

**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 16TH DAY OF DECEMBER 2020
IN THE MATTER OF APPLICATION BY ISAAC EJIOFOR FOR THE ENFORCEMENT OF
FUNDAMENTAL RIGHT OF HIS PROPERTY**

SUIT NO: FCT/CV/284/2019

BETWEEN:

ISAAC EJIOFOR-----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 of the Federal Republic of Nigeria Constitution 1999, 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 the applicant without notice and without compensation by the respondent was illegal, null and void.

(2) A declaration that the compulsory acquisition of those properties without notice and without compensation and subsequent reallocation of same to other

person other than the applicant which reallocation was not for public purpose was illegal, null and void.

(3) An order compelling the respondent to pay the applicant the sum of **Seventy Three Million, Eight Hundred and Sixty-Six Thousand Naira (=N=73,866,000.00)** as special damages for the money spent on the properties erected on the plots allocated to him demolished by the respondent for the six structures.

(4) An order compelling the respondent to pay the sum of **One Million and Eight Hundred Thousand Naira (=N=300,000 X 6==N=1.8M)** being the purchase price of each plot at **=N=300,000 each.**

(5) An order directing the respondent to pay the applicant interest on the above sum of 10% or **Ten Million Naira (10m)** as general damages.

The grounds upon which the orders and relief are sought are:-

(a) That the demolition of the properties of the said Isaac Ejiofor and subsequent re-acquisition of the said plots without compensation is contrary to Section 44 (1)

(a) (b) of the 1999 Constitution was illegal, null and void.

(b) That the re-acquisition of the said plots and reallocation of same to other persons without notice and public purpose was contrary to Article 14 of the African Charter on Human & People's right is illegal, null and void.

In support of the application is a 13 paragraph affidavit deposed to by the Isaac Ejiofor, the applicant himself, wherein he averred to the following facts:

That he was given allocations in karu market to erect four huge shops and he also purchased two more allocations from one Ben Nweke, who gave him a Power of

Attorney to reflect the acknowledgement of receipt of amount paid to him. And he erected additional two more shops making a total of six big shops.

That the shops were erected according to specified design by the respondent, and he was required to pay a monthly fee as rates and processing fees from the defendant.

That in 2016 the respondent demolished all six of his shops and other shops in the market notwithstanding that the allocation letter stated that the structures and allocation was permanent in nature and no notice was given as to the demolishing of the shops.

That the respondent came with heavily armed men as at the time they came for demolition.

That the respondent re-acquired the plots of lands after the demolition, but promised them new shops as they intended to erect same on the reacquired plots initially allocated to them.

That the administration which left office in 2016 did not fulfill its promise and they were not reallocated shops nor was any compensation given for the re-acquisition of the property.

That they in the construction and erection of the shops they had expended funds in the purchase of materials.

Documents comprising of allocation letters, receipts of payments, and Power of Attorney were frontloaded and marked as **Exhibits 1 to 13.**

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 applicant's Right to property was breached by the respondent in the compulsory acquisition of the properties of the applicant without compensation.
- b. Whether where the above issue No. A is in the affirmative, the applicant is entitled to compensation.

The arguments in respect of the issues formulated are as contained in the written address, needless repeating them as they form part of the record of the court. It is also worthy of note that the defence did not file any counter affidavit to the application despite service of the Originating Process and the hearing notices on him.

Before I delve into the issues for determination raised by the respective parties, it is pertinent to address whether this matter was properly brought as an application for the Enforcement of fundamental human rights pursuant to Sections 44 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Order II Rules 1, 2, 3 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, and Article 14 of the African Charter on Human and Peoples Right.

It is trite that for a court to assume jurisdiction on an application brought pursuant to the Fundamental Right (enforcement procedure) rules, the reliefs sought by the applicant must be thoroughly examined. See the cases of **ADEKUNLE VS. A.G OGUN STATE (2014) LPELR-22569 (CA) Pages 42-43**

Paragraphs E-G, JIMOH VS. JIMOH (2018) LPELR-43793 (CA) PG. 21-24
PARAGRAPHS C-F.

The provision of Section 44 of the 1999 Constitution (As Amended) provides that ***“No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things.....”***. When an application is brought under the Enforcement of Fundamental Rights Procedure Rules, a condition precedent to the exercise of the court’s jurisdiction should be the main claim and not an ancillary claim. See the case of ***IHEANACHO VS. NPF (2017)12 NWLR (PT 1580) CA 424. Where the court held “that or a claim to qualify as falling under Fundamental Rights (Enforcement Procedure) Rules, it must be clear that the principal relief sought by the applicant is for the enforcement of Fundamental Human Right and not to redress a grievance that is ancillary to the principal relief which is not itself ipso facto a claim of Fundamental Right.”***

The applicant in this instant case claimed that he was allocated four(4) plots of land for the erecting of shops in Karu market by the respondent and he equally went further and purchased 2 more from an original allottee, these shops were demolished by the respondents without notice after they had erected same according to the respondents’ instructions and reallocation promised. Failure to keep that promise led to the instant application and the reliefs sought herein for the enforcement of the applicant’s right. The enforcement of Fundamental Human Right is affidavit based. The court must also examine the facts contained in the affidavit evidence and statement in support of the application whether

such facts disclose reasonable course of action. On the mode of commencement of action on alleged breach of fundamental rights, order 2 Rule 3 enjoins that 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.

To the issues distilled for determination by the applicant's counsel:

ISSUE ONE

Whether the applicant's Right to property was breached by the respondent in the compulsory acquisition of the properties of the applicant without compensation.

