

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON MONDAY THE
6TH DAY OF NOVEMBER, 2023.

BETWEEN:

SUIT NO.B/1170/2022

MR FESTUS ADEMOLACLAIMANT/RESPONDENT

AND

MR OSADOLOR OGIEFADEFENDANT/APPLICANT

RULING

This is a Ruling on a Notice of Preliminary Objection, dated the 13th of February, 2023, filed on the 14th of February, 2023, praying for an order dismissing this suit for lack of jurisdiction.

By the Notice of Preliminary Objection, the Defendant/Applicant is challenging the competence of this suit on the ground that this Honorable Court has no jurisdiction to entertain this suit based on the following grounds:

1) That SUIT NO.B/477/2017 was instituted by:

- i. MRS. JOY OLUSI;***
- ii. MADAM MARY EHIMATIE ERHAHON;***
- iii. MRS. FLORENCE A. ODIGIE (NEE ERHAHON); and***
- iv. MISS EVELYN ERHAHON***

AGAINST

- i. MR. SAMSON IGBINEWEKA; and***
- ii. MR. JAMES AMADIN***

B. That Suit NO.B/477/2017 was before the Honorable Justice ERHABOR in the then High Court 6, Benin City over the same subject matter which is a parcel of land at N0. 8 Ogbesasa Street or 8 B Ogbesasa Street, Benin City;

C. That while SUIT NO.B/477/2017 was still pending before the honorable Court, the Claimants therein and their privies colluded and sold part of the subject matter, to wit the land that is the subject matter of this suit, to the Claimant herein who knew about Suit NO.B/477/2017; and

D. That by virtue of the doctrine of lis pendens, no title or interest was passed to the Claimant and the Claimant therefore has no title or interest upon which to base a cause of action to enable the Claimant rouse the jurisdiction of this honorable Court to hear this suit.

The Notice of Preliminary Objection is supported by an affidavit of five paragraphs and a Written Address of learned counsel for the Defendant/Applicant.

In his written address, the learned counsel for the Defendant/Applicant ***Isaac Ozua Esq.*** posited that the preliminary objection is predicated on the absence of jurisdiction because the Claimant/Respondent has no title to give him the necessary cause of action to activate the jurisdiction of this honorable Court on the grounds as contained in the Notice of Preliminary Objection. He relied on his affidavit of five paragraphs together with some of the processes in SUIT NO.B/477/2017 annexed as Exhibits A, B, C and D to the supporting affidavit.

Furthermore, learned counsel relied on the decision of the Supreme Court in the case of ***ENYIBROS FOODS PROCESSING COMPANY LTD & ANOR V. NIGERIAN DEPOSIT INSURANCE CORPORATION &ANOR (2007) VOL 153 LRCN 62 RR 9 & 11*** where the apex Court exposted *inter alia* thus:

"The doctrine is really designed to prevent the vendor from transferring any effective title to the purchaser by depriving him (the vendor) of any rights over the property during the currency of the litigation or the pendency of the suit. That being so, the principle of nemo dat quod non habet will apply to defeat any sale or transfer of such property made during the pendency of the litigation."

He therefore urged the Court to dismiss this suit for lack of jurisdiction.

Upon receipt of the Notice of Preliminary Objection, the learned counsel for the Claimant/Respondent filed a Counter-Affidavit of six paragraphs and a Written Address of counsel.

In his Written Address, the learned counsel for the Claimant/Respondent, ***Chris Otasowie Esq.*** formulated a sole issue for determination as follows:

"Whether the grounds upon which the Applicant countered this suit has not been overtaken by events."

Arguing the sole issue for determination, the learned counsel posited that the ground upon which the Applicant Countered this suit, is that there is a pending matter of the subject matter in High Court No. 6 now Court 3 presided over by **Hon. Justice A.N. Erhabor** and as such the subject matter is *lis pendis*. He submitted that the ground is quite misconceived because the Claimant/Respondent has shown through paragraphs 3 (a-d) and Exhibit A of his Counter-Affidavit that the matter was not determined in favour of any party and same was struck out.

