

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT MAITAMA, COURT 4, F.C.T., ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/1941/2019

B E T W E E N:

ONWU O. ARUA

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PLAINTIFF

AND

- 1. MR. WILLIAM OFFOR**
- 2. MR. EDWARD NWEKE**
- 3. MR. CANICE NWEKE**
- 4. MR. HILLARY IFEANYICHUKWU UKPABI**

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DEFENDANT S

J U D G M E N T

The Plaintiff is by the Originating Summons filed against the Defendants praying this Court for the determination of a lone question.

The question for determination is as follows:

“Whether the Defendants acted ultra vires in their powers when they unilaterally removed the Plaintiff as a Vice President of Ohaneze Ndigbo FCT in direct contravention of Article 16 of the Constitution of the Ohaneze Ndigbo Federal Capital Territory which is the governing law of the Organization”

In support of the reliefs sought by the Plaintiff, a 22 paragraph affidavit dated 20th May, 2019 was deposed to by the Plaintiff personally.

The facts that I consider to be germane to this summons, in summary, are that the Plaintiff is currently the Vice President of the Ohanaeze Ndigbo having been duly elected in the August, 2015 for a 4 year tenure, ending in August 2019. He disclosed that he is a member of the Ebonyi State Community Association in the Federal Capital Territory. The Association is an umbrella organization for all the indigenes of Ebonyi State resident in the FCT.

Plaintiff recounts that during the November 2018 Ebonyi State Community meeting which was headed by the 1st Defendant as President of Ebonyi State Community, the 1st Defendant unilaterally took the decision to replace the Plaintiff from his official status as the Vice President of Ohanaeze Ndigbo Abuja, FCT.

Plaintiff asserts that his replacement is in contravention of Article 16 of the constitution of the Ohanaeze Ndigbo, FCT. He recounted that he was then replaced with the 3rd Defendant following a letter written by the 4th Defendant, the Public Relations Officer of the Ohanaeze Ndigbo, Abuja FCT. Applicant further disclosed that he was replaced with the 3rd Defendant based on a letter signed by the 4th Defendant.

Applicant maintains that the due process for his replacement was not followed as he was not availed with the opportunity to be heard on the reason behind his replacement with the 3rd Defendant. It is further recounted by the 1st Defendant that he was served with Exhibit B dated 15th

July, 2017 titled “Letter of Summons” wherein the 1st Defendant requested that the Plaintiff is to attend the 1st Defendant in order to render an account of his performance as Vice President in the past years. Applicant also disclosed that the 1st Defendant set up “a witch hunting committee” to probe the activities of the Ebonyi State Community representatives in Ohaneze Executive Committee. Applicant recounted that the Committee “fizzled out” without any sitting.

In reaction to the originating process, the Defendants filed a 20 paragraph counter affidavit dated 14th August, 2019 deposed to by the 1st Defendant, the President General of the Ebonyi State Community in Abuja. The facts that are pertinent to his application, briefly stated are that the 1st Defendant was nominated as a member of the Executive Committee of Ebonyi Community in Abuja to represent the interest of Ebonyi State in the Ohaneze Ndigbo having regard to Article 6 of the Constitution of Ohaneze Ndigbo, Abuja.

It is further disclosed that the power of removal of members from the Executive Committee of Ohaneze Ndigbo, FCT resides with the Ohaneze Ndigbo, FCT and none other. 1st Defendant further disclosed that the Ebonyi Community in Abuja nominated the Plaintiff into the Ohaneze Ndigbo, FCT, consequently the Ohaneze Ndigbo, FCT, in the same manner removed the Plaintiff and others vide a letter dated 21st November, 2018 as a disciplinary measure for their absence from meeting beyond the

constitutionally allowed period without reasonable excuse. The letter directing the removal of the Plaintiff and others by the Ohaneze Ndigbo, FCT is attached as Exhibit 1.

By Exhibit 1, the Ohaneze Ndigbo requested the Defendant to replace the removed officers which includes the Plaintiff, accordingly the 3rd Defendant was nominated to replace the Plaintiff on the Executive Committee of the Ohaneze Ndigbo, FCT. 1st Defendant further asserts that in so far as the 1st – 3rd Defendants are not privy to the decision over the removal of the Plaintiff by the Ohaneze Ndigbo, FCT, Defendants are unfamiliar with the procedure taken for the removal of the 1st Defendant and others.

