

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA APPEAL JUDICIAL DIVISION

HOLDEN AT GUDU COURT NO. 15

BEFORE HIS LORDSHIPS: HON. JUSTICE A.A.I. BANJOKO

HON. JUSTICE D.Z. SENCHI

DATED THE 17TH DAY OF JUNE, 2010

SUIT NO. CV/142/08

APPEAL NO. FCT/HC/CVA/81/09

BEWTEEN:

TOPE POPOOLA

.....

DEFENDANT/APPLICANT

AND

ROSEMARY I. JOHN ADEYAN -----

PLAINTIFF/RESPNDENT

JUDGMENT

This notice of appeal was filed by the Defendant/Applicant against the judgment of the Senior District Court sitting at Kubwa presided over by Honourable C.O. Oba. The judgment of the Senior District Court was delivered on the 13th of October, 2009.

The Appellant's appeal is premised on the whole judgment of the Senior District Court upon the ground stated hereunder:-

(i) That the judgment is unreasonable and cannot be supported having regard to the weight of evidence adduced. The particulars as set out by the Appellant in his notice of appeal is that

(a) the finding of the learned District court that it has jurisdiction and consequently made an order of re-possession of the property in issue in favour of the Plaintiff/ Respondent in the light of the weighty evidence adduced in challenged to the title of the property in issue.”

(b) It is further the finding of the learned District Judge that there is landlord/tenant relationship between the Defendant/Appellant and the Plaintiff/Respondent in the absence of a clear nature of the tenancy and rent payable.”

The reliefs sought by the appellant from this court is (i) to allow the appeal and (ii) an order setting aside the judgment of the Honourable C.O Oba Judge of the senior District court sitting at kubwa, Abuja.

In his brief of argument the learned counsel to the Appellant E.I. Nwude Esq. formulated a sole issue for determination as follows:-

“Whether the trial court was right to have assumed jurisdiction when the totality of evidence adduced by the Appellant and even supported by the Respondent proved to the contrary.”

On the above issue, the Appellant’s counsel submitted that the Appellant was let into possession of the property in issue by the Respondent on the ground of an agreement to sale. According to counsel, the Appellant took possession after spending about N700, 000.00 in renovating the property, even though the

transaction was not reduced in writing as a result of the trust relationship between the family of both parties. Secondly, the transfer of letter of allocation of the property to the Appellant which the Respondent trickily withdrawn before instituting the action at the lower court. Mr. E.I. Nwude Esq. submitted on behalf of the Appellant that even though the agreement to sale was not reduced in writing, the Appellant is protected under equity and judicial pronouncement which created exceptions to the general rule of statute of frauds. Counsel referred us to the case of ***INTERNATIONAL TEXTILE INDUSTRIES (NIGERIA) LTD VS ADEREMI, (1999) 8 NWLR (pt. 614).***

The Appellant's counsel contended that the claim of the Respondent that tenancy agreement exist between the parties, there must be proof as to the certainty of parties, period of tenancy, rent payable and property in question. Appellant's counsel submitted that the Respondent failed to prove these elements of tenancy relationship before the trial court. He therefore contended further that the Appellant had raised the issue of title in his testimony in which the Appellant proceeded to spend about N700,000.00. The Appellant's counsel further submitted that courts of summary jurisdiction are bound to consider not only Plaintiff's claim before it but also the defence of the Defendant to determine the real issues between the parties and whether or not the trial court has jurisdiction to entertain the suit. ***ERHUNMWUNSE VS EHANIRE, (2003) 13 NWLR (pt. 837) page 353.*** Counsel to the Appellant further submitted that a court of summary jurisdiction on receipt of evidence, oral or documentary and it discloses the issue of title to be resolved between the parties, at that point, the trial court should decline to exercise jurisdiction. According to counsel to the Appellant where the issue of title or interest to land is raised bona fide among contending parties, the

trial court being a court of summary jurisdiction must decline jurisdiction. Counsel cited the cases of ***OLUWO VS ADEBOWALE, (1959) 4 FSC 143 and ERHUNMUNSE VS EHAWIRE (supra) FOWER VS FOWLER.***

E.I. Nwude Esq. submitted further that the Appellant is prejudiced since he cannot make any counter claim on the subject matter before the District Court on the ground of lack of jurisdiction. Counsel then submitted that the trial District Judge misdirected himself in law when he relied on section 13 of the District Court law to resolve the issue of its jurisdiction to determine the suit without reference to section 2(a)(i) of the District court's law. In conclusion, counsel to the Appellant, Mr. E.I. Nwudi urged the court to hold his submission in the affirmative.

