

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA (APPEAL) JUDICIAL DIVISION

HOLDEN AT GUDU

DELIVERED ON THE 2ND DAY OF DECEMBER 2021

BEFORE HIS LORDSHIPS:

HON. JUSTICE MODUPE R. OSHO-ADEBIYI----PRESIDING JUDGE

HON. JUSTICE J. ENOBIE OBANOR JUDGE

APPEAL NO. FCT/HC/CVA/489/2020

BEWTEEN:

CHRISTOPHER OPARA APPELLANT

AND

ETHA VENTURES LIMITED..... RESPONDENT

JUDGMENT

This notice of appeal was filed by the Appellant against the judgment of the trial District Court of the Federal Capital Territory Kado/Lifecamp delivered on the 4th day February 2020. The Appellant's appeal is premised on the whole judgment of the trial Court upon the following grounds:

1. That the lower Court erred in law when it went on with the proceeding without having the jurisdiction to determine the matter before it.
2. That the lower Court erred in law when it refused to join the necessary party after the application of the Appellant on the ground that the Appellant had cross examined the party sought to be joined, thereby denying the appellant herein fair hearing and ensure a full and final determination of the matter.

3. That the lower court denied the Appellant fair hearing and was not fair to the Appellant in this matter due to the petition written against the court to recuse himself from the matter by the appellant.
4. That the decision of the learned trial judge was against the weight of evidence before the Court.

As a result of the above, the Appellant is seeking for the following reliefs in this instant appeal:

- a) An order setting aside the decision of the lower court.
- b) An Order remitting the matter in another judge of the lower court for retrial.
- c) An Order joining the necessary party for the full and final determination of this matter.

The Appellant also filed an application for stay of execution before this Court and an appeal against the ruling of the lower Court dated the 7th day of March 2019, wherein the lower Court dismissed the Appellant's motion seeking to join Kenneth Opara to the suit in the lower Court. The issue raised in the appeal against the ruling is also raised before this appeal under consideration. Determining this instant appeal one way or the other, will put to rest the application for stay of execution and the appeal against the ruling of 7th March 2019.

The brief facts that gave rise to this appeal is that the Respondent at the trial court instituted an action against the Appellant and Kenneth Opara for the recovery of the shop the Appellant occupied as tenant belonging to the Respondent and for arrears of rent among other claims at the Chief District Court. Wuse Zone 2, Abuja-FCT. The name of Mr. Keneth Opara was struck out upon an application of the Respondent at the trial court.

The Respondent called two witnesses who were cross examined by the Appellant's Counsel and thereafter the Respondent closed its case. The Appellant thereafter opened his Defence and the case was adjourned for continuation of Defence. The trial judge was then transferred to the District Court, Life Camp, Kado where the case continued. The Appellant brought an application for joinder of Mr. Keneth Opara which the Court dismissed. Aggrieved by the Ruling of the trial court, the Appellant filed an interlocutory Appeal against the ruling. Upon filing the interlocutory appeal, the Appellant filed an application for stay of proceedings which was refused by the trial Court and adjourned for continuation for defence. The Appellant also filed an application challenging the jurisdiction of the lower Court which was also dismissed. The Court on application of the Respondent, foreclosed the appellant and delivered judgment in favour of the Respondent.

Parties filed and exchanged their brief of argument. The Appellant's Counsel from his brief of argument raised two issues for determination from the four grounds of appeal in the Notice of appeal thus;

1. Whether or not the trial court has territorial jurisdiction to continue the hearing of the suit?
2. Whether or not the appellant was denied fair hearing before the trial court?

Arguing issue one 'Whether or not the trial court has jurisdiction to entertain and continue the hearing of the suit?' Appellant's Counsel submitted that by Section 10 (1) of the Recovery of Premises Act, the District Court was in clear violation of this statutory provision as the trial judge at the lower court conferred statutory jurisdictional power upon

herself by moving the matter from Wuse Zone 2 which is the district court covering where the property is located to Life Camp Kado, another district outside the court's administrative jurisdiction despite protest from the Appellant.

Arguing the second issue which is, whether or not the Appellant was denied fair hearing before the trial court?

Counsel submitted that the trial Court proceeding to hear the case prior to the determination of the outcome of the petition written against the trial court on basis of bias and failure of the trial court to join the third party being a necessary party to the suit, is a clear violation of the appellant's right to fair hearing guaranteed under Section 36 (1) of the 1999 Constitution of the federal republic of Nigeria (as amended).

Submitted further that the submission of the appellant before the lower court that the said Kenneth Opara is the person indebted to the respondent was not considered by the trial court and the opinion of the lower court did not support the legal principle behind necessity of joinder.

