

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 16TH DAY OF MARCH, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/1895/2021
MOTION **NO.:**
FCT/HC/M/5641/2022

BETWEEN:

1. ALURA DA DUNIYA ENTERPRISES
2. VON HOUSE FORTH ESTATES LTD **CLAIMANTS/RESPONDENTS**

AND

1. THE HON. MINISTER OF THE
FEDERAL CAPITAL TERRITORY
2. THE FEDERAL CAPITAL DEVELOPMENT
AUTHORITY (FCDA) **DEFENDANTS/APPLICANTS**

RULING

This Ruling is on the second Notice of Preliminary Objection brought by the Defendants/Applicants in this suit.

By an Originating Summons dated the 29th of March, 2021 but filed on the 5th of August, 2021, the Claimants seek the determination of the following questions:-

1. *Whether the 1st Defendant's ground of revocation that "the 1st Claiant's plot known as Plot No. CD 81 of about 1.0 htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval*

dated the 13th day of March, 2003 situate at Barwa Layout Abuja fall within the Federal Capital City (FCC)” contained in the Defendants’ notices of revocation is a ground of revocation under the Land Use Act.

2. *Whether the Defendants’ said notice and the ground thereof “that the 1st Claimant’s plot known as Plot No. CD 81 of about 1.0htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13th day of March, 2003 situate at Barwa Layout Abuja fall within the Federal Capital City (FCC)” is not wrongful, unlawful, illegal, null and cannot subtract the allodia right of the Plaintiff and exercise of same over the property.*

Upon a determination of the above questions, the Claimants seek the following reliefs:-

1. *A Declaration that the Defendants’ ground of revocation that “the plaintiff’s plot known as Plot No. CD 81 of about 1.0htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13th day of March, 2003 situate at Barwa layout Abuja fall within the Federal Capital City (FCC)” contained in the Defendants’ notices of revocation is a ground of revocation under the Land Use Act. (sic)*

2. *A Declaration that the Defendants' notice and the purported ground thereof "that the plaintiff's plot known as Plot No. CD 81 of about 1.0htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13th day of March, 2003 situate at Barwa Layout Abuja fall within the Federal Capital City (FCC) is not wrongful, unlawful, illegal, null and can subtract the allodia right of the Plaintiff and exercise of same over the property." (sic)*
3. *A perpetual order restraining the defendant either by themselves, their agent (sic), servants, privies and person or persons acting for and or on their behalf from tampering in any way whatsoever with the allodia rights of the Plaintiff and exercise of same over and in respect of the said property on the pursuant (sic) to the Defendant's said notice and the ground thereof.*
4. *The cost of the suit.*

The Defendants responded to the suit by filing, on the 27th of April, 2022, their Counter-Affidavit in response to the Originating Summons. They also filed two Notices of Preliminary Objection, one with the Motion Number M/4982/2022 and the other with the Motion Number M/5641/2022. In the Notice of Preliminary Objection with Motion Number M/5641/2022 dated the 16th of May, 2022 but filed on the 17th of May, 2022, the

Defendants/Applicants brought this Notice of Preliminary Objection praying for the following relief:-

An Order of Court striking out this suit for lack of requisite jurisdiction to entertain same.

The ground for the Notice of Preliminary Objection is that the Claimants lacked the requisite locus standi to institute this suit, and, accordingly, the Court lacks the jurisdiction to entertain same. The particulars of the Notice of Preliminary Objection are that the 1st Claimant is not a legal person in law and could not validly be a grantee of a Right of Occupancy as envisaged by the Land Use Act; that the 1st Claimant could not sue and be sued in its name and that the 1st Claimant could not have validly appointed the 2nd Claimant as its attorney in respect of the subject plot.

In support of the Notice of Preliminary Objection are a 12-paragraph affidavit deposed to by one SaiduBadamasi Abdulkadir, a Legal Assistant in the Litigation Registry of the Legal Services Secretariat of the Federal Capital Territory Authority and a written address in support of the Notice of Preliminary Objection.

In the affidavit, the deponent averred that the Claimants in their Originating Summons had claimed that the 1st Claimant was the holder of the offer of Terms of Grant/Conveyance of provisional Approval of Plot No. CD 81 in

Bawa Layout Kuje Area Council Abuja dated the 13th day of March, 2003. He also swore that the 1st Claimant purported to have appointed the 2nd Claimant as its attorney in respect of the land. He added that the 1st Claimant instituted this action in its name and that of the 2nd Claimant. He stated further that the 1st Claimant could not maintain this present suit in its name as presently constituted.

