

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 27TH DAY OF MAY, 2024

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

SUIT NO. FCT/HC/CV/58/2016

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

MRS. AGNES O. AJAYI CLAIMANT

(Suing by her Agent, LERAMOH CHARLES)

AND

MR. ZINO ORIERO DEFENDANT

J U D G M E N T

The Claimant's Writ of Summons and Statement of Claim
against the Defendant dated 1st November 2016, amended

and further amended vide a Writ of Summons and Statement of Claim dated 18/10/2019 but filed on the 25th of October 2019 is for the following:

- (1) Special damages in the sum of Five Thousand, Five Hundred and Thirty-Eight Dollars, Ninety-Three Cents (\$5,538.93) to be converted to the current Naira value being special damages, amount used in purchasing the spare parts of the Range Rover SUV with Reg. No. TRIPPLE ST from the United States of America.
- (2) Special damages in the sum of ~~N~~25,000 per day for loss of use from the date of accident which is 3/07/2014 until Judgment is entered.

(3) Special damages in the sum of N150,000 being amount paid to the mechanic.

(4) ~~N~~800,000 as solicitor's fees.

(5) ~~N~~10 Million for general damages.

(6) ~~N~~1 Million as cost of action.

(7) 10% interest on the Judgment sum until the Judgment sum is liquidated.

The Writ of Summons and Statement of Claim and all other processes were served on the Defendant.

He filed a Defence and Counterclaim wherein he claims as follows:

- (1) ~~N~~750,000 being amount paid as hospital bills by the Defendant as a result of the accident.
- (2) ~~N~~3.5 Million for the BMW driven by the Defendant at the time of the accident which was sold by the Police at the instance of the Claimant.
- (3) ~~N~~1.5 Million as general damages.
- (4) ~~N~~5 Million as cost of the action.

The Claimant opened her case and called two (2) witnesses in proof thereof.

The first Claimant's Witness is Sgt. Abba Ibrahim attached to Gwarinpa Police Station, Abuja. He remembered deposing to a Witness Statement on Oath. He adopted same as his oral evidence.

In the said Witness Statement, he deposes viz:

He is the Investigating Police Officer in respect of the accident which is the subject matter of this case.

That the accident involved two cars, a Range Rover 2014 model and a BMW 323 Series.

That the Police carried out its investigation after the accident. They also called the Vehicle Inspection Officer to carry out their duty upon which they submitted their findings vide an official report.

The said report faulted the driver of the BMW being the Defendant. The driver of the said vehicle was rushed to the hospital for urgent medical treatment at the Garki General Hospital.

He was instructed to report at their Station after treatment to aid investigation but he refused and failed to honour invitation.

That the Police went to the hospital and discovered that he had left without reporting to them.

The Defendant neglected or failed to pay the Claimant for the damage of the Range Rover.

The Claimant applied for the release of the Range Rover in their custody for repairs so as to mitigate the loss and prevent undue deterioration and depreciation.

That they got signal from their headquarters that all abandoned vehicles at Police Stations in the FCT should be auctioned.

The BMW vehicle belonging to the Defendant was amongst the auctioned vehicles having been abandoned. That the DPO and DTO wrote to the Claimant informing Claimant of this development.

The PW1 tendered the Police Report dated 9/10/2020 and Motor Vehicle/Accident Inspection Report dated 3/07/2015 as Exhibits A and A1.

Upon being cross-examined by Defendant's Counsel, he answered as follows:

He was in charge of investigation. That the accident occurred at 67 Road, Galadima, before Charley Boy.

On arrival, they met the two vehicles. The BMW was moving in the opposite direction of the place where the Range Rover was stationarily parked.

The owner of the vehicle came out of a compound and told them that he parked the vehicle. That it was when they took their sketch and was about toying the vehicle that Claimant came.

The Claimant was not in the vehicle. The Defendant was taken to the hospital. That the vehicle was parked off the road.

To another question, he said he did not check the call-log of the Claimant's phone.

The second Claimant's Witness is Leramoh Olayinka Charles. He lives at House No. 5, Road 67, Abuja Model City, Gwarinpa.

He filed a Further Amended Witness Statement on Oath on 18/10/2019. He adopts same as his oral testimony. He said orally that:

He took photograph of the accident scene with his Ipad. The Police was called to the scene. That he parked the Range Rover.

The Defendant was coming from the opposite direction. He ran into Claimant's car. The airbag of the car exploded.

