

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**  
**HOLDEN AT MAITAMA ABUJA**  
**ON THE 27<sup>TH</sup> DAY OF MAY, 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH**  
**(PRESIDING JUDGE)**

SUIT NO: FCT/HC/CV/1009/2016.

**BETWEEN**

**OCHEOGBU IFERE.....PLAINTIFF.**

**AND**

- 1. THE HONOURABLE MINISTER OF THE FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA) ..... DEFENDANTS.**

**JUDGEMENT.**

Before the court is an originating summons filed on the 19th of February, 2016 wherein three questions were raised for determination and the plaintiff claims seven reliefs.

The originating summons is supported by a 24 paragraph affidavit deposed to by Ocheogbu Ifere with attached Exhibits and an accompanying written address.

The questions raised for determination by plaintiff are:

1. Whether the defendants were entitled, in the light of section 5(1)(a), 28 and 44 of the Land Use Act, to withdraw/compulsorily acquire plot 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063

(old file Number 2367) at Cadastral Zone E16 measuring approximately 1,200sqm without paying compensation or allocating an alternative plot of land of equal size and value to the plaintiff.

2. Whether in the light of the mandatory provisions of section 28(6) and 44 of the Land Use Act, the purported withdrawal/compulsory acquisition and revocation of the Right of Occupancy of the plaintiff by the Defendants is valid and legally sustainable without evidence of any service of notice of the purported compulsory acquisition and revocation on the plaintiff.

3. Whether in the light of the provisions of section 28(7) of the Land Use Act, the Right of Occupancy of the plaintiff over plot 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm with old file Number BN 2367 and new file Number BN 10063 had ever been lawfully extinguished.

The plaintiff/applicant claims against the defendants jointly and severally as follows:

1. A declaration that the plaintiff is the owner of the property described as plot No. 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm.

2.A declaration that the purported compulsory acquisition/withdrawal of plot No. 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral

Zone E16 measuring approximately 1,200sqm is invalid, null and void and of no effect whatsoever being contrary to section 28(6) and (7) and 44 of the Land Use Act and section 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999.

3. An Order cancelling and /or setting aside the purported compulsory acquisition/withdrawal of plot 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm is invalid, by the Defendants being in clear and flagrant violation of the mandatory provisions of the Land Use Act.

4. An Order granting/restoring possession to the plaintiff over plot 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm.

5. An Order compelling the defendants to issue to the plaintiff a Certificate of Occupancy covering plot 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm.

6. An Order of perpetual injunction jointly and severally restraining the defendants, their agents, servants, privies or assigns from further interfering in any way, shape or form with the plaintiff's exclusive use and possession of plot 140 within Kpaduma District, Federal Capital Territory with file No. BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm.

7. The sum of N15,000,000.00 (Fifteen Million Naira) as damages.

The Defendants were served with the originating processes on 11th of March, 2016.

The Defendants upon receiving the originating processes, filed on 12th April, 2016 a Notice of Preliminary Objection which was later abandoned and struck out by the Court on 10th of February, 2020 upon an application for same by the plaintiff.

The plaintiff in his written address in support of the originating summons, formulated the following three issues for determination.

1. Whether the purported compulsory acquisition of the plaintiff's plot of land by the 1st and 2nd defendants was lawful and proper.
2. Whether the defendants were entitled, in the light of sections 5(1) (a), 28 and 44 of the Land Use Act, to compulsorily acquire the plot without paying compensation or allocating an alternative plot of land of equal size and value to the plaintiff.
3. Whether in the light of the provisions of section 28(7) of the Land Use Act, the Right of Occupancy of the plaintiff over the plot had ever been lawfully extinguished.

Plaintiff's submission in respect of his issues for determination is summarised briefly as follows:

On the 1st issue raised, plaintiff's counsel submitted that Defendants have the power under the Land Use Act to revoke right of occupancy however the power of compulsory acquisition must be exercised by the 1st defendant in line with the mandatory

provisions of the Land Use Act. He referred the Court to *CSS BOOKSHOPS V. RTMCRS* (2006) 11NWLR (PT.992) Pg. 530 @ 577 Para.F., *NITEL V. CHIEF OGUNBIYI* (1992) 7 NWLR (PT.255) pg.543 and Section 28(6) of the Land Use Act.

