

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON TUESDAY 13TH JULY, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 9, MAITAMA, ABUJA

SUIT NO: FCT/HC/CV/3151/2020

MOTION NO: M/13068/2020

BETWEEN

ALHAJI ALIYU ABUBAKAR CLAIMANT

AND

1. ECONOMIC AND FINANCIAL CRIMES
COMMISSION (EFCC) } DEFENDANTS
2. HERITAGE BANK PLC }

JUDGMENT

The Claimant claims to have proprietary interest over two properties whose title documents he deposited with the 2nd Defendant as collateral for purposes of obtaining financial facilities; but which title documents

were alleged to have been unlawfully seized by the 1st Defendant from the 2nd Defendant; hence he commenced the instant action *vide* Originating Summons filed in this Court on 16/11/2020 wherein he sought the determination of the following questions:

1. Whether having regard to the current state of the law in the light of true or proper construction of **sections 43 and 44 (1)** of the provisions of the **Constitution** of the Federal Republic of Nigeria, **1999 (as amended) Cap. C23 LFN, (2004)**, the Plaintiff is not entitled to the custody of the title document of the property in his care, to wit: **Certificate of Occupancy No. 17dfw-14cc3-4b01r-828uw-10**, in respect of the property situate at **Plot No. 1189, A05 Cadastral Zone Maitama District**, not subject of any investigation, inquiry or prosecution conducted by the 1st

Defendant thereof which the 1st Defendant currently retains and detains.

2. Whether having regard to the current state of the law in the light of true or proper construction of **sections 43 and 44 (1)** of the provisions of the **Constitution** of the Federal Republic of Nigeria, **1999 (as amended) Cap. C23 LFN, (2004)**, the Plaintiff is not entitled to the custody and the quiet enjoyment of the property including the title document of property lawfully in care of the plaintiff, to with **Certificate of Occupancy No. 186aw-154f0-5017r-65eau-20** in respect of the property situate at **Plot No. 280, A00 Cadastral Zone, Central Area, Abuja** not subject of any investigation, inquiry or prosecution conducted by the 1st Defendant thereof.

3. Having regard to the current state of the law in the light of true or proper construction of **sections**

43 and **44 (1)** of the provisions of the **Constitution** of the Federal Republic of Nigeria, **1999 (as amended) Cap. C23 LFN, (2004)**, whether the 1st Defendant acting outside its executive and administrative functions, and contrary to its enabling law: **section 7** of the **Economic and Financial Crimes Commission (Establishment) Act, 2004** can take over, seize retain and/or withhold the title document of the property in care of the Plaintiff, which at the material time was in the custody of the 2nd Defendant as collateral for banking facilities availed to the Plaintiff's Companies to wit: **Certificate of Occupancy No. 17dfw-14cc3-4b01r-828uw-10**, in respect of the property situate at **Plot No. 1189, A05 Cadastral Zone Maitama District**, which is not subject of any investigation, inquiry or prosecution conducted by the 1st Defendant thereof.

4. Having regard to the current state of the law in the light of true or proper construction of **sections 43 and 44 (1)** of the provisions of the **Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap. C23 LFN, (2004)**, whether the 1st Defendant acting outside its executive and legislative functions, and contrary to its enabling law: **section 7 of the Economic and Financial Crimes Commission (Establishment) Act, 2004** can take over, seize retain and/or withhold the title document of the property in care of the Plaintiff, which at the material time was in the custody of the 2nd Defendant as collateral for banking facilities availed to the Plaintiff's Companies to wit: **Certificate of Occupancy No.186aw-154f0-5017r-65eau-20** in respect of the property situate at **Plot No. 280, A00 Cadastral Zone, Central Area, Abuja** which is not

subject of any investigation, inquiry or prosecution conducted by the 1st Defendant thereof.

5. Whether, being not a subject of 1st Defendant's investigation, prosecution, or inquiry, the seizure and continuing retention thereof of Certificate of Occupancy in custody of the Plaintiff to wit: certificate **No.17dfw-14cc3-4b01r-828uw-10**, being title document in respect of the property situate at **Plot No. 1189, A05 Cadastral Zone Maitama District**, by the 1st Defendant is not oppressive, vexatious, arbitrary and a violation of the Plaintiff's fundamental right to own interest in movable and immovable property as constitutionally guaranteed and preserved under **section 44** of the **Constitution** of the Federal Republic of Nigeria, **1999 (as amended)**.

6. Whether, being not a subject of 1st Defendant's investigation, prosecution, or inquiry, the seizure

and continuing retention thereof of Certificate of Occupancy in care/custody of the Plaintiff to wit: Certificate No. **186aw-154f0-5017r-65eau-20** in respect of the property situate at **Plot No. 280, A00 Cadastral Zone, Central Area, Abuja** by the 1st Defendant is not oppressive, vexatious, arbitrary and a violation of the Plaintiff's fundamental right to own interest in movable and immovable property as constitutionally guaranteed and preserved under **section 44** of the **Constitution** of the Federal Republic of Nigeria, **1999 (as amended)**.

