

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY OF
NIGERIA
HOLDEN AT APO ABUJA
BEFORE HIS LORDSHIP THE HON. JUSTICE FRANCES ERHUVWU
MESSIRI (JUDGE)
ON THURSDAY THE 4TH DAY OF FEBRUARY , 2021**

SUIT NO: CV/3091/2020

BETWEEN

MR. ANTHONY IKWUOCHE OMAIYE ----- CLAIMANT/RESPONDENT

AND

KYC INTER PROJECT LIMITED ----- DEFENDANT/APPLICANT

RULING

The CLAIMANT commenced this suit by the writ of summons and accompanying processes dated 4/11/2020 and filed on the 5/11/2020. Along with the originating processes, the Claimant/Plaintiff filed a motion on notice also dated 4/11/2020.

The reliefs the Claimant seeks in this suit as endorsed in writ of summons and repeated in paragraph 22 (a)-(h) of the Statement of Claim are: -

- A. A declaratory Judgment of this Honourable Court to the effect that the Claimant's title, legal and possessory rights to all that **Plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abuja** is valid and subsisting to the exclusion of any other allocation, sale or transfer whatsoever.
- B. A declaratory Judgment of this Honourable Court that any other allocation, offer, transfer or/and assignment in aspect of **Plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abuja** not

granted to the Claimant, is illegal, ineffectual, null and void and of no effect whatsoever.

- C. Judgment of this Honourable Court directing the Defendant, its privies, agents, assigns and other person(s) howsoever described to forthwith unconditionally vacate the Claimant's **Plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abuja.**
- D. An order of perpetual injunction of this Honourable Court restraining the Defendant, its privies, assigns, agents, servants, successors-in-title or howsoever described from further harassing, forcefully attempting to take over, intimidating, interfering, trespassing and disturbing the Claimant's ownership and possessory rights over the property.
- E. Alternative, the Judgment of this Honourable Court directing the Defendant to forthwith pay the **Sum of N16, 000,776.63 (Sixteen Million, Seven Hundred Seventy –Six Naira, Sixty-Three Naira)** Only to the Claimant being the force sale value of the property in order for to forfeit his rights and claims over **Plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abuja.**
- F. Judgment in the **Sum of N5, 000,000.00** in favour of the Claimant against the Defendant as general damages for breach of contract.
- G. Judgment in the **Sum of N3, 000,000.00** as exemplary damages against the Defendant in favour of the Claimant for wilfully, knowingly and persistently carrying on with acts that are injurious to Claimant.
- H. The **Sum of N1,000,000.00** as cost of action and any other ancillary relief(s) this Honourable Court deem fit grant in the circumstances of this case.

In the aforementioned Motion on Notice, the Claimant prays this court for the following orders to wit: -

- a. **AN ORDER** of interlocutory injunction of this Honourable court directing the Defendant/Respondent, its privies assigns, agents, servants, successor-in-title or howsoever described to forthwith desist from all act of trespass and remove all forms of encumbrances placed on the Claimant/Applicant plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe

District Abuja pending the hearing and final determination of the substantive suit.

- b. **AN ORDER** of interlocutory injunction restraining the Defendant/Respondent, its privies assigns, agents ,servants, successor-in-title or howsoever described from either by themselves or though the officers of the Nigeria Police Force or any Law other Enforcement Agencies to Harass, intimidate, interfere, trespass, and forcefully attempt to enter and disturb the quit possession of the Claimant/applicant over all that plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abuja pending the hearing and final determination of the substantive suit.
- c. **AN ORDER** of interlocutory injunction restraining the Defendant/Respondent, its privies assigns, agents, servants, successor-in-title or howsoever described from developing or constructing any part of all that plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abujapending the hearing and final determination of the substantive suit.
- d. **AN ORDER** of interlocutory injunction restraining the Defendant/Respondent, its privies assigns, agents, servants, successor-in-title or howsoever described from selling, letting, demising tampering with any part of or all that plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abujapending the hearing and final determination of the substantive suit.
- e. **AN ORDER** of interlocutory injunction restraining the Defendant/Respondent, its privies assigns, agents, servants, successor-in-title or howsoever described from using the Nigeria Police or any other Enforcement Agency to assert any right over all that Plot 156A KYC La Villa Diamante City, Sabo Lugbe Extension Layout, Lugbe District Abujapending the hearing and final determination of the substantive suit.

