

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT JABI, ABUJA**

**THIS TUESDAY, THE 21ST DAY OF FEBRUARY, 2023.**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**SUIT NO: FCT/HC/CV/019/2022  
MOTION NO: M/5379/2022**

**BETWEEN:**

**BAKARE BOLAJI  
(TRADING UNDER THE NAME AND STYLE OF  
BAKARE BOLAJI & ASSOCIATES)** } **CLAIMANT/  
RESPONDENT**

**AND**

**1. HAJIA HAJARA ADEOLA  
2. MIKASA LIMITED** } .....**DEFENDANTS/OBJECTORS**

**RULING**

By a motion on notice dated 11th May, 2022, and filed same date at the court's Registry, the Defendants/objectors pray for the following Reliefs:

- 1. An order of this Honourable Court dismissing this suit *in limine* for absence of any reasonable cause of action.**
- 2. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.**

The grounds of the application as contained on the motion paper are as follows:

- 1. The Claimant predicates his case on an alleged exclusive agency to market and sell the land measuring 11.4 Hectares lying and situate at Plot 21 Cadastral Zone C17 in the industrial Area 11 District of Federal Capital Territory, Abuja belonging to the 2nd Defendant within the jurisdiction of this Honourable Court.**
- 2. By the letter of appointment of the Claimant dated May 26, 2016 attached as part of the frontloaded documents, there is no provision in the appointment letter appointing the Claimant as an exclusive agent.**
- 3. By the Claimant's pleadings, it was not the Claimant that sold the land which is the subject matter of this suit, the Claimant merely made "efforts to sell"**
- 4. The law is settled that a commissioned agent is only entitled to payment upon effecting sale.**
- 5. The claim of exclusive agency and for payment without effecting sale, clearly fail to disclose any cause of action.**

The objection is supported by a written address in which one issue was raised as arising for determination as follows:

**"Whether there is any reasonable cause of action before this Honourable Court."**

The address which forms part of the Records of Court, and here I will only highlight the essence of the submissions, then dealt at length with the meaning of reasonable cause of action and its legal parameters and it was contended that looking at the statement of claim vide paragraphs 3-12 and the Reliefs sought that no reasonable cause of action was disclosed and accordingly that the court will lack jurisdiction to entertain the action. The applicants also filed a Reply on points of law in response to the Claimant's written address and in the address, the point was addressed that the extant objection on jurisdiction is not to be equated with demurrer and accordingly there was no requirement for the filing of a statement of defence before the issue of want of reasonable cause of action can be raised.

At the hearing, counsel to the Applicants moved the application and relied and adopted the submissions in the written addresses in urging the court to strike out the substantive action for failure to disclose a reasonable cause of action against Defendants.

The Claimant in response filed a claimant's written address in reply to the notice of objection on 11th November, 2022. In the address, two issues were raised as arising for determination as follows:

- 1. Whether the Defendants/Objectors preliminary objection dated and filed on 11th May, 2022 does not amount to a demurrer?**
  
- 2. Whether the Claimant/Respondent's statement of claim discloses a reasonable cause of action?**

The submissions on the above issues equally form part of the Records of Court. I will only highlight in summary the essence of the submissions made on the issues.

**On issue 1**, the simple point made is that the extant objection is a demurrer which has been abolished. That the proper procedure under prevailing Rules of court is that for the objection to be sustainable, the point of law must first be raised in the statement of defence before the applicant can proceed to file his objection in which the point of law is again raised for determination before the trial. In the circumstances, it was contended that the present objection is a demurrer and thus incompetent and liable to be struck out.

**On issue 2**, a cause of action was defined and it was submitted that on the principles or parameters of what situates a cause of action that the Respondent vide paragraphs 3-17 of the claim has disclosed a reasonable cause of action or disclosed and raised questions fit to be decided by the court. That whether the action will succeed ultimately is a different matter altogether.

At the hearing, counsel to the Respondent adopted the submissions contained in the written address in urging that the objection be dismissed.

I have carefully evaluated the processes filed on both sides of the aisle together with the oral submissions. The narrow issue to be resolved as captured by both

parties is whether this action discloses a reasonable cause of action against Defendants. It is a matter to be resolved on fairly settled legal principles.

A convenient starting point would however be to consider the issue of the competence of the objection. It was contended that the application is in the nature of a demurrer which is now no longer allowed or available under our Rules of Court.

