IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS FRIDAY, THE 25TH DAY OF JUNE, 2021.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/758/2010
MOTION NO: M/7318/2020

BETWEEN:

1. **GODWIN OROHU**
2. **TOSIN GOMNA**
3. **FIDELIS DABOER**
4. **ALHAJI SANI YAHAYA**

.... PLAINTIFFS/RESPONDENTS

AND

1. **FEDERAL MINISTRY OF WORKS**
2. **MINISTER OF WORKS**
3. **DANTATA & SAWOE CONSTRUCTION CO. (NIG.) LTD**

.... DEFENDANTS/ RESPONDENTS

4. **FEDERAL MINISTRY OF JUSTICE**
5. **A.G. OF THE FEDERATION/MINISTER OF JUSTICE**

.... DEFENDANTS/ APPLICANTS

RULING

By a notice of preliminary objection dated 3rd June, 2018, the 4th and 5th Defendants/Applicants contends that the court lacks jurisdiction to entertain the matter and contends as follows:

1. The Amended Writ of Summons and Statement of Claim is incompetent and liable to be dismissed or struck out.

2. This suit as presently constituted is a gross abuse of the process of this Honourable Court.

3. This Honourable Court lacks the jurisdiction to entertain this suit and ought to strike out same.

Grounds upon which this objection is brought are as follows:

1. The Claimant's Amended Writ of Summons and Statement of Claim was filed on 4th June, 2018.

2. The 4th and 5th Respondents were only served with the Amended Writ of Summons and Statement of Claim on the 9th of January, 2020.

3. By virtue of Order 6 Rule 6 of the Rules of this Honourable Court, an originating process issued by the Registrar of this Honourable Court shall be served within six months.

4. Where after the expiration of six months of issuance of the originating process, the claimant fails to serve same on the Defendant, the said process is deemed expired and incapable of activating the jurisdiction of the court.

5. The Amended Writ of Summons by which this action was instituted is not signed by a Legal Practitioner and this is therefore, incompetent.

6. The validity of the Writ of Summons in the proceeding before this Honourable Court is fundamental and a necessary requirement for the competence of the suit.

7. Failure to commence a suit with a valid writ of summons goes to the root of the action since the conditions precedent to the exercise of the court's jurisdiction has not been met to properly place the suit before the court.

8. **The claimants failed to explore the dispute resolution mechanism provided under the Land Use Act by first referring the disputes arising from the compensations paid to them by the Defendants in respect of their properties to the Land Use and Allocation Committee of the Federal Capital Territory.**

9. **The claimants failed to comply with a mandatory condition precedent to the institution of this action and therefore deprives this Honourable Court of the jurisdiction to entertain this action.**

10. **This Honourable Court therefore lacks jurisdiction to determine this suit as presently constituted.**

11. **This suit cannot be maintained against the 4th and 5th Defendants by virtue of Section 2(a) of the Public Officers Protection Act.**

The application is supported by a seven (7) paragraphs affidavit. A written address was filed in compliance with the Rules of Court in which four issues were raised as arising for determination as follows:

1. **Whether the claimants' Amended writ of summons and statement of claim filed on 4th June, 2018 and served on the 4th and 5th Defendants on 9th January, 2020 had expired thereby, rendering same incompetent and stripping this Honourable Court of jurisdiction to entertain same?**

2. **Whether by virtue of the provision of Section 2(a) of the Public Officers Protection Act, Cap P41, LFN 2004 this Honourable Court is cloth with the jurisdiction to entertain this action?**

3. **Whether the subject matter of this suit is not inchoate, the claimants having failed to first exhaust the dispute resolution mechanism provided under the Land Use Act for resolution of disputes of this nature?**

4. **Whether this Honourable Court can assume jurisdiction to entertain this action that is predicated on an unsigned and incompetent writ of summons?**

Submissions were made on the above issues which forms part of the Record of Court. I shall in the course of the Ruling and where necessary refer to specific submissions of counsel.

The Applicants also filed a further affidavit with two (2) annexures marked as **Exhibits A** and **B** and a Reply on points of law in response to the Counter-Affidavit of the Plaintiffs/Respondents.

At the hearing, counsel to the 4th and 5th Defendants/Applicants relied on the contents of the affidavit and further affidavit and adopted the submissions in the written address. However in his oral submissions, he stated that they are abandoning issues (1) and (4) above. In the circumstances, the issues raised with respect to when the Amendment originating process was served on them and the question relating to the allegation that the writ was unsigned shall be discountenanced. In essence, we are concerned with only issues (2) and (3).

On the part of the Plaintiffs/Respondents, they filed a seven (7) paragraphs counter-affidavit with two (2) annexures marked as **Exhibits POCA** and **CAR**. A written address was filed in compliance with the Rules of Court in which the four issues raised by Applicants were adopted and submissions canvassed. I shall equally in the course of this Ruling refer to specific submissions as I consider necessary.