Besides, the 1st Defendant contends that he was not instrumental to nor wielded any influence on the processes that culminated in the removal of the Plaintiff from the Ohaneze Ndigbo, FCT. 1st Defendant also asserts that notwithstanding the institution of this suit, the Plaintiff still parades himself as the Acting President of the Ohaneze Ndigbo, FCT. He therefore contends that the Plaintiff has not suffered any losses or damage as a consequence of his removal from office as a member of the Executive Committee of Ohaneze Ndigbo, FCT.

Finally, the 1st Defendant posits that this suit cannot be rightly determined in the manner it has been instituted as the Plaintiff's grievance is predicated on the conduct of the Ohaneze Ndigbo and not that of the

Defendants. A further affidavit was filed by the Plaintiff dated 19th November, 2019 in response to the counterclaim.

The facts in summary that are relevant to this application are that, Plaintiff referred to a letter dated 6th July, 2018 written by the Chairman of the Committee, Ven Obioma Onwuzumba and its secretary Rev. Fr. Barrister Paul Eze, Exhibit 'A' wherein he was addressed as the President Acting, Executive 1. The Plaintiff further contends that the letter of 21st November, 2018 directing his removal as the Ohaneze Ndigbo is a sham as it did not emanate from the Ohaneze Ndigbo besides, he asserts that the letter was written by the 4th Defendant who does not have the power to write such a letter i.e., Exhibits C and D.

It is also noted by the Plaintiff that the Defendant in their counter affidavit contends that they cannot challenge the validity or otherwise for his removal from office. It is also recounted that the 3rd Defendant, has, whilst, this suit is pending been parading himself as the Vice President of the Ihaneze Ndigbo, FCT in a goodwill message of the 22nd October, 2019.

The Plaintiff maintains that the matter presented to this Court for determination is the construction of Article 16 of the Constitution of Ohanaeze Ndigbo FCT vis-à-vis the illegality of his removal as Deputy President.

Both Counsel filed and exchanged written addresses whilst a reply on points of law, Okonta Ndubuisi Esq., Counsel for the Plaintiff in his

written address dated the 14th August, 2019 formulated two issues for determination. They are as follows;

1. Whether the originating summons is a proper mode of commencing this action, facts deposed to in the affidavit in support and counter affidavit considered.
2. Whether the Plaintiff has proved his case on a balance of evidence.

Chimezie Okpoko Esq., Counsel for the Plaintiff in the Defendants' written address formulated a lone issue for determination.

Whether the Defendants acted ultra vires their powers as provided by Article 16 of the Constitution of Ohaneze Ndigbo, FCT when they unilaterally removed the Plaintiff as the Vice President of Ohaneze Ndigbo, FCT without recourse to the aforementioned article of the Constitution.

I am inclined to consider the submission of Defendant's Counsel first issue for determination as it borders on a threshold point which is whether the originating summons is a proper mode of commencing this suit.

Learned Counsel for the Defendant has submitted that the rules of Court are meant to be obeyed and commended this Court to the decision in **UKAGWU v. P.H. (2008) 9 N.W.L.R. (PART 1093) page 592 and KALU v. ODILI & ORS. (1992) L.P.E.L.R. 1653 S.C.** Counsel then went on to submit that by virtue of Order 2 Rule 2 of the High Court of the FCT, Civil

Procedure Rules; proceedings may commence by originating summons where:

- a) The main issue is likely to be one of construction -
 - i) Of a written law or an instrument made under any written law;
or
 - ii) Of any deed, will, contract or other document or some other question of law or
- b) There is unlikely to be a substantial dispute of law

Learned Counsel for the Defendant has submitted that the Plaintiff's originating summons discloses a high probability of conflict as the reliefs does not end on this Court's interpretation of the Constitution but raises the issue of defamation.

