

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : SUIT NO: CV/03525/17
DATE: : THURSDAY 25TH MARCH, 2021

BETWEEN:

BISAD SYSTEMS NIGERIA LIMITED... PLAINTIFF/RESPONDENT

AND

1. MINISTER, FED. CAPITAL TERR., ABJ. DEFENDANTS
2. FED. CAP. DEV. AUTHORITY ABUJA } APPLICANTS
3. COMMON WEALTH HANDBALL ASSOC. }

RULING

The Applicant approached this Honourable Court praying for the following:-

1. An Order of this Honourable Court dismissing this Suit for want of jurisdiction.
2. An Order of this Honourable Court dismissing this Suit in its entirety same constituting gross abuse of process of court.

The grounds upon which the application was brought was equally filed. Affidavit of 21 paragraph deposed to by One A.O. Fatoba Esq., a Legal Practitioner in the Law Firm of the Applicant was filed in support of the application.

It is the deposition of the Applicant that the 3rd Defendant was created in 1985 as an organ of the

Commonwealth through the selfless efforts of Late Jeff Roland who coordinated efforts of Handball loving Sovereign Nations such as Nigeria, Canada, Kenya, India, England, Cyprus and Pakistan as a component of the Commonwealth Games Federation and it was Headquartered in London with the aim of inter alia: promoting the development of the game of handball through coaching, playing and refereeing of the game; representing the interest of the Commonwealth Nations in respect of the International Handball Federation (IHF), developing and promoting friendships particularly through youth of the Commonwealth; and ensuring that a Commonwealth Nation wins the Senior Handball World Cup in the year 2020.

That it is international best practice that Nations hosting secretariats of Organs of the Commonwealth

of Nations such as the 3rd Defendant and other similar International bodies such as the United Nations (UN), African Union (AU), Economic Community of West African States (ECOWAS) e.t.c fund the activities of the secretariats. Thus in case of the 3rd Defendant it was incumbent upon the Federal Republic of Nigeria having successfully lobbied for the relocation of the 3rd Defendant's Secretariat to Nigeria to fund its activities.

In Order to enable the 3rd Defendant acquire a permanent secretariat befitting of its status and the Federal Republic of Nigeria, the then President and Commander in Chief of the Armed Forces of Federal Republic of Nigeria Chief OlusegunObasanjo directed the 1st Defendant to allocate a piece of land to the 3rd Defendant for the purpose of erecting a befitting permanent secretariat.

Pursuant to the aforementioned directives of the President and Commander in Chief of the Armed Forces of Nigeria, the 3rd Defendant applied to the 1st Defendant for a parcel of land within the Federal Capital Territory and the 1st Defendant graciously issued the 3rd Defendant Statutory Right of Occupancy over Plot 2775, Cadastral Zone, A6, Maitama, having an area of approximately 4601.05 sq.m which the Plaintiff now claims his right over same was improperly revoked by the 1st Defendant.

That aggrieved by this allocation of the aforementioned piece of land to the 3rd Defendant the Plaintiff instituted Suit No. **FCT/HC/CV/202/2014 Between Bisad Systems Nigeria Limited and Minister, Federal Capital Territory, Abuja & 3 Others**, the same parties and

same subject matter in this suit and obtained Judgment against the Defendants.

That the Court of Appeal however in a final Judgment delivered on 7th day of July, 2017 allowed **Appeal No. CA/A/202/2014** and set aside the Judgment of the Trial Court on the ground that the Trial Court lacked jurisdiction to try same.

That rather than appeal the final decision of the Court of Appeal in the aforementioned **Appeal No. CA/A/202/2014**, the Plaintiff returned to this Honourable Court to file the instant suit between the same parties and on the same subject matter.

The Judgment of the Court of Appeal in **Appeal No. CA/A/202/2014** is hereto attached and marked Exhibit 'CHA 14'.

In line with law, a written address was filed wherein two issues were formulated for determination to wit;

1. Whether the 3rd Defendant being an Organ or Department of the Commonwealth can be sued in the Court of another sovereign including this Honourable Court in any legal proceeding either against it person or for the recovery of specific property or damages, and its property or property in its possession such as the subject matter plot of land can be sieged or detained by legal process in this Honourable Court.
2. Whether by virtue of the final Judgment of the Court of Appeal in **Appeal No. CA/A/202/2014** which held that this Honourable Court lacks jurisdiction to hear Suit No. **FCT/HC/CV/202/2014** Between **Bisad System**

Nigeria Limited And Minister, Federal Capital Territory, Abuja & 3 Others, the same parties and same subject matter in this Suit does not constitute abuse of process of this Honourable Court.

On issue one, whether the 3rd Defendant being an Organ or Department of the Commonwealth can be sued in the Court of another sovereign including this Honourable Court in any legal proceeding either against it person or for the recovery of specific property or damages, and its property or property in its possession such as the subject matter plot of land can be sieged or detained by legal process in this Honourable Court.

