

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : SUIT NO: CV/370/2019
DATE: : MONDAY 23RD SEPT., 2024

BETWEEN:

GREEN LAKE INTERNATIONAL LTD. PLAINTIFF

AND

1. THE HON. MINISTER OF FCT.
2. FED. CAP. DEV. AUTHORITY (FCDA)
3. FED. CAP. TERR. ADMINISTRATION ABUJA
METROPOLITAN MANAGEMENT COUNCIL
4. LODIGIANI NIGERIA LTD.

DEFENDANTS

JUDGMENT

The Plaintiff approached this Honourable Court vide Writ of Summons dated and filed on the 9th February, 2021, praying the court for the following;

- a. A Declaration of this Honourable Court that the 1st to 3rd Defendants have no power in law to demolish the property lying and situate at Plot 2786, Cadastral Zone A06 Maitama, Abuja measuring about 3,776.88m and covered by Certificate of Occupancy No. 1a60w-1566c-6723r-10220-20 dated 29th September, 2006 pending the hearing and determination of Suit No. **FCT/HC/CV/11835/2009**.
- b. A Declaration that the purported Notice of Demolition of the property lying and situate at Plot 2786, Cadastral Zone A06 Maitama, Abuja measuring about 3,776.88m² and covered by Certificate of Occupancy No. 1a60w-1566c-6723r-10220-20 dated 29th September, 2006, is illegal, unconstitutional, null and void and of no effect.
- c. An order of Perpetual Injunction restraining the Defendants either by themselves, their servants, agents or privies, and/or anyone or Body acting through them from

attempting, and/or carrying on the purported demolition of the property lying and situate at Plot 2786, Cadastral Zone A06 Maitama, Abuja measuring about 3,776.88m² and covered by Certificate of Occupancy No. 1a60w-1566c-6723r-10220-20 dated 29th September, 2006.

- d. An order setting aside the purported Notice of Demolition dated the 6th day of November, 2019, which seeks to demolish the Plaintiff's property lying and situate at 2786, Cadastral Zone A06 Maitama, Abuja measuring about 3,776,88m² and covered by Certificate of Occupancy No. 1a60w-1566c-6723- 10220-20 dated 29th September 2006.
- e. The sum of N100,000,000.00 (One Hundred Million Naira) only as general damages for trespass.
- f. The cost of this action.

Pleadings were exchanged and the matter was set down for hearing.

The case of the Claimant as distilled from the Statement of Claim and Witness Statement on Oath is, that the property lying and situate at Plot 2786, Cadastral Zone A06 Maitama, Abuja

measuring about 3,776.88m² was allocated to Aso Plaza sometime in the year 1997.

The Plaintiff avers that the 1st and 2nd Defendants issued Messrs Aso Plaza with a Certificate of Occupancy No. **FCT/ABU/MISC/15,255**.

Plaintiff avers that it applied to the 1st and 2nd Defendants for an approval to commence development of the buildings on the said Plot and the approval was granted via a letter of conveyance of approval for development plan.

That sometime in 2006, Messrs Aso Plaza transferred its residual interest of the property lying and situate at Plot 2786, Cadastral Zone A06 Maitama, Abuja measuring about 3,776.88m² to the Plaintiff.

Plaintiff further avers that it applied to the 1st and 2nd Defendants for recertification of the Certificate of Occupancy No. **FCT/ABU/MISC/15,255** for the purpose of bearing the name of the Plaintiff and for payments of ground rents and other incidental levies in respect of the property.

The Plaintiff avers that the 1st and 2nd Defendants on the 29th September, 2006 issued the Plaintiff with a Certificate of

Occupancy No.1a60w-1566c-6723r-10220-20 dated 29th September, 2006 in respect of the Property lying and situate at Plot. 2786 Cadastral Zone A06, Maitama, Abuja measuring about 3,776.88m² is bearing the Plaintiff's name. The Certificate of Occupancy dated 29th September, 2006 is hereby pleaded and shall be relied upon at the trial.

Plaintiff avers that after the issuance of the said Certificate of Occupancy dated 29th September, 2006, the Plaintiff started paying the ground rents of the Plot of land covered by the said Certificate of Occupancy as demanded by the 1st and 2nd Defendants.

That aside paying the ground rent, it fully developed the said plot of land in accordance with the approved plan by the 1st and 2nd Defendants and continued to be in peaceful possession and/or occupation without any encumbrances from a third party.

Plaintiff avers that sometime in 2009, the 4th Defendant approached the Plaintiff laying claim to the ownership of said property and started disturbing the peaceful occupation of the Plaintiff.

That based on paragraph 13 ante, the Plaintiff instituted a civil action against the 1st, 2nd, and 4th Defendants in Suit No

FCT/HC/CV/1835/2009 seeking inter alia a declaratory relief that it is the rightful owner of the property lying and situate at Plot 2786, Cadastral Zone A06, Maitama, Abuja measuring about 3,776.88m². A Certified True Copy of the Writ of Summons dated 16th July, 2009 is hereby pleaded and shall be relied upon at the trial.

That upon the service of the Writ of Summons on the Defendants, they filed their Statement of Defence and during the course of the trial, they subsequently amended it as their substantive Statement of Defense.

That while the matter was still pending, Plaintiff was informed that the 1st and 2nd Defendants had revoked its title in the said Property and re-issued it to Lodigiani (Nig.) Ltd.

That based on the preceding paragraphs, Plaintiff instructed its lawyer Mssrs R.O. Atabo. Esq., to write to the Defendants informing them of the legal implication of their action and as well to maintain status quo until the hearing and determination of the case. A copy of the letter dated 3rd October, 2019 is hereby pleaded and shall be relied upon at the trial

That to its greatest surprise, on the 6th November, 2019 it received a demolition notice from the 3rd Defendant giving it

Twenty-One (21) days to vacate the Property as it intends to commence the demolition exercise at the expiration of the Twenty One (21) days. A copy of the Demolition Notice dated 6th November, 2019 is hereby pleaded and shall be relied upon at the trial.

That it instructed its Counsel to write the 3rd Defendant informing it that the subject of demolition is already a subject of litigation and that being so, it should refrain from its attempt to, and/or carrying out the said demolition as envisaged in the said purported Notice of Demolition served on the Plaintiff on the 6th of November, 2019. A copy of the letter dated 6th November, 2019 is hereby pleaded and shall be relied on at the trial.

That even with the letter issued to the 3rd Defendant by the Plaintiff's counsel, 3rd Defendant was still hell-bent on effecting the said demolition of the property lying and situate at Plot 2786, Cadastral Zone A06, Maitama, Abuja measuring about 3,776.88m² and covered by Certificate of Occupancy No. 1a60w-1566c-6723r-10220-20 dated 29th September, 2006.

That the 1st Defendant wants to demolish a property that is still a subject of litigation in Suit No: **FCT/HC/CV/1835/2009**, to which it is also a party.

That the act of the 1st to 3rd Defendants is in utmost bad faith so as to prejudice the outcome of the pending litigation against them.

PWI (Goni Barma) tendered the following in evidence;

- a. Writ of Summons
- b. Amended Statement of Defence
- c. Letter dated 3rd October, 2019
- d. Demolition Notice dated 6th November, 2019
- e. Letter dated the 6th November, 2019

All marked Exhibits '1', '2', '3', '4', and '5' respectively.

PW1 was cross - examined and subsequently discharged.

Plaintiff then closed its case to pave the way for Defence.

