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Policy and Principles of the Lagos State Tenancy Law, 2011

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Abstract
This study assessed the policy and principles of the Lagos State Tenancy Law, 2011 against the background of previous Rent laws in Lagos state with particular reference to nutty issues such as the justification for government intervention in the determination of rent, rationale for rent standardization, security of tenancy, and the sanctity of tenancy agreements and relationships. It was revealed that while the government of Lagos state through its legislature passed a new Rent law tagged the ' Lagos State Tenancy Law, 2011' ostensibly to cure the defects that characterized the earlier Rent laws particularly the Rent Control and Recovery of Residential Premises Law of Lagos State No.6 of 1997 (as amended in 2004), the 2011 Tenancy law while addressing the perceived flaws of the earlier legislation appears to have failed to holistically address the dilemma of the tenants since a practical solution to the problem itself goes beyond mere legislative attempts to hound the landlords into accepting 'standard rent' without objective recourse to economic realities in the country. The new law also inadvertently omitted some parts of Lagos in terms of scope of application leaving lawyers, jurists, and litigants in apparent confusion as to the course to take in such areas that technically have no applicable Rent law. It was recommended that government should as a practical solution get involved in mass housing development in order to effectively reduce the major problem of acute shortage of accommodation as only this can tilt the balance in favour of the tenants by stemming the tide in the real sector which in reality is a reflection of the natural forces of demand and supply of accommodation responsible for excessively high rent in Lagos. It was finally recommended that the legislature in Lagos should urgently take steps to enact legislation to regulate tenancy relationships in the omitted areas especially, Apapa, Ikeja GRA, Ikoyi, and Victoria Island.

Key words: *Edict, Landlord, Law, Rent Standardization, Security of Tenancy.*

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Introduction

The various states and Federal Capital Territory in Nigeria have made far reaching efforts to regulate the rent situation in the country through their Rent Control and Recovery of Premises Laws and their numerous amendments. The perception in most quarters has been that the main target of these laws is to emasculate the excesses of greedy landlords who have in demonstration of their shylock disposition taken advantage of the tenants over the years. The focus of this paper is to examine the potency of the current Rent Law in Lagos State given the far reaching efforts to regulate the rent regime against the backdrop of practical realities. As a prelude to this discourse, it is necessary to attempt a definition of the terms ‘Landlord’ and ‘Tenant’.

A Landlord, according to Hornby[1] is a person who has tenants or lodgers, or one who owns an inn. This presupposes any person or persons entitled to the immediate reversion of the premises, or if the property is held in joint tenancy, any of the persons entitled to the immediate reversion. The above definition apparently includes the agent or attorney of any person so entitled.

In Nigeria, the various Rent and Recovery of Premises Laws of the states equally define who a Landlord is. For instance, Section 40 of the Lagos State Rent Control and Recovery of Residential Premises Edict No.9 of 1976[2] defined a Landlord as the person entitled to the immediate reversion of the premises or if the property therein is held in joint tenancy in common, any of the persons entitled to the immediate reversion, and includes the attorney or agent of the Landlord, and also any person appointed to act on behalf of the state in dealing with any land, building, premises, or corporeal or incorporeal hereditament vested in the state.

The implication, as can be read from the forgoing is that the state can be said to be a Landlord since Section 1 of the Land Use Act vests all the land in the territory of each state in Nigeria upon the Governor of that state. The Federal government could also by extension be referred to as a Landlord with particular reference to lands in the Federal Capital Territory since the combined effect of Section 1 (3) of the Federal Capital Territory Act[3] and Section 297 (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended is to the effect that the ownership of all lands comprised in the Federal Capital Territory shall vest in the Government of the Federal Republic of Nigeria.

A tenant on the other hand is defined by the same S.40 of the Lagos State Rent Control and Recovery of Residential Premises Edict, and Section 2 of the Recovery of Premises Act, (Abuja)[4] as any person occupying 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. In other words, a person who occupies premises with the grantor retaining reversionary rights to such premises is a tenant.

Thus, a person who does not have absolute title to the premises he occupies, but only a term upon the offer of consideration to another is a tenant and not the Landlord. This probably led Male[5] to conclude that: **"A tenancy is an agreement between the parties whereby in consideration of rent, the performance and observance of tenants' covenants, a landlord grants a term of years in a demised premises to a tenant expected to pay rent in a manner stipulated in the agreement"**.

It must be noted for the purposes of this discourse that co-owners or joint owners of family property under customary law are not joint tenants in common which are terms of English law unknown to customary law. None of them is therefore included in the definition of a landlord as any of the persons entitled to the immediate reversion of the property. Where any of such persons brings an action for possession of the family property, he has to establish by some other evidence that he is the person entitled to the reversion of the premises[6].