7. Whether the seizure and continuing retention of the Certificate of Occupancies/title documents referred to in paragraphs 1 and 2 above in custody of the Plaintiff by the 1st Defendant without any prior or subsequent order of court made in that regard is not illegal, arbitrary,

oppressive, ultra vires and amount to abuse of prosecutor and investigative powers outside **section 7 of the Economic and Financial Crimes Commission (Establishment) Act, 2004.**

Upon the determination of these questions, the Claimant prayed the Court to grant the following reliefs:

1. A declaration that the seizure and the retention of the Certificate of Occupancy No.17dfw-14cc3-4b01r-828uw-10, being title document in care/custody of the Plaintiff in respect of property situate at Plot No. 1189, A05 Cadastral Zone Maitama District, by the 1st Defendant from the 2nd Defendant whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is arbitrary, oppressive, high-handed, outside its enabling law, unconstitutional and amounts to an abuse of statutory powers.

2. A declaration that the seizure and the retention of the Certificate of Occupancy No.186aw-154f0-5017r-65eau-20, being title document in care/custody of the

Plaintiff in respect of property situate at Plot No. 280, A00 Cadastral Zone, Central Area, Abuja by the 1st Defendant from the 2nd Defendant at the material time whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is arbitrary, oppressive, high-handed, outside its enabling law, unconstitutional and amounts to an abuse of statutory powers.

3. A declaration that the seizure and the retention of the Certificate of Occupancy No. 17dfw-14cc3-4b01r-828uw-10, being title document in care/custody of the Plaintiff in respect of property situate at Plot No.1189, A05 Cadastral Zone Maitama District, by the 1st Defendant from the 2nd Defendant at the material time whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is a violation of the Plaintiff's fundamental human right to own interest in movable and immovable property as guaranteed and preserved under sections 43 and 44 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

4. A declaration that the seizure and the retention of the Certificate of Occupancy No.186aw-154f0-5017r-65eau-20, being title document in care/custody of the Plaintiff in respect of property situate at Plot No. 280, A00 Cadastral Zone, Central Area, Abuja by the 1st Defendant whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is a violation of the Plaintiff's fundamental human right to own interest in movable and immovable property as guaranteed and preserved under sections 43 and 44 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

5. A declaration that the seizure and the retention of the Certificate of Occupancy No. 17dfw-14cc3-4b01r-828uw-10, being title document in care/custody of the Plaintiff in respect of property situate at Plot No.1189, A05 Cadastral Zone Maitama District, by the 1st Defendant whilst not being a subject of any investigation, inquiry or prosecution without a requisite order of court is illegal, wanton and an unconscionable display of might over the rule of law in the performance of official responsibility.

6. A declaration that the seizure and the retention of the Certificate of Occupancy No.186aw-154f0-5017r-65eau-20, being title document in care/custody of the Plaintiff in respect of property situate at Plot No. 280, A00 Cadastral Zone, Central Area, Abuja by the 1st Defendant whilst not being a subject of any investigation, inquiry or prosecution without a requisite order of court is illegal, wanton and an unconscionable display of might over the rule of law in the performance of official responsibility.

7. A declaration that the seizure and the retention of the Certificate of Occupancy No. 17dfw-14cc3-4b01r-828uw-10, being title document in care/custody of the Plaintiff in respect of property situate at Plot No. 1189, A05 Cadastral Zone Maitama District, by the 1st Defendant whilst not being a subject of any investigation, inquiry or prosecution without a requisite order of court is a violation of the Plaintiff's constitutionally guaranteed property rights.

8. A declaration that the seizure and the retention of the Certificate of Occupancy No.186aw-154f0-5017r-65eau-20, being title document in care/custody of the

Plaintiff in respect of property situate at Plot No. 280, A00 Cadastral Zone, Central Area, Abuja by the 1st Defendant whilst not being a subject of any investigation, inquiry or prosecution without a requisite order of court is a violation of the Plaintiff's constitutionally guaranteed property rights.

9. A mandatory injunction directing the 1st Defendant to release forthwith to the Plaintiff, or the 2nd Defendant from whom it collected the Certificates of Occupancy Nos: 17dfw-14cc3-4b01r-828uw-10 and 186aw-154f0-5017r-65eau-20, seized from the custody of the Plaintiff's agent (2nd Defendant) and being retained by the 1st Defendant without a requisite order of court.

10. A perpetual injunction restraining the 1st Defendant by its officers or agents from further seizure, retention, interfering with or carrying on any further dealing with the Certificates of Occupancy Nos: 17dfw-14cc3-4b01r-828uw-10 and 186aw-154f0-5017r-65eau-20, being title documents in respect of Plot No. 1189, A05 Cadastral Zone Maitama District and Plot No. 280, A00 Cadastral Zone, Central Area, Abuja.

