

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT 20 GUDU – ABUJA**  
**DELIVERED ON THURSDAY THE 23<sup>RD</sup> DAY OF JUNE, 2022**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**  
**SUIT NO.CV/047/2021**  
**MOTION NO:M/4165/2021**

**BETWEEN:**

**MR. ONYEMUYEFA PETER ----- CLAIMANT**

**AND**

- 1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY**
- 2. DIRECTOR-GENERAL DEPARTMENT OF ----- DEFENDANTS  
STATE SECURITY**
- 3. UNKNOWN OCCUPANTS OF FLAT 5 OYO  
COURT GADUWA ESTATE**

**RULING**

I have read the motion, the processes filed for and against the grant of this application and the cases cited therein. In my view, there are two (2) issues for determination as can be derived from the 2<sup>nd</sup> Defendant/Applicants issues for determination to wit: -

1. Whether this court has the jurisdiction to entertain this suit against the 2<sup>nd</sup> Defendant.
2. Whether the 2<sup>nd</sup> Defendant is a juristic person capable of suing or being sued if yes, whether the Claimant has disclosed any reasonable cause of action against the 2<sup>nd</sup> Defendant.

On the first issue, it is trite law that jurisdiction is the authority or power of a court to adjudicate on a cause or matter before it or take cognizance of a matter presented before it in a formal manner for its decision. See

**BENUE STATE URBAN DEVELOPMENT BOARD & ORS V. ASUAKOR & ANOR (2019) LPELR-47233(CA).** Learned counsel for the

2<sup>nd</sup> Defendant submitted that this court does not have jurisdiction to entertain this suit against the 2<sup>nd</sup> Defendant being an agency of the federal government relying on **Section 251 (1) (q) (r) and (s) of the Constitution of the Federal Republic of Nigeria (As amended)**. Learned Counsel for the Claimant submitted and urged the Court to hold that it is not the law that a State High Court inherently lacks the jurisdiction to entertain any matter involving the Federal Government or any of its agencies. That it is the exclusive reserve of the FCT High Court to adjudicate on matters affecting land and the recovery of premises in the FCT. Counsel cited **C.B.N v. RAHAMANIYYA GR Ltd. (2020) 8 NWLR pt. 1726 @page 314**. For the purpose of clarity, it is important to state exactly the provisions of **Section 251 (1) (q) (r) and (s) of the Constitution of the Federal Republic of Niger (As amended)**.

*251. (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –*

*(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;*

*(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and*

*(s) such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly: Provided that nothing in the provisions of paragraphs (p), (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.*

It is clear to this Court from the record, without any doubt, that the 2<sup>nd</sup> Defendant in this case is an agency of the Federal Government and exclusive jurisdiction is vested in the Federal High Court in civil cases and matters arising from the administration, management and control of the Federal Government, the operation and interpretation of the Constitution as affects the Federal Government as well as any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government or any of its agencies.

The Supreme Court in **A/G FEDERATION V. A/G LAGOS (2017) 8 NWLR Part 1566 Page 20 at 46 Para E-F per Peter-Odili JSC** held:

*“The jurisdiction of a trial court is determined by the writ of summons and statement of claim of the plaintiff...”*

Taking a cursory look at the writ of summons and the statement of claim in the instant case, the claim of the Claimant is for recovery of possession (vacant possession), and general damages for trespass which are not on the administration, management and control, operation and interpretation of the Constitution and declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government or any of its agencies. The Court of Appeal has held that **Section 251 of the 1999 Constitution** does not however suggest that the Federal High Court is empowered or has jurisdiction to entertain an action on simple contract or debt recovery notwithstanding the fact that a party is an agency of the Federal Government in **Federal College of Education V. Akinyemi (2008) 15 NWLR Part 1109 Page 21 at 52-53 Para H-A per Okoro JCA (as he then was)**. Hence a claim for simple contract or debt recovery is not a claim justiciable in the Federal High Court but in the State High Court. See **ABDULAZIZ & ORS V. JINGTEX (NIG) LTD (2017) LPELR-43090(CA)**. Learned counsel relied heavily on the case of **CBN V. Aite Okojie (2015) LPELR-24740 (SC)** to state that the federal high Court has exclusive jurisdiction to determine any civil cases and matter where a party is an agency of the federal Government no matter the issues involved. However, the case deals mainly on matters that arise

from the administration, management and control of the Federal Government; the operation and interpretation of the constitution as it affects the Federal Government and any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government which is not the issue in this instance case. Therefore, the case of **CBN V. AiteOkojie (supra)** cited by the 2<sup>nd</sup>Defendant/Applicant is inapplicable with the instant case. It is important to note that the proviso to the subsection gives a person the right to seek redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance, where the action is based on any enactment, law or equity. In **Minister F.M.H. & U. D. V. Bello (2009) 12 NWLR (Pt. 1155) 345 C.A**

it was held thus'

*"In determining the jurisdiction of the Court based on Section 251 (1) of the 1999 Constitution, I am of the view that two issues will definitely be considered. The two issues are the parties to the suit and the subject matter of the suit..."*

Therefore, it is my viewthat the subject matter of this suit as found above falls within the competence and jurisdiction ofthis court because the Claimant's action is not one of the causes of action listed for under **Section 251 (1) (a) to (s) of the 1999 constitution (As amended)**even though the 2<sup>nd</sup>Defendant is an agent of the Federal Government and I so hold.

On the second issue "Whether the 2<sup>nd</sup> Defendant is a juristic person capable of suing or being sued if yes, whether the Claimant has disclosed any reasonable cause of action against the 2<sup>nd</sup> Defendant".

