

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 15TH DAY OF JULY, 2024

SUIT NO.: CV/1588/2024
MOTION NO: M/8838/2024

BETWEEN:

FATIMAH AHMADUNKARI DAMAGUN CLAIMANT

AND

KHADI AMINU SA'AD DEFENDANT

RULING

DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR

Pending before the Court is a Notice of Preliminary Objection filed by the Defendant dated the 30th day of May, 2024 and filed on 31st May, 2024. The objection is challenging the jurisdiction of the court to hear and determine the suit on the following grounds:

1. The Defendant and the Claimant were husband and wife, and they got married in accordance with Islamic rites as clearly shown in paragraph 3 of the Claimant's Statement of Claim.
2. The Claimant avers in paragraphs 12, 13 and 18 of the Statement of Claim as well as paragraphs 12 of her Witness Statement on Oath, that the Defendant purchased the property known as No. 25, Abubakar Malami, SAN street, Ipen 7 Estate, Karsana District, Abuja as a gift for her.

3. The Claimant's claim that she owns the said property is based and predicated on the alleged gift made to her by the Defendant.
4. This Honourable court cannot therefore determine the Claimant's claim of ownership of the said property without first determining whether the gift was actually made by the Defendant.
5. Any question or determination as to whether a gift was made where the donor is a Muslim, is a question of Islamic personal law.
6. By the provision of Section 262 (1) and (2) and Section 277 (1) and (2) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), the jurisdiction to hear and determine any question of Islamic personal law regarding a gift where the donor is a Muslim is conferred on the Sharia Court of Appeal and by extension on the Area/Sharia courts.
7. Section 262 (2) (c) and 277 (2) (c) of the Constitution provides that: "Any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim."
8. This Honourable court, not being a Sharia court of Appeal or an Area/Sharia court, lacks the jurisdiction to hear and determine any question regarding a gift made by a Muslim, as that is clearly a question of Islamic personal law

In support of the Preliminary objection is a 6 paragraph affidavit deposed to by Michael Adebiyi and a Written Address wherein Counsel to the Defendant/Applicant raised two issues for the determination of the Court:

- a. Having regard to the Claimant's claim that the property was purchased for her as a gift by the Defendant vis-a-vis the Defendant's demand that the Claimant should vacate and surrender his property to him, whether this Honourable court can determine the issue of title or ownership of the property without first determining whether the alleged gift was actually made?*
- b. Whether by virtue of Section 262 (2) (c) and 277 (2) (c) of the Constitution of the Federal Republic of Nigeria, 1999, this Honourable court has the jurisdiction to hear and determine question of gift where the donor is a Muslim?*

The facts deposed to in the affidavit are as follows: That both the Defendant and the Claimant are Muslims governed by Islamic law. They were husband and wife, having married according to Islamic rites. They got divorced in May 2022. Subsequently, the Claimant filed this suit seeking a declaration that she is the rightful owner of the property located at No. 25, Abubakar Malami, SAN Street, Ipen 7 Estate, Karsana District, Abuja.

It is further deposed to in the affidavit of the objector that the Claimant asserts in paragraphs 12, 13, and 18 of her Statement of Claim, and paragraph 12 of her Witness Statement on Oath, that the Defendant purchased the property as a gift for her, which the Defendant has denied.

Deposing further the Objector states that the Court cannot determine the Claimant's claim of ownership without first deciding whether the gift was actually made by the Defendant, as determining whether a gift was made by a Muslim donor involves questions of Islamic personal law, which falls outside the jurisdiction of this Court. The Sharia Court of Appeal, and by extension the Area/Sharia courts where Islamic law is applicable, are the only courts with jurisdiction to entertain questions of Islamic personal law regarding wakf, gifts, wills, and succession when the donor or endower is a Muslim.

Counsel in arguing the two issues raised in the Written Address together submitted that the Claimant's basis for ownership, as stated in her Statement of Claim and Witness Statement on Oath, is that the Defendant gifted the property to her. However, the Claimant also admitted in her Statement of Claim that the Defendant asked her to vacate the property, which raises doubts about her claim of ownership.

He contended that the Court must first determine whether the gift was actually made by the Defendant before making any decision on the ownership of the property. This involves resolving the claim of the gift, which is necessary for the Court to properly address the Claimant's claim of ownership.

He questioned whether the Court has the jurisdiction to determine the issue of the gift, especially since the alleged donor is a Muslim. He submitted that determining any question regarding a gift where the donor is a Muslim falls under Islamic personal law, which is within the jurisdiction of the Sharia Court of Appeal and Area/Sharia courts and not the High Court of the FCT, as provided by Sections

262 and 277 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

He referenced several cases, such as BALA V BALA (2023) LPELR-60941(CA) AND MUSTAPHA V. MOHAMMED & ANOR (2012) LPELR-7924 (CA). He argued that the FCT High Court's jurisdiction is subject to the provisions of the Constitution, which allocate certain matters to specific courts.