He submitted further that the plaintiff was never served the purported withdrawal/revocation/compulsory acquisition notice in line with the provisions of the Land Use Act. And that the issue of service of notice of revocation/compulsory acquisition is mandatory and that the purported compulsory acquisition of the plaintiff's plot by the defendants without serving him the mandatory notice of revocation/notice of compulsory acquisition renders same null and void. He urged the Court to so hold.

On the second issue, he submitted that in the unlikely event that the Court holds that the compulsory acquisition of the plaintiff's plot is legal and lawful, the plaintiff is entitled to compensation for the compulsory acquisition or alternative plot of land of equal size and value. He referred to Section 29(1) of the Land Use Act.

On the third issue, Counsel submitted that the plaintiff's Right of Occupancy in respect of the plot was never lawfully extinguished. He referred to section 28(7) of the Land Use Act and the case of *NIGERIAN ENGINEERING WORKS V. DENLAP LIMITED* (2001) 18 NWLR (PT.746) Pg. 726 at 758 Paras. A-C.

In conclusion, he submitted that the question posed by the plaintiff on the originating summons be answered in the affirmative and all the reliefs sought be granted.

I have considered the case of the plaintiff, the written address and oral submissions of counsel on behalf of the plaintiff. And I am of the view that the issues arising for determination are:

1. Whether this action as presently constituted has been competently instituted.
2. Whether the questions formulated ought to be answered in the affirmative as submitted by plaintiff.
3. Whether from the affidavit evidence before the Court, the applicant is entitled to the prayers sought in the Originating Summons.

The first issue is whether this action has been competently instituted.

The plaintiff from the above reliefs, is seeking the determination of the questions hereinbefore set out and corollary declaratory reliefs already highlighted above.

The Defendants did not file a counter affidavit nor any legitimate opposition to this Originating Summons.

A glean of all the processes before the court reveals that the main materials for consideration here are the affidavit evidence and questions for determination as set out before the court, and the reliefs sought by the plaintiff.

By the way, the questions for determination in the originating summons correlates in every respect with the issues formulated for determination in the written address and evinces the declaratory reliefs sought in this suit.

Originating Summons is no doubt one of the identified modes of commencing a case in the Federal Capital Territory High Court, Abuja. See Order 2 Rules 1 and 3(1) of the Federal Capital Territory High Court (Civil Procedure) Rules, 2018 and the preceding Order 2 Rules 2 of the Federal Capital Territory High Court (Civil Procedure) Rules, 2004.

Clearly, by the provisions of Order 2 Rules 2(2) of the Federal Capital Territory High Court (Civil Procedure) Rules, 2004 in force when this suit was instituted, civil proceedings may be commenced by originating summons where the main issue is or is likely to be one of construction of a written law or instrument, or of any will, contract or other document. Its also employed where there is or unlikely to be any dispute as to fact. For better understanding hereunder is the said Order 2 Rule 2 of the Federal Capital Territory High Court (Civil Procedure) Rules, 2004.

Order 2 Rule 2 provides thus:

*“(2) Proceedings may commence by originating summons where-*

*(a) the main issue is, or likely to be one of construction -*

*(i) of a written law or of an instrument made under any  
written law; or*

*(ii) of any deed, Will, contract or other document or some*

*other question of law; or*

*(b) there is unlikely to be a substantial dispute of law. “*

On Originating Summons as a procedure where there's unlikely to be dispute of fact, I refer to:

**INCORPORATED TRUSTEES OF CATHOLIC DIOCESE OF EKITI STATE v. AG EKITI STATE & ANOR (2018) LPELR-43510(CA) 60-61 PARA E-D** where the court postulates as follows:

*“Originating summons as a process has its own peculiarities which are geared towards expeditious determination of the cause of the parties which cause is not burdened by facts that are likely to be in dispute. In the case of Dapianlong V. Dariye (2007) 8 NWLR (Pt. 1036) 332 , the Supreme Court held inter alia that originating summons is the method of commencing an action where the sole or principal question in issue is or likely to be one directed to the construction of a written law, the constitution or other document or other question of law. In other words, originating summons is used for non-contentious actions or matter, that is, those actions where the facts are not likely to be in dispute. It is not meant to enlarge the jurisdiction of a Court because it is merely a method of procedure. It is not a substitute for commencing*



*contentious suits because the appropriate method of commencing such suits is a writ of summons in which what is alleged by the parties will be clearly defined in the pleadings and both sides will be a liberty to lead oral evidence in proof of the averments.”*

See also

**HUSSAINI ISA ZAKIRAI v. SALISU DAN AZUMI MUHAMMAD & ORS(2017) LPELR-42349(SC) PG. 64-66 Para A-A.**

And

**DIRECTOR OF SSS & ANOR V. AGBAKOBA (1999) LPELR – 954 (SC) Per UWAIS JSC Pg. 27 Para C-E.**

From the above provisions of Order 2 Rule 2 of the 2004 Civil Procedure Rules of this Court, it is clear that it is only where a person's claims is for determination of construction as elucidated therein and postulated in the authorities recounted Supra that the Originating Summons route may be employed in an action.

