IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

THIS TUESDAY, THE 19TH DAY OF MAY 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/43/17
MOTION NO: M/9560/17

BETWEEN:

MR MARKUS APMATOZON .....PLAINTIFF/RESPONDENT
(Suing for himself and on Behalf of Jankaro Family)

AND

JUST UNIQUE BOUTIQUE LIMITED .....DEFENDANT/OBJECTOR

RULING

By a notice of preliminary objection dated 22nd September, 2017, the Defendant/Applicant contends that the court lacks the jurisdiction to hear and determine this action. The extant case and the application was initially filed before Honourable Justice Balami (now retired). Indeed the application was heard by the respected jurist but due to the exigency of time, he could not deliver the Ruling before his retirement. With his retirement, the matter was then transferred to this court by the Honourable the Chief Judge, FCT.

Now the grounds, particulars of the objection and the Reliefs sought as contained in the application are as follows:

Grounds of the Objection:

1. The suit does not disclose a Cause of Action.

2. **The instant suit constitutes Gross Abuse of Court's process.**

3. **This Honourable Court lacks jurisdiction to hear and determine the instant suit.**

<u>Particulars of Objection</u>:

1. **The Plaintiff/Respondent herein commenced this action by writ of summons alleging trespass to Plot 1849 Cadastral Zone C12, Kabusa District, Abuja against the Defendant/Objector even though the Plaintiff/Respondent is not in Occupation of the said plot land, as it is a virgin land, and the Plaintiff/Respondent has not put before this Honourable Court any title document in proof of his possessory Right over the said plot of land but rather relied on customary right or traditional right of inheritance over the land which is situate at Kabusa District of the Federal Capita Territory, Abuja against a more superior title of the Defendant/Objector which is a Statutory Right of Occupancy granted the defendant/objector by the Honourable Minister of the Federal Capital Territory, Abuja through a letter of Offer of Statutory Right of Occupancy dated 20th February, 2010.**

2. **The Plaintiff/Respondent herein, in his pleadings before this Honourable Court, did not plead any document supporting his claim to possessory right over the said plot 1849 Cadastral Zone C12, Kabusa District, Abuja but has rather in his paragraph 4 of his Statement of Claim admitted and also pleaded the Defendant/Objector's title to the said Plot 1849 Cadastral Zone C12, Kabusa District, Abuja which is a Statutory Right of Occupancy dated 20th February, 2010 issued by the Honourable Minister of the Federal Capital Territory, the only lawfully recognised authority under the law to manage, administer and allocate land in the Federal Capital Territory, Abuja to citizens of Nigeria who have applied for same and are found to be qualified for allocation, to which the Defendant/Objector applied and got her own allocation.**

3. **The Defendant/Objector having applied, and duly, and even legally, and of course lawfully, been granted her allocation by the Honourable Minister**

of the Federal Capital Territory, Abuja, is not liable to the Plaintiff/Respondent for any claim of compensation of whatever nature or flavour as the duty and obligation to compensation for any claim of traditional history of inheritance is that of the Department of Compensation under the Ministry of the Federal Capital Territory, Abuja and not to be undertaken by the Defendant/Objector.

4. **Though the Defendant/Objector being aware that the Plaintiff/Respondent does not have any title to the said Plot 1849 Cadastral Zone C12, Kabusa District, Abuja, but not wanting any legal tussle with the Plaintiff/Respondent, did offer the Plaintiff/Respondent huge sums of money just so that peace will reign, to wit; N1, 000, 000 (One Million Naira) at first, as pleaded in paragraph 13 of the plaintiff's Statement of Claim, and subsequently, N1,500, 000 (One Million, Five Hundred Thousand Naira) as pleaded in paragraph 17 of the plaintiff's statement of claim, all in the bid to have peace reign, even though the defendant/objector has not even cleared the bushes or commenced any work on the plot of land, but the plaintiff/respondent herein rejected all that offer of goodwill and without certificate of pre-action counselling got this suit by his lawyer, filed against the Defendant/Objector.**

<u>Reliefs Sought</u>:

1. **The Defendant/Objector prays this Honourable Court to strike out the instant suit for lack of jurisdiction.**

2. **An order barring the plaintiff/respondent, his agents, servants, assigns, privies or any other person deriving title from him from re-instituting this suit against the Defendant/respondent.**

The application is supported by a Fourteen (14) paragraphs affidavit with one annexure marked as **Exhibit JBL1**, the offer of statutory right of occupancy of the disputed land. A written address was filed in compliance of the Rules of Court in which one issue was raised as arising for determination, to wit:

"Whether given the circumstances, the instant preliminary objection ought to be upheld and the plaintiff's suit consequently struck out."

