

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/2425/2020

DATE: 28/6/2022

BETWEEN:

PLATINUM INNOVATIVE LIMITED.....PLAINTIFF

AND

1. FLEXY HOMES LIMITED }
2. CVS LIMITED }DEFENDANTS

APPEARANCES:

Ugo Nwafor Esq for the Plaintiff.

J.A.N. Okoli Esq for the 1st Defendant.

M. A. Ode Esq Holding the brief of Y. G. Haruna Esq for the 2nd Defendant.

JUDGMENT

By an Originating Summons dated 20th day of July, 2020 and filed on 18th day of August 2020 brought pursuant to Order 48 of the FCT High Court Civil Procedure Rules.

The Plaintiff claims as follows:

- “(1). A declaration that the Plaintiff is a lawful tenant in Suite B3.1, Heroes Plaza (now CVS Plaza) Plot 145, Adetokunbo Ademola Crescent Wuse 2, Abuja FCT measuring approximately 67,1 square metres, by virtue and considering the various payments, both rent and service charges, Tenancy Agreement of the Plaintiff and other relevant surrounding circumstances over its possession in the said property.***
- (2). A declaration that by virtue and considering the provisions of the FCT High Court Civil Procedure Rules, particularly Order 28 Rule 1, and also considering the adverse claims over the ownership of the property in which the Plaintiff is a lawful tenant, by the 1st and 2nd Defendants, and also considering the letter of demand by the Counsel to the 1st Defendant dated 11th June 2020, and also the letter of demand dated 25th February, 2020 by the Counsel to the 2nd Defendant, both claiming same rent from the Plaintiff, the Plaintiff will be prejudiced to pay rent to any of the adverse claiming Defendants until the issue of property ownership is resolved between the Defendants.***
- (3). A declaration that by virtue and considering the pending Court action in the FCT High Court between the Defendants in dispute regarding the title and ownership over the property the Plaintiff occupies as a tenant, and both Defendants demanding rent from the Plaintiff at various times over the current term in the property, being 2020/2021, the Plaintiff will be prejudiced to pay rent to any of the Defendants or their agents until the issue of ownership or title is resolved amongst the said Defendants.***
- (4). An Order of this Honourable Court directing the Plaintiff to pay and to continue paying the designated rents for the space it occupies into a designated account to hold it in trust by itself for the lawful owner of the property upon resolution of the dispute on title between the Defendants.***

- (5). An Order of perpetual Injunction restraining the Defendants or anyone on their behalf from taking further steps of either variously or jointly evicting the Plaintiff whereas the issue of title to the said property is a dispute between the said Defendants.**
- (6). An Order of this Honourable Court restraining the Defendants from continuing to disturb the peaceful occupation of the Plaintiff in the property being Suite B3.1, Heroes Plaza (now CVS Plaza) Plot 145, Adetokunbo Ademola Crescent Wuse 2, Abuja FCT measuring approximately 67.1 square metres.**

OR IN THE ALTERNATIVE TO PARAGRAPH 4

- (7). An order of this Honourable Court directing the Plaintiff to be paying the designated rent into this Honourable Court or an account provided by an Order of this Court pending the title resolution between the 1st and 2nd Defendants on who should receive rents from the Plaintiff.**

And for the determination of the following questions:

- “(1). Whether by virtue of and considering the provisions of Order 28 Rule 1, and the Letters of demand variously written to the Plaintiff by the 1st Defendant and 2nd Defendant, dated 11th of June, 2020 and 25th February, 2020 respectively, any rent the Plaintiff pays to any of the Defendants while the issue of title over the property the Plaintiff occupies is unresolved, shall prejudice the interest of the Plaintiff, and as such amount to double jeopardy?**
- (2). Whether by virtue, and considering the provisions of Order 28 Rule 1 of the FCT High Court Civil Procedure Rules, and also considering the adverse claims by the two Defendants as well as the matter pending in FCT High Court Abuja between the said Defendants over the title/ ownership of the property which the Plaintiff occupies as a tenant, any attempt to force payment of rent to the 1st and 2nd**

Defendants variously, is not justifiable, unfair and inimical to the rights of the Plaintiff, as well as to the intent and purposes of a landlord and tenant relationship, and thus void?

