

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/736/2021

BETWEEN:

C.U. PETERS ESQ _____ CLAIMANTS/APPLICANTS

AND

- | | | |
|-------------------------------------|---|--------------------------------|
| 1. PATIBON SERVICES LTD | } | DEFENDANTS/ RESPONDENTS |
| 2. FRANCIS SHOGA | | |
| 3. PHILIP OLUWAFEMI SHOGA | | |
| 4. ENGR. EKUNDAYO AFOLA-OGUN | | |
| 5. BARR. IBRAHIM IDAIYE | | |

RULING

On the 5th day of July, 2022 the counsel to the defendants appeared and the counsel to the claimant did not appear, and his matter was called for hearing. The counsel to the defendants introduced to the court an application he has filed, and further informed this court that the service of the Notice of Preliminary Objection was served on the claimant on a particular date.

The court allowed him to move his application challenging the jurisdiction of this court.

On the next return date when the ruling on the application was to be delivered, the counsel to the claimant was in court, and the ruling was not delivered for the fact that it was not ready.

The counsel to the claimant addressed the court and applied that the proceedings of the 5th July, 2022 be set aside on the ground that on that day he was in court but however fell sick and could no longer bear it to stay for the proceedings as he rushed to hospital in Gwagwalada. That

before then, he met a counsel in this matter in the court, even though it was not Ibrahim Idaiye Esq and informed that counsel that he would be rushing to the hospital as he was dying. Also before that, he said, he asked the court clerk to give him a date as the court did not start sitting.

The counsel to the claimant also told the court that he submitted his response in opposition to the notice of preliminary objection and paid for service, and that after he was discharged from the hospital he tried to reach Zubairu to find out whether his processes were served on the defendants, but Zubairu could not pick his call. He said, he tried reaching the Registrar, and he was told by the Registrar that Zubairu was on leave. The counsel told the court that later he was told that Zubairu could not do anything, and he therefore prayed to the court to set aside the proceedings conducted on the 5th day of July, 2022 relying on the principle of fair hearing as enshrined in the constitution, (as amended).

Thus, it appears from the submission of the counsel to the claimant that it was the fault of the staff of this court whose name is Zubairu, who refused to serve the processes of the claimant on the defendant, and who also could not inform the court that the counsel was in court on the 5th July, 2022 but left for hospital. It is the law that the sin of the staff of the court will not be visited on the litigant, and therefore it is not the fault of the counsel to the claimant not have responded within time by serving the processes on the defendant particularly his response in opposition to the notice of preliminary objection.

Looking at the processes in the case file, it is discovered that the response of the claimant was filed on the 5th July, 2022, and taking into consideration that once motion or application is moved, the court has to rule in one way or the

other, and coupled with the positions of the law that the court has to look at every processes in the case file, I am inclined to consider the response of the claimant in arriving at a decision on the Notice of Preliminary Objection filed by the 4th and 5th defendants instead of setting aside the proceedings conducted on the 5th July, 2022.

The 4th and 5th defendants/applicants in their motion with No. M/5954/2022 seek for an order striking out the names of the 4th and 5th defendants from this suit on the ground that the statement of claim of the claimant did not disclose a reasonable cause of action against the 4th and 5th defendants, and there is no chance of success of this suit against the 4th and 5th defendants as it amounts to wastage of time to determine this suit against the 4th and 5th defendants.

It is in the affidavit that the claimant averred in paragraph 7 of his statement of claim that the 4th defendant called him on the 20th May, 2020 for a meeting and in the meeting the 4th defendant introduced other defendants who retained his professional services and briefed him to handle a list of cases which he filed for thereon, and that the 4th defendant never did anything other than to introduce the other defendants to the claimant, and that the entire statement of claim is bereft of any other activity wherein the 4th defendant did.

It is also in the affidavit that the 5th defendant was only alleged in the statement of claim to have taken the briefs of the claimant in breach of the Rules of Professional Conduct, and no facts as to how the alleged breach occurred was provided by the claimant in his statement of claim. The applicant therefore averred that this court does not have the jurisdiction to hear and determine a breach under the Rules of Professional Conduct for the Legal Practitioners.

