journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

# An Examination of Legal Framework for the Operation of Leases as a Means of Transfer of Real Property in Nigeria

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**Abstract**

*The enjoyment of property that belongs to another person within a definite period and usually with consideration called the rent has come to aid the middle and poor members of the society, since not everybody can afford to become landlords. This has been made possible by the lease agreement between the parties such as lessee and lessor or landlord/tenant as the case may be. However, laws of the federation at various state levels determine the fate of lessor and the lessee at corporate and individual levels. The problem of the mode of creation of lease agreement as a result of the provision of Land Use Act which is seeking resources for the Governor's consent has been examined in this article. The aim is to examine the legal framework for the operation of lease as a means of transfer of real property in Nigeria by considering the Lagos State Law, Federal Capital Territory Act and Kaduna State law as it relates to lease/tenancy agreement for the creation of lease under the Land Use Act. The methodology adopted in this article is doctrinal in which both the primary and secondary sources of materials were analyzed such as statutes like Land Use Act, 1978 and journals and articles in the area of this research. The major finding of this work is the challenges faced in the course of the creation of lease as a result of consent provision in the Land Use Act, 1978, which must first be had and obtained. This research recommends that the consent provision in the statute should be amended to reduce the hardship involved in seeking and obtaining same.*

**Keywords: Leases, Real Property, Court, Jurisdiction**

## 1. Introduction

A relationship that exists where a party called the lessor or landlord, confers on another person, called the lessee or tenant, the right to the exclusive possession of land for a time which is either subject to a definite limit originally, as in the case of lease for a term of years, or which, through originally indefinite, can be made subject to a definite limit by either party, as in the case of a lease from year or any other periodic tenancy is known as lease agreement.[1] Such a relationship should be regulated in accordance with the provision of the law, since it is an agreement or contract, hence the need for the examination of its legal framework. The parties involved will be guided by it in terms of the covenants which either of them pledges himself to the other that something is either done, shall be done, shall not be done or provides for the truth of certain facts. This framework can be considered based on the laws applicable to lease transaction in Nigeria, like the common law of England relating to leases and tenancies which primarily forms part of Nigerian law by virtue of various reception statutes[2] and subject to prevailing local circumstances and legislations.

Furthermore, leases and tenancies had not always been part of the law of England which was principally feudal. It was not until towards the end of the twelfth century that leases for terms of years became common. Even then, the relationship of landlord and tenant thereby created remained purely contractual. They conferred no estate in the tenant and the tenant was not entitled to any of the possessory remedies which were ordinarily available to freeholder.

However, since the bulk of English statutes regulating the relationship between landlord and tenant are not applicable in Nigeria as they do not qualify as statutes of general application, series of local legislations had to be enacted.

The law of jurisdiction to be considered: the Recovery of Premises Act (Abuja) which is Federal Capital Territory, Lagos State Tenancy Law 2011, as well as Kaduna State Tenancy Law 2018, Rent control and

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[1] G Dobry and M Barnes (1970) Hill and Redman's Law of Landlord and Tenant 15th Edition. London Butterworth p.3

[2] For Instance s. 32 Interpretation Act, Cap 123 Laws of Federation of Nigeria, 2004

Recovery of Residential premises law of Lagos State, among others. The essence is that these jurisdictions are used as case studies because of their development in terms of property and innovations as well as with the rapid growth of both the commercial and residential premises which these laws cater for at large.

## 2 Agreement of the Parties[3]

An agreement to lease is just like any other contract for considering its validity on the party reading an agreement on the main terms of the lease. These must be consensus and idem, which means a final and complete agreement between the parties. Thus, in order to establish the existence of a valid agreement for a lease, there must be definite understanding in respect of the following:

- identification of the parties to a lease agreement. This means proper identification of the parties such as tenant or lessor and the lessee.

i. The lease property
ii. The rental value. i.e. rent payable
iii. The length of title; and
iv. The commencement date.

In essence, an agreement to create lease which does not state, among other things, the date of commencement of the lease, is not binding. Therefore, the absence of the necessary terms of the agreement, as listed, renders the contract inconclusive.[4]

## 3. Common Law

As a result of the constitutional history of Nigeria, the common Law of England is a major source of the Nigerian Law. [5] Hence, the common law of England relating to leases part of Nigerian law by virtue of the various reception statutes[6] and subject to the prevailing local circumstances and legislations. It was not until towards the end of the twelfth century that leases for terms of years became common.[7] Although, the relationship between the landlord and tenant hereby created remained purely contractual. They confirmed no estate in the tenant and the tenant was not entitled to any of the possessory remedies which were ordinarily available to freeholders.

