

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 23RD DAY OF JUNE, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/BW/11/17

MOTION: M/5842/20

BETWEEN:

YO-OKOSHANG ENTERPRISES ... CLAIMANT/RESPONDENT
(Suing through its lawful Attorney
Daesung Borehole Limited)

AND

**1. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY**
**2. HONOURABLE MINISTER OF THE
FEDERAL CAPITAL TERRITORY**
3. ALHAJI AHMED LEDA
**4. TAMAIDUKKA INVESTMENT
COMPANY LIMITED RC: 417618**
5. A.Y. SHAFALIMITED

...DEFENDANTS/APPLICANTS

RULING

In a further amended Statement of Claim the Plaintiff claimed the following against the Defendants:

1. A declaration that the purported revocation of the Plaintiff's Right of Occupancy on the Property lying and situate at Plot No. B Com 09 CAD zone 07-05, Dawaki layout measuring 1.888.27 sqm without service of the Notice of Revocation on the Plaintiff is unlawful, arbitrary, capricious, malicious exercise of discretion as well as gross abuse of executive powers.
2. Declaration that the said Land (hereinafter called the Res) belongs to Plaintiff and an act of the Defendants Challenging the possession of the Plaintiff as unlawful and an act of trespass.
3. Declaration that the act of the Defendants amounts to trespass.
4. An order directing the Defendants jointly and severally to pay the Plaintiff the sum of ₦20, 000,000.00 (Twenty Million Naira) as special damages for the arbitrary and unlawful act detrimental to the Defendant.
5. An order directing the Defendants to pay the Plaintiff the sum of ₦10, 000,000.00 (Ten Million Naira) as general damages for the act of trespass.
6. Perpetual Injunction against the Defendants, agents, servants, privies for the act of trespass on the Res.

The 1st -5th Defendants were served. The 1st -2nd Defendant filed a Preliminary Objection challenging the Jurisdiction of the Plaintiff not disclosing a reasonable cause of action.

They sought for an order dismissing/striking out the Suit for being incompetent and for lacking the requisite jurisdiction of the suit. In the alternative the 1st and 2nd Defendant stated that they want an order striking out the name of the 1st and 2nd Defendants from the suit. 1st and 2nd Defendants are the FCTA and Minister FCT.

The 1st and 2nd Defendants believe that the issues raised in the application are threshold issues which when tried or decided prematurely can decide the Suit. That the 1st and 2nd Defendants brought this application that those issues be tried as preliminary issues on competence of this suit and the jurisdiction of the Court to entertain same. They supported the application with an Affidavit of 7 paragraphs.

Upon receipt of the writ on its own part the 5th Defendant, A.Y.M Shafa Ltd filed a Preliminary Objection urging the Court to dismiss or strike out the suit on the ground that it was improperly constituted and therefore incompetent.

They based the application on the following grounds.

That the Claimant is not a person known to law. That the Claimant lacks the capacity to commence this Suit and hold landed property in Nigeria.

Since the 1st and 2nd Defendants and 5th Defendant had filed Preliminary Objection challenging the competence of the Suit and not disclosing any cause of action and jurisdiction the Court will take the 2 Preliminary

Objections together and come up with its Ruling after considering all the issues raised by parties.

That the Claimant as no complaint or civil right or obligation fit to be determined by the Court. They referred to the case of:

BARIUS & CO LTD Vs. OKAFOR UDEJI (2018) 11 NWLR (PT.1630) 298 @309

That going by the paragraphs 6, 7, 9 and 13 of the Plaintiff's Statement of Claim shows that the claims are misplaced because the notices which the Plaintiff claimed were pasted by the 1st and 2nd Defendants have no nexus with the Property of the Plaintiff which is No. B Com 09 CAD Zone 07-05 Dawaki Layout. That a closer look at the said Notices reveals that they were directed to:

“Owner/Occupier/Developer of Plot 1085 (MFS) District Dawaki CAD F18”.

That the above address is not one and the same with that of the Plaintiff's property. That the mere existence the above facts does not vest the Plaintiff with any Cause of Action to approach the Court for the relief sought. That 1st and 2nd Defendants are empowered by FCT Act Section 7 & 21 to be responsible for the management of the infrastructure and physical development of the FCT. Again that the 1st and 2nd Defendants in the performance of their statutory duties which include enforcement of adherence to approve town planning codes, are empowered by law to post notices and indeed mark any

building which is in contravention of Development Control Approval for demolition.

That the 1st and 2nd Defendant pasted the said notices and caution which is within their statutory rights. That the Suit presently constituted is not proper avenue for plaintiff to challenge the Administrative act of the 1st and 2nd defendants. That the relief sought is speculative and not supported by averments in the Statement of Claim and did not disclose any cause of action. That the Defendant has not infringed the civil right of the Plaintiff by pasting the notices if at all the notices were pasted in the Plaintiff's land/property. They relied and referred to the case of:

RINCO CONSTRUCTION COMPANY LTD Vs. VEEPEE INDUSTRIES LTD (2005) 9 NWLR (PT.929) 85@99

That the Claimant has not set out the facts showing how its legal right was infringed upon by the 1st and 2nd Defendants. That the 1st and 2nd Defendant had not infringed on Plaintiff's right. They urged Court to resolve the issue in 1st and 2nd Defendants favor and hold that the Plaintiff's statement of claim does not support the relief sought in this suit. That Plaintiff failed to establish a nexus between the act of the 1st and 2nd Defendant and the alleged infringement of the right of the Plaintiff. They urged Court to dismiss the Suit with punitive cost or alternatively to strike out the names of the 1st and 2nd Defendant from the Suit.

