

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT WUSE ZONE 2  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU  
ON THE 16<sup>TH</sup> DAY OF DECEMBER 2020  
IN THE MATTER OF APPLICATION BY EMMANUEL AKOR FOR THE ENFORCEMENT  
OF FUNDAMENTAL RIGHT RULES 2009 AND AFRICAN CHARTER ON HUMAN AND  
PEOPLES RIGHT.**

**SUIT NO: FCT/CV/286/2019**

**BETWEEN:**

**EMMANUEL AKOR -----APPLICANT**

**AND**

**ABUJA MUNICIPAL AREA COUNCIL -----RESPONDENT**

*OTI STEVEN for the applicant.*

*Respondent not in Court and not represented.*

**RULING**

By an Originating motion brought pursuant to the provisions of Section 44(1) (A) &(B) of the Federal Republic of Nigeria Constitution 1999, 2009, Article 14 of the African Charter on Human and People’s Rights, Order II Rules 1,2,3 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, the applicant sought for the following reliefs:

(1) A declaration that the compulsory acquisition of the properties of one Boniface Anyi and Daniel Enweani without notice and without compensation by the respondent was illegal, null and void.

(2) A declaration that the compulsory acquisition of the properties of Boniface Anyi and Daniel Enweani without notice and without compensation and the

subsequent reallocation of same to other persons not for public purpose was null, void and of no effect.

(3) An order compelling the respondent to pay the applicant on behalf of the said Boniface Anyi special damages in the sum of **Twelve Million, Three Hundred and Eleven Thousand Naira only (=N=12,311,000)** being the amount used by the said Boniface Anyi to erect the warehouse that was demolished, reacquired by the respondent without compensation by the respondent.

(4) An order compelling the respondent to pay the applicant on behalf of Daniel Enweani special damages in the sum of **Thirty one Million, Six Hundred and Eighty Thousand Nine Hundred and Eighty Naira only (=N=31,680,980)** being the sum used by the said Daniel Enweani to erect the properties demolished by the respondent.

(5) An order of this court directing the respondent to pay the applicant on behalf of the said Boniface Anyi and Daniel Enweani the purchase price of the plots reacquired after that demolition in sum of **Sixty Thousand Naira (=N=60,000), Sixteen Thousand Naira (=N=16,000) & Sixteen Thousand Naira (=N=16,000)** respectively.

(6) An order directing the respondent to pay the applicant interest of ten percent 10% to the above sum or alternatively **Ten Million Naira (=N=10m)** as general damages.

The grounds upon which the reliefs are sought are:

(a) That the demolition of the properties of Boniface Anyi and Daniel Enweani and subsequent re-acquisition of same without compensation is contrary to Section 44 (1) (a) & (b) of 1999 Constitution and is therefore null, void and of no effect.

(b) That the re-acquisition of those plot and without compensation without notice and public purpose was contrary to Articles 14 of the African Charter on Human & People's right.

In support of the application is a 14 paragraph affidavit deposed to by the Emmanuel Akor, the applicant himself, wherein he averred to the following facts:

That he was appointed to act in representative capacity as an applicant to prosecute this fundamental right case by Boniface Anyi and Daniel Enweani who are the allottees of the plots and after the demolition of the structures on them were re-acquired by the respondent without compensation.

That both Boniface Anyi and Daniel Enweani were allocated Plots no WH26, Plot I (WH, plot 25B and plot 26B) respectively by the respondent as shown by the allocation marked as Exhibit A, B, & C & D and that after they were allocated the plots by the respondent, structures were erected on those plots which the respondent demolished without notice and without compensation.

That after the demolition, the respondent re-acquired the plots where it erected new shops without compensation to the said Boniface Anyi and Daniel Enweani.

That the said Boniface Anyi and Daniel erected the warehouse according to specific design and paid all the rates and processing fees. The process fees and rates receipts are attached and marked as Exhibits E and F.

That Daniel Enweani purchased his plots from original allottees namely City Farm, John Dogo & Jezhi who in turn donated power attorney to him to acknowledge the money paid to them. The power of attorney are hereby attached and marked as Exhibit G, H, I.

That after these two allottees erected the warehouse, in 2016 the respondent demolished same with other shops in the market notwithstanding that the structures on those plots were for permanent nature.

That before the demolition, the respondent gave them no notice as the respondent demolished the shop with heavily armed men at the time of demolition.

That after the demolition the respondent promised after it re-acquired the plots, to give the new shops it intended to build on those plots to Boniface Anyi and Daniel Enweani but they never did till date.

That the said Boniface Anyi and Daniel Enweani in the construction of his warehouse spent and purchased materials for the warehouse, the list and the amount spent are as listed in the originating motion and the receipts of the materials purchased by both Boniface Anyi and Daniel Enweani are annexed and marked as Exhibits J,K,L,M,O. The allocation letters, receipts of payments, and Power of Attorney were frontloaded and marked as **Exhibits A to O**.

In compliance with the Rules, a written address was filed and learned counsel to the applicant formulated two (2) issues for determination by the court to wit;

- a. Whether the applicants Right to property was breached by the respondent in the compulsory acquisition of the properties of the applicant without compensation.
- B. Whether where the issue above is in the affirmative, the applicant is entitled to compensation.

The respondents in reply filed a 26 paragraph counter-affidavit deposed by Hauwa Yamla, while the applicant filed a further and better affidavit of 39 paragraphs.

