

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/3081/17
DATE: : THURSDAY 5TH MARCH, 2020

BETWEEN

INCORPORATED TRUSTEES OF UTAKO SHOP OWNERS } PLAINTIFF/RESPONDENT

AND

- 1. HON. MINISTER OF THE FCT } DEFENDANTS/**
- 2. FEDERAL CAPITAL DEV. AUTHORITY } APPLICANTS**
- 3. ABUJA MUNICIPAL DEV. AUTHORITY }**
- 4. M.N. ATAJ CONSTRUCTION LIMITED }**

RULING

This is a consolidated Ruling on the two Preliminary Objections filed by 1st and 2nd Defendants' Counsel and the 3rd Defendant's Counsel.

The 1st and 2nd Defendants' Counsel in their Motion dated 20th day of July, 2019 raised the following issues as grounds of their preliminary objection; to wit:-

- a. That the Writ of Summons and the Statement of Claim, did not disclose any cause of action against the 1st and 2nd Defendants.
- b. That the 1st and 2nd Defendants are not necessary parties before the Court.
- c. That the Statement of Claim upon which the Suit was brought did not state any injury suffered by the Claimant as a result of the act of the 1st and 2nd Defendants.

d. That the 1st and 2nd Defendants at no material time, enter into any contractual relationship with the Claimant.

In support of the application is an 11 Paragraph affidavit duly deposed to by One Yusuf Ibrahim a Staff of the 2nd Defendant/Applicant.

It is deposition of the Applicant that sometimes in 2017, the Claimant instituted action against the 1st and 2nd Defendants in respect of allocation of shops space within Utako Ultra – Modern Market, Abuja wherein the Claimant contended that there was a newspaper advertorial made in Leadership of Friday March, 2016 captioned “Expression of Interest (EOI)” foretelling of Utako – Modern Markets, Utako under form measures and upgrading of Kugbo Spare Parts Market Mechanic Workshop, Kugbo.

Applicants aver that from the Summons and Statement of Claim, there is no cause of action against the 1st and 2nd Defendant whereupon, the Claimant suffered some injury.

Written address was filed wherein Learned Counsel formulated a sole issue for determination to wit;

Whether this Suit filed via a Writ of Summons being incompetent disclosed any cause of action against the 1st and 2nd Defendants.

Or

Alternatively whether the Court can assume jurisdiction to entertain the Suit against the 1st and 2nd Defendants were they are no necessary parties.

Arguing on above formulated issue, Learned Counsel submits that a critical look at the Writ of Summons and Statement of claim in this Suit, it is obvious that there is no cause of action against the 1st and 2nd Defendant. And that the 1st and 2nd Defendant has not acted in any way

that occasioned injury on the part of Claimant and urge the Court to strike out the names of the 1st and 2nd Defendant as the Court lacks jurisdiction to entertain or determined the Suit against them. *A.G FEDERATION VS ABUBAKAR (2007)10 NWLR (Pt. 18) NWLR (Pt. 851)182.*

Upon service, Plaintiff filed a counter affidavit of 10 paragraph deposed to by one ChukwuNneka a Litigation Secretary in the Law Firm of the Plaintiff/Respondent.

It is the counter affidavit of the Plaintiff that 1st and 2nd Defendant were part of the 1st – 4th Defendants sued the Claimants over the threat to demolish over 1,000 shops in Utako Ultra – Modern Market, constructed at owner – occupier basis by members of the Claimant, and not allocation of shops space.

Plaintiff further averred that the statement of claim of the Claimant contains the caveat emptor of the Claimants on Daily Sun Newspaper of March, 29th 2016, and

that paragraphs 9,13,15,16,17 and 18 of the statement of claim, contains facts which clearly links the 1st and 2nd Defendants to the cause of action in that the 1st Defendant allocated the land where the market is constructed to the 3rd Defendant, and that 1st and 2nd Defendants through Abuja Metropolitan Management Agency (Development Control) granted approval for the purported remodeling of Utako Ultra – Modern Market.

A written address was filed wherein two issues were formulated for determination to wit;

- a. Whether, looking at the Writ of Summons and Statement of Claim so far, this Suit disclosed no cause of action against the 1st and 2nd Defendant.*
- b. Whether, looking at the averments in the statement of claim and the writ, the 1st and 2nd Defendants are not necessary parties.*

On issue one whether, looking at the Writ of Summons and Statement of Claim so far, this Suit disclosed no cause of action against the 1st and 2nd Defendant.