The processes were duly served on the Defendant. In response, the Defendant filed a preliminary objection dated 14/1/2021 and filed on the same date,

challenging the jurisdiction of this court hear, adjudicate and determine this matter as presently constituted.

The grounds upon which the objection is predicated are.

- a. The fact that is admitted by both Claimant/Respondent and the Defendant/Objector is that the plot was originally allocated to Mr Peter Popoola.
- b. There is no legally admissible evidence before court to substantiate the Claimants acquisition or ownership or any interest in plot 28C Diamond Acres Estate Sabo Lugbe Extension Abuja (Now plot 156a KYC La Villa Diamante City Sabo Lugbe Extension Layout Lubge Abuja).
- c. The Power of Attorney, memorandum of understanding and sale agreement that are annexure i.e., exhibit 7'8' and exhibit 1 to the affidavit in support of this application are not legally admissible to ground any transfer of ownership or any interest in plot 28C Diamond Acres Estate Sabo Lugbe Extension Abuja (Now plot 156a KYC La Villa Diamante City Sabo Lugbe Extension Layout Lubge Abuja) to the Claimants/Respondent
- d. That the Claimant/Respondent lacks the locus standi to institute this action in his capacity as MR. ANTHONY IKWUOCHE OMAIYE there being no instrument transferring plot 28C Diamond Acres Estate Sabo Lugbe Extension Abuja (Now plot 156A KYC La Villa Diamante City Sabo Lugbe Extension Layout Lubge Abuja) or any interest in it to him.
- e. The letters that are annexed as exhibit (3), exhibit (6) to the affidavit in support of this application are invalid, the allocation to Mr. Peter Popoola having not been revoked or in any way validly invalidated.

In support of the preliminary objection, the Defendant /objector filed an Affidavit of five paragraphs deposed to by Yusuf Mohammed Jimoh, attached to the said affidavit are (number of annexure) annexures marked exhibits.....-

Learned counsel to the Defendant/objector filed his written address along with the preliminary objection. The said address is dated 14/1/2021.

In opposition to the Preliminary Objection, the Claimant filed an Eight Paragraph Counter Affidavit deposed to by..... Attached to the Counter Affidavit are Annexures marked exhibits..... to

Learned Counsel to the Claimant- Peter Tochukwu Esq., filed a written address in opposition to the objection.

At the hearing of this suit on the 27/01/2021, learned counsel adopted their respective addresses in support and in opposition to the preliminary objection. The said addresses are hereby incorporated into this ruling and when the need arises, this court shall refer to the relevant portion of the addresses.

Learned counsel for the Defendant Dr M.Y. Suleiman formulated three issues for determination to wit:

- i. Whether there is before this court a legally admissible land instrument/deed of transfer of plot 28C Diamond Acres Estate Sabo Lubge Extension Abuja now plot 156A LA Villa Diamante City Sabo Lubge Extension Layout Lubge Abuja from Mr Peter Popoola original allotted to the Claimant/Respondent that confers the right or locus standi to sue in his name.***
- ii. Whether after the allocation of plot 28C Diamond Acres Estate Sabo Lubge Extension Abuja now plot 156A LA Villa Diamante City Sabo Lubge Extension Layout Lubge Abuja. Sabo Lubge Extension Layout Lubge Abuja to Mr Peter Popoola by the defendant/ Objector. The defendant/objector could validly transfer the plot or any interest in it to the Claimant/Respondent or any person by means of change of ownership, memorandum of understanding or a power of attorney that was signed by him (Defendant and not Mr Peter Pocola.***
- iii. Whether the Claimant can maintain this action in his own name and in his own right when there is nothing that has invalidated the Title of Mr Peter Popoola and rested same on him and there is no instrument before the court executed by Mr Peter Popoola authorizing the Claimant to institute this action.***

On his part, learned counsel for the Claimant formulated a sole issue for determination to wit: -

Whether the Claimant/Respondent has the locus stand into institute this action in his individual capacity having regards to the documentary evidence before the court and the circumstance of this suit.

