IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT , ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

Date:- 28TH OCTOBER, 2022

FCT/HC/ CV/080/2022

BETWEEN

E-IKRAX VENTURES NIG. LTD ---------- CLAIMANT

AND

1. IHS TOWERS NIG. LIMITED
2. IHS (NIGERIA) LIMITED } **DEFENDANTS**

JUDGMENT

By an Amended Writ of Summons and Statement of Claim filed on 24th day of June, 2022, the Claimant sought the following reliefs against the Defendants:-

i. An Order of this Honourable Court awarding the sum of ₦4,000,000.00 (Four Million Naira) only as annual rent against the 1st and 2nd Defendants commencing from 2006 till the date of judgment as arrears of rent owed by the Defendants to the Claimant for the occupation at will of Plot 289 Lagos Street, Garki, Abuja.
ii. An Order of this Honourable Court directing the Defendants to forthwith give vacant possession of the premises known as plot 289, Lagos Street, Abuja, presently occupied at will

by the Defendants for over sixteen (16) years without payment of a single naira as rent.

iii. An Order of thisHonourableCourt directing the Defendants to pay 10% post judgment interest only as interest on the judgment sum.

iv. The sum of ₦10, 000,000.00 (Ten Million Naira) only as general damage against the Defendants respectively.

v. The cost of filing and prosecuting of this case, which is placed at ₦5, 000,000.00(Five Million Naira) only.

The case of the claimant is that it is the owner of Plot 289 Lagos Street, Garki, Abuja, where the Defendants occupy and built their telecommunications Base Transmission Station. That it purchased the said land since the year 2006 and inherited accruable right and interest accruable over the Defendants' infrastructure. The Claimant also claims to be the Defendants landlord and therefore entitled to rent from the Defendant, but the Defendants have failed, refused and/or neglected to pay rent to the Claimant since 2006 despite repeated letters of demand served on the Defendants.

During the hearing of this suit, the Claimant called its lone witness, one Oyabola Majid Adeniyi, who tendered the following documents:-

i. Letter from Justice Gate dated the 23rd day of December 2019 addressed to IHS Towers admitted in evidence as Exhibit 1A

ii. Letter from Justice Gate addressed to IHS Towers Limited dated 9th January 2020 admitted in Evidence as Exhibit 1B

iii. Another letter from Justice Gate addressed to ,IHS Towers Limited dated 17th August 2020 admitted in Evidence as Exhibit 1C
iv. Letter from Justice Gate to IHS Towers Limited dated 15th day of October 2020 admitted in evidence as Exhibit D
v. Letter from Fidelity Bank Ltd to IHS dated 25th November 2021 admitted in evidence as Exhibit 2.
vi. The Defendants letter to the Claimant dated 18th June 2021 admitted in evidence as exhibit 3
vii. Email exchanges between the Claimant and the Defendants alongside certificate of compliance dated 24th March 2022, admitted in evidence as Exhibit 4.

Through the letter from Fidelity Bank dated 25th November, 2021, the Claimant claims that the original copy of their certificate of occupancy over the said property is with the Bank, for the purpose of securing a facility.

By a joint statement of Defence dated the 24th day of June 2022 and filed on the 27th day of June 2022, the Defendant denied the existence of any landlord-tenancy relationship with the Claimant. They also joined issues with the Claimant on its claim to ownership of the property and further challenged the Claimant to provide original copies of its tile documents or any valid proof of ownership of the property.

It is also the case of the Defendants that they are protected by the statutory defence of laches, acquiescence and estoppel. That the Claimant claims to have purportedly purchased the property since 2006, about 16 years ago, yet it took no steps to challenge the occupation of the Defendants, thus the claimant is estopped from making any further claims against the Defendants.

The Defendants at hearing called its sole witness, "DW1" Usaini Usman, who adopted the Defendants witness statement on oath. During cross examination, DW1 alleged that the Defendants purchased the said property since 2013. DW1, however, did not produce any evidence to support this claim.

At the close of hearing, the Defendants filed their final written address on 8th July 2022, while the Claimant through it Counsel filed its written address on 15th July, 2022. In response to the Claimants final written address, the Defendants filed a Reply Address on 18th August, 2022.

