

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA**

THIS MONDAY, THE 9TH DAY OF MARCH 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO: CV/2166/18
MOTION NO: M/5275/2020**

BETWEEN:

SENATOR (ENGR) YISA EAST BRAIMOH.....CLAIMANT/RESPONDENT

AND

1. HON. MINISTER FCT	}DEFENDANTS/ APPLICANTS
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY(FCDA)		

RULING

By a notice of preliminary objection dated 12th February 2010, the Defendants/Applicants contend that his action is incompetent on the ground that it discloses no reasonable cause of action against Defendants and that the court lacks the jurisdiction to entertain same.

Let us perhaps situate the reliefs and the grounds as sought on the motion paper as follows:

- 1. An order dismissing the suit of the Plaintiff for disclosing no cause of action/reasonable cause of action against the Defendants/Applicants.**
- 2. An order dismissing this suit for want of jurisdiction.**

The Grounds of the objection are as follows:

- 1. On the endorsement of the claims in the Claimant's Writ of Summons and Statement of Claim, the Claimant did not have any claim against the Defendants/Applicants.**
- 2. The suit discloses no reasonable cause of action against the Defendants/Applicants.**
- 3. This Honourable Court lacks jurisdiction to entertain this case as presently constituted.**

The application is supported by a ten(10) paragraphs affidavit. A Power of Attorney was attached but it was not properly identified or marked in the affidavit. A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination to wit:

“Whether the Claimants suit as presently constituted discloses any cause of action/reasonable cause of action against the Defendant.”

The substance of the submissions in the address which forms part of the Records of Court is that reading the factual situation as presented by the Claimant in his Statement of Claim, that no cause of action was disclosed and that no claims were made against the Defendants. The Defendants contend that the claim of Plaintiff was that his land was revoked but that on their records, the Plaintiff executed a Power of Attorney in favour of a third party thereby transferring his interest and accordingly that there is no legal right of Plaintiff which Defendants have breached. The case of **Rinco Const' Co' Ltd V. Veepee Ind. Ltd (2005)9 N.W.L.R (pt.929)85; Cookey V. Fombo(2005) N.W.L.R (pt.941)182 at 208** were cited in support.

At the hearing, counsel for the Defendants/Applicants relied on the paragraphs of the supporting affidavit and adopted the submissions in his written address in urging the court to strike out the case for failure to disclose a reasonable cause of action.

In opposition, the Plaintiff/Respondent filed an eleven(11)paragraphs counter-affidavit with six(6) annexures marked as **Exhibits A-F**. A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination to wit:

“Whether or not the Plaintiff suit as presently constituted discloses any cause of action against the Defendants?”

The submissions on the address equally forms part of the records of court.

It was contended that in determining cause of action, the only document the court is permitted to look at is the statement of claim and that in this case paragraphs 1-17 of the statement of claim shows the infractions of Plaintiff's legal rights by Defendants in respect of the land in dispute and clearly discloses a reasonable cause of action against the Defendants.

At the hearing, counsel to the Plaintiff/Respondent relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the preliminary objection as frivolous and lacking in merit.

I have carefully considered the processes filed on both sides of the aisle including the oral submissions and the simple issue that arises is whether the Statement of Claim discloses a reasonable cause of action. Perhaps I should state at this outset that lack of a cause of action goes to the maintenance of the action and by no means to the legal competence or jurisdiction of the court as erroneously urged by the Defence Counsel. See **Amusan V. Obideyi (2000)15 W.R.N 90 at 102.**

It is settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The Court needs only to look at and examine the averments in the Statement of Claim of the Plaintiff. See **Ajayi V. Military Admin. Ondo State (1997)5 N.W.L.R (pt.504)237; 7UP Bottling CO. Ltd V. Abiola (2001)29 W.R.N 98 at 116.** The facts as contained in the affidavit in support of the preliminary objection cannot form the basis on which to determine if there is a reasonable cause of action. The answer to the question of whether the Statement of Claim discloses a reasonable cause of action is to be found in the Statement of Claim itself and not in any affidavit or other extraneous document.

