IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 2ND DAY OF DECEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1349/18

BETWEEN:

1) PLUS CHIKENDO NIG. LTD
(Trading doing business in the name and style of Gilead Park and Gardens).

2) REV. DR. KENNETH ONYEMERE:…………...CLAIMANTS
(Trading under the name & style of Gilead Park and Garden)

AND

1) MINISTER OF THE FCT, ABUJA

2) FEDERAL CAPITAL DEVELOPMENT AUTHORITY

3) ABUJA METROPOLITAN MANAGEMENT AGENCY:.DEFENDANTS

Ezra Enwere for the Claimant.
Defendant absent and unrepresented.

JUDGMENT.

The Claimants commenced this suit against the Defendants vide a Writ of Summons dated and filed the 28th day of March, 2018. On the 2nd of April, 2019, the Claimants with the leave of Court, substituted their original Joint Statement of Claim and Witness Statement on Oath with the ones filed on the 1st day of March, 2019 wherein the Claimants claimed against the Defendants as follows:

a. A declaration that the forcibly entering of the Defendants and stopping the management of the park and garden,

destroying structures erected under lawful authority and further threat by purported officials of Park and Recreation to seal, demolished (sic) and confiscate for the purpose of transferring same to their friends, cohorts or their proxies, is unlawful.

b. That the demolition of the park without notice, compensation, valid revocation or at all, etc., is a violation of the Deed agreement between the Claimants and the Defendants.
c. Damages assessed as One Hundred Billion Naira (N500,000.00 (sic)) for the damages done to the park in the subject matter, and the prospective earnings of the Claimants which had been frustrated.
d. Three Million Naira solicitors' fee which whereof is hereby pleaded.
e. Alternatively, if the management wished to withdraw allocation of the park, which tons of millions have been spend (sic) developing with theirexpress and written permission, then compensation assessed at the sum of 100 Billion Naira be paid.
f. An order compelling the Defendants to pay the Claimants Fifty Million Naira (N50,000,000.00) as exemplary and general damages for trespass.
g. An order of perpetual injunction restraining the Defendants, their privies, proxies, agents, servants, howsoever described, from entering into, tampering, using whatsoever in the park.

The case of the Claimants as pleaded in their Joint Statement of Claim, is that in 2003, the 2nd Claimant applied for and was granted approval by the Federal Capital Development Authority, to maintain Horticulture/Garden on a Plot of land numbered as Plot 4374, totalling 2.924 hectares at Cadastral Zone A02, Wuse 1 District, FCT Abuja.

The Claimant averred that in 2007, they further applied for land allocation from the Abuja Metropolitan Management Council (AMMC) for the purpose of developing and managing a park and Garden activities at Dakar Street, Wuse Zone 1, Abuja, and approval was granted to them to manage park and garden related issues in respect of the said Plot 4374.

They stated that they paid N25,000.00 for the allocation, and that on 9th July, 2007, a thirty (30) years lease agreement was executed between the Claimants and the Defendants, for which they paid the sum of N500,000.00.

That they employed staff to work in the park, planted flowers, decoration, etc and hired bulldozer that cleared the bush for 14days.

The Claimants furthered averred that a Committee for Revalidation/Recertification of Parks in FCT was set up to examine the title documents of all the Parks in FCT, and they were made to pay the sum of N50,000.00. That after complying with all the requirements from the Committee, a clearance letter was issued to them by theChairman and Secretary of the Recertification Committee, dated 16th August, 2011, thereby confirming and authenticating their title document. That after all these processes, the park was captured as permanent.

They stated that on 7th March, 2018, the Defendants invaded the park, the subject matter of this suit with bulldozer and completely demolished and destroyed all the developments in the garden,thereby destroying the source of livelihood and earnings of the Claimants and completely extinguishing their investments. That there was no proper notice or at all, no revocations of both the permanent lease and the temporal lease, all of which were destroyed without due process of laws.

At the hearing of the case, the 2nd Claimant gave evidence for the Claimants. He adopted his witness statement on oath, and tendered the following documents in evidence:

1. FCDA Departmental Receipt for N1,000.00–Exhibit PW1A.
2. Application Form for lease of Park – Exh PW1B.
3. Site Plan – Exhibit PW1C.
4. Approval Letter dated 5th July, 2007 – Exh PW1D.
5. Parks and Recreation Department's Official Receipt for N25,000.00 – Exhibit PW1E.
6. Notice of Meeting – Exhibit PW1F.
7. Deed of Sublease – Exhibit PW1G.
8. Temporary Approval Letter – Exhibit PW1H.
9. Clearance Letter – Exhibit PW1J.
10. Receipt for legal fee – Exhibit PW1L.

