

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

SUIT NO: FCT/HC/CV/245/2023

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
BETWEEN:**

**JOHN OSAGIE INEGBEDIONAPPLICANT
AND**

1. BOING LUXURY ESTATE

2. ORY MARTINS AKINSELOYIN.....RESPONDENTS

JUDGMENT

This is an application filed under the fundamental rights procedure pursuant to Order II Rule I of the Fundamental Rights (Enforcement Procedure) Rules 2009 and sections 43 and 44 and 46 of the Constitution of the Federal Republic of Nigeria 1999, (as amended).

The respondents in response filed a preliminary objection dated and filed 25th January, 2023 and the defendants also filed a counter affidavit and a written address in opposition to the application.

The applicant seeks for the following reliefs:

1. A declaration that the Respondents' act of revoking the Applicant's ownership of the serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja) is a violation and infringement of the Applicant's fundamental right to own immovable properties in Nigeria against the provision of Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. An order directing the Respondents to issue and deliver to the Applicant the allocation papers to the serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja) and other 4 plots of land measuring 600sqm each at the Respondents Asokoro Rock Villa Estate, Abuja, which the Applicant paid for.
3. An order restraining the Respondents either by themselves, cronies, privies and or representatives from further tampering with or encroaching on the serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja) and other 4 plots of land measuring 600m² each at the Respondents' Asokoro Rock Villa Estate, Abuja, which belongs to the Applicant.
4. An order directing the Respondents to pay to the Applicant the sum of N100,000,000.00 (One Hundred Million Naira) only as general damages for infringing and violating the Applicant's fundamental right to ownership of immovable properties in Nigeria against the provision of Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
5. An order directing the Respondents to pay to the Applicant the sum of N200,000,000.00 (Two Hundred Million Naira) only as exemplary/punitive damages for its unconscionable infringement and violation of the Applicant's fundamental right to ownership of immovable in Nigeria against the provision of Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

6. An order directing the Respondent to pay to the Applicant, the sum of N10,000,000.00 (Ten Million Naira) only, being cost of this Suit.
7. An order directing the Respondent to tender a public apology to the Applicant published in 2 National Dailies.
8. And for such further orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:

1. The Applicant is a responsible public servant and a law-abiding Nigerian citizen resident at Plot 29, Mab-Global Estate, Idu-Karimu, Abuja FCT.
2. That the 1st Respondent is a corporate body registered under the laws of the Federal Republic of Nigeria (RC1331127), and having its office address at 5th Floor, Left Wing, NICON Plaza, Muhammadu Buhari Way, CBD, FCT - Abuja.
3. That the 2nd Respondent has the administrative responsibility of managing the 1st Respondent's affairs. His service address is also 5th Floor, Left Wing, NICON Plaza, Muhammadu Buhari Way, CBD, FCT – Abuja.
4. That the Applicant purchase serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja) alongside 4 other plots measuring 600m² each at the Respondents' Asokoro Rock Villa Estate, Abuja, and made full payments of Eighty-Five Million Naira (N85,000,000) only for all the 5 plots on the 9th of January, 2020.
5. That the Applicant paid in two installments of Eighty Million (N80,000,000) first and was issued with a

- receipt by the Respondents, and later another Five Million Naira (N5,000,000) of which the Applicant has not been issued with any receipt, being complete payment for all the five plots, and also the deed of contract of sale dated 1st day of July, 2019 executed between both parties in respect of only the serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992, (Asokoro Rock Villa Estate, Abuja) only.
6. That there is no outstanding remaining on the payment for the purchase price, thus the full consideration was made. No other title documents were given to the Applicant in respect of any of the lands to show the terms of the contract of the sale except the deed of contract of sale of 1st July, 2019 mentioned above.
 7. That the Respondents could not immediately show the Applicant to the physical plot until after several demands from the Applicant, the Respondents also failed to issue a letter of allocation to the Applicant in respect of any of the plots, even after several repeated demands for those relevant documents.
 8. That on several occasions the Applicant demanded that the Respondents put up a perimeter fencing and other basic amenities to ensure social security around and within the estate, but up until the time of filing this suit the Respondents have done none of those.
 9. That on the 8th of May, 2023 the Respondents via e-mail sent to the Applicant a notice dated the 8th day of May, 2023 stating their intention to revoke the land serviced Plot approximately 1000 square meters,

Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja) allocated to the Applicant.