- (3). Whether by virtue of the intents and purposes of the tenancy agreement dated 1st day of May 2020 upon which the Plaintiff occupied the aforesaid property, which includes to have peaceable enjoyment of the rented space in the property, and to pay rent when due, and now considering the double demands for the same rent by the 1st and 2nd Defendants, who have clashing interests in the same property, the actions of the Defendants are within or not within the contemplation of the extant laws on Tenancy as applicable in FCT, and thus unlawful?***

Filed in support of the Originating Summons is a 35 paragraphed affidavit deposed to by one Sonia Nwaodo, the manager of the Plaintiff. Attached to the supporting affidavit are annexures marked as Exhibits A to J respectively. Equally filed is an 8 paragraphed affidavit of urgency deposed to by the same Sonia Nwaodo.

In compliance with the Rules of Court, a Written Address dated 20th day of July 2020 was filed in support of the Originating Summons.

Addressing the Court on 29th March 2022 learned Counsel to the Plaintiff, Ugo Nwafor Esq adopted their processes and contended that there is an adverse claim to the subject matter, that they have not colluded with any of the parties and they are ready to pay the money into Court or as the Court may direct. Consequently, Counsel urged the Court to enter judgment in their favour.

In the said Written Address in support of the Originating Summons, learned Counsel to the Plaintiff formulated two issues for determination to wit:-

- “(a). Whether considering the circumstances of this case, the Plaintiff will not be prejudiced to pay rent to any of the Defendants while title dispute subsists amongst the Defendants.***

(b). *Whether the Plaintiff is entitled to the reliefs sought going by the affidavits before this Honourable Court.*”

In arguing the issues, Counsel submitted on issue one that a cause of action is the entire set of circumstances giving rise to an enforceable claim. In this respect, ***SAVAGE V UWAECHINA (1992) 3 SC 214 at 221; IBRAHIM V OSIM (1987) 4 NWLR (Pt. 67) 965 at 970.***

Counsel stated that Plaintiff has shown by the affidavit that it has a cause of action against the Defendants on whom to pay the rent to.

To this extent, Counsel submitted that it is trite that an action where the Defendants are making adverse claims to a singular property, the Court would make the requisite Orders in the best interest of justice in line with the Rules.

It is the contention of the learned Counsel to the Plaintiff that the conditions as set out by the Rules of this Court have been met by the Plaintiff who is ready and willing to make rent payment as would be directed by this Honourable Court. That the Plaintiff has equally shown by its affidavit that it has no interest in the title of the property whatsoever.

To this end, Counsel submitted on issue that the Plaintiff has established an enforceable claim against the Defendants and urged the Court to so hold.

On issue two which is whether the Plaintiff is entitled to the reliefs sought going by the evidence before the Court, Counsel submitted that the Plaintiff is entitled to the reliefs sought going by the evidence before the Court. Counsel referred the Court to the supporting affidavit and the exhibit attached therewith.

Finally, Counsel urged the Court to grant the reliefs sought by the Plaintiff in the interest of justice.

The 1st Defendant on its part, filed a Counter Affidavit of 25 paragraphs deposed to by one Michael Odeyinde the 1st Defendant’s lawful attorney over Suite B3.1 Heroes Plaza (now CVS Plaza). Attached to the Counter Affidavit are annexures marked as Exhibit CA1, CA2, CA3, CA4A, CA4B, CA5, CA6, CA7 and CA8 respectively.

Filed in support of the Counter Affidavit is a Written Address dated the 17th day of June 2021.

Addressing the Court on 29th March 2022, learned Counsel to the 1st Defendant J.A. N. Okoli Esq, adopted their processes in opposition to the Originating Summons and told the Court that they abandoned Exhibits CA4A, CA4B, CA7 and CA8 and urged the Court to dismiss the suit and grant the consequential orders sought.

In the said Written Address, learned Counsel to the 1st Defendant formulated two issues for determination to wit:-

- “(1). Whether the Plaintiff has the locus standi to initiate the instant suit against the 1st Defendant.**
- (2). Assuming without conceding that the Plaintiff possesses the locus standi to initiate the instant suit against the 1st Defendant whether the Plaintiff has disclosed any cause of action against the 1st Defendant.”**

In arguing the issues, Counsel submitted on issue one that a suit commenced by way of Originating Summons, the Affidavit in support of the Originating Summons and any Counter Affidavit thereto, constitute the pleadings of parties and parties and the Court are bound by the pleadings. In this respect, Counsel cited the cases of **MAINSTREET BANK CAPITAL LIMITED & ANOR V NIGERIA REINSURANCE CORPORATION PLC (2018) 14 NWLR (Pt.1640) P. 423 at 445, Para E; OHOCHUKWU V A-G RIVERS STATE & 2 ORS (2012) Vol. 42 (Pt.2), NSCQR, 864 at 895, Para B, SC.**