Okonta Ndubuisi Esq., has further submitted that the issue of whether the Plaintiff was given fair hearing is an issue to be resolved by evidence. Besides, Counsel reasons that the Plaintiff's claim as it relates to defamation cannot be entertained by way of an originating summons as in the instant case. This being the case Okonta Ndubuisi Esq. has urged this Court to order that pleadings be filed in this suit. He then commended this Court to the decision in **FAMFA OIL LTD. v. A. G. FEDERATION & ANOR. (2003) L.P.E.L.R. 1239 S.C.** there, the Supreme Court held thus:

"The very nature of an originating summons is to make things simple for hearing. It is available to any person claiming interest under a deed,

will or other written instrument whereby he will apply by originating summons for the determination of any question of construction arising under the instrument for declaration of his interest”

Similarly, in the same vein, the decision is equally quite apt in the instant scenario, the Court held that:

“It is our considered view that originating summons should only be applicable in such circumstances on where there is no dispute on question of facts or the likelihood of such dispute. Where for instance, the issue to determine short questions of construction and nor matter of such controversy that the justice of the case would demand the setting of pleadings, the originating summons could be applicable”

I have considered the submissions of the Defendant’s Counsel particularly in the light of the Apex Court decisions. Ordinarily, I would have ordered pleadings to be filed, where the conflicts in the affidavit evidence is so substantial that it would be expedient to so direct. However, upon examination of the originating process, I am unable to identify material conflicts. Admittedly, a case of defamation would require filing of pleadings where issues are joined between parties on whether the offending statement or remark is defamatory or otherwise or where issues are joined on the falsehood of the offending words.

In this particular case, I am unable to identify a case of defamation even though the Plaintiff has hinged his relief on damages arising from

defamation. It is settled that a salient ingredient for the establishment of the tort of defamation is that the words must be expressly pleaded.

In the instant case, it is not alleged that any of the Defendants made any defamatory remarks against Plaintiff neither has he contended that the remarks (which is not pleaded) has impugned his reputation or lowered his reputation in the eyes of a reasonable man. The claim for defamation in this suit reared its head for the first time in the reliefs sought by the Plaintiff. There are no facts disclosed in the Plaintiff's pleadings bordering on defamation.

In the circumstance, there is no competent action for the tort of defamation against the Defendants. The Plaintiff's relief for general damage for defamation is floating in the air and cannot stand in the absence of facts and particulars of defamation. This being the case there is no merit in the Defendants' submission that this suit ought to be converted into pleadings when there is no case of defamation before the Court. You cannot build something on nothing and expect it to stand.

Turning to the argument of the Defendants' Counsel that issues are joined on the denial of the Plaintiff's right to fair hearing, again, I am disinclined to order pleadings on this account as it is the Plaintiff who is alleging denial to fair hearing by the Committee. The Defendants Defence is that the removal of the Plaintiff was at the instance of Ohanaeze Ndigbo of the FCT and that the Defendant had no hand in the decision. This being

the state of the evidence on this point, I consider it needless to direct the filing of pleadings. The position taken by parties do not require trial for this Court to determine the lone issue for determination.

In sum, I am of the view and will so hold that this suit is one that can be sufficiently entertained by way of an originating summons. The Defendant's first issue for determination is answered in the affirmative.

On the Defendants' second issue for determination, that is, whether the Plaintiff has proved his case against the Defendant, the Defendants' Counsel has submitted that the evidence of the Plaintiff is insufficient to discharge the onus of proof to establish its case. Counsel noted that the Plaintiff cause of action is his alleged removal by the Ohanaeze Ndigbo, Abuja that removed him from office, the letter of his removal was written by the 4th Defendant. As rightly pointed out, the 1st – 3rd Defendants have not been shown to be the members of the Executive Committee of the Ohaneze Ndigbo. No allegation has been made against the 1st – 3rd Defendants as to the role played by them in effecting his removal. It is the Ohaneze Ndigbo as a body that a cause of action seems to have accrued.

I am in agreement with the Defendants' Counsel that the proper person to be sued against the removal of the Plaintiff is the Ohaneze Ndigbo or members of the Executive Committee of the Ohaneze Ndigbo acting for and on behalf of the organization and not the Defendants in their

private capacity. I find it necessary to recapitulate the Ohaneze Ndigbo's letter of the 21st November, 2018 which states thus:

We write to inform you of the decisions of the Central Body of the Ohaneze Ndigbo FCT Chapter which by the powers bestowed on it by Article 8(2)(b), 9(2)(a) and (c) of the Ohaneze Ndigbo FCT Chapter Bye Laws on the highest decision making organ of the Ohaneze Ndigbo FCT, took a decision on the above subject at our last meeting held on Friday 16th November, 2018 at Tamara Gardens.

having violated the provisions of the Articles by their continuous absence from meetings for more than three times without reasonable excuses are deemed to have abdicated their positions and hence forth stand removed from the Executive Committee” (Emphases are mine.)

