

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 6TH DECEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/2410/19

BETWEEN:

OLORUNYOMI PHILIP ADEJUMO ----- } **CLAIMANT**
AND

1. HONOURABLE MINISTER FEDERAL CAPITAL TERRITORY }
2. FEDERAL CAPITAL TERRITORY ADMINISTRATION ----- } **DEFENDANTS**
3. **GLORY OF GOD ACADEMY LTD**

RULING ON PRELIMINARY OBJECTION

In a Writ of Summon filed on the 9th of July, 2019 the Plaintiff Olorunyemi Phillip Adejumo sued Glory of God Academy claiming that he is the rightful owner of Plot BDS/382 with file No.: 41550 CAD in Dutse Sagwari Layout, Bwari Area Council, Abuja Plot size 600sqm allocated on the 22nd of February, 2007. That his right is still subsisting. He wants perpetual injunction against the Defendant, its agents, privies, workers, servants from trespassing into the Plot BDS/382 herein after called the Res. That anything on the Res belongs to him. He also wants One Hundred Million Naira

(₦100, 000,000.00) as damages for the trespass against the Defendant.

He initially joined the Federal Capital Territory Minister and Federal Capital Development Authority.

The Defendant entered appearance conditionally and filed a Preliminary Objection on the 20th of February, 2020 stating that the Claimant has no legal right over the Res.

In the Written Address it raised an Issue for determination which is:

“Whether in view of the law in the case of Ona V. Atanda (2000) 5 NWLR (PT. 656) 244 which declared that Customary Right of Occupancy does not exist in the FCT the Claimant has a recognizable legal right to institute this action.”

It submitted that Plaintiff has no legal right to institute this action because he has no recognizable title to confer on him such legal right to seek the reliefs sought in this case. That the document of title which the Plaintiff relies on is a Customary Right of Occupancy which does not exist anywhere in the FCT. He referred to the case of **Ona V. Atanda** where the Court held that:

“By the combine effort of S.49 (i) Land Use Act S.1 (3) FCT Act and S. 261 (2) of the 1999 Constitution as amended, Customary Right of Occupancy does not exist in the FCT.”

It further submitted that the Plaintiff is a holder of a Customary Right of Occupancy as he stated in the paragraph 4 of his Statement of Claim and the annexure off the offer of terms of Grant/Conveyance of Approval attached to this claim. That it is clearly stated in the Annexure thus:

“I am pleased to convey Approval of the Customary Right of Occupancy.”

It submitted that from the pleading of the Plaintiff it is clear that he holds a Customary Right of Occupancy which does not exist in the FCT. That by virtue of the decision in the case of **Onah V. Atanda** what exists in the FCT is only Statutory Right of Occupancy. That by that decision, Customary Right of Occupancy does not exist in the FCT. That since the Plaintiff has not established the recognizable legal title he does not have legal right to institute this action.

That the root of the Plaintiff's title is worthless and incapable of conferring any legal right to institute this action. That none establishment of legal right by Claimant has robed Court of its jurisdiction to entertain this matter.

That legal right is synclines with Locus Standi in that where there is no Locus Standi; there will be no right to sue. The relied on the following cases:

A-G Akwa Ibom V. Essien
(2004) 7 NWLR (PT. 872) 288 @ 320

Nnadi V. Okoro

(1998) 1 NWLR (PT. 535) 573 Paragraph D – E

That since the Plaintiff claim is incompetent because of lack of Locus Standi the Court will have no jurisdiction to entertain the action. He urged the Court to so hold. He referred to the case of:

UBN V. Ntuk

(2003) 16 NWLR (PT. 845) 183 @ 205

He urged Court to dismiss the Suit and uphold the Preliminary Objection and award punitive cost against the Defendant.

Upon receipt of the Preliminary Objection the Claimant filed a 4 paragraphs Counter Affidavit on the 12th of May, 2020 in opposition to the Preliminary Objection.

The Plaintiff submitted that it has a legal right to institute this action, the subject matter is within the jurisdiction of this Court, the claims are within the jurisdiction of the Court too, the Suit is properly instituted, the Court also properly constituted, Plaintiff has better title to the exclusion of other persons.

