

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 16TH DAY OF JUNE, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: CV/120/2019

BETWEEN:

UNION HOME SAVINGS AND LOANS LTD ----- CLAIMANT

AND

1. MINISTER FOR FED. CAPITAL TERRITORY
2. FED. CAPITAL DEV. AUTHORITY ----- DEFENDANTS

RULING

The plaintiff by an Originating Summons dated 25th October, 2019 is seeking for determination of the following questions:

“1. Whether in view of the consent judgment in suit No. FCT/CV/3926/2013 between Zackson Nig. Ltd vs. Hon. Minister FCT & ors, the 1st and 2nd defendants who are parties to the suit can validly revoke certificate of occupancy No. FCT/ABU/MISC.3369 dated June 2005 granted over Plot No. 372 Cadastral Zone B04, Jabi

District, FCT and transfer all or part of the plot to another person.

2. Whether by virtue of the provisions of the Land Use Act the 1st and 2nd defendants can validly revoke a plot of land without due revocation notice served on the claimant.”

Consequently, the claimant sought the following reliefs:

“1. A declaration that the purported revocation of the claimants Certificate of Occupancy No. FCT/ABU/MISC.3369 dated June 2005 and measuring approximately 1799.99 square meters is invalid, illegal, null and void as the claimants interest on the plot is still subsisting.

2. A declaration that the purported re-allocation of Certificate of Occupancy No. FCT/ABU/MISC.3369 dated June 2005 and measuring approximately

1799.99 square meters to the 3rd defendant is invalid, illegal, null and void.

3. an order setting aside any grant or allocation of plot No. 372, Cadastral Zone B04, Jabi District, FCT, by the 1st defendant to any person or authority in violation of the consent judgment of the High Court of FCT in suit No. FCT/CV/3926/13 between Zackson Nig. Ltd vs. Hon. Minister FCT & ors dated 28/2/2019.

4. An order of perpetual injunction restraining the defendants by themselves, their privies, agents servants, from interfering with the rights and interest of the claimant in and over the land known as plot No. 372, Cadastral Zone B04, Jabi District, FCT covered by Certificate of Occupancy No. FCT/ABU/MISC.3369 dated June 2005 and measuring approximately 1799.99 square meters.

5. An order directing the 1st and 2nd defendants to issue a certificate covering 1799.99 square meters out of the plot No. 372, Cadastral Zone B06, Jabi District, FCT covered by Certificate of Occupancy No. FCT/ABU/MISC.3369.

6. Against the 3rd defendant, an order of perpetual injunction restraining the purported allottee from entering upon, building on, storing construction materials, excavating or in any other manner trespassing on the land as plot No. 372, Cadastral Zone B04, Jabi District, FCT covered by Certificate of Occupancy No. FCT/ABU/MISC.3369 dated June 2005 and measuring approximately 1799.99 square meters.”

The application is supported by an affidavit of 11 paragraphs deposed to by Kingsley Eidaghese with annexed Exhibits A – F. A Reply affidavit of 6 paragraphs was also filed with annexure marked Exhibits A and B. **Gbenga Owa**

Esq. filed the claimants written address which was duly adopted.

In reaction to the affidavit in support, the defendants filed a conditional memorandum of appearance and counter affidavit of 6 paragraphs deposed to by Loveth Oniyeyone. Also in support is a written address duly adopted by P.A. Omoluabi Esq. The defendants in the counter affidavit have denied any allocation being made to the claimant as no record was found in Abuja Geographic Information System (AGIS). They admitted the existence of the consent judgment but stated that the claimant herein was not a party to the consent judgment. That the consent judgment was between Zackson Nig Ltd and Union Homes Ltd. They also denied the existence of any 3rd defendant in this suit being referred to by the claimant.

The claimants in the further affidavit averred that Union Homes Ltd and Union Savings and Loan Ltd are one and the same by virtue of the Certificate of Change of Name

issued by Corporate Affairs Commission. That as such the claimant was a party to the consent judgment referred to.

Originating Summons is a special procedure designed for a special purpose and it was described in the case of Dapianlong vs. Dariye (2007) LPELR-928 (SC) as follows:

"The originating summons procedure is a means of commencement of action adopted in cases where the facts are not in dispute or there is no likelihood of them being in dispute and when the sole or principal question in issue is or is likely to be one directed at the construction of a written law, Constitution or any instrument or of any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. In general terms, it is used for non-contentious actions or matters i.e. those actions where facts are not likely to be in dispute."