On the other hand, in the Respondent's brief of argument, three issues were distilled for determination as follows:-

1. Whether or not the trial court rightly assumed jurisdiction having regard to the evidence adduced?
2. Whether the jurisdiction of the trial court was automatically precluded, divested or ousted by the counter claim of the Defendant alone without credible evidence to sustained same, the allegation of purchase?
3. Whether in the light of the evidence before the court, the counter-claim of the Defendant can be said to be bona fide?

On the first issue, M.A Ofeoshi, Esq. on behalf of the Respondent submitted that there is no valid counter claim before the trial court which is the basis of challenging the jurisdiction of the trial court. He submitted that assuming the court hold that there is a valid counter claim, the counter claim is unsustainable

and unjustifiable having regard to the totality of the evidence before the trial court. Counsel to the Respondent submitted further that the claim of the Respondent before the trial court is for possession of premises and that jurisdiction of a court is determined by the court perusing the statement of claim or writ of summons and in the instant case, the Plaint of the Plaintiff/Respondent. Counsel referred to ***NACB LTD VS OZOEMENTAN, (2005) ALL FWLR (pt. 280) page 1498.*** In the same breath, the Respondent's counsel submitted that jurisdiction is also conferred on courts by law or statutes or without taking evidence, where all such materials are already before the court. Counsel cited the case of ***INAKOJU VS ADELEKE, (2007) ALL FWLR (pt.353) page 1 at 87-88.*** Thus, counsel submitted on behalf of the Respondent that by virtue of section 13 (b) District Court Act Cap 495 laws of the Federation of Nigeria, 1990 empowers the District court to entertain matters on recovery of possession. Finally, on the 1st issue for determination, the Respondent's counsel submitted that the Appellant raised the issue of title without substance and that the law is who ever that alleges must prove. Counsel referred us to the case of ***KATE ENTERPRISES LTD VS DAEWOO (NIGERIA) LTD, (1985) 7 SCL.***

On the second issue, whether the jurisdiction of the trial court was automatically ousted by mere fact that the Defendant/Appellant raised the issue of title alone when there was no credible evidence to sustain the issue before the court.

Counsel to the Respondent submitted that a close examination on record would reveal that the evidence of the Defendant/Appellant is inconsistent with the agreed facts of the parties and the assertion of the Defendant/Appellant has not been substantiated. On the other hand, according to the Respondent's counsel,

that the evidence of the Plaintiff/Respondent is consistent and in total agreement with the agreed facts by the parties. Mr. Ofeoshi submitted on behalf of the Respondent that it is in evidence that the Respondent by consent, allowed the Defendant/Appellant to restore the roof of the property which sum was quantified as two years rent. According to counsel, that it was after two years that the Defendant/Appellant advanced the first N50,000 and another N10,000 respectively and the Defendant/Appellant was yet to pay the complete N100,000 when the Plaintiff/Respondent decided to sell the house. Counsel to the Respondent then contended that the evidence before the court is that the Defendant/Appellant is yet to acquire title as he has not paid the purchase price in full. Furthermore, according to counsel on behalf of the Respondent that there is no written instrument of transfer or agreement for sale. Thus, counsel contended that by the combine effect of decree No. 6 of 1976, Federal Capital Territory Act Cap 503 and section 1 thereof and sections 297 and 298 of the 1999 constitution of the Federal Republic of Nigeria there is no customary land in the F.C.T and therefore Kubwa, where the property is situated is part of FCT, hence therefore, exclusively vested ownership of land in the FCT on the Federal Government of Nigeria. Counsel therefore submitted on behalf of the Respondent that no oral sale of statutory land in the FCT and he referred the court to section 4 of the statutes of fraud. Counsel also submitted that even where the trial court fail to enquire and decide on the issue of jurisdiction, by virtue of section 36 (b) and (c) of the High Court Act Cap 510 Laws of the Federation 1990, this court is empowered to give judgment and make final orders as that vested on the court of first instant. Counsel therefore urge us to evoke the provisions of section 36(b) and (c) of the Act to determine the substance and real issues in controversy

between the parties assuming that the trial court had no jurisdiction on the matter.

On this second issue, counsel to the Respondent concluded by submitting that the evidence before the court justify, the conclusion that the relationship between the Plaintiff/Respondent and the Defendant/Appellant was that of landlord and tenant. Counsel referred the court to Black law dictionary, 18th edition at pages 1505 and 1506 on the definition of tenancy and tenancy at will, as well as the case of ***ODUTOLA & ANOR VS PAPER SACK (NIGERIA) LTD.***

On the third issue distilled for determination whether in the light of the evidence before the court, the counter claim or allegation of purchase by the Defendant/Appellant can be said to be bon afide.

