

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON WEDNESDAY THE 19TH DAY OF APRIL 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI
SUIT NO: CV/2933/2022

BETWEEN

1. RADMSHUSMANRTD =====CLAIMANTS/RESPONDENTS
2. CDRE A.OAYUBARTD

AND

1. KINGSLEYAKPODUAD
2. COMFORT OMOTE=====DEFENDANTS/APPLICANTS
3. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY
4. THE FEDERAL CAPITALTERRITORY ADMINISTRATION
5. NATIONAL DEFENCE COLLEGE NIGERIA
6. MINISTRY O F DEFENCE

RULING

The 1st and 2nd Defendants/Applicants filed a notice of preliminary objection against the Claimants suit praying this Court for the following reliefs:

1. AN ORDER of this Honourable Court striking out or dismissing the instant suit in its entirety for lack of locus standi to institute the action and lack of reasonable cause of action on the part of the Claimants and lack of jurisdiction of the Honourable Court to entertain and determine the suit.
2. AND FOR SUCH further or other Orders as the Honourable Court may deem fit to make in the circumstances of the case.

The grounds upon which the Applicants filed this application are as follows:

1. That the Claimants in the instant suit lack the necessary locus standi to institute and maintain this action against the Defendants as the rights upon which their claims in this suit are based does not vest, enure, or reside in them but rather enures, vests, and resides in favour of the 6th Defendant, the Ministry of Defence, who has willingly relinquished those rights.

2. That the suit as presently constituted and instituted does not disclose any cause of action or any reasonable cause of action against the 1st and 2nd Defendants or even the 3rd to 6th Defendants and same is speculative, vexatious and amounts to a waste of the Court's time.
3. That the Claimants/Respondents have not shown the existence of any of their right or rights which have been trampled upon by the 1st to 6th Defendants whether jointly or severally to justify the grant of the reliefs claimed.
4. That the Claimants/Respondents have not shown that the 1st to 6th Defendants whether jointly or severally owe them any obligation(s) which have not been fulfilled.
5. That there are no reasonable facts to support the Claimants/Respondents' claims and the facts contained in the statement of claim filed by the Claimants do not disclose any reasonable cause of action against the Defendants.
6. That reliefs nos. C and F contained on the Writ of Summons as well as Reliefs Nos. 44 (C) and (F) as contained in the Statement of Claim both respectively seek declarative and injunctive reliefs against the 3rd, 4th, 5th, and 6th Defendants who are Minister, agencies, and Ministry of the Federal Government respectively.
7. That the jurisdiction to entertain and determine reliefs nos. C and F contained on the Writ of Summons as well as Reliefs Nos. 44 (C) and (F) as contained in the Statement of Claim is exclusively vested in the Federal High Court by virtue of Section 251 (1)(p), (q) and (r) of the Constitution of the Federal Republic of Nigeria.
8. That this Honourable Court is thus robbed of the necessary and requisite jurisdiction to entertain and determine this suit as presently constituted.
9. That this suit be struck out for want of competence.

Attached to the application is an affidavit of 18 paragraphs deposed to by one Benedicta Urhioke Yakubu with Exhibits marked as Exhibit A1, A2, B1, B2, C1, C2, D1, D2, E, F, G1, G2, H, I, i1, i2, i3, i4. Also filed is a written address wherein Applicants' Counsel raised a sole issue for determination as follows:

1. Whether this Honourable Court has the jurisdiction to entertain the instant suit as it is presently constituted.

Applicants' Counsel arguing the sole issue contended that the Claimants in this suit lack the locus standi to sue in this matter and are therefore not competent claimants as they have failed to show from their originating processes any right that have been injured to warrant the filing of this suit and urged the Court to hold that the Claimants lack the locus standi to institute and maintain the present action and ought to be struck out.

Counsel further contended that this suit fails to disclose a reasonable cause of action against the Defendants as the Claimants statement of claim fails to reveal any situation that would entitle the Claimants to sustain this action against the Defendants and urged the Court to so hold.