In addressing the question of demurrer, let me state the obvious that firstly, jurisdiction is very important and indispensable in the administration of justice. It is fundamental as the validity or otherwise of any proceedings turns on its existence or non-existence. See **Uti V Onoyiwe (1991) 1 SCNJ 25 at 49.**

It is trite principle that the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595; The Supreme Court** instructively stated as follows:

**“A court is competent to adjudicate when:**

- a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and**
- b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.**
- c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.**

**Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication”.**

For the jurisdiction of the court to crystallize into hearing a matter, the three ingredients above must co-exist conjunctively.

The question of jurisdiction on the authorities is a threshold issue and the very basis or lifeline on which a court tries or decides any dispute in court. Where an action is not competent or properly constituted, it robs the court of jurisdiction to

entertain same and must be dealt with first. See **Ofia V Ejem (2006) 11 NWLR (pt.992) 652 at 663**. Because of its importance, it can be raised at any stage of the proceedings and even on appeal and in any manner.

Lending enormous judicial weight to this position, the Supreme Court in **Nuhu V. Ogele (2003)18 N.W.L.R (pt.852)231 at 279** per Edozie J.S.C stated as follows:

*“It has long been settled that where an objection to the jurisdiction of an inferior court appears on the face of the proceedings and I will add, manifested in the uncontroverted affidavit evidence of the parties, it is immaterial by what means or by whom the court is in formed of such objection. ... The issue of jurisdiction being fundamental to the existence of the writ or claim, the form, nature or procedure of how it is raised is not strictly material. Where a challenge to the decision of a court is founded on lack of jurisdiction, the court is bound to consider such challenge. A party to a litigation cannot be shut out and the court inhibited from entertaining a matter on technical ground particularly where the issue of jurisdiction is concerned.”*

As a logical corollary and in the clear context of the fundamental pivot jurisdiction plays in every case, the relationship between jurisdiction and demurrer must not be confused as they are distinct legal processes. Proceedings by way of demurrer may have been abolished under extant Rules of Court but it is imperative to understand the difference between jurisdiction and demurrer since proceedings in lieu of demurrer are still available. The Supreme Court in **NDIC V CBN (2002) 7 NWLR (pt.766) 272 at 296 – 297** instructively brought out the dichotomy between the two concepts thus:

**“The tendency to equate demurrer with objection to jurisdiction could be misleading. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or, where appropriate, no locus standi.... But as already shown, the issue of jurisdiction is not a matter for demurrer proceedings. It is much more fundamental than that and does not, entirely depend as such on what a plaintiff may plead as facts to prove the reliefs he seeks. What it involves is what will enable the plaintiff to seek a hearing in court over his grievance, and get it resolved because he is able to show that the court is empowered to**

**entertain the subject matter. It does not always follow that he must plead first in order to raise the issue of Jurisdiction.”**

Therefore in demurrer, now branded application in lieu of demurrer, parties to an action must file their pleadings, the statement of claim and defence. Then the defendant is entitled to raise his point of law, which may include but not limited to the issue of jurisdiction as a preliminary issue in his statement of defence. Whereas if the important issue of jurisdiction is raised, the parties need not plead nor the defendant peremptorily required to raise the jurisdictional issue in his statement of defence; such a defendant is free to file a preliminary objection to the jurisdiction of the court with the writ of summons as the only process before it, that is without pleadings. See **Elabanjo V Dawodu (2006) 15 NWLR (pt.1001) 76; Akintaro V Egungbohum (2007) 9 NWLR (pt.1038) 103.**

It must also be added that though demurrer proceedings may have been abolished as earlier alluded to vide **Order 23 Rule 1 of the Rules of Court 2018**, however the provision of **Order 23 Rule 2(3) of the High Court Rules provides room for extant applications of this nature.** I am fortified in this view by the decision of the Supreme Court in the case of **Mobil Oil (Nig.) Plc V. IAL 316 Inc. (2000) 9 WRN 29 at 39**, where the Supreme Court in considering **Order 31 Rule 19 of the Federal High Court Rules 1976**, which is in pari materia with **Order 23 Rule 2(3) of the High Court Rules** held, per Ayoola, JSC at page 39 of the Report stated as follows:

*“Order 31 Rule 19 of the Rules which enables a party to apply to the Court to strike out any pleadings on the ground, inter alia, that it discloses no cause of action, to some extent, offers an alternative to a demurrer and gives the defendants a somewhat wider latitude as to the time in the proceedings when he could make the application.”*

The bottom line is that the important question of jurisdiction is not necessarily predicated on the filing of pleadings. I am therefore unable to agree that the application is incompetent.

