

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 29th MARCH, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: CV/2122/2020

BETWEEN:

FEMASON LIMITED - - - - CLAIMANT

AND

MAJOR-GENERAL A.B. IBRAHIM - - - DEFENDANT

JUDGMENT

This application was commenced by a Writ of Summons dated the 7th day of July 2020 and filed on the 9th of July 2020. Wherein the claimant claims the following reliefs against the defendant:

- 1. A DECLARATION** that **ALH. DANKOGI MERCHANTS. NIG. LTD** did sell, transferred and relinquished its legal, equitable and proprietary interest including its possessory rights in Plot No. CRD/CP16 measuring about 3000^{m2} at Lugbe 1, Layout, Abuja with Right of Occupancy /TDP No. FCT/MZTP/LA/ 198/MISC/ 9115 dated 7th July, 1998 Cadastral Zone 0707 to Claimant only to the exclusion of any other person including the defendant herein.
- 2. A DECLARATION** that **ALH. DANKOGI MERCH. NIG. LTD** is not the Allottee of the land known as Plot No. CRD/CP16

measuring about 3000^{m2} at Lugbe 1, Layout, Abuja with Right of Occupancy/TDP No. FCT/MZTP/LA/198/MISC/9115 dated 7th July 1998 Cadastral Zone 0707 and consequently could not have transferred or transfer or convey any proprietary interest or right to Defendant in respect of same in any manner whatsoever.

3. **A DECLARATION** that Claimant is entitled to the continued possession, use and occupation of the said Plot No. CRD/CP16 measuring about 3000^{M2} at Lugbe 1 Layout, Lugbe, Abuja, FCT, delineated with Beacon Numbers PB 3510; PB 3509; PB 3271; PB 3272 and PB 3273, respectively without molestation, harassment, intimidation and disruption by Defendant, his servants, agents, privies or any person acting through him.
4. **A DECLARATION** that the forceful entry, take over and occupation of the fenced Plot No. CRD/CP16 measuring about 3000^{m2} at Lugbe 1, Layout, Lugbe, Abuja, FCT and carrying on digging and excavation of the land by Defendant using uniformed Military Officers constitute trespass to Claimant's possessor rights over the land and acts of intimidation and oppression.
5. **AN ORDER OF MANDATORY INJUNCTION** directing Defendant, his servants, agents, privies or any person claiming through him to forthwith discontinue the acts of trespass on Claimant's said Plot No. CRD/CP16 measuring about 3000^{m2} at Lugbe 1, Layout, Lugbe, Abuja, delineated with Beacon Numbers PB 3510; PB3509; PB3271; PB3273, respectively.

6. **AN ORDER OF PERPETUAL OR PERMANENT INJUNCTION** restraining Defendant, his Agents, Privies, Associates, Servants, Workers of any person acting through him from further interfering with Claimant's proprietary and possessory rights over Plot No. CRD/CP16 measuring about 3000^m² at Lugbe 1, Layout, Lugbe, Abuja or entry or re-entry thereto and from continuing any further acts of intimidating, harassing, oppressing or invading the homes or residence of Claimant's officials, workers, Agents with Soldiers or Military Personnel.
7. **AN ORDER** directing defendant to pay the sum of N500 million to Claimant as general damages for trespass, forceful invasion of Claimant's peaceful and quiet enjoyment of the land as well as for forceful disruption of claimant's development plans and activities on the land.
8. **AN ORDER** directing defendant to pay the sum of N500 million to Claimant as aggravated and exemplary damages for the violent, illegal and wanton infringement and attack on Claimants peaceful use, occupation and quiet enjoyment of their possessory rights over the said Plot of land and for oppressive and arbitrary deployment of soldiers to forcefully displace and take over claimant's occupation and possession of the said plot of land.
9. The sum of N5 million as cost of action.

Accompanying the Writ of Summons is the Statement of Claim, pre-action counseling certificate, witness statements on oath of

Chief Uzu Analaba, Alhaji Musa A. Audu, Engineer Toyin Ajiboye. and the list of documents to be relied upon was annexed.

Equally filed by the claimant/applicant is a Motion on Notice brought pursuant to order 42 Rule 1 43 Rule 1 Section 6(6)(c) of the constitution of the Federal Republic of Nigeria and under the inherent jurisdiction of this honourable court. The Claimant/Applicant is praying for the following reliefs:

1. **AN ORDER OF INTERLOCUTORY INJUNCTION** restraining defendant, his Agents, Privies, Associates, Servants, Workers or any person acting through him from further entry into and/or engaging in any form of construction, erecting or any structure or carrying out any excavation or digging activities on Claimant's land known as Plot No. CRD/CP16 measuring about 3000^m² at Lugbe 1, Layout, Lugbe, Abuja, pending the hearing and determination of the substantive suit.

