

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 27TH DAY OF MAY, 2019.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/1143/18
MOTION NO: FCT/HC/M/1024/16

BETWEEN:

CHESS PUB NIGERIA LIMITED:.....CLAIMANT/RESPONDENT

AND

- | | | |
|--|---|---------------------------|
| 1) AIRWAVE NIGERIA LIMITED | } | :....DEFENDANTS/OBJECTORS |
| 2) DR. ISDON CHINEDU IWUH | | |
| 3) GUARANTY TRUST BANK PLC | } | :..DEFENDANTS/RESPONDENTS |
| 4) MRS. JULIET AGUNIADE
<i>(Trading under the name and style of GLASS
HOUSE CANDY SHOP & MINIMART)</i> | | |
| 5) IHS NIGERIA LIMITED. | | |

Steven E. Akharam for the Plaintiff.
Stan Dioka for the 1st and 2nd Defendants.
TofiSese holding the brief of MasyAcho for the 5th Defendant.

RULING.

This suit is a claim or declaration and injunction against the Defendants to wit:

- i) A declaration that the various Defendants acts of entry from Septmebre, 2013 to 19th January, 2018 and the continued stay of the Defendants in the Graden Situate at pack No. 178B A01 Agwu close, Area 3 Garki FCT, Abuja, which has remained in the lawful possession of the Claimant, without Claimants permission and lawful authority and against all Claimants proteste warning and complain against the Defendants amount to

trespass on the property in issue and therefore unlawful.

- ii) An order of this Court compelling the Defendants to vacate the Claimant's garden in issue, situate at and known as Park No. 178B Ao1, Agwu close, Area 3 Garki FCT, Abuja with immediate effect.
- iii) The sum of N100,000,000 (One Hundred Million Naira) against the Defendants as damages for trespass.
- iv) Injunction restraining the Defendants, their agents, servants, privies, assigns or any person claiming through them in trust for them from further trespassing into Claimants Garden situate at, and known as Park No. 178B Ao1, Agwu close, Area 3 Garki FCT, Abuja, save by lawful means and/or by order of Court of competent jurisdiction.
- v) 10% interest per annum on the Judgment sum from the date of Judgment until final liquidation.

IN THE ALTERNATIVE:

- i) A declaration that the various acts of the 1st and 2nd Defendants in unlawfully letting in the 3rd, 4th and 5th Defendants into Claimants Garden between September 2013 to the 19th Januray, 2018, and the continued trespass of the Defendants in the said Claimants Garden situate at, and known as Park No. 178B Ao1, Agwu close, Area 3 Garki FCT, Abuja, which has remained in the lawful possession of the Claimant, without Claimant's permission and lawful authority and against all Claimant's protest, warning and complains against the Defendants amount to a breach of the fundamental terms of the Claimant's right to the enjoyment of peaceful and quiet possession of the demised Garden contained in Claimant's leasehold

contract with the 1st and 2nd Defendant dated the 5th day of May, 2014.

- ii) An order of this Court compelling the Defendants to vacate the Claimant's Garden in issue, situate at, and known as Park No. 178B Ao1, Agwu close, Area 3 Garki FCT, Abuja, with immediate effect.
- iii) The sum of N41,312,543.50 (Forty One Million, Three Hundred and Twelve Thousand, Five Hundred and Forty-Three Naira, Fifty Kobo) against the 1st and 2nd Defendants as special damages for breach of the leasehold contract between the Claimant and the 1st and 2nd Defendants.
- iv) The sum of N100,000,000 (One Hundred Million Naira) against the 1st and 2nd Defendants being general and exemplary damages for breach of the leasehold contract between the Claimant and the 1st and 2nd Defendants.
- v) 10% interest per annum on the judgment sum from the date of judgment until final liquidation.

The 1st and 2nd Defendants filed a Notice of Preliminary Objection:

FOR AN ORDER of the Honourable Court striking or dismissing the Claimants claim for want of jurisdiction on the following eight grounds that:

- i. By virtue of Section 2(b) of the District Courts (Increase in jurisdiction of District Judges) Order 2014, it is the Chief District Judge I and II and the Senior District Judge I and II as well as the district judge I that have and exercise jurisdiction in all suits between landlord and tenant where the annual value of rent of the property in issue does not exceed Five Million Naira (N5,000,000).

