

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON THURSDAY 25th DAY OF MARCH, 2021

SUIT NO: FCT/HC/M/12066/2020

BETWEEN:

PROF. BALA YAKUBU APPLICANT.

AND

(1) PROPT KONSULT NIGERIA LIMITED
(2) MR. BAYO ISMAIL
(3) MEDINAT YUSUF } ... RESPONDENTS.

JUDGMENT

By an Originating Motion dated the 18th day of November 2020 and filed on the same day, the Applicant approached this Courts to determine whether by the facts and circumstances of the case, he is entitled to the following orders for the enforcement of his fundamental rights against the Respondents.

1. An order of perpetual Injunction restraining the 1st, 2nd and 3rd Respondents, either by themselves, their servants, agents or privies from forcefully trespassing into the Applicant's apartment situate at Flat 1 Plot 635, No.15 Otukpo Street, Area 11

Garki, Abuja. And from infringing into the privacy of his home, harassing, intimidating without notice and the grant of same or in any way violating the fundamental right to life, dignity of human person of the Applicant.

2. An order restraining the 1st, 2nd and 3rd Respondents either by themselves, their servants, agents or privies from applying to Court to evict the Applicant from his residence, situate at Flat 1, Plot 635, No.15 Otukpo Street, Area 11 Garki, Abuja without the issuance of six (6) months notice.
3. Further or other order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The Originating Motion is supported by a 29 paragraph affidavit deposed to by the Applicant himself and attached to the affidavit are documents which were not marked as stated in the affidavit, a statement of facts signed by the Applicant's Counsel providing the ground for the relief sought and Applicant also deposed to a verifying affidavit alongside an affidavit of urgency, failed with a Written Address in support of the originating motion.

In the affidavit of the Applicant, he averred that he has been a tenant on the Respondents property since 1999 and have been paying his rent as at when due and sometimes on demand by

the Landlord or the 1st Respondents and later rented flat 3 on the 2nd floor for his office space in addition to Flat 1 on the ground floor.

That when the economic situation in the country became too harsh and coupled with the fact that he is being owed by the Federal Government, which payment has been delayed, he pleaded with the Respondents for some time to enable him source funds to no avail.

That on the 31st day of January, while he was sourcing for fund to satisfy the judgment debt, the Respondents brought armed policemen to evict him and his organization from the two flats and it brought about his friends to crediting the 1st Respondents account beyond the judgment debt of ~~₦~~8,200,000.00 (Eight Million, Two Hundred Thousand Naira). Instead, the sum of ~~₦~~12,200,000.00 (Twelve Million, Two Hundred Thousand Naira) was paid.

That the Respondents with the help of the police refused to return the sum of ~~₦~~4,000,000.00 (Four Million Naira) paid in excess of the judgment sum and insisted on adopting the money against the Applicant's wish as an advance payment of the rent. And the Respondents threatened to evict him if he did not accept their position and was also made to pay extra ~~₦~~56,000.00 (Fifty Six Thousand Naira) to the police and Court staff that came with the Respondents.

That as a result of what transpired, the Applicant insisted that a document be issued to him to state that the Respondents collected more than the judgment sum.

The Applicant also avers that in 2020 again, the Respondents have commenced with their usual harassment, intimidation and threats and have written series of letters to him, copies of the two letters which are "FINAL RENT DEMAND NOTICE IN RESPECT OF 3 BEDROOM FLATS, OTHERWISE KNOWN AS FLAT 1 AND 3 and NOTICE OF IMMEDIATE PAYMENT OF ARREARS OF RENT FOR THE PERIOD OF 3rd OF FEBRUARY 2020, TO 2nd OF FEBRUARY 2021 AND 1st OF MAY 2020 TO 31st APRIL 2021 RESPECTIVELY are hereby attached and marked as Exhibit C and D respectively.

That in addition to all of the aforementioned, the Applicant also avers that the Respondents have formed the habit of barging into his residence and privacy without notice or even knocking at the door and have all the time, insulted him on one occasion by calling him 'ode' meaning fool in Yoruba language.

The Applicant also avers that in order to reduce cost and as a result of the Respondents frequent harassment, he had parked out of Flat 3 and handed the premises to the Respondents to reduce. A copy of the handing over of premises letter to the Landlord dated the 13th of October 2020 is attached and marked as Exhibit E.