Submissions were then made on the fact that the extant action does not disclose a cause of action which forms part of the Records of Court.

In opposition, the Plaintiff/Respondent filed a rather voluminous reply raising six (6) issues as arising for determination as follows:

i. **Whether by the combine effect of Section 1 (3) of the FCT Act, Section 49 (1) of the Land Use Act and Section 297 (2) of 1999 Constitution (as amended) abolished Customary Right of Occupancy in the Federal Capital Territory with such adverse effect on the Plaintiffs in the circumstances.**

ii. **What is the status of the plaintiffs as Occupier or holders of such lands by virtue of Section 36 (2) of the Land Use Act.**

iii. **Whether there can be valid acquisition of land by the government, individual, organisation or anybody without notice of intention to acquire and revocation couple with payment of compensation under the law.**

iv. **Whether the plaintiffs are entitle to exclusive possessory rights over their farmlands and claim for compensation for the un-exhausted improvements thereon as guaranteed under the Constitution of the Federal Republic of Nigeria.**

v. **Whether the suit of the plaintiffs as constituted disclosed any reasonable cause of action.**

vi. **Whether admitted facts need further proof.**

Submissions were equally canvassed in support of all these issues which also forms part of the Records of Court.

The Defendant/Applicant then filed a reply on points of law to the address of plaintiff which also forms part of the Records of Court.

At the hearing, counsel on either side of the aisle relied on the processes filed and adopted the submissions in their written addresses in urging the court to grant the objection and strike out the case and on the other hand to dismiss the preliminary objection as lacking in merit,.

I have here carefully considered the entire processes filed by the parties including the written addresses to which I may refer to in the course of this Ruling where necessary. The entire objection and the submissions made is situated on the principle that the extant action does not disclose a cause of action.

It is equally important to underscore the principle that it is the application or the preliminary objection filed which has precisely denoted the objection and the reliefs sought that defines the issue(s) that is to be decided by the court. It is in this context that one finds it difficult to legally situate the basis of the extensive issues raised by the plaintiff in their Response. There clearly here and unfortunately appears to be a complete misunderstanding of the essence of the application and the import of an interlocutory application vis-à-vis the substantive action. This grave error of appreciation has led to the making of submissions on substantive issues and facts on which the court is yet to hear evidence on. Parties appear to have proceeded on the basis that the case has been heard and concluded and therefore took liberties to make extensive submissions on the substantive and contested assertions of the case.

The point to perhaps situate at the onset is that parties may have filed their pleadings but hearing is yet to commence. Parties have by the pleadings filed joined issues and precisely streamlined the dispute for substantive trial. It will therefore be re-miss on the part of the court to start an enquiry and make findings at the interlocutory stage of matters for the substantive trial. Counsel on either side may enjoy the luxury to delve into substantive issues at this point but a court of law qua justice has no jurisdiction to make such an inquiry. That will be clearly prejudicial and wrong.