As stated earlier, submissions with respect to issues (1) and (4) having been abandoned by Applicants will equally therefore be discountenanced.

At the hearing, counsel to the plaintiffs/respondents relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the application as lacking in merit.

Now as stated earlier, we are concerned essentially with issues (2) and (3) as follows:

2. **Whether by virtue of the provision of Section 2(a) of the Public Officers Protection Act, Cap P41, LFN 2004 this Honourable Court is cloth with the jurisdiction to entertain this action?**

3. **Whether the subject matter of this suit is not inchoate, the claimants having failed to first exhaust the dispute resolution mechanism provided under the Land Use Act for resolution of disputes of this nature?**

I will start with issue (3) above.

I will not highlight the submissions made on the issues by parties for reasons that will shortly be apparent. It is important to situate facts from the materials filed by parties which clearly would impact on the powers of court to deal with the issue. I prefer to allow the facts deposed to by parties speak directly to the point. In paragraphs 4 and 5 of the counter-affidavit of Plaintiffs/Respondents, they averred as follows:

"4. The allegation in applicants' paragraph 3h and their assertion in 3i that the claimants failed to first refer their dispute over compensation to the Land Use and Allocation Committee of the Federal Capital Territory before instituting this suit, and that the court is therefore without jurisdiction over the matter, is a replication of Ground 6 of their earlier Preliminary Objection dated 4th April, 2011 and filed 5th April, 2011 (9 years ago).

5. The said Preliminary Objection was argued. Ruling was delivered on it on 5th October, 2012. The applicants appealed the ruling in Appeal No: CA/A/19/2013. The Court of Appeal directed that the point can conveniently be brought after final judgment and struck the appeal out on 1st February, 2018. Certified True Copy of the Preliminary Objection extracted from pages 106 to 109 of the Record of Appeal is hereto annexed and marked Exhibit POCA. The Certified True Copy of the ruling of the Court of Appeal is annexed hereto and marked Exhibit CAR."

Now in response to the above averments, the Applicants in paragraphs 4 and 5 of their further affidavit stated thus:

"4. The contrary to paragraphs 4 and 5 of the said Counter-affidavit of the plaintiffs, the preliminary and jurisdictional point of objection raised by the 4th and 5th defendants' previous Notice of preliminary objection that this suit is premature for the plaintiffs' failure to first refer the dispute to the Land Use and Allocation Committee of the Federal Capital Territory

for resolution of the dispute in compliance with Section 30 of the Land Use Act, was never resolved one way or the other in the Ruling delivered by this Court. CTC of the Ruling of this Court on the objection delivered on 5th October, 2012 is hereby attached as Exhibit A.

5. **That the failure of the court to resolve the preliminary point of objection challenging its jurisdiction one way or the other formed the basis of the appeal filed by the 4th and 5th Defendants/Applicants challenging the Court's failure to decide on the preliminary point of objection. Copy of the Notice of Appeal filed by the 4th and 5th Defendants on 14th January, 2013 is hereby attached as Exhibit B."**

Now flowing from the above averments, there is no doubt that:

1. The present Applicants have earlier by a **Notice of Preliminary objection** attached as Exhibit POCA to the Respondents Counter-Affidavit precisely formulated this same complaint over failure of plaintiff to first refer the dispute over compensation to the Land Use Allocation Committee of the FCT vide Ground 6. By Exhibit A, attached to the Applicants further affidavit, Honourable Justice B. Balami (now retired) delivered a Ruling dated 5th October, 2012 striking out the Preliminary Objection filed by the Applicants containing the above ground of objection. The clear implication of this Ruling is that this same ground of complaint having already been raised and heard by a court of coordinate jurisdiction cannot be heard again under any guise by the same court. Indeed whatever the dissatisfaction Applicants may have over the Ruling and this they have articulated in their notice of Appeal, the bottom line is that they were heard and a Ruling given. This court is clearly therefore *functus officio* with respect to that particular issue.

2. By the Notice of Appeal **Exhibit B** attached to the further affidavit of Applicants, they challenged the decision at the Superior Court of Appeal. The two Grounds of complaint recognise that there Preliminary Objection was heard and dismissed but that there were no specific findings on the issues raised by them and therefore prayed for the following:

"a. An Order allowing the appeal.

b. An Order setting aside the Ruling of the trial Court delivered on the 5th of October, 2012.

c. An Order granting the relief sought in Appellants' Notice of Preliminary Objection before the trial Court and striking out Plaintiffs' suit at the trial Court for failure to comply with mandatory condition precedent and the trial Court's lack of jurisdiction to entertain the suit, in accordance with its powers under Section 15 of the Court of Appeal Act, 2004."

I will return to the Reliefs sought from the Appeal Court later.

3. The Court of Appeal by **Exhibit CAR** attached to the counter-affidavit of Applicants frowned at such interlocutory appeals and struck it out stating clearly that the point can conveniently be brought after final judgment.

