

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS

COURT NO: 6

SUIT NO: FCT/HC/CV/3655/2013

MOTION NO: M/5175/2020

BETWEEN:

ATTAH UMAR

(Suing through his Attorney **KINU .A. KABIRWA**).....**PLAINTIFF**

VS

1. MINISTER OF FEDERAL CAPITAL TERRITORY

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY....DEFENDANTS

RULING

Before the court are two applications. The 1st is a Notice of Preliminary Objection filed by 3rd Defendant and the other a Motion on Notice filed by 4th Defendant both of which are subject of this Ruling. The 3rd Defendant's Notice of Preliminary Objection is with No. M/5175/2020 dated 11/2/2020 and filed same date praying the court for;

- (1) An Order dismissing the Plaintiff's suit for being incompetent and want of requisite jurisdiction of this Hon. Court to entertain same.

Grounds of the objection.

1. The Plaintiff's title attached as Exhibit "A" is a Customary Right of Occupancy via a letter of allocation dated 23rd February, 2007.
2. By the combined effect of Section 1(3) and 6(3)(4) of the FCT Act, Section 297 (1) (2) and Section 299 of the Constitution of the Federal Republic of Nigeria, Sections 49(1) of the Land Use Act, there is no Customary Right of Occupancy in the Federal Capital Territory, Abuja.
3. Section 6 of the Land Use Act which deals with lands in non-Urban Areas is not applicable in the FCT. Please see the case of **ENGINEER YAKUBU & 3ORS VS SIMON OBADE (2005) All FWLR @ 282.**
4. The Plaintiff's case is standing on nothing as the said Customary Right of Occupancy is a nullity abinitio.
5. The Plaintiff's pleadings have failed to disclose a reasonable cause of action.
6. None of the reliefs sought inures the Plaintiff as there is nothing like Customary Right of Occupancy in the FCT.
7. The 3rd Defendant holds a Statutory Right of Occupancy in line with the Extant Laws.

In support of the Notice of Preliminary Objection is a 5 Paragraph affidavit sworn to by O.O. Francis with one (1) Exhibit annexed marked "A". Filed a Written Address in urging the court to dismiss the Plaintiff's suit.

The 4th Defendant's Motion on Notice is with No. M/5847/2020 dated 25/2/2020 but filed on 27/2/2020, brought pursuant to Order 43 Rule 1 of FCT High Court (Civil Procedure) Rules 2018 And under the inherent jurisdiction of this Hon. Court praying for the following reliefs;

1. An Order of this Hon. Court dismissing this suit for lack of Jurisdiction and abuse of court process.

Grounds of application.

- a. The Plaintiffs lacks the locus to institute this action because the Power of Attorney he claimed that was donated to him was never registered.
- b. The Offer of the Terms of Grant/Conveyance of approval for a Customary Right of Occupancy dated 23rd day of February, 2007 was never issued by the 1st or 2nd Defendants.
- c. No cause of Action.

In support of the Motion is a 10 Paragraph affidavit deposed to by Philip Yoor with one (1) Exhibit attached marked "A" filed a Written Address and adopts the Address, in urging the court to dismiss the Plaintiff's Claim.

In opposition to the applications of the 3rd and 4th Defendant, the Claimant filed a Counter-Affidavit of 22 Paragraph on 25/1/2021 deposed to by Kinu A. Kabirwa. Also filed a Written Address in support.

In the Written Address of 3rd Defendant/Applicant settled by R.T. Anderinfun, a sole issue was formulated for determination to wit:

“Whether the court has the jurisdiction to entertain the Plaintiff’s case in view of the Plaintiff’s title: Customary Right of Occupancy which the Plaintiff holds over the subject matter”.