1st, 2nd and 3rd Defendants filed a joint statement of defence wherein they denied the claim of the Plaintiff as contained in the statement of claim and contended as follows:-

1st - 3rd Defendants contends that before the purported allocation to **Aso Homes Limited** sometime in 1997, the said Plot No. 2786 was allocated to the 4th Defendant sometime in 20th

November, 1990 vide an Offer of Terms of Grant/Conveyance of Approval. The said Offer of Terms of Grant/Conveyance of Approval is hereby pleaded and shall be relied on at the trial of this Suit.

That 4th Defendant applied and paid all the necessary fees for the issuance of a Certificate of Occupancy. Upon the payment and application for the issuance of a Certificate of Occupancy, the 4th Defendant was issued with a Certificate of Occupancy No. **FCT/LA/90/ MISC 5964/22** dated 12th April, 1998. The said Certificate of Occupancy No. **FCT/ABU MISC 15255** dated 12th April, 1998 is hereby pleaded and shall be relied upon at the trial of this Suit.

That the 4th Defendant upon the receipt of the Building Permit/Approval commenced development on the said plot and got up to Lintel level.

That in further answer to paragraph 5 of the Claimant's Statement of Claim, the 1st - 3rd Defendants contends that upon the allocation to 4th Defendant it applied for Building Plan Approval which said Approval was granted/approved to it vide a letter dated and 5th January, 1995 titled **"CONVEYANCE OF APPROVAL FOR DEVELOPMENT PLAN"**. The said Building

Plan Approval is hereby pleaded and shall be relied upon at the trial of this Suit.

It is the contention of the 1st - 3rd Defendants, that the title of the 4th Defendant was erroneously revoked vide a Revocation Notice dated 22nd October, 1997. The said Revocation Notice dated 22nd October, 1997 is hereby pleaded and shall be relied upon at the trial of this Suit.

The 1st - 3rd Defendants aver that upon discovery that the said 4th Defendant had a subsisting Building Plan Approval, the Revocation Letter issued to it was withdrawn and their title over Plot No. 2786 Cadastral Zone A06, Maitama District, Abuja was reinstated vide a letter titled **"RE-INSTATEMENT OF TITLE NO. MISC 5964 over Plot 2786, within Maitama (A06) District, Abuja"**. The said Letter of reinstatement is hereby pleaded and shall be relied upon at the trial of this Suit.

That upon the reinstatement of the title of the 4th Defendant over the said Plot No. **FCT/ABU MISC 15255** dated 24th April, 1998, the re-allocation of same Plot No: 2786, Cadastral Zone A06 Maitama to the Claimant on the 24th of December, 1997 was revoked vide a letter dated 15th June, 2009. The said letter is hereby pleaded and shall be relied upon at the trial of this suit.

The said Certificate of Occupancy was issued to **Messrs Aso Homes Limited** in error.

1st - 3rd Defendants deny paragraph 7 of the Claimant's Statement of Claim and put the Claimant to the strictest proof thereof.

That neither **Messr Aso Home Limited** nor **Green Lake Nigeria Limited** submitted any Building Plan for approval.

It is also the contention of the 1st – 3rd Defendants that the 3rd Defendant did not grant any development permit to either **Messrs Aso Homes Limited or Messers Green Lake Nigeria Limited.**

1st - 3rd Defendants deny paragraphs 8, 9, 12, 13 19, 20, 21, 22 and 23 of the Claimant's Statement of Claim and put the Claimant to the strictest proof thereof.

1st – 3rd Defendants deny paragraph 17 of the Claimant's Statement of Claim.

In further response to paragraph 18 of the Claimant's Statement of Claim, the 1st - 3rd Defendants contended that the Claimant knew that their purported development on the land was illegal as the Claimant's title was withdrawn and the 1st - 3rd Defendants

did not grant any development Permit to the Claimant before the development of the illegal structure on the disputed plot.

Chanuwa G. Hamman who gave evidence as DW1 for the 1st, 2nd and 3rd Defendants tendered the following documents in evidence;

1. Offer of terms of grant of conveyance
2. Certificate of Occupancy
3. Conveyance of approval for building plan
4. Settlement of Building plan
5. Reinstatement letter

Above documents were admitted and marked Exhibits 'D1', 'D2', 'D3', 'D4' and 'D5' respectively.

DW1 was cross-examined and subsequently discharged.

On the part of the 4th Defendant, they filed statement of defence wherein they also denied the claim of the Plaintiff in seriatim as contained in the amended statement of claim.

4th Defendant contended further that Messrs Aso Plaza has no capacity to acquire Plot 2787, Maitama, Abuja, subject matter of

this suit and was consequently not in a position to transfer any interest therein to the Plaintiff and that the said property, subject matter of this suit, was developed by the 4th Defendant and not the Plaintiff.

4th Defendant contended that they are the lawful allottee of Plot 2786 Cadastral Zone A06, Maitama, Abuja as per the Offer of Terms of Grant/Conveyance of Approval dated 20th November 1990. The 4th Defendant pleads the said letter of offer, and that upon the acceptance of the said offer by the 4th Defendant and full compliance with the directives of the 1st and 2nd Defendants, the 4th Defendant was granted a Certificate of Occupancy No. **FCT/ABU/MISC. 5964** to cover the property. The 4th Defendant shall rely on the Certificate of Occupancy during the trial of this suit.

That in further compliance with the directive of the 1st and 2nd Defendants, the 4th Defendant paid the required survey fees in respect of the property to the 2nd Defendant on the 20th August, 1991. The Settlement of Survey and the Revenue collectors' Receipt are hereby pleaded.

That it also submitted its Building Plan to the 2nd Defendant for approval and paid the processing and approval fees and same

was approved vide the 2nd Defendant's letter of 5th January, 1995. The said letter is hereby pleaded.

That it had developed the property to lintel level, which is 40% of total construction of the structure on the plot, before the 4th Defendant's interest was purportedly revoked without due process by the 1st and 2nd Defendants. However, the 1st and 2nd Defendants, having realized their mistake, have since reinstated the title of the 4th Defendant vide their letter titled ***"RE-INSTATEMENT of TITLE NO. MISC 5964 OVER PLOT 2786 within MAITAMA (A06) DISTRICT ABUJA"*** dated 15th June, 2009. The 4th Defendant pleads the said letter.

4th Defendant in further answer to the Plaintiff's averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Amended Statement of Claim, challenges the jurisdiction of the Court to entertain this suit, the 4th Defendant states that same is an abuse of the process of this court.

That in 2009, the Plaintiff instituted an action against the 1st, 2nd and 4th Defendants herein in suit No. **FCT/HC/CV/1835/2009** over the same subject matter of this Suit i.e Plot 2786 Cadastral Zone A06, Maitama, Abuja measuring about 3,776.88m². A certify

copy of the Writ of Summons dated 16th July, 2009 is hereby pleaded and shall be relied on at the trial.

That the Plaintiff's suit No. **FCT/HC/CV/1835/2009** against the 1st, 2nd and 4th Defendants was struck out twice, first on the 19th March, 2014 wherein the Plaintiff brought an application to relist same, the said application was taken and the matter relisted. A Motion on Notice with Motion No. M/2847/14 and the Affidavit in support and written address filed by the Plaintiff are hereby pleaded and shall be relied on at the trial.

That the suit was struck out again by the FCT High Court (Coram: Marryann E. Anenih J.) This time on the 14th December, 2015. A Certified True Copy of the said FCT High Court Record of Proceedings of 14th December, 2015 is hereby pleaded.

That based on paragraphs 1, 2, 3, and 4 above, the 4th Defendant further states that the Plaintiff brought a Motion on Notice to relist the suit again, the said motion filed on the 6th December, 2019 is pending before the previous FCT High Court. The Motion on Notice with Motion No. M/1754/19 filed on 6th December, 2019 and the affidavit in support and the written address is hereby pleaded and shall be relied on at the trial.

