

IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT APO, ABUJA

ON THURSDAY, 21ST DAY OF OCTOBER, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/3065/2020

MOTION NO. M/12599/2020

BETWEEN

DAMARIS D. JOHNSON

*[Suing by and through her Lawful
Attorney, David Johnson.]*



CLAIMANT/RESPONDENT

AND

SUPER STRUCTURE CONSTRUCTION
AND REALTY LIMITED



DEFENDANT/APPLICANT

RULING

The claimant [Damaris D. Johnson] commenced this suit on 3/11/2020 vide Writ of Summons. This Ruling is on the defendant/applicant's *Motion No. M/12599/2020* filed on 1/12/2020 praying the Court for: *[i] 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; and [ii] such further order or other orders as the Honourable Court may deem fit to make in the circumstance.*

The grounds for the application are:

1. This suit was filed without prior knowledge of claimant/respondent.
2. This suit as presently constituted is an abuse of court process.
3. The Power of Attorney purportedly donated to David Johnson by the claimant/respondent was neither signed by David Johnson nor witnessed by anybody on his behalf.
4. The claimant as presently constituted is no longer in existence and incapable of pursuing this action in court.
5. The claimant as constituted herein lacks *locus standi* to institute and maintain this action against the defendant.

In support of the Motion, Sunkami Adebayo, the operation manager of the defendant, filed a 15-paragraph affidavit along with the written address of Ikechukwu Pascal IfegboEsq. In opposition, Godswill O. OkorieEsq. filed a written address on 22/12/2020. At the hearing of the application on 8/7/2021, Matthew TorsaaEsq. adopted the defendant/applicant's processes and applied to withdraw ground 4 above. Godswill O. OkorieEsq. adopted the claimant/respondent's written address. The said ground 4 is struck out.

In the affidavit in support of the application, Sunkami Adebayo stated that: [i] the suit was filed without prior knowledge of the claimant; [ii] the power of attorney that was purportedly donated to David Johnson by the claimant

was neither signed by David Johnson nor witnessed by anybody on his behalf; and [iii] the purported power of attorney that gives the attorney the right to sue on behalf of the claimant was forged just to harass and irritate the defendant and to deceive this Court.

Let me first consider as a preliminary point the argument of learned counsel for the claimant/respondent that the defendant/applicant's motion on notice is incompetent as it is not certain which of the two legal practitioners whose names appeared on the process signed it. He stated that the name of the legal practitioner who signed the motion on notice was not ticked as an indication of authorship.

Godswill O. OkorieEsq. relied on sections 2[1] & 24 of the Legal Practitioners Act; and argued that if it is uncertain who endorsed a court process, that process must be declared incompetent as it is statutorily required that every court process must be signed by a legal practitioner whose name is on the roll of legal practitioners. He referred to **F.B.N. Plc. v. Maiwada [2013] 5 NWLR [Pt. 1348] 444, SLB Consortium Ltd. v. NNPC [2011] 9 NWLR [Pt. 1252] 317**and **Oketade v. Adewunmi [2010] 3 MJSC [Pt. 2] 31**in support. It was submitted that in the instant case, the name on the NBA Seal that was affixed to the Motion is that of Ikechukwu Paschal Ifegbo while the name that was ticked as the author of the Motion is that of AzubikeA. Chijioke. He urged the Court to hold that the Motion is incompetent.

I have looked at the Motion. It is glaring that the NBA Seal that was affixed thereto is that of “*Ikechukwu Paschal Ifegbo*” and the name ticked as the author of the motion is “*Ikechukwu Paschal IfegboEsq.*” I hold without further ado that the argument of learned counsel for claimant on this point is misconceived.

I now proceed to consider the merit of the application. From the grounds of the application and the submissions of both learned counsel, there are two main issues for determination. The first is whether the claimant has *locus standi* to institute this suit; while the second is whether this Court has jurisdiction to entertain the claimant’s suit. The two issues are related; the decision on the first issue will determine the decision on the second issue. Thus, the two issues will be determined together.

ISSUES 1 & 2

Whether the claimant has locus standi to institute this suit; and

Whether this Court has jurisdiction to entertain the claimant's suit.

The term *locus standi* means the legal capacity or competence to institute proceedings in a court of law for redress. See **Pam v. Mohammed [2008] 16 NWLR [Pt. 1112] 1**. In order to establish *locus standi* to institute an action, the claimant must show that he [or it] has sufficient legal right or interest in the subject matter of the suit. As rightly stated by learned counsel for the defendant, if the statement of claim does not disclose the claimant’s sufficient

interest in the subject matter of the suit or threat of injury to his right or interest in the subject matter, he has no *locus standi* to institute the action and the court will have no jurisdiction to entertain same. See **Adesanya v. President of the Federal Republic of Nigeria [1981] 2 NCLR 358** and **Yesufu v. Governor, Edo State [2001] 13 NWLR [Pt. 731] 517.**

Learned counsel for the defendant submitted that the claimant has no legal capacity to institute the suit or has lost his legal power to institute this suit as the power of attorney that empowers him on behalf of the claimant is defective in nature. It was further argued that the incompetence of claimant's suit has deprived the Court of jurisdiction to adjudicate on the matter. Mr. Ikechukwu Paschal Ifegbostressed that jurisdiction is the bedrock or foundation of adjudication and a defect in competence is fatal because the proceedings are null and void however well conducted and decided. He referred to several cases including **Emenike Uwanta v. Independent National Electoral Commission & 2 Ors. [2011] 11-12SC [Pt. II] 4** and **Gafar v. Government of Kwara State & 2 Ors. [2007] 2 FWLR [Pt. 370] 3197.** He urged the Court to dismiss or strike out the suit.

