

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI – ABUJA**

**ON THIS 26<sup>TH</sup> DAY OF JANUARY, 2021**

**BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA**

**SUIT NO. FCT/HC/CV/581/2021**

**MOTION NO. M/4936/2021**

**BETWEEN**

**CHIEF MRS. JOY OKOCHA**

**(Doing business in the name and style**

**“Joy Elegance Park and Garden”)**

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- - -

**CLAIMANT**

**AND**

**MR. JOHN AKADI**

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**DEFENDANT**

**RULING**

This Ruling is predicated upon the Notice of Preliminary, Objection filed by the Defendant on 15<sup>th</sup> November, 2021 dated same date, against the Writ of Summons dated and filed on 26<sup>th</sup> February 2021.

The Defendant by way of Preliminary Objection challenged the jurisdiction of this honourable court to entertain this suit on the following grounds:

1. *The Plaintiff lacks the locus standi to institute this suit as she is a trespasser ab initio without any valid titled documents in her name.*
2. *The Plaintiff's entire suit by virtue of the Writ of Summons, statement of claim does not disclose any reasonable cause of action.*
3. *The Plaintiff's Writ is incompetent having failed to join the FCT Minister, Abuja Environmental Protection Board, Abuja Metropolitan Management Agency, Department of Parks and Recreation who are necessary parties to this suit.*
4. *The court is robbed of jurisdiction to entertain this suit.*

## **FACTS OF THE CASE**

The Claimant avers that she is the rightful owner of a garden located at No.1671D/A02 between wuse zone 1 and zone 7 Abuja within the jurisdiction of this court, she avers that sometimes in 2001, at Abuja Environmental Protection Board, the agency in charge of allocation and leasing of parks and garden in the Federal Capital Territory Abuja leased out a garden situate at No.167D/A02 between wuse zone 1 and zone 7 Abuja, to the claimant for Recreational Development. Claimant avers that she

has been operating the garden and park since 2001 under the name and style "Joy Elegance park and garden", that sometimes in 2007, after the Abuja Metropolitan Management Agency took over the overseeing and allocation of parks and garden in Abuja, she was issue yet a letter of intent to Develop Manage and operate the garden by the Abuja Metropolitan Management Agency. That sometimes in 2011 during the Federal Capital Territory Administration Recertification Exercise, she paid the sum of N25,000.00 (Twenty five thousand) to the Federal Capital Territory Administration as park processing fee. That she was issued a site/survey plan by the Abuja Geographic information Systems (AGIS). That she also obtained a building plan approval before she started erecting structures on same portion of the garden. The claimant avers that the defendant encroached into her garden and started erecting strictness and planting trees despite warnings not to do so.

Upon service of the Writ of summons and other processes on the defendant, learned counsel to the defendant filed this Preliminary Objection, in his written address in support of this application, counsel formulated a lone issue for determination to wit:

*"whether this court has jurisdiction to entertain this suit looking at the Writ of Summons and statement of claim".*

Learned counsel contended that the claimant lacks the locus standi to institute this suit as she is a trespasser ab initio without any valid title documents in her name. Counsel relied on **ADETONO & ANOR V. ZENITH INTL BANK PLC (2011) LPELR – 8237 (SC)** . Learned counsel also cited the case of **NIGERIAN INSTITUTE OF ESTATE SURVEYORS AND VNUERS VS HYDRA PROPERTIES LTD & ORS (2017)LPELR - 43137(CA)** to the effect that the interest required to be shown by a plaintiff in order to acquire requisite legal capacity and standing to initiate a valid action before a court of law is real interest, not imagined, genuine interest and not fantasized.

It is the argument of counsel to the defendant that the claimant in this case is only imagining that she can sue or take a legal action on behalf of a business name “joy Elegance Garden and parks” who is supposedly leased or allocated the land. Counsel submitted that the claimant business name cannot hold land or acquire interest on landed property. He relied on **FCDA & ORS. VS UNIQUE FUTURE LEADERS INTERNATIONAL LTD (2014) LPELR – 23170(CA)** to the effect that a business name does not have the capacity to hold land in its name. Counsel submitted that since the purported allocations were made to “Joy Elegance Gardens and parks” a business name, the allocations

are void ab initio as they cannot confer any legal rights on the plaintiff.