In his written address, the counsel to the 4th and 5th defendants formulated one issue for determination, in the application, to wit:

Whether the plaintiff/respondent has made out a case of action against the 4th and 5th defendants/applicants in this action to vest jurisdiction on this Honourable Court to hear any claim against them?

The counsel to the 4th and 5th defendants cited the case of **Madukolu V. Nkemdilim (1962) 2 SCNLR 341** to the effect that any defect in competence is fatal, for the proceedings is a nullity no matter how well conducted, and once the elements of jurisdiction are absent, the court does not have jurisdiction, and that the court must ensure that subject matter is within its jurisdiction and that there is no feature in this case to prevent it from exercising its jurisdiction, and in this case, the claimant failed to disclose any cause of action against the 4th and 5th defendants. The counsel cited the case of **Savage V. Uwaechia (1972) 3 SC 214 at 221** as to the definition of cause of action: The counsel cited the case of **A.G. Fed. V. Abubakar (2007) 10 NWLR (pt 1041) 1 at pp. 121 – 122** to the effect that there must exist a matter in actual controversy between parties to a suit in which the court is called upon to determine and that once there is no such live issue between the parties, court will lack jurisdiction to entertain the matter.

The counsel submitted that in determining whether there is a cause of action in a matter, recourse has to be had to the statement of claim and not statement of defence, and he cited the case of **UBN Plc V. Umeoduagu (2004) 13 NWLR (pt 890) 352**.

The counsel to the 4th and 5th defendants submitted that the claimant did not suffer any injury by the

introduction only by the alleged failure to pay his professional fee which has nothing to do with the 4th defendant.

It is submitted that it was alleged by the claimant in paragraph 3 of his statement of claim that the 5th defendant has taken over the cases of the claimant contrary to the Rules of Professional Conduct, and no facts were given as to how the 5th defendant took over claimant's brief, and the counsel cited the case of **Anukwu V. Eze (2012) 11 NWLR (pt 1350) 50** to the effect that cause of action consists of every fact that would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court.

The counsel submitted that there is no fact or facts which constitute a cause of action against the 4th and 5th defendants and therefore urged the court to grant this application.

In his reply on points of law, the counsel to the claimant raised these issues for determination, to wit:

- 1. Whether proceedings in lieu of demurrer which has been abolished by FCT High Court (Civil Procedure) Rules 2018 could be resurrected by this Honourable Court to exculpate the 4th and 5th defendants from the liability of trial in the claimant's action?**
- 2. Whether the Honourable court can adjudicate on offensive affidavit of the defendants?**
- 3. Whether the claimant in his averments did establish reasonable cause of action against the 4th and 5th defendants and connecting the nexus in respect of the claimant's suit?**

On issue No. 1, the counsel to the claimant submitted that Demurrer is a formal mode of disputing the sufficiency in law of the pleading of the other side. In effect it is an allegation that, even if the facts stated in the pleadings to which objection is taken to be true, yet their legal consequences are not such as to put the demurring or proceeding further with the matter, and he cited **Lawyers Deskbook, Vol. I at p. 72** by **Sylvester V. Imhanobe**, and also referred to Order 23 Rule 1 of the Rules of this court.

The counsel submitted that the defendants have admitted in their joint statement of defence that it is the 4th defendant that introduced both the claimant and the defendants, and that the 4th defendant conducted the meeting that took place at 10B Naitunke Street, Wuse 2, Abuja, and that the suit before the court the claim is a jointly and severally against all the defendants, and the court is referred to Black's Law Dictionary 16th Edition Central Edition 1991 page. He submitted that by the affidavit of the defendants, it was admitted that the 4th and 5th defendants are connected with the case, and have to stand the trial.

The counsel also submitted that the 5th defendant has converted the brief and which is a serious professional issue, and he cited the case of **Julius Berger Plc V. Omogus NSQLR 1062** to the effect that the fact or combination of facts which gives rise to a right to sue, and this consist of wrongful act and consequent damage, and he urged the court to dismiss the defendants' preliminary objection with substantial cost of N500,000.00.

