

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA-ABUJA  
ON TUESDAY THE 3<sup>RD</sup> DAY OF OCTOBER, 2023.**

**SUIT NO: FCT/HC/CV/2798/2022  
MOTION NO: M/10986/2022  
MOTION NO: M/10082/2022**

**BEFORE HER LORDSHIP: HON. JUSTICE A.I. AKOBI**

**BETWEEN**

**DR. MFON ENEBONG J. BASSEY.....CLAIMANT**

**AND**

**LEISURE COURT LIMITED.....DEFENDANT**

**R U L I N G**

This suit is initiated against the defendant vide writ of summons dated and filed the 24/08/2022. The hearing of the main suit is yet to commence but the court has entertained some interlocutory applications.

On the 25/04/2023, the claimant/applicant moved a motion on notice No: M/10082/22 filed the 24/08/2022 after granting the defendant's application for extension of time within which the defendant may enter appearance and file and serve her counter affidavit to the motion of the claimant and a deeming order.

The claimant/applicant's motion was moved by Salifu Oguche Usman Esq of counsel to the claimant/applicant. The motion is brought pursuant to Order 43 Rule 1 of the High Court of the FCT (Civil Procedure) Rules and under the inherent jurisdiction of the Honourable Court. The motion seeks these reliefs:

- a. An Order of interlocutory Injunction of this Honourable Court restraining the defendant from interfering with the Claimant's peaceful and lawful occupation of his property being Plots 6601 and 6602, Lugbe Extension 1, Abuja (either by herself, through privies, servants and aids whosoever or however) pending the hearing and determination of this substantive suit.
- b. And for such further order or other orders that this Honourable Court may deem fit to make in the circumstance.

The application is supported with 20 paragraphs affidavit deposed to by one Mr. Agbaapuonwu Paul Onyeachonau, Nigeria citizen resident at Chetiko village, the agent of the claimant on record in this suit. It is attached with a written address and unmarked series of exhibits.

Upon receipt of a counter affidavit in opposition to the motion of 24/08/2022, the claimant/applicant also filed 7 paragraphs of further and better affidavit on the 09/03/2023, with six (6) annexure and a reply on point of law in urging the court to be persuaded by the facts before its and preserve the res. while moving the application,

the learned counsel urged the court to direct in alternative the parties to maintain status quo pending the determination of the suit.

On being served with the claimant/applicant's application, the defendant/respondent filed a counter affidavit of 17 paragraphs deposed to by Shalom C. Emejulu, a legal practitioner in the law firm of Olasupo Ashaolu SAN & Co. Attached thereto is an exhibit marked exhibit A and a written address. They adopt and are relying on the argument in opposition to the claimant's application.

Soon after moving the application for interlocutory injunction for restraining order; the defence counsel Mr. V. I Miduador informed the court of their pending preliminary objection and sought permission to move same. The Court wondered why the defence counsel waited until the claimant moved his application for restraining order, considering that the issue of jurisdiction should first be heard and determine before any further step is taken. This is anchored on the rooted principle of law that order made without jurisdiction is a nullity. See **PDP & Ors v. Ezeonwuka & Anor. (2017) LPELR-42563 (SC) p. 64. paras. A-C.**" To avoid a wasteful journey of making an order that will be set aside for lack of jurisdiction, it has been held in plethora of cases that when the issue of jurisdiction is raise at any stage of the proceeding, it should first be heard and determine before embarking on any other thing. See **Attorney General of Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552.** Based on this principle of law I decided not the make

pronouncement on the application of the claimant until the issue of jurisdiction is resolved one way or the other.

The defendant/applicant's notice of preliminary objection with motion no: M/10986/2022 is dated 25<sup>th</sup> September, 2022 and filed the 23/09/2022. The application is premised on 9 grounds with one main relief and an alternative relief. The reliefs are:

1. **An Order** of this Honourable Court striking out this suit for lack of locus standi and cause of action.
2. **OR IN THE ALTERNATIVE**, an order of this court striking out the name of the defendant/applicant for lack of cause of action
3. **And** for such order or further orders that the court may deem fit to make in the circumstance of this case.

