

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/2377/19

BETWEEN:

- 1. UWANAKA CHILEM GOODNESS**
- 2. UWANAKA CHIAMAKA MERCY.....CLAIMANTS/RESPONDENTS**

VS

- 1. MR OBIJURU ROYSON.....1ST DEFENDANT/APPLICANT**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY...2ND DEFENDANT/
RESPONDENT**
- 3. HONOURABLE MINISTER, FEDERAL CAPITAL TERRITORY.....3RD
DEFENDANT/RESPONDENT**

RULING

By a Notice of Preliminary Objection, dated 29/11/2019 but filed on 5/12/2019, brought pursuant to Order 43 Rule 1 of the Federal Capital Territory High Court (Civil Procedure) Rules and under the inherent jurisdiction of this court. The Applicant prays the court for the following reliefs;

- (1) An Order of court dismissing this Suit for want of jurisdiction.
- (2) And the Omnibus relief.

The grounds upon which the 1st Defendant/Applicant objects to the Suit are;

- (1) The action itself constitutes a crass abuse of court process.
- (2) The Claimant have no locus standi
- (3) The action discloses no cause of action.
- (4) The action is statute barred and cannot be reactivated.
- (5) The action is incompetent and the Honourable Court lacks the requisite jurisdiction to entertain same.

The Notice of Preliminary Objection is supported by an 18 Paragraphs affidavit with Exhibits 1, 2 and 5 attached and deposed to by the 1st Defendant /Applicant. Also filed is a Written Address and adopt same, in urging the court to grant the reliefs sought.

The application was served on the Claimants/Respondents on 6/12/2019 and also served on the 2nd /3rd Defendants/Respondents on 6/12/2019. Responding Claimants/Respondents through their counsel filed an 11 Paragraph counter-affidavit deposed to by Onyinye H. Nwosu, counsel to the Claimants/Respondents. Also filed is Written Address and adopts same as oral argument, urge court to discountenance the application and enter the matter for hearing.

2nd/3rd Defendant/Respondent did not file their respective response to the application and were not represented by counsel, were absent in court.

The case of the 1st Defendant/Objector as gleaned from his affidavit is that, he has been in possession of the property, subject matter of the Suit, since he purchase the property sometime in 1992 and erected a three bedroom flat in

1994. That one Iliya Amadu approached him sometime in 1996 informing him of being the owner of the very Plot 74 within Duste Alhaji Layout Abuja upon which he had erected a house, that upon enquires at the office of the Abuja Municipal Area Council but was confirmed that the said Iliya Amadu owned the property and upon a negotiated agreement, the said Iliya Amadu sold the property to him at the sum of ₦1,500,000.00 (One Million Five Hundred Thousand Naira Only). 1st Defendant/Objector then applied to the Abuja Municipal Area Council for the title documents to be issued in his own name, having demonstrated purchase of same. He enjoyed peaceful occupation and physical possession of the said building since 1992 till sometime in 2018, when some people came stating that they were the owners of the land which he has built upon 27 years ago exercising all rights or ownership, possession and title without molestation and accusation.

In his Written Address, 1st Defendant/Objector's counsel formulated a sole issue for determination that is;

“Having regards to the entire circumstances of this case, including the facts as advanced by the Claimants, whether this court has the requisite jurisdiction to delve into the matter”.

Submits on the authority of Shelim Vs Gobasng (2009) 12 NWLR (PT. 1156) 435 that the subject matter of this action is neither within jurisdiction of this court nor initiated by due process of laws. Therefore court cannot adjudicate on this Suit.

Submits further that the cause of action arose since 1992 when one late Uwanaka was put in possession as stated in Paragraph 7 of the Statement of

Claim of the Claimant, and was put in possession and did nothing until the Applicant completed his building and started collecting rents therefrom, thus by the Provisions of Section 7 (1a) of the Limitation Law of the FCT this action is caught up by the Statute of Limitation and is therefore a stale action. Refer to Ezeani Vs NRC (2015) 3 NWLR (PT. 1445) 145, Muomah Vs Spring Bank Plc (2009) 3 NWLR (PT. 1129) 553 and Davis Vs Ajibona (1994) 5 NWLR (PT. 343) 234 @ 257 Paras D – F.

Submits that the Claimants are Meddlesome Interlopers and busy bodies, who want to reap where they did not sow and have no locus standi and cause of action to institute this action as the conveyance of Provisional Approval would show that the Claimants have nothing to do with this title and the Letters of Administration attached worsen the case of the Claimants. Refer to Progressive Action Congress Vs INEC (2009) ALL FWLR (PT. 478) 260 @ 328, Egolum Vs Obasanjo (1999) 7 NWLR (PT.611) 355 Buhari Vs Obasanjo (2005) ALL FWLR (PT. 273) 1.

Submits finally that the Claimants have not disclosed sufficient interest in the subject matter of this action to enable them make any claim before the Court. That the case is an abuse of court process. Refer to Dingyade Vs INEC (2011) ALL FWLR (PT. 581) 1426 @ 1455. And on the basis of their submission, urge court to dismiss the Suit in limine for being an abuse of court process and also for want of jurisdiction.

