REQUIREMENT OF LANDLORD'S WRITTEN AUTHORITY: THE PLACE OF THE SOLICITOR

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Introduction

A brewing controversy in some of our jurisdictions today is the need for a landlord to authorize an agent in writing, before such agent can validly issue statutory notices to recover premises. The controversy is not really whether an agent should be authorized in writing, but whether a solicitor, acting on the instructions of a landlord, is also bound by the requirement of writing.

In this paper, the writer intends to review the plethora of decided authorities, sometimes conflicting in this regard. A review of relevant statutory provisions will also be undertaken to ascertain whether the requirement is statutory or judicial. Most importantly, it shall be submitted that a solicitor, being a trained professional to solicit and advocate on behalf of his client has apparent authority to do that which is best in the interest of his client. For this purpose, the solicitor cannot be regarded as an agent of the landlord that require special written authorization before taking steps to recover premises.

Decided Authorities

Perhaps, the earliest Nigerian case authority in this regard is *Ayiwoh v Akorede*.[1] Here, the notice to quit and notice of owner's intention to apply to recover possession were issued and served by a solicitor, who was orally instructed by the landlord's attorney. Robinson, J. held the notices invalid as the solicitor did not come within the definition of "agent", not having been authorized in writing to issue and serve them. It is pertinent to observe that the notices here, were required to be issued under section 7 of the Recovery of Premises Ordinance, while the term, "agent," was defined under section 2 of the same Ordinance.[2]

Subsequent case authorities seemed to condemn the decision in *Ayiwoh v Akorede*, as being too broad. In *Olusi v Solana*,[3] Hubbard, J. held that a notice to quit may be given by the landlord's solicitor without the need for written instruction from the landlord.

There was a clearer pronouncement on the issue in *Nianda v Alake*,[4] where Hassan, Ag. SPJ held that there was no specific requirement of the landlord's written authority before a solicitor can issue a notice to quit unlike the specific requirements contained in the same section (section 7 of Recovery of Premises Law) for a notice of intention to apply to court for possession. A similar pronouncement had also been made in the earlier case of *Lababedi v James*,[5] where Udoma, J. (as he then was), stating

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[1] (1951) 20 NLR 4 at 5; *Balogun v LEDB* [1963] 2 All NLR 80.
[2] Similarly worded like sections 2 and 7 of the Recovery of Premises Law, Cap 118, Laws of Lagos State, 1972; Cap. 544, LFN (Abuja) 1990. See also, sections 13 and 36, Rent Control and Recovery of Residential Premises Law of Lagos, 1997; sections 2 and 17, Rent Control and Recovery of Residential Premises Law of Bendel State of 1977; sections 15 and 40, Rent Control and Recovery of Residential Premises Law of Kwara State of 1977.
[3] [1956] LLR 18.
[4] [1972] NNLR 23.
[5] [1962] 2 All NLR (pt. 2) 30.

unequivocally stated that section 7 of the Recovery of Premises Ordinance makes no specific provisions as to who should sign a notice to quit and so, a notice to quit may be signed by a solicitor acting for the landlord without being authorized to do so in writing.

From the three latter cases, it is clear that where a solicitor is orally instructed by the landlord and the solicitor issues the two notices i.e. notice to quit and notice of intention to apply to recover possession, the former will be valid while the latter will be invalid for want of written authority. This position held sway until 1992, when the Court of Appeal in the case of *Coker v Adetayo*,[6] did a seemingly judicial somersault back to the days of *Ayiwoh v Akorede*. In that case, joint owners of premises agreed that one of the owners should occupy the ground apartment of the premises for his own use. Consequent upon this, a solicitor was instructed in writing by all the owners, to issue the relevant notices to the Appellant, who was the tenant in occupation. Before the Court of Appeal, the Appellant contended that the letter of authority by the landlords was given after the notices were issued and served by the solicitor; and so was invalid. The ground of this contention was that the 4th plaintiff, for whose benefit the premises was sought to be recovered, was resident in Bulgaria at the relevant time. Appellant contended that it was not possible for the 4th plaintiff to sign the letter of authority in Bulgaria and return same between when it was issued in Nigeria on 3rd November 1982 and 22nd November 1982, when the notice to quit was issued by the solicitor. Ubaezonu, JCA who delivered the lead judgment, to which Kolawole and Kalgo (JJCA) concurred, held that there was no evidence in court to show that the letter of authority was signed after the notice to quit was issued. The notice to quit was therefore held valid. But before holding the notice to be valid, His Lordship had proceeded to state what he believed the law to be, thus:[7]

> The law is that any such letter of instruction to the solicitor must be issued before the Notice to Quit is issued by the solicitor otherwise the solicitor has no authority to act. Any notice to quit or notice of intention to apply to recover possession issued by any such solicitor before the letter of instruction is null and void and of no effect.

