

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

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

THURSDAY, FEBRUARY 14, 2019

SUIT NO. FCT/HC/CV/2238/2017

BETWEEN:

ZACKSON LIMITED PLAINTIFF

AND

RICHFIELD TECHNOLOGY LIMITED DEFENDANT

J U D G M E N T

THE PLAINTIFF herein [*Zackson Limited*] in frantic bid to wrest possession of the premises situate at No.16 Gwani Street, Wuse Zone 4, Abuja from the Defendant [*Richfield Technology Limited*] has approached this court claiming the reliefs endorsed in the writ of summons issued out of the Registry of this Court on 20/6/17 [as well as in the accompanying statement of claim] as follows:

1. Possession of the premises i.e. 16 Gwani Street, Wuse Zone 4, Abuja (hereinafter known as the 'Premises') occupied by Defendant till date.
2. The sum of ₦9,900,000.00 (Nine Million Nine Hundred and Fifty Thousand Naira) [sic] only being arrears of rent owed by the Defendant for the rental periods 1st November 2015 to 31st October 2016 and 1st November 2016 to 31st October 2017.
3. 10% Interest on the sum of ₦4,950,000 from the 1st November 2015 for the period 1st November 2015 to 31st October 2016 to the date of Judgment and thereafter at the rate of 5% till the entire sum is liquidated.
4. 10% Interest on the sum of ₦4,950,000 from the 1st November 2016 for the period 1st November 2016 to 31st October 2017 to the date of

Judgment and thereafter at the rate of 5% till the entire sum is liquidated.

5. Mesne profit of ₦412,500.00 (Four Hundred and Twelve Thousand, Five Hundred Naira) only being monthly rent as from 1st November 2017 until the Defendant vacates the property.
6. ₦100,000.00 (One Hundred Thousand Naira) being cost of this action.”

The Defendant filed a statement of defence dated 14/5/18 by which it joined issues with the Plaintiff; and the Plaintiff filed a reply to statement of defence dated 11/6/18. At the plenary trial, the parties fielded one (1) witness apiece.

The Plaintiff's sole witness *Precilia Selya Silas* [PW1] adopted her statements on oath dated 20/6/17 and 11/6/18, and tendered Exhibits P1^A – P1^K. She deposed that she is the Property Manager of the Plaintiff responsible for the collection of rents from tenants, including the Defendant which is a Limited Liability Company and a yearly tenant at the Plaintiff's premises under and by virtue of a tenancy agreement executed in August 2011; that the Defendant paid into the Plaintiff's Bank account the sum of ₦4,950,000.00 as rent from 1/11/11 to 31/10/12; that the rent payable was subsequently reviewed but the Defendant deliberately refused to pay the arrears of rent for 2012 - 2013 and 2013 - 2014 rental periods in spite of its continuous occupation of the Plaintiff's premises; that by a letter dated 20/12/13, the Plaintiff reminded the Defendant of its failure and/or refusal to pay rents and indicated that its solicitors would be instructed to take necessary action to recover the arrears of rents, but the Defendant persisted in its refusal and neglect to pay the arrears of rent; that the Defendant became a tenant at will at the expiration of the tenancy on 31/10/16 (sic) and has remained in occupation of the premises without making any payment despite several demands; that by a letter dated 11/8/14 the Plaintiff instructed its solicitors,