The tenant's remedy was only a personal one against the lessor, like breach of covenant or for breach of warranty; since by virtue of the doctrine of privity of contract, only the parties to the transaction could sue and be sued on it. However, by the fifteenth century, the law had afforded the tenant to legal advantage of possession and had conferred on him an estate in the land. Therefore, while retaining all the features of contract, it create a proprietary right in rem binding not only on the parities but also their assigned successors in title and any person in the contract with the estate.

Furthermore, under the common law, leases or tenancies and estate in fee simple are the two estates known to law. These are also the two basic estates known to as law in Nigeria. However, by virtue of (The) Land Use Act, the highest estate a private citizen can hold in land is a right of occupancy for a term of year which is akin to a lease or tenancy while the radical title or what can be called the freehold estate, remains in the Governor of the State where the land is situated.

The legal basis of the application of common law in Nigeria courts is the clause which provided that:

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[3] Parties lease agreement

[4] In addition to that, in order to be enforceable, the agreements must earlier confirm to the statute of fraud, S.9, or must be supported by part performances. Also in the case of international Textile Ind. (Nig) Ltd v Aderemi (1999 – 2000) All N.L.R. 156.

[5] A O Obilade , *The Nigeria Legal System*, (London Sweet and Maxwell, 1979) P. 55

[6] For Instances, 8.32. Interpretation Act, Cap 123 Laws of the Federation of Nigeria. 2004.

[7] Y F Odukoya. and L O Alimi , *Leases, Tenancies and Recovery of Premises in Nigeria*. Yinkol Law Publishers, Lagos, Nigeria, 2009) P 9.

> *The common law; the doctrines of equity shall, in so far as they relate to any matter in respect of which the State is for the time being competent to make laws, be in force within the jurisdiction of the courts*.[8]

Therefore, the decisions of common laws courts of England with regard to some general interpretation of principles and phrases have persuasive force or effect on the Nigeria courts in matters relating to land, if the facts and circumstances are relevant or there is a lacunae in that regard, e.g. proof of title to land by acts of ownership which may include grants of lease(s), collection of rents, among others.

**4. Statutes**

Since the bulk of English statute regulating the relationship of landlord and tenant are not applicable in Nigeria as they do not qualify as statutes of general application, series of local legislations have had to be enacted. The most basic of all these legislations are the Recovery of Premises Act[9]., Rent Control and Recovery of Residential Premises Law, Lagos State,[10] recovery of premises Law, Lagos.[11] Rent Control and Recovery of Premises Edict, [12] Landlord and Tenant Edict of Bauchi State, 1990, Recovery of Premises Edict of River State, 1991, Landlord and Tenant Law of Anambra State, 1989 and Landlord and Tenant Law of Enugu State, 1995.

Since the provisions of these statutes are basically similar, this work will focus only on Recovery of Premises Act, Abuja and the Rent control and Recovery of Residential Premises Law, Lagos, Kaduna State. References will be made to any of the other Laws where necessary.

The above statutes are in addition to some other general statutes like the Land Use Act[13], Property and Stamp Duties Act. Land instrument Registration Laws[14], all of which directly or indirectly impact on the law relating to Landlord and tenant and shall be considered in the book as appropriate.

**4.1 Lagos State Tenancy Law[15]**

In Nigeria, being a Federation, each of the 36 Federating States including the Federal Capital Territory (FCT) Abuja has the jurisdiction to promulgate laws to govern the procedure for property to lease. In Lagos State House of Assembly, the laws made are:

(a) Lagos State Tenancy Law 2011
(b) Lagos State Rent control and Recovery of Residential Premises Law of 1997.
(c) Recovery of premises Law cap 118 Laws of Lagos State 1973 and also the court which is to administer the justice in this situation, starting from magistrate courts law. However, they must up to date the comprehensive piece of legislation in Lagos State is the Tenancy Law of 2011. Apart from the following under listed area in Lagos State, that were exempted, this law of Tenancy 2011 is applicable to all premises in Lagos State including business and residential premises. Exempted are:

(a) Residential premises owned or operated by an educational institution for its staff and students.
(b) Residential premises provided as emergency shelters,
(c) Residential premises in a care center or hospice facility;

