



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HON. JUSTICE HUSSEINI BABA YUSUF**



SUIT NO: FCT/HC/M/6001/2018

BETWEEN:

GODWIN OBLA SAN.....APPLICANT/RESPONDENT
The Occupier of Plot 1293 Bamanga Tukur Crescent, Gudu

AND

ABUJA MUNICIPAL AREA COUNCIL.....RESPONDENT/OBJECTOR

JUDGMENT

On 14th June, 2018, I granted leave to the Applicant to initiate an application for judicial review against the action of the Respondent pending before the Senior Magistrate Court, Wuse, Abuja-FCT. I also made an Order that such leave would operate as a stay pending the hearing and determination of the application. Pursuant to this, the Applicant filed a motion on Notice brought pursuant to Order 43(1) of the High Court of Federal Capital Territory (Civil Procedure) Rules, 2018 and seeks for the following reliefs:

- 1. An Order removing the proceedings in Case No. AMAC/409/2018 before His worship Muhammed T. O.**

Abdulmumini (Magistrate 1) of Court 9. Magistrate Court, Wuse Zone 2 instituted at the Magistrate Court to this Honourable Court for the purpose of being quashed for want of jurisdiction.

2. Such additional or further Orders this Honourable Court may deem fit/just to make in the circumstances"

Also in support of the motion is a 15 paragraphs affidavit deposed to by Godwin Obla SAN, the Applicant herein. Annexed to the said affidavit are four exhibits, numbered GO1, GO2, GO3 and GO4. Accompanying the motion is a written address in obedience to the Rules of this Court.

Upon receipt of the Applicant's motion, the Respondent on 21/2/2019 filed a 12 paragraphs counter affidavit. Annexed to the said counter affidavit is one exhibit numbered AMAC 1. The Respondent incorporated a Notice of Preliminary Objection to the said counter affidavit which seeks for the following relief:-

1. AN ORDER of this Honourable Court dismissing or striking out the Plaintiff's Suit No: FCT/HC/M/6001/18 against the Respondent for incompetence and want of jurisdiction.

2. AN ORDER of this Honourable Court dismissing or striking out the Plaintiff's Suit No: FCT/HC/M/6001/18 against the Respondent for an abuse of the process of this Honourable Court.

3. AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstances.

There are five grounds in support of the Notice of Preliminary Objection. On 13th June 2019, this Honourable Court Ruled that the Respondent's counter affidavit and Notice of Preliminary Objection were deemed as properly filed and served.

Upon receipt of the counter affidavit and Notice of Preliminary Objection, the Claimant on 3/10/19 filed a reply.

The Respondent upon receipt of the Applicant's response to the preliminary objection filed a reply on points of law on 14/10/19.

Both parties filed and exchanged Written Addresses in support of their respective positions. They adopted the Addresses in Court on 17/11/20 November 2020. Ruling was then reserved for today.

I have carefully read the said Written Addresses of the Counsel for the parties and all the processes filed in this Suit. Reference will be made to them as the need arises.

In view of the fact that the Respondent's preliminary objection challenges the jurisdiction of this Court to entertain this Suit, I wish to first determine it. In the event that I hold that it has merit am bound to strike out this Suit without further ado. If otherwise am bound to go further to determine this Suit.

PRELIMINARY OBJECTION

The preliminary objection challenges the jurisdiction of this Court to hear the Claimant's Suit on the ground that the Applicant never served Pre-action Notice on the Respondent before this Suit was instituted as prescribed by Section 124 of the Local Government Act, 1976.

The relevant and germane Section to this preliminary objection is Section 124 of the Local Government, 1976 which states thus:

- (1) No Suit shall be commenced against a Local Government until one month at least after written notice of intention to commence the same has been served upon the Local Government by the intending Plaintiff or his agent.**
- (2) Such notice shall state the cause of action, the name and place of abode of the intending Plaintiff, and the relief which he claims."**

I wish to state from the onset that the issue of pre action notice being canvassed in the notice of preliminary objection deals with procedural jurisdiction to entertain the Applicant's suit. The said issue does not concern the jurisdiction of this court as a matter of substantive law. While the procedural jurisdiction of this Court can be waived, the issue of jurisdiction of this Court as it concerns substantive law cannot be waived. See the cases of **NDAYAKO VS DANTORO (2004) 13 NWLR (PT. 889) 187** and **ETIM VS OBOT (2010) 12 NWLR (PT.1207) 108**.

The Respondent on 21/2/2019 filed a motion for extension of time to file its counter affidavit and memorandum of appearance. The said motion was moved and granted on 13/6/2019. The Respondent by filing the said motion for extension of time has taken a step in the proceeding and has waived the right to insist on being served with a pre action notice before being sued. On what amounts to the Respondent taking a step in this proceeding I refer to the decision of the Supreme Court in the case of **OBEMBA Vs WEMABOD ESTATES LIMITED (1977) 5 SC 115** where it was held that:

“A party who makes any application whatsoever to the Court, even though it be merely an application for extension of time, takes a step in the proceedings.

