SUING THROUGH AN ATTORNEY IN TENANCY MATTERS IN IMO STATE: FROM PRACTICE TO PRINCIPLE

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Abstract

The practice of a landlord suing through an Attorney in actions for recovery of premises has become a constant over time, such that the legal status and effects of actions initiated by this procedure are rarely considered and consequently, misconceived both by jurists and advocates. A recent incident stirred up the examination of this topic by the Researcher. A Magistrate Court in Owerri, Imo State, declared an action filed in the personal capacity of the Landlord incompetent for failure of the Landlord to grant a written Power of Attorney to his Caretaker/Manager to represent him in the suit *albeit*, the Caretaker was only called as a witness and not an Attorney. A doctrinal research approach was adopted, with adequate reliance placed on the relevant primary and secondary sources. It was discovered that due to the long practice of instituting tenancy matters through an Attorney, some courts have made it a sine qua non to the validity of such actions and have inadvertently dismissed suits not brought through an Attorney. It was recommended amongst others that suits by proxy and the circumstances, conditions and modalities for filing them should be enshrined in the Tenancy Law of the State as well as the Magistrates Court Rules as it is obtainable at the High Court, Federal High Court and the National Industrial Courts to reduce the confusion and controversy surrounding this mode of commencing an action.

Key Words: Attorney, Landlord, Power of Attorney, Tenancy, Tenant

1.0 Introduction

One of the fundamentals of jurisdiction is the competence of parties to a suit to either prosecute or defend the action against them. The issue of parties is so foundational that any impropriety in the parties can rob a court of its adjudicatory jurisdiction. In other words, where a Plaintiff lacks the *locus standi,* which is the legal capacity to commence an action in court, or where he sues a person against whom he has no claim, the action is declared incompetent and liable to be struck out or dismissed, depending on the stage of the proceedings. Generally, in civil actions, a matter is instituted by a party called the Plaintiff or Claimant. Parties to an action are a creation of statute, just like every other jurisdictional issue. Consequently, to determine the appropriate party to initiate or defend an action, recourse must be mandatorily had to the law establishing the cause and right of action as well as the jurisdiction of the Court. Actions for recovery of premises are within the jurisdiction of the Magistrates' Courts. The parties in an action for recovery of premises are the Landlord and the tenant, but where the Landlord deems fit, he can delegate his right to sue to another, usually referred to as an Attorney. Sometimes, actions filed through an Attorney are mistaken for representative actions. At other times, the Attorney is erroneously treated as a party to the action. Recently, a court adjudged a suit filed by a landlord to be incompetent for the landlord's failure to grant a Power of Attorney to his Caretaker (who was merely called as a witness) to represent him in the suit as Attorney. The position of the law, as established by

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judicial precedents and statutes, is that an Attorney cannot sue in his name without the name of the Landlord but the dismissal of a landlord's suit for the sole reason that it was not brought through an Attorney is novel. Thus, bringing to limelight the nature, status, form and implications of appointing an Attorney in actions for recovery of premises.

2 Clarification of Concepts

2.1 Parties

Generally, in legal proceedings, the parties are those persons, be they natural or artificial, whose names appear on the record of the court as Plaintiff and Defendant;[1] Complainant and Defendant or Petitioner and Respondent, depending on whether it is a civil or criminal proceeding. The person who normally claims the existence of a thing which, by the operation of law he claims to be his, is usually called the Plaintiff/Claimant. The person against whom the claim is made and who normally denies, is called the defendant.[2]

Parties to proceedings are broadly categorized into desirable party, interested party and necessary party.[3] A desirable party is the party that has an interest in or who may be affected by the result of the action. An interested party is a person who could have been joined as a party to the suit. It includes a person affected or likely to be affected or aggrieved or likely to be aggrieved by the proceedings.[4] A necessary party is a person who would be bound by the result of the action; the question cannot be effectually and completely settled unless he is a party.[5]In any proceedings, necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence the proceedings could not be fairly dealt with.[6] There is also a category of parties referred to as proper parties. Proper parties are those who, though not interested in the plaintiff's claim, are made parties for some good reasons.[7]