Learned Counsel contended that cause of action is constituted by the aggregate or bundle of facts which the law will recognize as giving the Plaintiff a substantive right to make a claim for remedy or relief against the Defendant. Learned counsel argued further that a perusal of the reliefs shows that there is a cause of action against the Defendants..the authority of *ONUEKWUSI VS R.T.C.M.Z.E (2011)6 NWLR (Pt. 1243) 341 at 345 ratio*, was cited in support of the argument.

On issue two i.e. whether, looking at the averments in the statement of claim and the writ, the 1st and 2nd Defendants are not necessary parties, learned counsel argued that the law is settled on the issue of competence of parties in a judicial or legal proceedings.

Counsel contended that parties are those who have direct interest in the subject matter of the dispute and that there must be a nexus between the parties. *AKINDELE VS ABIODUN (2009)11 NWLR (Pt. 1151) 356.*

Counsel also argued that, there is a nexus between the parties and therefore urged Court to dismiss the application.

On its part, Learned Counsel for the 3rd Defendant filed its Notice of Preliminary Objection praying Court for the striking out of the suit for lack of competent jurisdiction.

In support of the application, is an affidavit of 7 paragraph deposed to by One Alice Anyebe a Litigation Secretary in the Law Firm of the Applicant.

It is the deposition of the Applicant that the gravamen of the Plaintiff's action against the Defendants borders on the shops occupied by individuals at Utako Market of the Federal Capital Territory, Abuja, and that the said

shops/market falls under the jurisdiction of the Applicant who has the power to control and manage the market and including the shops built therein.

Learned counsel also contended that by the law as contained in the Bye-laws vide annexure 'A', it will be in the interest of justice to strike out this Suit.

A written address was filed in compliance with the law whereof. Learned Counsel formulated a sole issue for determination to wit; *whether this Honourable Court is robbed of the jurisdiction to entertain the instant Suit?*

Learned Counsel contended that the question of jurisdiction is very fundamental and must be determined first, and that the jurisdiction of Court is conferred by the Constitution or other statutes creating it. *OLOFU VS ITODO (2010)18 NWLR (Pt. 1225) P. 558.*

Learned Counsel contended further that by virtue of annexure 'A' (Bye-laws), the court that has jurisdiction to

entertain issue of this nature at Pages ‘B329’ – ‘B331’ and Section 2 is the Magistrate Court.

Court was finally urged to decline jurisdiction to entertain this suit.

Upon service, Plaintiff filed Counter affidavit of 6 paragraph deposed to by One Nelson Onwuemeodo, the Chairman of the Plaintiff.

It is the Counter deposition of the Plaintiff that the cause of action leading to this Suit arises within the Federal Capital Territory, Abuja.

That by virtue of Section 257 of the 1999 Constitution of the Federal Republic of Nigeria, the High Court of FCT is empower to adjudicate over all Civil Proceedings arising within FCT.

That the Bye-laws of the Abuja Municipal Area Council cannot nullify the provisions of the Constitution.

A written address was filed wherein Learned Counsel stated that the provision of the Bye-laws relied upon by the Applicant cannot/does not in any way bestow on the Magistrate Court exclusive jurisdiction over matters relating to Market Management within FCT. And that provision of statute must be given its ordinary meaning. ***OGBUCHI VS DEPUTY SHERIFF, B.S.H.C (2015)8 NWLR Pt. 1460 at 177.***

Learned Counsel also cited and relied on Section 257(1) of the Constitution of the Federal Republic of Nigeria which conferred jurisdiction on FCT High Court and therefore, court should assume jurisdiction and dismiss the Preliminary Objection of the Applicant.

I have gone through the Notice of Preliminary Objection filed by the 1st and 2nd Defendants and that of the 3rd Defendant. I have equally considered the position of the Plaintiff/Respondent.

In the court's humble opinion only two issues arise for determination to wit; whether the Plaintiff's suit discloses a reasonable cause of action against the 1st and 2nd Defendants. And whether this court has the jurisdiction against 3rd Defendant.

