

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 17TH DAY OF JUNE, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO: FCT/HC/CV/797/2020
MOTION NO: FCT/HC/M/9645/2020

BETWEEN:

1) ENGR. KALU GEORGE EGBEKE
2) ENGR. EFFIONG FULLER ETIM OKON:.....CLAIMANTS/
RESPONDENTS

AND

1) NATCOM DEVELOPMENT &:.....DEFENDANT/
INVESTMENT LTD (Trading as NITEL) RESPONDENT
2) OTUNBA OLUSOLA ADEKANOLA:....DEFENDANT/APPLICANT
3) BUREAU OF PUBLIC ENTERPRISES (BPE):.....DEFENDANT/
RESPONDENT

Appearances: None.

RULING.

The 2nd Defendant/Applicant brought this motion pursuant to Order 43 Rule 1(1), (2); Order 3 Rule 1 of the high Court of the FCT, Abuja (Civil Procedure) Rules, 2018; Sections 417 & 422 (7)(b) of CAMA, and under the inherent jurisdiction of this Court, praying for;

1. An Order striking out the Claimant's suit for lack of jurisdiction of this honourable Court to entertain same.
2. And for such further Order or Orders as this honourable Court may deem fit to make in the circumstances of the case.

The Applicant founded this application on the grounds that;

- a. The Claimant's suit borders on landed property situate at Itu Local Government Area of Akwalbom State outside the territorial jurisdiction of this honourable Court.
- b. Leave of Court required before the institution of this suit against the 2nd Defendant as liquidator of NITEL Trustees Ltd under Section 417 of CAMA was not obtained, which thus deprives this Court of jurisdiction.
- c. The capacity in which the 2nd Defendant is being sued by the Claimant is not reflected on the heading of the Originating Summons, contrary to the provision of Section 422 (7)(b) of the Companies and Allied Matters Act, Cap C20, LFN 2004.

The learned 2nd Defendant/Applicant's counsel, Michael Edet, Esq, raised three issues for determination in his written address in support of the application, namely:

1. Whether this Court has jurisdiction to entertain a claim of land situate in Itu Local Government of Akwalbom State?
2. Whether this Court can entertain a case instituted against a liquidator without the requisite leave of Court as provided under Section 417 of CAMA?
3. Whether the failure by the Plaintiffs to reflect on the face of the Originating Summons the capacity in which the 2nd Defendant is being sued does not render the suit of the Plaintiffs incompetent?

Proffering arguments on issue one, learned counsel contended that the Claimant's relief a, b, c and d are claims which border on landed property situate in Itu Local Government of Akwalbom State outside the precinct of the jurisdiction of the Federal Capital Territory. He placed reliance on **Dalhatu v. Turaki (2003) 15 NWLR (Pt.843) 310 at 339** to argue that this Court lacks the territorial jurisdiction to entertain the instant suit.

He referred to Order 3 Rule 1 of the Rules of this Court which provides that suits bordering on land are to be filed in the judicial division where the land is situate, and contended that in this case, the land in question is situate in Akwalbom State, entirely outside the jurisdiction of this Court.

He urged the Court to decline jurisdiction and strike out the case accordingly.

On issue two, learned counsel contended that the suit before this Court is not properly constituted as the leave of Court required to be obtained before the suit is brought, upon a winding up Order being made or a provisional Liquidator appointed, was not obtained. He argued that the 2nd Defendant, from the Claimants' affidavit, was appointed Liquidator of NITEL Trustees Ltd on 28th March, 2007 while this suit was filed on 24th August, 2017 without any evidence that the leave required by Section 417 of CAMA was sought and obtained.

He referred to **UBN PLC v. Sogunro (2006) 16 NWLR (Pt 1006) 504 at 524** and urged the Court to strike out the name of the 2nd Defendant from the suit for failure to obtain the required leave to file the suit as provided by Section 417 CAMA.

Arguing issue three, learned counsel contended that the capacity in which the Claimants are suing the 2nd Defendant is not reflected on the face of the originating Court processes as required by Section 422(7) CAMA. He posited that the provision of the said Section 422(7) of CAMA is mandatory and that failure to comply with same in this case causes the suit to appear as a personal suit against the 2nd Defendant instead of one against him as the Liquidator of NITEL Trustees Ltd. He referred to **Brifina Ltd v. Inter. Cont. Bank Ltd (2003) 5 NWLR (Pt.814) 540 at 577.**

Relying on **Asaboro v. Pan Ocean Oil (Nig) Ltd (2006) 4 NWLR (Pt.971)595 at 618**, he contended that the failure of the Claimants to reflect the capacity in which the 2nd Defendant is being sued is fatal to the suit of the Claimants. He urged the Court to hold that the suit is incompetent against the 2nd Defendant and to accordingly, strike out the name of the 2nd Defendant from the suit.

