

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

BEFORE HIS LORDSHIP: HON. JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/2715/2019
DATE: 7TH JULY, 2020

BETWEEN:

- 1. MR. OLUMIDE ADEKUNLE**
- 2. MR. MIYIWA ADEKUNLE**
- 3. MISS FUNOLA ADEKUNLE**
(Suing as Children and as Administrators and
Administratrix of the Estate of Christie Folake
Adekunle)



CLAIMANTS

AND

ROM-FLEX NETWORK LIMITED

-

DEFENDANT

Parties absent.

S. Edward for the Claimant.

Abiola Akinwale appearing with B. Uwaokhonya for the
Defendant.

Claimant's Counsel – The matter is for ruling.

R U L I N G

This is a matter commenced under the originating summons dated
21/8/2019 and filed on 22/8/2019.

The Claimants in the said summons formulated the following
questions for determination:

1. Whether the Defendant was right in breaking down the inner
walls/pillars of the Claimants' property (that is, House No. 2B

Agadez Street, Wuse II, Abuja) in the manner shown in Exhibits OSU6 and OSU7 without obtaining the consent and/or approval of the Claimants;

2. Whether the Defendant can embark on the purported renovation/remodeling of the Claimants' said property as claimed in its letter to the Claimants' solicitors dated 22nd April, 2019 (Exhibit OSU 4) without obtaining the consent and/or approval of the Claimants;
3. Whether the breaking down of the inner walls/pillars of the Claimants' property (four bedroom duplex with one Bedroom Boys Quarter at Plot 696b, Agadez Crescent, Wuse 2, FCT Abuja) by the Defendant does not amount to structural alteration of the demised premises;
4. Whether having regard to paragraph 3(g) of the Tenancy Agreement (Exhibit OSU 1) the Defendant executed in relation to the demised premises, the Defendant can carry out structural alteration or addition to the demised premises without the prior written consent of the Claimants;
5. Whether the Defendant's conduct of breaking down the inner walls/pillars of the demised premises and altering the structure thereof without the consent and/or approval of the Claimants is not wrongful, unlawful and unjustifiable;
6. Whether the Claimants are not entitled to an order to recast/replace the inner walls/pillars of the demised premises in the face of the Defendant's failure and/or neglect to recast/replace same;

And pray the court for the following reliefs against the defendant.

1. A Declaration that the Defendant was not right in breaking the inner walls/pillars of the Claimants' property (that is, House No. 2B Agadez Street, Wuse II, Abuja) in the manner shown in Exhibits OSU 6 and OSU 7 without obtaining the consent and/or approval of the Claimants;
2. A Declaration that the Defendant cannot embark on the purported renovation/remodeling of the Claimants' said property as claimed in its letter to the Claimants' solicitors dated 22nd April, 2019 (Exhibit OSU 4) without obtaining the consent and/or approval of the Claimants;
3. A Declaration that the breaking of the inner walls/pillars of the Claimants' property (four bedroom duplex with one Bedroom Boys Quarter at Plot 696b, Agadez Crescent, Wuse 2, FCT Abuja) by the Defendant amounts to structural alteration of the demised premises;
4. A Declaration that by virtue of paragraph 3(g) of the Tenancy Agreement (Exhibit OSU 1) executed by the Defendant in relation to the demised premises, the defendant cannot carry out structural alteration or addition to the demised premises without the prior written consent of the Claimants;
5. A Declaration that the Defendant's conduct of breaking the inner walls/pillars of the demised premises and altering the structure thereof without the consent and/or approval of the Claimants is wrongful, unlawful and unjustifiable;

6. A Declaration that the Claimants are entitled to an order to recast/replace the inner walls/pillars of the demised premises in the light of the Defendant's failure and/or neglect to recast/replace same;
7. An Order directing the Claimants to forthwith recast/replace the inner walls/pillars of their said property lying and situate at No. 2B Agadez Street, Wuse II, Abuja;
8. An Order of perpetual injunction restraining the Defendants, its agents, servants and/or privies from further altering or carrying out structural alteration or addition to the demised premises without the written consent of the Claimants;
9. N50,000,000.00 (Fifty Million Naira) damages for the Defendant's unlawful conduct;
10. Cost of this action.

