IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 17TH DAY OF JUNE 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14 APO - ABUJA

SUIT NO. CV/2773/16

BETWEEN:

1. PROFESSOR EMEKA OKOLI
2. RAYBOURNE AND DEAN CONSULTING LTD. } CLAIMANTS

AND

1. SHELL PETROLEUM DEV. CO. NIG. LTD.
2. TEAM RELOCATIONS LIMITED
3. METRICA INC.
4. METRICA RELOCATION PLUS INC.
5. METRICA LOGISTIC NIG. LTD. } DEFENDANTS

JUDGMENT

By *Writ of Summons and Statement of Claim* filed in this Court on 18/10/2016, the Claimants claimed against the Defendants the reliefs set out as follows:

1. ***A declaration of this Honourable Court that the taking over of the Plaintiffs' business, staff, trade secrets is illegal and a breach of the Operating Agreement between the Plaintiffs and the Defendant.***

2. ***An Order of this Honourable Court mandating the Defendants either jointly or severally to refund the Thirty Eight Thousand US Dollars ($38,000.00) owed the Plaintiffs.***

3. ***An Order of this Honourable Court granting the sum of One Hundred and Fifty Million Dollars ($150,000,000.00) as special damages.***

4. ***An Order of this Honourable Court granting compensatory sum of Ten Million Dollars ($10,000,000.00) as general damages against the Defendants jointly and severally in favour of the Plaintiffs.***

The Defendants, except the 2nd Defendant, joined issues with the Claimants and contested their claim.

The 1st Defendant filed her Statement of Defence on 19/05/2017; whilst the 3rd – 5th Defendants filed their Joint Statement of Defence on 18/04/2018.

At the plenary trial, the 1st Claimant testified in person and on behalf of the 2nd Claimant. He tendered in evidence, a total of thirteen (13) sets of documents as exhibits to further support the Claimants' case. He was subjected to cross-examination by learned counsel for the respective 1st, 3rd – 5th Defendants.

The 1st Defendant in turn fielded a sole witness by name **Mrs. Onyekachi Igwe,** staff of the 1st Defendant. She tendered no documents in evidence and was duly cross-examined by the learned senior counsel for the 3rd – 5th Defendants and the Claimants' learned counsel.

The 3rd – 5th Defendants also called a sole witness by name **Nicholas Erigo,** an Immigration Consultant. He tendered in evidence a total of six (6) documents to

support the Defence of the 3rd – 5th Defendants. He was equally subjected to cross-examination by learned senior counsel for the 3rd – 5th Defendants and the Claimants' learned counsel.

Upon conclusion of plenary trial, parties filed and exchanged their written final addresses in the manner prescribed by the **Rules** of this Court.

The 1st Defendant filed her final address on 13/11/2019 wherein a sole issue is formulated for determination in this suit, namely:

> ***Did the Plaintiffs from their pleadings, evidence led and Exhibits tendered prove any of the reliefs against the 1st Defendant?***

The 3rd – 5th Defendants filed their final address on 20/11/2019, wherein they formulated three issues as having arisen for determination in this suit, namely:

1. ***Whether the 2nd Claimant who is not a party to Exhibit C7 between the 2nd Claimant and the 4th***

Defendant can sue and maintain an action thereunder?

2. ***Whether the 2nd Claimant can institute legal action in its name without the authority of the board of directors or members in general meeting in accordance with section 63(5)(b) of the Companies and Allied Matters Act, Cap C20, LFN, 2004?***

3. ***Whether by virtue of Exhibits D1, D2, D3, D4, D5 and D6, the principle of estoppel res judicata has not debarred the Claimants from re-litigating the same issues already adjudicated and decided upon by the United States District Court for the Western District of Texas and the United States Court of Appeals for the Fifth Circuit?***

4. ***Whether the Claimants have proved their case to warrant this Honourable Court granting the reliefs prayed for in the Statement of Claim?***

5. ***Whether by the non-exclusive nature of Exhibit C7 between the 2nd Claimant and the 4th Defendant, the***

Defendants must refer all relocation services to the 2nd Claimant?

The Claimants in turn filed their final address on 10/01/2020, wherein **James Odiba, Esq.**, of learned counsel distilled four issues as having arisen for determination in this suit, namely:

1. ***Whether the Claimants' suit is caught by the principle of res judicata?***

2. ***Whether the 1st Defendant was privy to the contract between the Claimants and the 3rd and 4th Defendants, and the Claimant did disclose a cause of action against the 1st Defendant?***

3. ***Whether the suit as presently constituted is maintainable?***

4. ***Whether from the state of the pleadings and evidence adduced, the Claimants are not entitled to the reliefs sought against the Defendants?***

The 1st Defendant filed Reply on points of law to the Claimants' final address on 30/01/2020; whilst the 3rd – 5th Defendants filed their Reply on points on law to the Claimants' final address on 22/01/2020.