In his reply on points of law to the Claimants/Respondents' counter affidavit, learned Applicant's counsel posited that the Claimants' argument that this Court has jurisdiction to entertain this suit by virtue of Section 51(2) and 39(1) of the Land Use Act, is misplaced. He submitted that what determines the jurisdiction of the Court for land matters is the venue or place where the land is located. He referred to **Dalhatu v. Turaki (supra); F.G.N. v. Oshiomole (2004) 3 NWLR (Pt.860) 305 at 325-326**.

He contended that the territorial jurisdiction of this Court cannot by any stretch of imagination, extend beyond the FCT to Itu, Akwalbom State.

Learned counsel further relied on **Asaboro v. Pan Ocean Oil (Nig) Ltd (supra)** to urge to Court to disregard the Claimants' argument that their omission to state the capacity in which the 2nd Defendant was being sued on their originating process amounts to a misnomer. He contended that the said omission goes to the root of the case.

On the Claimants' contention that it was the Liquidator, rather than the company, that was sued, and as such, requiring no leave of Court, learned counsel posited that upon the appointment of a liquidator, it is difficult to separate the Liquidator of the company from the company itself.

The Claimants/Respondents in opposition to the Notice of Preliminary Objection, filed a 14 paragraphs counter affidavit deposed to by NdubuisiKalu, Esq, counsel to the Claimants/Respondents, and same supported by a written address. Learned counsel averred that this Court has jurisdiction to entertain this suit as same falls within the competence of the Court. Also, that the Claimants require no leave to sue the 2nd Defendant and that the capacity under which the 2nd Defendant is sued is copiously reflected in paragraph 6 of the Claimants supporting affidavit attached to their originating summons.

In his written address in support of the counter affidavit, learned Claimants/Respondents' counsel, NdubuisiKalu, Esq, raised a lone issue for determination, namely;

“Whether this honourable Court has jurisdiction to entertain this suit taking into consideration Section 39(1) and Section 51(2) of the Land Use Act, 1978; Section 422(7)(b) of the Companies and Allied Matters Act.”

Arguing the issue so raised, learned counsel contended that Section 51(2) of the Land Use Act has taken every land vested in the Federal Government out of the realm of the governors' administration and out of the High Court of the State, by extension, Akwalbom State, and vested same in the President of the Federal Republic of Nigeria or a Minister appointed by him.

Relying on section 39(1)(a) of the Land Use Act, he argued that it is not the intention of the framers of the Land Use Act to confer jurisdiction in respect of lands which are subject of Statutory Rights of Occupancy, on the State High Courts. That such jurisdiction is conferred on the FCT High Court which is

the Court closer to the President and the Federal Government, since the Federal High Court has no jurisdiction over land matters.

He contended that the High Court with the requisite jurisdiction to hear a case of this nature, considering the authority that issued the statutory right of occupancy, is the FCT High Court, and that this is the reason why the Federal High Court transferred this case to the FCT High Court.

Regarding the Applicants' contention that the leave of Court was not sought and obtained before suing the 2nd Defendant, learned Claimants/Respondents' counsel argued that Section 417 of the Companies and Allied Matters Act does not contemplate obtaining any leave of Court to sue the 2nd Defendant. That the Section only contemplates an instance where a company that has been wound up, like NITEL Trustees Ltd, is to be sued. He contended that the person being sued in this case is the Liquidator, who is a natural person, and not a company contemplated by the Act.

Learned counsel further argued that Section 422(7)(b) of the CAMA has been complied with by the Claimants as the whole essence of the said Section is to ensure that the capacity under which the 2nd Defendant is sued, is disclosed. He argued that paragraph 6 of the Claimants' affidavit attached to the originating summons has disclosed the capacity of the 2nd Defendant in this suit.

Arguing further, learned counsel contended that the omission of the capacity of the 2nd Defendant on the heading of this suit, is only a misnomer and not fundamental to warrant striking out the suit. He referred to **The Registered Trustees of the Airlines Operators of Nigeria v. Nigerian Airspace**

Management Agency (2014) LPERLR-149(SC),and urged the Court to dismiss this motion for want of substance.

