IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS TUESDAY, THE 13TH DAY OF OCTOBER, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/2243/10
MOTION NO: M/8316/2020

BETWEEN:

1. STYCON PETROLEUM (NIG) LTD
2. ALHAJI ABDULMUNAF YUNUSA } **.....PLAINTIFFS**

AND

1. LIZA COMMERCIAL ENTERPRISES LIIMTED
2. MR SAEED ALI JAMAL
3. MRS SAEED ALI JAMAL
4. THE HON. MINISTER OF THE FCT
5. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)
6. COMMISSIONER OF POLICE FCT, ABUJA } **..DEFENDANTS**

RULING

By a motion on notice dated 6th July, 2020 and filed same date at the Court's Registry, the Plaintiffs/Applicants seek for the following reliefs:

1. **An Order of this Honourable Court directing a visit to the locus in quo for the inspection of the property subject matter of this suit.**

2. **And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.**

GROUNDS UPON WHICH THE APPLICATION IS BROUGHT ARE:

1. **That parties have joined issues and both the plaintiffs as well as the 1st – 5th Defendants have closed their case having led evidence in support of their respective positions.**

2. **That for the just determination of this suit, it is necessary for the court to direct visit to locus in quo in other to properly evaluate the evidence before the court.**

The application is supported by a six (6) paragraphs and a brief written address in which one issue was raised as arising for determination to wit:

"Whether this Honourable Court may grant this Application?"

Submissions were made which forms part of the Record of Court to the effect that the court has the power under **Section 127 of the Evidence Act** to direct a visit to the locus in quo and the principles governing the exercise were then highlighted. The case of **Shekse V. Planshak & ors (2006) LPELR – 3042 (SC)** was cited. It was then contended that the averments in the affidavit in support provides sufficient basis to allow for the grant of the application.

At the hearing, counsel to the Applicants relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

The 1st to 3rd Defendants in opposition filed a nineteen (19) paragraphs counter-affidavit and a written address in which two issues were raised with issue one been rather lengthy and verbose as follows:

ISSUE ONE

Whether there is any doubt on the mind of this Honourable Court as to the accuracy of any piece of evidence before the court or ambiguities or conflict in evidence in respect of physical features to warrant a visit to the locus in quo in a bit t clear such doubt, ambiguity or resolve such conflict by physical inspection of the subject matter of this suit.

ISSUE TWO

Whether motion on notice with Motion No. M/8314/2020 brought by the Plaintiffs/Applicants is not an indirect invitation of the court to re-open the case of the Plaintiffs/Applicants which had already been closed.

Submissions were equally made on the two issues above which forms part of the Records of court. The substance of the submissions particularly relating to the fundamental question of whether the court should visit the locus in quo is that there is nothing on the affidavit of Applicants providing sufficient grounds to allow for a grant of the application on the principles referred to and cited by Applicants counsel in the **Shekse V Planshak & ors case (supra)**. The point was made that parties have effectively concluded their cases, final addresses filed and the matter is simply now for adoption. That by the nature of the case or claims made by Plaintiffs/Applicants and the response by Defendants, that there is no doubt or conflict as to the accuracy of any piece of evidence led by parties in this case to warrant a visit to the locus-in-quo.

It was finally submitted that the extant application is simply an attempt by the Applicants to revisit their earlier application to re-open their case which the court did not grant. That to grant this application will only allow plaintiff to lead further additional evidence which will prejudice the defendants.

At the hearing, counsel to the 1st- 3rd defendants similarly relied on the paragraphs of the counter-affidavit and adopted the submissions in their written address in urging the court to refuse the application.

On the part of 4th and 5th defendants, they also filed a rather lengthy eight (8) paragraphs counter-affidavit with a written address in which one issue was raised as arising for determination as follows:

"Whether the Plaintiffs/Applicants have made out a case for a visit to the locus in quo for the inspection of the property?"