Upon a proper appreciation of the totality of the pleadings of the respective parties, the evidence adduced at the trial and the totality of the circumstances of this case, it is my considered view that this suit must be decided on two broad issues, without prejudice to the issues severally formulated by learned counsel to the respective parties, namely:

1. ***Whether or not, by the doctrine of estoppel per res judicatam raised by the 3rd – 5th Defendants in their defence, the Claimants are not estopped from commencing this action?***

2. ***If issue (1) is resolved in the negative, whether or not the Claimants have established, by credible***

evidence, their entitlement to the reliefs claimed in this action against each of the Defendants in this suit?

In proceeding to determine these issues, I must state that I had carefully considered and taken due benefits of the totality of arguments canvassed by the respective learned counsel in their written final submissions; to which I shall endeavour to make specific reference as I consider needful in the course of this judgment.

TREATMENT OF ISSUES

ISSUE ONE:

Is the doctrine of *estoppel per rem judicatam* applicable to the circumstances of this case; if so, are the Claimants' therefore not barred from commencing this action?

By my understanding of the case of the Claimants, this suit is predicated on the document referred to as the

PREFERRED SUPPLIER AGREEMENT FOR THE PROVISION OF INTERNATIONAL DESTINATION SERVICES IN NIGERIA[1], tendered in evidence in the course of trial by the 1st Claimant as **Exhibit C7**. According to the testimony of the 1st Claimant, the agreement was executed between the 4th Defendant, a company based in Delaware, USA and an affiliate of the 3rd Defendant; with the 2nd Claimant, a limited liability company domiciled in Nigeria.

The case of the Claimants is that sometime in October, 2008, one **Agnes Soos**, employee of the 3rd Defendant, contacted the 1st Claimant, seeking a business arrangement whereby the 2nd Claimant would act as an "*In-Country Partner Consultant*" to the 3rd Defendant in order to fulfil the 3rd Defendant's contractual obligations with the 2nd Defendant, a British company and the 1st Defendant, in Nigeria. Services required from the 2nd Claimant would include

[1] Hereinafter referred to as **PSA**

and involve delivering *"a wide range of logistics and relocation services, including housing support, lease record responsibilities, travel support, household goods shipping and customs clearance, communication support, hiring of staff and payroll, translation services, conference support, office support, and administrative support."*[2] It was on the basis of this that the **PSA, Exhibit C7**, was proposed, prepared and executed between the 4th Defendant and the 2nd Claimant, effective from 16 November, 2009, for purposes of the 3rd Defendant's fulfilment of her business obligations with the 2nd Defendant; and whereby it was agreed that the 2nd Claimant shall provide the 4th Defendant and her corporate clients with a range of international destination services, on the basis of the terms and conditions set out in the **PSA, Exhibit C7**.

According to the 1st Claimant, the **PSA** was in operation for some years, during which the Claimants

[2] **Exhibit D3** @ page 2 thereof

invested heavily to provide business infrastructure and systems in four Nigerian cities of Abuja, Port-Harcourt, Lagos and Warri; and purchased several automobiles, office equipment and technological systems.

The 1st Claimant also testified that as a result of the superlative services provided by the Claimants, the 2nd, 3rd and 4th Defendants were able to begin to negotiate for other contracts in Nigeria; and further alleged that before the negotiations came to fruition, the 2nd, 3rd and 4th Defendants began scheming secretly to suddenly get rid of the Claimants by arbitrarily repudiating the partnership agreement, cut off the Claimants from having access to the email portals which were the official channels of communication between the parties; that as a prelude to the planned arbitrary takeover of the Claimants' businesses in Nigeria, the 1st – 4th Defendants colluded for the officials of the 2nd – 4th Defendants to visit

Nigeria to inspect and assess the Claimants' local structures and business operations in the four focal cities mentioned earlier on; that it was during this visit to Nigeria that the Defendants arranged the registration of the 5th Defendant in order to take over the Claimants' businesses, including their staff, operating structures and systems, trade secrets, formulas, patterns, devices, blueprints, confidential information on the "co-location" system, business list, etc.[3]

The 1st Claimant testified further that he received email message from **Dr. Bruce Dunson**[4] on 18 December, 2012[5] that the 3rd and 4th Defendants have decided to terminate the **PSA** by 31 December, 2012, which amounted to notice of less than 30 days as agreed to under the **PSA**[6]; and that by emails of

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[3] Paragraphs 33 – 40 of the 1st Claimant's Statement on Oath of 18 October, 2016.

