IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI, ABUJA

THIS WEDNESDAY, THE 23RD DAY OF NOVEMBER 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/1556/2016
MOTION NO: M/10924/2022

BETWEEN:

CITY VIEW ESTATES LIMITED .....PLAINTIFF/APPLICANT

AND

1. BLUEBAY GLOBAL CONCEPTS LIMITED
2. AHMED ADEWUSI ...DEFENDANTS/
3. HON. MININSTER OF FCT RESPONDENTS

RULING

By a Motion on Notice dated 20th September, 2022, the Plaintiff/Applicant seeks for the following Reliefs:

1. **An order of this Honourable Court directing a visit to the locus in quo for the inspection of the land which is the subject matter of this suit**

2. **And for such further order or orders as the Honourable Court may deem fit to make in the circumstances.**

The grounds on which the application is based as contained on the motion paper are as follows:

1. **That both parties have joined issues and given conflicting evidence of the Plot Numbers (plot DN 2, Cadastral Zone C08 Darkwo District, Abuja) as against (Plot No10 and/or 10x Cadastral Zone C08 Darkwo District, Abuja) and boundaries locations and have closed their cases having led evidence in support of their respective positions.**

2. **That for the just determination of this instant suit, it is necessary for the court to visit the locus in quo in order to properly evaluate the evidence and situate the plot numbers and location before this Honourable Court.**

3. **That this Honourable Court has the discretion to accede to this Application**

4. **That it is in the interest of justice for the court to grant this application**

The affidavit is supported by a 6 paragraphs affidavit and a written address. In the address, one issue was raised as arising for determination:

Whether in the circumstances of this case as projected by the affidavit evidence, this Honourable Court will exercise its discretion in favour of the Applicant?

I will highlight the essence of the submissions made as the address forms part of the Record of court. The address commented by dealing with the settled principles guiding a visit to the locus-in-quo and it was that contended that though parties have closed their cases and final addresses filed, they however presented conflicting evidence in their respective claims with respect to the plot numbers, boundaries and location of the disputed plot and that a visitation to the locus would enable the court clear every doubt as to the accuracy of the evidence presented and also to properly evaluate the evidence put before it by all the parties. Reference was made to the provisions of **Section 127(c) of the Evidence Act and the cases of shekse V. Plankshak (2008) AII FWLR (pt.439)422 at 424; Abakpa V. Onoja (2015)AII FWLR (pt.792)1729 at 1739** were cited amongst others.

At the hearing, counsel to the Plaintiff/Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application having satisfied the legal requirements for the grant of the application.

In opposition, counsel to the 1st and 2nd Defendants filed a counter-affidavit of 4 paragraphs and a written address in which one issue was raised as arising for determination to wit:

Is this a case where a visit to the locust is necessary, desirable and proper.

I will here also highlight only the essence of the submissions made by 1st and 2nd Respondents as the address forms part of the Record of Court. It was contended that the extant application has not disclosed any cogent reason(s) as to why a visit to the locus in quo is necessary or desirable as there is absolutely no conflict of evidence with respect to boundaries as erroneously submitted. It was further submitted that it was only the Plaintiff that led evidence with respect to its boundaries and there is no counter evidence on the Record situating any conflict to warrant a visit to the locus-in-quo.

It was further submitted that the basis of the present application as discerned from paragraph 3a, d, e of the affidavit in support relates to conflicting description of the disputed plot by parties which it is submitted is of no moment because the law is settled that the fact that different names are ascribed to land or area where the land is located is not fatal to the party claiming such land.

It was also submitted that the Plaintiff did not also file a survey plan and neither did the 1st and 2nd Defendants file a counter survey plan depicting any contrary features to the Plaintiffs survey plan that would have required or necessitated a visit to the locus. It was finally submitted that a visit to the locus is not made as a matter of course or to seek to use the visitation to cure lapses in the course of litigation as the Applicant seek to achieve by the extant application.

At the hearing, counsel to the 1st and 2nd Respondents equally relied on the contents of the counter-affidavit and adopted the submissions in the written address in urging the court to refuse the application as lacking in merit.

I have carefully considered the submissions on both sides of the aisle and the issue to be resolved falls within a narrow legal compass with fairly settled principles and that is simply whether the court should grant the application for the visit to the locus in quo.

Now the grant of an application of this nature involves the exercise of the courts discretion; a discretion obviously to be exercised judicially and judiciously predicated on cogent facts been furnished. This is borne out by the clear provision of **Section 127(1) (b) of the Evidence Act** which provides thus:

"127. (1)If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit - …

(b) inspect any moveable or immovable property the inspection of which may be material to the proper determination of the question in dispute."

