

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

SUIT NO: CV/1239/2019

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

INCORPORATED TRUSTEES OF WUYE ULTRA MODERN MARKET ALLOTEES....PLAINTIFF

AND

S.C. PETERSDEFENDANT

RULING

The defendant herein filed this Notice of Preliminary Objection seeking this court to strike out this suit for want of jurisdiction on the sole ground that the entire suit of the plaintiff is academic and a gross abuse of the judicial process of this court as the defendant is not counsel to the plaintiff in any suit especially in the cases mentioned in the affidavit evidence of the plaintiff and further the Nigerian Bar Association, which the plaintiff seeks for an order against it to the effect that this Honourable Court do order that the said association sanctions the defendant, is not a party to this suit, ipso facto, this court lacks the jurisdiction to make such order against a non-party.

The application/notice is supported by four paragraphed affidavit deposed to by one Bernard Adindu, the legal secretary in the law firm representing the defendant and is accompanied by a written address of counsel.

The plaintiffs/respondents filed an eleven paragraphed counter affidavit and is accompanied by a written address of counsel.

In the affidavit in support of the notice of preliminary objection, it is stated as the deponent was told by the defendant that he (the defendant) is not a lawyer or legal practitioner representing the plaintiff in any case in the

entire world especially in **Abbah Dennis & Ors V. Hon. Minister FCT & Ors** with suit No. **CV/440/2012**; **Abbah Gana & 257 Ors V. Nigerian Police Force & 6 Ors** with Suit No. **CV/2694/2016**; **Mayaki & 1085 Ors V. Hon. Minister FCT & Anor.** with suit No. **CV/196/2016** or any other case in the Supreme Court.

It is stated that the case of **Abbah Dennis & Ors V. Hon. Minister FCT**, the suit had been determined and an appeal against same by the All Purpose Shelter Ltd had also been determined and the Supreme Court had ordered that parties be allowed to choose their counsel but the plaintiff is not a party to that appeal and was never in that case from the trial court.

It is stated that regarding the case of **Abbah Gana & 257 Ors V. Nigerian Police Force & 6 Ors**, with suit No. **CV/2694/2016**, that the defendant is also not a counsel to the present plaintiff was not a party to the said action and the court had ruled that parties should indicate their advice of counsel.

It is stated regarding the case of **Mayaki & 1085 Ors V. Hon. Minister FCT & Anor.** with suit No. **CV/196/2016**, that the court per Ogbonnaya J. had strictly warned persons claiming that the plaintiff was a party as from the writ before His Lordship, the plaintiff is not a party and as such cannot debrief any counsel except the parties themselves.

It is further stated that some of the plaintiff in EXH. 'D', annexed in this affidavit had written to the defendant telling him that the plaintiff is being used to extort money from them by asking them to pay money for the execution of judgment that had not been given by the court, and that the plaintiff had never briefed the defendant to conduct any case on its behalf, rather for the purpose of transparency and in order to issue a single receipt for transaction relating to Wuye Ultra-Modern Market between

the defendant and his clients, his clients should pay through the plaintiff's association, and that the Nigerian Bar Association which the plaintiff is seeking for an order against in relief No. 7 is not a party to this case.

In his written address, the counsel to the defendant/applicant formulated this issue for determination, to wit:

Whether in the light of the circumstance of the originating summons and the applicable laws, this Honourable Court has the jurisdiction to hear and determine the plaintiff's originating summons?

Learned counsel to the defendant cited a plethora of decisions of the Supreme Court where the subject of jurisdiction was dealt with extensively, and it is submitted that the subject matter is that the defendant is/was not counsel to the plaintiff and that the plaintiff has failed to exhibit any court process before the court to show that the defendant handled any case for the plaintiff, and that cases in court are not filed orally or by speculation and that court cases are filed in the names of parties and it is only a party to the case that can debrief a lawyer, and he cited the case of **Ajakaiye V. FRN (2010) 11 NWLR (pt 1206) p. 500 at 527, paras. F-G** to the effect that it is only a party purported to be represented by counsel can challenge a legal practitioner's right or authority to appear.

The counsel contended that EXH. 'A', 'B', 'C', and 'D' are records of the cases that contrary to the plaintiff's claim that it has debriefed Mr. Peters, the plaintiff was not a party to those suits.

To the counsel, the law is certain and steadfast that the only person in law that could debrief Mr. Peters in the circumstances of this case in which the suit was filed are the parties to the appeal of the suits. He further argued that the courts, as could be gleaned from the exhibits 'B' and 'C',

had made decisions in the right position of the law and the plaintiff who is aware of these decisions and even annexed these decisions to its originating summons is still approaching this court on the same issue which is a contemptuous action.

