

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/2603/2020

BETWEEN:

ALHAJI MOHAMMED KUDU USMAN.....PLAINTIFF

AND

**1. SHEIKH IBRAHIM KHALIL
2. FEDERAL HOUSING AUTHORITY, ABUJA
3. INSPECTOR GENERAL OF POLICE (F-SARS) }.....DEFENDANTS**

RULING

The claimant, by the writ of summons claims from the defendants as follows:

1. A declaration of this Honourable court that the claimant is the owner of the Plot No. 115 measuring 1299.71 square meters, situate and lying at 69 Crescent, Gwarinpa II Estate, Federal Capital Territory Abuja by virtue of the Deed of Assignment and other documents executed between the claimant and one Alhaji Sani Suleman.
2. A declaration of this Honourable court that the encroachment of the land by the 1st defendant, his agents and/or servants constitute an act of trespass.
3. An order of this Honourable court restraining the 1st defendant by himself, agent, servant or any

other persons acting on his instructions or authority whatsoever from further interference with the said property and/or parading himself as the owner of the land or which the claimant is in possession.

4. An order of this Honourable court compelling the 2nd defendant to revoke any document that was issued to the 1st defendant by the 2nd defendant with respect to Plot No. 115, measuring 1299.71 square meters, situated and lying at 69 Crescent, Gwarinpa II Estate, Abuja.
5. An order of this Honourable court restraining the 3rd defendant from further inviting the claimant over allegation of trespass and mischief over Plot No. 115, measuring 1299.71 square meters situate and lying at 69 Crescent Gwarimpa II Estate, Abuja.
6. General damages in the sum of N10,000,000 (Ten Million Naira) for the inconveniences, delay and hardship suffered resulting from the defendants action.
7. Cost of action N2,000,000 = (Two Million).
8. And for such further order or orders as this Honourable court may deem fit to make in the circumstances.

It is on the above premise, the counsel to the 2nd defendant filed this motion with No. M/1053/2021 dated the 1st day of February, 2021 and prays the court for the following:

An order of the Honourable court striking out the name of the 2nd defendant from this suit for want of reasonable cause of action and lacks of jurisdiction.

The grounds from which this application was filed are as follows:

- a. The claimant's suit as presently constituted did not state any grouse against the 2nd defendant.
- b. There is no connection between the claims of the claimant and the 2nd defendant and as such the 2nd defendant has no business being a party to this suit.
- c. The claims and grievances of the claimant can be resolved and decided by this Honourable court without joining the 2nd defendant as a party to this suit.
- d. The claimant in this suit has not disclose through this suit that he has any claim against the 2nd defendant.
- e. The 2nd defendant is not a necessary party to this suit.
- f. There is no reasonable cause of action against the 2nd defendant in this suit.
- g. The suit against the 2nd defendant is an academic exercise which the court cannot entertain as there is no live matter against the 2nd defendant before the Honourable court.
- h. The Honourable court does not have jurisdiction to sit and determine this suit presently constituted.

The claimant/respondent filed a nineteen paragraphed affidavit, and a written address of counsel.

It is in the affidavit in support of this application that there is no connection between the claims of the claimant and the 2nd defendant and as such the 2nd defendant has no business being a party to this suit. That the claims and grievances of the claimant can be resolved and decided by this court without joining the 2nd defendant as a party to

this suit especially as the claimant has not disclosed any claim against the 2nd defendant and therefore, the 2nd defendant is not a necessary party and that the suit is an academic exercise which this court cannot entertain, and that it is an abuse of court process brought in order to irritate and annoy the 2nd defendant.

In his written address the counsel to the 2nd defendant formulated one issue for determination, to wit:

Whether in the circumstances of this case as presently constituted, there is a reasonable cause of action against the 2nd defendant so as to cloth this Honourable court with jurisdiction to sit and determine this case?

