

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT WUSE ZONE 2
ON TUESDAY THE 30TH DAY OF OCTOBER, 2018
BEFORE THEIR LORDSHIPS:

HON. JUSTICE A. S ADEPOJU - PRESIDING
HON. JUSTICE Y. HALILU - MEMBER

APPEAL NO. CVA/112/17
SUIT NO: FCT/URPT/0064/CV/15

BETWEEN

GODIYA DODO & 51 ORS APPELLANTS
AND
1. HON. MINISTER, FCT ABUJA
2. FED. CAP. TERR. DEV. AUTHORITY ABUJA
3. THE CHIEF OF NAVAL STAFF
4. THE NIGERIA NAVY
5. THE CHIEF OF ARMY STAFF
6. THE NIGERIA ARMY } RESPONDENTS

JUDGMENT

This is an appeal by the Appellants against the ruling of TPL E. Oluseyi Lufadeju, sitting in an Abuja Regional Planning Tribunal in Suit No. FCT/URPT/0064/2015. The Appellants as complainants at the Tribunal

instituted their suit on the 31st day of March, 2013, whereby they prayed for the following reliefs:-

- a. A declaration that the Claimants are entitled to compensation for the destruction of both their cash crops and economic trees on their farm land behind Mogadishu Barracks in Nyanya Province of Abuja Municipal Area Council, Abuja – FCT.
- b. An order of the tribunal directing the defendant jointly and severally to immediately pay the complainant compensation in the sum of One Hundred Million Naira only (N100,000,000.00) for the unlawful destruction of their cash crops and economic trees on their farmland; and
- c. Cost of the action at N1,000,000.00 (One Million Naira) only.

Upon the receipts of the complaint and other processes filed alongside with it, counsel to the 1st and 2nd Respondents as 1st and 2nd Defendants at the Tribunal filed a notice of preliminary objection challenging the

jurisdiction of the Tribunal. Counsel to the 3rd, 4th, 5th and 6th Respondents as 3rd, 4th, 5th and 6th Defendants also filed a notice of Preliminary Objection challenging the jurisdiction of the tribunal.

In opposing the application, counsel to the Appellant/Plaintiff filed separate written addresses to the various applications and upon a careful consideration of the notice of preliminary objection and address of counsels, the Tribunal hold in a nutshell that pursuant to sections 86, 43 and 44 of the Nigeria Urban and Regional Planning Act, the Tribunal lacks the jurisdiction to entertain the suit and proceeded to dismissed the suit for lack of jurisdiction.

The Appellant formulated the following issues for determination in its brief of argument to wit;

- i. Whether when a court has no jurisdiction, the proper order to make is an Order for dismissal or an order of striking out the suit.

- ii. Whether the tribunal was right when after declining jurisdiction, it went ahead to hold that the Appellants/Claimant's claims against the Respondents/Defendants was statute barred.
- iii. Whether the Appellant's case was statute bar.

On issue No 1, whether when a court has no jurisdiction, the proper order to make is an Order for dismissal or an order of striking out the suit.

It is the argument of the learned counsel for the Appellant that the lower court cannot, as in the instant case, dismiss a claim the merit of which it is not competent to enquire into. Counsel relied on *ADESOKAN VS ADETUNJI (1994) 5 NWLR (Pt. 346) 540*.

It is the contention of the Appellant that the proper order to make when a court holds that it lacks jurisdiction is to strike – out the suit and not to dismiss it. *OKOYE VS NIGERIAN CONSTRUCTION*

&FORNITURE CO. LIMITED (1991)6 NWLR (Pt. 199).

Learned counsel submit further that the Respondents in their preliminary objection at the trial court prayed for an order striking out the suit Not dismissal. And therefore court cannot grant reliefs not sought.

NIGERIAN AIRFORCE VS SHEKETE (2002) 18 NWLR (Pt. 798) 129.