The Applicant further avers that he instructed his personal Assistant to write to the Respondents requesting the usual 6 months notice to enable him seek for another accommodation to no avail. Copies of the letters written by the Applicants personal assistant dated the 23rd March 2020 and 18th May 2020 are attached and marked as Exhibit F and G respectively. He further instructed his lawyer to write in the same respect to no avail. The letter to the Managing Director is dated the 3rd day of June 2020. It is attached and marked as Exhibit H.

He also avers that his reason for nonpayment is because of the Covid-19 Pandemic and ENDSARS Protest, hence the Federal Government delayed payment to his Organization which he had explained to the Respondent.

Finally, he avers that, inspite all of these, the Respondent's have gone ahead to serve him 7 days notice to quit. A copy of the notice dated the 13th day of November 2020 is attached and marked as Exhibit I and instead of the 7 days notice, he is entitled to 6 months quit notice as a yearly tenant.

Counsel for the Applicant Charles H. T Ucheagbu then urged the Court to grant the application.

In response, the Respondents filed a Counter Affidavit deposed to by the 3rd Respondent and attached to the Counter Affidavit are document marked as Exhibit A - F and a Written Address in support of the Counter Affidavit.

The Respondents admitted the claims of the Applicant to the following extent.

That the Applicant came into the Respondents property as a legitimate tenant paying rent in Flat 1 ground floor and Flat 3, 2nd Floor at the same address in Gimbiya Street.

That indeed, the Applicant occupies two of the Respondent's apartment at the annual rate of ₦2,000,000.00 (Two Million Naira) for each flat.

The Respondents also admit the averments of the Applicant that he rented Flat 1 on the ground floor for his residential purpose and Flat 3 on the 2nd floor for his office space all at Plot 635 Otukpo Street, Area 11 Garki, Abuja.

The Respondent also admit paragraph 6, 7, and 8 of the Applicant's Affidavit only to the extent that he (The Applicant) came into the Respondent's property as a legitimate tenant paying rent in Flat 1 ground floor and Flat 3, 2nd Floor at Plot 635 off Onitsha/Gimbia Street, Area 11 Garki, Abuja, but thereafter failed, refused and also neglected to pay or renew his rent which has fallen in arrears as at today.

That the Applicant's tenancy on the Respondent's premises on both properties being Flat 1 on the ground floor which tenancy commences from the 3rd of February of a given year to the 2nd of February of the subsequent year and Flat 3 on the 2nd Floor which tenancy commences on the 1st of May of every year and

terminate on the 30th of April of the following year has expired.
(Is in arrears)

The Respondents also deny paragraph 10 to 28 of the Applicant's Affidavit and further to paragraph 10 of the Respondent's Counter Affidavit that in 2016, when the Applicant's rent expired, the Applicant refused to renew his rent on both flats despite several pleas and formal requests to him to fulfill his civil obligation, to the Landlord/Respondent therein. And that instead of the Applicant paying up his rent in 2016, after he was served with "quit notice" and notice of owners' intention to apply to Court to recover premises, the Applicant filed a similar suit in this Court in 2017 before the Vacation Judge in August 2017 with Suit **No: FCT/HC/CV/2413/2017** alleging harassment, intimidation and a restraining order against the Respondents. The Respondents joined issues with the Applicant in the aforementioned suit and counter claimed same after they were served. An advance copy of the writ is annexed to their counter affidavit in the instant case and marked as Exhibit A of the Respondents. The Respondents Counter claim and statement of the Respondent in the old suit is also attached and marked as Exhibit B.

The Respondents also avers that the Applicant exhausted the Landlord/Respondents. In that suit with **Suit No: CV/2413/2017** and thereafter a term of settlement was entered for the parties in that suit as consent judgment as shown in the Certificate of Judgment annexed as Exhibit C.

That in response to paragraph 21, 22 and 23, the Applicant never demonstrated any good faith by paying his rent after it fell into arrears on the 3rd day of February 2020 and the 1st of May 2021, hence the 1st Respondent wrote demand notices and the notice to quit with the Applicant's acknowledgement behind the notice. They are all attached and marked as Exhibit D, E and F respectively.