I shall be brief but succinct in addressing the above issues in interest of Justice and fair play.

Jurisdiction is the life wire of a court as no court can entertain a matter where it lacks jurisdiction. Issue of jurisdiction can be raised at any time even on appeal to the Supreme Court because of its decisive nature.

UBA PLC. & ORS VS ADEMOLA (2008) LPELR 6066 (CA)

I shall therefore, consider the notice of Preliminary Objection carefully in view of its importance to avoid wasting our precious time.

Cause of action is fact or facts which establishes or gives rise to a right of action. ***INOMA-BINIYA VS OMONI (1989) 4 NWLR (Pt. 119) Page 60 at 74 paragraph A-B.***

Cause of action was defined in the case of ***FASHTUN MOTORS LTD VS UBA LTD (2000) 1 (Pt. 640) page 190 at 200*** as consisting every fact which would be necessary for the court to assume jurisdiction.

In considering whether or not pleadings disclose any reasonable cause of action, it is the writ of summons and statement of claim that will be considered and certainly not statement of defence by way of claim that will be considered and not statement of defence by way of affidavit ***UBA VS UMEODU AGU (2004) 13 NWLR (Pt. 890).***

The summary of the facts of this case as contained in the Plaintiffs statements of claims is for the following:-

- a. A declaration that members of the Plaintiff are lawful allottees and Owners of their shops within the Utako Ultra –Modern Market, Utako Abuja.
- b. A declaration that any purported re-modelling of Utako Ultra – Modern Market based on the brochure designed by the 3rd and 4th Defendants without the interest and investment of members of the Plaintiff is null and void and of no effect whatsoever.
- c. A declaration that any purported sale of forms or shops based on the purported design, approval or brochure produced by the 4th Defendant is null and void and of no effect.
- d. An injunction restraining the Defendants, either by themselves, their agents or privies by whatsoever name called from carrying out any re-modeling of Utako Ultra – Modern Market or further sale of forms of offering for sale any form meant for any shop at Utako Ultra – Modern Market until the terms

contained in the existing allocation letters are exhausted.

- e. The sum of N200Million Naira only against the 4th Defendant for the pain, agony and stress which the 4th Defendant had caused the Plaintiff and its members by her actions and conduct in purporting to be re – modelling Utako Ultra – Modern Market, Utako Abuja.

From the above, could it be said that the Plaintiff’s case disclosed reasonable cause of action?

Cause of action was defined as:-

- a. A Complaint
- b. A Civil right or obligation for determination by a Court of Law.
- c. A dispute in respect of which, a Court of Law is entitled to invoke its judicial powers to determine.

- d. Consequent damages.
- e. Every fact which would be necessary for the Plaintiff to prove, if transferred in order to support his right to the Judgment of the court but does not comprises every piece or evidence that is necessary to prove.
- f. All the things necessary to give a right or action whether they are to be done by the Plaintiff or third person and
- g. A factional situation which enables one person to obtain a remedy from another.

A.G FEDERATION VS ABUBAKAR (2007)10 NWLR (Pt. 18)NWLR (Page 851).

Cause of action can only arise which vest one competent Court jurisdiction to entertain a suit, where the action of a party cause injury or damage and same suffered by the Claimant.

Indeed were from the endorsement on a Writ of Summons and Statement of Claim, a petition discloses a cause of action, the court unless precluded by other statutory provision, can exercise jurisdiction. A matter cannot be heard on merit unless there is a cause of action and the Plaintiff has the right to bring actions against the parties. ***UTTIH VS ONOYIVEWEH (1991)1 NWLR (Pt. 166)166.***

From the endorsement on the Writ and Statement of Claim, I have no doubt that Plaintiff has a cause of action against the Defendants and that this court has jurisdictional competence to entertain same. From the foregoing, there is no way the two preliminary objections can stand in law.

Consequently the two Preliminary objections filed by both the 1st and 2nd Defendants' Counsel and 3rd Defendant Counsel are hereby dismissed

Justice Y. Halilu
Hon. Judge
5th March, 2020

APPEARANCES

K.U.N. Osemeha – for the 1st and 2nd Defendants.

R. Okotie-Eboh with R. Tarfa – for the 4th Defendant.

3rd Defendant not in court and not represented.

Plaintiff in court but not represented by Counsel.