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1 Hornby, A.S.(1982) Oxford Advanced Learner's Dictionary. London: Oxford University Press.
2 This Law has been extensively amended by several other Rent laws, the most recent being that of 2011.
3 Cap. 128 LFN, 1990. (Now, Cap. F6 LFN 2004).
4 Cap. 544 laws of the Federation of Nigeria, 1990. (Now LFN, 2004).
5 Male, J.M. (1995) Landlord and Tenant. Great Britain: Prentice Hall Publishers Limited.
6 *Ariran v. Adepoju* (1964) 2 All NLR. 83.

A plaintiff who brings an action for possession of premises from a tenant must therefore establish by evidence that he is the Landlord of the premises. It is sufficient if he shows that he was the one who, acting for himself or as agent to another, let out the premises to the tenant and that the tenant has been paying him rent in respect of the premises. Strict proof of the title of the Landlord will therefore only be required where he acquired title subsequent to the letting of the premises such as by purchase from the previous owner[7].

Background

Rent control in Lagos has remained a vexed issue in view of the peculiarities of the state given its special economic and commercial status and its attendant impact on the dynamics of the property market in the state. This situation which was clearly exacerbated by the numerous demolition exercises of successive administrations in pursuance of the state's programme of urban renewal and by extension a resultant acute shortage of accommodation set the stage for a prolonged rift between landlords and tenants in all parts of Lagos.

The ripples of these demolitions, coupled with the massive influx of individuals in the aftermath of the boom in the banking and financial sector towards the turn of the century tilted the balance of the equilibrium in favour of landlords and naturally against the tenants. This has led to frequent legislative interventions, presumably to stem the tide and thus the numerous Rent edicts of 1976, 1994, 1997, 2004, and recently, 2011 all aimed at stabilizing rent in the face of inflation.

Understandably, justification for the intervention of government in the determination and regulation of rent may not be far fetched. The current movement all over the world is towards regarding housing as a prime social need in respect of which legislative intervention must be allowed in order to ensure greater security of tenure of the sphere of people's homes[8]. This is because social justice demands that a weaker party to a contract be protected, and the Lagos state legislature has long demonstrated its favourable disposition to this concern in several instances despite arguments on the contrary.

Furthermore, the recent trend in the development of human rights and its ascendancy to a point of towering above municipal law has affected judicial thinking about housing. Thus, the right to shelter has been recognized globally to the extent that in most civilized climes, housing has become a fundamental right. Although the Nigerian government has been unable to achieve this feat till date, it has however made a bold step by recognizing that the security and welfare of the people shall be the primary purpose of government[9]. More specifically, section 16(2)(d) provides that the state shall direct its policy towards ensuring: **'that suitable and adequate shelter …... are provided for all citizens'**.

Against this background, it is apposite that the various rent laws of the states and Federal Capital Territory are all geared towards the realization of this purpose of the federal government as captured clearly in the Constitution. Granted that sections 14 and 16 above do not form part of the Fundamental rights of the citizens enumerated in chapter 4 of the 1999 Constitution and as such are not justiciable in our courts, but the fact that they form part of the chapter 2 group of rights otherwise known as the Fundamental Objectives and Directive Principles of State Policy is instructive. These

7 *Arejian v. Sulemon* & Ors. 14 WACA, 202.

8 Gray, K. Elements of Land Law, (Second Edition) UK: Butterworts, 1993. 169.

9 Section 14(2)(b), Constitution of the Federal Republic of Nigeria, 1999.

constitutional provisions strengthen the legislative foundation of the various rent laws seeking the security of tenure of tenants.

Policy and Principles of the Rent Control and Recovery of Residential Premises Law of Lagos State (No. 6 1997) as amended. (Laws of Lagos State, 2004) & The Lagos State Tenancy Law, 2011

It is now indisputable that the initial euphoria that heralded the signing into law of the Lagos State Tenancy Law in August, 2011 as an improvement on the Rent Control and Recovery of Residential Premises Law of Lagos State (No. 6 of 1997) as Amended in 2004 has gradually faded. The reason for this may not be unconnected with the perceived flaws in the new law which raises serious doubts as to its feasibility given the current socio-economic situation and circumstances of the inhabitants of Lagos state. It is therefore not surprising that the helpless tenants who have been victims in the face of shylock landlords are yet to enjoy any form of relief from the harsh realities of the rent situation in Lagos. For the purposes of clarity and precision, the two legislations will be referred to hereinafter as the 'Old' and 'New' law(s) respectively.