That the occupation of the subject matter of this suit by the Plaintiff amounts to trespass.

Abba Usman who gave evidence on behalf of 4th Defendant tendered the following documents in evidence:-

- a. Receipt for payment of certified documents dated 1st July, 2022
- b. Settlement of survey fees
- c. Conveyance of approval for development
- d. Re-certification and Re-issuance of Certificate of Occupancy
- e. Settlement of Building Plan Approval fees
- f. Two Revenue collector receipts issued by 1st Defendant
- g. Receipt of payment of ground rent by 4th Defendant
- h. Record of proceedings of the FCT High Court
- i. Writ of Summons CTC
- j. Two CTCs of Motion on Notice

The said documents were all admitted and marked Exhibits "D6", "D7", "D8", "D9", "D10", "D11", "D12", "D13", "D14", and "D15" respectively.

DW2 was cross-examined and subsequently discharged.

Plaintiff filed reply to the 4th Defendant's statement of defence wherein it denied paragraphs 1, 3, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the 4th Defendant's Statement of Defence and puts the 4th Defendant to the strictest proof thereof.

Plaintiff further maintained that contrary to Paragraph 9 of the 4th Defendant's Statement of Defence, this Court has the jurisdiction to entertain this suit and same is not an abuse of court process.

That contrary to Paragraph 10 of the 4th Defendant's Statement of Defence, the Plaintiff avers that the action filed by it in Suit No: **FCT/HC/CV/1835/2009** before this Honourable Court is an action seeking inter alia declarative relief that it is the rightful owner of the property lying and situate at Plot 2786, Cadastral Zone A06, Maitama, Abuja.

That this present suit was filed as a result of the purported revocation of the Plaintiff's title in the property at Plot 2786,

Cadastral Zone A06, Maitama, Abuja by the 1st and 2nd Defendants and the threat by the 3rd Defendant to demolish same which is already a subject of pending litigation in Suit No: **FCT/HC/CV/1835/2009**.

That the issue for determination in this suit is whether it was lawful for the 3rd Defendant to demolish the Plaintiff's property lying and situate at Plot 2786, Cadastral Zone A06, Maitama, Abuja which is already a subject of litigation in Suit No: **FCT/HC/CV/1835/2009** even after the 3rd Defendant was being notified of a pending litigation.

That the issue for determination in Suit No: **FCT/HC/CV/1835/2009** is for the determination of ownership of the property at Plot 2786, Cadastral Zone A06, Maitama, Abuja between the Plaintiff and the 4th Defendant while this suit is for the determination of the legality of the demolition of the Plaintiff's property by the 1st, 2nd and 3rd Defendants.

That contrary to paragraphs 10, 11, 12, 13 and 14, the Plaintiff avers that the reliefs sought and Parties in Suit No: **FCT/HC/CV/1835/2009** are different from the reliefs and parties in this present suit.

That further to paragraph 7 above, the Defendants in Suit No: **FCT/HC/CV/1835/2009** are:

- a. The Minister Federal Capital Territory (FCT)
- b. Federal Capital Development Authority
- c. Lodigiani (Nig.) Ltd.

That this suit is not an abuse of court process as the issues in question and the parties are different from Suit No. **FCT/HC/CV/1835/2009**.

Upon consideration of the respective cases of the parties, final written addresses were filed and adopted.

Learned counsel for the 4th Defendant filed its final written address, wherein four issues were formulated for determination to wit;

1. **Whether this suit is not liable to be struck out for want of jurisdiction in view of the Plaintiff's failure to prove her legal personality to commence the suit?**
2. **Whether the Plaintiff has established her claim of illegal demolition in view of her failure to prove ownership and title to the property in dispute?**

3. **Whether this suit does not constitute an abuse of Court process in view of the fact that same was filed during the pendency of an application to relist Suit No: CV/1835/2009.**
4. **Whether from the totality of the evidence adduced before this Honourable Court, the Plaintiff has proved her case to be entitled to the reliefs sought from this Court?**

On Issue 1, **Whether this suit is not liable to be struck out for want of jurisdiction in view of the Plaintiff's failure to prove her legal personality to commence the suit?**

Learned counsel submits that legal capacity to sue and be sued is a sine qua non and a condition precedent to activating the jurisdiction of a Court of Law to proceed with a matter. The law is settled that it is only a natural or artificial person duly registered with the Corporate Affairs Commission and other regulatory bodies so designated to do so that can sue and be sued in Nigeria. The Court is referred to section 41 (6) and section 42 of the Companies and Allied Matters Act, 2020 and further cited the case of ***AMAC VS. THE OCCUPIER (GW163902) (2022) LPELR-56473(CA).***

It is the argument of the learned counsel that the onus is on the Plaintiff to have adduced evidence to show her legal capacity to maintain the suit which she failed and/or neglected. The law is trite that the only evidence of incorporation is to produce certificate of incorporation when the juristic personality of a party is challenged. He cited Section 41(6) of Companies and Allied Matters Act, 2020.

Learned counsel further argued that, the Plaintiff's name on the Amended Writ of Summons appear as "**GREENLAKE INTERNATIONAL LIMITED**". It is their firm view that the addition of "LIMITED" at the back of the name of the Plaintiff without more is not enough to cloth the Plaintiff with the legal personality to sue or be sued.

On issue two, **Whether the Plaintiff has established her claim of illegal demolition in view of her failure to prove ownership and title to the property in dispute?**

It is the submission of the leaned counsel that the law is trite that whoever desires any court to give judgment to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof

lies on that person. He cited section 131 of the Evidence Act, 2011.

Learned Counsel argued that the Plaintiff has alleged a purported planned demolition of a property situate at Plot 2786 Cadastral Zone A06, Maitama, Abuja measuring about 3,776.88 m and covered by Certificate of Occupancy No. 1 a60w-1566c-6723r-10220-20 dated 29th September, 2006 and an Order of this Court stopping the said demolition pending the hearing and determination of Suit No. **FCT/HC/CV/11835/2009**. It behooves squarely on the Plaintiff to lead credible evidence to prove her ownership of the said property and to satisfy the honourable Court that he has indeed title to the property in issue and that his development on the said property at all-time material to the planned demolition was legal and approved by the 1st-3rd Defendants, which the Plaintiff have failed woefully. He cited ***MAIHAJA GAIDAM (2018) 4 NWLR (Pt. 1610)***.

It is the contention of the learned counsel that PW1 admitted that the Plot in dispute is never developed by the Plaintiff and that he is not even aware or could not say the type of building plan approval that was granted to the Plaintiff. The Plaintiff sole

witness before the Honourable Court was/is completely unaware of the title of the Plaintiff.

Learned counsel further contends that the 1st - 3rd Defendants witness who testified herein as DW1 on the 10th March, 2022 and Introduced herself as Chanuwa G. Hamman tendered four (4) documents of title which have proven without any shred of contradictory evidence that the land in dispute belongs to the 4th Defendant and that at all material time building approval was only granted to the 4th Defendant who were the only recognizable interest to have commenced any form of development on the said Plot 2786 and no else and the court is urge to so hold.