In support of the originating summons is a 22-paragraph supporting affidavit dated 22/8/2019 deposed to by Obase Sam Usang, a Litigation Executive in the law firm of Abuka & Partners, Legal practitioners to the Claimants. Also filed is a 14-paragraph Further Affidavit dated 17/2/2020 deposed by the same Obase Sam Usang. Reliance is placed on all the said affidavits and they are equally adopted as forming part of this ruling.

The gist of the affidavits is that the Claimants are the children of late Christie Folake Adekunle and are Administrator of her Estate located at Plot 696b, Agadez Crescent, Wuse 2, FCT, Abuja which property is also known as House No. 2B Agadez Street, Wuse II, Abuja.

That the Defendant is the person in possession of the said property as tenant and executed a Tenancy Agreement for a 2 year period commencing from 16/6/2014 to 15/6/2016. The Tenancy Agreement is annexed as Exhibit OSU 1.

That around March 2019 it was discovered that the Defendant carried out major construction work on the said property without the consent of the Claimants.

That paragraph 3(g) of the Tenancy Agreement provides that the Defendant is not to do or permit any structural alteration in or addition to the demised premises without the prior written consent of the Claimants.

That as a result of the above, the Claimant caused a letter to be written to the Defendant through their solicitors; the said letter is annexed and marked Exhibit OSU 3.

The Defendant in its letter dated 22/4/2019 said it was out to renovate/remodel the property in a bid to add value to the property; the said Defendant's letter is Exhibit OSU 4.

That the Defendant was advised to return the demised premises to its original form and look for alternative accommodation, which the Defendant has failed to do.

That Izeeks Integrated Services Nigeria Limited was consulted to carry out assessment on the property and the construction work being carried out therein. Izeeks Integrated Services Nigeria Limited submitted Technical Report dated 1/7/2019 which is

annexed as Exhibit OSU 5; while the photographs from the demised premises is marked as Exhibit OSU 6 and OSU 7.

It is the averment that unless immediate step is taken to recast/replace the walls/pillars that was broken/removed from the demised premises, the premises stand the risk of collapsing.

It is also the averment of the Deponent of the Further Affidavit that the information in paragraph 4(i) – (vii) of the Affidavit in support of the originating summons was given to him by Mrs. Bola Carew and not by the 3rd Claimant Miss Funlola Adekunle.

Learned counsel to the Claimant filed a written address dated 21/8/2019 wherein counsel distilled a sole issue for determination, thus:

“Whether this Honourable Court ought not to grant the Claimant’s reliefs, having regard to the evidence before the court”

That the Defendant executed a Tenancy Agreement with the Claimants’ Estate on 28/5/2014 for a 2 year period, which Tenancy expired by effluxion of time on 15/6/2016 but the Defendant continues to retain possession on the same terms and conditions as contained in the said Tenancy Agreement.

It is submitted that the Claimant’s case is that the Defendant broke and/or pulled down part of the inner walls/pillars of demised premises without obtaining its consent and/or approval.

It is the submission that Exhibits OSU 4 which is a letter of apology by the Defendant is an admission that the Defendant never obtained the consent or approval of the Claimants before breaking the inner walls/pillars of their property in the manner shown in Exhibits OSU 6 and OSU 7.

It is further submitted that the Defendant acted in bad faith by breaking the inner walls/pillars of the demised premises.

The Claimants have stated that they are willing to recast/replace the inner walls/pillars of the demised premises in the light of the obvious failure and/or neglect of the Defendant to do the needful; more so the Claimants have the right to preserve their property and this court is urged to resolve this issue in favour of the Claimants.

In opposition to the originating summons, the Defendant filed a 14-paragraph counter affidavit dated 14/1/2020 deposed to by Mrs. Oluwaseun Eyo one of the senior management staff of the defendant's company.

The gist of the said averments in the counter affidavit is that contrary to the averment in paragraph 4 of the affidavit in support of the summons, there is no third claimant known as Mrs. Bola Carew and she did not give such information as averred to in the said paragraphs.