On the part of the 5th Defendant in the Written address. On the Suit being incompetent the 5th Defendant submitted that the Claimant is not a juristic person who has a right to sue and be sued. That by the way the name of the Plaintiff appears in the writ that the Plaintiff is an enterprise and not a limited liability Company and as such Plaintiff is not a Juristic person which can sue or be sued. That action commenced by the Plaintiff robs the Court the jurisdiction to entertain the Suit since Plaintiff is non-juristic person. That in this Suit there is no competent Plaintiff for the Suit to be properly constituted. That by paragraph 1 of the further amended Statement of Claim the Plaintiff is an enterprise. That there is no competent Claimant. They referred to the case of:

CBN Vs. EDET (2015) ALL FWLR (PT.768) 879

On whether the Claimant can hold landed property in Nigeria they submitted that the Plaintiff claimed to be the allottee of the Res. That claimant lack capacity to enter into contract or hold land in its incorporated name. That any allotment of land on the Claimant as non juristic person is null and void. They referred to the case of:

BANKOLE & OR Vs. EMIR INDUSTRY LTD (2012) LPELR 19719

N.I.P.C LTD Vs BWA LTD (1962)2 NSCC 357

FCDA & OR Vs UNIQUE FUTURE LEADERS INTERNATIONAL LTD (2014) LPELR – 23170

They submitted that the Claimant bringing this action through Deasung Borehole limited does change the fundamental defect in the Suit. That the Plaintiff Yokoshang Enterprise has no capacity in the eyes of the law to appoint an agent and cannot give or donate power it does not have in itself. It cannot give a power it does not have to exercise to an agent to exercise same on its behalf. They referred to the case of:

ADELAJA Vs FANOIKI & ANOR (1990) 3 SC 130

INTERGRATED FINANCE LTD Vs NPA & ANOR (2019) LPELR-49321

They urge Court to dismiss or strike out the Suit as the Plaintiff is a non juristic person and cannot hold landed property, lack the capacity to sue and cannot commence an action through an Attorney as it has no power and donate power it does not have.

The Plaintiff did not file any Counter Affidavit to challenge the Preliminary Objection of the 1st, 2nd and 5th Defendants. They had held that the Suit is competent within the Rules of the Court.

That the Plaintiff has a legal right which has been infringed by the action of the Defendants. That the Court has both territorial and legal material jurisdiction to entertain the Suit. That it is the 1st and 2nd Defendants who were accused of the threat to demolish the Res. That they are very necessary party and should referred as necessary party. That this suit is about a wrong

committed against the Plaintiff by the Defendants threat to demolition.

Again that the Suit was properly instituted by the Plaintiff following the due process of law. That they have a right to institute the action through their Attorney. That at preliminary stage the evidence is not analyzed. That the Plaintiff disclosed cause of action which is demolition and threat to demolish the Res by the 1st and 2nd Defendant. That the Plaintiff had disclosed in the Statement of Claim that the 5th defendant had trespassed into the res. That it will be in the interest of Justice to allow the matter so that all parties and particularly the Plaintiff will be given chance to establish his claim. He urged the Court to hold that there is a cause of action and that the Suit is competent and that the Court has jurisdiction to entertain same.

COURT:

After all the summary above can it be said that there is no cause of action, that the suit is not competent and that the Court has jurisdiction to entertain the suit, bearing in mind that the 1st and 2nd Defendants are the allocating authority which has right to ensure that the planning of the FCT is maintained and not abused going by the provision of S.7 & 21 FCT Act and also bearing in mind that the Res as claimed is located within the FCT and that the issue complained of by the Plaintiff through its attorney is on demolition or threat to demolishing of the Res in this case.

Again does this Court have jurisdiction and does the Suit of the Plaintiff disclose any cause of action. Again is it premature too.

It is the humble view of this Court that there is a disclosed cause of action, the suit of the Plaintiff is competent and this Court based on the cause of action so disclosed, has jurisdiction to entertain this suit.

It is the Claim of the Plaintiff that they have been enjoying the Res which they were allegedly allocated since 2001. That the 1st and 2nd Defendant had threatened to demolish the Res and that the 5th Defendant had encroached into the land and continue to trespass. This Court has the right to entertain suit on trespass. It has the power to entertain issues concerning allegation of threat to demolition. It has that jurisdiction to determine the issue in dispute. So this Court hold. It is the cause of action that give Court its jurisdiction.

Again the suit of the Plaintiff is not premature as the 1st and 2nd Defendants claim. The 1st and 2nd Defendants are in the center of the allegation of threat to demolish the res as alleged by the Plaintiff. Their continued to be part of the Suit is very necessary. This Court holds, that it shall not remove their names as they continued being a party will help the Court to get to the Justice of the case. So this Court holds.

Again the Suit is not improperly constituted as the 5th Defendant is erroneously postulating. The Plaintiff is

suing through its Attorney. Yes Plaintiff is not a Registered Company but it is a Registered Business enterprises. It has a right to seek redress in Court if its right is infringed on. There is no law that forecloses a business enterprise from seeking redress in Court. Again at this preliminary stage this Court cannot deal with the issues of analyzing evidence in support of the Suit. The Attorney of the Plaintiff has the capacity to stand for the Plaintiff which is seeking redress against a wrong done to it by the action and trespass by the 5th Defendant and the threat of demolition and revocation of the res by the 1st and 2nd Defendants. That is why this Court holds that there is good cause of action by the Plaintiff and that this Court has the requisite Jurisdiction to entertain the Suit. The Court can later determine after hearing from all parties whether the suit will succeed or not. From all indication the two Preliminary Objections lack merit. They are therefore dismissed.

This is the Ruling of this Court.

**Delivered today the day of
..... 2021 by me.**

**K.N.OGBONNAYA
HON. JUDGE.**