[4] CEO of the 3rd and 4th Defendants

[5] Tendered in evidence as **Exhibit C9**

[6] By **Clause 8.1** of the **PFA, Exhibit C7,** either party could terminate the agreement upon providing **30 days**' notice to the other party

25 December, 2012 and 29 December, 2012[7], he drew attention of **Dr. Dunson** to the fact that he was not given the required 30 days notice to terminate the **PSA**; and expressed amazement at the decision to abruptly terminate the **PSA**; and that thereafter **Dr. Dunson**, representing the 4th Defendant, sent another email on 31 December, 2012[8] to give the Claimants further notification of the termination of the **PSA** effective from 18 January, 2013; and by another email of 2 January, 2013[9], the 4th Defendant, through **Dr. Dunson**, further communicated with the Claimants that *"To avoid any confusion surrounding the master agreement (**PSA**) we have with your firm, we are giving you 30 days notice that our master agreement (**PSA**) will effectively terminate February 4, 2013."*

The 1st Defendant further testified that as a fall out of the termination of the **PSA**, that the Defendants still

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[7] Tendered in evidence as **Exhibit C10 & C10A**
[8] Still **Exhibit C10A**
[9] Tendered by the 1st Claimant as **Exhibit C11**

owed the Claimants the sum of **$38,000.00** arising from work done on behalf of the 4th Defendant up to 31 December, 2012, for which he tendered purported related invoices in evidence;[10] which money the Defendants refused to pay.

The 1st Claimant further alleged that contrary to the terms of the **PSA,**[11] the Defendants resorted to enticing all of the Claimants' employees to quit their job to join their newly formed 5th Defendant, thereby making it impossible for the Claimants to continue in business; and that after the collapse of the Claimants' business, the 5th Defendant also arbitrarily took over the Claimants' novel "co-location" structures and continued to use it as if it was her concept.[12]

Now, apart from the respective Defendant's denial of the totality of the case of the Claimant, particularly

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[10] **Exhibits C12, C12A-C12C**

[11] **Clause 3.1(c)** of the **PSA, Exhibit C7** provides that during the agreement and 12 months after date of termination, the 4th Defendant shall not recruit an existing employee or subcontractor of the 2nd Claimant or entice any pre-existing clients of the 4th Defendant to cease using her services.

[12] **Paragraphs 47 – 50** of the 1st Claimant's Statement on Oath *supra*.

with respect to the contention that the 1st, 3rd and 5th Defendants were not parties of the **PSA**, the 3rd – 5th Defendants had raised a very salient issue of law[13] that the Claimants, being privies in civil suits before the United States District Court for Western District of Texas San Antonio Division with the same subject matter as the one in the present suit, which US Court's decision dismissal of the Claimants' claim was further upheld by the US Court of Appeals for the Fifth Circuit and the US Supreme Court in an action between the 2nd Claimant and the 2nd – 4th Defendants, are thereby estopped from re-litigating this same issue in the present suit as same is caught by *estoppel res judicata* and is therefore an abuse of judicial process.

In support of this defence, the 3rd – 5th Defendant's witness, **Nicholas Erigo** tendered in evidence

[13] Paragraph 19 of their joint Statement of Defence

judgments under reference as constituting *res judicata* to the present suit.[14]

I had considered the totality of the arguments canvassed by learned counsel for the 3rd – 5th Defendants on this point; together with the Claimants' learned counsel's arguments in opposition, in which the correct legal principles have been adequately canvassed.

As a starting point, it has been held, and rightly so that an in-depth comparison of the doctrines of *res judicata* and abuse of Court process reveals that both share similar pre-conditions for their applicability in terms of parties, subject matter and issues. See *Momoh Vs. Adedoyin*.[15] That being so, it is apparent that a finding that the present suit is caught by the doctrine of *estoppel per rem judicatam* automatically

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[14] **Exhibits D1, D2** and **D3**

[15] [2017] LPELR-43124(CA).

connotes or implies that the suit constitutes abuse of the process of this Court.

It is trite that as a general rule, once one or more of any issues have been distinctly raised in a cause of action and determined between the same parties or their privies in a Court of competent jurisdiction, neither party, his privies, agents, servants, is allowed to re-open or re-litigate any such issues all over again. This is so because where a cause of action or an issue has been determined in a previous suit between the same parties or their privies, they are, as a matter of public policy and in the interest of the common good that there should be an end to litigation, stopped from bringing a fresh action in any Court in the same cause or issue already pronounced upon by a Court of competent jurisdiction in the

previous action. See *Ajiboye Vs. Ishola*;[16] *Agbaje Vs. INEC*.[17]

As learned counsel have also correctly captured, before the plea of *res judicata* can succeed, the propounder must satisfy the Court of the presence of the following features:

1. That the parties in the previous and present action are the same;

2. That the subject matter in the two actions are the same;

3. That the issues in the two matters are the same and

4. That the decision in the previous action must be final and by a Court of competent jurisdiction.

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[16] [2006] 13 NWLR (Pt. 998) 628 @ 643-645(CA).
[17] [2016] 4 NWLR (Pt. 1501) 151 @ 167(SC).

