

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 32
CASE NUMBER:	SUIT NO. FCT/HC/M/1183/20
DATE:	2ND MARCH, 2021

BETWEEN:

ALHAJI MUHAMMED GAYA.....CLAIMANT
(Suing through his lawful attorney
DAUDA IBRAHIM THEYRE)

AND

SUPER STRUCTURES LIMITED.....DEFENDANT

APPEARANCES:

Simon C. John Esq for the Defendant/Applicant holding the brief of
Azubuike A. Chijioke Esq.

S. I. Imokhe Esq

RULING

By a Motion on Notice dated 9th day of November 2020 and filed on the
12th day of November 2020, the Defendant/Applicant herein, prayed the
Court for the following: -

- (1). An Order dismissing the Claimant's suit for lack of locus standi, incompetence, abuse of Court process, and patent lack of jurisdiction of the Honourable Court to entertain same.
- (2). And for such further Order or other Orders as the Honourable Court may deem fit to make in the circumstance.

The grounds predicated the application are as follows: -

- (1). This suit was filed without compliance with Order 2, Rules 2 and 2(2b) of the FCT High Court (Civil Procedure) Rules 2018.
- (2). This suit as presently constituted is an abuse of Court process.
- (3). The Claimant as presently constituted is no longer in existence and incapable of pursuing this action in Court.
- (4). The Claimant as constituted herein lacks locus standi to institute and maintain this action against the Defendant.
- (5). The Honourable Court was divested of jurisdiction to entertain this suit.

The Application is supported by an Affidavit of 10 paragraphs deposed to by Sunkanu Adebayo an operation manager in the Defendant's company two unmarked annexures which are photographs and a Written Address dated 9th day of November, 2020.

Meanwhile, in opposition to this Motion on Notice the Plaintiff/Respondent filed a Counter Affidavit of 5 paragraphs deposed to by Lyn Onyekwere a Counsel in the law firm of S. I Imokhe & Co, Counsel to the Plaintiff/Respondent, a Written Address dated 2nd day of December 2020 and annexures marked Exhibits A, B and C respectively.

In the Defendant/Applicant's Written Address in support of the Motion on Notice, two issues for determination were formulated by Azubuike A. Chijioke Esq, Plaintiff's Counsel to wit:-

- “(1). Whether this present suit does not constitute abuse of Court process, having not complied with the Rules of this Honourable Court.**
- (2). Whether the Honourable Court is not divested of the jurisdiction to entertain the Claimant's suit and any application connected thereto”.**

In arguing issue one, learned Counsel submitted with regard to Order 2 Rule 2(b) & (e), whether the Claimant has locus standi to institute this suit, that the words “locus standi” is a latin phrase meaning “place to

stand” the right to bring an action or to be heard in a given forum that in other words, locus standi is the legal capability of a Plaintiff/Claimant to institute an action in a Court of law in exercise of his constitutional right.

That ordinarily therefore, if the Statement of Claim discloses no personal sufficient interest in the subject matter of the case, the Plaintiff will have no locus standi to institute the action and the Court will have no jurisdiction to entertain same. Reliance was placed on the case of **BAKARE V JOSE-ADEOGUN (2014) 6 NWLR (Pt. 1403) 320 at 350 – 351; YESUFU V GOV. EDO STATE (2001) 13 NWLR (Pt. 731) 517.**

It is also argued that for a Plaintiff to invoke the judicial power of the Court, he must show sufficient interest or threat of injury he would suffer which is being sought to be protected. Counsel cited the case of **MOMOH V OLOTU (1970) 1 ALL NLR 117; ADESANYA V PRESIDENT F.R.N (1981) 2 NCLR 358; ADEFULU V OYESILE (1989) 5 NWLR (Pt. 122) 377; OWODUNNI V REGISTERED TRUSTEES OF C.C.C (2000) 10 NWLR (Pt. 675) 315.**

Counsel also referred to paragraph 11 of the Claimant’s Witness Statement on Oath, in arguing that the Claimant herein has no leg to stand on.

Reference was also made to paragraph 11 of the Claimant’s Statement of Claim.

Learned Counsel submitted further that the Plaintiff has not met the requirement stipulated by law in order to bring this action against the Defendant and urged the Court to resolve issue 1 in their favour.

