

IN THE HIGH COURT OF THE FCT, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT APO, ABUJA
ON TUESDAY, THE 04TH DAY OF FEBRUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE
SUIT NO: FCT/HC/CV/GAR/250/2023

BETWEEN:

UMAR FAROUK BASHAR

CLAIMANT/RESPONDENT

AND:

1. HONOURABLE MINISTER OF THE FEDERAL
CAPITAL TERRITORY ADMINISTRATION, ABUJA

DEFENDANTS/APPLICANTS

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY, ABUJA

3. DR RABIU MUSA KWANKWASO

DEFENDANT

RULING ON THE 3RD DEFENDANT'S NOTICE OF
PRELIMINARY OBJECTION

On the 26th of April, 2023, the Claimant instituted this action *vide* a Writ of Summons dated the same 26th of April, 2023 against the three Defendants named therein. The Writ of Summons seeks the following reliefs against the three Defendants:-

- i. A Declaration that the Claimant is the rightful owner of Plot No. 4807 Cadastral Zone A06, Maitama District, Abuja, with File No. KT 62739 and measuring 41,165.36m².*
- ii. A Declaration that the Claimant is entitled to the full and unencumbered use and occupation of the whole of that land situate at Plot No. 4807 Cadastral Zone A0, Maitama District, Abuja, with File No. KT 62739 and measuring 41,165.36 m².*
- iii. A Declaration that the purported interest subsequently granted to the 3rd Defendant by Parks and Recreation Department of the 1st and*

- 2nd Defendants, on part of or the subject of which purported interest forms part of the Claimant's Plot No. 4807 Cadastral Zone A06, Maitama District, Abuja, with File No. KT 62739 and measuring 41,165.36m² is illegal, null and void and of no legal effect whatsoever.*
- iv. *A Declaration that the 3rd Defendant's encroachment on or into a part of the Claimant's Plot No. 4807 Cadastral Zone A06, Maitama District, Abuja, with File No. KT 62739 and measuring 41,165.36m² is wrongful, unlawful and illegal.*
- v. *A Declaration that the 3rd Defendant's continued presence and activities on the said space or parcel of land which forms part of the Claimant's Plot No. 4807 Cadastral Zone 06, Maitama District, Abuja with File No. KT 62739 and measuring 41,165.36m² is wrongful and tantamount to trespass.*
- vi. *A Declaration that the marking of the portion of the Claimant's Plot No 4807 Cadastral Zone A06, Maitama District, Abuja, with File No. KT 62739 and measuring 41,165.36m² for removal or demolition by the Department of Parks and Recreation of the 1st and 2nd Defendants is wrongful, unlawful and illegal and amounts to trespass.*
- vii. *An Order setting aside the purported interest subsequently granted to the 3rd Defendant by Parks and Recreation Department of the 1st and 2nd Defendants and the subject of which purported interest forms part of the Claimant's Plot No. 4807 Cadastral Zone A06, Maitama District, Abuja with File No. KT 62739 and measuring 41,165.36m².*
- viii. *An Order awarding damages for trespass against the Defendants in the sum of Five Hundred Million Naira (N500,000,000.00) only.*

- ix. *An Order of perpetual injunction restraining the Defendants whether by themselves, their agents, servants and or privies or any person acting through them by whatever name called from continuing acts of trespass or from further trespassing or in any way interfering with the Claimant's peaceable enjoyment/possession and interest over Plot No. 4807 Cadastral A06, Maitama District, Abuja, with File No. KT 62739 and measuring 41,165.36m² which include the portion or part unlawfully encroached upon by the 3rd Defendant with the unlawful concurrence or permission of the Department of Parks and Recreation of the 1st and 2nd Defendants;*
- x. *An Order awarding general damages in the sum of N100,000,000.00 (One Hundred Million Naira) only.*
- xi. *An Order of this Honourable Court awarding the sum of N7,000,000.00 (Seven Million Naira) only as special damages being the cost of this action.*
- Particulars of Special Damages*
- Payment of solicitors' fees in the sum of N7,000,000.00 (Seven Million Naira) only. Copy of receipt dated this 25th day of April, 2023;*
- xii. *An Order granting the Claimant all or any consequential reliefs as this Honourable Court may deem fit to grant in the circumstances.*

The Writ of Summons was accompanied by other originating processes. These are the Statement of Claim, the Certificate of Pre-Action Counselling, the Claimant's List of Witnesses and the frontloaded documents.