[8]S. L8 (a1 (b) Cap. 67. KSA/CL, 1991.
[9]Cap 544 Laws of the Federation of Nigeria, Abuja, 1990
[10] Cap R6 Laws of Lagos State, 2003.
[11] Cap 118 Laws of Lagos State, 1973. Although this law is omitted in the 2003 edition of the Laws of Lagos State, it remains in force as it is has not been repealed by any statute neither has it been spent. It is settled that mere omission of an enactment does not amount to a repeal. See *Ibidapo v Lufthansa Airlines* (1997) 4 NWLR (Pt. 500) 124. It must be noted that the Rent Control Tribunal Law listed as Cap R7 in the 2003 Laws of Lagos State
[12]No. 12 Laws of Cross River State, 1985
[13] Cap L5 Laws of the Federation of Nigeria, 2004
[14] See for instance, Cap 100 Laws of Ogun State, 1978.
[15] Lagos State Tenancy Law 2011 No. 14 of 2011

(d) Residential premises in a public or private hospital or mental health facility and
(e) Premises made available in the course of providing rehabilitative and or therapeutic treatment.[16]

Furthermore, the Tenancy law of 2011also does not apply to premises, business or residential located in the following areas: Apapa, Ikeja GRA, Ikoyi and Victoria Island[17]. These are the highbrow areas of Lagos and the property prices both rental and sale is in millions. Also, the disputes relating to premises in any of the excluded areas (Apapa, Ikeja GRA, Ikoyi and Victoria Island) and those excluded by type are governed by the Lagos State Rent control and Recovery of residential premises Law of 1997 and the Recovery of Premises Law Cap 118 Laws of Lagos State 1973 or the terms as provided in the tenancy agreement executed between the parties.

More so, the landlord who seeks to recover possession of his demised premises from his tenant must comply with the due process of law and he must follow the procedure to the latter as stipulated in the applicable tenancy law. Any form of recovery, which is not in accordance with the laid down procedure will be an illegal recovery and leaves the landlord open to primitive damages and other serious liability, trespass and assault. Our courts of law have always resisted and frowned at self-help measures.[18] Thus, any forced eviction will be sanctioned by the courts. The recovery procedure to follow depends on the nature of the tenancy whether for a fixed term or a periodic tenancy. Where the tenancy is for a fixed term, the tenancy relationship comes to an automatic end at the expiration of the term. In such a situation the landlord is not obliged to give a statutory "notice to quit" as it is deemed that the tenant is aware and he is obliged by law to issue and serve a '7days notice of intention to recover possession. This is designed to put the tenant on notice of the fact that the landlord intends to commence legal action against him for holding over possession and for breaking the terms of his tenancy. At the expiration of the "7 (seven) days notices", the landlord may proceed to initiate legal action either at the Magistrate Court or High Court.

Where the tenancy has not expired and the landlord is desirous of recovering possession of the demised premises, he is obliged to give the two statutory notices to the tenant. This is designed to insulate the tenant from forced evictions and afford the latter with sufficient time to make alternative arrangement or enter into negotiation with his landlord. The landlord in this situation first serves the "notice to quit; this is to bring the tenancy to an end. It is the unilateral action of the landlord.

The landlord in this situation first serves the "notice to quit. This is to bring the tenancy to an end. It is the unilateral action of the landlord.[19] The length of the "notice to quit" served on the tenant is usually dependent on the periodic nature of the tenancy. [20] For instance, where the tenancy is yearly, then the tenant is entitled to six months "notice to quit". Where the tenant is a tenant at will, then one week's notice to quit will suffice. Where the tenancy is monthly, one month's notice to quit shall be served on the tenant. Where the tenancy is quarterly or half yearly then a "three months' notice to quit" shall be served on the tenant.