And contended that by the combined effect of Section 1 (3) and 6 (3) (4) of FCT Act, Section 297 (1) (2) and 299 of the Constitution, 49 (1) Land Use Act there is no Customary Right of Occupancy in the FCT. That Section 6 of Land Use Act which deals with land in non-urban area is not applicable to the FCT and the Area Council because all lands in the FCT belongs to Federal Government. That the Power of the Area Councils, in the case of FCT, to grant Customary Right of Occupancy does not extend to lands held by Federal Government. That from Plaintiff’s pleadings as well as Exhibit “A” attached to the affidavit in support of the application, Plaintiff’s title is Customary Right of Occupancy granted by Bwari Area Council and area Council cannot exercise jurisdiction in land in the FCT. That nothing in the entire pleadings of Plaintiff to show it derived its title from 1st Defendant and cannot have legal right in the Plot which it can enforce or protect. In all cited several judicial authorities; Engr. Yakubu & 3 Ors Vs Simon Obade (2005) All FWLR at 82, Madu Vs Madu (2008) 6 NWLR (PT. 1085) 304 Ona Vs Atada (2000) 5 NWLR (PT. 656) 244 Ojukwu Vs Ojukwu (2000) 11 NWLR (PT. 677) 72 UBA Vs BTL Ind. Ltd (2004) 18 NWLR (PT. 904) 180.

4th Defendant/Applicant in his Written Address settled by I.E Uzuegbu, three (3) issues was formulated for determination namely;

1. Whether the Plaintiffs have the legal status (locus standi) to institute this action.
2. Whether the suit before this Hon. Court is a gross abuse of court process vis-a-vis the Customary Right of Occupancy issued by the Bwari Area Council.
3. Whether this suit discloses any cause of action.

Arguing the issue 1, submit that Plaintiff have no locus standi to institute this action. That he is claiming to have institute this action by the virtue of Power of Attorney donated to him and a closer look at the said Power of Attorney will reveal that it was not registered. That when it is shown that a party lacks the locus standi to institute an action, the court would have no Jurisdiction to entertain his complaint. Cited *Manlehin Vs James* (1984) LPEFLR – 1753.

On issue 2, referred the court to Section 41 Land Use Act and submitted that by bringing this matter to the High Court on a matter that border on Customary Right of Occupancy issued by Bwari Area Council instead of Area or Customary Court that has Jurisdiction over it, is an abuse of court process and the proper Order to make when a party has abused process of court is to dismiss the suit. He referred to *Apanisile Idowu Vs FRN* (2011) LPELR – 3793 (CA).

On issue 3, answered it in the negative and referred the court to all the averments in Plaintiffs' Statement of Claim, particularly Pars 3 – 18 and submit he ought to have shown how the wrongful acts of Defendants, if

any, gives him cause of complaint but he has woefully failed to do so. That Plaintiff has not disclose any cause of action in this matter.

In the written Address of Claimant/Respondent, Adekunle Oladapo Otitoju of Counsel for Claimant/Respondent did not formulated any issue for determination but submitted that the grant or otherwise of these applications is at the discretion of the court and must be invoked by placing relevant materials before court to enable it exercise its discretion in favour of Applicants and this they failed to do. That for court to determine Jurisdiction to entertain a matter, will consider only the Writ of Summons and Statement of Claim. In other words, it is the Originating Processes filed by Claimant that determines whether or not court has jurisdiction to entertain a matter. Cited Adeyemi Vs Opeyori (1976) 9 – 10 SC, 31, AG, Anambra State Vs AG, Federation (1993) 6 NWLR (PT. 302). Submitted that Claimant's case discloses cause of action that calls for court to invoke its jurisdiction to entertain it. Also that court have been enjoined not to determine the merit of a substantive case at Interlocutory stage as to do so is to compromise a party's Constitutional Right to fair hearing and renders such determination void. Refer to E.D Tsokwa & Sons Ltd Vs C.F.A.O (1993) 4 NWLR PT. 291, 128.

On the issue by 4th Defendant that the Power of Attorney donated is not registered. Submitted that it is misconceived as it need not be registered to be effective and cited Chief J.A. Ojo & 1 Or. Vs Saula Ogisanyin Anibere & 7 Ors NSCQR Vol. 18 (2004), 208.

Also submitted Claimant/Respondent has the locus standi to institute the action and the suit not an abuse of process of court.

