IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: **JUSTICE SALISU GARBA**
COURT CLERKS: **FIDELIS T. AAYONGO & OTHERS**
COURT NUMBER: **HIGH COURT TWO (2)**
CASE NUMBER: **FCT/HC/M/4714/2020**
DATE: **5TH MAY, 2020**

BETWEEN:

ZEY MOTORS LIMITED - **PLAINTIFF**

AND

1. **THE HON. MINISTER F.C.T.**
2. **FED. CAP. TERRITORY DEV. AUTHORITY**
3. **CARPUS TECHNOLOGY & CONSULTING LTD** **DEFENDANTS**
4. **MAJOR GEN. LAWRENCE ONOJA (RTD)**
5. **SUNDAY NWAFOR & SONS LIMITED**

Parties absent.

Emmanuel N. Ukaegbu appearing with Emmanuel U. Ukuma for the Claimant.

Michael Ashi Michael for the 5th Defendant.

5th Defendant's Counsel – I apply to be permitted to appear without robe as my robe and wig is in the office.

Court – The application by learned counsel for the 5th Defendant to appear without wig and gown is hereby granted.

Claimant's Counsel – The matter is for ruling.

This court is to rule on 2 Notices of Preliminary Objection filed by the 3rd and 5th Defendants.

1ST R U L I N G (3rd Defendant's Notice of Preliminary Objection)

This ruling is predicated upon a Notice of Preliminary Objection dated 30/1/2020 praying this Honourable Court for an order

dismissing the Plaintiff's suit for being incompetent and want of requisite jurisdiction of this Honourable Court to entertain same.

The grounds of the objection are as follows:

1. Paragraph 6 of the Plaintiff's claim states that what was allocated to the Original Allottee (A. Amco Property Ltd) of the title which they hold is a Customary Right of Occupancy via a letter of allocation dated 22nd February, 2007.
2. By the combined effect of Sections 1(3) (4) of the FCT Act, Section 297 (1) (2) and Section 299 of the Constitution of the Federal Republic of Nigeria, Sections 49(1) of the Land Use Act, there is no Customary Right of Occupancy in the Federal Capital Territory, Abuja.
3. Section 6 of the Land Use Act which deals with lands in non Urban Areas is not applicable in the FCT. Please see the case of ENGINEER YAKUBU & ORS v SIMON OBADE (2005) All FWLR at 282.
4. The Plaintiff's case is standing on nothing as the said Customary Right of Occupancy is a nullity *ab initio*.
5. The Plaintiff's pleadings have failed to disclose a reasonable cause of action.
6. None of the reliefs sought inures the Plaintiff as there is nothing like Customary Right of Occupancy in the FCT.
7. The 3rd Defendant holds a Statutory Right of Occupancy in line with the extant laws.

In support of this application is a 7-paragraph affidavit dated 30/1/2020 deposed to by C.C. Orizu counsel in the law firm of Rich

Attorneys & Solicitors; the Applicant's counsel. Attached thereto is one document marked Exhibit A.

In compliance with the rules of this court, learned counsel filed a 6-page written address wherein counsel distilled a lone issue for determination to wit:

> ***"Whether this court has the jurisdiction to entertain the Plaintiff's case in view of the Plaintiff's title of Customary Right of Occupancy which the Plaintiff holds over the subject matter Land"***

On this sole issue, it is the submission that the Plaintiff's case as contained in the writ of summons is that it purchased the subject matter parcel of land it described as Plot No. B93 measuring approximately 3370.86 situate at Dawaki Exension 1 Layout in Bwari Area from A. Amco Property Limited who was granted a Customary Right of Occupancy.

Submits that straight away the Plaintiff does not have the *locus standi* to institute this action as he has no right to maintain same. The law is trite that before a party can institute an action, he or she must have a *locus standi* and the onus is on the party whose competence to sue is being challenged to show that he or she has a right.

It is the contention of the Applicant that by the combined effect of Sections 1(3) and 6(3) (4) of the FCT Act, Section 297(1) (2) and Section 299 of the Constitution of the Federal Republic of Nigeria, Section 49(1) 61 the Land Use Act, there is no Customary Right of

Occupancy in the Federal Capital Territory, Abuja. Learned counsel refers to the case of ENGINEER YAKUBU & 3 ORS v SIMON OBADE (2005) All FWLR at 282.