The application has 16 paragraphs of supporting affidavit deposed to by one Miduador I. Victory, a legal practitioner in the law firm of Lasupo Ashaolu SAN & Co of flat 5, Block 5 Mani Close, off Kano Street, Area I, Garki, Abuja. It is attached with a written address wherein the applicant formulated a sole issue for the determination of the court thus: **Whether or not this Honourable Court has the requisite jurisdiction to grant the reliefs sought by the defendant/applicant.**

In arguing the issue, the learned counsel to the defendant/applicant Gbenga A. Shaolu Esq. relying on the case of **Audu v. APC & Ors (2019) LPELR 48134 (SC)**; submitted that cause of action is the

bedrock that cloths the court with jurisdiction and contended that this Honourable court lacks jurisdiction to entertain this suit as the claimant does not have the requisite cause of action and locus standi to institute the suit against the defendant/applicant. On what a cause of action is, the counsel placed reliance on the judicial definition of cause of action in the case of **Savage & Ors v. Uwechia (1972)1 ALL NLR (PT.1)251 at p. 256; (1972)3 SC 24 at 221**, where they reproduced the decision of Fatai-Williams, JSC thus:

‘A cause of action is defined in Stroud’s judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts, which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage....’ Furthermore, that no action can lie where there is no reasonable cause of action and the required locus to sue. Cited **Oloriode v. Oyebi (1984) 5 SC 1 at 28**. To drive home his point, the applicant invites the court to the claimant/respondent’s writ of summons where he claimed that no cause of action has been made out in the claimant’s writ of summons to warrant this Honourable Court to exercise her unfettered discretionary power in favour of the claimant/respondent. Particular reference is made to paragraph 3 of the statement of claim and their entire case which is that the claimant/respondent is alleging trespass against the defendant/applicant on Plots **MF 6601 and MF 6602**, Lugbe extension FCT, Abjua. Meanwhile, the defendant/applicant had on

their part claimed that they are not in trespass neither are they in occupation of the said plots MF6601 and MF 6602, Lugbe extension, rather, that the applicant is in occupation of Plot CRD CP 1, Lugbe extension and not Plots MF 6601 and MF 6602 which is in issue. It is therefore submitted, if at all there is trespass, the claimant/respondent seem to be mistaken on who it is that is trespassing on the said plots. Cited **Dauda v. Access Bank (2016) LPELR-41143 (CA)**. In that case, they reproduced the holding of the court thus:

**“Any error, mistake or wrong finding of a fact by a court which leads to a miscarriage of justice is perverse and same must be set aside by an appellate court. This is so because an error that leads to a miscarriage of justice is such without which the decision would have been otherwise. The Appellate Court cannot allow such mistake and decision to stand. But if despite the error or mistake the decision of the Court would remain the same, the error though generally not palatable in law will be winked at by the Appellate Court and will not lead to the appeal being allowed.”**

The applicant believed firmly and submit that the claims of the claimant/respondent is based on mistaken facts of trespass and that if the court proceed to grant the claims it will result in miscarriage of justice which will occasion great suffering on the defendant in this

matter. The court is therefore urged to strike out the matter as the foundation upon which the claims stand on is faulty.

On issue of locus standi, the court is referred to the case of **Odeneye v. Efunga**, where locus standi is defined as a legal capacity to institute proceedings in a court of law; they went further to expatiate that for there to be locus standi, there ought to be a right to sue on the part of the claimant. It is further submitted that even if the claimant/respondent has the right to sue which they are not conceding to, they still have no right of action/cause of action in this case against the defendant because the defendant/applicant is not in trespass to the said plots MF 6601 and MF 6602, Hence, the court is urged to strike out the suit on ground that this Honourable Court lacks the requisites jurisdiction to entertain the suit as the claimant has no locus standi/cause of action and so the suit is incompetent.