For a person to be joined as a party in an action, it must be shown that the person is entitled to some share or interest in the subject matter or lays claim to such share or interest or is likely to be affected by the result of the action or is a necessary party and/or it is just and convenient to join him.[8] The expression "a person having interest" has been defined as synonymous with "person aggrieved".[9] A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something".[10] The test of interest to determine a person interested is whether the person could have been joined as a party to the suit. [11] One of the reasons for making a person a party to an action is to make the person bound by the result of the action or benefit therein."[12]

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1 *Olawoye v Jimoh & Ors*(2013) Legalpedia (Sc) 18118
2 *Nwavu & 11 Ors v Okoye & 19 Ors*(2008) Legalpedia (SC) 78175
3 *Igbudu v Iorchir Mathais* (2022-05) Legalpedia 63345 (CA)
4 *Section 243 (1) (a)* of the Constitution of the Federal Republic of Nigeria 1999 (as amended); E.F.P Co. Limited v. NDIC (2007) 9 NWLR (Pt. 1039) 216 at 251.
5 *Ojo v Ogbe* (2007) 9 NWLR (Pt. 1040) 542 at 551
6 *Biyu v Ibrahim* (2006) 8 NWLR (Pt. 981) 1 at 35
7 *Green v Green* (1986) NWLR (Pt.18) 517
8 *Yakubu v Gov. Kogi State* (1995) 3 NWLR (Pt. 383) 367 SC; *Ogunbule v Adebanjo* (2006)2 NWLR (Pt. 964) 319
9 *Ikonne v Commissioner of Police, Imo State* (1986) 2 NSCC 185, 1130, 1153
10 *In Re: Sidebotham, Ex. P. Sidebotham* (1880)14 Ch. D at p. 465, per James, LJ
11 *Enyibros Foods Processing Co. Ltd v Nigerian Deposit Insurance Cooperation* (2007) 8 NWLR (Pt. 1039) 216, 251, per Tobi JSC
12 *Diamond Bank Plc v Hollist & Ors* (2015) Legalpedia (CA) 13712

Having seen the meaning of a party, can an Attorney be described as a party whose presence is required to determine the case in question or whose presence cannot be dispensed with in the adjudication of a tenancy matter? If the answer is in the negative, what is the rationale for declaring a suit incompetent that is not brought in the name of an Attorney?

2.2 Attorney

An Attorney is an individual appointed and authorized to act on behalf of another person.[13] There have been controversies as to the form, the appointment of an Attorney should take to be valid in law. While it is desirable and easily determinable to have the appointment of an Attorney in writing, verbal or parole appointment is not invalid. It is not the law that an Attorney must tender his letter of authorization to prove instruction to handle a matter in any court, which includes Landlord and Tenant matters. No one has the right to challenge such authorization except the party he claims to be representing. This is akin to the decision of the Court in *Ajakaiye v FRN*[14] which held as follows:

> "It is a trite and well established principle of law, that when a lawyer (legal practitioner) appears in a court of law and announces that he is duly instructed by a party, the court will have no business inquiring into his authority to appear. The only person that can challenge a legal practitioner's right or authority to appear in a court of law, is the party he claims to be representing."

2.3 Power of Attorney

A Power of attorney is a grant of authority that allows someone to make legally binding decisions for another or on another's behalf. When you grant someone this authority, he has the power to act in your place, meaning that his decisions are as binding on you as if you had made them yourself. Power of Attorney can be durable or temporary. A durable Power of Attorney continues until you explicitly revoke it while a temporary grant specifies when that power will end. A Power of Attorney is an agreement between two parties: a principal and an attorney-in-fact. The Attorney-in-Fact need not be an Attorney at law (a lawyer). A Power of Attorney gives the Attorney-in-Fact rights to act in the principal's place and they stand in a fiduciary position to their principals.[15]

