

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON THURSDAY, THE 15TH DAY OF DECEMBER, 2016

BEFORE HIS LORDSHIP HON. JUSTICE A. R. MOHAMMED

(JUDGE)

SUIT NO. FHC/ABJ/CS/339/2016

BETWEEN:

BI-COURTNEY LIMITED

.....

.....

APPLICANT

AND

1. THE MINISTER OF LANDS, HOUSING
AND URBAN DEVELOPMENT
(Now Minister of Works, Power and Housing)
 2. ATTORNEY GENERAL OF THE FEDERATION.
- } RESPONDENTS

R U L I N G

This ruling is on the issue raised by the Court suo motu. The issue raised by the Court is:

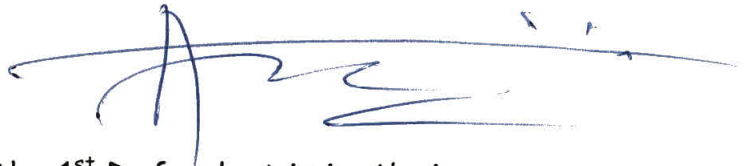


"Whether in view of paragraphs 3(e), (f), (g), (i), (k), (l), (p), 4, 5, 6 and 7 of the affidavit in support and paragraphs (i), (ii), (iii), (iv), (v) and (vii) of the grounds of the application, is it the Abuja Division of this Court that should entertain this suit or the Lagos Division of the Court?"

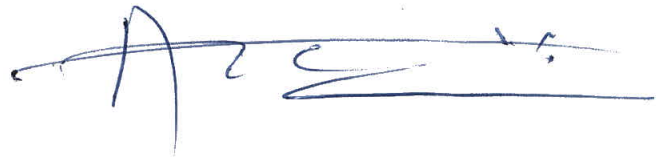
The Court then directed the Applicant's counsel to file written address on the above issue. Learned Applicant's counsel has filed a written address in compliance with the order of the Court and the said address is dated and filed on 17/11/16.

I have read the Applicant's Affidavit filed on 17/11/16 and written address also dated and filed on 17/11/16 in answer to the issue raised by the Court. In the Applicant's written address, the contention, in the main are that:-

- a. that the 1st Defendant discharge his responsibilities from Abuja.
- b. that the headquarters of the 1st Defendant is in Abuja.
- c. that the Applicant letters dated 30th July, 2013 and 14th July, 2014 were addressed to the 1st Defendant in Abuja.
- d. that the 1st Defendant and the A-G, Federation also reside in Abuja and discharge their administrative, executive and statutory functions from Abuja.
- e. that the cause of action has arisen in Abuja.



f. that if proceedings are instituted in the Lagos Judicial Division' that the Applicant would need to scale the additional hurdle and inconvenience of obtaining leave of the Court to issue and serve the originating processes on the 1st Defendant and the A.G. Federation in Abuja under Section 97 of the Sheriffs and Civil Process Act and the authority of **OWNERS OF MV ARABELLA VS. N.A.I.C. (2008) 11 NWLR PART 1097, 182.**



However, a careful reading of the paragraphs (ii), (iii), (iv) and (v) of the grounds upon which the application for leave is brought would show that the entire suit is predicated on the alleged disregard to the suits and orders made on the subject property by the 1st Defendant, when he granted consent over the property subject of litigation before Federal High Court, Lagos, High Court of Lagos State and the Court of Appeal. The suits numbers are given were as follows:-

- a. FHC/L/1042/2013,
- b. M/925/2010
- c. LD/L/1186/2012,
- d. LD/692/2012, and
- e. CA/L/483^M/2012.

With specific reference to the suit in the Lagos Division of the Federal High Court, that is, suit No. FHC/L/1042/2013, the 1st Defendant herein is the 2nd Defendant in that suit. In fact, in exhibit 9 attached to the Applicant's affidavit in support of the Motion Exparte dated 17/5/16, the 2nd Defendant was specifically restrained and prohibited from-

"giving effect to and/or entertaining and/or accommodating and/or countenancing and/or consenting to any transaction whatsoever over the property situate at 70, Alexander Avenue, Ikoyi, Lagos State."



Now, the suit before this Court seeks leave to apply for order of mandamus against the action of the 1st Defendant in granting consent for the assignment of the same property at 70, Alexander Avenue, Ikoyi, Lagos despite subsisting orders of the Federal High Court. See paragraph V of the grounds for the application for leave. A careful reading of the processes filed in this suit would reveal that the matter is more of a contempt proceedings than a suit for mandamus. Now, whatever it is that the Applicant wants to achieve by this suit, it ought to have been filed in the Lagos Division of this Court where the restraining orders were made in the suit No. FHC/L/1042/2013 against the 2nd Defendant, who is even a party in that suit. By bringing the suit in Abuja division of the Court could

lead to the Court having multiple or varying decisions on the same property at 70, Alexander Avenue, Ikoyi, Lagos.