10. That the Applicant through his counsel, Messrs Kalepron Attorneys, responded by his letter of 22nd May, 2023, warning the Respondents to desist from such illegal act and that any such attempt will be resisted with a law suit against the Respondents.
11. That regardless of the letter of the Applicant warning the Respondents from carrying out their illegal revocation, the Respondents in defiance went ahead to revoke the allocation of serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja), via its notice of 31st of October, 2023.
12. That by so doing the Respondents are blatantly displaying pure and deliberate disregard for the fundamental right of the Applicant as protected under Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
13. That all attempts and appeals by the Applicant to the Respondents to get them to be reasonable fell on deaf ears.
14. That being a Nigerian Citizen, the rights of the Applicant as guaranteed by the Constitution cannot be taken away save in a manner prescribed by the Constitution.
15. The unlawful and unjust act of the Respondents against the Applicant is unconstitutional and a violation of the Applicant's right as guaranteed by Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
16. The rights of the Applicant as guaranteed by the provisions of Section 43 of 1999 constitution of the

Federal Republic of Nigeria, 1999 (as amended) is sacrosanct and cannot be violated save in a manner prescribed by the law.

It is pertinent at this juncture to identify the claims whether it falls within which can be brought under enforcement of the Fundamental Right Procedure. See the case of **Abubakar Tatari Ali Polytechnic V. Maina (2005) All FWLR (pt 284) p. 255 at 261 – 262, paras. G-C** where the Court of Appeal, Jos Division held that in order to determine whether a cause could come under the Fundamental Rights Rules, the proper approach is closely determine the reliefs sought by the applicant, the grounds for such reliefs and the facts relied upon. If such facts disclose that breach of fundamental right is the main flow, then redress may be sought through the Rules. In the instant case, and it is against this backdrop the defendants filed a notice of preliminary objection dated the 25th January, 2024 and sought for an order of this Honourable Court striking out the suit for want of jurisdiction on the grounds that the fundamental enforcement proceedings is not the proper mode of action to redress an alleged breach of contract and the suit is an abuse of court processes.

The preliminary objection is supported by an affidavit and it is stated that the claimant was shown his plots of land which is contrary to the claimant's allegation and that the estate is within the fully developed part of the Abuja city and as at the time of receiving the applicant's court process, the estate had been developed with internal roads up to the location.

It is stated that as a matter of practice and town planning land, Department of Development control the agency responsible for giving housing development approval within the Federal Capital Territory does not grant

open ended building approval to developers of housing estate or even to individual land owners and in the case of the estate in issue, the approval given to them by the Development Control to develop the estate is for a limited years not exceeding 5 years which was well communicated to all beneficiaries of plot allocation within the estate including the applicant.

It is stated that on the plot title allocation given by the Honourable Minister for Federal Capital Territory, they were given 2 years to develop the land from the date of allocation and as part of the measures to make the estate habitable and secure, the respondents made provision for 24 hour security services at its sole expenses and further permitted individual land allottee to provide any additional security measure as may be desired, including erection of private fence to protect their apartments and give ample privacy to the occupants.

The deponent stated that there has been no security breach reported in the three years that the estate has been in existence.

The deponent admitted writing letters and sending mails to the applicant and other subscribers who have not developed their lands. It is stated that the respondents risk revocation of the entire land unless the estate is fully developed within the timeline given and unfortunately, the applicant has not demonstrated any genuine intention to develop his plots.

It is stated that the respondents demonstrated the best intention to refund the purchase price to the applicant as revocation of his allocation as it appeared that he was not interested in developing them so that the plots could be made available to genuine developers.

It is stated that the decision to revoke the undeveloped plots was taken as a last measure at a meeting between the respondents and the land allottee/stake holders sometime in the year 2022 and yet the applicant has refused and neglected to develop his plots, five years after the purchase.

