

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 16TH DAY OF JULY, 2021

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

SUIT NO: FCT/HC/CV/3126/2020

MOTION NO: M/1585/2021

BETWEEN:

COMMOCORP IMPEX PTD LIMITED

(FOR And on behalf of Allotees -- - ----CLAIMANT/ RESPONDENT

Of shops at Aumtco Terminus Durumi

Now relocated at kaura District

To serve as Aumtco Bus Terminal)

AND

1. ABUJA URBAN MASS TRANSPORT

COMPANY LIMITED (AUMTCO) -----DEFENDANT/ APPLICANT

2. AUTOCORP IMPEX PTE LIMITED -----DEFENDANT

RULING

The 1st defendant/Applicant brought this application by way of preliminary objection to the Claimants suit, the Notice of preliminary Objection is dated the 9th day of February 2021 and filed on the same day pursuant to Order 43(1) of the FCT High Court Civil Procedure Rules 2018. The 1st Defendant/Applicant is praying the court for the following reliefs:

1. **AN ORDER** of The court dismissing or striking out the claimant's suit against the 1st defendant on the ground that this honorable court lacks the jurisdiction to hear and determine the said suit as presently constituted.
2. **AND** For such further order or orders as the honorable court may deem fit to make in the circumstance

GROUND FOR THE PRELIMINARY OBJECTION

1. That the action of the claimant herein does not disclose any reasonable cause of action against the 1st Defendant.
2. A final judgment by consent of the parties was entered for the claimant the 2nd Defendant and the 1st defendant at the Federal High Court Abuja on the 18th July 2000.
3. The said judgment is binding on the claimant as one of the Allottees of shops at Aumtco Terminus Durumi represented by the 2nd defendants.
4. That the claim relating to kaura bus Terminus between the 1st defendant the 2nd defendant has been adjudicated upon by the final arbitral award delivered by Dr. Alex A Izinyon, SAN on the 6th November 2019.
5. That the arbitral award was affirmed by Hon justice D.Z Senchi of High Court of FCT Abuja following the 1st Defendant application for recognition and enforcement on the 23/09/2020.
6. That the 2nd Defendant who has always been representing the claimant has filed an appeal at the

court of Appeal against the ruling of Hon. Justice D.Z Senchi.

7. That the claimant is estopped from re-litigating on the subject matter of which final judgment has been given.

In support of the application, a 30 paragraphs affidavit was attached deposed to by one Mrs Temilade Ojo and 5 annexures as Exhibits.

1. Exhibit 1 is memorandum of settlement dated the 18th day of July 2000
2. Exhibit 2 is a Development Agreement dated 18th day July 2009
3. Exhibit 3 is a Final Award dated 6th November 2019
4. Exhibit 4 is a Ruling delivered by Hon Justice D.Z Senchi on the 23/09/2020.
5. Exhibit 5 is a Notice of Appeal dated 08/October 2020

The applicant avers that all issues arising from the demolition of Durumi Bus Terminus by the Authority of the Federal Capital Territory were resolved by the consent judgment of the Federal High Court dated the 18th July 2000. The applicant further avers that paragraph 12 of the Claimant statement of claim confirmed that the case at the Federal High Court upon which the memorandum of settlements of the parties was entered as the consent judgment of the court was filed in respect of the demolition and the expenses expended on Durumi bus terminus. And that the consent

judgment was very explicit and that consequent upon the consent judgment, the Federal Capital Development Authority provided alternative land for the relocation of Durumi Bus terminus to Kaura bus terminus. And that the 2nd defendant acting as the mandated representative of all the allottees of Durumi Bus terminus which the Claimant is inclusive entered into a development agreement with the 1st defendant on the 18th June 2009 for the development of a bus terminus at kaura bus terminus that the 2nd defendant could not deliver on the terms of the development agreement within 24 months as stipulated in the agreement that the 1st defendant not satisfied with the none performance of the 2nd defendant , the 1st defendant exploited the arbitration clause in the development agreement and filed its points of claim at the Abuja multidoor court house on the 6th September 2018. That the 1st and 2nd defendant jointly appointed Dr Alex Izinyon SAN as the sole Arbitrator and an Arbitral award was published on the 6th November 2019 and that the final award terminated the development agreement between the 1st and 2nd defendant. That the final award ordered the 2nd defendant to return to the 1st defendant certificate of occupancy No 193w-9159w-5193r-cb5cu-20 in respect of kaura bus terminal which is in the custody of the 2nd defendant to 1st defendant. That the 2nd defendant filed a motion to set aside the award at the High Court Of The Federal Capital Territory and the said motion was set aside by Hon Justice D.Z Senchi on the 23/September/2020. That the 1st defendant motion filed at

the High Court Of The Federal Capital Territory for the recognition and enforcement of the arbitral award was granted by the ruling delivered by Hon Justice D.Z Senchi. That the 2nd defendant has filed an appeal against the ruling of Hon Justice D.Z Senchi. That the instant suit is an attempt through the back door by the claimant to relitigate or repair their case which has already been heard and award published by the Arbitrator which was confirmed by the ruling of Hon. Justice D.Z Senchi