I have carefully examined the questions for determination and the reliefs sought by the plaintiff and all the averments deposed to in the affidavit in support of the originating summons. The reliefs claimed by the plaintiff including relief for perpetual injunction have all been set out hereinbefore.

The plaintiff seeks declaratory orders amongst other prayers. And the nature of the claims and supporting facts impels me to be particularly cautious in the determination of the claims of the plaintiff without further facts or evidence by way of oral testimony

for which the witnesses can be subjected to cross examination for verification of particulars of evidence. The affidavit evidence presented herein without any other cannot be taken hook, line and sinker for determination of the declaratory and ancillary claims of the plaintiffs one way or the other.

The subject matter of this Originating Summons borders on ownership of title to land described as plot No.BN 10063 at Cadastral Zone E16 measuring approximately 1,200sqm. and whether the title of plaintiff to same has been properly extinguished.

It is trite law that it is not proper to commence an action which is likely to be in dispute under the originating summons. Originating summons is used when what is in dispute is the mere construction of documents, statutes or interpretation of the law in respect of which pleadings are unnecessary or where there are no real dispute as to facts between parties. See

**OJO LOCAL GOVERNMENT V. ELILE & ANOR. 2018 LPELR-46576 Pg. 62-63, Paras. F-D**

*“In the circumstances therefore, I hold that there were substantial dispute of facts coupled with a claim for perpetual injunction and the declarations sought gave rise to the issue of title to the land in dispute, which claim cannot be inquired into in a proceedings commenced by means of Originating Summons as was erroneously held by the Court below but by means of a Writ of Summons. Thus, the Originating Summon procedure by which the suit was*

*commenced by the Respondents was completely and irredeemably improper. Consequently, issue three is hereby resolved in favor of the Appellant against the Respondents. See Famfa Oil Ltd V A.G Federation(2003) 18 NWLR (Pt. 852) 453 @ p. 467; Jev V. Iyortyom (2014) 14 NWLR (Pt. 1428) 575 @ p. 615; Nwosu V. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt. 135) 688.”*

See also the cases cited Supra above.

In as much as it is noted that declarations may be made upon affidavit evidence, I however wish to observe that it is not in instances such as this where oral evidence is likely to be required to resolve issues raised by plaintiff’s case. It is also settled that declaration of title to land cannot merely be granted by the Court on the basis of admission only without first and foremost providing opportunity for calling oral evidence by the parties involved. I refer on this to:

**NWOSU v. APP & ORS (2019) LPELR-49206(CA) PG.40 PARA B-C**

*“It is not the law, that declaratory reliefs cannot be granted on the basis of affidavit evidence. Once the affidavit evidence is credible and sufficient, declaratory reliefs can be granted on their basis. It is, that declaration cannot be given on the basis of admission only”.*

Without further ado and in order to avoid falling into the error of making pronouncement bordering on the substantive action, I find

that at this stage that this action hasn't been properly commenced by the plaintiff. A prudent scrutiny of the questions for determination and reliefs attest to this.

Thus where an action for title or ownership of land is commenced by an originating summons (just as it is in the instant case) instead of Writ of Summons, the appropriate order to make by the Court is to either direct that pleadings be filed so that oral evidence will be taken to resolve the grey areas that exist in the case or strike out the case as the justice of the particular case requires. See

**OFODILE v. INEC & ORS (2019) LPELR-48631(CA)at page 30-39 paras B-E. per UMAR JCA**

Suffice to say in the light of the foregoing, that I am of the humble view that this case as presently constituted cannot be effectively determined one way or the other by the Originating Summons procedure.

Consequently, the suit is found to have been incompetently instituted and is hereby accordingly struck out.

Signed

Honourable Justice M.E Anenih.

Appearances:

I.O. Ona Esq with D.G. Odubitan Esq and Rebecca .O. Olu Ms for plaintiff.

Betty A. Umegbulem Ms with Fatima Adamu and Linda Musa for  
Defendants.