In the within address accompanying the affidavit, the counsel to the respondents formulated two issues for determination:

- 1. Whether the fundamental rights of the applicant were violated or infringed?**
- 2. Whether having regards to the facts of this case and of the alleged cause of action, if any, this case is such that can be determined under the fundamental rights (Enforcement Procedure) Rules 2009 and therefore competent as constituted?**

The counsel submitted that jurisdiction is the life wire of any court action and he cited the case of **Aladesanmi & Ors V. Holden Properties (Nig) Ltd (2018) LPELR – 49351 (CA)** where the court held that proceeding conducted without jurisdiction will amount to futility. He argued that it has been settled in plethora of cases by superior courts in Nigeria that for an action to be competent, the case must come before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction, and he referred to the case of **Madukolu V. Nkemdilim (1962) 1 All NLR (pt 4) 587** where the necessary adjuncts of a competent jurisdiction were stated as follows:

- i. It is properly constituted as regards members and qualifications of the members of the bar, and no member is disqualified for one reason or another.**

- ii. **The subject matter of the case is within the jurisdiction and there is no feature on the case which prevent the court from exercising its jurisdiction, and**
- iii. **The case comes up before the court initiated by the due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.**

The counsel also cited the provision of Order II Rule I of the Fundamental Right (Enforcement procedure) Rules 2009 which provides that:

“Any person who alleges that any of the fundamental rights provided for in the constitution or African charter on Human and Peoples’ Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur for redress.”

The counsel submitted that in relying on the provision of this Rule, the applicant approached this court to seek protection under section 43 and 44 of the 1999 Constitution as amended but that the applicant failed to depose to the fact or compulsory acquisition of property or revocation that the law he relied upon prohibited. He argued that rather, what the law prohibited is the act of doing so without regard for the law or revocation or compulsory acquisition of citizen property.

The counsel argued that whole the right to own immovable property in Nigeria is sacrosanct, the enjoyment of the right to own is dependent on the nature of the property, manner or acquisition, the allocating authority, conditions of allocation among other conditions for

example under the Land Use Act. He argued further that land subject to statutory right of occupancy may not be property and validly revoked or acquired without proper notice of revocation given to the holder of the title and followed up with payment of compensation, where the title was compulsorily acquired in the overriding public interest. He cited the provision of sections 28 and 29 of the Land Use Act, laws of the Federation 2007.

The counsel submitted further that where the conditions are duly followed as in the instant case, the provisions of sections 43 and 44 of the 1999 constitution cannot be called in aid or such person to contend that his constitutional right was infringed upon. He further argued this because once the provision of sections 44(a) and (b) are followed by the holder of the title to the land, he cannot sustain an action to contend that his fundamental right was infringed.

He argued that EXH. AP8 which the applicant relied upon as the notice of revocation was issued after the expiration of the Notice of intent to revoke given vide EXH. AP6 which the applicant acknowledged. The counsel submitted that at page 3 of the attachment to the exhibit shows the trial of communication exchanged between the parties which clearly shows that the applicant had notice of the intended revocation which to all intent and purposes, under the terms of his title allocation had been followed and that if for any reason at all, the applicant was of the view that the respondents had no powers under the terms of allocation of the alleged titles, the option open to him to redress the perceived wrong is to initiate an action by writ of summons and that this is because his cause of action had ceased to be that of violation of fundamental right to breach of contract of land allocation. He cited the case of **N.D.I.C. V. Silvawak International Ltd & Anor. (2005) LPELR –**

7695 (CA) where it was held that the provision of sections 44 (1) and 40 of the 1999 constitution envisages a situation where a property, movable or immovable is required for the good of the public as the property will be converted into a public use. The owners of the property are entitled and eligible to collect adequate compensation for the property under the land. He also argued that in the instant case of **FCMB Plc V. Nyanya (2014) LPELR** – where it was held that an action for breach of contract cannot be brought under the fundamental right procedure Rules where the main claim is not for the enforcement of a fundamental right.

In relying on the decision of the appellate court, he opined that the declaratory relief sought by the applicant, which is the main claim and paragraphs 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 of the affidavit in support of the application as well as grounds 5, 6, 7, 8, 9, 10 and 11 as support of the reliefs sought, the court would see that the bone of contention between the parties is about contract of sale of land the effect or consequences of an alleged breach or violation which by any stretch of imagination cannot be determined under the fundamental right enforcement procedure rules and he urged the court to strike out the matter.

The counsel submitted that should the court however are of the view that the action was rightly instituted as presently constituted, they will be praying that the court dismisses the applicant's case on the ground that the respondents had done what was expected of them under the relevant constitutional provision by giving adequate notice to the applicant before his title was revoked.

Regarding payment of damages, counsel opined that if the applicant's right to the land in issue was properly determined having been given adequate notice before

alleged revocation, no right could be said to have been infringed or injury inflicted to give rise to award of damages and in any case, there is no proof of the alleged damages that has been placed before the court for consideration and he also argued that the claimant has failed to prove an entitlement to the damages he sought and he urged the court to either strike out the matter or dismiss same.