With the greatest respect to their Lordships, the above pronouncement did not distinguish between the notice to quit and the notice of intention to apply to recover possession. In fact, both notices needed written authority of the landlord before they could be issued as far as their Lordships were concerned. This clearly jettisons the position stated in *Olusi v Solana* and the rest authorities and reverts back to the *Ayiwoh v Akorede* position. Curiously, their Lordships of the Court of Appeal did not cite any decided case in support of their position. None of the cases earlier mentioned was referred to in the judgment. Their Lordships did not also refer to the relevant section of the Rent Control and Recovery of Residential Premises Edict of Lagos of 1976,[8] which provided for the issuance of the notices. The case went on further appeal to the Supreme Court[9] but unfortunately, the issue of whether a solicitor needs written authority to issue the statutory notices did not come up for determination. It would have afforded the apex court opportunity to pronounce on this nagging controversy.

At this juncture, it becomes pertinent to refer to the relevant statutory provisions to enable us have a clearer appraisal of the divergent positions held by the courts in the plethora of cases decided on this issue. For our purpose, the writer shall treat the

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[6] [1992] 6 NWLR (pt. 249) 612.
[7] Ibid at 625.
[8] Section 15; *in pari materia* with s.7 of the Recovery of Premises Law, Cap 118, Lagos, and now s.13 of the Rent Control and Recovery of Residential Premises Law of 1997 of Lagos.
[9] See *Coker v Adeyemi Adetayo* [1996] 6 SCNJ 127.

Recovery of Premises Law, as the focal point since other laws in other jurisdictions are *in pari materia* with it in regard to the relevant sections.[10]

Statutory Authorities

Section 7 of the Recovery of Premises Law provides:

> When and so soon as the term or interest of the tenant of any premises, held by him at will or for any term either with or without being liable to the payment of any rent, shall have ended or shall have been duly determined by a written notice to quit as in Form B, C or D, whichever is applicable to the case, or otherwise duly determined, and such tenant, or, if such tenant does not actually occupy the premises or only occupies a part thereof, any person by whom the same or any part thereof shall then be actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively, *the landlord of the said premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served, in the manner hereinafter mentioned, with a written notice, as in Form E signed by the landlord or his agent, of the landlord's intention to proceed to recover possession on a date not less than seven days from the date of service of the notice.* (Emphasis supplied).

Without prevarication, we cannot agree more with Udoma, J. (as he then was) and Hassan, Ag. SPJ in *Lababedi v James* and *Nianda v Alake* respectively, when they ruled that there was nothing under section 7 of the Recovery of Premises Law that requires a notice to quit to be issued by a solicitor only with the written authority of the landlord.

However, one finds it difficult to agree with Hassan, Ag. SPJ when he held that the notice of intention to apply to recover possession is specifically required to be issued with the written authority of the landlord under section 7. With respect, the emphasised part of section 7 above is the relevant portion that is applicable to the notice of intention to apply to recover possession. It talks of *"… the landlord of the said premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served, in the manner hereinafter mentioned, with a written notice as in Form E signed by the landlord or his agent of the landlord's intention …."* It is clear that no mention is made of *"the landlord or his agent, authorized in writing",* in the above section. So, the host of authorities that have so held, must have done so *ex abundanti cautela* and not because the statute so requires.

This writer is in agreement that if an agent purports to act for and on behalf of the landlord, he must be able to show some form of authority. But it should not be limited to a written one. In *Bashua v Odunsi*,[11] the plaintiff occupied a shop as tenant to the 2nd Defendant's tenant. The 1st Defendant, 2nd Defendant's son, wrote a letter to the Plaintiff requiring him to vacate the shop within 2 months. The letter did not refer to the 2nd Defendant neither did it state that it was written on behalf of the 2nd Defendant. The 1st Defendant physically entered the premises, purporting to exercise the powers of the 2nd Defendant, to terminate the tenancy. The Plaintiff then brought an action against the Defendants in trespass. It was held, that the tenancy had not been properly determined as the letter did not refer to the 2nd Defendant; neither was the 1st Defendant the owner of property. Both father and son were therefore, liable to the Plaintiff in trespass.

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[10] See fn 2 ante for the equivalent provisions in some selected jurisdictions.
[11] (1940) 15 NLR 107.

What one can decipher from the above decided case is that, had the letter referred to the father as the owner, or had the son described himself as acting on behalf of the landlord, the court might have ruled otherwise. This accords with reasoning. Even in cases where the agent states that he is acting on the authority of the landlord, a disputing tenant should raise the issue and it will be sufficient if the landlord himself comes to testify in court that he had in fact, instructed the agent to issue the notice in question.[12] Agency may be created by estoppel, operation of law or by agreement.[13] It is trite that an agreement may be oral unless there is a requirement of law to make same written.

Since the crux of this paper is not so much on an agent but much on a solicitor, that brings us to the definition of the word, "agent" under the statute. Section 2 of the Recovery of Premises Law defines "agent" thus:

> any person usually employed by the landlord in the letting of the premises or in the collection of the rents thereof or specially authorized to act in a particular manner by writing under the hand of the landlord.