2. **AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the defendants, his Agents, Privies, Associates, Servants, Workers or any person acting through him from further interfering with the Claimant's proprietary and possessory rights over the said plot (subject matter of this suit) and any structure belonging to Claimant/Applicant on the land pending the hearing and determination of the substantive suit.

3. **AN ORDER** maintaining the status quo ante bellum prior to 1st day of February, 2020, pending the hearing and determination of this suit.

The grounds upon which this application is brought are as follows:

- 1. That it is in the interest of justice for the Honorable court to intervene via an interlocutory injunctive relief.*
- 2. To protect and preserve the Res, investment made and structures already developed by Claimant/Applicant on the land.*
- 3. To further promote and entrench the rule of law as opposed to the rule of force or the resort to violence in the use and administration of land by members of the public.*
- 4. That the balance of convenience tilts more in favour of Claimant/Applicant herein than the Defendant/Respondent.*

Attached to the Motion on Notice is a 31 paragraphs affidavit and annexures marked as Exhibit 1-8:

- 1. Exhibit 1 is a letter of Allocation/Conveyance of provisional Approval dated 7th July 1988.*
- 2. Exhibit 2 is a purchase receipt dated 10/2/99*
- 3. Exhibit 3 is a Board resolution dated 9/2/99*
- 4. Exhibit 4 is Handover Certificated dated 10/2/99*
- 5. Exhibit is a copy of FCT administration Acknowledgment of title document dated 12/01/06.*
- 6. Exhibit 6 is a copy of the letters/report dated 11/05/15*
- 7. Exhibit 7 is a picture of Notices and Inscription posted on the gate of the res.*
- 8. Exhibit 8 is a copy of the police investigation report dated 15/5/2020.*

The gravamen of the case as can be gleaned from the statement of claim attached to the Writ of summons and the affidavit of claimant/applicant is as follows:

The claimant avers that he acquired ownership and became seized of the entire expanse of land known as Plot No. CRD/CP/16 of about 3000^m² at Lugbe Layout in February 1999 he (claimant/applicant) purchased same directly from Alh. Dan Kogi Merchants Nigeria Ltd with RC No. 391557 the original and sole Allotee of the land. That the land is delineated with beacon numbers PB 3510, PB 3509, PB 3271, PB3272 and PB 3273 respectively and also identified with Right of Occupancy /TDP with No. FCT/MZTP/LA/198/MISC/9115 as prepared by the Cadastral section of survey and mapping of AMAC zonal planning office FCDA Abuja dated 7th July 1998. That the claimant visited the land together with one Alhaji Musa A the chairman/CEO of Alh. Dankogi Merchants Nig. Ltd to identify the exact location, size, dimensions and abuttal's of the land. That he paid the sum of N850,000.00 (Eight Hundred and Fifty Thousand Naira) on behalf of the Claimant/Applicant to Alh. Dankogi Merchants Nig. Ltd to acquire the said land and the company duly issued a purchase receipt dated 10/2/99. That the company delivered vacant and physical possession of the land to the claimant/applicant including original letter of Allocation Conveyance dated 15/6/95. That upon the handover of the plot of land to claimant/applicant, the applicant erected perimeter fence and installed metal gate thereon to fully secure the land. That the claimant/applicant remained in peaceable possession and occupation of the land until the 2/7/2014 when the Defendant/Respondent through his agents Mr. Abdulkareem Adagiri and Mr. Victor Garba visited the land and met one Mr.

Ambrose Antoro a representative of Trendy Homes Limited who was carrying out feasibility work on the land on behalf of the claimant. That the said Abdulkareem Adagiri ordered Mr. Ambrose Antoro and other workers on site to vacate the land. That Mr. Abdulkareem Adagiri placed a call to him, saying Plot No. CRD/CP16 Lugbe 1 Layout belongs to Col A.B. Ibrahim, that the entire Plot is a Military zone and the claimant should vacate the land. That he laid a complaint with the Nigerian Police Force Lugbe Division. That the defendant through his agents Mr. Abdulkareem Adagiri and Victor Garba voluntarily submitted a copy of his letter of Allocation/Conveyance to the Police at Lugbe Division with a named Allottee known as "" ALH. DANKOGI MERCH. NIG. LTD while the claimant/applicant submitted copies of letter of Allocation/conveyance dated 15/6/95 with the name of the Allottee known as ALH. DANKOGI MERCHANTS NIG. LTD.