Counsel submitted finally that the issue of failure to join Kenneth Opara as a necessary party also goes to the jurisdiction of the court and urged the Court to grant the reliefs sought by the Appellant and allow the appeal accordingly in the interest of justice, equity, and fairness.

Appellants Counsel relied on the following authorities:

1. Ireneanus VS FRN (2018) LPELR
2. Madukolu VS Nkemdilim (199B1236) 09AT 4
3. Iweka VS AG Fed. (1996) 4 NWLR (PT 362)
4. Salim VS Ifenkwe (1996) 5 NWLR (PT 450)
5. Ige VS Farinde (1994) 7 NWLR (PT 354)

The Respondent on their part filed their Brief of Argument in respect of the instant Appeal and in response to the Appellant's Brief of Argument dated 6th day of September, 2021. Respondent's Counsel formulated two issues for determination in this Appeal as follows:

- I. Whether the trial Judge was right to retain jurisdiction over a part heard matter before it upon being transferred from District Court, Wuse Zone 2 to District Court Life Camp, Kado.
- II. Whether the dismissal of the Appellant's application for joinder of Mr. Kenneth Opara as a Co-Defendant was a denial of fair hearing.

Arguing the first issue, Respondent's Counsel submit that the trial court rightfully retained jurisdiction over the instant case which it heard partly before being transferred to the District Court, Life Camp, Kado as Section 8 (1) of the District Court Act (LFN) Abuja 1990 confers Jurisdiction on District Court Judge throughout the Federal Capital Territory.

Counsel therefore urged this Court to so hold and dismiss the issue of territorial jurisdiction as canvassed by the Appellant's counsel and affirm that the trial judge had the territorial jurisdiction to hear the instant case and was right to retain same.

Arguing issue two which is "Whether the dismissal of the Appellant's application for joinder of Mr. Kenneth Opara as a Co-Defendant was a denial of fair hearing."

Counsel submitted that the dismissal of the Appellant's application for joinder of Mr. Kenneth Opara as a Co-Defendant by the trial court was not a denial of fair hearing. Submitted that the Appellant was at all material times throughout the proceedings at the trial court fairly heard.

Submitted that the Respondent at trial court who after instituting the action discovered it had no cause of action against Mr. Kenneth Opara and subsequently made an application to strike out his name and same was struck out without objection by the Appellant who was in court; and the same Mr. Kenneth Opara, was called as a subpoenaed witness by the Respondent and was cross-examined by the Appellant's counsel.

Submitted that the party sought to be joined is not a party to the tenancy agreement and is not in occupation of the property of the Respondent in issue, and the trial court was right in refusing to grant the application for joinder.

Submitted further that the Appellant had a right upon the dismissal of the application for joinder to put up a Defence and exonerate himself from whatever claim the Respondent had against him, but he rather chose to waive his right by abandoning his Defence halfway. Submitted that the Appellant was guilty of deliberately delaying the hearing of this case at the trial court as he was granted all the opportunities to be fairly heard and was indeed heard at all material times in course of trial.

Counsel finally urged this court to dismiss this Appeal on the grounds that; the trial Court was right to have retained jurisdiction in this case which was partly heard even though the judge moved to Life Camp, Kado. That the Appellant was fairly heard throughout the proceedings at the trial court and the refusal of the Appellant's Application for joinder does not amount to denial of fair hearing and in doing so, dismiss this Appeal and uphold the ruling and Judgment of the trial court delivered on the 7th day of March, 2019 and the 4th day of February, 2020 respectively by Chief District Judge Sharon Ishaya Tanko of Chief District Court. Life Camp. Kado, FCT Abuja.

Respondent's Counsel relied on the cases of Nigerian Institute of Transportation (NITT) Zaira VS. Alhaji Mahe Dange (2008) FWLR (PT 445) 1601; Newswatch Communication Vs. Alhaji Aliyu Ibrahim Atta (2006) ALL FWLR (PT 318) 582 and Ayorinde vs. Fayoyin (2001) FWLR (PT. 75) 483.

This Court has carefully considered the totality of the grounds of appeal raised by the Appellant, the issues raised in Appellants brief of argument and that raised by the Respondent. To determine this appeal, this Court would adopt the two issues raised by the Appellant in his brief of argument thus;

1. Whether or not the trial court has territorial jurisdiction to continue the hearing of the suit?
2. Whether or not the appellant was denied fair hearing before the trial court?