The impact was so much that the BMW pushed the Range Rover backward.

The Defendant was on top speed. He was drunk. The Defendant was panting for breath and he was begging.

He pleaded with the Police who came around to take the Defendant to the hospital in order to save his life.

He absconded from the hospital. The owner of the car was traced at the Licensing Office. The owner of the car refused to settle the bill.

The six photographs of the scene of accident and Certificate of Compliance are Exhibits B – B6. Invoices and receipt of spare parts bought are Exhibits C – C2. Exhibit D is receipt of mechanic charge.

In the Further Amended Witness Statement on Oath dated 18/10/2019 he said he is the Claimant's agent. That he knows the Defendant as the driver of the BMW3 Series car which rammed into the Range Rover (SUV) where it was parked.

That the Defendant drove the BMW car viciously, recklessly and dangerously, veered off his lane and crashed into the SUV causing it severe damage.

That the said BMW car belonged to DR. SHARON ORIERO OVIEMUNO. The Defendant was at large and only showed up at the institution of this action.

That he refused to turn up at the Police Station despite repeated calls and entreaties made to him to take responsibility and or amicably resolve issues arising from his action.

The SUV's entire front section was shattered and caused the airbag fitted to the steering wheel to expend.

That both patent and latent damage was occasioned. That the Police took both vehicles to their Station.

That Claimant bought some of the vehicle spare parts from U.S. since same were not easily available in Nigeria.

The cost of the spare parts so far purchased is \$5,538.93 while supplying cost is \$2,539.00 totalling \$8,077.93.

That the mechanic received the said spare parts and has used same in the repair work and now awaits the procurement of more parts in order to complete the work.

The mechanic has been paid ₦150,000 as his fees.

The Defendant has not deemed it fit to be sorry for the accident. He abandoned the BMW in the Police Station.

The Police wrote to Claimant's agent that the BMW was auctioned as a result of the disappearance of the Defendant.

The Claimant charters commercial vehicles in order to meet her transportation needs. The Claimant since the day the Defendant rammed into her vehicle suffers and is still suffering the loss of use of same, which loss is N25,000 per day.

The Claimant engaged the services of a lawyer at a fee of N800,000 now paid.

Under Cross-Examination, the witness said he was inside the vehicle during the accident. That he parked while the Defendant was coming from the other side on top speed.

The above is the case of the Claimant.

The Defendant gave evidence for himself as DW1. He adopts his Witness Statement on Oath dated and sworn to on the 1/11/2019.

In the said Witness Statement on Oath, he says he drove the BMW3 Series on the fateful day of the accident.

He did not drove viciously, recklessly or dangerously, neither did he veer off his lane and ram into the Claimant's

SUV, rather it is the Claimant's agent who was reckless in driving the SUV thereby occasioning the accident.

The said SUV was not parked at the shoulder of the road or any other place but was in motion at the time of the accident.

That the reckless driving which occasioned the accident left the Defendant's car badly damaged and caused him serious bodily injuries. He was hospitalised at Zinox Hospital.

That he was not at large neither did he abandon the vehicle at Gwarinpa Police Station. He was never invited to the Police Station neither was he contacted.

That the photographs did not represent the true position. The Claimant's car was not towed but driven by the Claimant. That it was the BMW that was towed because of the impact on it arising from the reckless driving of the Claimant.

That the owner of the vehicle made an application for the release of the vehicle but the Police acting in concert with the Claimant refused.

That the owner of the BMW, Dr. Sharon showed concern towards the repair of the Claimant's Range Rover car irrespective of his recklessness in driving same but Claimant without notifying her or him took the car away

from the Police Station in order to inflate the price of repairs.

That the Police Reports were doctored for the purpose of overreaching him. The Report from the VIO is a subterfuge procured by the Claimant for the purpose of prosecuting the suit and it does not represent or reflect what transpired in the accident.

That the action is frivolous. He claims as per the Counterclaim.

Under Cross-Examination by the Claimant, he answered that he remembered what took him to the hospital. He spent a day in the hospital and made subsequent visits.

He had a bruise on the forehead and felt pain in his chest region.

He did not go back to the accident scene to recover his car. He was in the hospital with the pain and was later taken home to rest.

To another question, he answered that when he later inquired about the car, he was told that the car had been taken to the Divisional Police Headquarters, Gwarinpa.

That he had a valid Driver's Licence at the time of the accident. That the vehicle particulars were with the owner as at 2014. He did not know if they asked for the particulars.