On the other hand Claimants/Respondents case in brief is that they are children of the Adeline Uwanaka, the beneficial owner and holder of the Right of Occupancy over the property described as Plot No. E74 within Duste –Alhaji

Abuja with File Number IMSO and new File Number IMS1514/ granted by the Abuja Municipal Area Council vide a conveyance of approval dated 6/6/1992. That one Mal Abdulrahaman Bako was till his death some time in 1998 the only Chief of Duste-Alhaji and was succeeded by his son Hon. Chief Abubakar Bako that the man referred to by the 1st Defendant/Applicant has never been the Chief.

It is further the case of the Claimants that they traced the property in dispute upon being granted a Letter of Administration with respect to the Estate of their late mother Miss Adeline Uwanaka; they held a meeting with the 1st Defendant/Applicant who pleaded with them to repurchase the property from them and paid the sum of ₦100,000.00 (One Hundred Thousand Naira) to one Mr. Adams Bala Baba to conduct a search on the property now in dispute to ascertain the true owners. The said search confirmed that the property actually belongs to the Claimants; therefore they have a reasonable cause of action as well as requisite locus standi to get justice in this matter.

In their Written Address Awuru Esq of counsel formulated a sole issue for determination that is;

“Whether the instant application is meritorious”

Submit that the material to guide the court in the determination of competency and locus standi is the Statement of Claim. Refer to *Ajoku Vs Ohiri and Sons*. (2018) LPELR -4625 (CA). The averments in their Statement of Claim reveal that the Suit is competent and the Claimant have the requisite locus standi to commence this action.

Submits further that the issues raised and facts relied in challenging the locus standi of the Claimants are evidential issues which touches on the substantive case before the court and which issues cannot be determined at the interlocutory stage. Refer to Fishing Industries Ltd Vs Coker (2990) 7 NWLR (PT. 162) 262 @ 656 Paras A – D. Urge court to dismiss the application.

On the issue of the action being statute barred, urge court to look at the Claimant's Writ of Summons and Statement of Claim in the determination of whether the Suit is statute barred. Refer to Egbe Vs Adefarasin (1987) 1 NWLR (PT. 47) 23 Para A – B and Ajoku Vs Ohiri & Ors (Supra).

Finally urge court to dismiss the preliminary Objection for lacking in merit.

Having carefully considered the grounds and facts relied on for challenging the jurisdiction of court, the response of the Claimants/Respondents and the judicial authorities cited by counsel the court finds that only (one) issue call for determination, that is;

“Whether or not, this court has jurisdiction to entertain and determine this matter”.

Jurisdiction is very vital and fundamental in nature, once raised the court must determine it once and for all, because, it is the legal power or authority which a court must have to decide matters that are being litigated before it.

In this instant application the gravamen of the objection of the Defendant is predicated upon;

1. The action itself constitutes a crass abuse of court process.
2. The Claimants have no locus standi.

3. The action discloses no cause of action.
4. The action is statute barred and cannot be reactivated.
5. The action is incompetent.

In the determination of the grounds of objection the court have held overtime that it is only the Writ of Summons and Statement of Claim filed by the Claimant that the court will look at, to reach a decision one way or the other. See *Cil Rise & Asset Management Ltd Vs Ekiti State Government & Ors* (2020) LPELR 5956 51 @ 51 – 53 Para D; *Onuekwusi Vs RTCMZC* (2011) ALL FWLR (PT. 573) 1927 @ 1929 Ration 3. *Basinco Motors Ltd Vs Woermann Line* (2009) ALL FWLR (PT. 485) 1634 SC. Thus in the determination of this application, the Statement of Claim filed by the Claimant will be the focus of the court. The court as of necessity must take a look at its record and this the court is empowered to do; see *Agbareh Vs Mimra* (2008) ALL FWLR (PT. 409) 559 @ 564 Ratio 7.

On the ground that the Suit constitute an abuse of court process, the categories of situations that give rise to abuse of court process are not closed, the list is in-exhaustive as it depends on the circumstances of each case. See the case of *Umeh Vs Iwu* (2008) 8 NWLR (PT.1089), 225 at 230. One way by when abuse of court process would occur is where there is multiplicity of suits between the same parties on the same subject matter and on the same issues. Also to institute an abuse during the pendency of another claiming the same relief is an abuse of court process. See *Umeh Vs Iwu* (Supra) @ 227 -228. To determine, whether there is an abuse of the process of court, there is the need

for the court to look at the facts allegedly constituting the abuse. See Umeh Vs Iwu (Supra) @ 230 Ratio 4.

In the instant case, the court has perused the processes filed by the parties particularly the Statement of Claim of the Claimant and I am of the firm view that this instant suit does not constitute an abuse of court process as canvassed by the Defendant/Applicant. I am more convinced of this stand because the circumstance of this Suit cannot put into the categories which the court have held to be abuse of the process of court.