See _Cardoso Vs. Daniel_;[18] _Abiola & Sons Co. Ltd. Vs. 7up-Bottling Co. Ltd._;[19] _Esuwoye Vs. Bosere_.[20]

I had proceeded to apply the parametres set out in the foregoing to the case at hand.

1. ON PARTIES:

The previous judgment under consideration, as contained in **Exhibit D3**, is a judgment of the United States Court of Appeals for the Fifth Circuit, Appeal No. 16-50888, dated March 22, 2017, between _Raybourne and Dean Consulting Limited (Plaintiff-Appellant) Vs. Metrica Incorporated; Metrica Relocations Plus, Incorporated (Defendants-Appellees)._ The judgment is with respect to appeal from the United States District Court for the Western District of Texas.

[18] [1986] 2 NWLR (Pt. 20) 1.
[19] [2012] 15 NWLR (Pt. 1322) 184
[20] [2017] 1 NWLR (Pt. 1546) 256 @ 290-291

Now, it is considered appropriate at this stage to determine at first, the issue as to the competent proper parties to this suit, as raised by learned counsel for the respective Defendants. Their defence, basically, is that the agreement, **Exhibit C7**, which is the basis of the present action, was executed strictly between the 2nd Defendant and the 4th Defendant only; and as such, cannot be enforced by the 1st Claimant against the 1st, 2nd, 3rd and 5th Defendants, who were not parties to the agreement.

In determining this issue, I make reference, at first to the testimony of the 1st Defendant under cross-examination by learned counsel for the respective Defendants in this suit. Under cross-examination by the 1st Defendant's learned senior counsel, the 1st Claimant had this much to say with respect to the issue at hand:

> ***"It is correct that my case is based on Exhibit C7. The agreement is between Raybourne and Dean and Metrica Inc. (that is the 2nd Claimant and the 4th Defendant). It is correct that Shell, the 1st Defendant, is not mentioned in the agreement. It is correct that the 1st Defendant did not pay money directly to me for services I rendered. My grouse is that the agreement, Exhibit C7, was wrongly terminated… It is correct that all the damages I claim is based on services I rendered under Exhibit C7."***

Also answering questions under cross-examination by learned counsel for the 3rd – 5th Defendants, the 1st Claimant further testified as follows:

> ***"It is correct that Exhibit C7 is between the 2nd Claimant and the 4th Defendant. It is correct that the 1st Claimant is not a party to the agreement. I agree that the 1st Claimant has no claim against the Defendants."***

It is beyond conjecture, as the 1st Defendant indeed conceded, that the Claimants claim in the instant action, is founded on and centred around the **PSA, Exhibit C7**. The agreement was executed strictly between the 2nd Claimant and the 4th Defendant. The Claimant's main claim, which relates an allegation of breach of one of the agreed terms of the **PSA**, could only have been enforceable against the 4th Defendant, with whom the 2nd Claimant executed the same. I am therefore in perfect agreement with the arguments elaborately canvassed by learned counsel for the respective 1st, 3rd – 5th Defendants that the doctrine of privity of contract, are squarely applicable in the circumstances of this case. The purport of the doctrine was explained in simple terms in *Aondo Vs. Benue Links (Nig.) Ltd*.,[21] where it was held as follows:

[21] [2019] LPELR-39655(CA)

"By the doctrine of privity of contract, only a party to a contract can sue or be sued on it. It cannot be enforced by or against a non - party even if it is made for his benefit and purports to give him the right to sue or make him liable upon it."

This point was again clearly made by the Supreme Court in *Basinco Motors Ltd. Vs. Woemann Line & Anor.*,[22] cited by the 1st Defendant's learned senior counsel, where it was held elaborately as follows:

"The doctrine of privity of contract portrays that as a general rule, a contract affects only parties thereto and cannot be enforced by or against a person who is not a party to it. In other words, the doctrine stipulates that only parties to a contract can sue and be sued on the contract even if the contract is made for his benefit and purports to give him the rights to sue or make him liable upon it. Moreover, the fact that a person who is a stranger to the consideration of a contract stands in such

[22] [2009] 13 NWLR (Pt. 1157) 149 @ 180

near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue or be sued upon the contract."

Applying these authorities to the instant case, it becomes easy to find, at first that the 1st Claimant, who is not a party to the contract, has no locus to be joined as co-Claimant in the action. It is immaterial that the 1st Claimant is the 2nd Claimant's *alter ego* and that evidence on record revealed that he actively participated in the performance of the contract. All actions he took with respect to the contract were done on behalf of the 2nd Claimant, a limited liability company, who understandably would usually act through her human organs and agents.