Homsem Chambers of Suite 601, 6th Floor, Theodak Plaza, National Hospital Drive, Abuja to recover the arrears of rent from the Defendant, whereupon *Homsem Chambers* issued and served on the Defendant a demand notice dated 11/8/14; that the Plaintiff paid professional fee of ₦100,000.00 to *Homsem Chambers* to prosecute this action for the recovery of arrears of rent from the Defendant as evidenced by the payment receipt issued by Plaintiff's solicitors; that in spite of the Demand Notice served on the Defendant and several entreaties by the Plaintiff, the Defendant has refused to pay the arrears of rents for the use and occupation of the Plaintiff's premises which has necessitated the filing of this suit; and that the Defendant has neither vacated the premises nor complied with the judgment entered in favour of the Plaintiff on 29/11/16 in Suit No. CV/2263/14 by *Honourable Justice Anenih* [ordering it to pay arrears of rents and costs of the suit]. The further deposition of DW1 is that the Plaintiff's solicitors, acting on the Plaintiff's instruction, issued and served on the Defendant a six (6) months Quit Notice dated 30/11/16 which was duly acknowledged by *Mr. Ese Marcus* who is a member of the Defendant's staff; that upon the expiration of the Quit Notice, the Plaintiff's solicitors, again acting on the Plaintiff's instruction, issued a seven (7) Days' Notice to Tenant of Owner's Intention to Apply to Recover Possession dated 2/6/17, which was served by a Bailiff of this Court, *Abdullahi Yusuf* on the Defendant's Managing Director, *Mr Peterson Donald* who refused to acknowledge receipt of same as shown in the affidavit of service; that he was informed by *Gabriel Tsenyen, Esq.* of counsel whom he verily believes that the Defendant visited the demised premises on 28/4/17 with view to handing over the same to the Plaintiff's solicitor but could not do so because the keys were misplaced, and promised to return on the 29/4/17 to change the keys but never showed up until the filing of this suit; and that in spite of the statutory notices given and several pleas by the Plaintiff, the Defendant has refused to give up possession and/or pay outstanding rents for the use and occupation of the Plaintiff's premises.

The DW1 deposed in her additional statement on oath dated 11/6/18 that the Defendant leased the Plaintiff's premises for period of one (1) year certain but voluntarily and on its own accord applied for a renewal of its rent by an undated letter; that the Plaintiff's Managing Director has never met with the Defendant's Managing Director since the Defendant took possession of the premises in 2011 till date and all dealings with the Defendant have been done through him as Property Manager; that he denied the Defendant's Managing Director's assertion at the point of executing the judgment of this Court that he handed over the keys to him and he recalled instances where he had to follow up on the Defendant for the arrears of rent which the Defendant never denied; that the tenancy of the Defendant was initially for a certain but the Defendant continued in occupation of the premises even after the judgment of this court for arrears of rent; that the Defendant is estopped from denying facts contained in the statement of claim already determined by this Court in Suit No. CV/2263/14 wherein judgment was entered against the Defendant for arrears of rent from 2012 to 2014, whilst this suit is for the period between 2015 and 2017; that the Plaintiff established its case [in Suit No. CV/2263/14] to merit the judgment of this court; that the Defendant neglected to appear in court to defend the suit despite being served with several hearing notices upon relisting of the suit; the claim for possession and arrears of rent from 2015 to 2017 was not covered by the Judgment of this court which was for the arrears of rent and has no relationship with the present suit for possession; that the Defendant has inflicted pain on the Plaintiff by refusing to vacate the Plaintiff's premises and pay rent for the use and occupation of the Plaintiff's premises; that it was the several efforts of the Plaintiff's solicitors that led the Defendant's Managing Director to visit the premises on the 28/4/17 purposely to change the locks which was not done and the premises has remained under the control of the Defendant till date; that it was the seven (7) days' notice that the Defendant refused to receive but not the quit notice; that the Plaintiff is an entity duly registered at the

Corporate Affairs Commission with Registration No. RC. 160630; and that the Defendant is merely seeking to evade its financial obligation to the Plaintiff for the use and continuous occupation/holding over of the Plaintiff's premises.

Cross-examined by *Chidi Nwankwo, Esq.* of counsel for the Defendant, the PW1 insisted that the Defendant gave them a written notice of renewal in the form of a letter, which is among the exhibits already tendered in court; that the initial rent payable by the Defendant was ₦4m plus but the rent was subsequently reviewed; and that it was the Plaintiff's Managing Director, *Brig. Gen. Danladi Zakari* who told him that the Defendant's Managing Director, *Mr Donald Peterson* did not handover the keys to him.

At the close of the Plaintiff's case, the Defendant's sole witness, *Donald Peterson* [DW1] adopted his statement on oath dated 14/5/18 wherein he deposed that he is the Managing Director of the Defendant on record and has been duly authorised by the Defendant to make this oath on its behalf; that the Defendant was a tenant of the Claimant at No. 16 Gwani Street, Wuse Zone 4, Abuja which the Defendant leased for a one-year period spanning 1/11/11 to 31/10/12 at a rent of N4,950,000.00; that the Defendant packed out of the premises at the expiration of the one-year tenancy sometime in November, 2012 and the tenancy was never renewed and no rent was reviewed for the periods from 2012 to 2014 as alleged; that he handed over the keys to the Claimant's Managing Director, *Brig Gen. Danladi Zakari (Rtd)* sometime in November 2012 when the Defendant packed out therefrom; that prior to the expiration of the tenancy in 2012, the Defendant never gave any notice to the Claimant expressing desire to take a new lease on the demised premises; that the Defendant never received any reminder from the Claimant alleging failure or refusal to pay rent; that the Defendant is not indebted to the Claimant and was never a tenant at will because as it did not hold over the premises but packed out at the expiration of the tenancy in

