

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**DELIVERED ON THURSDAY THE 14TH DAY OF MAY, 2020.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI**

**SUIT NO. CV/427/2019**

**BETWEEN**

**SUN MICRO SYSTEM LIMITED ----- CLAIMANT**

**AND**

**1. MINISTER OF THE FEDERAL CAPITAL TERRITORY**

**2. FEDERAL CAPITAL DEV. AUTHORITY -----DEFENDANTS**

**JUDGMENT**

By an originating summons filed in this court on the 25<sup>th</sup> of November, 2019 the Applicant seeks the determination of the following 2 questions;

1. Whether Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja is not for Commercial land use/purpose having regard to the offer of Terms of Grant/Conveyance of Approval dated 11<sup>th</sup> April 2003 issued to the Claimant by the Defendants and the judgment of the High Court of the Federal Capital Territory, Abuja, in FCT/HC/CV/1938/09.
2. Whether the premium payable by the claimant in respect of Plot 252 Katampe Extension District, Cadastral Zone B19, Federal

Capital Territory, Abuja is not N2000.00 per square metre as stated in the offer of Terms of Grant/Conveyance of Approval dated 11<sup>th</sup> April 2003 issued to the Claimant by the Defendants. .

Upon answering the above questions, the Plaintiff claims against the Defendant the following reliefs:-

1. A declaration that the land use/purpose for Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja, measuring approximately 1 Hectare is commercial.
2. A declaration that the premium payable by the Claimant in respect of Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja, measuring approximately 1 Hectare is N2000.00 per square meter, totalling the sum of N20million.
3. An order nullifying and setting aside the statutory Right of Occupancy Bill issued to the Claimant on the 22<sup>nd</sup> day of October, 2019 by the Defendants wherein the premium for Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja, was stated as N5000.00 per square meter, totalling N50,161,222.73 instead of N2000,00 per square meter, totalling N20Million.
4. An order directing the Defendants to accept the sum of N20Million from the Claimant instead of N50,161,222.73 as the

premium for Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja.

5. AND SUCH further or other orders as the Honourable Court may deem necessary to make in the circumstances of this case.

In support of the originating summons, the Claimant filed an affidavit of 24 paragraphs and a 5 paragraph affidavit both deposed to by one Alphonsus Oshiole, the Claimant's Project Engineer. Attached to the affidavit in support of originating summons are eight (8) exhibits marked AA - HH respectively. The learned Counsel for Claimant also filed a written address in support of the originating summons and raised two (2) issues for determination as reproduced above. The attached eight (8) Exhibits are as follows;

1. Exhibit AA – Offer of Terms of Grant/Conveyance of Approval.
2. Exhibit BB – Judgment of the FCT High Court in Suit No: FCT/HC/CV/1938/09 dated 9<sup>th</sup> of July, 2012.
3. Exhibit CC – letter titled “RE: STATUTORY RIGHT OF OCCUPANCY WITH FILE NO. MISC 51826 OVER PLOT 252 KATAMPE EXTENSION DISTRICT, CADASTRAL ZONE B19, FEDERAL CAPITAL TERRITORY, ABUJA” from Federal Capital Territory Administration, Department of Land Administration dated 28<sup>th</sup> of October, 2013 addressed to the Claimant.
4. Exhibit DD - letter titled “RE: PAYMENT PAYABLE FOR PLOT 252 KATAMPE EXTENSION DISTRICT, CADASTRAL ZONE

B19, FEDERAL CAPITAL TERRITORY, ABUJA WITH REGARD TO THE JUDGMENT OF COURT IN SUIT NO. FCT/HC/CV/1938/09” from Federal Capital Territory Administration, Department of Land Administration dated 24<sup>th</sup> of July, 2014 addressed to the Claimant.

5. Exhibit EE – letter titled “RE: PAYMENT PAYABLE FOR PLOT 252 KATAMPE EXTENSION DISTRICT, CADASTRAL ZONE B19, FEDERAL CAPITAL TERRITORY, ABUJA WITH REGARD TO THE JUDGMENT OF COURT IN SUIT NO. FCT/HC/CV/1938/09” from HAKEEM KAREEM & CO dated 15<sup>th</sup> February, 2015 addressed to the 1<sup>st</sup> Defendant.
6. Exhibit FF – Statutory Right of Occupancy Bill dated 22/10/2019.
7. Exhibit GG – Site plan showing Plot: Katampe Extension / B19 / 252.
8. Exhibit HH – Revenue Collector’s Receipt of Federal Capital Territory Administration and Zenith Bank Deposit Slip titled “AGIS-FCC REVENUE ACCOUNT”.