Also filed along with the Notice of Preliminary Objection is a written address dated the 19th day of February 2021 wherein learned counsel to the 1st defendant/Applicant formulated 3 (three) issues for determination to wit:

- 1. Whether there is any cause of action in the statement of claim against the 1st defendant that can warrant the court to grant the reliefs sought by the claimant against the 1st defendant.**
- 2. Whether the filing of this suit in this court will not amount to an abuse of court process the issues involved having been adjudicated upon by federal High court in suit no: FHC/ABJ/CV/191/99, The final arbitral award dated 16th day of November, 2019 and when appeal is pending on the same subject matter at the court of Appeal.**
- 3. Whether the legal principle of res judicata applies to the instant suit to oust the jurisdiction of the court to adjudicate on this matter.**

Learned counsel cited the following cases in support of his argument.

1. Amukwu V. Eze (2012)II NWLR(PT1310)P.50,
2. Akibu V Oduntan (2000) 3 NWLR (pt 685)446
3. Bello V.A.G Oyo State (1986)5NWLR (pt.4)828.
4. Ogbimi V. Ololo(1993)7NWLR(pt 304)128,
5. Adesokan V. Adegorolu (1993)2 NWLR (pt 179)293.
6. Saraki V. kotoye (1992)9 NWLR (pt 264).156 at 1888 paras E-G it was held as follows
7. Okorodudu v Okoromadu(1977) 3 Sc 21.
8. Oyagbola V. Eso W/A inc(1966) ALLNLR 170
9. S.O NTUKS Vs NIGERIA PORT AUTHORITY(SC190/2003)
10. Ukaegbu & 7 ors V. Ugorji & 3 ors (1991)6 NWLR (Pt 96)177,
11. Alhaji Ladimeji & Anor V. Salami & 2 ors (1998)5NWLR (Pt 548) 1 at 13.

Learned counsel relying on the above cited authorities, in his written address argued that there is no cause of action against the 1st defendant as the terms of settlement adopted as a consent judgment settled all matters between the Claimant 1st defendant and the 2nd defendant concerning Durumi Bus terminus.

In Response, the claimant/Respondent filed a 31 paragraph counter affidavit. The claimant/Respondent answered that paragraphs 5,6,7,and 9 of the applicants affidavit in support

of its preliminary objection are true ,while the 1st defendant deposition in paragraph 10 is false, in support of notice of preliminary objection the claimant states that, The consent judgment between the claimants and the allottees, represented by the by 2nd defendant at the federal High court in suit no: FHC/CV/191999 attached as Exhibit 1 in the 1st defendants notice of preliminary objection at paragraph 5, states that the claimant and all the allottees shall be relocated together with the 1st defendant to a new place, the claimant /Respondent further answer that the 1st defendant in the suit at Federal High court conceded to the claimant all the allottees should continued development, occupation and use of shops at Aumtco Terminus Durumi Abuja now relocated at Kaura Bus Terminus by the agreement between the 1st and the 2nd defendant at page 2 paragraph G clearly states that the allottees now the claimant in this suit would be allow to raise funds to construct the shops and the rest at terminal Kaura district. The claimant further responded that paragraph 11 of the 1st defendant's affidavit in support of preliminary objection is false and also states that the 2nd defendant acted as mandated representative of the allottees sequel to the judgment of Federal High Court on 18th July 2000 for the development of the new Kaura bus terminus, and there is no letter from the claimant or allottees in writing in line with clause 2(f) of the letter of allocation in exhibit 2, The claimant's counter affidavit further states in paragraph 9, the paragraph 12,13,14,15,16,17,18 and 19 of the 1st

defendant notice of preliminary objection are fact within the exclusive knowledge of the 1st defendant, while the claimant and the allottees are not in the position to admit or to deny it , Wherein on countering paragraph 19 of the 1st defendant preliminary objection , the claimant states that the final award terminating the development agreement between the 1st and 2nd defendant does not affect or bind the claimants and the allottees in anyway or their right to institute this action, and states that the arbitral award and the parties to arbitration were solely between the 1st and the 2nd defendants.