Learned Counsel submit that diplomatic immunity which is covered by the provisions of the Diplomatic

Immunities and Privileges Act must not be confused. That the doctrine of sovereign or state immunity is one of great antiquity. In common law jurisdiction, an independent sovereign state or group of States or their Organs or Departments or Institutions may not be sued in the Courts against its will and without its consent.

KRAMER ITALO LTD. VS GOVERNMENT OF THE KINGDOM OF BELGIUM (2004) 12 CLRN 93 at 103.

JOHN GRISBY VS JUBWO (1952) – 55) 14 W.A.C.A 637.

Counsel argued that it has demonstrated enough vide affidavit that 3rd Defendant is an Organ of or Department of Commonwealth of Nations and therefore this Court lack jurisdiction.

On issue two, whether by virtue of the final Judgment of the Court of Appeal in **Appeal No. CA/A/202/2014** which held that this Honourable Court lacks jurisdiction to hear Suit No. **FCT/HC/CV/202/2014** Between **Bisad System Nigeria Limited And Minister, Federal Capital Territory, Abuja & 3 Others**, the same parties and same subject matter in this Suit does not constitute abuse of process of this Honourable Court.

Counsel submit that the Plaintiff in its statement of claims expressly admitted that it had earlier instituted Suit No. **CV/202/2014** and that the Court of Appeal decided same in Appeal No. **CA/A/202/2014**.

Learned Counsel contended that this present case is an abuse of court processes and therefore same should be struck-out.

Upon service, Plaintiff/Respondent filed counter affidavit of 6 paragraph duly deposed to by NwakaNnamdi, Litigation Manager in the Law Firm of the Plaintiff/Respondent.

It is the deposition of the Applicant that the Suit before this Honourable Court is challenging the actions of the 1st and 2nd Defendants made in violation of the extant provisions of the land use Act.

Learned counsel contended that 3rd Defendant does not have immunity from Legal Processes and is subject to the jurisdiction of this Honourable Court with respect to matters relating to the provisions of

the Land use Act, and by applying for land allocation Pursuant to the Land use Act, the 3rd Defendant/Applicant submitted to the jurisdiction of this Honourable Court as conferred by Section 39 of the Land use Act.

Learned counsel further contended that 3rd Defendant has not be conferred with immunity from Legal Processes as required by Law, and does not enjoy any immunity and that the 3rd Defendant is not a department or Organ of any State or Sovereign Power.

It is further the deposition of the Plaintiff/Respondent that Suit **No. CV/202/2014** annexed by the Applicant has been struck out by the Court of Appeal on the ground that the Writ of Summons was defective, having not been

properly signed by a Legal Practitioner and that the Judgment of the Court of Appeal is not final on the substantive issues in the present suit.

That the present suit is competent and this Honourable Court has jurisdiction to entertain same.

A written address was filed wherein three (3) issues were formulated for determination to wit;

1. Whether this Honourable Court is conferred with jurisdiction to entertain and determine this suit, as presently constitute in the light of the facts pleaded in the statement of claims and reliefs sought and the parties thereto.
2. Whether the 3rd Defendant having not been declared by the Minister of Foreign Affairs by any Order in a gazette to be an Organization, the Members of which are sovereign Powers

(Whether Foreign Sovereign Powers or the Commonwealth as regarded by the extant provision of Section 11 of the Diplomatic Privileges and Immunity, Act, Cap D9, Laws of the Federation of Nigeria, 2004, is not subject to the jurisdiction of this Honourable Court in the light of the facts of this case.

3. Whether the Plaintiff is estopped from bringing this Suit against the Defendants as presently constituted, after the earlier suit was struck-out by the Order of the Court of Appeal in Appeal No. CA/A/202/2014 Between Minister, Federal Capital Territory, Abuja & 2 ors VS Bisad Systems Nigeria Limited &Anor.

Learned Counsel argued issues one and two above together.

It is the argument of learned counsel that the procedure of conferment of diplomatic privileges and immunity on any International Organization, whether those of Foreign Sovereign Powers or the Commonwealth are set out in Section 11(1) & 2(a) of the Diplomatic Immunities and Privileges Act.

Counsel argued that, the suit before this Court is only challenging the actions of the 1st and 2nd Defendants in purported re-allotting the Statutory Right of Occupancy over Plot 2775, Cadastral Zone A6, Maitama District Abuja without validly revoking the Plaintiff's right over same.

It is further the argument of Learned Counsel that the application and acceptance of the purported grant by the 3rd Defendant is not an act of state for which the doctrine of State Immunity can be invoked.

