

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 2ND DAY OF MAY, 2025

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/201/2023

BETWEEN:

EMESIABUM NNAMDI FRED ----- APPLICANT

AND

ABUJA MUNICIPAL AREA COUNCIL (AMAC) - RESPONDENT

RULING ON PRELIMINARY OBJECTION

Upon receipt of the application the Respondent filed a Preliminary Objection challenging the Suit of the Applicant, urging the Court to dismiss or strike out the Suit for lack of locus standi, cause of action against the Respondent, for abuse of Court Process, and incompetency. And he wants an Order dismissing the Suit for lack of jurisdiction, and omnibus prayer.

The Preliminary Objection is based on the following grounds:

That the Applicant has no locus standi.

That the Suit is incompetent and no jurisdiction on part of the Court as the Suit was filed in non-compliance with the law.

The Respondent filed a 4 paragraphs Affidavit.

The Respondent in their Written Address raised 4 Issue for determination which are:

- (1) Whether the Applicant has locus standi to file the Suit against the Respondent.**
- (2) Whether the Applicant has cause of action.**
- (3) Whether Court has jurisdiction to entertain the Suit in the absence of cause of action.**

Taking Issue No. 1 & 2 together, they submitted that the Applicant has no locus standi to institute this Suit/Action against the Respondent. That the Respondent never sealed the office of the Applicant and did not come there to enforce any Court Order against him or his office but Restaurant. That the Applicant has no locus standi to institute this action. That he has no cause of action too. That he is a gold-digger as seen in his monetary Claim/Reliefs.

That the picture exhibited shows only the Applicant standing alone and that there is no padlock on the gate to the entrance of the compound and no evidence of sealing same.

They urged Court to evaluate the **EXH 2A** to see that there is no confinement of the Applicant. That the Applicant

failed to prove the case of confinement against the Respondent, and as such his claim must fail as the onus is not discharged. They urged Court to so hold and dismiss the case. They relied on the following cases:

Abugu & Anor V. Owhandu
(2021) LPELR – 54683 (CA)

Akande V. Adisa
(2012) 15 NWLR (Pt. 1324) 1

Francis Osawe Eseigbe V. Friday Agbolor & Anor
(1993) LPELR – 1164 (SC)

Adefulu V. Oyesile

(1989) 5 NWLR (Pt. 122) 377 @ 410

Jack V. University of Agric Makurdi supra

On Issue No. 3 & 4, on jurisdiction of Court to entertain the Suit in the absence of cause of action and lack of locus standi, they submitted that the Applicant has no cause of action and as such the Court has no jurisdiction to entertain the Suit against the Respondent. They referred to the case of:

Madukolum V. Nkemdilim
(1962) 2 SCNLR 341

That the proper Order Court should make is to dismiss the Suit since the Suit is an abuse of Court Process.

That lack of jurisdiction robs the Court the competency to entertain the Suit. That the Court should dismiss the Suit

for being an abuse of Court Process. They referred to the cases of:

**Com. Incorporation V. Cobham
(2005) 15 NWLR (Pt 1003) 283**

**Federal Republic of Nigeria V. Gold
(2007) 11 NWLR (Pt. 1044) 7 @ 18**

They urged the Court to dismiss the Suit.

Upon receipt of the Preliminary Objection, the Applicant filed a Response on Points of Law which are on the following:

That the Respondent has placed no evidence before the Court to support its contention.

That the facts are exactly repetition of the prayer sought in the Preliminary Objection and the grounds.

That the Preliminary Objection contravenes **S. 115 (2) of the Evidence Act 2011.**

That Counsel argument cannot take place of evidence and facts.

On all the above the Applicant submitted seriatim that the Applicant/Respondent came by way of evidence instead of Affidavit which makes the Suit untenable.