The counsel argued that the plaintiff by this suit is inviting your Lordship to make pronouncement on cases that are not before the court without also availing the court any evidence as their entitlement to declarative reliefs being sought before the court, and further argued that this case is a clear case of speculation and abuse of court process, and he cited the case of **Ukachukwu V. PDP (2014) 4 NWLR (pt 1396) p. 65 at 81 paras. D-G.**

Regarding relief No. 7 of the substantive suit, the counsel urged the court decline jurisdiction to make an order against the Nigerian Bar Association who is not a party to this suit, and he cited case of **Auro Nig. V. Registered Trustees of Amorc (2000) 10 NWLR (pt 676) 522 at 540 paras. E-F**, and he finally urged the court to dismiss this suit with punitive cost as it is academic.

In the counter affidavit of the plaintiffs/respondents, it is stated that the persons named in the suit referred to by the defendant are members of the plaintiff who came together and agreed that the plaintiff should appoint a lawyer to prosecute this case against individuals appointing different lawyers in respect of the same case and so the defendant as a lawyer was appointed by the executive of the plaintiff.

It is deposed to the fact that the plaintiff/respondent instituted this action vide originating summons on the 5th day of March, 2019 and same was duly served on the defendant/applicant but he refused to respond to it despite receiving same and refused to attend to court inspite of repeated hearing notices served on him by the plaintiff/respondent.

It is stated further that the defendant on the 14th July, 2020 filed a Notice of Preliminary Objection challenging the competence of this suit and served same on the plaintiff/respondent without responding to the substantive claim thereby delaying the matter from proceeding to hearing because the defendant's objection is to be heard with the substantive claim in accordance with the Rules of the court.

The deponent stated that the facts deposed to in the affidavit in support of the objection are false and deliberate attempt to mislead the court, and the said issue is not one of the persons named in the action but who engaged the defendant to defend the persons named in the action referred to by the defendant, and that the defendant was briefed by the plaintiff in this case to represent its members named in each of the cases the defendant handled on their behalf and the defendant was duly paid for each of the cases by the plaintiff herein for which he issued receipts, and it is stated that it is the height of deceit and irresponsibility for the defendant/applicant to deny being engaged by the plaintiff where in fact he even attended the plaintiff's meeting on several occasions to brief the plaintiff on the cases farmed out to him. It is said the plaintiffs were dissatisfied with the defendant's services and so they debriefed him and he acknowledged and confirmed being debriefed.

It is stated further that the objection of the defendant/applicant is misplaced and arrived at avoiding the real issue submitted to this court for determination, and that the NBA is the umbrella body of all lawyers in Nigeria with powers to sanction erring lawyers and the plaintiff need not make it a party before it can pray the court to refer the defendant for disciplinary action.

It is stated that the defendant has collected the plaintiff's money running into millions without rendering satisfactory services to its members hence his sack, and even after been sacked, he has still continued to stand in the way of the progress of the plaintiff and its members hence following this action.

In his written address, the counsel to the plaintiff/respondent raised this issue for determination, to wit:

Whether the plaintiff's case is incompetent and if no, whether this Honourable Court can grant the reliefs sought in this application?

The counsel to the plaintiff/respondent submitted that there is nothing debilitating against the plaintiff's case same having been brought through due process of law, and that the defendant devoted so much energy in addressing the known issue of jurisdiction, any step taken in the matter is a nullity but failed woefully to show what took the plaintiff's case out of the jurisdiction of this court.

The counsel contended further that an application of this nature is not granted as a matter of course but upon placement of relevant materials before the court but that the submissions upon which the applicant based the objection is not fertile and the court is left with no other choice but to dismiss the application as one lacking in merit.

It is submitted that parties to an action are those whose names are designated on record as a plaintiff or defendant which is different from concept of parties from that of a client. He argued that the concept of client connotes a contractual relationship between a lawyer and client rather than parties in an action which is convenient for issues of joinder, non-joinder and mis-joinder of parties, and he buttressed this point with judicial authorities, and further submitted that it can be gleaned from the authorities he cited that the basis for lawyer-client relationship is contract

and not the existence of a legal action in court where in the name of the supposed client is designated either as a plaintiff or defendant. He argued that the issue in this instant application is not one of parties named in the action as exhibited by the defendant/applicant but one of parties who engaged the services of the defendant and in arriving at the answer to the question who engaged the services of the defendant, the court is invited to look at the contract agreement and evidences of payments made to the defendant (EXH. P3 and P4) where the defendant is alleged to have been engaged and disengaged by the plaintiff.