11. And such orders or further orders as the Honorable court may deem fit to make in the circumstances.

The 1st Defendant contested the Claimant's claim by filing a Counter Affidavits to the Affidavit filed in support of the Originating Summons. The 2nd Defendant, in turn, also filed a Counter Affidavit in response to the Claimant's Originating Summons.

To further challenge the action, the 1st Defendant filed Notice of Preliminary Objection on 15/12/2020, wherein it challenged the competence of the action and the jurisdiction of the Court to entertain the same on the principal ground that the suit constitutes an abuse of Court process.

In opposition to the objection, the Claimant filed a Counter Affidavit on 22/01/2021 to which the 1st Defendant filed a Further Reply Affidavit on 08/02/2021.

I have proceeded to consider the 1st Defendant's objection together with the totality of the processes filed to support and oppose the same; including written and oral arguments canvassed by learned counsel for the respective contending sides, to which I shall make reference as I deem needful in the course of this ruling.

Now, as gathered from the sixteen (16) grounds set out in the notice of objection and the affidavit filed in support of the same, the salient grievances the 1st Defendant have to the competence of the Originating Summons could be recaptured as twofold, namely:

1. That whilst in an action filed at the Federal High Court in suit No. FHC/ABJ/CS/159/2020 between Megatech Engineering Limited & 5 Ors. Vs. EFCC & 1 Anor, the Claimant herein, through the 1st Claimant in that action, sought the orders of the Federal High Court to compel the 1st Defendant in that action (the same as the 1st

Defendant in the present action), to erase markings titled “UNDER EFCC INVESTIGATION, KEEP OFF” from properties purporting to belong to the Claimants in that action; and in which the Court ordered the Defendants in that action not to take any further steps until the suit is resolved, is still pending; the Claimant filed the instant suit, which in the opinion of the 1st Defendant, will produce the same result if the reliefs in the suit before the Federal High Court and instant suit are granted; and for that reason, that the instant suit constitutes abuse of Court process.

2. That the present suit is incompetent as it ought not have been commenced at the High Court of the Federal Capital Territory for the reason that the 1st Defendant is an agent/agency of the Federal Government of Nigeria, which thus

placed it within the jurisdictional competence of only the Federal High Court.

I have considered arguments canvassed by learned counsel for the two contending parties with respect to this objection. I do not intend to recapitulate their arguments which already form part of the records of the proceedings in this suit. Suffice to restate the well known principles well settled in a long line of judicial precedent that abuse of court process contemplates multiplicity of suits between the same parties in regard to the same subject matter and on the same issue; that the concept denotes a perversion of the judicial mechanisms by the use of an unlawful procedure for the attainment of unlawful results; and that abuse of judicial process manifests itself largely in the multiplicity of actions on the same subject matter between the same parties.

The Courts have further held that when an action is challenged on the grounds of being an abuse of Court

process, that it is not the existence of the right to institute the action that is protested against; rather it is the manner of the exercise of this right and the purpose of doing same that is abhorred. See the authorities of Nweke Vs. FRN [2019] LPELR- 46946 (SC); Chief B. A. Allannah & Ors Vs. Mr. Kanayo Kpolokwu & Ors [2016] LPELR - 40724 (SC).

Again, in Ogojeifo Vs. Ogojeifo [2006] 3 NWLR (Pt. 966) 205, the Supreme Court set out the different scenarios or circumstances that may constitute abuse of Court process, as follows:

1. That there must be, at least, two matters filed in two different courts.
2. That the said different suits are instituted with the goal of pursuing the same rights (even though on different grounds).

3. That the subject matter or the questions for determination in the two suits must be substantially the same.

4. That frivolous and scandalous use of a lawful court process to the irritation and embarrassment of another party must be apparent in the latter suit.

See also *Mobil Producing Nigeria Unlimited Vs. Monokpo* [2003] 18 NWLR (Pt. 852) 346 at 430-431.

On the strength of well settled principles, I have proceeded to undertake a critical and comparative examination of the suit pending at the Federal High Court, processes of which the 1st Defendant exhibited to its Counter Affidavit; and the *Originating Summons* filed to commence the present action. With due respects to the 1st Defendant's learned counsel; I am unable to find any correlation between the two suits. Parties in the two suits are different in that the Claimants who have submitted disputes for adjudication in that action are not the same

as the Claimant in the present action. The Claimants in the former action are all artificial entities that can sue and be sued in their separate legal personalities; whilst the Claimant in the instant suit is suing in his personal and natural capacity which is separate and distinct from a corporate body.

