

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

30TH DAY OF MAY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/3383/2020
MOTION NO. M/4637/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

IBRAHIM ABDULLAHI FUNTUA CLAIMANT/RESPONDENT

AND

- | | |
|------------------------------------------------------------|------------------------------|
| 1. ENGR. (MRS.) JOSEPHINE NNORUKAH ... DEFENDANT/APPLICANT | |
| 2. ABUJA GEOGRAPHIC INFORMATION SYSTEM (AGIS) | } DEFENDANTS/
RESPONDENTS |
| 3. C.O.P (FCT POLICE COMMAND, ABUJA) | |
| 4. THE DIVISIONAL POLICE OFFICER, LUGBE,
AIRPORT ROAD | |

RULING

The 1st Defendant's Notice of Preliminary Objection is dated the 20th day of April, 2022. It is brought pursuant to Order 43 (1) of the Rules of Court and Sections 3 and 4 (c) of the Limitation Act Cap 522, Laws of the Federal Capital Territory, 2007 and under the inherent jurisdiction of the Court.

It prays for an Order dismissing the suit on the ground: (1) That it is statute barred. (2) It is an abuse of Court process. The grounds for the objection are stated on the face of the Motion paper.

Learned Counsel relies on the 4-paragraph Affidavit filed in support. The deponent deposes that the 1st Defendant is the legal owner of the property situate at Plot 70 Sabon Lugbe Layout, measuring about 3,000sq meters as a *bonafide* purchaser for value from the original allottee, David Sanya via a Conveyance of Provisional Approval and Federal Capital Territory Administration Regularisation of Land Titles and Documents of FCT Area Council dated 15th of July 1993 and 31st July 2007 respectively.

That by the Sales Agreement dated 10th of August, 1994, she acquired interest in the property from the original allottee. That she took physical possession of the property and has since maintained various acts of ownership by building on the land and has enjoyed

peaceful possession for about 27 years before this suit was filed.

That Claimant purportedly acquired interest on the same land on 16/08/2006 vide one Mr. Ken Obiye. That the action of the Claimant amounts to an abuse of Court process. That the proper parties are not before the Court. That it is in the interest of justice to dismiss the suit.

The Claimant's Counsel relies on his Counter Affidavit sworn to by Patricia Reni Likita, Litigation Secretary of No. 9, Rima Street, Maitama, Abuja. She denied the depositions in the Affidavit in support.

That the Claimant's suit is not statute barred. In 2020 he got to know that 1st Defendant have taken possession over Plot 70 Sabon Lugbe Layout and has erected a perimeter fence on the plot without applicant's knowledge or consent.

The Claimant swiftly lodged a Petition against the 1st Defendant at the Divisional Police Station Lugbe with other letters such as application for confirmation of land status with AGIS and request for Search Report.

That the cause of action against the 1st Defendant is trespass. That Claimant is still within time to bring the action. That the Claimant will be prejudiced if the application is granted.

Learned Counsel to the 1st Defendant adopted his Written Address. He canvassed that by the express provision of Section 4 (c) of the Limitation Act, the Claimant's right of action is deemed to have accrued on 16/08/2006 while the Claimant filed the suit on 8th December 2020.

That there is no nexus between the Claimant and the subject matter in issue. That there is no documentary evidence. It is therefore an abuse of Court process.

The Claimant/Respondent also adopted his Written Address as his oral submission. Learned Counsel submits

that Section 3 of the Limitation Act stipulates 12 years for recovery of land by an individual in the FCT. That Claimant is still way much within time.

That Claimant's cause of action arose sometime in January 2020 when Claimant got to know that 1st Defendant had taken possession of his property by erecting a perimeter fence thereon.

That by Sections 3 and 15 of the Limitation Act, the Claimant was still within time to file this action. That Claimant has furnished the Court with sufficient materials to demonstrate ownership over Plot 70, Sabon Lugbe Layout.