The plaintiff’s case, as may be gathered from the affidavit in support of the summons is that the 1<sup>st</sup> Defendant granted the Claimant the statutory Right of Occupancy over the parcel of land situated at and known as Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja, measuring approximately 1 Hectare via a letter with reference number: MFCT/LA/MISC 21404 dated 11<sup>th</sup>

April 2003. The Claimant has been in possession until the defendant through their agents interfered with the Claimant's quiet possession and the Claimant commenced Suit No: FCT/HC/CV/1938/09 against the Defendants and obtained Judgment in its favour. That the Claimant had a meeting with officials of the defendants as to the appropriate premium to be paid in the light of judgment of the court, which meeting was followed up with a letter urging that the proper premium to be paid was N2000 per square meter totalling N20Million Naira with respect to the size of the Plot which is 1Hectre (10,000sqm). The Defendant wrote a letter dated 24<sup>th</sup> of July, 2014 rejecting the sum of N2000 per square meter stating that the appropriate premium to be paid by the Claimant was the prevailing rate but did not state what the prevailing rate was. That on the 12<sup>th</sup> February, 2015 the Claimant wrote to the Defendants to reconsider their position on the premium failing which the Claimant will go back to the Court for redress. The Defendants did not reply the letter and on the 22<sup>nd</sup> day of October, 2019 the Defendant issued the Claimant with a Statutory Right of Occupancy Bill / Demand Notice (MFCT/LA/MISC 21404 dated 11<sup>th</sup> April 2003) and the said Plot was stated as commercial in line with the letter of grant of the Statutory Right of Occupancy but the Premium was stated as the total sum of N50, 161, 222.73 at N5000.00 per square meter **instead of N2000 per square meter totalling N20Million in line with the said offer of Terms of Grant/Conveyance of approval which the court has pronounced as valid and subsisting.** That on the 15<sup>th</sup> of November 2019, the Claimant was

issued with a site plan for the said plot of land but the land use stated therein is Public Institution instead of commercial.

In the written address of the Claimant's Counsel, two (2) issues was formulated for determination thus:-

1. "Whether Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja, is not for Commercial land use/purpose having regard to the Offer of Terms of Grant/Conveyance of Approval dated 11<sup>th</sup> April 2003 issued to the Claimant by the Defendants and the Judgment of the High Court of the Federal Capital Territory, Abuja, in FCT/HC/CV/1938/09?"
2. "Whether the premium payable by the Claimant in respect of Plot 252 Katampe Extension District, Cadastral Zone B19, Federal Capital Territory, Abuja, is not N2000.00 per square meter as stated in the Offer of Terms of Grant/Conveyance of Approval dated 11<sup>th</sup> April 2003 issued to the Claimant by the Defendants?"

In arguing the two (2) issues, learned counsel submitted that the 1<sup>st</sup> Defendant meant what is stated in Exhibit AA that the land use purpose for the aforesaid Plot of land he allocated to the Claimant is Commercial and that the premium is N2000.00 per square meter. Also that any site plan prepared by the Defendants in respect of the said plot of land has to be consistent with the land use already stated in Exhibit AA. Counsel

further submitted that the premium of the total sum of N50, 161, 222.73 which the Defendants arrived at the rate of N5000.00 per square meter is not only contrary to the terms of grant of Statutory Right of Occupancy made to the Claimant by the 1<sup>st</sup> Defendant, but also offensive to the mandatory provisions Regulation 2 of the Federal capital Territory (FCT) Land Use Regulations 2004 as the premium demanded by the Defendants is not the rent provided for under sections 5(1), 10 )b) and 16 – 20 of the Land Use Act. Counsel also submitted that the premium of the total sum of N50, 161, 222.73 at the rate of N5000.00 per square meter which the Defendants included in Exhibit FF is not anchored on any law. He urged the court to declare same null and void and to resolve all the issues presented for determination in favour of the Claimant and to grant all the reliefs sought by the Claimant in its Originating summons. He also urged the court to make such consequential orders as may be necessary in the circumstances of this case. He relied on the following authorities’;

