

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/2343/2020

BETWEEN:

**ABU SARKI NYIZEBADA _____ CLAIMANT
(SUING FOR HIMSELF AND ON BEHALF
OF THE FAMILY OF LATE NYIZEBADA PAKACHI)**

AND

- | | | |
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| 1. KUJE AREA COUNCIL
2. MARYRICH NURSERY & PRIMARY SCHOOL
3. FUNMILAYO AREMU | } | DEFENDANTS |
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RULING

By the Notice of Preliminary Objection filed by the 1st defendant whereupon the 1st defendant seeks for the following orders:

1. An order striking out in limine the suit of the plaintiff against the defendants for being incompetent and for wants of jurisdiction of this Honourable Court.
2. An order that the plaintiff's suit is defeated by reason of the plaintiff's claim to traditional history/customary right/title over the res in this suit contrary to the provisions FCT Act 1976 and other applicable law.
3. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is filed are contained in page I of the motion papers.

In response, the claimant filed a reply on points of law dated the 19th April, 2022 and filed on the 21st April, 2022.

In his written address in support of the application, the counsel to the 1st defence, in giving the brief facts of this case, stated that the claimant claims that plot No. CP-9 and other adjoining lands was first developed and used from its virgin status by his great grand-father Nyizebada Pakachi, the founding father of the first ruler of Pasali-Kingdom within the territory of the 1st defendant, over one hundred years ago and that after the demise of his father, Anta-Pada Pakachi, who took over the reign of the Pasali Kingdom and took control of the land of his ancestors, the res in this suit and the other adjoining land developed among the entire family of Anta Pada Pakachi, under the leadership of Alhaji Sulaiman Yusuf, the present ruler of Pasali Kingdom and elder brother to the claimant.

The 1st defendant said that the claimant's at all material times is that since his great grandfather developed the land from virgin status till date, a period spanning for more than one hundred years, his family has always used the land for farming, which is their only source of income. And also that since the family started building houses on the land till date, they have not received any revocation notice from either the Federal capital Territory Authority nor the 1st defendant herein on that the 2nd and 3rd defendants out of the blue and purport to have been allocated the res on this suit by the authority.

The counsel formulated a sole issue for determination, thus:

Whether by the provisions of the applicable laws in the FCT this Honourable Court is not robbed of its jurisdiction to hear and determine this suit against the claimant's claim of traditional history/customary right/title to the res in this suit?

The counsel submitted that the law is trite that issue of jurisdiction of a court can be raised at any time as decided in the case of **Oju V. INEC (2008) 13 NWLR (pt. 1105) at 590;** and **Chris V. Ononuju (2008) 9 NWLR (pt 1093) 8 at 646.**

The counsel submitted that in the instant case, the 1st defendant decided to raise this objection on jurisdiction of this Honourable Court to try this matter in view of the claimant's claim of traditional history/customary right/title to the res in this suit contrary to relevant provisions of the FCT Act and other applicable laws that shall be highlighted during this address. The counsel submitted that this is because the issue of jurisdiction which trades on the competence of a court is very radical and crucial issue and as such, it is incumbent on the court to deal with it at the earliest opportunity when raised before embarking on adjudication of the main suit if necessary.

The counsel further submitted that the courts are enjoined to deal with an objection on jurisdiction once it is raised because where a court lacks jurisdiction ab initio but still proceeds to adjudicate on the matter, the proceedings, no matter how well conducted, will be null and void and of no effect, and he cited the case of **D.E.N.R. Ltd. V. Trans International Bank Ltd (2008) 18 NWLR (pt 1119) at 395 ratio 5; Nwaka V. H.O.S. Ebonyi State (2008) 3 NWLR (pt 1093) at 160 ratio Y. Oduko V. Govt. of Ebonyi State (2009) 9 NWLR (pt 1147) 439 ratio 2; and Adams V. Umar (2009) 5 NWLR (pt 1133) ratios 39, 40 and 41.**

While eschewing the principles of jurisdiction, the counsel submitted that a court can only legally and validly competent when it has jurisdiction over the person and the subject matter of the dispute brought before it, and he cited the case of **Maduafokwa V. Abia State Govt. (2009) 2 NWLR (pt 1126).** He opined that the factors which determines a court's competence and jurisdiction over a

claim brought before it was spelt out by the Supreme court in the celebrated case of **Madukolu V. Nkemdilim (1962) 1 All NLR 587**. The counsel submitted that in this instant case, it is the contention of the 1st defendant that it is only the Minister of the FCT that has the power to grant statutory right of occupancy over a land situate within the Federal Capital Territory to any person upon application and he cited the case of **Ona V. Ayenda (2000) 5 NWLR (pt 656) at 255 ratio 9; Madu V. Madu (2008) 6 NWLR (pt 1083) at 304 ratio 11**.

