THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA

THIS WEDNESDAY, THE 11TH DAY OF MAY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/2712/17
MOTION NO: M/10948/2020

BETWEEN:

1. ODEYEMI AJANI
2. OMADACHI EZEKEL
3. AMOS GIWA
(Suing through their Lawful Attorney, Mr. Ubong Inyang Johnny) } **.....PLAINTIFFS/RESPONDENTS**

AND

1. THE EXECUTIVE CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL
2. ABUJA MUNICIPAL AREA COUNCIL } **....DEFENDANTS/ RESPONDENTS**
3. PEDAGS INVESTMENT LIMITED .... DEFENDANT/APPLICANT

RULING

The 3rd Defendant/Applicant by a Preliminary objection filed on 20th October, 2020 contends that the court lacks the jurisdiction to entertain this action.

The grounds of the objection are as follows:

" **1. The Plaintiffs/Respondents' suit regarding claims of title to the landed properties are void by virtue of the LAND USE ACT, LAWS OF THE FEDERATION 2004 and the CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED IN 2011).**

2. **The purported development of the land in the Federal Capital Territory by the Plaintiffs/Respondents are illegal by virtue of the Federal Capital Territory Act, LAWS OF THE FEDERATION 2014 (ENACTED ON THE 4TH DAY OF FEBRUARY 1976).”**

The objection is supported by a written address in which one issue was raised as arising for determination:

“Whether the Honourable Court is vested with the jurisdiction to entertain, consider and determine the Plaintiff’s suit.”

Submissions were made on the above issue which forms part of the Record of Court. I will highlight the main thrust of the address without going into unnecessary details because most of the submissions go to the substance of the case when hearing has not even started. The address commenced by situating that it is the Plaintiff’s claims that determines jurisdiction and the feautures that must be present before a court can determine any action as streamlined in the case of **Madukolu V. Nkemdilim (1962) 2 SCNLR 341.**

The main thrust of the submission of Applicant is that the allocations the Plaintiffs are relying on does not emanate from the proper source or the proper allocating authority in the FCT which is the **minister** and thus any allocations they are relying on proceeding from 1st Defendant is void. The cases of **Divage Health and Sanitary Service Ltd & Anor V. Venaj Invt. Ltd(2018)LPELR-45975; Madu V. Madu (2008)LPELR-1800** were cited.

The Applicant also contends that the Claimant did not apply for and obtain approvals from the FCT and accordingly posits that all the structures they erected are illegal.

In response, the Claimant filed an address dated 5th February, 2021 and also adopted the issue raised by Applicant and made submissions accordingly.

I shall equally highlight here the essence of the submissions. The address commenced by highlighting the elements or features of when a court is competent to adjudicate on a matter as streamlined in the case of **Madukolu V. Nkemdilim (supra)** and it was contended that it is the claim of the Claimant that the court will look at to determine whether it has jurisdiction to entertain a case or not.

The Claimant contends that the case is competent and the objection premature as it wants the court to determine the substantive suit without proper hearing. That the issue of allocations to the claimants and whether they proceeded from the proper

source cannot be determined at this stage but it was submitted that even at that, the allocation to the Claimant was valid and with the authority of the Minister F.C.T.

The Applicant filed a further reply which essentially sought to accentuate the points earlier raised.

At the hearing, parties relied on the processes filed and adopted the submissions in their written addresses in urging the court to grant the application and on the other hand to dismiss the objection.

I have carefully considered the processes and submissions on both sides of the aisle. The narrow issue is whether this court has the requisite jurisdiction to entertain this action.

It is important to state that this a transferred matter which was earlier been handled by my brother, Hon. Justice Valentine Ashi (of blessed memory). On the records, the Plaintiff has filed its pleadings, the 1st and 2nd Defendants is yet to file a response while the 3rd Defendant has filed its defence and set up a counter-claim against Plaintiff.

It is important to therefore state that **hearing** has not yet commenced. In the circumstances, most of the submissions by parties particularly the Applicant relates to issues touching on the substantive matter. Submissions were made relying on evidence(s) which has not yet been proferred or elicited and which infact can only be done at the hearing proper.

The Applicant may enjoy the luxury of making such submissions at this stage but the court must be circumspect and refrain from commenting on issues touching on the substantive matter, yet to be heard or tried when dealing with an interlocutory application such as this. The rationale behind this rule is to avoid making comments that may be prejudicial or prejudge the substantive matter.

Having made the above comments, it is important to underscore the point that the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595; The Supreme Court** instructively stated as follows:

"A court is competent to adjudicate when:

a) **It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and**

b) **The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.**

c) **The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.**

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication".