The contention that the Claimant in the present suit is the *alter ego* of the 1st Claimant in the previous action is of no moment, particularly when it is seen that, contrary to the contention of the 1st Defendant's learned counsel, the subject matter in contention in the former suit are totally unrelated to that in the present action. A cursory examination of the originating processes filed in the suit at the Federal High Court reveals clearly that the properties with respect to which the Claimants in that suit have sought reliefs are totally different from (or not the same as) the properties in contention in the present action. For purposes of clarity, I reproduce the description of the properties subject matter of the suit

before the Federal High Court, as endorsed on the originating processes exhibited by the 1st Defendant, as follows:

- 1.No. 60, Gana Street, Maitama, Abuja.
- 2.No. 6, Onega Street, Maitama, Abuja.
- 3.No. 6, Pope John Paul Street, Maitama, Abuja.
- 4.Plot 498, Wuye Street, Maitama, Abuja.
- 5.3B, Oguta Lake Street, Maitama, Abuja.
- 6.No. 19B, Nun Street, Maitama, Abuja.

A comparative examination of the Originating Summons in the present suit shows very clearly that none of the properties listed in the foregoing form the basis of the Claimant's claim in the present action. The Claimant's claim in the present action relates to the alleged unlawful seizure of title documents of two properties described as Plot No. 1189, A05 Cadastral Zone, Maitama District, Abuja; and Plot No. 280, A00 Cadastral Zone, Central Area, Abuja.

Again, I have also examined the issues sought to be resolved in the two actions, which, in my view, are completely different. Whereas the Claimants in the suit before the Federal High Court are seeking, *inter alia*; for an order to restrain the Defendants from applying for an interim order of forfeiture and to erase markings on their properties; the Claimant herein seeks for the enforcement of his fundamental rights and the release of title documents of properties aforementioned, purported to have been wrongfully retrieved by the 1st Defendant from the 2nd Defendant.

From the above analysis of the facts and circumstances of the two suits and the position of the law thereon; it would appear that other than the 1st Defendant featuring in both suits, the present action does not have the basis or essential elements that would characterize it as abuse of Court process. I so hold.

Accordingly, the present suit cannot be defeated on the ground of abuse of Court process, the 1st Defendant having failed to establish any satisfactory ground of the presence of abuse inherent in the present action.

Now, the second prong of the 1st Defendant's contention is that the 1st Defendant, being an agency of the Federal Government of Nigeria, is not subject to the jurisdictional competence of the High Court of the Federal Capital Territory; and that it is only the Federal High Court that is vested with exclusive jurisdiction by virtue of the provision of **s. 251(1) (p), (q) and (r) 1999 Constitution.**

I had carefully considered the totality of what I consider as familiar arguments canvassed by the 1st Defendant's learned counsel in support of this ground of the objection. Learned counsel's contention is that the Claimant's action is predicated on the 1st Defendant's exercise of its mandate as vested by the provisions of

Ss. 6 and 7 of the EFCC (Establishment) Act, 2004; that any action flowing from the exercise of such powers is vested exclusively in the Federal High Court, more so that the 1st Defendant is an agency of the Federal Government, citing the provisions of **s. 251(1) (p), (q), (r) and (s)** of the **Constitution** which confer exclusive jurisdiction on the Federal High Court with respect to matters affecting the Federal Government or any of its agencies where issues involving actions for declaration or injunction or affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and thus argued that the reliefs sought by the Claimant in the instant suit were within the contemplation of those **sub-sections** of **s. 251** of the **Constitution** cited in the foregoing and that, as such the Federal High Court, to the exclusion of all other Courts, have jurisdiction to entertain such an action. Learned counsel relied on a number of familiar authorities, including *NEPA Vs. Edegbero* [2002] 18

*NWLR (Pt. 798) 79; NPA Vs. Aminu Ibrahim & Co & Anor [2018] LPELR-4464(SC); Abdulraheem & Ors Vs. Oduleye & Ors. [2019] LPELR-48892(SC) 155 and Chief M. A. Inegbedion Vs. Dr. Selo-Ojemen & Ors. [2013] 8 *NWLR (Pt. 1356) 226-227*, and urged the Court to decline jurisdiction to entertain the suit.*

In his response to this ground of the objection, the Claimant's learned senior counsel argued that the contention of the Claimant, by instituting the present action, is that the 1st Defendant acted ultra vires its enabling law by seizing and continuing to seize title documents of properties in the Claimant's possession, which properties were not subject of any investigation, inquiry or prosecution; and that such alleged unlawful action of the 1st Defendant could not be said to be in furtherance of the performance of its executive or administrative functions.

Learned senior counsel further argued that the present action is instituted as a fundamental rights action predicated on the provisions of **Chapter IV** of the **Constitution**, which, by virtue of the provision of **s. 46** of the **Constitution**, gives both the High Court of a State (including the High Court of the FCT) and the Federal High Court concurrent jurisdiction to entertain. For his submissions, learned senior counsel equally cited a number of authorities, including EFCC Vs. Afolabi [2018] LPELR-43565; Olaniyan Vs. University of Lagos [1985] 2 NWLR (Pt. 9) 599; Grace Jack Vs. University of Agriculture, Makurdi [2004] 5 NWLR (Pt. 865) 208; FRN Vs. Ifegwu [2003] 15 NWLR (Pt. 842) 113; Abacha & Ors. Vs. Fawehinmi [2000] LPELR-14(SC).

