

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1737/14

BETWEEN:

- 1. THOMAS UCHE**
- 2. MOSES ALADE ADEBO** (Trading under the Name and Style of Fadama Development Ventures)
- 3. MRS. HELEN UCHE**
- 4. MRS. CHRISTIANA ONUAFOR**
- 5. MR. CALLISTUS**
- 6. CHRIS IKWUEGBU.....PLAINTIFFS**

VS

- 1. MINISTER OF THE FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- 3. GWAGWALADA AREA COUNCIL.....DEFENDANTS**

RULING

By a Notice of Preliminary Objection dated 4/7/2017 and filed same day, the 3rd Defendant/Applicant seeks the court for an Order dismissing the Suit against her for being statute barred.

In the Written Address filed in support of the Preliminary Objection, 3rd Defendant/Applicant's Counsel formulated a sole issue for determination that is;

“Whether this action is statute barred”

The process was served on all the parties, the Claimants/Respondents through their Counsel filed their reply to the Preliminary Objection on 15/10/18 and formulated three (3) issues for determination namely;

- (1) Whether in the circumstances of this case, it will be proper and just to punish the Plaintiff for allegedly suing outside the statutory period.
- (2) Whether Section 114 of the Local Government Edict 1976 of Niger State is not void for being inconsistent with Section 4(8) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
- (3) Assuming without conceding that Section 114 of the Local Government Law of Niger State 1976 (Applicable in the FCT) is not void, can it avail the 3rd Defendant without it (3rd Defendant) showing that it acted in conformity with its Constitutional mandate?

1st and 2nd Defendants did not file their response but align with the Preliminary Objection and therefore not opposed to it.

I have carefully considered the submission of both Counsel and the judicial authorities cited, I find that only one (1) issue call for determination that is.

“Whether the 3rd Defendant/Applicant have made out a ground so as to be entitled to the relief sought”

The 3rd Defendant/Applicant is an Area Council which make up the Federal Capital Territory as stated in Section 303 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and her status is further defined in Part II of the Fifth Schedule of the said Constitution. Under the Provision of Section 318, Part IV, interpretation citation and commencement of the 1999 Constitution (As Amended). It is stated that, Local Government Area or Local Government Council includes an Area Council. Thus it is not far-fetched to say that an Area Council enjoys same status as a Local Government created pursuant to Section 7 of the 1999 Constitution of the Federal Capital Territory of Nigeria (As Amended) and as all Local Government Council listed in Part 1 of the Fifth Schedule of the said Constitution.

The ground of the 3rd Defendant/Applicant’s objection to the suit is that this suit violates the Provision of Section 114 of the Local Government Edict 1976 of Niger State which is now in the laws of the Federal Capital Territory of Nigeria Vol. 3. The said Provision requires that when any suit is commenced against any Local Government Area, for any act done or execution or intended execution of any law or any public duty or authority or of any alleged neglect or default, such suit shall not lie or be instituted unless it is commenced within (6) six months next after the act, neglect or default complained of. That the cause arose on 8/6/2009, but Claimants commenced their action on 9/6/2014, outside the (6) six months period prescribed by the said Local Government Edict 1976 of Niger State now

applicable in the FCT. On the other hand, the Claimants/Respondents submission in brief is that the Claimants were received by the officials of the 3rd Defendants/Applicants and actually pretended to be negotiating with them and Claimants decided to rightly wait and see the mediation process and it was when it became obvious that the officials of the 3rd Defendant were not serious that Claimants decided to go to court, therefore 3rd Defendant/Applicant are estopped from asking the court to dismiss the suit of the Claimants. Submits on their Issue 2, that Section 114 of the Local Government Act of Niger State 1976 is inconsistent with Section 4(8) of the 1999 Constitution and is therefore void, because it ousts the jurisdiction of court. On Issue 3 submits that the 3rd Defendant/Applicant is not entitled to any form of protection under Section 114 of the Local Government Edict of Niger State 1976 (As Applicable in the FCT) that taking refuge in the said Provision as the 3rd Defendant/Applicant has done is grossly inadequate as they ought to have gone further to show that the demolition of the Claimant's properties followed due process and was therefore lawful.

First, I have perused the Local Government Act Laws of FCT Vol. 3 2007, the Provision of the Act relied upon by the Applicant is contained in Section 123 and not Section 114 as stated by the 3rd Defendant/Applicant.

To resolve the above contending claims of the parties, the court must consider the Statement of Claim of the Claimants/Respondent and this the court is empowered to do. See *Agbareh Vs Mimira* (2008) ALL FWLR (PT. 409) 559 @ 585 Paras D – F. The court in the determination of this

application must ascertain when the cause of action of the Claimants arose and whether the action is indeed statute barred.

Upon a careful consideration of the Amended Statement of Claim of the Claimants/Respondents filed on 21/4/16 particularly paragraph 9, the court is of the view that the cause of action of the Claimant accrued on 8/6/2009 when their properties were purportedly destroyed by the Defendants. The Claimants/Respondents commenced this Suit on 9/6/14, (6) six years after the accrual of the cause of action

The question is, does the protection of Section 123 of the Local Government Act avail the 3rd Defendant with regard to the submission of the Claimant/Respondent's Counsel that they were pretending to be negotiating with them that they approached the court when they realized that 3rd Defendant was not serious with the mediation period. The effect of negotiation between parties on limitation law has been stated in a Plethora of cases. In N.N.P.C Vs Iorshase (2008) All FWLR (PT. 403) 1305 @ 1320 Paras A – B the court held;

“The law does not prohibit parties to a dispute from engaging in negotiation for the purpose of settling the dispute except where as a result, there is what can be reasonably regarded as a settlement of the dispute or an admission of liability on the part of the Defendant, the limitation time continues to run”

See also Eboigbe Vs N.N.P.C (1994) 5 NWLR (PT. 347) 649.

In the instant case Claimants/Respondents Counsel submits that the parties were in some sort of negotiation. He failed to show that there

was any settlement of the dispute or admission of liability on the part of 3rd Defendant. There is also nothing in the Statement of Claim showing that indeed the parties were in any negotiation whatsoever therefore the limitation period continues to run, and makes the suit being cut up by the Provision of Section 123 of the Local Government Edit 1976 now applicable in the Federal Capital Territory. The court has held that where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. See *Fajimolu Vs Unilorin* (2007) 2 NWLR (PT. 1017) 74. The Claimants having failed to bring the suit within the period of six (6) months prescribed by the said Act, same is caught up by the statute and robs court of jurisdiction. The Claimants/Respondents Counsel submission on estoppels cannot avail them as I have said that there was nothing to show in the Statement of Claim that there was any negotiation between the parties nor was there admission of liability on the part of the 3rd Defendant therefore the reliance on estoppels cannot also avail them.

From the foregoing, the Claimants/Respondents having failed to bring their action timeously so as not to be caught up by the Provision of Section 123 of the Local Government Act. The suit has now become statute barred.

In conclusion, the Preliminary Objection of the 3rd Defendant/Applicant succeeds accordingly; the suit filed by the Claimants/Respondents on 9/6/14 against her is hereby dismissed as this court lacks the jurisdiction to entertain the suit against the 3rd Defendant/Applicant.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

9/3/2020

APPEARANCE:

S.I ORIPELAYE HOLDING BRIEF FOR IFEANYI MARAIZU FOR THE
CLAIMANT/RESPONDENT

A.O. ONI FOR THE 1ST/2ND DEFENDANT/RESPONDENT

DAUDA ABUBAKAR FOR THE 3RD DEFENDANT/APPLICANT