On issue No. 2 i.e whether the Tribunal was right when after declining jurisdiction, it went ahead to hold that the Appellant/Claimants claim against the Respondents/Defendants were statute barred?

Learned counsel submit that a declaration of lack jurisdiction by the tribunal in respect of the subject matter of the Appellants claim is an admission of legal incompetence or importance to make any further or binding declaration in the cause before the court

ONUYIVWE VS UTIH (1991) 1 SC (Pt. 1) 61.

On issue 3 whether the Appellants case was statute bar? Learned counsel submit that the suit of the Appellant/Complainants before the Tribunal is not statute barred even on the face of the provision of section 6(3) & (4) of the FCT Act.

It is the submission of the appellant that, the appellant case before the lower Tribunal is not predicated on title to land but rather, it is one for entitlement to compensation for cash crops and other economic trees. And therefore, it cannot be statute barred.

On their part, 1st and 2nd Respondent filed their brief of argument and formulated two issues for determination to wit;

1. Whether the Tribunal was right in dismissing the Appellants case after holding that it is statute barred.
2. Whether from the facts and circumstances of this Appeal, the tribunal was right to hold that the suit

is statute barred under the provision of section 6(3) and (4) of the FCT Act.

On issue No. 1, whether the Tribunal was right in dismissing the Appellants case after holding that it is statute barred.

Learned counsel submit that, the effect of a finding of a statute bar by any court of law or tribunal is dismissal of the matter. ***AGBAJO VS ATTORNEY GENERAL OF THE FEDERAL (1986) 2 NWLR (Pt. 23) 529.***

On issue two, Whether from the facts and circumstances of this Appeal, the tribunal was right to hold that the suit is statute barred under the provision of section 6(3) and (4) of the FCT Act.

Learned counsel submit that Federal Capital Territory Act in section 6(3) clearly states that any person who claims any right or interest in any land comprised in the Federal Capital Territory submit in writing, particulars

of his claims to the executive secretary on or before the expiration of a period.

HON. MINISTER OF FEDERAL CAPITAL TERRITORY & ANOR VS IYA ALABRAH & 2ORS UNREPORTED.

3rd to 6th Respondents formulated 3 issues for determination to wit;

1. Whether when a court has no jurisdiction, the proper order to make is an order for dismissal or for an order striking out the suit?
2. Whether the Tribunal was right when after declining jurisdiction, it went ahead to hold that the Appellant/Claimants claim against the Respondents/Defendants was statute barred.
3. Whether the Appellant's case was statute barred.

On issue No. 1, Whether when a court has no jurisdiction, the proper order to make is an order for dismissal or for an order striking out the suit?

Learned counsel submit that the principal reason for the dismissal of the case was because, it was statute barred. And that the argument that a court cannot dismiss a claim, the merit of which it is not competent to enquire, is misleading and not the position of the law. For it is a principle of law that a court has the power to inquire into a matter whether it has jurisdiction or not. ***AHMED VS AHMED (2015) 15 NWLR (Pt. 1377) page 328 paragraph C-D.***

On issue two, whether the Tribunal was right when after declining jurisdiction, it went ahead to hold that the Appellant/Claimants claim against the Respondents/Defendants was statute barred.

Learned counsel submit that section 1(1) 3 and 6(3) of the FCT Act provide for limitation of action and that the action of the appellant before the lower court was statute barred. Court was urged to dismiss the Appellant's case.

On the part of court, we have gone through the brief of argument as canvassed by the appellant and the briefs of argument filed by the respective counsel for the Respondents.

In resolving the issues afore-raised by both Appellant and respondents, we have decided to collapse the issues into one issue, to wit:-i.e. whether tribunal was right in dismissing the appellant case instead of striking out is hereby formulated for determination.

Before delving into the above issue formulated, it is expedient to look at the brief case of the appellant before the lower court.

