

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 27 GUDU - ABUJA
ON TUESDAY THE 26TH DAY OF JANUARY 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/1392/2020

ALHAJI SAEED MOHAMMED DANTSOHO ----- CLAIMANT

AND

1. THE EMBASSY OF VENEZUELA, ABUJA
2. HONOURABLE MINISTER FEDERAL CAPITAL TERRITORY
3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY-----DEFENDANTS
4. ABUJA METROPOLITAN MANAGEMENT COUNCIL

RULING

The 1st Defendant on the 24th of September 2020, filed a motion on notice brought pursuant to Order 7 Rules 1 and 2; Order 8 Rules 1 and 3; Order 13 Rule 19; and Order 43 Rule 1 of the FCT High Court Rules 2018; Section 1 and 11 of the Diplomatic Immunities and Privileges Act, 1962 and under the inherent jurisdiction of this Court praying the Court for the following orders;

1. an order striking out and/or dismissing the suit against the 1st Defendant on the ground that the Court has no jurisdiction to hear and determine same.

The grounds upon which this order is sought are;

1. That the 1st the Defendant/Applicant is not a named juristic person that can be sued before this Honourable Court.

2. The originating processes filed in this suit were not personally served on the 1st Defendant/Applicant contrary to the provisions of the law and rules of this Honourable Court.
3. That by the provisions of Section 1 and 11 of the Diplomatic Immunities and Privileges Act 1962, legal proceedings cannot be instituted against the 1st Defendant/Applicant.
4. That this Honorable Court lacks the requisite jurisdiction to entertain this suit against the 1st Defendant/Applicant as presently constituted.

In support, applicant filed a 7-paragraph affidavit deposed to by a John Kogi a litigation secretary in the law firm representing the 1st Defendant/Applicant.

Also, filed is a written address wherein Counsel to the 1st Defendant raised 3 issues for determination.

1. Whether this Court has the jurisdiction to entertain this matter when the originating processes have not been served on the 1st Defendant.
2. Whether the 1st Defendant is named in the processes filed before the Court is a juristic person that can be sued?
3. Whether any legal proceeding can be maintained against the 1st Defendant by virtue of its sovereign immunity?

Arguing the first issue, the 1st Defendant's Counsel contended that the Claimant by not effecting proper service of the originating process on the 1st Defendant, the Claimant has failed to fulfil an essential condition precedent to the activation of the Court's jurisdiction in this suit.

On issue two, Counsel submitted that the 1st Defendant is not an entity created by law or legislation vested with the capacity to sue and be sued. Submitted further that in all the documents filed by the Claimant in support of his clam, none bears the name of the 1st Defendant as named in this suit, Counsel therefore urged the Court to strike out the name of the 1st Defendant from this suit.

Counsel arguing the third issue, submitted that by the provisions of Sections 1 and 11 of the Diplomatic Immunities and Privileges Act 1962, the 1st Defendant is entitled to diplomatic immunity unless there is a valid waiver which is not present in this case which robs this court of the jurisdiction and the 1st Defendant's name be struck out.

Counsel relied on the following authorities:

1. Nwankwo V. Yar'adua (2010) 12 NWLR (pt. 1209) 518 @ 560 para E-H
2. Kida v. Ogunmola (2006) 13 NWLR (pt.997) 377 @ 394 para A-B;394-395 para H-C.
3. Onyuike V. The People of Lagos State (2013) LPELR-24809 (CA)
4. Ataguba V. Guru Nigeria Limited (2005) 8 NWLR (pt.927) 429
5. African Reinsurance Corporation V. J.D.P Construction (Nig.) Ltd (2007) LPELR-216 (SC)
6. Siewe V. Cocoa Producers Alliance (2013) LPELR-22033 (CA) pg.18-23 para B-D

The Claimant filed a reply on points of law in opposition to the preliminary objection on the ground that the application is incompetent as the 1st Defendant is not properly before the Court as

the application is filed after written address of the Claimant has been filed as well as the fact that the preliminary objection is a demurrer which has been abolished by the Rules of this Court. Counsel further responded to the three issues raised by the 1st Defendant's Counsel.

