

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

MOTION NO. FCT/HC/M/1917/2017

B E T W E E N:

KEYSTONE BANK LIMITED

PLAINTIFF/RESPONDENT

AND

1. ENGR. EMMANUEL IBOK ESSIEN

**2. RITMAN COLLEGE OF AGRICULTURE
SCIENCE AND MANAGEMENT STUDIES LTD.**

**DEFENDANTS/
APPLICANTS**

R U L I N G

The Defendants/Applicants are by the Notice of Preliminary Objection under reference M/1917/2018 praying this Court for an order to dismiss this suit on three grounds, firstly, on the ground that both the Defendants are resident outside the jurisdiction of this Court and secondly that the cause of action occurred in Ikot Ekpene where the Defendants are situate. Lastly, the Defendants contend that this Court lacks the jurisdiction to entertain this suit.

In support of the application, the 1st Defendant deposed to a 14 paragraph affidavit dated 14th January, 2018. A further affidavit in

response to the counter affidavit was filed by the 1st Defendant dated 19th February, 2018.

The facts contained in both affidavits, briefly stated are that both the 1st and 2nd Defendants are resident and carry out business at 104 B, Umuahia Road, Ikot Ekpene, Akwa Ibom State outside the jurisdiction of this Court. It is also disclosed that the cause of action in the substantive suit is not one which this Court is seized with territorial and subject matter jurisdiction. It is noted that only one of the property that is situated and located at No. 5, Road 11 Ariba, Gwarimpa II, Estate, Abuja (also known as No. 5, Christian Ajayi Okunuga Street)

It is further contended by the 1st Defendant that he does not operate any business in the aforesaid Abuja address nor does he reside there. The 1st Defendant also asserts that both Defendants entered into a loan transaction arrangement with the Plaintiff in Ikot Ekpene, Akwa Ibom State. According to the Defendant the loan transaction between parties in this suit is in relation to the property located and situated at No. 5, Christian Ajayi Okunuga Street, Gwarimpa II and 104B, Umuahia Road Ikot Ekpene, Akwa Ibom State. 1st Defendant also asserts that he has since relocated from Abuja to Akwa Ibom State after the expiration of his tenure as a Senator in 2003.

In so far as the loan transaction arose and dispute concerning the loan arose in Akwa Ibom State, 1st Defendant reasons that the appropriate forum for resolving the dispute should be in the High Court of Akwa Ibom State.

In reaction, the Plaintiff filed a counter affidavit and a reply to the 1st Defendant's affidavit, Christopher Yildar, a litigation Secretary in the law firm of West Idahosa & Co. The facts disclosed in the counter affidavit and reply in summary are that the 1st Defendant is resident in Abuja at No. 5 Christian Ajayi Okunuga Street, Gwarinpa II whilst he maintains his country home in Ikot Ekpene. It is also disclosed that the cause of action in this suit spans through three territorial jurisdiction, Akwa Ibom State, Lagos State as well as the Federal Capital Territory.

The deponent also disclosed that the consent to the mortgage of No. 5 Christian Ajayi Okunuga Street, as collateral for the loan transaction was obtained from the Federal Housing Authority in Abuja. He further disclosed that the suit is for an order for possession and sale of property lying within the exclusive jurisdiction of this Court. It was also admitted that the loan transaction is secured by the Abuja property as well as another property at No. 5 Road II, Abriba, Gwarimpa II Estate Abuja to this end the Plaintiff relied on the Deed of Tripattite Legal Mortgage.

In response to the further affidavit of the Plaintiff, the Defendant contends that the loan facilities are separate transactions. It is asserted by the Plaintiff/Respondent that the loan transactions are separate. He contends that the amendment sought by the Plaintiff is for this Court to deal with the property at No. 5 Christian Ajayi Okunuga Street over which this Court has jurisdiction.

In effect, the Plaintiff contends that this suit is meant to determine an issue relating to property which is within this Court's jurisdiction for the purpose of offsetting the Defendant's indebtedness of ~~N~~308,601,656.25. (Three Hundred and Eight Million, Six Hundred and One Thousand, Six Hundred and Fifty-Six Naira, Twenty-Five Kobo)

In sum, the Plaintiff maintains that this Court is seized with jurisdiction to entertain the Plaintiff's claim for recovery of the loan which the property at No. 5 Christian Ajayi Okunuga is used as a collateral. Both counsel filed and exchanged written addresses in furtherance of this application.

Obong C. A. Udoh Esq., Learned Counsel for the Defendants/Applicants in his written address dated the 17th January, 2018 formulated a lone issue for determination that is, whether this Court has the jurisdiction to entertain this suit against the 1st and 2nd Defendants.