It is also the contention that the power of Local Government Councils (or Area Councils in the case of the Federal Capital Territory) to grant Customary Right of Occupancy does not extend to and land held by the Federal Government whether in the various States or in the Federal Capital Territory. See MADU v MADU (2008) 6 NWLR Pt 1083 at 304.

Submitted that Area Councils cannot exercise jurisdiction in land in the FCT. See ONA v ATANDA (2000) 5 NWLR Pt 656 at 286.

It is further submitted that the issue of title in this case is purely documentary and the Plaintiff has put forward his title which is a Customary Right of Occupancy. Exhibit A speaks for itself.

In conclusion, learned counsel urge this Honourable court to dismiss the Plaintiff's Suit for being incompetent and lacking in merit.

In opposition to this application, learned counsel to the Claimant/Respondent, filed a 10-pargraph counter affidavit dated 4/3/2020 deposed to by Knowledge Onyekachi, a Litigation Secretary in the law firm of Chief Solo U. Akuma (SAN).

Learned counsel also filed 7-page written address dated 20/2/2020; wherein counsel submitted that the preliminary objection raised by the 3rd Defendant/Applicant is a demurrer. It is an elementary law that "demurrer" has been abolished in the

FCT Legal System by virtue of Order 23 Rule 1 of this court's Rule 2018 which provided that "no demurrer shall be allowed", The 3rd Defendant/Applicant should have complied with Order 23 Rule 2 and 3 by raising this point of law in the Statement of Defence. The 3rd Defendant cannot raise this issue independently without raising it in her statement of defence before seeking the leave of this court to set it down for hearing. See ADELEKE v OYO STATE HOUSE OF ASSEMBLY (2007) All FWLR (Pt 345) 211 at 273 – 274,

Submits that the 3rd Defendant contended in its Notice of Preliminary Objection that the Claimant does not have *locus standi* to institute this action.

It is the submission of the Claimant/Respondent that the Claimant possesses the necessary locus to commence this suit because the claimant acquired an interest from the original allottee of the subject of this suit and has been in possession and carries on legitimate business on the subject matter.

The Claimant seeks before this court relief that will confer rights on the Claimant. See OJUKWU v OJUKWU (2000) 11 NWLR Pt 677.

Further submitted that for a court to determine whether a Claimant has *locus standi* or not, it is only the writ of summons and the statement of claim that the court will look into. See ADESOKAN v ADEGOROLU (1991) 3 NWLR (Pt 179) 293 at 305 – 306.

Submitted that the Customary Right of Occupancy contemplated in the case of ONA v ATANDA cited by the 3rd Defendant is the type of Right of Occupancy acquired through customary

inheritance by indigenous occupant of an area. That is completely different from the Claimant's Right of Occupancy. See AKO v EJEKWEMU (1976) LPELR – 365 (SC).

Further submits that the 3rd Defendant/Applicant's argument would have been valid if the Claimant's title emanated or is traced from Native Authority. In conclusion, learned counsel urged this Honourable Court to discountenance the submission of the 3rd Defendant/Applicant and dismiss the application and hear the suit on the merit.

Learned counsel to the 3rd Defendant/Applicant filed a 13-page Reply on Points of Law to the Claimant's counter affidavit and submits that the Claimant missed the point when in its response to the Notice of Preliminary Objection filed by the 3rd Defendant argued that the said Preliminary Objection dated 30/1/2020 is a demurrer.

Submits that Order 23 Rule 3 of the Rules of this court empowers this Honourable Court to order any pleading to be struck out on the ground that it disclosed no reasonable cause of action and where pleading is shown to be frivolous, the court or judge may order the action to be stayed or dismissed, or judgment to be entered accordingly.

Submits that the law is trite, an objection (as in the instant case) that the court has no jurisdiction to entertain a matter or action is not an ordinary point of law contemplated under Order 23 of the

Rules of this court. See WURA BOGGA NIGERIA LTD & ANOR v HON. MINISTER OF FCT & ORS (2009) LPELR 20032 (CA).