The Writ of Summons was served on the 1st and 2nd Defendants on the 19th of May, 2023 and on the 3rd Defendant on the 20th of October, 2023 via substituted means

pursuant to an Order of Court to that effect made on the 19th day of September, 2023 upon a Motion *Ex parte* with Motion Number M/1135/2023 dated the 14th of September, 2023 but filed on the 15th of September, 2023. On the 12th of March, 2024, the 3rd Defendant filed his Statement of Defence. He thereafter filed his Notice of Preliminary Objection challenging the suit of the Claimant on the 11th of June, 2024 and specifically seeking the following relief: *“An order striking out the Claimant’s suit as incompetent and therefore divesting the Court of the requisite jurisdiction to entertain the suit and the reliefs sought therein in their entirety”*. The Notice of Preliminary Objection was dated the same date it was filed. It was served on the Claimant through his Counsel on the 27th of June, 2024. The Claimant, on the 4th of July, 2024, filed his Written Address in answer to the Notice of Preliminary Objection of the 3rd Defendant. This Written Address was served on the 3rd Defendant through his Counsel on the 5th of July, 2024.

On the 13th of November, 2024, the parties adopted their processes for and against the Notice of Preliminary Objection. The Court thereafter adjourned for Ruling.

The sole ground for upon which the objection is founded is that the Claimant has not disclosed a cause of action against the Defendants.

In the Written Address in support of the Notice of Preliminary Objection, learned Counsel for the 3rd Defendants formulated this sole issue: *“Whether the Claimant has disclosed a reasonable cause of action against the Defendants in this suit to warrant the activation of this Honourable Court’s jurisdiction to adjudicate on the matter.”*

Arguing this sole issue, learned Counsel defined what a cause of action is and juxtaposed this definition with certain averments from the Statement of Claim. He

contended that the Claimant has not made out a cause of action against the 3rd Defendant, adding that the 3rd Defendant was not responsible for the markings that was done on the *res*, more so, as it was the Claimant who reported the matter to the 1st and 2nd Defendants, resulting in the 1st and 2nd Defendants marking some portions of the Claimant's property for demolition. He further submitted that the Claimant had been unable to state with exactitude the exact time the cause of action accrued and that for that reason the suit was incompetent.

For all his arguments on the points he raised under this issue, learned Counsel cited and relied on the following cases: *Alwa'u v. Musa & Ors* (2023) LPELR-59561 (CA), *Bwajah v. Nigerian Tin Mines Co. Ltd* (2014) LPELR-23344 (CA), *Suleja v. Abubkar & Ors* (2019) LPELR-47899 (CA), *Stabili Visinoni Ltd v. Cosmek Int'l Ltd* (2023) LPELR-61468 (CA) and *Chevron (Nig.) Ltd v. Joceco (Nig.) Ltd & Ors* (2022) LPELR-58451 (CA). in conclusion, he urged the Court to strike out the suit for being incompetent on the ground that it had not disclose any cause of action against the 3rd Defendant.

In his response to the arguments in support of the preliminary objection, learned Counsel for the Claimant contended that in determining whether the suit of the Claimant had disclosed a cause of action against the 3rd Defendant, the court must consider the totality of the facts as pleaded in the statement of claim and the statement of defence. He invited the court to discountenance the submissions of learned Counsel for the 3rd Defendant that failure to specify when the cause of action arose was fatal to the case of the Claimant. He cited the case of *Karshi & Ors v. Gwagwa & Ors* (2022) LPELR-57544 (SC). Counsel further contended that

considering the nature of the reliefs sought, time as to when the cause of action arose was immaterial. He cited the case of *Ude v. Chimbo* (1998) LPELR-3288 (SC), *AG Federation v. AG Abia State & Ors* (2001) LPELR-24862 (SC). He therefore urged this court to discountenance the arguments contained in the preliminary objection and proceed to the determination of the suit on its merit.

In determining this Notice of Preliminary Objection, this Court hereby nominates the following issue for determination: ***“Whether the suit of the Claimant is not incompetent for failure to disclose a cause of action against the 3rd Defendant.”***

What is a cause of action? I must, as it is my habit, attempt a working definition of the term. *Black’s Law Dictionary (8th edition, 2004) at page 664* defines it as ***“A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person...”*** Nigerian Courts have lent their platforms to the definition of the concept.