On receipt of the claimant/respondent counter affidavit in opposition to the preliminary objection, the defendant/applicant reacted by filing 12 paragraphs of reply affidavit dated and filed the 13/04/2023, deposed to by one Benjamin A. Dina, a legal practitioner in the law firm of Olasupo Ashaolu SAN & Co. File and attached to the reply affidavit is a written address in urging the court to uphold their preliminary objection. The issue formulated in this written address and the argument and submission is the same with that in the preliminary objection save from paragraph 2.4 of the written address wherein the applicant canvassed that the subject

matter of this suit bothers on land in dispute; and on the definition of “Land in dispute” he cited in aid the case of **Ebvuhe v. Ukpakara (1996)7 NWLR 256**, wherein the Supreme Court state that:

“The law is that the land in dispute is the area of the land plaintiff is claiming in an action for title. Again, in **Adone v. Ikebudu (2001)8 NSCQR 180**, the Supreme Court held that : “The land in dispute in a claim for declaration of title to land or entitlement to a grant of statutory or customary right of occupancy in respect of land is none other than that put in issue and claimed by the plaintiff. It is usually more particularly delineated in his survey plan and in respect of which the parties join issues. It must be clearly stated that the land in dispute in any suit is not that shown or claimed by the defendant in his statement of defence and/or in his survey plan unless such a defendant counter-claimed against the plaintiff in respect of such land.” **Per Jummai Hannatu Sankey, JCA (pp 20-21 oaras F-E**. It is further emphasized that the land that the claimant/respondent is claiming in his counter affidavit and all the processes filed before this court are Plots Nos: 6601 and 6602, Extension Layout, Abuja which the defendant/applicant clearly stated it has no interest in but the owner of Plot No.CRD CPI of about 1HA situate at Lugbe 1, Layout, Abuja, FCT which is different from Plots Nos. 6601 and 6602, Lugbe 1 extension layout, Abuja. Hence, that the claimant/respondent is mistaken on whom exactly is trespassing on his plots of land.

On the meaning of land in dispute, the applicant referred the court to the decision of **Per Umaru Atu Kalgo, JSC, in Emiri & Ors v. Imieyeh**



**& Ors (1999) LPELR -1132 (SC) thus: “.....seems to me that land in dispute means a disputed land which, as in this case, both parties are claiming to be their own.”** The defendant/applicant further submitted that the claimant/respondent allegation of trespass over plot Nos: 6601 and 6602 against the defendant is a mistake of fact and that this preliminary objection if properly determine is capable of bringing this suit to an end at this stage, hence, the court is urged to discountenance the counter affidavit of the Claimant/Respondent and grant the application of the defendant/applicant for lack of jurisdiction.

It is on record that the defendant/applicant preliminary objection was served on the claimant/respondent through his counsel on the 09/02/2023. Upon the receipt of the preliminary objection, the claimant/respondent responded by filing a counter affidavit of 9 paragraphs deposed to by the claimant himself. The Counter affidavit is dated and filed the 09/03/2023, annexed with six exhibits and written address wherein two issues are formulated for the determination of the court to wit:

- 1. Whether the Claimant/Respondent's suit before this Honourable Court has disclosed cause of action and locus standi against the defendant.**
- 2. Whether it is proper for the court to grant the prayers of the applicant against this suit at the interlocutory stage when facts are yet to be established.**

The claimant/respondent answered issue one in the affirmative and on what a cause of action is, the court is commended to the case of **Makan v. Hangem (2018)22 WRN 1-187 at 52-52**. It is submitted in paragraph 4.3 of the written address in support of the counter affidavit that the Respondent's suit as constituted via the writ of summons, statement of claim and the counter affidavit gives him a cause of action against the applicant who consistently trespass unto his property known as Plots MF 6601 and MF 6602, situate at Lugbe extension 1, Abuja. The respondent further averred how he called on the attention of the applicant through exhibit CR2 on its act of trespass on the subject matter. Cited **Nigerian Port Authority v. Ajobi (2006)7 SC (PT.1)23** where it held that 'the **cause of action must be revealed in the pleadings of the claimant. The court would confine itself only to the averments in the writ and statement of claim in the assessment of whether the plaintiff has a reasonable cause of action....**' Relying on the above authority, the respondent submitted that it is the pleading of the claimant/respondent that determine whether he has cause of action and the court is urged to resolve the issue in their favour.

