

Rent Review Clause in a Depressing Economy

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Abstract

The enforcement of the Rent Review Clause in a lease is very controversial. It is a matter of utmost importance to the landlord to receive good returns for his real property investment, in view of current hyper-inflationary trend in Nigeria. It is one of the most litigious areas in the Law of Landlord and Tenant. Most of these cases are rarely reported because over 90 percent of them end up at the Rent Tribunals, Magistrates' and other Courts of Inferior Records and do not often go to appeal. This article looks at the current pervading economic crisis in Nigeria which has placed the Landlord in a disadvantaged position. Instead of the Landlord to enjoy upward rents review at periodic intervals, to commensurate his real property investments, he is compelled by the market forces to reduce rent to accommodate tenants whose partner or bread-winner had lost jobs, encountered business failure or leave his property vacant and un-let for considerable period of time, because of lack of ability to pay by the prospective tenants. This paper attempts to examine the operation of the Rent Review Clause, its applicability in residential lettings during the economic boom, non-applicability in Commercial Lettings, Government Lease and the present reversing or descending trend resulting into decrease in the fortune of the landlord, to the advantage of low-income tenants whose class of income the landlord is compelled to accommodate due to the declining economic circumstances.

Keywords: Rent, Review, Clause, Depressing, Economy

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1. Introduction

It is common for Conveyancers to include Rent Review Clause (RRC) in Tenancy Agreement in order to mitigate the effect of inflation. This would facilitate the upward review of the rents at periodic intervals throughout the duration of the lease commensurate with the rising cost of living. In most private lease (as opposed to the lease of public lands by the Government Authorities) it is common for the parties to consent to negotiations to review the rents at periodic intervals of every five years. Normally, the current market value of the premises (the rack rent) is computed at the stipulated intervals and substituted for the former rent. In the current economic crises, most landlords are unable to enforce the RRC today because in spite of the rising costs of living, the depreciating income of most tenants are unable to foot the increase and most of the middle-class tenants had gone to buy their plots of lands, build their own houses and abandoned the apartments hitherto let by the Landlords. Most Landlords are consenting to downward instead of upwards reviews. This is the disgusting effects of depressing economy which presently cannot sustain the operation of the RRC.

2. Rent Review Clause Must be Subject to Express Covenant

The general rule is that the Landlord and Tenant are at liberty to insert express covenants in their Tenancy Agreement to govern any subject-matter which they think appropriate, provided it does not contravene any established law.¹ Apart from all the implied covenants² such as quiet possession – this has been extended to include the right to privacy and freedom from unreasonable disturbances,³ non-derogation from the grant, fitness for habitation and keeping the roof and main-walls in repairs, which are implied by the general law in a Leasehold Agreement, both the Landlord and Tenant are at liberty to put any express covenant to govern any subject-matter as terms and conditions of the tenancy.⁴ **S 57 (1) Registered Land Law 1973 (Lagos State)** provides that subject to the provisions of the Law or any enactment, the Proprietor (Landlord) may by mutual agreement, lease his

¹ See discussions on Rent Review Clause - I. O. Bolodeoku – Rent Review Clause, What Lawyers Must Note (1994-96) *Nigerian Journal of Contemporary Law* p-109, Emeka Chianu–*Landlord and Tenant Cases and Materials* (2006) pp. 256-259, Emeka Chianu – Law of Landlord and Tenant 2010 pp.269-270; *Adedubi v Makanjuola* (1944) 10 WACA 33, *Esi v Moruku* (1940) 15 NLR 116 at 119,

² S.64 Registered Land Law Lagos State, SS.33, 34 and 35 Landlord and Tenant Law 1988 (Rivers State), 1990 (Kaduna), 1993 (Imo) 1999 (Abia), 2000 (Akwa-Ibom) and 2004 (Cross Rivers) and 2006 (Bayelsa) States of Nigeria.

