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/0754/18

DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN:

MR. ADE ARAGBAIYE …… PLAINTIFF/RESPONDENT

AND

1. HON. MINISTER, FCT **DEFENDANTS**

2. FED. CAP. DEV. AUTHORITY

3. ABUJA MUNICIPAL AREA COUNCIL (AMAC)

RULING

This Ruling is at the instance of the 3rd Defendant/ Applicant who approached this Honourable Court for an Order of this Honourable Court dismissing or striking out suit No. FCT/HC/CV/0754/18 for want of Jurisdiction, and for such further order or Orders as this Honourable Court may deem fit to make in the circumstances.

The following were the grounds upon which the application was predicated;

a. That the alleged cause of action in this matter accrued in the year 2002 as par the Plaintiff's Statement of Claim;

b. That the Persons aggrieved by all acts of the 3rd Defendant/Applicant are only entitled to challenge same within the period of six months;

c. That the Plaintiff's action was filed outside the said prescribed period of six month

d. That the purported pre-action notice was issued and served during the pendency of Suit No.: **FCT/HC/CV/0754/18.**

e. That there is no cause of action and or reasonable cause of action disclosed against the 3rd Defendant/Applicant in the Plaintiff's Suit No.: **FCT/HC/CV/0754/18.**

f. That this Honourable Court lacks the jurisdiction to entertain this suit as presently constituted.

Learned counsel formulated a sole issues for determination to wit; whether this Honourable Court has the jurisdiction to entertain this suit as it is presently constituted.

Arguing on the lone issue, counsel contended that, where a precondition for doing an act is not complied with, No action subsequently performed without the precondition

can be valid. ***ORAKU RESOURCES LTD VS N.C.C (2007) 16 NWLR (Pt. 1060) 870.***

Learned counsel contended that section 123 of the local Government Act clearly stipulate the timeline within which an action such as the present suit can lie against the 3rd Defendant/Applicant and that same was not complied with.

It is further the submission of the learned counsel that where an action is statute barred, a Plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process, because the period of limitation laid down by the limitation law for instituting such an action has elapsed.

AKPABUYO LOCAL GOVT. COUNCIL VS D'TTO COMPANY (NIG) LTD (2016) LPELR 413 52 (CA).

Upon service, the Claimant/Respondent replied on point of law citing the case of ***KOKORIN VS PADEGI LGC***

(2009) LPELR 8376 (CA) to submit that there is always an exception to the general Rule.

Counsel also cited the case of ***HUSSAN & ORS VS BORNO STATE GOVT. & ORS (2016) LYELR 40259 (CA)***.

On the part of court, I wish to observe that when there is limitation period, such period is determined by looking at the writ of summons and the Statement of Claim, which shows when the wrong was committed giving rise to the cause of action and comparing it with the time when the matter was commenced, that is, when the Writ of Summons was filed.

Time can, however, only begin to run when there is in existence of a person who can sue and be sued, and material facts that must be proved to entitle the Plaintiff to the sought relief. See ***EBENOGWU VS. ONYEMAOBA (2008) 3 NWLR (Pt. 1074) 396 P. 422 Paragraph A – C.***

Indeed in the case of ***FRED EGBE VS HON. JUSTICE J. A. ADEFARASIN (2002) 14 WRN 57, (1987) 1 NWLR (Pt. 47) 1 at 20*** SC held that cause of action are fact or facts which establish or give rise to a right of action. That it is the factual situation which gives a person a right to judicial relief.

Learned counsel for the 3rd Defendant submit that a look at the statement of claim of the Plaintiff, the cause of action of the Plaintiff or the wrong complained of arose in the year 2002 and this suit was filed in 2018 which, according to the learned counsel to the Defendants/Applicants, is apparently over 6 years and outside the six months limitation period prescribed by Section 123 of the Local Government Act, Laws of the Federation, FCT.

Learned counsel submitted that the action of the Plaintiff is caught up by the provision of the Local Government Act. Reliance was placed on the cases of ***UMUKORO VS***

NPA (1997) NWLR (Pt. 502) Page 656, ODEDIRAN VS NPA (2004) 7 NWLR PG 872 PG 230 at 237.

I must state here that it is a general principle of Law that where the Law providestime for filing of an action within a prescribed period in respect of a cause of action accruing to the Plaintiff, proceedings shall not be brought after the time prescribed by statute.

It is obvious that section 123 of the Local Government Act is a condition precedent in instituting any action against the Defendant. Failure to file an action within the time frame, which is a pre-requisite in presenting a competent action, robs the court of jurisdiction to entertain the suit. See ***BABALOLA VS OSOGBO LOCAL GOVERNMENT (2003) 10 NWLR (Pt. 829) at 483 and ADEKOYO VS FHA (supra) Ratio 3.***

It is my considered opinion that the salutary approach here shall be to reproduce paragraphs 5, 8, 13a,17 and 18 of the Plaintiff/Respondent's statement of claim which are

germane for consideration in establishing whether or not the suit is statute barred by virtue of section 123 of Local Government Act, Laws of the Federation FCT. I have so reproduced the relevant paragraphs of the said Plaintiff/Respondent's statement of claim aforementioned.