***ALFORTRIN VS A.G FEDERATION (1996) 9
NWLR (Pt. 475) 634 at 663 – 664.***

Learned counsel submit that the common law principle of Sovereign or State Immunity does not avail the 3rd Defendant. ***OLUWALOGBON VS GOVT. OF U.K (2005) 14 NWLR (Pt. 946) 760 at 786 – 787 Para H – B.***

On issue three, Whether the Plaintiff is estopped from bringing this Suit against the Defendants as presently constituted, after the earlier suit was struck-out by the Order of the Court of Appeal in Appeal No. CA/A/202/2014 Between Minister, Federal Capital Territory, Abuja & 2 ors VS Bisad Systems Nigeria Limited &Anor.

Learned Counsel argued that the Judgment in **CA/A/202/2014** did not finally determine the

substantive rights of the parties in this suit, as the earlier suit was struck out for want of jurisdiction arising from a defective originating process.

Court was urged to dismiss this application for lacken in merit.

The 3rd Defendant/Applicant replied on points of law upon been served with the Plaintiff's counter affidavit.

Learned counsel argued that Plaintiff committed infractions on it counter affidavit specifically paragraphs 5e, f, g, h, I, J, L, M, O, P, Q, V, S, T, U, V, W, Y, Z, aa, bb, cc, ee, JJ, LL, MM, OO and QQ which offends the provisions of Section 115(2) of the Evidence Act, 2011.

Counsel argued further that this Honourable Court cannot delve into substantive matter in the main suit

at this stage as the Plaintiff argued that it is the owner of the subject matter in dispute.

On the application of the Diplomatic Immunities and Privileges Act, Counsel argued that Section 11 of the said Act does not apply to the 3rd Defendant as long as it does not apply to its present body.. Court was on the whole urged to grant the application.

Court:-I have considered the argument of 3rd Defendant/Applicant which was carefully marshaled in the preliminary objection in issue. I have also gone through the response of the Plaintiff /Respondent.

For records, the Preliminary Objection touches on the jurisdiction of this court to entertain this matter and also the fact that the suit as constituted is an abuse of court process.

Respective counsel have stated their legal views and annexed documents in support of their views.

The said views are already contained in the preceding part of this ruling. I shall comment on the afore – stated issues where necessary in the course of this ruling.

Jurisdiction, be it subject matter or party is most fundamental in the determination of suit.

Jurisdiction refers to the legal authority, legal capacity to adjudicate at all. Issues of jurisdiction are radical and crucial question of competence. See ***FCDA & ANOR VS KUDA ENGINEERING AND CONSTRUCTION COMPANY LTD & ORS (2014) LPELR – 2285 (CA). S.C IN MADUKOLU VS NHEDEHIM (1962) LPELR 24023 (SC) says it all on jurisdiction.***

A court is competent when it is properly constituted as regards numbers and qualifications of the member of the bench and no member is disqualified for one reason or another, the subject matter is within the jurisdiction of the court and there is no feature in the case which presents the court from exercising its jurisdiction, and the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Arising from the holding of Supreme Court (CS) in Madukolu (supra), jurisdiction can then be looked at from the subject matter and or party which was dealt with in the authorities of *NEPA VS ADEGBENRO(2002) 18 NWLR (Pt. 798)*, *GRACE JACK VS UNIVERSITY OF AGRICULTURE MAKURDI (2004) 1 SC (Pt. 11) 100*.

It is settled law that subject matter and or party or parties before the court as the case may be is very important in conferring jurisdiction.

3rd Defendant's counsel argued that 3rd Defendant being commonwealth handball Association, a sport organ of the commonwealth of Nation, enjoy immunity from legal processes and not subject to the jurisdiction of this court.

Learned counsel further made it a ground of its preliminary objection that Appeal No. **CA/A/202/2014** touches on the competency of the present action same having been disposed - off and only appeal to the SC is left to be explored by Plaintiff in this matter hence this present matter being an abuse of court process.

May I observe that the subject matter in dispute is ownership of land which was rightly or otherwise allocated to the 3rd Defendant with the Plaintiff laying claim to same as having been allocated to them earlier. That is the crux of suit **No. FCT/HC/CV/367/2007.**

On the other hand, Court of Appeal in Appeal **No. CA/A/202/2014** determined appeal in an earlier suit **No. FCT/HC/CV/367/07.**

The kernel of part of the objection of 3rd Defendant/Applicant is that the present suit which has the same parties and subject matter having been determined cannot be re-litigated upon by Plaintiff/Respondent hence the argument on abuse of court process. I need state at this juncture that both

parties and subject matter in the earlier suit and present suit are the same.

I however need to mention that it is not in all circumstances that matters which have been litigated cannot be re – litigated. No two circumstances are the same. The decision of the Court of Appeal in the earlier suit is most necessary to be considered to determine whether same has established a case of Res – judicata i.e interest reipublicaeut sit finis litium, per Braimahin ***MADUKOLU VS NHEDILIM*** (*Supra*).