Learned counsel urged this Honourable court to respectfully find and hold that it does not have the power to convert a Customary Right of Occupancy to a Statutory Right of Occupancy by whatever means or guise.

Submitted that, that would amount to violation of the provision of the Constitution and usurpation of the powers of the Honourable Minister of the FCT.

I have carefully considered the processes filed and the submissions of learned counsel on both sides, the law is trite that what determines whether a court has jurisdiction to hear and determine a matter is the claims of the Claimant. See BARRISTER ORKERJEV & ANOR v SEKAV DZUA IYORTYOM & ORS (2014) LPELR – 23000 SC.

A cursory look at the claims of the Claimant, the issue of title to land; consequently the relief sought above falls within the jurisdiction of this Honourable Court.

Having stated the above, the 3rd Defendant in paragraphs 8, 9 10 and 11 of its Statement of Defence have joined issues with the Claimant.

Touching on the grounds of this application will mean dealing on the substantive matter.

The law is that while considering an interlocutory application, a court of law is enjoined to refrain from touching on issues which deal with the substantive matter as to do otherwise will amount to rendering the decision of the substantive matter nugatory as there will be nothing else to decide on in the main matter. See MUSTAPHA v MOH. & ANOR (2012) LPELR 7924 (CA); ADEWALE v GOVT. OF EKITI STATE (2007) 2 NWLR (Pt 1017) 634 at 641.

In the light of the above, I hold the view that this preliminary objection is misplaced and unfounded, it is accordingly dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
05/05/2020

2ND RULING ON MOTION NO. M/5288/2020

The 5th Defendant's counsel filed a Notice of Preliminary Objection dated 11/2/2020 praying the court for the following relief:

1. An Order dismissing or striking out this suit in its entirety for want of jurisdiction on the ground that the Plaintiff as constituted on the face of the originating processes lacks the requisite *locus standi* to institute and maintain the suit.

The grounds upon which this objection is brought are:

1. The Plaintiff lacks capacity to institute the action.
2. Proper parties are not before the court.

The relief sought in this objection is an order dismissing the entire suit for want of jurisdiction.

In support of this application is 5-paragraph affidavit dated 12/2/2020 deposed to by Philip Yaor counsel in the law firm of Ikechukwu Uzuegbu & Co.

In compliance with Rules of this court, learned counsel filed 4-page written address wherein counsel formulated the following issues for determination:

1. Whether the Plaintiff has *locus standi* to bring this action.
2. Whether proper parties are before the court.

On Issue one, it is the submission that it is trite law that before a party can institute or defend an action he must have *locus standi*. The issue of *locus standi* does not depend on the success or merit

of a case but on whether a Plaintiff has any legally recognised interest in the matter to submit same to court for adjudication. See OJUKWU v OJUKWU (Supra).

Submits that a Plaintiff must show sufficient legal interest and the legal capacity so as to support his claim in court. The Plaintiff without such sufficient legal interest and no authority to institute this action cannot competently seek redress in a court of law. See UBA v BTL IND. LTD (2004) 18 NWLR (Pt 904) 180 at 220.

Submits that in the case of UNITED COMPANY LIMITED v NAHMAN & ORS (2000) LPELR 104 (CA), it was held that the issue of *locus standi* is fundamental in that if a court determines that a party to a suit lacks the standing to bring an action, the matter terminates there because the court can no longer consider the merit or otherwise of the action or suit. In the instant case, the Plaintiff/Respondent stated in paragraph 6 that the Donor of the Power of Attorney which was donated to it was granted a Right of Occupancy unknown to the FCT Act; hence the Power of Attorney granted was void *abi nitio* as it was based on a Right of Occupancy unknown to the FCT Act.

Further submits that the purported Power of Attorney that was tendered by the Plaintiff at the trial has nothing to show that it was registered. Learned counsel to the 5th Defendant urge this Honourable Court to uphold that the Plaintiff/Respondent lacks the locus to institute this action against the 5th Defendant/Applicant since there is no proof before the court to show the Plaintiff/Respondent has the capacity to institute this

action. Learned counsel urged the court to resolve Issue 1 in favour of the 5th Defendant/Applicant. See ALHAJI A.B. ABUBAKAR v ALHAJI ABUBAKAR DANYA WAZIRI & ORS (2008) LPELR 54 (SC) where the Supreme Court held that in law Power of Attorney as it relates to land is an instrument going by the definition of the Land Registration Law.