In actions commenced by originating summons, pleadings are not required rather affidavit evidence are employed: See Director State Security Service v. Agbakoba (1999) 3 NWLR (Pt. 595) 314; Din v. A-G of the Federation (1986) 1 NWLR (Pt. 17) 471; Keyamo v. Lagos State House of Assembly & Ors (2002) 18 NWLR (Pt. 799) 605.

In FAMFA Oil Ltd v. A-G, Federation (2003) 18 NWLR (Pt. 852) 453 the apex Court had this to say:

"The very nature of an Originating Summons is to make things simpler for hearing. It is available to any person claiming interest under a deed, will or other written instrument whereby he will apply by Originating Summons for the determination of any question of construction arising under the instrument for declaration of his interest. It is a procedure where the evidence in the main is by way of documents and there is no serious dispute as to their existence in the dealings of the parties to the

suit. In such a situation, there is no serious dispute as to facts but what the plaintiff is claiming is the declaration of his rights. If there are serious dispute as to facts then a normal writ must be taken out and not Originating Summons” Per ONNOGHEN, JSC

See also Doherty v. Doherty (1968) NMLR 241, Ossai v. Wakwah & ors (2006) 4 NWLR (Pt. 969) 208, F.G.N. v. Zebra Energy Ltd (2002) 18 NWLR (Pt. 798) 162.

Ordinarily, the filing of a counter affidavit signifies a challenge to the suit and when a trial judge is confronted with such a situation, he is duty bound to look at the affidavits in support and counter affidavit to determine whether the facts are contentious or not. See Awolaja & anor vs. Balogun (2018) LPELR – 45535 (CA).

I have viewed the affidavits and attached exhibits and without much ado state that the facts are disputed and

contentious, thus making the originating summons a hostile proceedings. Except for the admitted existence of consent judgment, almost all the other facts are disputed. How do you resolve the fact that Union Homes Ltd is one and the same as Union Savings and Loans Ltd? What of the fact that the claimant is making reference to two different plots of land, or the fact that the defendants deny any allocation made to the claimant. What about the fact that the claimant is saying that someone who wanted to purchase the land conducted a search and informed him that the report came out in the name of the claimant. All these are not facts that can be resolved without oral evidence.

It must be emphasized that it is not the filing of a counter affidavit to oppose the claims in an Originating Summons that make such proceedings contentious or result in dispute facts. Even where no counter affidavit was filed the nature of the claims and the facts deposed in the

affidavit in support of the claims in the originating summons are enough to disclose disputed facts and hostile nature of the proceedings. See Ossai v. Wakwah & Ors. (supra). The reliefs sought are basically for declarations and injunctions these are discretionary remedy, and for a person to be entitled to same, he must show the existence of a legal right, or a claim which the Court is prepared to recognize and which if validly made, the Court is prepared to give legal recognition. See Orlu v. Gogo–Abite (2010) 8 NWLR (Pt. 1196) 307 SC.

Grant of declarations can only be made on the Court being satisfied by such evidence placed–in support of the relief seeking declaration. The Court cannot decide the claims in the midst of contentious facts.

Going by the peculiar traits of originating summons which does not accommodate disputed facts, the Court must satisfy itself that the facts are undisputed and it is upon such that the questions put forward can be answered

and reliefs granted. When affidavits are conflicting, the rule is that oral evidence in an originating summons procedure be called to resolve the conflict. See Niger Progress Ltd v. N.E.L. CORP. (1989) 3 NWLR (Pt. 107) 68 @ 94, Group Danone v. Voltic (Nig.) Ltd (2008) 7 NWLR (Pt. 1087) 637.

I am not unmindful of the submission of learned counsel to the 1st and 2nd defendants who urged the Court to dismiss the case with cost. The position of the law is that in such a situation where conflicts have arisen from the affidavit evidence of the parties, the proper order for the Court to make is for parties to file and exchange pleadings. See Adebipe vs. Theophilus (2005) LPELR –11282 (CA).

In the circumstance, parties are directed to file and exchange pleadings pursuant to the rules of Court.

Signed

Honourable Judge

Appearances:

Gbenga Owa Esq – for the claimant

P.A. Omoluabi Esq – for the defendants