

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
DELIVERED ON WEDNESDAY THE 30TH DAY OF JUNE 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/053/2018

BETWEEN

OLA ISRAEL -----CLAIMANT

AND

1. MR. NELSON CHINEMEZE (08031503263)
2. MR. NZUBE ERASMUS CHUKWU DEFENDANTS
3. UNKNOWN AND UNAUTHORIZED PERSON(S)

JUDGMENT

The Claimant filed this suit against the Defendants praying the Court for the following reliefs;

1. A DECLARATION by this Honourable court that the plaintiff is in exclusive possession and is the owner of the property known and described as Plot No. 301 A measuring about 700m² situate at Chukakore (Byazhin) Kubwa layout issued on the 15th October 2002 by Bwari Area Council, FCT Abuja.
2. A DECLARATION by this Honourable Court that the defendant(s) act on the said property and all act of ownership done by the 1st, 2nd and 3rd Defendants in regards of Plot No. 301A measuring about 700m² situate at Chikakore (Byazhin) Kubwa layout on cadastral Zone 07-05Abuja FCT, beginning from June 2018 till the determination of this suit are illegal and ultra vires and therefore to no effect whatsoever.

3. A DECLARATION by this Honourable Court that the defendant(s) act on the said property, plot No. 301A Chukakore (Byazhin) Kubwa measuring 700m² are unauthorized, unlawful and amount to trespass to the said property.
4. AN ORDER of this Honourable Court for perpetual injunction restraining the defendants, their agents their representatives, their privies and whatsoever means they may choose to come from any further activities or continued trespass on the said property known and described as Plot 301A measuring about 700m² situate at Chikakore (Byazhin) kubwa layout on Cadastral Zone 07 — 05 FCT Abuja.
5. The sum of N30,000,000.00 (Thirty Million Naira) only as damages against the Defendant(s) for trespass to the property known and described as Plot No. 301A measuring about 700m² situate Chikakore (Byazhin) Kubwa layout FCT Abuja.
6. The sum of N1,000,000.00 (One Million Naira) only as the cost for filling and prosecuting this suit.

The Defendants were served by substituted means in this case on the order of this Court, however, the Defendants neither entered appearance nor filed their statement of defence to defend this suit.

Trial in this case commenced on the 10th day of December 2019 with the Plaintiff opening his case and calling its sole witness, the plaintiff himself as PW1. The PW1 adopted his statement on oath as evidence in chief in proof of his case. It is the case of the Plaintiff that he is in possession and has ownership of the property known and described as Plot No. 301A Chikakore (Byazin) Kubwa measuring 700m² on

Cadastral Zone 07 — 05, FCT Abuja (the property). That the Defendants are unauthorized persons who trespassed and disturbed the peaceful possession and ownership of the said property. The Plaintiff further testified that he came to own the property as the original allottee one Abubakar Abba sold the property to one Mr. Moses Sunday Ajehson who in turn, transferred the property to the Plaintiff.

The plaintiff further testified that he has been in possession of the property since 2013 upon completing the purchase of the property having conducted searches at the land Registry and confirmed that the original allottee had a valid title document before Moses Sunday transferred it to plaintiff. That before completion of the purchase, Plaintiff contracted the services of one Francis Lawal who is a mason and some Laborer to erect a perimeter fence in order to demarcate and indicate the boundary of the said property and mounted a gate which the said mason actually erected. That Plaintiff had no transaction of any kind with the Defendants having been in quiet and peaceful possession for a long time neither has he transferred his interest in the said property to anyone whatsoever. That the Mr. Moses Sunday Ajehson whom he purchased the property from confirmed that he did not have business with or know the defendants or anybody in respect of the said property and that his title is free from all encumbrances and has therefore sought the Court to grant his reliefs as claimed. In proof of his Case, Plaintiff tendered the following documents which were admitted into evidence as follows;