- 1. OGBUANYINYA V. OKUDO (1979) 6-9 S.C.32 at 48**
- 2. B.P.E. V. ASSURANCE BANK (2009) LPELR-3896 (CA) at pp 17-18**
- 3. A.G NASARAWASTATE V. S.G. PLATEAU STATE (2012) LPELR-9730 (SC)**
- 4. UBN N. NWAOKOLO (1995) 6 NWLR (Pt 400)127**
- 5. NNPC V. FAMFA OIL LTD (2012) 17 NWLR (Pt. 1328)**

The Defendants filed a 7 paragraph affidavit deposed to by Saidu Badamasi Abdulkadir, a legal assistant in the litigation Registry of the legal service secretariat of the 2<sup>nd</sup> Defendant. Attached is a written address wherein learned Counsel for the Defendants raised a sole issue for determination to wit:

“whether the Claimant has proved its case to be entitled to the reliefs sought from the court”.

Learned counsel submitted that the 1<sup>st</sup> Defendant has Statutory Powers under the Land Use Act to fix premium payable by land owners within the Federal Capital Territory relying on section 9 (2) of the Land Use Act, therefore that the claim of the Claimant is merely frivolous, vexatious and misconceived urging the court to so hold. Counsel also submitted that the Claimant is not in a position to determine the amount to be paid as a premium for the subject plot, as the sole responsibility for doing so lies with the Honourable Minister of the Federal Capital Territory, 1<sup>st</sup> defendant in this suit and that by the provisions of Section 9 (2) of the Land Use Act, the 1<sup>st</sup> Defendant has the statutory powers to prescribe the fees payable by land owners before Certificate of Occupancy is issued to them. Finally counsel submitted that Exhibit BB cannot avail the Claimant as the premium to be paid in respect of the subject plot as it was not one of the issues presented before the former Court for adjudication wherein judgment was delivered, hence no pronouncement was made on the issue. Counsel urged the



court to hold that the case of the Claimant is misconceived, mischievous and frivolous and to dismiss the suit in its entirety.

I have thoroughly and carefully read processes and the issue for determination is:-

“Whether this Court has the power to sit on and alter, add, vary or interpret the decision of a court of co-ordinate jurisdiction”.

Judgment between same parties was delivered in suit No: FCT/HC/CV/1983/09 dated 9<sup>th</sup> July, 2012 before his Lord, the Honourable Justice D. Z. Senchi of the FCT High Court Abuja in respect of the land subject matter of this suit. In that Judgment My Lord Justice Senchi was approached with the following claims of the Plaintiff: -

1. A declaration that the Plaintiff is the holder of the Statutory Right of Occupancy over Plot 252 Katampe Extention District, Cadastral Zone B19 FCT Abuja.
2. A declaration that the Plaintiff's Statutory Right of Occupancy over Plot 252 Katampe Extention District, Cadastral Zone B19 FCT Abuja is valid and subsisting.
3. An order compelling the 1<sup>st</sup> Defendant to issue the Certificate of Occupancy for Plot 252 Katampe Extention District, Cadastral Zone B19 FCT Abuja.
4. An order of perpetual injunction restraining the Defendant from unlawfully or illegally, invalidating, terminating or revoking the

Plaintiff's Statutory Right of Occupancy over Plot 252 Katampe District Cadastral Zone B19, FCT Abuja.

5. An order of perpetual injunction restraining the Defendants from trespassing upon the said Plot 252 Katampe District Cadastral Zone B19, FCT Abuja.
6. The sum of N50,000,000.00 (Fifty Million Naira) as damages suffered by the Plaintiff.

The Hon. Justice Senchi in his Judgment had granted claims 1, 2, 4 and 5 while dismissing claims 3 and 6. Defendants in this suit are contending that N2,000 per square metre at the time of allocation 17years ago (2013) was the prevailing premium rate for Katampe Extention where Claimants land subject matter of this suit is located and that the Hon. Minister FCT is statutorily empowered under the Land Use Act to determine the premium payable for land within the FCT. Defendants further alleged that the premium rate for the subject plot was not one of the issues presented before the Hon. Justice Senchi for adjudication hence the Hon. Justice Senchi did not adjudicate nor make any pronouncement upon the issue in his judgment. I have gone through the processes and submissions of learned counsel and I find that the Hon. Justice Senchi had in his judgment made declaratory orders to the effect that the Plaintiff's Statutory Right of Occupancy over the subject matter Plot is valid and subsisting. The said Statutory Right of Occupancy is dated 11/04/03 and it reflects the following terms and conditions :-

“Rent per hectare per annum – N35,000

Improvement – N ----- (blank)

Term – 99years

Rent revision – Every 5 years

Purpose – Commercial

Premium - N2,000 per square metre.’