Learned Counsel also submits on the issue of abuse of Court process that there is no multiplicity of suit between the same parties on the same subject matter. He finally urges the Court to dismiss the Notice of Objection.

The issue for determination is: **Whether or not this suit is barred by the statute of limitation or is an abuse of Court process thereby necessitating its dismissal.**

The objection is brought pursuant to Sections 3 and 4 (c) of the Limitation Act Cap 522 Laws of the Federal Capital Territory, Abuja.

Section 3 states:

“No person shall make an entry or bring an action or suit to recover any land or rent but within twelve years next after the time at which the right to make such entry or bring such action or suit shall have first accrued to some person through whom he claims or if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or to bring such action or suit shall have first accrued to the person making or bringing the same.”

Section 4 (c):

*“When the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed or otherwise assured by any instrument (other than a will) to him or some person through whom he claims by a person, being in respect of the same estate or interest in the possession or receipt of the rent and **no** person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid or the person through whom he claims became entitled to such possession or receipt by virtue of such instrument.”*

The law is that where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. An action

instituted after the expiration of the prescribed period is said to be statute barred.

See **OSUNKO vs. SHELLE (2004) 6 NWLR (PT. 868) 17.**

Time begins to run for the purpose of limitation law from the date the cause of action accrues.

See **BRITISH AIRWAYS PLC vs. AKINYOSOYE (1995) 1 NWLR (PT. 374) 722 at 724.**

In paragraph 10 of the Statement of Claim and paragraph 10 of the Claimant's Counter Affidavit filed in opposition to the 1st Defendant's Notice of Objection is to the effect that sometime around January 2020, he got to know that the 1st Defendant has taken possession over Plot 70 Sabon Lugbe Layout and has erected a perimeter fence on the said plot without his knowledge and consent.

He deposes that he swiftly took certain actions as deposed to in paragraph 8. The cause of action therefore arose in January 2020. This suit was initiated on the 8th

day of December, 2020. It is clear that the suit was filed within one year of the accrual of the cause of action. This action therefore is not statute barred and I so hold.

On the issue of abuse of Court process, it is trite that the Court has a duty to protect itself from abuse and will not allow a litigant to abuse its process.

It has been restated often that the concept of abuse of judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. But a common feature of it is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice.

See **SARAKI vs. KOTOYE (1992) 11/12 SCNJ 1.**

The circumstances that will give rise to abuse of Court process include:

- (a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues on a multiplicity of actions on the same

matter between the same parties even where there exists a right to begin the action.

- (b) Instituting different actions between same parties simultaneously in different Courts even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right.
- (d) Where there is no law supporting a Court process or where it is premised on frivolity or recklessness.

The 1st Defendant has not proved that there is multiplicity of suits on the said subject matter between the same parties neither is there any other suit filed simultaneously.

In paragraph 6 of the Claim, Claimant states he is the *“bonafide legal owner of the land title documents dated 16/08/2006 over Plot No. 70 Sabon Lugbe Layout.”*

The 1st Defendant in my view has not been able to prove that the suit is an abuse of Court process. The fact that the claim appears weak or not likely to succeed is in the conjecture until proved.

In the circumstance, the ground that the suit is an abuse of Court process also fails.

In the 1st Defendant's Written Address, he smuggled in an issue not contained on the face of the Motion paper, which has to do with the absence of proper parties.

Non-joinder or misjoinder cannot defeat a cause of action. By Order 13, all parties may be joined in one action as Claimants. When an action commences in the name of a wrong person as Claimant or where it is doubtful whether it has been commenced in the name of the right Claimant, the Court may order a substitution or

addition of any other Claimant on such terms as just. See Order 13 Rule 2 of the Rules of Court.

In totality, the 1st Defendant's Notice of Objection fails for lack of merit and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
30/05/2023

Parties absent.

Z. H. Zubairu, Esq. for the Claimant.

CLAIMANT'S COUNSEL: The matter is for Ruling. We
are ready.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
30/05/2023