Now it is not out of place to state that the primary source of jurisdiction of all Superior Courts of records in Nigeria is the 1999 constitution. Indeed all courts derive their jurisdiction from the Constitution as the Supreme Court made clear in **Osadebay V A.G. Bendel State (1991) SCNJ 162 at 173** per Bello CJN (of blessed memory).

It is trite principle that in considering whether a court has jurisdiction to entertain on action, it is the Plaintiff's claim that the court has to consider because it is the Plaintiff's case of action that determines the legal right of a party to judicial relief(s).

The arguments of learned counsel to the Applicant that the court should begin to embark on appraisal of evidence not proffered or their defence in determining jurisdiction cannot therefore be valid or availing.

It is therefore logical to hold that in resolving the present objection, relating to jurisdiction, we must take our bearing from the statement of claim of Plaintiff and examine same and ascertain the import. As was aptly stated by the Apex Court in WAEC **V. Akinola O. Akinkumi (2009)9 N.W.L.R (pt.1091)151**, it is not the manner in which the plaintiff's claim is couched that matters, nor is it the categorization or label given to the claim by either of the parties that counts. The court has a duty to carefully examine the reliefs claimed to ascertain what the claim is all about. The task before the court is to now ascertain the claim of the plaintiff from his statement of claim.

In a nutshell, the pleadings of the plaintiff relevant to the issue under consideration are:

"1. **The 1st Plaintiff is the lawful allotee of shop/open space No.115, measuring about 249.17m^2 with Ref No. MZTP/GEN/98/311; situate and lying at the Kugbo Mechanic Spare Parts Market, Abuja-FCT.**

2. **The 2nd Plaintiff is the lawful allotee of shop/open space No.91 measuring about 470.19m^2 with Ref No. MZTP/GEN/98/311; situate and lying at the Kugbo Mechanic Spare Parts Market, Abuja-FCT.**

3. **The 3rd Plaintiff is the lawful allotee of shop/open space No.F4 measuring 24m^2 with Ref No. MZTP/GEN/98/311; situate and lying at the Kugbo Mechanic Spare Parts Market, Abuja-FCT.**

4. **The Plaintiffs are suing through their Lawful Attorney, Mr. Ubong Inyang Johnny by virtue of Powers of Attorney dated 28th of November, 2016, consecutively. (The powers of attorney are hereby pleaded and shall be relied upon at the hearing of this suit).**

7. **The 3rd Defendant is a company incorporated under Companies and Allied Matters Act with personality to sue and be sued in its name and is also the Property Developer/Financier of the Kugbo Mechanic Spare Parts Market, Abuja-FCT.**

8. **The Plaintiffs aver that they were allocated the various shops/open spaces at the Kugbo Mechanic Spare Parts Market Abuja, via letters of Conveyance of Allocation of Open Space No.115, measuring about 249.17m^2 with Ref No. MZTP/GEN/98/311, Conveyance of Allocation of Open Space No.91 measuring about 470.94m2 with Ref No. MZTP/GEN/98/311 and Conveyance of allocation of Open Space No.F4 measuring 24m^2 with Ref No. MZTP/GEN/98/311, all dated 19th March, 2001, consecutively. (The said letters of Conveyance of Allocation of Open Spaces are hereby pleaded and shall be relied upon at the hearing of this suit).**

9. **The Plaintiffs aver that the 1st Plaintiff paid the total sum of ₦68,775.9, the 2nd Plaintiff paid the total sum of ₦128,653.8, and the 3rd Plaintiff paid the total sum of ₦7,980.00 consecutively, for administrative/service charge and annual rental fees for their shops/open spaces and were issued receipts of payment by the 2nd Defendant. (The Plaintiff's payment receipts are hereby pleaded and shall be relied upon at the hearing of this suit).**

10. The Plaintiffs aver that the 1st and 2nd Defendants have continued to demand and receive payments for rents and tenement rates from the Plaintiffs and other allottees of the shops/open spaces in the Kugbo Mechanic Spare Parts Village even as they are waiting for the access road and infrastructures promised them by the 1st and 2nd Defendants.

11. The Plaintiffs aver that on the 4th of July, 2017, while construction work was ongoing on the 2nd Plaintiff's site, which is shop/open space No.91, some staff of the 3rd Defendant entered into the 2nd Plaintiff's shop/open space, approached the workers of the 2nd Plaintiff and the Plaintiff's lawful attorney and demanded that they should stop work as the 3rd Defendant was now in charge of developing the market, whereupon the 2nd Plaintiff's workers and his lawful attorney left the site out of fear of being forcefully removed from the site by the staff of the 3rd Defendant.