It is the averment of the deponent that Suit No. FCT/HC/CV/95/18 Estate of C.F. Adekunle v Rom-Flex Network Limited & Anor. has not been discontinued and is still pending.

That the Defendant's conduct is not wrongful, it is not unlawful and it is not unjustifiable and that the court should refuse the reliefs of the Claimants.

The learned counsel to the Defendant filed a written address dated 9/01/2020 wherein counsel formulated three (3) issues:

1. Whether the Claimant's reliefs can be granted in the circumstances of this case.
2. Whether this present suit does not amount to multiplicity of suits and an abuse of court process.
3. Preliminary objection.

On Issue 1, it is the submission that an originating summons is used whenever the law so provides and it is used when the sole or principal question in issue is or likely to be one of the construction of a written law or any instrument or any Deed, Will, Contract or other document, where there is not likely to be dispute as to the facts. See INAKOJU v ADELEKE MJSC 2007 VOL. 2 Pg 1 at 8 particularly at 45 Paras C – D.

It is submitted that the facts deposed to by the Claimants are disputed and therefore it is the position of the Defendant that originating summons will not lie in this matter.

On Issue 2, it is the submission that this present suit by the Claimants amounts to multiplicity of court suits and an abuse of court process. Court is referred to paragraph 16 of the supporting affidavit and Exhibits OSU 2 which shows that there is an existing suit between the parties. See the cases of UMEH v IWU (2008)

MJSC VOL. 5 Pg 179 Paras 1 – 3; UKACHUKWU v UBA (2005) 18 NWLR (Pt 956) 1.

It is further submitted that there is no evidence before this court to show a discontinuance or withdrawal of the suit pending before the court sitting in Kubwa.

On Issue 3, which is preliminary objection. The Defendant contends that this court lacks the requisite jurisdiction to entertain this suit as it is presently constituted. The ground of the objection is that the filing of this suit amounts to an abuse of court process having become multiplicity of actions.

The Defendant prays the court to strike out and or dismiss this suit. And for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

The Claimant's counsel filed a reply on points of law dated 17/2/2020 wherein counsel in response to the Defendant's preliminary objection, submitted that the defendant's contention is misconceived.

A cursory look at the originating summons herein shows that the cause of action/subject matter of this suit is different from that of Suit No. FCT/HC/BW/CV/95/18 ESTATE OF C.F. ADEKUNLE v ROMFLEX NETWORK LTD & ANOR. Also the reliefs in this suit are different from the ones in Suit No. FCT/HC/BWCV/95/18. Court is referred to Exhibit OSU 2.

It is submitted the entire authorities the Defendant cited on its Issues 1 and 2 are against the Defendant. Court is urged to discountenance the entire submissions of the Defendant and resolve the issues, for determination in favour of the Claimants.

I have carefully considered the processes filed, affidavits of the Claimants, counter affidavit and the submissions of learned counsel on both sides, it is in the interest of justice to consider the preliminary objection raised as Issue 3 in the defendant's written address.

The preliminary objection is premised on the ground that this present suit constitutes an abuse of court process for being multiplicity of actions and therefore liable to be struck out.

It is the contention of the Defendant that a look at the Claimant's deposition in paragraph 16 in the supporting affidavit of their originating summons marked as Exhibit OSU 2 clearly shows of an existing suit between the parties herein in Suit No. FCT/HC/BW/CV/95/18 between Estate of CF ADEKUNLE v ROM-FLEX NETWORK LIMITED & ANOR; which amounts to multiplicity of action and an abuse of court procedure.

It is trite law that the circumstances that will give rise to abuse of court process include inter alia: instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action. See OPEKUN v SADIQ (2003) 5 NWLR (Pt 841) 475.

I have carefully considered and taken a critical look at Exhibit OSU 2, it is clear as crystal that the cause of action/subject matter of this suit is different from that of Suit No. FCT/HC/BW/CV/95/18 before the High Court in Bwari Division for recovery of premises.

In the light of the above, I am of the firm view that this action does not constitute an abuse of the process of this court. Accordingly, the submission of learned counsel to the Defendant hold no water and is of no moment. The preliminary objection is hereby overruled.

The Defendant contended that this suit was wrongly commenced or instituted being commenced by an originating summons instead of a writ of summons.