On the issue of this Court's jurisdiction to determine the claims and reliefs against the 3rd to 6th Defendants, Counsel submitted that by Section 251 (1) p, q, r, the Federal High Court the Federal High Court has exclusive powers to adjudicate on any action seeking declaratory and injunctive reliefs against any agency of the Federal Government and as such, this Court lacks the jurisdiction to entertain this instant suit as constituted and urged the Court to so hold and consequently strike out this instant suit for being incompetent and for lack of jurisdiction.

In opposing the application, the Claimants/Respondents filed a counter affidavit of 31 paragraphs, deposed to by the 2nd Claimant. Also filed is a written address where the Claimants' Counsel also raised a sole issue for

determination, which is “whether this Honourable Court has the jurisdiction to entertain the instant suit as presently constituted.”

Arguing the sole issue, Counsel for the Claimants/Respondents submitted that the Claimants statement of claim has established sufficient legal interest to bring this action before this Court and to hold otherwise would mean determining this instant suit at the interlocutory stage. Submitted further that the 1st and 2nd Defendants serving the Claimants quit notice gave rise to the cause of action and determining the issues raised by the Applicants can only be done at the substantive hearing and not at the interlocutory stage and urged the Court to so hold.

On the issue of jurisdiction of this Court to entertain suits where Federal government Agency are parties, Counsel relying on the case of Yahuza & ors V. Agu & Ors (2017) LPELR-4402 (CA), which principle being relied on by the Claimants Counsel unfortunately does not support their case. Counsel also relied on the case of Bakare V. Ogundipe & Ors (2020) LPELR-49571 (SC) and submitted that this Court has jurisdiction to determine this case as the subject matter of this suit is within the ambit of this Court and urged the Court to dismiss the Preliminary Objection with substantial cost. In replying on points of law, Counsel to the 1st and 2nd Defendants filed a further and better affidavit and written address with cases to buttress their argument which this court has duly considered.

I have read and considered the Applicants application in its entirety as well as the counter affidavit of the Respondents as well as all the authorities relied upon by respective Counsel and this Court is in agreement with the sole issue raised by respective parties which is “Whether this Court has the jurisdiction to entertain this suit as presently constituted.

Authorities abound that jurisdiction is the bedrock of any judicial proceeding. It is the nerve centre of adjudication and where a Court lacks jurisdiction and proceeds to hear and determine a suit, the proceedings, no

matter how well it is conducted becomes nullity ab initio. See the case of MARK BAKO USENI v. ALEXANDER MAMCHIKA ATTA & ORS(2023) LPELR-59880(SC) where Per JAURO, J.S.C at Pp. 18-19 paras. Dheld.

"This issue borders on the jurisdiction of the trial Court to entertain the suit filed by the 1st Respondent. The prominent role of jurisdiction of a Court in the adjudicatory process cannot be overemphasised, for without jurisdiction, a Court is without competence to adjudicate over or entertain any matter before it. It is for this reason that jurisdiction is referred to as the lifeblood of adjudication. Jurisdiction is to adjudication; what oxygen is to human beings. Any proceeding conducted in the absence of jurisdiction amounts to an exercise in futility and any decision reached will be nullified on appeal."

The Applicants in this case have objected to the jurisdiction of this Court mainly on the grounds that the Claimants lack the locus standi to institute this suit, that the Claimants suit does not disclose a reasonable cause of action and lastly, that it is the Federal High Court that has the requisite jurisdiction to entertain this suit and not this Court.

Firstly, as it relates to the issue of locus standi, in determining whether the claimants have the necessary locus to institute this action, it is the pleadings that would be considered by this Court. Thus, the Claimant must in the pleadings, show sufficient interest in the subject matter of the dispute. That is the position of the Court in MR. AKANIMO ASUQUO UDOFIA v. SENATOR (DR) ITA SOLOMON ENANG & ORS(2023) LPELR-59447(CA) where the Court in (Pp. 48 paras. C) held as follows;

"Locus Standi means the legal capacity to sue or approach Courts. The party approaching the Court must have been aggrieved or deprived of their rights. Thus in any legal

process, the existence of locus standi is necessary and the locus standi of a Plaintiff is determined from the totality of all averments in his statement of claim which should be carefully scrutinized with a view to ascertaining whether or not it has disclosed sufficient legal interest and how such interest has arisen in the subject matter of the action also considering the nature of the claim and the cause of action which must be ascertained.”