However, the claimant states that paragraph 20,21,22,23,24, and 25 are facts within the exclusive knowledge of the 1st defendant which the claimant cannot admit or deny it, and the 2nd defendant is not the managing director of the claimant or has any link with him, the claimant/Respondent further states that paragraph 26 of the 1st defendant's affidavit to preliminary objection is false and is not to relitigate the suit that has been heard by award of arbitration and the ruling of Hon justice D.Z Senchi which the claimant and the allottees were not parties to the suit, the claimant states that the allottees never file multiple actions to warrant abuse of court process of this suit, and the claimant urged the court to discountenance the notice of preliminary of preliminary objection filed by the 1st defendant and proceed with the substantive matter before this Honorable court.

Equally filed along the Counter Affidavit is a written address and Reply on Points of law wherein learned counsel for the Claimant/Respondent formulated 4 (four) issues for determination to wit:

- 1. Whether the Honourable court has the jurisdiction to entertain this suit considering the statement of claim, writ of summons and documents filed by the claimant in this suit?**
- 2. Whether the claimant has the reasonable cause of action to institute this suit against the 1st and 2nd defendant?**
- 3. Whether this Honourable court at preliminary stage can delve into the main /substance issues without hearing the parties and their witness over the issues raised by the 1st Defendant and the claimant in this action?**
- 4. Whether the claimant who is not a party to a suit is bound by the outcome or decision in that suit?**

Learned counsel cited the following cases in proof of his case:

1. Mrs Uju B. Osude Vs Mrs Eucharica Azodo and 2 ors (2017)Jsc NLR Vol 8.p.124 at pp.156-158 para G-A
2. Skye Bank plc Vs Chidebere (2017) 7 NWLR P+1564....
3. Gen Muhammed Buhari Vs Inec (2008)LPER-814SC
4. CIL Risk Asset Management L t d Vs Ekiti State Govt and 3 ors (2020)JSCWLR
5. Sunday Gabriel Vs Federal Republic of Nigeria (2017)JSCNLR Vol 16 P. 167 AT 205 PARA A-B

6. Justice Titus Adewuyi Oyeyemi Rtd Vs Hon Timothy Owoeye & Anor (2017) JSCNLR Vol 5.p 220 AT 256
7. Ogunkunle Vs Eternal Sacred Orders (2001) 12 NWLR (PT 727) 359
8. RASC LTD Vs Akib (2006) 13 NWLR (PT 997)
9. Ume Vs Iwu (2008) 8 NWLR (PT 1089) 225
10. Ayanruv Vs Mandilas Ltd (2007) 10 NWLR (PT 1043)
11. AG Nasarawa State Vs AG Plateau State (2012) LPELR-9730
12. Dakolo & Ors Vs Rewane Dakolo & Ors (2011) LPELR-915

Learned counsel in his written address/Reply on Points of Law argued vehemently, placing reliance of the above authorities that this Honourable Court has Jurisdiction to hear and entertain the instant suit and that the nature of claim and not the parties before the court is what determines jurisdiction. He went further to state that the Claimant/Respondent has a reasonable cause of action and that the Claimant was not a party to the suit and the outcome and decision of same cannot be binding on them.

At the hearing on the 24th day of March 2021, learned counsel to the 1st defendant/Applicant stated that he filed a notice of Preliminary objection dated the 19th day of February 2021 with motion number M/1585/2021 brought pursuant to Order 43 rule 1 of the FCT High Court Civil Procedure Rules 2018 wherein he contended that the suit of

the claimant/Respondent should be dismissed or struck out on the grounds that this honourable Court lacks the jurisdiction to hear and determine the suit. He further stated that accompanying the Motion are the grounds upon which the application is brought and also filed along is a 30 paragraphs affidavit deposed to by One Temilade Ojo, and 5 Exhibits as annexures and a written address which learned counsel adopted as his oral argument in support of the application.

In response, the Claimant/Respondent's counsel stated that he filed a 31 paragraphs counter affidavit in opposition to the 1st Defendant/Applicant's notice of preliminary objection. The said counter affidavit was deposed to by Chukwunyelu Onwuke a manager to the claimant. And attached to the same are Exhibits 1 and 2, a written address and reply on point of Law and urged the court to dismiss the Preliminary Objection by the 1st Defendant/Applicant.