On issue No. 2, the counsel to the claimant referred to section 115(1) and (2) of the Evidence Act, 2011 to the effect that every affidavit use in the court shall contain only

the statement of facts and circumstances to which the witness deposes either of his personal knowledge or from information which he believes to be true, and that an affidavit shall not contain extraneous matters by way of objection, prayer or legal argument or conclusion, and he cited the cases of **Sodepo Oleminkaram Oy (1992) 8 NWLR (pt 258) 229 at 244; UAC (Nig.); Abu V. Alele Williams (1992) 5 NWLR (pt 241) 340 at 347 and 348, paras. C-D** and submitted that the defendants' affidavit in support of preliminary objection to the suit of the claimant from paragraph 3(a)-(g), 4(a) – (g) are all offensive and in aberration of the Oath Act 1990 and section 115 (1) and (2) of the Evidence Act, and urged the court to so hold.

On issue No. 3, the counsel defines cause of action to mean fact or facts which give a person a right to judicial redress or reliefs against another, and further submitted that the claimant has established prima-facie facts to grant him the legal starch to maintain the suit against the 4th and 5th defendants, the preliminary objection with substantial cost.

Thus, let me quickly adopt the issues already formulated by the counsel to the claimant as follows:

- 1. Whether this preliminary objection bothers on demurrer, and if the answer is in the affirmative, whether demurrer is allowed?**
- 2. Whether the affidavit in support of this application contravene section 115(1) (2) of the Evidence Act and Oath Act 1990?**
- 3. Whether the claimant's statement of claim discloses a reasonable cause of action against the 4th and 5th defendants?**

On issue No. 1, the counsel to the defendant in his affidavit in support of the preliminary objection made heavy

weather as to the non-disclosure of cause of action in the claimant's statement of claim which is basically argued that this court does not have the jurisdiction to entertain this suit having regard to the non-disclosure of the cause of action.

It is instructive to note that there is a distinction between demurrer proceedings and objection to the jurisdiction. In demurrer, the claimant must plead, and it is upon that pleading that the defendant will contend that accepting that all the facts pleaded to be true, the claimant has no cause of action, however, the issue of jurisdiction is not matter of demurrer proceedings. See the case of **Akenyemi V. Banjoko (2019) All FWLR (pt 989) p. 1285 at 1314, paras. C-F.**

In the instant application, the 4th and 5th defendants averred that it is in paragraph 7 of the statement of claim that the 4th defendant called him on the 20th May, 2020 for a meeting and in the meeting the 4th defendant introduced other defendants who retained his professional services and briefed him to handle a list of cases which he filed for them and that the 4th defendant never did anything other than to introduce the other defendants to the claimant and that the entire statement of claim is bereft of any activity wherein the 4th defendant did. It was also averred in the affidavit that the 5th defendant was only alleged, in the statement of claim, to have taken the briefs of the claimant in breach of the Rules of Professional Conduct, and that the court does not have jurisdiction to hear and determine a breach under the Rules of Professional Conduct.

Thus, looking at the above averments, it can be inferred that on the side of the 4th defendant, the argument of the defendant appears to be demurrer, this is because, the 4th defendant only introduced the claimant to the defendants and never did anything. This shows that based

upon the statement of claim, the only thing the 4th defendant did was to have introduced the claimant to the other defendants and that he never did anything apart that, and that the plaintiff has no cause of action. To my mind, this is demurer.

On the side of the 5th defendant, the 4th and 5th defendants argued that the 5th defendant was alleged to have taken over the briefs of the claimant which is against the Rules of Professional Conduct For Legal Practitioners, and this court does not have jurisdiction to entertain this kind of action. To my mind, the defendant raised the issue of jurisdiction.

Now, demurrer is not allowed pursuant to Order 23 Rule 1 of the Rules of this court, however, the jurisdiction of jurisdiction has to be looked into by this court in reference to the case of **Akinyemi V. Banjoko (supra)**.

In any of the two situations mentioned above, this matter has to proceed, and the issue is resolved in favour of the claimant.