In this instant case, the Applicants are challenging the locus standi of the Claimants to maintain this action on the premise that the rights upon which their claim is based does not enure on the claimants. The Claimants on the other hand are contending that they were duly allocated the said property and attached the letter of allocation issued to them by the 5th Defendant and have been in occupation of the subject property, which therefore gives them the locus to institute this suit.

As rightly submitted by both Counsel, at this stage, all the Court is expected to look at are the Claimant's claim to determine whether or not the Claimants have locus standi to bring this suit. Now looking at the statement of claim before this Court vis a vis the reliefs sought, the Claimants are not seeking for declaratory reliefs on the ownership of the said Block C16, Flat 2 and C16 Flat 1, one C. The claim before this Court in my view, is simply against the procedure of the sale of the above property. At the risk of not dealing with the substantive suit at this interlocutory stage, it is my view from the claim and reliefs before this Court, that the Claimants having claimed to be allocated the subject property and being in occupation of same, have the legal right to bring this instant suit challenging the procedure for the sale of the said property and I so hold.

On the ground that the action fails to disclose a reasonable cause of action, the Court in the case RINCO CONSTRUCTION CO. LTD V. VEEPEE INDUSTRIES

LTD. & ANOR (2005) LPELR - 2949(SC) 14, the Supreme Court per Niki Tobi JSC, stated inter alia thus:

"Reasonable cause of action means a cause of action with some chances of success. For a statement of claim to disclose a reasonable cause of action, it must set out the legal rights of the Plaintiff and the obligations of the Defendant. It must then go on to set out the facts constituting infraction of the Plaintiff's legal right or failure of the Defendant to fulfill his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy he seeks."

Also, law is trite that whenever issue of reasonable cause of action is raised, it is the statement of claim or that ought to be considered. So long as the statement of claim discloses some cause of action or raises some question which can be decided by a Judge, there is reasonable cause of action. The merit of the claim or the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out or dismissing it. See Yusuf & Ors. v. Akindipe & Ors., (2000) 8 NWLR (Pt. 669) 376.

In this instant case, having taken a cursory look at the amended statement of claim of the Claimants, particularly paragraphs 7, 8, 9, 13, 17, 19, 20, 21, 22, 23 and from the facts stated therein, I find that there is sufficient cause of action in the statement of claim, and I so hold.

Finally on the issue of the jurisdiction of this Court to entertain and determine this suit in relation to the reliefs claimed against the 3rd, 4th, 5th, and 6th Defendants. It is Applicants' Counsel's contention that this Court lacks jurisdiction to entertain this suit as presently constituted as reliefs C and F are against the 3rd to 6th Defendants, who are agencies of the Federal Government and by virtue of Section 251 (1) (p) (q) and (r) of the

Constitution of the Federal Republic of Nigeria, it is the Federal High Court that is vested with the jurisdiction to entertain this claim.

It will be pertinent to reproduce the above sections relied on by the Applicants. The said section provides thus

“251. (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters –

(p) the administration or the management and control of the Federal Government or any of its agencies;

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

Going by the above provision vis a vis the facts and the reliefs sought, this case ought to be entertained and determined by the Federal High Court, however, the Supreme Court recently pronounced on the position of the law on the jurisdiction of the Federal High Court on matters affecting the Federal Government agencies in the case of *HRM OBA ISAAC OWOLABI OLAYEMI & ORS v. THE FEDERAL HOUSING AUTHORITY (2022) LPELR-57579(SC)* (Pp. 24-27 paras. E) Per ABOKI, J.S.C held thus