He submitted that one of the conditions for the application of the doctrine of *Lis pendis* is that the subject matter of the suit must be in a pending suit and he referred to the cases of *Abe V. Damawa (2023) 3 NWLR Pt. 187 Pg. 338*; *Akiboye V. Edeko (2011) 6 NWLR Pt. 1244 Pg. 415*; and *Ogunsola V. NICON (1991) 4 NWLR Pt. 188 Pg. 762*.

In conclusion, he urged the Court to strike out this Notice of Preliminary Objection.

Upon a careful consideration of all the processes filed in this application, together with the arguments of the learned counsel for the parties, I am of the view that the sole issue for determination is: ***Whether this Court has Jurisdiction to entertain this Suit?***

Essentially, the issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: *Katto vs. C.B.N (1991) 11-12 S.C 176*.

A Court can claim to have jurisdiction in respect of a matter if:

1. *It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;*
2. *The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and*
3. *The case comes up before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of the jurisdiction.*

In support of the foregoing, see the following decisions on the point:

Madukolu vs. Nkemdilim (1962) 1 All NLR 587; Dangana & Anor vs. Usman & 4 Ors (2012) 2 S.C. (Pt.111) 103; and WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.

It is an elementary principle of law that the issue of jurisdiction can be raised at any stage of the proceedings. It can even be raised by the Court *suo motu*. See: *SLB Consortium Ltd. vs. NNPC (2011) 9 NWLR (Pt.1252) 317 at 335.*

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorocho vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.*

As earlier stated, in determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorocho vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.*

The learned counsel for the Defendant/Applicant has submitted that the Claimant's claims as presently constituted discloses no cause of action against the Defendant because it is caught by the doctrine of *Lis Pendens*.

There are two salient legal principles involved in this objection. The first is the principle of cause of action and the second has to do with the doctrine of *Lis Pendens*. I will necessarily examine these two principles in the determination of this Preliminary Objection.

On the doctrine of cause of action, it is necessary to find the meaning or connotation of what constitute "a cause of action". For this I will refer to the case of ***DR. IRENE THOMAS & ORS VS THE MOST REVEREND T. O. OLUFOSOYE (1986) 1 NWLR (PT. 18) 669 AT 682 (F-H) TO 683*** where ***OBASEKI, JSC*** lucidly expounded *inter-alia* as follows:-

"...a cause of action is the question as to the civil rights and obligation of the plaintiffs founding the action to be determined by the Court in favour of one party against the other party... Where the statement of claim discloses no cause of action and if the Court is satisfied that no amendment, however ingenious, will cure the defect, the statement of claim will be struck out and the action dismissed. Where no question as to the civil rights and obligations of the plaintiff is raised in the statement of claim for determination, the statement of claim will be struck out and the action dismissed."

Again in the old case of ***Savage & Ors. v. Uwechia (1972) 1 All N.L.R. (Part 1) 251 at p.257 Fatai-Williams, J.S.C. (as he then was)*** stated as follows:

"A cause of action is defined In Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts, which give rise to a right to sue and it consists

of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. As Lord Esher said in Cooke v. Gill, (1873) L.R. 8 C.P. 107 and later in Read v. Brown (1888) 22 O. B. D. 128 (C.A.), it is every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.”

Furthermore, the criteria employed by the Courts in determining the existence or non-existence of a cause of action is for the Court to consider the Writ of Summons and the Statement of Claim. See: *Olagunyi V. Yahaya (1998) 3 NWLR 501. Aremo II V. Adekanye (2000) 2 NWLR (644) 257; Elema V. NEPA (2000) 2 NWLR (Pt. 644) 337.*

Where a statement of claim discloses some reasonable cause of action on the facts alleged in it, the claim has some chances of success and once it raises some issues of law or fact calling for determination by the Court, it cannot be struck out. For a statement of claim to be said to disclose no cause of action, it must be such as nobody can understand what claim he is required to meet. The case stated in it must be unsustainable or unarguable or it is incontestably bad. See: *Tika-Tore Press Ltd V. Umar (1968) 2 All N.L.R 107.*