He cited further case law, including SOCIETY BIC S.A. & ORS V. CHARZIN INDUSTRIES LTD (2014) LPELR-22256 (SC) AND OSAGIE & ORS V. ENOGHAMA & ORS (2022) LPELR-57662 (CA), which highlight the limitations of the High Court's jurisdiction and affirm that matters involving Islamic personal law should be handled by the appropriate courts.

He concluded that since the Claimant's ownership claim is based on an alleged gift from a Muslim donor, this Court lacks jurisdiction. He urged the Court to strike out or dismiss the suit for want of jurisdiction, as proceeding without jurisdiction would render any decision a nullity.

The Claimant/Respondent in response to the Preliminary Objection filed a 9 Paragraph Counter-affidavit on 5th June, 2024 deposed to by Julius Dajong Swarlat. Also filed is a Written Address wherein Counsel posed two issues for determination thus:

- 1. Whether this Honourable Court is clothed with requisite jurisdiction to hear and determine the Claimant's case.*
- 2. Whether the Defendant/Applicant's notice of preliminary objection is an incompetent process and liable to be struck out.*

The Claimant/Respondent deposed to the fact that the subject matter of the suit before the Court concerns the declaration of title to the house located at No. 25 Abubakar Malami SAN Street, Ipent 7 Estate, Karsana District, Abuja, not the validity of a gift.

He averred that the cause of action is for the Court to determine the ownership of the disputed house between the Claimant and the Defendant and that the notice of preliminary objection is premature, as the Defendant seeks to have the Court determine the suit at an early stage. He further deposed that Islamic personal law is not relevant to this suit, which focuses solely on the ownership dispute of the house. He asserted that the Court has the jurisdiction to hear and determine the suit, and the Claimant is not seeking a ruling on the validity of a gift.

Deposing further he stated that the Defendant's notice of preliminary objection is incompetent and that the Defendant has not filed a memorandum of appearance or a conditional appearance as required by the Court's rules, and is out of time for doing so and also that the Defendant has also failed to file a Statement of Defence within the prescribed time. These failures he claims are fundamental and render the notice of preliminary objection incompetent. He concluded by noting that demurrer proceedings have been abolished by the Court's rules.

On issue 1 of the Claimant's Written Address filed by Counsel, it was argued that from the claims of the Claimant before this Honourable Court, the Claimant wants this Honourable Court to declare her as the rightful and legitimate owner of the house in dispute as the land is situated within the Federal Capital Territory. Counsel made reference to the provision of Section 39(1) of the Land Use Act 1978 stating that

all lands subject to statutory right of occupancy are within the exclusive jurisdiction of the High Court. He further argued that by virtue of Section 41 of the Land Use Act only lands subject to customary right of occupancy are within the jurisdiction of the Area Courts and other courts of coordinate jurisdiction. Contending further Section 1(3) Federal Capital Territory Act, 1990 all lands within the FCT are vested in the Federal Government without any reservation for customary grant as all lands in FCT are urban lands under the control of the Federal Government. He made reference on UMARU v. YAYA (2021) LPELR- 55008(CA) and ZUMBU v. BUMA & ORS (2018) LPELR-44938(CA).

On issue 2, He argued that the Preliminary Objection did not contain any orders, prayers, or reliefs sought from the Court. He argued that this omission rendered the application a worthless piece of paper, emphasizing that a court, including this Honourable Court, is not a Father Christmas and cannot grant what a party did not ask for.

To support his argument, he referenced the case OF EMERAH & ANOR V. OLADOSUN & ORS (2011) LPELR-8982(CA) and ELIAS & ANOR V. ECOBANK (NIG) PLC (2015) LPELR-41003(CA).

Addressing the issue of whether the failure of the Defendant/Applicant to file a memorandum of appearance or memorandum of conditional appearance before filing the notice of preliminary objection rendered it incompetent, he answered in the affirmative. He argued that the filing of such a memorandum is a condition precedent before any further step can be taken in a suit, as prescribed under Order 9 Rule 1 & 2 of the FCT High Court Civil Procedure Rules. The Applicant's failure to comply with this rule vitiated the process and rendered it incompetent.

To support this argument, he referred to the case of UNITY BANK PLC V. KAY PLASTIC (NIG) LTD & ANOR (2011) LPELR-8839(CA), which held that a process not duly filed before the Court does not exist in the eyes of the law, and the jurisdiction of the Court cannot be properly invoked. He also cited the case of ESHIET V. EFFIONG & ORS (2018) LPELR-45184(CA), where the Court of Appeal held that the failure to file a memorandum of appearance rendered a subsequent motion incompetent.