That paragraph 24 of the Applicant's affidavit is admitted only to the extent of serving the notice on the Plaintiff and that despite the service of the notices in paragraph 33, the Applicant refused to deliver vacant possession and that paragraph 25 of the Applicant's affidavit has no factual value and they further aver that the Applicant is not entitled to any six (6) months notice and such ascertain is wrong.

It should be noted that before the hearing of this matter the Respondents filed a Notice of Preliminary Objection filed a notice of Preliminary Objection dated and filed on the 3rd day of February 2021, objecting to the application for non-compliance with the rules of this Court and seeks the following orders.

- (1) An order striking out the suit for lack of locus standi of the Respondents before the Court thereby robbing the Court of jurisdiction.
- (2) An order striking out the suit for incompetence and for lacking in proper cause of action as

contemplated by Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria.

The objection raised by the Respondents is predicated on the following grounds-

- (1) That the suit is incompetent as the Claim in this suit does not fall within Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria thereby robbing the Court the jurisdiction to try and determine same.
- (2) The Applicant by the relief contained in this suit are seeking injunctive reliefs and enforcement of Fundamental Right whereas the facts before the Court does not support their reliefs.
- (3) Originating Motion served on the Respondent/Applicants failed to comply with Order II Rule III of the Fundamental Right Enforcement Procedural Rules 2009 as required of the law in that there was no statement setting out the name and description of the Applicant case' the reliefs sought coming under Fundamental Right Enforcement Procedural Rules.

- (4) That the Respondents/Applicants have no locus standi to defend this suit as they have no proprietary interest in the subject matter of the suit as they have no relationship with the Plaintiff.
- (5) That the Respondents/Applicants before the Court are only Agents of the Landlord they cannot be sued as Agents without their principal.
- (6) The Originating process in this suit were not properly served on the 1st Respondent being a Corporate entity.
- (7) The Court lacks the jurisdiction to entertain this suit.

The Respondent/Applicant relies on the 11 paragraph Affidavit in support of the Notice of Preliminary Objection deposed to by the 3rd Respondent.

In the Written Address 3 issues were formulated by the Applicant.

- (1) “Whether an Agent can be sued without his principal, if the answer is in the negative whether the Court has jurisdiction to hear this suit in the absences of proper parties before it.”

- (2) Whether there was a proper service on the 1st Defendant.
- (3) Whether considering the relief sought by the Applicant in this case, the cause of action is an action maintainable under the Fundamental Right Enforcement Procedural Rules and if the answer is in the negatives whether the Court has jurisdiction to hear and determine the cause of action in this case.”

The Learned Counsel to the Respondent/Applicant argued the issues succinctly in urging the Court to hold that the matter is incompetent and liable to be struck out.

In response, the Applicant/Respondent filed a Counter Affidavit and a Written Address. Learned Counsel in the Written Address adopted the issues as raised by the Respondent/Applicant which has been reproduced earlier in this judgment.

It is my view that the issue Court should determine first is, the Preliminary Objection and in doing that I shall consider first

“Whether the Originating Motion has complied with the provision of Order II Rule III of the Fundamental Right Enforcement Procedural Rules, and if the

answer is in the negative whether the application becomes incompetent.”

All other issues in the Preliminary Objection as well as the substantive application rest on how the Court resolves this issue.

Order II Rule 3 provides that

“An application shall be supported by a statement setting out the name and description of the Applicant, the relief sought, the grounds upon which the reliefs is sought and supported by an affidavit setting out the facts upon which the application is made.”

Clearly, the application before the Court is contrary to the contention of the Respondent/Applicant has a statement of fact as mandated by the provision of Order II Rule III of the Fundamental Right Rule 2009.

I accordingly find that there’s no substance to the claim of non compliance with Order II Rule 3 of Fundamental Right Enforcement Procedural Rules and is hereby discontinued with.

Now I shall consider the issues as formulated by the parties.

Issues No. 1 is

“Whether an Agent can be sued without his principal, if the answer is in the negative, whether the Court has jurisdiction to hear this suit in the absences of proper parties before it.”