It is perhaps important to underscore the principle that it is wrong in law to dispose off at the interlocutory level matters that clearly are for the substantive case. A court of law should not put itself in a difficult situation of unwittingly deciding the very same matter which is yet to be dealt with in the substantive case before it at the interlocutory stage. See **S.C.C. (Nig.) Ltd V Our line Ltd (1995) 5 N.W.L.R**

(pt.395) 364 at 372. Let us perhaps at the risk of prolixity, again situate the basis of the objection as contained in the particulars of the objection as follows:

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1. **The Plaintiff/Respondent herein commenced this action by writ of summons alleging trespass to Plot 1849 Cadastral Zone C12, Kabusa District, Abuja against the Defendant/Objector even though the Plaintiff/Respondent is not in Occupation of the said plot land, as it is a virgin land, and the Plaintiff/Respondent has not put before this Honourable Court any title document in proof of his possessory Right over the said plot of land but rather relied on customary right or traditional right of inheritance over the land which is situate at Kabusa District of the Federal Capita Territory, Abuja against a more superior title of the Defendant/Objector which is a Statutory Right of Occupancy granted the defendant/objector by the Honourable Minister of the Federal Capital Territory, Abuja through a letter of Offer of Statutory Right of Occupancy dated 20th February, 2010.**

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3. **The Defendant/Objector having applied, and duly, and even legally, and of course lawfully, been granted her allocation by the Honourable Minister of the Federal Capital Territory, Abuja, is not liable to the Plaintiff/Respondent for any claim of compensation of whatever nature or flavour as the duty and obligation to compensation for any claim of**

traditional history of inheritance is that of the Department of Compensation under the Ministry of the Federal Capital Territory, Abuja and not to be undertaken by the Defendant/Objector.

4. **Though the Defendant/Objector being aware that the Plaintiff/Respondent does not have any title to the said Plot 1849 Cadastral Zone C12, Kabusa District, Abuja, but not wanting any legal tussle with the Plaintiff/Respondent, did offer the Plaintiff/Respondent huge sums of money just so that peace will reign, to wit; N1, 000, 000 (One Million Naira) at first, as pleaded in paragraph 13 of the plaintiff's Statement of Claim, and subsequently, N1,500, 000 (One Million, Five Hundred Thousand Naira) as pleaded in paragraph 17 of the plaintiff's statement of claim, all in the bid to have peace reign, even though the defendant/objector has not even cleared the bushes or commenced any work on the plot of land, but the plaintiff/respondent herein rejected all that offer of goodwill and without certificate of pre-action counselling got this suit by his lawyer, filed against the Defendant/Objector.**

The above is clear and self explanatory. The entire basis of the objection is again made clearer in the affidavit in support of the objection and in particular paragraph 12 as follows:

"That the Defendant/Objector is the only allottee to Plot 1849 Cadastral Zone C12, Kabusa District, Abuja and cannot be deemed to be a trespasser on the plot of land lawfully and legally allocated to her by the Honourable Minister of the Federal Capital Territory Abuja, and that the Plaintiff/Respondent not having any document to prove a superior title to the plot of land in question, fits into the description of trespasser to the defendant's plot of land."

Now as stated earlier, parties may have filed their pleadings joining issues but hearing is yet to commence. The Rules of Court may have provided for the filing of depositions and frontloading of documents to be used at trial but until hearing commences and these frontloaded documents are properly tendered and admitted in evidence, then the said deposition and frontloaded documents on their own have not much utilitarian or evidential value. Indeed a party may even elect or choose to call new or additional witness(es); file fresh depositions and abandon the earlier

deposition filed. Until the deposition is adopted by the witness thereby making it evidence to be used at trial, it cannot in law be made use of. A party may equally decide not to tender the frontloaded document(s). No law compels him to do so.

Let me perhaps make the point clearer with respect to the trial process. When a case is heard, parties on both sides have to present their witnesses in the box, lead them in evidence where invariably the witness statement on oath is used or adopted as part of his evidence, documents (if any) are tendered through this witness(es), arguments on admissibility may be taken, and in most cases oral evidence in expatiation is invariably given. The adversary then has the very crucial opportunity to show that the evidence given by the opposing party should be disregarded or disbelieved and this he must demonstrate by cross-examination that the evidence lacks credibility and should not be believed. **Section 223 of the Evidence Act** permits a party cross-examining to elicit from the witness evidence which is favourable to the party cross-examining or which tends to disprove or contradict the case for the party who produced the witness. The Act specifically provides among other things that questions may be asked which tend to test the accuracy, veracity or credibility of the witness or to discover who the witness is and what is his position in life or to shake the credit of the witness by injuring his character. The ball then reverts back to the party who may re-examine his witness(es) if he so desires to clear any ambiguities that may have arisen during cross-examination. Through all these, the court does its duty by observing the demeanour of the witnesses, the credibility of the evidence and its accuracy thereof and at the end evaluates all the evidence, and then exercises the right to believe or disbelieve witnesses and then finally arrive at specific findings on the issues arising from the pleadings and evidence as presented to court for resolution.

