

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 6TH DAY OF JUNE, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/CV/1774/21

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MOHAMMED BABA DALA.....CLAIMANT

AND

- | | |
|--------------------------------------|---|
| 1. NIGERIA AIR FORCE PROPERTIES LTD | } |
| 2. CREATIVE SYNERGIES & ADVISORS LTD | |
|DEFENDANTS | |

R U L I N G

The 2nd Defendant by a Preliminary Objection dated 6/10/22 brought pursuant to Order 43 Rule 1 of the Rules

of Court and Section 135, 136, 137 and Section 138 of the Nigerian Communication Act Cap N97 laws of the Federation prays the Court for the following orders:

- (1) Striking out the suit against the 2nd Defendant for being a nullity.
- (2) And for such order or further orders as the Court may deem fit to make in the circumstance.

The grounds upon which the application is made are:

- (1) That the suit is wrongly commenced in this Court.
- (2) That the claim is within the exclusive jurisdiction of the Federal High Court.
- (3) The action is incompetent and a nullity.

Learned Counsel rely on the 4 point Affidavit deposed to by Igbokwelkeazo of Counsel. He deposed essentially that the claim is for a declaration and an Order stopping the construction and erection of a telecommunication base trans receiver station (mast et al) adjacent the Claimant's house.

That pursuant to the Nigerian Communication Act, the Federal High Court has exclusive jurisdiction as against all other Courts to hear this case. The 2nd Defendant's Counsel rely on his Written Address which he adopted as his Oral Argument.

He posited a sole issue for determination which is Whether this Court as against the Federal High Court has jurisdiction to hear the suit against the Defendant.

Learned Counsel refer to Section 138 and 157 of the Nigerian Communication Act N97 Laws of the Federation.

That paragraph 15 & 16 of the Statement of Claim states that the telecommunication base Trans receiver station facilitates among other things the network.

That the claims and pleading and the issues thrown up are clearly within the purview of the Nigerian Communications Act which has ceded jurisdiction to the Federal High Court.

That specifically the claim falls within Chapter IX PT. 1 & 2 of the Act which deals with the duty of care. Learned Counsel urges the Court to strike out the case for lack of jurisdiction.

Learned Counsel to the Claimant/Respondent filed a reply on point of law dated 5/12/22 but filed on the 6/12/22. He adopted same as his oral argument.

He canvassed that the issue before the Court is a simple issue of personal wrong done to the Claimant and his family. That Section 138 and 157 of the Telecommunication Act is subject to Section 272 of the 1999 Constitution which deals with civil wrong that were there is a conflict the Constitution prevails.

That the issue before the Court is not the issue of telecommunication but the protection of the Claimant's health. That this Court has the requisite jurisdiction to entertain this action.

Jurisdiction is the limit imposed on the power of a Court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues, or to the persons between whom the issues are joined or to the kind of relief sought.

See *A.G. LAGOS STATE VS. DOSUNMU (1989) 3 NWLR (PT. 111) 552.*

It is trite that Courts are creatures of statute. That it is the statute that created a particular Court that will also confer on it its jurisdiction.

Section 251 (5) of the 1999 constitution confers on the Federal High Court jurisdiction civil or criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly.

Where the jurisdiction of a Court is challenged as in this case the Court is entitled to consider the Claimant's claim before it to decide whether it has jurisdiction or not.

The relevant portion of the Claimant's pleading is as follows:

“7. The 1st Defendant via a letter dated 29th of June 2021 approved the construction of telecommunication base Trans receiver station by the 2nd Defendant.

8. The 2nd Defendant through her client first initiated the process of constructing the Telecommunication base receiver station by excavating the land intended to be constructed on.

9. When the owners of the houses close to where the 2nd Defendant excavating for her construction insisted that the said Telecommunication Base Trans receiver station (mast et al) will not be constructed near their houses citing health and other challenges associated with erecting Telecommunication Base Trans receiver station close to their residence.

10. Due to their complaints by the said house owners, the 2nd Defendant halted the construction and started looking for another site.

11. The 2nd Defendant has now initiated the process for the construction of the Telecommunication Base Trans receiver station on a land adjacent the Claimant's house by excavating the land and pouring concrete.

12. That Claimant reached out to the 1st Defendant explaining to her the dangers posed by the said mast which the 1st Defendant ignored.

13. That the land where the 2nd Defendant is constructing the mast was designed to have a block of terrace flats and not Telecommunication Base Trans receiver station.

15. That Telecommunication Base Trans receiver station is a piece of equipment that facilitates wireless communication between user equipment and a network.

That the said telecommunication base receiver station equipment especially the antennas emit electromagnetic radiation which causes a myriad of health challenges.

That it transmit gases that impair the immune system human neurological functions. That this telecommunication base receiver station will cause environmental pollution.

By the Nigeria Communication Act, the Federal High Court shall have exclusive jurisdiction over all matters, suits and

cases arising out of or pursuant to or consequent upon the act or its subsidiary legislation.

The subject matter of this suit is the attendant consequences of the construction of a Telecommunication Base Trans receiver station which includes its health challenges. The Claimant's Counsel's argument that Section 138 & 157 of the Telecommunication Act is subject to Section 272 of the 1999 Constitution is unfounded.

Jurisdiction cannot be assumed in the interest of justice. It is either the Court has jurisdiction or it does not have jurisdiction to deal with the matter.

Once a Court lacks jurisdiction, a party cannot use any statutory provision or a common law principle to impose jurisdiction because the absence of jurisdiction is irreparable in law. The matter ends there and the only procedural duty is to strike it out.

The fact that Claimant obtained an Order of injunction as in this case cannot be used as a basis to confer jurisdiction on a Court where it has none. If a Court has no jurisdiction no amount of brilliance can resuscitate or rescue it.

The only valid way is to file the action in a Court of competent jurisdiction.

In the circumstance of this case, this Court lacks jurisdiction. The case is accordingly struck out.

HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC

(HON. JUDGE)

06/06/2024

Parties absent.

No legal representation.

COURT: Ruling delivered.

(Signed)

HON. JUDGE

06/06/2023