

The New Chaotic Tenancy Laws of Lagos State

The new tenancy laws of Lagos State were enacted on the 5th of August 2011 at the Lagos State House of Assembly. Its main purpose was to help both landlords and tenants in Lagos State. Well, that is according to the Lagos State government. Nevertheless, the legislation was signed by the Governor on the 24th August 2011, and is now the main law regulating housing in Lagos State.

The law was introduced, following the severe weather conditions during the rainy season of 2011, where homes collapsed and several residents were killed and seriously injured, due to poor maintenance of the structures. Thousands of people were also rendered homeless during this period, which prompted the Lagos State government to intervene in the issue.

The Lagos State government felt that the problems originated from the 'Shylock' landlords, who were exploiting the system and taking advantage of the 'desperate' tenant. The government also felt that the introduction of the legislation will in the long term make homes affordable to the average individual in the state. Their solution was the introduction of this draconian law which as far as I am concerned does little or nothing to solve the problem of housing in Lagos State.

As a property lawyer, I had the opportunity of scrutinising the new law. The first thing that I noted was the fact that this piece of legislation was hurriedly drafted and placed in the face of the law makers. There was no form of extensive consultation with lawyers, housing experts, landlord and tenant representatives or even any relevant pressure group. Not any one body had a say in the passing of this legislation. There was not even a White paper. For those who are not familiar with the term 'White Paper', it is a document that originated in governments, and many point to the Churchill White Paper of 1922, as the earliest well known example. They are a tool of participatory democracy and not an unalterable policy commitment. They have tried to perform the dual role of presenting firm government policies while at the same time, inviting opinions upon them.

Secondly, section 1 of the law which deals with its application, stipulates as follows; (1) This Law shall apply to all premises within Lagos State, including business and residential premises unless otherwise specified.....The following areas: (i) Apapa; (ii) Ikeja GRA (iii) Ikoyi; and (iv) Victoria Island are exempted from the application of this Law, however, the Governor may from time to time by Order published in the State Official Gazette exempt the application of this Law to any other area or premises in the State. The section is the worst that I have ever come across in any form of legislation. Not only does it contradict itself, by initially specifying that the law covers the whole of Lagos State, and then indicating expressly that certain areas will not be covered by the Act, but it also creates an 'area divide', where certain areas are considered more prestigious than the other, thus creating property prices to rise rapidly in certain privileged areas and then decrease in the affected areas, notably on the mainland of Lagos. There is also a case for discrimination. Whilst the 'rich' who can afford to buy or rent properties in the exempted areas are not covered by the law, those in the so called less prestigious areas of Lagos State are affected by the draconian new laws. 'One rule for some, whilst a different one for others.' Perhaps the law makers should have borne in mind when passing this legislation, that there are poor maintained properties in the exempted areas, which have been a risk to the residents for years. There have been unreported incidents of houses collapsing in these areas during nasty storms, causing

collateral damage and loss of lives. The purpose of the law therefore has already been defeated by introducing this ridiculous section.

Thirdly, the Rent Control and Recovery of Residential Premises Law Vol. 7 Laws of Lagos State 2003 and the newly enacted Tenancy Laws of Lagos State 2011 are the current laws regulating tenancies in Lagos State, but which one prevails over the other? The new law has failed to address this, which will eventually lead to confusion amongst lawyers and even in the judicial system. It is extremely important that the draftsman goes back to the drawing room, to look for ways of dealing with this potential problem. For instance, it will be appropriate for the new law to either indicate that the previous law have been consolidated into the new law, or that the new law supersedes all previous laws relating to the tenancy law of Lagos State.

Fourthly, section 4 of the Act covers advance rent, and it provides as follows;

- (1) It shall be unlawful for a landlord or his agent to demand or receive from a sitting tenant rent in excess of six (6) months for a monthly tenant and one (1) year for a yearly tenant in respect of any premises without prejudice to the nature of tenancy held at the commencement of the tenancy.
- (2) It shall be unlawful for a sitting tenant to offer or pay rent in excess of one (1) year for a yearly tenant and (6) months for a monthly tenant in respect of any premises.
- (3) It shall be unlawful for a landlord or his agent to demand or receive from a would-be tenant rent in excess of one (1) year in respect of any premises.
- (4) It shall be unlawful for a new or would-be tenant to offer or pay rent in excess of one (1) year in respect of any premises.
- (5) Any person who receives or pays rent in excess of what is prescribed in this section will be guilty of an offence and shall be liable to a fine of One Hundred Thousand Naira (N100, 000.00) or to three (3) months imprisonment.

Before the new laws were implemented, it was the custom of most Lagos State landlords, to demand rent in excess of up to 5 years, thus making it impossible for the average individual to find suitable accommodation for themselves and their immediate family. The new law prohibited this practice, limiting the landlord to only demand advance rent for one year for a yearly tenancy and six months for a monthly tenancy. Excellent idea, but the law does not apply to the exempted areas, which means that landlords in Ikoyi can demand rent in excess of over 20 years.

Lastly, section 1(2) provides as follows; “This Law will not apply to:

- (a) residential premises owned or operated by an educational institution for its staff and students;
- (b) residential premises provided for emergency shelter;
- (c) residential premises:
 - (i) in a care or hospice facility;
 - (ii) in a public or private hospital or a mental health facility; and
- (d) that is made available in the course of providing rehabilitative or therapeutic treatment.

One would have thought that residential homes, schools, hospitals and mental health facilities were likely to be more vulnerable to the ‘Shylock’ landlord, than the ‘average’ tenant. Except of course, there is a separate law in place, for these categories of dwellings.

In conclusion, we can all appreciate that the Lagos State government has introduced this law, to protect tenants from unreasonable and greedy landlords. I will nickname it ‘The tenant’s laws of Lagos State’. The ‘chaotic’ comes in afterwards, when one discovers the blunders in the laws. As discussed above, it is questionable as to whether the latter have got it right. It is understandable for them to have hurriedly drafted this piece of legislation, following the disastrous rainy season of 2011, that claimed several lives and rendered thousands of residents in Lagos State homeless, but nevertheless the new law needs to be looked into again carefully. This can be achieved by listening and reading the views of experts and professionals, and then going back to the drawing room to make the necessary amendments.

Jide Ogundimu is a Solicitor and Advocate of the Supreme Court of Nigeria and also a Solicitor of England and Wales. He is a housing specialist and practices law at his law firm, Jide Ogundimu & Co Solicitors, which is based in Lagos, Nigeria.