

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANYA ON THE 23RD DAY OF MARCH, 2020

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/6211/17

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

KABIR TANKO.....PLAINTIFF/RESPONDENT

(Suing through his Lawful Attorney

Mrs. HadizaUkachukwu)

AND

- 1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- 2. MINISTER, FEDERAL CAPITAL TERRITORY**
- 3. ABUJA METROPOLITAN MANAGEMENT COUNCIL**
- 4. MORINGA CONSULTING LTD**
- 5. NATIONAL PRIMARY HEALTH CARE
DEVELOPMENT AGENCY**
- 6. MEDICAL AND HEALTH WORKERS UNION OF NIGERIA**
- 7. DR. KAYODE ALAO**

....RESPONDENTS

RULING

The 1st – 3rd Defendants' Notice of Preliminary Objection is dated the 15th day of July 2019. The objection is to the competence of the suit against the 1st – 3rd Defendants/Applicants. He sought for an order dismissing the suit. The grounds for the objection are:

1. There is no justiciable wrong suffered by the Claimant at the instance of the 1st – 3rd Defendants. There is no averment in the pleadings that the land allocation of Plot 2062 within Gaduwa District was subject to revocation or trespass by 1st – 3rd Defendants.
2. There is no legal basis for the Claimant to institute the action against the 1st – 3rd Defendants as there is no cognizable wrong or hardship suffered by the 1st – 3rd Defendants/Applicants.

That there is no cause of action and or reasonable cause of action disclosed by the Claimant's suit against 1st – 3rd Defendants. That the suit is brought malafide.

Learned Counsel to the Applicant relied on the 13 paragraph Affidavit deposed to by Nansok Emmanuel. He deposed essentially that paragraphs 8, 9, 10, 11, 12 & 13 of Statement of Claim constitute the major plank of the Claimant's case. That the alleged trespass was done by the 4th – 7th Defendants. That the grouse of the

Claimants Claim against the 1st – 3rd Defendant is speculative. That the only portion dealing with 1st – 3rd Defendants is paragraph 9 to the effect that the land was allocated to him vide a Statutory Right of Occupancy. That the Claimant has no specific Claim against the 1st – 3rd Defendants. The Claimant filed a Counter Affidavit which he relied upon in opposition to this Notice of Objection. It is deposed to on the 13/03/20. He deposed that the 1st – 3rd Defendants are saddled with the responsibility of allotting land and ensuring proper development within the FCT, Abuja. That he is the Lawful Attorney of the Claimant who 1st Defendant allocated Plot 2062 Cadastral Zone B 13, Gaduwa District Abuja. That the 4th – 7th Defendants contend the ownership of the said Plot 2062 that was duly allocated to the Claimant. That by Paragraphs 4 – 8 of the 1st – 3rd Defendants proposed Amended Statement of Defence and paragraphs 7 – 13 of the 1st – 3rd Defendants Statement of Defence, they said the Claimant Plot 2062 Cadastral Zone B13 Gaduwa formed part of a bigger Plot 467 which was revoked and balkanized into smaller plots and reallocated by the 1st Defendant.

That the Claimant was duly granted a Statutory Right of Occupancy over Plot 2062 Cadastral Zone B13 Gaduwa District Abuja measuring about 864.07 square metres. That the Claimant's title has been extinguished. That Claimant and the 4th – 7th Defendants are laying claims to Plot 2062 Cadastral Zone B13 Gaduwa District Abuja each claiming that it was allocated to them by the 1st Defendant through the activities of 2nd & 3rd Defendants. The 1st – 3rd Defendants are proper parties. That there are reliefs against the 1st – 3rd Defendants.

I have read the Notice of Objection. I have also considered the Written Addresses of Counsel. The lone issue for determination in my view is as posited by the 1st – 3rd Defendants Counsel. It is whether from a careful consideration of the Statement of Claim, the Claimant's suit discloses any reasonable cause of action against 1st – 3rd Defendants.

A cause of action has been defined to mean the fact or facts which establishes or gives rise to a right of action and that it is a factual situation which gives a person the right to Judicial Relief.

In *A.G. Federation V. A.G. ABIA STATE & 35 ORS (2001) 11 NWLR (PT. 725) 689 at 733.*

The Supreme Court held:

“It is sufficient for a Court to hold that a cause of action is reasonable once the Statement of Claim in a case discloses some cause of action or some questions fit to be decided upon by a judge notwithstanding that the case is weak or unlikely to succeed. The law is that it is the totality of the averments in the Statement of Claim that determines the accrual of cause of action”.

Therefore it is the averments in the Statement of Claim and the reliefs claimed in the Writ of Summons that determine when the cause of action accrued to the Plaintiff.

See *MILITARY GOVERNOR ONDO STATE & 5 ORS VS. KOLAWOLE & 4 ORS* (2008) 4 – 5 SC (PT. 11) P 188 at 184 – 185.

In the Writ of Summons issued at the instance of the Claimant, there are four reliefs.

Relief 1 is a declaration that Claimant is the beneficial owner of the parcel of land described as Plot 2062 Cadastral Zone B13 Gaduwa District, Abuja. The 4th relief is an order of perpetual injunction against all the Defendant including 1st – 3rd Defendant.

From the Statement of Claim, the Claimant avers that he was allotted the parcel of land in dispute vide a Statutory Right of Occupancy by the 1st – 3rd Defendant. That he was in lawful and peaceful possession of the said parcel of land until disturbed by 4th – 7th Defendants. The law is that a Claimant has a duty to bring before the Court all parties whose presence are crucial to the resolution of the case. The 1st – 3rd Defendants are statutorily involved in land administration in the FCT. If there is any act intermeddling or contesting an allottees title, the 1st – 3rd Defendants ought to be Parties whose presence cannot be overlooked.

In my humble view, the 1st – 3rd Defendants are interested parties in the action and their presence is crucial to the effectual and complete determination of the questions involved in the cause or matter. The 1st – 3rd Defendants have already joined issues

by filing their defence. The Notice of Objection therefore lacks merit. It is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HOH. JUDGE)

23/03/20