That a party can neither seek via Written Address nor be granted a Relief not supported by evidence/pleading or deposed facts. He urged the Court to so hold. That the Respondent made no averment in the Affidavit to support

their argument as speculated. That the Preliminary Objection should therefore fail. That facts deposed to by the Respondent are Points of Law. He referred to the case of:

**Gbajabiamila V. Central Bank of Nigeria & Ors
(2014) LPELR – 22755 Pg. 52**

That Para 3 – 16 disclosed *locus standi* especially Para 13, 14 & 15, and cause of action. That the Respondent did not place any evidence to disrobe the Suit of the Applicant, locus, cause of action or competency.

That the submission of the Respondent is all legal argument, conclusive of the position of the Respondent regarding this Suit, and breaches **S. 115 (2) of the Evidence Act**. That the Respondent's Counsel argument took place of evidence. He referred to the cases of:

**Agu & Ors V. Buhari & Ors
(2019) LPELR – 48433 (CA) Pg. 44 – 46**

**Ogunsanya V. State
(2011) 6 MJSC (Pt. 1) 24 @ 65**

He urged the Court to dismiss the Preliminary Objection and go on to consider the main application.

COURT

Every Nigerian citizen has a right under the law to seek redress where any of his/her right is being, has been or about to be infringed. Such redress can only be sought in a

High Court. See **Order 1 & 2 FREP 2009** and also **S. 35 (1) – (6) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

Once there facts or circumstances giving rise to an enforceable claim, it is said to be a cause of action. All necessary things that give right of action and every fact which is material to be proved to entitle the Applicant to succeed are what gives rise to cause of action. See the cases of:

Sulgrave Holdings In. V. Federal Republic of Nigeria
(2012) 17 NWLR 309

Sanda V. Kukawa Local Government
(1991) 2 NWLR (Pt. 174) 379

Sani V. President Federal Republic of Nigeria
(2010) 17 NWLR 1

Once a person can show with facts and evidence that his Rights and obligations have been or are in danger of being breached or infringed, it is said that such a person has the *Locus Standi* to sue or take an action. In that case the action must be justifiable and hence, must be dispute between such a person/Applicant and the person he sues. In that case the Applicant must disclose sufficient legal interest. He must show how such legal interest arose in the subject matter of the action. See the cases of:

Gani Fawehunmi V. Akilu
(1987) 4 NWLR (Pt. 67) 797

Ogbuechi V. Gov. Imo
(1995) 9 NWLR (Pt. 417) 53

Adesanya V. President of Nigeria
(1981) 2 NCLR Pg. 358

P.M. Ltd V. The Danang Sisters
(2012) 2 NWLR Pg. 169

Once an Applicant has in his Affidavit shown facts suggestive that his legal interest in a Res has been infringed, the Court has no reason not to hold that he has a *Locus Standi*. So where the entire set of facts and circumstances giving rise to an enforceable claim, it is said to be in existence a cause of action. Once those facts gives rise to a basis for suing or taking action in Court and gives the person the right to obtain remedy in Court from the person who has infringed his Right or legal interest, it is said to be a cause of action. So all those things necessary to give right of action means cause of action. So such facts and Relief claimed determines the cause of action. See the cases of:

Charles V. Gov. Ondo State
(2013) 2 NWLR Pg. 294

Omoneji V. Kolawole
(2008) 14 NWLR (Pt. 1106) 180

Egbe V. Adefarasin No. II
(1987) 1 NWLR (Pt. 47) 1

So all bundles of facts recognized by law as giving the Applicant right of action and right to seek judicial remedy or redress, they are what constitutes right of action.

In the Preliminary Objection, I have gone through the facts in support of the application and the Preliminary Objection challenging the application as well as the Applicant's Response to the Preliminary Objection. It is my humble view that the Applicant has cause of action and locus standi to institute the present action going by the facts and circumstance giving rise to the claim in the main Suit.