³ S.6(1) (a) (b) Tenancy Law 2011 (Lagos State)

⁴ See discussions on Rent Review Clause – See D.N. Clark (Prof) and John E. Adams (Prof) -Rent Reviews and Variable Rents (1990) (Longmans London) pp.3RD Edition, I.O. Bolodeoku – Rent Review Clause, What Lawyers Must Note (1994-96) *Nigerian Journal of Contemporary Law* p-109, Emeka Chianu (Prof) – *Landlord and Tenant Cases and Materials* (2006) pp. 256-259, Emeka Chianu (Prof) – Law of Landlord and Tenant 2010 pp.269-270

property on such conditions or terms, as he thinks fit. In *NSC (Nigeria) Limited v. Innis-Palmer*⁵ the Court of Appeal held that in cases such as Covenants for Repairs, Rent Review Clause not to Sub-let, Under-let or part with possession without the written consent of the Landlord,⁶ not to undertake structural alteration,⁷ restrictive user, improvements and developments on the demised land, insurance, option to renew, option to purchase and others spelling out the terms and conditions of the lease must be the subject of express covenants⁸ as they are out implied in any lease under the general law except in respect of the leases of State land.¹⁰ The other covenants subject to express terms are service charges, facility and security deposits.¹¹

3. The Operation of Rent Review Clause in a Lease

The purpose of RRC is to enable the Landlord obtain market value of the rent of his premises at stipulated intervals, reflect on the change in value for his investments in real property.¹² The evidence of Estate Surveyors and Valuers are admissible to determine the lettable value of the demised premises and what is reasonable rent, fair market value, rack rents, fair market rent shall be determined having regards to the adjacent properties within the vicinity which have similar age, amenities, facilities available and comparable character within the neighbourhood.¹³ In *Awaye Motors Limited v. Adewumi*,¹⁴ the Court of Appeal held that the Courts must take judicial notice of the inflationary trend in the country and of the Government measures to combat inflation. *Abdullahi JCA* held that before the Court could fix the reasonable or market rent for the particular premises, evidence must be adduced before it in order to arrive at just decision and here, there was no such evidence before the trial judge as to the rate and percentage of inflation, government measures in combating

⁵ (1992) 1 NWLR (Pt. 218) 422 at 225 and 435

⁶ Subject to the requirement that such consent shall not be unreasonably be withheld in case of respectable, reasonable and responsible assignee, sub-lessee – See S. 60(2) Registered Land Law 1973 (Lagos State), *Alakija v. John Holt Limited* (1973) 7 CCHCJ 27 at 31 & 36, *Stirling Astaldi Limited v. Idowu Limited* (1976) 8 CCHCJ 2099 at 2105.

⁷ S.65(d) Registered Land Law 1973(Lagos State).

⁸ See generally- tenancy agreement, covenants, terms in a lease and breaches – *NBA (LPDC) v. Ojo* (2017) 13 NWLR (Pt. 1581) 1000 (LPDC is staffed with eminent Lawyers of the highest caliber and its judgment has the status of Court of Appeal because its appeals lie straight to Supreme Court), *Ogbonna v. KSD & P Co. Limited* (2014) 11 NWLR (1417) 185SF & P Limited v. NDIC (2012) 10 NWLR (Pt. 1309) 522 (CA), *Adedubi v. Makanjuola* (1944) 10 WACA 33, *Esi v. Moruku* (1940) 15 NLR 116 at 119,

⁹ *NSC (Nig) Limited v. Innis-palmer* (1992) 1 NWLR (Pt. 218) 422 at 225 and 435 – a case of express covenants for repairs spelling out the terms.

¹⁰ SS 5 (1) (d) (i) (ii) and 6 Land Use Act 1978, S 9 (1) State Land Act, Regulation 5 (b) (2) Native Lands Acquisition Law and SS 11 (c) 21 and 23 Land Tenure Law 1962.

¹¹ S10 Tenancy Law 2011 (Lagos State)

¹² *British Gas Corporation v. Universities Superannuation Scheme Limited* (1986) 1 ALL ER 980 (1986) 1 WLR 398 at 401

¹³ *Karibu House Limited v Travel Bureau Limited* (1980) Kenya LR27 at 30-31 (CA), *Mzraiv. Mvungi* (1972) Tanzania High Court Digest 22 (per Bramble J).

¹⁴ (1993) 5 NWLR Pt. 292) 236 at 238.

inflation, percentage of reduction and how successful, these are salient questions that must be answered through evidence. The Trial Court is not entitled to speculate or embark on computation of fair market rent on which there is no evidence and His Lordship set aside the judgment of the Lower Court.¹⁵ *Ogundere JCA* also held that there was no evidence on which the learned trial Judge based his new revised rent as the testimony of the Landlord in this regard is an opinion and not evidence. It is only the evidence of an expert witness under Section 77 Evidence Act, provided he testified under cross-examination and the Trial Court assessed such evidence as having probative value.¹⁶ Consequently, the parties can review rents at specific intervals commensurate with the rising cost of living utilizing the evidence of Estate Surveyors and Valuers to arrive at market value rent.¹⁷ In today's depressed economy, the Landlords are no more relying on the market value but reducing rents downwards rather leaving their properties vacant, unoccupied and un-let. We shall examine the efficacy and operation of RRC covenant in respect of residential lettings on the one hand in the pre-1999 and business premises lettings (commercial, industrial, land development, agricultural, etc) on the other.

