

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO: FCT/HC/CV/7483/2023

DELIVERED: ON THE 29/02/2024

BETWEEN:

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| <ol style="list-style-type: none">1. AISHA BUHARI FOUNDATIION2. AFROLYK GLOBE LIMITED3. VENUS MEDICARE LIMITED4. SILK TRUST NIGERIA LIMITED5. RHOMBIC PROPERTIES LIMITED6. ASIWAJU KHAMIS OLATUNDE A. BADMUS | } |CLAIMANTS |
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AND

- | | | |
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| <ol style="list-style-type: none">1. FEDERAL CAPITAL TERRITORY ADMINISTRATION2. THE ECONOMIC AND FINANCIAL CRIMES
COMMISSION3. ABUJA GEOGRAPHIC INFORMATION SYSTEM | } | DEFENDANTS |
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Appearance:

S.I. Abdulaziz Esq for the Claimant

Halima Moh’d Esq for the 1st and 3rd Defendants

Mary Onoja Esq for the 2nd Defendant.

JUDGMENT

The Claimants herein by an Originating Summons filed on the 8/9/2023 against the Defendants raised the following questions for determination to wit;

- i. Whether the 2nd defendant has the powers to interfere and halt the perfection of the 1st to 5th plaintiffs' title at the 3rd defendant without disclosing the reason for the action in violation of section 36 of the 1999 Constitution of Nigeria (as amended).**
- ii. Whether the plaintiffs have the right to know who the subject of the investigation is, the nature of the complaint, whom amongst the plaintiffs is being investigated in accordance to Section 36 of the 1999 Constitution of Nigeria (as amended).**
- iii. Whether the 1st and 3rd defendants cease the perfection of a title consequent upon a bare letter written by the 2nd Defendant since 12th April, 2022.**
- iv. Whether the 2nd defendant must seek the leave of a court before proceeding to infringe on the rights of a person to own property in Nigeria consequent upon the provisions of Sections 35, 36, 37 and 44 of the 1999 Constitution, also Section 15(2) of the Money Laundering Act, 2022 and Section 34 of the EFCC Act.**
- v. Whether the 2nd defendant arbitrarily used its powers in violation of the Constitution of the Federal Republic of Nigeria, Money Laundering (Prohibition)**

Act, 2022 and the Economic and Financial Crimes Commission Act.

- vi. Whether this Honourable Court by virtue of Section 6(6) of the Constitution of the Federal Republic of Nigeria, Money Laundering (Prohibition) Act, 2022 and the Economic and Financial Crimes Commission Act has the powers to set aside the 2nd defendant's letter dated 12th April, 2022.**

- vii. Whether this Honourable Court has the powers to set-aside the actions of the defendants for being ultra vires, a nullity and consequent upon the gross violation of the Constitution of the Federal Republic of Nigeria, Money-Laundering (Prohibition) Act, 2022 and the Economic and Financial Crimes Commission Act.**

Upon the determination of the above questions in favour of the Claimants, the Claimants prayed for the following reliefs against the Defendants, to wit;

- (a) A declaration that the failure to disclose the complainant, the offence and the entity that is the subject of the 2nd defendant's purported investigation on property measuring 11,490.71sqm located and known as No. 2 Atakpame Street, Plot 472, Wuse II District (Cadastral Zone A08), Abuja FCT which was*

subsequently sub-divided into properties known as i. 1,192.73sqm now known as plot 472A (New Plot 2058), ii. 1,337.32sqm now known as plot 472B (New Plot 2059) iii. 5,577,45sqm now known as Plot 472C (New Plot 2060), iv. 2,017.88sqm now known as Plot 472D (New Plot 2061), and v. 1,358.38sqm now known as Plot 472E (New Plot 2062), is ultra vires the 2nd defendant's powers, a gross violation of the plaintiff's right to fair hearing and to own property.