Learned counsel submitted that the claimant's statement of claim and Writ of Summons does not disclose any reasonable cause of action. He relied on **IMPERIAL HOMES MORTGAGE BANK VS D-UAR CONSULTING LTD (2016) LPELR – 40319 (CA)** to the effect that before a matter is commenced for determination by the courts there must be a cause of action recognizable in law.

It is the submission of counsel that there is no recognisable right in law that a business name can own land or be allocated landed property.

On the whole, counsel contended that the lease granted the claimant was for a period of 5 years, hence the lease has expired. Counsel urged the court to so hold. That there is no reasonable cause of action to sustain the reliefs sought by the claimant.

In response, the claimant filed a reply to the defendant's notice of Preliminary Objection. The claimants reply is dated and filed on the 19<sup>th</sup> November, 2021. Learned counsel to the claimant in his reply formulated the following issues for determination to wit:

- 1. Whether this Honourable court can decide the issues raised by the Defendant and the arguments thereon at this stage of the proceedings.*
- 2. Whether from the claimant's statement of claim and relief, sought, this Honourable court has jurisdiction to entertain this suit.*

On issue one above, it is the contention of learned counsel to the claimant that the issues raised by the defendant in his Preliminary Objection goes to the substantive suit which cannot be resolved at this stage of the proceedings. He relied on **FBN VS AGBARA & ORS (2020)LPELR 50632(SC)PP 11-12 PARA A-A, JUMBO VS AMCON & ORS. (2020)LPELR-50231 (CA)36 PARAS A-C** to the effect that courts are not to delve into the substantive matter which is yet to be tried at the time of considering a preliminary objection.

Learned counsel submitted that the defendant did not support his preliminary objection with affidavit evidence but predicated his facts on documents frontloaded by the claimant which are not yet evidence before the court such as document of lease. Counsel argued that it is law that the court cannot act on a document not tendered and admitted in evidence. He relied on **IKPA VS STATE**

**(2017)LPELR – 42590 (SC)** amongst others to the effect that a court is not allowed to act on any document not tendered or admitted in evidence before it.

Learned counsel argued that the defendant counsel filed a preliminary objection which touches on issues of fact but he failed to file a supporting affidavit. That the Preliminary Objection is dead on arrival. Counsel contended that the facts introduced by the defence cannot be substitute for supporting affidavit evidence no matter how brilliantly articulated. He relied on **OMISORE & ANOR VS AREGBESOLA & ORS.(2015)LPELR – 24803 (SC)108 PARAS B-E.**

On issue two, Counsel argued that a business name and its proprietor are regarded as one and the same name. He cited **ADAMU V. FRN (2018)LPELR-46029(CA)24-25 PARAS E-B.** Counsel cited Order 13 Rule 29 of the Rules of this Honourable court which provides:

*"Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit all files relating to proceedings against firms shall apply."*

Counsel cited **F O – LOY VS REGISTERED TRUSTEES OF THE NEW COVENANT CHURCH (2017)LPELR – 42183 (CA)P.30** to the effect that a decision premised on the application of this rule cannot by any means be null.

Learned counsel argued further that whether or not the business name is registered is inconsequential if a person can be sued in his own name. He relied on **IYKE MEDICAL MERCHANDISE VS PFIZER INC & ANOR (2001)LPELR – 1579(SC)18, PARA C-G** to the effect that the question of the production of the certificate of Registration of the business name is a non-issue. Counsel submitted that the yardstick in assessing whether or not a plaintiff has locus standi to institute an action is sufficient interest. He relied on **EMEZI VS OSUAGWU (2005)2 SC (PT.11)128 AT 141 LINE'S 25-40** to the effect that the term locus standi denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law.