12. The Plaintiffs further aver that on the 5th of July, 2017, while the Plaintiffs' lawful attorney was on the 2nd Plaintiff's site which is shop/open space No.91, the 3rd Defendant brought a bulldozer onto the 2nd Plaintiff's shop/open space, pulled down the fully grown cashew tree that was on the plot of land adjacent to the 2nd Plaintiff's shop/open space and covered part of the foundation dug by the 2nd Plaintiff on the shop/open space with the felled cashew tree. (picture showing the development on shop/open space No. 91 and the tree pulled down by the staff of the 3rd Defendant, taken by Mr. Ubong Inyang Johnny, the Plaintiffs' lawful Attorney are hereby pleaded and shall be relied upon at the hearing of this suit).

13. The Plaintiffs further avers that on the 10th of August, 2017, while the Plaintiffs' lawful attorney was supervising the ongoing work on the 1st Plaintiffs' space which is shop/open space No.115, some staff of the 3rd Defendant entered into the 1st Plaintiffs' site, approached the workers of the 1st Plaintiff and their lawful attorney and demanded that they should stop work and leave immediately as the 3rd Defendant was now in charge of developing the market and also informed them that they were going to pull down the 1st Plaintiffs' shop/open space No.115 which has reached 50% completion. (pictures showing the development on shop/open space No.115 taken by Mr. Ubong Inyang Johnny, the Plaintiffs' Lawful Attorney, are hereby pleaded and shall be relied upon at the hearing of this suit).

Based on the above, the Claimants sought for the following Reliefs:

" a. A DECLARATION that the Plaintiffs' allocation over shops/open spaces No.115, measuring about 249.17m2 with Ref No. MZTP/GEN/98/311; No. 91 measuring about 470.19m2 with Ref No. MZTP/GEN/98/311, and No.F4 measuring 24m2 with Ref No: MZTP/GEN/98/311, consecutively, situate and lying at the Kugbo Mechanic Spare Parts Market, Abuja-FCT, is valid and still subsisting.

b. A DECLARATION that the act of the 1st and 2nd Defendants in engaging the services of the 3rd Defendant as the developer and financier of Kugbo Mechanic Spare Parts Market, Abuja-FCT, without regard to the valid and subsisting allocation of the Plaintiffs over shops/open spaces No.115, measuring about 249.17m^2 with Ref No. MZTP/GEN/98/311; No. 91 measuring about 470.19m^2 with Ref No.MZTP/GEN/98/311, and No. F4 measuring 24m^2 with Ref No. MZTP/GEN/98/311, consecutively, situate and lying at the Kugbo Mechanic Spare Parts Market, Abuja-FCT is illegal, null and void.

c. AN ORDER of this Honourable Court restraining the 3rd Defendant, their privies, servants, agents or any other person whatsoever called from pulling down, destroying, stopping work or in any other way tampering with the 1st Plaintiffs' building under construction on shops/open spaces No.115 measuring about 249.17m^2 with Ref No. MZTP/GEN/98/311; No. 91 measuring about 470.19m^2 with Ref No. MZTP/GEN/98/311, and No. F4 measuring 24m^2 with Ref No. MZTP/GEN/98/311, situate and lying at the Kugbo Mechanic Spare Parts Market, Abuja-FCT.

d. AN ORDER of the Honourable Court compelling the 3rd Defendant to cease every plan of commencing any development or construction of shops at Kugbo Mechanic Spare Parts Market, Abuja-FCT, especially on the Plaintiffs' shops/open spaces No.115, measuring about 249.17m^2 with Ref No. MZTP/GEN/98/311; No. 91 measuring about 470.19m^2 with Ref No. MZTP/GEN/98/311, and No. F4 measuring 24m^2 with Ref No. MZTP/GEN/98/311.

e. AN ORDER of perpetual injunction restraining the Defendants either by themselves, servants, privies, agents or howsoever described from disturbing and/or interfering with the Plaintiffs' rights to develop, occupy and make use of their respective shops/open spaces No. 115, measuring about 249.17m^2 with Ref No. MZTP/GEN/98/311; No. 91 measuring about 470.19m^2 with Ref No. MZTP/GEN/98/311, and No. F4 measuring 24m^2

with Ref No. MZTP/GEN/98/311, situate and lying at Kugbo Mechanic Spare Parts Market, Abuja-FCT, which shops/open space were allocated to the Plaintiffs by the 1st and 2nd Defendants; and

f. The cost of this action."

The above claims of Plaintiff are fairly straightforward and not difficult to discern. Their case is simply that they were allocated shops and open spaces for consideration. They have commenced constructions works but that the 3rd Defendant has demanded that they stop work and threatened to demolish their shops; that they are now in charge of developing the market. The present action challenges essentially the actions of 1st Defendant in engaging the services of the 3rd Defendant without regard to the valid allocations to them.

In **Akibu V Oduntan (2000) 13 NWLR (pt.685) 446 at 463.** the Supreme Court defined cause of action as:

"A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:-

(a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and

(b) The consequent damage."