In his further submission on issue one, Counsel stated that the Plaintiff lacks the locus standi to initiate the instant suit against the 1st Defendant and that in determining the locus standi, the Court is enjoined to only look at the Statement of Claim before the Court. In this respect, Counsel cited the cases of **WUSHISHI V IMAM (2017) 18 NWLR (Pt.1597) 175 at 205 to 206 paras G – A; ODIMEGWA V IBEZIM (2019) 9 NWLR (Pt.1677) 244 at 260, Para D.**

The learned Counsel referred the Court to the Plaintiff's supporting affidavit and submitted that admitted facts require no further proof and Plaintiff is bound by its pleadings. Reliance was placed on the cases of ***MBA V MBA (2018) 15 NWLR (Pt.1641) 177 at 189-190 Para G – A; OHOCHUKWU V A-G RIVERS STATE & 2 ORS (supra); YARE V NATIONAL SALARIES WAGES AND INCOME COMMISSION (2013) VOL.54 (Pt.1) NSCQR 235 at 250, Para A, Section 123 Evidence Act 2011.***

To this extent, Counsel contended that having admitted before this Court that the 1st Defendant is the landlord of Suite B3.1 Heroes Plaza (now CVS Plaza) Plot 145, Adetokunbo Ademola Crescent, Wuse 2 Abuja wherein the Plaintiff occupied then as a tenant (and now as a tenant at sufferance). The Plaintiff is therefore perpetually estopped and legally inhibited from denying the landlordship or title of the 1st Defendant over the same property. Reliance was placed on the cases of ***INTERCONTINENTAL BANK PLC V BRIFIMA LIMITED (2012) VOL. 50 (Pt.1) NSCQR 307 at 330 Para B; OLIYIDE & SON LIMITED V OBAFEMI AWOLowo UNIVERSITY ILE-IFE (2018) VOL.173 (Pt.2), NSCQR 740 at 764, Paras E – H; A-G RIVERS STATE V A-G AKWA IBOM STATE (2011) 8 NWLR (Pt.1248) 31 at 82, Para B – E, Section 170 of Evidence Act 2011; PAN ASIAN AFRICAN CO. LTD V NICON (1982) ALL NLR Page 229.***

Consequently, Counsel submitted that the Plaintiff is irrebuttably presumed to already know who its landlord is and who to pay its rent to.

Again Counsel referred the Court to paragraphs 13, 14, 19, 20 and 26 of the Plaintiff's supporting affidavit and Relief No. 3 and submitted that the Plaintiff failed to produce evidence of any existing law suit/dispute between the two Defendants wherein the title of the 1st Defendant over its property is being contested by the 2nd Defendant. Reliance was made to the case of ***SANI ABACHA FOUNDATION FOR PEACE & UNITY & 5 ORS V UNITED BANK FOR AFRICA PLC (2010) VOL. 14 (Pt.1) NSCQR, Page 360.***

Therefore, Counsel urged the Court to resolve issue one in the affirmative and hold that the Plaintiff does not possess the locus standi to initiate the instant suit as presently constituted against the 1st Defendant.

On issue two, Counsel contended that assuming without conceding that the Plaintiff's possesses the locus standi to initiate the instant suit against the 1st Defendant, the Plaintiff has not disclosed any cause of action and/or reasonable cause of action against the 1st Defendant to warrant the Plaintiff's claims before the Court. In support, Counsel referred the Court to the cases of ***UWAZURUONYE V GOV. IMO STATE (2013) 8 NWLR (Pt.1355) 28 at 50-51, Paras G – A; OJUKWU V YARADUA (2009) 12 NWLR (Pt.1154) 50 at 131-132, Para H.***

As such, Counsel submitted that in determining whether or not a suit discloses cause of action, the Court limits itself to this content of the Statement of Claim only. Reference was placed on the case of ***OMNIA NIG LTD V DYKTRADE LTD (2007) VOL.31 NSCQR 673 at 697.***

To this extent, Counsel submitted that the affidavit in support of the Plaintiff's Originating Summons (which is the Statement of Claim before the Court) did not disclose any wrongful act done to the Plaintiff by the 1st Defendant to warrant the grant of the Plaintiff's relief particularly relief nos 1, 5 and 6 before the Court.