Submissions were equally made which forms part of the Records of Court. The substance of the submissions is that while the court has a discretion under Section 127 of the Evidence Act to grant the application for a visit to the locus in quo, that there has to be valid grounds or basis for it. The case of **Danjuma V Nasiru & Anor (2015) LPELR – 25922 (CA)** was cited. That in this case, the applicants on

their affidavit have failed woefully to make out a case for such visitation as there is absolutely no dispute or conflict as to the accuracy of any piece of evidence that would require a visitation to resolve. That the case made out by Applicants is clear with respect to the disputed plots and that it is their duty to prove with a degree of certainty the land they claim. The cases of **Markus Ukargbu & Ors V. Mark Nwololo (2009) 3 NWLR (pt.1127) 194.**

It was finally pointed out that this is a 2010 matter and that the extant application is intended to further delay the conclusion of the case which is now at the stage of adoption of final addresses.

At the hearing, counsel to the 4th and 5th Defendants/Respondents equally relied on the paragraphs of their counter-affidavit and adopted the submissions in the written address in urging the court to refuse the application.

I have carefully considered the submissions on both sides of the aisle and the issue to be resolved falls with a narrow legal compass with fairly settled principles and that is simply whether the court should grant the application for the visit to the locus-in-quo.

The grant of an application of this nature involves the exercise of the courts discretion; a discretion obviously to be exercised judicially and judiciously predicated on cogent facts been furnished. This is borne out by the clear provision of **Section 127(1) (b) of the Evidence Act** which provides thus:

"127. (1)If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit - …

(b) inspect any moveable or immovable property the inspection of which may be material to the proper determination of the question in dispute."

The above provisions appear to me clear and unambiguous. The provisions provides the clear remit that the court may if it thinks fit order for inspection of any movable or immovable property, the inspection of which may be material to the proper determination of the question(s) in dispute.

The Application is therefore not granted as a matter of course or on whimsical grounds or indeed on no grounds at all. There must be sufficient facts or template

supplied by the Applicant putting the court in commanding height to grant the Application.

In this case of **Shekse V Planshek & ors (supra),** relied on by all counsel in the matter, the Supreme Court streamlined clearly the principles governing the visitation to a locus-in-quo in these instructive terms:

"**I think it is necessary to state the general principle of visit to or inspection of locus in quo. These are (1) there is no rule of law which determines at the stage in a trial a visit of inspection must be made. See Ejidike Ors V Obiora (1951)13 WACA page 270 at page 273 (2) A court should undertake a visit to the locus in quo where such a visit will clear a doubt as to the accuracy of piece of evidence when such evidence is in conflict with another evidence. See Seismograph Services (Nig.) Ltd V Ogbeni (1974) 6 S.C pg119; (1974)1 All NLR (pt.1) pg.1 pg.104 (3) Where there are two conflicting evidence adduced by parties to a case; it is necessary to visit the locus in – quo if such a visit can resolve the conflict in the evidence. See Seismograph Services (Nig.) Ltd V. Akporovo (1974) 6 S.C Pg119 (4) Where a trial judge makes a visit to locus in quo, it is not proper for him to treat his perception at the scene as a finding of fact without evidence of perception being given by a witness either at the locus or later in court after the inspection. See Seismograph Services (Nig.) Ltd V. Onokpasa (1974) 6 S.C. Pg119. (5) On a visit to locus in quo, it is necessary for the trial judge to make a record in the course of the proceedings of what transpires at the scene. However, if the trial judge failed to make record but made statement in his judgment about the visit, such statement would be taken as accurate of what happened and therefore final, unless of course the contrary can be established by the party that impugns the record. See Maji V. Shafi (1965) WACA Pg35 Bello V. Kassim (1969) 1 N.W.L.R Pg.148. (6) Where a visit is made to a locus in quo evidence of witness can be received at the scene or in court later, but the parties in that case must be given opportunity of cross-examining the witness and commenting on the evidence."**

The above is clear.