Learned senior counsel further argued that the provisions of **Ss. 6** and **7** of the **EFCC (Establishment) Act**, relied upon by the 1st Defendant's learned counsel is inapplicable in the present case to determine the Court's jurisdiction to entertain the suit in that the subject matter

does not fall within the executive or administrative function of the 1st Defendant to arbitrarily seize a citizen's property without lawful justification. Learned senior counsel further relied on the authority of Ahmed Vs. Ahmed & Ors. [2013] LPELR-21143(SC).

It is not in doubt that any suit whose subject matter or cause of action is within the realm contemplated by the provision of s. **251(1) (q)** and **(r)** of the **Constitution**, in so far as it affects the Federal Government or any of its agencies, is within the exclusive jurisdictional competence of the Federal High Court. That is clear and undebatable.

However, where a suit, as in the present case, simply alleges infringement of a citizen's sacrosanct fundamental human rights, preserved by the provisions of **Chapter IV** of the **Constitution**; the same **Chapter IV**, vide s. **46(1)** thereof, clearly sets out the course open to any citizen who alleges that any of the fundamental

rights preserved in that Chapter has been, is being or is likely to be breached, for judicial redress.

It will therefore be a total misconception of the purport of **Chapter IV** of the **Constitution** for anyone to import acts alleged to be done in breach of a citizen's fundamental rights by an agency of the Federal Government into those contemplated in **s. 251(1) (q), (r) and (s)** of the **Constitution**, and thereby argue that such an action is within the exclusive jurisdictional competence of the Federal High Court.

In practical terms, most suits involving allegations of violations of fundamental rights are alleged against security agencies, which are agencies of the Executive arm of Government. That being so, if the drafters of the Constitution had intended to add to the already overcrowded jurisdiction of the Federal High Court by conferring exclusivity to the Court on matters ensuing from Chapter IV of the Constitution, it would have been

expressly so provided in s. 46, as it is in s. 251 of the **Constitution**. I so hold.

This Court has been consistent in its view, which remains unbending, that a State High Court, including the FCT High Court, has unfettered jurisdiction to entertain any matter predicated on any of the provisions of **Chapter IV** of the **Constitution**, by virtue of s. 46, s. 6 (6) (b) and s. 257 thereof, regardless that the Federal Government or any of its agencies is a party.

The position of this Court was again reaffirmed by the Court of Appeal in EFCC Vs. Agbele [2018] LPELR-22521(CA), which case was decided at the trial by this Court. The Court of Appeal, whilst affirming the decision of this Court on the same issue as to whether or not the State High Court (including High Court of FCT), had jurisdiction to entertain a fundamental rights suit in which an agency of the Federal Government is a party, relied on the decision of the Supreme Court in John Shoy Int'l

Ltd Vs. FHA [2017] All FWLR (Pt. 892) 984, where it was held that any action founded on the enforcement of fundamental rights does not fall within the enumerated items under s. 251(1) of the **Constitution** over which the Federal High Court has exclusive jurisdiction. See also Futmina Vs. Olutayo [2017] LPELR-43827(SC), where the Supreme Court held as follows:

“On this issue, I have no hesitation agreeing with the respondent's counsel that the settled position of the law that the jurisdiction to entertain actions for the enforcement of any of the fundamental rights guaranteed by the Constitution in Chapter IV thereof is concurrently vested in the Federal High Court and the State High Court. This is without prejudice to whether any of the parties is either the Federal Government or an agent or agency of the Federal Government. NEPA v. EDEGBERO (supra) is accordingly inapplicable as it does not deal with enforcement of fundamental rights. On the other hand, GARBA v. UNIVERSITY OF MAIDUGURI (supra);

JACK v. UNIVERSITY OF AGRICULTURE (supra) as well as GAFAR v. GOVERNMENT OF KWARA STATE (supra) are very apposite.”

In the present suit, the complaints of the Claimant is that the 1st Defendant seized title documents of properties he deposited with the 2nd Defendant as collateral for financial facilities; and had held on to the documents without any lawful justification whatsoever. On this basis, the Claimant had approached this Court to seek redress for the alleged violation of his right to own property; preserved by the provisions of **Ss. 43** and **44** of the **Constitution**.

In such a case therefore, it needs be re-emphasized that the purported actions of the 1st Defendant, in seizing certificates of occupancy of properties in the Claimant's possession, which he deposited with the 2nd Defendant to secure financial facilities, without following due process, as alleged, cannot by any stretch of interpretation be held to constitute executive or administrative action or

decision of an agent of the Federal Government of Nigeria for which a suit to challenge validity of such action can only be entertained exclusively by the Federal High Court by virtue of the provision of s. **251(1)(r)** of the **Constitution**. I so hold.