Learned counsel submits that, the Law is settled that a Court of Law will rely on unchallenged and un-contradicted evidence before the Court. He cited ***OMOTOSHO & ANOR VS. IFE NORTH LOCAL GOV. (2009) LPELR-8728(CA).***

Learned counsel submits that assuming without conceding that there is evidence before the court that, the Plaintiff acquired their title in the said Aso Plaza as alleged in their pleadings albeit without evidence to support same, the Aso Plaza lacks the capacity to acquire land in the Federal Capital Territory as same is not a Limited Liability Company nor a Natural person and can

therefore not be able to acquire property in the FCT. ***FCDA & ORS VS. UNIQUE FUTURE LEADERS INTERNATIONAL LTD (2014) LPELR-23170(CA) was cited.***

On Issue three, ***Whether this suit does not constitute an abuse of Court process in view of the fact that same was filed during the pending of an application to relist Suit No: CV/1835/2009.***

It is the contention of the learned counsel that the Plaintiff's suit severely and grossly abused the process of this Court. The law is trite that where a party to litigation uses the judicial process improperly to the irritation and annoyance of his opponent and the efficient and effective administration of justice same is said to have amounted to abuse of judicial process and liable to struck out by the court. That the said application to relist the Suit No: **M/174/2019** was refused in the Ruling of this Honourable Court Coram Hon Justice Marryann E. Anenih delivered on the 11th of April, 2022 it does not prevent this Current suit from being an abuse of Court process and the court is urge to so hold.

It is the argument of the learned counsel that the motion seeking to relist Suit **No: FCT/CV/1835/2009** was filed before Justice Marryann E. Anenih on the 6th December, 2019, this current suit

before the court was commenced via an amended writ of summons on the 9th February, 2021. The said application to relist the suit was only struck out by the Honourable Court Coram: Marryann E. Anenih on the 11th of April, 2022. Both the two suit relates to the subject matter of this suit i.e Plot 2786. Cadastral Zone A06, Maitama, Abuja involving the same parties. This is a perfect instance of an abuse of the process of this Court as two suits cannot under the laws be going on simultaneously in the same Court on the same subject matter against the same defendants although the former suit before Justice Anenih is now struck out as the said application to relist the suit is refused, recourse will be had to date of filing of the application to relist the Suit No: **FCT/CV/1835/2009** and the current suit and the court is urge to so hold. He cited ***OKAFOR VS. A-G ANAMBRA STATE (1991) 6 NWLR (Pt. 200) 659.***

On issue four, ***whether from the totality of the evidence adduced before this Honourable Court, the Plaintiff has proved her case to be entitled to the reliefs sought from this Court?***

It is the submission of the learned counsel that the entirety of the Plaintiff's evidence before this Honourable is hearsay and

inadmissible, the Plaintiff sole witness who testified before this Court as PW1 on the 17th January, 2022 was asked under cross-examination by Counsel to the 1st - 3rd Defendants and he admitted the statements he adopted in Court is what he was told.

Learned counsel contends that the Plaintiff clearly admitted under cross-examination that he was told all the things he deposed in his witness statement on oath. This was even more evident when he stated further that he is not a Director of the Plaintiff which means that he is not in a position to know the facts he stated having not been privy to the transactions that gave rise to the suit. The Court is urged to so hold and declare the entire testimony of PW1 hearsay and inadmissible before this Court. He cited ***ANDREW VS. INEC (2018) 9 NWLR (Pt. 1625) 507 Page 558, Paragraphs B.***

Learned counsel submits that, assuming without conceding that the Plaintiff tendered and produced the purported Certificate of Occupancy pleaded by them, which is not evidence before the court, it is our contention as earlier submitted under issue one above that the purported ASO Plaza lacks the requisite juristic personality to acquire land as it is neither a natural person nor a limited liability company capable of acquiring, land. He cited the

case of ***FCDA & ORS. VS. UNIQUE FUTURE LEADERS INTERNATIONAL LTD. (2014) LPELR – 23170 (CA).***

The Law is settled that where rival Claimants derive title from common grantor, he who is first in time takes priority. Counsel refers to the case of ***OMYALE VS. MACAULAY (2009) 7 NWLR (Pt. 1141) 597.***

Learned counsel submits that, the Plaintiff has failed to adduce evidence of ownership of Plot 2786 in issue before the Court, and the court is urge to discountenance every pleadings of the Plaintiff in this aspect as same is not supported with any evidence. He cited ***OBUTE VS. ABDULKAREEM (2014) LPELR – 23971(CA).***

Learned counsel argued that at the 6th November, 2019, there was no such suit No: **FCT/HC/CV/1835/2009** on the cause list of the Court as same was struck out, the Plaintiff only filed an application to relist the said suit on the 6th of December, 2019 exactly one month after the demolition Notice was served on them by the 3rd Defendant. Counsel refer the court to Exhibit “D15” tendered by the 4th Defendant a Motion on Notice with a Motion No: M/1754/19 particularly paragraph 4(e) of the supporting affidavit where the Plaintiff admitted that the suit was

struck out on the 14th December, 2015. The irresistible conclusion the Court will make after critically examining the evidence before the Court is that there was no suit pending before the Honourable Court as at the time the demolition Notice was served on the 6th November, 2019.

Learned counsel further argued that the 4th Defendant herein filed a Counter-Affidavit opposing the application to relist the suit No: **FCT/HC/CV/1835/2009** and after hearing both parties, the Honourable Court Coram: Hon. Justice Marryann E. Anenih refused the application to relist the suit in her ruling delivered on the 11th day of April, 2022.

Learned counsel urge the Honourable Court to reject the Plaintiff's contention in this regard, the 4th Defendant's overwhelming documentary evidence before the Court remains uncontroverted by the Plaintiff and the court is urge to rely on same in favour of the 4th Defendant and dismiss the suit as the Plaintiffs have failed to prove her case before the Honourable Court to be entitled to the reliefs sought. He cited the case of ***NGOKA VS. IFEZUE & ORS.(2016) LPELR - 41312***

In conclusion, learned counsel submits that flowing from the above submissions and very profound judicial authorities of the

Apex Courts, the court is urge to dismiss and/or struck out this suit for lacking in merit, lack of prove of same by the Plaintiff and want of jurisdiction of the Honourable Court in the interest of justice.

In line with law and procedure, 1st - 3rd Respondents filed written address, wherein three issues were formulated for determination to wit;

- a. **Whether in view of Exhibit "6", there is evidence by the Claimant in this Suit.**
- b. **Whether, considering the totality of the evidence and pleading led in this suit, the Claimant are entitled to the reliefs sought.**
- c. **Whether the Claimant has established her claim of illegal demolition in view of her failure to prove ownership and title to the property.**

Learned counsel jointly argued issues one and two together, to wit

- a. **Whether in view of Exhibit "6", there is evidence by the Claimant in this Suit.**

b. Whether, considering the totality of the evidence and pleading led in this suit, the Claimant are entitled to the reliefs sought.

It is the learned counsel s submission that the answer is in the negative, that there is no evidence by the Claimant in line with Order 2 Rule (2) (c) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules 2018.