It is the evidence of the Defendants that they acted pursuant to the above instruction. Much as the Plaintiff contends in his further affidavit, that the letter of his removal above is a sham and did not emanate from the Ohaneze Ndigbo, I am of the view that the onus lies on the Plaintiff to lead credible, plausible and cogent evidence in proof of his assertion. This can only be done by calling on the Executive Council members to give evidence that the letter of his removal does not emanate from the Ohaneze Ndigbo, Plaintiff's assertion is no more than a traverse to the assertions of the Defendants.

It settled that the burden of proof is on a party who is asserting a fact hence the burden of first proving a fact lies on the Plaintiff who contends that he was removed by the Ebonyi Community. The burden then shifted to the Defendant to establish that they were not responsible for the Plaintiff's removal. In the instant case Exhibit 1, letter of the 21st November, 2018 was exhibited to show that the removal of the Plaintiff was by the Ohaneze Ndigbo FCT Chapter.

It follows that the burden of proof shifted back to Plaintiff to show through cogent evidence that the document is a sham with no identifiable address or the real letter head. The appropriate person as I see it who can credibly ascertain the authenticity of Exhibit 1 is the secretary or member of the Executive Community of the Ohaneze Ndigbo and not the Plaintiff or any person who took part in the decision of the Central Body of the Ohaneze.

Besides, the Plaintiff having alleged that his removal was in violation of the Ohaneze Ndigbo Constitution ought to have sued the Executive Members of the Ohaneze Ndigbo who constitute the administrative body of the Ohaneze Ndigbo FCT Chapter and not Defendants herein. The question for determination it must be recounted is whether the Defendants acted ultra vires of their powers when they unilaterally removed the Vice President of the Ohaneze Ndigbo FCT. It is noted that the 1st – 3rd Defendants have been described as President, Secretary and member of

the Ebonyi State Community it is wondered why they have been sued for an act which is said to be in violation of Article 16 of the Ohaneze Ndigbo of the FCT. Only persons who have subscribed as members of the Ohaneze Ndigbo can be sued or can sue in respect on acts pertaining to the violation of the Ohaneze Constitution, the competent parties going by the facts of this case is the Executive committee of the Ohaneze Ndigbo.

Much as Exhibit 1 is shown to have been signed by the 3rd Defendant he cannot be sued in his personal capacity except he is sued for and on behalf of the Ohaneze Ndigbo of the FCT.

In sum, the Defendants are incompetent parties before this Court. It has long been settled that for a Court to have jurisdiction, the parties and the subject matter of the suit must be competent before the Court and the Court must be presided over by a Court of competent jurisdiction. See the case of **MADUOKOLU v. NKEMDILIM**. In the instant case the Defendants are not competent parties before this Court hence this suit is incompetent.

Finally, the Defendants' Counsel has rightly submitted that the case of defamation is not properly before the Court. He commended this Court to the decision in **NIGERIAN WEST MINISTER DREDGING AND MARINE LTD. v. SMOOT AND ANOR. (2011) L.P.E.L.R. – 4619 CA**. The Court of Appeal held that:

“To succeed in an action for defamation, the Plaintiff has the onus to prove that the publication complained of is in writing, that it is false that it is

defamatory, that it was published to third parties and it is the Defendants that published the defamatory words”

Applying the foregoing consideration to the case put forward by the Plaintiff, the claim in damages for defamation must fail in the absence of the necessary ingredients to sustain a case of defamation. No fact was pleaded by the Plaintiff in support of the salient ingredient enunciated in the **Nigerian West Minister’s case supra**.

In the light of the foregoing considerations Plaintiff’s case fails as it is lacking in merit.

It is accordingly dismissed.

O.O. GOODLUCK
Hon. Judge.
28th May, 2020

APPEARANCE:

Plaintiff is in Court.

4th Defendant is in Court

C. C. Okpoko Esq.: For the Plaintiff

1st – 3rd Defendants are unrepresented.