

dated the 13th day of March, 2003 situate at Barwa Layout Abuja fall within the Federal Capital City (FCC)” contained in the Defendants’ notices of revocation is a ground of revocation under the Land Use Act.

2. *Whether the Defendants’ said notice and the ground thereof “that the 1st Claimant’s plot known as Plot No. CD 81 of about 1.0htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13th day of March, 2003 situate at Barwa Layout Abuja fall within the Federal Capital City (FCC)” is not wrongful, unlawful, illegal, null and cannot subtract the allodia right of the Plaintiff and exercise of same over the property.*

Upon a determination of the above questions, the Claimants seek the following reliefs:-

1. *A Declaration that the Defendants’ ground of revocation that “the plaintiff’s plot known as Plot No. CD 81 of about 1.0htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13th day of March, 2003 situate at Barwa layout Abuja fall within the Federal Capital City (FCC)” contained in the Defendants’ notices of revocation is a ground of revocation under the Land Use Act. (sic)*

2. *A Declaration that the Defendants' notice and the purported ground thereof "that the plaintiff's plot known as Plot No. CD 81 of about 1.0htr covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13th day of March, 2003 situate at Barwa Layout Abuja fall within the Federal Capital City (FCC) is not wrongful, unlawful, illegal, null and can subtract the allodia right of the Plaintiff and exercise of same over the property." (sic)*
3. *A perpetual order restraining the defendant either by themselves, their agent (sic), servants, privies and person or persons acting for and or on their behalf from tampering in any way whatsoever with the allodia rights of the Plaintiff and exercise of same over and in respect of the said property on the pursuant (sic) to the Defendant's said notice and the ground thereof.*
4. *The cost of the suit.*

The Defendants responded to the suit by filing, on the 27th of April, 2022, their Counter-Affidavit in response to the Originating Summons. They also filed two Notices of Preliminary Objection, one with the Motion Number M/4982/2022 and the other with the Motion Number M/5641/2022.

In the Notice of Preliminary Objection with Motion Number M/4982/2022 dated the 26th of April, 2022 but filed on the 27th of April, 2022, the

Defendants/Applicants brought this Notice of Preliminary Objection praying for the following relief:-

An Order of Court striking out this suit for lack of requisite jurisdiction to entertain same.

The particulars of the Notice of Preliminary Objection are that the nature of the reliefs sought in the suit cannot be determined by way of an Originating Summons as the issues are contentious which would need to be proved in a full trial involving the adducing of evidence.

In support of the Notice of Preliminary Objection are a 9-paragraph affidavit deposed to by one SaiduBadamasi Abdulkadir, a Legal Assistant in the Litigation Registry of the Legal Services Secretariat of the Federal Capital Territory Authority and a written address in support of the Notice of Preliminary Objection.

In the affidavit in support of the Notice of Preliminary Objection, the deponent averred that the Claimants had commenced the suit by way of Originating Summons claiming that the property known as Plot No. CD 81 in Barwa Layout Kuje Area Council, Abuja was allocated to the 1st Claimant who purported to have alienated same to the 2nd Claimant. He swore that the Claimants claimed that the Defendants had served a Notice of Revocation on the owners of the farmland in that layout, adding that the

Defendants also stopped the Claimants from developing the property. It is on the basis of the above facts that the Defendants maintained that the nature of the dispute could not be determined by way of an Originating Summons.

In the written address in support of the Notice of Preliminary Objection, learned Counsel for the Defendants, without formulating any issue for determination, submitted that the only actions which could be commenced by way of an Originating Summons are actions that border on the construction of a written law or instrument. Citing the cases of ***Obasanya v. Babafemi (2000) 15 NWLR (Pt. 689) 1 at 17 paras E – H, Fasheun Motors Ltd v. UBA Ltd (2000) 1 NWLR (Pt. 640) 190 at 198 paras E – H*** among others, he invited the Court to take note of the issues the Claimants had formulated in their Originating Summons, adding that same fell outside the purview of actions determinable by way of Originating Summons.

It was the case of the Defendants' Counsel that the suit of the Claimants is contentious and that Originating Summons is not apposite for determining contentious suits. He cited the cases of ***Akibu v. Race Auto Supply Ltd (2000) 14 NWLR (Pt. 686) 190 at 203 para F – H*** and ***University of Lagos v. Aigoro (1991) 3 NWLR (Pt. 179) 376***. In view of the wrong mode of commencement adopted by the Claimants, the Defendants urged the Court to strike out the suit or in the alternative to order the parties to file pleadings.

In response, the Claimants filed a Counter-Affidavit and a Written Address in opposition to the Notice of Preliminary Objection of the Defendants. In the 10-paragraph affidavit deposed to by one Jonas Umeh, a Counsel in the law firm of Kanu-Kanu & Co., solicitors to the Claimants/Respondents, the deponent averred that the nature of the reliefs sought could be determined by way of Originating Summons, adding that the Claimants would be prejudiced if the relief sought in the application is granted.

In the written address in support of the Counter-Affidavit, Counsel formulated three issues for determination. These are: *“(1) When will a suit be commenced by way of Originating Summons; (2) Whether the suit of the Claimants/Respondents as presently constituted before this Court is not one which can be effectively determined by the Court by way of Originating Summons; and (3) What will the Court do if this suit was brought by way of Originating Summons instead by Writ of Summons.”*

In his submissions on the first issue, learned Counsel reiterated the provisions of Order 3 Rules 1 and 2 of the Rules of this Court, 2018 and submitted that an action which was rooted in an interest in a deed, will, enactment or other written instruments could be commenced by way of an Originating Summons. He added that oral evidence was not permissible where the right evolved from the interpretation of a written instrument, because documents speak for themselves. He urged the Court to look at the

documents whose interpretation was sought and resolve the first issue in favour of the Claimants.