On whether the originating processes have not been served on the 1st Defendant for this Court to assume jurisdiction, Counsel to the Claimant submitted that the 1st Defendant was served via substituted means on the order of this honourable Court as the 1st Defendant refused to accept personal service, and the 1st Defendant cannot deny being served with the process, when it made reference to the processes before this Court in its motion. Counsel urged this Court to hold that the 1st Defendant was duly served as required by the civil procedure rule of this Court.

Arguing the issue of whether the 1st Defendant is a juristic person that can be sued, the Claimant's Counsel submitted that although the Vienna Convention on Diplomatic Relations 1961, did not expressly confer legal personality on the 1st Defendant, by virtue of the functions of the 1st Defendant as stated in the Article 2, of the Vienna Convention and the Definition of a juristic person as stated in the case of *Anozie V. A.G. Lagos State* (2010) the 1st Defendant is a juristic person.

Submitted further that from the evidence before this court, the 1st Defendant applied for and was granted a Certificate of Occupancy and also opened a bank account which was used to transact business with the Claimant in its name as the "Embassy of Venezuela". Counsel urged the Court to hold that in the circumstances of this case, given the evidence before this Court, the 1st Defendant is a

juristic person capable of suing and be sued as the justice of this case demands.

Arguing the issue of whether legal proceeding can be maintained against the 1st Defendant by virtue of its sovereign immunity, Counsel submitted that the Diplomatic Immunities and Privileges Act does not apply in this case as it not the true position as asserted by the 1st Defendant that the Act gives immunity to foreign Diplomats and Sovereign entities such as the 1st Defendant from legal proceedings as they are not immune in all matters including commercial transactions and tortious liabilities. Counsel urged the Court to dismiss the preliminary objection with substantial cost.

Counsel relied on the following authorities;

1. Mobil Oil Nig Ltd V. AIL (2006) 6 NWLR (Pt.659) 146 at 167
2. M.V Mustapha V. Afro-Asian Impex ltd (2002) 14 NWLR (pt787) 395 at 408-410
3. Anozie Vs. A.G Lagos State (2010)
4. Fawehinmi V. N.B.A (no.2) (1989) 2 NWLR 558
5. Chairman EFCC Vs. Little Child (2016) 3 NWLR 73 at 101-102
6. Trendex Trading Corporations v. Central Bank of Nigeria (1972) All ELR 881.

The 1st Defendant's Counsel filed a reply to the Claimant's reply on points of law. The 1st Defendant's Counsel on the issue of demurrer submitted that demurrer cannot arise in this case as the 1st Defendant is challenging the jurisdiction of this Court on the basis of lack of service and not averment of facts in the statement of claim.

In replying to the issue of service, Counsel submitted that the 1st Defendant being a foreign entity, the Claimant ought to obtain the

leave of Court to serve the originating processes out of jurisdiction which the Claimant failed to comply with as provided in Order 8 Rule 1 of the FCT High Court Rules, 2018, which goes to the root of the Court assuming jurisdiction.

On the second and third issues, counsel urged the Court to discountenance the argument of the Claimant's Counsel as they are misconceived as the 1st Defendant did not waive its immunity for the Claimant to bring a case against it.

The Claimant's Counsel on the date the motion was moved, urged on this court to discountenance the 1st Defendant's reply to their reply on points of law as the issue of serving a foreign body was never raised in their preliminary objection. Submitted that the 1st Defendant's Counsel merely used the reply on points of law re-argue their preliminary objection, therefore, the said reply is overreaching as they have no right to reply to the new issue raised.

I do not agree as the issue of service raised by the Defence Counsel is an issue of jurisdiction and such can be raised at any time even on appeal

I have examined the application of the 1st Defendant/Applicant as well as the Claimant's reply on points of law and the Applicant's reply to the reply on points of law. I will adopt the issues for determination espoused by the Applicant's Counsel.

1. Whether having regard to the facts and the parties in this suit, this Court has the jurisdiction to entertain this suit?
2. Whether any legal proceedings can be maintained against the 1st Defendant by virtue of its sovereign immunity

3. Whether this Hon. Court has the jurisdiction to entertain this matter when the originating processes have not been served on the 1st Defendant?