On the issue of the Claimants lacking the locus standi to institute this action; it has been held that the question whether a Plaintiff has locus standi to sue is determinable from the totality of averments in his Statement of Claim. See Businco Motors Ltd Vs Woermann Line (2008) ALL FWLR (PT. 485) 1634 @ 1673 Para A – C. The Applicant in the instant case challenge the locus standi of the Claimants to maintain this action on the premise that the conveyance of Provisional approval pleaded and attached to their Statement of Claim have nothing to do with them, whereas the Claimants/Respondents contend that the said Letter of Administration empowered them to commence this action and that this ground of objection in any case touches on evidential issues which court cannot determine at this stage. It is trite law that a Letter of Administration bestows powers to the administrators of an Estate, the power to begin or defend a legal proceeding in connection with the Estate. See Re Fawcett (1941) 2 ALL ER 341, Ademola Vs Sodapo (1989) 5 NWLR (PT.121) 329. See also Olowu Vs Olowu (1994) 4 NWLR (PT.336) 90. Thus by the Letter of Administration pleaded and attached to their Statement of Claim

the Claimants/Respondents have demonstrated sufficient locus standi to commenced this action.

On the ground of that, the action discloses no cause of action in the case of Adekoya Vs Sodipe (2012) ALL FWLR (PT.638) 895 @ 913 – 914 Paras E, A, D – E the court defined cause of action as;

“The situation or state of facts which entitles a party to maintain an action in a judicial tribunal.... 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 notwithstanding that the case is apparently weak or unlikely to succeed at all”.

“Thus the fact that the cause of action is weak or unlikely to succeed is no ground to strike out or dismiss the case”.

Again in the case of Anozie Vs Attn-Gen Lagos (2012) ALL FWLR (PT. 631) 1522 @ 1550 – 1551 Paras G-A the court has the following to say about in the determination of the issue of cause of action thus;

“When determining the issue of cause of action, it is totally irrelevant to consider the merit of the claim , what is important at this stage is to critically examine the averments in the pleadings and see if they disclose any reasonable cause of action or raise some question fit enough to be decided by a judge”.

Taking a que from the above cited authorities I have taken a considered look at the Statement of Claim of the Claimant particularly paragraphs 6, 7, 8, 9,

10, 11, 12, 13, 14, 15, 16, 17, 18, 19 thereof and I find that indeed there are sufficient causes of action in the said Statement of Claim.

Another ground of objection by the Defendant/Applicant is that this Suit is statute barred and cannot be reactivated. The Defendant objector relies on Section 7 (10) of the Limitation Law of the FCT for this ground of objection, the said law prohibits the hearing of actions which bothers on land from being heard after the expiration of a period of 6 years from accrual of the cause of action. In support of this ground the Defendantobjector narrated in his supporting affidavit how he became seized with ownership of Plot 74, within Duste –Alhaji layout of the Abuja Municipal Area Council, in 1992, completing a building thereon in 1994, let same out same year and on 14th July 2012 let the property to one Pastor Jonathan Onuoha with copies of Statement of Account evidencing payment of rent attached as Exhibits on the other hand, Claimants/Respondents in their counter-affidavit gave account of how their predecessor –in-title acquired Plot No E 74 with Duste Alhaji Abujaon 6th June 1992 took possession of same until her demise and became aware of the property upon being granted Letter of Administration in 2018. I have taken a considered look at the competing claims of the parties. I observe that while the Defendant objector claims ownership of Plot 74 within Duste Alhaji layout of the Abuja Municipal Area CouncilAbuja, the Claimants/Respondents lay claim to Plot E74, within Duste Alhaji Abuja granted by Abuja Municipal Area Council. Again, Defendant/Objector’s narrative about the possession of the property he claims left so much gaps to be filled. He claims the property was completed and rented out in 1994 but Exhibited rent receipts for the year 2016 and 2017 only. What about the receipts for all those years, he never disclosed the

information or evidence if provided could and the court in the determination of when the cause of action accrued especially in the face of the authority of Davis V Ajibona (Supra) relied upon by the Defendant/Applicant. I am of the firm view that all the observations raised in the different narrative of ownership and the actual property will be properly determined if evidence is led by both parties and not at this stage of trial. I so hold.

On the final ground for his objection to the Suit, the Defendant/Applicant contends that the action is incompetent and this court lacks the requisite jurisdiction to entertain same. I have taken a considered look at the Writ of Summons and Statement of Claim of the Claimants. I find that the Suit was initiated through due process having been commenced by Writ of Summons and the land the subject matter of the suit is within the Federal Capital Territory. This brings it under the jurisdiction of this court. There is nothing to support the assertion of the Defendant/Applicant that this court cannot hear this case.

From all of these and having failed to substantiate all the grounds for the objection, this court therefore holds that this Preliminary Objection lack merit and should fail and is accordingly dismissed.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

23/9/2020

ONYINYE NWOSU ESQ – FOR THE CLAIMANT

OLUGBENGA ADEYEMI ESQ – FOR THE 1ST DEFENDANT

NO REPRESENTATIVE FOR THE 2ND/3RD DEFENDANT