On this, the Counsel for the Respondent/Applicant contended that the Respondents being only agents of a disclosed principal who is the Landlord have no interest that can be jeopardized by the outcome of this suit one way or the other. Relying on this authority in **ADIRAN V. INTERLANE TRANSPORT LTD.** Learned Counsel urge the Court to hold that the Respondents are improper, irrelevant and incompetent parties to this suit.

In response, the Learned Counsel for the Applicant /Respondent relying on the authority of **FIRST BANK OF NIG V. EXCEL PLASTIC INDUSTRY LTD (2003) 13 NWLR (Pt.837)** submits that there is no agency in the case of a wrong doer i.e the relationship of agent and principal has no application in the case of a wrong doer.

I agree with this position will add that under the Fundamental Right Enforcement Procedural Rules Respondents are parties against whom a Human rights case has been instituted under the 2009 Rules. See Order 1 of the Fundamental Right Enforcement Procedural Rules 2009. The named Respondent’s are sued in their individual capacities in respect of the alleged

breaches to the Applicants fundamental right I hold that they are proper parties and hereby resolve the 1st issue accordingly.

On the 2nd issues i.e “Whether there was proper service on the 1st Respondent? The Respondent/Applicant relied on the provision of Section 78 of the CAMA and Order 7 Rule 8 of the FCT High Court Civil Procedure Rules in contending that the Applicant/Respondent did not comply with procedures for services of process on a corporation or company. He argued that proper service can only be effected on a Director or Secretary of a company.

In response the Learned Counsel to the Applicant/Respondent submits that in line with authority in **ODUA INVESTMENT CO LTD V. TALABI (1997) 10 NWLR (Pt.523) 1**, the 1st Respondent who has entered appearances and has filed its defence, has waived right to complain about service of the process. That it amounts to a submission to the jurisdiction. Also the Learned Counsel contends that a staff of the 1st Respondent was served the process and that suffices.

I want to say that the Fundamental Right Enforcement action been sue Generis is not one guided by the High Court Civil Procedure Rules but by the Fundamental Right Enforcement Procedure Rules 2009. Order V Rule 2 provides that a service duly effected on to Respondent’s agent will amount to personal service on the Respondent.

It is also clear that by response of the 1st Respondent as held in **UZODINMA V. IZUNASO & ORS (2011) LPELR 20027 (LA)**, He is deemed to have waived any issue of services as he is fully aware of the processes. In line with finding above, this issue is equally resolve against the Respondent/Applicant.

On the last issue i.e “Whether considering the reliefs sought by the Applicant in this case, the cause of action is an on action maintainable under the Fundamental Right Enforcement Procedural Rules and if answer is in the negative whether this Court has the jurisdiction to have determine this matter?”

On this issue, the Respondent/Applicant contends that by the provisions of Section 46(1) (2) and (3) of the 1999 Constitution claims maintainable under Fundament Right Enforcement Procedural Rules is limited and continued to infringement of Rights in Chapter IV of the Constitution.

For clarity Section 46(1) provides:

“Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in that state for redress.”

The Learned Counsel urged the Court to hold that considering the relief sought by the Applicant in the case, the cause of action is not one for enforcement of fundamental right but

rather one more in the realm of tort of assault or nuisance but under fundamental right.

In responses, the Applicant/Respondent submits that the action is predicated under Section 37 of the Constitution of the Federal Republic of Nigeria which provides:

“The privacy of citizens, their homes, correspondences, right to telephone communications and telegraphic communications are hereby private and guaranteed and protected.”

Learned Counsel further submits that the Applicant alleged that the Respondents have formed the habit of barging into the privacy of his home without notice or even knocking at the door and has also infringed on the dignity of his human person. The Applicant/Respondent holds the view that his claim is maintainable under the fundamental Right Enforcement Procedural Rules.

I have considered the arguments of both the Respondent/Applicants and that of the Applicant/Respondents it is the view of the Court that the Applicant/Respondent has anchored his claim/reliefs on Section 37 of the Constitution which is incumbent on the Court to look at facts adduced on both sides and make a finding of whether the Applicant/Respondent's rights have been infringed upon. In

view of this finding and the previous findings the Preliminary Objection fails and it is accordingly hereby dismissed.

In arguing the Originating Motion the Applicant formulated a sole issue for determination i.e

“Considering the facts and circumstances of this case, Whether the Applicant has satisfied the condition for the grant of the reliefs sought.”

