

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 8 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/1732/2020

BETWEEN:

1. APOSTLE EMMANUEL OJODALE AMEH ESQ.
2. PASTOR JULIAN OJOCHIDE AMEH APPLICANTS

AND

1. ALIYU ZAKARI
2. ONYEKA NWORIE
3. KABIRU UNUMOSE ATTAHIRU RESPONDENTS

JUDGMENT

DELIVERED ON 9TH NOVEMBER, 2021

The Applicants filed this suit under the Fundamental Human Right Enforcement Rules against the Respondents. The Claims of the Applicants are as contained on the Originating Motion are for the following reliefs:-

- a. A Judicial Declaration of this noble court to the lawful effect that the N500,000.00 (Five Hundred Thousand Naira) paid to the 1st Respondent as rent effectively covers for the interlocking of the compound including that of Flat 3, No, Olutunde Close, Kubwa, FCT, Abuja.

- b. A Judicial Declaration of this noble court to the lawful effect that the 2nd Applicant is a person of nobility, impeachable integrity, honour and unquestionable character.
- c. A Judicial Declaration of this noble court to the lawful effect that the 1st Applicant is indeed a legal practitioner duly and effectively called to the Nigerian Bar and indeed a Minister of the Gospel of the Lord Jesus Christ.
- d. A judicial declaration that the Applicants Rights or dignity of Human person, freedom of movement, personal liberty and privacy as guaranteed and preserved in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (As amended) and under the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap 10, laws of the Federal Republic of Nigeria is innate, lawful and Fundamental and same cannot be taken away unconstitutionally or infringed upon by the acts of the 1st and 3rd Respondents.
- e. A judicial declaration to the lawful effect that the continuous trailing and the unlawful taking of pictures of especially the 2nd Applicant by the 2nd Respondent without her consent duly had and obtained is unlawful, nugatory and void.
- f. A Judicial Declaration of this noble court to the effect that the 1st Respondent had no Right howsoever, unlawfully to block the back passage or remove the back or front taps of the Applicants who are in lawful occupation of Flat 3, No. 10, Olutunde Close, Kubwa, FCT, Abuja.

- g. An order of this noble court to the lawful effect that the Applicants are assuredly entitled to all the facilities duly and effectively paid for in Flat 3, No 10, Olutunde Close, Kubwa, FCT, Abuja.
- h. An order of this Honourable court perpetually restraining the 1st to 3rd Respondents from generally constituting nuisance and nauseating disturbance in the peaceful lives of the Applicants.
- i. An order of this noble court compelling the 1st to 3rd Respondents to publicly apologize by tendering a public apology to the Applicants in two known National dailies (Newspaper) for the unlawful infringement done against the Applicants.
- j. An order of this Honourable court compelling the 1st to 3rd Respondents jointly and severally to pay as compensation to the Applicants the sum of Five Million Naira (N5, 000,000.00) for the reckless violation of the Fundamental Rights of the Applicants.
- k. Any other or further order as this noble court may deem fit to make in the circumstances of this case.

The application is supported by sixty five paragraphs affidavit deposed to by the 2nd Applicant. And annexed to the said affidavit are sixteen exhibits. The Applicants also make a statement in support of the application and filed a written address.

Upon being served, the Respondents filed a sixty two paragraphs counter affidavit deposed to by the 2nd Respondent and several

exhibits annexed to the said counter affidavit. The said counter affidavit was filed with the leave of court.

The Respondents also filed a Preliminary objection to the Applicant's case. And in support of the Preliminary objection, the Respondents filed a forty paragraphs affidavit. And annexed to the said affidavit are two exhibits.

Upon being served with the Respondent counter Affidavit; the Applicants filed a further affidavit and a counter affidavit to the Preliminary objection.

Parties filed and exchange written addresses in support of their various processes. When the matter came up on 6th July, 2021, the Respondents moved the court in terms of the objection and urge the court to dismiss the Applicants case. The Applicants on their part adopted their 34 paragraphs affidavit in opposition to the Preliminary objection and their written address. And urged the court to refuse the Preliminary objection.

On the application for the enforcement of Fundamental Rights filed by the Applicants the Applicants relied on all the paragraphs of affidavit, adopted their written addresses and moved the court to grant their claim. The Respondents also relied on their counter affidavit as well as further affidavit and adopted their written addresses accordingly. They urged the court to dismiss the Applicant's claim.

I have carefully, gone through the processes filed in this suit. As I said earlier, the Applicants commence this suit under a Fundamental Rights enforcement procedure pursuant to order 2 rules 1 to 5, section 34, to 41 of the constitution of federal republic of Nigeria as amended and article 11,e iv, vii, 1 (b) and D of the African Charter on Human and Peoples Right. The reliefs sought are clearly stated on the motion paper.

