decision on the concurring judgement of Honourable Justice Ogunwumiju in Pillars Nigeria Limited v William Kojo Desbordes where she stated thus:

> *"The justice of this case is very clear. The Appellant has held on to property regarding which it had breached the lease agreement from day one. It had continued to pursue spurious appeal through all hierarchy of Courts to frustrate the judgment of the trial Court delivered on 8/2/2000 about twenty years ago.* ***After all, even if the initial notice to quit was irregular, the minute the writ of summons dated 13/5/1993 for possession was served on the appellant, it served as adequate notice.*** *The ruse of faulty notice used by tenants to perpetuate possession in a house or property which the landlord had slaved to build and relies on for means of sustenance cannot be sustained in any just society under the guise of adherence to any technical rule.* ***Equity demands that wherever and whenever there is controversy on when or how notice of forfeiture or notice to quit is disputed by the parties, or even where there is irregularity in giving notice to quit, the filing of an action by the landlord to regain possession of the property has to be sufficient notice on the tenant that he is required to yield up possession.*** *I am not saying here that statutory and proper notice to quit should not be given. Whatever forms the periodic tenancy is whether weekly, monthly, quarterly, yearly etc., immediately a writ is filed to regain possession, the irregularity of the notice, if any, is cured. All the dance drama around the issue of the irregularity of the notice ends. The Court would only be required to settle other issues, if any, between the parties."*[4]

It is pertinent to note that the concurring judgment of Hon. Justice Ogunwumiju in ***Pillars Nigeria Limited v Williams Kojo Desbordes & Anor*** is not a ratio but an obiter dictum given that issue of notice was no longer a live issue before the Supreme Court having been struck out. The law is settled that any pronouncement of the Court on any issue not placed before it for adjudication does not form part of the ratio of the judgement but is a statement known as an obiter dicta and does not generally carry any binding force.[5] Hence, it was simply an academic exercise.

ANALYSIS OF THE DECISION IN BANKOLE & ANOR V OLADITAN AND PILLARS NIGERIA LIMITED V WILLIAM KOJO DESBORDES & ANOR

The golden question at this point is whether the decision of the Supreme Court and Court of Appeal has altered the position of the law. This question is answered in the negative. Although the Courts applied the doctrine of equity to ease the harshness of common law, it still remains that equity follows the law as stated in Col. Halilu v Gani Fawhinmi,[6] and the law in the recovery of premises is still governed by Section 7 of the Recovery of Premises Act which states thus:

> *"When the term or interest of the tenant held by him ends or is duly determined by a written notice to quit or is otherwise duly determined and the tenant or if the tenant does not actually occupy the*

> *premises or only occupies a part, a person by whom the premises or any part thereof is actually occupied, refuses to quit and deliver up possession, the landlord may cause the person to be served in manner hereinafter mentioned, with a written notice signed by the landlord or his agent, of the landlord's intention to recover possession on a date not less than seven days from the date of service of the notice"*

The decision of the Supreme Court and Court of Appeal did not oust the mandatory requirement of serving the notice to quit and notice of intention to recover possession. This is evident in the dicta of Hon. Justice Ogunwumiju in **Pillars Nigeria Limited v Williams Kojo Desbordes & Anor** when she stated that:

> *"I am not saying here that statutory and proper notice to quit should not be given."*

Thus, service of the two statutory notices remains mandatory, however, where there is an irregularity with the notices, once the writ of summons is filed and served it cures any irregularity. This is because once the writ of summons is served the tenant is already put on notice that the landlord wants possession, hence, it would not be in the interest of justice if the proceedings is started afresh on a mere irregularity. Hence, tenants can no longer hide under the veil of technicality to frustrate the recovery of possession by the landlord. This was made clear in the leading judgement of Muhammad Ibrahim Sirajo, JSC in **Bankole Anor & Oladitan** where he stated thus:

> *"I hold that notwithstanding the irregularity in the service of the Notice to Tenant of Owner's Intention to Recover Possession of Property on the 1st Appellant,* ***the writ initiating this suit cannot be invalidated as the service of the writ itself constitute sufficient notice to the Appellants that the Respondent wants to recover possession*** *of the property together with arrears of rent."*[7]

CONCLUSION

In précis, although the decision of the learned justices is in the interest of justice, it remains that equity does not destroy the law nor create it, but assists it. As such the decision of the Supreme Court and Court of Appeal is incapable of changing the law. Thus, the legal regime governing the recovery of premises in Nigeria remains unchanged in that the service of the two statutory notices is mandatory. However, from the decision of the Courts in the reviewe d cases, it can be said that tenants can no longer use the defence of faulty service to evade eviction and deny landlords the right to recover their property. Thus, a writ cannot be invalidated for a mere irregularity in the notice as the service of the writ itself constitutes sufficient notice to the tenant that the Landlord wants to recover possession.

END NOTES

[1] African Petroleum Limited v Owodunni [1991] 8 NWLR (Pt. 210) 391 at 415

[2] Iheanacho v Uzochukwu [1997] 2 NWLR (PT.487) 257 at 269-270, Recovery of Premises Act Laws of the Federation 2004, Mnyim & Ors v The Registered Trustees Assemblies of God Nigeria [2021] LPELR-54209 (CA)

[3] Bankole & Anor v Oladitan [2022] LPELR-56502 (CA)

[4] Pillars Nigeria Limited v Williams Kojo Desbordes & Anor [2021] 12 NWLR (Pt.1789)

[5] Buhari & Ors v Obasanjo & Ors [2003] LPELR 813 (SC), Osuagwu v Emezi & Ors [2013] LPELR-22030 (CA)

[6] Col. Halilu Akilu v Chief Fawhinmi (No.2) LPELR-339 (SC) 82

[7] Ibid n3

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