- ii. From the process before this Honourable Court the Claimant is the tenant of the 1st Defendant over the subject property, Park No. 178B Ao1, Agwu close, Area 3 Garki FCT, Abuja, and the annual rental value of the property is N3,000,000 (Three Million Naira).
- iii. The subject property, is the subject matter of an earlier Suit No. CV/029/2018 between Airwave Nigeria Limited (the 1st Defendant herein) vs. Chess Pub Nigeria Limited (the Claimant herein pending before an FCT Senior District Magistrate Court).
- iv. The suit before the District Court is part heard and the Claimant, as Defendant thereto, has filed its defence to the suit and therein raised issues and allegation of facts equally arising for determination in this suit.
- v. In the said suit before the District Court, the 1st Defendants herein, seeks for the recovery of the possession of the subjects property following its determination of the lease Agreement upon which the Plaintiff herein predicates the present suit.
- vi. Entertaining this suit liable to set this Honourable Court on a collision course with the District Court which is presently seised of Suit No. CV/029/2017 seeking, inter alia, an order ejecting the Claimant from the subject property.
- vii. There is likelihood of this Honourable Court and the District Court arriving at conflicting judgments and or finding of facts if this Honourable Court proceeds to entertain this matter predicated on substantiating the same allegation of facts in the Suit No. CV/029/2017 which has already proceeded to trial.
- viii. The present suit is informed by malice and brought in bad faith to irritate, annoy and harass the Defendants and also frustrate the efficient and effective administration of justice

in the earlier suit of the 1st Defendant pending before the district court.

The objection is supported by a 9 paragraph affidavit and attached are exhibits;

- 1) Exhibit AW1: A copy of the said Notice of termination dated the 3rd day of November, 2017.
- 2) Exhibit AW2: A copy of the Notice of Intention to apply to court to recover possession issued to the Claimant on the 6th December, 2019.
- 3) Exhibit AW3: A copy of the Application for plaint dated 12th February, 2018.
- 4) Exhibit AW4 and AW4B: Copies of the Defendants statement on oath of ChineduOkorie filed at the District Court Registry on 28th February, 2018.

The 1st and 2nd Defendants also filed a written address in support of the preliminary objection challenging the competency of the present suit for want of jurisdiction on brief statement of facts.

The issues for determination are:

- 1) Whether this Honourable Court lacks the requisite jurisdiction to entertain this suit in view of the express and unequivocal provision of Section 2(b) of the District Courts (increase in jurisdiction of district judges) order 2014.
- 2) Whether having regards to the fact and circumstances of this case the Claimant's suit constitutes an abuse of Court process.

The learned counsel argued that jurisdiction is the live blood of any adjudication without which no proceeding, however brilliantly conducted by the Court or tribunal can be valid.

Without jurisdiction the whole trial or proceeding of a Court is a nullity learned counsel relied on the case of **IkediOhakim v. Chief Martin Aqbaso&Ors (2010) LPELR 2359 (SC) at pp.25-26 paras E-A.** He argued that what constitutes the vital ingredients of jurisdiction are encapsulated in the case of **Mnokolu v. Nkemdilim (1962) 2 SCNLR 341.**

He argued, for avoidance of doubt, Section (2)(b) of the said 2014 order provides that;

“In all suits between landlord and tenant for possession of any land or house claimed under agreement or refused to be delivered up, where the annual value rent does not exceed Five Million Naira (N5,000,000) in the case of Chief District Judge I, Four Million Naira (N4,000,000) in the case of Chief District Judge II, Three Million Naira (N3,000,000) in the case of Senior District Judge I, Two Million Naira (N2,000,000) in the case of Senior District Judge II and One Million Naira (N1,000,000) in the case of District Judge I.”

He argued that the law is since settled that the jurisdiction of the Court is determined by the Plaintiff’s claim.

