

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

THIS WEDNESDAY, THE 10<sup>TH</sup> DAY OF NOVEMBER, 2021.

**BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE**

**SUIT NO: FCT/HC/CV/744/2021**

**BETWEEN:**

**VISH OIL & GAS LTD.....CLAIMANT/RESPONDENT**

**AND**

**FEDERAL RADIO CORPORATION OF NIGERIA.....DEFENDANT/APPLICANT**

**RULING**

This is a ruling in respect of the defendant/objector’s preliminary objection dated 16<sup>th</sup> January, 2021 and filed on the 29<sup>th</sup> day of July, 2021. The application is predicated on one ground.

1. That his Honourable Court lacks Jurisdiction to entertain the instant suit for being incompetent, as plaintiff has failed to give pre-action notice to the Defendant (being a condition precedent) and a requirement of the Federal Radio Corporation of Nigeria Act, Laws of the Federation of Nigeria 2004.

Consequently, the Applicant sought for this the following two reliefs.

1. An order of this Hon. Court striking out this suit filed on 11<sup>th</sup> March, 2021 in its entirety for being incompetent.

2. And for any order or Orders this Hon. Court may deem fit to make as the Justice of the suit demands.

The defendant/objector also filed a written address wherein the learned counsel to the defendant/objector, **G.B. Ashi, Esq** formulated a lone issue for determination “***whether this court has the requisite Jurisdiction to entertain the instant suit for being incompetent or whether an incompetent action can give rise to a legal consequence.***”

Arguing the lone issue, learned counsel submitted that the issue of Jurisdiction is a threshold matter that can be raised at any time even for the first time at the apex court. Counsel added that it can be raised by any of the parties or even the court suo motu. He cited ***Alima V. UBA (2013) 12 SCN 12, Hwagolu Vs. Azuka (2007) 29 WRN, Okoya VS. Santili (1990) 2 NWHR (Pt 131) 172 Governor Gongola State Vs. Tukur (1989) 4 NWHR (Pt. 177) 592.*** Learned counsel further submitted that for the judicial powers of the court to be properly invoked, some factors must co-exist. He cited ***Nyame Vs. FRN (2010) 3 SCNJ (Pt. 1) 28 at 62.***

Learned counsel argued that this court lacks Jurisdiction to entertain this suit for being incompetent, as the plaintiff failed to give pre-action notice to the defendant. Counsel submitted that this suit is not only incompetent, but dead on arrival, thus robbing the court of the Jurisdiction to entertain same. Counsel also submitted that the defendant is a creation of the statute and a body corporate owned by the Federal Government of Nigeria and regulated by the Federal Radio Corporation of Nigeria Act, which provides for the procedure to maintain an action against it. He cited Section 25 (2) of the Federal Radio Corporation Act. Learned Counsel further submitted that this provision gives a condition precedent to be met before any legal proceedings can be commenced against the defendant in any court in Nigeria. He added that the plaintiff failed to comply and therefore this action is null and void.

Learned counsel urged this court to decline jurisdiction for failure to comply with the requirement of this statute. He added that the operative word used in Section 25 (2) of the Federal Radio Corporation Act is “shall” and that it connotes obligation and does not allow or give room for the use of discretion by this court. He cited the case of *AGIP VS. AGIP (2010) 42 NSCCR (Pt. 167) at 246-247 C.C.T & CS Ltd VS. Expo (2008) FWHR (Pt.418) (98 at 227)*.

Learned counsel finally urged this court to on the strength of the above authorities strike out this suit for being incompetent, having failed to fulfill the provision of the law before instituting same.

Conversely, the Claimant/Respondent counsel Sir C. AMakpu, Esq in his written address in opposition dated 4<sup>th</sup> August, 2021 and filed the same day formulated three issues for determination.

1. Whether the defendant followed the due process of law in filing its Notice of preliminary objection.
2. Whether the defendant’s Notice of Preliminary Objection has not been caught by the doctrines of waiver and estoppels by conduct and therefore capable of affecting the substantive Jurisdiction of this Honourable Court.
3. Whether the defendant’s objection has merit regards being had to the demand letters and the nature of the claim founded on the breach of contract and recovery of debt.