- (b) A declaration that the 2nd defendant lacks the powers to cause the withholding, of the plaintiffs' right to own, deal and enjoy their property, ad infinitum without possessing a valid order from a court of law; with the powers to hear and determine issues pertaining to title to land.*
- (c) A declaration that the 1st and 3rd defendants have been complicit in the violation of the plaintiff's right, the Money Laundering Act and also the EFCC Act.*
- (d) A declaration that the 2nd defendant lacks the powers to interfere with the plaintiffs right to own property without a valid court order and the 1st and 3rd defendants have the powers to proceed with their statutory duties except upon receipt of a valid court order and or a credible complaint by an interested party.*

- (e) *An order setting aside the letter dated 12th April, 2022 issued by the 2nd defendant for being in violation of any known law and emanating through the abuse of powers.*
- (f) *An order that 1st and 3rd defendants shall conclude the perfection of the 1st, 2nd, 3rd, 4th and 5th plaintiffs property measuring 11,490.71sqm located and known as No. 2 Atakpame Street, Plot 472, Wuse II District (Cadastral Zone A08), Abuja FCT which is now subdivided into properties known as i. 1,192.73sqm now known as plot 472A (New Plot 2058), ii. 1,337.32sqm now known as Plot 472B (New Plot 2059) iii. 5,577,45sqm now known as Plot 472C (New Plot 2060), iv. 2,017.88sqm now known as Plot 472D (New Plot 2061), and v. 1,358.38sqm now known as Plot 472E (New Plot 2062); forthwith.*
- (g) *An order of perpetual injunction restraining the 2nd defendant either directly and or through its successors, proxies, agents and servants from interfering with the operations, functions, powers, execution and implementation of the plaintiffs rights to own and dispose of the property measuring 11,490,71sqm located and known as No. 2 Atakpame Street, Plot 472, Wuse II District (Cadastral Zone A08), Abuja FCT.*
- (h) *An order for the cost of filing this action.*

(i) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the originating summons, an affidavit of 44 paragraphs deposed to by one Charles C. Iwuchukwu Esq, a legal practitioner in the law firm of the claimant. The gist of the claimant's case as distilled from the affidavit evidence is that the 6th plaintiff has a piece of land measuring 11,490.71sqm located and known as No. 2 Atakpame Street, Plot 472, Wuse II District (Cadastral Zone A08) Abuja FCT to which the 1st, 2nd, 3rd, 4th and 5th claimants were interested in a different portion-each. That a search was conducted in the registry of the defendants by the law firm of the counsel for the claimant and the report shows that the land was not encumbered.

That acting on the clean report, a deed of assignment for each of the 1st – 5th claimants was prepared and signed by the parties.

It is the contention of the claimants that the 6th claimant sold the portion of his land to the 1st – 5th defendants as follows:-

- 1) 1,358,38sqm now known as plot 472E (new plot 2062)
- 2) 5,577,45sqm now known as plot 472C (new plot 2060).
- 3) 1,192,73sqm now known as plot 472A (new plot 2058).
- 4) 1,337,32sqm now known as plot 472B (new plot 2059) and
- 5) 2,017,88sqm now known as plot 472D (new plot 2061).

That after selling the land, 6th claimant made an application to the 3rd defendant for an approval of conveyance and also approval for a sub-division of the land, and on the 23/9/2022 the 1st defendant communicated the approval of the sub-division of

the land by the Hon. Minister. A copy of the letter of the approval was attached as Exhibit “1A”.

That following the approval, the claimants sought to perfect their documents but when they requested for the files to make payment, a letter dated 12/4/2022 from the 2nd defendant that caution on procession the document over allegation of money laundering. The letter was annexed as Exhibit AK0B2.

The claimants stated further that they are not aware of any case of money laundering against them and in view that, a letter was written to the defendant but they received no response.

In line with law and procedure, a written address was filed wherein the 7 issues were formulated for determination to with;

- i. Whether the 2nd defendant has the powers to interfere and halt the perfection of the 1st to 5th plaintiffs’ title at the 3rd defendant without disclosing the reason for the action in violation of section 36 of the 1999 Constitution of Nigeria (as amended).**
- ii. Whether the plaintiffs have the right to know who the subject of the investigation is, the nature of the complain, whom amongst the plaintiffs is being investigated in accordance to Section 36 of the 1999 Constitution of Nigeria (as amended).**
- iii. Whether the 1st and 3rd defendants cease the perfection of a title consequent upon a bare letter written by the 2nd Defendant since 12th April, 2022.**