The conclusion is therefore that the Claimant's cause of action is totally unrelated to matters upon which the Federal High Court is conferred with exclusive jurisdiction by virtue of s. **251(1) (q), (r) and (s)** of the **Constitution** to entertain. This position is again reinforced by the decision of the Court of Appeal in Osunde Vs. Baba [2015] All FWLR (Pt. 781) 1482, where it was held as follows:

"I am in agreement with the appellants that the subject matter of the instant case does not fall within those matters captured by s. 251 of the Constitution. It is apparent that the appellants are agents of the state government; the wrong alleged against them was in pursuance of the duty reposed on them by the

state... I equally agree with the appellants that this falls within the exclusive purview of the state High Court. The learned trial judge's holding to the effect that he had no jurisdiction to try the instant case was made in error and I so hold."

As correctly submitted by the learned senior counsel for the Claimant, the Supreme Court authority of Abdulraheem & Ors Vs. Oduleye & Ors. (*supra*), cited by the 1st Defendant's learned counsel will only be applicable where the claim of the Claimant relates to executive or administrative actions or decisions of the 1st Defendant, which is not the case in the present circumstances.

On the whole, I hold that by virtue of the combined provisions of **Ss. 43, 44, 46(1), 6(6) (b) and 257** of the **Constitution**, the instant action is competently filed in this Court; and that this Court is eminently vested with jurisdiction to entertain the same. The objection of the 1st

Defendant, in its totality, is accordingly overruled and dismissed.

DETERMINATION OF THE SUBSTANTIVE SUIT

Proceeding to the main claim, I had carefully examined and considered the totality of the facts deposed in the affidavit evidence placed before the Court by the contending sides, together with the totality of the written arguments canvassed by their respective learned counsel in the written submissions filed alongside their processes.

The summary of the Claimant's case is that the two properties covered by the two Certificates of Occupancy belong to **Hentom & Company Ltd.** and one **Alhaji Ibrahim Ruwadoruwa Usman** respectively; that he had the consent and permission of these two personalities to make use of the Certificates of Occupancy as collateral to source for financial assistance from financial institutions, especially the 2nd Defendant.

The Claimant's case is further that the said **Alhaji I. R. Usman** had sold the property, being Plot 280, Cadastral Zone A00, covered by one of the Certificates of Occupancy in issue, to **Megatech Engineering Ltd.**, where he is a Director, even though the sale is yet to be formally perfected.

The Claimant's case is further that he received a call from one **Mr. Lekan Busari**; the account officer handling his account with the 2nd Defendant – **Heritage Bank**, on the 25th of March 2020 at about 12 noon informing him that the 1st Defendant demanded to see the two Certificates of Occupancy covering the plots of land located at **Plot No. 1189, A05 Cadastral Zone Maitama District**; and **Plot No. 280, A00 Cadastral Zone, Central Area, Abuja**, which Certificates the Claimant had kept with the 2nd Defendant Bank for purposes of using same to secure financial facilities.

The case of the Claimant is further that the said **Mr. Lekan Busari** was constrained to produce and show the said Certificates of Occupancy to the officers of the 1st Defendant, who eventually retrieved and seized the documents in their custody ever since.

The Claimant's case is further that since the retrieval and seizure of the said Certificates of Occupancy on 25th of March 2020, the 1st Defendant has never invited him, nor the persons whose names appear on the Certificates for interrogation or investigation in respect of the certificates or the properties to which they relate; that while he and the companies in which he has interests are being prosecuted for other offences, none of the charges against them are directly or indirectly related to the documents seized, yet the 1st Defendant unjustly continued to withhold the Certificates of Occupancy which are not subject of any investigation, inquiry or prosecution; and without any Court order.

It is to be noted that the 1st Defendant does not dispute these facts as deposed by the Claimant with relation to the alleged seizure of the Certificates of Occupancy in contention, from the said **Mr. Busari**, the 2nd Defendant's consultant/agent.

The 1st Defendant's contention is that the seizure was lawful and was carried out as a result of the involvement of one of the companies to which the Claimant has substantial interest, **Megatech Engineering Limited**, in the **Malabu Oil and Gas** matter in which the Claimant and his companies are being investigated and prosecuted at both the Federal High Court and the High Court of the FCT.

The 1st Defendant further contended that by its enabling law, the EFCC is empowered to investigate cases of money laundering, corruption and financial crimes, as such its conduct or activities does not infringe on the Constitution; and that by rushing to Court to file the

present action, the Claimant has attempted to truncate the 1st Defendant's intention to commence interim attachment or forfeiture proceedings against the said properties.

The 2nd Defendant, on its part, more or less corroborated the Claimant's case, stating the circumstances under which the said Certificates of Occupancy, which the Claimant deposited as collateral for loan facilities advanced to him, were retrieved from the Bank's recovery agent, the said **Mr. Lekan Busari**.