In my firm opinion, the best the 1st Claimant could offer in the instant case, rather than being a party thereto, is give evidence at the instance of the 2nd Claimant as he already did. The 1st Claimant had no

individual right of action against any of the Defendants in this suit, since he has not made out any clear cut grievances against any of them in his personal capacity. I so hold.

In the same token I must further hold that it was improper to have joined the 1st, 2nd, 3rd and 5th Defendants to this suit, the 1st Claimant having conceded that the **PSA**, which is the basis of the instant action, was executed strictly between the 2nd Claimant and the 4th Defendant. As such, not being parties to the agreement; and irrespective of the benefits they may have potentially derived from the **PSA;** and regardless of whatever close links they could have to the 4th Defendant, they could not have been validly sued on the **PSA**. I so hold.

Therefore, upon the application of the doctrine of privity of contract to the present suit, it becomes

apparent that the only proper parties thereto are the 2nd Claimant and the 4th Defendant.

On that note, I hereby strike out the suit as against the 1st, 2nd, 3rd and 5th Defendants respectively. In the same token, the name of **Professor Emeka Okoli** is hereby struck out in his capacity as the 1st Claimant in this suit

I had proceeded to examine **Exhibit D3**, one of the judgments relied upon by the 3rd – 5th Defendants to ground the defence of *estoppel per rem judicatam*. The action was between **Raybourne and Dean Consulting Limited** (same as the 2nd Claimant in the present suit); and **Metrica Incorporated and Metrica Relocations Plus** (the 3rd and 4th Defendants in the present suit). Without any much ado, I must hold that the parties who litigated in the previous suit relied upon by the 3rd – 5th Defendants are in substance the same as the parties in the present suit. The arguments

of the Claimants' learned counsel that the parties in the two actions are not the same cannot, on the basis of the doctrine of privity of contract, be tenable in the circumstances. It has been held that the deliberate inclusion of nominal or docile parties whose presence adds no value to the determination of the real controversy in dispute; or the joining of parties who have no *locus*, as the 1st Claimant in this suit, would not defeat the applicability of the plea of *estoppel per rem judicatam*. I so hold. The authority of *Abubakar Vs. Bebeji Oil and Allied Products Ltd*.[23] cited by learned counsel for the 3rd – 5th Defendants is apposite here. See also *Udo Vs. Okupa*.[24]

2. ON ISSUE AND SUBJECT MATTER:

I have again examined the judgment relied upon by the 3rd – 5th Defendants for the defence of plea of *res*

[23] [2007] 18 NWLR (Pt. 1066) 319 @ 373-374
[24] [1991] 5 NWLR (Pt. 191) 365 at 373

judicata.[25] I note, with interest, that the summary of the case of the Claimant in that judgment, elaborately reproduced by learned counsel for the 3rd – 5th Defendants in his final address[26] fitly captures the essence of the pleadings filed by the Claimants in the present case. In other words, the case made out by **Raybourne and Dean** in that case, as reflected in the judgment, is exactly the same case the Claimant has made out in the present suit. The judgment further reflects that parties in that suit joined issues on the Claimant's claim for breach of contract, that is, the **PSA**, which is also the subject matter of the foreign suit. The Claimant in that suit equally claimed a refund of the sum of **$38,000.00** from **Metrica Relocations Plus,** as was done in the present suit. I make reference to a portion of the judgment in which the claims of the Claimant and the issues in dispute were captured, as follows:

[25] **Exhibit D3**
[26] Pages 9 – 10 thereof

"On October 14, 2014, Raybourne filed suit in federal court against Metrica seeking "all damages allowable by law, including statutory, actual, compensatory and punitive damages, attorney's fees, costs and pre – and post – judgment interest." Raybourne's complaint identified twenty-one causes of action and a jury-trial demand. The complaint listed nine allegations of contractual breach, all under the same contract; breach of duty of good faith and fair dealing; promissory estoppel; unjust enrichment; breach of fiduciary duty; unfair competition by misappropriation; common law fraud; tortious interference with employment relations, prospective economic advantage, economic opportunity, and lawful business; theft under the Texas Theft Liability Act; and vicarious liability."[27]

By a careful examination of the cause of action and the reliefs claimed by the Claimants in the present

[27] Pages 4-5 **of Exhibit D3**

action; it is apparent that they are clearly encapsulated and subsumed in **Raybourne's** twenty-one causes of action, as revealed in the portion of the judgment reproduced in the foregoing. I am therefore satisfied that the issues and subject matter in the present case are largely the same and circumscribed in the foreign action filed by the 2nd Claimant. I so hold.

3. <u>COURT OF COMPETENT JURISDICTION</u>:

As I had noted earlier on, the judgment relied upon by the 3rd – 5th Defendants in support of their contention of their plea of *estoppel per rem judicatam* is that of the United States Court of Appeals for the Fifth Circuit, Appeal No. 16-50888, dated March 22, 2017, with respect to appeal from the United States District Court for the Western District of Texas. The judgment was properly certified *vide* **Exhibit D6**. There is nothing on the face of the judgment to

suggest that it did not emanate from a Court of competent jurisdiction; neither did the Claimants deny filing the action at the material time in the said Court of the United States of America; or that the judgment did not reflect the action filed.