The Defendant has not filed any Statement of Defence or Counter Claim to challenge the Suit of the Plaintiff and that the Preliminary Objection is brought in bad faith and is contrary to Order FCT High Court Rule 2018 and should be dismissed

Please note that the Defendant had filed its Statement of Defence and Counter Claim subsequently on the 5th of July, 2020 after the Plaintiff had responded to the Preliminary Objection and before the Preliminary

Objection was heard. In the Counter Claim the Defendant claimed the following:

- (1) Declaration that the Defendant is the rightful owner of the said Plot No.: BDS/382 measuring 600sqm at Sagwari Dutse Alhaji having acquired the title legally from original Allottee – Aruwa Mohammed.**

- (2) Declaration that any other Right of Occupancy subsequently granted to the Claimant or any other person or authority in respect of the Res after the Defendant/Counter Claimant is illegal, null and void and of no effect.**

- (3) Perpetual Injunction restraining the Claimant whether by himself or his servant, Agent, Privies or person claiming through him from trespassing into the said Res or interfering with the Defendant/Counter Claimant's Right and interest in the Res.**

- (4) Two Hundred Million Naira (₦200,000,000.00) only as damages for bringing the Defendant/Counter Claimant without a valid recognizable legal title, the expenses incurred in engaging the services of a Legal Practitioner and for filing the Processes.**

COURT:

The main and only ground of the Preliminary Objection is that the Plaintiff has no legal right to institute the action and that the Court has no jurisdiction to determine the Suit.

Once a party – the Plaintiff is able to show that his Right is in danger of being infringed it is said that he has a right to sue in an action. Once a party discloses in his Statement of Claim that he has sufficient legal interest in a subject matter and had shown in his claim how such interest arose, such party is said to have legal interest on the Res and in the Res and has right to maintain an action in Court. This is what the Court hold in the following cases:

Fawehuni V. Akilu
(1987) 4 NWLR (PT.67) 797

Adesanya V. The President
(1981) 2 NCLR 358

Ogbuechi V. Gov. Imo State
(1995) 9 NWLR (PT. 417) 53

P.M Limited V. The M.V Dancing Sisters
(2012) 4 NWLR 169

So once a party shows that his right and obligation has been infringed, it is said that he has a legal right to sue.

The Defendant/Counter Claimant had stated that the Plaintiff has no legal right to institute this action. This

means that the Plaintiff's action is not justiciable and there is no dispute between the Plaintiff and Defendant according to the Defendant.

*By the Black's Law Dictionary 9th Edition Page 1348
Legal Right means*

- 1. Right created or recognized by Law.**
- 2. Right recognized under common Law Courts.**
- 3. Capacity of assertion a legally recognized claim against one with a correlative duty to act.**

According to the same dictionary Real Right is:

Right that is connected with a thing rather the person

The Plaintiff in this case has brought this action against the alleged trespass by Defendant. He claims that he is the owner of the Res same having been allocated to him sometime in 2007. That he has exclusive ownership of same and has enjoyed same until the Defendant trespassed. He attached paper in support of the claim. The Defendant filed this Preliminary Objection challenging the claim and Counter Claim against the Plaintiff saying that the Plaintiff has no legal right.

A closer look at the facts in support of the Preliminary Objection and the submission in the Written Address are discloser that the submission were as if it is meant to the determination of the issue in dispute in the main rather than in the Preliminary Objection.

It is imperative to state that in any Preliminary Objection the Court is called upon to determine the Preliminary issue and not to delve into analyzing the main issue in dispute. Once determination of a Preliminary Objection will occasion the determination of the main issue in dispute the Court will not go into it. The Court will rather dismiss the Preliminary Objection and go into the Hearing of the main issue.

In this case, starting from the issue for determination raised by the Defendant calling on Court to determine the Preliminary Objection by analyzing the decision of the Court in the case of Onah V. Atanda supra, I clearly shows that the issue is beyond Preliminary matter. There is no how the Court will determine whether or not Plaintiff has legal right to institute this case without analyzing the evidence and considering the fact in the Statement of Claim and the Counter Claim too.

From all indication the claim of the Plaintiff is justiciable. There is also a dispute between the parties which is the owner of the Res and allegation of trespass.

Based on all the above, this Court holds that there is a legal right which is allegedly trespassed on and there is a need to determine that issue.

The Res is within the territorial jurisdiction of this Court. The parties are also within jurisdiction. This Court therefore has the jurisdiction to entertain the Suit because the Plaintiff has a legal right which the claims is been trespassed on.

After all parties are heard the Court can now make its pronouncement and must have also analyzed the case of Onah V. Atanda. The analysis cannot come at this Preliminary stage.

This Court therefore holds that the Preliminary Objection is unmeritorious and is therefore **DISMISSED.**

The Court will on the next adjourned date go into Hearing of the Main Suit.

This is the Ruling of this Court.

Delivered today the __ day of _____ 2020 by me.

K.N. OGBONNAYA
HON. JUDGE