The Medical Certificate and receipt is Exhibit E and E1.

The above is the Defendant's defence.

Parties were ordered to file Written Addresses. The Defendant's Final Written Address dated 5/02/2023 and adopted as Defendant's Final Written Address raised two issues for determination:

(1) Whether the action does not deprive the Court of jurisdiction as the alleged agent failed to tender proof of authorisation to institute the action.

(2) Whether from the circumstances of this case and totality of the evidence, the Claimant proved his case or not.

On Issue 1, Learned Counsel submits that the alleged agent lacks the standing to institute the action having failed to tender evidence in proof of his claim.

No Power of Attorney was tendered. That failure to tender the supposed Power of Attorney is fatal and raises the presumption of its non-existence.

The purported claim of agency contained in the Claimant's Pleading is not supported by evidence. That Pleadings do not constitute evidence.

On Issue 2, Learned Counsel submits that Claimant has failed to prove his case and the effect being that same ought to be dismissed.

That in motor accident cases, the Claimant has a duty to plead and prove negligence on the part of the Defendant resulting in the accident.

The mere occurrence of the accident is not proof of negligence. That the Police Report dated 9/10/2020 is spurious and malicious having been issued by the Police about 6 years after the occurrence of the incident.

That documents made during the pendency of an action for the purpose of that action should not be admitted in evidence. That the Vehicle Inspection Report was not tendered by the maker.

The Claimant has failed to prove his case so as to entitle him to Judgment.

That special damages must not only be specifically pleaded but must also be strictly proved. That in the instant case, the Claimant failed to tender evidence of proof of same or call vital witnesses to prove same.

That cost incurred by one party is not recoverable from another as that will be unethical and constitute an affront on public policy.

That Claimant failed to plead and prove her entitlement to interest.

The Claimant's Final Written Address is dated 27/03/2023.

Learned Counsel adopted the same issues raised for determination by the Defendant's Counsel.

On Issue 1, Learned Counsel contends that the Court has jurisdiction to entertain the action. That the Court is competent, it is properly constituted, the subject matter is within jurisdiction and it is initiated by due process.

That there is no statutory requirement that a Power of Attorney from a principal to an agent should be in writing or by deed.

Learned Counsel submits that the Claimant's Attorney can defend the suit or sue without any written document authorising him.

That the Court has unfettered powers to entertain this suit as it has the requisite powers to so adjudicate.

On Issue 2, Learned Counsel argues that the evidence of the Claimant is not controverted by the Defence.

That Exhibits A and A1 being public documents and Certified True Copy (CTC) can be tendered from the Bar and indeed any person can so tender same.

A witness who is not a party to a public document can tender the duly Certified True Copy of the said document.

The Defendant's averments are not supported by evidence. Mere evasive denials do not amount to evidence.

That the negligent conduct of the Defendant was established. That the uncontroverted oral evidence before the Court stated amongst other things that the Defendant

was drunk at the time of the accident and was on top speed.

That Exhibits E and E1 is dated 2/07/2014 which is a day before the accident. That this Court should discountenance the document.

That the Claimant has proved special damages by production of valid receipts of purchase for the items in question and invoice.

He finally urges the Court to grant the reliefs sought.

I have read the evidence and exhibits. I have also considered the Written Addresses of Counsel as adopted.

I shall adopt the issues raised by both Counsel in their Written Addresses to determine the suit.

1. Whether this Court has jurisdiction to adjudicate on this matter in view of the Claimant's failure to tender his Letter of Authorisation or Power of Attorney enabling him to institute the action.
2. Whether from the circumstances of this case, and the totality of evidence, the Claimant has proved his case on the preponderance of evidence and balance of probability.

On the first issue, *whether this Court has jurisdiction to adjudicate on the matter on the failure of the Claimant to tender his authorisation or Power of Attorney.*

I agree with Learned Counsel to the Claimant that in a long line of cases spanning more than four decades, it is settled that a Court is competent when it is properly constituted as regards numbers and qualification thereof, the subject matter is within jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction and the case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction. All the

requirements above must co-exist conjunctively before jurisdiction can be exercised by the Court.

See **ALAO vs. AFRICAN CONTINENTAL BANK LTD (2000) 6 SC (PT. 1) 27.**

ARAKA vs. EJEAGWU (2000) 12 SC (PT. 1) 99.

LUFTHANSA AIRLINES vs. ODIASE (2006) 7 NWLR (PT. 978) 39.