Arguing issue one, learned counsel submitted that the defendant woefully failed to follow the proper Procedure/Permitted by the Rules of this Court, in filing its notice of Preliminary Objection. Counsel referred to Order 5 Rule 2 (2) of the Rules of this Court which provides that the application under this Rule should be by summons or

motion Learned counsel also referred to order 5 (2) 1 which also provides that any objection to set-aside the originating process for an irregularity would be allowed if it is taken within a reasonable time and before fresh steps are taken.

Counsel stated that the defendant/objector also failed to follow this procedure, but rather came in through his counsel on 19<sup>th</sup> July, 2021 and agreed for a date for hearing of the suit without any indication to the contrary thereby waving the purport of his memorandum of appearance filed under protest. Counsel further submitted that the sudden change of mind to file an objection challenging the procedure followed by the claimant coming in to Court without following the Rules of Court missed the legal target. Counsel further submitted that he who comes to equity must come with clean hands and that equity helps the vigilant. He added that he who seeks equity must do equity see. *Karaye VS. Wike (2020) All FWHR (Pt. 1055) 468 at 487*.

Learned counsel further submitted that the defendant/objector also refused to follow order 23 Rule 2 (1) of the Rules of this court by not raising his point of law vide his pleadings.

He cited *Federal College of Education VS. Akinyeny (2009) All FWHR (Pt 465) 1785 at 1806, Gov. of Imo State VS. Amuzie (2019) 10 NWHR (Pt. 1680) 331 at 345, Nocklink ventures Ltd. VS. Aroh (2020) 7 NWHR (Pt. 1722) 63 at 93/* Counsel insisted that Rules of Court are not made for fun, but to be Obeyed. He cited *FBN Plc VS. Abraham (2009) All FWHR (Pt. 461) 863 at 876) FBN VS T. S. A Industries Ltd (2010) VS. Yar'adua(2009) All FWHR (Pt. 482) 1062 at 1117*.

Arguing issue two, learned counsel submitted that assuming (without conceding) that service of pre-action Notice is applicable in the claimant's case and that it has not been served as the defendant claims, Counsel insisted that even the defendant's Notice of preliminary objection is caught up by the doctrines of waiver and estoppel by

conduct and therefore incapable of affecting the substantive jurisdiction of this court. Counsel insisted that the defendant cannot approbate and reprobate. He added that the defendant's preliminary objection is based not in the substantive but the procedural jurisdiction of the court. Counsel further insisted that while procedural Jurisdiction can be waved, substantive jurisdiction cannot be waved. He cited *Samuel Akpan Nsubong VS. The Federal Road Safety Commission*, suite No. FCT/HC/3152/2017. *Anganwoke VS. Okoye (2010) All FWHR (Pt. 515) 214 at 232, UBN VS. Sanni (2019) All FWHR (Pt. 983) 82 at 115.*

Learned counsel also submitted that the law is now settled by the apex court that if objection to procedural Jurisdiction is not raised timely, it should not be accommodated as its amount to waiver. He cited *B. P. E VS. Dangote Cement Plc (2020) 5 NWHR (Pt. 1717) 322 at 348, Alfa VS. Attai (2019) All FWHR (Pt. 1000) 549 at 584. Heritage Bank Ltd. VS. Bentworth Finance Nig. Ltd. (2019) All FWHR (Pt 997) at 23.*

Learned counsel further submitted that there is nothing in the statute relied upon by the defendant that deprives this court of Jurisdiction under Section 257 of the Constitution of the Federal Republic of Nigeria 1999, as amended. He also added that there is nothing that deprives the claimant his right and obligations under sections 6(6)b and 36 of the 1999 Constitution, as amended. Counsel submitted that what is not expressly prohibited is allowed. He cited *Mumini VS. FRN (2019) All FWHR (986) 698 at 703.* Counsel also insisted that Jurisdiction of courts is not ousted by mere speculation or by conjectures. He cited *G.E.C. Ltd VS. Duke (2007) All FWHR (Pt. 387) 78 at 801, Asheukh VS. Yale (2012) All FWHR (Pt. 625) 297 at 308.*