Where at the expiration of the "notice to quit" and the tenant still holds over the property, then the landlord is obliged to give a "7 days' notice of owner's intention to recover possession" as provided in

[16] Section 1(2) Lagos State Tenancy 2011
[17] Section 1(3) ibid. The Governor may be a gazzeted order exclude the application in any other area to premises.
[18] *Elochin Nigeria Ltd v Abadiwe* (1986) 1 NWLR PT. 14 @ 47 Amiagolu JSC as this to say "The Laws of all civilized Nations have always frowned at self help if for no other reason than that they engender breaches of the peace. It is no doubt annoying and more often than not frustrating for a landlord to watch helplessly his property in the hands of an intransigent tenant who is paying little for his holding or keeps the premises untidy or is irregular in his payment of rent or is otherwise and unsuitable tenant for the property. The temptation is very strong for the landlord to simply walk into the property and retake immediate possession. But that is precisely what he law forbids.
[19] Section 13 (1) Lagos State Tenancy Law 2011
[20] Where the tenancy agreement is silent as to the length of notice to be given then the statutory provisions will apply. See e.g. Section 13 (1) (e) of the Lagos State Tenancy Law 2011, which provides that where the tenancy is a yearly tenancy, the tenant is entitled to 6 months notice to quit. [23] Section 13(1) ibid.

Section 16 of the Tenancy Law of 2011 Where the tenant is still recalcitrant and fails to deliver and or yield possession of the demised premises to the landlord, the latter's right to take legal action kicks in. Such a landlord is at liberty to commence legal action in the High Court or at the Magistrate Court.[21] His claim shall be for an order of possession, arrears of rent and or mense profit as the case may be.[22] It is after the expiry of the statutory notices, which is either a "notice to quit" and/or the "7 days notice of intention to recover", that the landlord may file his action in a Court of law and proceed to recover possession of the premises. A licensee upon the expiration or withdrawal of his license is entitled to "7 days' notice of owner's intention to recover the premises" as provided in Section 14 of the Law. The Court as provided under the Tenancy Law of 2011, refers to the Magistrate Court and High Court, they both have jurisdiction to deal with landlord and tenancy issues. It should however be noted that where the rental value of the property exceeds the jurisdiction of the Magistrate Court which is in Lagos State is capped at ₦10 million, the landlord will have to initiate his action in the High Court. Furthermore, all recovery of premises matters in the areas excluded by from the ambit of operation of the Tenancy Law of 2011 is commenced in the High Court.

**Grounds for Recovery of Premises**[23]:

Where the premises is being used for an immoral or illegal purpose.

(a) Where the premises has been abandoned.

(b) Where the premises has become unsafe or unsound as to constitute a danger to human life and property.

(c) The tenant or subtenant by his conduct has constituted himself into an intolerable nuisance.

(d) Where the tenant is in breach of the covenants of the tenancy agreement such as nonpayment of rent. [24]

(e) Where the premises is required for personal use of the owner.

**Role of the Magistrates in Recovery of Premises**

It is not in doubt that justice administration has in the course of time witnessed a huge paradigm shift. It is now firmly entrenched that disputes may be settled by means other than litigation. Settlement of disputes and conflicts outside of the familiar courtroom is now the norm and new standard. This change remove has been propelled by the obvious inadequacies of the adversarial system for example (i) the failure of the system to deliver timely and cost-effective solutions to conflicts, (ii) the increasing frustration and perceptions of disputants that the Courtroom only favors the most expensive lawyers in town. (iii) The fact that litigation fractures almost irredeemably, the relationship between the disputants has engendered the acceptance of alternative dispute mechanisms.

Normally, the judge/magistrate wore the toga of an impartial umpire throughout the proceedings; he ultimately makes a decision based on facts presented before it. He is not to descend into the arena of the dispute, he is not to ask any questions himself or seek to unearth the truth. He must allow the parties to conduct their case in the way and manner they deem fit within the confines of the rules of his Court. His interactions with the claimant or the defendant is kept to the barest minimum.

Section 28 of the Lagos State Magistrates Courts Law 2009, enumerates the civil jurisdiction of the magistrates and it includes personal actions arising from contract, tort or both where the amount claimed

[21] Where the action is initiated at the Magistrate Court, there has to be a full compliance with the rules of procedure of the said Court. Most Magistrates Courts may entertain claims not exceeding ₦10 million.

[22] Ndiele v Gilbert Eze (2016) Lpelr 42122(CA); *Ihenach & Anor v Uzochukwu & Anor* (1997) LPELR-1460(SC) and *Sule v Nigeria Cotton Board* (1985) 2 NWLR (Pt. 5) (@)17

[23] Section 25 op.cit.

[24]Section 25(2) ibid.

does not exceed ten (10) million Naira; landlord and tenancy matters where annual rent values does not exceed ten (10) million Naira, appointments of guardians ad litem, appeals from customary courts, and recovery of statutory penalties, charges rates etc not exceeding ten (10) million Naira, and statutory offences as stipulated under the Urban and Regional Planning and Development Laws, Environmental Sanitation Law Personal Income Tax Law, to mention a few.