The 2<sup>nd</sup>Defendant in this suit is the Director-General,Department of State Security. Learned counsel to the 2<sup>nd</sup> Defendant submitted that the 2<sup>nd</sup> Defendant in this suit is not a juristic person as there is no legislation establishing any agency with the name. relying on **The Registered Trustees of the Airlines Operators of Nigeria v. Nigerian Airspace Management Agency (2014) LPELR-22372 (SC)**and urged the court to strike out the name of the 2<sup>nd</sup> Defendant from this suit.

Learned counsel to the Claimant urged the court to hold, that a misnomer is not sufficient to warrant a striking out of a suit since it relates to a wrong name being used for a known defendant who is in no way misled by the incorrect writing of his name. That a misnomer relates to a wrong name and not a wrong identity, citing **APGA V. Ubah&Ors (2019) LPELR-48132 (SC) @ pages 18-19.**

The Position of the law as regards juristic or legal personality as held Per TOBI, J.S.C in **ABUBAKAR & ORS V. YAR'ADUA& ORS (2008) LPELR-51 (SC)**is that;

*"Juristic or legal personality can only be denoted by the enabling law. This can either be the Constitution or a Statute. If the enabling law provides for a particular name by way of juristic or legal personality, a party must sue or be sued in that name. He has no choice to sue or be sued in any other name. In other words, juristic or legal personality is a creation of statute and a party which seeks relief must comply strictly with the enabling statute. The position of the law is as stringent and as strict as that."*

**The National Security Agencies Act, Cap. N74, Laws of the Federation, 2004** granted power of establishment of the office of the 2<sup>nd</sup> Defendant. The said Act in **Section 1 (c)** confers the name State Security Service on the agency; for the avoidance of doubt, **Section 1 (c) of the National Security Agencies Act, 2004**says: -

1. "There shall, for the effective conduct of national security, be established the following National Security Agencies, that is to say—
  - (a) the Defence Intelligence Agency;
  - (b) the National Intelligence Agency; and
  - (c) the State Security Service".

The above provisions of the National Security Agencies Act, are very clear and unambiguous. By the above section the office of the State Security Service is a creation of statute and by this statutory provision, it is legally recognized as a juristic person capable of Suing and being sued. It is trite law that to be a competent party to a suit, the name

must be the real name by which that party is known in the case of a natural person or its corporate name in the case of a legal entity. In the instant case, the 2<sup>nd</sup> Defendant as constituted cannot sue and be sued, not being a legal entity. This certainly is not a misnomer as submitted by counsel to the Claimant. A misnomer has been described as occurring where the natural or legal person actually exists but a wrong name is used to sue. The question to ask here is; “Whether the Claimant suing the agency”? Or “Is the Claimant suing the Director General of State Security Service”? From the Claimant’s statement of claim it is evident that the claim is against the agency being the State Security Service and not against the Director General of State Security Service. See **AGBONMAGBE BANK LTD V. GENERAL MANAGER G.B. OLLIVAT LTD & ANOR (1961) 1 ALL NLR 116**. In this case, the first defendant was named as “General Manager, G.B. Ollivat Ltd”. The opposing party filed a preliminary objection that such name was not known to law, the first defendant replied that the description as “General Manager, G.B. Ollivat Ltd” was a misnomer which could be amended by leave. The courts held that the defence of misnomer would not avail the Plaintiff as the mistake was not the spelling but the case of suing a non-existent personality as “General Manager” is descriptive of the person representing G.B. Ollivat Ltd. The case of G.B. Ollivat is on all fours with this present suit as the “Director General Department of State Security” is descriptive of the office of the person who is in the employment of the State Security Service. Also, in **IBRAHIM V. CHAIRMAN KACHIA LG (1998) 4 NWLR Pt 546 Pg. 471 @ 475 B-C per Ogebe JCA** where the court held that an attempt to substitute “Kachi LG” for “Chairman Kachi LG” is not a misnomer but that of suing a wrong party which an amendment cannot cure. Therefore, the claim for a misnomer will not avail the Claimant as it is not a mistake as to name. Claimant also submitted that the 2<sup>nd</sup> Defendant did not file a defence in this suit before raising the objection hence it is a demurrer and ought to be dismissed with costs. It has been held that Jurisdiction of a Court is a matter of law. The issue of jurisdiction is very fundamental as it goes to the root of any matter. There is however a difference between an objection to the jurisdiction of a Court and a

demurrer. An objection to the jurisdiction of the Court can be raised at any time even when there are no pleadings filed. Once the objection to the jurisdiction of the Court is raised, the Court has inherent powers to consider the application even if the only process that has been filed is the Writ of Summons. See **OYEROGBA V. AKINYEMI & ORS(2016) LPELR-41940(CA)**

Consequently, I hold that the Director General Department of State Security is not a juristic person. Therefore, the name of the 2nd Defendant (DIRECTOR-GENERAL DEPARTMENT OF STATE SECURITY) is hereby struck out. Having answered the first leg of the 2<sup>nd</sup> issue for determination in the negative determining the 2<sup>nd</sup> leg will amount to academic exercise in futility.

**Parties:** Absent

**Appearances:** I. L. Ijewere appearing for the Claimant. Y. Abubakar appearing with U. J. Obialor and M.S. Ugwu for the 1<sup>st</sup> Defendant. 2<sup>nd</sup> and 3<sup>rd</sup> Defendants not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI  
JUDGE**

**23<sup>RD</sup> JUNE, 2022**