

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT APO, ABUJA.**

**ON TUESDAY, THE 14TH DAY OF DECEMBER 2021**

**BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.**

**(JUDGE.)**

**SUIT NO. FCT/ HC/CV/1016/2021.**

**MOTION NO: M/3326/2021.**

**BETWEEN**

1. MR KELVIN EKEOGBEDE
2. MR ELDER NWANKWO PLAINTIFFS/RESPONDENTS
3. MR A. Y AHMADU

(FOR THEMSELVES AND 70 MEMBERS OF KURUDU MAIN MARKET DEVELOPERS ASSOCIATION).

**AND**

1. DEPARTMENT OF DEVELOPMENT CONTROL, FCTA.
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. CHIEF EZEKIEL BAWA
4. ENGR AGAMEVU JONATHAN
5. CHIEF EZRA GOMINA -----DEFENDANTS/APPLICANTS

**[RULING.]**

The Plaintiffs/Respondents approached this honourable court vide a writ of summons dated and filed on the 31/03/2021 praying for the following reliefs:

- (a). A Declaration that the Plaintiffs are the lawful owners and developers of the lock up shops described as Kurudu Main market.
- (b). A Declaration that conveyance and purchase of the shop space of about 3m x2.7m per shop to the Plaintiffs granted since 2001 to the Plaintiffs are valid and subsisting.
- (c)An order of perpetual injunction restraining the Defendants and their privies, servants, agents, attorneys, assigns, tenants, and /or person or persons claiming through , by and for them from trespassing on the said land and demolishing the said shops as described in prayer (a)
- (d). An order mandating the Defendants to provide alternative shop space for the Plaintiffs or relocate them to other space pending the construction of new shops in the said market described as Kurudu Main Market.
- (e). General damages of ₦20,000,000.00(Twenty million) Naira only being aggravated damages resulting from incessant destruction of the Plaintiffs shops by the Defendants and consequent trespass therefrom.

Further to the writ of summons the Plaintiffs/ Respondents filed a motion on notice for An interlocutory injunction restraining the Defendants/Applicants, their privies, servants, agents, attorneys, assigns, and /or person or persons claiming through , by and for them from demolition or further demolition of the market structures and shop spaces described as Kurudu Main Market Abuja or from further trespassing or committing further acts of trespass to the same plot until the determination of the substantive suit.

Consequent to the writ of summons and the motion on notice, the 3<sup>rd</sup> and 5<sup>th</sup> Defendants filed a Counter/Affidavit in opposition to the motion on notice and further filed joint statement of defence.

Learned Counsel for the 3<sup>rd</sup> and 5<sup>th</sup> Defendants have now filed a preliminary objection challenging the suit NO.FCT/CV/1016/2021 on the grounds that :

1. The 3<sup>rd</sup> and 5<sup>th</sup> Defendants don't have authority and powers over land administration in the F.C.T, by virtue of section 299-300 of the 1990 Constitution of the Federal Republic of Nigeria and section and section 13 of the FCT Act 1976.
2. That the Claimants don't have any valid title documents, letter of allocation from AMAC or FCDA or even any agreement whatsoever with the 3<sup>rd</sup> and 5<sup>th</sup> Defendants for the purported shops.
3. There is no evidence of any payment to the account of the 3<sup>rd</sup> and 5<sup>th</sup> Defendants in respect of the purported shops
4. It is the Abuja Municipal Council that is vested with the authority to build and allocate shops in the FCT and not the Defendants.
5. The Claimants lacks locus standi to sue the Defendants
6. The Claimants are illegal occupants without any title documents or allocation letter from AMAC , therefore they don't have cause of action against the Defendants but should be prosecuted for criminal trespass.
7. The 1<sup>st</sup> Defendants is not a juristic person that can sue or be sued.

Learned Counsel Y.Z. Edego Esq filed a written address dated and filed on the 11/10/2021 in support of the preliminary objection wherein he formulated three issues for determination by this Honourable Court to wit;

1, whether the Claimant without any letter of allocation or title documents from the AMAC, or FCDA or any agreement with the 3<sup>rd</sup>

and 5<sup>th</sup> Defendants whatsoever, have locus standi or cause of action against the Defendants

2, whether the Claimants have locus standi and cause of action without any documents and building approval for the purported uncompleted shops the subject matter of the suit

3, whether by virtue of section 7 of the FCT Act, the 2<sup>nd</sup> defendant is empowered to remove any building or structure without title documents allocation and illegal structure without building approval.