Counsel further submitted that the decisions relied upon by the defendant's counsel are inapplicable to the facts and circumstances of this suit and should be discountenanced. He cited *Ado VS. State (2017) All FWHR (Pt. 897) 1938 at*

**1958.** Counsel urged this court to discountenance all the authorities cited by the defendant as irrelevant decisions not apposite to the facts and issues in the instant suit.

Learned counsel also submitted that the law is that it is the claimant's claim that would determine jurisdiction and not the affidavit or objection of the defendant. He cited *Ikpelkpe VS. Warri Refinery (2020) All FWHR (Pt. 1024) 299 at 317, BCE Consultant Engineers VS. NNPC (2021) All FWHR (Pt. 1083) 359 at 378.*

Arguing issue three, learned counsel submitted that the defendant's objection has no merit regard being had to the demand letters and that the nature of the claim is founded on breach of contract and recovery of debt for the work done. Counsel also submitted that the law is settled that service of pre-action notice is not applicable to cases founded on breach of chapter iv of the Constitution, breach of contract and recovery of debts arising from the work done. He added that service of letters of demand on the defendants constitute sufficient service of pre-action notice or quality as pre-action notice. He cited *Olatunji VS. Hammed 92010) All FWHR (Pt. 540) 1365 at 1374 Amad VS. NNPC (2000) FWHR (Pt. 9) 1527 at 1542.*

Learned counsel finally urged this court to determine the claimant's claim on merit as the defendant failed to raise it procedural and unmeritorious defence vide pleadings or immediately after the service of the writ of summons.

I have carefully considered the facts of this application and the submissions of counsel on both sides and I am of the considered view that the only issue that calls for determination is whether this court has the jurisdiction to entertain the claimant's suit

The Federal Ratio Corporation Act 2004 in Section 25 (2) provides as follows ***“No suit shall be commenced against the corporation before the expiration of a period of one month after the written notice of intention to commence the suit shall have been served upon the authorities agent and the notice shall clearly and explicitly state the***

*cause of action the particulars of the claim, the name and place of abode of the intending plaintiff and the reliefs which he claim*". This is a clear statutory provision of the Federal Radio Corporation Act, 2004. Furthermore, it is a settled principle of law that the issue of Jurisdiction can be raised at any time, even on appeal and can also be raised in any manner that the plaintiff deems fit. Again, even court on its own or suomutu can raise the issue of Jurisdiction. The law is that once this issue of Jurisdiction is raised, it must be decided first before any further step is taken in the matter.

In the instant suit, there is no doubt that the plaintiff did not comply with the provisions of Section 25 (2) of the Federal Radio Corporation Act, 2004, rather his argument is that the demand notices he served on the corporation for money owed it qualifies as a pre-action notice. I hold the considered view that demand notice is not pre-action notice as provided for in section 25(2) of the Federal Radio Corporation Act.

Again, the plaintiff also argued that the defendant did not file his statement of defence and that he was represented by his counsel on 19<sup>th</sup> July, 2021 and the Counsel agreed for a date for hearing of the suit without any indication that he was going to challenge the manner the plaintiff came to court. However, the plaintiff admitted that the defendant filed his memorandum of appearance under protest, but went ahead to argue that his legal representative's appearance in court on 19<sup>th</sup> July, 2021 and his agreement for a date for hearing means that his earlier appearance is under protest has been waived. This is a misconception of the law. The statutory provision of section 25 (2) of the Federal Radio Corporation Act 2004 cannot be waived by any of the parties. Consequently, this suit is hereby struck-out and no order is made as to cost.

*Signed*  
*Hon. Judge*  
*10<sup>th</sup>/11/2021*