In substance issues i and iii formulated as well as the sole issue formulated by counsel to the Claimant are the same. They said issues call on this court to determine the right of the Claimant to maintain this suit. In my candid view, the said issues dovetail into issue ii formulated by counsel to the Defendant, such that a resolution of any of the issues bothering on locus standi cannot be possible without delving into issue ii. For this reason, I am of the considered view that a compression of the issues is inevitable in the circumstances.

It is the submission of learned counsel to the Defendant that the document on which the Claimant anchors his title to the land in dispute are registrable documents by the clear provisions of Section 2 of the land Registration Act of the Federal Capital Territory Abuja. Counsel argued that the said documents are not Registered in compliance with the above law and consequently cannot vest title on the Claimant. Counsel referred this court to the following cases- **Orianzi Vs AG Rivers State (2017) 70 NSCQR part 3 1131 at 1182 paragraph F-G and Amkra Vs Zankley (1963) All NLR 304.**

He then submitted that having not registered the Deed of Conveyance, the Claimant can neither plead nor tender the said Deed in evidence. Counsel to the Defendant urged this court to expunge those paragraphs of the pleading wherein reference was made to the unregistered Deed. Defendant's counsel argued that if the said paragraphs were expunged, there would be nothing left for the Claimant to maintain this suit in his name. It is his argument that there would be no nexus between the Claimant and the property in dispute if the said averments in the pleadings are expunged. Counsel also referred this court to **Ckwmc Ltd VS Akingbade 2016 NSCQR part 1 125 at 147.**

It is the further submission of counsel to the Defendant, that the Defendant having allocated the plot of land in dispute to Mr. Peter Popoola, the Defendant cannot allocate the same property to a third party, without first revoking the allocation earlier given to Peter Popoola. The point being made by learned counsel to the Defendant is that title to the land in dispute still vest in Peter Popoola in absence of a registered Deed of Conveying the property from Peter Popoola to a third party.

Dr M.Y. Suleman of counsel urged this court to resolve issue 3 in favor of the Defendant and hold that the Claimant lacks locus stand to institute this action since the Claimant has no valid instrument of transfer.

On his part, learned counsel for the Claimant- Peter Tochukwu Esq. submitted, the documents being relied on by the Claimant are unregistered registrable instrument and they are admissible for purposes of proving equitable interest and can therefore be pleaded. Counsel referred this court to the case of **Benjamin Vs Kalio (2018) PT 1641 page 38 @50.**

Claimant's counsel argued that issues bothering on the validity of the instrument being relied upon by a Claimant are not issues to be determined at the preliminary stage. He referred this court to **Global finishing industry limited Vs Chief Folarin Coker (1990)7 NWLR PT 162 page 265 PT 281 Par H-A.**

Counsel prayed the court to overrule the objection with substantial cost.

In his reply on points of law, Dr.MY Suleman of counsel submitted that an equitable right does not empower a litigant to approach court and that only legal right can give such powers. He submitted further that Claimant is not in court for equitable right but for enforce legal right. Counsel to the Defendant prayed court to expunge paragraphs 5g (k) M r. 6 and 7 of the counter affidavit as they are either conclusions, arguments or statement of law, which offends **Section 115(1) (2) of Evidence Act 2011.** He referred this court to **Buhari Vs INEC 2008 36 NSCQR (part 1) 475** and submitted that if those paragraphs are expunged then the counter affidavit would be lifeless.

I have given submissions of both counsel due consideration; I have also read meticulously all processes filed in support of and against this preliminary objection. On whether the Claimant has the requisite locus to maintain this action? Black's Law Dictionary Fifth Edition defined the phrase locus standi as:-

"a place of standing in Court. A right of appearance in a Court of justice, or before a legislative body, on a given question."

The constitutionality of locus standi has been well spelt out by the provision of Section 6(6) (b) of the Constitution of the Federal Republic of Nigeria 1999 as follows: -

"The judicial powers vested in accordance with the foregoing provision of this section shall extend to all matters between persons or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil right and obligation of that person. " .