The Respondents on their part filed a Preliminary objection to the hearing of the Applicants suit. The ground for the objection are basically that the suit of the Applicants is not grounded or cannot be founded in the enforcement of a Fundamental Rights as enshrined in chapter 4 of the constitution of the Federal Republic of Nigeria 1999 as amended. And this constitutes an abuse of court process.

The enforcement of a Fundamental Rights by a person is a Right that flows from the constitution of the federal republic of Nigeria particularly part iv thereof and the African charter on Human and Peoples Right, Under Section 46 (1) of the 1999 constitution.

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

Flowing from this, a cause of action will imbue on a person whose Fundamental Rights is allege to have being, is being or

likely to be contravened. And any person who makes such an allegation is entitled to approach the court for the enforcement of his said Right. In essence, where the claim is the enforcement of a Fundamental Right, a person has the Right to seek for remedy. However, for the court to adjudicate on the claims of the parties, the reliefs sought or the main reliefs claimed must be for the enforcement of the Fundamental Rights of the parties. See the case of *Tukur V Government of Taraba State* (1997) 6 NWLR (Pt. 510) pg. 549, *W. A. E.C V. Akinkumi* (2008) 9 NWLR (Pt. 1091) pg 151. Conversely, where the principal claim is not the enforcement of a Fundamental Right, it will not be maintainable under the Fundamental Rights Enforcement Rules. *Ind. Coafar v Government of Kwara State & ors* (1997) 12 NWLR (Pt. 53) pg. 29
Muhammed J. S. C. Held:-

“It is the law as decided by this court in a long line of cases on the subject that when application is brought under the rule, a condition precedent to the exercise of the court’s jurisdiction is that the enforcement of Fundamental Rights or securing of the enforcement thereof should be the main claim and not an accessory claim. That where the main or principal claim is not the enforcement or securing the enforcement of a Fundamental Right, the jurisdiction of the court

cannot be properly exercised as it will be incompetent.”

To discover whether, the claim falls within the purview of the enforcement of a Fundamental Right, the court will of necessity look at the application of the Applicant. This is because, the intendment and purpose of the Applicant's claim can only be discovered in the process filed by him. I must state straight away that the Preliminary objection of the Respondents in the instant suit challenges the jurisdiction of the court to entertain the Applicants suit.

Jurisdiction is a life wire of adjudication and when it is raised by a party, the court must set aside any other things it is doing and determine this issue timorously.

This is because where a court lacks the jurisdiction to try a matter, its decision on the matter will be a nullity. See the case of Anyanwu V Ogunnewe (2014) 8 NWLR (Pt. 1410) 437 @ 441; Madukolu V Nkenidilim (1962)2 SCNLR 341 and Oloba V Akereja (1988) 3 NWLR (Pt. 84) page 508.

The claims of the Applicants in this suit are as I stated earlier, well spelt out on the face of the application for the enforcement of the Fundamental Rights and I have also carefully read the entire deposition of the 2nd Applicant in the affidavit in support of the application. From the reliefs endorsed, on the motion, it will seems to me that the main reliefs as conches by the Applicant

in this suit are in the realm of landlord and tenant as well as a claim in tort for defamation.

They do not constitute a claim a kind of which is contemplated by section 46 of the 1999 constitution as amended. I quite agreed with counsel to the Respondents that the Fundamental Right enforcement rules is sui generis.

It cannot be use to commence a claim that is not the enforcement of a Fundamental Right. It is exclusive. See the case of Erukeme V Mazi (2015) 17 NWLR (Pt. 1488) pg. 411; Loveday V. Comptroller, Federal Prison Aba (2013) 18 NWLR (Pt. 1386) 379.

It is therefore beyond doubt that the claims of the Applicants falls outside the enforcement of their Fundamental Right. A claim in the realm of the landlord and tenant's dispute and the tort of defamation is not within the contemplation of the provision of chapter IV of the 1999 constitution 1999 as amended. And the Africa charter on Human and Peoples Right. It is beyond doubt that where Fundamental Right claim is not a central claim in an action for the enforcement of Fundamental Right, the court will lack the jurisdiction to adjudicate on it on that score. See the case of Gafar V. Gov't of Kwara State (Supra) as well as Udondu V. U. B. N Plc (2009) 3 NWLP (Pg. 97); Sea Trucks (Nig.) LTD V. Aniboro (2001) 2 NWLR (Pt. 696) pg. 159.

Having said this, I am of the firm, view that the Preliminary objection of the Respondents has merit and ought to be sustained.

The Preliminary objection succeeds. This court lacks the jurisdiction to entertain the Applicants suit under the Fundamental Rights enforcement rules. The suit ought to be and it is hereby struck out for want of jurisdiction.

APPEARANCE

Jerome Okoh, Esq. holding brief for M. O. Maduabuchi, Esq. for the Respondent.

The Applicant counsel not present in court.

Sign
Hon. Judge
09/11/2021