The counsel contended that the exhibits annexed to their counter affidavit showed that the defendant drafted a contractual agreement himself and the plaintiff and received all his legal fees in respect of the matters from the plaintiff. The counsel invited the defendant to strictly prove any other contractual relationship that ought have given rise to such payments, and he urged the court to hold that it was the plaintiff/respondent's association that retained the services of the defendant/applicant and not the individual members. He argued further that the mere fact that the defendant/applicant on his own volition decided to proceed on litigation on names of the individual members does not deprive the association of its competence to retain or disengage a counsel if it so wishes, and he cited the cases of **Ajakaiye V. FRN (2010) 11 NWLR (pt 1206) p. 500 at 527 paras. F-G** and **Olawoye V. Jimoh (2013) 13 NWLR (pt 1317) p. 383 paras. B-C**.

The counsel contended that the grounds of this objection are bare faced, misconceived, premature and not one on jurisdiction particularly because there is nothing debilitating against the plaintiff's case or that brings it within the gamut or abuse of judicial process.

The counsel cited the case of **Madukolu V. Nkemdilim (1962) 1 All NLR (pt 4) 582 and Papersack (Nig.) Ltd V. Oduola (2010) LPELR – 4829 at paras. E-C** and submitted that this action meets the requirements of a competent action and does not constitute an abuse of court of process.

The counsel informed the court that the plaintiff/respondent has not instituted multiple actions on the subject matter any court of law, rather all it has done is to approach the court in compliance with due process of law and within the jurisdiction of the court pursuant to section 6 of the constitution of the Federal Republic of Nigeria 1999 (as amended), and he urged the court to hold that it has the requisite jurisdiction to hear this matter and to dismiss the preliminary objection in its entirety.

Let me formulate the following issue for determination in this application, to wit:

‘Considering the facts and circumstances of this suit whether the defendant/applicant is a competent party to confer upon this court the jurisdiction to entertain it?’

Thus, the ground upon which this application was filed is that the defendant is not the counsel to the plaintiff in any suit and especially in the cases mentioned in the affidavit in support of the originating summons filed by the plaintiff, while the other ground is that the Nigeria Bar Association, which the plaintiff seeks for an order against is not a party, to this suit and therefore, the court lacks jurisdiction to make such an order against a non party.

So, where a court lacks jurisdiction, it is bereft of any power to determine the merit of the issue it purports to try. See the case of **F.R.N V. Abubakar (2020) All FWLR (pt 1036) p. 320 at 330; paras. B-C**. In the instant suit, the defendant/applicant is challenging the jurisdiction of this

court to try him on the ground that he is not a proper or rather competent party to the suit and therefore, this court is bereft of the jurisdiction to entertain the suit. See also the case of **Oyedemi V. Falade (2021) All FWLR (pt 0098) p. 458 at 479, paras. F-H** where the Court of Appeal, Ibadan Division held that for an action to be properly constituted, there must be a competent plaintiff and a competent defendant. The issue of proper parties in a suit is very important and one which affects the jurisdiction of the court, it goes to the foundation of the action. A court would lack jurisdiction to entertain an action where the proper parties are not before it. See the case of **Moses V. NBA (2019) All FWLR (pt 1022) p. 784 (SC); and Bakare V. Olorunnimbe (2021) All FWLR (pt 1103) p. 305 (CA).**

A party to an action is a person whose name is designated on record as plaintiff or defendant, the term party refers to that person by or against wherein a legal suit is sought whether natural or legal persons but all others who may be affected by the suit indirectly or consequently are persons interested and not parties. See the case of **A.P.C. V. Zenith Bank Plc (2021) All FWLR (pt 1103) p. 233 at 248, paras. G-H.** In the instant suit it is the contention of the defendant/applicant that he is not a lawyer or legal practitioner representing the plaintiff in any case in the entire world especially in **Abbah Dennis & Ors. V. Hon. Minister FCT & Ors** with suit No. **CV/440/2012; Abbah Gana & 257 Ors. V. Nigeria Police Force & 6 Ors**, with suit No. **CV/2694/2016;** and **Mayaki & 1085 Ors. V. Hon. Minister, FCT & Anor.** With suit No. **CV/196/2016** or any other case in the Supreme Court. He also contended that the plaintiff had never briefed the defendant to conduct any case on its behalf rather, for purposes of transparency and in order to issue a single receipt for transactions relating to Wuye Ultra Modern Market between the defendant and his clients, his