On issue one which is "whether or not the trial court has territorial jurisdiction to continue the hearing of the suit", the Appellant is challenging the ruling of the trial Court wherein the Court held it has jurisdiction to continue the hearing of the case after the trial District Court judge was transferred to Kado from Wuse. The law is well settled that the inherent jurisdiction of a Court is not exercisable when the Court lacks jurisdiction as jurisdiction is the lifeline of all trials. See PETROJESSICA ENTERPRISES LTD VS. LEVENTIS TECHNICAL. CO. LTD (1992) 5NWLR (PT.244) P.675 @693.

Before a court can assume jurisdiction, certain conditions must exist:- 1. That the court is properly constituted as regards to members; 2. Qualification of the members; 3. The subject matter is within the jurisdiction of the court. 4. That condition precedent to the initiation of the

suit has been met. See the cases of MADUKOLU VS NKEMDILI, (1962) ALL NLR 587, ARSAY LIMITED VS AIRLINE MANAGEMENT SUPPORT LTD, (2003) FWLR (pt. 156 at 943).

It is the contention of the Appellant that the trial Court was in error when it continued with the proceedings in Kado as the Court lacked jurisdiction to hear a matter which emanates from the administrative area of the District Court of FCT sitting at Wuse, which is where the subject matter in dispute is located, therefore, lower Court sitting in Kado lacked territorial jurisdiction to determine the matter.

The ruling of the lower Court holding that it had jurisdiction to entertain the matter is as follows;

“.....this matter was assigned to my Court sitting at Wuse on the 12/1/2018 by the assigning Magistrate and the matter upon being adjourned for Defence on the 12th of December 2018 the court was directed to relocate to Life Camp, it is clearly the prerogative of this Court to continue hearing its part heard matter either by going to Wuse at my convenience to preside over such matter or to carry along such matters to which every Court is situated as Section (1) (2) and Section 6 of the DCL does not in any way confer territorial or District Terminal (sic) jurisdiction upon the District Court within the FCT, the practice of hearing matters within the location of the territorial subject matter within a short proximity of any District Court is for administrative connivance(sic).....”

The Appellant's argument is premised on the provision of Section 10(1) of the Recovery of Premises Act, Cap 544 Laws of the Federation of Nigeria 1990 which provides as follows;

“On the expiration of the time stated in a notice of the landlord's intention to recover possession, if the tenant or any person holding or claiming by, through or under him, neglects or refuses to quit and deliver up possession accordingly, the landlord may apply, according to whether he is taking action in the High Court or a magistrate's court, for the issue of a writ or enter a plaint, as in Form F, at his option either against the tenant or against the person so neglecting or refusing, in the court of the division or district, as the case may be, in which the premises are situate for the recovery of the premises and thereupon a summons as in Form G shall issue to such tenant or person so neglecting.

From the above provision, can it be said that the district trial judge lacked jurisdiction to entertain the matter on the ground that the trial judge was moved from Wuse where the subject property is located to Kado/Lifecamp, a different location, where the court continued hearing and finally determined the case? The argument of the Appellant is clearly misconceived. The subject property is situate in Wuse within the Federal Capital Territory. All Courts in the Federal Capital has one judicial division and by this all magistrate or District Courts in the FCT is classified under the judicial division of the Federal Capital Territory. The Appellant's Counsel is of the mistaken belief that the location of the Court amount to the division of the Court. For administrative convenience Courts are set up in different location in the FCT and Judges/Magistrates/District Judges can be transferred to different location within the judicial division of the FCT,

which is the situation in this instant Appeal as the trial judge sitting in Wuse was transferred to Kado/Lifecamp, this does not in any way affect the jurisdiction of the courts as Kado/Lifecamp is within the FCT judicial division. More so, Section 8(1) of the District Court Act LFN 1999 gives District Court judges jurisdiction throughout the FCT, Abuja unless the appointment of the judge is specifically limited to the area of a District or group of District, which from the records, is not the case.

We therefore uphold the decision of the lower Court in dismissing the preliminary objection of the Appellant challenging the jurisdiction of the lower Court.

With respect to the second issue for determination which is whether the Appellant was denied fair hearing before the trial Court. The Appellant is contending that the refusal of the trial Court to join Kenneth Opara who is a necessary party and failure of the lower Court to put the proceedings on hold pending the outcome of the Petition written against the trial judge amounts to the Appellants denial to fair hearing.

As it relates to the issue of joinder, from the records, the party sought to be joined in the lower Court was initially a Defendant which on application of the Plaintiff, his name was struck out without objection from the Appellant. The Appellant thereafter sought to join the same party which had been struck out on the ground that he was a necessary party. The lower Court in delivering its ruling held;

“.....However, in this circumstance there is already evidence before me which evidence includes that of the 3rd party sought to be joined who was also equally cross examined by the Defendant seeking for him to be joined. Clearly upon the plaint before me, it is the view of this Court that the Plaintiff even

upon Exhibit 11 attached to the motion, the particulars of Claim does not disclose any course of action against the said party sought to be joined. It is the vase of the Plaintiff and if at the end of the day they are unable to establish a claim against the defendant or even establish that the Defendant is proper party to the suit. It is my view that upon the fact before me I am not convinced that the prayer (sic) sought to be joined is a necessary party and consequently the application of the applicant is dismissed.”