Learned counsel submits that PW1 is not the maker of the Witness Statement on Oath adopted by him. The court is referred to the Witness Statement on Oath purportedly signed by the PW1 and Exhibit "6" and other documents signed by the PW1 in this suit. He added that the Claimant has no evidence in this suit as the Witness Statement on Oath adopted by him was not signed by him. The court is therefore urge to compare the signature in the Witness Statement on Oath signed by the PW1 and Exhibit 6 to ascertain whether the PW1 is the maker of the Witness Statement on Oath adopted by him. ***MADAM ALICE CHIATOGU AMADI VS. CHARLES ORISAKWE & 2ORS. (2005) 21 NSCQR Page 1 at 9 Paragraphs B – D were cited.***

It is the submission of the learned counsel that the Witness Statement on Oath purportedly signed by the PW1 was not

signed/made by him and counsel therefore urged the court not to rely on it but to rather strike same out the said Witness Statement on Oath. The case of ***OBIORA MOKE VS. G. E. EZEUKO, SAN & 1OR. (2002) FWLR (Pt. 38) Pages 1275 and 1289 Paragraphs C – D was cited.***

Learned counsel argued that, it is trite that pleadings cannot take the place of evidence. It is the law that evidence must be led to prove the averments in the pleading. See the case of ***PETER OJOH VS. OWUALA KAMALU & 3ORS. (2005) 24 NSCQR Page 256 at 301 where S.U. ONU, JSC was cited.***

It is trite law that since the Claimant did not give oral evidence but only adopted his purported Witness Statement which was not signed by PW1, it is deemed that he has abandoned his claim and the court is urged not to attach any weight to the purported Witness Statement on Oath. Counsel commend the court to the case of ***THE ADMINISTRATOR/EXECUTORS OF THE ESTATE OF GEN. SANI ABACHA VS. SAMUEL DAVID EKE-SPIFF & 3ORS. (2009) 37 NSCQR Page 364 at 415-416 Paragraphs H-A per PIUS O. ADEREMI, JSC was cited.***

It is the submission of the learned counsel that, it is no longer a contention in law and in practice that specifically in respect of an

action for the declaration of a right, the Claimant must satisfy the court by credible evidence that he is entitled to the right he claims, therefore a party who seeks declarative reliefs is duty bound to succeed only on the strength of his case, without recourse to the Defendant's case. He cited the case of ***MOHAMMED VS. WANMAKO (2017) LPELR-42667 (SC) 24, A-B.***

Learned counsel further submits that, even though the Claimant tried (without success) to lay claim to their prove the subject matter of this suit, the fact still remains that the Claimant never asked the court to determine their right to Certificate of Occupancy.

Learned counsel submits and constrained by the legal principle that says "*the court is not a father Christmas*", that this Honourable Court is not under any obligation to even consider the aspect of Claimants' evidence where they are trying to lay claim to the subject matter of this suit. The trial courts have been warned severally that party should only get what they asked for and that the court should not be kind to the extent of awarding what litigants did not seek in their claims.

Learned counsel also submits that, it is a trite law that when a litigant fails to prove a principal claims which other claims derive their existence, the other claims will fail also. This is encapsulated in the legal maxim "*nothing succeeds on nothing*".

Learned counsel submits finally on issues 1 and 2 that the Claimant did not give any evidence in the matter and her claim is predicated on nothing. In view of the submission and authorities cited above, learned counsel urge the court to so hold and strike out the purported Witness Statement on Oath adopted by the PW1.

On Issue three, **whether the Claimant has established her claim of illegal demolition in view of her failure to prove ownership and title to the property.**

Arguing on the above, it is the contention of the learned counsel that this issue alone clearly ought to have raised a very fundamental question on the rightful owner of the subject matter in question. Whether there is an encroachment or not, and whether the encroachment is lawful or unlawful, or where exactly is the beginning or the end of the plot belonging to the Claimant herein, are all questions of facts that can only be determined by taking of oral evidence and possibly, a visit to the locus.

It is the submission of the learned counsel that, in the 1st - 3rd Defendants' defense, it is aver to facts which made the actions embarked upon by agents of the 1st Defendant necessary, notwithstanding the ownership of any plot, the 1st Defendant can enter into any plot in the Federal Capital Territory to monitor the development being carried out there. It is her statutory function and their actions are within the ambit of the law and their statutory functions.

He cited Section 7 of the Federal Capital Territory Act, (Cap.F6), Laws of the Federation of Nigeria, 2004.

Learned counsel submits that, there has not even been any damage any way done by the 1st - 3rd Defendants. There is no such duty to the Claimant in this instance. The Honourable court can recall that when PW1 was asked if the claimant applied for building permit approval, the witness could not remember who did the approval, nor whether it was submitted or approved by the 1st - 3rd Defendants or not.

It is further the submission of the learned counsel that the reliefs sought by the Claimant premised on a non-existent approval will amount to an infringement of the provisions of the Federal Capital

Act and will encourage the enthronement of illegality because the Claimant did not plead same in her Statement of Claim.

Learned counsel submits that the Claimants have no approvals for all the structures marked for which notices were also given.

ALHAJI YAHAYA YUSUF & ANOR VS. SAVANNAH SCAPE REALTORS LTD. (CA/A/719/2013) was cited.

Learned counsel submits that any development carried out without approval in the Federal Capital Territory, Abuja cannot be regarded as valid since the conditions precedent was not complied with.

It is the contention of the learned counsel that, the 2nd Defendant can enter into any plot, including that of the Claimant, to monitor the development thereon and mark as well as issue notices on them, same having been built without approval.

In conclusion, learned counsel submits that the Claimant has not convinced this Honourable Court to entitle her to the reliefs sought and the court is urge to so hold and dismiss this suit with substantial cost.

In line with law and procedure, Plaintiff filed written address wherein six (6) issues were formulated for determination to wit;

1. **Having regards to the circumstance of this case, whether the denial of the Plaintiff's legal capacity to sue was properly made in this suit.**
2. **Whether the Plaintiff has established her claim of illegal demolition in view of her failure to prove ownership and title to the property in dispute?**
3. **Whether this suit does not constitute an abuse of court process in view of the fact that same was filed during the pendency of Suit No: CV/1835/2009.**
4. **Whether from the totality of the evidence adduced before this Honourable Court, the Plaintiff has proved her case to be entitled to the reliefs sought from this Court?**
5. **Having regards to the doctrine of lispendens whether the revocation of the Plaintiff's Certificate of Occupancy and the demolition of the Plaintiff's property by the Defendants is legal and valid.**
6. **Having regards to the evidence of the 4th Defendant's sole witness under cross - examination,**

whether this Honourable Court can rely on his evidence.

Learned counsel submits that section 41(6) and Section 42 of the Companies and Allied Matters Act, 2020, that the Plaintiff in this suit is a legal personality been a company registered under the companies and Allied Matters Act, Laws of the Federation of Nigeria, 1990.

It is the submission of the learned counsel that the 4th Defendant in its issue 1 of its final written address argued that the Plaintiff is not a legal personality on the basis that it failed to prove its juristic personality by production of its certificate of incorporation, the 4th Defendant relied on the case of **REPTICO S.A. GENEVA VS. AFRIBANK (NIG) PLC. (2013) 14 NWLR (Pt. 1373) 172.** Indisputably, where the legal personality of a party is challenged by an adversary, the onus/burden resides in that party to lead evidence, parol or documentary, to establish its legal capacity. The most reliable way incorporation of a company can be proved is by tendering certificate of its incorporation. **He cited MULTICHOICE (NIG.) LTD. VS. M.C.S.N. LTD./GTE (2020) 13 NWLR (Pt. 1742) 517 Paragraphs H-A;**

Learned counsel contends that it is deducible that where a Defendant chooses to challenge or deny a fact(s) in a party's pleadings, it ought to deny same specifically.

It is the contention of the learned counsel that the Defendant's pleadings is bad for being evasive and does not properly traverse the issues raised by the Plaintiff.

Learned counsel submits that the denial made by the Defendant is not sufficient, as it merely denies the averment made by the Plaintiff along with the circumstances without giving a full and substantial answer as required by the Rules of this Honourable court and extant laws. The 4th Defendant ought to further state that it either conducted a search and found the Plaintiff not to be a registered company.