On issue 2, it is submitted by the learned Counsel that the incompetence of the Claimant’s suit has deprived this Honourable Court of its jurisdiction to adjudicate on the matter. That it is because the question of strikes at the root of any cause or matter and consequently raises the issue of competence of the Court to adjudicate in the particular proceedings. Reliance was placed on the cases of **JOSIAH AYODELE V. ADETAYO & 2 ORS (2010) 3 -5 SC, 89; EMENIKE UWANTA V INDEPENDENT NATIONAL ELECTORAL COMMISSION & 2 ORS (2011) 11-12 SC (Pt. 11) 4; LEONARD OKOYE & 7 ORS V NC & F CO LTD & 4 ORS (1991) 6 NWLR (Pt. 199) 501 at 534, per AKPATA, JSC; LAFIA L GOV VS GOV OF NASARAWA STATE (2012) 12 KLR (Pt. 321) 4385, 4410, paras E – G, per Rhodes –Vivour JSC; GAFAR V GOVERNMENT OF KWARA STATE & 2 ORS (2007) 2 FWLR (Pt. 370)**

3197, 3223-3224, paras G – A, per Ogbuagu JSC; TANAREWA (NIG) LTD V PLASTFARM LTD (2003) 14 NWLR (Pt. 940) 355; FAGBOLA V K.C.C.I. M.A. (2006) 6 NWLR (Pt. 977) 433.

The Court is urged to resolve issue 2 against the Claimant and proceed to dismiss or strikeout the entire suit without much ado.

The Court is finally urged to grant the application as prayed and award a cost of N150, 000 against the Claimant to serve as a deterrent to others like the Claimant in order not to abuse the process of Court in future.

Meanwhile, on the part of the Plaintiff/Respondent, a sole issue for determination was formulated by Kayode Komolafe Esq in the Written Address to wit:

“Whether having regard to the depositions in the Applicant’s supporting affidavit, juxtaposed against those in the Respondent’s Counter Affidavit, this objection ought to be sustained”.

In arguing the issue, learned Counsel submitted on the issue of locus standi that whether the Respondent has shown sufficient interest in the subject matter of this suit is a matter of fact and depends on the materials placed before the Court.

On the meaning of locus standi, learned Counsel referred the Court to the cases of ***NIGERIA PORTS AUTHORITY V DR. SAM EXPO SAMA & 3 ORS; ADEOKINS RECORDS & ANOR V MUSICAL COPYRIGHT SOCIETY OF NIGERIA (2019) 15 NWLR (Pt. 1643) 550 at 563; ALH. MAROOF MAGBAGBEOLA & 11 ORS V ALH. MOROOF AKINTOLA & 2 ORS (2018) 11 NWLR (Pt. 1629) 177 at 196-197; STANBIC IBTC BANK PLC V LONGTERM GLOBAL CAPITAL LTD & 2 ORS (2018) 10 NWLR (Pt. 1626) 96, at 141.***

It is submitted that the Court needs to examine the Statement of Claim to see whether the said Plaintiff has shown sufficient interest to determine whether he has the standing to bring the action or not.

Learned Counsel submitted that the Respondent’s Statement of Claim is already part of the Court’s record on this case. That aside from the Counter Affidavit, from the averments in the Statement of Claim, it is clear that the respondent, as the original Allottee over the land in dispute and in that capacity donated an Irrevocable Power of Attorney in favour

of Mr. Dauda Ibrahim Theyre. That various payment receipts and documents including the re-certification documents have been pleaded and relied upon by the Respondent for that purpose. Reference was also made to the Offer of Terms of Grant/Conveyance of approval on behalf of the Respondent. That given the peculiar facts and circumstances of this case, it is to be seen that the interests shown by the Respondent in the subject matter of this suit is too strong as to be carted away in the manner as suggested by the Defendant/Applicant.

That in the instant suit, the Statement of Claim has disclosed a cause of action against the Defendant.

Reliance was placed on the cases of ***SIFAX NIG. LTD & 4 ORS V MIGFO NIG. LTD & ANOR (2018) 9 NWLR (Pt. 1623) 138 at 170 (SC); JOHN HINGA BIEM V SOCIAL DEMOCRATIC PARTY & ORS (2019) 12 NWLR (Pt. 1687) 377, at 407, SC; REV. PHILLIP MICAH DOPAH & 3 ORS V REG. TRUSTEES OF UNITED METHODIST CHURCH OF NIGERIA (2019) 4 NWLR (Pt. 1663) 520, at 534.***

The Court is then urged to overrule the objection on this ground.

