**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**IN THE ABUJA JUDICIAL DIVISION**
**HOLDEN AT APO – F.C.T. – ABUJA**

**CLERK: CHARITY**
**COURT NO. 15**

**SUIT NO: FCT/HC/CV/3323/13**
**M/4565/18**
**DATE 09/12/2020**

**BETWEEN:**

**MRS COMFORT C. IROCHEONWU……..PLAINTIFF/RESPONDENT**

**AND**

1. **FEDERAL CAP. DEV. AUTHORITY**
2. **MIN. OF FEDERAL CAPITAL TERR.….DEFENDANTS/APPLICANTS**

**3.THE STATE SECURITY SERVICES(DEPARTMENT OF STATE SERVICES)**
**4.MR. ALI N.BINDU……DEFENDANTS/RESPONDENTS**

**RULING**
**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

This application concerns motion number M/4565/18 dated 29/3/18 but filed on 4/4/18. It is brought pursuant to section 6 (6) of the 1999 constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of this Court.

It prays for an order of this Honourable Court dismissing suit No. CV/3323/13 against the 1st and 2nd Defendants for being incompetent, an abuse of Court process and want of reasonable cause of action.

## ALTERNATIVELY

An order of this Honourable Court striking out Suit No. **CV/3323/13** against 1st and 2nd Defendants for want of jurisdiction.

In support is a 4 paragraphs affidavit with one Exhibit A attached and a written address. He relied on all the paragraphs of the supporting affidavit and as well adopted his written address as his argument in support of the application as he urged the Court to grant this application.

In response to this application, the Plaintiff/Respondent learned Counsel said he filed a written reply dated 23/4/18 which was filed on 26/4/18. He submitted that he addressed all the issues as formulated by the 1st and 2nd defendants/applicants and not frame any new issues. He adopted the written address as his argument against the grant of this application as the motion on notice is purely academic.

On the part of 4th Defendant/Respondent, his learned Counsel submitted that he has filed a 5 paragraphs counter-affidavit dated 6/11/19 and filed on 8/11/19. He said they also filed a written address and placed reliance on all the processes filed in urging the Court to refuse the application.

The coast is now clear for me to consider the merit or otherwise of this application. In the applicant's written address, he formulated 3 issues for consideration to wit:

(a) Whether the 1stDefendant is a juristic person that can sue and be sued in law.

(b) Whether the instant suit against the 1st and 2nd defendants seeking to enforce contractual transaction between Federal Government of Nigeria and the Plaintiff is incompetent, null and void ab initio.

(c) Whether the Plaintiff has reasonable cause of action to commence the instant suit.

On the first issue, learned Counsel to the applicants submitted that 1st defendant is not a juristic person known to law being neither a statutory corporation nor a natural person. He submitted further that appropriate order in this circumstance to make is striking out the case against the party found not to be a juristic person. For all these submissions, he cited the cases of **GANI FAWEHINMI VS. NBA (NO. 2) (1986) 2 NWLR (PT. 105) 558; IFEDAPO COMMUNITY BANK LTD VS. ETERNAL ORDER OF C&S CHURCH, SAKI BRANCH (2000) 6 WRN 65; ACCESS BANK VS. AGEGE LOCAL GOVT & ANOR (2016) LPELR – 40491 (CA); SHELL PETROLEUM DEVELOPMENT CO. & ANOR VS. DANIEL PESSU (2014) LPELR – 23325 (CA)** amongst other cases.

On the part of the Plaintiff /Respondent, the learned Counsel responded by submitting that the amendment of the 1st defendant's name on the 19/10/17 before this Honourable Court has fundamentally cured whatever defect that was canvassed in issue one.

The 4th Defendant/Respondent align with the submission of the Plaintiff/Respondent on this first one.