Powers of Attorney may be general, limited or special. They are usually written documents, although some jurisdictions allow oral power or attorney agreements. Many jurisdictions impose special requirements on their form or substance. Typically, a power of attorney only remains effective as long as the principal is alive and competent to make decisions. Principals may, however, grant durable powers of attorney that persist after they are no longer able to make their own decisions.[16] In this regard, the court described a power of attorney in the case of *Okoroafor v Owerri Municipal Council*[17] when the court held that:

> ...I shall also resort to the definition of POWER OF ATTORNEY in BLACK'S LAW DICTIONARY Sixth Edition at page 117 "An instrument in writing whereby one person as Principal appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of

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13 T Y Lyvinton, 'Understanding Attorney in Fact,' < https://bluenotary.us/attorney-in-fact-vs-power-of-attorney/#google_vignette> accessed on 1/4/2025

14 *Chemiron International Ltd v Stabilini Visinoni Ltd*, Per Y. B. Nimpar, J.C.A (2015) Legalpedia (CA) 10512

15 <https://www.law.cornell.edu/wex/power_of_attorney>, accessed on 17/3/2025

16 *Ibid.*

17 (2014) LPELR-22847(CA) (Pp. 25 paras. C) Per EKPE ,JCA (P. 25, paras. C-E)

> principal. An instrument authorizing another to act as one's agent or attorney. The agent is attorney in fact and his power is revoked on the death of the principal by operation of law. Such power may be either general (full) or special (limited).

Under the Nigerian law, a Power of Attorney has been recognised as one of the ways to create an agency relationship. In *Salbodi Group Ltd & Alhaji Salihu Makama v Doyin Investment Nigeria Limited & Ors,*[18] the Court of Appeal, in adopting the decision of the Supreme Court on the methods of creating agency, held that:

> "In law, agency can be created in about four to five ways. See Vulcan Gases Ltd. V. GF.IND. AG. (2001) 9 NWLR (Pt. 719) 610 @ Pp. 637 - 638, where the Supreme Court per Iguh JSC had espoused various ways of creation of agency inter alia thus:
> "Usually, the relationship of principal and agent may arise in any one five ways, namely;
> (1) By express appointment whether orally or by letter of appointment or, indeed by Power of Attorney…
> (2) By ratification of the agent's acts by the principal…
> (3) By virtue of the doctrine of estoppel
> (4) By implication of law in the case of agency of necessity and
> (5) By presumption of law in the case of cohabitation"

Accordingly, a Power of Attorney is an instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain acts or kinds of acts on behalf of the principal[19]. A Power of Attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor.[20]

2.4 Tenancy

A tenancy springs from a consensual arrangement between two parties; one person grants to another the right to possession of land for a lesser term than he, the grantor has in the land.[21] that is, landlord and tenant. A tenancy contract is created when a landlord hands over his property to a tenant, with the understanding that the latter will have exclusive possession of the property for an agreed period. In exchange for such exclusive possession, the tenant makes a certain payment known as rent to the landlord. A tenancy can be created expressly or impliedly by parties. It can also be created by statute or operation of law, for instance, statutory tenancy and successive tenancy.[22] The most predominant factor of a tenancy is that it is for a 'Term certain,' which is usually between one to three years with the option to renew. Any tenancy relationship exceeding three (3) years is considered a lease agreement and not a tenancy agreement.[23] There are about five types of tenancy: tenancy at will-where the tenant occupies premises with consent of landlord without any fixed or definite term or interest in the property; tenancy at sufferance-which is where a tenant occupies the premises without the consent of the landlord, and arises in a situation where there has been a notice to quit and he

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18 (2022-05) LEGALPEDIA 18045 (CA) per B. A. GEORGEWILL, J.C.A