The 1st – 3rd Defendants were duly served with all the processes and hearing notices in this suit but they neither entered appearance nor filed any process in defence of the suit. On the Claimants' application, the defendants' right to cross examine the PW1 and to defend the suit was therefore, foreclosed.

The Claimants subsequently filed and adopted their final written addresses while the Defendants filed none.

In the Claimants' final written address dated 25th August, 2021 and filed on the 23rdSeptember, 2021, learned Claimants' counsel, Ezra Enwere, Esq, raised a lone issue for determination, to wit;

> ***"Whether the Claimants in view of the exhibits tendered and unchallenged evidence before this Court, have proved their case against the Defendants to entitled (sic) them to all the reliefs sought in this suit?"***

Proffering arguments on the issue so raised, the learned counsel referred to Section 131 of the Evidence Act, 2011 and the case of **Okoye v. Nwankwo (2014) LPELR 23172 (SC),** and contended to the effect that the Claimants have by their pleadings and evidence led before the Court, established that they were in effective occupation of the subject matter of the suit, and that the demolition thereof was wrongful, unlawful and arbitrary in law, as there was no prior notice given and no justification for the demolition of the subject matter.

He argued that the Claimants having established their claims through unchallenged oral and documentary evidence, that the burden of proof now shifts to the Defendants, who despite service of Court processes and hearing notices on them, refused neglected, failed and ignored to state their side of the case because they really have no defence to the Claimants' suit.

Relying on **Best Vision Contract Limited v. U.A.C.N.P.D.C. PLC (2003) 13 NWLR (Pt.838) 594, Folorunso&Anor v. Shaloub (1994(3 NWLR (Pt.333) 413 at 433,** inter alia, he submitted that the law is trite that facts deposed to in an affidavit which are not controverted or challenged by counter affidavit are deemed to be duly admitted, and that when evidence is unchallenged, the Court ought to accept such evidence in proof of the issue in contest.

He posited in conclusion, that the Claimants have established their case against the Defendants and urged the Court to so hold and enter judgment for the Claimants.

The law is trite that in the determination of a case before it, particularly suits commenced by a Writ of Summons, the Court will consider the Claimants' Statement of Claim to determine whether or not the Claimant's action is sustainable.

An important section of the Statement of Claim is the concluding part called the "prayers" or the "reliefs sought", where the Claimant sets out the reliefs or remedies he claims in the suit. Any Statement of Claim that lacks this Section is deemed to contain bare assertions to no end, and is liable to be struck out. See**Stowe &Anor v. Benstowe&Anor (2012) LPELR-2838 (SC).**

A fortiori, where the reliefs endorsed on the Statement of Claim are vague or imprecise, the Court will be unable to grant such reliefs.

The Courts are not endowed with the powers to amend imprecise reliefs on the Statement of Claim or to fill in any gaps in the Statement of Claim. Thus in **Emeje v. N.I.P.R.D. (2010) LPELR-8986 (CA),** the Court of Appeal per Peter-Odili, JCA (as she then was), held that:

> ***"The Statement of Claim was vague where details of important facts were called for. This gap cannot be filled by the Court. This is so since a Court of law is not with authority to dish out remedies in vacuo."***

By Order 16 Rule 1(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018.

> ***"Every Statement of Claim, defence or counter claim shall state specifically the relief claimed or sought in the alternative,…."***

The reliefs endorsed on the Statement of Claim in the instant case, are not precise or specific. The particular Park and Garden for which the order of declaration is sought were not specified.

There is disparity between the amount claimed in words and that claimed in figure, among other anomalies. The

draftmanship employed in drawing up the reliefs is terribly poor, to say the least.

Given that the Claimants' claims are vague and imprecise, and thus cannot be granted by this Court, it will amount to waste of judicial time to go into the consideration of the merits of the case.

In **WemaBank PLC v. Osilaru (2008) 10 NWLR (Pt.1094) 150 1t 174,** the Court of Appeal, per Okoro, J.C.A, held that:

> ***"For a claim to be considered, it must be straight forward, factual and unequivocal, and should not be vague, as no Court will grant a relief which is vague."***

Furthermore, Alagoa, JSC (Rtd) in a more recent case of **UniJos v. Ikegwuoha, (2013) 9 NWLR (Pt.1360) 478 SC** referred to a claim that is vague and lacks certainty as no claim at all. The law is trite, that a Court's order is never made in vain. I also conclude that the Writ of Summon or a Statement of Claim is bereft of proper claims where the claim is equally contaminated, bad, corrupted and cannot be sustained. Consequent upon these, I therefore hold that the Claimants' suit as constituted is incompetent therefore liable to bestruck out and is hereby struck out.

HON. JUSTICE A. O. OTALUKA
2/12/2021.