I must hold that the contention of the Claimants' learned counsel that the Court that decided the appeal resulting in **Exhibit D3**, lacked jurisdiction, is clearly misplaced in that such a contention cannot be rightly made in this Court. It will amount to asking this Court to sit on appeal over the decision of the said Court of Appeals of the US. Even if it is apparent that the judgment was handed down without jurisdiction, the right course for **Raybourne** was to have approached that same Court of the Supreme Court in the US to canvass such arguments.

But then, I must agree with the submissions of learned counsel for the 3rd – 5th Defendants that it definitely

cannot lie in the Claimants' mouth to contend in this Court that the US Court lacked jurisdiction to entertain the action. **Raybourne** was the Claimant in the US District Court, the decision of which she appealed to the Court of Appeals, Texas. She did not canvass and could not have canvassed the issue of jurisdiction in those Courts, being the party that approached the Court in the first place.

Again, I must refer to the **PSA**, **Clause 9.1** thereof which provides as follows:

> ***"9.1 The construction and validity and performance of this Agreement shall be governed in all respects by the Laws of the United States of America and the parties hereby submit to the jurisdiction of the United States Courts."***

As has been shown, the Courts that decided the previous case were United States Courts to whose jurisdiction parties agreed to submit with respect to disputes arising from the **PSA**. As such, it could not

have been rightly contended by the Claimants' learned counsel that those Courts lacked jurisdiction to have entertained a suit in which **Raybourne** willingly and validly submitted to their jurisdiction. I so hold.

4. IS JUDGMENT FINAL AND ON THE MERIT?

A clear understanding of the judgment contained in **Exhibit D3** would reveal and establish, as correctly submitted by learned counsel for the 3rd – 5th Defendants, that it conclusively and completely decided to finality, the issues presented before the US Court of Appeal by **Raybourne and Dean**; which issues are on all fours with those in controversy between the focal parties in the instant case. In order to establish that the suit of **Raybourne and Dean** was determined on its merits and to finality, as revealed in the judgment of the Court of Appeals of the US, **Exhibit D3**, I reproduce a portion thereof as follows:

"In an incredibly detailed and thorough seventy-page Report and Recommendation applying Texas law, the magistrate judge recommended granting Metrica's amended motion for summary judgment and dismissing with prejudice every claim asserted by Raybourne. The report analyzed all twenty-one claims asserted by Raybourne, concluding after discussion of each that there was an absolute lack of any competent evidence or authority submitted by Raybourne to survive summary judgment, who in most instances did nothing more than present unsupported, conclusory statements reiterating its position as stated in the original complaint. Raybourne filed ninety-nine pages of objections to the report.

Then in March, 2016, upon conducting a de novo review, the district court adopted the Report and Recommendation in full…, granted Metrica's amended motion for summary judgment, dismissed Raybourne's claims in their entirety. ….

On appeal, Raybourne re-asserts eighteen of its original twenty-one complaints against Metrica, half of which involve allegations of breach of contract. In sum, Raybourne primarily alleges that Metrica violated the terms of the PSA by maliciously terminating the agreement, recruiting Raybourne's employees, and stealing its trade secrets and proprietary information, thereby destroying the company. After conducting a de novo review of the record, the applicable law, and each of Raybourne's arguments on appeal, we agree with the courts below that Raybourne has failed to show that there is a genuine issue of material fact with respect to any single claim it advances and thus the district court properly granted summary judgment in favour of Metrica.

For the aforementioned reasons, we affirm in full the district court's summary judgment in favour of the Defendants-Appellees."[28]

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[28] Pages 5-7 of **Exhibit D3**

By all means, judgment of a Court of Appeal, reviewing and affirming the decision of a lower Court with respect to issues and cause of action tabled before that Court, as **Raybourne** did, reflected in **Exhibit D3**; clearly constitutes *res judicata* with respect to the present suit in which the same issues and claims were canvassed.

I have also noted the contention of learned counsel for the Claimants that the judgment in context was akin to a non-suit. Nothing could be further from the clear contents of **Exhibit D3**, which demonstrated that evidence filed by **Raybourne** with respect to her twenty-one points of claim were exhaustively considered and that the suit was determined summarily on the basis that the evidence were insufficient to necessitate a full blown trial. There is no doubt, as correctly submitted by learned counsel for the 3rd – 5th Defendants, that the suit decided on the

basis of the Rules of Court of the United States District Court and the Court of Appeals.