November, 2012; that the Claimant never wrote any letter through its solicitors, *Homsem Chambers* to the Defendant, and one *Ngozi Ejiofor* who purportedly received the letter written by the Claimant's solicitors is/was not a member of the Defendant's staff and not known to the Defendant; that the Defendant having packed out of the said premises since November 2012 is neither indebted to the Claimant nor expected to pay for the periods she was not in occupation of the premises; that the Claimant obtained a default judgment against the Defendant in respect of the purported indebtedness; that Suit No. CV/2263/14 filed by the Claimant against the Defendant for recovery of purported arrears of rent was struck out for want of diligent prosecution; that the Claimant's *ex parte* application for relistment was granted and judgment was eventually entered in favour of the Claimant behind the Defendant; that the said judgment has since been executed by the Claimant on 27/4/17 when the Claimant came to the Defendant's office with officials of FCT High Court and took away cars, generators, air-conditioners, etc. as shown in the inventory; that the Claimant has subjected the Defendant to unimaginable hardship and stress by realising moneys it was never entitled to through execution of the judgment; that the Claimant did not bother to claim possession in the said suit No. CV/2263/14 knowing full well that Defendant had since yielded up possession; that he refused to accept the quit notice because he did not see the need to receive a quit notice in respect of premises the Defendant had vacated since 2012; that the Defendant never attempted to handover the premises to the Claimant on 28/4/17 as she had handed over the keys to the Claimant since November 2012; that the Defendant never promised to come back to the premises to change keys and handover the premises to the Claimant; that the Defendant is neither in possession of the said premises nor indebted to the Claimant for arrears of rent having vacated the said premises since November 2012; that the Defendant never renewed the tenancy after its expiration in 2012; and that the Claimant has an office

at 16 Gwani Street, Wuse, Zone 4, Abuja but it is not duly registered as a limited liability company.

Under cross examination by *Gabriel Tsenyen, Esq.* of counsel for the Plaintiff, the DW1 insisted that he never asked for renewal of the tenancy. He acknowledged the signature on Exhibit P1¹ and conceded signing his statement on oath as well as the Tenancy Agreement but stated that he presumed that the signature on Exhibit P1¹ was forged. The DW1 maintained that he did not raise any eyebrows when the court processes were served on him because he knew that they were coming to court where he would make necessary explanations; and that he could not recall meeting with the Plaintiff's counsel on 28/4/17 or visiting the Plaintiff's premises with his Manager to release keys to the Plaintiff's counsel as alleged.

At the close of plenary trial, the parties filed and exchanged final addresses as enjoined by Order 33 of the High Court of the FCT (Civil Procedure) Rules 2018, which addresses were adopted by the respective counsel for the parties in open court on 6/12/18. The Defendant's final address and reply on points of law are dated 8/11/18 and 5/12/18 respectively, whilst the Plaintiff's final address is dated 19/11/18. Two (2) issues are distilled for determination in the Defendants' final address as follows:

1. Whether this suit should not be dismissed for failure of the Plaintiff to establish its juristic capacity.
2. Whether the Plaintiff has proved her case on the balance of probabilities to be entitled to judgment in this suit.

On the Plaintiff's part, a sole issue for determination is identified in the *Plaintiff's final address* as follows:

Whether on the weight of evidence adduced by the Plaintiff, this court has the jurisdiction to entertain the Plaintiff's case to warrant a successful claim for possession, arrears of rents, mesne profits, interests and cost against the Defendant to entitle the Plaintiff to the judgment of this court.