Before delving into the issues for determination, this Court will deal with the issue of demurrer raised by the Claimant's Counsel. In this case, the 1st Defendant is yet to file its defence to the Claimant's statement of claim but rather, filed this preliminary objection. Learned Counsel to the Claimant submitted that the preliminary objection filed by 1st Defendant is a demurrer and therefore incompetent as same was filed without filing a statement of defence. Learned Counsel to the Claimant referred to Order 23 Rule 1 of the rules of this Court which states that "*No demurrer shall be allowed*". Hence, Counsel to the Claimant submitted that the preliminary objection is incompetent. Unfortunately, Learned Counsel is of the mistaken belief that the preliminary objection as to jurisdiction is a demurrer.

In demurrer proceedings, preliminary objection on jurisdiction can be taken after the statement of claim but before the defence is filed. See **GOGO GREEN FARMS AGRIC (NIG) LTD V. MITSUI O.S.K LTD (2005) 17 NWLR (Pt.953) 70 @ 83-84, Para H-D Per Garba JCA.** Although 1st Defendant/Applicant in this suit is yet to file a defence; a challenge to the jurisdiction of a Court is not a demurrer as it is the general rule of practice that issues of jurisdiction can be raised at any stage of the proceedings even on appeal. See **ARJAY LTD V. APRLINE MANAGEMENT SUPPORT LTD (2003) 7 NWLR (Pt. 820) Pg 577 @ 602, Para H to Page 603 Per Onu JSC** where the learned Jurist held that the issue of jurisdiction is not a matter of Demurrer

proceedings hence the defendant does not therefore need to plead first in order to raise the issue of jurisdiction.

I will take the first and second issues simultaneously. Claimant in this suit filed a writ seeking for declaratory reliefs as the owner and occupier of the subject property or in the alternative, a refund for the sum of \$1,000,050 (USD) being the purchase price for the property and refund of the N700m expended in developing the property, injunction as well as general damages and exemplary damages against the Defendants. From the Statement of claim of the Claimant, the Claimant had purchased a landed property known as Plot 1039 Cadastral Zone A05 Maitama District, Abuja from the 1st Defendant at a sum made up of the price of the Plot of land together with the commission and agency fees as offered by the 1st Defendant/Applicant.

The 1st Defendant/Applicant is the Embassy of Venezuela. That at the first instance, Claimant paid the sum of \$1,000,050 (USD) to the 1st Defendant as part payment for the property. The 1st Defendant had acknowledged the receipt of the payment of this sum by a letter dated 6th June, 2018 signed by the Head of Mission under the seal of the Embassy and addressed to the Claimant and also directed in the said letter how the balance of the purchase price was to be paid. The said letter also indicated the 1st Defendant's acceptance of the terms and conditions contained therein. That subsequent to the acceptance of offer and terms by the Embassy of Venezuela as contained in their letter to the Claimant, the Claimant had gone ahead and paid the balance into the account of the Venezuela Embassy domiciled with U.B.A Plc (United Bank for Africa). The Claimant had paid a total sum of \$780,000 (USD) into;

Bank: United Bank for Africa

Account Name: Embassy of Venezuela

Account No: 3002465444

Sort Code: 033083564.

Apart from the cash lodgment of \$780,000 (USD), the Claimant had on the instruction of the Embassy, made the following payments

1. \$16,000.00 to BolatitoSuberu
2. \$10,000.00 to GandiObiefule
3. \$70,000.00 to GandiObiefule

Which total sum paid by the Claimant to the Embassy amounts to \$1,000,050.00 (USD). Claimant further averred that all through the duration of the transaction, the 1st Defendant, Head of Mission and Ambassador was a certain “MIGUEL ANGEL DELLA VECCHAI” who opened and operated the embassy’s account with the United Bank for Africa Plc until he closed same. That the contract of sale Agreement in respect of the subject matter property was duly executed by the Head of Mission (Ambassador) and the Secretary of the Embassy under the seal of the Embassy of Venezuela. That the Embassy further executed an irrevocable power of attorney dated 25th June 2018 and a Deed of Assignment in respect of the subject matter property and both were also signed/duly executed on behalf of the Embassy of Venezuela by the same Head of Mission and Secretary under the seal of the Embassy of Venezuela. The irrevocable Power of Attorney; the Contract of Sale and the Deed of Assignment were all duly witnessed by the Commissioner for Oath who appended his signature accordingly and same exhibited and