19 *Abubakar v Waziri* (2008) JELR 46682

20 *Ude v Uwara* (1993) 2 SCNJ 47

21 *Javad v Aqil* (1991) 1 WLR 100

22 D Evans and P F Smith, *The Law of Landlord and Tenant* (London, Butterworths Publications 1974) 12-13

23 A K Ugochukwu, "Terms in Tenancy Agreements in Nigeria between Landlords and Tenants, <https://anikingsleyugochukwu.wordpress.com/2020/12/15/tenancy-agreements-between-landlord-and-tenantsnigeria/> accessed on 26th March, 2025.

refuses to give up possession; periodic tenancy-which arises where a tenant has been given possession of premises with the consent of the landlord and there is a particular time fixed. Usually, it will carry a renewal clause; Statutory Tenant- is tenant who got into the premises legally but subsequently his tenancy is terminated either by valid notice to quit or by expiration of time, such that he would have become a tenancy at sufferance however, he cannot be forcefully ejected unless proper legal action is taken out at the law court because the law (statute) offers some protection to the tenancy. If such tenant is forcefully ejected, the landlord will be liable in trespass.[24]Tenancy for a fixed period-tenancy for a term certain and fixed by the parties and automatically expires on effluxion of time[25] Tenancy by estoppel-this is where the parties are estopped from denying the tenancy, that is, where a particular person acts as landlord and does not have title to the property[26]**.**

2.5 Landlord and Tenant

A landlord is a person entitled to the immediate reversion of the premises.[27] A landlord is any person receiving rent (whether in his own right or as an attorney or agent) from another for the occupation of any premises.[28] A Tenant is a person who occupies any premises, whether on payment of rent or by operation of law.

Section 4 of the Imo State Landlord and Tenants Law describes tenancy. The section provides that:

> 1. Subject to this Edict or any other written law in force in the State, there shall exist a relationship of landlord and tenant where an interest in property is created in favour of a person out of an interest vested in another person in the same property.
> 2. An interest created under subsection (1) of this section is called "tenancy"; the person out of whose favour a tenancy is created is called "landlord"; the person called "tenant" and the duration of the tenancy is called "term".

Section 7 further states that "the holder of a right of occupancy may subject to this Edict and any other law in force in the state, create a tenancy thereof for any term".

3. Parties in Actions for Recovery of Premises in Imo State

The general jurisdiction of the Magistrates' courts in Imo State is provided under the Imo State Magistrates' Courts Law[29] and Rules. *Section 17 (1)(b)* of the Law provides that in all suits between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, the Magistrate Court shall have jurisdiction to hear and determine the same, subject to its monetary limits which is currently a minimum of two million naira.

By *Order 111 Rule 1* of the Imo State Magistrate Court Rules, only a person who has a right to claim a relief against another can bring a suit. Once it is established that the plaintiff has a relief to claim against the Defendant, the right parties are before the court. Conversely, the absence of a relief claimable against the Defendant amounts to the absence of a right of action.

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24 *Pan Asian African Co. Ltd v. NICON* (1982) 9 SC 1; *AP v. Owodunni* (1991) 8 NWLR Part 210 Page 391

25 *UBA v Tejumola* (1988) 2 NWLR (Pt.79) 662.

26 *Ude v Nwara* (Supra)

27 *Section 2* of the Recovery of Premises Act, Cap 544, Laws of the Federation of Nigeria, 2004

28 *Ibid*

29 (Cap 82) Laws of Eastern Nigeria, 1963 (as Amended)

In the exact words of the Rules: "any person may join a plaintiff in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative."