On the 2<sup>nd</sup> issue: **Whether it is proper for the court to grant the prayers of the applicant against this suit at the interlocutory stage when facts are yet to be established.** On this issue, the respondent contended that the preliminary objection of the applicant is tantamount to calling on the court to determine the substance of this suit at a very preliminary objection stage resorting to demurrer proceedings that

has long been abolished. Cited **Nwannewuike v. Nwannewuike (2007)16 NWLR (PT. 1059)1 at 20 paragraph F-H**. The respondent further contends that the averment of the applicant that he occupies Plot CRD CP1 which differs from Plots MF 6601 and 6602 allegedly trespassed upon are facts which must be established by concrete, cogent and credible evidence in a full blown trial and that the court should hold that the suit discloses a very substantial cause of action against the defendant/applicant.

In conclusion, he reiterated the position of the law that the application of this nature is solely at the discretion of the Honourable Court which must be exercised in accordance with the law and guided by facts placed before the court. Finally, the court is urged to refuse the application for lacking in merit.

In order to resolve the preliminary objection, I adopt the two issues formulated by the claimant/respondent. **ISSUE ONE: Whether the Claimant/Respondent's suit before this Honourable Court has disclosed cause of action and locus standi against the defendant.**

Where the defendant/applicant is able to prove that the claimant has no locus standi to institute an action or there is no cause of action against the defendant, that will affect the competence of the suit and the court will have no jurisdiction over the matter. In other words, where a party failed to show a cause or reasonable cause of action, his/her claim will fail. In the case of **Okolo V. UBN Ltd (2004)3 NWLR (PT.859) 87 at 108**, the court held as follows:

“Jurisdiction is the pillar upon which the entire case before a court stands. Filing an action in a court of law presupposes that the court has jurisdiction. But once the defendant shows that court has no jurisdiction, the foundation of the case is not only shaken but is entirely broken. In effect there is no case before the court for adjudication and therefore parties cannot be heard on the merits of the case”.

Parties in their written addresses set out what a cause of action is and supported same with judicial authorities. It will not be out of place to also refer to the case of **Anukwu Vs. Eze (2012)11 NWLR (PT.1310)50**, where the court defines “cause of action” as:

**“a bundle of facts which the law will recognize as giving the Plaintiff a right of action. It is a situation or state of facts which would entitle a party to sustain action and give him right to seek judicial remedy or redress. In other words a cause of action means a bundle or aggregates of facts which the law will recognize as giving the plaintiff substantive right to make the claim for the relief or remedy sought.”**

The contention of the applicant in the instance case is that there is no cause of action by the claimant against the defendant. The question begging for an answer is how to determine a cause of action. It has been held by our courts that cause of action is determined from the statement of claim. It is held in **UBN v. UMEODUAGU\_(2004) 13 NWLR (Pt.890) 352**, thus:  
*"In determining whether or not pleadings disclosed any reasonable*

*cause of action, the trial Court will only examine the writ of summons and the statements of claim. It will not examine the statement of defence by way of affidavit."*

Following the above judicial authority, I carefully went through the claimant statement of claim wherein he alleged that he was granted a statutory Right of Occupancy over Plot No: MF 6601 and 6602 by virtue of offer of Terms/Conveyance of Approval dated 16<sup>th</sup> August 2006 respectively by the Abuja Municipal Area Council on behalf of the Honourable Minister of the Federal Capital Territory and he has been in peaceful possession and occupation of the properties. In order to preserve his title to the properties and to commence developmental activities, he has made several applications to authorities and bodies concern. Evidence of such application and appropriate payment is attached. But that around second week of August, 2022, he received information from his neighbor around the property of the presence of the defendant on the subject matter, who moved into same with bulldozers and tractors, cleared all grasses and commence developmental activities on the said lands without his consent. That he engaged the defendant through his agent Mr. Paul Onyeachonam to dissuade the defendant from trespass to his property but that the defendant instead engaged the assistance of the Nigeria Police, FCT Command CID Department to harass and intimidate him. The defendant in its affidavit in support of the preliminary objection denied in paragraphs 5, 6, 7, 8, 9 and 10, that they never trespass on

the said plots of land and that the land they are in possession is plot CRD CP 1 which is different from the plots in issue.