annexed to the statement of claim. The Claimant in his statement of claim further stated that the Claimant thereafter took possession and commenced construction on the subject matter and had expended a total cost of N700,000,000.00 (seven hundred million Naira), when the said transaction became a subject of investigation by the Economic and Financial Crimes Commission (EFCC) who invited the Claimant to the office of the commission and informed Claimant that an allegation of criminal trespass was levelled against the Claimant by the new Ambassador to the Embassy of Venezuela in the person of “David N. Velasquez .C. That upon conclusion of investigation, the EFCC had informed Claimant that there was indeed a genuine transaction on the said Embassy land (subject matter) which is free from any fraudulent act on the part of the Claimant. Hence the EFCC caution on the subject matter site was removed on the instruction of the EFCC and Claimant was subsequently informed by the EFCC to continue with the construction. That the new Ambassador likewise laid a complaint with the 2nd Defendant, the Hon. Minister of FCT. That the FCT Minister had declared the transaction and construction as illegal and sealed the property thereby halting the construction.

The Embassy has by this application filed a Preliminary objection praying the Court to strike out/dismiss this suit by pleading the immunity clause as contained in Section 1 and 11 of the Diplomatic Immunities and Privileges Act of 1962 that legal proceedings cannot be instituted against the 1st Defendant/Applicant, hence this Court lacks jurisdiction to entertain the suit against the Embassy of Venezuela.

Section 1 of the Diplomatic Immunities and Privileges Act of 1962 protects consular officers, foreign envoys, members of family, members of their official or domestic staff from legal process except if same is waived via Section 11 of the same Act whereby the minister (External affairs)so lifts the immunity. Hence, by the provisions of the Diplomatic Immunities and Privileges Act of 1962, sovereign immunity is accorded to the state, its Consular, workers, staff and family members.

The Applicant/Embassy of Venezuela is a foreign sovereign state who by the Diplomatic & Immunity Act, enjoys immunity from suits and legal processes in Nigeria. The immunity status evolved from the rules of International Law and as contained in the 1962 Act is likewise reciprocated to Nigeria's envoy and diplomats in foreign states. It is a legislation that confers immunity on persons both natural and artificial who serve their states. Section 11 (1) of the Act defines the category of artificial persons who are to be protected under the immunity clause and it states that organizations declared by the order of the minister as being so constituted by sovereign powers or commonwealth countries.

In *KRAMER ITALO LTD V. GOVT. OF THE KINGDOM OF BELGIUM & ANOR* (2004) 12 CLRN 93 @103 AKPATA JCA (as he then was held.

“Diplomatic immunity is not the same thing as sovereign immunity. The 1962 Act protects every foreign envoy, consular officers, members of their families, members of their official or domestic staff from suit and legal process. Such protection however can be waived. By

Section 11 of the 1962 Act of Immunities and Privileges extended to any organization declared by the minister of external affairs to be an organization the membership of which are sovereign powers”

The Embassy/1stDefendant has through its preliminary objection raised its objection on a point of law challenging the validity of this suit on the grounds that the Court lacks jurisdiction to entertain the claim. It is trite that preliminary objection of this nature can only be determined at this initial stage by reference to the pleadings particularly the statement of claim. See ELEBANKO V. DAWODU (2006) 15 NWLR (PT.1001) 76 @137, Para C-D Per Ogbuagu JSC. From the statement of claim, all transactions bordering on the sale of the subject matter was allegedly initiated by the Applicant (Embassy of Venezuela), money in the sum of \$1,000,050.00 (USD) was paid into the 1st Defendant/Applicant's account, Applicant executed the deed of assignment, contract of sale and irrevocable power of attorney. All these acts are alleged to have been perfected through Applicant's former ambassador and secretary to the embassy and every alleged act done by them was deemed to have been done on behalf of their state. The Diplomatic Immunity and Privileges Act of 1962 as I earlier stated evolved under the International Law. It is provided for in most sovereign states. It is as the name implies, a privilege accorded to sovereign states in person of the diplomats, servants, consular officers etc., posted to other sovereign states. The drafters of this law intended it to be a privilege which ought not to be abused nor ridiculed. Hence, the Diplomatic Immunities and Privileges Act of 1962 does not confer absolute immunity rather the decision to restrict its immunity would depend on the peculiar and