The counsel submitted that jurisdiction is the fountain and sole source of the legal authority of any person who decides a matter between parties to so decide and as such, where there is no jurisdiction, whosoever is deciding it does so in vain, and he cited the cases of **Oloruntoba – Oju V. Adulraheem (2009) 13 NWLR (pt 1157) 83 at pp. 124 – 125, paras. H – A**; and **Ogar V. Igbe (2019) 9 NWLR (pt 1678) p. 534 at 552 paras. D – E** where the Supreme Court gave depth definitions as the concept of jurisdiction. He submitted further that in line with the authorities cited, the only guide to determining whether or not a court has jurisdiction is the statement of claim, and he cited the case of **Atibalyalaim Sawings & Loans Ltd V. Suberu (2018) 13 NWLR (pt 1637) p. 387 at 413 paras. E – F**. The counsel invited the court to look at the statement of claim, and that the claimant ought to have laid out the cause of action showing of the injury the action of the 2nd defendant has caused him, and the consequential damages he had incurred, and to him, this position is strengthened by the decision of the court in the case of **Registrar, Collage of**

Education, Katsina – Ala V. Gbande (2014) 5 NWLR (pt 1401) p. 589 at 601 paras. C – E.

The counsel submitted that relief No. 4 of the statement of claim is self destructive as it seeks the court to make a wild order and speculate as the existence of same on mentioned documents, as the claimant made no mention of any document and there is no specific document that the claimant wants the court to compel the 2nd defendant to revoke. The counsel took his time to reproduce the relief No. 4, and therefore, he contends that the claimant's case is an academic issue and the court ought not to entertain same, and he cited the case of **Uguru V. P.D.P. (2015) 7 NWLR (pt 1459) p. 478 at 502 para. A**, and he urged the court to strike out the name of the 2nd defendant.

It is in the counter affidavit that the content of the affidavit in support is untrue and does not represent the true position of facts. It is stated that the claimant in paragraphs 10, 11, 16, 25, 26, and 30 of the statement of claim dated 11th September, 2020 has stated clearly facts which are necessary for the joinder of the 2nd defendant. That the claimant had traced his root of title to one Liman Shehu who bought the land from the 2nd defendant/applicant while paragraphs 25 and 26 also show that the 1st defendant has also claimed to have purchased the land from the 2nd defendant. It is stated that the 1st defendant keeps portraying himself as the owner of the property in issue having alleged to have acquired same from the 2nd defendant.

It is stated that if this action succeeds, there would be the need for the 2nd defendant/applicant to revoke or withdraw any document related to the Plot of land as contained in the document's/respondent's statement of claim, and that it is competent for the 2nd defendant/applicant to be joined in order to determine

who the land was actually allocated to. That the case is not an abuse of court process or academic in any way. It is further stated that the 2nd defendant is in charge of allocation management of Federal Housing Lands and this suit is one that relate to land in dispute, and as such all parties are necessary parties to this case and justice will be better served if the 2nd defendant is joined as a party.

In his written address, the counsel to the claimant raised this issue for determination, thus:

Whether there is a reasonable cause of action against the applicant to cloth this Honourable court with jurisdiction?

The counsel submitted that the 2nd defendant is a necessary party without whom the question to be settled in the main suit will not be settled effectually, and he cited the case of **Tonique oil Services Ltd V. UBA (2017) All FWLR (pt 985) p. 1357 at 1366, paras. H – A.** where the court gave the meaning of cause of action. He argued that from the above, there is need for the 2nd defendant/applicant to give evidence as to whether there is a case of double sale of a single land to two different individuals in relation to this case at different times as can be seen from the statement of claim at paragraphs 10, 11, 16, 25, 26 and 30 as well as the reliefs sought that there exists a reasonable cause of action against the 2nd defendant. He submitted further that it is the assertion of the 3rd defendant that an investigation was referred to the office of the 2nd defendant and the report revealed that Liman Shehu sold the land to one Alhaji Sani Suleiman who then sold the same land to the 1st defendant. He also submitted that the matter in issue cannot fairly determined in the absence of the 2nd defendant/applicant.

The counsel further submitted that the 3rd defendant has intended to arraign the claimant for trespass to land on

the ground that the 2nd defendant/applicant has notified the 3rd defendant via a letter that the land in question belonged to the 1st defendant, and he urged the court to refuse this application.

Let me adopt the issue for determination as formulated by the counsel to the claimant, thus:

Whether there is a reasonable cause of action against the applicant to cloth this Honourable court with the jurisdiction?