For his part, learned counsel for the claimant referred to claimant's averment in paragraph 1 of her statement of claim that she is the one entitled to the statutory right of occupancy over the subject property by virtue of the grant of same by the Minister of the Federal Capital Territory, Abuja. In paragraphs 3 & 4 thereof, she averred that she granted a power of attorney to David

Johnson and that she enjoyed quiet and undisturbed possession of the land in issue since 1999. In paragraph 5 of the statement of claim, she averred that the defendant without her authority or consent entered the Plot and erected a perimeter fence which has given her the cause of action to institute this suit.

Godswill O. OkorieEsq. posited that the issues raised by the defendant as to whether the claimant is in existence; or whether she granted consent for the commencement of this action; or the attack on the validity of the power of attorney relied upon by David Johnson to bring this action on behalf of the beneficial owner of the Plot in issue will entail the taking of evidence in order for the Court to determine them. He submitted that where a court is called upon to embark upon such exercise, an application of this nature that is brought before the defendant delivers its pleadings will not be appropriate as the court will be forced to look at materials extraneous to the claimant's pleadings to determine whether or not it has jurisdiction to entertain the suit. Learned counsel for the claimant referred to the case of **Petkev Nig. Ltd. &Anor. v. Elder Ogbogu&Anor. [2016] LPELR-40069 [CA].**

On the basis of the above views, Godswill O. OkorieEsq.submitted that the defendant's application brought without first filing its statement of defence amounts to a demurrer proceeding, which has been abolished under Order 23 of the Rules of this Court, 2018. He referred to several cases including **Mr. Sam AmukaPemu v. NDIC [2016] 6 NWLR [Pt. 1507] 175** to support the view that where a party fails to file or deliver his [or its] pleadings canvassing a

point of law, any motion he files seeking to determine the suit *inlimine* on the basis of the point of law will be deemed premature and incompetent. Mr.Okorie emphasized that claimant's suit cannot be challenged on the ground of a total want of jurisdiction as the subject matter of the suit is within the jurisdiction of this Court.

As I said earlier, the position of the law is that where the statement of claim does not disclose the claimant's sufficient interest in the subject matter of the suit, he has no *locus standi* to institute the action and the court will have no jurisdiction to entertain same. In Thomas v. Olufosoye [1986] 1 NWLR [Pt. 18] 669, it was held that the question whether a plaintiff [or claimant] has the *locus standi* to sue is determinable from the totality of the averments in the statement of claim.

The subject matter of this suit is Plot 354 Cadastral Zone 07, SabonLugbe, Abuja. As learned counsel forthe claimant rightly stated, it was averred in the statement of claim that the claimant [Damaris D. Johnson] is the person entitled to the statutory right of occupancy over the said Plot by virtue of an offer of terms of grant/conveyance referenced MFCT/LA/PL.2457 issued to her by the Minister of the Federal Capital Territory, Abuja on 13/5/1999.It was further averred that the claimant granted a power of attorney to David O. Johnson by which she authorized the donee,among other things, to manage the Plot and to commence civil actions with respect to the Plot.

I hold the considered view that the grounds for this application, which are that: [i] the suit was filed without prior knowledge of the claimant; and [ii] the power of attorney purportedly donated to David Johnson by the claimant was neither signed by David Johnson nor witnessed by anybody on his behalf are not valid grounds to challenge the *locus standi* of the claimant to institute this action. These issues or grounds may be raised in the statement of defence and determined by the Court after the trial. Although it is obvious, but I need emphasize the point that the claimant's attorney [David Johnson] is not the claimant in this suit and has no claim against the defendant.

From the averments in the statement of claim and the reliefs claimed, it is evident that the claimant has disclosed that she has sufficient interest in the said Plot 354, subject matter of the suit. Thus, the claimant has *locus standi* to institute this action. Issue No. 1 is resolved against the defendant/applicant.

In respect of Issue No. 2 i.e. whether the Court has jurisdiction to entertain this suit, the factors which determine the jurisdiction of a court have long been stated in **Madukolu v. Nkemdilim [1962] 2 SCNLR 341** as follows: [i] that the subject matter of the case is within the court's jurisdiction; [ii] that there is no feature in the case which prevents the court from exercising its jurisdiction; and [iii] that the case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

In the instant case, the subject matter of this suit is within the jurisdiction of this Court; and there is no feature in the case or any condition precedent which prevents the court from exercising its jurisdiction. In the light of the decision of the Court that the claimant has *locus standi* to institute this suit, I hold that the Court has jurisdiction to entertain the suit. Let me also remark that there is nothing to support ground 2 of this application that this suit is an abuse of court process. I hold that the suit is not an abuse of court process.

CONCLUSION

From all that I have said, the defendant/applicant's Motion filed on 1/12/2020 lacks merit. It is dismissed. I award cost of N50,000.00 in favour of the claimant/respondent against the defendant/applicant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

1. Martin I. Kalu Esq. for the claimant/respondent; holding the brief of G. U. Nwaneri Esq.
2. Matthew Torsaa Esq. for the defendant/applicant; holding the brief of Azubuike Chijioke Esq.