That the Nigerian Police, Lugbe Division in the course of carrying out investigation into the title documents presented by the claimant/applicant and defendant/respondent caused a letter to be written to the Abuja Municipal Area Council for investigation and report. That Abuja Municipal Area Council vide a letter replied the Nigerian Police Force Lugbe stating that the correct title document is the one marked "A" which bears ALH DANKOGI MERCHANTS NIG. LTD.

That the Nigeria Police Lugbe Division upon Conveying and confirming the report and outcome of police investigation to all parties in May 2015 directed the defendants and his agents to stop parading himself as the owner of the land. That consequently the claimant/applicant resumed and remained in further peaceful occupation, use and possession of the land

without any further disturbance and disruption from the defendant and his agents until sometimes in February 2020 when the defendant/respondent himself in company of about six uniformed and armed soldiers with military escort came to the land to chase the claimant's workers and agents from the site. That prior to February 2020 when the defendant chased the claimant's workers away from the land, the applicant has already concluded the construction of stores, shops and offices for its workers. That the claimant went back to the Lugbe Police station with the Engineer on site Mr. Toyin Ajiboye to report the invasion of the land that the defendant who was invited by the police was fully briefed of the police investigation on the land in May 2015 to the effect that Allotee of the land was ALH. DANKOGI MERCHANTS NIG. LTD and not ALH DANKOGI MERCH NIG. LTD from whom the defendant allegedly acquired their allocation, that the investigations conducted by the Divisional Police Headquarters Lugbe Division uncovered the fact that the letter of Allocation/Conveyance as well as allocation said to be made to ALH. DANKOGI MERCH NIG. LTD by Abuja Municipal Area Council by the defendant and his agents were non-existence. That the defendant on the 6/6/2020 commenced digging and excavations on the land thereby distorting its topography and configuration contrary to the use and development plans of claimant/applicant.

Upon being served with the originating process and the accompanying documents the defendant/respondent filed a preliminary objection dated the 25th November 2020 and filed on the same date. Praying this Honorable court to strike out the suit or the following grounds.

1. *This Honourable court lacks jurisdiction to entertain the instant suit as presently constituted.*
2. *The Plaintiff lacks the locus standi to institute this action.*
3. *There is no Defendant in the suit.*
4. *The suit is frivolous, vexatious and an abuse of court process.*

Attached to the notice of preliminary objection is a 6 paragraphs affidavit deposed to by one Miracle Udeaja, a litigation secretary in the law firm of Messrs M.S Ibrahim & co, counsel to the defendant herein

In the affidavit annexed, the defendant avers that the claimant does not have the legal right to institute this case against the defendant. That the claimant's claim borders on the declaration of title to land the claimant does not have any documents to the effect that it has title in the said property which is the subject matter of this suit that the bunch of document exhibited by the claimant there is no document evidencing the transfer of the title in the property under content that the claimant cannot maintain an action against a non-existing party. That there is no defendant in the instant suit as the name Major General A.B Ibrahim. That this Honorable Court lacks jurisdiction to entertain this case

Attached to the preliminary Objection is a written address of defendant counsel wherein learned counsel formulated the following issue for determination:

1. *Where the claimant has the locus standi to institute the instant suit against the defendant?*

2. Where the claimant can maintain an action against a non-existing party.

On issue one above, learned counsel contended that the claimant does not have the capacity to institute the instant case against the defendant learned counsel to the defendant cited the case of **WUSHISHI VS IMAM (2017)18 NWLR (PT.1597)page 175 at pages 205-206 paras G-A** to the effect that locus standi is the legal right of a party to an action to be heard in litigation before the Court of law and it entails that capacity to institute or commence or initiate an action in a competent court of law or tribunal, without let, hindrance, obstruction or inhibition from any person or body whatsoever

Counsel argued that it is trite that where a party does not have the locus standi to institute a case, the court equally leaves the jurisdiction to entertain the case. He relied on **ALHAJA REFATU AYORINDE & ORS VS ALHAJA ATRATION & ANOR (2000) LPELR pages 26-27-para G-C**