In their final written address, learned Counsel to the Defendants raise a single issue, to wit:

"Whether the Claimant is entitled to the reliefs sought".

Counsel contended on behalf of the Defendants that there is no credible evidence placed before the court that is reasonable or justifiable to ground the claims of the Claimant. It is the argument of the Defendants that the Claimant has failed to establish the existence of a landlord-tenancy relationship between them, and is therefore not entitled to the rent sought in relief 1 of the Claim. Counsel stated that the claimant did not plead the rent of N4, 000,000 as annual rent, in any of the paragraphs in its statement of claim, and did not tender any document to prove that it is entitled to such annual rent.

Relying on **section 22 of the Limitation Act, Cap 522 Laws of FCT**, Counsel argued that the claimant cannot seek arears of rent from 2006, about 16 years ago, as such became statute barred after the expiration of six years.

Counsel to the Defendants also argued that the Defendants are not entitled to vacant possession as sought in relief 2, as it failed to prove that the defendants are tenants at will or sufferance, and also failed to prove their title by any of the ways established by the Supreme Court in the locus classicus case of ***IDUNDUN V. OKUMAGBA, AS WELL ASMADUV.MADU (2008) LPELR 1806***

It is also the submission of Counsel that assuming the Claimants proved its title over the subject matter of this suit, its claim for vacant possession would still fail owing to same being statute barred by virtue of **section 15 (2) (a) of the Limitation Act, CAP 522, Laws of FCT,** which states that no action by a person to recover land shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it. In this case, the Defendants have been in occupation for 16 years before the present action. Counsel cited several judicial authorities, especially ***SULGRAVE HOLDINGS INC V. FGN (2012) 17 NWLR (PT.1329) 309 (P.343, PARAS. F-G) AND WALI V. A.P.C (2020) 16 NWLR (PT. 1749) 82,*** where the Supreme Court held that a claim that is statute barred is a nullity and not justiciable.

Finally, Counsel argued that the Claimant is not entitled to reliefs 3 -5, as it has failed to prove its main claim for rent and vacant possession. Counsel urged the court to dismiss this suit.

On the part of the Claimant, three issues were raised by the Claimants learned Counsel:-

i. Whether the Claimant has proved its case on the balance of probability

ii. Whether the Defendants can be allowed to approbate and reprobate
iii. Whether the suit is statute barred and whether the defence of laches and acquiescence and estoppel can operate to exempt the Defendants from liability.
iv. What are the consequences of the Defendants withholding evidence in respect of the site hosting the Base Transmission Station.

On issue 1, Counsel submitted on behalf of the Claimant that the Claimant has proved its case for possession and rent on the balance of probability, as their evidence of ownership of the said property was uncontroverted by the Defendants. Counsel maintained that exhibits 1 (a), (b), (c) and (d) and its attachment clearly show that they bought the land in question. Counsel further pointed to exhibit 3, and argued that the letter from Fidelity Bank to the Defendant, acknowledging being in possession of the original documents of Plot 289, Lagos Street, belonging to the Claimant, and Exhibit 2, which is a letter from the Defendants, is also prove of the Defendants title.

Counsel argued that the claimant having made out a prima facie case showing title to the property, the burden of proof shifted to the Defendant, who failed to discharge same. See ***AROMIRE V. AWOYEMI (1972) 2 S.C.1***. Citing the decision in ***BELLO & ANOR V. ALIYU& ANOR (2018) LPELR-44592 (CA)***, Counsel submitted that pleadings and evidence that are not challenged or controverted against whom they are pleaded or averred, are deemed to have been admitted.

Counsel pointed out that by virtue of paragraph 6 of exhibit 3, it can be implied that the Defendants at all times, were seeking to

negotiate and agree on the lease renewal/purchase of the property from the Claimant, and never denied the Claimants title. Counsel also maintained that the tenancy between the Claimant and the Defendants was created by necessary implication taking into account the circumstances and totality of the evidence adduced before this Honourable Court.

