

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 15TH MARCH, 2021.

BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/2760/17
MOTION NO.: -FCT/HC/M/10949/2020

BETWEEN:

- 1) YAKUBU GAUSU
 - 2) DARI ALAKE
 - 3) JEZHI JIBAWU
 - 4) MRS. GRACE OKELEKE
 - 5) PHILIP AYOSON
 - 6) EST FOODS LTD
 - 7) EMMANUEL OKECHUKWURESPONDENTS
- :.....CLAIMANTS/

*(For themselves and on behalf of other
Concerned Allottees of Open Space at
Kugbo Mechanics Workshop Kugbo, Abuja).*

AND

- 1) ABUJA MUNICIPAL AREA
COUNCIL (AMAC)
- 2) EXECUTIVE CHAIRMAN, ABUJA
MUNICIPAL AREA COUNCIL
- 3) FEDERAL CAPITAL DEVELOPMENT
AUTHORITY
- 4) DEPARTMENT OF DEVELOPMENT:.....DEFENDANTS/
CONTROL RESPONDENTS
- 5) PEDAGS INVESTMENT LIMITED:.....5TH DEFENDANT/
APPLICANT

IfeanyiNrialiki with Ifeanyi I. Okeke for the Claimants.
TolaOlarotinu with DamilolaOlajobi for the 1st and 2nd Defendants.
UgochiObialor with Samuel Ugwu, Rafishat A. Hassan and Kamila D. Mamzhi for the 3rd and
4th Defendants.
Justine Chuwang for the 5th Defendant.

RULING.

This is a matter bordering on a claim for the following reliefs:

- i. A declaration that the Plaintiffs are entitled to a quiet and peaceful enjoyment and possession of the Open

Spaces at KugboMotor Spare Parts and Mechanic Workshop, Kugbo, Abuja allocated to them by the 3rd defendant through the 1st defendant, having met all the conditions for allocation of same, and being actually allocated same.

- ii. A declaration that the action of the defendants especially the 5th defendant in invading the Plaintiff's Shops, Buildings, Open Spaces and placing obstructive objects at the place known as Kugbo Motor Spare Parts and Mechanic Workshop, Kugbo, Abuja sometimes in August, 2017 is illegal and unlawful and therefore amounts to trespass.
- iii. An order of injunction perpetually restraining the defendants either by themselves, agents, privies, assigns or any person acting through or under them from further trespassing on the plaintiffs duly allocated properties known as and situate at Kugbo Motor Spare Parts and Mechanic Workshop, Kugbo, Abuja or taking such step or action that will affect the plaintiffs' quiet enjoyment or possession of the said property.
- iv. Cost of prosecution of this suit.

Parties have exchanged pleadings. Evidence has been led by the 3rd witness of the Claimant on 4th March, 2020. The 5th Defendant/Applicant on 20th October, 2020 filed this preliminary objection application objecting to the jurisdiction of this Court to continue hearing and determination of this suit. He raised two grounds to wit:

- 1.0 The Plaintiffs/Respondents' suit regarding claims of title to the landed properties are void by virtue of the LAND USE ACT, LAWS OF THE FEDERATION 2004 and THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED IN 2011).

2.0 The purported development of the land in the Federal Capital Territory by the Plaintiffs/Respondents are illegal by virtue of the FEDERAL CAPITAL TERRITORY ACT, LAWS OF THE FEDERATION 2014 (ENACTED ON THE 4TH DAY OF FEBRUARY 1976).

The application was supported by a written address the Applicant objection is based on the ground that the -

“Plaintiffs/Respondents suit regarding the purported allocation of land in the Federal Capital Territory to the Plaintiffs/Respondents by the 1st Defendant/Respondent are void by virtue of the Land Use Act and the Constitution of the Federal Republic of Nigeria 1999 (As Amended in 2011).”

Secondly that the purported development of the land by the Claimant is illegal.

In raising this preliminary objection, the 5th Defendant’s counsel argued:

- 1) That the Court should consider the pleadings of the Claimant before which determines the Court’s jurisdiction – **Tukur v. Govt of Gongola State (1989) 4 NWLR (Pt 117) p.517.**
- 2) That Claimants are not entitled to the reliefs sought – **FRN v Amah & Ors (2014) LPELR 22804 (CA).**
- 3) That the Claimants suit is incompetent pursuant to 122(1) L & M Evidence Act 2011 and by reason of paragraph 7, 8, 9 and 18 of the 1st – 5th Claimants/Respondents’ statement of claim. That the powers of the President as the Governor of Federal Capital Territory can be delegated to the Minister. He referred to Section 51(2) of the Land Use Act Laws of Federal Republic of Nigeria 2014 Enacted in (1978) and Section 1(2) of the

Constitution of the Federal Republic of Nigeria 1999 (As Amended).

Relying on **Omatseye v. FRN (2017) LPELR 42719 (CA)**, learned counsel invited this Court to interpret the provisions of the relevant laws and not to amend add or subtract from the provisions.

