

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA.**

BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.

HON. JUDGE HIGH COURT NO. 12.

COURT CLERKS – T. P. SALLAH & ORS

DATE: 18/01/2021

BETWEEN:

FCT/HC/CV/1538/2020

DR. OLAYINKA ADEROPO OBANEWA

....

APPLICANT

AND

1. MICHAEL IBEH

2. MR. MAYOWA OJO

**(SUED FOR THEMSELVES AND ON BEHALF
OF MEMBERS OF THE EXECUTIVE COUNCIL
OF JUBILATION BETHEL ESTATE RESIDENTS ASSOCIATION,
LOKOGOMA, ABUJA, FCT.)**

**3. THE REGISTERED TRUSTEES OF JUBILATION
BETHEL ESTATE RESIDENTS ASSOCIATION,
LOKOGOMA, ABUJA, FCT.**

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JUDGMENT

On 11th May, 2020 the Applicant herein instituted the instant suit against the Respondents by filing an originating motion on notice No. CV/1538/20 accompanied by a Statement and an affidavit in support under the Fundamental Rights (Enforcement Procedure) Rules. The Applicant seeks the following reliefs:-

- a. A DECLARATION that the conduct of the Respondents in threatening and seeking to restrict the movement of the Applicant in and out of the Applicant's houses at Plot 106A and Plot 106B, Jubilation Bethel Estate, Lokogoma, Abuja unless and until the Applicant pays purported extra infrastructure levy demanded by the Respondents in their letter dated the 10th June 2019 is a threat to and likely

violation of the Applicant's Fundamental Rights to dignity of his human person, freedom of association, freedom of movement and residence and right to acquire and own immovable property guaranteed under sections 34(1)(a), 40, 41 and 43 of the Constitution of the Federal Republic of Nigeria, 1999 as Amended and Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria 2004.

- b. A DECLARATION that the Respondents are not empowered to demand and/or collect any fee with force from the Applicant or indeed any other resident of Jubilation Bethel Estate, Lokogoma, FCT, Abuja unless with and under a valid order of a Court of competent jurisdiction.
- c. A DECLARATION that it is wrongful and unlawful for the Respondents to threaten to restrict or curtail the movement of the Applicant within and without Jubilation Bethel Estate, Lokogoma, Abuja as stated in their letter dated the 10th June 2019 and that the said threat amounts to a likely violation of the Applicant's fundamental rights to freedom of association, freedom of movement and residence and right to acquire and own immovable property guaranteed under sections 40, 41(1) and 43 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
- d. A DECLARATION that the conduct of the Respondents in restricting and preventing agents of the applicant from gaining access to Jubilation Bethel Estate, Lokogoma, Abuja for the purpose of carrying out repairs and renovation on the applicant's property is unconstitutional, wrongful, unlawful and a violation of the applicant's fundamental rights to dignity of human person, freedom of movement and residence and the right to acquire and own immovable property guaranteed under sections 34(1)(a), 40, 41(1), 43 and 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Articles 5,6,7 and 12 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap A9 LFN 2004.

- e. AN ORDER setting aside the Respondents' letter dated the 10th June 2019 demanding for extra infrastructure levy from the Applicant.
- f. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents, either by themselves or their agents, servants, privies or any person or persons howsoever described acting through them or under their authority from demanding from the applicant, his agents, assigns, successor(s) in title or any person or persons claiming through him or on his behalf payment of any levy relating to Jubilation Bethel Estate, Lokogoma, Abuja or any levy or fee whatsoever.
- g. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents, either by themselves or their agents, servants, privies or any person or persons howsoever described acting through them or under their authority from inviting, molesting, embarrassing, harassing, intimidating, arresting or occasioning any form of inconvenience whatsoever to the applicant, his agents, assigns, servants, successor(s) in title or any person or persons claiming through him or on his behalf in connection with the subject of the Respondents' letter dated the 10th June 2019.
- h. The sum of Two Million Naira (N2, 000, 000. 00) as damages against the Respondents jointly and severally for the violation of the Applicant's fundamental rights.
- i. Such further and other order(s) that the Court may make to ensure the enforcement of the Fundamental Rights of the Applicant provided for in the Constitution of the Federal Republic of Nigeria 1999 as amended or the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act to which the Applicant may be entitled.