Of significant importance is Section 35 (1)- (3)[25], which provides thus:

1. In civil cases, a Magistrate shall, so far as there is proper opportunity, promote reconciliation among persons over whom he has jurisdiction, also encourage and facilitate settlement in an amicable way of matters in difference between them
2. The Magistrate may thus refer proceedings in relation to any action, part of or any matter out of it, for mediation to the Citizens' Mediation Centre established under the Citizens' Mediation Centre Law and or Lagos Multi-Door Court House.
3. Reference to mediation under the provisions of subsection (2) of this section shall be made with the consent of the parties to the proceedings.

Furthermore, where a recovery of premises litigation commences, the magistrate is to ensure that all statutory notices are served in strict compliance with the applicable law. A common provision found in most of the Recovery of Premises legislation is that the statutory notices, e. g "notice to quit and or "seven-days' notice of intention to recover", are to be served personally on the tenant. In addition, the laws usually provide alternate means of service, such as delivery on any adult on the demised premises or service by courier dispatch or affixing the notice on a conspicuous part of the demised premises. [26] It is imperative that the magistrate not only ensures that the relevant statutory notices have been served, he must also ensure that suit to recover possession of the demised premises commences in accordance with the provisions of the Rules of his Court i.e. by due process. In addition, the tenancy agreement and the applicable tenancy law are to be interpreted in a purposive manner without the importation of extraneous matters. Finally, let me add that the magistrate is expected to be in full control of his Court and must be ready to move the case along with dispatch so that recovery litigations do not suffer from inordinate adjournments, delays and backlogs. Expeditious determination of cases is the hallmark of an efficient judiciary. Parties have a legitimate expectation that their cases shall be determined with dispatch.

Moreso, in Lagos State, the jurisdiction lies in the annual rental value, where the rented value is below 10, (ten) million, the magistrate court is the proper court with jurisdiction to entertain the suit. Where the amount claimed is 5 (five) million, the action can be instituted in the small claim court. Where the rental value is above 10 (ten) million, the proper court with jurisdiction will be the High court of Lagos State.

Also, parties to a rental or lease agreement can by their express agreement vary the length of statutory notices required for recovery of premises. Where they so decide, they will be bound by the length of notices agreed. this paragraph should merge with the next one In the supreme court decision in pillars Nigerian Limited v William Kojo Desboordeks and Anor[27] In the supreme court, as regards the decision of the pillars Nigerian Limited v William Kojo Desboordeks and Anor, the Justice of this case is very clear.

[25] Magistrate Court Law 2009

[26] Sections 18 and 19 of the Lagos State Recovery of Premises Law.

[27] (1997) 1 SCJ 117 at 884 – where it was held that resort to self-help by the Landlord to evict a tenant who is in lawful occupation is not within the preview of the permission of the recovery of premises law and that such a landlord renders himself liable to the tenant trespass.

The justice of this case is very clear. The Appellant had held on to property which it had breached the lease agreement from day one. It had continued to pursue spurious appeals through the hierarchy of courts to frustrate the judgment of the Trial court delivered on 8/2/2000 about 20 years ago. After all, even if the initial notice to quit was irregular, the minute the writ court of summons dated 13/5/1993 for repossession was served on the Appellant, it serves as adequate notice. The ruse of faculty 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 whenever and wherever there is controversy on when or how notice of forfeiture or notice to quit is disputed by the parties, or even where there are irregularities in giving the notice to quit, the filing of an action by the landlord to regain possession of the property has to be a sufficient notice on the tenant that he is required to yield up possession. This research is not stating that statutory and proper notice to quit should not be given; however, whatever forms the periodic tenancy is whether weekly, monthly, quarterly, yearly.

Immediately after a Writ is filed to regain possession, the irregularity of notice, if any is cured. The time to give notice should start to run from the date the Writ is served. If for example, a yearly tenant, six months after the writ is served, and so on. All the dance drama around the issue of irregularities at the notice ends, the court would only be required to settle other issues if any between the parties. This appeal has absolutely no merit and it is hereby dismissed.

Hence, it would be proper from the above decision to state that the position of the law on the mandatory issuance of the service of a writ on the respondent amount to sufficient notice to quit.