In considering whether a Court has jurisdiction to entertain a matter such as this case, the Court is guided by the Claim before the Court by critically looking at the Writ of Summons and the Statement of Claim.

See **NKUMA vs. ODILI (2006) 6 NWLR (PT. 977) 587 SC.**

I have taken a cursory look at the Writ of Summons and Statement of Claim. The Claimant in this case is Mrs. Agnes O. Ajayi.

In the Writ of Summons and Statement of Claim, she is suing by her Attorney, Leramoh Charles.

It states:

*“Mrs. Agnes O. Ajayi Plaintiff
(Suing by her Attorney, Leramoh Charles)”*

However, the law as it relates to a representative action is that a party wishing to sue or defend in a representative capacity must obtain the authorisation to sue or defend from the person or persons he wishes to represent.

See OKUKUJEV vs. AKWIDO (2001) 10 WRN 1 SC.

In a representative action such as this, both the Claimant and the person he represent are parties to the action although the named Claimant is *dominus litis* until the suit is determined.

Thus for the purpose of initiating any process in a representative action, such process must be by and in the name of the named Claimant so long as his mandate from those he represents remains acceptable and uncountermanded.

See OGUNYOMBO vs. OKOYA (2002) 16 NWLR (PT. 793) 224.

The burden is on the party seeking to sue in a representative capacity to prove his authority.

See ADUKWU vs. COMMISSIONER FOR WORKS, ENUGU STATE (1997) 2 NWLR (PT. 489) 588.

In the Claimant's Statement of Claim, he avers as follows:

"2. The Plaintiff vide a Power of Attorney donated her powers to Mr. Leramoh Charles (hereinafter called Attorney) and have appointed same to institute the proceedings at the Court of law as per the content of the said Power of Attorney which includes but not limited to the litigation thereof."

In paragraph 34 of the Claimant's Witness Statement on Oath, he states:

"34. That the Claimant vide a Power of Attorney donated her powers to Mr. Leramoh Charles (hereinafter called the

Attorney) and have appointed same to institute proceedings at the Court of law as per the content of the said Power of Attorney which include but not limited to the litigation thereof.”

The law is clear that it is not in all cases that the Court will hold that a party has no authority to sue in a representative capacity where there is no formal authorisation by way of document to sue. The Courts adopts a flexible attitude based on the facts and circumstances of each case.

See ADUKWU vs. COMM. OF WORKS, ENUGU STATE (supra).

In the instant case, there is a Power of Attorney. The Claimant refers to it in her Pleading and gave evidence

copiously about the existence of the Power of Attorney and the content thereof.

The Claimant failed to tender the said Power of Attorney, the content of which she relied upon in proof of his authorisation to institute this action.

I could see a copy of the Power of Attorney in the Court's file, nevertheless, it was not tendered in evidence.

In the circumstance of this case, the supposed Attorney has no capacity to sue and or give evidence for the Claimant. The Claimant failed to prove his authorisation.

In other words, the suit is incompetent and I so hold.

On Issue 2, *whether the Claimant has proved her case on the preponderance of evidence and balance of probability.*

The refusal and or failure of the Claimant to tender the Letter of Authorisation to institute this action has dealt a debilitating wound on the physiology of this case, leaving it to gasp for breath.

It is therefore unnecessary to delve into the second issue as the first issue is the pivot upon which the second issue stands.

In the circumstance of this case, the suit is not competent.

It is accordingly struck out.

The Defendant filed a Counterclaim, which reliefs earlier reproduced in this Judgment.

The law is that he who asserts a fact must prove same. He could not prove by evidence that he did not drive viciously or recklessly and that it was the Claimant who did and caused the accident.

His evidence is that he was admitted in Zinox Hospital. Exhibits E and E1 are receipts of VHM Vinette Hospital & Maternity and a letter titled Medical Report. They are not credible. The Defendant's story is not believable.

The evidence is that it is the Police that sold the BMW via public auction and not the Claimant.

The Defendant has not proved that it was the Claimant that caused the accident. He also failed to prove how the cost of N5 Million was incurred.

In totality, it is my view that the Defendant has failed to prove his case on the preponderance of evidence and balance of probability.

The Counterclaim fails and it is dismissed.

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

(HON. JUDGE)

27/05/2024

Parties absent.

O. G. Ajayi, Esq. for the Claimant.

Augustine Okpotu, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

27/05/2024