In the written address in support of the Notice of Preliminary Objection, learned Counsel for the Defendants, again without formulating any issue for determination, submitted that only persons recognized as such in law are qualified to institute actions in Court. Referring the Court to sections 42 and 43(1) of the Companies and Allied Matters Act, CAP C20 Laws of the Federation of Nigeria 1990 as amended in 2020 and the case of ***Alhaji Mailafia Trading and Transport Company Ltd v. Veritas Insurance Company Ltd (1986) 4 NWLR 732 at 804 A – C***, he submitted that the 1st Claimant was not a person recognized in law and cannot, therefore, maintain this action in Court. He added that only persons recognized as such in law are qualified for grant of statutory right of occupancy under sections 5 and 6 of the Land Use Act CAP L5 Laws of the Federation of Nigeria 2004.

It is the contention of the Defendants' Counsel that since the 1st Claimant was not validly allocated the plot in question, it could not have validly

transferred the interest in same to the 2nd Claimant. This manifest invalidity, he further submitted, robbed the Claimants of the locus standi to institute this suit. He referred to the cases of ***Nnadi v. Okoro (1998) 1 NWLR (Pt. 535) at 600 paras C – E, Adunuga v. Odumerus & Others (2003) 8 NWLR (Pt. 821) 163 at 184, para E, Ladejobi v. Oguntayo (2004) 18 NWLR (Pt. 904) 149 at 173 paras C – D*** and submitted that since the originating processes of the Claimants disclosed a lack of locus standi of the Claimants to institute this suit, the Court must decline jurisdiction to hear and determine same. He also argued that a person who has no right could not purport the said right to another person. He urged the Court, therefore, to uphold the objection and strike out the suit of the Claimants.

In answer to the Notice of Preliminary Objection, the Claimants filed a 15-paragraph Counter-Affidavit deposed to by one Jonas Umeh, a Counsel in the law firm of Kanu-Kanu & Co, the solicitors of the Claimants/Respondents herein and a written address in support of the Counter-Affidavit.

In the Counter-Affidavit, the deponent averred the 1st Claimant was qualified to maintain the suit in its name because the 1st Claimant is a natural person and not a trade name. He added that the 1st Claimant applied for allocation of land in that name and the Defendants granted the said application, having satisfied itself that the 1st Claimant satisfied the requirements of the law for such allocation. He swore that the 1st Claimant made payments to the

Defendants in that name and had been dealing with the Defendants in the name too.

In the written address in support of the application, Counsel for the Claimants/Respondent formulated two issues for determination. These issues are: *“(1) Whether there is anything in the face of the processes filed by parties in this suit to show that the name of the 1st Claimant/Respondent is a trade name; (2) Whether the Defendants/Applicants are not estopped from complaining about the name of the 1st Claimant/Respondent, the Defendants/Applicants being the ones that dealt and have been dealing with the 1st Claimant/Respondent in that name and issued the documents in that name.”*

In his arguments on the first issue, learned Counsel submitted that there was nothing on the face of the processes filed by the Claimants that lend credence to the allegation that the name of the 1st Claimant was a trade name, adding that in the absence of such proof, the only deducible conclusion is that the name is that of a natural person. He further contended that the Defendants' having raised the issue of the name of the 1st Claimant, the burden of proof was on them to show that the name was a business name and not the name of a natural person. He submitted that the failure of the Defendants to discharge this evidential burden made their claim to be

speculative, adding that the Courts have been enjoined to eschew speculation.

On the second issue, learned Counsel submitted that the Defendants/Applicants were estopped from objecting to the validity of the name of the 1st Claimant, considering that they have been dealing with it in that name. He argued that the action of the Defendants in this regard tantamount to approbating and reprobating at the same time. It was his contention that the 1st Claimant satisfied all the conditions of the Defendants before it was allocated the land in dispute. Further to this, he contended that the Defendants did not object to the name of the 1st Claimant when it applied for regularization of the title documents of the property in question. He submitted that it was too late in the day for the Defendants to complain about the legal status of the 1st Claimant. He urged the Court to dismiss the Notice of Preliminary Objection.