The Appellant in the lower court stated that they are indigenous settler and occupiers of portions of the vast hectares of land behind Mogadishu barracks in Nyanya province and that they had planted cash crops and economic trees but that sometimes in 2014, they started noticing the presence of military officer who carried out the clearing of their farm crops and economic trees

without notice, and also that they have written series of letter to the Respondent for compensation of their farm crops and economic trees without response. Hence the action before the lower tribunal (see pages 2 – 10 of the records of proceedings).

It is instructive to observe that, the ruling of the lower tribunal as contained in (pages 175 to 181) of the records of proceedings is in the respect of preliminary objection raised by the Respondents before the tribunal.

The tribunal in their ruling distilled issues for determination to wit;

- a. Whether the Plaintiff possess the requisite locus standi to institute this suit.
- b. Whether the Honourable Tribunal possess the requisite jurisdiction to entertain dispute or amount payable for cash crops and economic trees.
- c. Whether the suit as presently instituted is statute barred.

- d. Whether the suit as presently instituted amount to an abuse of court process. See page 176 of the record of proceedings.

The trial tribunal considered all the issues aforesaid and ruled that the case of the Appellant was statute barred. The appellant dissatisfied with the ruling of the lower court, filed the present appeal.

We must observe that in considering the jurisdiction of a court of law in any matter, the relevant statute which confers or oust jurisdiction of such a court in the matter is fundamental.

The Federal Capital Territory Act which came into force on the 4th of February, 1976 provides in section 6(3) the time within which any person who claims any interest or right in any land comprised in the FCT shall make his written notice to the authority.

Section 6(4) provides that no claim for compensation shall be entertained by the authority unless a written notice of the claim in accordance with subsection (3) of

this section is served on the authority within the period specified in the said subsection. That is twelve months from the 4th of February, 1976.

As stated in the preceeding part of this judgment, the appellant's case was for compensation for the alleged destruction of their cash crops and economic trees which saw the Respondents filed notice of preliminary objection challenging the jurisdiction of the tribunal and that the matter was statute barred.

The Tribunal in her ruling in page 180 of the record of proceedings stated as follows:-

“The next issue raised in their objection is whether the suit is statute barred by virtue of sections 6(3) and (4) of the FCT Act.”

In page 181 of the record of proceedings at paragraph 2 the tribunal stated as thus;

“In the instant case, the draftsmen of the Federal capital Territory Act, actually intended to set a

time frame for a claim of compensation, otherwise for the next thousand years an indigene may come up with a claim of compensation for loss of his ancestral homes ... in the circumstances we hold that this suit was filed after the period stipulated in the FCT Act i.e section 6(3) and (4). Consequently the suit is statute barred.”

From above, it is obvious that the lower tribunal had exhaustively considered the issues bothering on jurisdiction of the court and further delved into the issue whether the suit before it was statute barred.

It must be emphasized at this juncture that where an action is statute barred, a Plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action has elapsed. An action commenced after the expiration of the period, within which an action must be brought stipulated in a statute of limitation is not

maintainable ***ENUGU STATE CIVIL SERVICE COMMISSION & ORS VS GEOFREY (2006) LPELR 7638 (CA).***

It has since been settled, that where a Defendant raises a defence that a Plaintiff's action is statute barred whether in his statement of defence, preliminary objection or through a motion on notice or in any other way and the court sustains or upholds such defence, the proper order such court will make in that circumstances is that of dismissal of the Plaintiff's action and not merely striking it out. ***YAKUBU & ANOR VS NITEL & ORS (2005) LPELR 11909 (CA).***

From above therefore, we find no merit in the application consequently same is hereby dismissed.

The decision of the Lower Tribunal is hereby upheld.

Justice A.S Adepoju
(Hon. Judge)
(Presiding)

Justice Y. Halilu
(Hon. Judge)
(Member)

APPEARANCES

A.N ASURU – for the Appellants.

ANNE IKENJOKU – for the Respondent.

O.M ATOYEBI – for the 3rd – 6th Respondents.