On issue 2, Counsel maintained that the Defendants in this case, approbated and reprobated in their pleadings. That they admitted at the onset that they were not the owner of the said property on which they hosted their Telecommunication Mast, which is why the negotiated for rent renewal and possible purchase from the Claimant, but later turned around to claim through DW1 during examination that they purchased the property from Visafone, without tendering any evidence to that effect; and also claimed that the Claimants suit is statute barred. Counsel relying on a plethora of judicial authorities including the decision in ***AKINBIYI V. LAGOS ISLAND GOVT COUNCIL &ORS (2012) LPELR-19839 (CA)***, stated that the law prohibits a party from approbating and reprobating.

On issue 3, Counsel submitted on behalf of the Claimants that the equitable defence of laches, acquiescence and estoppel does not avail the Defendants in this case, as they could not establish the ingredients that must be present for the plea to be sustained as laid out in the case of ***KAYODE V. ODUTOLA (2001) LPELR – 1682 (SC).*** Counsel argued that a party relying on the doctrine of standing by cannot get a declaration of title in his favour merely because of the reliance he placed on it, and there cannot be a declaration of title in the favour of he who successfully

established the plea of laches and acquiescence. See ***OSHODIV.IMORU (1936) WACA 93***.

Counsel also maintained that the Defendants failed to prove how the doctrine of estoppel applied in the instant case.

Arguing on the issue of statute of limitation raised by the Defendants, Counsel maintained that section 22 of the Limitation Act of the F.C.T does not affect the Claimants right in any way, because the cause of action arose when the Defendants failed to respond to exhibit 1(d). Also the fact that the Defendants are still in occupation of the property makes the cause of action a continuous one.

Furthermore, Counsel argued that by virtue of section 39 of the Limitation Act, the cause of action starts accruing from when the person in possession acknowledges the title of the person to whom the right of action has accrued. In this case, the Defendants have not acknowledged the title of the Claimant; therefore, the Claimant is not caught up by the Limitation Act.

On issue 4, Counsel argued on behalf of the Claimant that the failure of the Defendant to produce any document of purchase to support DW1's claim of purchasing the property from visafone, contravenes the requirement of the Statute of Frauds, which makes it compulsory for all transaction in respect of land to be in writing. Moreso, the Defendants did not plead in their Statement of Defence that they purchased the property, and did not adduce evidence in examination in chief, only to inform the court during cross examination that they purchased the site.

The Defendants in their reply address, maintained that the Claimant failed to plead the purported rent it claims in this suit,

and denied approbating and reprobating as alleged by the Claimant. Counsel to the Defendant further submitted that contrary to the Claimants argument, they have satisfied all the conditions for the plea of laches and acquiescence, and that the doctrine of estoppel by conduct has been well established by the Defendants. It was also submitted on behalf of the Defendants that contrary to the Claimants argument that the Defendants were withholding document, the Defendant did not plead any fact relating to documents and therefore cannot be said to have withheld any.

Having undertaken a thorough analysis of the facts, evidences and arguments of both parties, I am of the view that themajor contention of parties in this suit is whether the Claimant is entitled to the arrears of rent sought by it, and whether the Claimant also has a right to title and possession of Plot 289, Lagos Street. This matter can be properly determined by a single issue, to wit:-

Whether the Claimant is entitled to the reliefs sought?

As I observed earlier, the major contention of parties in this suit is whether the Claimant is entitled to the arrears of rent sought by it, and whether the Claimant also has a right to title and possession of Plot 289, Lagos Street.

Rent is one of the essential ingredients of a lease. In other words, when a person in occupation of a property is required to pay rent, it is presumed that there exists a tenancy relationship between parties.

How then is a tenancy relationship created?