The reference by counsel to the Defendants to the unmarked Power of Attorney and the submissions made on it and similarly the **Exhibits A-F** attached by the Plaintiff's counsel to the counter-affidavit and the submissions made thereon clearly have no relevance or application on the issue or question of reasonable cause of action. Counsel on both sides alluded to this settled principle in their written addresses yet they failed to limit the exercise of determining cause of action to only the statement of claim but erroneously proceeded to look at clearly extraneous materials and make submissions based on those materials. Those aspects of the submissions dealing with these materials will be accordingly discountenanced.

Now in considering whether there exists a reasonable cause of action, 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 by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A-G (Fed) V. A-G Abia State & Ors (2001)40 WRN 1 at 52; Mobil Producing Nig UNLTD V. LASEPA (2003)1 MJSC 112 at 132.**

What then is cause of action, which has to be reasonable failing which the Court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe V. Adefarasin (1987)1 NWLR (pt.47)1 at 20; Omotayo V. N.R.C (1992)7 N.W.L.R (pt.234)471 at 483; Bello V. A-G Oyo State (1986)5 N.W.L.R (pt.45)828; Afolayan V. Ogunrinde (1990)1 N.W.L.R (pt.127)369 at 373; Julius Berger Nig. Plc V. Omoigui (2001)42 WRN 1 at 16-17; Thomas V. Olufosoye (1986)1 N.W.L.R (pt.18)669; Savage V. Uwaechie (1972)3 SC 214; Adeosun V. Jibesin (2001)14 WRN 106 at 135** to mention a few as well as **Ogbimi V. Ololo (supra)** relied upon by the Defendant's Counsel.

In **Akibu V. Oduntan (2000)13 N.W.L.R (pt.685)446 at 463**, the Supreme Court defined cause of action as:

“A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

(a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and

(b) The consequent damage.”

In so far as can be evinced from the Statement of Claim, the fact or combination of facts on which the Plaintiffs have premised their right to sue seem to be as pleaded in paragraphs 1 to 18 of the Statement of Claim. The wrongful act of the Defendants and the damage suffered by the Plaintiff has been clearly set out in the said paragraphs of the Statement of Claim.

In summary, the substance of the cause of complaint here is the alleged revocation of Plaintiff's right of ownership of plot No898 Cadastral Zone B01, Gudu District without service of any notice of revocation or an opportunity given to hear from him. Furthermore, the Plaintiff complains that he is yet to be issued the certificate

of occupancy over the said disputed land years after the allocation to him and having made all necessary and due payments to the Defendants.

A Statement of Claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the Plaintiff's legal right or the failure of the Defendant to fulfill his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka V. Shell (2003)3 MJSC 136 at 149, Ibrahim V. Osim (1988)3 N.W.L.R (pt.82)257 at 271-272.**

After a careful consideration of the Statement of Claim, I am satisfied that it has clearly set out the legal rights of the Plaintiff and the obligation of the Defendants. It has further set out the failure of the Defendant to meet its obligations. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a court. At the risk of prolixity, any perceived weakness of the Plaintiffs' case is not a relevant consideration when the question is whether or not the Statement of Claim has disclosed a reasonable cause of action.

On the whole, it is really difficult to legally situate the basis of this extant preliminary objection that the extant statement of claim does not disclose a reasonable cause of action. It is either the import of what constitutes a reasonable cause of action is not properly understood or simply that the objection was filed for purposes that are not salutary. I won't say more.

The only point to add is that the fact that learned defence counsel perceives and has in fact submitted that the Plaintiff's action is bound to fail is no ground to strike it out. No.

In the light of the foregoing and in summation, I found no merit whatsoever in the Defendant's preliminary objection and it is hereby dismissed.

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Hon. Justice A. I. Kutigi

Appearances:

- 1. E. Jatto, Esq for the Plaintiff/Respondent**
- 2. Abdulrasaq Jimoh, Esq for the Defendants/Respondents**