I have given a careful and insightful consideration to the issues formulated by the parties. This matter thrusts up a simple dispute between landlord and tenant for the recovery of possession, arrears of rent, mesne profits, pre-judgment and post-judgment interests and costs; and this court should ordinarily be preoccupied with the determination of the Claimant's entitlement or otherwise to the reliefs sought, which is a function of whether or not it has discharged the burden of proof cast upon it by law, as captured by the second issue formulated by the Defendant. But there is a rather disquieting threshold issue bordering on the competence of this action, which is captured in the first issue identified by the Defendant, as well as in the Plaintiff's sole issue. In this regard, I find the issues distilled by the Defendant succinct for the determination in this matter but will, however, permit myself to rephrase and hone the issues to precision as follows:

1. Whether the Claimant has the requisite juristic capacity to maintain this action *eo nomine*.
2. Whether having regard to the pleadings and the evidence adduced by the parties, the Claimant has discharged the *onus probandi* cast upon it by law so as to entitle it to the reliefs sought.

It is on the basis of these two (2) issues that I shall proceed presently to dispose of this matter. As stated hereinbefore, the parties filed and exchanged written final addresses which were adopted by their respective counsel in open court; and I will refer to the submissions contained therein as I consider relevant or necessary.

Issue One interrogates whether the Claimant is invested with the requisite juristic capacity to maintain this action *eo nomine*, which is in the nature of a preliminary objection that goes to the roots of the competence of this action, and *ex ipso facto* the competence and/or jurisdiction of this court to adjudicate. His lordship, *Chukwudifu Akunne Oputa, JSC* expressed the law on this point succinctly in the leading case of **GREEN v GREEN [1987] 3 NWLR (PT. 61) 480 at 500** as follows:

If a plaintiff is incompetent to bring the action, the court as well will not be competent to hear an incompetent plaintiff for then the action would not have been brought '*upon fulfillment of a condition precedent to the exercise of the court's jurisdiction*'.

It is now well ingrained in our jurisprudence that jurisdiction is the first test in the legal authority of a court or tribunal and its absence disqualifies the court or tribunal from determining the substantive issues submitted to it for adjudication. This is so because jurisdiction is the very lifeline of judicial power and judicialism without which the entire proceedings constitutes a nullity however brilliantly they may otherwise have been conducted. Indeed, jurisdiction is everything: without it a court has no power to take one step in the proceedings beyond merely declaring that it lacks jurisdiction; there would be no basis for the continuation of proceedings pending and the court downs its tools in respect of the matter before it the moment it holds the opinion that it is bereft of jurisdiction. Jurisdiction is a radical and crucial question of competence and any defect in the competence of the court is fatal and snuffs out the life of adjudication from the court; such defect is extrinsic to the adjudication on the merit and the proceedings however well conducted and decided they otherwise may be are a nullity. See **MADUKOLU v NKEMDILIM (1962) 1 ALL NLR 587 at 595; ROSSEK v ACB LIMITED [1993] 8 NWLR (PT. 312) 382 at 437 C-G; 487 G-B; MATARI v DANGALADIMA [1993] 3 NWLR (PT. 281) 266; OLOBA v AKEREJA [1988] 3 NWLR (PT. 84) 508** and **OKE v**

OKE [2006] 17 NWLR (PT. 108) 224 amongst a host of other cases. In the peculiar scheme of legal proceedings, a court is vested with jurisdiction to entertain and determine the application by which its jurisdiction is challenged. See **BARCLAYS BANK OF NIGERIA LIMITED v CENTRAL BANK OF NIGERIA (1976) 6 SC 175 at 188 -189; IWUAGOLU v AZYKA [2007] 29 WRN 120 at 136; [2007] 5 NWLR (PT. 1028) 613 at 630** and **WILKINSON v BANKING CORPORATION (1948) 1 KB 721 at 724**. Since the Defendant has challenged the competence/jurisdiction of the court to entertain the suit as constituted, this court cannot but grapple with the jurisdictional challenge before going further in the proceedings, if at all it will go any further.