The Applicant's 34 paragraph affidavit in support is deposed to by the Applicant himself and accompanied by exhibits and a Statement setting out the grounds of the application and other relevant information. The Applicant's Counsel also filed

his Written Address dated 11th May, 2020 arguing in favour of the grant of the application.

With leave of Court, the 1st, 2nd and 3rd Respondents filed a joint Counter-Affidavit of 29 paragraphs with exhibits as well as their Counsel's written address. The Applicant filed a further affidavit and his Counsel's reply address on points of law.

On the 15th October, 2020, the instant matter was heard and Counsel to the respective parties adopted their processes and the case adjourned today for judgment. In his written address, the Applicant's Counsel formulated and argued two issues for determination of the instant application to wit:-

- a. Considering the facts deposed to in the affidavit in support of the application, whether the Applicant has disclosed a violation of his fundamental rights.
- b. Whether the Applicant is entitled to the reliefs sought in the statement in support of the application.

The Respondent's Counsel for his part distilled the following as the issues for determination:-

- a. Whether the Applicant should be estopped in conduct and action from denying the facts and existence of his membership and participation in the activities of the 3rd Respondent.
- b. Whether the Applicant has disclosed any violation of his fundamental rights by the Respondents and is entitled to the reliefs sought in the statement in support of the application.

I am of the opinion that the Respondents' issues can be adequately addressed under the second issue formulated by the Applicant. I shall therefore adopt the two issues formulated by the Applicant for the determination of this suit as mine.

ISSUE ONE AND TWO

Considering the facts deposed to in the affidavit in support of the application, whether the Applicant has disclosed a violation of his fundamental rights.

Under this issue, learned Counsel to the Applicant submitted in his address that the Applicant has invoked this Court's special jurisdiction enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). He referred this Court to Section 46(1) of the Constitution and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009. He further submitted that the law is that any person who alleges breach of his fundamental rights must establish such breach by cogent and credible affidavit evidence. He relied on the case of **ONAH V. OKENWA (2011) ALL FWLR (PT.565) P. 357**. Counsel submitted that the Applicant's affidavit in support lends credence and support to the assertion that his fundamental rights were threatened and indeed violated by the Respondents. Referring this Court to Sections 34(1)(a), 40, 41(1) and 43(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and a plethora of decided cases. Counsel argued that the Applicant's rights to dignity of human person, freedom of association, freedom of movement and residence as well as right to acquire and own immovable property were infringed. He urged this Court to resolve the issue in favour of the Applicant.

I have equally gone through the written address of the Respondents Counsel. And without much ado, I will proceed to look at the instant suit itself.

In the case of **EFFIONG V. EBONG (2006) 18 NWLR (PT. 1010) P. 109** the Court of Appeal held as follows:-

At any time when the Court is confronted with a claim under the fundamental rights procedure it is imperative that it should examine the relief sought, the grounds for such relief and the facts relied upon by the applicant.

Where the facts relied upon disclose a breach of the fundamental rights of the applicant as the basis of the claim, there is a clear case for the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules. However, where the alleged breach of right is ancillary or incidental to the principal claim, grievance or complaint it is incompetent to proceed under the rules. This is because the right violated is not synonymous with the substantive claim which is the subject matter of the action.– (underlining supplied by me for special emphasis).