Counsel submitted that jurisdiction is the live wire of a case which should be determined at the earliest opportunity he cited **N.U.R.T.W V R.T.T.A.N (2012)10 NWLR P 170 (SC)** to effect that a defect in competence is not only intrinsic but extrinsic to the entire process of adjudication. He also cited the case of **UMANAHAH VS ATTAH & ORS (2006) LPELR -3356 (SC) pages 35-36, para B-C** on the basic requirements that must fulfilled before a court can assume jurisdiction over a matter. Counsel contended that amongst the bunch of documents attached to the claimant's on originating process, there is no

document or instrument transferring title of the property to the claimant. He cited **JINADU AJAO & ORS VS BELLO ADIGUN (1993) LPELR – 284 page 7, para A-D** to the effect that there must be a party within the meaning of the law called or regarded “grantor” who confers, transfer limits, charges or extinguishes in favor of another also called and known within the same law as “grantee” counsel contended that there is no power of Attorney nor a deed of Assignment transferring title in a property to another. He urged that the claimant having failed to establish its title in the property does not have the legal capacity to institute this suit in the first place and the effect is that this Honorable Court lacks the jurisdiction to entertain the suit.

On issue two, learned counsel to the defendant submitted that the claimant cannot mention on action against a non-existing party as the claimant described the defendant as Major General A.B Ibrahim. He relied on **THE REGISTERED TRUSTEES OF THE AIRLINE MANAGEMENT AGENCY (2014)LPELR-22372(SC)PP 18-19, PARA E-B** to the effect that a non-existing person, natural or artificial cannot institute an action in court.

Counsel argued that the defendant is know and addressed as cornel Abdulsalam Ibrahim Bagudu and not Major General A.B. Ibrahim as reflected on the originating process. He relied on **WHITE DIAMONDS PROPERTY DEVELOPMENT COMPANY LIMITED V TRADE WHEELS LIMITED (2008)LPELR – 44572(CA)** to the effect that for an action to be competent there must be a competent plaintiff and defendant with locus standi to prosecute and defend an action or suit.

On the whole, counsel contended that there cannot be a competent suit without competent parties and as such this suit qualifies as an abuse of court process.

In response to the defendant's preliminary objection, the claimant filed a 7 paragraphs counter – affidavit dated and filed on the 2nd December, 2020. The counter-affidavit was deposed to by one Kenneth Ogbiti counsel in the Law firm of Ayo Ogundele & Co, Counsel to the Claimant in this suit.

The Claimant avers that he purchase the land, the subject matter of this suit from the original allottee and was issued a "purchase receipt" amongst other documents, that the claimant has been in physical possession of the land until the defendant/applicant came to interfere with the possession that the statement of claim to which the defendant has refused to file a defence contains all the facts of the purchase of the land, possession of same by the claimant respondent the attempt to forcefully take over the land by defendant, the report and the visits to the police station Lugbe by parties. That the defendant at the Nigerian Army Headquarters introduced himself as Major General A.B. Ibrahim when he met the claimant, that the applicant of the defendant is denurer in nature and forbidden by this honourable court.

Attached to the claimant's counter-affidavit is a written address of counsel dated and filed on the 2nd December, 2020 wherein the claimant formulated a sole issue for determination of wit:

"Whether considering the processes filed in the claimant in this suit and the true position of the law, the preliminary objection should succeed."

Learned counsel in canvassing argument on the lone issue submitted that by virtue of order 23 Rule 1 of the Rules of this honourable court "No demurer shall be allowed."

Counsel submitted that the preliminary objection is in the nature of demurer considering the fact that the objection is not one raising issues about the constitutional competence of the Honourable court but an alleged designation of the defendant. Counsel argued that from the processes filed by the claimant before this Honourable court, the claimant's chief executive officer and witnesses on record have not physically with defendant both in defendant 's office at the Nigerian Army Headquarters and police station Iugbe.

Counsel argued that the preliminary objection touches on the substance of the case at hand, the ownership of the subject matter, the issue of ownership or title and designation of identity of the defendant can only be proceed and determine through evidence which is adduced at trial.

He relied on **DADA V DOSUNMU (2006)5 WRNI** to the effect that the age of technical justice is gone, the current vogue is substantial justice.

