

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ABUJA**

**ON 15<sup>TH</sup> DAY OF SEPTEMBER, 2021**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO: FCT/HC/CV/520/2018**

**BETWEEN:**

**JIMMY OGUNKUNLE**

**.....**

**CLAIMANT**

**AND**

**1. SHODEINDE OLUMIDE**

**2. HARUNA YAKUBU OPHARA**

**.....**

**DEFENDANTS**

**RULING**

By a notice of preliminary objection filed on 27<sup>th</sup> January 2020 the Defendants seek an order striking out the Claimant's suit for want of jurisdiction, and for further orders.

The application was premised on 4 grounds and supported by a 27 paragraph affidavit of OlatundeOjaomo, legal practitioner with Ojaomo&Ojaomo Chambers, solicitors to the Defendants.

In his written address, TosinOjaomo, learned defence counsel raised two issues for determination thus:

- 1) Whether or not the Claimant/Respondent has established that there is privity of contract between him and the Defendants for him to have the locus standi to commence this action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- 2) Whether or not the court has jurisdiction to entertain this suit.

Arguing both issues learned counsel submitted it is trite law that for a Claimant to have the locus standi to institute an action there must be a dispute between him and the Defendant. He argued that it is clear from the statement of claim that there is no privity of contract between the Claimant and the Defendants as there is no contract of sale of Plot No. 167 Peace Village Lugbe Abuja between the Claimant and the Defendants, therefore the Claimant is nothing more than a meddlesome interloper.

He further urged that proper parties were not before the court, all of which robbed the court of the jurisdiction to entertain this suit. He thus prayed the court to strike out the suit for want of jurisdiction.

**ATTORNEY GENERAL OF KADUNA STATE V HASSAN (1935) 2 NWLR 453 AT 96; MADUKOLU V NKEMDILIM (1992) 9 NWLR (PT 263) 69 AT 84** and other authorities were relied upon.

In vehement opposition to the notice of preliminary objection, the Claimant filed a 7 paragraph affidavit deposed to by OlawaleAbodunde, a witness (to be) in this suit supported by a written address wherein AbimbolaDainiEsq., learned counsel to the Claimant, urged the court to dismiss the notice of preliminary objection.

He submitted that the Claimant has placed material facts and exhibits before the court to show that he has a case against the Defendants.

He urged the court to strike out paragraphs 8,18, 20 to 26 of the affidavit in support of the notice of preliminary objection as they violate Section 115 (2) of the Evidence Act 2011.

He urged that the defence failed to file a statement of defence before raising the objection therefore the notice of preliminary objection has taken the

nature of a demurrer which has been abolished by Order 23 of the High Court of FCT (Civil Procedure) Rules 2018.

Having toed the demurrer path, it was further argued that the Defendants are not permitted to file an affidavit in support of their notice of preliminary objection, as it is taken that they have admitted the facts as contained in the statement of claim and that the challenge to jurisdiction will not in this circumstance, avail the Defendants.

He urged the court to find, upon a perusal of the statement of claim, that the Claimant has a cause of action and that the court has the jurisdiction to entertain his claim.

That the Defendants rather than file their statement of defence, have substituted their statement of defence with their legal argument. He placed reliance on **MADUKA V UBAH (2014) LPELR 23966 (CA); AJILOWURA V DISU (2006) ALL FWLR (PT 333) 1613** amongst others.

Mr Ojaomo responded that an objection can be raised at any time. See Order 1 Rule 2 of the Rules of this court and that the court can vary the Rules to do justice.

I have considered the affidavits, written addresses and oral submissions of learned counsel on both sides.

An objection to the locus standi of a Claimant to bring an action is an objection to the jurisdiction of the court to entertain the said suit.

Jurisdiction is a threshold issue and as rightly argued by Mr Ojaomo, can be raised at any time of the proceedings and in any manner. Indeed it is trite law that it can even be raised by the court *suomotu* or for the first time at the Supreme Court. Where it is raised *suomotu* by the court, the parties must be

heard however, before a decision is pronounced by the court. See **MADU V MBAKWE & ANOR (2008) LPELR-8389 (CA)**; **DONGTOE V CIVIL SERVICE COMMISSIONER OF PLATEAU STATE & 2 ORS (2001) 4 SCNJ 131 AT 148 – LINES 5-14**; **MAJOR CONCEPT LTD & ANOR V PRINCE (ENGR) ARTHUR EZE (2020) LPELR – 50548 (CA)** per Joseph EyoEkanem JCA at pages 12-13 paragraph G-A; **ONYEKWULUJE & ANOR V ANIMASHAUIN & ANOR (2019) LPELR-46528 (SC)**.

In **NERC V ADEBIYI (2017) LPELR- 42902 (CA)** it was held that jurisdiction cannot be fettered by rules of court.

In the instant case, the Defendant has raised an objection to the jurisdiction of the court on the ground that the Claimant lacks the locus standi to bring this action.

In **ACN & ANOR V PETER & ORS (2011) LPELR -13402 (CA)** the Court of Appeal per Tom ShaibuYakubu JCA at pages 25-26 paragraphs D-C re-echoed the Supreme Court in **SUNDAY ADEGBITE TAIWO V SERAH ADEGBORO & ORS (2011) 5 SCNJ 125** wherein the apex court laid down the two main tests to guide the courts in determining the right or authority to sue in an action, which is what the doctrine of locus standi means, as follows:-

- 1) Is the action justiciable?
- 2) Is there in existence a dispute between the parties?

The court further stated that in determining the locus of a person to sue, the probability of the success of the action is not a relevant factor. Once there is a nexus between the litigant and the cause of action, then the litigant has a right to sue. See also **HON MINISTER FCT & ANOR V OLAYINKA OYELAMI HOTELS LTD (2017) LPELR-42876 (CA) PAGES 12-13 PARA D** per Akomolafe Wilson JCA.

Now, to determine if a claimant has locus standi, the court will meticulously peruse only the statement of claim for it is the Claimant's claim that determines the jurisdiction of the court.

In the said statement of claim, the Claimant pleads that he acquired Plot 167 within Lugbe 1 layout in Abuja Municipal Area Council from the 2<sup>nd</sup> Defendant who issued him an irrevocable power of attorney in respect of the said plot donated by Usman Suleiman, said to be the original owner, as well as the Customary Right of Occupancy, Survey Data, TDP.

That the 2<sup>nd</sup> Defendant later sold the same plot to the 1<sup>st</sup> Defendant, who is now trespassing on the said plot.

The Claimant therefore filed this suit claiming a declaration that he is the rightful owner of the plot and other reliefs, including trespass.

I am in complete agreement with the Claimant that the statement of claim discloses a justiciable cause of action and that there is a nexus between the Claimant and the Defendants. The Claimant has shown sufficient interest peculiar to him in the matter in controversy.

The court is not to consider the chances of success of the action.

All the facts deposed in the Defendants' affidavit in support of the notice of preliminary objection are essentially their defence to the suit of the Claimant. I equally agree that paragraphs 8, 18, 20 to 26 of the affidavit in support of the notice of preliminary objection offend Section 115 (2) of the Evidence Act 2011. Same are hereby expunged.

In conclusion, I hold that the Claimant has the locus standi to bring this suit. The court has jurisdiction to entertain same. The notice of preliminary objection lacks merit. It is accordingly dismissed.

**Hon. Judge**