1. Survey Plan and Right of Occupancy on FCT/BZTP/LA/NS/2006/881. Survey with respect of land granted to Abubakar Abba measuring 1000 sq.m as Exhibit OL 1.
2. Bwari Area Council Conveyance of Provisional Approval dated 18/10/2002 addressed to Abubakar Abba as Exhibit OL 2.
3. Land fees receipts paid to Bwari Area Council with receipt no. 0980983 in favour of Abubakar Abba for the sum of N16,500 as Exhibit OL 3.
4. Irrevocable Power of Attorney between Abubakar Abba and Mr. Moses Sunday Ajehson dated 25/05/2013 as Exhibit OL4.
5. Irrevocable Power of Attorney between Israel Ola and Mr. Moses Sunday Ajehson dated 25/05/2013 as Exhibit OL5.

The Plaintiff closed his case and the Court adjourned for cross examination and Defence. On the next adjourned date, neither parties nor their respective Counsel were in Court and the Court further adjourned the case subject to the service of hearing notice on the Defendants for the Defendants to cross examine the Plaintiff and enter their defence. The Defendants however failed to appear, and the Plaintiff's Counsel applied that the Defendants be foreclosed from cross examining the PW1, which was granted by the Court and the case was adjourned for Defence. On the next adjourned date which was for for defense, the Defendants not their Counsel failed to enter appearance, file a defence nor field a witness to defend the case and

they were foreclosed and the case adjourned for parties to file their written addresses.

In the written address filed by the Plaintiff, the Plaintiff Counsel raised a sole issue for determination to wit; "Whether the plaintiff has be (sic) credible evidence to proved (sic) his case on the balance of probabilities or preponderance of evidence"

Arguing the sole issue, the Plaintiff Counsel submitted that from the totality of the uncontroverted evidence of the Plaintiff and the exhibits tendered as evidence, the Plaintiff has discharged the burden of proof based on the preponderance of evidence as required by law in proof of his case.

Submitted further that the Defendants failed to adduce any shred of evidence to controvert the Plaintiff's Claim as they refused to cross examine the Plaintiff's witness more so as Defendants declined to defend themselves against the claims of the Plaintiff, which therefore means that the Defendant has no defense against the Plaintiff's claim before this Honourable Court.

Counsel therefore urged the Court to enter Judgment in favour of the Plaintiff by granting all the reliefs sought by the Plaintiff.

Counsel relied on the following authorities to buttress their argument as follows;

1. Calabar Central Co-operative Thrift &Credit Society Ltd. & 2 others Vs. Bassey EbongEkpo (2008) 6 NWLR pt. 1083 pg. 362 at pg. 371
2. University of Jos V. Dr. M.C. Ikegwuoha (2013) 9 NWLR pt. 1360 pg 478 particularly at pg 497 - 498. para, f-b.
3. EbenweV. State (2011) LPELRC-SC. 39/2009

4. Okoye V. LPDC (2005) 15 NWLR (pt. 494) pg 471
5. Okpoko Community Bank Ltd. V. Igwe (2012) LPELR-19943 (CA)

The Defendants were duly served with the originating processes and all accompanying documents in this suit as well as hearing notices for each day of court sitting but the Defendants failed to enter appearance nor file a defence to defend this suit. Be that as it may, the Plaintiff is duty bound to prove his case through credible evidence irrespective of the fact that the Defendant did not lead any evidence, more so as part of the reliefs sought by the Plaintiff is declaratory in nature. See the case of Okereke V. Umahi (2016) 11 NWLR pt.1524 pg. 438 para B-D.

Upon a careful examination of the record of this case before this Court, the evidence of the Plaintiff and the written address filed as argument, the issues to be determined before this Court are;

1. Whether this suit is competent to warrant this Court assume jurisdiction to determine this case.
2. Whether the Plaintiff has sufficiently proved its case by credible evidence to be entitled to the reliefs as sought.