On the second issue, Counsel submitted that the suit of the Claimant as presently constituted was competent as it could be determined by the Court by way of Originating Summons. He invited the Court to examine the purported Notice of Revocation issued by the Defendants in view of the provisions of sections 28(1) and (5) and 44(a) – (e) of the Land Use Act. He maintained that the suit sought for a declaration of rights on the basis of the documents exhibited as well as the provisions of the Land Use Act and the Constitution of the Federal Republic of Nigeria, 1999. Adding that the Claimants do not seek any claim for damages to warrant the use of oral evidence, he urged the Court to resolve the second issue in favour of the Claimants.

On Issue Three, Counsel submitted that where the Court finds that the suit ought to have been commenced by way of Writ of Summons and not by way of an Originating Summons, it had the powers to order the parties to file pleadings and not to strike out the suit. He cited the case of ***Emezie v. Osuagwu & Others (2005) 3 SCM 30 at 33 Ratio 4*** and urged the Court to dismiss the Notice of Preliminary Objection of the Defendants.

The issue before this Court in this application is “***Whether the suit of the Claimants should not be struck out on the basis of wrong mode of commencement?***”

In resolving this issue, the *terminus a quo* is Order 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. Order 2 Rule 2(1) provides that:-

(1) The under listed proceedings shall be commenced by writ except any applicable law requires that the proceedings shall be begun otherwise, than by writ:

a. Proceedings in which claimant claims:

(i) Any relief or remedy for any civil wrong or

(ii) Damages for breach of duty, whether contractual, statutory or otherwise, or

(iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property.

b. Where the claim is based on or includes an allegation of fraud, or

c. Where an interested person claims a declaration.

On the other hand, Order 2 Rule 3 of the Rules of this Court stipulates the nature of cases that may be commenced by way of Originating Summons.

The Rule provides as follows:-

(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

By virtue of the above provisions, each mode of commencement of action has the categories of actions it is meant to serve. Thus, while the Writ of Summons is suitable for suits where there are contentious disputes as to the facts, the Originating Summons is appropriate for cases where the parties are agreed on the facts, but disagree on the construction of the written instrument which governs their relationship. The written instrument could be

a deed, a will, an enactment or, indeed, any written instrument which contains the rights and obligations of the disputing parties.

There have been judicial pronouncements on modes of commencement of action. For instance, in *Ezeigwe v. Nwalulu (2010) 4 NWLR (Pt. 1183) 159 S.C. at 215, paraB*, the apex Court held that “*The mode of commencement of action is an indispensable aspect of our civil procedure, hence various courts have it embodied in their Civil Procedure Rules.*” The Supreme Court was quite emphatic on this subject in the case of *Riok (Nig.) Ltd. v. Incorp. Trustees, N.G.F. (2022) 16 NWLR (Pt. 1857) 725 S.C. at 779, paras E – F* when it held that the subject matter of a suit determines the mode of commencement of the suit. Speaking further *at page 780, para B*, the Court held that “*Where a procedure for carrying out a matter is clearly spelt out in a law, a party has no choice but to comply fully with the procedure. Failure on the part of a plaintiff shows that he has not fulfilled the conditions precedent for commencement of such action.*”

The Claimants in this suit are seeking for declaratory and injunctive reliefs in relation to the Defendants’ purported revocation of the title of the 1st Claimant in respect of Plot No. CD 81 measuring about 1.0 hectares lying and situate at Barwa Layout, Kuje, Abuja which title is covered by the Kuje Area Council Offer of Terms of Grant/Conveyance of provisional approval

dated the 13th day of March, 2003. On the other hand, the contention of the Defendants is that the suit was not initiated by the proper mode of commencement, in view of the fact that the Claimants are challenging the actions of the Defendants, thereby making the suit contentious.

The question, therefore, is whether the suit of the Claimants arose from a dispute over the interpretation of any written instrument. The Defendants do not think so. The Claimants disagree with them. Both parties supported their entrenched positions with legal arguments in that regard.

I have reflected on the reliefs the Claimants seek in this suit. It is important to state that the suit seeks the determination of the questions contained on the face of the Originating Summons. I have accorded more than a passing attention to the questions formulated therein. It is my considered view, and I so hold, that the questions did not disclose that the rights of the Claimants are dependent upon the determination of any question of construction arising under any written instrument.

The suit of the Claimants is one for declaration of title to land. At worst, it is an suit challenging the action of an administrative authority. Either way, the subject is contentious. It is, therefore, not proper to initiate such suit by way of Originating Summons. I agree with the Defendants that this suit is too

contentious a suit to be heard on the Originating Summons. The reliefs sought therein cannot be granted on the basis of affidavit evidence alone.

The Rules of this Court gives the Court a reasonable degree of latitude within which to navigate if it encounters circumstances of this nature. Order 2 Rule 3(3) provides that “***The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit.***” On the other hand, Order 5 Rules 1(1) and 3 provide that: -

(1)Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.

3. The court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this Rules to be begun by an originating process other than the one used.

In view of the cumulative and combined effect of Order 2 Rule 3(3) and Order 5 Rules 1(1) and 3 of the Rules of this Court, therefore, the Notice of

Preliminary Objection fails. I hereby overrule the Notice of Preliminary Objection with Motion Number M/4982/2022.

This is the Ruling of this Honourable Court, delivered today, the 16th of March, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
16/03/2023