4. Residential lettings prior to Commercialization Era 1999.

In respect of residential lettings, that is many statutory prohibitions designed to curtail the freedom of contract of the parties during the period of economic boom. The Statutes impose standard rents fixed by government order from time to time for residential accommodation in certain designated areas.¹⁸ It was unlawful for the Landlord to accept an agreed rent in residential accommodation which is in excess of the standard rent prescribed for the type of accommodation¹⁹ and if the agreed rent is higher or lower than the standard rent then both parties shall comply with the standard rent²⁰ and they are prevented from contracting out of the Statutes.²¹ These Statutes had been repealed. The RRC now operate on the reasonable market rent assessed using the above criteria enumerated. Still the Landlords are in precarious position to enforce it on the face of depressed economy. In spite of the above handicap, **Section 4 Tenancy Law 2011 (Lagos State)** prohibit the Landlords from

¹⁵ (1993) 5 NWLR Pt. 292) 236 at 238 at 242-243.

¹⁶ (1993) 5 NWLR Pt. 292) 236 at 244 and *Olaniyun v. Shokunbi* (1997) 6 NWLR (Pt. 509) 447 and *Unilife Development Limited v. Adeshighin* (2001) 4 NWLR (Pt. 704)

¹⁷ See Uche Jack-Osimiri, *Modern Law of Landlord and Tenant* pages 248-249

¹⁸ See SS 3, 4, 12 etc, Rent Control and Recovery of Residential Premises Edict No. 9 (1976 Lagos) SS 5, 6, 14, 16, etc, Edict No. 3 (1984) (Rivers) as amended.

¹⁹ S 3 (1) Law No 9 (Lagos), S 5 (1) No. 3 (Rivers).

²⁰ S 3 (2) (3) (Lagos), S 5 (2) (3) (Rivers) Edicts. *Agbaje v Bankole* (infra).

²¹ S 12 (Lagos), S 14 (Rivers) Edicts, *Agbaje v Bankole* (infra).

collecting rents in excess of 6 (six) months duration from the monthly tenant and 12 (twelve) months from the yearly tenants. Most of many penalties or disabilities formerly imposed on the tenant in that event of the contracting out of the Rent Control Statute²² had been removed under Privatization and Commercialization Act 1999 which promoted the free market economy. The case of *Agbajev. Bankole*²³ where the Supreme Court held that the parties could not opt out of the rent prescribed by the Statute and therefore the agreed rent must not be the one stipulated by the Statute but the one both parties agree upon having regard to the market value. Still, in depressed economy, the Landlords are unable to find Tenants with sufficient financial strength to pay economic market value rent because most middle-class families have built their own houses resulting in unoccupied houses. The logical implication in the present predicament is that the Rent Review Clause is outside the control of the Landlord and Tenant not only in respect of residential accommodation but also in business premises as well.

The government can no longer promulgate standard and maximum rents orders because of the free market economy. The parties can still review the rents at periodic intervals²⁴ but the problem of the difficulty of implementation, must still persist because of the depressed economy attributable to inability to pay as most tenants had abandoned 2-3 bedrooms flats to squeeze their families into double rooms apartments. In some cases, the Court has power on application of the Landlord or Tenant or any interested person, to determine the standard rent in respect of any residential accommodation within the limit prescribed in the schedule of the standard and maximum rents orders.²⁵ Some Statutes positively invest powers in the Court to hear and determine the appropriate rent to be paid²⁶ taking into consideration the nature of any extra or missing amenities and the increase or decrease they make to the letting value of the premises.²⁷

Some Statutes created ambiguity here as regards the proper meaning to be ascribed to the words 'appropriate rent'. It is not very clear what basis the Court would act on to determine whether a rent is equivalent to market rent or reasonable rent or fair rent unless there are

²²See the equivalent S. 12 (Lagos), S 12 Edict No 8 (1977) (Cross Rivers & Akwa-Ibom), S 5 Edict No 3 (1977) (Anambra & Enugu). S 17 Edict No 3 (1977 Kaduna), S 12 Edict No 2 (1977 Kwara).