Now to the substance or a consideration of the application on the merits. As stated earlier, the simple issue is whether the statement of claim **discloses a reasonable cause of action.**

It is settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The court needs only to look at and

examine the averments in the statement of claim of the plaintiffs. See **Ajayi V Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; 7up Bottling Co. Ltd V Abiola (2001) 29 WRN 98 at 116.**

The extensive submissions and allusion to facts as contained in the written addresses of Defendants/Applicants cannot form the basis on which to determine if there is a reasonable cause of action. The answer to the question of whether the statement of claim discloses a reasonable cause of action is to be found in the statement of claim itself and not in any other extraneous document(s).

In considering whether there exist a reasonable cause of action it is sufficient for a court to hold that a cause of action is reasonable once the statement of claim in a case discloses some cause of action or some question fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A.G. (Fed.) V A.G. Abia State & ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd V. LASEPA (2003) 1 MJSC 112 at 132.**

What then is a cause of action, which has to be reasonable failing which the court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo V N.R.C (1992) 7 NWLR (pt.234) 471 at 483; Bello V A.G. Oyo state (1986) 5 NWLR (pt.45) 828.** to mention a few.

In **Akibu V Oduntan (2003) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

**“A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:**

- (a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and**
- (b) The consequent damage.”**

The question now is does the extant statement of claim disclose the above elements. In so far as can be evinced from the statement of claim and the Reliefs sought, the fact or combination of facts on which the Plaintiff has premised his right to sue seem to be pleaded in paragraphs 3 to 14 of the statement of claim. The alleged wrongful act(s) of the Defendants and the damage suffered by Plaintiff has been clearly set out in the said statement of claim. It is the alleged failure to pay him agreed commission after he had carried out the written mandate of Defendants to market and sell a property situate at Plot 21 Cadastral Zone C17, Area 11, Abuja, an assignment, he said he executed which culminated in the property been purchased or bought by one Alhaji Bashir Haruna and his company.

The arguments made out by Defendants that the claimant by the letter appointing him is not an exclusive agent; that he was not the person who sold the subject matter in dispute but only made “**efforts to sell**” and that a commissioned agent is only entitled to payment upon effecting sale are with respect premature and are clearly matters that go to the substantive issues or matters which the court cannot make an inquiry into at this stage and have no value for purposes of determining the question of whether a statement of claim discloses a reasonable cause of action. The Defendant will appear by the nature of the submissions made to have proceeded on the wrong premise, that we are dealing at this point with the substantive action. The cases of **SD Nig Ltd V. Ojo & Anor (2016)LPELR 4023 CA; Ukah & Ors V. Onyia & Ors (2018)LPELR 4025 and Odufulnde V. Rossek (1962)LPELR 25099** cited by Defendants denoting the principle of when an agent is entitled to claim payment of agent commission certainly remain good law but can have no application now when the court is yet to hear the grievance submitted for adjudication. At the appropriate time, God willing, the authorities will be considered to situate their application in the context of the facts/evidence elicited and proved at the hearing.

On the whole, a statement of claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the plaintiff’s legal right or the failure of the Defendant to fulfill his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka V Shell (2003) 3 MJSC 136 at 149, Ibrahim V Osim (1988) 2 NWLR (pt.82) 257 at 271 – 272.**

After a careful consideration of the Statement of Claim, I am satisfied that it has clearly set out the legal rights of the Plaintiff and the obligation of the Defendants.

It has further set out the failure of the Defendants to meet its obligations. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a Court. At the risk of prolixity, any perceived weakness of the Plaintiff's case is not a relevant consideration when the question is whether or not the Statement of Claim has disclosed a reasonable cause of action.

The fact that learned defence counsel perceives and had indeed submitted that the plaintiff's action is bound to fail is no ground to strike the action out. No.

In the light of the foregoing and in summation, I find no merit whatsoever in the Defendants preliminary objection and it is hereby dismissed.

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*Hon. Justice A.I. Kutigi*

**Appearances:**

1. *L.C. Ekene Okwunma, Esq., with Precious C. Idems for the Claimant/Respondent.*
2. *C.N. Ayo with Hajara Shehu for the Defendants/Applicants.*