The Learned Counsel submitted that paragraphs 21 and 26 of the Affidavit in support have established that the Respondent have been harassing, intimidating, threatening and invading the privacy of his home. For clarity I shall produce the 2 paragraphs below.

Paragraph 21

“That in addition to all these, the Respondents has formed the habit of barging into my residence and privacy without notice or even knocking at the door and have all the times insulted, harassed and threatened me. That the 3rd Respondent at one occasion called me “Ode” in Yoruba Language, meaning “fool.”

Paragraph 26

“That in spite of all these the Respondents have gone

ahead to serve me seven day's notice to quit. A copy of the notice dated 13/11/2020 is attached as Annexure 1.”

Further the Learned Counsel posits that the incessant harassment, threats and invasion of the privacy of the homes of the Applicants by the Respondents amount to torture, inhuman and degrading treatment which infringes of his fundamental rights.

Finally Learned Counsel contends that the onus now is on the Respondents to justify the infringement and referred to authority in **FAJEMIROKUN V. (CBL) NIG LTD (2002) NWLR (Pt.774) 95.**

The Respondents in response to the application relied on the Counter Affidavit and the Written Address of Counsel. Learned Counsel for the Respondents formulated one issue for determination. i.e

“Whether this Court can grant the 1st and 2nd prayers on the face of the Applicants motion paper seeking for an order of perpetual injunction, restraining order and or an order of Enforcement of the fundamental right of the Applicant.”

Learned Counsel argued that a relief for an order of enforcement of the fundamental right of an Applicant through

a constitutional safeguard, it is an issue of strong, cogent and verifiable facts.

Learned Counsel submitted that all the Respondents have done was taking steps to recover possession where a tenant at the expiration of his rent refuse to pay or deliver possession as in this case. Learned Counsel refers to Exhibit D, E, & F (two demand notices and a notice to quit) respectively.

Learned Counsel further contends that the legal right of the Applicant is extinguished upon the expiration of his tenancy on the 2nd of February 2020 and 30th April 2020 and is liable to be served with notices leading to eviction if he remains in the premises.

A pertinent question at this point is whether the Applicant has made out a case of infringement of his right under Section 37 of Constitution of the Federal Republic of Nigeria, (right to privacy of citizen and their homes against the Respondents to entitle him the reliefs sought.

It is in evidence that the Applicant is in arrears of rent and the Respondent being agents of the Landlord have taking steps towards eviction of the Applicant from the premises he occupies. These are facts. The Applicant however, alleges that the Respondent have infringed on his right to privacy as enshrined under Section 37 of the Constitution by harassing, threatening with eviction and insulting him. And have formed the habit of barging into his residence and privacy without

notice or even knocking at the door. These facts the Respondents have denied.

I have carefully considered the positions of both parties to this matter, I want to say that the relief sought by the Applicant cannot be justified in the circumstance of the case. . It is my finding that the Respondents in this case were carrying out their responsibility as agents of the Landlord and by servicing notices and coming around regularly to acoast a tenant who has neither paid his rent nor delivered possession cannot rise to or amount to a threat or harassment which will entitle the Applicant to an order of perpetual injunction against the owner of the property from excising his right to recover premises from a tenant whose rent has long expired.

I must make haste to state that fundamental right enforcement procedure is not a draconian monster. It is not intended to clip the wings and shut the mouth of legitimate Landlords and their agents as in this case. I prefer to believe the Respondents that they acted within the bounds of the law. I say that the Applicants human right to privacy is not superior to that of the Respondents principal's right to own property. The ground the reliefs sought in the circumstances of this case will amount to protecting the Applicant as he continues delays illegitimately the inevitable.

Finally I find that the Applicant, who has approached the Court for enforcement of his fundamental human right to privacy of

citizen and homes has failed woefully to convince this Court by cogent evidences that he is deserving of the reliefs in question.

Both reliefs fail and the application is accordingly dismissed for being unmeritorious.

No provisions cost is rewarded.

**SGND
HON. JUDGE
25/3/2021.**

LEGAL REPRESENTATIONS

- (1) O. S. Oyakhire Ifijeh for the Applicant.
- (2) Samuel Akuli for the Respondents.