

**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/1910/2019

MOTION NO: M/4782/2020

BETWEEN:

PASTOR SAMUEL SHIKA SHIE.....APPLICANT

VS

- 1. TRANSMISSION COMPANY OF NIGERIA**
- 2. THE HONOURABLE MINISTER OF POWER, WORKS & HOUSING**
- 3. THE HONORABLE MINSTER, MINISTRY OF THE FCT**
- 4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY.....DEFENDANTS**

RULING

By a Notice of Preliminary Objection with No: M/4782/2020 dated 28/1/2020 but filed on 30/11/2020, brought pursuant to Order 43 Rule 1, Order 44 Rules 1 and 3 of FCT High Court (Civil Procedure) Rules 2018, Section 30 of Land Use Act, 1978, Section 20 of the Freedom of Information Act, 2011 and Section 251 (1)(P)(R) of 1999 Constitution (As Amended), the Applicant challenges the jurisdiction of this court and the competence of this suit.

The grounds upon which this application is brought are;

1. The Claimant has not met the condition precedent to instituting this suit.
2. The action of the Claimant is statute barred.

In support of the Notice of Preliminary Objection is a four (4) Paragraph affidavit sworn to by Saidu Wordi. Also filed a Written Address in support and adopts the Address, in urging the court to grant the reliefs sought.

Upon being served the Notice of Preliminary Objection and in response, the Claimant/Respondent filed a Counter -Affidavit on 6/12/2021 of seven (7) Paragraph. Also filed a Written Address and adopt the said Address, in urging the court to dismiss the Notice of Preliminary Objection with substantial cost.

1st Defendant is not opposed to the application.

In the Written Address of Applicant Counsel formulated a sole issue for determination and that is;

“Whether this court has jurisdiction to entertain the Claimant’s case”

And submitted that courts derive their power from the statute establishing them and its not left to court to cherry-pick cause of action and parties, it can exercise jurisdiction over. That once it lacks jurisdiction to entertain a matter, everything done in the matter itsa nullity. Refer the court to several judicial authorities. That in the instant, it cannot be said Claimant approached the right court with jurisdiction to hear his case, commended the court to Section 251 (1) (P) (R) of 1999 Constitution and contending that from the Provisions, its clear that once the Federal Government or any

of its Agencies is party to an action, the Federal High Court not only have jurisdiction, but its jurisdiction in that regard is exclusive. Cited Adegbite Vs Amosu (2016) 15 NWLR (PT. 1536) 405 (SC). That 2nd Defendant is an Agency of Federal Government and the Minister represents the agency as a person. That this court not being a Federal High Court with exclusive jurisdiction, does not have jurisdiction to hear this suit.

On relief for production of document and compensation, submitted that Claimant relied on Freedom of Information Act which by Section 1 gives a person the right to access or request information from Public Institution. That by Section 20, any Applicant who has been denied access to information may apply to court for review of the matter within 30 days after the Public Institution denies or is deemed to have denied the application. That from Claimant's deposition in his supporting affidavit, they applied to Public Compliant Commission on 16/2/2018 for copy of Resettlement Action Plan but were not given. That from the day the application was made till the day Claimant applied to court is a gap of one year, four months and ten days. And in considering this period, except in exceptional circumstances, if an Applicant did not get response from the Public Institution within 7 days, the application is deemed denied. Referred to Sections 4 and 7 of the Act. That even in these exceptional circumstances, time limited to get feedback cannot be more than 2 weeks. Commended the court to Section 5 and 6 of the Act. Further that application to compel 1st Defendant to produce document is application for judicial review and Claimant has not satisfied the condition precedent to application for Judicial Review. Refer to Order 44 Rule 1 (1) and 3 of the

Rules of Court and case of Yar'adua Vs Yandoma (2015) 4 NWLR (PT. 1448) 123 (SC).