Delivery of statement of defence is also a step in the proceedings."

See also the decision of the Court of Appeal in the case of **ONWARD ENT LTD Vs MV MATRIX (2010) 2 NWLR PT 1179 530 at 551** where it was held:

"Steps in the proceedings have been held to include; the filing of an affidavit in opposition to summons for summary judgment, service of a defence, and an application to the: court for leave to serve interrogatories, or for a stay pending the giving of security or costs, or for an extension of time for serving a defence or for an Order for discovery or an Order for further and better particulars."

It is not in dispute that the Applicant did not serve any pre-action notice on the Respondent before instituting this Suit. Also not in dispute is the fact that the Respondent was served with the substantive Motion on Notice herein on 5/7/2018. The fact that the Respondent filed its counter affidavit and Notice of Preliminary Objection on 21/2/2019, a period of over 7 months after the Respondent was served with the Motion on Notice herein, is also not disputed. It may be mentioned that the effect of non-service of a pre-action notice, where it is statutorily required, as in this case is only

an irregularity which, however, renders an action incompetent. It follows therefore that the irregularity can be waived, was indeed waived by the Respondent herein who failed to raise it timeously.

In the case of **NNOYE Vs ANYICHIE (2005) 2 NWLR PT 910 623 at 647** the Supreme Court held:

"The defence like any similar defence touching on jurisdiction, should be raised preferably soon after the Defendant is served with the Writ of Summons."

Aside from all that I have said, it is a thorough misconception of the Law to think that an application for Writ of Certiorari which is merely an attack on an existing Suit is commencing a separate action. It is not. It is an application in continuation of an existing action before the lower Court to which the requirement for pre-action notice would not apply. To think otherwise is similar to asking a party who wants to appeal against the decision of a Magistrate Court to give a pre-action notice before doing so.

A pre-action notice as prescribed by Section 124 of the Local Government Act of 1976 is only required when a party seek to commence an action against the Local Government. In this case, it is the Local Government (i.e. the Objector) who commenced the action and all that the Applicant has done is to apply that the said Suit be taken from the Magistrate Court by this Court in its supervisory

jurisdiction for the purpose of being quashed. To that extent, it is my view that the ground relied upon for the preliminary objection is non-applicable to this application.

From all I have endeavoured to say above, I come to an irresistible conclusion that the preliminary objection by the Respondent is unmeritorious and is accordingly dismissed.

SUBSTNATIVE ISSUE

This Suit by its very nature touches on the prerogative jurisdiction of this Court. Applicant is seeking judicial review of the proceedings in Case No. AMAC/409/2018 before His Worship Muhammed T.O. Abdulmumini (Magistrate 1) of Court 9, Magistrate Court Complex Wuse Zone 2, Abuja. The Applicant's motion is predicated on the decision of this Honourable Court in the case of **PLANNED SHELTER LTD & ORS Vs ABUJA MUNICIPAL AREA COUNCIL & 5 ORS IN SUIT NO: FCT/HC/CV/2625** annexed to the Applicant's affidavit in support of the Motion on Notice as Exhibit G04. See paragraphs 9, 10, 11 and 12 of the said affidavit. For ease of reference, the said paragraphs are reproduced below:

"9. That I am aware that the aforementioned bye-law has been declared unconstitutional, null and void. The Applicant shall found on certified true copy of the Court's decision in Planned Shelter Ltd & Ors Vs Abuja Municipal

Council & 5 Ors in Suit No: FCT/HC/CV/2625/16 (UNREPORTED) is hereby marked and attached as Exhibit G04.

10. That all actions taken or set to be taken by the Area Councils connected with the collection of tenement rates from any person or entity within the FCT have been nullified set aside and rendered ineffectual.

11. I require this Honourable Court to review the administrative decision of the Respondent as contained in their Tenement Rate Demand Notices for the year 2017.

12. The Respondent will not stop making attempts to recover the said tenement rates which have been declared null and void by the High Court of the Federal Capital Territory."

See also paragraph 2.5 of the Respondent's written address.

The Law is settled that Certiorari is a discretionary remedy as it touches on the prerogative jurisdiction of the Court. It is exercised pursuant to the supervisory power of this Court to set aside Judgment, Orders or proceedings of inferior Courts and usually utilized to quash erroneous decisions of such inferior Courts where they act ultra vires. In other words, whenever an inferior Court or

Tribunal acts in excess of its legal authority or where there is want of jurisdiction an Order of Certiorari would ordinarily lie. Being a discretionary remedy, it may be withheld where the Applicant failed to justify the exercise of Court's discretion in his favour.