The implication of the Ruling of the Court of Appeal is clear. The Appeal by Applicants over the decision of Honourable Justice Balami dismissing the preliminary objection filed by Applicants including the complaint related to the failure to make specific findings over failure to comply with mandatory condition precedent of referring the matter first to the Land Use Allocation Committee of the FCT remains a live issue and pending. The issue has just been left in abeyance to be taken by way of an appeal arising from the final judgment.

The implication is that the orders sought by the Applicants in the appeal as stated above remain alive and extant.

In the circumstances, it will be remiss and overtly presumptuous on the part of this court to proceed to consider the same point as canvassed by the Applicants which is now pending at the Court of Appeal and in the context of the Reliefs they pray for. The Applicants at the Appeal Court pray that the Ruling dismissing the preliminary objection be "set aside" and that the Court of Appeal should grant "the relief sought in Appellants Notice of Preliminary Objection before the trial court and striking out plaintiffs suit at the trial court for failure to comply with mandatory condition precedent …"

At the risk of sounding prolix, the Superior Court of Appeal have stated clearly that this complaint shall be determined later and at the appropriate time.

This court is obviously not the Court of Appeal and has no powers to sit and review the decision of my learned brother Balami J (Retired), a court of coordinate jurisdiction or to make the orders sought by Applicants vide their Notice of Appeal which only the Court of Appeal can make. The present issue (3) cannot be countenanced as I have demonstrated at some length above. The proper order is to simply strike it out. I so do.

Now on the remaining issue (2) on application of the provisions of Section 2 (a) of the Public Offices Protection Act, the case made out by Applicants is simply that the extant case ought to have been filed within three (3) months and to use the words of the Applicants, that time for the action to be filed "lapsed sometime in February, 2011" but that the "claimants/respondents suit was filed on 4th June, 2018, about 7 years outside the mandatory provision of POPA and is statute barred."

Do the facts in this case bear out the contention of Applicants? Now on the materials, this matter was filed within time on 20th December, 2010 and well before the expiration time as even streamlined by Applicants which as stated earlier is "February 2011". The Applicants have not denied or challenged the fact that this action was filed on **20th December, 2010** and the file number used by the Applicants on all processes filed by them unequivocally attest to that fact, to wit: **FCT/CV/758/2010**.

In the light of this unchallenged fact, it is difficult to situate the factual and or legal basis of the contention that the action was filed on **4th June, 2018** and thus **statute barred**.

There appears to be a grave error of appreciation by Applicants with respect to the import of the Amended writ of summons filed by plaintiffs on 4th June, 2018 pursuant to the Order of court granted by the Retired Justice Balami on the said date.

The principle now of general application is that amendments duly made take effect from the date of the original document sought to be amended; and this applies to every successive further amendment of whatever nature and whatever stage it is made. Therefore when a writ of summons is amended, it dates back to the original issue of such writ and consequently the action will continue as if the amendment

has been inserted from the beginning. See **Adewumi V. A.G Ekiti State (2002) 2 NWLR (pt.751) 474 at 506 E-F.**

It is therefore patently wrong or erroneous to assume like Applicants have done here that the extant Amended Writ of Summons dated 4th June, 2018 meant that the case or action was filed afresh on that date. The Amendment granted in this case accordingly dates back to the date when the pleadings were originally filed. This means that once pleadings are amended, what stood before the amendment is no longer material before the court. See **Union Bank of Nig. Plc V Osaze (2011) 7 NWLR (pt.1246) 293 at 311 G-H.**

The bottom line is that the Amended writ of summons in this case take effect from the date of the original document which is 20th December, 2010. See **Ezenwa V K.S.H.S.M.B (2011) 9 NWLR (pt.1251) 89 at 115 B**. The provisions of POPA clearly have no application here. Issue 2 is thus resolved against Applicants.

Before I drop my pen, I call on all counsel on either side of the aisle to now act post haste and ensure that this long drawn matter is now determined with the minimum of delay. It is a sad commentary on the process that a matter filed on 20th December, 2010 is yet to be heard and determined, nearly 11 years after it was filed. It is difficult to see how Nigerians will have confidence in the administration of justice if matters like this to be decided on fairly settled principles drags on interminably. I say no more.

On the whole, except for issue (3) which the court strikes out, the application completely lacks merit and is hereby dismissed. I order for an accelerated hearing of this action.

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Hon. Justice. A. I. Kutigi

Appearances:

1. **J.E.T Amokaha, Esq., for the Plaintiffs/Respondents.**

2. **A.J. Reuben Nnwoka, Esq., for the 1st and 2nd Defendants/Respondents.**

3. **I.I. Okim, Esq., for the 3rd Defendant/Respondent.**

4. **Festus Jumbo, Esq., for the 4th and 5th Defendants/Applicants.**