All these processes must be scrupulously adhered to before a decision is reached one way or the other.

The court is yet to go through any of the above streamlined processes.

In the circumstances, it is really difficult to situate the legal basis for the issues raised and conclusions reached with respect to who was or was not in occupation of the disputed land; the question of ownership and legal status of these ownership; the questions of trespass and compensation amongst others on which issues have been joined by the pleadings of parties. Until the case is heard and parties present

their grievances/evidence, there is no way that this court can on the basis of an interlocutory application begin an inquiry and evaluation of the facts of the case. As stated earlier, counsel on both side have the liberty to make their submissions and conclusions, but the court cannot be seen to be making conclusions on a matter it has not heard evidence of the parties. That course of action would be premature and overtly pre-judicial.

This application clearly is compromised on the basis of a dearth of materials to sustain the application.

Let me however out of abundance of caution say a few words on cause of action. 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 Vs Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; 7up Bottling Co. Ltd. Vs Abiola (2001) 29 WRN 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 Exhibit or other extraneous document.

In considering whether there exist 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 out. See **A-G (Fed.) Vs A-G Abia State & ors (2001) 40 WRN 1 at 52; Moil Producing Nig. Unltd V Lasepa (2002) 1 MJSC 112 at 132.**

In **Akibu V Oduntan (2000) 13 NWLR (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."

I have here carefully considered the totality of the averments in the statement of claim and as far as can be evinced, the facts or combination of facts which the plaintiffs have premised, their right to sue can be evinced from paragraphs 1-34 of the statement of claim.

In these paragraphs, the plaintiffs claim to be customary owners of the disputed plot from time immemorial and in occupation of same carrying out farming activities. That the defendant who claims to be the owner of the same disputed land encroached on the land destroying their economic trees causing extensive financial damages. That attempts were made to settle the matter but this failed and the defendant has continued with the acts of encroachment and trespass.

It is on the basis of this adverse claim of defendant that the plaintiff has approached the court to validate their claim or interest over the disputed plot. 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 NWLR (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 plaintiffs and the obligation of the defendant. 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.

The fact that counsel for the defendant perceive and has indeed submitted that the plaintiff's action is bound to fail is no ground to strike it out. No.

The only point to add is that all the authorities cited by defendant on the allocation cognisable in the FCT cannot be applied at this stage. The authorities cannot be applied in a vacuum i.e. in the absence of parties presenting fully their grievances, the authorities cannot apply for now.

Furthermore, as stated earlier, part of reliefs sought include that of **trespass** and its success or failure is not dependent on the success of the relief on ownership. Trespass in land constitutes the slightest disturbance to the possession of land by a person who cannot show a better right to possession. See **Adeoye Adio Fagunwa & Anor V. Nathaniel Adibi & ors (2004) 17 NWLR (pt.903) 544 at 569**.

It is logical to say that in the absence of evidence led at plenary hearing this question of who has better right of possession cannot properly be enquired into and resolved at this point. I say no more.

The point to underscore is that the claims of plaintiff is not solely predicated on **title**. Even if it is argued that some of the claims are not justifiable, there are however facts presented allowing for a ventilation of some of the other reliefs sought. I say no more.

In the light of the foregoing and in summation, I find no merit in the defendant's preliminary objection and it is hereby dismissed. I call on counsel to now act post-haste and ensure that this matter is now determined with little delay, if any at all.

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Hon. Justice. A.I. Kutigi

<u>Appearances</u>:

1. **J.E. Ndeye, Esq. with Precious Okoh (Mrs) for the Plaintiff/Respondent**

2. **Iorker Daniel for the Defendant/Applicant/Objector.**