The above are the positions of the parties in respect of this Notice of Preliminary Objection. In determining this Notice of Preliminary Objection, I shall adopt the two issues formulated by the Counsel for the Defendants and formulated a consequential issue which flows from the grounds for the Defendants' Notice of Preliminary. These issues, therefore, are these: "(1) Whether there is anything on the face of the process filed by parties in this suit to show that the name of the 1st Claimant/Respondent is a trade name?"

(2) Whether the Claimants have the locus standi to institute this suit?
(3) Whether the Defendants/Applicants are not estopped from complaining about the name of the 1st Claimant/Respondent, the Defendants/Applicants being the ones that dealt and have been dealing with the 1st Claimant/Respondent in that name and issued the documents in that name?”

On Issue One, the Claimants have argued that there was nothing on the face of the process that indicates that the name of the 1st Claimant is a trade name. He has contended that the burden of proof was on the Defendants who had asserted that the name of the 1st Claimant is a business name. I have studied the name of the 1st Claimant. The name is “Alura Da Duniya Enterprises” On the face of it, this name is a business name, or a trade name as Counsel for the Claimants call it. This is evidenced by the word “Enterprises” which ends the name.

The Claimants, in paragraph 8 of their Counter-Affidavit, averred that “the name of the 1st Claimant/Respondent is not a trade name but that of a natural person to the perfect knowledge of the Defendants/Applicants”. I find it difficult to agree with this averment. “Enterprises” presupposes that the name is a business name. If the Claimants are convinced that the name is the name of a natural person, the burden of proof is on them to show that the name is not a business name. Counsel for the Claimants has argued

that the burden of proof is on the Defendants who claimed that the name is a business name. I do not agree with him. It is not in all cases that the burden of proof lies on the person who alleges the existence or non-existence of a fact. Section 132 of the Evidence Act, 2011 stipulates that “***The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.***” See ***Akande v. Adisa (2012) 15 NWLR (Pt. 1324) 538 S.C. at 558, paras. A-G; 571-572, paras. H-C; 574, para. D; 583, paras. G-H.*** since it is common knowledge that “Enterprises” is a word that is commonly used in reference to businesses other than incorporated companies, the state of evidence weighed against the Claimants. The burden of proof was, therefore, incumbent on them to establish through credible evidence that the 1st Defendant is a natural person. This burden they have failed to discharge. I therefore resolve the first issue against the Claimants and hold that, indeed, there is something on the face of the processes filed by the parties in this suit that shows that the name of the 1st Claimant/Respondent is a trade name. that thing, I further hold, is the word “Enterprises”.

On the second issue, that is, whether the Claimants have the locus standi to institute this action, I must begin by examining the concept of locus standi. In ***Akande v. Jegede(2022) 14 NWLR (Pt. 1849) 125 S.C. at 147, paras F – G,*** the Supreme Court explained the concept and its connection with the

capacity to institute an action in Court thus: ***“Locus standi entails the legal capacity of instituting or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever. The issue of locus standi is a condition precedent to the determination of a case on merit. Where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the court lacks the jurisdiction to entertain it, the only order the court can make in the circumstance is that of dismissal.”*** On the determinant of locus standi, the Court held in ***Ayakndue v. Augustine(2023) 2 NWLR (Pt. 1867) 189 S.C. at 199 – 200, paras G – A*** that ***“The test for the determination of the locus standi of a person are: (a) The action must be justiciable. (b) There must be a dispute between the parties. In this case, the appellants had the locus standi to sue, but to prove their case was another hurdle they must cross.”***

There is no doubt that the suit of the Claimants is justiciable. There is also no doubt that there is a real dispute between the Claimants and the Defendants over the property described as Plot No. CD 81 Barwa Layout, Kuje Area Council of the Federal Capital Territory, Abuja. Though the Defendants has asked this Court to strike out this suit for want of jurisdiction on the ground of the Claimants’ lack of locus standi, it is immediately obvious from the particulars of the ground of the objection that the

Defendants are challenging the legal personality of the Claimant to institute this action and not necessarily their *locus standi* to initiate this suit. In ***Omega Bank Plc v. Govt., Ekiti State(2007) 16 NWLR (Pt. 1061) 445 C.A. at 475, paras. C-D***, the Court drew a distinction between legal personality and locus standi when it held that “***Legal personality and locus standi have two quite different meanings and implications in law. Locus standi means right to seek a particular relief claimed. A legal personality must have locus standi in order to be capable of exercising the right of action.***”