- iv. Whether the 2nd defendant must seek the leave of a court before proceeding to infringe on the rights of a person to own property in Nigeria consequent upon the provisions of Sections 35, 36, 37 and 44 of the 1999 Constitution, also Section 15(2) of the Money Laundering Act, 2022 and Section 34 of the EFCC Act.**
- v. Whether the 2nd defendant arbitrarily used its powers in violation of the Constitution of the Federal Republic of Nigeria, Money Laundering (Prohibition) Act, 2022 and the Economic and Financial Crimes Commission Act.**
- vi. Whether this Honourable Court by virtue of Section 6(6) of the Constitution of the Federal Republic of Nigeria, Money Laundering (Prohibition) Act, 2022 and the Economic and Financial Crimes Commission Act has the powers to set aside the 2nd defendant's letter dated 12th April, 2022.**
- vii. Whether this Honourable Court has the powers to set-aside the actions of the defendants for being ultra vires, a nullity and consequent upon the gross violation of the Constitution of the Federal Republic of Nigeria, Money-Laundering (Prohibition) Act, 2022 and the Economic and Financial Crimes Commission Act.**

Learned counsel for the claimants argued all the issues compositely in urging the court to grant the reliefs sought.

Upon service, 2nd defendant filed a counter affidavit of 5 paragraph duly deposed to by one Bashari Muhammed an investigating officer with the 2nd defendant.

It is the counter affidavit evidence of the 2nd defendant that it received an intelligence report against Adamawa State Government between 1/1/2019 and July 2021. It was averred that three Adamawa State Government accounts, namely, Special Services Department Government account, Government House, Yola account and Office of the Accountant General Account received a total inflow of Seventy Three Billion, One Hundred and Sixty Million Seven Hundred and Eight Two Thousand Ninety Seven Naira and Sixty two Kobo (₦73, 160,782,097.62).

That the state government during the tenure of Hon. Umaru Ahmadu Fintiri; as Ag. Governor paid Raycom & Company Nig. Ltd a total of (₦1,128,000,007.32) One Billion, One Hundred and Twenty Eight Million, Seven Naira Thirty two Kobo into the company's account No. **0005721472** for road construction and out of the amount, the governor received (₦200,000,000) as kick backs.

It is the deposition of the 2nd defendant that the governor incorporated a company called Mayim Construction and Properties Limited with RC. N. **1170587** with his children as alter ego and that the said company acquired plot 472B

Cadastral Zone A09 Wuse 2, Abuja and subsequently leased it out to Golden Beacons Nig. Ltd via tenancy agreement.

That the 6th claimant was invited by the 2nd defendant vide Exhibits EFCC 2 and that the purpose of the caution placed on the property was only to protect innocent buyers as to existence of an investigation.

A written address was filed wherein the issue *whether on the circumstance of this case, the plaintiffs are entitled to the reliefs sought.*

Learned counsel argued the above issues succinctly in urging the court to dismiss this case.

The Claimants upon service, of the counter affidavit, filed a further affidavit wherein the claimant stated that the counter affidavit of the 2nd defendant does not respond to allegation of ultra vires use of its powers.

Court:

I have gone through the affidavit evidence of the Claimants via-a-vis the exhibits annexed therein in support of the case of the Claimant and legal argument of counsel on the one hand and the counter affidavit filed by the 2nd defendant in opposing the case of the claimant on the other hand. I have perused the further affidavit of the claimant and the written address therein.

In this case, the claim of the Claimants is basically predicated on interference of the 2nd defendant with respect to the Claimants property measuring **11,490.71sqm** located and known as No. 2 Atakpame Street, Plot 472, Wuse II District Cadastral Zone A08, Abuja,

The law is that, where proceedings in a court are by affidavit evidence, it is important that conflicts in such affidavit are not glossed over. The court is enjoined to look at the nature of the conflict. ***ORHENA ADUGUGBILEVE & ANOR VS. MRS. NGUMAM ADDINGI & ANOR (2014) 16 NWLR PT. 1430 PAGE 394 AT 399.***

It must be borne in mind that the Claimants reliefs 1, 2, 3 and 4 are declaratory in nature thereby predicating the success of other reliefs on their success.