In the light of these summarized facts, my view is that the sole issue that has arisen for determination in this suit, which more or less encapsulates the focal questions submitted by the Claimant for resolution in this suit, could be succinctly framed as follows:

Whether the 1st Defendant can, in spite of the powers conferred on it by law, seize the Claimant's title document indefinitely, without a valid order of

interim attachment or forfeiture obtained from Court; and if the answer is in the negative; whether the 1st Defendant breaches the Claimant's fundamental rights in the circumstances of this case as alleged.

It is not in question that one of the primary functions of the 1st Defendant is to investigate and prosecute cases of economic and financial crimes; which, by extension span to investigation of properties suspected to have been procured by proceeds of crime. In this regard, the 1st Defendant is empowered under **Ss. 28 and 29** of the **EFCC (Establishment) Act** to trace and attach such properties and thereafter proceed to obtain an interim attachment order from the Court. See *Felimon Enterprises Ltd. Vs. The Chairman, EFCC & Anor.* [2017] LPELR-43829(SC).

Evidently, **Ss. 28 and 29** of the **EFCC (Establishment) Act**, make provisions for series or chain of events that must be actuated in tandem for any act of seizure of a citizen's property to be considered lawful. The first act in

the chain is that the person whose property is subject of seizure or forfeiture must be arrested. In the instant case, there is no material evidence before the Court that the Claimant was ever arrested or invited by the 1st Defendant with respect to the properties covered by the two Certificates of Occupancy retrieved from the 2nd Defendant's custody.

Furthermore, the provisions of **Ss. 27, 28 and 29** of the **EFCC (Establishment) Act** requires the commission, upon tracing and attaching or seizing the properties of a suspect who has been arrested, to thereafter proceed to Court to obtain interim forfeiture orders with respect to the seized properties. However, in the present case, the 1st Defendant retrieved the two Certificates of Occupancy in contention traced to the Claimant from the 2nd Defendant's agent on 25/03/2020. However, up until 16/11/2020 when the Claimant filed the present suit, a period of over seven (7) months, the 1st Defendant did not show that it has approached any Court of law to

seek or obtain interim forfeiture orders with respect to the properties covered by the said Certificates of Occupancy but continue to keep the Certificates in its custody.

Even if it is admitted that the **Act** is silent on the time frame within which such an application can be brought once the seizure is effected; but principles of expediency dictate that such an application ought to be brought within a reasonable time of attaching or seizing the property.

A similar issue arose in EFCC Vs. Afolabi [2018] LPELR-43565(CA), cited by the Claimant's learned senior counsel, where the Court of Appeal held as follows:

“...the period of over five months after the seizure of the vehicles without any application for interim order of attachment being sought from a Court showed that the Appellant was no longer acting within the ambit of the provisions of the general law it seeks to rely upon.”

In the present case, it is totally unreasonable and unconscionable for the 1st Defendant to have held on indefinitely to the two Certificates of Occupancy, without either interrogating the Claimant as to his connection to the properties; or filing a formal application in Court for interim forfeiture. I so hold.

The 1st Defendant had deposed in the Counter Affidavit filed to oppose the instant Originating Summons that the properties covered by the said two Certificates of Occupancy, were bought by the Claimant through an agent, one **Mr. Ikechukwu Obiorah**, but failed to place materials before the Court to substantiate the claim.

Furthermore, even if it is accepted that the Claimant purchased the properties in question, the 1st Defendant has not placed any materials before the Court to show that the two properties were subject of any of the pending Court cases in which the Claimant is standing trial as a Defendant. As a matter of fact, the 1st

Defendant failed to place any materials before the Court that the Claimant was ever questioned at any time whatsoever with respect to the properties, either before or after its officers surreptitiously retrieved the two Certificates of Occupancy from **Mr. Lekan Busari**, the 2nd Defendant's recovery consultant.

I have further carefully scrutinized all the Court processes relating to both criminal and civil actions in which the Claimant is involved, as exhibited by the 1st Defendant to its Counter Affidavit; but nowhere are the properties covered by the Certificates of Occupancy in question in the instant case mentioned or referred to, or made subject matter of any of those cases.

In the same vein, I had also carefully scrutinized the Court processes of cases in which the 1st Defendant is prosecuting the Claimant alongside some other parties both at the Federal High Court and the High Court of the FCT, as exhibited by the Claimant to the Affidavit filed

to support the Originating Summons; and I affirm the Claimant's case that the properties covered by the two Certificates of Occupancy in contention in the present case are not connected or named directly or indirectly with or in any of those cases.

On the basis of the materials placed before the Court by all the parties, I must agree with the submissions of the Claimant's learned senior counsel that in so far as the properties to which the two Certificates of Occupancy in contention in the instant suit are concerned, there has been no investigation, inquiry or prosecution, pursuant to the provision of **s. 7** of the **EFCC (Establishment) Act**. I so hold.

