

RULING

This Ruling is hinged on Notice of Preliminary Objection dated 9th of November, 2021 and filed on the 10th of November, 2021 wherein the Defendant/Applicant challenge the competence of this suit on the following grounds:-

- a. That the Claimants have no locus standi to institute the action.
- b. No reasonable cause of action has been disclosed against the Defendant.
- c. The suit is bad for non – joinder of persons.

In support of the preliminary objection, Defendant/Applicant filed a written address

wherein a lone issue was raised for determination to wit:-

“Whether or not the Claimants’ Originating Processes is incompetent and an abuse of process of this Honourable Court having regard to the fact that same was filed devoid of;

a. Locus standi

b. Cause of Action and;

c. Non – joinder of necessary party.”

Arguing on the issue, learned counsel submits that it is settled law that a point of law can be raised on a preliminary objection if the point or points of law will be decisive of the whole litigation. This, the court has a duty to decide on the objection

before proceeding to consider the substantive issue. ***KAMBA VS. BAWA (2005) 4 NWLR (Pt. 914) 43 (Pt. 59) Paragraphs D – E) CA;***
OKOI VS. IBIANG (2002) 10 NWLR (Pt. 776) 455 were cited.

Counsel submits further that even if 1st Claimant is acting in line with the provision of Order 13, Rule 29 of the Rules of the High Court of the FCT, 2018, as a business name or partnership in this case, none of paragraphs in the Claimants' pleadings link the said party with the only document attached thereto establishing a connection between the Claimants and the 'Res' in dispute before this court. Documents are not just thrown at the court to decipher, there must be an established nexus between pleadings and a

document sought to be relied upon. The fact that 1st Claimant did not in the pleadings established a relationship with the document attached as Exhibit to the said pleadings is fatal to the Claimants' case of *AGUOCHA VS AGUOCHA (1986) 4 NWLR (Pt. 37) 566;*

AJIKAWO VS. ANALDO (NIG.) LTD (1991) 2 NWLR (Pt. 173) 359 page 372, Paragraph E were cited.

With respect to reasonable cause of action, counsel submits that a party, who seeks the indulgence or exercise of discretion of a court, has the duty to place all the necessary materials before the court to enable the court exercise its discretion.

The discretion of the court is exercised based on facts before the court and not on any extraneous matter or issue. ***IBORI VS FRN (2009) 3 NWLR (Pt. 1127) 94 pages 106 – 107, Paragraphs H – A;***

ODIMEGWA VS. IBEZIM (2019) NWLR (Pt. 1677) 244 Page 260, Paragraphs D – E;

CHEVRON NIG.LTD. VS.LONESTAR DRILLING NIG. LTD. (2001) 11 NWLR (Pt. 723) 186 Page 193, Paragraphs F – H were cited.

On the issue of non – joinder of person, counsel submits that non – joinder to a proceeding of a third party whose interest would be affected by the outcome of the suit would render the decision of the court in the suit inconclusive. ***TANAREWA***

(NIG) LTD. VS. ARZAI (2005) 5 NWLR (Pt. 919) 593 page 626 Paragraphs D – E;

UDO VS. CSNC (2001) 14 NWLR (Pt. 732) 116 Page 162 Paragraphs C – D;

OKWU VS UMEH (2016) 4 NWLR (Pt. 1501) 120 Page 143 – 144 Paragraphs H – C were cited.

Conclusively, counsel urged the court to uphold the preliminary objection and decline jurisdiction to entertain this suit.

On their part, Claimants/Respondents filed their reply on points of law to Defendant's notice of preliminary objection.

It is the submission of counsel that it is respectfully submitted that Defendant's

Preliminary Objection impugning the competency and/or standing of the Claimants to claim reliefs against the Defendant and jurisdiction of this Honourable Court to entertain same ought not to be raised at this stage as the factual and legal issues interwoven in it can only be resolved on the completion of evidence and not even on pleadings alone. In other words, the issue of locus standi is an issue of facts that can only be resolved through evidence where facts in the statement of claim are insufficient to donate locus standi, however, in the instant case facts in the statement of claim are sufficient to donate locus standi on the Claimants.

That another dangerous and ruse aspect of the instant application is that it cannot be decided upon without the Court being tempted to delve

into the substantive suit, and doing so will be tantamount to the court preempting itself at the interlocutory stage of hearing an objection when parties have not led evidence. Hence, counsel urge this Honourable Court to dismiss the instant application and hold further that the same is premature and ought to be raised at the completion of evidence as deciding on it at this stage will stand on the way of justice and pose a preemptive effect on the substantive suit.