In the counter affidavit of the applicant it is stated that the applicant is a responsible and legitimate customer of the 1st and 2nd respondents and legally own the plots of land in question as he paid the full price for them, being the full consideration. That the respondents admitted selling the plots of land to the applicant and also revoking them and that all the paragraphs of the respondents' counter affidavit are bare and naked as same contained no exhibits attached to buttress all the assertion, wherein the applicant annexed an exhibits in support of his case.

It is stated that the contract of sales of land between the applicant and the respondents were concluded and executed and there is no breach of contract and that it is because the applicant has the ownership of the land that is why the revocation is a breach of his fundamental right requiring enforcement by the court. He also said that the applicant has shown reasonable cause of action to activate the jurisdiction of this court to enforce her fundamental right which was breached by the respondents.

The counsel raised the following issues for this court to determine, thus:

- a. Does this Honourable Court not have the proper jurisdiction to entertain this suit and grant all the claims of the applicant as canvassed in her originating motion, affidavit and the written address?**

b. Does the illegal act of the respondents revoking and taking away the land bought by the applicant not amount to a breach of the fundamental right of the applicant as enshrined in sections 43 and 44 of the constitution of the Federal Republic of Nigeria, 1999 (as amended)?

In arguing both issues together, the counsel contended that this court has the jurisdiction to entertain this suit under the enforcement of the fundamental right procedure as provided in section 43 of the constitution. He argued that this court has the jurisdiction to entertain this suit and grant the claims of the applicant to redress the wrong done to him, and he cited the provision of section 46 of the constitution which provides:

“Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in that state for redress.”

The counsel argued that most important questions for the court to answer are:

- i. Is the applicant the rightful owner of the land being withheld and revoked by the respondents?**
- ii. Has the respondents unilaterally and illegally revoked and taken away the applicant’s ownership of the land?**
- iii. Does the revocation and taking away of the ownership of the applicant to the land amounts to infringement on the right of the applicant to own and use immovable property?**

The counsel answered all these questions in the affirmative and contended that the revocation of the applicant's property without recourse to a court, is an infringement on his right as the respondents are not saddled with such power to be a judge in their own cause as it is trite that *nemo iudex in causa sua*. He submitted that they ought to follow the constitutional procedures and apply to a court of competent jurisdiction to determine the matter.

The counsel submitted further that the respondents referred to section 27 of the Land Use Act 1938, but deliberately refused to appropriate the fact that the provision gives power to revoke rule governor and yet they went ahead to exercise a power they alone have.

The counsel argued that the respondents are deliberately trying to confuse the court because the question is not that of formation or breach of contract, the question is that of infringement on the right to own immovable property and that parties had long concluded the contract by fulfilling their contractual obligations – offer – acceptance and consideration, intention to create legal relations etc and as such, the respondents to resurface without any contractual terms contradicting EXH. AP3, if is an infringement on the right of the applicant to own immovable property and he referred to section 43 of the 1999 constitution.

The counsel adopted his entire argument as contained in the written address accompanying the originating motion as part of his argument in urging this Honourable Court to grant the reliefs as sought and discountenance/dismiss the counter affidavit of the respondents.

I adopt the issues for determination in this application of the respondents as I found them apt:

1. Whether the fundamental right of the applicant were violated or infringed?
2. Whether having regards to the facts of this case and or the alleged cause of action, if any, this case is such that can be determined under the Fundamental Rights (Enforcement Procedure) Rules 2009 and therefore competent as constituted?

Thus, it is the contention of the applicant that he purchased a serviced Plot measuring approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja) alongside 4 other plots measuring 600m² each at the Respondents' Asokoro Rock Villa Estate, Abuja and made full payments of N85,000,000.00 in two installments of N80,000,000.00 and N5,000,000.00 respectively for all the 5 plots on the 8th January, 2020 and the respondents issued him a receipt of payment of N80,000,000.00 only but has failed to issue him with receipt for the subsequent and final installment of N5,000,000.00. The applicant also contended that he was given two deeds of contract of sale dated 1st day of July, 2019, each executed between both parties and one in respect of the serviced Plot approximately 1000 square meters, Cadastral Zone E27 3992 (Asokoro Rock Villa Estate, Abuja), and the other in respect of the 4 plots measuring 600m² each, and he said that he was not given other title documents to show the terms of the contract of the sale, not even an allocation paper despite repeated demands and he was not shown the plots of land immediately until he made several demands.