Dealing with the first issue raised which is “Whether this suit is competent to warrant this Court assume jurisdiction to determine case.” The law is trite that jurisdiction is the bedrock of any judicial proceedings and its absence or defect renders any proceedings a nullity notwithstanding that it was well conducted and is therefore of overriding importance. When an issue touches the jurisdiction of the Court, it can be raised at any time or stage of the proceedings by either party or even by the Court itself. This is the position of the

Court in the case of UMEH & ANOR v. OKWU & ORS(2014) LPELR-24063(CA)where Per TANI YUSUF HASSAN, JCA (Pp 27 - 27 Paras A - B) held;

"The issue of Jurisdiction is a threshold one which can be taken at any stage of the proceedings even before the Apex Court for the first time. It can be raised by any of the Parties or by the Court suo moto."

When there are sufficient facts on the record establishing a want of competence or jurisdiction in the Court, it is the duty of the judge to raise the issue suomotu if the parties fail to draw the Court's attention to it. See the case of Zakari V. Nigerian Army (2015) 17 NWLR pt.1487 pg. 77 @ 107-108 para G-A.

The Plaintiff instituted this action against the Defendants on the 1st day of November 2018. On the 21st of February 2019, 21st March 2019, 11th April 2019 and 14th May 2019, neither parties nor their respective Counsel were present in Court which prompted the Court to strike out the case for want to diligent prosecution. On the 3rd day of June 2019, the Defendant approached the Court and informed the Court that it had a motion to relist the case already struck out. The Plaintiff moved his application, and the case was relisted. On the 8th day of June 2019, the Plaintiff's counsel informed the Court that personal service on the Defendants have been impossible to achieve and urged the Court to grant their motion for substituted service which the Court obliged and the Defendants were served by substituted means.

For the Court to have jurisdiction, the action must be initiated by the due process of the law. This suit was initiated by a writ of summons filed on the 1st of November 2018 and Order 6 Rule 6 of the FCT High Court (Civil Procedure) Rules provides as follows;

(1) The life span of every originating process shall be 6 months.

(2) Where a Court is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applied before its expiration for renewal of the process, the Court may renew the original or concurrent process for three months from the date of such renewal. A renewed originating process shall be as in Form 7 with such modifications or variations as circumstances may require.

Hence, where an originating process, as in this case, a writ is not served within the prescribed 6 months, the writ ought not be served unless same is renewed. The use of the word **shall** makes it mandatory that all writs have a lifespan of 6 months. In this case, the writ was issued on the 1st day of November 2018 and was clearly expired before service of same on the Defendants. The Plaintiff failed to utilise the opportunity to renew as provided by the rules and the rules anticipated situations such as this and made ample provision for renewal. The effect is that the suit was not validly commenced and the validity of an originating process in a proceeding is fundamental, as the competence of the proceeding is *sine qua non* to the legitimacy of the suit. It is therefore unsurprising that the Defendants failed to enter appearance nor defend this suit despite

being served hearing notices for each day of court sitting in this suit as they would have been made aware of the fact that the Plaintiff served them with an expired writ without an order of Court renewing the writ. The Defendants are not bound to honour such Writ so served.

Hence, the failure to commence proceedings with a valid writ of summons goes to the root of the case and an order derived from such proceedings is liable to be set aside as incompetent and a nullity. The Supreme Court in the case of KENTE V. ISHAKU & ORS (2017) LPELR-42077(SC) Per Eko J.S.C held in page 27 para A-B that

“the validity of originating processes in a proceeding like the originating summons, writ of summons or notice of appeal, is the sine qua non for the competence of the proceeding that follows or that is initiated by such process”

Therefore, a Court is only competent to adjudicate over a matter, when all the conditions precedent for it to have jurisdiction have been satisfied. This action being commenced by an incompetent process has divested this Court of jurisdiction to entertain same and I so hold.

It will therefore be an academic exercise in futility for this Court to determine the second issue raised in this suit having held that it lacks the requisite jurisdiction to entertain the substantive suit and where the court holds that it has no jurisdiction to hear and determine the matter before it, the proper order to make is to strike out the action.

Consequently, this suit as presently constituted is hereby struck out.

Parties:Absent

Appearances:No legal representation for either party.

HON. JUSTICE MODUPE OSHO-ADEBIYI

JUDGE

30TH JUNE, 2021