

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.
ON THE 6TH DAY OF OCTOBER, 2020

SUIT NO: FCT/HC/CV/2932/17

BETWEEN:

CHIEF PATRICK OGBONNA -----CLAIMANT/RESPONDENT

AND

<p>1. HON. MINISTER FCT, ABUJA</p> <p>2. Abuja METROPOLITAN MANAGEMENT COUNCIL</p> <p>3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY</p> <p>4. DIRECTOR, RESETTLEMENT & COMPENSATION COMMITTEE.</p>	}	<p>...DEFENDANTS/APPLICANTS</p>
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N.C.EZE for the Plaintiff,.

D.A.N NWOBODO for the Defendants/Applicants

RULING

The Defendants/Applicants filed a notice of Preliminary Objection to the competence of this suit on the following grounds:

- (1) That the court lacks jurisdiction to entertain the reliefs sought by the Plaintiff/Respondent in this suit as presently constituted.
- (2) That the names of legal practitioner who purportedly prepared the originating process is not known on the face of the Writ of Summons and Statement of Claim.

The gravamen of the plaintiff's suit was that the defendants' demolition of his 18 bed room flats at Gwagwa-Karmo was wrongful, illegal and therefore should be compensated.

The defendants/Applicant in the counsel written address formulated two issues for determination to wit:

- (1) Whether this Honourable Court has the jurisdiction to entertain the suit as constituted.
- (2) Whether the suit is statute barred.

The counsel argued that the person who appended his signature on it originating processes is not ascertainable. He submitted that a court process, whether Writ of Summons, Complaint or Statement of claim or defence must be signed and sealed by a named and identifiable legal practitioner. Any court process not signed by a named and identifiable legal practitioner is incompetent, null and void. He relied on the case of **KIDA V. OGUNMOLA (2006) ALL FWLR (PT 327) P. 402 @ 412 PER MUHAMMED JSC. SLB CONSORTIUM LTD V. NNPC (2011) 9 NWLR (PT 1252) 317. MEKIYE & ANOR V. TAJUDEEN & ORS (2012) 15 NWLR (PT 1323) PG 315 @ 338** where the Supreme Court considered the non-signing of the pleading by a legal practitioner whose name was expressed on the process to be an issue of jurisdiction robbing the court of competence to adjudicate on the case. He urged that based on the judicial authorities cited, the court should resolve issue 1 in favour of the Defendants/Applicants.

I have considered the Writ of Summons with the Statement of Claim and all the attached processes taken out by the plaintiff, while it is true and

obvious that names of four counsel were listed in the processes. It is very obvious that the counsel Nzagha Chiadikaobi Eze, whose name appeared as number one in the list and whose seal and stamp was affixed to the processes signed the processes. This is very evident from the signature on the document. Perhaps the only thing that is missing is that the name of the counsel who signed was not ticked.

I agree with the submission of learned counsel to the Plaintiff/Respondent that a process of court is said to be properly signed when it complies with **Section 2(1) and 24 of the Legal Practitioners Act Cap L11 Laws of the Federation of Nigeria which reads "2(1) subject to the provision of this Act, a person shall be entitled to Practice as barrister and Solicitor if and only if his name is on the roll"**

24 "In this Act unless the context otherwise requires the following expressions. Have the meanings hereby assigned to them respectively, that is to say- "legal Practitioners" means a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and a Solicitor, either generally or for the purpose of any particular office or proceedings".

It admits of no controversy or contain that the signature of the person who signed the processes is that of a person qualify to practice as a legal Practitioner. The signature is legible. The argument of Counsel to the defendants/applicant therefore lacks merit and is hereby discountenanced.

On whether the suit is statute barred. The defendant/applicants Counsel submitted in the alternative. He relied on the provisions of Section 6(3) of

the Federal Capital Territory Act and Section 2(a) of the **Public Officers Protection Act LFN 2004** which provides that **“Where any action, prosecution or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any Act or law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority the following provisions shall have effect-:**

(a) The action, prosecution or proceeding shall not be or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury within three months next after the case thereof”.

He submitted that the continuance of action is a principle of law requiring a plaintiff as a matter of obligation to seek prompt remedy for the breach of his right in a Court of Law within the time limited by the law, otherwise his right of action or cause of action becomes unenforceable at the expiration of the period allowed for commencing an action by the law. He referred to the cases of **KASIM VS.NNPC (2013) 10 NWLR (Pt.1361)46@50** **BAKARE VS. NIGERIA RAILWAY CORPORATION (2007)17 NWLR (Pt.1064)606**. He argued that a cause of action matures or arises on a date or from the time when a breach of any duty or act occurs which warrants the person thereby injured or the victim who is adversely affected by such breach to take a .Court action in protection of his legal right that has been breached. That the duration of a right or cause of action conferred on an injured party is limited and does not enure in perpetuity.