He concluded by urging the Court to resolve the issue in favour of the Claimant/Respondent and against the Defendant/Applicant.

I have gone through the processes before me and the arguments for and against the Preliminary objection. I shall in the resolution of this objection adopt the 1st issue raised by the Claimant/Respondent thus:

"Whether this Honourable Court is clothed with requisite jurisdiction to hear and determine the Claimant's case."

Before delving into the above issue raised, I shall state that at the stage of hearing the application, the Claimant's Counsel did not rely on his averments in Paragraph 6 of the supporting affidavit and withdrew the arguments in Paragraphs 4.2 to 4.9 of the Claimant's Written Address relating to the supposed failure of the Defendant/Applicant to file a Memorandum of Appearance. The said averments and arguments are hereby struck out.

The Claimant/Respondent contended that the Defendant/Objector did not seek for any reliefs. I disagree. At a glance of the Preliminary Objection the Claimant stated thus "TAKE NOTICE that the Defendant shall, before or at the hearing of this suit raise a preliminary

objection challenging the jurisdiction of the court to hear and determine the suit.” This to my mind is sufficient as jurisdiction is the live wire of a suit and can be raised suo motu by the Court at any stage.

Now, this objection, simply put is challenging this Court’s jurisdiction to entertain the suit of the Claimant.

Jurisdiction is derived from the Constitution or some specific law. It is a threshold issue, so once raised it must be decided quickly. The issue of jurisdiction is fundamental to the hearing of all cases. See the case of CBN & ORS v. OKOJIE(2015) LPELR-24740(SC).

In order to determine if the Court has jurisdiction, it is crucial to scrutinise the Statement of Claim before. Now, the Claims of the Claimant are that the Defendant gave the subject matter of this suit to her as a gift and the said claim has been disputed by the Defendant/Objector. It is also not in doubt that both parties are Muslim and got married under Islamic Law.

I shall make reference to Section 262 (2) (c) of the constitution of the Federal Republic of Nigeria, 1999 provides as follows:

2 For the purpose of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide-

(c) any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator, or deceased person is a Muslim"

It is not in doubt that the issue of gift is salient in the determination of this suit and the provisions of the 1999 Constitution as (Amended) include questions of Islamic Personal Law regarding gifts

It is indisputable that the issue of gifts is pivotal in the determination of this suit. The provisions of the 1999 Constitution, as amended, explicitly encompass questions related to Islamic Personal Law, particularly concerning gifts. This inclusion emphasizes the necessity of applying Islamic principles and rules when evaluating the validity and implications of gifts within this case.

However, it is essential to recognize that this Honourable Court lacks the jurisdiction to adjudicate matters that fall under the purview of Islamic Personal Law. The constitution clearly delineates the scope of authority, assigning specific jurisdiction to courts that are competent to interpret and apply Islamic Law. Therefore, any determination regarding the issue of gifts within the framework of Islamic Personal Law must be made by a court that possesses the requisite jurisdiction to handle such matters.

In light of this, it is imperative that this Honourable Court acknowledges its lack of jurisdiction and refrains from making any rulings on issues that are governed by Islamic Personal Law, thereby ensuring that the matter is adjudicated fairly and in accordance with the constitutional mandate.

It was held in the case of NANA & ORS v. AKWALABI(2021) LPELR-55009(CA)**Per MOHAMMED BABA IDRIS, JCA (Pp 17 - 17 Paras A - E)**

that:

"...From the wordings of the statement of claim filed at the trial Court by the Respondent, it is glaring that the matter is purely an issue of Islamic Personal Law as it bothers on Islamic Law of Succession (Inheritance) and Gift. There is no doubt that the issues presented before the lower Court is purely that of Islamic Personal Law. See pages 53-58 of the Record of Appeal. It had been argued by the Appellants' counsel and rightly so that the issue before the lower Court was purely that of Islamic Personal Law and that there are two issues involved namely SUCCESSION and GIFT. These two issues are within the exclusive jurisdiction of the Shariah Court of Appeal as provided by Section 277(2)(a)-(e) of the 1999 Constitution (as amended)."

It was also held in the case of *MAGAJI v. MATARI* (2000) LPELR-1813(SC) **Per UTHMAN MOHAMMED, JSC (Pp 22 - 22 Paras A - B)** that:

"Land disputes can only be pertinent for determination of Sharia Court of Appeal if it involves any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim."

It is my view that this suit involves a question of Islamic Personal Law regarding a gift and as such this court lacks the jurisdiction to entertain the said suit. This suit is hereby struck out.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant; Ishaka Mudi Dikko, SAN.and Basil Terhile Hemba, Esq.

For the Defendant;Shuaibu Ahmad Umar, Esq.