It is the submission of the Defendant that the facts deposed to by the Claimants are disputed and therefore originating summons will not lie in this matter.

It is trite law that originating summons is used for non-contentious actions, that is, those actions where facts are not likely to be in dispute where facts are in dispute or riotously so, an originating summons procedure will not avail a claimant and he must come by way of writ of summons. In other words, an originating summons will not lie in favour of a claimant where the proceedings are hostile in the sense of violent dispute. See *INAKOJU v ADELEKE* (2007) 4 NWLR (Pt 1025) 423.

In the instant case, I have carefully perused through the Claimant's affidavits and the Defendant's counter affidavit, it is

clear that the averments therein reveals that the facts are not likely to be in dispute and they are non-contentious.

The subject matter before this court is that the Defendant as tenant to the Claimant broke and/or pulled down part of the inner walls/pillar of the demised premises which they occupied as tenant without obtaining consent and/or approval from the Claimant, thereby it also violating Clause 3(g) of the Tenancy Agreement Exhibit OSU 1.

The Defendant in its letter dated 22/4/2019 Exhibit OSU 4 admitted the above position.

For want of doubt paragraph 1 of the said letter is reproduced as follows:

“We write to sincerely apologise to you for renovating/remodeling your property at No. 2B Agadez Street Wuse II, Abuja without your approval”

In paragraph 8(ii) and (iv) of the supporting affidavit, the Claimant avers that apology will not redress the damage done to their property. And the Defendant was advised to return the demised premises to its original form and look for alternative accommodation.

A cursory perusal at the 14-paragraph Defendant's counter affidavit shows clearly it is a mere general traverse. It is trite law that a mere general denial of the Claimant's claims by the Defendant in his pleading (in this case counter affidavit) is not a

sufficient denial. See the Supreme Court case of BALOGUN v UBA LTD (1992) 6 NWLR (Pt 247) 336.

It is pertinent to state here that the 3rd Claimant on record is Miss Funlola Adekunle and not Mrs. Bola Carew as averred by the Defendant.

In conclusion, I am of the considered view that by the admission of the Defendant in Exhibit OSU 4 that it carried out breaking of the inner walls/pillars of the Claimant's property without the consent and/or approval of the Claimants suggest that there is nothing for the Claimants to prove. It is trite law that facts admitted need no further prove. Accordingly, the questions raised in the originating summons are all resolved in favour of the Claimants. The court hereby makes the following orders:

1. That the Defendant was not right in breaking the inner walls/pillars of Claimants' property, House No. 2B Agadez Street, Wuse II, Abuja, in the manner shown in Exhibits OSU 6 and OSU 7 without obtaining the consent and/or approval of the claimants.
2. That the Defendant cannot embark on the purported renovations/remodeling of the Claimant's said property as claimed in his letter to the Claimant's solicitors dated 22nd April, 2019 (Exhibits OSU4) without obtaining the consent and/or approval of the Claimants.
3. That the breaking of the inner walls/pillars of the said Claimants' property by the Defendant amounts to structural

alteration of the demised premises. And the act of the Defendant is wrongful, unlawful and unjustifiable.

4. That by virtue of paragraph 3(g) of the Tenancy Agreement (Exhibit OSU 1) executed by the Defendant in relation to the demised premises, the Defendant cannot carry out structural alteration or addition to the demised premises without the prior written consent of the Claimants.
5. That the Claimants are entitled to an order to recast/replace the inner walls/pillars of the demised premises in the light of the Defendant's failure and/or neglect to recast/replace same.
6. The Claimants are hereby directed to forthwith recast/replace the inner walls/pillars of their said property lying and situate at No. 2B Agadez Street, Wuse II, Abuja.
7. The Defendant, its agents, servants and/or privies are restrained from further altering or carrying out structural alteration or addition to the demised premises without the written consent of the claimants.
8. N5,000,000.00 (Five Million Naira) is awarded as damages against the Defendant in favour of the Claimants for the Defendant's unlawful conduct.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
07/07/2020

Claimant's Counsel – We are very grateful for the judgment.

Defendant's Counsel – We also thank the court for its ruling. We are most obliged.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
07/07/2020