It is contended by the applicant that on the 8th of May, 2023 the Respondents via their email abjoffice@boingestate.com sent him a notice dated the 8th day of May, 2023 of their

intention to revoke the plots of land allocated to him in the estate to which he responded through his counsel, Messrs Kalepron Attorneys by a letter dated 22nd of May, 2023 warning the Respondents to desist from such illegal act and that any attempt will be resisted with a law suit against them and despite the said letter of warning, the respondents in defiance went ahead to revoke his ownership of the plots in issue via its notice of 31st of October, 2023. His contention is that the revocation is a pure disregard for his fundamental rights as protected under the constitution. While it is the contention of the respondents that the estate is within the fully developed part of the Abuja City and as at the time of receiving the applicant's court process, the estate had been developed with internal roads up to the location and that as a matter of practice and town planning law, Department of Development Control, the agency responsible for giving housing development approval within the FCT does not grant open ended building approval to developers of housing estate or even to individual land owners and in the case of the estate in issue, the approval given to them by the Development Control to develop the estate is for limited years not exceeding 5 years which was well communicated to all beneficiaries of plot allocation within the estate including the applicant. It is contended that in the plot title allocation given by the Honourable Minister of FCT, they were given 2 years to develop the land from the date of the allocation and as part of the measures to make the estate habitable and secure. The respondents admitted to writing and sending letters to the applicant and other subscribers who have not developed their land and that the respondents risk the revocation of the entire land unless the estate is fully developed within the timeline given and unfortunately the applicant has not demonstrated any

genuine intention to develop his plots and the respondents have demonstrated the best intention to develop his plots and the Respondent have demonstrated the best of intention to refund the purchase price to the Applicant on revocation of his allocation and the decision to revoke the undeveloped plots was taken as a last measure at a meeting between the Respondents and the land allottees/stakeholders sometimes in 2022.

Now from the contentions of the applicant and the respondents, I am inclined to identifying the number of issues: **whether or not the transaction between the applicant and the respondents has been completed and perfected having regard to the applicant not given the title documents?** Could there be a breach of contract on the part of the respondents or that the contract was subject to repudiation? **Whether the allocation granted by the Minister FCT was such that it has timeline of two years to develop the land or risk the revocation of the grant? Whether it was with the consent of the applicant as an allottee/stakeholder that the allocation was revoked?** There are the numbers of issues and others to be identified by any court that will feature in resolving the case between the applicant and the respondents, and if that is the position, the applicant should not have come by way of enforcement of fundamental right against the respondents, no matter he couched the complaint, and at best the applicant should have approached the court on declaration of title to land. See **N.D.I.C V. Koleosho (2006) All FWLR (pt 312) p. 2107 at 2119, paras. A-B** to the effect that an action relating to or connected with a claim for possession and/or title to land cannot be brought under the fundamental Rights (Enforcement Procedure) Rules 2009. In the instant suit the entire facts and circumstances of it is that the matter relates

to contract of sale of land. See the case of **Governor, Kwara State V. Lawal (2006) All FWLR (pt 336) p. 315 at 346, paras. A-B** where the court held that the fact that the mere involvement of the question of enforcement of fundamental rights in a case does not automatically entitle the applicant to approach the court by the fundamental rights enforcement procedure or to take his case before the Federal or state High Court as the applicant in the instant case choose to do.

To so entitle the applicant, the complaint relating to the infringement of fundamental right must be the main plank on which the case rests and not one that is merely ancillary or incidental to another claim, in the instant case, there was a transaction between the applicant and the respondents to which the applicant was said to have not met the conditions of the transaction. This suit, I so hold, could have been best brought under the writ of summons as the main plank of the complaint is the revocation of the transaction and the applicant, having been allocated or sold plots of land and was later revoked, the issue ceased to be that of fundamental right to own a property, and I therefore, so hold that this matter was taken to this court on a wrong vehicle instead a writ of summons designed for initiating an action it was started with an originating motion under fundamental right procedure, and I have no option than to strike the suit accordingly and it is hereby struck out.

Hon. Judge

Signed

13/6/2024

Appearances:

S.C. Nnaji Esq appeared for the claimant.

Abdullateef Ayoro Esq appeared for the defendant.