See the case of **JUDICIAL SERVICE COMMISSION OF CROSS RIVER STATE & ANOR Vs YOUNG (2013) LPELR-20592 (SC)** where Fabiyi, JSC has this to say:

"The pertinent question at this point is - what really, in law, is certiorari? It is depicted as follows:-
"Certiorari is one of the prerogative writs whose main function is to ensure that inferior Courts or anybody entrusted with performance of judicial or quasi judicial functions keep within the units of the jurisdiction conferred upon them by statute which create them. Therefore, an Order of certiorari will lie to remove into the High Court for purpose of being quashed any Judgments, Orders, convictions or other proceedings of such inferior Courts or body, civil or criminal made without or in excess of jurisdiction (T. Akinola Aguda of blessed memory in his Book - Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria 1995 Edition

Now the decision of this Court in Exhibit G04 expressly declared that the Respondent herein has no power under the Constitution to make by-laws fixing rates for collection from property owners or occupiers in FCT and specifically restrained the Respondent from taking any step aimed at giving any effect to any purported bye-laws for the collection of any tenement rates. I have perused the Respondent's counter affidavit and I make bold to state that the Defendant never denied the fact that this Honourable Court made the Order in Exhibit G04 restraining it from collecting any tenement rates in FCT. Neither did the Respondent deposed to the fact that they have appealed against the said Order as contained in Exhibit G04 or that the said Order has been set aside by the Court of Appeal.

Exhibit G04 binds the Respondent and it is bound to obey same until same is set aside by the Court of Appeal. Eko J.S.C. In the case of **N.N.PC. Vs SAMFADEK & SONS LTD (2018) 7 NWLR (PT. 1617) 1 at 9** held:

"There was no appeal against that Order of 27th May 1996. Applicant's counsel, in a novel and disingenuous, if not bizarre, applied to the trial Court (coram: Oduneye, J.) to decline jurisdiction to re-hear the matter remitted to it by the Order of the Court of Appeal, which had neither been

appealed nor set aside. The efficacy of the Order was not in doubt. A Judgment or Order of Court remains binding until set aside by a competent Court."

See also the decision of the Supreme Court in the case of **A.P.C. VS. KARFI (2018) 6 NWLR (PT. 1616) 479 at 519** where it was held:

"The Judgment of the Federal High Court, including the Orders made therein, enjoyed the presumption of regularity enacted into Section 168(1) of the Evidence Act, 2011. Every decision, including Orders of a Court of law subsists and remains binding on the parties until set aside by a Court of competent jurisdiction. It does not lie in the discretion of the party against whom the decision or Judgment, including injunctive Orders therein are made to disregard the Orders merely because, in his wisdom, he thinks that the Orders are invalid and not binding on him. Our jurisprudence will not brook of such treachery that leads to anarchy."

The Respondent has urged me to disregard Exhibits GO1, GO2 and GO3 annexed to the Applicant's affidavit on the ground that they were not certified. In the case of **B.A.T. Vs INT'L TOBACCO CO. PLC (2013) 2 NWLR PT.1339 493 at 520** the Court of Appeal held thus:

"Only recently, we had cause to explain, in a well considered Judgment, that public documents, exhibited to an affidavit is already an exhibit before the Court, being part of the affidavit evidence which a Court is entitled to look at, and use."

In the light of the decision referred herein, Exhibits G01, G02 and G03 being annexed to an affidavit does not require certification in order to make them proper before the Court.

Respondent has urged me to refuse the reliefs sought for by the Applicant on the ground that the Applicant suppressed the existence of the decision in **KABIR MASARI VS THE CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL & 3 ORS IN SUIT NO: FCT/HC/CV/603/2017**. Am afraid, nothing has being placed before me that will enable me arrive at such conclusion. The fact that the Applicant is a senior lawyer is not in dispute. The Applicant was not a party in the **Kabir Masari's case** (Supra) neither was he a Counsel in that case. So on what basis did the Respondent arrive at the said conclusion I cannot tell.

Am not prepared to hold as urged on me by the Respondent that the Magistrate Court in Wuse Zone 2 Abuja did not exceed his jurisdiction when he sat over the proceedings in Case No: AMAC/409/2018 which relates to tenement rates over which this

Honourable Court has issued injunctive Orders against the Respondent from taking any step towards implementing any bye-laws in connection with tenement rate in FCT Abuja. And even declared the said bye-laws as unconstitutional, null and void.

In light of the above, the Applicant's Motion on Notice succeeds and I make an Order removing the proceedings in Case No: AMAC/409/2018 before His Worship Muhammed T.O. Abdulmumini (Magistrate 1) of Court 9, Magistrate Court, Wuse Zone 2 instituted at the Magistrate Court to this Honourable Court for the purpose of being quashed for want of jurisdiction. Accordingly, the entire proceedings before His Worship Muhammed T.O. Abdulmumini (Magistrate 1) in Case No: AMAC/409/2018 is hereby quashed.

There shall be no Order as to cost.

Signed
Hon Justice H.B. Yusuf
(Presiding Judge)
11/02/2021