It is pertinent to note that the main objective of the new law was actually to protect and serve the interests of both the landlords and the tenants in their tenancy relationship as well as regulate the procedure for the recovery of premises from tenants. The aim was therefore visibly to ensure that both parties live up to their responsibilities and obligations. The following salient features distinguish the old and the new Laws:

First, admittedly, the old law applied only to residential accommodation leaving out commercial accommodation and other types making it inherently flawed. By virtue of section 1(i) of the new law[10], its application covers all premises within Lagos State, including business and residential premises, unless otherwise specified. Curiously however, areas such as Apapa, Ikeja GRA, Ikoyi, and Victoria Island were exempted from the application of the law[11]. This appears to have created more confusion than clarity in view of the fact that the new law obviously repealed the old law which hitherto applied to the whole of Lagos, thereby raising the issue as to which law should apply to the exempted areas. This obvious lacuna could not have been the intention of the legislature, and may at best be described as an oversight. An expensive one indeed and so requires urgent legislative action.

Second, by virtue of the new law[12], it shall be unlawful for a Landlord or his agent to demand or receive from a sitting tenant rent in excess of Six (6) Months from a Monthly tenant and one (1) year from a yearly tenant in respect of any premises. The Section also makes it an offence for a Landlord or his agent to demand or receive from a new or would-be tenant, rent in excess of one (1) year in respect of any premises. The punishment for violation of this section is a fine of One Hundred Thousand Naira (N100,000.00) or three (3) Months imprisonment.

It is noteworthy that by virtue of the old law, the requirement is that the Landlord should not demand nor receive rent in excess of Six Months from a prospective or in-coming tenant nor demand or receive from a sitting tenant ‘standard rent’ in excess of three (3) months in respect of any accommodation. To this extent, the old law appears in principle to be preferable on the part of the

10 2011.
11 Sub-section (3)
12 Section 4

tenant to the new one of 2011. Nevertheless, the cardinal issue is as to how realistic this provision is given the nature and practice of parties in the arena of tenancy relations.

It is therefore extremely difficult to enforce this provision in both instances especially in view of the fact that the tenants in most instances are usually desperate at the point when they need accommodation and so are usually at the mercy of the greedy landlords who take advantage of this desperation to circumvent the law by insisting on deposits above the prescribed limit. Under both the old and new laws, the demand for rent from either an incoming or sitting tenant in excess of the standard rent in respect of any accommodation is unlawful.

Third, by the combined effect of Sections 1,2, & 3 of the old law, the Governor may from time to time, classify the types and categories of Residential Accommodation, prescribe Standard Rent payable thereof, and the Landlords are not to collect more than the standard rents. In pursuance of this power, Lagos state was divided into eleven districts, zones "A" to "N", accommodation classified into eight types, and buildings categorized into "A", "B", and "C"[13]. Thus, in line with this culture of interfering in the determination of rents payable, Section 37 of the new law provides that a sitting tenant may apply to the court for an order declaring that the increase in rent payable under a tenancy agreement is unreasonable, and the court may in its discretion, order that the increase in the rent be changed to a specific amount[14].

However, in reality there appears to be serious uncertainty as to how the Lagos State government intends to effectively achieve this lame attempt to fix, regulate, and/or control the rent payable for accommodation in view of the fact that in every perfect market, it is the forces of demand and supply that naturally determines the consideration or price of whatever goods and services being offered. Against this background, one wonders how the rent can be dictated by the government especially since the Lagos state government has no form of control over the demand and supply of accommodation and is not in a position to change this reality. Even the Federal government did not help matters as it sold its stakes in its own estates such as 1004 Estates, Bode Thomas Towers and the former Federal Secretariat which would have mitigated the hardship suffered by tenants. It will therefore amount to an effort in futility for the Lagos state government to continuously legislate on the rent regime and quantum of increment applicable without investing in mass housing.

The fourth feature of the new law which deserves mention being an improvement on the old law is the provision that where the Landlord or his agent in addition to rent requires the tenant or licensee to pay a security deposit to cover damage and repairs for services and facilities for the premises, or service charges in flats or units that retain common parts on the premises[15], the Landlord or his agent shall issue a separate receipt to the tenant for payments received and such tenant shall be entitled to a written account at least, every six (6) months from the Landlord of how monies paid were disbursed.

Furthermore, while both the Old[16] and New[17] laws have now criminalized failure by the Landlord to issue a rent payment receipt to a tenant, the punishment under the new law upon conviction is a fine of One Hundred Thousand Naira (N100,000.00) only. This is a significant increase from the previous

13 See Schedule 3 of the Edict.
14 Section 37(3).
15 Section 10.
16 Section 29.
17 Section 5.

fine of Two Thousand Five Hundred Naira (N2,500) only or one month imprisonment prescribed by the old law.