### 4.2 Recovery of Premise Act (Abuja)

Regardless of any state of origin or nationality where someone come from, Nigeria citizens and people eligible to live in Nigeria possess the right to rent any property anywhere in any part of the Nigeria. However, Nigerian law provides for certain rules that must be complied with in matters involving rents in Nigeria that fall under the qualification, for a valid rent agreement in Nigeria. The major legislation that regulates property transactions in Nigeria is the Land Use Act, of 1979. Albeit, each state of the Federation have tenancy laws that regulate tenancy transaction in their states.

However, recovery of premises is among the transaction covered by the Land Use Act and Tenancy Law of various States of Nigeria. In Federal Capital Territory, the Act governs this is Recovery of premises Act (Abuja). In lease agreement, one of the essential elements for valid lease is exclusive possession which means the lessee must be in total possession of the leased (rented) property to the exclusion of the landlord, except where the tenancy agreement provides that the landlord may enter the premises to assess damages on the property or to repair damaged parts of the said property.

On this note, the exclusive possession as a right of the tenant is not paramount. Certain circumstances may warrant the lessor who is the Landlord to recover and take possession of the leased property. Where a tenant breaches a fundamental term in the tenancy agreement, the Landlord may apply to the court to recover the premises from the tenant.

More so the Magistrate Court or the High Court, as the case may be, is available to entertain an application which is necessary for recovery of premises because of unlawful eviction; the landlord can be sued and made liable for damages. The Supreme Court in *Ihenacho v Uzochukwu*[28] stated that before the expiration of the tenancy any landlord who seeks to recover possession of his premises (effluxion of time) is obliged to issue a notice to quit. The notice stipulates a period within which the tenant must quit possession of the premises.

[28] Cap 544 Laws of the Federation of Nigeria (Abuja) 1990.

The duration of notice given will usually depends depend on the agreement between the parties. In the absence of any agreement, the period of notice will be determined by statute. Specifically, the main legislature for the recovery of premises in (Abuja), Federal Capital Territory, (FCT) is the Recovery of premises Act.[29] Section 2 of the Act state (states) that, a landlord is a person entitled to immediate revision of the premises and includes the attorney or agent of any such landlord or any person receiving (whether in his own right or as an attorney or agent) any rent from any person for the occupation of any accommodation in respect of which he claims a right to receive same. This section of the Act, tenant includes any person occupying premises under a bonifide claim to be the owner of the premises. However, statutory notices are required before a landlord may recover his premises in Abuja. It is important to bring to the fore the fact that the formalities for recovery of premises in Abuja are similar to those of other state.

In Abuja, in term of court jurisdiction, it depends on annual rental value. Where the rented value is 5 (five) million naira or below the court with jurisdiction is the district court. Where the rental value is above 5 million naira, the High court of the Federal Capital Territory will assume jurisdiction.

### 4.3 Kaduna State Landlord and Tenant Law[30]

The major law in administering the Landlord and Tenant relationship in Kaduna State is the Kaduna State Landlord and Tenant Law, 2018.[31] Section 3 of the Law, states that, "a Landlord in relation to any premises means the person entitled to the immediate reversion of the premises, while jurisdiction of a court in this respect shall not ousted by the mere fact that the tenant asserts that title to the property vest in a party other than the Landlord and claims possession on rent arrears or mesne profit[32]. If the parties agreed to resort to Alternative Dispute Resolution (ADR), for amicable dispute resolution shall not be construed as an ouster of the court's jurisdiction. While all the proceeding shall be brought under the law at the district court or the customary court irrespective of the fact that the rental value of the premises exceeds the monetary jurisdiction of the court. This is different from what is obtainable in Lagos and Abuja on rental value as condition for court jurisdiction.

Upon the following ground in the order of possession, the court shall have power to make an order if the tenant is in arrears of rent,

- that the tenant is in breach of a fundamental covenant or term of the tenancy,
- that the premises is required by the landlord in personal use,
- that the premises is being used for immoral or illegal purposes by the tenant,
- that the premises has been abandoned,
- that the premises is unsafe and constitute a danger to human life or property,
- that the tenant or any person residing or lodging with him or being is sub-tenant constitutes by conduct, an act of intolerable nuisance,
- that the tenancy is for a fixed term and has expired by effluxion of time, and
- that seven days' notice at Landlord; intention to apply to recover possession has been served in the tenant or occupier.