On compensation, submitted that by virtue of Section 2 (2) (c) of Land Use Act, it is the Land Use and Allocation Committee that has the power to determine dispute as to the amount of compensation payable under the Act and that this accord with Section 36 (2) of the Constitution. That where there is non-compliance with stipulated pre-condition for setting a legal process in Motion, any action instituted in violation of the pre-condition Provision of the relevant enactment ins incompetent and court is devoid of jurisdictional competence to entertain the action. Cited several judicial authorities. That in the instant, Claimant having not first apply to Land Use Allocation Committee cannot first apply to the court for matter of compensation on government acquisition of land.

On the World Bank Policy on involuntary resettlement relied on by Claimant, submitted its a policy which merely sets down steps to be taken by a country that wish to borrow money from the bank for development projects and no way a governing law in this country.

Also submitted that the Originating Summons Procedure adopted by Claimant is not proper procedure to commence this action because the procedure is peculiar to actions for interpretation of statutes and documents and in circumstances where there are no disputes of facts or likelihood of such dispute. Cited National Bank of Nigeria Ltd & Anor Vs Lady Ayodele Alakija & Anor (1978) 9 – 10 SC, Doherty Vs Doherty (1968)

NMLR, 241. That in instance, facts and circumstance are definitely going to be in dispute.

In the Written Address of Claimant/Respondent, Counsel also formulated a sole issue for determination namely;

“Whether the Preliminary Objection has merit and ought to be granted”

And submitted that Claimant’s suit is totally based on the Freedom of Information Act and the World Bank Policy on Involuntary Resettlement. That 1st/2nd Defendant project and site is funded by loan from French Development Bank and it is the World Bank Policy an Involuntary Resettlement that governs the loan and since 1st/2nd Defendants have accepted the loan, they are bound by the terms of the loan. That this suit has no bearing to the Land Use Act and therefore references to the Act by Applicant is totally misconceived. That the arguments canvassed by Applicant in the Preliminary Objection seek to dispose by way of objection to issues for determination in the substantive suit.

Also submitted that the FOI Act, Section 31 thereof, which confers on Claimant Right to obtain information also confers concurrent jurisdiction on both FCT High Court and Federal High Court and therefore a gross misconception for Applicant to say that only the Federal High Court has jurisdiction to entertain the substantive suit.

On contention that the substantive suit cannot be brought by way of Originating Summons, refers to Order 2 Rule 3 (2) of Rules of Court and submitted that all (3) three issues submitted for determination in the

Originating Summons seek interpretation of the Freedom of Information Act, the World Bank Policy on Involuntary Resettlement and the rights of the Claimant under the FOI Act and World Bank Policy on Involuntary Resettlement.

On contention that action of Claimant is statute barred for non-compliance with Section 20 of FOI Act because it was filed after 30 days from the date the Public Complaints Commission declined application for copy of the Resettlement Action Plan. Submitted that the Public Complaints Commission is not custodian of the Resettlement Action Plan and that the aim of seeking its intervention was to compel 1st Defendant to release the document to Claimant. That it was after Claimant's Counsel letter of 10/4/2019 that it became obvious that 1st Defendant had declined to give the information requested. That Section 4 (A) FOI Act requires information requested to be given within 7 days from the date is made, that is 7 days from 10/4/2019 brings date of compliance to 17/4/2019. Further that by Section 7 (4), where the information is not given within 7 days, its deemed that the institution has refused to give the information. That it will, therefore, be deemed that the information was refused as at 17/4/2019. That Section 20 of the Act requires filing of the substantive action within 30 days, that is not later than 17/5/2019 and that Claimant filed this action on 15/5/2019.

I have given insightful consideration to be submission of both Counsel and the judicial and statutory authorities cited and the court finds that two (2) issues calls for determination;

1. Whether this court has jurisdiction to entertain and determine this suit.
2. Whether this suit is statute barred.

On issue 1, the Applicant relying on the Provisions of Section 251 (1) (P) (R) of the Constitution, contended that this court lacks jurisdiction to entertain and determine this suit contending that its clear from the Provision that once the Federal Government or any of its Agencies is a party to an action, the Federal High Court not only have jurisdiction but its jurisdiction in that regard is exclusive. On the other hand, Claimant/Respondent contended that its suit is based on the Freedom of Information Act and the World Bank Policy on Involuntary Resettlement.