The Applicant, by this application, seeks the Order of Court striking out this suit for lack of jurisdiction, and the main ground for seeking the striking out order is that the suit borders on landed property situate in Itu Local Government Area of Akwalbom State, outside the territorial jurisdiction of this Court.

The issue of jurisdiction is so fundamental that it can be raised at any stage in a proceedings, even on appeal, and even by the Court suo motu. This is because jurisdiction is the life-wire of any judicial proceeding and any proceeding conducted in the absence of jurisdiction will amount to an exercise in futility, no matter how well conducted. See **PetroJessica Enterprises Ltd & Anor. v. Leventis Technical Company Ltd (1992) LPERLR-2915 (SC); NDIC v. CBN & Anor (2002) LPELR-2000(SC)**.

On the factors that must be present before a Court can assume jurisdiction over a matter, the Court of Appeal, in **Asibe & Ors v. Owerri Municipal Local Government (2012) LPELR-9820(CA)**, per Owoade, JCA, held inter alia, that;

“... a Court is competent when –

- 1. It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and***
- 2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction, and***

3. The case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.”

The subject matter of the instant case, being landed property situate at Itu Local Government Area of Akwalbom State is The critical question is **whether there is any feature in the case that prevents this Court from exercising jurisdiction over this case?** In that regard, the 2nd Defendant/Applicant has identified the critical factor to be the location of the land in question, as he argues that the land, being situate in Itu Local Government Area of Akwalbom State, is outside the territorial jurisdiction of this Court.

In **Dariye v. FRN (2015) LPELR-24398 (SC)**, the Supreme Court, per Ngwuta, J.S.C.held thus:

“Territorial jurisdiction implies a geographic area within which the authority of the Court may be exercised and outside which the Court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the Court by the law creating it.”

The law is also trite that it is the claims of the Claimant as endorsed on the Writ and the Statement of Claim that determines the jurisdiction of the Court. In this case, it is the reliefs of the Claimants as endorsed on the Originating Summons to wit:

- a. A declaration that the sale of a piece or parcel of land situate at Itu Local Government Area, Akwalbom State described as telephone exchange point to the plaintiffs by the 2nd and 3rd defendant is proper and valid in law.

- b. A declaration that the 1st defendant's continuous presence on the property in issue and removal of cables and other facilities attached to the land is unlawful and same amounts to trespass.
- c. An order of this honourable court directing the 1st defendant to vacate the property situate at along Calabar/Itu Road, Ntiatlitam, Itu LGA popularly known as NITEL PREMISES, ITU TOWN forthwith.
- d. An order of perpetual injunction restraining the defendants, their agents, privies or allies from further trespassing into the property situate at along Calabar/Itu Road, Ntiatlitam, Itu LGA popularly known as NITEL PREMISES, ITU TOWN.
- e. An order directing the 1st defendant to pay to the plaintiff the sum of N500,000,000 (five hundred million naira only) as general damages to the plaintiffs for continuous trespass on the property in issue and the continues removal of telephone facilities.

Bearing in mind that the territorial jurisdiction of the High Court of the Federal Capital Territory is circumscribed within the territorial boundaries of the Federal Capital Territory, and considering the claims endorsed on the Originating Summons, it is crystal clear that the subject matter of this suit is unquestionably situate outside the jurisdiction of this Court. The land in issue is situate in Akwalbom State, beyond the territorial reach of this Court.

The submission of learned Claimants' counsel that it is the grantor of the right of occupancy that determines the Court with the jurisdiction to entertain any dispute connected to the land, is, to my mind, standing the law on its head and a misconception of the law. Section 51(2) of the Land Use Act did

not confer jurisdiction on this Court as contended by learned Claimants' counsel.

Moreover, this Court at this stage cannot go into evidence to determine the authority that granted the right of occupancy; assuming, but without conceding that that is material in determining the jurisdiction of this Court.

The instant suit is clearly one that should be decided by the Akwalbom State, High Court, and not the High Court of the Federal Capital Territory.

Since this Court has no jurisdiction to entertain this suit, I consider it superfluous and an academic exercise to consider the other grounds of objection raised by the 2nd Defendant/Applicant. I will therefore not waste the precious judicial time of this Court embarking on such fruitless venture.

From the totality of the foregoing therefore, it is my considered view that this Court lacks the competence to entertain this suit as the subject matter thereof is outside the territorial jurisdiction of this Court. Accordingly, this case is hereby struck out for want of jurisdiction with a cost of N200,000.00 (Two Hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
17/6/2021.