

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA

ON THE 12TH DAY OF DECEMBER, 2023

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

SUIT NO. FCT/HC/CV/1313/2020

MOTION NO. M/11262/2020

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

SERENE GREENFIELDS LIMITED CLAIMANT/RESPONDENT

AND

- | | |
|---|------------------------------|
| 1. THE SPEAKER OF THE
HOUSE OF REPRESENTATIVES | DEFENDANT/APPLICANT |
| 2. THE CLERK, NATIONAL ASSEMBLY OF NIGERIA | } DEFENDANTS/
RESPONDENTS |
| 3. POLARIS BANK LIMITED | |

RULING

The 1st Defendant's Notice of Preliminary Objection is dated the 28th day of October, 2020. It prays the Court for an Order striking out the suit on the ground that it is not justiciable against the 1st Defendant by virtue of Sections 3 and 30 of the Legislative Houses (Power and Privileges) Act Cap L12 LFN 2004.

Learned Counsel to the 1st Defendant relied on the grounds for the application.

- (1) That the 1st Defendant enjoys immunity from civil action in respect of legislative proceedings.
- (2) The said proceedings and actions in the course of legislative proceedings do not vest on the Claimant any right of action against the 1st Defendant.

Learned Counsel adopted his Written Address as his oral argument. He refers to the endorsement on the Writ of Summons and Statement of Claim with the following reliefs:

- (1) An unqualified apology from the 1st and 2nd Defendants and a retraction of the false and defamatory publication unjustifiably published by the 1st and 2nd Defendants as it concerns the Claimant on pages 145 and 146 particularly page 146 of its House Committee Report on Fuel Subsidy with the active contribution of the 3rd Defendant and which false report has been replicated in various

national and social media worldwide unabashedly defaming and tarnishing the business and trade reputation of the Claimant.

- (2) The sum of ₦3 Billion as general damages for the reckless national and worldwide defamation of the Claimant through the publication of the Committee report of the 1st and 2nd Defendants with contributions from the 3rd Defendant on fuel subsidy which report replicated in various media nationally and globally have defamed the business reputation and standing of the Claimant.

The 1st Defendant's Counsel posited a lone issue for determination, which is:

“Whether by virtue of the provisions of Sections 3 and 30 of the Legislative Houses (Power and Privileges) Act Cap L12 LFN 2004, this suit is justiciable against the 1st Defendant.”

Learned Counsel canvasses that by virtue of paragraphs 2, 5, 6, 9, 10, 11, 12, 13, 15 & 16 of the Statement of

Claim, the Claimant claims as per the Writ of Summons and Statement of Claim.

Learned Counsel refers to Sections 62 (1) and 88 of the 1999 Constitution. The 1st Defendant is immune from civil action by virtue of Sections 3 and 30 of the Legislative Houses (Power and Privileges) Act in respect of words written in a report to its Committee.

He canvassed that the provisions of the Legislative Houses (Powers and Privileges) Act is a valid and subsisting law.

The Committee's proceedings and recommendations, which the Claimant is complaining about which forms the substratum of the claim were actions of the House of Representatives. Its report cannot form the basis of an action such as this. Learned Counsel urges the Court to strike out the suit.

Claimant filed a Reply to 1st Defendant's Preliminary Objection dated 5/05/2022. The Claimant's Counsel on the other hand raised two issues for determination:

- (1) Whether legislative powers can be exercised in breach of constitutional provisions.
- (2) If **no**, whether the 1st Defendant ought not be made answerable to this Court for such powers exercised in breach of the Constitution particularly the right to fair hearing.

Learned Counsel refers to **paragraphs** 8 - 18 of the Claim and submits that the Constitution is the *grundnorm* of the Federal Republic of Nigeria. That Section 1 (1) and (3) of the Constitution makes the 1999 Constitution the *grundnorm*.

That by Section 4 (8) of the 1999 Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of the Courts of law, accordingly the National Assembly or House of Assembly shall not enact any law

that oust or purports to oust the jurisdiction of a Court of law.

That Section 36 of the Constitution as well as rules of natural justice guarantees the right of fair hearing. That the failure of the Defendants to invite the Claimant either to appear for any enquiry or present documents is a breach of the Constitution.

Learned Counsel refers to **A-G BENDEL STATE vs. A-G FEDERATION & ORS. (1981) LPELR-605 SC.** That legislative powers cannot be exercised inconsistently with the Constitution as such exercise of powers will be invalid to the extent of its inconsistency.

Learned Counsel finally urges the Court to hold the 1st Defendant to be answerable to the Honourable Court as the Legislative Houses (Powers & Privileges) Act which purports to oust the jurisdiction of the Court is inconsistent with the Constitution.

The 1st Defendant's Reply on Points of Law is dated 14/11/2022. Learned Counsel adopted same.

Learned 1st Defendant's Counsel contends that Section 36 of the Constitution does not apply to investigation and verification of facts.

That Claimant did not say the Legislative Houses (Powers & Privileges) Act is inconsistent with any provision of the Constitution.

That Claimant's argument is that Sections 3 and 30 of the Legislative Houses (Power & Privileges) Act are unconstitutional are not valid and tenable. He urges the Court to reject Claimant's argument.

I have read the arguments of both Counsel and considered same. The statutes sought for interpretation which are germane for resolution of this matter are Sections 3 and 30 of the Legislative Houses (Powers & Privileges) Act, Section 1 (1) & (3) and Section 4 (8),

Sections 36, 62 (1) and 88 of the 1999 Constitution (as amended). I shall reproduce them.