On issue No. 2, as to whether the affidavit in support of this application contravenes section 115 (1) and (2) and Oath Act 1990, the claimant contends that from paragraphs 3(a) – (g) and 4(a) – (g) of the affidavit in support of the preliminary objection offend section 115(1) (2) of the Evidence Act, 2011, and Oath Act 1990. The claimant/respondent did not explain as to how the paragraphs 3(a) – (g) and 4(a) – (g) offend provisions of section 115 (1) and (2) of the Evidence Act. See the case of **Stanbic Bank Plc V. L.G. Capital Ltd. (2018) All FWLR (pt 927) p. 175 at 189, paras. B-C** where the Supreme Court held that where a party alleges that certain paragraphs offend the provisions of section 115(2) of the Evidence Act, 2011, the

responsibility is on the party to explain how the paragraphs of the affidavit are inconsistent with the section of the Evidence Act. In the instant case, the argument of the claimant is hereby discountenanced.

On the issue No. 3, I agree with the counsel to the 4th and 5th defendants that in determining whether a suit discloses a cause of action, the court has to have recourse to the statement of claim and not the statement of defence. See the case of **Sifax Nig. Ltd. V. Migfo Nig. Ltd (2019) All FWLR (pt 1019) 924 (SC)** in the instant case, the court is duly bound to go through the statement of claim with a view to discover two things that is cause of action and the claim or relief made against the 4th and 5th defendants.

Thus, the court has painstakingly gone through the statement of claim, and has not seen any cause of action against the 4th and 5th defendants, and has not seen any claim or relief, made against them. See the case of **Ogbebor V. INEC (2019) All FWLR (pt 1004) p. 310 at 333, paras. D-G** where the Supreme Court held that a dispute must arise between the parties before a court is called upon to adjudicate, there must be proper parties linked to the cause of action before a court can assume jurisdiction in the matter, and it is improper to join, as a co-defendant, to an action a person against whom the plaintiff has made out no cause of action and against whom he has no claim.

In paragraph 5 of the statement of claim, the claimant averred that the 4th defendant represented himself as a brother to the 2nd and 3rd defendants, while in paragraph 6, it is averred that the 5th defendant is a legal practitioner who took over the briefs of the plaintiff in breach of the Rules of Professional Conduct. It is also averred in paragraph

32 of the statement of claim that the 4th defendant called for a meeting without disclosing the agenda of the meeting.

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

- (a) The wrongful act of the defendant which gives the plaintiff his cause of complaint, and
- (b) The consequent damage. See the case of **Idiagbon V. APC (2019) All FWLR (pt 1021) p. 173 at 186, paras. D-E.**

In the instant case, and based upon the above paragraphs quoted, what are the wrongful act of the 4th defendant? It is only averred that he called for a meeting without disclosing the agenda of the meeting. Does calling for a meeting without disclosing the agenda a wrongful act, that will warrant the claimant to file an action? And what does he want from the 4th defendant? Certainly, even if the 4th defendant represented himself as the brother of the 2nd and 3rd defendant, what is the wrong committed by the 4th defendant if he represented himself as the brother to the 2nd and 4th defendants? to my mind, the set of circumstances put forward by the claimant in the statement of claim does not disclose any cause of action against the 4th defendant, and to this, I so hold.

Now, if the 5th defendant being a legal practitioner took over a brief from the claimant, does that constitute a wrong which gives rise to a legal claim against the 5th defendant? The claimant should have gone beyond that to explain in his statement of claim as to the wrong committed by taking over his brief, and at what circumstances. This, the claimant did not explain the combination of facts which gives right to the claimant to complaint against the 5th

defendant. Even though the claimant averred that the 5th defendant took his brief against the Rules of Professional Conduct For Legal Practitioners, what is the claim of the claimant against the 5th defendant, if eventually it is established that there was wrongful taking over of brief by the 5th defendant from the claimant? The claimant failed to set the facts or combination of facts that will link the 5th defendants with the cause of action, and to this, I so hold.

The filing of this suit against the 4th and 5th defendants is improper and is frivolous and vexatious as it is an abuse of court process. See the case of **Ogbebor V. INEC (supra)**.

The names of 4th and 5th defendants are hereby struck out of this as there is no cause of action disclosed and no relief against them.

Hon. Judge
Signed
9/11/2023

Appearances:

Sir C.U. Peters Esq appeared for himself and own counsel.

A.G. Inyandu Esq appeared for the defendants.

CT: The matter is adjourned to 5th day of February, 2024 for hearing.

Hon. Judge
Signed
9/11/2023