Learned counsel to the claimant contended that there are five ways of proving title.

- a. *By traditional evidence*
- b. *By production of documents of title duly authenticated and executed.*



- c. *By acts of ownership extending over a sufficient length of time.*
- d. *By acts of long possession and enjoyment.*
- e. *By proof of possession of annexed or adjacent land.*

Counsel cited **OYADARE VS KEJI & ANOR (2005)LPELR – 2861(SC)16-17 [ARAS F-C.** amongst others.

Counsel submitted that assuming but not conceding that claimant has no valid documents; her claim of ownership can be established by long possession which she has been enjoying. Counsel argued that the case of **FCDA & ORS. VS. UNIQUE FUTUR LEADERS INTERNATIONAL LTD (2014)LPELR – 23170 (CA)** cited by learned counsel for the defendant was cited out of context as the claimant in the instant case does not claim title to land, but trespass.

It is the contention of counsel that the claimant has the legal capacity to sue the defendant even if she fails to prove title, if at all she does claim title. He referred to the case of **OSHO & ANOR VS FOREIGN FINANCE CORPORTIONAL & ANOR (1991)LPELR – 280(SC)38 PARAS D-E.** to the effect that trespass is a wrong to possession. It constitutes the slightest disturbance to possession by a person who cannot show a better title. He relied on **EKPAN & ANOR VS UYO & ANOR (1986)**

**LPELR – 1085(SC)29** to the effect that possession of parcel of land means the occupation or physical control of the land either personal or through an agent or servant.

Counsel submitted that the claimant has a cause of action which can be seen in the statement of claim. He relied on **BARBUS & CO NIG. LTD & ANOR VS OKAFOR UDEJI(2018)LPELR - 44501(SC)13** to the effect that whenever an issue of reasonable cause of action is raised, it is the statement of claim that ought to be considered. It is the submission of counsel that the instant suit can be effectively determined without joining Abuja Environmental Protection Board, Minister of FCT, Department of Parks and Recreation as canvassed by the defence counsel. He relied on **KANU & ORS VS UWAKWE & ANOR (2018)LEPER- 44409(CA)32-33 PARAS C-A.** On who a necessary party is.

On the whole, counsel urged this court to resolve issue two in favour of the claimant.

In response to the claimant's reply, the defendant filed a reply on point of law dated the 10<sup>th</sup> November, 2021 and filed on the 26<sup>th</sup> November, 2021 wherein learned counsel to the defendant contended that the court can at the preliminary stage examine the Writ, Statement of claim and accompanying documents to

determine the locus standi of the plaintiff and also to determine if the suit discloses any reasonable cause of action. Learned counsel cited the case of **DISU & ORS VS AJILOWURA (2006)LPELR – 955(SC)** to the effect that where issues arises as to locus standi, it is the statement of claim alone that has to be carefully scrutinized with a view to ascertaining whether or not it has discloses the interest of the plaintiff. Counsel also cited **SHUAIBU & ANOR V. KOLE OSITO )2021(LPELR – 53435(CA).**

Counsel submitted that the law does not require the Defendant to support his Preliminary objection with any affidavit as all the issues submitted are to be determined by looking at the writ of summon and statement of claim. Counsel cited the provision of Section 123 of the Evidence Act 2011. Counsel submitted that the plaintiff having admitted in her statement of claim and address of counsel that her title or possession of land is derived from a business name of which they admit cannot own or acquire interest in land by virtue of law, then there is nothing worthy of a hearing in this case. He cited **UAC LTD VS MACFOY (1961)3 ALL E.R 1169** to the effect that you cannot put something on nothing and expect it to stand.