²³(1971) 1 ALL NLR 275, *Akpiriv. Oluwa* (1972) 11 CCHCJ 85.

²⁴S 1 (2) (3) (4) Law No 9 (Lagos), S 3 (2) (3) (4) Law No 3 (Rivers). RSLN No 11 Standard and Maximum Rents Orders and RSLR No 7 1987 (Rivers) are obsolete and are no more applicable.

²⁵S 4 (Lagos), S 6 (Rivers) Law.

²⁶S 3 (2) Laws No 15 (1985 Imo).

²⁷Proviso to S 4 (b) Law No 3 (1977 Anambra & Enugu) *Tamnous v Kirpalani* (infra)

expert evidence of Estate Surveyors and Valuers, are analyzed above.

Strictly, fair rent is the market rent based on the balance of demand and supply for homes in an area taking into account the age, character, quality and location.²⁸ This could also be determined by rents already established for comparable properties in the neighbourhood area.²⁹ Areas in Etta-Agbor Road Calabar, Iloabuchi, Azikiwe Street Port Harcourt, Choba and Aluu in Port Harcourt, Akoka Lagos command higher rents because of students' population. In spite of the above, reasonable rent and market rent are different in meaning. In *John Kay Ltd vs. Kay*³⁰ the Statute enabled the Tenant to apply to the Court to fix the rent it thinks reasonable. The Court fixed the rent at £550 but the Landlord contended £750 as the market value. The English Court of Appeal held that the figure £750 was derived not merely from the increase in general costs or decrease in the value of money but was an inflated one due to the temporary shortage of this type of property. The Court was emphatic that even though £750 was the market value as influenced by scarcity, the trial Court was justified in holding that so far as the figure was inflated by that particular circumstance, it was an unreasonable figure. On the strength of this case, it is submitted that a reasonable rent was contemplated by the Statute and the Court has a discretion to consider several factors including the age and categories of the property's facilities and fix rents proportionate to the facilities available, including: domestic servants' quarters, garages, stores, verandahs,³¹ balconies, gardens, gardeners, stand-by electric generators, security guards and other amenities. In essence, the restriction on standard and maximum rent does not apply to furnished lettings where the facilities enumerated above are provided.³² In *Tannous vs. Kirpalani*³³ the Supreme Court held that the statutory prohibition against increase of rent did not apply to furnished premises but only to the unfurnished ones. The efficacy of this decision and the impossibility of its exploitation by shylocks although watered down with the effect that furnished and unfurnished lettings are now subject to the natural control imposed by the depressed economy. Although the Landlord was only entitled to charge 25 percent of the standard rent or a monthly rental of the furniture to be assessed, based on one

²⁸ *Commissioner of Lands v Aneke* (1973) 3 ECSR (Pt 1) 207 at 210-213, *Nzekwu v Attorney General East Central State* (1992) 2 ECSR (Pt 1) 323 (323 (1973) 5 SC 224 at 342-3, *Salako v Salako* (1973) 9 CCHCJ 5 at 8 and MartinPartington (Prof), Law of Landlord and Tenant (2015) Weiderfield & Nicolson London pp. 219-225

²⁹ Uche Jack-Osimiri, 'Discarding the Recovery of Premises Law 1991' Nigerian Tide, 19 September 1992 page 6, Law Mirror 28 September-4 October 1992 page 9 and also *Chairman LSDPC v. Ottun* (below).

³⁰ (1952) 2 QB 258.

³¹ S. 4 (2) Law No. 3 (1977 Anambra & Enugu).

³² *Tannous v. Kirpalani* (supra).

³³ (1968) 1 ALL NLR 372 and *Ojikutov. Ayanbajo* (1965) LLR 154.

sixtieth of the true rental value of the furniture³⁴ but furnished lettings in Port Harcourt had disappeared with the exit of expatriates (Oyibo/Bekee/Mbakara) staff formerly hired by Shell, Mobil and other Oil Companies in operation at the Niger Delta Region of Nigeria.