In view of the conduct of the 1st Defendant as enumerated in the foregoing, the Claimant has contended that it infringed on his fundamental rights preserved by the provisions of **Ss. 43** and **44** of the **Constitution**.

S. 43 of the Constitution provides that:

“43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.”

S. 44 of the Constitution further provides as follows:

“44. (1) No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law...

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law-

....

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry”

The well established position of the law is not in doubt that the rights to acquire and own property guaranteed by **Ss. 43** and **44** of the Constitution are not absolute and that **s. 44(2) (k)** of the **Constitution** creates an exception. See *La Wari Furniture and Baths Ltd. Vs. FRN* [2019] LPELR-33271 (SC).

However, the point to be underscored is that in order for the 1st Defendant to take advantage of the exception created by the provision of **s. 44(2) (k)** of the **Constitution**, to temporarily take possession of a citizen's property or property in which a citizen has interest, it must be shown that the property in question is compulsorily seized for purposes of examination, investigation or enquiry; and for that matter as empowered by any general law in force. See *Jonathan Vs. FRN* [2019] LPELR-11231 (SC).

As I had found in the foregoing, the 1st Defendant had not complied with the strict provisions of **Ss. 27, 28** and

29 of the **EFCC Act** in confiscating the Certificates of Occupancy in contention in the present case, as such, it could not be said that it had proceeded lawfully, under the exception provided by s. **44(2) (k)** of the **Constitution**, to have perpetually denied the Claimant access to properties in which he has interest. I so hold.

What is not in contest in the instant case is that the 1st defendant has not placed any material before the Court to show that it obtained any Court order to have retained the said two Certificates of Occupancy in its possession for a period of over seven (7) months prior to the institution of the present action; and up till date.

On the basis of the analyses of the materials placed before the Court and the application of the law thereto as set out in the foregoing, I must and I hereby resolve all the questions set down for resolution by the Claimant in this suit in his favour. The result is that the Claimant's action hereby succeeds as against the 1st Defendant.

Accordingly, I hereby enter judgment in favour of the Claimant against the 1st Defendant upon terms set out as follows:

1. It is hereby declared that the seizure and the retention of the Certificate of Occupancy No.17dfw-14cc3-4b01r-828uw-10, being title document in care/custody of the Claimant in respect of property situate at Plot No.1189, A05 Cadastral Zone, Maitama District, by the 1st Defendant from the 2nd Defendant whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is arbitrary, oppressive, high-handed, outside its enabling law, unconstitutional and amounts to an abuse of statutory powers.

2.It is hereby further declared that the seizure and the retention of the Certificate of Occupancy No.186aw-154f0-5017r-65eau-20, being title document in care/custody of the Claimant in respect of property

situate at Plot No. 280, A00 Cadastral Zone, Central Area, Abuja by the 1st Defendant from the 2nd Defendant at the material time whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is arbitrary, oppressive, high-handed, outside its enabling law, unconstitutional and amounts to an abuse of statutory powers.

3.It is hereby further declared that the seizure and the retention of the Certificates of Occupancy referred to in (1) and (2) in the foregoing by the 1st Defendant from the 2nd Defendant at the material time whilst not being a subject of any investigation, inquiry or prosecution by the 1st Defendant is a violation of the Claimant's fundamental human right to own interest in movable and immovable property as guaranteed and preserved under sections 43 and 44 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

4. It is hereby further declared that the seizure and the retention of the Certificates of Occupancy referred to in (1) and (2) in the foregoing by the 1st Defendant whilst not being a subject of any investigation, inquiry or prosecution without a requisite order of court is a violation of the Claimant's constitutionally guaranteed property rights.

5. The 1st Defendant is hereby ordered to release to the Claimant, forthwith, the two Certificates of Occupancy referred to in (1) and (2) above, seized from the custody of the Claimant's agent (2nd Defendant) and being retained by the 1st Defendant without a requisite order of Court.

6. The 1st Defendant is hereby further restrained, either by its officers or agents from further seizure, retention, interfering with or carrying on any further dealing with the said Certificates of Occupancy referred to in (1) and (2) above, being title

documents in respect of Plot No. 1189, A05 Cadastral Zone, Maitama District and Plot No. 280, A00 Cadastral Zone, Central Area, Abuja.

7.1 award costs of this action, in the sum of ₦250,000.00 (Two Hundred and Fifty Naira) only, in favour of the Claimant, against the 1st Defendant only.

OLUKAYODE A. ADENIYI
(Presiding Judge)
13/07/2021

Legal representation:

Dr. J. Y. Musa, SAN – (with Joseph E. Obla, Esq.; U. E. Udosen, Esq.; A. E. Ogwiji, Esq.; M. A. Ochohi (Miss) & Douglas Moru, Esq.) – for the Claimant

Bala Sanga, Esq. – (with O. I. Uket, Esq.) – for the 1st Defendant

Israel Ayeni, Esq. (with Adedolapo Aderemi, Esq.) – for the
2nd Defendant