

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 11TH DAY OF MARCH, 2022

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

JUDGE

SUIT NO.: FCT/HC/CV/363/21

BETWEEN:

- | | |
|-------------------------------------|-------------------|
| 1. AMAKA NWABICHIRI | ----- } CLAIMANTS |
| 2. AMAX INTEGRATED SOLUTION LIMITED | |
| 3. BIRD TRUST NIGERIA LIMITED | |

AND

- | | |
|---|--------------|
| 1. ECONOMIC & FINANCIAL CRIMES COMMISSION | } DEFENDANTS |
| 2. FCT MINISTER | |

RULING ON PRELIMINARY OBJECTION

Upon receipt of a Writ filed by Amaka Nwabichiri and 2 Ors, the EFCC filed a Preliminary Objection challenging the competency of the Suit. That there is no Pre-action Notice served on it and that the action is statute-barred and that Court lacks jurisdiction to entertain same. They filed an Affidavit of 11 paragraphs.

In the Written Address, they raised an Issue for determination which is:

“Whether by provision of S. 2 (a) Public Officers Protection Act this Court lacks jurisdiction to entertain this Suit.”

They submitted that the Court has no jurisdiction to entertain the Suit. That the Plaintiffs had delayed in instituting this Suit and that they did not bring this action within the time allowed by the limitation Act. That the party has lost its right to enforce the cause of action. They relied on the case of:

Eboigbe V. NNPC

(1994) 5 NWLR (PT. 347) 647 @ 659

That Court lacks jurisdiction to entertain the Suit by virtue of the provision of the S. 2 (a) Public Officers Protection Act. They urged the Court to so hold and strike out the matter.

In response, the Plaintiffs filed a Written Address in which they raised 2 Issues:

- (1) Whether in the light of facts and circumstances of this case, S. 2 (a) of the Public Officers Protection Act can avail the 1st Respondent as to render this Suit Statute Barred.**

- (2) Whether the issuance of Pre-action Notice is a condition precedent to the institution of an action against a Public Officer within the meaning of the Public Officers Protection Act.**

On Issue No. 1, they submitted that the present Suit is not Statute Barred and that S. 2 (a) of the Public Officers Protection Act cannot avail the 1st Respondent as to render this Suit Statute Barred.

That the claim of the Plaintiffs is that the 3rd Plaintiff – the allottee of the land sold same to 1st & 2nd Applicants in 2015. That in 2016 the Respondents wrote to Director of Land at FCDA requesting him to place a Caveat Emptor on the Res, Plot 79 CAD D11, Filindabo, on the ground that the EFCC is

investigating an alleged case of conspiracy, abuse of office, diversion of public fund and misappropriation. That the Caveat Emptor was placed without Order of Court and as such the 1st & 2nd Applicants have not been able to gain access to the land for improvement. That they seek Court Order to lift the Caveat Emptor placed on the land.

That by virtue of the S. 2 (a) of the Public Officers Protection Act, she submitted that for the action to be Statute Barred it must have ceased. But that in this case, the Caveat Emptor on the land had been continuous and has not ceased. That there is continuous damage to the Applicants. So they are not caught up with the Statute of Limitation. That the continuous damage falls within the exception to the said Rule. That since the Caveat Emptor has not been lifted the injury suffered by the Plaintiffs is continuous. The referred to the case of:

Abdulrahman V. NNPC
(2012) NWLR (PT. 1791)

INEC V. Ogbadibo Local Government Area
(2016) 3 NWLR (PT. 1498) 167

They urged Court to so hold and resolve the Issue in their favour.

On Issue No. 2, they submitted that Public Officers Protection Act does not apply to cases on recovery of land. They cited the case of:

Government of Osun State V. Danlami
(2007) 9 NWLR (PT. 1038)

Where Court held that the Public Officers Protection Act does not apply to cases of land contract or claim for work or labour done. That the Public Officers Protection Act does not apply as

the cause of action is rooted on removal of an encumbrance on the land. They cited the case of:

**NPA V. Construzioni General Fasura Cogetor SPA
(1974) 1 All NLR 462**

That the protection under Public Officers Protection Act can only happen if the Officer acted within the boundaries of his duty. But when such Officer acts outside the duty boundaries, he loses the immunity. They relied on the case of:

**Mohammed V. ABU Zaria
(2014) 7 NWLR (PT. 1407)**

That the Caveat Emptor was placed without Court Order contrary to provision of **S. 28 & 29 EFCC Act 2004.**

That the EFCC acted outside its duty boundary and therefore cannot be protected by S. 2 (a) of the Public Officers Protection Act.

That the S. 2 (a) of the Public Officers Protection Act is subject to the Constitution. That where the Public Officer violates a citizen's fundamental right, that the said provision of S. 2 (a) of the Public Officers Protection Act cannot avail him.

On issuance of Pre-action Notice, they submitted that there is nothing that requires them to serve that Notice on Respondents in order to validly commence an action against them.

They urged Court to dismiss the Preliminary Objection.

COURT:

From the summary of the above, it is the humble view of this Court that the Suit is not statute barred because the action

complained of by the Plaintiffs upon which their action is predicated is continuous and the injury suffered is continuous too. The Applicant – EFCC is not protected under the S. 2 (a) of the Public Officers Protection Act. So this Court holds. The action falls under the same exception to the said Section of the Public Officers Protection Act.

Besides, the issue or cause of action is on the Caveat Emptor placed on the Res which concerns a land allocation transaction.

The decision in the case of **Mohammed V. ABU Zaria Supra** applies. So also the case of **Government of Osun V. Danlami Supra**.

There is no provision of the law that non-service of Pre-action Notice should deny a person right to seek redress on issue concerning land.

Besides, such non-service of a Notice is mere irregularity which should not nullify a Suit or right to sue. See **S. 5 FCT High Court Rules 2018**.

All in all, *this Preliminary Objection lacks merit. It is therefore dismissed.*

This is the Bench Ruling of this Court.

Delivered today the ____ day of _____ 20222 by me.

K.N. OGBONNAYA
HON. JUDGE