It is the contention of counsel that the case of ***REPTICO S. A. GENEVA VS. AFRIBANK (NIG) PLC. (Supra)*** relied on by the 4th Defendant is quite distinguishable from the instant suit. The case cited had to do with the registration of a foreign company in Nigeria and not a localized company. Their denial was also substantiated that required the Plaintiff to have tendered its Certificate of incorporation been a foreign company. As in the instant case, the Plaintiff is a Nigerian Company registered with

the corporate affairs Commission. The cited case went further to substantiate why it alleged that the company was not registered. Plaintiff's sole witness while being cross-examined by the 4th Defendant's counsel affirming the Plaintiff's legal capacity. The case of ***PDP VS. INEC (2014) LPELR-23573 (CA) was cited.***

Learned Counsel submits that, it is settled law that in civil cases, issues are settled on pleadings; parties are bound by their pleadings and litigation is fought and won on pleadings. ***ATANDA & ORS. VS. AJANI & ORS. (1989) LPELR- 589 (SC) was cited.***

Learned counsel further submits that the 4th Defendant having not denied the Plaintiff's averments particularly paragraph 3 of its Statement of Defence amounts to an admission that needs no further proof and the court is urged to so hold.

Learned counsel urge the court to discountenance the argument of the 4th Defendant and resolve Issue one in favour of the Plaintiff.

Learned counsel seeks to argue issue Two and Four simultaneously.

On Issue two, **Whether the Plaintiff has established her claim of illegal demolition in view of her failure to prove ownership and title to the property in dispute?**

On Issue four, **whether from the totality of the evidence adduced before this Honourable Court, the Plaintiff has proved her case to be entitled to the reliefs sought from this Court?**

Learned counsel submits that the provisions of Sections 131, 132 and 133 of the Evidence Act 2011, he who asserts must prove and whoever desires to have judgment entered in his favour must establish his case on a preponderance of evidence. He cited ***DAODU VS. NNPC & ORS (1998) LPELR- 927 (SC)***.

Learned counsel argued that the Plaintiff's Claim before this Honourable Court borders largely on a demolition notice issued by the 1st - 3rd Defendants while a matter for title was still pending before this Honourable Court in respect of the said property. In order to prove the Plaintiff's assertion, the Plaintiff tendered the Demolition Notice before this Honourable Court (see Exhibit 4).

Learned counsel further submits that the Plaintiff have not only proven their case on the preponderance of evidence but the same evidence as adduced by the Plaintiff is seen to be unchallenged

by the Defendants. The law is settled that when evidence is unchallenged the court ought to accept such evidence as proof of the issue in contest. He cited ***FOLORUNSO & ANOR VS. SHALOUB (1994) 3 NWLR (Pt. 333) Page 413 at 433 Paragraphs B-H;***

Learned counsel submits that the title documents tendered by the 4th Defendant (Exhibits "D1" – "D5") is irrelevant to the fact in issue and therefore goes to no issue. The case of ***ANOZIE VS. OBICHERE & ORS. (2005) LPELR-7478 (CA) was cited.***

Counsel submits, that based on extant laws, the Plaintiff has proven its case in accordance with the preponderance of evidence as required in civil proceedings, and the Court is urge to so hold.

On issue 3, ***whether this suit does not constitute an abuse of court process in view of the fact that same was filed during the pendency of Suit No: CV/1835/2009.***

Learned counsel argued that in determining whether a matter is an abuse of process, the court is enjoined by law to examine each case, predicate on its facts and circumstances in order to showcase an abuse of court process or not as held in the case of ***WAZIRI VS. GUMEL (2012), 9 NWLR (Pt. 1304) 185.***

Learned counsel contends that in order to determine if the suit is an abuse of court process on the basis that the subject matter in this suit is the same as in suit No: **FCT/HC/CV/1835/2009**, it is important to juxtapose the parties, reliefs and issues for determination in the both suits. A cursory look at Exhibit "1" of the Plaintiff's pleadings before this Honourable Court, it is prima facie clear that the parties are not the same. He cited Section 122 (2) (M) of the Evidence Act 2011, and the court is urge to take judicial notice of Exhibit "1" tendered by the Plaintiff.

Learned counsel further argues that the issues before the court in Suit **No. FCT/CV//2009** is that of ownership of the Plaintiff's property lying and situate at Plot No: 2786, Cadastral Zone A06, Maitama, Abuja Measuring about 3,776,88m and covered by Certificate of Occupancy No.1a60w-1566c-6723-10220-20 dated 29th September, 2006. While the issue that calls for the determination before this Honourable court is whether it was lawful for the 3rd Defendant to demolish the Plaintiff's property lying and situate at Plot No: 2786, Cadastral Zone A06, Maitama, Abuja measuring about 3,776,88m and covered by Certificate of Occupancy No.1a60w-1566c-6723-10220-20 dated 29th September, 2006 even after the 3rd Defendant was notified of a pending litigation (See Exhibit "3").

It is the submission of learned counsel, that having established that the parties, issues and the reliefs sought by the Plaintiff in this suit are different from suit No: **FCT/HC/CV/1835/2009**, the suit before this Honourable Court is not an abuse of court process and counsel urge this Court to so hold.

Learned counsel urge this Honourable Court to discountenance the argument of the 4th Defendant and resolve this issue in favour of the Plaintiff.

On issue five, **having regards to the doctrine of lispendens whether the revocation of the Plaintiff's Certificate of Occupancy and the demolition of the Plaintiff's property by the Defendants is legal and valid.**

Arguing on the above learned counsel submits that the law does not allow litigant to prejudice any of the litigating parties. The doctrine negates and disallows any transfer of rights or interest in any subject matter that is being litigated upon during the pendency of litigation in respect of the said subject matter. See also the case of ***ORONTI VS. ONIGBANJO (2012) LPELR – 7804 was cited.***

It is the argument of the learned counsel, that the Plaintiff in proof of its case exposes the fact that the Plaintiff filed its case in

the year 2009 before the High Court of the FCT asking *inter alia* a declaration of title to the property known as Plot 2786, Cadastral Zone A06, Maitama, Abuja measuring about 3, 776.88m and covered by Certificate of Occupancy No. 1s60w-1566c-6723r-10220-20 dated 29th September, 2006 and served the said processes on the Defendants. While the matter was still pending in court, the 1st and 2nd Defendants revoked the Certificate of Occupancy of the Plaintiff in respect of the said property and issued same to the 4th Defendant and went further to send a demolition notice (Exhibit "4") to the Plaintiff. The Plaintiff upon receipt of the demolition notice wrote a letter through its Solicitor to the 1st and 3rd Defendants intimating it of a pending suit as regards the subject matter (see Exhibit "6").

Learned counsel submits that once parties have turned their dispute over to the courts for determination, the right to resort to self-help ends. He cited ***HARUNA VS. K.S.H.A. (2010) 7 NWLR (Pt.) 658 Paragraphs A-G.***

Learned counsel contends that the 1st – 3rd Defendants never denied the fact that it issued a demolition notice to the Plaintiffs nor did they denied that they revoked the Plaintiffs Certificate of Occupancy during the pendency of Suit No: **FCT/HC/CV/**

1835/2009 nor did they also denied that it demolished the Plaintiffs' property. It is trite law, that facts not disputed or controverted are deemed admitted. It is the submission of the learned counsel that the Defendants having not disputed the evidence, are deemed to have admitted same.

The Court is urged to resolve issue five in favour of the Plaintiff.

On Issue six, **having regard to the evidence of the 4th Defendant's sole witness under cross examination, whether this Honourable court can rely on his evidence.**

It is the submission of the learned counsel that witness deposition on oath is the front loaded deposition on oath of a witness in support of his pleadings, it constitutes his evidence in chief in the proceeding. The case of ***MTN VS. CORPORATE COMMUNICATION INVESTMENT LTD. (2019) LPELR – 47042 (SC) Page 36 Paragraphs was cited.***

Learned counsel contends that the written deposition of a witness is thus adopted as witness evidence in chief while his cross - examination is the test of his veracity and the Court would only act on such evidence if it is found to be cogent, credible and reliable upon proper evaluation. Thus, the fact that a witness had deposed to any or all the facts as pleaded alone would not suffice

because the Court still has the duty to assess the quality of his evidence. The case of ***OGUNDE VS. ABDULSALAM (2017) LPELR – 41875 (CA) Page. 49 Paragraph. B*** was cited.