One of the rights guaranteed to every citizen under the Constitution is the right to own property. It is therefore trite that no member of the executive can interfere with the liberty or property of a subject except on the condition that he can support the legality of his action before a court of justice. Under the Constitution, the right to property would yield to the demand of public interest for the establishment of public utilities. But the state is under obligation to pay prompt compensation to the individual or individuals whose interest in such property is affected. See the case of **ESUGBAYI ELEKO VS. GOVERNMENT OF NIGERIA (1931) A.C.663**. Section 44 of the 1999 Constitution of the Federal Republic of Nigeria also prescribes conditions precedent for the compulsory acquisition of property or any interest in moveable or immoveable property. Firstly there must be a law to this effect, in other words, no compulsory acquisition of property is possible without a law. Section 318 (1) of the Constitution defines a law as that enacted by

a House of Assembly. Secondly, the law must mention the purpose for which the property is being sought to be acquired. Thirdly, the law must provide for the prompt payment of compensation and Fourthly, there must be a right of access to the person whose property is acquired to move a court, tribunal or body having jurisdiction in that part of the country for determination of his interest in the property and the amount of compensation. See **CHIEF COMMISSIONER EASTERN PROVINCES VS. ONONYE (1944) N.L.R 142.**

The law also provides that before a person's property could be acquired compulsorily for public purpose, certain conditions must be met namely:

(a) A notice of intention to do so must have been served upon him or the occupier or a person interested or upon such persons as were entitled to sell or convey the land, failing by affixing conspicuously on the property;

(b) The notice must be by personal service or by being left at his last known place of abode or business; and

(c) The notice served on him must be published once in the state Gazette, and at least two National daily newspapers circulating in the state. **See the cases PROVOST LACOED VS. EDUN (2004) 6 NWLR (PT 870) 476 SC, A.G. BENDEL STATE VS. AIDEYAN (1989) 4 NWLR (PT 118)646 SC**

In the absence of any statutory provision to the contrary, the issuance of a public notice of acquisition does not immediately vest title to the land in the government, the government acquires title after satisfying the provisions of the Public Land Acquisition Act, which requires that a land certificate should be

obtained as proof of title. **EDUN VS PROVOST, LAGOS STATE COLLEGE OF EDUCATION (LACOED) (1998) 13 NWLR (PT 580) 52@55 CA**

From the unchallenged averments of the applicant, no notice was served on him neither was there any publication, and no compensation has been paid after demolition of the shops even though reallocation was promised after the shops have been rebuilt, but was a promise not kept.

It is trite that by virtue of the Land Use Act 1978, all lands comprises in the territory of each state in the federation is vested in Government of the state, and as such land shall be held in trust and administered for the use and common benefits of all Nigerians. The net result of that is that land holders are not owners but only holders of occupancy rights which may be revoked under certain conditions as have been provided by the law. One of such conditions is for public purposes, however compensation **shall** be paid. The Government cannot acquire land from an individual without adequate compensation.

The respondent's act of demolishing the shops of the applicant in Exhibit 1-6, the allocation papers of the plots issued to the applicant by the respondent and compulsorily relocating same without notice and payment of compensation is contrary to Section 44(1)(a)(b) of the 1999 Constitution of the Federal Republic of Nigeria. I therefore hold that the applicant's right has been breached.

ISSUE TWO or B as contained in the address is for compensation; ***whether the applicant is entitled to compensation.***

There is no doubt that the applicant is entitled to compensation. And as proof of entitlement of the applicant to damages, he has attached photocopies of receipts

marked as Exhibit 14, 15 and 16. The applicant in paragraph 3, 4 and 5 of the Originating Summons is seeking for special and general damages. His claim for special damage is supported by Exhibits 14, 15 and 16 respectively. In an action instituted under the Fundamental Rights Enforcement Procedure Rules, once the court declares that an applicant's fundamental right has been breached, the payment of compensation is ordered by the court immediately. There is no categorization of compensation or damages under the rules. This is unlike under the common law where compensation are particularized or categorized. See **HERITAGE BANK V S & S WIRELESS LTD & ORS (2018) LPELR 46571 CA**. The Court of Appeal held:

"It is trite that once an infringement of fundamental rights is proved or established, the award of Compensation in form of monetary damages whether claimed or not follows, as surely as sunrise in the Tropic (Permit the expression). There is nothing like categorization or particularization of damages in an action for the enforcement of Fundamental Rights vide JIM-JAJA V C. O. P RIVERS STATE (2013) 6 NWLR (PT. 1350) 225 @ 254 Per the lead judgement prepared by Muritala Coomasie JSC thus:

"The appellant's claim is in connection with the breaching of his fundamental rights to his liberty by the respondents."

Where a specific amount is claimed it is for the court to consider the claim and in his opinion, the amount that would justify to compensate the victim of the breach. In this respect the common law principles on the award of damages do not apply to matter brought under the Enforcement of the Fundamental Human Right Procedure as submitted by the learned counsel to the 3rd Respondent. The

procedure for the enforcement of the Fundamental Human Right was specifically promulgated to protect the Nigerian Fundamental Right from abuse and violation by authorities and persons. When a breach of right is proved, the victim is entitled to compensation eve if no specific amount is claimed.”

See **SSS & ORS V INCORPORATED TRUSTEES OF THE PEACE CORPS OF NIGERIA & ORS 2019 LPELR 47274 CA.**

The claim of the applicant as contained in paragraphs 3, 4 and 5 should be redressed by filing a writ of summons. However as stated earlier, the applicant is entitled to compensation to be assessed by the court taking into consideration the circumstances of the case as manifested in the affidavit in support of the application for Enforcement of Fundamental Rights. The acts of the respondents are unconstitutional, illegal, null and void. And I hereby award the sum of Ten Million Naira as compensation for the applicant.

SIGN

**HON JUDGE
16/12/2020**