Submitted that no instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered in the proper office, having not been registered makes this suit incompetent and abuse of court process.

On Issue Two, it is the submission that the alleged allocation the Plaintiff is claiming was made at Bwari Area Council and the Bwari Area Council that allocated the said allocation should have been made a party to this suit. There is no way this suit can be determined without the allocating party being part of this suit. The inability of the Plaintiff to make Bwari Area Council a party to this suit makes the suit incompetent. Learned counsel refers to the case of AJALA & ANOR v GINIKANWA & ORS (2018) LPELR (44469) (CA).

Submitted that the effect of not bringing proper/necessary parties before a court, the action is not properly constituted. See AYORINDE & ORS v ONI & ANOR (2000) LPELR 684 (SC).

On the proper Order to make when the proper parties are not before the court is to strike out the action. See AYORINDE & ORS v ONI & ANOR (Supra).

In conclusion, learned counsel urged this Honourable Court to dismiss the entire claims of the Plaintiff for lack of jurisdiction as well as for the non-disclosure of a cause of action against any of the Defendants and to award the cost of N250,000.00 (Two Hundred and Fifty Thousand Naira) only against the Plaintiff for filling this frivolous suit.

In opposition to this application, learned counsel to the Claimant filed a 13-paragraph counter affidavit dated 4/2/2020 deposed to by Knowledge Onyekachi, a Litigation Secretary in the firm of Chief Solo Akuma (SAN).

Learned counsel also filed 8-page written address in support of his counter affidavit.

In paragraph 4 of the counter affidavit, it was deposed inter alia: that the Plaintiff/Respondent's counter affidavit is necessitated to counter all the deposition of the 5th Defendant/Applicant in her affidavit in support of the Notice of Preliminary Objection.

In the written address in support of the counter affidavit, the learned counsel to the Claimant/Respondent submit that the 5th Defendant by this application challenged the competence of this suit and which affected the jurisdiction of the Honourable Court, whenever the competence of suit is raised, the court can only look at the claims of the Claimant to determine whether the suit is

competent or not. See ADEFILA & ANOR v POPOOLA & ORS (2014) LPELR – 22468 (CA).

Submits that a careful reading of the Claimant's claims in the writ of summons and the amended writ of summons, there is nothing in the reliefs or claims of the Claimant which are not within the jurisdiction of the Honourable Court to determine.

Submits that the Claimant possesses the necessary locus to commence this suit because the Claimant possesses the necessary locus to commence this suit because the Claimant acquires an interest from the original allottee of the subject of this suit and has been in possession and carries on legitimate business on the subject matter. The Claimant seeks before this court relief that will confer rights on the Claimant. See OJUKWU v OJUKWU (2000) 11 NWLR Pt 677.

Submitted that the 5th Defendant/Applicant contended that the Right of Occupancy granted to the Claimant is unknown to FCT Act but never referred to the court to any part of the Act.

Further submit that the law only requires the Claimant to show interest in the subject matter of the suit to be able to maintain action before the court.

On Issue 2, it is the contention of the 5th Defendant that proper parties are not before the court. In response, learned counsel to the Claimant submits that the allocation that the Claimant is relying on was not issued by Bwari Area Council but by the Honourable Minister of FCT who is in charge of the Federal Capital

Territory Administration. The said allocation has been duly regularized and therefore Bwari Area Council is neither a proper party nor a necessary party in this suit. See GREEN v GREEN (Supra).

In conclusion, learned counsel urged the court to discountenance the submission of the 5th Defendant/Applicant in the overall interest of justice for this application to be dismissed and for the suit to be heard on the merit.

Upon being served with the counter affidavit of the Claimant, the 5th Defendant/Applicant filed a 6-paragraph Further Affidavit and Reply on Points of Law; both dated 11/3/2020.

In paragraph 3 of the Further and Better Affidavit, it is the deposition that the Plaintiff in their statement of claim admitted that the purported title that they predicated their claim is a Customary Right of Occupancy.