It is thus clear from the foregoing that this case, being a landlord and tenant matter over possession of premises at annual rent of N3,000,000 falls squarely within the confines of Section 2(b) of the District Courts (increase in jurisdiction of District judges) Order 2014 as above reproduced and ought to have been maintained at the Senior District Court or other Chief District Court, which are the Courts vested with the requisite jurisdiction to hears usch cases.

In light of the above postulations the learned counsel urges your lordship to strike out the matter for want of jurisdiction to entertain same in the face of the express and unequivocal provisions of the District Courts (increase in jurisdiction of District Judges) ORDER 2014 and the apex Court decision in **FRN v. Solomon & Ors (supra).**

On issue 2: the learned counsel cited the case of **Ogoejiolor v. Ogoejiolor (2006) 3 NWLR (Pt 66) 205,** the Court of Appeal held:

“The concept of abuse of judicial process is imprecise it involves circumstances and situations of infinite varieties and conditions its common feature is the improper use of the judicial process to the irritation and annoyance of the opponent and the efficient and effectual administration.”

He also cited the case of **Agwasim v. Ojichie (2004) 10 NWLR (Pt 882) 613 at 624-625 (SC)** and the case of **Arubo v. Aiyeleri (1993) 3 NWLR (Pt 280) 126.**

He argued that having regards to the circumstance of the present case, it is beyond contest that all the above features of an abuse of Court process are present in the case. It is not in dispute that the Claimant and the 1st Defendant are before the District Court in Suit No. CV/029/2017 over the same subject matter of this suit.

He argued that it is trite law that where a party has been adjudged guilty of abuse of Court process, his suit must be dismissed. He cited the case of **Erabor v. Major & Co. (Nig) Ltd (2001) 5 NWLR (Pt 706) 3000 at 301.**

In response to the application, the Claimant filed a 9 paragraph counter-affidavit and a further counter-affidavit of 12

paragraph relied upon the averments and also adopted a written address. The Respondent raised a lone issue for determination.

1. Whether, having regard to the facts and all the circumstances of this case as shown on the pleadings and Reliefs sought in this suit and the documents in support of this application, this Court does not have the jurisdiction to hear and determine this suit.

The learned counsel in his argument admitted in paragraph 4.14 of this written address that the present suit falls with paragraph 2(a) of the District Courts (Increase in Jurisdiction of District Judges) Order 2014 and not with paragraph 2(b) of the same order. Learned counsel concluded by stating that in the assumption that the cause of action is in respect of recovery of premises, that paragraph 2 of the said order does not vest exclusive jurisdiction on District Courts. Therefore, he submitted that the cases of **Ohakim v. Agbaso (2010) LPELR 2359 SC, Madukolu v. Nkadilim (1962) 2 SCNLR 341** and a host of others cited by the Applicant are irrelevant and unhelpful to the case of the Applicants.

In paragraph 4.1.7, he further argued that the plaint attached to the affidavit attached to the affidavit was not a certified copy and therefore not admissible in evidence. Learned counsel admitted the existence of CV/029/18 in the Magistrate Court but urged the Court not to only take cognisance of Exh AW3, AW4 and AW4B upon which the Applicant relied. The learned counsel went on a protracted argument in paragraph 4.1.8 – 4.1.12 in respect of admissibility of attached exhibits to an affidavit.

He urged the Court to hold that suit CV/029/18 **Airwave Nig Ltd v. Chess Pub Nig Ltd** in the Magistrate Court has no relationship with CV/1143/18 in this Court. Moreover when the Claimant had joined 2nd -5th Defendants for trespass that this

Court should assume jurisdiction. He urged the Court to hold this application to be an abuse of Court's process. He relied on a plethora of cases in paragraph 4.1.18-4.1.24.

The Applicant in his further counter-affidavit attached CTC of the plaint AW5 Statement of Defendant, -AW6 and AW7 – Defendants witness statement on oath.

Having scrutinously gone through the affidavit evidence of the parties and their address, the question is whether this Court has the requisite jurisdiction to entertain this suit.