Paragraph 5 of Plaintiff's Statement of Claim reads thus;

> ***"The Claimant avers that sometime in 2002, he applied for and was granted statutory Right of occupancy by the 1st Defendant through the 3rd Defendant over plot 1137 measuring approximately 1,000.572sqm2 in Kuruduma Layout now referred to as Guzapeof the Federal Capital Territory, Abuja (The Applicant form and letter of grant of customary right is hereby pleaded and will be relied on during the trial)."***

Paragraph 8

"That sometime in 2006, all Allottees of land within the Federal Capital Territory granted through the Area Councils including those granted through the 3rd Defendant on behalf of the 1st Defendant were required to regularize their titles with the 1st Defendant. Following this directive by the 1st Defendant, the Claimant obtained and completed the application form for regularization of land titles in Area Councils and duly submitted same to the 1st Defendant. (The acknowledgment copy of the form is hereby pleaded)."

Paragraph 13a

"The Claimant avers that plot 1137 Kuruduma (also known as Guzape) has not been revoked by the Defendants, and there is no adverse claim to it."

Paragraph 17

"The Claimant avers that having made all the payments to the Defendants as prescribed for the issuance of a Certificate of Occupancy to him, he made several demands to the 1st Defendant to issue and release his Certificate of Occupancy to him, but the 1stDefendant refused or neglected to release same to him."

Paragraph 18

"The Claimant avers that he strongly believes that the Certificate of Occupancy has been issued and is in the custody of the Defendants."

I wish to state the elementary law that, the rules and principles of equity helps only the vigilant and they do not assist an indolent party who fails to pursue his right diligently within a reasonable time. I refer you to the case of ***A. G. RIVERS STATE VS UDE (2007) ALL FWLR (Pt.347) 600 at 614 paragraph C, Per Mustapha JSC.***

When paragraph 5 of the Plaintiff/Respondent's Statement of Claim is closely considered vis-a-vis the date endorsed on the writ of summon, it is very unambiguous that the cause of action in this suit arose sometime in 2002 while the writ of summons is 2018.

It is my view that the Plaintiff/Respondent in this case is directly responsible for the delay in bringing this action, and cannot, for all intent and purposes, benefit from his wrong. The maxim is 'Ex tarpicausa non orituractio'

I also refer to the authority of the ***ADMINISTRATOR AND EXECUTORS OF THE ESTATE OF GENERAL SANI ABACHAVS EKE-SPIFF & ORS (2009) 2 – 3 SC (PT. 11) 93 OF (2009) 7 NWLR 97 SC.***

Section 123 of the Local Government Act Laws of the Federation, FCT reads thus;

> ***"When any suit is commenced against any Local Government for any act done in pursuance or***

execution or intended execution of any law of any public duty or authority or in any such law, duty or authority, such suit shall not lie or institute unless it is commenced within six months next after the act, neglect or default complained of or in the case of continuance of or damage or injury six months after the ceasing thereto."

If the provision of 123 of the Local Government Act, Laws of the Federation, FCT is juxtaposed with paragraph 5 of the Plaintiff/Respondent Statement of Claim afore – reproduced and the endorsement on the writ which is very ominous that the act complained of occurred sometime in 2002 and the suit was filed in January, 2018, what then is the fate of this suit.?

And since in computing the time to ascertain whether a case is statute barred it is the writ of summons and statement of claim that are considered, and in view of the fact that the Plaintiff/Respondent in his paragraph 5 of

statement of claim acknowledged the fact that the cause of action arose sometime in 2002, which is more than 6 years now, it is my considered ruling that section 123 of Local Government Act, laws of the Federation FCT, has caught up with the Plaintiff/Respondent's suit.

Similarly the Plaintiff/Respondent's statement of claim has been properly taken care of by the learned justices of the Supreme Court in the case of ***AJIBONA VS KOLAWOLE (1996) 10 NWLR (Pt. 476),*** when **"Ogwuegbu JSC,** as he then was stated thus;

> ***"The limitation law and all laws of this description ought to receive beneficial construction. They should be construed liberally but not in such a way as to read into them words not intended by the lawmakers as the majority decision of Court below portrayed. All limitation laws have for their object the prevention of the rearing up of claims that are stale. To contend that the Defendant must prove***

Plaintiff's knowledge of such adverse possession for time to start to run, import a strange condition into the limitation law."

On the whole, therefore, I find the argument of learned counsel for the Plaintiff/Respondent half hearted, whimsical and unsustainable in law.

On the other hand, I find the legal argument of learned counsel for the 3rdDefendant/Applicant trite and rooted in law and thereby sustainable.

I must importantly wish to re-state the already established position of law that, for a Court of law to assume jurisdiction over a matter, the said subject matter of the case shall be within jurisdiction, and there shall be no feature in the case which prevents the Court from exercising its jurisdiction, as in this present case. See ***WAEC VS ADEYANJU (2008) VOL. 6 M.J.S.C. 1 at 23 – 24 paragraph E – A and MADUKOLU VS NKEMDILIM & ORS (1962) 2 SC NLR 341.***

In view of the foregoing therefore, Plaintiffs/Respondents have slept on their rights. Itself to be dragged into this court would not allow any untoward situation of rascality.

I shall therefore do the needful by dismissing this suit against the 3rd Defendant only.

Consequently other Defendant are hereby ordered to enter their defence.

Justice Y. Halilu
Hon. Judge
12th March, 2020

APPEARANCE

NNEKA PEGGI AMADI – for the Plaintiff.

UMARU YUNUSA – with M.D AYODELE – for the 3rd Defendant/Applicant.