It should also be noted that by paragraph ix of the grounds of the application, the Applicant's case is somewhat built on alleged contempt. This is because the Applicant stated in paragraph ix of the ground of the application as follows:-

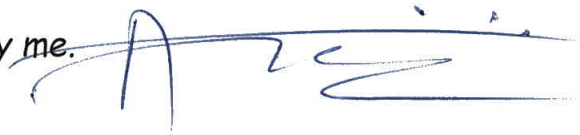
ix. The Minister has purportedly exercised executive powers in an illegitimate and contemptuous manner despite the series of pending litigation in respect of the Applicant's property and an order of this Honourable Court restraining the Minister from so doing. The Minister's said exercise of executive powers is clearly not in accordance with the rule of law and same is therefore invalid and/or illegal.

What is more, the content of paragraph ix of the ground leaves no one in doubt as to the main objective of the present suit, which is to pursue allegation of contempt and disregard to orders of Court in Suit No. FHC/L/1042/2013. That being the case, the proper forum to institute and pursue this matter ought to be in the Lagos Division of the Court and not Abuja. Although, learned Applicant's counsel has relied on the provision of order 2 rule 1(9) of the Federal High Court Rules, 2009, to buttress the argument that as the Defendants

reside and carry on substantial part of their businesses in Abuja and that the consent given to register the assignment over property at 70, Alexander Avenue, Ikoyi Lagos was issued in Abuja, then the suit is properly commenced in the Abuja division of the Court.

However, a careful reading of order 2 rule 1 (3) of the Federal High Court Rules, 2009 would completely punctured the reasoning and contention of the Applicant. For, order 2 rule 1 (3) states thus:

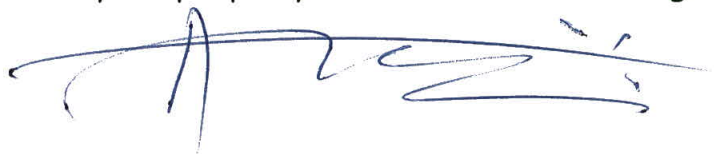
"All actions for recovery of revenue, penalties, forfeitures, and also all actions against public officers, shall be commenced and tried in the judicial division of the Court in which the cause of action arose." Underlining supplied by me.



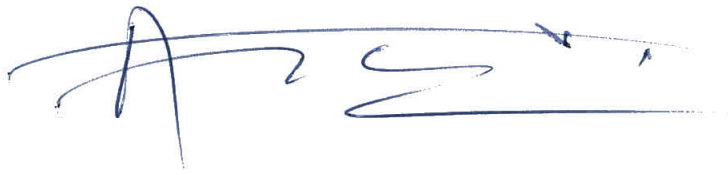
There is no doubt that both Respondents in this suit are public officers within the meaning of the term. It therefore means that in bringing any or all actions against them (that is, 1st and 2nd Defendants herein), the only consideration is where the cause of action arose and not where the said public officers carry on substantial part of their businesses. It therefore follows that the use of the phrase "defendant" in order 2 rule 1 (9) of the Federal High Court Rules, 2009 must necessarily exclude a "public officer" as he was not contemplated in the said sub-rule. This is because, since the preceding order 2 rule 1 (3) has specifically mentioned

public officers, it means they are excluded from the application of situation stated in order 2 rule 1 (9) of the Federal High Court Rules, 2009.

Flowing from the above, although, the Minister's action (that is, the giving of consent) is said to have been done in Abuja, but the actual registration was carried out at the Lands Registry in Lagos. It is my view therefore that the cause of action in this suit was the eventual registration of property at 70, Alexander Avenue, Ikoyi, Lagos and not just the giving of the consent by the 1st Defendant. I said so because the consent per se allegedly given by the 1st Defendant is ineffective until it is registered with the relevant Land Registry. It therefore means that it is the action of registration that could alter the status of the property. I am therefore firmly of the view that a critical examination of this suit as presently constituted will leave no one in doubt that it can only be properly entertained in the Lagos Division of this Court.



In consequence of the above reasoning, this Suit is hereby transferred to the Lagos Division of the Court for determination in accordance with the clear provision of order 2 rule 1 (3) of the Federal High Court Rules, 2009.



HON. JUSTICE A. R. MOHAMMED
JUDGE
15/12/16.

APPEARANCES:-

O. Aworuga Esq. with O. Ben-Omotehinse Esq. for the Applicant.