That in the instant case, the incident occurred in 2006, which the Writ of Summons was filed on the 18th of September, 2017(Eleven Years after the

cause of action arose) while the law provides that the plaintiff ought to have been taken legal action before 3 months elapsed. And as to whether the defendants are public officers and limitation period for action against public officer applies he relied on the Supreme Court decision in the case of **UNIJOS VS. IKEGWONA (2013) 9NWLR(Pt.1360) 478 @482 per S.S. Alago JSC**, enunciated two conditions precedent to defence created under **Section 2(a)** of the Public Officers Protection Act. That;

a. It must be established that the person against whom the action is commenced is a public officer,

And

b. The act done by the officer in respect of which the action was commenced must be an act done in pursuance or execution or intended execution of any law or any public duty or authority.

That the Act covers both natural and artificial persons. And in the instant case, the 1st, 2nd, 3rd and 4th defendants/applicants who had acted pursuant to their duties as public officers in the demolition exercise acted within the context of the law. He further stated that Section 6(3) of the Federal Capital Territory Act provides for compensation payable for lands in FCT and states thus ***“Any person who claims any right or interest in any land comprised in the Federal Capital Territory shall submit in writing, particulars of his claims to the Executive Secretary on or before the expiration of twelve months from the date of commencement of the Order made under Section 2 of this Act or such longer period as the President may, either generally or in relation to any particular claim or claims, prescribe by notice published in the Federal***

Gazette". He argued that the principal claims /reliefs of the plaintiff centres on compensation. The Director of resettlement and compensation was joined as the 4th defendant/applicant. That the plaintiff did not follow the laid down mandatory step before taking legal action after Eleven (11) years that the cause of action arose. He submitted that such Suit is frivolous and incompetent and urged the Court to so hold.

In response, the plaintiff/Respondent filed a reply to the Preliminary objection on point of law. The plaintiff's Counsel argued that his client's case is an exception to the rule. That in cases of continuance of damage or injury, the Public Officer Protection Act permit an action to be brought on the cessation thereof after three months. That from the Amended Statement of Claim, the Claimant averred that he continued to be deprived of the allocation he was entitled compensation by virtue of the Federal Government intervention. That where allegation of continuance of damage or injury is raised, there is no need for the trial Court to take evidence before determining the case. He relied on the case of **AG of RIVERS STATE VS. AG BAYELSA STATE (2013) 3NWLR (Pt.1340) 1-220**. He further argued that the 2nd, 3rd and 4th applicants are agencies of the government but not public officers under the term public officer as defined in the case of **IBRAHIM VS. JSC (supra)**. That in the instant case, the plaintiff's complaints are against the extortion of money and illegal denial of relocation and compensation as directed by the Federal Government after illegal demolition of the claimant's property of Sixteen bedroom flats without notice. He argued that the Protection afforded public officers under the Public Officer Protection

Act does not apply when land is in issue particularly when the claim of malicious destruction of property, relocation and Compensation are directly in issue. That the limitations Laws prescribes that an action against Land will not die until after Twelve(12) years and that Section 2(3) of the Public Officers Protection Act also clearly excludes Land as an action to be circumscribed by the statute. He urged the Court to discountenance the argument made by Counsel to the defendants/applicants and dismiss the objection.

It is imperative to state that the documents to be examined by a Court when determining whether an action is statute barred or not are the Writ of Summons and the Statement of Claim. The limitations period is determined by looking at the Writ of Summons only to ascertain the alleged date the wrong in question which gave rise to the plaintiff's cause of action was committed and comparing it with the date on which the Writ of Summons and Statement of claim was filed. The main grouse of the plaintiff was on non-payment of compensation and resettlement after the alleged illegal demolition of his 16 bedroom flat by the defendants in 2006.