A tenancy relationship is established and formed by an agreement entered into by the landlord who is the owner of the premises and the tenant, who is desirous of the use and enjoyment of possession of the said premises on the terms and conditions freely agreed upon by the both of them. See ***DICKSON & ANOR V. ASSAMUDO (2013) LPELR - 20416 (SC)***

It seems to me plain that for an agreement for a lease to be valid there must be, among other essentials, agreement on the date of commencement of the term; and in the absence of this date, validity will not be given to the agreement. See ***HARVEY V. PRATT (1965) 2 ALL E.R. 786 C.A.***

In order to have a valid agreement for a lease, it is essential that it should appear either in express terms or by reasonable inference from the language used in the instrument on what day the term is to commence. Indeed, both the commencement and the maximum duration of the term must be either certain or capable of being rendered certain before the lease takes effect. ***SEE LACE V. CHANTLER (1944) K.B. 305 at 306 - 307.*** As Lush L.J.

Put it as early as in the case of ***MARSHALL V. BERRIDGE (1881) 19 CH.D 233 at 245***:-

> ***"There must be a certain beginning and a certain ending, otherwise it is not a perfect lease, and a contract for a lease must, in order to satisfy the Statute of Frauds, contain those elements."***

It is settled beyond question that, in order for there to be a valid agreement for a lease, the essentials are that there shall be

determined not only the parties, the property, the length of the term and the rent, but also the date of its commencement. Accordingly, though a lease may be limited to endure for any specific number of years, however many, it cannot validly be limited in perpetuity. See ***SEVENOAKS, MAIDSTONE AND TUNBRIDGE RAILWAY CO. V. LONDON, CHATTAM AND DOVER RAILWAY CO. (1879) 11 CH. D. 625 at 635-636***

In this case, the Claimant failed to discharge the burden of proving the existence of a lease whether parol or in writing. The Claimant did not plead any of the essential elements of a lease in their statement of claim, and did not provide any evidence in support of their claim for arears of rents. If, as the claimant averred, it acquired the said Plot 289, Lagos Street, in 2006, questions that begs for answers are; which month and date did the Defendants come into possession of the premises as tenants? What was the agreed duration of the lease? What amount was fixed as rent for the lease?

These are questions the court keenly wanted answers to, but the Claimant did not provide the answers!

If there was a rent case completely starved of evidence, this is certainly one. This case clearly cries to high heavens in vain to be fed with relevant and admissible evidence. The Claimant woefully failed to realize that judges do not act like the oracle at Ife, which is often engaged in crystal gazing and thereafter would proclaim a new Oba in succession to a decade's Oba. Judges cannot perform miracle in handling a civil claim, and least of all manufacture evidence for the purpose of assisting a Plaintiff to win his case. See ***ELIAS V. OMO- BARE (1982) 2 SC***. There is no miracle a Court can do in such situation, to save the case.

Having, held that a landlord- tenants relationship has not been sufficiently established, the Claimant lacked credible basis for the claim of right of rents over the property, and, consequently, any right to damages, in the circumstances.

In view of the foregoing, reliefs 1, 3, 4 and 5 are hereby refused.

Although the Claimant's suit was not that of Declaration of Title to land, and the Claimant did not specifically seek such relief from the Court, however, the Defendant in their Statement of Defence, and oral testimony, joined issues with the Claimant on its claim to ownership of the property and further challenged the Claimant to provide original copies of its title documents or any valid proof of ownership of the property. They also challenged the Claimants title to the said property on ground of limitation of right of action, estoppel, laches and acquiescence.

This challenge of the Claimant's title by the Defendants, makes it imperative for the court to make a pronouncement on whether the Claimant can properly claim title to the subject matter in dispute.

Going through the pleadings and the evidences adduced by the Claimant, especially exhibits 1B and its attachments,as well as exhibit 3, which states that the original title documents of the property belonging to the Claimant is with Fidelity Bank, the Claimant has made an attempt to establish prima facie, title to the property in dispute. The Defendant has not presented any contrary evidence to prove ownership of the saidproperty. However, the boggling issue of statute bar raised by the Defendant needs to be critically considered.

The Defendant relied heavily on **section 15 (2) (a) of the Limitation Act, CAP 522, Laws of FCT,** which states that no action by a person to recover land shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it.

The most pertinent question at this point is, how does the Court determine whether an action is statute barred?