The above provisions appear to me clear and unambiguous. The provision provides the clear remit that the court may, if it thinks fit, order for inspection of any movable or immovable property, the inspection of which may be material to the proper determination of the question(s) in dispute.

The Application for visitation to the locus in quo is therefore not granted as a matter of course or on whimsical grounds or indeed on no grounds at all. There must be sufficient facts or template supplied by the Applicant putting the court in commanding height to grant the Application.

In the case of **Shekse V Planshek & ors (2006) LPELR-3042 (SC),** the Supreme Court streamlined clearly the principles governing the visitation to a locus-in-quo in these instructive terms:

"**I think it is necessary to state the general principle of visit to or inspection of locus in quo. These are (1) there is no rule of law which determines at the stage in a trial a visit of inspection must be made. See Ejidike Ors V Obiora**

(1951)13 WACA page 270 at page 273 (2) A court should undertake a visit to the locus in quo where such a visit will clear a doubt as to the accuracy of piece of evidence when such evidence is in conflict with another evidence. See Seismograph Services (Nig.) Ltd V Ogbeni (1974) 6 S.C pg119; (1974)1 All NLR (pt.1) pg.1 pg.104 (3) Where there are two conflicting evidence adduced by parties to a case; it is necessary to visit the locus in – quo if such a visit can resolve the conflict in the evidence. See Seismograph Services (Nig.) Ltd V. Akporovo (1974) 6 S.C Pg119 (4) Where a trial judge makes a visit to locus in quo, it is not proper for him to treat his perception at the scene as a finding of fact without evidence of perception being given by a witness either at the locus or later in court after the inspection. See Seismograph Services (Nig.) Ltd V. Onokpasa (1974) 6 S.C. Pg119. (5) On a visit to locus in quo, it is necessary for the trial judge to make a record in the course of the proceedings of what transpires at the scene. However, if the trial judge failed to make record but made statement in his judgment about the visit, such statement would be taken as accurate of what happened and therefore final, unless of course the contrary can be established by the party that impugns the record. See Maji V. Shafi (1965) WACA Pg35 Bello V. Kassim (1969) 1 N.W.L.R Pg.148. (6) Where a visit is made to a locus in quo, evidence of witness can be received at the scene or in court later, but the parties in that case must be given opportunity of cross-examining the witness and commenting on the evidence."

The above is clear.

Before dealing with whether the Applicant has made out a proper case for visitation, let me quickly and briefly address the rather subtle point made relating to whether the timing of the filing of the application after final addresses have been ordered and filed and the case ready for adoption has any negative or deleterious impact on the fate of the application. The simple answer to this question is that there is on the authorities no sacrosanct point or threshold at which an application for visitation to the locus must necessarily be made. Indeed as the Apex Court made clear above, there is no rule of law which determines at what stage a visit to the locus must be made. The visitation is largely determined by the justice and fairness of the application; the contested facts streamlined in the pleadings and most importantly the nature of the evidence led at trial. Where there are doubts or

conflicts in evidence or issues raised with respect to accuracy of a piece of evidence and a visitation will help resolve such doubt or conflict, then a visit may be undertaken, notwithstanding the late stage it was brought or filed.

Now back to whether the Applicant made a good case for the visitation. We take our bearing from relevant paragraphs of the affidavit in support as follows:

"I David Iwe, Male, Christian, Nigerian, of Plot 684 Sentinel Crescent, Zone B2, Durumi, off Area 1, Abuja do hereby make oath and state as follows:

1. **That I am a counsel in the law firm of solicitors to the applicant.**

2. **That by virtue of my position I am conversant with the facts of this case.**

3. **That I was informed by my company secretary of the Plaintiff company, CALISTUS EWURU ESQ. on the 28th day of June, 2022 in our law firm, at about 9.00am of the following facts which I verily believe to be true:**

    a. **That the subject matter of this suit is Plot DN2, Cadastral Zone C08, Darkwo District, Abuja as against the conflicting evidence of allocation to the Defendant-Plot 10 and/0r 10x, Cadastral Zone C08, Darkwo District, Abuja.**

    b. **That the parties in this suit have closed their cases having led evidence in support of this respective positions.**

    c. **That the parties have filed and served their final written address within the time frame allowed by the rules of court.**

    d. **That the summary of the Plaintiff/Applicant's case is that the Respondents trespassed on the Plaintiff/Applicant's land situate on Plot DN2, Cadastral Zone C08, Darkwo District, Abuja, the same land which the respondent describes as Plot 10 or Plot 10x Cadastral Zone C08, Darkwo, Abuja.**