intricate circumstances of the transaction wherein the cause of action arises. Consequently, the nature of the transaction and the role of the sovereign that gave rise to the claim is the cardinal point to be considered in this preliminary objection. The transaction is the alleged sale of a land by the ambassador and secretary to the Embassy of Venezuela and the role of the state of Venezuela in this transaction is of paramount importance. Where the former ambassador and secretary participates in an activity that is irreconcilable with the superior authority of the state, it must be shown that the State complied with the rules governing the activity otherwise it would risk losing its immunity and thereby be impleaded. See *DUKE OF BRUNSWICK VS. KING OF HANOVER* (1844) 6 BEAV 1.

As I stated earlier, before applying a restrictive doctrine on the immunity of the applicant, the Court must be fully satisfied that the alleged act of the Applicant must be in a manner inconsistent with its superior authority. Privilege accorded by the Act must not be abused nor ridiculed. In this instant case, the applicant is yet to file its defence hence, the fact that applicant sold its property to the Claimant and received the sum of \$1,000,059 (USD) from Claimant, the sale allegedly duly authorized and executed by its former ambassador and secretary while they were in office, money allegedly paid into the official account of the Venezuelan Embassy, the absence of the said ambassador from Nigeria and the presence of a new ambassador who is now opposed to the transaction, are issues that require a defence as the Claimant who allegedly bought the said land from the ambassador has now sought for redress in a Court of Law being the last hope of the “common man”. The Supreme Court has

warned on a number of occasions that each case be decided according to its own peculiar circumstances bearing in mind that no two cases are the same. In the course of this ruling, I have come across a lot of decided authorities on the issue of diplomatic immunity and impleading diplomatic immunity but the peculiarity of the claim before me makes it a novel case and on this, I rely on the pronouncement of Lord Denning in PACKER VS. PACKER 80 KG PG. 226 where he stated:-

“if we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on and this will be bad for the law”.

It is my considered view that the 1st Defendant in the circumstances has a case to answer as there are allegations of abuse on the privileges extended to it by the law of the Federal Republic of Nigeria. The proper order this court should make is to call upon the 1st Defendant/Embassy of Venezuela to file its defence against these grave allegations as justice is a two-edged sword. I therefore hold that the Diplomatic Immunities and Privileges Act of 1962 as pleaded by the Defendant is hereby restricted to the extent of this transaction considering the peculiar circumstances of this case and it would be proper for the 1st Defendant to file its defence in answer to this claim leveled against it.

This Court having waived immunity of the Defendant to the extent of this claim, it would be an exercise in futility to delve into the issue of juristic personalities as cases abound where the issue of juristic personality becomes a non-issue once immunity is waived. See DUKE OF BRUNSWICK Vs. KING OF HANOVER (1844) 6 BEAV 1;

GLADSTONE VS. MUSURUS BEY (1862) 1 Hem & M 495, where an interim injunction was issued against a bank to restrain it from parting with funds deposited by a foreign ambassador on behalf of his government.

With respect to the third issue for determination, which is, whether this Hon. Court has the jurisdiction to entertain this matter when the originating processes have not been served on the 1st Defendant. The 1st Defendant in its preliminary objection stated that the originating processes were not personally served on the 1st Defendant contrary to the law and rules of this court. First and foremost, the rules of this Court does not specify service on sovereign states. Consequently, where personal service is impossible and, in this case, where mode of service is not specifically specified, substituted service should be the last resort. There is evidence before me that the 1st Defendant was served by substituted means on the orders of this Court via courier(DHL).

Consequently, the Preliminary Objection filed by the 1st Defendant is hereby struck out and hearing of this matter will proceed on the next adjourned date.

Parties: Parties absent.

Appearances: Ibrahim G. Adamu, Esq., for the Claimant.
Tosin Opubor, Esq., holding brief of Mathias Dawodu, Esq., for the 1st Defendant.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
26/01/2020