Learned Counsel submitted on non-compliance with provisions of Order 2 Rule 2(2b) 2e) of the Rules of this Court, that assuming without conceding that there was non-compliance, Order 5 Rules 1 & 2 of the F.C.T. High Court Civil Procedure Rules 2018 provides that such failure or non-compliance can be treated as an irregularity and would not vitiate the proceedings or Writ.

Reliance was placed on the case of ***ALHAJI ATIKU ABUBAKAR GCON & ORS V ALHAJI UMARU MUSA YAR ADUA & ORS (2008) LPELR 51 SC.***

Finally, Counsel urged the Court to look at the Statement of Claim supporting the Counter Affidavit and other grounds and to dismiss this objection with punitive costs, and to set the matter down for trial on the merit.

Now, I have carefully considered this Motion on Notice, the Reliefs sought, the grounds predicated the application, the Supporting Affidavit, the annexures attached therewith as well as the Written Address filed in support of same.

I have equally considered the Plaintiff/Respondent's Counter Affidavit, the annexures attached therewith as well as the Written Address in support of same. In my humble view, the issue for determination is whether the Defendant/Applicant has made out a case to be entitled to the reliefs sought in this application?

Having carefully analysed the submissions of the learned Defendant/Applicant's Counsel, it is observed that the main contention on its part is that the Plaintiff/Applicant has no locus standi to institute this suit, and has not complied with Order 2 Rule 2(b)(2e) of the F.C.T. High Court Rules 2018, which Counsel argued has divested this Honourable Court of jurisdiction to entertain this suit.

First of all the phrase "locus standi" is defined in the Black's Law Dictionary 9th Edition at page 1026, as follows: -

***"Place of standing",
the right to bring an action or to be heard,
in a given forum;***

also, in giving its judicial definition, the Supreme Court held in the case of ***NWORIKA V ONONEZE –MADU & ORS (2019) LPELR – 46521, Per Bage JSC, at Pages 7 – 11, para E***, as follows:

"....beyond analogical inferences or conjectures, the issue of locus standi is the actual legal capacity of instituting or commencing an action in a competent Court of law without inhibition, obstruction or hindrance from any person or body whatsoever...."

Paragraph 9 of the Defendant/Applicant's supporting Affidavit is clearly hinged on the issue of locus standi.

In response, the Plaintiff/Respondent avers in paragraph (1) of the Counter Affidavit, that contrary to paragraph 9 of the affidavit in support of the Preliminary Objection, the Plaintiff/Respondent has the requisite legal capacity to institute this action in protection of his interests in the subject matter of this suit.

Now, in determining whether a Plaintiff has locus standi, it was held by the Court of appeal in the case of ***ABU & ANOR V KURA & ORS (2017) LPELR – 42489, per OTISI, J.CA, at PP 14- 15, para D***, as follows:

“....The issue of locus standi is not determined by the success or the merits of the case. What is important is that the Claimant has sufficient interest in or legal right in the subject matter. To say a party has no locus standi is to say that he has no right to appear and be heard in a matter.....”

It therefore, follows that in the instant case, the question is whether the Plaintiff/Respondent has any sufficient interest in the subject matter of the present suit and whether he has complied with the provision of Order 2 Rule 2(b) & (e) of the Rules of this Court.

It is the contention of the Defendant/Applicant among other things particularly in paragraphs 5, 6 and 7 of the supporting affidavit that the subject matter in this suit is no longer available as units of Bungalow constructed to completion and sold to suitable subscriber as seen in Exhibit A. That this suit was filed when the trespass had been completed according to the Plaintiff's Statement of Claim and that the Claimant forged these title documents to deceive this Honourable Court and to reap what he did not sow.

Now, the Plaintiff/Respondent had countered these assertions in the Counter Affidavit, particularly paragraph 4a-l thereof.

The Plaintiff/Respondent has shown how he became the original allottee of the land in question by also making reference to Exhibits A, B and C annexed to the Counter Affidavit.