Learned Counsel therefore urge this court to strike out this suit for want of jurisdiction as a result of the vague and empty claims.

In response to the preliminary objection, Learned Counsel for the Plaintiffs/Respondents filed a reply to the notice of preliminary objection dated the 12/11/2021, settled by Udoka Oguekwe Esq. wherein he distilled an issue for resolution by this Honourable Court to wit:

“Whether the Court ought to grant the relief of the Applicant.

He stated in summary that, about 20 years ago the Kurudu community headed by a Hakimi established market and made offers to unsuspected members of the public and the Respondents bought and built shops on the land allocated to them.

That they have been doing business in the Kurudu community without interruption, either by the Kurudu community or the Abuja Municipal Area Council or any other authority whatsoever.

He further stated that sometime in 2016, the 2<sup>nd</sup> Defendant/Applicant became the Hakimi of Kurudu community, and he threatened the Respondents of demolition and carried out the threat in 2021, when the department of development control marked their shops for demolition without any form notice and demolished some of the shops.

He wondered if a person who has been in effective possession of shops cannot run to court for rescue when his right is threatened? and if the court will ask him to go home simply because someone is alleging that he didn't obtain permission.

Learned Counsel for the Plaintiffs/Respondents cited the case of **MOBILE PETROLEUM LTD V. LASEPA (2002) 18 NWLR AND IYEKE V. PTI (2019 )2NWLR PT 1656** and submits that the fact that the Respondents are in occupation of the shops they built and the 2<sup>nd</sup> Defendant started demolishing their shops without notice and with Instigation of the 5<sup>th</sup> Defendants is enough cause of action.

He enjoined the court to examine the pleadings and once the statement of claim raises some issues of law, then the Court should proceed to trial.

He therefore urges court to dismiss the preliminary objection.

I have dedicatedly read the Preliminary Objection, especially the grounds upon which the objection is predicated.

The case of the Plaintiffsshow on its face that the Plaintiffsare possessionof the shops which they lay claim to in the suit . It is clearly premature at this stage to decide whether or not the saidrights of thePlaintiffs are actual or not.

Their complaints to which they seek audience in this Court is that they have an interest in the shops and same is being demolished without any notice .The pertinent question begging for an answer is whether at this stage,without hearing evidence,if this Honourable Court canmake any finding on what the Plaintiffs will or canrely on in this suit?

The Apex Court of the land has cautioned, that a Court while dealing with preliminary matters is not entitled to make any comment, pronouncement or observation in its ruling on that application which

might appear to pre-judge or pre-empt or the main issues in the proceedings which will impact on the fair trial of the substantive suit.

The Supreme Court per. **IGUH JSC** in the case of **Woherem V. EMEREUWA &ORS (2004) 13 NWLR PT 890 P 398** stated that:

***“.....a matter therefore which is raised by way of preliminary point but which may be answered if evidence is adduced cannot be properly raised as a preliminary objection. Such a matter is more properly answered by evidence during trial and shall constitute an issue for determination at the trial”.***

Learned Counsel for the Defendants/Applicants made spirited efforts in his submission to drag this Honourable Court into make a finding on facts that bother on the substantive suit as can be seen in the grounds upon which this preliminary objection is predicated.

Though, he laced his objection with the garment of lack of jurisdiction, in truth he is calling on this Honourable Court, to make a finding on the potency of evidence the Plaintiffs are yet give.

The grounds disclosed in this application by Respondent/Applicant herein are triable and not what this Honourable Court can make findings on without first hearing the case of both parties.

I shall therefore resist and indeed have resisted with all my strength to fall into the temptation of making a finding on issues that bother on the substantive suit especially with regards to proof required or needed to establish the Plaintiffs/Respondents case before this Honourable Court.

A preliminary objection is a question that has to be settled before going into other things, where it requires going into other things it becomes a defence to the action and should be heard at trial.

Accordingly, this Honourable Court is of the view that the ground upon which this preliminary objection is hinged will pre judge this suit.

The suit Number-**CV/1016/2021** is for claim relating to interest in shops in the FCT which falls within the jurisdiction of this Honourable Court.

In the circumstances, I cannot but come to the irresistible conclusion that this preliminary objection is without merit. Accordingly, the preliminary objection is overruled and hereby struck out.

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***JUSTICE F. E. MESSIRI.***  
***[JUDGE.]***

Appearances.