In addition, by virtue of Section 11 of the new law, it shall be the duty of any party who engages the services of a professional in respect of the tenancy agreement to pay the fees for such professional services. This is a clear departure from the provision of the old law[18] which merely criminalizes the demand and receipt of an amount above 5% of the annual rent as agreement fee and 5% as commission respectively.

Equally noteworthy and in fact significant is the innovation in the new law to the effect that the expiration of a notice to quit need not coincide with anniversary of the tenancy. However, the length of Notice in each case remains the same. The notice by virtue of the new law can now be served on any adult residing in the premises, or by pasting same on the premises, or by sending it via courier and such service shall be effective[19]. This is a huge relief from the cumbersome and onerous previous requirement of personal service on the party/lawful tenant.

With particular reference to Notice, a major breakthrough has been introduced by virtue of Section 13(5) of the new law in the light of which the necessity of Notice can be dispensed with in case of a tenancy for a fixed term whereupon the landlord need only serve a seven (7) days Notice of Intention to Apply to Recover Possession as in form YL5 once the tenancy has been determined by effluxion of time.

Moreover, by Section 44 of the new law, any Landlord who unlawfully ejects a tenant by illegal means such as demolishing the premises, forcibly ejecting them, using threats, molesting of the tenant etc. shall be guilty of an offence and is liable to a fine not exceeding Two Hundred and Fifty Thousand Naira (N250,000.00) only.

Finally, by virtue of Sections 30 and 32 of the new law, the court shall encourage both Mediation and Alternative Dispute Resolution in deserving circumstances for tenancy disputes. In so doing, a valid agreement to arbitrate shall be upheld by and be enforceable in the court provided that an arbitration clause or agreement in a tenancy or lease agreement shall not be construed as an ouster of the court's jurisdiction.

Conclusion and Recommendations

It is conceded that the establishment of the various Rent Tribunals with jurisdiction to preside over causes and matters under the successive Rent laws is presumably the legislature's solution to the slow adjudication process, due sometimes to our over dependence on technicalities and legalism in regular courts. Nevertheless, while a careful examination of the policy and principles of the Lagos State Rent Control and Recovery of Residential Premises law, 2004 and the Lagos State Tenancy law, 2011 which seeks to repeal it will show that much as the intention of the legislature in both instances was clearly to regulate the procedure for recovery of premises while at the same time ensuring that both parties to a tenancy relationship are offered some degree of protection and security especially the tenant. This intention appears to be a mirage in reality as the approach clearly undermines the juridical nature of rent in the law of tenancies. The attempt by government to fix, regulate and

18 Section 33(9).

19 Sections 18 & 19.

generally superintend the rent regime though laudable in theory is inherently flawed in actual fact in the face of the hard fact that the basic indices responsible for the determination of price in a free market which has always been the forces of demand and supply are, with particular reference to rent matters outside the control of the Lagos state government. This singular fact will continue to render government's various legislation in this direction at best an academic exercise except and until the equation changes especially since the persistent greed and desperation on the part of the landlords and tenants respectively will continue to act as cogs in the wheels of progress with particular reference to rent control.

It is recommended that in addition to the laudable efforts at legislation, the Lagos state government should engage in massive low-cost housing development in all parts of the state. Only this can tilt the balance of the forces of demand and supply in favour of the tenants by ensuring a systematic albeit gradual reduction in the rents payable in the whole of Lagos. Granted that this will initially appear an uphill task given the capital intensive nature of housing development generally, but in the long run, such an aggressive investment in the Real sector will ultimately translate to a major source of internally generated revenue and indeed, a money spinner for the state.

The legislature in Lagos state should equally take immediate steps to enact legislation to cover the areas exempted by the 2011 Tenancy Law. This they can do either by fresh enactment of another Rent Law for Apapa, Ikeja GRA, Ikoyi, and Victoria Island, or by amending the scope of the 2011 law in terms of applicability to cover the whole of Lagos state. This will bring to an end the present confusion that has trailed the enactment of the present Tenancy Law since its inception in 2011.

It is finally recommended that if the Lagos state Governor is insistent on classifying types and categories of Residential accommodation for the purposes of prescribing standard rents payable thereof, then he should ensure that the prescribed rent must as much as possible be consistent with the economic realities of the present day. This he can achieve by periodically reviewing the prescribed rent in liaison with professional estate valuers to avoid creating a significant disconnect between the prescribed rent regime, and the practical rent situation as determined by the forces of demand and supply.

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