In paragraph 4h, it is averred that the subject matter of this suit is land and same is available.

It is further averred in paragraph 4(i), thereof, that the Plaintiff/Respondent did not forge the title documents as same were allocated to him by the Minister for the Federal Capital Territory.

Therefore, having considered all the above averments of the Plaintiff/Respondent's Counter Affidavit, and also having considered the documentary exhibits annexed and marked Exhibits A, B and C, as well as the Plaintiff/Respondent's Writ of Summons and Statement of Claim, it is my considered opinion that at this stage, the Plaintiff/Respondent has shown sufficient interest in the subject matter in this suit to entitle him to institute this action. I so hold. I also refer to paragraph 4(k) of the Counter Affidavit.

Thing brings me now to the issue of non-compliance with Order 2 Rule 2(b) and (e) of the Rules of this Court 2018.

In response to the Defendant/Applicant's arguments on this issue, particularly the averments captioned in paragraph 9 of the Supporting Affidavit, the Plaintiff/Respondent has averred in paragraph 4j of the Counter Affidavit that this suit was filed in compliance with the rules of this Honourable Court.

I have carefully considered the submissions of Counsel on both sides on this issue. However, it would be in order for the purpose of clarity to reproduce the said provision thereunder.

Order 2 Rule 2 provides: -

“All civil proceedings commenced by Writ of Summons shall be accompanied by:-

(a). Statement of Claim

(b). List of witness(es) to be called at the trial

(c). Written Statements on Oath of the witnesses, except a subpoenaed witness.

(d). Copies of every document to be relied on at the trial and

(e). Certificate of Pre-action Counselling as in Form 6

(underlining mine).

Indeed, looking at the above provision, it is absolutely clear that the word “shall” (underlined for emphasis) indicates that compliance with the provision is not discretionary but rather mandatory.

To buttress this point, the Rules go further to state in Order 2 Rule 4 of the Rules of this Court as follows: -

“Where a Claimant fails to comply with rules (2) and (3) above, his originating process shall not be accepted for filing by the Registry.”

I have taken judicial notice of the relevant dates in the Plaintiff's Writ of Summons, it indicates that the said Writ is dated 30th day of September 2020 and filed same day. However, no list of witnesses is attached in compliance with Order 2 Rule 2(b) of the Rules of this Court.

Likewise, although there's a Certificate of Pre-action Counselling attached to the processes in this suit, in the Court's file, it is observed that the said Certificate of Pre-action Counselling is dated 29th day of September 2019 but not properly filed before the Court in compliance with Order 2 Rule 2(e) of the Rules of this Court, which is at the time of filing the Writ of Summons.

In order words, the Plaintiff/Respondent has failed to comply with the above rules of Court.

Therefore, I am quite in agreement with the submissions of the learned Defendant/Applicant's counsel on this issue.

However, on non-compliance with the rules of Court, Order 5 Rule 1(1) and (2) of the Rules of this Court provide as follows: -

Order 5 Rule 1(1): -

***“Where in beginning or purporting to begin any proceedings there has been reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.*”**

Order 5 Rule 1(2): -

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

(Underlining mine).

Therefore, in the instant case, although there's non-compliance with Order 2 Rule 2(b) and (e) of the Rules of this Court which may be attributable to Counsel's sheer negligence or even inadvertence, such

non-compliance shall be treated by the court as a mere irregularity which shall not nullify proceedings.

In fact going by Order 2 Rule 3 of this Court's Rules, it is mandatory upon the Registry not to accept such process for filing. Therefore, in my humble view, the fault of the Court's Registry exceeds even that of learned Plaintiff/Respondent's Counsel. I so hold.

In conclusion therefore, I find that this Motion on Notice on the whole lacks merit even though the issue is party resolved in favour of the Defendant/Applicant on non-compliance of the rules of Court.

On the whole, I find that this Court has the requisite jurisdiction to entertain this suit. The relief seeking dismissal of the present suit fails and it is accordingly dismissed in its entirety.

However, Plaintiff/Respondent is ordered to regularise by filing the necessary documents in compliance with Order 2 Rule 2(a) – (e) of the Rules of this Honourable Court.

No order as to cost.

Signed:

***Hon. Justice Samirah Umar Bature
2/3/2021***