The counsel submitted further that by a community reading of the judicial and statutory authorities cited earlier, the ownership of land comprised in the Federal Capital Territory invested in the Federal Government of Nigeria as shown in section 261(2), 297 (1) & (2) of the 1999 Constitution. Section 49 (1), 51(2) of the Land Use Act and section 1-37 of the FCT Act and by virtue of sections 5(1) 130 (2) of the 1999 Constitution (as amended) and section 51(2) of the Land Use Act, the president is vested with the Executive Powers of the Federation which may be exercised by him directly or through the vice president or any minister of the Government designated by him.

The counsel argued that sequel to the above, the president under sections 147(1), 302 of the Constitution 1999 (as amended) and section 18 of the FCT Act appointed the Minister of FCT and delegated his exercise of executive powers over the FCT to the Minister and as such, it is only the Minister FCT that can grant a statutory right of occupancy over the land in FCT.

It is the contention of the learned counsel that there is no question or issue of traditional history/deemed customary right of occupancy in respect of land vested in the Federal Government or any of its agencies as it is only the Minister FCT that can grant statutory right of occupancy over the land in the FCT, and he urged the court to take a cursory

look at the writ of summons and statement of claim, there is no place where the claimant either expressly or impliedly mentioned that they (his family) got title to the land (the res in this suit) through the Minister FCT or the authority but rather that they got their title through a traditional/history/deemed customary right as original inhabitants.

The counsel argued that the gravamen of preliminary objection is that the issues of claims based on traditional history/deemed customary right/title to land in the Federal Capital Territory has long been settled in the case of **Ona V. Ayemida (supra)** where the court in giving effect to the provisions of section 49(1) of the Land Use Act and the preambles of both the Land Use Act and the FCT Act and sections 1(1) (2) (3), 2, 6(1) 3) (4) and 7 of the FCT Act held inter alia that whatever contrary right of occupancy the original occupants of the lands had prior to the acquisition of the entire area ceased as from the 4th February, 1976 when the Federal Capital Territory Act came into force.

The counsel to the 1st defendant submitted that in view of the claimant's failure to show that they were allocated the plots of land, the res in this suit by the Minister of the FCT, the claimant's case is caught up by the Supreme Court's decision in **Madukolu V. Nkemdilim (supra)** and robs this court of its jurisdiction to hear and try this matter, and he urged this Honourable Court to strike out the suit of the claimant against the defendants.

The counsel to the claimant filed a reply on points of law where he raised the issue that:

Whether the claimant has locus standi to constitute this action?

The counsel answered the above issue in the affirmative and he cited the case of **Adesanya V. President of the Federal Republic of Nigeria & Anor (1981) 2 NWLR 358**

to the effect that locus standi may be defined as a right of a party to appear and be heard on the question before any court or tribunal, and he also cited the case of **Barbus & Co. (Nig.) Ltd & Anor V. Okafor Udeji (2018) LPELR 44501**.

The counsel argued that the claimant's statement of claim reveals that the claimant has possessory right/interest on the said land, where he has been in occupation of the land for a century which fact he says is admitted by the defendant in their statement of defence. He said the statement of claim also shows that the claimant is claiming legal interest through deemed right which is well recognised and protected by section 36(1) of the Land Use Act, and he argued that although the 1st defendant has made heavy weather on the fact that the claimant does not have deemed right as all rights in the FCT Abuja are donated to the Minister, such argument if allowed will be descending on the merit of the case without even going to the trial which is against the principle of preliminary objection predicated on locus standi as put forth by the Supreme court in the case of **Daniel V. INEC & Ors (2015) LPELR – 24566 (SC)** to the effect that locus standi denotes the legal capacity to institute proceedings in court. It is a threshold issue that goes to the root of the suit. On no account should the merit of the case be considered before locus standi is decided.

The counsel argued that the deciding the issue of deemed right of the claimant and whether such right has been abolished by the FCT Act 1975, as the 1st defendant is suggesting, runs fowl of the procedures of preliminary objection as adduced in **Daniel V. INEC & Ors (supra)** and as such argument can only be entertained at the trial and decided by the court during final judgment when the Hon. Court is given the opportunity to evaluate evidence

canvassed by parties and to ascribe probative value to such evidence.