Section 3 of the Legislative Houses (Powers & Privileges) Act states:

“No civil or criminal proceedings may be instituted against any member of a Legislative House

(a) in respect of words spoken before that House or a Committee thereof, or

(b) in respect of words written in a report to that House or to any Committee thereof, or in any Petition, Bill, Resolution, Motion or question brought or introduced by him therein.”

Section 30 of the extant law states:

“Neither the President or Speaker as the case may be, of a Legislative House nor any officer of a Legislative House shall be subject to the jurisdiction of any Court in respect of the exercise of any power conferred on or vested in him by or under this Act or

of the standing Orders of the Legislative House or by the Constitution.”

Section 62 (1) of the 1999 Constitution states:

“62(1) The Senate or the House of Representatives may appoint a Committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such Committee and may by resolution, regulation or otherwise as it thinks fit, delegate any function exercisable by it to any such Committee.”

Section 88(1):

“Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its Journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed an investigation into any matter or thing with respect to which it has power to make laws...”

Section 1(1) of the Constitution of the Federal Republic of Nigeria states:

“This Constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

1 (3) - *“If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void.”*

The instant suit brought by the Claimant prays the Court for an unqualified apology from the 1st and 2nd Defendants and a retraction of the false and defamatory publication unjustifiably published by the 1st and 2nd Defendants as it concerns the Claimant on pages 145 and 146, particularly page 146 of its House Committee Report on Fuel Subsidy with the active contribution of the 3rd Defendant and which false report has been replicated in various national and social media worldwide unabashedly

defaming and tarnishing the business and trade reputation of the Claimant.

In the Statement of Claim, particularly paragraph 13, Claimant avers that at p. 145 of the Report of the 1st Defendant's Committee, it states that marketers obtained Forex but not found to have utilized same for petroleum products importation.

Some marketers were found to have obtained forex for petroleum products importation in the relevant years 2009, 2010 and 2011 but could not be found to have utilized same for the purpose they were meant.

In paragraph 14, the Claimant avers that the report on page 146 stated thus, "The table hereunder is intended to expose those who may have exploited the subsidy regime to engage in money laundering activities."

It went ahead to state those who obtained forex but did not import petroleum products. The Claimant is No. 12 of

the List. The Claimant avers that the report is totally false, baseless, unfounded and reckless.

In paragraph 6 of the claim, the Claimant avers that the Committee said it invited 93 Non-Governmental Companies and marketers to appear before it. That it also invited 5 Non-Governmental Companies who only submitted documents but did not appear before the Committee.

That about 45 Non-Governmental Companies and marketers were invited but failed to appear before the Committee or send any document whereas 5 Non-Government Marketers described as not directly involved in the subsidy regime were also invited.

The complaint of the Claimant is that throughout the investigation and verification works of the Committee no invitation whatsoever was extended to the Claimant either to appear for any enquiry or even present documents to the Committee. That his reputation has been injured.

In **CHEVRON NIG. LTD vs. IMO STATE HOUSE OF ASSEMBLY (2016) LPELR-41563**, the Court of Appeal held: “Admittedly, powers are expressly granted under the provisions in Sections 82, 83, 120 and 121 of the Constitution for legislative investigations to be directed or caused to be directed by each House of Assembly.”

It is however necessary to stress that the powers so conferred are in the language of those provisions exercisable only for the purposes of enabling each legislative body or its Committees to make laws with respect to any matter within its legislative competence and to enable it correct any defects in existing laws, expose corruption, inefficiency or waste in the execution or in the disbursement or administration of funds appropriated by it.

It seems clear therefore that a legislative investigation is part of law making. It is an adjunct of the legislative process. Accordingly, any legislative investigation carried out in exercise of those powers is subject to the

Constitutional requirements of Chapter IV of the Constitution, which guarantees to every person's fundamental rights to life, to dignity of human person.

Each legislative body in common with all branches of government is obliged under the Constitution to exercise its legislative powers in aid of legislation subject to the limitations placed by the Constitution on government action.

In **A-G BENDEL STATE vs. A-G FEDERATION & ORS (1981) LPELR-605 SC**, the Supreme Court held, *“In the exercise of the legislative powers, the legislature is not left at large and allowed to breach the constitutional provisions without question.”*

Section 4 (8) of the Constitution makes them answerable in the Courts of law or judicial tribunals established by law for any allegation of breach of the Constitution in the exercise of their legislative powers by its provisions.

In the instant case, the allegation of the Claimant in its Writ of Summons and Statement of Claim is that the 1st and 2nd Defendants breach its right of fair hearing. He was not invited to hear his side of the story and he was maligned and injured by the 1st Defendant in its report which was published globally.

In the circumstance of this case, the 1st and 2nd Defendants cannot hide under Sections 3 and 30 of the Legislative Houses (Powers & Privileges) Act to do what they are alleged to have done.

Once there is an allegation of the breach of a fundamental right in the performance of their functions, the Courts must intervene. It is the breach of that right that has conferred on this Court jurisdiction.

Sections 3 and 30 of the Legislative Houses (Powers & Privileges) Act is not inconsistent with the Constitution. The Constitution envisages that all persons, including

government, parastatals and or companies shall conduct its businesses in accordance with the Constitution.

The non-compliance with fundamental rights under the Constitution and the rules of natural justice has made the instant matter justiciable or made it come alive.

The accusation of the Claimant is that the 1st Defendant shaved his head behind him, hence, he is claiming damages for libel.

For the reasons above, it is my view and I so hold that the suit is justiciable. The 1st Defendant's Notice of Objection lacks merit and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
12/12/2023

Parties absent.

Nguevese Tin-Tur, Esq. for the Claimant.

G. O. Unurhoro-Oke, Esq. for the 1st Defendant.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
12/12/2023