In *Adesokan v Adegorolu* (1997) 3 NWLR (pt 493) 261 at 278, their Lordships of the Supreme Court per Ogunbare JSC had this to say at pages 278 - 279.

"It must be remembered that this issue of locus standi is not dependent on the success or merit of a case but on whether the plaintiff has sufficient interest in the subject matter of the dispute.

The parameter is founded on the determinant two main factors bordering first, on the subject matter and second, sufficient interest to be shown by the Claimant thereon. In other words there must be the correlation of the Claimant's interest in the subject matter of dispute touching him as a party and thus giving him the right of complaint and defending his civil right and obligations against another person, government or authority. In determination of whether or not a party has the requisite local standi to prosecute a suit, the court is enjoined to look at only the pleadings of the Claimant.

Judicial parameters of locus standi had been set in the case of **ABACHA & ANOR VS AG FEDERATION & ORS.** (2013) LPELR-21479 where the Court pronounced on the Nature of locus standi citing the case of **NYAME VS FEDERAL REPUBLIC OF NIGERIA** (2010) 42 NSCQR 54 and held that:

"The term locus standi entails the legal capacity of instituting, initiating or Commencement of an action in a competent Court of Law or Tribunal without any inhibition, obstruction or hindrance from anybody or person Whatsoever including the provision of any existing law.

The fundamental aspect of locus standi is that it focuses on the party seeking to get its complaint heard before the Court.

It is settled law that the Plaintiff will have locus standi in a matter only if he has a special right or alternatively if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced or where the interest is adversely affected..."

The averments of the Claimant show on its face that the Claimant is armed with an instrument to which he lays claim to the land in dispute. It is clearly premature at this stage to decide whether or not the said instrument indeed vest any right on the Claimant. His complaint to which he seeks audience in this court is that he has an interest in the land in dispute. Can this court at this stage and without hearing evidence make a finding on the veracity of the documents he seeks to rely 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 preempt the main issues in the proceedings relative to the interlocutory application or which will pre judge the fair trail of the substantive suit.

See **SDC.CONSORTIUM (NIG) LTD VS NAGEL & CO LTD & ANR (2003)4 NWLR PT811.**

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

" If facts to sustain a point in preliminary objection may not properly be taken 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 to the Defendant made spirited efforts in his submission to drag this court to make a finding on facts that bother on the substantive suit. Though he laced his objection with the garment of lack of jurisdiction, in truth he is calling on this court to make a finding of the potency of documents that are yet to be tendered. I shall resist with all my strength to fall into the temptation of making a finding on issues that bother on the substantive suit especially on, document yet to be tendered before this honorable court.

The affidavit in support of this preliminary objection is littered with facts that appear to be issue in the substantive suit that any finding on same will amount to pre judging this suit and same will not be an informed finding.

See **ELABANJPO & ANOR VS DAWODU (2006) 6-7 SC P 24.**

It is the claim of the Claimant that determines jurisdiction of the court to entertain a suit before it. See **MARAFI & ORE VS DAN ALHAJI & ORS 2019, ADEYEMI VS OPEYORI (1976) SC.**

Thus, where sufficiency of interest abound the court will input locus standi

Following the authority in **OWODUNI VS REGD TRUSTEES OF CCC AND ORS (2000) LPELR** this court has looked at the plaintiff statement of claim which discloses prima facie rights or interest of the plaintiff which have been or are in danger of being violated invaded adversely attached by the act of the defendant/objector

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, the court is of the respectful view that the ground upon which this preliminary objection is hinged which basically are documents annexed to the statement of claim and motion on notice not yet tendered before this court. Calling on the court to make finding on such document in my respectful view will pre judge this suit.

The suit NO CV/3091/2020 is for claim relating to interest in land situate in the FCT which falls within the jurisdiction of this honorable court

This court therefore has the requisite jurisdiction to determine this by the decision in **IBRAHIM OBAJE (2005) ALL FWLR PT 282** where the SC stated that, the High Court of the FCT Abuja has to the exclusion of other courts has jurisdiction over dispute on land based in Abuja.

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