PRINCE ABDUL RASHEED A. ADETONA & ANOR VS. ZENITH INTERNATIONAL BANK PLC. (2011) 18 NWLR (Pt. 1279) 627;

IMADE VS MILITARY ADMINISTRATOR EDO STATE (2001) 6 NWLR (Pt. 709) 478 C.A. were cited.

Counsel reiterate that the trite position of the law is that, the only material relevant in considering the questions of ‘**locus standi**’ and ‘**cause of action**’ is the Claimants’ statement of claim and the writ of summons. In effect, counsel humbly refer the court to all paragraphs of the statement of claim in this suit with particular reference to paragraphs 1, 2, 4, 5, 10, 11, 12, 13 and 14.

Counsel further avers that in paragraphs 1, 2 and 4 of the Claimants’ statement of claim, the Claimants traced and established how they acquired an interest over the subject matter of this suit via an offer of grant of approval of Right of Occupancy; and for over 21 years been enjoyed untrammelled possession of the land in dispute.

It is the averment of counsel that in paragraphs 10, 11, 12, 13 and 14 of the said statement claim, the Claimants established how the Claimants' possession was disturbed by the Defendant in February, 2021, and how several lawful measures were enlisted to quell the disturbance but the Defendant refused to redress his wrongful act and have continued in his reckless act of trespass on the Claimants' property.

That a further look at the Claimants' Statement of Claim, particularly paragraph 10, 11, 12 and 13, will show that the Claimants have real grounds for complaint before this court which cannot be wished away. In the said paragraphs the Claimants stated that consequent upon the Defendant's invasion and removal of Claimants' properties, the

Claimants instructed their lawyers to institute this action in Court for redress and to ward off the notorious trespasser.

Learned counsel submits, therefore, that it is the combination of facts as averred in Claimants; Statement of Claim that gives the Claimants a cause of action and the right to sue. The said statement of claim made it abundantly clear that the Claimants have a stake in the subject matter and even further established how the Claimants suffered from the Defendant's conduct. A better glean of the entire paragraphs of the said Statement of Claim shows two elements of cause of action, viz the wrongful act of the Defendant which gives the Claimants their cause of complaint and the consequent damage. See

***ADESOKAN VS. ADEGOROHU (1977) 3
NWLR (Pt. 493) 261;***

***B.B APUGU & SONS LTD. VS O.H.M.B (2016)
13 NWLR (Pt. 1529) 206 at 269 – 270 were cited.***

Flowing from the foregoing, counsel submits that the totality of the pleadings of the Claimants and the reliefs sought against the Defendant relate to a proprietary right that was personally vested in the Claimants, and that they have real interest at stake, which only this Court can adjudicate upon. As a corollary, counsel urge the Court to hold that the Claimants' Statement of Claim has shown a reasonable cause of action against the Defendant and have also met and satisfied the test of sufficient interest in relation to locus standi as

espoused in the cases of ***CHIJUKA VS. MADUEWESI (Supra)***;

PAM VS. MOHAMMED (2008) 16 NWLR (Pt. 1112) 1 were cited.

Counsel submits that, the issue of “non – joinder of person” raised as third ground in the Defendant’s preliminary objection is of no moment as issue of joinder is a procedural issue that needs to be established by facts, yet the Defendant woefully failed to file any affidavit to show the court who was not joined but ought to be joined. In any case the ruled of this court, particularly, Order 13 Rule 18 of the FCT High Court Civil Procedure Rules, 2018, provides that court hears matters as between parties properly

before it and that such proceedings cannot be defeated by the non – joinder of any person.

Counsel respectfully urge the court to dismiss this frivolous application with a cost of N200,000.00 and proceed to assume jurisdiction over the substantive suit.

COURT:-

I have gone through the arguments of learned counsel for the Defendants on the issues of locus standi, cause of Action and non – joinder of necessary party on one hand and the argument of the Claimants’ counsel on the other hand.

I shall deal with the issues raised one after another for the purposes of justice and posterity.

The term locus standi denotes the Plaintiff's capacity to sue in a court of law to enforce a legal right. Once the Plaintiff has a right or vested interest to protect and enforce legally and this has been disclosed in the statement of claim, the onus on him to establish locus standi to sue would have been discharged.