The period of time prescribed by a statute of limitation begins to run the moment a cause of action accrues to the person entitled to it - ***NATIONAL BANK OF NIGERIA LTD VS ARISON TRADING & ENGINEERING CO. LTD (2006) 16 NWLR (PT 1005) 210, AMEDE VS UNITED BANK FOR AFRICA (2008) 8 NWLR (PT 1090) 623***. Thus, when dealing with a limitation statute, it is of utmost importance to ascertain the exact date of accrual of a cause of action.

A cause of action consists of every fact which would be necessary for a claimant to prove, if traversed, in order to support his right to judgment. It is the bundle or aggregate of facts which the law recognizes as giving the claimant a substantive right to make a claim for the relief or remedy being sought. It is every fact which is material to be proved to entitle the claimant to succeed or all those things necessary to give a right to relief in law or equity ***OGBIMI VS OLOLO (1993) 7 NWLR (PT 304) 128.***

It consists of two elements, namely: (a) the wrongful act of the defendant which gives the claimant his cause of complaint; and (b) the consequent damage ***SAVAGE VS UWAECHIA (1975) 2 SC 213***.

Date is thus very material when an occasion arises for finding out when a cause of action arose ***OMOTAYO VS NIGERIAN RAILWAY CORPORATION (1992) 7 NWLR (PT 254) 471.***

The period of limitation is determined by looking at the writ of summons and the statement of claim only; to ascertain the alleged date the wrong in question which gave rise to the plaintiff's cause of action was committed and by comparing such date with the date on which the writ of summons was filed. If the time pleaded in the writ of summons or statement of claim is beyond the period allowed by the limitation law, the action is statute barred. In other words, the determining factor is the averments in the plaintiff's writ of summons and the statement of claim.

Time begins to run in land cases when possession is lost save where there is fraudulent concealment. ***AJIBONA VS. KOLAWOLE (1996) 10 NWLR (PT. 476) 22.***

The Claimant in this case claimed by paragraph 6 of the Amended Statement of Claim filed, that they bought the land on 9th day of February, 2006 from T & B Commercial Ventures Ltd, and in Paragraph 8, thereof, the Claimant averred that since they bought the property (in 2006), they have been expecting payments for rent from the Defendants to no avail. Although the Claimant failed to clearly state at what point, and how the Defendants came into a property they bought since 2006, one thing is certain, that they became dispossessed of the land in dispute in 2006.

In the circumstances of this case, it is as clear as day that the provisions of **section 15 (2) (a) of the Limitation Act, CAP 522, Laws of FCT**, applies to this case. The subject matter of

the litigation is a land situated in the Federal Capital Territory, and it follows that the Claimant had twelve years to institute the action against the Defendants "to recover possession" of the land which it claimed to have leased to the Defendants. Within that period, they could have taken steps to challenge the Defendant's possession, but they did nothing and only sought a remedy, sixteen years after.

The implication of an action being statute barred is that a plaintiff, who ordinarily would have had a cause of action, by judicial process because the period or time laid down by the limitation law for instituting such an action has elapsed, automatically loses that right to approach the Court to ventilate his grievance. See ***UNIPORT VS JOHN (2020) 10 NWLR (PT. 1731) 106***. In fact, a complaint that a suit is statute barred challenges the jurisdiction of the Court.

As it relates to Section 15 of the Limitation Act, any person who wants to institute an action for declaration of title to land must do so within 12 years from when the cause of action arose. If the action is brought after 12 years, the action will be statute barred. See ***ADEJUMO&ORS VS OLAWAIYE (2014) 12 NWLR (PT 1421) 252.***

The implication of this will be that the aggrieved person will have an unenforceable right once the action is statute barred, it is dead on arrival and no amount of legal oxygen can resurrect the action. The action is stone dead and only good for burial which will mean dismissing same.

The Claimants suit is accordingly dismissed in its entirety.

I have taken pain to consider and discussed all the issues raised in the judgment. I am of the view it is always the claims of the Claimant that in most cases not in all cases that brought matter before the Court. I have no doubt in my mind that the duty of the Court is to restrict itself on the things properly brought before it the Court is not expected to speculate partake or descend into the arena of any case before it. It is essentially the duty of Counsels to do the needful by presenting their case properly so as to ensure that justice is done to all parties.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

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