Dr. Ehiogie West Idahosa, Plaintiff/Applicant's Counsel in his written address dated 24th January, 2018 formulated a lone issue for determination that is, whether the Honourable Court has jurisdiction to determine this suit having regards to the fact that some of the reliefs before this Court bother (sic) on an order for possession and sale of a mortgaged property lying and situate within the Federal Capital Territory.

Dr. Ehiogie West Idahosa in arguing the Plaintiff/Respondent's issue one drew the attention of this Court to Order 9 Rule 1 of the High Court of the FCT Civil Procedure Rules. I have carefully considered Order 9 of these Court's rules and note that it is for appearance hence it is in applicable to this application. Perhaps reference to Order 9 by Counsel was in error, the proper order is Order 3 of the FCT Rules which provides for place and institution and trial of suits, it provides thus:

Subject to the provisions of the FCT High Court Act on transfer of suits, the place for trial shall be regulated as follows;

1. All suits relating to land or any mortgage or charge on land or any interest in land or any injury or damage to land and actions relating to personal property detained or seized for any cause, may be commenced and determined in the judicial division in which the land is situated or the detained or seizure took place.

2. All suits for specific performance or upon the breach of any contract may be commenced and determined in the judicial division in which such contract ought to be performed or in which the Defendant resides or carries on business.

Learned Counsel for the Plaintiff has submitted that one of the properties secured for the loan facility is in Abuja, consequently, this Court is seized with jurisdiction to entertain the Plaintiff 1st, 2nd and 3rd reliefs. Counsel went on to submit that the property is a subject of a mortgage transaction hence this Court is vested with jurisdiction. Counsel rightly referred to the decision in **ONYEMA v. OPUTA (1987) 3 N.W.L.R. (PART 60) page 259 at 262 Ratio 8** where it was held thus:

“It is wrong for the Court of one state of Nigeria to entertain a claim which involves land situate in another state. Every State in Nigeria and every state High Court possess exclusive jurisdiction over land situate within its territorial boundaries and the Court of another state have jurisdiction to adjudicate over an issue which seeks to determine a jus in rem in that land”

The Plaintiff's Counsel also recounted that the Defendant has been duly served with the originating processes in Abuja hence this suit is competent before this Court.

Learned Counsel for the Defendant Obong C. A. Udoh Esq., has argued to the contrary and has urged this Court to answer Defendant's issue one in the negative. Relying on Order 9 Rule 4(1) which is erroneously relied upon instead of Order 3 Rule 3 and 4 of the High Court of the FCT Rules, Obong C. A. Udoh, Esq., posits that this Court lacks the jurisdiction to entertain this action.

He referred this Court to Order 3 Rule 4 of this Court Rules provides that:

All other suits shall where the Defendant resides or carries on business or where the cause of action arose in the Federal Capital Territory shall commenced and determined in the High Court of the Federal Capital Territory.

The Defendant's Counsel went on to contend that the 1st and 2nd Defendant reside and carry on business at 104 B Umuahia Road, Ikot Ekpene, Akwa Ibom State outside the jurisdiction of this Court. Besides, it is disclosed by the Defendants that the contractual relationship which led into this suit took place in Akwa Ibom State where the facilities were advanced to the Plaintiff.

I have carefully considered the submissions of both Counsel, particularly in the light of Order 3 Rules 1 – 4 of this Court and I am inclined to endorse the submission of the Plaintiff's Counsel that the

subject matter of this suit is predicated on a mortgage transaction involving land. This being the case the rules of this Court specifically provides that land matters relating to mortgage shall be entertained by this Court.

I am minded that the Tripartite Agreement between the parties is in respect of two properties, one is located at 104 Umuahia Road, Ikot Ekpene Akwa Ibom State whilst the other is in respect of the property situate at No. 5 Christian Ajayi Okunuga Street Gwarimpa II Estate, Abuja.

In view of the geographical location of the property in Abuja, this Court is seized with the territorial jurisdiction to entertain this suit to the extent of the property which falls within the territorial jurisdiction of this Court.

In the circumstance, the Preliminary Objection is partly overruled to the extent of the Plaintiff's claim as it relates to the foreclosure or the exercise of the equity of redemption on the property in respect of No. 5 Christian Ajayi Okunuga Street, Gwarimpa II Estate Abuja however, the objection raised by the Defendants/Applicants as it relates to the Plaintiff's claim regarding the property at 104 Umuahia Road, Ikot Ekpene, Akwa Ibom State is hereby sustained.

The Plaintiff can amend its pleadings to that which is in relation to this Court's jurisdiction.

**O.O. Goodluck,
Hon. Judge.
20th February, 2020.**

APPEARANCES

Parties absent

J. U. Pius Esq.: For the Plaintiff

Kingsley Chinda Esq.: For the Defendants