- 4) Learned counsel argued in paragraph 4.8 of his address that the 1st – 5th Defendants/Respondents failed to establish that they applied to the Minister Federal Capital Territory for grant of land and therefore all purported allocation to them are void. Further in paragraph 4.9 he argued that a letter from Abuja Municipal Area Council granting land does not constitute a title document – **Divage Health & Sanitary Service Ltd & Anor v. Kenj Investment Ltd (2018) LPELR 45975 CA** and also in **Madu v. Madu (2008) LPELR 1806 (SC)**.

He extensively relied on Section 315 of the 1999 Constitution, Section 1(3), Section 3(1) (2), and Section 7 of Federal Capital Territory Act. Also counsel relied on Section 7(1) - (6) of the 4th Sch of the Constitution of Federal Republic of Nigeria 1999.

Learned counsel further submitted relying on Section 167 Evidence Act and **Smar v. State (2016) LPELR 40827 (SC)** that the 1st – 5th Plaintiff/Respondent, withheld evidence and “such evidence should be deemed to be adverse to them”. See paragraph 4.13 page 14 of the address.

In conclusion, in paragraph 4.16 of his address, learned counsel submitted by urging the Court to hold that the purported allocations by 1st Defendant to 1st – 5th Defendants were void and illegal and that on the strength of his submissions he urged the Court to strike out the suit for want of jurisdiction.

In response, the learned counsel to the Claimants filed a reply dated 25th January, 21 and served on the 5th Defendant's counsel on 26th January, 21 same day the preliminary objection is to be heard.

The learned counsel to the Claimants raised 3 issues for determination;

- i. Whether the preliminary objection was competently made at this stage having regards to the fact that this case has fully gone into trial before it was raised.
- ii. Whether the 5th Defendant has the locus standi and the vires to question the validity or otherwise of the allocation of the open space/shops to the Claimants/Respondents?
- iii. Whether having regards to the facts of this case and claims of the Claimants before the trial Court this Honourable Court does not possess the jurisdiction to entertain this matter.

In arguing issue one, the learned counsel relying on Order 42 Rule (2) of the rules of this Court to urge the Court to have a holistic trial and conclusion to the matter for the interest of justice.

On issue two, the learned counsel submitted that the 5th Defendant had no locus to question the validity of the allocation of the open space. That the preliminary objection is nothing devoid of meddlesomeness and interloping pranks.

He relied on the case of **A.G. Anambra State v. Eboh (1992) NWLR (Pt 218) 419** and urged to hold that the 5th Defendant lacks locus to challenge the validity of the allocation.

That from the pleadings that the 5th Defendant had no competing right with the Claimants.

That the cases cited by the Applicant were irrelevant to the issues raised on the preliminary objection – **Ali v. Osakwe (2009) 14 NWLR (Pt 1160) CA 75.**

That the Applicant set up an imaginary case upon which he raised a preliminary objection. He equally relied on the case of **FRN v. Amah (supra)** submitting that preliminary objection is not meant to be raised for fun.

He further contended that jurisdiction of a Court is determined by examination of Plaintiff's pleadings which is a statement of claim with 3 declaratory reliefs.

The learned counsel urged the Court to resist the 5th Defendant urge to derail the cause of proceedings by learned counsel setting up a new case of their own to change the coloration of the Claimant's case. He relied on the case of **Gov. of Ekiti State v. Olayemi (2016) 4 NWLR (Pt 1501) Pg.1.**

Learned counsel urged the Court to uphold its jurisdiction by reason of the pleadings of the Claimant and dismiss the preliminary objection for lacking merit.

Firstly before delving into the preliminary objection, is the response of the Plaintiff's counsel properly filed and served in accordance with Order 49 Rule 5?

The preliminary objection was filed on 20th October, 2020 and served on the Claimants on 22nd October, 2020. The Claimants/Respondents filed their response on 25th January, 2021, three months after service on them.

This issue borders on non-compliance of the rules of this Court. It is not in doubt that the Plaintiff's counsel failed to comply with the requirements of filing his response within time. The question is whether the irregularity is curable.

Order 5 requires a Court faced with difficulty as to late filing of a statement of claim or irregular filing to have a look at the process for the interest of justice. Order 5 demands a legal duty from the Court to hear the processes which includes motions and replies. Thus the provisions of order 5.1(2) states:

“Where at any stage in the course of or in connection with the proceedings there has by reason of anything done or left undone been a failure to comply with the requirements as to the place, manner or form, such failure may be treated as irregularity. The Court may give direction as he thinks fit to regularise such steps.”