In respect of this issue, counsel to the Defendant adopted the submissions in issues nos 1 and 2 . He however added and submitted that it is in evidence that the Defendant/Appellant threatened the Plaintiff/Respondent and was charged to court for same and that it is also in evidence that the Defendant/Appellant challenged the ownership of the Plaintiff/Respondent. Counsel also submitted that it is in evidence that the Defendant/Appellant committed waste by the unilateral alteration of some aspect of the building by changing rooms into store and remove the store. Counsel therefore contended that act of the Defendant/Appellant statutorily or in common law loses its protection and he is liable for immediate possession and forfeiture as well as damages in trespass where claimed. Counsel referred the court to the case of ***AJIE VS AHUNANYA, (2000) FWLR (pt.20) page 601, PLATEAU INVESTMENT & PROPERTY DEV.CO. VS***

EBHOTA & ORS (2001) FWLR (pt64) page 374 at 401. ARIORI V ELEMO (1979) 10 CA.

In conclusion, counsel to the Respondent M.A Ofeoshi Esq. urged us to uphold the respondent's submission and dismiss the appeal as it lacks merit.

The Notice of Appeal was filed on the 19th October, 2009 and the Respondent was served with the Notice of Appeal and the Appellant's brief of arguments on the 20th January, 2010. Hearing notice was issued and served on the Respondent on the 2nd June, 2010. The proof of service of the hearing notice and the affidavit of service deposed to by the court bailiff were all filed before the court.

In both the Appellant and the Respondents brief of arguments, the issues distilled for determination are principally the same. We shall however consider issues nos 1 and 2 as formulated for determination by the Respondent counsel together with the sole issue formulated by the Appellant's counsel. The three issues, appears to be interrelated and can therefore be conveniently taken together. The issues are:-

1. Whether the trial court was right to have assumed jurisdiction when the totality of evidence adduced by the Applicant and even supported by the Respondent proved to the contrary.
2. Whether or not the trial court rightly assumed jurisdiction having regard to the evidence adduced?
3. Whether the jurisdiction of the trial court was automatically precluded divested or ousted by the counter claim of the Defendant alone without credible evidence to sustains same the allegation of purchase?

It is trite law that 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)**

In the instant appeal, the contention of the Appellant is in respect of the claim of the Plaintiff/Respondent which the Appellant alleged to be beyond the monetary jurisdiction of the court. In this regard, it is the law that the claim of the Plaintiff is what determines the jurisdiction of the court. See **INAROJU VS ADELEKE, (2007) ALL FWLR (pt. 353) page 1 at 87, ONUORAH VS KADUNA R. P.C LTD, (2005) 6 NWLR (pt. 921) page 393.**

In other words, what determines jurisdiction of court is the cause of action of the Plaintiff as disclosed in the writ of summons or statement of claim. See **OMNIA (NIG) LTD VS DYKTRADE LTD, (2007) 15 NWLR (pt. 1058) page 576 at 583; AYORINDE VS ONI, (2000) 15 NWLR (pt. 649) page 348.**

In the instant appeal, the trial court being a court of summary jurisdiction is to consider the claim of the Plaintiff as it appears on the Plaint and the defence of the Defendant. In the case of **ERHUNMWUNSE VS EHANIRE, (supra)** the Supreme court held “the Customary Court or Area Customary Court is not a superior court

of record where pleadings are ordered and filed and the technicalities of the law observed. The court is only a court of summary jurisdiction. The Customary court is therefore bound to consider not only the claim before it but also the defence of the Defendant in order to determine what the real issue between the parties is and whether or not it has jurisdiction to entertain the suit. In other words, the customary court ought to consider the totality of the case of both the Plaintiff and the Defendant in order to form a balanced and objective opinion as to whether or not it has jurisdiction to entertain a suit.”

In the instant appeal therefore, apart from the plaint note of the Plaintiff, the trial District Court must consider the evidence of the Defendant in order to ascertain or determined whether it has jurisdiction or not. Thus, by the amended plaint note of the Plaintiff dated the 18th of June, 2009, the Plaintiff claims

- a. An order for possession and;
- b. A claim for loss of use not above the jurisdictional limit of this Honourable court at the rate of N8, 400.00 per month since April, 2008.”