Finally, Counsel urged the Court to resolve issue two for determination in the negative and hold that the Plaintiff has not disclosed any cause of action in this suit against the 1st Defendant.

On the whole, Counsel urged the Court to dismiss this suit for being frivolous or at best strike it out for the reasons that the Plaintiff lacks the locus standi to initiate same as well as not having disclosed any cause of action against the 1st Defendant and the jurisdiction of the Honourable Court has been robbed.

On the other hand, the 2nd Defendant filed a 20 paragraphed Counter Affidavit in opposition to the Originating Summons. The said Counter Affidavit was deposed to by one Hon. Fawag Mustapha, the MD/CEO of the 2nd Defendant. Attached to the Counter Affidavit are annexures marked as Exhibit A1, A2, A3, A4, B1, B2, B3, B4 and C1 respectively.

Equally filed in support of the Counter Affidavit is a Written Address dated the 7th July, 2021.

Addressing the Court on 29th March 2022, learned Counsel to the 2nd Defendant Y. G. Haruna Esq adopted their processes filed in response to the Originating Summons and urged the Court to hold in their favour.

In the said Written Address in support of the Counter Affidavit, Counsel formulated a lone issue for determination to wit:-

“Whether or not the 2nd Defendant in the circumstance has a good root of title to the property which is the subject matter of the dispute to warrant payment of rent to it.”

In arguing the issue, Counsel submitted that the 2nd Defendant has a good root of title to the property and it is trite law that there are five (5) ways in which a party can prove or establish title to ownership of property. In support of this, Counsel cited the cases of ***AJIBULU V AJAYI (2004) NWLR (Pt.885) 458 at 473 – 474; EWO V ANI (2012) 17 NSCQR 36; ADANYI V ANWASE (2006) 12 NWLR (Pt.503) 31 at 183 CA.***

The learned Counsel further referred the Court to paragraphs 7, 8 and 9 of its Counter Affidavit and Exhibits A1, A2 and A3 and submitted that the 2nd Defendant has demonstrated that it possesses a good root of title to the property in question.

To that extent, Counsel submitted that it is settled that a Plaintiff who lacks declaration of title to land must prove his root of title to the property. Reliance was placed on the case of ***DIKE V OKOLOEDO (1999) 10 NWLR (Pt. 623) 359 SC.***

In another submission, Counsel stated that a party who relies on a document in proof of his title to the property must tender the document in evidence as extrinsic evidence of its contents is not admissible in evidence. Counsel cited in support the cases of ***ADELAJA V ALADE (1999) 6 NWLR (Pt.608) 544 SC; JIAZA V BAMGBOSE (1999) 7 NWLR (Pt.610) 182 SC.***

Therefore, Counsel submitted that CVS Limited (the 2nd Defendant) is the bonafide purchaser for value of the property known described as Heroes Plaza, No. 145, Adetokunbo Ademola Crescent, Wuse 2 Abuja measuring about 2, 669.03sqm in which the shop (Suite B3.1) occupied by the Plaintiff

is located and the 1st Defendant has no deed of portion duly registered to show that any portion of the property was sold to them.

Finally, Counsel urged the Court to resolve the issue in favour of the 2nd Defendant and grant an Order of payment to be made in favour of the 2nd Defendant in this matter.

Now, I have carefully perused the Originating Summons, reliefs sought, the supporting affidavit, the annexures attached therewith as well as the Written Address in support. I have equally perused the 1st Defendant's Counter Affidavit in opposition with the Exhibits attached therewith and the Written Address. I have also studied the 2nd Defendant's Counter Affidavit in opposition to the Originating Summons together with the Exhibits attached therewith and the Written Address.

“Therefore, it is my humble view that the issue for determination is whether the Plaintiff has made out a case for the grant of the reliefs sought in view of the affidavit evidence before the Court.”

It is the case of the Plaintiff as distilled from the supporting affidavit briefly that some time ago in 2018, the Plaintiff rented Suite B3.1 Heroes Plaza (now CVS Plaza) Plot 145, Adetokunbo Ademola Crescent, Wuse 2 Abuja FCT measuring approximately 67.1square metres from the 1st Defendant. That upon payment of the rent, the Plaintiff was issued with a payment receipt. That the Plaintiff also paid the service charge in respect of the rented property. That tenancy agreement was also given to the Plaintiff who equally paid for legal and agency fees.