It is forcefully contended in the Defendant's final address settled by *Chidi Nwankwo, Esq.* that the it is now commonplace that a court is only competent to exercise jurisdiction where the conditions prescribed in **MADUKOLU v NKEMDILIM (1962) 1 ALL NLR 587** [which were reiterated **SALATI v SHEHU (1986) 1 SC 332 at 374**] are satisfied, insisting that the court would lack the jurisdiction to entertain a suit where there are no competent parties, citing **THE ESTATE OF LAMIDO ALIYU MUSTAPHA v LINKO AGRO-ALIED INDUSTRY LIMITED [2015] 16 NWLR (Pt. 1486) 413 (CA)**; that it was in realisation of the foregoing precondition that the Claimant asserted its corporate personality in the statement of claim, which was traversed in the statement of defence and the Claimant filed a reply to statement of defence reasserting that it is a legally registered entity with a purported RC Number but failed to produce any documentary evidence at the trial; that the law is firmly established that where a plaintiff asserts that a company is duly registered and the defence denies this fact in the statement of defence, the onus lies squarely on the plaintiff to prove by cogent evidence that the company is duly incorporated i.e. producing in evidence the certificate of registration, citing s. 36(6) of the Companies and Allied Matters Act (CAMA) and the cases of **WITT & BUSH LTD v GOODWILL AND TRUST INVESTMENT LTD [2004] 8 NWLR (PT. 874) 179 at**

198 -205 –per Chukwuma Eneh, J.C.A (as he then was), **G & T INVEST. LTD v WITT & BUSCH LTD [2011] 8 NWLR (Pt. 1250) 500** at page 540 –per Adekeye JSC, **NNPC v LUTIN INVESTMENT LTD [2006] 2 NWLR (Pt. 965) 506** at 527, **ABAKALIKI, L.G.C. v. ABAKALIKI R.M.C. ENT. (NIG.) LTD [1990] 6 NWLR (PT. 155) 182**; **FAWEHINMI v N.B.A. (No. 2) [1989] 2 NWLR (PT. 105) 556**, **APOSTOLIC CHURCH v A-G., MID-WESTERN STATE [1972] 7 NSCC 247**, **J. K. RANDLE v KWARA BREWERIES LIMITED [1986] 6 SC 1** and **A. C. B. PLC v EMOSTRADE LIMITED [2002] 8 NWLR (PT. 770) 501**; that non-production of the Claimant’s certificate of incorporation portends that it has failed to prove its juristic capacity and this suit ought to fail as it is only a legal entity that can maintain a suit, placing reliance on **LION OF AFRICA INSURANCE CO. LTD v ESAN [1999] 8 NWLR (Pt. 614) 197**; **UNIJOS v CARLEN NIG. LTD [1992] 5 NWLR (PT. 241) 35**, **EJIKEME v AMECHI [1998] 3 NWLR (PT. 542) 456**, **EMECHETA v OGUERI [1996] 5 NWLR (PT. 447) 227** **THE ESTATE OF L. A. MUSTAFA v L. A. IND. LTD [2015] 16 NWLR (PT. 1486) 413**, **DAIRO & ORS v REGISTERED TRUSTEES OF THE ANGLICAN DIOCESE OF LAGOS (2017) LPELR-42573 (SC)** –per Galinje, JSC and **INAKOJU v ADELEKE [2007] 4 NWLR (PT. 1025) 427**. The Defendant reiterated essentially the same arguments in the reply on points of law and no useful purpose would be served by rehashing them.

The Claimant’s reaction is that the Defendant has made heavy weather out of the fact that the Plaintiff is not a juristic personality in view of the non-production of its certificate of incorporation in evidence, and queried rhetorically whether the contention would avail the Defendant even if it is assumed without conceding that this is the correct situation. The Claimant returned a negative answer to the rhetoric question and insisted that the Defendant’s Managing Director [DW1] voluntarily signed Exhibit P1A on behalf of the Defendant, which paid rent as well as subsequently voluntarily renewed the tenancy and was fully aware of the pendency of Suit No.

CV/2263/14 until the Judgment in Exhibit P1^K was entered against it without taking any steps in that proceedings; that it is an established principle of law that a party cannot approbate and reprobate, citing **SOWEMIMO v AWOBAJO [1999] 7 NWLR PT (610) 355** –per Onalaja, JCA and s. 169 of the Evidence Act 2011; and that a party to a fraudulent transaction cannot obtain relief from his own wrongdoing to the prejudice of his partner in that wrongdoing, placing reliance on **DIAMOND BANK LTD v UGOCHUKWU [2008] 1 NWLR (PT 1067) 26** and **IKYE MEDICAL MERCHANDISE v PFIZER INC. [2001] 10 NWLR (PT. 722) at 540**.