However, the facts before the Court is that the objector leased out the property to the 1st and 2nd Defendants for 10 years at arent of N3,000,000.00. In terminating the tenancy, he issued a notice of termination and filed a recovery of premises action in a District Court. He further proceeded to file this action which reliefs are stated thus;

- i. A declaration that the various Defendnats' acts of entry from September 2013 to 19th January, 2018, and the continued stay of the Defendnats in the Garden situate at Park No. 178B AO1, Agwu Close, Area 3, Garki, FCT, Abuja, which has remained in the lawful possession of the Claimant, without Claimant's permission and lawful authority, and against all Claimant's protests, warning and complaints against the Defendants amount to trespaas on the property in issue and therefore unlawful.
- ii. An order of this Court compelling the Defendnatstovacate the Claimant's Garden situate at Park No. 178B AO1, Agwu Close, Area 3, Garki, FCT, Abuja, with immediate effect.
- iii. The sum of N100,000,000 (One Hundred Million Naira) against the Defendants as damages for trespass.

- iv. Injunction restraining the Defendants, their agents, servants, privies, assigns or any person claiming through them or in trust for them from further trespassing into Claimant's Garden situate at Park No. 178B AO1, Agwu Close, Area 3, Garki, FCT, Abuja, save by lawful means and/or by order of Court of competent jurisdiction.
- v. 10% interest per annum on the judgment sum from the date of judgment until final liquidation.

IN THE ALTERNATIVE:

- i) A declaration that the various acts of the 1st and 2nd Defendants in unlawfully letting in the 3rd, 4th and 5th Defendants into Claimants Garden between September 2013 to the 19th Januray, 2018, and the continued trespass of the Defendants in the said Claimants Garden situate at, and known as Park No. 178B Ao1, Agwu close, Area 3 Garki FCT, Abuja, which has remained in the lawful possession of the Claimant, without Claimant's permission and lawful authority and against all Claimant's protest, warning and complains against the Defendants amount to a breach of the fundamental terms of the Claimant's right to the enjoyment of peaceful and quiet possession of the demised Garden contained in Claimant's leasehold contract with the 1st and 2nd Defendant dated the 5th day of May, 2014.
- ii) An order of this Court compelling the Defendants to vacate the Claimant's Garden in issue, situate at, and known as Park No. 178B AO1, Agwu close, Area 3 Garki FCT, Abuja, with immediate effect.
- iii) The sum of N41,312,543.50 (Forty One Million, Three Hundred and Twelve Thousand, Five Hundred and

Forty-Three Naira, Fifty Kobo) against the 1st and 2nd Defendants as special damages, being the total sum of money expended by the Claimant to deforest, build and develop the Garden situate at, Park No. 178B AO1, Agwu Close, Area 3 Garki FCT, Abuja.

- iv) The sum of N100,000,000 (One Hundred Million Naira) against the 1st and 2nd Defendants being general and exemplary damages for breach of the leasehold contract between the Claimant and the 1st and 2nd Defendants.
- v) 10% interest per annum on the judgment sum from the date of judgment until final liquidation.

The reliefs above which are asking for declaratory orders are clearly on trespass and injunction. As observed there is a recovery of premise action going on in the District Court of which this suit can clearly be separated from. The Claimant by reason of the annual rent of the said property of cause can file a plaint seeking for payment of such rent in the District Court relying on the (Increase of Jurisdiction of District Judges) 2014. The plaint before the District Court has nothing in relation to the present suit on trespass, injunction and damages of N100,000,000 for trespass. This definitely falls within the purview jurisdiction of this Court.

Therefore, it is my ruling that the plaint in the District Court can co-exist with the trespass suit in this Court, they are like the salt water and the non salt water which are in co-existence in the ocean. In other words they are separable.

Therefore, the Court holds that this Court can assume jurisdiction and I so do to entertain the suit before this Court in respect of trespass, injunction and damages that would follow.

Application or preliminary objection is baseless and therefore, is dismissed with a cost of N100,000.00 (One Hundred Thousand Naira) against the Applicant.

HON. JUSTICE A. O. OTALUKA
27/5/2019.