In other words, the Plaintiff must in the statement of claim disclose sufficient interest or threat of injury and show a nexus between them and the right claimed to enable him to involve the judicial process. See *UGWUNZE VS. ADELEKE (2002) 2 NWLR (Pt. 1070) 148 at Page 171 Paragraphs F – H.*;

See also *DISU VS. AJILOWURA (2006) 14 NWLR (Pt. 1000) 783.*

A court is generally competent to adjudicate over a matter only when the condition precedent for its having jurisdiction are fulfilled. A court will be competent 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 the other;
- b. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction;
- c. The case comes before the court initiated by the due process of law and upon fulfillment of

any condition precedent to the exercise of jurisdiction.

Any defect in competent is fatal, for the proceedings are nullity, however well conducted and decided. Above was stated in the case of ***MINISTER OF WORKS & HOUSING VS. SHITTA (2008) ALL FWLR (Pt. 401) 847 at 863 – 864 Paragraph G – C.***

What then, is a cause of action? Fact or facts which established or gives rise to a right of action is called cause of action.

See ***INOMA BINIYA VS. OMONI (1989) 4 NWLR (Pt. 119) Page 60 at 74 Paragraphs A – B;***

EGBE VS.ADEFARASIN (1987) 1 NWLR (Pt. 47) Page 1.

Furthermore, cause of action was define in the case of ***FASHEUN MOTORS LTD. VS. UBA LTD. (2000) 1 (Pt. 640) Page 190 at 200 Paragraph E*** as consisting every fact which would be necessary for the Court to assumed jurisdiction.

Poser; how then shall a court of law determine whether a party laying claim to an issue has the right to so claim?

It is my considered opinion and indeed on the authority of bountifully decided cases, that in determining whether or not pleadings disclose any reasonable cause of action, it is the Writ of

Summons and Statement of claim that will be considered, and certainly not statement of defence by way of affidavit.

See the case of ***UBN VS. UMEODUAGU (2004) 13 NWLR (Pt. 890).***

See also ***CIVIL SERVICE TECHNICAL WORKERS UNION VS. AGRICULTURES AND ALLIED WORKERS UNION OF NIGERIA (1993) 2 NWLR (Pt. 273) 63***

On the issue of non-joinder of necessary party, the first point that must be made here is that joinder of persons or parties is clearly permissible under the provisions of Order 13 Rule 3(1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules) 2018.

However, two conditions must be established by such person(s) to qualify for the joinder i.e;

1. Is the cause or matter liable to be defeated by the non-joinder of the third party as a Defendant?
2. Is the third party a person who ought to have been joined as a Claimant or Defendant so that he may be bound by the result of the trial or his presence before the Court as a Defendant is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.

See *AJAYI VS. JOLAYEMI (2001)10 NWLR (Pt. 722) Page 29 – 30. Paragraphs F – A;*

***CROSS-RIVER STATE NEWSPAPERS
CORPORATION VS. ONI & ORS (1995) 1
NWLR (Pt. 371) Page 23 Paragraphs G – C.***

The governing principle which is a cardinal rule for Administration of Justice is that determination of litigation must be in the public interest. Hence, where the issues, between the parties involve third parties whose interest are affected and the non-joining of the party will result in further litigation, such parties are a necessary parties. Therefore, those whose presence will be necessary for the effectual and complete adjudication of the matter before the Court and their presence as parties is important, the Court with or without an application, can join them as parties.

For the purpose of comprehension, the Claimant commenced this suit against the Defendant through a Writ of Summons dated 15th day of February, 2021. The reliefs claimed by the Claimant in this suit are for declaration of right, trespass, injunction and monetary damages with respect to Plot 3271A, Lugbe 1 Extension, Abuja.

I am not tempted to delve into the substantive suit, and doing so will be tantamount to the court preempting itself at the interlocutory stage of hearing.

The Claimants stated how they acquired an interest over the subject matter of this suit via an offer of grant of Approval of Right of Occupancy; and for over 21 years been enjoyed untrammelled possession of the land in dispute.

Learned counsel for the Defendants has now filed a notice of preliminary objection, seeking the Court to decline jurisdiction.

The facts averred in the Claimants statement of claim are such that if put side by side with those of the Defendant notice of preliminary objection, certainly there are issues to be determined by this Honourable Court. I so hold.

On the whole, it is my firm view that this notice of Preliminary Objection is timely but too early to be raise when evidence has not been led at all. I agree with the learned counsel to the Claimants/Respondents that the instant application is premature and ought to be raised at the completion of evidence as deciding on it at this

stage will stand on the way of justice and pose a preemptive effect on the substantive suit.

Accordingly Motion No. **M/77801/2021** is hereby and accordingly dismissed.

Justice Y.Halilu
Hon. Judge
21st June, 2022

APPEARANCES

Simon Onu, Esq. – for the Defendant.

Claimants not in Court and not represented.