*“There is no doubt that Section 251 of the 1999 Constitution as amended, vests jurisdiction on the Federal High Court to determine cases where the agency of the Federal Government is made a party to the suit. **However, the principal claims must be against such an Agency of the Federal***

Government before the Federal High Court can assume jurisdiction. That in my view means that the Court has a duty to ascertain that it is the principal reliefs in the matter that is against the Federal Government or any of its agencies and not the ancillary reliefs. This, therefore, means that each case must be considered upon its peculiar facts and circumstances to determine whether a relief thereof is principal or ancillary. This Court has, in a multiplicity of its decisions, held that the fact that an action is against the Federal Government or its Agencies, does not ipso facto bring the case within the jurisdiction of the Federal High Court. The subject matter of the action must fall squarely within the jurisdiction of the Federal High Court before that Court can assume jurisdiction..."

Hence, not all situation or circumstances where the Federal Government or its agencies are parties would the Federal High Court assume jurisdiction; the subject matter of the action must also align within the ambit of the Federal High Court for the Court's jurisdiction to be activated. In this case, to determine whether it is the Federal High Court that ought to hear this matter, this Court would look at the reliefs sought against the Defendants. Now reliefs A and B is seeking for declaratory reliefs against the 3rd and 4th Defendants, the 3rd Defendant is the Hon. Minister of the Federal Capital Territory, 4th Defendant is the Federal Capital Territory Administration. The question that therefore begs to be answered at this point is "are the 3rd and 4th Defendants Federal Government agencies?" This question has been put to rest by the Supreme Court in BAKARI v. OGUNDIPE & ORS (2020) LPELR-49571(SC) Per RHODES-VIVOUR, J.S.C in (Pp. 15-17 paras. F-F) held,1

"It is very important to decide the status of Abuja and whether the 2nd and 3rd Respondents are Agencies of the Federal Government of Nigeria. A decision would lay to rest once and for all time proper Court to hear the Plaintiff's claim Section 299 of the Constitution states that:

299. The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly-

(a) all the Legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this Section shall be exercised in accordance with the provisions of this Constitution; and

(c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this Section.

By virtue of the provisions of Section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria has the status of a State. It is as if it is one of the States of the Federation.

An Agency is an executive or regulatory body of a state, such as state Offices, Departments, Divisions, Bureaus, Boards and Commissions. The 2nd Respondent, i.e., the Minister of the Federal Capital Territory, though a Minister of the Federal Government

occupies a similar position of Governor of a State, since Abuja is classified as a State by Section 299 of the Constitution. The 2nd Respondent is thus the Chief Executive of the Federal Capital Abuja.

The Federal Capital Development Authority i.e., the 3rd Respondent is established by Section 3 of the Federal Capital Territory Act. It is a Governmental Agency of the Federal Territory, Abuja.

It is the actions of the 2nd and 3rd Respondents that are challenged. They are both agents of the Federal Capital Territory, Abuja, which has the status of a State. They are not agencies of the Federal Government of Nigeria..."

Instructive to note that just as in the case above, the 3rd and 4th Defendants in this case are both agents of the Federal Capital Territory with claims are challenging their actions as clearly seen in reliefs A and B. From the facts of this case, the Claimants principal reliefs are challenging the actions of the 3rd and 4th Defendants. No doubt the 5th and 6th Defendants are agencies of the Federal government, however, the reliefs sought against them are adjunct in nature and cannot be grouped or categorised as a principal relief.

Hence, armed with case of HRM Oba Issac V. FHA (Supra) and Bakare V. Ogundipe (supra), it is my view and I so hold that the 3rd and 4th Defendants not being agencies of the Federal Government and the principal reliefs sought in this instant suit are against the 3rd and 4th Defendants, this Court has jurisdiction to hear and determine this suit. This application is consequently dismissed.

Parties:Absent

Appearances:EjehHycenth appearing with Joseph Akosu for the 1st and 2nd Defendants. Samuel Ogala appearing for the Claimant. AyubaAbang appearing for the 3rd and 4th Defendants.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
19THAPRIL, 2023**