When considering the disclosure of cause of action, it is irrelevant to consider the weakness of the Claimant's Claims. What is always important is to examine the averments in the pleadings and see if they raise some questions fit to be decided by a Judge. See: *Ogunsanya V. Dada (1992) 4 SCNJ 162 at 169. Yusuf V. Akindipe (2000) 8 NWLR (Pt. 669) 376.*

Coming to the doctrine of *Lis Pendens*, in the case of *ENEKWE V I.M.B. NIG. LTD. (2007) ALL FWLR (Pt. 349) 1053 Niki Tobi JSC* (now of blessed memory) expounded thus: "*And that takes me to the examination of whether the*

doctrine of lis pendens applies to this case. The expression is made up of two latin words. The 1st is lis which means a piece of litigation, a controversy. The word pendens conveys the connotation of pending. The two words put and read together generally means a pending law suit. The expression is a useful Latinism that has given its name to a notice required in some jurisdictions to warn all persons that certain property is the subject-matter of litigation, and that any interest acquired during the pendency of the suit must be subject to the outcome of the litigation. Traditionally this notice was called the notice of lis pendens but 20th century American lawyers have shortened the phrase to merely lis pendens.

The doctrine which is embedded in the common law gives notice to persons by way of warning that a particular property is the res of a litigation and that a person who acquires any interest in it must know well ahead that the interest will be subject to the decision of the Court on the property. Nigeria as common law Country applies the doctrine in appropriate cases".

The learned Justice of Supreme Court stated the conditions under which the doctrine of *lis pendens* will apply as follows:

- 1. The object of the suit must be to recover or assert title to specific property.*
- 2. The property must be real property.*
- 3. At the time of the sale of the property the suit in question was pending.*

It is settled law that all the above conditions must exist in the case, in other words, a matter based on the doctrine of *lis pendens* will fail if any of the conditions is not satisfied. See the case of **ENYIBROS FOODS PROCESSING**

COMPANY LIMITED V NIGERIAN DEPOSIT INSURANCE CORPORATION (2007) ALL FWLR (Pt. 367) 793.

Applying the two salient principles to the present suit, it is incumbent on me at this stage to focus my attention on the Claimant's Claim in order to determine whether it raises some issues of law or fact calling for determination by the Court. I cannot consider the defences of the Defendant at this stage. Clearly, the doctrine of *Lis Pendens* is not part of the Claimant's case, perhaps it may be part of the Defendant's case which I cannot consider at this stage.

Upon a careful examination of the Claimant's Claims, it is apparent that he is claiming against the Defendant as follows:

"1 .A DECLARATION that the Claimant is the rightful person entitled to a grant of a Statutory Right of Occupancy in and over all that property measuring approximately 36 feet by 80 feet lying and situate along Ogbesasa Street, off Sapele Road also known as No. 8B, Ogbesasa Street, Benin City more particularly marked and delineated in Survey Plan No GEO/235/2018;

2. A DECLARATION that the actions of the Defendant in recently trespassing same and trying to commence building work amounts to trespass in law;

3. The sum of N10, 000,000.00 (Ten Million Naira Only) as damages against the Defendant for Trespass; and

4. An Order of Perpetual Injunction restraining the Defendant, his agents, servants and/or privies from further trespassing, interfering or acting in any manner whatsoever inconsistent with Claimant's title in and over the said property."

By the elements in the foregoing definition of "cause of action" there can be no doubt that the Claimant's Claims as indicated in his Statement of Claim is for declaration of title, trespass, damages and injunction in respect of the land in dispute. In his pleadings, the Claimant has copiously pleaded the facts culminating in his reliefs. Clearly at this stage, the Claimant has a cause of action against the Defendant. The defence of *Lis Pendens* raised by the Defendant cannot form the basis of a Preliminary Objection on lack of any cause of action.

Sequel to the foregoing, I hold that *the sole issue for determination is resolved in favour of the Claimant/Respondent. This Preliminary Objection lacks merit and it is accordingly dismissed with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Claimant/Respondent.*

P.A.AKHIHIERO

JUDGE

6/11/23

COUNSEL:

ISAAC OZUA ESQ.....DEFENDANT/APPLICANT

CHRIS OTASOWIE ESQ.....CLAIMANT/RESPONDENT