The above was the claim of the Plaintiff/Respondent before the trial District Court sitting at Kubwa, Abuja. It is also the law that jurisdiction can be conferred on a court by the law establishing it or a statute. In the instant appeal, the District Court Act Cap 495, Laws of the Federation of Nigeria 1990 by virtue of section 13(b) has conferred jurisdiction on District court on matters pertaining to recovery of premises. Thus, therefore, from the amended plaint note of the Plaintiff and the evidence on record, we hold the view that the trial District Court sitting in kubwa has jurisdiction to entertain the claim of the Plaintiff/Respondent and we so hold.

The next issue to determine is the claim of the Defendant/Appellant as to the title of the subject matter in dispute. In the evaluation of the evidence of both parties, the trial Senior District Judge at page 14 paragraphs 7 and 8, summarized the evidence of the Plaintiff and that of the Defendant and he came to the conclusion at page 15 of paragraph 9 where he states “my findings therefore are that there is agreement with the Plaintiff and the Defendant for him to renovate the premises and live in same in 2006 and 2007 using the sum spent on renovation as rent. He paid only N60, 000 as part payment of rent for 2008 out of N100, 000.00”

The question now is was the trial Senior District Judge right in arriving at this conclusion without determining whether he has jurisdiction or not. In the instant case, it appears that the Defendant/Appellant has, by his testimony on record, is counter claiming against the Plaintiff/Respondent title of the subject matter which he has spent N320, 460 in renovating. In other words, the Defendant’s claim for title to the house, to be entitled, must prove and establish his root of title. Counsel to the Appellant, Mr. E.I Nwude Esq. in his brilliant submissions, argued that even though the agreement to sale was not reduced in writing, the Appellant has protection under equity and judicial pronouncement which created exceptions to the general rule of statute of fraud. It appears that for the Defendant to properly raised the issue of title or joined issues as title with the Plaintiff, it is not sufficient to assert but such assertion must be proved by evidence. ***ABURIMI VS SECRETARY, ASSEMBLIES OF GOD CHURCH, 14 WACA 185.*** Now it appears that the learned counsel to the Appellant did not appreciate the provision of section 4 of the statute of frauds. In other words even where he appreciates the law, it appears he is being too economical with the truth.

This court is fully aware, as disclosed from the records that the subject matter of dispute is situated in Kubwa within the Federal Capital Territory. And by the combine effect of sections 1 and 18 of the FCT Act and the provisions of sections 297 and 298 of the 1999 constitution, transaction in land in the FCT is not regulated or governed by the customary land tenure. In other words, transaction in land in the FCT confers titles by written instrument of transfer or agreement of sale or by statutory grant. In the case of **ERHUNMWUNSE VS EHAMRE**, (*supra*), the Supreme court of Nigeria as per *UWAIS CJN (as he then was) at page 374 paragraphs E-F* stated “it is quite clear from the testimonies of the parties before the Oredo Area Customary Court that the dispute between the parties involves land which is the subject of a statutory right of occupancy. Although the claim by the Respondent herein, as Plaintiff, was inter alia to recover possession of the house which he claim to have purchased from the Appellant, the latter’s defence is a denial of the sale of the property to the Respondent. This puts title to the house in issue. Section 39(1)(a) of the Land Use Act Cap 202 which vests exclusive jurisdiction in the High Court with regard to first instance proceedings in respect of land which is the statutory right of occupancy.”

See also the case of **MADU VS MADU,(2008) 6NWLR (pt 1083) page 296 at 324-325.**

In the instant case, it appears that the counter claim or claim of title to the subject matter by the Defendant/Appellant before the learned trial Senior District Court was wrong in law. In the same breath there is no evidence adduced by the Defendant to substantiate the claim of title by the Defendant. This court therefore found that there was no evidence adduced before the court to put the

title of the house in issue. It is therefore our considered view that the defence as to title by the Defendant which stands as a counter-claim and presupposes a separate action is not supported by evidence and we resolve same in favour of the Plaintiff. Hence, therefore, the trial senior District court was right in confining himself to the plaint note of the Plaintiff/Respondent which subject matter he has jurisdiction to adjudicate upon and he rightly after evaluation of the evidence, came to the conclusion that there was a tenancy agreement between the Plaintiff and the Defendant. I refer to pages 13 -14 of the records of proceedings of the learned trial Senior District Judge. It is therefore our considered opinion that the trial Senior District Judge sitting at Kubwa was right in assuming jurisdiction in this matter. There is therefore nothing placed before us to temper or direct otherwise on the finding of the learned trial District Judge. Thus, issues 1-3 are resolved in favour of the Plaintiff/Respondent. Accordingly, the Judgment of the trial District court is hereby affirmed and the Appeal being unmeritorious, it is hereby dismissed.

HON. JUSTICE A.A.I. BANJOKO

HON. JUSTICE D.Z. SENCHI