In so far as can be evinced from the relevant paragraphs of the statement of claim which I have reproduced above, the fact or combination of facts on which Plaintiffs have premised their right to sue has been clearly pleaded. The claim here has set out clearly the legal rights of Plaintiff; the obligations of the Defendants and the actions allegedly constituting the infractions of their legal rights by Defendants in such a way that if there is no proper defence, the Plaintiffs will succeed in the reliefs they seek.

The allocations frontloaded which are yet to be tendered in evidence to allow for proper evaluation but which forms part of the Record and which the court can however look at situates that the allocations were made by the Zonal Manager for and on behalf of the Honourable Minister.

Now whether this allocation by the Zonal Manager on behalf of the Minister or indeed whether the allocation to Plaintiffs are valid is not a matter that can be determined at this interlocutory stage as earlier stated. What is interesting is that

the Applicant who is challenging the allocation of the Plaintiffs also derived its allocation from 1st Defendant. How this allocation impacts the case bearing in mind that the 3rd Defendant/Applicant also has set up a counter-claim is a different matter altogether. Even if not directly relevant, the counter-claimant in its counter-claim appear to have recognized this allocation of Claimants as they are claiming damages in **Relief 1** of the Counter-claim for the alleged failure of Plaintiffs to draw the attention of **"3rd Defendant to their interest in the property". (**See Relief 1). The Applicant here appears to be blowing hot and cold. I say no more. The decisions and the statutes cited by Applicant and on which extensive submissions were made are clearly premature. The court cannot be applying these decisions and statutory provisions when the case is yet to be heard and parties given every opportunity to present their grievances. At the right and appropriate time, God willing, the decisions and statutory provisions will be looked at and applied.

On the whole, the Applicant has not situated any feature that deprives the court of jurisdiction to entertain the present action. The point raised is one that at best can be taken after facts, if they exist, are first adduced in or established in evidence to allow for the point of law to be taken. It cannot be taken in a vacuum or where the facts are obscure as in this present situation. The point must be underscored and as earlier alluded to that the 3rd Defendant/Applicant by the objection are deemed to have admitted and accepted the averments contained in the writ of summons and statement of claim put forward by the plaintiffs and it is only upon those facts that the court can determine the application and not any other extraneous consideration or submissions. I found authority for this in the pronouncement of the Supreme Court in **Woherem V Ehereuwa (2004) 13 NWLR (pt.890) 418 at 419** per Iguh JSC as follows:

"Another point that ought to be borne in mind is that the application of the respondents, as defendants, before the trial court was by way of a preliminary objection for the dismissal of the appellant's suit in limine on the ground of Limitation of Action Law of Rivers State of Nigeria, 1988. The principle of law is well established that an application by way of preliminary objection for the dismissal of a suit in limine may be made on points of law and where there are no facts in dispute for the purpose of determining such a objection. See Bello Adegoke Foko and others V Oladokum Foko and another (1968) NMLR 441. The applicant relies only on the facts as stated by the plaintiff in the writ of summons and statement of claim. The facts stated by the plaintiff in the writ of summons and statement of claim are for that purpose deemed to have

been admitted by the defendant/applicant. See Ayanbode V Balogun (1990) 5 NWLR (pt.151) 392 at 407. Where, however, disputes as to facts appear on the pleadings of the parties, as is the case in the present application, it is only open to a defendant to raise a preliminary objection on the face of the plaintiff's writ of summons if the said defendant accepts the plaintiff's averments of fact either on the writ of summons or on his statement of claim but submits that even in those circumstances no cause of action would appear to have been disclosed or that the court has no jurisdiction to entertain the suit or that the action is statute-barred by virtue of some Limitation Law. But, if facts exist, which must first be adduced in or established by evidence to enable a point of law to be sustained, the preliminary objection may not be properly taken. See Banjo and others V Eternal Sacred Order of Cherubim and Seraphin (1975)3SC 37. Similarly if the facts to sustain the preliminary point are obscure or at large, a preliminary objection may not properly be taken. A matter, therefore, which is raised by way of preliminary point but which may be answered if evidence is adduced cannot be properly raised as preliminary objection. Such a matter is more properly answered by evidence during the trial and shall constitute an issue for determination at the trial."

The above is clear.

In the light of the foregoing, and in summation, I find no merit whatsoever in the 3rd Defendant's preliminary objection and it is hereby dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Temitope Ayodele-Ogunjide, Esq., with Aniefiok Ekanem Esq., for the Claimants/Respondents**

2. **A.Y Zubairu, Esq., for the 1st and 2nd Defendants/Respondents**

3. **Justin Chuwang., Esq., for the 3rd Defendant/Applicant**