However, that in February, 2020, whilst the Plaintiff was about to pay its rent for the 2020/2021 year to the 1st Defendant, that the 2nd Defendant made demands for the same rent from the Plaintiff.

That it was discovered after investigation that the original owner of the property had allegedly sold part of the entire property to the 1st Defendant, thereafter sold the entire property to the 2nd Defendant including the part sold to the 1st Defendant. This fact has now become an issue regarding title between the 1st and 2nd Defendants.

That pursuant to the alleged sale, the 1st and 2nd Defendants are now both seeking to collect same rent from the Plaintiff whereas the issue of ownership between them has not been settled and sorted out.

From the above facts vis-a-vis the depositions in the affidavit evidence before the Court, it is not in doubt that there is a dispute as to ownership of Suite B3.1 Heroes Plaza (now CVS Plaza) Plot 145 Adetokunbo Ademola Crescent, Wuse 2, Abuja. FCT measuring approximately 67.1 square metres, the subject matter of this suit which the Plaintiff occupied as a tenant. In other words, both the 1st and 2nd Defendants are laying claim to the ownership of the said Suite B3.1, the subject matter of this case in view of Exhibits C, E and F attached to the supporting affidavit.

In this respect, the Plaintiff approached this Honourable Court viz interpleader proceedings seeking among other thing a directive on who to pay rent to owing to the ownership tussle between the 1st and 2nd Defendants.

To this extent, it was held in the case of ***A.Y. RIMI VENTURES LTD & ANOR V SAGIR & ORS (2018) LPELR-45100 (CA) per Ndukwe Anyanwu, JCA at page 80, Paras E – F***, where it was held thus:-

“It is therefore said that an interpleader proceedings is an equitable proceedings to determine the rights of rival claimants to property held by a third person having no interest therein”

However, in the instant case, what is before this Honourable Court is not issue of determining who is the owner of the subject matter but a perusal of the reliefs sought by the Plaintiff as endorsed in the Originating Summons will show basically that the Plaintiff wants a directive from this Honourable Court on the payment of the rent pending the resolution of the ownership issue between the 1st and 2nd Defendants.

By Order 48 Rule 2 of the Rules of this Court and in clarity and ease of reference I shall reproduce same hereunder. It provides thus:-

“Order 48 Rule 2

The Applicant must satisfy the Judge by affidavit or otherwise that he:

(a). Claims no interest in the subject matter in dispute other than for charges or costs;

(b). Does not collude with any of the claimants; and

(c). Is willing to pay or transfer the subject matter into Court or to dispose of it as the Judge may direct.”

Consequently, the Plaintiff deposed in the Supporting affidavit particularly at paragraphs 21, 24 and 25 thus:-

“Paragraph 21 reads: That the Plaintiff has no interest whatsoever in the title or ownership of the property. The Plaintiff only wants to pay rent to the right person.

Paragraph 24 reads: That the Plaintiff is willing to transfer the subject matter being the rent to this Honourable Court.

Paragraph 25 reads: That the Plaintiff is not colluding with any of the Defendants in this case. And the Plaintiff has not vested interest at all with any of the Defendants in this case.”

In view of the foregoing, it is my considered opinion that the Plaintiff has satisfied the conditions for bringing this suit via interpleader proceedings. I so hold.

At this juncture, a carefully perusal of paragraphs 18 and 19(b) of the 1st Defendant’s Counter Affidavit and paragraphs 6, 7, 8, 17 and 18 of the 2nd Defendant’s Counter Affidavit will show clearly that both the 1st and 2nd Defendants are laying claim to the property, subject matter of this suit which the Plaintiff is occupying as a tenant and both Defendants having not specifically denied the Plaintiff’s deposition in the supporting affidavit to the effect that issue of title between the Defendants over the subject matter has

not been settled. This Honourable Court has no option than to hold that the Plaintiff has made out a case for the grant of the reliefs sought. I so hold.

In that respect and without further ado, I hereby resolve the issue for determination in favour of the Plaintiff against the Defendants and grant the reliefs sought herein save for relief no. 4. In the alternative, the Plaintiff is hereby ordered to pay the designated rent into account of this Honourable Court to be managed by the Chief Registrar pending the title resolution between the 1st and 2nd Defendants on who should receive rent from the Plaintiff.

Signed:

***Hon. Justice S. U. Bature
28/6/2022.***