

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO.11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O.A MUSA**

SUIT NO: FCT/HC/CV/2165/2018

BETWEEN:

JAMES OBETTA ----- CLAIMANT/RESPONDENT

AND

BWARI AREA COUNCIL ----- DEFENDANT/APPLICANT

RULING

DELIVERED ON THE 19TH MARCH, 2021

This is a preliminary objection filed by the defendant against the claimant. The main plank of the preliminary objection are two pronged namely:-

- a. That the claimant suit is statue barred having been caught up by section 2 (a) of the public officer protection Act in that the suit was commenced outside the three (3) months limitation period allowed by the Act.
- b. That the matter relates to and/or deals with a claim for insurance under the insurance Act.

Upon being served with the preliminary objection the claimant filed an eleven (11) paragraphs affidavit together with a written address just as the defendant had filed a ten (10) paragraphs affidavit and a written address. The defendant also file a reply on point law. When the matter came up on 6th October, 2020 the counsel to the parties adopt their written addresses in support of their various case.

I have carefully read all the processes filed in this case by the parties as well as listened to counsel argued the case for their respective parties. As I said earlier, this preliminary objection is challenging the jurisdiction of court to entertain the claimant case. It is note worthy that jurisdiction is the life wire and once the jurisdiction of the court is challenge, the court must decide on it at the earliest opportunity before taking any further steps.

This because where a court lacks the jurisdiction to entertain a matter, the proceeding and the decision reach therein by the court is a nullity no matter how well the proceeding was conducted see the case of JERIC NIG LTD V. U.B.N Plc (2000) 15 NWLR (Pt.691) 447. KATTO V. C.B.N (1991) 9 NWLR (Pt.214) 126. Similarly a court must be satisfied that its jurisdiction is well actuated before it.

To determine that the court has jurisdiction to entertain a matter the court must ensure as follows:-

- a. It is properly constituted as regards numbers and qualifications of members of the bench and no member is disqualified for one reason or the other.
- b. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction.
- c. The case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction see the case of TUKKUR V.GOV. GONGOLA STATE (1989) 4 NWLR (Pt117) 517. To determine if this court has the jurisdiction to entertain the claimant case it is the claimant

statement of claim where one has been filed that the court will refer to. In the instant case the defendant has argued that the case of the claimant is statute barred as same was filed outside the three months window allowed by the section 2 (a) public officers protection Act the said section provides as follows:-

“2. Where any action, prosecution or other proceeding is commenced against any person for any act done pursuance or execution or any intended execution of any Act or law 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, following provisions shall have effect.

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

This section provides complete protection to any act included on the section against a public officer if the action or suit is brought outside the three months window. In other word where a litigant perceives that it has a viable claim against a public officer on matters touching on the several acts of the public officer mention in the section, such claimant or litigant is to bring the action against such public officer within three months of the act. Where a successful pleas of this section is made by a defendant it will serve effectively to terminate the claimant’s claim and pull the jurisdictional rug from under the feet of the court thus rubbing it of its jurisdictional vires.

The claimant on the other hand has argued that the claim of the claimant is not statute barred and that it falls within the exception to section 2 (2) of the public officers protection Act. The claimant has call in aid of this submission, the case of F.G.N Vs. ZEBRA ENERGY LTD (2002) 18 NWLR (Pt.798) 162 at 196 cited with approval in the case Bureau of Public Enterprises V. Reinsurance Acquisition Group LTD & Ors (2008) LPELR C.A/A/195/m/05. The Supreme Court in F G N V. Zebra Energy LTD & Ors (Supra) held as follows:

“the provision of the public officers protection law are not absolute. The provisions do not apply in actions for recovery of land, breaches of contract, claims for work and labour done. See Okeke V. Baba (2000) 3. Soule V. L.E.D.B (1965) L.I.R 118. Salako V. L.E.D.B (1953) 20 NLR 169. The public officers protection Act was not intended by the legislature to apply to contract. The law does not apply in cases of recovery of land, breaches of contract or for claims for work and labour done”

Turning to the claim of the claimants I observe that the claim was filed on 22nd July, 2018 from the averment in the statement of claim the fire incidence that raised down the Bwari Market occurred on 25th December, 2017. Looking at the two dates, the claimant suit was filed well over three months after the occurrence of the fire incidence but the graverment of the case is not the fire incidence perse.

The nadir of the claimant complaint is located in the announcement of the chairman of the defendant in Revoking the allocation of the claimant. The claimant did not indicate in its statement of claim the date on which the said announcement was made. It is thus difficult to

say with precision when the revocation of the claimant allocation took place.

I have gone through all the documents filed by the parties but I failed to find a precise date on which this statement was made. And there is no document annexed to show any revocation of the claimant's allocation. In determining a preliminary objection of this nature, the court is always careful not to delve into the real issue in litigation.

The court cannot speculate as to the precise date this self same announcement was made by the defendant chairman. The absence of the date has deprived the court the essential element in calculating the time frame and arriving at a precise date on which the right of action of the claimant was extinguished by section 2 (2) of the public officers protection Act.

In the light of this therefore I hold that the answer to this question can only be elucidated by hard core evidence in a full plenary trial. I shall now turn to the second limb to the preliminary objection of the defendant. This limb has argued by the defendant is to the effect that the case of the claimant relates to a claim in insurance under the insurance Act and that been so, the court which is clothed with the Jurisdiction to try the case is the Federal High Court.

According to the defendant the claim of the claimant are located in paragraphs 20, 33, 44, 51, 52, 61 and 64 of the claimant statement of claim that going through this paragraphs it will be noted that the claimant's claim is substantially predicated on the issue of insurance counsel relied on section 251 (1) (S) of the 1999 constitution as

Amended and section 102 of the insurance Act 2003 and argued that the combine effect of the two laws is that only the Federal High Court that has Jurisdiction to try the claimant's claim.

He further argue that by section 93 (1) & (2) of the insurance Act place the responsibility of insuring all Government on the National Insurance Corporation of Nigeria and as such the defendant is not a proper party to be sued in this suit. On the other hand the claimant had argued that the claim of the claimant is fundamentally predicated on a simple contract and the tort of negligent.

He cited several authorities to buttress his submission and urge the court to hold that the Jurisdiction of this court extend to entertaining the claimant's case. He further submitted that because there is a privity of contract between the defendant and the claimant in respect to the Insurance, the defendant is a proper party in the suit.

Looking at the claim of the claimant, I am of the view that it revolves not strictly on a claim for the enforcement of an Insurance contract. The claimant's claim as I understand it and as can be glean from the relief therein touches on breach of contract and negligence. There is nothing on the face of the claimant's claim suggesting that it is claiming the proceeds of an Insurance contract.

Rather the complaint of the claimant is that the defendant ought to have Insured the market and as such the claimant is demanding from the defendant a disclosure of the details/particulars of the said Insurance contract. This by no stretch of imagination falls within the

purview of matters covered by section 251 (1) (S) of the 1999 constitution as Amended or section 102 of the Insurance Act.

In the light of this, I hold that this court has the Jurisdiction to entertain the claimant's claim. I also hold that the defendant is a proper party to be sued in this suit. In the final analysis this court finds that the application of the defendant is unmeritorious and ought to be refused. The defendant preliminary objection is hereby refused as lacking in merit, same is hereby dismissed.

APPEARANCE

Vivian Akowei Esq. for the Claimant/Respondet.

Defendant not in court.

Sign

Hon. Judge

19/03/2021