

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 25TH OCTOBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/2925/2019

BETWEEN:

ETHA VENTURES LIMITED ----- CLAIMANT

AND

1. EZIKE OGBONNO
2. DAILY SHOWS GLOBAL
ENTERPRISES NIG. LTD } ----- DEFENDANTS

RULING

The Applicant filed the instant Motion on Notice on the 28th June, 2021 praying this Court for the following reliefs:

- 1. "A declaration that there is no cause of action against the 1st Defendant and the joinder of his name as a party in this suit amounts to misjoinder of party.*
- 2. An order of the Honourable Court striking out the name of the 1st Defendant in this suit as same was wrongly joined and ought not to be a party in this suit.*

3. An for such order or other orders as this Honourable Court may deem fit to grant in the circumstances.”

The Application is supported by a nine paragraphs affidavit deposed to by the Applicant himself. Attached to the Application is one document marked as exhibit E1. Mr. E.C. Ugwuodo Esq. Counsel for the Applicant also filed a Written Address which he adopted. In his written submission, Learned Counsel raised a sole issue for determination as follows:

“Whether the Claimant’s claim discloses any cause of action against 1st Defendant to warrant him being joined as a party to this suit.”

Counsel submitted that the Claimant did not disclose any cause of action against the 1st Defendant to warrant him being joined as a party to the instant suit. That the 1st Defendant though the Managing Director of the 2nd

Defendant never had any tenancy agreement with the Claimant/Respondent.

Counsel further submitted that the 2nd Defendant is a juristic person that can sue and be sued. Every company by virtue of its incorporation under the Companies and Allied Matters Act, 2020 as amended becomes a legal entity that can sue and be sued. He went on to submit that in the instant case, the 1st Defendant/Applicant is the Managing Director of the 2nd Defendant and the 2nd Defendant is a limited liability Company duly incorporated in line with the Provision of CAMA 2020 as amended. He submitted further that from exhibit E1, it is evident that the person who had tenancy agreement with the Claimant is the 2nd Defendant and the 1st Defendant cannot be bound by a contract/agreement entered into by the 2nd Defendant.

Counsel finally urged the Court to grant the application. He referred to the following authorities:

1. Salomon vs. Salomon & Co. (1897) A.C. 22,66
2. Akanni vs. Kasali (1980) 1 – 3 CCHCJ 209.
3. Section 42, Companies and Allied Matters Act, 2020.

In opposition to the Applicant's Motion on Notice, the Claimant/Respondent filed a 14 paragraphs Counter affidavit duly sworn to by one Uzoanaya Ndubuisi, I a Counsel in the law Firm of Uzoanya, Uzoanya & Co. Solicitors to the Claimant/Respondent. Attached to the Counter affidavit is one annexure marked as exhibit TVF. Further, Uzoanya Kelechi Victoria Esq. filed a Written Address wherein Learned Counsel formulated a sole issue for determination as follows:

“Whether the Claimant/Respondent has a Cause of action against the 1st Defendant/Applicant in this suit.”

Counsel submitted that the joinder of the 1st Defendant/Applicant was proper as there is a cause of action against him. He submitted that the 1st Defendant/Applicant is a proper party whom a cause of action has been disclosed against and who ought to be bound by the decision or the outcome of this suit.

Counsel further submitted that the 1st Defendant by virtue of exhibit TVF filed the Tenant Verification Form as the person occupying the premises and therefore cannot hide behind the veil of incorporation. Counsel finally urged the Court to hold that in the circumstances of this case, a cause of action has been disclosed against the 1st Defendant/Applicant.

Learned Counsel referred this Court to the following cases;

1. Enemchukwu vs. Okoye & Anor. (2016) LPELR – 40027 (CA).

2. Njikonye vs. MTN NIG. COMM. LTD. (2008)9 NWLR (Part 1092) 339.
3. Adeyemi vs. Lan and Bakers (Nig.) LTD. (2007)7 NWLR (Part 663)33;
4. Trengo (Nig.) LTD. vs. African Real Estate Investment Coy. LTD. & Anor. Lor (14/04/1978) SC.
5. Awoniyi vs. Registered Trustees Amorc (2000) FWLR (Part 25) 1592.

From the submissions of Learned Counsel across the divide, it is noted that Counsel are ad-dem on the only issue for determination which is

“Whether the Claimant/Respondent disclosed any cause of action against the 1st Defendant/Applicant to warrant his joinder in the suit.”

Generally, the term cause of action entails the fact or combination of facts from which the right to sue accrues. The term has also been defined as *“simply the existence of*

factual situation which entails one person to obtain from the Court a remedy against another person'. See: Fadare vs. A.G. of Oyo State (1982)4 SC 1 at 6-7, Amofe vs. Gambari (2013) LPELR - 22096 (CA).