I have considered all the arguments of all learned Counsel regarding this first issue and without wasting time, I take bold to say that I align myself totally with the submissions of the Plaintiff/Respondent Counsel that the amendment granted by the Court changing the first defendant's name from FCTA to FCDA is in line with the provisions of S.3 and 4 (2) (a) of the Federal Capital Territory Act, Vol. 6 Cap F6 LFN, 2004 and as such the first issue is resolved in favour of the Plaintiff and 4th Defendant/Respondents respectively.

On the second issue, the applicant's learned Counsel argued that 1st and 2nd Defendants/Applicants cannot be sued as they are neither the Federal Government of Nigeria nor its agent (FCDA) that entered into the transaction leading to the dispute. He argued further that even in the event that the 1st and 2nd defendants acted as an agents of the Federal Government, this action will still fail because, agents of a disclosed principal cannot be sued. For all these arguments he referred to the authorities of **MOHAMMED VS. MOHAMMED (2012) 11 NWLR (PT. 1310) 1; SOLID UNIT NIG. LTD & ANOR VS. GEOTESS NIG. LTD (2013) LPELR – 20724 (CA); GTB VS. UMEH (2017) LPELR – 42163 (CA); UKPANAH VS. AYAYA (2011) 1 NWLR (PT. 1227) 61.**

Finally on this second issue, the applicants submitted that the Plaintiff should have channelled her grievances against the Federal Government of Nigeria and / or Attorney General of the Federation who has the constitutional mandate to defend the interest of the Federal Government and accordingly urged the Court to dismiss the instant case against the 1st and 2nd defendants as an abuse of Court process and strike out their names from the Writ.

Mr. Aliyu Anas Esq. representing the 4th defendant/respondent is more concise in his reaction to this issue compared to that of Plaintiff's respondent learned Counsel even though in substance they are saying the same thing.

He submitted that the relationship between the applicants and the Federal Government needs to be established. Therefore, it is important to have a community reading of the provisions of sections 299, 302 of the Constitution of the Federal Government of Nigeria 1999 (as amended) and section 18 of the Federal Capital Territory Act, Vol. 6 cap F6 LFN, 2004.

Section 299 (a) of the Constitution provides thus:

> *(a)"All the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja;*

Section 302 states thus;

> *"The President may, in exercise of the powers conferred upon him by section 147 of this Constitution, appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President, from time to time".*

Pursuant to the above quoted provisions, section 18 of FCT Act is enacted. It is headed delegation of powers to the Minister for the Federal Capital Territory and it provides;

> *"As from the 28th May, 1984, the President has delegated to the Minister of the Federal Capital Territory the following functions, among others, that is to say";*
>
> *(a)Any function or power conferred on the Chairman of the Federal Capital Development Authority under this Act;*
>
> *(b) Any executive power of the Federal Government vested in the President pursuant to section 299 (a) or any other section of the Constitution of the Federal Republic of Nigeria and exercisable within the Federal Capital Territory"*

The reasonable deduction from the combined reading and digestion of all the above provisions are to the effect that in

Federal Capital Territory, any issue that has to do with landed property whether private or governmental, the only body in charge is the Federal Capital Development Authority headed de facto and dejure by the Honourable Minister of Federal Capital Territory being a delegate of the President to assign, allocate and issue Certificate of occupancy to any applicant.

In final analysis of this second issue, with due respect to the learned Counsel to the applicants, I agree in toto with the learned Counsel to the Plaintiff that the argument of Counsel on this issue is totally misconceived and can lead if not carefully digested to a ludicrous pronouncement that would be ***incongrous*** to the provisions of sections 299 (a) and 302 of the Constitution.

In effect therefore, this issue is resolved against the applicants and in favour of the respondents.