Before dealing with whether the Applicants have made a case for the visitation, let me quickly address the point made by all Respondents that the Application is undermined abinitio, because it was brought at a very late stage after addresses

have been filed and the case was for adoption. The simple answer here is that there is no sacrosanct point or threshold at which an application for visitation to the locus must necessarily be made. Indeed as the Apex Court made clear above, there is no rule of law which determines at what stage a visit to the locus must be made. The visitation is largely determined by the justice and fairness of the application; the contested facts streamlined in the pleadings and most importantly the nature of the evidence led at trial. Where there are doubts or conflicts in evidence or issues raised with respect to accuracy of a piece of evidence and a visitation will help resolve such doubt or conflict, then a visit may be undertaken, notwithstanding the late stage it was brought or filed.

Now back to whether the Applicants made a good case for the visitation. We take our bearing from relevant paragraphs of the affidavit in support as follows:

"5. That I was informed by A.M. Ma'aji Esq. The lead counsel handling this matter sometime on 3rd day of July, 2020 in our office at A.M. Ma'aji & Partners at No. 1, Mopol Junction, Keffi Road, Nyanya, Abuja, at the Hour of 12:00 Noon of the following facts which I verily believe to be true as follows:

a. **That the subject matter of this suit is Plot No. 193 adjoining plot No. 192 located within Cadastral Zone A04 Asokoro District Abuja.**

b. **That parties have joined issues in this case.**

c. **That evidence was led in this matter by both parties in support of their respective positions.**

d. **That the court needs to evaluate the evidence put before it by all the parties.**

e. **That for proper determination of issues in this case, there is the need for this Honourable Court to direct a visit to the locus in quo for inspection of the property subject matter of this suit.**

f. **That granting this Application will serve the cause of justice.**

g. That it is in the interest of justice that this application be granted as the Respondents will not in any way be prejudiced."

I have read the above averments again and again and it is difficult to situate any cogent reason(s) within the context of the principles highlighted in the decision of the Supreme Court above that would allow for a grant of the Application.

There is absolutely nothing made out by Applicants in their affidavit particularly in the context of the dispute precisely streamlined on the pleadings and evidence led that shows that there is doubt as to the accuracy of any piece of evidence or indeed a conflict about certain aspects of the oral testimonies which a visit to the locus might clear. It is the affidavit filed in support of an application that should show or disclose facts to support and put the court in a clear position to grant the Relief(s) sought on the motion paper. It is not a matter for address of counsel however well articulated. The contention in paragraph 5(g) of the affidavit that a visitation will enable the court evaluate evidence is not a valid legal reason for a visit to the locus.

The duty of court to evaluate evidence and reach a fair decision at the end of trial has nothing to do with visit to the locus-in-quo. With or without the visit the court will do its duty on the basis of the pleadings and the quality of the evidence led in proof of the contested assertions. To the extent that there is absolutely no doubt as to the accuracy of a piece of evidence or that a piece of evidence conflicts with another, and a visit will help resolve such conflict, then a visitation to the locus will essentially then be a redundant exercise with no utility value.

The land in dispute and the subdivision said to have been undertaken is known to the parties. There is equally no issue joined with respect to the features so one really wonders at the value of the present call for a visit to the locus-in-quo.

The point must be underscored and I had earlier alluded to it that no court visits the locus for simply sight seeing or the fun of it or to even while away precious judicial time. See **Niger Construction Ltd V. Okugbeni (1987) LPELR – 1993 (SC); Marcus Ukaegbu & ors V. Mark Nwololo (2009) 3 NWLR (pt.1127) 194; Olusani V Oshasona (1992) 6 SCNJ 74 at 88**.

Circumstances must be circumscribed **clearly in the affidavit** showing the necessity for such a visit. Where that is not done as in this case, the implication is

that no materials was furnished to enable the court judicially and judiciously consider and situate whether the application has both factual and legal validity.

On the whole, I have not been persuaded that this Application has merit. The Application accordingly fails and it is hereby dismissed.

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Hon. Justice A. I. Kutigi

Appearances:

1. **Ado Muhammad Ma'aji, Esq. for the Plaintiffs/Applicants.**

2. **A.U. Umoso Esq., with J.C. Adediran (Mrs.) for the 1st – 3rd Defendants/Respondents.**

3. **Bamidele O.F. (Mrs.) for the 4th and 5th Defendants/Respondents.**