In *Ode v. Uzor* (2023) 13 NWLR (Pt. 1900) 1 S.C. at 28, paras. B-G, the Court defined ‘cause of action’ thus:

“A cause of action accrues when the cause of action becomes complete so that an aggrieved party can begin and maintain an action. A cause of action consists of every fact which would be necessary for a claimant to prove, if traversed, in order to support his right to judgment. It is the bundle or aggregate of facts which the law recognizes as giving the claimant a substantive right to make a claim for the relief or remedy being sought. It is every fact which is material to be proved to entitle the claimant to succeed or all those things necessary to give a right to relief in law or equity. A cause of

action cannot arise until all that needs to take place to complete the complaint has happened and the aggrieved person is aware that his right has been infringed upon. There may be more than one good and effective cause of action arising out of the same transaction and the cause of action accrues on the happening of the latest of such facts.”

These principles were reiterated in the case of ***Obasanjo v. Wuro Bogga (Nig.) Ltd. (2023) 2 NWLR (Pt. 1868) 253 S.C. at 266, paras C-E*** where the Supreme Court held that ***“A cause of action arises as soon as the combination of facts giving the right to complain happens. In other words, a cause of action is said to have accrued when the entire factual situations which give a person the right to a judicial relief are present or have happened. That is, when all that is necessary to make the matter in litigation an enforceable right or an actionable wrong have occurred. It is the accrual of the cause of action that confers on the appellant the right to institute an action to enforce the cause of action or right to a judicial relief.”***

In determining when a cause of action accrues, the court considers primarily the statement of claim of the Claimant and, then, other processes in the case file. In ***P.D.P. v. Uche (2023) 9 NWLR (Pt. 1890) 523 S.C. at 586-587, paras. H-C***, the apex Court expounded on the principle thus:

“Ordinarily, it is the originating processes that should be looked at to determine the cause for an action, the right of the action and the jurisdiction or lack of jurisdiction to entertain it except where the actual cause of action is hidden or misrepresented by the facts in the originating processes. In an

action commenced by originating summons, the cause of action is exposed by the questions raised for determination, the reliefs claimed for in the originating summons and the affidavit in support of the originating summons.”

In determining the time the cause of action accrued in this suit, this court has to examine the originating processes and every other process filed in this suit. Contrary to the contention of the 3rd Defendant that the originating processes of the Claimant did not disclose the time the cause of action, one of the documents that were pleaded and frontloaded was a picture of the marking on the property in dispute wherein the demolition notice was written and the date on which the marking was done stated as the 29th day of March, 2023. It can be said that the notice of demolition was the final act in a series of acts that gave rise to a cause of action. In the case of *Karshi & Others v. Gwagwa* (2022) 9 NWLR (Pt. 1834) 139 SC cited by learned Counsel for the Claimant in his written response, the apex court held thus at pages 182-183, paras F-B of the Law Report: “A cause of action cannot arise until all that needs to take place to complete the complaint has happened and the aggrieved person is aware that his right has been infringed upon.”

Because the 3rd Defendant did not show that the indeed the suit of the Claimant is statute-barred, his argument in this regard goes to no issue. I agree with learned Counsel for the Claimant that considering the nature of the reliefs he seeks in this suit, particularly, the reliefs on adverse claim and trespass, as long as those claims border on continuing acts, action in respect to those claims cannot be defeated by the plea of limitation of action. See ***Obueke v. Nnamchi* (2012) 12 NWLR (Pt. 1314) 327 SC at 351-352, paras G-A; 354, paras F-H.**

It is for these reasons that I do not find merit in the Notice of Preliminary Objection of the 3rd Defendant. I therefore have no hesitation in overruling preliminary objection contained in the Notice of Preliminary Objection of the 3rd Defendant dated and filed on the 11th day of June, 2024. Accordingly, the preliminary objection of the 3rd Defendant is hereby overruled and the Notice of Preliminary Objection which embodies his preliminary objection dismissed.

This is the Ruling of this Court delivered today, the 04th day of February, 2025.

HON. JUSTICE A. H. MUSA
JUDGE
04/02/2025