



The Legal Luminary

In- house E-Newsletter of the Legal Department

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From the Editor!

Welcome to another edition of the Legal Luminary. From the bomb blast at the UN building to the texts about a strange killer number this September has indeed been one to remember. Let us hope that the subsequent months bring better things.

In this edition our feature article looks at "Recovery of premises in Nigeria". This is an issue which every landlord and tenant needs to familiarise themselves with.

There is the usual Q and A section in which we expect to answer questions sent in by readers. The other regular features are also included. Please enjoy this issue and send your comments and questions.

Q DOES NIGERIA HAVE COPYRIGHT LAWS?

A Yes, Nigeria has the 2nd most stringent laws governing Copyright protection in the world. Copyright is the statutory right granted to the creator of an original work or their assignee for a limited period of time in exchange for public disclosure of the work, which normally includes: distribution, copying and adaptation of the work. Copyright owners have exclusive right to exercise control over copying and other exploitation of the works for a specific period of time, thereafter the work enters public domain. There are several laws governing Intellectual Property protection in the country and they include Copyright Act (LFN) 1990, which has been amended twice by Copyright (Amendment) Decree no.98 of 1992 and

Copyright (Amendment) Decree no.42 of 1999. The Copyright Law is in 4 parts. Part 1 deals with copyright in general such as duration of copyrights and civil & criminal penalties, Part 2 deals with neighboring rights, Part 3 relates to administration of copyright while Part 4 is for miscellaneous matters. There are 5 schedules. However, despite the existence of all these laws the entertainment industry in Nigeria is threatened by a high rate of copyright piracy. The Nigerian Copyright Commission has launched commendable programmes and television adverts but enforcement of the laws still remains a major problem.

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Joseph Embugushiki

QUOTE

The big shots are only the little shots who keep shooting.

Christopher Worley

NEWS

Central Bank of Nigeria (CBN) on the 19th of September raised the Monetary Policy Rate (MPR) by 50 basis points to 9.25 per cent from its current level of 8.75 per cent.

AMCON) will inject N821 billion to revive the five banks it rescued recently to take the banks' net assets value to zero level

NCC is assuring people that a phone call can't kill after a text message has spread across the country warning that people will die if they answer cell phone calls from 09141 .

RECOVERY OF PREMISES IN NIGERIA: A SUMMARY REVIEW

A Landlord who wants to determine or terminate the tenancy agreement and recover possession of his property from a tenant for whatever reason must observe due diligence and lawful procedure to achieve his objective. Self-Help is an extra-judicial remedy to enforce or protect a right e.g. the use of reasonable force to eject a trespasser.

Where the Landlord employs self-help, it must be lawful otherwise he will be criminally liable for his actions. For instance, where a Landlord, in an effort to recover his premises from a tenant engages in a self-help by removing the doors, windows and even the roof of the building being occupied by the tenant, he has taken laws into his hands by employing self-help as an option or tactics to eject the tenant.

The recovery of possession of premises from a Tenant in lawful occupation by a Landlord can only be obtained by Order of the Court in compliance with the stated procedure otherwise, the Landlord may be liable in trespass for forceful ejection of the tenant. In the case of Ihenacho Vs Uzochukwu, possession was obtained through an Affidavit sworn to by the Landlord and endorsed for possession by a Magistrate without service of statutory Notices or issuance of a writ. The Landlord was held liable for Trespass for the ejection of the Tenant on the basis of Affidavit

Notice to Quit

This is an important Notice in the process of recovery of premises and where there is any defect in its issue, content or service, such will vitiate the entire proceedings. A Notice to Quit is to be issued in form B,C,or D. Where the Notice is issued by a Solicitor or Agent, it shall be in Form C and shall contain the following:

- that the Tenant should quit and deliver up possession of the premises;

- the type of Tenancy (i.e. weekly, monthly or yearly etc).
- the date the Notice to Quit i.e the expiration of the tenancy; and
- the date the Notice to quit is to expire

The parties to a Tenancy Agreement i.e. the Landlord and the Tenant are to determine the nature of Notice required to terminate the Tenancy (see AP Vs OWODUNMI). However, under various laws on Recovery of premises, where no agreement exists between the parties, tenancy shall be determined by the following length of Notice

- 1.Tenancy-at-Will [i.e. weekly tenancy] -shall be entitled to 7 days or a week Notice
- 2.Monthly Tenancy shall be entitled to one (1) month Notice
- 3.Quarterly Tenancy shall be entitled to quarterly Notice (i.e. 3 months)
- 4.Yearly Tenancy shall be entitled to 6 months Notice

Procedure for Recovery of Premises

The procedure for recovery of premises is technical and strict and any breach will result in a nullity. The process commences with the service of the Statutory Notice. (See S.7 RPL, Abuja). Two Statutory Notices must be served to the Tenant which are:

A Notice to Quit; and Notice of owners intention to recover possession. At the expiration of the Notice to quit and the Tenant fails to quit and deliver up possession of the premises, a second Notice will be served on him or person in possession i.e. Notice of Owners Intention to recover possession

Furthermore, where the seven (7) days Notice is not served on the tenant, the Court shall not have jurisdiction to try the case. It should be noted that the service of Statutory Notices are condition precedent for the institution of an action for recovery of possession of premises. Where the

appropriate Notices have been served and if at the expiration of the Notice to quit, the tenant holdover and owes arrears of rent from the date, until possession is given up, the rent accrued is known as mense profit, and would be payable only by a person or tenant who is illegally holding over the land or premises (African Petroleum V Owodunmi supra).

It is worthy of note, that the relationship between the landlord and tenant is like cat and dog. The recovery of premises laws in Nigeria favours the tenant more and as such, Landlords should be cautious in dealing with the tenant to avoid taking laws into their hands by indulging in self-help practices to forcefully eject the tenant and thus incriminate himself through such action

SOCIAL DIARY

Happy birthday in arrears to our amiable colleague Panshak Haggai, who added yet another year to his years on the 17th August, 2011. The luminary wishes Haggai very many happy returns.

Ruth Damak also celebrated the 1st birthday of her son, Joel on the 24th of September. The Luminary wishes him many more years.

The Corporations annual "Health Talk" was held on the 22nd of September and routine medical tests were carried out on all staff, it was a very informative session.