The above are the terms contained in the Statutory Right of Occupancy which the Hon. Justice Senchi held as being subsisting and valid. Nevertheless, Defendant has raised some salient issues to the effect that the FCT Minister is empowered under the Land Use Act to vary the amount to be paid as premium on any land within the FCT as Defendants has submitted that the issue of the premium to be paid on the subject matter Plot never came up before Hon. Justice Senchi. Contrary to the submissions of learned counsel to the Defendants the Statutory Right of Occupancy which Hon. Justice Senchi in his judgment upheld as being subsisting and valid is not devoid of particular terms and conditions, rather the Statutory Right of Occupancy is inclusive of the terms and conditions contained therein which I have highlighted above. By removing one clause or term or varying a clause or terms/condition as contained therein would be tantamount to this court interpreting the judgment of a court of co-ordinate jurisdiction. Claimants prayers in his originating summons before this court to wit :-

Prayer 1, praying this Court to declare that the subject matter Plot is commercial is already reflected in the offer of terms of grant of

Right of Occupancy which the Hon. Justice Senchi adjudicated upon.

Prayer 2 and 3 praying this court to declare the premium payable by the Claimant in respect of subject matter Plot as being N2,000 per square metre and not N5,000 is already reflected in the said offer of grant of Right of Occupancy which the Hon. Justice Senchi adjudicated upon.

Prayer 4 and 5 before this court is as a consequence of claims 1,2 and 3 .

It is trite law that courts are creations of the Constitution and Statutes, which defines the areas of Jurisdiction, hence a court must possess the necessary vires before adjudicating on a matter see **IKECHUKWU VS. FRN (2015) 7 NWLR (PART 1457) 1 AT 23H-2A-B per NGWUTA, JSC.** This Court is to decide whether the issue of premium and other terms and conditions as contained on the face of the Grant of Statutory Right of Occupancy adjudicated upon by Hon. Justice Senchi can be varied by the Defendants or not. I have no doubt in my mind that this court being a Court of co-ordinate jurisdiction with his Lord, Hon. Justice Senchi has no jurisdiction or competence to adjudicate on the question arising from the terms and conditions contained in the Statutory Right of Occupancy, as this would be tantamount to interpreting the judgment of his Lord Hon. Justice Senchi vide this Originating Summons currently before me and embarking on same would be an aberration in judicial process and a complete nullity. In the case of **RACE AUTO SUPPLY COMP.LTD &**

**ORS VS. ALHAJA FAOSAT AKIB (2006) 13 NWLR (PT. 997) 333 @ 351 E – 352 A-E.** In this case, the consent Judgment of Obadina J (as he then was) dated 4/5/1998 was placed before Shitta–Bey J. Both of the same Lagos High Court for interpretation. Justice Mohammed JSC held that a Judgment of a Court of law cannot be subjected to interpretation by a Court of co-ordination jurisdiction and stated;

*“the Lagos trial Court presided over by Shitta–Bey J. lacked competence to subject the consent judgment, of the same court delivered by Obadina J (as he then was) to interpretation of the contents or terms therein”.*

I am of the view and I so HOLD that the declaratory reliefs sought in the Originating Summons before me is an invitation to sit over the Judgment of a Court of co-ordinate jurisdiction which in effect is an invitation to sit as Appellate Court on Judgment of Co-ordinate jurisdiction and this contradicts the provisions of the Constitution of the Federal Republic of Nigeria and the Law. As held by Mohammed JSC in the Case of **RACE AUTO Supply Comp Ltd & ORS (Supra):-**

*“If a Judgment does not meet the claim of the party or it is not as favourable to his interest as he may have fathomed owed, the option open to him is to appeal the judgment and not to approach Courts of Co-ordinate jurisdiction to appraise, reappraise, modify or give different impression of what the judgment given in his favour or against him conveys with a view to obtaining*

*more favourable decision from other Courts of the same status. The latter Court will lack the jurisdiction to intervene”.*

In view of the above, the only option available to the Claimant is to appeal. Case is consequently struck out for want of jurisdiction.

**Parties:** Absent

**Appearances:** Ifunnaya Oranuba for the Claimant. Respondent is not represented.

**HON. JUSTICE M. OSHO-ADEBIYI**

**JUDGE**

**14<sup>TH</sup> MAY, 2020**