By the above definition, a solicitor qua solicitor cannot fall within it. A solicitor is not usually employed by the landlord in the letting of the premises or in the collection of rents. However, one is mindful of the practice of some solicitors being retained as estate solicitors to collect rents, quit tenants and put tenants into possession. Such solicitors are more in the realm of estate agents and must be distinguished from a solicitor, who is briefed to recover premises in a specific situation. Even if a solicitor falls into the former category, the ordinary law of agency will apply. He may be specially authorized in writing by way of a power of attorney to be able to do all that the landlord would have done personally. But it cannot be said that, it is a requirement of the Recovery of Premises Law for the reasons already given above. As it has been submitted above, the requirement of a written authority for the notice of intention most especially, is an *ex abundanti cautela* of the courts and not a statutory requirement.

If the courts will be cautious in insisting on written authority of the landlord to enable an agent to issue notices; whether notice to quit or notice of intention to recover possession, such caution is unwarranted in regard to solicitors acting on a brief to recover possession for their client, the landlord. Normally, when a landlord instructs an agent, he tells him to issue notices and if need be, take steps to evict the tenant. This is not the case with a solicitor, who is not appointed as an estate agent. When a landlord approaches a solicitor qua solicitor, the landlord does not specifically instruct him on what to do. The landlord narrates his problem with evicting a stubborn tenant and asks the solicitor to take over and use his professional skill to do what should be done in law. In most cases, it is the solicitor who will advise the landlord, in some cases illiterate, that notices have to be issued. This view is fortified in the case of *Adewunmi v Plastex (Nig). Ltd*[14] where Eso, JSC held that a lawyer is a professional and vis-à-vis a client, he is on contract, and his professional skill, hired by the client, is to be employed at his discretion.

The above position was further fortified by Karibi-Whyte, JSC in *Afegbai v AG (Edo State)*[15] thus:

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[12] *Isa v Okeke* [1973] NNLR 69 at 71; cited in A. F. Afolayan, "A Review of Solicitor's Power to Issue Quit Notice", (2002) 6 NLPJ 106 at 108, fn 15.
[13] *Pascutto v Adecentro (Nig) Ltd.* [1997 12 SCNJ 1 at 15 and 16; see also Ayankoya v. Olukoya [1996 2 SCNJ 292.
[14] [1986] 3 NWLR (pt. 32) 767; see also Halsbury's Laws of England, 4th ed., par. 1181; *Swinfen v Swinfen* 26 L.J Ch 97, cited with approval in *Afegbai v AG (Edo State)* [2001] 14 NWLR (Pt. 733) 425.
[15] [2001] 14 NWLR (Pt. 733) 425 at 457.

> The nature of the legal relationship between counsel and his client, is one of an independent contractor and not one of principal and agent. It is not that of master and servant.

It is therefore, humbly submitted that when a landlord briefs a solicitor to recover premises for him, the landlord secures the services of an independent contractor, who will use his professional skill to do that which is in the best interest of his client. In one word, the solicitor has apparent authority to conduct the case of his client.[16] The authority to conduct the case also includes that to conduct incidental matters or matters precedent to the action, like the issuance of notices for recovery of possession.[17] The landlord does not therefore have to authorize him in writing to do what he should do as a solicitor. As it was held in *Tukur v Govt. of Gongola State*,[18] the courts do not inquire into counsel's authority to appear. *Mutatis mutandis*, the courts should not inquire into counsel's authority to issue notices to recover premises. It is for the landlord to disown the solicitor if need be. Anything short of this would place solicitors at odds of even having to prove that illiterate landlords actually signed purported written authorities. This will lead to absurdity.

Conclusion

In the course of this paper, it has been shown that the Recovery of Premises Law and its equivalent in other jurisdictions do not specifically require that the agent of the landlord must be authorized in writing before such agent can issue notices for recovery of premises. It has been shown that it is a creation of judicial caution. More importantly, it has been argued that solicitors need not be authorized in writing by landlords before solicitors can issue notices under the Recovery of Premises Laws. Thus, the pronouncements in earlier cases including *Coker v Adetayo* that have opened the floodgate to controversy in this regard in many jurisdictions cannot be the position applicable to solicitors, with due respect for the rule of judicial precedent. It is hoped that the Supreme Court will one day be opportuned to take a stand on this issue.

It is suggested too that parliament should amend the law to make clear their intention, be it for agents or solicitors.

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[16] *Adewunmi v Plastex (Nig) Ltd*. supra; *Afegbai v AG. (Edo) State* supra. Note however, *Mosheshe General Merchants Ltd. v Nigeria Steel Products Ltd*. [1987] 1 NWLR (Pt. 55) 110 that limits the scope of Counsel's authority to tec nical matters and not facts.

[17] Halsbury's Laws of England op.cit.

[18] [1988] 1 NWLR (Pt. 68) 39; [1988] All NLR 42.