I have given an insightful consideration to the submission of Counsel and the judicial and statutory authorities cited and find that only one (1) issue calls for determination and that is;

“Whether the 3rd and 4th Defendants/Applicants have made out a case to warrant the reliefs sought in their respective applications”

The gravamen of the 3rd and 4th Defendants/Applicants is that this court lacks the jurisdiction to entertain this suit because Claimant has disclose no cause of action, lacks the locus standi to institute the action and the suit is an abuse of the process of court.

Cause of action is the entire set of facts that give rise to an enforceable claim. Any act of the Defendant that gives the Plaintiff his cause of compliant is cause of action. See Ayodele Vs Ekocorp Plc (2022) All FWLR (PT. 1133) 142. And the law is well settled that in determining whether or not a Claimant’s case discloses cause of action, it is the totality of the facts pleaded in the Statement of Claim that are critically examined. See Ayodele Vs Ekocorp Plc (Supra).

In this instance, I have in line with the law, critically perused the Writ of Summons and Statement of Claim of Claimant and find that the case of Claimant disclosed cause of action against the 3rd and 4th Defendants/Applicants in this suit. All the issues raised by the Applicants on the point are matters for the substantive hearing that cannot be determined at this Interlocutory stage. The courts overtime have been

enjoined to refrain from determining matters for the substantive at Interlocutory stage. See *Brossa Vs Governor, Edo State* (2021) All FWLR (PT. 1075), 1. The argument of Applicants on the issue therefore do not avail them.

On the issue by 4th Defendant/Applicant that the Claimant lacks locus standi to institute the action. Locus standi means the legal capacity to a party to sue. See *Taiwo Vs Adegboro & Ors* (2011) LPELR – 3133 (SC). And to determine whether or not a Claimant has locus standi to sue, the court should perused the Statement of Claim. See *Nita Vs Jones* (2007) WRN, Vol. 12, 183 @ 195. I have looked at the Statement of Claim of Claimant in the instant suit and found that the Claimant instituted this action through his lawful Attorney on the basis of Power of Attorney donated for purpose and other purposes as contained in Clause 9 of the said Power of Attorney annexed to the Originating Processes of this suit. The contention of 4th Defendant/Applicant that the said Power of Attorney is unregistered and not valid and is not tenable. This is because the law is settled that where a donee of Power of Attorney is instituting an action in respect to the subject matter of the Power of Attorney, the only manner known to law for instituting such an action is indication of the fact that the Donee is suing through his lawful Attorney as is done in the instant suit. See *Mangibo Vs Oguide & Anor* (2009) LPELR – 8416 (CA). in any event, the fact that the Power of Attorney, the basis upon which Claimant took out this action, is not registered does not invalidates it or render the Claimant's incompetent to sue. See *Melwani Vs Five Star Industries Ltd* (2002) LPELR 1858 (SC). The argument, therefore, does not avail 4th Defendant/Applicant.

On the issue, also by 4th Defendant/Applicant that Claimant suit amount to abuse of processes of court. It is their contention that Claimant's title is Customary Right of Occupancy and that by instituting the action at the High Court instead of Area or Customary Court that has jurisdiction amount to abuse of processes of court. Again this argument of 4th Defendant/Applicant is not tenable. I have earlier stated that this is an issue for the substantive hearing and not a matter at this Interlocutory stage. Besides I see no abuse of the processes of court on the basis of this instant suit.

From all of these, it is the findings of court that these applications by the 3rd and 4th Defendants/Applicants are totally bereft of merit and waste of time. These issues raised by the 3rd and 4th Defendants/Applicants in their respective applications are substantially same issues the 1st/2nd Defendants raised in their Notice of Preliminary Objection which this court in a considered Ruling on 7/10/2022, dismissed for lacking in merit. Given the age of this case, Counsel are advise to refrain from filing frivolous applications and I Order accelerated hearing of this suit.

I made no Orders as to cost.

Signed
HON. JUSTICE C.O. AGBAZA
Presiding Judge.
6/12/2022

APPEARANCE:

JOSEPH ADEJOH – FOR 3RD DEFENDANT/APPLICANT

ASHI MICHAEL ASHI – FOR 4TH DEFENDANT

DAYO AYILARA – FOR 1ST/2ND DEFENDANT/APPLICANT

NO APPEARANCE FOR CLAIMANT/RESPONDENT