It is the contention of the learned counsel that a witness who does not know the meaning of a word used in its deposition can be inferred to have testified on what he was only told only and such amounts to hearsay evidence.

From the foregoing, learned counsel submits that the 4th Defendant Witness deposition is inadmissible on the basis that its hearsay evidence before the court and therefore this Honourable court cannot rely on same but rather be expunged. The court is urge to so hold.

Learned counsel further submits that assuming the court upholds the argument that that the witness deposition cannot be relied on then it means that the pleadings filed by the 4th Defendant is without evidence and where pleadings is without evidence it goes to no issue as pleadings themselves do not constitute evidence. The case of ***ST. MACHIAVELLI COLLEGE VS. OGUNSAN (2010) LPELR- 4919(CA) Page. 12 Paragraph B*** was cited.

From the foregoing, it is succinct to say that the 4th Defendant has no defence before this Honourable Court having not lead

evidence in support of his pleadings and the court is urged to so hold.

In conclusion, learned counsel submits that the Plaintiff has fully shown that it is entitled to the reliefs sought before this Honourable Court having canvassed arguments on all the six issues formulated. The court is urged to grant all the reliefs sought by the Plaintiff and jettison the evidence adduced by the 4th Defendant.

On their part, 4th Defendant filed reply on point of law to the Plaintiff's final written address.

It is the submission of the learned counsel that the Plaintiff rightly admitted that where the legal personality of a party in this case the Plaintiff is challenged by an adversary, the onus/burden resides in that party in this case the Plaintiff to lead evidence to establish its legal capacity and the most reliable way incorporation of a company can be proved is by tendering certificate of its incorporation and the court is urged to resolve this point against the Plaintiff as rightly admitted by her.

Learned counsel argued that contrary to the Plaintiff submission at paragraphs 4.1.7, 4.1.8 and 4.1.10 of her written address that the 4th Defendant's paragraph 1 of their Statement of Defence is

not sufficient to deny the averment made by the Plaintiff and that the Plaintiff ought to have given full and substantial answer. This submission is misconceived by learned counsel for the Plaintiff, the 4th Defendant clearly in answering Paragraph 1 of the Plaintiff's Statement of Claim where they have pleaded that the Plaintiff is a legal personality without more. The 4th Defendant clearly denies this assertion in her Paragraph 1 of the 4th Defendant Statement of Defence and clearly pleaded that the Plaintiff is not a legal entity recognized under the relevant laws of the Federal Republic of Nigeria.

Learned counsel submits that the denial of the legal personality of the Plaintiff cannot be said to be passive in the face of all these denials both in the 4th Defendant Statement of Defence, Witnesses Statement on Oath of DW2 and at the trial, the 4th Defendant specifically denied the legal personality of the Plaintiff. The case of ***MULTICHOICE (NIG.) LTD. VS. M.C.S.N LTD/ GTE (2020) 13 NWLR (Pt.1742) was cited*** and Order 17 Rule 2 of the Rules of this Honourable Court relied on by the Plaintiff cannot be of help to her as they did not apply to the point being canvassed by the Plaintiff in this case. The Plaintiff was bound to have produced her Certificate of Incorporation if at all the Plaintiff is a legal personality as the law is settled that it is

only by producing the certificate of incorporation that the Court can be satisfied as to the legal capacity of the Plaintiff to have commenced this suit failure of which is fatal to the sustainability of this suit. Counsel referred the court to the case ***of MAGBAGBEOLA VS. SANNI (2005) LPELR-1815 (SC)***. Learned counsel urge the court to reject the Plaintiff's submissions as the 4th Defendant averments in this regard are very specific and conspicuous, resolve this issue in favour of the 4th Defendant and against the Plaintiff.

It is the contention of the learned counsel that in Reply to paragraphs 4.2.4 of the Plaintiff Written Address to the effect that the Defendants did not deny demolishing the Plaintiff's property. Counsel states that there is nowhere in the Plaintiff's pleadings where the Plaintiff stated that her property was demolished, there was equally nowhere at the viva voce evidence of PW1 at the trial where the Plaintiff stated that his property is demolished. Counsel referred the court to Paragraph 18 of the Plaintiff's amended statement of claim.

Learned counsel contends that the Plaintiff has accepted these submissions by remaining mute on the distinctions drawn by the 4th Defendant. The Court is urged to rely on same in favour of the

4th Defendant. He cited the case of ***EKPEMUPOLO & ORS VS. EDREMODA & ORS. (2009) LPELR-1089(SC).***

Learned counsel further argued that, the Plaintiff submission on issue 2 of her Written Address particularly paragraphs 4.3.7 and Paragraphs 4.3.8 that this suit is not an abuse of Court process simply because according to them the parties and reliefs sought in Suit **No. FCT/HC/CV/1835/2009** is different from the reliefs sought in the current suit. Counsel state that the Plaintiff did not deny the fact that there was an existing application to relist suit **No. FCT/HC/CV/1835/2009**, on the face of the amended writ of summons in this suit and the writ of summons in suit **No. FCT/HC/CV/1835/2009** all the Defendants in that suit are also Defendants in this current suit, the Plaintiff is the same and the subject matter of both suits relates to Plot 2786, Cadastral Zone A06, Maitama, Abuja.

It is also the submission of learned counsel in determining abuse of Court process that the law is settled that it is immaterial even if the grounds in the two suits are different. Counsel refers the court to the case of ***SARAKI VS. KOTOYE (1992) 9 NWLR (Pt. 264) 156.***

Learned counsel submits that the Plaintiff argued under issue 5 of her written address particularly in paragraphs 4.5.4, 4.5.5, 4.5.6 and 4.5.7 that the 1st and 2nd Defendants revoked her title to the property the subject matter of this suit when the suit was already pending in Court and submitted that the Court should evoke the doctrine of lis pendens against the Defendants relying on the case of ***HARUNA VS. K.S.H.A (SUPRA)***.

Learned counsel contends that, the Plaintiff's Suit **No: FCT/HC/CV/1835/2009** was filed on the 16th July, 2009. Refer to the date of filing of Exhibit "1" tendered before the Court by the Plaintiff after they were already communicated the reinstatement of the land in issue before the Court to the 4th Defendant via a letter dated 13th June, 2009. It is therefore totally wrong and misleading for the Plaintiff to submit that their title was revoked during the pendency of Suit **No. FCT/HC/CV/1835/2009** as from the evidence before the Court the said suit was only filed after the revocation and reinstatement of the suit in issue was communicated to the Plaintiff. The Plaintiff claim is not back up with any evidence and therefore the doctrine of lis pendens does not arise and the court is urge to so hold and reject this submission.

DW2 being the Executive Director of the 4th Defendant is the right person and indeed in a best position to testify on behalf of the 4th Defendant. The argument of hearsay evidence does not arise and the court is urged to reject same. ***OKEREMUTE VS. STATE (2021) LPELR-55335(SC)*** was cited.

Learned counsel in conclusion, flowing from the above submissions, urge the court to uphold their submissions and strike out and /or dismiss the Plaintiff's suit with cost.

COURT:

I have abbraised myself with the respective cases of Plaintiff and Defendants, on the one hand, and their legal arguments on the other hand, as stated in the preceding part of this judgment.