On the proper parties to an action in a matter for recovery of premises, the Landlord and Tenants Law of Imo State[30] which is the principal law governing actions for recovery of premises in the State, gives the Landlord of a premises the right to recover possession of his property let out to a tenant for lawful occupation. *Section 121* of the Law mandates a tenant to deliver up possession of the premises upon same being determined. Where the tenant refuses to deliver up possession as required under *section 121*, *section 122* gives the landlord the right to evict him. According to *Section 122* of the Law:

> (1) When the tenant fails to get the subtenant out of the premises or otherwise deliver up complete possession, the landlord may maintain an action against him for failure to quit and deliver up possession at the end of the term.
> (3) in any such action, the landlord shall recover against the tenant reasonable damages and cost sustained by him by reason of the tenant's failure to deliver up complete possession of the premises

It is crystal clear from the above-cited Law and Rules who has the right and capacity to sue or be sued in actions for recovery of premises- the Landlord who has a relief to claim against the tenant in the premises. To buttress this fact, in *Essential Logistics Ltd v Odili & Ors*[31], the Court of Appeal held that:

> it is the law that when time fixed for the tenancy to run lapses, the relationship of landlord and tenant automatically terminates and the landlord if he so wishes, may take possession through the due process of law after serving on the tenant notice of owners intention to apply to recover possession [i.e. seven days' notice)."

4.0 The Legal Status of an Attorney in Actions for Recovery of Premises

Generally, a plaintiff or claimant has the right to appoint an Attorney to institute an action on his behalf. The legality of this procedure is unquestionable. The recent trend is to make a provision in the Rules of Court granting a party the choice to use an agent, which includes an Attorney to prosecute his claim. For instance, the Federal High Court Rules[32] expressly allows a party to take actions in respect of a matter through an agent. According to *Order 9 Rule 34* of the Rules,

> Where by these Rules, any act can be done by any party in a proceeding, the act may be done either by the party in person, his legal practitioner or his agent unless the agent is expressly barred under these Rules.

Similarly, *Order 13 Rules 32 and 33* of the National Industrial Court of Nigeria (Civil Procedure) Rules[33]provide thus:

> 32. Where by these Rules, any act may be done by any party in any proceedings, such act, may be done either by the party in person, or by

30 1994
31 (2014) Legalpedia (CA) 19151 PER BAGE, JCA
32 2017
33 2017

> the party's counsel, or by the party's agent (unless an agent is expressly barred under these Rules).
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> 33. If a power of attorney is executed by a principal and the agent is authorized to sue in a representative capacity on behalf of the principal, such an action must be brought in the name of the principal, that is, the donor of the power of attorney, indicating that the donor is suing through the named agent"

In the same vein, the Imo State High Court (Civil Procedure) Rules[34] provides in *Order 13 Rule 34* that:

> Where by these Rules, any act may be done by any party in any proceedings, such act, may be done either by the party in person, or by his Legal Practitioner, or by the party's agent (unless an agent is expressly barred under these Rules).

By the express provisions of these rules, it can be rightly inferred that for a person to sue as an Attorney for another, he must have the backing of law. The question that begs for an answer is where a law does not make such a provision, what will be the legality or validity of a suit brought through an Attorney?

The Landlord and Tenant Law of Imo State recognizes holders of power of attorney for the purposes of creating tenancies but[35] is silent on the power to appoint an Attorney to institute a legal proceeding. The other provision that relates to power of attorney is the interpretation of the term. The Magistrates' Court Rules is equally silent on the procedure to be adopted in instituting legal proceedings by holders of power of attorney, too.[36]

Besides the rules, it is an acceptable practice in judicial proceedings for a Claimant to donate power to a person to prosecute a matter on the Claimant's behalf.[37] In *Akinbode v Oyebamiji & Anor*[38] the court held that:

> A suit filed by an attorney is perfectly normal and acceptable under our law. It flows from the relationship of an agent and a principal. All that is required is that there must be a donor and a donee of a power of attorney, that the power to sue in the name of the donee was expressly given in the power of attorney and that the donee of the power must sue in the name of the principal.

The defining question here is whether the Rules of this Court permits a person to sue or be sued as a lawful attorney of an aggrieved person? In *Akinbode v Oyebamiji &Anor*[39] the Appellant's suit was struck out because she was suing through her lawful Attorney, which the Civil Procedure Rules of Ogun State High Court does not make any provision for. In the absence of any express provision for actions to be taken through an agent, any suit brought through an Attorney should not be entertained.

