

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 8, NYANYA ABUJA ON THE 11TH DAY OF
JUNE 2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/1251/18

COURT CLERKS: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN

PROF. AFOLABI OJOCLAIMANT

AND

1. PROF. MOJISOLA TIAMIYU

**2.HON. MINISTER OF THE FEDERAL
CAPITAL TERRITORY**

**3.ABUJA GEOGRAPHIC INFOMRATION
SYSTEMS.**

4.CHIEF MUIBI GABRIEL TIAMIYU

...DEFENDANTS

RULING

The 2nd and 3rd Defendants' Notice of Preliminary Objection dated 18/07/19 is for an Order:

1. Dismissing the claim on the following grounds
 - (a) For disclosing No Cause of Action.
 - (b) It is statute barred.
 - (c) Lack of Jurisdiction.

Learned Counsel relies on the three paragraph Affidavit deposed to by Alice Amos Secretary of Suite No. A/83 Efab Mall, Area 11, Garki – Abuja.

She deposes that the Claimant's suit against the 2nd Defendant is a Certificate of Occupancy allegedly issued by the 2nd Defendant in favour of the 1st Defendant in respect of property situate at No. 18 Colorado Street, Maitama Abuja over which the Claimant is laying claim.

That the Claimant's suit has not disclosed any injury caused him by the 2nd and 3rd Defendant.

That there is no nexus established between this Suit and the activities of the 2nd and 3rd Defendants.

That Claimant averred that he executed a Power of Attorney to the 1st Defendant and her husband Chief Mubi Gabriel Tiamiyu as his joint attorneys.

That the Certificate of Occupancy was issued in the name of 1st Defendant without his consent.

That Claimant has not shown any cause of action against the 2nd and 3rd Defendants but rather against the 1st and 4th Defendants.

That the cause of action arose on 9/07/17 when he became aware that the 1st and 4th Defendants were laying claim on the property in question.

The above fact is in his letter dated 7/08/17. The letter is Exhibit FCTA1.

That this Court lacks competence and jurisdiction to entertain this action.

The Claimant also relies on his Counter Affidavit deposed to by Olakunle Ojo, the Claimant's son and Legal representative.

He deposes that the 2nd Defendant who issued Certificate of Occupancy dated 12/03/92 to the Claimant in respect of the property at No. 18 Colorado Street, Maitama Abuja further issued another Certificate of Occupancy dated 9/09/05 in respect of the same property to the 1st Defendant. That the issuance of another Certificate of Occupancy to the 1st Defendant without his consent is injurious to Claimant. That the Power of Attorney executed in favour of the 1st and 4th Defendants was to enable them manage the said property at No. 18 Colorado Street, Maitama and not to transfer title.

That he wrote a letter dated 16/03/18 immediately he became aware that another Certificate of Occupancy was issued to the 1st Defendant.

That the 2nd and 3rd Defendants have already joined issues with the Claimant.

That the 2nd and 3rd Defendants are necessary parties.

Learned Counsel to the 2nd and 3rd Defendants submits that the Claimant's Statement of Claim has not disclosed a reasonable cause of action.

That the Writ and Statement of Claim did not state any wrong or obligation the 2nd and 3rd Defendants owed the Claimant.

That the 2nd and 3rd Defendants are public officers who are protected by Section 2 of the Public Officers Protection Act.

That the 2nd and 3rd Defendants being public officers of the Federal Capital Territory Administration fall within the ambit of the Public Officers Protection Act and therefore protected from any act or omission done by them in the course of their official assignment.

That the Claimant's Suit having not been filed within 3 months statutory period prescribed by the Act cannot be entertained. It is statute barred.

That this Court should strike out the suit for lack of jurisdiction.

The Claimant/Respondent's Counsel contends that the Claimant has disclosed a cause of action.

Learned Counsel further argued that the Claimant's case falls within the exception. That there is continuance of damage or injury to him.

That aside the above, the Suit was commenced within 3 months.

That the Public Officers Protection Act does not apply to actions for recovery of land, breaches of contract and claims for work and labour done.

Learned Counsel urges the Court to dismiss the Notice of Objection.

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 the factual situation which gives a person the right to judicial relief.

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 unlikely 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. FEDERATION VS. A.G. ABIA STATE & 35 ORS, (2001) 11 NWLR (PT. 725) 689 AT 733.**

MILITARY GOVERNOR ONDO STATE VS. KOLAWOLE & 4 ORS (2008) 4-5 SC (PT.11) P.158 AT 184 – 185.

In the Claimant's Statement of Claim, he avers that he holds the legal title to all the land, buildings and appurtenances

within the property known and described as No. 18 (Plot 2726) Colorado Street, Maitama District, Abuja FCT.

That the 2nd Defendant issued a Certificate of Occupancy on the said property to the Claimant.

That the Claimant had since assumed and exercised full acts of ownership of same to the exclusion of others.

That Claimant commenced the development of a twin duplex on same with the construction ongoing until he retired from service.

That he appointed 1st Defendant and her husband as joint Attorneys to manage and superintend over the property for a period of 4 years which period lapsed in February 2009.

That Claimant later discovered that another Certificate of Occupancy was issued by the 2nd Defendant in favour of the 1st Defendant in respect of his property known as No. 18 Colorado Street, Maitama.

I have also looked at the reliefs.

In my humble view, the Statement of Claim has disclosed some cause of action or questions fit to be decided by a Judge. It contains facts which establish or give rise to a right of action.

The Statement of Claim reveals the wrong and the injury suffered by the Claimant.

I therefore hold that the Claimant's Suit discloses a reasonable cause of action.

On whether the 2nd and 3rd Defendants are covered by the Public Officers Protection Act having regard to the fact that the Claimant failed to file his Suit within 3 months statutory period prescribed by the Act, Section 2 of the Public Officers Protection Act states:

“Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such law, duty or authority, the following provisions shall take effect:

(a) the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within 3 months next after the act, neglect or default complained of, or in case of a continuance of damage or injury within 3 months next after the ceasing thereof.....”

In the instant case, the 2nd Defendant is alleged to have issued the Claimant a legal title to his land situate at No. 18 Colorado Street, Maitama.

The 2nd Defendant issued another Certificate of Occupancy to the 1st Defendant, the Donee of the Power of Attorney of the Claimant thereby disturbing the title of the Claimant.

The injury suffered by the Claimant is a continuous one until the imbroglio is resolved. The injury has not ceased.

In the circumstance, the cause of action has not been defeated by the Public Officers Protection Act and I so hold.

Jurisdiction on the other hand is the limits imposed on the power of a validly constituted Court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to persons between whom the issues are joined or to the kind of relief sought.

The question of jurisdiction of a Court is a radical and crucial question of competence.

It is settled law that a Court is competent when it is properly constituted and the subject matter of the

case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction and the case comes before it is initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction,.

UMANNAH VS ATTAH (2006) 17 NWLR (PT. 1009) 503.

MADUKOLU VS. NKEMDILIM (1962) 1 ANLR 587 SC.

This case is properly before me. There is no feature in this case inhibiting this Court from exercising jurisdiction.

It was initiated by due process and the subject matter comes within jurisdiction.

In my humble view, this Court has jurisdiction to entertain this action and I so hold.

In totality, the 2nd and 3rd Defendants' Preliminary Objection lacks merit and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

11/06/2020.