In response to the counter affidavit filed by the claimant on the 2nd December 2020. The Defendant filed a 8 paragraphs Further and Better Affidavit, dated and filed on the 9th December, 2020, the further and better affidavit was deposed to by one Miracle Udeaja a Litigation Secretary in the law firm of M.S. Ibrahim & Co Counsel to the defendant in this suit wherein the defendant avers that the claimant has never been in possession of the said land which is the subject matter of this suit and so the defendant

called not have attempted to forcefully take over the land from the claimant that the defendant as never introduced himself to the claimant as Major-General A.B. Ibrahim. That the preliminary Objection borders on jurisdiction and as such can be raised at any stage of the proceedings. That an objection to the jurisdiction of a court to entertain a case does not amount to denurer.

In the defendant's reply on points of law to the claimant's written address. Learned counsel to the defendant submitted that the claimant misconceived the provisions of order 23 Rule 1 of the Rules of this Honourable court when placed side by side with the defendant's notice of preliminary objection.

Learned counsel to the defendant contended that a preliminary objection challenging the jurisdiction of the court does not amount to demurrer. He relied on **NDIC Vs CBN(2002)7 NWLR PT 766 page 272 at 294-295 para G-C** to the effect that the issue of jurisdiction can be raised at any stage of proceedings even an appeal.

Counsel cited the case of **AARTI STEEL NIG. LTD V STAPO & ORS (2018)LPELR – 4575** to the effect that "there is a difference between an objection to jurisdiction and a demurrer. In a denurrer proceedings, there should be a statement of claim in place "there is a difference between an objection to jurisdiction and a demurrer. In a denurrer proceedings, there should be a statement of claim in place, the fact of which the applicant would be required to admit before bringing in his objection. An objection to the jurisdiction of the court can be raised at any time, even when there is no pleading filed and a party raising

such an objection need not bring application under any rule of court.

Counsel argued that the defendant's preliminary objection is to the effect that this honourable court lacks the wires to entertain this suit, and such objection has to be to entertain this suit, and as such objection has to be raised at the earliest opportunity in order not to belabor the court. He relied on **PETRO JESSICA ENTERPRISES LTD V LEVENTIS TECHNICAL CO. LTD (1992) LPER-2915(SC)** amongst other to the effect that jurisdiction of any stage of the trial.

Learned counsel argued that here there is no competent parties in a case, the court lacks the jurisdiction to entertain such a case as the whole case is considered incompetent. He relied on **AKINDELE V ABIODUN (2019)11 NWLR PT 1152 PAGE 356 AT 381, PARAS B-E** to the effect that "the competence of parties whether plaintiff or defendant is very vital and important as it goes to the foundation of a suit and consequently touches on the jurisdiction of either the trial or appellate courts..."

On the whole, counsel to the defendant argued that the defendant is not known and address as Major-General A.B. Ibrahim, hence the name in which the defendant is being sued is not his real name.

I have carefully perused the claimant Writ of Summons and the accompanying processes. I have in the same view pursued the Notice of Preliminary Objection the annexed affidavit and Written Address to which the claimant responded to by filing a counter-Affidavit, and the defendant filed a further and better affidavit.

It is my considered view that for justice to be carefully served in the instant suit. The first question that arise is:

"Whether this honourable court has the requisites jurisdiction to hear and determine the instant suit? "

The issues raised by both counsel is pertinent and will be considered accordingly, the defendant counsel in his preliminary objection raised the issue of locus-standi and lack of jurisdiction of this Honourable court to entertain this suit. It is my considered opinion that this is to be dealt with the issue of locus standi.

It is trite law that the issue of jurisdiction can be raised at any stage even at the Supreme Court, it is fundamental and piutal see **SLB CONSORTIUN LTD VS NIGERIA NATIONAL PETROLEUM COMPORATIONAL(2011)9 NWLR (PT 1252)317 AT PAGE 335.**

In determining whether a court has jurisdiction or not in an action, the claimant originating process i.e. Writ of Summon or statement of claim has to be considered. In the instant suit, the Writ of Summons. See **OKORO CHA V UNITED BANK FOR AFRICA PLC (2011) 1 NWLR PT. 1228** for a claimant to have locus-standi in bringing an action he must show that he has sufficient interest in the whether see **ADESKAN V ADEGORUM (1991)3 NWLR (PT.179) AT 307 PARA B.** In decided the issue of locus standi, the judge must confirm himself to the writ of summons.

A careful perusal of the Writ of summons in the instant suit clearly shows that the claimant has sufficient interest to protect.

Hence the preliminary objection of the defendants/applicants fails. I so hold.

On the Motion on notice praying for an order of interlocutory injunction.