

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT 15 APO ABUJA
ON THE 13TH DAY OF DECEMBER, 2019
BEFORE THEIR LORDSHIPS
HON. JUSTICE CHIZOBA N. OJI (PRESIDING JUDGE)
HON. JUSTICE M.B. IDRIS (HON. JUDGE)

APPEAL NO: CVA/334/19

SUIT NO: CV/396/2018

BETWEEN:

MRS IHUA MAUREEN APPELLANT

AND

**LONGE NATHANIEL MODUPE (Trading under the name
and style "Dupe Longe Associates") RESPONDENT**

**WATCHMAN OSHEKUN FOR THE APPELLANT
S. M. EMOJEGHWARE HOLDING THE BRIEF OF AHMED YAKUBU FOR THE
RESPONDENT.**

JUDGMENT

This is an interlocutory appeal against the ruling/order of the Chief District Court of the Federal Capital Territory in suit no CV/396/2018 wherein the court dismissed the preliminary objection of the Defendant, now Appellant praying for an order of court dismissing the Plaintiff/Respondent's suit for want of jurisdiction on the ground that the Landlord did not serve the appropriate notices.

The Amended Notice of Appeal filed on 14/11/19 deemed duly filed and served on 5th December 2019 contains two grounds of appeal, shorn of their particulars as follows:

“Ground One

The Learned District Judge erred in law when, after considering the preliminary objection of the Defendant/Applicant (now Appellant herein) that the requisite notices to invoke the court’s jurisdiction were not appropriately given contrary to statutory and judicial authorities, she held that the court cannot make any pronouncement on the validity or otherwise of the notices, and that evaluating the validity of the notices will lead the court to delve into the substantive matter, not minding that the plaint, particulars of claim, and the evidence of the lone witness of the Plaintiff constituted the Plaintiff’s claim based on which jurisdiction is determined.

Ground Two

The Learned District Judge erred in law when she dismissed the preliminary objection on grounds that the preliminary objection addressed issues in the substantive suit even when the said issues were the case of the Plaintiff already before the court, and by law jurisdiction is determined by the case of the Plaintiff before the court, and can be raised at anytime.”

Therefore, the Appellant seeks the following reliefs from this court:

- (i) To allow this appeal
- (ii) To set aside the Ruling of the District Judge
- (iii) To dismiss suit no CV/396/2018 Between LONGE NATHANIEL MODUPE
V MRS IHUA MAUREEN**

The Appellant filed her brief of argument on 14th October 2019 and distilled two issues for determination thus;

- “1. Whether the Honourable Chief District Judge II was right in law when she held that ruling on the service of notices and their competences will be better handled at the end of the case.
2. Whether the Honourable Chief District Judge II was right in law when she held that the preliminary objection addressed the issues in the substantive suit.”

The Respondent filed his brief on argument on 4th November 2019 wherein three issues for determination were raised thus;

- “1. Whether this appeal is competent
2. Whether this interlocutory appeal has not become an academic exercise
3. Whether the lower court was right in law for not delving into the substantive suit at the interlocutory stage.”

On being served with the Respondent’s brief, the Appellant filed a reply on point of law on 13th November 2019.

We think we should resolve this appeal on the issues raised by the Respondent.

On whether the appeal is competent, the Respondent has argued that the ground one of the appeal is incompetent because it does not flow from the ruling of the trial court appealed against and that ground two is of mixed law and fact for which leave of court is required, and as none was sought by the Appellant, same is incompetent.

We have examined the arguments therein and find that the appeal of the Appellant is competent.

Ground one flows from the ruling of the trial court and ground two is a ground of law.

On whether this interlocutory appeal has not become an academic exercise. Learned counsel for the Respondent submitted in paragraphs 4.20 to 4.25 of his brief that the Appellant filed her Notice of Appeal in April 2019 as contained on page 19 of the record of appeal and consequently filed a stay of proceeding at the lower court but same was dismissed for lack of merit. After several adjournments the Appellant finally opened her defence on 12th day of September 2019 and the lower court entered judgment in favour of Plaintiff/Respondent on 10th October 2019. The lower court however denied the Plaintiff/Respondent vacant possession of the premises on the ground that the issuer of the notices had no authority to so do.

Consequently, learned counsel submitted that the interlocutory appeal has been overtaken by the proceedings and subsequent judgment of the lower court for all practical purposes and rendered the interlocutory appeal a mere academic exercise, which the courts have been enjoined not to engage in, citing **ODOM & ORS V PDP & ORS (2015) LPELR – 24351 (SC)**.

In response to the argument the learned Appellant's counsel submitted that allowing the appeal will serve the purpose of nullifying the entirety of the proceedings at the lower court including the judgment as the court acted without jurisdiction.