In paragraph 4, it is the deposition that all the land in the FCT Abuja are covered by either Statutory Right of Occupancy or Certificate of Occupancy having being by Land Use Act as land in an Urban Area hence cannot be covered by the Customary Right of Occupancy.

On the Reply on Points of Law, learned counsel to the 5th Defendant/Applicant submits that whether this Honourable Court has jurisdiction to hear a matter where the Claimant's title is a Customary Right of Occupancy *vis-a-vis* Section 41 of the Land Use Act (Cap 22 Laws of the Federation of Nigeria 1990) that

vested jurisdiction on matters that borders on Customary Right of Occupancy in the Area courts, Customary Courts or Court of equivalent jurisdiction in a State. See ADISA v OYINWOLA & ORS (2000) LPELR – 186 (SC); TAJUDEEN OLALEYE-OTE & ANOR v FALILATU BABALOLA (2012) LPELR – 927 (SC).

On the part of the court after a careful consideration of the processes filed and the submissions of learned counsel on both sides do adopt the 2 issues as formulated by the 5th Defendant/Applicant as issues for determination to wit:

1. Whether the Plaintiff has the *locus standi* to bring this action.
2. Whether proper parties are before the court.

On Issue 1, it is the contention of the 5th Defendant/Applicant that the Claimant has no *locus standi* to institute this action while the Claimant/Respondent is of the view that he has jurisdiction to institute this action. In law, *locus standi* denotes the legal capacity based on sufficient interest in a subject matter to institute proceedings in court of law to pursue a specified cause. In the consideration of the challenge to *locus standi*, the references are necessarily the writ of summons and the averments in the statement of claim. It must be reiterated that when the standing of a Plaintiff to institute an action is challenged, the court looks only at the writ of summons and statement of claim. It is the averment in the statement of claim that are paramount. The court shall then consider whether there is a justiciable issue before the court. See LADEJOBI v OGUNTAYO (2001) FWLR 9Pt 45) 780; THOMAS v OLUFOSOYE (1988) 2 SC.

In the instant case, I am of the considered view that paragraph 7, 8, 9, 10, 11, 12 and 13 of the Claimant's Amended Statement of Claim confers him with the requisite locus to institute this action.

On Issue 2, it is the contention of the 5th Defendant/Applicant that proper parties are not before the court i.e. the inability of the Claimant to make the Bwari Area Council a party to this suit makes the suit incompetent while the Claimant is of the view that Bwari Area Council is neither a proper party nor a necessary party in this suit.

Order 13 Rule 18(1) of the Rules of this Court 2018 provides thus

> ***"No proceedings shall be defeated by reason of misjoinder or non-joinder of parties, and the court may deal with the matter in controversy so far as regards the right and interest of the parties actually before him"***

Order 13 Rule18(3) provides thus:

> ***"The court may order that the names of any party who ought to have been joined or whose presence before the court is necessary or effectually and completely adjudicate upon and settle the questions involved in the proceeding be added"***

With the above provisions at the back of my mind, I have no difficulty at arriving that the inability of the Claimant to make Bwari Area Council a party in this suit does not make the suit incompetent. At the appropriate time the Claimant may wish to do so if he wishes.

Furthermore, it is the duty of the Plaintiff to bring to court any party whose presence is crucial to the resolution of his case because only him can decide on the person he believes, he has relief against.

It is also trite law that where there has been a non-joinder either by failure of the parties or an intervener to apply *suo motu*, the non joinder will not be taken as a ground for defeating the action; the said rule is designed to save rather than to destroy, to cure rather than to kill the action or suit. See SIFAX NIGERIA LTD & ORS v MIGFO NIGERIA LTD & ANOR (2015) LPELR – 24655 (CA).

In conclusion, I am of the considered view that the preliminary objection is lacking in merit, it is accordingly dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
05/05/2020

Claimant's Counsel – We are very grateful for the well-considered ruling.

3rd Defendant's Counsel – We thank the court for the well considered ruling.

Claimant's Counsel – We ask for a date in June for continuation of hearing. We suggest 23rd/24th June, 2020.

3rd Defendant's Counsel – We have no objection.

Court – Suit adjourned to 23rd – 24th June, 2020 for continuation of hearing. I order that the 1st, 2nd, 4th and 5th Defendants be served with hearing notices.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
05/05/2020