5. Effectiveness of Standard Rents and Reform

The effectiveness of the operation of the standard rents for residential lettings has been frustrated by the dire economic circumstances that Nigerians found themselves over the recent years. The economy has been undergoing a painful revolution. With the introduction of deregulation and fiscal measures known as Structural Adjustment Programmes (SAP),³⁵ the government ability to control rents suffered a major setback. The Statute such as the **Privatization and Commercialization Act 1999** has been imposed to impose a free market economy. The standard and maximum rents prescribed for various categories of accommodation are yielding to the market forces of supply and demand. With the government unable to control the prices of cements, zinc, sand and other vital building materials which are galloping daily to astronomical levels, Landlords have continued to jettison rent control in preference to the rents dictated by the market forces. Now the depressed economy has made the matter worse as the reasonable market rents cannot be enforced because tenants had vacated premises preferring slum and shanty settlements. The Tenants are also in a weaker position and are reluctant to enforce the Laws. The government too has not helped the matter by inflated property rates,³⁶ exorbitant charges for applications for Certificates of Occupancy, renewals, ground rents, consent, stamp duties and other statutory fees which the property owners³⁷ are compelled to pay. We advocate the control of properties rates, subsidized prices of building materials etc, to allow ownership of personal houses, and more investments in real properties rather than the emphasis on market value rents or the observance of Rent Control Law. We equally advocate the periodic rent reviews in order to achieve mutuality of fairness to both Landlord and Tenant³⁸ taking into account the hyper-inflationary trends in the country. The review of the standard rents in Rivers State in 1989 more than five years after the enactment of its predecessor in 1984 was unduly late.³⁹ Currently, the rents prescribed by the 1989 order are grossly out of touch with inflation and

³⁴S.3 Rent Control (Standard and Maximum Rent has been repealed.

³⁵ See Export (Incentives and Miscellaneous Provisions) Decree No. 19 (1986), Second Tier Foreign Exchange Market Decree No. 23 1986 and hosts of others.

³⁶ From personal experience of the Author in real property practice.

³⁷ State Lands (Fees Regulations) RSLM No. 7 2nd Schedule (1987 Rivers) as amended in 1990, 1993, 1994 etc, made pursuant to S. 36 State Land Law Cap 122 (1963 Laws of Eastern Nigerian).

³⁸ See Uche Jack-Osimiri, Critique and Repeal of Recovery of Premises Law 1991' (Rivers) 1993) 1 Abia State University LJ pp. 45-49.

³⁹ See note No 12 (supra).

the cost of maintenance of the properties. The government is yet to promulgate another order for rent review.

6. Rents Review Clause in Business or Commercial Lettings

There is unfettered freedom to review and increase rents in business, commercial, industrial, agricultural and other lettings. Bona fide contractors can also invest in the development of any landed property and in consideration thereof take the lease of the property so developed for any period of time at a lower⁴⁰ or higher rent. The general rule is that there must be a bilateral agreement between the Landlord and Tenant⁴¹ and therefore any increase based on a unilateral action of the Landlord would be ineffectual.⁴² This type of unilateral increase can at best amount to an offer and where the tenant refuses to pay the proposed rent, the Landlord's only remedy is to take necessary steps required by the law to terminate the tenancy and recover possession.⁴³

7. Economic Importance of Rents Review Clause

Strictly, Rent Review Clauses (RRC) afford a medium for parties to review the rents at progressive periods in a long lease before expiration of the term. At the commencement of the review period, a new rent is assessed or reviewed upward and substituted as the rent payable. It is customary for the Rent Review Clause to specify the durations such as every 5 years or 10 years, the procedures for the review and sometimes a prior notice in writing may be served by the Landlord within a specified time limit may be required. The general presumption is that time is not of the essence unless it is expressly so provided by the terms of the lease⁴⁴ or there is some indication in the lease that time is of the essence especially if the rent review is tied up with the option to determine the lease.⁴⁵ In *United Scientific Holdings Limited v. Burnly Borough Council*,⁴⁶ the Landlord granted the Tenant a lease of 99 years with a Rent Review Clause at the end of every 10 years. The Clause stipulated that the reviewed rent should be agreed within a specified period. The Landlord did not review the rent until the expiration of the period. The Tenant claimed that since the period had expired,

⁴⁰S.4 (5) Law No. 9 (Lagos), S.6 (5) No. 3 (Rivers), S.5 (5) No. 8 1985 (Cross Rivers & Akwa-Ibom), are now obsolete on the face of free market economy – Privatizations and Commercialization Act 1999 and the present economic doldrum and depression.

⁴¹*Away Motors Limited v. Adewumi* (above), *Udihv. Izedonmwun* (below).

⁴² *Udihv. Izedonmwun* (1992) 2 NWLR (Pt132) 357 at 359 and 366.

⁴³ *Udihv. Izedonmwun* (above).

⁴⁴ *United Scientific Holdings Limited v. Burnley Borough Council* (below).