On whether the lower court was right for not delving into the substantive suit at the interlocutory stage, the Respondent argued that the issue of service of relevant notices in recovery of premises action can only be resolved at trial after hearing evidence.

Resolution

Indeed, at first glance, we were inclined to agree with the Respondent that the Respondent's (Plaintiff at the Lower court) claim for possession having failed at the end of the day at the Lower court, that allowing this appeal would amount to an academic exercise as the Judgment of the Learned Chief District Judge II had served the purpose for which the interlocutory appeal was filed. But that would be losing sight of the substance of the interlocutory appeal which is founded on jurisdiction.

The law is trite that where a court lacks jurisdiction it has no power to make any further orders in the suit except to pronounce that it has no jurisdiction.

In the instant case, the Lower court found that the statutory notices issued and served on the Defendant (Appellant) were invalid but it proceeded to make further orders. See page 153 of the record of appeal where the learned Chief District Judge II held:

"In totality, the Plaintiff's claim for possession hereby fails due to invalid notices served on the Defendant.

It is hereby adjudged that the Plaintiff recovers from the Defendant the sum of N600,000 being the balance of the rent for the tenancy period of 17-12-17 to the 16-12-19 at N1,500,000 yearly.

The Plaintiff is also to recover the sum of N50,000.00 awarded to it on the 20-09-19 as cost against the Defendant".

It must be borne in mind that the Respondent's claim at the lower court was for possession (ejection), mesne profit etc.

The Recovery of Premises Act makes service of notices a condition precedent to filing a claim for recovery of premises.

The Appellant as Defendant at the lower court raised a preliminary objection to the validity of the notices served on her upon the close of the Plaintiff's (Respondent's) case.

The court considered the objection but ruled that it could not determine the validity of notices served at that stage, that it was a matter for the substantive suit. We think the learned trial Chief District Judge II was wrong.

In **ELIZABETH MONDAY SAMBO & ORS V SOLOMON ETIM OKON & ORS (2013) LPELR 20294 (CA)**, the Court per TUR JCA at Page 24-25 paragraphs E-A stated thus:

"A preliminary objection is necessary to prevent a court from proceeding to consider the merit of the controversies submitted for adjudication. At whatever stage the objecting party perceives that the court has no jurisdiction to entertain the controversy a preliminary objection is the remedy. The preliminary objection avoids the parties embarking on an unnecessary or protracted trial, incurring cost, waste of time and energy if the exercise could have been timeously avoided."

Indeed at the point when the Appellant's counsel raised the preliminary objection on the issue of jurisdiction all that the trial court required to rule on the objection by way of Plaintiff's plaint and Plaintiff's evidence in

support of his case were before the court. There was no point in postponing the doomsday, so to speak. In **ESE AKPOKINIOVO V AIR LIQUIDE NIGERIA PLC (2012) LPELR 9582 (CA)**, the court per Shoremi JCA at Page 10-11 paragraphs G-A held that:

“Failure to give statutory notice as provided by the law is a condition precedent to the exercise of jurisdiction. See **SULE V NIG COTTON BOARD (1985) 2 NWLR (Pt 5) 17**. What is the proper order to make? The only option available to the trial judge is to strike out the case”.

See also **EKPERE V AFORIJE (1972) 3 SC 113**.

An interlocutory appeal does not become academic simply because judgment has been delivered in the substantive suit and the judgment is in answer to the Appellant’s preliminary objection. We think each case must be considered within its peculiar circumstances. In the present case, the question of jurisdiction is involved. Where the court lacks jurisdiction, all that it does, no matter how well done, amounts to a nullity. See *Madukolu V Nkemdilim* (1962) 2 SCNLR 341; (1962) 1 ALL NLR 587.

With the close of the Plaintiff’s case, the trial learned Chief District Judge II had all the evidence needed to rule on the validity of the notices. She was in error to have held that deciding the validity would delve into the substantive suit. At that point the Plaintiff’s case and evidence were all before the court.

Had she ruled then, she would have found that the notices issued and served by the Plaintiff’s agent were invalid, since the agent did not tender his authority to issue and serve same.

Therefore the condition precedent for an action for possession having not been met, robs the court of jurisdiction to entertain the matter. According, the Appeal is allowed.

The ruling of the Learned Chief District Judge II is set aside. The suit no CV/396/2018 between **LONGE V NATHANIEL MODUPE V MRS IHUA MAUREEN (Trading under the name and style "Dupe Longe Associates")** is struck out. The orders made by the lower court are a nullity. No costs awarded.

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Hon Justice C N Oji
(PRESIDING JUDGE)

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Hon Justice M B Idris
(HON. JUDGE)