

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT LUGBE – ABUJA
ON, 10TH APRIL, 2018.

BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/1326/16
MOTION NO.: -FCT/HC/M/1773/18

BETWEEN:

MR. ANTHONY J. UDEH:.....PLAINTIFF/RESPONDENT
(Suing as Attorney to Tafida Yakubu)

AND

1) BARR. THEOPHILUS EJEH:.....DEFENDANT/APPLICANT
2) BWARI AREA COUNCIL, ABUJA:...DEFENDANT/RESPONDENT

Theophilus Egeh for the 1st Defendant.
Other parties are not represented.

RULING.

The 1st Defendant/Applicant, by this preliminary objection, is challenging the jurisdiction of this Court on the following grounds;

1. That the Plots of land in dispute which are the subject matter of this suit, are in Ushafa, Bwari Area Council of the FCT, under Bwari Judicial Division.
2. That the Plaintiff/Respondent resides in Bwari under Bwari Judicial Division.
3. The 1st Defendant/Applicant and the 2nd Defendant are all in Bwari under Bwari Judicial Division.
4. That this Honourable Court must take judicial notice that the administrative Judge of Bwari Judicial Division is Honourable Justice C.O. Agbaza appointed by FCT

Honourable Chief Judge, Justice I.U. Bello to be in charge of all cases affected by Bwari Judicial Division, Abuja.

5. That the venue and forum of convenience of land matter is where it is located and Bwari Judicial Division is the appropriate venue, more so that the Plaintiff and Defendants and the subject matter of dispute are all within Bwari Judicial Division.
6. That the statement of claim, the Plaintiff's statement on oath and the testimony of the 1st Defendant before this Honourable Court all attest to the location/address of the disputed Plots of land and the parties to the dispute.

In his supporting affidavit, the Applicant averred that the Chief Judge of the High Court of the Federal Capital Territory in 2015 created Bwari Judicial Division with an administrative Judge saddled with the responsibility of assigning matters to the Judges within the Division.

That Bwari Judicial Division has a process unit with relevant officers responsible for the filing of Court processes in the Judicial Division. That the instant case which bothers on Plots of land in Bwari within the Bwari Judicial Division and between parties all residing within Bwari Judicial Division, was filed by the Plaintiff/Respondent in March, 2016 in Abuja Judicial Division after the creation of Bwari Judicial Division.

Learned counsel for the 1st Defendant/Applicant in his written submission in support of the application raised a sole issue for determination, to wit;

“Whether by the creation of Bwari Judicial Division in 2015, the case filed by the Plaintiff/Respondent in 2016 – suit No. FCT/HC/CV/1326/2016 in Abuja Judicial Division is competent in the circumstances?”

Arguing the issue so raised, learned counsel relied on **R.C.A.P. (Nig) Ltd v. Governor of Oyo State (2009) ALL FWLR (Pt.575) 292** to submit that the issue of jurisdiction can be raised at any stage of the proceeding and that the Court has a duty to determine the issue of jurisdiction before proceeding to the determination of other issues.

Learned counsel contended that the instant action was instituted in a wrong venue as the subject matter of the suit as well as the parties are all within Bwari in Bwari Judicial Division, and that this Court in the circumstances lacks the jurisdiction to hear and adjudicate on the suit as the appropriate venue is Bwari Judicial Division. He referred to **University of Ilorin v. Adeniran (2007) 6 NWLR (Pt 1031) 498 CA** and **O.S.H.C. v. Ogunsola (2000) 14 NWLR (Pt 687) 445.**

He relied on a photocopy of purported NBA calendar showing Judges in Bwari Judicial Division which is annexed as Exhibit 'A' in support of the application. He urged the Court to strike out the Plaintiff's case.

The Plaintiff/Respondent filed a counter affidavit, supported by a written address in opposition to the application.

The Plaintiff/Respondent averred in his counter affidavit that this suit was filed at the Registry of the FCT High Court, after which it was traditionally and procedurally assigned to this Honourable Court for adjudication by the Chief Judge of the FCT High Court. That FCT High Court consists of a single jurisdiction and that its demarcation into Judicial Divisions is merely for administrative convenience and has nothing to do with the judicial competence of any particular High Court, in FCT. That Exhibit 'A' is a mere calendar and not a law and that same did not emanate from the office of the Chief Judge of the FCT High Court, neither does it have his authority.

Relying on Order 9 Rule 1 of the High Court of the Federal Capital Territory Abuja, Civil Procedure Rules (2004), (now Order 3 Rule 1 of High Court of the Federal Capital Territory Abuja, Civil Procedure Rules 2018) learned Plaintiff/Respondent's counsel posited to the effect that the land in dispute, being situate in the Federal Capital Territory, that this Court, being a High Court of the Federal Capital Territory is competent to hear and determine the suit. He contended that, by virtue of Sections 9 and 11 of the FCT High Court Act (Cap 510) LFN, 1990, it is only the constitution of the Federal Republic of Nigeria that can exclude the jurisdiction of the High Court of Justice, FCT, Abuja.

He urged the Court to hold that it has jurisdiction to hear and determine the suit, and to accordingly dismiss this objection with substantive cost.

The application before this Court is essentially asking the Court to decline jurisdiction from continuing to hear this case and to strike same out after the Plaintiff had closed his case, the Dw1 had testified and was duly cross examined and the matter was adjourned for the evidence of DW2.

The application was not brought pursuant to any rule of Court or law. The Applicant merely relied on the fact that the issue of jurisdiction can be raised at any stage of the proceeding. Granted that the issue of jurisdiction can be raised at any stage of the proceedings, including on appeal, there must however, be a basis known to the law for the challenge to the Court's jurisdiction.

The Applicant relied on Exhibit 'A' which is a single page photocopy of NBA calendar showing photographs of Judges in Bwari Judicial Division.

The said Exhibit 'A' does not in any way qualify as a legal authority on the basis of which this Court can decline jurisdiction from hearing or continuing to hear and determine this suit on its merit.

In any case, I am aware of the provision of Order 3 Rule 1 of the High Court of the Federal Capital Territory, (Civil Procedure) Rules 2018 which provides thus;

“1. All suit relating to and or any mortgage or charge on land or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause, may be commenced and determined in the judicial division in which the land is situated, or the distraint or seizure took place.” (Underlining mine)

Although the parties to the instant suit as well as the subject matter of the dispute, being Plots of land, are all in Bwari, within the Bwari Judicial Division, the above Order, to my mind, did not make it mandatory that such dispute must be commenced and determined within the affected Judicial Division as the operative word in the said Order is “MAY”.

But assuming but not conceding that the instant suit was indeed commenced in a wrong judicial division, Order 3 Rule 6 of the High Court of the Federal Capital Territory Abuja, Civil Procedure Rules 2018 is explicit on the fact that this Court cannot ipso facto, decline jurisdiction on its own or even on application by a litigant from entertaining the suit. The said Order 3 Rule 6, further provides thus;

“6. If any suit is commenced in the wrong judicial division, it may be tried in that division unless the Chief Judge otherwise directs.” (Underlining mine)

Evidently therefore, even where a suit has been commenced in a wrong judicial division, it will still be tried and determined in that judicial division, except the Chief Judge, on application to him, directs otherwise.

It follows therefore, that even if the instant suit was commenced in the wrong judicial division, in the absence of a contrary directive from the Chief Judge, this Court would determine to conclusion this suit on its merit. Accordingly, this application is hereby dismissed for lacking in merit with a cost of N10,000.00 (Ten Thousand Naira).

**HON. JUSTICE A. O. OTALUKA
10/4/2018.**