⁴⁵ If time is of essence and the landlord misses the review date the old rent remains payable and *Weller v. Lakehurst* (1981) 3 ALL ER 411.

⁴⁶ (1978) AC 904 (1977) 2 ALLER 62.

the Landlord lost the right to review the rent. It was held that time was not of the essence unless the parties expressly so provided and accordingly, the Landlord could exercise his right under the Clause notwithstanding that the period had expired.

Furthermore, the Rent Review Clause must provide formulae for ascertainment or computation of the progressive fair and reasonable rents in case of disagreement between the Landlord and Tenant, e.g. market value determined by arbitrators in accordance with arbitration laws.⁴⁷ The Court has power to correct defective Rent Review Clauses⁴⁸ in order to give it the desired business efficacy instead of holding it void or enforceable.⁴⁹ A price to be determined according to a stated formula is valid even without an effective mechanism for calculating the formula.⁵⁰ In the absence of such a formula, the Court can admit the evidence of an expert witness,⁵¹ i.e. an Estate Valuer or Surveyor provided he testifies and is open to cross examination and the trial Court assesses such evidence as having positive probative value.⁵² In the absence of expert evidence, the Court is not entitled to speculate with respect to matters about progressive rents or embark upon a system of computation, e.g. speculating on the effect of inflation in the country and the Government's measures in combating them, for which there is no evidence adduced in the Court in fixing the rent.⁵³

In *Awaye Motors Limited v. Adewumi*,⁵⁴ the landlord granted a lease of 25 years to the Tenant at N11,500 rent in 1971 with a Rent Review Clause providing for review every 10 years at a rent to be agreed between him and the Tenant. When the first 10 years was about to end in 1981 the parties began negotiations for revision of the rent for the next period. They were unable to reach agreement on the rent payable and the Landlord sued for a declaration that on the true construction of the Lease, the rent during the review period should be the market rent of the premises, rectification of the lease to provide for the determination of the rent by a single arbitrator in default of agreement between the parties and an enquiry into what should be the proper sum for the use and occupation for the subsequent period. The Trial Judge fixed a fair and reasonable rent payable at N4,500. The Court of Appeal, setting aside

⁴⁷ *Ayinkev. Osunsedo* (1973) 8 CCHCJ 5 at 6-8 *Sands v. Mutual Benefits Limited* (1971) East Africa LR 156 at 157-160, *Beer v. Bowden* (1981) 1 ALLER 1070 (1981) 1 WLR 522 CA.

⁴⁸ *Thomas Bates & Sons Limited v. Wyndham Ltd* (1981) 1 ALLER 1077 (1981) 1 WLR 505.

⁴⁹ *Brown v. Gould* (below).

⁵⁰ *Brown v. Gould* (1972) CH 53 (1972) 2 ALLER 1505. ⁵¹ S. 77 Evidence Act 2011, *Awaye Motors Limited v. Adewumi* (below), *Chairman LSDPC v. Ottun* (1973) 3 CCHCJ 255 at 257.

⁵² *Debs v. Cheico Limited* (1986) 3 NWLR (Pt 32) 846, (1986) 6 SC 179, *Adedibu v. Adewojin* (1951) 13 WACA 191 at 192 and *Marine & General Insurance Limited v. Rossek* (1986) 4 SC 271 (1986) 2 NWLR (Pt. 25) 750 *Awaye Motors Co. Ltd v. Adewumi* (below).

⁵³ *Awaye Motors Limited v. Adewumi* (below), *Gbeshe v State* (1972) 1 SC 94 and *Akintola v Stanbilin* (1972) 2 SC 130.

⁵⁴ (1993) 5 NWLR (Pt. 292) 236 at 238.

the decision, unanimously held inter-alia:

- (i) That there must be three basic essentials to the creation of a building contract viz: offer, acceptance and consideration. In the present case, taking into account the negotiations between them over the issue of rent, it is apparent that there is no contract between them over the rent issue.
- (ii) Where parties to a tenancy agreement fail to agree on rent, the Court could imply a term that in absence of such agreement, the rent payable should be the fair market rent. And to determine this, there must be evidence adduced before the Court. In the instant case, there was no evidence before the Lower Court as to what is reasonable rent. The evidence adduced by the Landlord was rightly described by the learned Trial Judge as irrelevant.⁵⁵

8. Conclusion

The Rent Review Clause in both residential lettings and business premises although presently dominated by market forces, is very necessary as it makes the Landlord realize his investments of capital and labour in real property.

⁵⁵ Per Muhammed JCA.