The question that begs to be answered is does the refusal of the trial Court to join the said Kenneth Opara amount to the denial of the Appellant’s right to fair hearing.

The law is trite that a person may be joined as a party to an action if he will be directly, legally or financially affected by an order made or likely to be made by the Court. Therefore, it will only be necessary to join a person as a party if his interest will be irreparably prejudiced if he is not joined in the action. The law is also settled that a person will be joined in an action if his presence will assist or enable the Court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter. See Awoniyi & Ors V, The Registered Trustees of the Rosicrucian Order, AMORC (Nig) (2000) 10NWLR (pt.676) P.522.

From the record of the lower Court, and the ruling of the trial Court already extracted above, it is our view that the trial Court rightly heard and determined the application for joinder using the principles as stated above to arrive at a just conclusion. The trial Court rightly examined the plaint to arrive at its ruling to determine whether the plaintiff has a case against the Kenneth Opara sought to be joined. The lower Court rightly came to the conclusion,

having heard both parties' vis a vis the stage of the proceedings before it and the evidence elicited that the Plaintiff had no cause of action against the party sought to be joined, more so as the party sought to be joined had earlier testified before the trial Court and cross examined by the Appellant. The ruling of the trial Court does not in any way amount to the denial of the Appellant's right to fair hearing. We therefore hold that the Appellant's argument on this issue is misconceived and uphold the ruling of the lower Court.

It is also Appellant's contention that he was denied fair hearing at the trial Court as the trial Court was not fair to the Appellant as a result of the petition, written against the Court to recuse himself from the matter.

We have looked through the entire proceedings of the trial Court and we must say unequivocally that the Appellant's right to fair hearing was not in any way denied at any point of the proceedings. The Appellant was indulged for several dates to continue with his defence but chose to sleep on his right using the tool of petition to stall the proceedings before the trial Court. Appellant was duly accorded all opportunity to present his defence but failed to do so and it is therefore our view that the Appellants right to fair hearing was not denied by the lower Court as the existence of a petition does not automatically amount to a stay of proceedings. From the records, there is nothing to show that there was a directive from the Chief Judge intimating the trial Court to stop sitting on the case. As rightly pointed out by the Appellant's Counsel, fair hearing is a three-way traffic and the trial Court putting the proceedings on hold on the fact that a petition has been written against it will be unfair to the other party to the case. The Petition was merely lodged to the Chief judge and if the trial Court is not directed to act on it, it is deemed non-existent before the trial Court. The Appellant from the records of the lower Court stated, "we

are waiting for the directive of the CJ” which clearly shows that no directive had been given to the trial judge. It therefore means that until a directive has been given to the trial Court, the matter would proceed. This Court therefore hold that the trial Court’s continuous hearing of the case despite the petition against it does not amount to breach of Appellant’s right to fair hearing as the trial Court fairly conducted the matter before it.

The Appellant is also contending that the decision of the trial Court was against the weight of evidence before the Court. From the records of proceedings before this court, the trial Court rightly evaluated the evidence of the witnesses and exhibits before it at page 112 to 115, particularly the evidence of Plaintiff through its 2nd witness and the Exhibits particularly Exhibit CO2 (the tenancy agreement which established the tenancy relationship between the Appellant and the Respondent. The Appellant was afforded ample opportunity to defend his case as derived from the records of the Court, instead of doing so, Appellant tried to use the judicial process to delay the outcome of the case, he cannot therefore be heard to complain that his right to fair hearing was breached. See the case of *AYOADE v. STATE* (2020) LPELR-49379(SC) where the Court held that a complaint of lack of fair hearing will only avail a party where he is able to show that he was denied the opportunity of presenting his case. This is not the situation in the case before the trial Court as the trial Court gave Appellant more than enough time to present his defence but failed to utilise same.

It is therefore our view that the trial Court properly evaluated the evidence and made proper findings upon the facts and documents placed before it to arrive at its conclusion. This appeal lacks merit and is accordingly dismissed.

Parties: Parties absent

Appearances: No representation for both parties.

SIGNED
HON. JUSTICE MODUPE R. OSHO ADEBIYI.
OBANOR
(PRESIDING JUDGE)
02/12/2021

SIGNED
HON. JUSTICE .J. ENOBIE
(JUDGE)
02/12/2021