The law is settled that for a claim to qualify as falling under Fundamental Rights (Enforcement Procedure) Rules it must be clear that the principal relief sought by the applicant is for the enforcement of a fundamental right and not to redress a grievance that is ancillary to the principal relief which is not itself *ipso facto* a claim of fundamental right. See the Supreme Court's decision in the case of **ABDULHAMID V. AKAR (2006) 13 NWLR (PT.996) P. 127** where it was held thus:-

*"The position of the law is that for a claim to qualify as falling under fundamental rights, it must be clear that the principal relief sought is for the enforcement or for the securing the enforcement of a fundamental right and not from the nature of the claim, to redress a grievance that is ancillary to the principal relief which itself is not **ipso facto** a claim for the enforcement of fundamental right. Thus, where the alleged breach of a fundamental right is ancillary or incidental to the substantive claim of the ordinary civil or common law nature, it will be incompetent to constitute the claim as one for the enforcement of a fundamental right."*

See also the cases of **ADE-OJO & ORS V. MAKANJUOLA & ORS (2019) LPELR-47962(CA)** and **SEA TRUCK (NIG) LTD V. ANIGBORO (2001) 2 NWLR (PT. 696) P. 159.**

I have carefully scrutinized the Applicant's allegations in his affidavit in support and the reliefs he claims in this suit. Succinctly put, the Applicant's allegation is that he is a resident of Jubilation Bethel Estate, Lokogoma, Abuja and owns two buildings therein. That he fulfilled all conditions of purchase of the buildings but the Respondents (who are residents of the same estate and association thereof) wrote him a letter on 10th June, 2019 requesting payment of N970,000 as extra infrastructural fee on the said properties. That the Respondents threatened to forcefully enforce payment of the levy by stopping construction activities in the estate and restricting movement of defaulters in and out of the estate. That the Respondents have been harassing the Applicant's tenants, his workmen for non-payment of the illegal levy demanded of him. The Respondents on 5th June, 2020 prevented the Applicant's agents from gaining access to the estate to effect repairs to his house. The Applicant contends that he is not a member of the Respondents' association i.e. the 3rd Respondent, and therefore has no obligation to the 3rd Respondent.

It is clear from the facts deposed to by the Applicant in his affidavit in support and the reliefs sought that his main grouse in this case is the right of the Respondents to levy infrastructure fee on him. This is clear from the second and fifth reliefs of his instant action which are for a declaration that the Respondents are not empowered to collect such fee from him and an order setting aside their letter demanding such fee. This is the pivot and springboard for the rest of the Applicant's claim of infringement of fundamental right i.e. threats of restriction of free movement etc. The claim that the Respondents do not have the power to impose levy on the Applicant constitutes the Applicant's principal claim in this action. It is however not a claim falling under fundamental right which can be brought under the fundamental right enforcement procedure. It is one which ought to be brought through the regular forms of action. It is incompetent under the fundamental rights enforcement procedure.

Emphasizing the condition precedent to the exercise of a Court's jurisdiction to entertain an action for enforcement of fundamental rights, the Supreme Court held in **UNILORIN V. OLUWADARE (2006) 14 NWLR (PT.1000) P. 751** per Mohammed JSC thus:-

"The law in relation to the claim for the enforcement of fundamental right is trite. It is to the effect that enforcement of fundamental right or securing the enforcement thereof, must form the basis of the applicant's claim as presented to the Court and not merely as an accessory claim. In other words where the main or principal claim is not the enforcement or securing the enforcement of fundamental rights, the jurisdiction of the Court cannot be properly exercised because it will then be incompetent."

Pursuant to all the foregoing, the Applicant's action is incompetent having been erroneously commenced under the **Fundamental Rights (Enforcement Procedure) Rules 2009**. This Court lacks the necessary jurisdiction to entertain the Applicant's claim under the Fundamental Rights (Enforcement Procedure) Rules. See the case of **W.A.E.C. V. AKINKUNMI (2008) 9 NWLR (PT. 1091)**. In view of this, a consideration of the merits of the case under the second issue herein would be unnecessary as it would amount to an academic exercise.

Thus, having established from the affidavit evidence and reliefs sought by the Applicant that this suit was incompletely commenced, this Court invariably have no jurisdiction to entertain same. Accordingly, the suit is hereby struck out.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
18/01/2021

Vincent Adodo:- With me is OlajumokeUsfoh for the

Applicant.
O.C. A Ibu:- For the Respondents

Sign
Judge
18/01/2021