I have considered Exhibit “CHA 14” i.e the judgment of the Court of Appeal heavily made weather of by learned counsel for the 3rd Defendant/Applicant being his reason for argument on abuse of court process.

For clarity, I shall refer to the respective comments of their lordships in the said judgment being referred by learned counsel for the Applicant, i.e Hon. Justice Abubakar D. Yahaya, Hon. Justice Toni Yusuf Hassan and Hon. Justice Mohammed Mustapha of the Court of Appeal.

Before I reproduce the relevant portion of the judgment, permit me to state that the kernel of the appeal in question was squarely on the fact that the writ of summons in the said suit had only the name of ***DR. ALEX A. IZINYON (SAN) & CO. and not DR. ALEX IZINYON (SAN)*** with signature inserted above the firm's name. The argument then was that only a legal practitioner can sign court process not firm.

Resolving the issue in contention, the following decision was unanimously reached by the panel of the justices, to wit:-

“In the prevailing circumstances all the proceedings which rested on the writ of summons and statement of claim were deemed not to have taken place in law.”

Per Tani Yusuf Hassan (JCA).

“I am in total agreement that the trial court had no jurisdiction to try the case as it was not initiated by due process of the law and upon fulfillment of the condition precedent, in the sense that the writ was not signed by any legal practitioner or the Plaintiff.”

Per AbubakarDattiYahaya (JCA).

“I have had the privilege of reading before now the lead judgment of my learned brother Toni Yusuf Hassan, JCA and I agree with her reasoning and conclusion.”

Mohammed Mustapha JCA.

Upon above findings, the court of appeal proceeded to strike – out the said writ of summons filed, same having not been signed by a legal practitioner.

The law on distinction between dismissal and striking out of a cause or matter is settled. The Plaintiff is left with the option of reviving the case and having it placed back on the cause list at any time subject to showing good cause.

Indeed if the Plaintiff’s action is not caught up by any statute of limitation, he can proceed to file a new action as done by the Plaintiff in this present action.

On the other hand, there shall be no room for resuscitation of an action or cause once there was an order for dismissal. The situation would have been taken care of by the principle of estopped per Rem judicatal. The case of *ONOURA VS OFOMATA (2012) LPELR – 19942 (CA)* is instructive on this note.

Arising from above, therefore, the appeal so mentioned in the preceedings part of this ruling which learned counsel for the 3rd Defendant/Applicant seem to use as a sword to bar Plaintiff from maintaining the present action was not determined on the merit in view of the fact that the writ was not competent to have conferred jurisdiction on the trial court hence the order of the Court Appeal striking out the Writ of Summons so

filed. The present action of Plaintiff therefore cannot be said to be an abuse of court process. I so hold.

On the issue of the immunity of the 3rd Defendant/Applicant from any legal proceedings, I have considered the argument of the 3rd Defendant/Applicant counsel touching on the Diplomatic privileges and immunities Act 1962, Section 6(6)(b) and 36(1) and (2) of the Constitution of FRN 1999 as amended.

I have seen all the Exhibits so annexed to the application objecting to the present action of the Plaintiff. I have juxtaposed the argument of learned counsel for the Claimant on the said immunity of the Commonwealth Handball Association, i.e the 3rd Defendant in the present suit.

The argument of 3rd Defendant/Applicant's counsel is that 3rd Defendant being an organ of the commonwealth enjoys immunity from legal proceedings.

It is the law that immunities under the first schedule to the Diplomatic immunities and privileges Act 1962 provides for immunity from suit and legal process. Where a sovereign or International Organization enjoys immunity from suit and legal process, waiver of such immunity is not to be presumed.

Eventhough 3rd Defendant's counsel referred to the 3rd Defendant as an organ of the commonwealth, I wish to state clearly that the Diplomatic privileges and immunities Act 1962 must be read ejusdem those persons who represent the various member

nations in the respective countries of the commonwealth carrying out their respective functions.

It is not the contemplation of the Diplomatic immunity and privileges Act that because a Handball Association which has commonwealth added to its name and which is involved in land dispute shall not be dragged to court.

The diplomatic immunity and privileges Act 1962, I dare say is not a draconian monster or magic tussle which was put in place to Act as a sword.

The argument of learned counsel for the 3rd Defendant i.e Commonwealth Handball Association that same enjoys immunity is of no moment. I so hold.

I shall make an Order for dismissal of the said Preliminary Objection for want of merit. Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
25th March, 2021

APPEARANCES

John Onoja representing Plaintiff.

C.S Ekeocha – for the Plaintiff.

YakubuHunira – for the 1st and 2nd Defendants.

HileNgutswen – for the 3rd Defendant/Applicant.