clients should pay through the plaintiff's association, and that the Nigerian Bar Association which the plaintiff seeks for an order against in relief o. 7 of the originating summons is not a party to this case. While, it is the contention of the plaintiff/respondent that the persons named in the suit referred to by the defendant are members of the plaintiff who came together and agreed that the plaintiff should appoint a lawyer to prosecute their case as against individuals appointing different lawyers in respect of the same case and so the defendant as a lawyer was appointed by the executive of the plaintiff. the plaintiff/respondent contended that the issue is not one of the persons named in the action but who engaged the defendant to defend the persons named in the action referred to by the defendant, and that the defendant was briefed by the plaintiff in this case to represent members named in each of the cases the defendant handle on their behalf and the defendant was duly paid for each of the cases by the plaintiff for which the defendant issued receipt, and therefore, the defendant cannot deny being engaged by the plaintiff where in fact he even attended the plaintiff's meeting on several occasions to brief the plaintiff on the cases, and the plaintiff were dissatisfied with the defendant's services, and so they debriefed him, and he acknowledged and confirmed being debriefed.

The test to be applied in making or joining a party in a suit is based on the need to have before the court such party as would enable it to effectually and completely adjudicate upon and settle all the questions in the suit. the main reason or purpose for joinder of a party in a suit is to make that person bound by the result of the suit, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is made a party. Where it is apparent by the

pleadings and/or evidence before the court that a person who is not a party to the suit may eventually be affected or be liable, such a person is to be joined by either of the parties, of the court, may su motu join him as a party for the effectual and complete adjudication of the dispute. See the case of **Yar'adua V. Bindawa (2018) All FWLR (pt 953) pp. 283-284, paras. H-C**. In the instant suit, and it is on the above premise that I have to look at the affidavit in support of the originating summons with a view to see whether this suit cannot be determined without the presence of the defendant.

It is in the affidavit in support of the originating summons that the deponent and other members of the plaintiff were allocated land/shop space by the Federal Capital Territory Administration and the allocations were duly paid for by the members of the plaintiff, and in October, 2012. They realised that same market space was given to a company known as All Purpose Shelter Ltd by the same authority, hence they met as a group of people and after deliberation they engaged the services of the defendant to institute an action on their behalf against the FCDA and the said private developer, and the engagement was done orally and they agreed that in a bid for them to have a common force to challenge the government, they would use in a representative capacity to cover all members who were duly allocated space in the market and they engaged the defendant as an association as against individuals whose name would appear in the court processes. That following from the above, all payments made to the defendant were made by the plaintiff as an association and not individuals, and the piece of evidence of payment were attached to the affidavit in support of the originating summons.

I have therefore, gone through the entire affidavit in support of the originating summons and observed that the issues between the plaintiff and the defendant both on disagreement between the defendant, as a lawyer, and the plaintiff, as client, and for the court, in this application, to determine whether it was the plaintiff that engaged the defendant or any other person is like delving into the substantive suit at this preliminary level this is because the defendant/applicant referred this court to the cases to which he deemed he represented which to him do not include the plaintiff, while it is the contention of the plaintiff/respondent in its originating summons that the payment made to the defendant by the plaintiff were done with respect to those cases to which the defendant claimed he represented and receipts were issued by the defendant. To my mind, the point which is raised by the defendant cannot be decided without evidence being led. See the case of **Adebayo V. Oja-lya Community Bank Nig. Ltd. 92004) All FWLR (pt 231) p. 1363 at 1372, paras. F-G** where the court held that where a court notices that it cannot successfully limit itself to the determination of the preliminary objection without going to the merits of the substantive matter, it should hear the arguments on the merit of the substantive matter while the respondent's preliminary objection is taken along with the argument in opposition to the substantive matter. In the instant case, the preliminary objection cannot be effectively determined without having recourse to the documents referred to in the originating summons, hence there is need for this matter to proceed to hearing so that it can be determined on its merit. See the case of **Obinali V. Okwaranyia (2004) All FWLR (pt 227) p. 553 at 558, paras. E-F**

On the contention that the Nigerian Bar Association cannot be ordered to do any act on ground of it being not

a party, this also cannot be determined at this preliminary level and until when the originating summons is heard and determined, this court cannot decide such an issue at the preliminary stage, and to this, I so hold.

In the circumstances, of this application, I have the firm view that this issue of whether the plaintiff was represented by the defendant or not cannot be decided by this court without touching upon the substance or merit of the substantive matter, and to this, I order that the proceedings should continue and let the substantive matter be dealt with on its merit along with the issue raised by the defendant in his preliminary objection.

Hon. Judge
Signed
1/06/2023

Appearances:

Itote Damisa Esq appeared for the claimant/respondent.

Paul Odi Esq appeared holding the brief of S.C. Peters Esq for the defendant.

DC-CT: The matter is slated to today for ruling.

CT: The ruling is delivered, and the matter is adjourned to 15th day of November, 2023 for continuation of hearing.

Hon. Judge
Signed
1/06/2023