On the last issue, the applicant's main argument is that the Plaintiff has failed to disclose a reasonable cause of action against the named defendants in this suit and that the trial Court lacks jurisdiction to entertain the suit against the defendants. He cited case of **OMIN III VS. GOV. CROSS RIVER STATE (2007) VOL. 41 WRN 158.**

In his swift response, the Plaintiff's learned Counsel submitted that itis now settled law that in determining the cause of action in a suit, the only document which the Court will look at or refer to are the writ of summons and the statement of claim. He referred to the case of **FCDA & ANOR VS. KUDA ENGINEERING AND CONSTRUCTION CO. LTD & ORS (2014) LPELR – 22985 (CA); ABUBAKAR V. BEBAJI OIL & ALLIED PRODUCTS & ORS (2007) 2 SC 48.**

Expectedly, the 4th defendant / respondent cleverly maintained silence on this point. Rather, he identified another issue for determination which is whether the 1st and 2nd defendants are necessary parties for the just determination of the instant suit? He answered in affirmative. I too agree with all his submissions on this issue as those submissions have been included and formed part of this ruling. The 1st and 2nd defendants are necessary parties for just and effective and effectual determination of this case.

In a plethora of unbroken claim of authorities, a cause of action is defined as the entire set of circumstance giving rise to an enforceable claim. It is in effect the facts or combination of actions which give rise to a right to sue and it consists of two elements;

(a) The wrongful act of the defendant which gives the Plaintiff his cause of action or complaint and

(b) The consequent damages".

Now, what are the claims of the Plaintiff as they appear in the statement of claim? I shall reproduce some paragraphs of the statement of claim.

Paragraph 22:

> *"The Plaintiff states that in a manner clearly suggestive of insider deal, collusion and an attempt to dispossess the Plaintiff of the property, the subject matter of this suit, and before the incidences of paragraph 20 and 21, when the Plaintiff visited the 1st defendant to make her final payment in 2007, the Plaintiff discovered that her file in the office of 1st defendant was missing. It took the*

*intervention of the Chairman of the Committee that sold the property to the Plaintiff, one Mr. Abbas, for the Plaintiff to conclude the transaction. This explains why the date on Plaintiff's Cheque for payment is different from the receipt issued.*

Paragraph 23 states:

*"The Plaintiff states that since her payment for the property in which the Plaintiff was entitled to her Certificate of Occupancy (C of O), having already been given a No. CR. 30306, to obtain the said Certificate, the 1st defendant has refused to release the Certificate to the Plaintiff to perfect the transaction which they have already collected money".*

Paragraph 24 reads thus:

*"The Plaintiff states that the 4th defendant has refused to give up in his bid to dispossess the Plaintiff of her property which the Plaintiff have duly paid for and which the office of the 3rd defendant had also conceded to the Plaintiff and that the 4th defendant is in the habit of always taking advantage of change in portfolio and his kinsmen and relatives in the office of the 1st, 2nd, and 3rd defendants to perpetrate his fraudulent activities".*

These are some of the claims of the Plaintiff as appeared in her statement of claim.

The Apex Court in the case of **ORKERJEV VS. IYORTYOM (2014) LPELR 23000 (SC)** held thus;

> *"It is settled law that it is the claim of the Plaintiff as disclosed in the statement of claim that determines the jurisdiction of the Court".*

I am mindful of the submission of the learned Counsel to the Plaintiff when he wrote in his address at paragraph 3.27 admirably that 1st and 2nd defendant appear to have hinged his argument in respect of this issue on the tenor of the letter of offer (their exhibit A) and his contention that there was no valid acceptance of the offer by the Plaintiff.

Evidence so far led in this suit and the respective statements of Defence particularly, paragraph 3, 4 and 5 of the 4th defendant's statement of defence clearly meant that issues have been joined on these points in the substantive matter. He cited the case of **NIGERIAN AMERICAN BANK LTD VS. ABAYOMI SAMUEL & ANOR (2006) LPELR 11719 (CA)** where the Appellate Court held;

> *"The Court's pronouncement on the non exhibition of the bond allegedly executed by the 1st Respondent as the basis for striking out the name of the 2nd Respondent amount to pronouncement on the substantive suit before it……".*

For the above reasons, and without much ado, all the arguments of the applicants concerning what constitute the main suit is of no moment.

In conclusion therefore, this application lacks in all merit and it is hereby dismissed.

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**S. B. Belgore**
**(Judge) 9-12-20.**