A party who seeks judgment in his favour is required by law to produce evidence to support his pleadings. It is an established position of law that in the case where declaratory reliefs are claimed as in the present case, the Claimants must satisfy the court by cogent and reliable proof of evidence in support of his claim. ***AGBAJE VS. FASHOLA & ORS (2008) 6 NWLR PT. 1082.***

The Claimants in attempt to prove its case deposed to a 44 paragraph affidavit and annexed documents therein.

Indeed, a trial court has the onerous duty of considering all documents placed before it in the interest of justice. It has a

duty to closely examine documentary evidence placed before it, in the course of its evaluation and comment or act on it. Documents tendered before a trial court are meant for scrutiny or examination and evaluation. See ***MOHAMMED VS. ABDULKADIR (2009) 4 NWLR (PT 1076) II AT PAGE 156-157.***

Having perused through the document annexed to the affidavit of the parties, in the opinion of the court, a sole issue calls for determination to wit; ***whether from the affidavit evidence of parties before me the Claimant is entitled to the judgment of this court.***

It must be borne in mind that 1st and 3rd defendants who are saddled with the responsibility of perfecting the title document of the property under consideration have failed and or neglected to file any counter affidavit in opposition to the case of the claimants thereby leaving same unchallenged on their part.

It remains trite law that facts deposed to in an affidavit that are not challenged are deemed admitted and court must act upon such facts. ***MADU VS. THE STATE (2011) LPELR 3973.***

Once a party avers to facts in an affidavit, it behoves on the adverse party to contradict those facts in a counter affidavit if they do not represent the true position. ***CHIJOKE AGU VS. OKPORKPI (2009) LPELR 8280.***

On the part of the 2nd defendant, it is the counter affidavit of the 2nd defendant that it has power by law to look into any act of economic and financial crimes when the commission is acting within its mandate. And that the letter written to the 3rd defendant in respect of the property was only to put the public on notice. Its essence is to prevent an innocent person from buying a property that is exposed to any form of encumbrance.

The Economic and Financial Crimes Commission is established under part 1 of the EFCC Act, 2004 with its functions clearly stated therein.

Section 1 (2) (c) of the Act refers to the Economic and Financial Crimes Commission (EFCC) as the designated financial intelligence unit in Nigeria charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with EFCC.

The functions of EFCC are provided for specifically under Section 6(a-g) of the EFCC Act. The functions include the following:-

- 1) Investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfer, future market fraud, fraudulent endorsement of negotiable instruments, computer credit card fraud, contract scam e.t.c.**

- 2) **Adoption of measures to identify, trace, freeze, confiscate proceeds derived from terrorists activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds;**
- 3) **The adoption of measure to eradicate the commission of economic and financial crimes, amongst other functions numerously itemized under the aforementioned section of the Act.**

It is the deposition of the 2nd defendant that it received an intelligence report against Adamawa State Government who acquired the said properties through Mayim Construction and Properties Limited via proceeds of crime.

The Tenancy Agreement between Mayim Construction and Properties Limited and Golden Beacons Nig. Ltd was annexed as Exhibit EFCC 1.

Similarly the 2nd defendant annexed Exhibit EFCC 2 which is statement of Badmus Toefeek Olatunde.

I have equally seen Exhibit **AKOAB2** annexed by the claimants which is investigation activities, No. 2, Atakpame Street, located at Plot 472, Cadastral Zone A08, Wuse II, Abuja.

For clarity, the body of said Exhibit **AKOAB2** is hereby reproduced thus;

- 1) *“The commission is investigating a case of criminal conspiracy, diversion of public funds and money laundering in which the above mentioned property features.*

- 2) **In view of the above you are kindly requested to place a caution on the above property and ensure that no transaction is allowed to take place on the property without clearance from the commission”.**

The said letter was signed by one ACE 1 Abdulkarim Chukol, Director Operations, of the 2nd defendant.

In response to the letter above, the Claimant’s solicitor wrote a letter to the 2nd defendant wherein they stated that *if the process is completed or allowed to run its full course, it will enable your ever vigilant organization successfully without your organization interfering with the right of any of the said parties or owners.* The said letter by the claimant was not responded to by the 2nd Defendant.