It is indeed true that the Federal High Court has exclusive civil jurisdiction over matters specified in Section 251 (1) of the Constitution. It is also true that the 3rd/4th Defendant/Applicant are Agencies of Federal Government. However, the law is well settled that the jurisdiction of the court is determined by the Claimant's Claim as disclosed in the court of Summons and Statement of Claim, rather than the Defendant's Statement of Defence. See MTN Nig Communication Ltd Vs Suntan Ventures Ltd (2010) LPELR – 4446 (CA). See also Ohakim Vs Agbaso & Ors (2010) LPELR – 2359 (SC).

In this instance, from the questions submitted for determination and the reliefs sought by the Claimant in this suit, its clear that the Claimant's case is on the Freedom of Information Act and the World Bank Policy on Involuntary Resettlement consequent upon the acquisition of the

Claimant's landed property by the Defendants. And under the said Freedom of Information Act, both the Federal High Court and the FCT High Court are accorded jurisdiction regarding the Freedom of Information Act. See Section 31 of the Act. In any event, in a claim which bothers on landed property it is the FCT High Court that has the jurisdiction and not the Federal High Court even if one of the parties is an institution of the Federal Government. See *Akanji Vs Federal Ministry of Lands, Housing & Urban Development & Ors* (2016) LPELR – 41631 (CA). See also *Federal Mortgage Bank Ltd Vs Lagos State Government* (2010) NWLR (PT. 1188) 570. The issue 1 is therefore resolved in the affirmative and in favour of the Claimant/Respondent.

On issue 2, the Applicant contended that the Claimant/Respondent's suit is statute barred for non-compliance with the Provision of Section 20 of FOI Act.

The said Section 20 of the Act reads;

“Any Applicant who has been denied access to information, or a part thereof, may apply to the court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application or within such further time as the court may either before or after the expiration of the 30 days fix or allow”

The contention of Applicant is that the instant suit was filed after 30 days from the date the Public Complaint Commission denied application for copy of the Resettlement Action Plan. While Claimant/Respondent argued that the action was filed within 30 days after 1st Defendant declined to give the

information. From the depositions in 1st Defendants Counter-Affidavit, it is clear that the Claimant/Respondent made the initial application to 1st Defendant which was denied before the subsequent application to the Public Compliant Commission. Therefore, in computation, it is when the 1st Defendant declined to give the information and not when the Public Compliant Commission denied the Claimant/Respondent of the information required. Now, Claimant/Respondent has stated that his Counsel's letter to 1st Defendant was on 10/4/2019 and that he filed his action on 15/5/2019. Although the said Claimant Counsel's letter of 10/4/2019 is not exhibited to the processes of Claimant, it was not denied by the Applicant and must be taken as true and correct. See Achilihu Vs Anyatonwu (2013) LPELR – 20622 (SC). By Section 4 of the Act, the information requested must be given within 7 days and by Section 7 where it is not given its deemed denied. In effect, it is taken that the 1st Defendant denied Claimant the information as at 17/4/2019 and a computation from 17/4/2019 to 15/5/2019 when Claimant filed the action clearly shows the action was filed within 30 days in compliance with the Act. The issue 2, therefore, is resolved in the negative and in favour of Claimant/Respondent.

On the issue that the Originating Summons adopted by Claimant/Respondent is not proper procedure to commence this action. This contention by Applicant is not tenable. I say so because the fact that a suit was commenced by a wrong procedure does not render the action incompetence. Such situations are treated as an irregularity. See Order 5 Rule 1 (2) and (3) of Rules of Court.

From all of these, it is the findings of court that this Notice of Preliminary Objection of the 3rd/4th Defendant/Applicant lacks merit and it is hereby dismissed.

I made no orders as to cost.

Signed

HON. JUSTICE C.O. AGBAZA

Presiding Judge

26/10/2020

APPEARANCE:

H.O OGAGA – FOR THE 3RD/4TH DEFENDANT/APPLICANT

C.S ORPIN – FOR THE CLAIMANT/RESPONDENT

NO APPEARANCE FOR THE 2ND DEFENDANT