As was held by the Supreme Court in *Onyeabuchi Vs. INEC*,[29] a judicial decision properly handed down is conclusive until reversed by a superior Court and its veracity is not open to a challenge nor can it be contradicted. The judgment relied upon in the present case by the 3rd – 5th Defendants is a judgment of the Court of Appeals of the United States of America, which validated and affirmed the dismissal of **Raybourne's** claims before the District Court. No better judgment could have constituted *res judicata* to the case at hand.

The position of the law is that a plea of *res judicata* operates not only against the parties but also against the jurisdiction of the Court itself and robs the Court of its jurisdiction to entertain the same cause of action on the same issues previously determined by a Court of

[29] [2002] 8 NWLR (Pt. 769) 417 @ 435-436

competent jurisdiction between the same parties. See <u>*Cardoso Vs. Daniel & Ors*</u>.[30]

On the basis of the foregoing analysis therefore, I must and I hereby uphold the plea of *estoppel per rem judicatam*, raised by the 3rd – 5th Defendants in their defence to the instant action; and I hereby hold that the judgment of the United States Court of Appeals, **Exhibit D3**, clearly constitutes *res judicata* to the suit at hand. The implication is that the instant action ought not have been commenced in this Court as it constitutes a flagrant abuse of the judicial process of this Court. On that note, I resolve issue one, as set out in the foregoing, against the Claimants.

Ordinarily, this judgment ought to have terminated at this point. However, I shall proceed, if only for purposes of academic adventure; just in the event that this Court is held to be wrong to have upheld the *plea of res judicata* against the instant action; to consider

[30] Supra (Note 18)

the merits of this suit, by evaluating the evidence adduced at the trial by the respective parties.

By relief (1) of their action, the Claimants prayed for a declaration that the taking over of their business, staff and trade secret is illegal and a breach of the operation of the Agreement between the Claimants and the Defendants. It has been established in the foregoing that the instant action can only validly proceed between the 2nd Claimant and the 4th Defendant, who are the only parties to the contentious **PSA, Exhibit C7**.

The provision of the **PSA** which was purportedly violated by the 4th Claimant is **Clause 3.1(c)** which provides as follows

> ***"3.1 Metrica Relocation will:-***
>
> ….

c) During this Agreement and for 12 months after the date of termination, commit that under no circumstances will any member of staff attempt to:-

i) Recruit an existing Partner employee or subcontractor;

ii) Entice any pre-existing clients of Partner to cease using the services of the Partner."

The facts asserted by the 2nd Claimant with respect to the alleged breach of **Clause 3.1(c)** of the **PSA** are captured in *paragraphs 40, 47 – 50* of the *Statement of Claim*. What constituted the 1st Claimant's evidence in support of the facts pleaded are deposed in *paragraphs 40, 47 – 50* of the *Statement on Oath* he deposed to on 18th October, 2016.

The United States Court of Appeal, succinctly captured the state of evidence adduced by **Raybourne** in proof of her case in the action under appeal before that Court, when it held the case was characterized by

unsubstantiated assertions, improbable inferences and unsupported speculation. The Court went on to further note as follows:

> ***"The report analyzed all twenty-one claims asserted by Raybourne, concluding after discussion of each that there was an absolute lack of any competent evidence or authority submitted by Raybourne to survive summary judgment, who in most instances did nothing more than present unsupported, conclusory statements reiterating its position as stated in the original complaint."***[31]

I cannot but adopt the foregoing reasoning with respect to the instant case. The Claimant merely reasserted and repeated the facts pleaded in the paragraphs of his _Statement of Claim_ mentioned supra word for word in his *Statement on Oath*. Pleadings do not amount to or constitute evidence. Without cogent

[31] Page 5-6 of **Exhibit D3**

evidence to support facts pleaded in the Statement of Claimant, such an action must fail.

The Claimants pleaded a letter in *paragraph 48* of their *Statement of Claim* by which it is alleged that the 4th Defendant urged on the employees of the 2nd Claimant to quit their job and join the 5th Defendant, but failed to tender such potentially vital letter in evidence at the trial.

I had noted the arguments canvassed by the Claimants' learned counsel to the extent that the **DW2, Mr. Nicholas Erigo**, admitted under the "fire" of cross-examination that he worked for the Claimants and that he and the rest of his colleagues that worked for the Claimants later joined the employment of the 3rd – 5th Defendants.