## 5. Jurisdiction of the Court in Leases[33]

In Nigeria, one of the essential requirements for a valid lease is exclusive possession. That is, the lessee must be in total possession of the leased (rented) property to the exclusion of the Landlord, except where the tenancy agreement provides that the landlord may enter the premises to assess damages on the property or to repair damaged parts of the property.

[29] Ibid
[30] Kaduna State Landlord and Tenant Law No. 17, 2018.
[31] Ibid
[32] Section 5(2) ibid
[33] Section 7(i) (2) Kaduna State Landlord and Tenant Law 2018.

However, the right of exclusive possession, as stated above, is not paramount. Certain circumstances may warrant the lessor, who is the Landlord to recover and take possession of the leased property. Where a tenant breaches a fundamental term in the tenancy agreement, the Landlord may apply to the Court to recover the premises from the tenant.

An application to the Court is necessary because, for unlawful eviction, the landlord can be sued and made liable for damages. In *Ihenacho v Uzochukwu*[34], the Supreme Court of Nigeria held that "resort to self-help by the landlord to evict a tenant who is in lawful occupation is not within the purview of the provisions of the Recovery of Premises Law and that such a landlord renders himself liable to the tenant in trespass".

Every state of Nigeria has its lease/tenancy law. This research uses FCT Abuja and Kaduna State in terms of court jurisdiction as case studies; this has been stated earlier. In matters of recovery of premises, the jurisdiction of courts is dependent on the annual rental value of the property.

In Abuja, where the rental value is 5 million or below, the Court with Jurisdiction is the District Court. Where the rental value is above 5 million, the High Court of the Federal Capital Territory will assume jurisdiction.

Also, in Lagos, where the rental value is below 10 million, the Magistrate Court is the proper Court with jurisdiction to entertain the Suit. Where the amount claimed is 5 million, the action can be instituted in the Small Claims Court. Where the rental value is above 10 million, the proper Court with jurisdiction will be the High Court of Lagos State.

However, in Kaduna state, the situation slightly differs as follows;

On the issue of rental value, irrespective of monetary jurisdiction of the court, all proceeding, shall be brought under this law and district court of customary court[35]

Furthermore section 7(2) states that[36]: No court shall entertain a matter or proceed to judgment under this law unless there is proof of compliance with the provisions of subsection (1) of this section. Section 7(1) states that all tenancy agreements shall be in writing and in substantial conformity with form TL8 o this law. Therefore, the court will lack jurisdiction in Kaduna State Law if the lease agreement is not in writing and in substantial compliance with the form TL8 of this law.

Hence, parties to a rent/lease agreement can by their express agreement vary the length of statutory notices required for recovery of premises. Where they so decide, they will be bound by the length of notices agreed.

## 6. Conclusion and Recommendations

The lease is one of the instruments used to transfer real property in Nigeria. This article has investigated the legal framework of such instrument by considering some laws like Lagos State Tenancy Law, 2011, Recovery of Premises Act of Abuja 2004 and Kaduna State Landlord and Tenant law 2018 among others. Most Nigerians cannot afford the ownership of property and therefore have opted for lease as alternative for the use and enjoyment of property be it for residential or otherwise; hence the reason why this area of this research is important. The consent provision in the cause of creation of leases as stipulated under section 21, 22, 23 and 25 of the Land Use Act 1970 pose challenges before alienation by the lessee in the sense that it must first be had and obtained since the procedure to obtain governor's consent is too cumbersome. For instance, in Kaduna State as at when this article was written, apart from the existing difficulties, such as delay in the procedures of obtained consent the application must be together with

[34] (1997) 1 SCNJ 117 at 284
[35] Section 7(2) .
[36] Ibid.

applicant three-years tax clearance certificate. The researcher personally applied for governor consent in Kaduna at KADGIS in 2023 which took months before it was finally acquired.

However to address the challenges of consent under creation of leases, the governor's consent provision in the Land Use Act should be amended to reduce the hardship involved in the procedure to obtain same. Mechanisms to fast track the procedure should be put in place like for instance; in lease transactions, since it is for shorter duration, the law, "Land Use Act, 1978", for instrument like lease having shorter period not being permanent the duration should be very short to obtain consent for least or permanently remove consent requirement. More so, since a holder of statutory right of occupancy held for fix period and the interest will revert back to state Governor at the expiration of the term grants.