e. **That the Plaintiff gave evidence of the Plot as Plot DN2, Cadastral Zone C08, Darkwo District, Abuja while the Defendant gave evidence of the Plot as Plot 10 and/or 10x Cadastral Zone C08, Darkwo District, Abuja.**

f. **That it is the contention of the Plaintiff/Applicant that the said Plot 10 or Plot 10x being claimed by the 1st and 2nd Respondents is a portion of the Plaintiff/Applicant's land at Plot DN2, Cadastral Zone C08, Darkwo District, Abuja, duly allocated to the Plaintiff/Applicant's by the Minister of the Federal Capital Territory as well as the boundaries.**

g. **That the applicant undertakes to provide Security Personnel to cover for the inspection.**

4. **That it is necessary for the Honourable Court to direct a visit to the locus in quo to enable the court to properly evaluate the evidence put before it by all the parties in this instant suit."**

I have read the above averments again and again and it is difficult to situate any cogent reason(s) within the remit of the principles highlighted in the decision of the Supreme Court above that provides both factual and legal basis to situate the extant application.

The affidavit above discloses or situates different description of the disputed plot each party claimed to have been allocated in contradistinction to an issue or matter of accuracy of a piece of evidence when such evidence is in conflict with another evidence. The Plaintiff may have given evidence of what it conceives are the boundaries of the disputed plot, there is however no contrary evidence on the Record by Defendants. Neither party equally tendered any plan to depict conflict in feautures for example that would necessitate a visit to the locus in quo.

There is absolutely nothing made out by the Applicant in their affidavit particularly in the context of the dispute precisely streamlined on the pleadings and evidence led that shows that there is doubt as to the accuracy of any piece of evidence or indeed a conflict about certain aspects of the oral testimonies which a visit to the locus might clear. It is the affidavit filed in support of an application that should show or disclose facts to support and put the court in a clear position to grant the

Relief(s) sought on the motion paper. It is not a matter for address of counsel however well articulated. The contention in paragraph 4 of the affidavit that the visit will enable the court to **"properly evaluate the evidence put before it"** cannot be a valid legal reason for visitation to the locus.

The duty of court to evaluate evidence and reach a fair decision at the end of trial has nothing to do with visit to the locus-in-quo except if the necessity for the visit has been shown to be material to the proper determination of the question(s) in dispute. With or without the visit, the court will do its duty on the basis of the pleadings and the quality of the evidence led in proof of the contested assertions. To the extent that there is absolutely no doubt as to the accuracy of a piece of evidence or that a piece of evidence conflicts with another, and a visit will help resolve such conflict, then a visitation to the locus will essentially then be a redundant exercise with no utility value.

Now on the pleadings, the land in dispute claimed by parties is clear. Each party has streamlined the source of its allocation. The real question of who between the parties has the genuine allocation or how each other got its allocation is for me not a matter for visitation to the locus in quo. Equally the question of whether the plots claimed by 1st and 2nd Defendants forms part of the land claimed by Plaintiff is more a consequence of the quality of evidence led with respect to who has proven that it has the better and or lawful allocation from the common grantor of lands in the F.C.T. There is equally on the pleadings no significant issue joined with respect to the features of the disputed land so one really wonders at the value of the present call for a visit to the locus in quo.

The point must be underscored and I had earlier alluded to it that no court visits the locus for simply sight-seeing or the fun of it or to even while away precious judicial time. The conflict must be a real and not superficial conflict on the evidence of both sides as to the existence or non-existence of a state of fact relating to a physical object and such conflict can be resolved by visualizing the object, material thing, scene of accident or property in ligation etc. It is only in such situations that the application of the visual senses will come in handy to aid the courts sense of hearing. See **Tar V. Ministry of Commerce and Ind. (2019)AII F.W.L.R (pt.1002)899 at 909, Niger Construction Ltd V. Okugbeni (1987)**

LPELR – 1993 (SC); Marcus Ukaegbu & ors V. Mark Nwololo (2009) 3 NWLR (pt.1127) 194; Olusani V Oshasona (1992) 6 SCNJ 74 at 88.

Circumstances must thus be circumscribed **clearly in the affidavit** showing the necessity for such a visit. Where that is not done as in this case, the implication is that no materials was furnished to enable the court judicially and judiciously consider and situate whether the application has both factual and legal basis.

On the whole, I have not been persuaded that this Application has merit. The Application accordingly fails and it is hereby dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. ***Ngozi Casmir Igwe, Esq., for the Plaintiff/Applicant***

2. ***Chidi Nwankwo, Esq., for the 1st and 2nd Defendants/Respondents***