

## SUMMARY OF JUDGMENT

### INTRODUCTION:

This appeal borders on Tenancy Law.

### FACTS:

This is an appeal and a cross-appeal against the judgment of the Court of Appeal, Lagos Division overturning the decision of the High Court. The Plaintiff, whom were the employers/landlord of the employee/tenant, commenced an action by way of writ before the High Court claiming from the Defendant the recovery of possession of the premises known and situate at 1, Ilabere Avenue, Ikoyi Lagos State, an injunction restraining the Defendant from continuing to occupy the premises in dispute, and also a mense profit. The Plaintiff had employed the Defendant as an accountant officer and provided accommodation in accordance with the Plaintiffs contract of service. When the Defendant was to be replaced the Defendant refused to vacate the premises, which led to the Plaintiff bringing an action against the Defendant. The trial Court held that the tenancy of the defendant was not properly determined in that the requisite notice to quit issued was insufficient and therefore invalid. The trial Court however, made the alternative finding that the defendant was a tenant at sufferance and therefore ordered him to vacate the premises immediately.

On appeal to the Court of Appeal, the Court of Appeal held that the defendant is a statutory tenant whose tenancy is protected by the provisions of the Rent Control and Recovery of Residential Premises Law No. 9 of 1976, and not a tenant-at-sufferance as claimed by the plaintiff. The plaintiff's premises at 1, Ilabere Avenue, Ikoyi, Lagos can therefore only be recovered from him by resort to the proper notices provided under Law No.9 of 1976, for a yearly tenant. Since no such notice have been filed and served on him, the dismissal of the plaintiff's action for possession by the trial High Court under its "alternative" judgment, was upheld. On the claims for "mesne profits" or, in the alternative, "use and occupation", the Court of Appeal gave Judgment for the plaintiff for "mesne profits" for a total sum of N390,000 from 1981 to 1986 and at the rate of N65,000.00 per annum until possession is given up. The defendant being dissatisfied appealed to the Supreme court against the award of N65,000.00 as mesne profits in favour of the plaintiff. The plaintiff also cross-appealed against the finding of the Court of Appeal that the defendant was a statutory tenant who was entitled to notice, but to whom no proper notice was given.

### ISSUES:

The appellant framed two issues for determination and the respondent formulated six issues for determination. However, the Court adopted the issues as formulated by the appellant in determining the appeal as follows:

1. Whether the Court of Appeal was right in awarding the Respondent mesne profit after holding that the Appellant is entitled to remain in possession of the premises until the tenancy is determined according to law.

2. Whether the Court of Appeal was not right in holding that the appellant is not a tenant at sufferance but a statutory tenant entitled to the necessary notices under the Recovery of Premises Law of Lagos State.

#### DECISION/HELD:

In the final analysis, the Supreme Court in a unanimous decision dismissed the appeal and cross-appeal.