I have keenly gone through the affidavit in support of the application for Enforcement of Fundamental Right of the Applicant, the Counter-affidavit of the respondent and the further and better affidavit of the applicant. It is particularly noted that in paragraph 2 of the affidavit in support of the motion, the applicant averred that he was appointed to act in representative capacity as an applicant to prosecute this fundamental right case by Boniface Anyi and Daniel Enweani who are the allottees of the plots and after the demolition of the structures on them were re-acquired by the respondent without compensation. The applicant apparently has instigated this action in a representative capacity. The law governing an action brought in a representative capacity is Order 13 Rule 13, 14(1)(2).

The provision of Order 13 Rule 13, 14(1) provides:

***“where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested.”***

From the provision of Order 13 Rule 13, 14(1) of the Rules of this Court, a representative action is allowed if there are numerous persons who have common interest in a suit and when it will be impossible to name all of them either as plaintiffs or defendants in the action, one or more of such persons may sue or be sued and the result of the action will be binding on all the parties who are represented notwithstanding that their names are not mentioned on the writ.

Furthermore a person who brings a representative action must show that he has a common interest on the subject matter of the action with those other members of the group. The common interest must be shown in the pleadings and the evidence in support. This view was expressed by the Supreme Court in the case of **EJEZIE V ANUWU (2008) 12 NWLR (PT. 1101) @ 446** where Oguntade JSC held:

***“The Rule of Court permitting representative action is a rule of convenience and as ought not to be treated with any rigidity but a flexible tool of convenience in the administration of justice.”***

The Court stated further;

***“It is settled law that in a representative action persons who are to be represented and the person representing them should have the same interest in the cause or matter. See S. OROGBADE V S. J. M. ONITIJU (1962) AWLR 32.”***

See **IDISE & ORS V WILLIAMS INTERNATIONAL LTD (1995) LPELR 1424 (SC), LAWAL & ORS V KAZEEM & ORS 2018 LPELR 45324 CA, AYINDE & OR V AKANJI & ORS (1988) LPELR 676 SC, UNITY BANK PLC V AKEJI (2018) LPELR 44995(CA).**

The averments contained in the affidavit in support of the application show that the applicant sued for and on behalf of Boniface Anyi and Daniel Enweani whose properties were alleged to have been compulsorily acquired by the respondent. There is nowhere in the entire gamut of the affidavit where the applicant declared that he had a common interest in the suit which he also seeks to protect. The court cannot surmise or speculate on behalf of the applicant on his locus standi to sue on behalf of the said Boniface Anyi and Daniel Enweani. Furthermore the common interest of the applicant and the authorization to sue in a representative capacity on behalf of the persons so stated in the writ must be apparent from the facts stated in the affidavit in support of the originating motion. The authority to sue may be either written or oral; therefore where there is no direct authority to sue on representative capacity or inference from the facts and the circumstances of the case, the applicant is said to lack the locus to sue for and on behalf of persons represented. See **HART V IGBI (1998) LPELR 6430**, where the Court of Appeal held:

***“I shall pause here to note on the high authority of ADEGBITE V LAWAL (1948) 12 WACA 398, the authorization either to sue or to defend in any suit in a representative capacity is given by the other persons represented and interested either in giving or in defending the suit. The question of approval of the authority by the court is another matter.”*** Per Nsofor JCA.

Also on what the court consider in determining whether a plaintiff has locus standi. The Supreme Court in the case of **EZE V P. O. P (2018) LPELR 44907 (SC)** held;

***“Again where a plaintiff’s locus standi to maintain an action is challenged, it is the plaintiff’s claim that determines the objection. If however the action is commenced by an originating summons it’s the averment in the affidavit in support alone that is examined in determining whether or not court is competent to proceed.”***

See **IZENKWE V NNADOZIE 4 WACA 351 @ 353, ADEYEMI V OPEYORI (1976) 9 – WSC 31 @ 51** and **TUKUR V GOVERNMENT OF GONGOLA STATE (1989) LPELR 3272 SC ADESANYA V PRESIDENT OF THE FRN & ANOR (1981) LPELR 147 SC.** From the affidavit in support of the originating motion, the applicant has failed to disclose his locus standi in instituting the instant action.

Furthermore, the applicant cannot be said to be a person whose right has been infringed under the provision of Section 44 (1) of the Constitution of the Federal Republic of Nigeria.

Order 11 Rule 1 is very implicit in its provision that;

***“Any person who alleges that any of the Fundamental Right provided for in the constitution or African Charter on Human and Peoples Right (Ratification and Enforcement Act) and to which he is entitled has been, is being or is likely to be infringed may apply to the court in the state where the infringement occurs or is likely to occur for redress.”***



Order 11 Rule 3 states;

***“An application shall be supported by a statement setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made.”***

Order 11 Rule 4;

***“The affidavit shall be made by the applicant but where the applicant is in custody, or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the applicant, stating that the applicant is unable to depose personally to the affidavit.”***

The persons whose rights are alleged to have been breached are Boniface Anyi and Daniel Enweani. There is no reason adduced by the applicant on why they cannot depose to the affidavit in support of the originating summons particularly.

The depositions of the applicant in the affidavit in support of the Originating Motion are nothing but hearsay. They are not admissible, have no probative value and hereby discountenanced. On the whole I hold that the applicant have not placed sufficient and convincing facts before the court to sustain the instant action. He had not disclosed who he was to the persons whose rights were allegedly breached; he also failed to disclose his interest in the suit, why he has brought the action on their behalf, and why the respondent should if this action succeeds pay the compensation that may accrue to the said persons to him. The

applicant is not a proper party to sue. In totality I hold that this action as constituted is incompetent and it is hereby struck out.

**SIGN**

---

**HON JUDGE**

**16/12/2020**