Where there is a written contract or agreement authorizing an agent to take legal actions for a principal, such contract or agreement must be recognized under an express provision of the law as one of the ways of initiating an action before a suit by an Attorney can be competent. Therefore, it is not enough to found one's authority to sue merely on a contract between him

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34 2017

35 *Sections 12 and 14*

36 *Ofodum v Onyeacho* 10 ENLR 132

37 *Laah v Opaluwa* (2004) 9 NWLR (Pt.879) 558

38 (2014) LPELR-24410(CA) (Pp. 16-17 paras. D)

39 (2014) LPELR-24410 (CA)

and the principal, it must have a statutory flavour. This is the position of the law in Uganda. In *Order 3 Rule 1* of the Civil Procedure (Amendment) Rules of Uganda[40], law suits and applications are made either by a party or through an agent authorized by the party via a written power of attorney. For such an agent to make an appearance or application on behalf of the donor of the power, his authority must not only be in writing, but it must be in the form of a power of attorney.

In Nigeria, it is trite law that a donee of power can sue on behalf of the Donor of the Power and in that regard, the donee must institute the action in the name of the donor. As stated in *C. N. Ekwuogor Investment (Nig.) Ltd v. Asco Investment Ltd*[41], "the preponderance of authorities both at the Supreme Court and this Court state that a donee of a Power of Attorney has to sue in the name of the principal". It presupposes that an Attorney cannot competently maintain an action on behalf of his principal in his name. However, in some other jurisdictions like Uganda, an Attorney can sue in his name depending on the extent of the power granted to him by the donor of the power. In *Uganda Performing Rights Society v MTN (U) Ltd*[42], the Court considered the relevant provisions of the contract entered into between individual members of UB40 and the Plaintiff wherein they assigned all their copyrights for purposes of effective management to the Performing Rights Society of UK (hereinafter called PRS (UK) and to exercise exclusive right to commence and pursue, either in its name or that of the author concerned, any legal action against any person or corporate body and any administrative or other authority responsible for illegal performances. The above provision of the contract empowered the plaintiff to sue either in its name or in the name of the author in whose work the copyright is alleged to have been infringed. The court is of the opinion that where the plaintiff opts to sue in its name, as in this case, then no power of attorney would be required. However, where it opts to sue in the name of the author, then a power of attorney would be required because it would be acting as an agent. All in all, it is the view of this court that the plaintiff was conferred with the power to commence and pursue any legal action in its name.

Again, in Uganda, where a power to represent another in a suit exists, it must be filed alongside the originating process. *Order 7 rule 14 (1)* of the CPR provides that: -

> where a plaintiff sues upon a document in his or her possession or power, he or she shall produce it in court when the plaint is presented, and shall at the same time deliver the document or copy of it to be filed with the plaint."

This provision was tested in *John Sebataana v John Abanenamer*[43]. In this suit, Court found that the power of attorney which gives the plaintiff the basis to sue the defendants was not annexed to the plaint and held that the attorneys have no authority to sue the defendants. The further held that the attorneys did not have a cause of action against the defendants and that the suit instituted by the attorneys against the defendants was unlawful. The concluded that the absence of the power of attorney in the plaint amount to filing a plaint without plaintiffs and such cannot be sustained in law.

Similarly, in the US Federal Rules of Civil Procedure[44]which provides for the capacity of parties to sue and be sued , the general principle is that every action shall be prosecuted in the name of the real party in interest. The Rules, however, recognizes actions by proxy. Thus, an executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in

40 2019
41 (2011) LPELR- 3899 (CA)
42 Civil Suit No. 287 of 2010
43 Civil Suit No. 99 OF 2005
44 *Order IV Rule 17*

whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States.

Just like it is provided in the Ugandan Rules, the US Code of Federal Regulations[45]insists that a person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter. Conversely, in actions for recovery of premises, there is no such rule; rather, the Attorney is required to tender it in evidence during trial.