It is instructive to state here that the 2nd Defendant throughout its affidavit evidence before the court, has never mentioned, or better, exhibited a court Order which they are acting upon by writing a letter to Defendant to stop processing the claimants file.

I have seen Exhibit 2 which was reproduced in the preceding part of this judgment, the said Exhibit is dated 12/4/2022 and the

Originating process before me is dated 8/9/2023, that is a period over one year.

Indeed, the actions of the 2nd Defendant stopping the 1st and 3rd Defendants from processing the Claimants papers on the allegation of investigation, without any court order, is a gross abuse of power. See ***GTB VS. ADEDAMOLA & ORS (2019) LPELR 473110 (CA)***.

I must reiterate here that it is essential in a democracy, as we have in this, country that the rights of citizens are protected in order to check arbitrary abuse of power by the executive or its agencies. Indeed, the 2nd defendant does not have power to stop 1st and 3rd defendants from carrying out their statutory duty without a court order. See ***GTB VS. JOSHUA (2021) LPELR 23173 (CA)***.

The question that readily comes to mind is whether any public officer has any public duty or authority to break the law? Certainly the answer is NO. Indeed, the action of the 2nd defendant is ultra vires their powers and that cannot be allowed to stand in law.

The court therefore, the Claimants have discharged the onus of proving is case on the preponderance of evidence and I accordingly hereby enter judgment in favour of the claimants and make orders as follows;-

- 1) **I hereby make declaration** that the failure to disclose the complainant, the offence and the entity that is the subject of the 2nd defendant's purported investigation on property measuring **11,490.71sqm** located and known as No. 2 Atakpame Street, Plot 472, Wuse II District (Cadastral Zone A08), Abuja FCT which was subsequently subdivided into properties known as i. 1,192.73sqm now known as plot 472A (New Plot 2058), ii. 1,337.32sqm now known as plot 472B (New Plot 2059) iii. 5,577,45sqm now known as Plot 472C (New Plot 2060), iv. 2,017.88sqm now known as Plot 472D (New Plot 2061), and v. 1,358.38sqm now known as Plot 472E (New Plot 2062), is ultra vires the 2nd defendant's powers, a gross violation of the plaintiff's right to fair hearing and the right to own property.

- 2) **It is hereby declared** that the 2nd Defendant lacks the powers to cause the withholding, of the plaintiffs' right to own, deal and enjoy their property, ad infinitum without possessing a valid order from a court of law; with the powers to hear and determine issues pertaining to title to land.

- 3) **A declaration** that the 1st and 3rd Defendants have been complicit in the violation of the plaintiff's right, the Money Laundering Act and also the EFCC Act **is not granted as no evidence was led in proof of complicity.**

- 4) **It is further declared** that the 2nd defendant lacks the powers to interfere with the Plaintiffs right to own property without a valid court order and the 1st and 3rd defendants have the powers to proceed with their statutory duties except upon receipt of a valid court order and or a credible complaint by an interested party.
- 5) **An order** setting aside the letter dated 12th April, 2022 issued by the 2nd defendant for being in violation of any known law and emanating through the abuse of powers **Is hereby granted.**
- 6) **An order** that 1st and 3rd defendants shall conclude the perfection of the 1st, 2nd, 3rd, 4th and 5th plaintiffs property measuring **11,490.71sqm** located and known as No. 2 Atakpame Street, Plot 472, Wuse II District (Cadastral Zone A08), Abuja FCT which is now sub-divided into properties known as i. 1,192.73sqm now known as plot 472A (New Plot 2058), ii. 1,337.32sqm now known as Plot 472B (New Plot 2059) iii. 5,577,45sqm now known as Plot 472C (New Plot 2060), iv. 2,017.88sqm now known as Plot 472D (New Plot 2061), and v. 1,358.38sqm now known as Plot 472E (New Plot 2062); forthwith. **Is hereby granted.**
- 7) An order of perpetual injunction restraining the 2nd defendant from interfering with the plaintiffs rights to own and dispose of the property measuring **11,490,71sqm** located and known as No. 2 Atakpame Street, Plot 472,

**Wuse II District (Cadastral Zone A08), Abuja FCT Is
hereby Granted**

I make no further order.

**Signed:
Hon. Judge
29/02/2024.**