I have given more than passing consideration to the point of objection taken by the Defendant, which has to do with whether the Claimant has established its legal capacity to maintain this action. It cannot escape notice that whilst this all-important threshold issue took up five and half pages of the Defendant's final address, as well as four pages of the reply on points of law, the claimant devoted less than one page of its 13-page final address to the issue. It is obvious therefore that a considerable amount of printer's ink and legal energy have been expended on this issue [at least, from the Defendant's perspective], which underscores the utmost gravity of the matter.

Let us put the issue in proper perspective. It is averred in paragraph 1 of the statement of claim dated 20/6/17 that: *"The Plaintiff is a limited liability company duly registered with office at 16 Gwani Street, Wuse Zone 4, Abuja."* The Defendant specifically traversed that averment in paragraph 24 of the statement of defence to the effect that: *"The defendant admits paragraph 1 of the statement of claim to the extent only that the claimant has an office at 16 Gwani Street, Wuse Zone 4, Abuja but denies that it is a duly registered limited liability Company".* The Claimant then proceeded to file a reply to statement of defence dated 11/6/18 reiterating in paragraph 22 thereof that: *"In answer to paragraph 24 of the statement of defence, the Plaintiff states that it is*

a legally registered personality with Registration No. RC 160630 and the Defendant is estopped from denying the status of the Plaintiff having signed the Tenancy Agreement”.

It is now well settled that only natural persons or such bodies or entities clothed with legal personality by law (otherwise called *legal persons*) that can sue or be sued in an action. Once objection is taken that either the plaintiff or the defendant (or both) is not a legal person capable of suing or being sued, the *onus probandi* rests squarely on the plaintiff to show that both or either of the parties is a juristic person and has the capacity to sue or be sued; and the best evidence of proof of incorporation of a company is the production of a certificate of incorporation from the authority or agency responsible for company's registration in any particular country. See **REGISTERED TRUSTEES OF APOSTOLIC CHURCH, ILESHA AREA v A-G MID-WESTERN STATE & 2 ORS [1972] 7 NSCC 247, J. K. RANDLE v KWARA BREWERIES LTD (1986) SC 1 at 4-5** and **A. C. B. PLC v EMOSTRADE LTD [2002] 8 NWLR (PT. 770) 501 at 518-519**. Where the plaintiff fails to discharge this burden, the competence of the action may be negatively impacted and the action may be struck out where it is the plaintiff's personality that is involved. See **FAWEHINMI v N.B.A. (No. 2) supra at 632 D, 640 - 641 F-A, ABAKILIKI L.G.C. v ABAKILIKI R.M.O. [1990] 6 NWLR (PT. 155) 182 at 192 G - H, 193 A, OKECHUKWU v NDAH (1967) NMLR 368 at 370** and **OGBECHIE v ONOCHIE [1888] 1 NWLR (PT. 70) 370 at 400**.

In the case at hand, issues were prominently joined in the pleadings (as reproduced above) on whether the Claimant is a duly registered company; and although the Claimant insisted that it is a duly registered entity with Registration No. RC 160630, no certificate of incorporation was tendered in evidence and there is consequently nothing placed before this court upon which an affirmative finding on the legal status of the Claimant could be

made. There is now a formidable *corpus* of binding case law that donates notoriety to the proposition that the only acceptable *modus* by which due incorporation of a company or other corporate entity can be established is by production of the certificate of incorporation. In **A. C. B. LTD v EMOSTRADÉ supra**, the Supreme Court (per Samson Odemwingie Uwaifo, JSC) referred to the earlier decisions in **REGISTERED TRUSTEES OF APOSTOLIC CHURCH v ATTORNEY-GENERAL, MID-WESTERN STATE supra** and **J. K. RANDE v KWARA BREWERIES LTD supra** and held that failure to produce certificate of incorporation is fatal and indicates that the respondent failed to prove its juristic personality or that it can sue and be sued *eo nomine*, which means that it does not exist in the eyes of the law. Indeed, in **REGISTERED TRUSTEES OF APOSTOLIC CHURCH v ATTORNEY-GENERAL, MID-WESTERN STATE supra**, where the plaintiffs averred in their statement of claim that the Apostolic Church was incorporated under the Land (Perpetual Succession) Act which was denied in the statement of defence (as in this case), the Supreme Court held that "*although evidence was led as to named persons being made trustees, the certificate of incorporation was never produced with section 6 of the Act under consideration [and] they have no power to sue or liable to being sued*". And notwithstanding that there was some evidence of admission about the status of the Apostolic Church, his lordship Shodeinde Sowemimo, Ag. JSC (as he then was) opined [at page 252 of the Report] that:

We are in agreement with the learned trial Judge, that whatever may be the admission of the 3rd respondent of the status of the appellant, there is no evidence before the court that the appellant (i.e. the Apostolic Church) was ever a corporate body. This could only be established as a matter of law by the production in evidence of the certificate of incorporation, admission inter partes notwithstanding. (Underlining supplied)

Not dissimilarly, his Lordship Uwais JSC [as he then was, later CJN) held in **J. K. RANDE v KWARA BREWERIES LTD supra** [at page 7] that:

The appellant sued the respondent as a company incorporated under the Companies Act, 1968. He failed to prove the incorporation by the production of the certificate of incorporation. As the averment in the statement of claim that the defendant was so incorporated was categorically denied by the respondent in its statement of defence the failure to prove the incorporation was fatal to the appellant's case.

See also **NNPC v LUTIN INVEST. LTD. (2006) 2 NWLR (PT. 965) 506 at 527, 533, 535 - 536, BANK OF BARODA v IYALABANI CO LTD [2002] 13 NWLR (PT. 785) 551, STANKINO SHIPPING COMPANY LTD (OWNERS OF THE MT "OSTANKINO") v THE OWNERS OF THE MT "BATA 1" (2011) LPELR-4806 (CA)** and **WORLD MISSION AGENCY INC v SODEINDE & ANOR (2012) LPELR-19738(CA)** amongst a host of other cases.

The above decisions are forcefully binding on this court under the inflexible doctrine of *stare decisis* and it is needless to say that I am bound to kowtow. I find myself unable to disagree with the forceful submissions of the learned counsel for the Defendant that the Plaintiff, having failed to establish its legal status, lacks the requisite legal capacity to institute this action. That is to say, a fundamental vice or feature that prevents the court from exercising jurisdiction has reared its ugly head in these proceedings. As things stand, this court is not at liberty to proceed any further to consider the substantive issues raised in the case. Where a suit is incompetent, the court as well will not be competent to determine the claim on the merits, for then the action would not have been brought 'upon fulfilment of a condition precedent to the exercise of the court's jurisdiction'. See **MADUKOLU v NKEMDILIM supra** and **GREEN v GREEN supra**

The learned counsel for the Defendant has urged me to dismiss the suit, but I find myself unable to accede to that rather tempting invitation. There is now a formidable body of binding case law to the effect that the proper order to make upon a finding that a plaintiff lacks legal competence either on account

of want of *locus standi* or otherwise which affects the jurisdiction of the court is one of striking out and not dismissal. See **OKOYE v NIGERIAN CONSTRUCTION & FURNITURE CO. LTD [1991] 6 NWLR (PT. 199) 501 at 534**, **ADETUNJI v ADESOKAN [1994] 4 NWLR (PT. 346) 540**, **NEPA v EDEGBERO [2002] 18 NWLR (PT. 798) 79**, **LAKANMI v. ADENE [2003] 4 SCNJ 348 at 355** and **ADELEKUN v ECU-LINE NV [2006] 8 MJSC 142**. Indeed, the cases of **OLORIEBI v OYEBI (1994) 5 SC 1**; **RTEAN v NURTW [1992] 2 NWLR (224) 281** and **DADA v OGUNSANYA [1992] 3 NWLR (232) 754** donate the proposition that a court which has no jurisdiction to adjudicate is equally bereft of jurisdiction to dismiss the action. The contrary position taken in cases such as **THOMAS v OLUFOSOYE [1986] 1 NWLR (PT. 18) 669** to the effect that the case would be dismissed when a court lacks jurisdiction was roundly rejected in **ADETUNJI v ADESOKAN supra** where the Supreme Court reviewed all the earlier decisions on the point.

The proper thing to do in the circumstance is to record an order striking out the suit for want of competence. I so order. There shall be no order as costs.

PETER O. AFFEN
Honourable Judge

Counsel:

Gabriel Tsenyen, Esq. (with him: **Obi Obiakor, Esq., K. C. Kwaplong, Esq.** and **N. R. Haamnaan, Esq.**) for the Claimant.

Chidi Nwankwo, Esq. (with him: **Richard Uba, Esq. and C. K. Orji, Esq.** and **Lilian Nwokolo, Esq.**) for the Defendant.