Black’s Law Dictionary (Garner, B, ed. 8th edition, 2004,) 2623 defines legal personality as follows: “***The legal status of one regarded by the law as a person; the legal conception by which the law regards a human being or an artificial entity as a person.***” Quoting **George Whitecross Paton, in A Textbook of Jurisprudence 393 (G.W. Paton & David P. Derham eds., 4th ed. 1972)**, the law lexicon added that “***Legal personality ... refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities.***”

In the case before me, it is obvious from my resolution of Issue One, that the 1st Claimant who is neither a corporate person nor a natural person, lacks the capacity to acquire and hold land. The provisions of section 42 of the Companies and Allied Matters Act, 2020 vests a company the power to acquire and hold interest in land. Section 830(1)(d) of the same Act vests

the power to hold interest in land in an incorporated trustees. There is no such provision in relation to business names in the Companies and Allied Matters Act, 2020. Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 makes the fundamental right to acquire and own immovable property exclusive to Nigerian citizens. Section 5(a) of the Land Use Act, CAP L5 Laws of the Federation of Nigeria 2004 and every other relevant section make a person the beneficiary of a statutory right of occupancy. In other words, only legal personality can acquire and hold interest in land. Since the 1st Claimant is not a person within the contemplation of the law, it lacks the capacity to acquire and hold the interest in the property properly described as Plot No. CD 81 Barwa Layout, Kuje, Abuja.

Having found that the 1st Claimant lacks the capacity to acquire and hold the interest in the above-described property, it could not have validly transferred the interest in that property to the 2nd Claimant. See ***Nwosu v. Nwankwo (1995) 6 NWLR (Pt. 400) 589; Eze v. Chukwudum (2003) 15 NWLR (Pt. 847) 549; Chukwu v. Eze (2005) 4 NWLR (Pt. 918) 479.*** I am not unaware of the exceptions to this general rule. These exceptions include situations where the assignee shows that they acted in good faith and without knowledge of the invalidity of the assignor's title, the doctrine of *lis pendis*, the doctrine of estoppel, and the doctrine of laches and acquiescence. I hold, however, that this case does not come within any of the exceptions to

the general rule that a person without valid title to land cannot transfer a valid title of the land to a purchaser. In view of the foregoing, therefore, I hereby resolve the second issue against the Claimants and in favour of the Defendants.

On the third Issue, Counsel for the Claimants/Respondents argued that the Defendants/Applicants are estopped from denying the competence of the 1st Defendant to acquire and hold land considering that they have been dealing with the 1st Claimant in that name. generally, the doctrine of estoppel operates to stop a party from turning around to deny the validity of a fact they had earlier affirmed, through their acts or omissions, to be in existence. Section 169 provides that “***When one person has, either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such person’s representative in interest, to deny the truth of that thing.***”

The law is settled that parties cannot by consent legalise an otherwise illegal transaction, or make lawful an act that is patently unlawful. The same way parties cannot by consent vest jurisdiction on a court which lacks jurisdiction to entertain a suit. See ***Tanksale v. Robee Medical Centre Ltd.(2013) 12***

NWLR (Pt. 1369) 548 C.A. at 574, paras. D-E; A.P.G.A. v. Anyanwu(2014) 7 NWLR (Pt. 1407) 541 S.C. at 569, para B; and The Vessel MT. Sea Tiger v. A.S.M. (HK) Ltd.(2020) 14 NWLR (Pt. 1745) 418 C.A. at 454, paras C – D.

It is my considered view, therefore, and I so hold, that having found that the 1st Claimant is neither a juristic person nor a natural person, and therefore incapable of acquiring and holding an interest in land, the Defendants are not estopped from bringing this application, notwithstanding that they have dealt with the 1st Defendant in that name in the past. This third issue is hereby resolved against the Claimants/Respondents.

Having resolved the three Issues I have formulated herein against the Claimants and in favour of the Defendants, I find merit in the Notice of Preliminary Objection. I therefore uphold the objection and, accordingly strike out this suit.

This is the Ruling of this Honourable Court, delivered today, the 16th of March, 2023.

**HON. JUSTICE A. H. MUSA
JUDGE
16/03/2023**

**APPEARANCES:
FOR THE CLAIMANTS:
AkanN. Udo Esq.**

FOR THE DEFENDANTS

C. J. Oloibi Esq.