I have considered very carefully the preliminary objection; I have in the same vein perused the reply of learned counsel to the Claimant in opposition to the Preliminary objection and written submissions of both counsel. Having done that, I shall adopt the issues as formulated by counsel to the defendant herein, in doing that I shall make references to the legal arguments of counsel to the Claimant as I deem fit during the course of this ruling. The issue is -:

***Whether this court has jurisdiction to entertain this suit looking at the writ of summons and statement of claim.***

It is the submission of learned counsel to the defendant herein in the main that the Claimant lacks locus standi to initiate this action counsel to the defendant cited **ADETONO& ANOR V ZENITH INTL BANK** (supra) and urged this court to hold in the affirmative. On the issue of locus standi, learned counsel to the claimant argued that what is required of the claimant is to show sufficient interest, he referred this court to the case of **EMEZI V OSUAGWU** (supra).

It is a well a well known elementary law that the issue of jurisdiction can be raised at any stage of the proceedings, even at the Supreme Court. It is fundamental and pivotal see the case of

**SLB CONSORTIUM LTD V NIGERIAN NATIONAL PETROLEUM CORPORATION (2011) 9 NWLR (PT 1252) 317 at page 335** B-C per Muktar JSC (as she then was)

For a court to have jurisdiction the following conditions must be present.

- a. The proper parties are before the court.
- b. The subject matter falls within the jurisdiction of the court.
- c. The composition of the court as to members and qualifications.
- d. The suit commenced by due process of law and upon fulfillment of any condition precedent to assumption of jurisdiction. See the case of ***C.B.N. V. SAP NIG. LTD (2005)3 NWLR (PT. 911) P.152 Ratio 2. MADUKOLU V. NKEMDILIM (1962)2 SCNLR 34 I SKEN CONSUIT. V. UKEY (1981) I SC. 16.***

The relevant things to be considered by the court in determining the issue of jurisdiction are facts deposed to in the affidavit, the writ of summons and statement of claim where one has been filed and served. The statement of defence is not one of the relevant materials for that purpose. See ***USMAN V. BABA (2005)5 NWLR (PT. 917)113 Ratio 5.***

On the other hand, locus standi connote right or power to institute an action in a law court. For someone to have locus standi in bringing an action he must show that he has sufficient

interest in the matter. See the case of **ADESOKAN V. ADEGOROLU (1991)3 NWLR) PT 179(293 AT 307. Para B.**

In an application to determine whether a claimant has locus standi or not, the judge is bound to confirm himself within the four walls of the writ of summons/statement of claim before him and no more, as a matter of law. See **ADESOKAN V. ADEGOROLU (SUPRA)** it is the main contention of the learned counsel to the defendant/applicant in his preliminary objection that the claimant cannot sue or take legal action on behalf of a business name. A careful perusal of the Statement of claim before this honourable court would show that the Claimant has been in occupation of the said garden since 2001, she has exercised possessory rights on the said garden since then. These facts clearly show that the claimant has sufficient interest in the instant matter.

The law is that non-joinder perse does not affect the jurisdiction of the court or competence of a suit. The non joinder or mis-joinder of a necessary party is only a procedural irregularity which can be corrected in the course of the proceeding. See **ANYAWOKO V. OKYE (2010)5 NWLR (PT 1188) pg. 497.** If a court has jurisdiction to hear a case, mis-joinder or non-joinder cannot oust that jurisdiction. See **BELIVERS FISHERIES DREDGMY (NIG)LTD pg 185 at page 202.** From the above authorities cited there is no doubt that this Honourable court has jurisdiction to hear and determine this matter. Upon a careful perusal of the claimant's statement of claim and supporting affidavit thereof, it is my considered legal view that the claimant herein has locus standi to initiate this action. I so hold. On the whole I find that the defendant/applicants notice of preliminary

objection dated the 15<sup>th</sup> November 2021 is lacking in merit, I so hold, it is hereby struck out with cost of N50,000.00 awarded against the Defendant/Applicant in favour of the Plaintiff/Respondent, to be paid on or before the next adjournment date.

**Appearances:**

Plaintiff in court, Defendant also in Court.

Gabriel Egharevea for the plaintiff

P.D Pius for the defendant

Ruling read in open court

**Signed**  
**Presiding Hon Judge**  
**26/01/2022**