I have carefully considered the evidence before me and from the issues distilled for determination by counsel to the 1st Defendant/Applicant and the Claimant/Respondent it is apparent that this suit raises two issues for determination to wit.

1. Whether there is a reasonable cause of action to institute this suit against the 1st and 2nd Defendant?

2. Whether this Honourable Court has the Jurisdiction to entertain this suit as presently constituted?

On issue one above, the courts have given adequate explanations as to what amounts to a reasonable cause of action, Hence for there to be a valid action therefore, there must be in existence a legal right which has been breached or violated; and which is capable of being remedied in law. See **Oshoboja Vs Amuda (1992) 7 SCNJ 317 at 326** where the supreme Court defined a cause of action as “the facts which when proved will entitle a plaintiff to a remedy against the defendant” See also **Mobil Vs Lasepa (2003) 104 LRCN 240 at 268** The supreme Court also held that once the allegations are such that shows a real controversy that were capable of leading to the grant of a relief, then a reasonable cause of action has been disclosed in the pleadings. In **Chevron (Nig) Ltd Vs Lonestar Drilling (Nig) Ltd (2007) 7 SC (pt.2) 27** the Supreme Court relying on an earlier decision in **Bello Vs Ag (Oyo) (1986)5 NWLR (Pt. 45) 828 at 876** held that a cause of action is constituted by the bundle or aggregate of facts, which the law will recognize as giving the Plaintiff a substantive right to make the claim against the relief or remedy being sought; and that a party ought not to be precluded from putting across his case in a full hearing except on the clearest indication that the action is denuded of all merits even on the supposition that the averments in the statement of claim are deemed as admitted by the Defendant. The Court held further that in determining whether or not a reasonable cause of action

has been disclosed, only the facts pleaded in the statement of claim have to be examined. The nature of defence which may be put up by the Defendant is not relevant. Where there is no cause of action accruing to the plaintiff, the suit will be struck out. I have carefully considered the evidence before me, both oral and documentary particularly Exhibits 1 which is the Memorandum of settlement dated 18th day of July 2000 before the Federal High Court Abuja Judicial division, Exhibit 2, which is the Development Agreement between Kaura Bus Terminus and Abuja urban Mass Transport Company dated 5th February 2020 and Exhibit 3, which is the Final Arbitral Award between Abuja Urban Mass Transport Companies Limited and Autocorp Impex PTE Limited dated 5th of Feb 2020 and Exhibit 4 which is the Ruling delivered by my learned brother Hon. Justice D.Z Senchi of the FCT High Court delivered on the 23rd of September 2020. And Exhibit 5 which is the notice of appeal before the Abuja Judicial division. From the evidence before this court, it is clear that the claimant was initially represented by the 2nd Defendant. It is therefore apparent to me that the Claimant in this suit has not placed sufficient facts before this court distinguishing the cause of action in the Ruling and the Arbitral award from the current case. Hence the Claimant does not have a reasonable cause of action. I so Hold.

On the second issue

Whether this Honourable Court has the Jurisdiction to entertain this suit as presently constituted?

Jurisdiction has been variously described by superior courts as the pendulum upon which judicial powers stands, and hence a decision reached without jurisdiction is a nullity. It is the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision **See Mobil Vs Lasepa(supra)**. Where a competent court has determined an issue and entered the judgment thereon neither of the parties to the proceedings may relitigate that issue by formulating a fresh claim since that the matter is res judicata **Ex-Parte Salami Adeshina (1993)4 NWLR(Pt. 442) p. 254. Madukolu Vs Nkemdilim (1962) 2 SCNLR 341**. When a matter is kept in litigations by constant suits in respect of the same subject-matter and between the same parties and their privies the courts process of adjudicating may thereby be abused and scandalized. It is for this purpose that there must be an end to litigation. Once a matter is decided and it is final, final in the sense that all the remedies of appeal have been exhausted or where no appeal is lodge, that decision is final between the parties or their privies in respect of same subject-matter .Thus the matter is final and closed between the parties and their privies which include their successors or agents in respect of same subject. It is a matter already judicially decided. That is all what res judicata is all about

see **Madukolu Vs Nkemdilim** (Supra). The plea of res judicata having being successful, this Court lacks the jurisdiction to hear and determine this suit as presently constituted. The case is hereby struck out. I so Hold.

Appearances:

Defendant represented by Coker Albert

Claimant is absent, not represented by counsel.

Ola Ibitoye for the defendant

Ruling read in open court.

Signed
Hon. Presiding Judge
16th/07/2021