Relying on Order 5 Rule (2), I hold that failure of the Claimants counsel to file and serve the 5th Defendant/Applicant within time is considered a curable irregularity which a Court of law has the legal duty in our adjectival law to hear the process or include it in its proceedings. – **Mobil Producing Nig Ltd v. Monokpo (2003) 18 NWLR (Pt 852) 346.**

Therefore in the instant case and of the objection of the learned counsel to 5th Defendant I consider the late filing of the reply of the Claimants dated 28th January, 2021 a curably irregularity and deem the process to be regularised. Noteworthy that it is trite law that rules of Court are to be obeyed and complied with. In the event of non-compliance, it is not explained away unless the non-compliance is considered a minimal kind. In the instant case, there is need for justice to be done. Therefore, I consider the non-compliance of the rules to be a curable irregularity since it has not done any injustice to the Applicant. I therefore hold that the non-compliance would cost the Claimants the penalty of late filing.

Having done with the above the next issue is whether this Court has jurisdiction to hear the suit CV/2760/17?

The issues raised by the Applicant are that the suit is incompetent and therefore the Court lacks jurisdiction to entertain it. The bedrock of any judicial proceedings is jurisdiction, its absence in defect renders the proceedings a nullity. Doubtless the issue of jurisdiction can be raised at any stage of proceedings and where at any stage the Court is seized of the want of jurisdiction, it puts an end to the matter.

In determining jurisdiction, recourse is always made to the Claimants statement of claim. – Per Rhodes-Vivour, JSC in **Oni v. Cadbury Nig PLC (2016) 9 NWLR (Pt 1516) 80.**

The procedure to adopt particularly in the instant case where an objection is raised to the jurisdiction of this Court in a matter commenced by originating summons is to consider the objection with the substantive matter which means considering the reliefs sought in the pleadings. – **YarAduav. Yaudoma (2015) 4 NWLR (Pt 1448) 123.**

The function of pleadings is to define and determine clearly the real issues in controversy. It is settled law that the jurisdiction of a Court is dependent on the examination of the Plaintiff's claim.

A Court of law is said to have jurisdiction and competence where;

- 1) It is properly constituted.
- 2) The subject matter of the case is within its jurisdiction.
- 3) The matter is properly initiated upon fulfilment of the condition precedent.

- **Madukolu v. Nkemdilim (1962) 2 SCNLR 341.**

Further the scope of jurisdiction of High Court of a State which includes High Court Federal Capital Territory, is provided under Section 251(1) and 272(1) of the 1999 Constitution, Federal Republic of Nigeria which provides that subject to Section 251 and other provisions of the said constitution, the High Court of State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right power duty liability privilege, interest, obligation or claim is in issue.

The competence of this Court to determine the case is not in doubt, as it is properly constituted, the matter is properly initiated and the subject matter arising from the claim is not in doubt within the jurisdiction of this Court.

The Claimant is merely asking for the following declarations:

- i. A declaration that the Plaintiffs are entitled to a quiet and peaceful enjoyment and possession of the Open Spaces at Kugbo Motor Spare Parts and Mechanic Workshop, Kugbo, Abuja allocated to them by the 3rd defendant through the 1st defendant, having met all the conditions for allocation of same, and being actually allocated same.
- ii. A declaration that the action of the defendants especially the 5th defendant in invading the Plaintiff's Shops, Buildings, Open Spaces and placing obstructive objects at the place known as Kugbo Motor Spare Parts and Mechanic Workshop, Kugbo, Abuja sometimes in August, 2017 is illegal and unlawful and therefore amounts to trespass.
- iii. An order of injunction perpetually restraining the defendants either by themselves, agents, privies, assigns or any person acting through or under them from further trespassing on the plaintiffs duly allocated

properties known as and situate at Kugbo Motor Spare Parts and Mechanic Workshop, Kugbo, Abuja or taking such step or action that will affect the plaintiffs' quiet enjoyment or possession of the said property.

iv. Cost of prosecution of this suit.

In considering the statement of claim, I have considered the reliefs before me and am of the opinion that the reliefs and pleadings of the Claimant are within the jurisdiction of this Court. The protracted argument of the Applicant and the numerous authorities to determine the powers of the Minister of Federal Capital Territory as the allottee divulge from the President of Federal Republic of Nigeria is an invitation to determine the main substratum of the case. I consider the argument of the Defence counsel to the 5th Defendant a misconception of the law and irrelevant at this stage. The issue of jurisdiction is properly ascertained by the claim of the Claimants. Borrowing the language of the Claimants' counsel it is not the duty of the 5th Defendant's counsel to resist the Claimants' claim under the umbrella of lack of jurisdiction by setting up a new case of their own contrary to the rules guarding the jurisdiction of this Court – **Gov. Ekiti State v. Olayemi (supra)**. I totally agree with the submissions of the Plaintiff's counsel and hold that the jurisdiction of this Court to hear and determine this suit is unshakable.

Full opportunities should be given to parties in the interest of justice. All claims must be adequately determined on merit particularly where the Court has jurisdiction to do so. Issue of jurisdiction should not be abused by merely raising it as a gamble or for fun. – **FRN v. Amah (supra)**.

Again, in granting this application would result in a premature determination of the main suit.

In conclusion, I find this application incompetent and a total misconception of the law. The preliminary objection is dismissed with a cost of N50,000.00 (Fifty Thousand naira).

HON. JUSTICE A. O. OTALUKA
15/3/2021.