Unlike the position in Uganda and US, in Nigeria, where a landlord chooses to sue through an Attorney, the form the authorization takes is immaterial. The law is clear as stated in *Vulcan Gases Ltd. v. G.F Ind. Gasverwertung A-G. (G.I.V)*[46] that "the relationship of Principal and agent may be by express appointment whether orally or by letter of appointment or, indeed, by a Power of Attorney. No formality, such as writing is required for the valid appointment of an agent except for instance, where the authority of the agent is to execute a deed on behalf of a principal. in which case, the agency itself must be created by deed. In view of this authority which has not changed, it is therefore, a misconception of the law for a court to insist on a written authority to prove the appointment of an Attorney before the Attorney will either represent the Plaintiff or testify on his behalf.

5.0 Is Suing through An Attorney Compulsory in Recovery of Premises?

As observed above, filing a suit through an Attorney is not a mandatory requirement, *albeit* it is permissible in law. Unfortunately, the agelong practice of bringing an action in the name of the landlord through his Attorney has been converted into a mandatory principle of law by some magistrate courts. This was the exact experience the researcher had in *Mr. Rising Egwim v Onyekachi Chimezie*[47] where the case was instituted solely in the name of the landlord and the court ruled that because PW1 who is his caretaker and manager did not tender a Power of Attorney while testifying as a witness, his evidence had no probative value. The court nonsuited the Plaintiff and simultaneously declared the suit incompetent for the absence of a Power of Attorney.

Firstly, no law forbids a landlord from initiating an action *suo motu* against his tenants or mandates him to do so through an Attorney appointed by him and the fact that the landlord sued in his name does not obligate him to testify. Evidence of his tenancy transactions can be adduced by anyone who witnessed same. The law has remained constant that the prosecution has the latitude to call the number of witnesses it desires. He is not under any obligation to call a particular witness[48] including himself. No law requires a Plaintiff or a Defendant to be present to testify if he can otherwise prove or defend his case.[49]

Secondly, where a landlord chooses his Caretaker to testify for him, the Caretaker does not need to be empowered by a Power of Attorney to be competent to testify. Under the Evidence Act[50], "all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to

45 § 725.302 Evidence of authority to file a claim on behalf of another.
46 (2001) 9 NWLR (Pt.719) 610
47 SUIT NO: OW/217/2024
48 *Akhigbe v The State* (2025-01) LEGALPEDIA 93823 (SC)
49 *Cross River State N/Papers v Oni* (1995) 26 LRCN 51
50 2011 (as amended)

those questions, by reason of tender years, extreme old age, disease, whether of body or mind, any other cause of the same kind."[51] How evidence is led is stipulated in *Sections 125 and 126* of the Act. *Section 125* provides that all facts, except the contents of documents, may be proved by oral evidence which shall be direct. Direct oral evidence implies that the evidence must refer to-(a) a fact which could be seen, it must be the evidence of a witness who says he saw that fact ; {b) to a fact which could be heard, it must be the evidence of a witness who says he heard that fact (c) to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness, who says he perceived that fact by that sense or in that manner ; (d) to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. Therefore, the qualification of a witness to testify is based on his ability to give direct evidence of the fact to which he testifies and he needs no special authorization to give evidence where he has been invited by a party to testify for him. This applies to all cases, inclusive of actions for recovery of premises.

It must be pointed out that the fact that a landlord has a caretaker in his premises, does not automatically make him the landlord's Attorney to file a suit for him. Such a Caretaker can only be an Attorney to the Landlord where he has been authorized by the Landlord to initiate the suit on the landlord's behalf. There is also no law insisting that a landlord must bring his suit through an Attorney and that a Caretaker must be that Attorney.