The plaintiff's action was initiated in 2017, is the action statute barred. For a more focused and clear appreciation, I refer to the cases of **RAHAMANIYYA UNITED (NIG) LTD. VS. MINISTRY OF FCT & 3 ORS.** Where the Court of Appeal held Section 2(a) of the Act is hereby reproduced thus: ***“where any action, prosecution or other proceedings commenced against any person for any act done in particular or execution or intended execution of any Act or Laws or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any***

such Act, Law, duty or authority, the following provisions shall have effect;

- a. ***The action, Prosecution or Proceedings shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of or in case of a continuance of damage or injury within three months next after the ceasing thereof, provides if the action, prosecution or proceedings be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within 3 months after the discharge of such person from prison***". In order that a party may be protected by the provision of Section 2(a) of the Public Officers Protection Act, it has to be established that the party against whom the action was commenced was a public officer and the act commenced in respect of which the action was an act done in pursuance or execution of any law or of any public duty. See **FOKOLADE VS. PUBLIC SERVICE COMMISSION (1993)1 NWLR Pt.273 pg 639 @ 643-644. EKEOGU VS. ALIRI (1990) 1NWLR Pt.126, Pg. 245. A public officer is any person who is directly employed in government public service, civil service or any public agency. See OKORO PALM OIL COY VS. ISERHIERHEN(2001) 6NWLR Pt. 710. Pg 660, EZE VS. OKECHUKWU(2002) 18 NWLR Pt.709 @ Pg 348. The Protection offered by the Public Officer Protection Act covers and protect all public officers that all Civil Servants in their individual capacity and all government bodies, public Institutions, agencies, Ministries and Departments by whatever name called and whether Corporate or unincorporated. See IBRAHIM VS. JUDICIAL SERVICE COMMISSION (1998) 14 NWLR Pt.584**

pg 1. The Act also limits their liability to a three months period from the date the cause of action ceased if it was a continuous act, except where any or other statute has modify the provision such as by enlarging the limitation period to extend beyond three months or where any other limitation specifically applies. The property or otherwise of the act of the defendants is not a relevant consideration for the applicability of the public officer Protection Act. **In CHIGBU VS. TINIMAS (NIG) LTD. 2006, 9NWLR Pt. 986 Page 189 @ 210 OGUNTADE JSC** stated. Thus ***“I do not see that is within our power to dance around the issue. It is not for us to consider whether or not the plaintiffs/respondent have been fairly treated. Our duty is to ascertain the intention of the law maker from the words used. Once we have done that we are duty bound to give effect to it regardless of the consequences”.***

If any action against a public officer or public Institution and organisation is statute barred having not been brought within the period of three months prescribed by the Public Officers Protection Act, there will be no basis for investigating the conduct of the public officer that give rise to the action. The conduct of the defendant as to whether he was malicious or not is irrelevant in determining whether the cause of action is statute barred under Section 2 of the Public Officer Protection Act.

I have gone through the Claim of the plaintiff and all the documents attached. It appears to me that the claim of the plaintiff can be situate with the provisions of **Section 6(3) (4) of the Federal Capital Territory Act.LFN 1990 Cap 503.**

The plaintiff claims to be an indigene of the Federal Capital Territory from his statement of claim when he averred in paragraph 22 ***“The claimant avers also that the defendant further instructed him to pay the sum of Five Thousand Naira only (=N=5,000.00) as indigene task clearance to qualify him for the compensation. The receipt for the acknowledgment of the Revenue collector is hereby pleaded”***. The plaintiff is asking to be compensated when in paragraph ‘K’ of his relief he sought for an Order of the Court directing the defendants to pay to the Claimant a total sum of **Two Hundred and Five Million (sic) Naira (=N=275,000,000.00)**.

The provision of Section 6(3) of the Federal Capital Territory Act states ***“Any person who claims any right or interest in any land comprised in the Federal Capital Territory shall submit in writing particulars of his claims to the Executive Secretary on or before the expiration of twelve months from the date of commencement of the Order made under Section 2 of this Act or such longer period as the President may either generally or in relation to any particular claim or claims, prescribe by notice published in the Federal Gazette”***.

6(4) “No claim for compensation shall be entertained by the authority unless a written notice of the claim in accordance with Section (3) of this Section is served on the authority within the period specified in the said sub-Section.”

A very critical look at the pleadings of the plaintiff shows that his interest in the land where he claimed he built the properties allegedly demolished by the defendants was derived from the natives of the village Gwagwa-Karmo.

The claim for compensation by any person who has a right or interest in land in FCT is reputable by the provision **Section 6(3) (4)** of the Federal Capital Territory Act. The plaintiff here failed to fulfil the mandatory condition precedent stated in **Section 6(3) of the FCT Act**.

Furthermore, when this provision is juxtaposed with Section 2 of the Public Protection Act, it is also evident that the plaintiff's action was not instituted within the time limited by law. Also the 1st -4th defendants are public officers. The issue of whether the defendants' action was malicious or illegal cannot therefore be raised since the plaintiff is out of time to institute the action. It is unfortunate that the plaintiff Claim for compensation is stale and statute barred. And it is hereby dismissed accordingly.

SIGN

**HON. JUDGE
06/10/2020**