The record of the Court do not however seem to support the submission of the Claimants' learned counsel. The relevant testimony of the **DW2** under

cross-examination by the Claimants' learned counsel, is as follows:

> ***"It is correct that I worked for the 1st Defendant before working for the 2nd Claimant. It is correct that after the 2nd Claimant sacked me, I worked for the 5th Defendant. I remember stating that I started working with the 5th Defendant sometime in mid January, 2013. The 2nd Claimant sacked me on 1st January, 2013. 1st January, 2013 was the day I got the 2nd Claimant's email sacking me and it was the last day I worked for the company….It is correct that Sam Oyibo, Mulikat Adejumo, Emeka Aniemeka and Amara Okoli, who used to work with the 2nd Claimant all joined the 5th Defendant because all of these other persons were equally sacked alongside with me."***

Now, under the provision of **Clause 3.1(c)** of the **PSA**, the 4th Defendant is only precluded from engaging **"existing"** employee of the 2nd Claimant within 12 months of termination of the contract. The provision

does not bind a **"sacked"** employee of the 2nd Claimant, as the evidence of the **DW2** clearly established.

In the circumstances therefore, it is clear that the Claimants' learned counsel either misconceived the purport of **Clause 3.1(c)** of the **PSA** or the unambiguous testimony elicited from the **DW2** under cross-examination, in canvassing the argument that such testimony supported the Claimants' allegation of breach of contract. I so hold.

I must again state that claims of parties are circumscribed by the reliefs claimed in an action. The Claimant's relief (1) is clear and unambiguous. The Claimants' grievance is with respect to the breach of **Clause 3.1(c)** of the **PSA, Exhibit P7**. The Claimants did not claim any relief with respect to unlawful termination of the **PSA**. The trite position of the law is

that evidence led with respect of relief not claimed goes to no issue. See *Unity Bank Plc. Vs. Onwudiwe*.[32]

I therefore consider the totality of the arguments canvassed by the Claimants' learned counsel, with respect to the purported breach of **Clause 8.1** of the **PSA**, as misplaced and inconsequential to the determination of this suit. I so hold.

On the basis of the foregoing analysis, I must hold that the Claimants have failed to adduce any shred of evidence whatsoever to sustain or substantiate the claim for breach of contract against the 4th Defendant.

With respect to the claim for refund of **$38,000.00,** the Claimants pleaded in *paragraph 45* of their *Statement of Claim* that the Defendants still owed them arising from work done by them on behalf of the 4th Defendant up to 31st December, 2012 for which

[32] [2015] LPELR-24907(CA)

invoices were provided for the Defendants' prompt payment. The Claimants pleaded the purported said invoices.

In the instance again, the 1st Claimant repeated the averment in *paragraph 45* of the <u>*Statement of Claim*</u> in *paragraph 45* of his *Statement on Oath*. The 1st Claimant went further to tender in evidence some documents being Funds Transfer Initiation of **J.P. Morgan Bank,**[33] which are more or less transaction details of funds transferred by the 4th Defendant to the 2nd Claimant at the material time. By the documents, the 4th Defendant transferred the respective sums of **$19,787.34**; **$7,000.00** and **$8,000.00** to the 2nd Claimant. However, my finding is that the Claimants failed to lead evidence to establish how the documents constituted proof of the 4th Defendant's purported indebtedness to the 2nd Claimant to the tune of **$38,000.00**.

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[33] **Exhibits C12, C12A-C12C**

In this regard, I cannot also resist a reference to yet another portion the judgment of the United States Court of Appeals, **Exhibit D3**, where the same head of claim was equally assessed. It was held as follows:

> ***"With respect to the alleged outstanding debt of $38,000 that Raybourne claimed to have never received from Metrica, the magistrate judge noted that "the only evidence before the Court, as presented by the defendants, is the document titled 'final accounting,' which is an exhibit from Dr. Okoli's deposition and demonstrates an overpayment from MRP to plaintiff" as opposed to an outstanding debt owed. Because Raybourne did not challenge the final accounting or offer evidence to contradict its calculations, the magistrate judge ultimately concluded that Raybourne actually owed an unpaid balance to Metrica, rather than vice versa."***[34]

[34] Note 4 of **Exhibit D3** (page 5)

In the same token, the Funds Transfer Initiation documents tendered by the 1st Claimant only demonstrated payment of money to the 2nd Claimant by the 4th Defendant as opposed outstanding debt owed to the 2nd Claimant. I so hold.

In the circumstances, the Claimants having failed to adduce any evidence whatsoever to support the claim for refund of **$38,000.00**, the Defendants, particularly the 4th Defendant, is not thereby under any obligation to adduce any evidence in rebuttal as permitted by the provision of **s. 133(1)** of the **Evidence Act**.

It will be needless to proceed to consider the Claimant's other reliefs for special damages and compensation since the main claims have failed.

The judgment of the Court, in the final analysis, is that whichever way the case of the Claimants is viewed, whether on the ground of the defence of *res judicata*

validly raised by the 3rd – 5th Defendants and sustained by the Court; or on the merits of the substance of the claim, which is bereft of any cogent evidence whatsoever, this suit must fail. Accordingly, the suit shall be and is hereby dismissed. Parties shall bear their respective costs.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
17/06/2020

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2nd Defendant unrepresented by counsel