6.0 Representatives' actions vs. Actions brought through an Attorney

One of the greatest misconceptions of an action initiated through an Attorney is that it is a representative action. Although an Attorney represents his principal but in a different context from representative actions in law. Representative actions are actions or suits instituted and/or conducted by one or more plaintiffs or defendants for and on behalf of other parties (plaintiffs or defendants) to the suit.[52] Representative suits are mainly used in actions by family heads or principal members for and on behalf of the family; officers or members of an association or common groups not bearing legal personality on behalf of the association or common group; next friends and guardian or ad litem for and on behalf of infants and lunatics; actions in respect of estate of deceased persons and executors of wills and letters of administration; other groups of persons with common interest in the subject matter of the action who decide to use a few persons to represent the entire persons constituted in that group. Whenever a person or persons are suing or being sued in a representative capacity, it must be clearly shown on the title of the writ as well as in the endorsement on the writ the names of the parties and the capacities in which the action is being brought or prosecuted.[53]The Court of Appeal while adopting various Supreme Court judgments, held in *Government of Akwa Ibom State & Ors v Mathew & Ors*[54] as follows:

> It is clear for the above that the persons suing in a representative capacity must have the same interest in the proceeding. Thus, the subject matter must evince a common interest as opposed to diverse interest, common grievance and

51 *Section 175(1)*

52 *Atanda v Olanrewaju* (1988) 4 NWLR (pt. 89) 394.

53 "Representative Actions, Class Actions and Third Party Proceedings", <https://motun911.wordpress.com/2020/12/14/representative-actions-class-actions-and-third-party-proceedings/> accessed on 18/4/2025

54 (2022-03) Legalpedia 10193

> reliefs sought must in their nature be beneficial to all the representatives and those represented.[55]

The Court of Appeal went further to acknowledge the holding of the Apex Court that: "for an action to lie in a representative capacity, the following must co-exist: -(a) there must be a common interest; (b) there must be a common grievance, and (c) the relief claimed must be beneficial to all.

One of the grounds relied upon by the Defendant's counsel in Mr. Rising's case to support his argument that the suit was incompetent was that the Plaintiff's suit did not satisfy *Order III Rule 3* of the Magistrates Court Rules of Imo State, 1956 which provides as follows:

> If any person sues or any defendant is sued in any representative capacity, it shall be expressed on the summons. The Court may order any of the persons represented to be made parties either in lieu of, or in addition to the previously existing parties.

The underlying factor to be considered in a representative action is whether the party representing the others share a common interest in the subject matter of the suit. In this context, therefore, an attorney cannot be said to share the same interest in the premises let to the tenant but only acts to prosecute his right and nothing more.

7.0 Conclusion/Recommendations

Actions by proxy are not new in the Nigerian legal system. This is common with actions for recovery of premises. Suing by an Attorney is a recognized practice which has been incorporated in some Rules of Court. However, no such rule is provided under recovery of premises law of Imo State. Actions by an Attorney, aid parties in exercising their right to legal redress in absentia, but not without controversies as to who, when and how a suit by an Attorney can be instituted. Contrary to the recent development, no rule mandates a landlord to be represented by an Attorney in a legal suit.

For clarity, however, it is recommended that there be an express provision for suit by attorneys in the Rules of Court particularly, the Landlord and tenant Law. It should not be left as a mere practice but rather be an established principle in our laws. This will remove every confusion surrounding suits initiated by an Attorney and cure the misapplication of the procedure.

The form the authorization for bringing an action through an attorney should take, must be specified too, as it is obtainable in Uganda and America. In Nigeria today, such an Authority may be verbal or written. In Uganda, it must be a Power of Attorney, but the US Code merely says that the document authorizing the Agent must be filed along with the Claim. This presupposes that any document in so far as it contains the consent and authority of the plaintiff to be represented, will suffice.

It is further recommended that a re-orientation or sensitization exercise be carried out to train practitioners and courts on the importance and implications of appointing a person as an Attorney to prosecute or defend an action against another.

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[55] See *Ayinde & Ors v Akanji & Ors* (1988) LPELR – 676 (SC) Per Craig JSC (Pp 26 – 27 Paras F; *Ezendu v Ekwoaba* (1998) 9 – 10 SC 143 AT 152