To start with, he has right to personal liberty and freedom of movement under the law and Constitution – **S. 35 (1) – (6)**. He has complained that his movement was affected when the Abuja Municipal Area Council (AMAC) – Respondent's officials locked the main entrance gate of the plaza where his office/chambers is situate and that for several hours he could not leave his Chambers. The act of the Respondent is an actionable wrong, and for that period the Applicant's movement was restricted – his legal right and interest were definitely affected. This Court holds that the Applicant has *Locus Standi* and that there is cause of action too.

It has been held in plethora of cases that the claim in a Suit determines the nature of the Suit and its competency. See the cases of:

**Sea Truck (Nig) Ltd V. Pyne
(1999) 6 NWLR (Pt. 607) 514**

Egbuomu V. Bornu Radio & TV Corporation
(1997) 12 NWLR (Pt. 531) 29

Tukur V. Government of Gongola
(1989) 4 NWLR (Pt. 117) 517

Adeyemi V. Opeyori
(1976) 9 – 10 SC 31

Amale V. Sokoto Local Government
(2012) 5 NWLR Pg. 181

Where there is cause of action and the Plaintiff/Applicant has the requisite locus standi, it is said that the Suit is competent as the claim determines the nature of the Suit. Once an Applicant has the locus to sue and a cause of action, the Court will have the jurisdiction to determine and entertain the action.

The *Locus Standi* is a condition precedent to Court's jurisdiction. Hence, before Court can proceed into hearing a matter, the Plaintiff/Applicant must have the locus standi and the claim must be based on the nature of the Suit and its competence. See the case of:

Arowolo V. Akaiyeyo
(2012) 4 NWLR Pg. 286

In this case the Applicant has shown that he has a cause of action which is the alleged infringement of his Right to freedom of movement and personal liberty which is as a result of the sealing of the main entrance gate to the plaza where his Chambers is located/situate, done by the

Respondent – AMAC when they have purported Order to seal only the Park “n” Eat Amala Restaurant shop at the plaza. By the nature of the claim in the application, it is clear that the action is competent. His Right is alleged to have been infringed by the action. He has a legal interest and under **S. 35 (6) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) he has a right to seek redress. Again, under **Order II FREP** he has a right to go to a High Court to seek the said redress. It is immaterial whether the action will succeed or not. The Court is not set in this Preliminary Objection to determine the merit of the application now.

By instituting the action in a High Court the action of the Applicant is proper. The nature of the claim is what can be sought in an action of this nature, and therefore, the action is competent in that regard. Since he has locus and there is a clear cause of action known to law, the Court has jurisdiction to determine same.

From all indication the Suit is not an abuse of Court Process as the Respondent claims in this Preliminary Objection as the Suit is not improper use of legal process. The Applicant is only exercising his right under the Constitution by seeking redress for the infringed Rights. His action is not in bad faith as erroneously submitted by the Respondent in this Preliminary Objection. See the cases of:

**Adeniyi V. Federal Republic of Nigeria
(2012) 1 NWLR (Pt. 1281) 284**

**Dumez (Nig) PLC V. UBA PLC
(2006) 14 NWLR (Pt. 1000) 515**

The main Suit in this case is not to initiate but to seek redress for the wrong action of the Respondent. See the case of:

**T.S.A Ind. Ltd V. FBN PLC No. 1
(2012) 14 NWLR (Pt. 1320) 326**

Based on all the above, it is the humble view of this Court that the action of the Applicant is not an abuse of Court Process. The action is proper, competent, there is locus standi and a cause of action, and this Court has the requisite jurisdiction to entertain the Suit. So the claim/action is premised on FREP which by the Constitution should be determined in a High Court. It is actually the Preliminary Objection that is an abuse of Court Process.

The Preliminary Objection lacks merit and it is therefore dismissed.

This is the Ruling of this Court.

Delivered today the _____ day of _____ 2025 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

APPLICANT'S COUNSEL:

C.H. MACKAY ESQ.

RESPONDENT'S COUNSEL: