

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI – F.C.T. – ABUJA

CLERK: CHARITY ONUZULIKE

COURT NO. 10

SUIT NO: FCT/HC/CV/2111/2021

DATE: 13/2/2024

BETWEEN:

NEWCLASS NIG. LTD.....PLAINTIFF

(Acting through its lawful attorney,
Amfi Network Limited)

AND

- | | | |
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| <p>1. THE HON. MINISTER OF THE FEDERAL
CAPITAL TERRITORY</p> <p>2. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY</p> <p>3. DEPARTMENT OF PARKS AND
RECREATION</p> | } | <p>DEFENDANT</p> |
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RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This Application vide Motion on Notice with Motion number M/73/2023 dated 17/2/2023 but filed on 18/2/2023 is brought by the 1st – 3rd Defendants/Applicant prays this Court for two principal reliefs to wit:

- (1) *An Order of this Honourable Court declining jurisdiction to hear the Plaintiff's case for none disclosure of reasonable cause of action against the 1st to 3rd Defendants.***
- (2) *An Order dismissing this suit.***

It is premised on the 10 grounds which are:

- (1) That the Plaintiff's action failed to disclose a reasonable cause of action against the 1st to 3rd Defendants.
- (2) That Development, Management and operation of designated park and Green Area within the Federal Capital Territory is governed by Development Lease Agreement containing the terms and conditions of the Offer attached to the letter of intent.
- (3) That an allottee of the designated park or green is mandated to submit a detailed technical proposal for approval within twenty one (21 days) from the date of approval of the Claimant's expression of interest.
- (4) That a Lease Agreement is then executed by both parties upon approval of the detailed technical design submitted and upon payment of all necessary fees.
- (5) That the Park is expected to be developed and completed according to the approved technical proposal within one (2) year from the date of approval; after which title documents would be issued to such allottee(s).
- (6) That the Claimant was expected to signify her acceptance of the offer by executing a Development Lease Agreement containing the terms and conditions of the offer before it crystallizes to a proper allocation.
- (7) That the Claimant in this suit has refused to comply with paragraph 2, 3 & 4 of the Letter of Intent dated 5th July 2007 and equally refused to apply and obtain a building plan approval from the 2nd Defendant Department of

Development Control to enable them commence development on the said plot of land.

- (8) That no Ministerial Approval was given to the Claimant to develop, manage and operate Park No. 539 BO3 Wuye Recreation Park District, subject matter of this suit.
- (9) That the 1st to 3rd Defendants by Public Notice & Reminder published in Daily Trust & Punch Newspapers dated 29th, 30th September, 2014 & 1st October 2014 cancelled all purported Park allocations without the Ministerial Approval. The copies of the Daily Trust & Punch Newspapers dated 29th, 30th September, 2014 & 1st October, 2014.
- (10) That Park No. 539 BO3 Wuye Recreation Park District, subject matter of this suit was part of it, as no Ministerial Approval was given.

The Motion is supported by a 6 paragraphs affidavit and a written address. The Applicant's learned Counsel moved the application *brevi manu* and as well adopted his written address as his oral argument and finally urged the Court to grant the application.

In his swift response, the Claimant/Respondent learned Counsel submitted that they have filed a 6-paragraph counter-affidavit dated and filed the 24/10/2023.

Also, he adopted his written attached to the counter-affidavit as his oral argument in urging the Court to dismiss this application.

The applicant's learned Counsel in his written address formulated a sole issue for determination to wit:

“Whether this suit discloses any reasonable cause of action or any cause of action or any cause of action at all against the 1st to 3rd Defendants in view of the facts and circumstances of this case?”

While the learned Counsel to the Claimant/Respondent formulated two issues for determination. The two issues are as follows:

- (1) ***“Whether the Defendant’s Motion on Notice filed on 18th February, 2022 did not constitute demurrer which has been abolished by the Rules of this Honourable Court?***
- (2) ***Whether the averments in the defendants’ affidavit in support of their Motion on Notice satisfied the requirements of an affidavit under the Evidence Act.***

With due respect to the learned Counsel to the Respondent, the only issue for determination in the instant application is as formulated by the Applicants’ Counsel which is whether this suit discloses any reasonable cause of action or any cause of action at all against the 1st to 3rd Defendants.

Submitting on the sole issue, the Applicant’s learned Counsel contended that the Plaintiff’s suit is unreasonable as it discloses no reasonable Cause of action against the 1st to 3rd Defendants.

Generally speaking, the term cause of action means the factual situation which if substantiated entitles the Claimant/Respondent to remedy against the Defendant. It is also the entire set of circumstances giving rise to an enforceable claim.

He argued further that in the determination of whether or not a suit discloses a reasonable cause of action, only the averments on the Claimant’s Statement of Claim is looked into. He referred the Court to this case of **CHEVRON NIGERIA LTD VS. LONSTAR BRILING NIGERIA LTD (2007) ALL FWLR PART 386 PAGE 633 at 634**

Ratio 2; the apex Court per **OGUNTADE JSC** in dealing with the issue as to proper approach of a Court in the determination of whether a reasonable cause of action exist in a matter stated thus:

“The proposition that a Plaintiff has no reasonable cause of action can only be made upon an examination of facts pleaded, in the Statement of Claim. It has nothing to do with the nature of the defence which the Defendant may have to the Plaintiff’s Claim. The Court must therefore confine itself only to the averments in the Statement of Claim, in the assessment of whether the Plaintiff has a reasonable cause of action”.

On his part, the Respondent’s learned Counsel submitted that in order to determine whether a suit discloses reasonable cause of action or not, it is statement of claim that the Court will examine to ascertain that. He said the law is trite that, once the statement of claim raises an issue that borders on the Civil rights and obligations of the Claimant or raises a triable issue, then the suit discloses a reasonable cause of action and will not be struck out. He referred the Court to the case of **THOMAS & ORS. VS. OLUFOSOYE (1986) 1 NWLR (PT. 18) 669.**

I have considered the arguments and submissions of both Learned Counsel for and against the grant of this preliminary objection.

In the case of **ALALADE VS. PRESIDENT OF THE OTA GRADE 1 CUSTOMARY COURT (2021) L.P.E.L.R. 55656 (CA)**, it was held as follows;

“I consider it well settled that jurisdiction is determined by the claim of the Plaintiffs. It is what the Plaintiffs’ submits to the Court for adjudication, that is to say, the subject matter and claim that

determines whether the Court has jurisdiction to entertain the claim or not. Therefore, the process to be examined in determining if the Court has jurisdiction to hear and determine the matter submitted to it for adjudication is the Plaintiff's claim. See ADETAYO v. ADEMOLA (2010) L.P.E.L.R. 155 (SC); TUKUR VS. GONGOLA STATE (1989) L.P.E.L.R. – 3272 (SC)”

Now, let me x-ray the content of the statement of Claimants vis-à-vis the position of law stated above.

Paragraph 6 reads:

“The 3rd Defendant through the Metropolitan Management Agency via a letter dated the 5th of July, 2007 conveyed to the Plaintiff the approval of 2nd Defendant for the leasing of Park No: 539, BO3 Wuye Recreation Park, Wuye District, measuring 0.9 hectares for operation of outdoor events and general recreation. The Letter of Approval is hereby pleaded and shall be relied upon at hearing.”

Paragraph 9 reads:

“The Plaintiff upon payment of the requisite processing and recertification fees to the Defendants took possession of the land and mobilized workers to site to commence development of same, but was stopped by the 2nd Defendant's Department of Development Control

on the ground that Official Approval was needed for development to be carried out.”

Paragraph 13 reads:

“The 3rd Defendant upon confirming the allocation directed the Plaintiff to write to the 1st Defendant requesting for his approval to develop the land and which the Plaintiff did on the 28th August, 2013 and submitted to the 1st Defendant’s office on the 29th August, 2013 and which was referred to the 3rd Defendant for processing. The Letter for Ministerial Approval carrying the stamps of the various recipients and endorsements for processing is hereby pleaded and shall be relied upon at hearing.”

Paragraph 21 reads:

“The failure of the Defendants to give the requisite development approvals has also given room for trespassers to encroach into the land to remove and destroy the sign posts fixed by the Plaintiff on the land. One of the trespassers even claims to have derived his title over the land from the Defendants and threatens to ensure that the Plaintiff does not develop the land.”

Interestingly, both learned Counsels for the Applicants and the Respondent agree that the law is trite as to the determination of reasonable cause of action that the only documents the Court is enjoined to peruse is statement of claim. The same thing goes to the issue of jurisdiction.

Therefore, from the paragraphs quoted above, it is not in doubt that 1st to 3rd Defendants/Applicants cannot be let go at this stage of this proceedings.

In effect therefore, I have no difficulty in coming to conclusion that there is a reasonable cause of action against the 1st to 3rd Defendants/Applicants and as such this Court has jurisdiction to hear and determine the case of the Claimant. I so hold.

This application which is Motion on Notice is lacking in all merit, and it is therefore dismissed.

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S. B. Belgore
(Judge) 13/2/2024