Both counsel have concurred and I agreed with them that in order to determine whether the plaintiff's suit discloses a cause of action, it is the originating processes that are examined by the court to ascertain whether they raise some questions fit to be determined by a court. See the case of **Iiyasu V. Rijau (2020) All FWLR (pt 1025) p. 452 at 472; paras. D –E.**

It is the law that the court is enjoined to examine the pleadings, and once statement of claim raises some issues of law or fact calling for determination by the court. The mere fact that the case is weak and not likely to succeed at a trial is not a ground for striking out. See the case of **Iyeke V. Petroleum Training Institute (2020) All FWLR (pt 1028) p. 1014 at 1033; paras. B – D.**

It was held by the Supreme Court in the above case at page 1033; paras. D – G that for a statement of claim to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and obligations of the defendant; then go on to set out facts constituting infractions of the plaintiff's legal right or failure of the defendant to fulfill his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the relief that he seeks. At this stage of the proceedings, the issue is not whether the allegation is true or not, but whether the facts averred to,

disclose a cause of action, that is some wrong that the plaintiff has suffered that the defendant must answer for.

Now let me look at the statement of claim with a view to see whether the facts averred have disclose a cause of action, that is to say whether there is a wrong on the part of the defendant which the plaintiff suffered and which he needs a remedy.

The claimant referred to paragraphs 10, 11, 16, 25, 26 and 30 of the statement of claim.

The paragraphs read:

10. The claimant states further that Muhammed Liman Shehu was initially allocated a land by the 2nd defendant at Plot No. 115, 172 Road, Gwarinpa Estate II, Abuja, but was subsequently relocated to Plot No. 115, 69 Crescent Gwarinpa II Estate, Abuja, via a letter dated 14th January, 2003, and that letter is pleaded.
11. The claimant further avers that Alhaji Sani Suleiman wrote to the 2nd defendant for consent to assign Plot 115, 69 Crescent, Gwarinpa II Estate, Abuja dated 23rd August, 2005 in favour of the claimant, and a document is pleaded
16. Consequent upon the above, the claimant instructed his lawyers and they wrote a letter for caveat to the 2nd defendant dated 30th October, 2019 and reminder letter on the 10th July, 2020, and the document is also pleaded.
25. That the agents of the 1st defendant also presented some documents to the 3rd defendant relating to the said Plot, purportedly claiming to have been issued to them by the 2nd defendant. A notice is given to the 1st defendant to produce the documents.

26. The claimant states that since then, no response has been received from the 2nd defendant nor from the 3rd defendant.

30. The claimant avers that action of the 1st defendant is affecting him as he had already engaged engineers for construction on the site but is now left at the mercy of the 2nd and 3rd defendants and he is not sure when the investigation will be completed.

Deducing from the above paragraphs, it can be seen that the claimant has categorically stated that the person from whom he obtained titled over the property in issue got same from the 2nd defendant who is the issuing authority. Therefore, whether this assertion is true or not, cannot be determined at this stage.

It is also deduced that there is the plaintiff's right, and the obligation of the defendant when there is a complaint of double allocation on the part of the 2nd defendant being the issuing authority.

It can also be deduced that the 2nd defendant will be affected by the order of this court at the end of the trial, and therefore, this matter will not be completely and effectively determined in the absence of the 2nd defendant who is alleged to have issued different documents/allocations which becomes the subject of dispute before this court. See the case of **Garuba V. Akande (2020) All FWLR (pt 1046) p. 981 at 1005; paras. D – G** where the court held that where a necessary party who ought to be joined is not joined in an action, as judgment obtained against such a party shall be to as avail. It cannot stand the test of time and is not binding on such a non party to the action.

Let me also refer to the provisions of Order 13 Rule 4 of the Rules of this court which provides:

“Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative judgment may be given against one or more of the defendants as may be found to be liable according to their respective liabilities, without any amendment.

By this, it can be inferred to mean that the 2nd defendant may be joined as a party against whom the right to any relief is alleged to exist and may be joined along with others, and judgment can be given in accordance with their respective liabilities, and to this, I so hold. See the case of **Sifax Nig. Ltd V. Migfo Nig. Ltd (2019) All FWLR (pt 1019) 924** where the Supreme Court held that it is the prerogative of the claimant to choose who to sue.

Based upon the above considerations, I have come to the conclusion that it is appropriate that the 2nd defendant to be made as a party in this suit, and the application of the 2nd defendant/applicant is hereby refused.

Hon. Judge
Signed
31/01/2022

Appearance:

Abubakar Mohammed Esq appeared with Sani Adamu Salisu Esq for the claimant/respondent.

O. J. Ojefia Esq appeared for the 1st defendant.

E. J. Ayinmodu Esq appeared for the 2nd defendant.

CT: The matter is adjourned to 22nd day of March, 20200 for hearing.

Hon. Judge
Signed
31/01/2022