The law is settled that, it is the Statement of Claim that determines cause of action. It is a cardinal principle of law that to ascertain a cause of action, the immediate materials a Court should look at are the Writ of Summons and the averments in the Statement of Claim. This is because it is by examining them that a Court can satisfy itself on the actual grouse of a party and remedy or relief it is seeking from the Court. See: Abubakar vs. Bebeji Oil and Allied Products Ltd. & Ors. (2007) LPELR - 55 (SC).

The Supreme Court in UBN Plc. vs. Umeoduagu (2004) LPELR - 3395 (SC) held thus: *"In determining whether a Plaintiff has a cause of action against any Defendant, the Court will restrict itself to the statement of claim and nothing more."*

By the supporting affidavit attached to the instant application, the 1st Defendant/Applicant's contention is that there is no cause of action against him and as such was wrongly joined in this suit. The Applicant averred that the Claimant/Respondent's claim emanated from a tenancy agreement between the Claimant and the 2nd Defendant which is a duly incorporated company.

Upon proper perusal of the Claimant's averment contained in its Statement of Claim, the facts or combination of facts upon which the Claimant based his right to sue are as pleaded in paragraphs 1 - 8 of the Statement of Claim. From the facts the 1st Defendant is the Managing Director and alter ego of the 2nd Defendant.

It is correct as submitted by Learned Counsel to the Defendants/Applicants that the 2nd Defendant is a limited liability Company duly incorporated in line with the Provisions of Companies and Allied Matters Act, 2020 (as

amended) and as such acquired the status of a legal personality that can sue and be sued in its corporate name.

However, the Courts in plethora of judicial authorities stated that there are circumstances under which the veil of incorporation can be lifted in order to ascertain the motives or opinions of persons working for and inside the separate personality. One of the circumstances under which the Corporate Veil can be lifted is where for instance there is complaint of improper or fraudulent conduct of the company. See: Tafida & Anor vs. Garba (2013) LPELR – 22076 (CA), NBCI vs. Integrated Gas Nig. Ltd. (1999)8 NWLR (Part 613)119 at 129.

In the instant case, without delving into the substantive case before this Court, the Claimant/Respondent has shown through the pleadings that the 1st Defendant at all material times represented and acted on behalf of the 2nd Defendant. In fact, the 1st Defendant filled the Tenant Verification Form in his personal capacity on behalf of the

2nd Defendant when the Claimant/Respondent sought to verify its existing tenants. The said verification is exhibited before this Court as exhibit TVF. Now the question is will the 1st Defendant be affected by the decision of this Court?

In the case of Ibigbami & Anor vs. Military Governor of Ekiti State & Ors. (2003) LPELR – 5619 (CA) the Court held that:

“The only reason which makes it imperative to make a person a party to an action is when he would be bound by the result of the action and the questions to be settled therein.”

See also: Ceekay Traders Ltd. vs. General Motors Ltd. (1992)2 NWLR (Part 222) 132, Odogwu vs. Odogwu (1992) NWLR (Part 225) 539.

On the facts and the reliefs sought, there cannot be any doubt that the Plaintiff targeted the reliefs sought

against all the Defendants. Now the classification of parties is well established in our civil Jurisprudence as follows:

1. Proper parties
2. Desirable parties
3. Necessary parties

Proper parties are those who, though not interested in the Plaintiff's claim are made parties for some reasons, and desirable parties are those who have an interest or who may be affected by the result. See: Green vs. Green (1989)3 NWLR (Part 61) 480, Dapialong vs. Lalong (2007)5 NWLR (Part 1026) 199.

A necessary party to a suit is a party who is not only interested in the matter of the proceedings but also party in whose absence, the proceedings could not be fairly dealt with. In such a situation it becomes almost impossible for the Court to effectively and conclusively decide upon and settle all questions arising in the suit in the absence of such

party. See: Biyo vs. Ibrahim (2006)8 NWLR (Part 981)1, BON Ltd. vs. Saleh (1999)9 NWLR (Part 618) 231.

It follows that any of the above mentioned parties may be joined to an action depending on the facts and justice of the case. A primary motivating factor which is usually lost sight of is the pressing need to avoid multiplicity of actions and to save litigation time in the process. See: Ogolo vs. Fubora (2003)11 NWLR (Part 831) 231. There is no doubt that the 1st defendant has an interest in the subject matter of this suit and will certainly be affected by the result.

In order for the 1st Defendant who is the sit-in tenant, and who signed the Tenant Verification Form and so that he will be bound by the decision of the Court, that I am inclined to the view that the interest of justice will be better served if the 1st Defendant remains a party to this suit.

I hold that there is a cause of action against the 1st Defendant and therefore there is no misjoinder of his name

in the suit. On the whole I hold that the application has no merit, it is refused and hereby dismissed.

Signed

Honourable Judge

Appearances:

Kelechi Uzoanya (Mrs.) – for the claimant

E.C. Ugwuodo Esq – for the defendants