

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 22ND OF MAY, 2024

SUIT NO: FCT/HC/CV/0656/18

BETWEEN:

MARIO MAKAMA ----- PLAINTIFF/RESPONDENT
(SUING THROUGH HIS LAWFUL ATTORNEY CHIKE NWOSU)

AND

LARIX COMPANY LIMITED ----- DEFENDANT/APPLICANT

*T. E. AKPA appears with MAYIDOLA MUHAMMED for the
Defendant/Applicant.*

Claimant/Respondent not in Court and not represented.

RULING

The preliminary objection of the defendant is premised on the ground that the Power of Attorney authorizing the Plaintiff to institute this action has terminated upon the demise of the donor. In the affidavit in support, the deponent Abigail Wiki Thomas stated that he was reliably informed by one Umar Bature, a Land officer at the Bwari Land Registry on the 15th day of July 2023 and verily believed to be true that the plaintiff just filed a suit against the within named Defendants about 20 years ago before the High Court of the Federal Capital Territory, Abuja. That the plaintiff instituted this suit pursuant to a purported Power of Attorney donated by Mario Makama the substantive claimant in this suit. That Mario Makama, the Donor of the purported Power of Attorney pursuant to which this suit was instituted is deceased. That the authority donated pursuant to the Power of Attorney does not survive the Donor of the party (sic).

The Learned Counsel for the defendant in the written submission argued that this court lacks jurisdiction to proceed with this matter brought pursuant to a

power of attorney the donor of which is deceased and the powers donated elapses/abates. That the plaintiff herein has unequivocally averred that he instituted this suit pursuant to a purported power of attorney donated by principal (now deceased) the substantive claimant in this suit. He cited the authorities of **LAWANI V GRILLO & ORS (2018) LPELR 44912 CA; CHIME & ORS V CHIME & ORS (2001) 3 NWLR (PT. 710) 527**. He urged the court on the affidavit evidence and statutory authority cited to strike out the plaintiff's suit for lack of jurisdiction to hear and determine the instant suit.

The plaintiff/respondent filed a 12 paragraph counter-affidavit one Ifeanyi Chukwu Grandison. In paragraph 6, the deponent averred that the defendant/applicant failed to provide any evidence before this court to support the assertion that the donor of the power of attorney held by the plaintiff/respondent namely Mario Makama is deceased. That it amounts to hearsay to rely on a statement allegedly made to a litigation secretary in the defendant/applicant's lawyers office on the 15th day of July 2023 by a certain Umar Bature as proof that Mario Makama is deceased.

In the written submission, the Learned Counsel for the Plaintiff submitted that the defendant/applicant's deposition to an affidavit stating that Mario Makama is deceased does not amount to proof of that assertion. That the assertion must be supported by direct evidence, relevant reports, certificates and or other documentary evidence establishing that assertion as fact. The counsel relying on the provision of Section 131 of the Evidence Act 2011, and the truism that he who asserts must prove, argued that since the sole ground for the defendant/applicant's preliminary objection is that Mario Makama is deceased and its reliance on hearsay information of Umar Bature, he urged the court to strike out the objection and hear the case on its merit.

Another issue raised by the Learned Counsel for the plaintiff/respondent is that the lawful attorney bought the land in question hence provided viable consideration which confers a valid and subsisting interest on the land on the lawful attorney. That the ingredient or element of purchase confers jurisdiction on this honourable court to entertain and determine the suit. He relied on the case of **LAWANI V GRILLO & ORS (2018) LPELR 44912 CA**. Counsel further submitted that the sole issue for the court's determination in the substantive suit is the location of plot 290 and plot 684. And that the defendant/applicant clearly stated that in its statement of defence that its plot is 684 and it built on same, and plaintiff/respondent's argument as advanced in his statement of claim is that the defendant/applicant built on plot 290 which is his own plot and not on plot 684 which they claim to own. He urged the court to assume jurisdiction which it has over the substantive suit and treat the preliminary objection of the defendant/applicant as mere technicality.

I have carefully gone through the facts alluded to by the deponent in the affidavit in support of the preliminary objection of the defendant/applicant and agree with the plaintiff that the averments contained in paragraphs 5-7 of the affidavit are bare assertions. That the donee of a Power of Attorney is deceased, and the and the assertion that it was related to the deponent by one Umar Bature an unknown Land Officer whose particulars and his relationship with the deceased was not stated is hearsay. Furthermore, the authorities cite by the applicant's Counsel are irrelevant and do not support the contention of the Defendants, but rather supports the case of the Plaintiff/Respondent. From the statement of claim and witness statement on oath of the plaintiff, the plaintiff averred that; *"By a deed of irrevocable power of attorney given on 5 May 2006, the plaintiff appointed Chike Nwosu as his lawful attorney to amongst other things take possession of the aforesaid Plot 290, Cbazango*

Layout, Kubwa, Abuja” both authorities cited by the Defendant’s Counsel state categorically that; **“when a Power of Attorney is expressed to be irrevocable and is given to secure a property of interest of the donee that it is irrevocable either by the donor without the consent of the donee or by death, incapacity, bankruptcy, winding up or dissolution of the donors as long as the donee has the interest or the obligation remains undischarged”** CHIME & ORS V CHIME & ORS Supra. Cited by the defendant’s counsel in his written address.

A Power of Attorney that is coupled with interest would continue to be binding even upon the death of the donor. The property of interest of the donee in the subject of the power of attorney is protected and endures, and is not terminated on the death of the donor. I endorse the submission of learned plaintiff’s counsel that the preliminary objection is a distraction from the main issue for determination by the court. It is lacking in merit and hereby dismissed accordingly.

Case is adjourned to 23/9/2024

Signed

Hon. Judge

22/5/2024