The claimant/respondent quickly reacted to the above denial and further averred in paragraphs 3 and 4 of the counter affidavit and I quote:

**Par 3:** That the deposition in paragraph 5 and 6 of the affidavit in support of the objection are false as the Applicant has trespassed unto the property of the Claimant/Respondent known as Plots MF 6601 and FM 6602 under the guise that same property is christened Plot No: CRD CP1 which she claimed to have been granted by the relevant authorities. Copies of the title document with respect to the Claimant/Respondent property are hereby attached and marked as Exhibit RC1.

**Par 4:** Further, that the Applicant is on the Respondent's property under the claim that same carries a different designation as Plot CRD CP1 and that on that ground he petitioned the Inspector General of Police against the Applicant on the account of the Applicant's possessory activities on the said property and that the claimant/respondent wrote a letter of Notice of trespass and demand for abatement dated 23<sup>rd</sup> August 2022 to the Defendant/Respondent, that the Applicant was invited via a letter of invitation and wrote a statement to the Police while the Respondent also through the Inspector General of Police wrote an investigatory letter to the Honourable Minister of Ministry of Science and Technology as well as the Permanent Secretary all in an attempt to

indict and humiliate the claimant over the said property, that in essence Plots MF 6601 and MF 6602 and Plot CRD CP1 refer to one and the same property and that the applicant's claim herein is mischievous. A copy of the Respondent's petition against the applicant in this respect and the claimant/respondent's letter dated 23<sup>rd</sup> August, 2022 are hereby attached and marked as exhibits RC2 and 3 respectively, while the letter of invitation to the Applicant, those to the Honourable Minister and permanent secretary are marked as exhibit RC4, RC5 and RC^ respectively.

The applicant in its defence attached conveyance of provisional approval dated 27/6/96 in respect of Plot No. CRD CP1 at Lugbe 1 layout, a property they claimed to be in possession. Similarly, the claimant/respondent also in his writ attached title document in respect Plots of MF 6601 and 6602. The claimant has established the fact via title document that the land in issue belongs to him; it stands to reason that he has legal interest in the said land. He therefore has cause of action against whoever allegedly trespassed unto the land and he has the locus standi to bring this action against the defendant/applicant/. From facts before me and the exhibits attached thereto, I have no difficulty in coming to the conclusion that there exist plots FM 6601, 6602 and Plot CRD CP1 all situate at Lugbe unless otherwise proved. However, the claimant/respondent in paragraph 4 of his counter affidavit alleged that Plots FM 6601, FM 6602 and CRD CP1 is referred to one and the same property. The law is long established that he who assert must prove. The claimant has

asserted that Plots FM 6601, FM 6602 and CRD CP1 are one and the same property. For the court to be persuaded to believing the assertion that these plots are one and the same property, the claimant has the duty to prove same by cogent evidence; and this cannot be done by affidavit evidence but by call of oral evidence.

It is apparently clear from the reliefs sought that the claimant is not praying for title, I therefore do not agree with the submission of the defendant/applicant in paragraph 2.4 of its reply affidavit that the subject of this suit bothers on land in dispute. I therefore resolve the first issue in favour of the claimant/respondent.

**Issue two: Whether it is proper for this court to grant the prayers of the applicant against this suit at an interlocutory stage when facts are yet to be established.** In the process of resolving issue one, the court tactically addressed issue two at the point when it concluded that ‘for the court to be persuaded to believing the assertion that these plots are one and the same property, the claimant has the duty to prove same by cogent evidence; and this cannot be done by affidavit evidence but by call of oral evidence’ I therefore hold that this court cannot grant this application by interlocutory without oral evidence. I hereby overruled the preliminary objection and parties are ordered to file and exchange their pleadings for this matter to be heard on merit.

Having dispensed with the preliminary objection and considering the facts of the case in relation to motion No: M/10082/2022, I hereby ordered for accelerated hearing of the suit and in exercise of my



inherent power under section 6(6) of the Constitution of the Federal Republic of Nigeria and to preserve the res (Plots FM 6601 and FM 6602) I hereby ordered the parties (Claimant & Defendant), their agents, servants, privies and aids howsoever called to maintain status quo ante pending the determination of the suit or until otherwise ordered by the court.

.....  
**HON. JUSTICE A.I. AKOBI**  
**03/10/2023**