It is instructive to note that both Plaintiff and 4th Defendant formulated the same issue on abuse of court process.

The issue is:-

Whether this suit does not constitute abuse of court process in view of the fact that same was filed during the pendency of suit No. CV/1835/2009.

The implication of the afore-formulated issue, clearly challenges the jurisdiction of this court, and bearing in mind the importance of jurisdiction generally in the annals of our jurisprudence, Courts are enjoined to always make haste to determine same at the earliest possible moment to avoid wasting time and energy on cases that have no legs to stand.

I am constrained to admonish parties, especially Defendants in this case to always, as a matter of responsibility and procedure to raise such issue by filing Motion on Notice so the court can deal with it one way or another especially that this suit was commenced by Writ of Summons and Originating Summons.

Having said that, I shall now proceed to consider the issue of abuse of Court process.

What is abuse of Court Process?

The Black's Law Dictionary Ninth Edition at page 10 gave the definition of the word "abuse" as "A departure from legal or reasonable use; misuse;" The phrase "Abuse of Process" was also defined at page 11 as:- The improper and tortuous use of a legitimately issued court process to obtain a result that is whether unlawful or beyond the process's scope".

Above was stated by Ogunbujì JSC (as he then was) in the case of ***OGBORU & ANOR VS. UDUAGHAB & ORS. (2013) LPELR – 20805 (SC)***.

Similarly, in ***SARAKI VS. KOTOYE (1992) 9 NWLR (Pt. 264) Page 156, the SC*** explained the concept of abuse of court process to mean, the multiplicity of action on the same subject matter between the same parties, even where there exists a right to bring the actions is regarded as an abuse. The abuse lies in the multiplicity of the action and manner of the exercise of the right, rather than the exercise of the right per se.

Filing two suits between the same parties, on the same subject matter and where the end result of both suits was the same, even though the reliefs in the two suits were worded differently, would constitute abuse of court process.

See ***ALI VS. ALBISHIR (2008) 3 NWLR (Pt. 1073) Page 94 at 141.***

The 4th Defendant at paragraphs 9, 10, 11, 12, 13 and 14 of their statement of Defence contended that Plaintiff filed suit No. **FCT/HC/CV/1835/2009** which was pending before Hon. Justice Maryanne E. Anenih of this court and same was relisted upon application and struck – out twice for want of prosecution.

4th Defendant further stated that Plaintiff again filed application seeking to relist the same suit vide Motion No. M/175/2019 filed on the 6th December, 2019, and that the said application is still pending before his lordship's court as it has not been withdrawn when the Plaintiff proceeded to file the instant suit No. **CV/370/2019**, hence the argument that same constitutes an abuse of judicial process.

Plaintiff on the other hand, filed reply wherein they admitted fact that there was an existing suit which they filed and seek to re-list before the said court but however maintained that the facts, parties and reliefs sought are not the same and, urged the court to discountenance the argument of 4th Defendant.

The arguments of both parties on the issue of abuse is already contained in the preceding part of this judgment.

It will not be of any added importance reproducing the same argument again, hook, line and sinker.

Suffices to mention that all argument would be considered in this ruling where same is relevant to the facts in issue.

I shall therefore, deal frontally with the vexed issue formulated by both Plaintiff and 4th Defendant on abuse of court process, i.e

Issue three, **Whether this suit does not constitute an abuse of Court Process in view of the fact that same was filed during the pending of an application to relist Suit No: CV/1835/2009.**

Permit me to state at this juncture, that a matter struck-out could either be re-listed upon application or a new suit filed.

Above are the options opened to a party.

Where a party chooses to file application to relist a struck-out matter, such a party cannot, again, proceed to file a fresh suit on the same subject as done by the Plaintiff in this instance, as such would amount to abuse of Court Process and Procedure.

It is not in doubt that Plaintiff instituted the instant suit whilst an application to re-list an earlier such which they filed before this Court Coram Anenih, J., was still pending.

Permit me to note that though learned counsel for the Plaintiff attempted to distinguish the reliefs in both suits, I am not swayed by such argument.

For the records, Plaintiff's suit before my brother judge was struck-out for the 2nd time on the 14th December, 2015, but application to re-list same was filed on the 6th December, 2019,

four years later, only again to file the Instant Amended Writ of Summons on the 9th February, 2021 whilst the said application to relist is still pending.

Both suits are on the same subject matter, i.e Plot 2786, Cadastral Zone A06, Maitama, Abuja; the parties are the same in both suits. Whereas the reliefs in the 2009 Suit sought to be relisted are largely for the Court to declare the Plaintiff as the lawful owner, amongst other declaratory reliefs, the relief sought in the suit before this Court is for a declaration that FCT Minister, FCDA, FCTA and Abuja Metropolitan Management Council have no Power to demolish the property situate at Plot 2786 Cadastral Zone A06, Maitama, pending the hearing and determination of suit No. **FCT/HC/CV/11835/2009**.

Again, I ask learned counsel for Plaintiff the following question;

Is Suit No. FCT/HC/CV/11835/2009 the same as Suit CV/370/2019 filed on the 20th November, 2019 which was later amended and filed on the 9th February, 2021?

Why would learned counsel for the Plaintiff seek an Order of this Court that the Defendants have no power to demolish his property pending the hearing of a Suit before another Court?

Has counsel not admitted the pendency of two (2) suits on the same subject matter?

This is clearly admission against interest which is the best form of evidence. See the case of ***ORAKWE VS. ORAKWUE & ORS (2018) LPELR 44703 (CA)***;

Section 24 of the Evidence Act, 2011 (as amended).

The Supreme Court of Nigeria has outlined certain conditions that must be fulfilled for a Court to be competent, jurisdictionally speaking, to determine a case.

Put briefly, a Court is competent when;

1. It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another.
2. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
3. The case comes before the Court initiated by the process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Indeed, any defect in competence of a Court to determine a matter is fatal, for the proceedings are a nullity however well conducted and decided.

See ***MADUKOLU VS. NKEMDILIM (1962) LPELR – 24023 (SC).***

The defect in this case is the existence of the application to re-list the aforementioned matter before my brother's court. It is akin to the umbilical cord of the unborn Fetus linking it to the mother through the placenta. So long as the motion is alive, the instant suit remains linked to it. I so hold.

What then is the effect of this finding?

It is the law that once a suit is found to be an abuse of process, the proper Order is to dismiss same, so said Supreme Court.

See ***DINGYADI VS. INEC (No. 2) (2010)18 NWLR (Pt. 1224) 154 SC;***

NWOSU VS. PDP & ORS (2018) LPELR – 44386 (SC).

This coercive power of Court is usually invoked to punish the party in abuse of its process.

I have no doubt in my mind that Plaintiff in this case has indeed abused the process of this Court. Prof. George O. Amadi, once said;

a sensible way of becoming sensible is to distill sense from nonsense and add sense to another sense extracted from another nonsense this is a recovering decimal which confronts us in the struggle to make sense out of our existence.

I am in no doubt that above quotation best describes the situation the Plaintiff has put itself... I say no more.

The motion seeking to relist the struck-out suit remains the reason this Court cannot exercise jurisdiction to entertain this suit.

This is where I shall bring down the curtain by dismissing the instant suit, since the Court cannot put something on nothing.

Accordingly, said Suit No. **FCT/HC/CV/370/2019** is **hereby dismissed.**

***Justice Y. Halilu
Hon. Judge
23rd September, 2024***

APPEARANCES

A.G Haruna, Esq. with B.O Adaji, Esq. and Emmanuel O., Esq. – for the Plaintiff.

O.O Olagunji, Esq. – for the 1st, 2nd and 3rd Defendants.

4th Defendant not in court and or represented.