The counsel submitted that assuming the Honourable court is inclined to entertain the 1st defendant's argument at this stage then the claimant does not have deemed right in the land the subject matter of this dispute, such argument is untenable and baseless because there is a conflict between the FCT Act 1975 and Land Use Act 1978 which established deemed right. He submitted that it is trite law that where there is a conflict between two equal legislations, the last in enactment supersede the first in enactment. To the counsel, this is rooted in the maxim *leges posteriores priores contrarias abrogant* which has been firmly established in the case of **FRN V. Osahon & Ors. (2006) LPELR-3174 (SC)** to the effect that when two statutes both are expressed in affirmative language, are contrary in manner, the latter abrogates the former.

The counsel argued that it is trite that the Federal Capital Territory Act which the 1st defendant is relying on was promulgated in 1975, while the Land Use Act that establishes deemed right was promulgated in 1978 and as such, the Land Use Act supersedes the FCT Act as it is the latter enactment. He further argued that the Land Use Act also supersede the FCT Act on this issue, because the fact in issue is ownership of land and the Land Use Act is the principal legislation that primarily addresses the issue of land tenure in Nigeria, while the FCT Act addresses the general administrative issues in Abuja, that is to say, the Land Use Act addresses specific issues on land, and when there is a conflict between two land covering the same subject matter, one specific and other general, the general rule is that specific legislation overrides and excludes general legislation on the same subject matter, and he referred to the case of **Akanni V. FRN (2012) LPELR – 19949 (Cit)**, and he

urged this Honourable court to dismiss the application of the defendants.

Thus, this preliminary objection is predicated upon the fact the claimant's claim to right to the property in issue is vide a traditional history/customary right/title as the original as habitants contrary to the provisions of the FCT Act 1976 and other applicable laws, and the fulcrum of the argument is based upon the fact that the claimant title to the property did not generate from the Minister FCT but from traditional history which is not allowed in the FCT, whereas the claimant has argued per contra that dealing with this issue at this stage will make the court to delve into substantive action without hearing evidence first.

The counsel to both parties formulated different issues in this application, for determination, it is my considered view to opt for the issue formulated by the counsel to the claimant, and I adopt same, that is:

Whether the claimant has locus standi to institute this action?

It is important to note at this stage that when it comes to an order of court for declaration of title to land, the party seeking for same must fully establish his entitlement to the said relief with credible evidence and the only way this can be achieved is when the parties are given opportunity to tender the exhibits and give oral testimony, and I am therefore of the firm view that the claimant's case is predicated upon the root of his title to the property in issue and the decision as to the legality or otherwise can only be determined after the trial.

To my mind, the objection and argument of counsel to the defendant is at best a defence to the suit. See the case of **Umaandors V. Effiom & Ors (2013) LPELR – 21407 (CA)** to the effect that where preliminary issues cannot be determined without encroachment on to the main issues in

a case, then the proper course for a court to take is to accelerate the hearing of all the issues in the case and take them together for a judicious determination. See the plethora of cases especially **Odutola Holdings Ltd V. Ladejobi (2006) All FWLR (pt 322) 1393; Udoh V. Asuquo (1986) All FWLR (pt 327) 1122; Oyefeso V. Onoghehin (1991) 4 NWLR (pt 187) p. 596; and Nyame V. FRN (2010) 7 NWLR (pt 1193) 44.**

Undoubtedly, there is no way the court will go into the merits of this preliminary objection without delving into the substantive action itself. See the case of **Obasanya V. Omolaja & Ors. (2000) LPELR – 5900 (CA)** to the effect that the issues canvassed in the preliminary objection and argued by both counsel touches on the substantive issues in the main and substantive case, and having heard the learned counsel on both sides in the matter and in furtherance of the decision of the Supreme Court in the case of **Nwosu V. Offor (1997) 2 NWLR (pt 487) 274** regarding the limitation of preliminary objection and matters that cannot be decided at that stage without going into merits of the matter, and while I agree that the issue of jurisdiction is germane and important, I must be careful not to delve into the substantive matter at the preliminary stage, the objection should have been encapsulated in the final written addresses of both counsel, and I so direct accordingly.

An order is given for the accelerated hearing of this matter.

Hon. Judge

Signed

16/1/2025

Appearances:

Hussaini Sani Esq appeared for the claimant.

A.J. Gata Esq appeared for the 1st defendant.

Tope Fasobi Esq appeared for the 2nd defendant.

CT: The matter is adjourned to 26th day of March, 2025 for hearing.

Hon. Judge

Signed

16/1/2025