

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 22<sup>ND</sup> JUNE, 2021.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**

**SUIT NO.:-FCT/HC/CV/1317/18**

**BETWEEN:**

**MRS. TORITSEJU MEMUDUAGHAN-ODEY**

*(Acting as the lawful Administrator/Executrix*

*of the Estate of DANIEL UROWINO MEMUDUAGHAN):.....CLAIMANT/  
RESPONDENT*

**AND**

- 1. CAPT. ABEL OMAMOFE MEMUDUAGHAN**
- 2. GUARANTY TRUST BANK PLC**
- 3. CARDINAL STONE REGISTRARS LIMITED**
- 4. AFRICA PRUDENTIAL REGISTRARS LIMITED**
- 5. FIRST REGISTRARS LIMITED**
- 6. VERITAS REGISTRARS LIMITED**
- 7. MERISTEM REGISTRARS LIMITED**
- 8. GTL REGISTRARS LIMITED**

**:...DEFENDANTS**

Helen Dickson for the Claimant.

Dominic Anyiado for the 1<sup>st</sup> Defendant.

Babatunde Tijani for the 2<sup>nd</sup> Defendant.

Joseph Adeyemi for the 3<sup>rd</sup> Defendant.

UjuEze A. Somto for the 6<sup>th</sup> Defendant.

4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants are not represented.

**RULING.**

In response to the Claimant's amended claim dated 3<sup>rd</sup> June, 2019, the 1<sup>st</sup> Defendant filed 36 paragraph Amended Statement of Defence.

The 1<sup>st</sup> Defendant in paragraph 36(i-iv) of his Amended Statement of Defence raised objections to the Claimant's suit. In the said paragraph, the 1<sup>st</sup> Defendant averred as follows:

***“36. The 1<sup>st</sup> Defendant shall rely on all legal and equitable defences available to him including but not limited to:***

- i. This Honourable Court lacks the jurisdiction to entertain this suit for being incompetent as the substantive claims before this Honourable Court pertains to and revolves around payment of “Dividends” on “Shares” acquired by Daniel UrowinoMemuduaghan in a “Company” incorporated under the Companies and Allied Matters Act.***
- ii. The parties sued in this suit are not proper parties to be sued in this Honourable Court.***
- iii. The Claimant in this suit is not “THE” lawful Administrator/Executrix of the “Estate of Daniel UrowinoMemuduaghan.”***
- iv. The “Letter of Administration” empowering the “Administrators” of the Estate of Daniel UrowinoMemuduaghan was granted at the Probate Registry, High Court of Justice, the then Bendel State(now Edo/Delta States).***
- v. That the allegations of “crimes” such as “conspiracy, fraud, and forgery” as contained in paragraphs 22, 23, 31 and 41 of the Claimant’s Amended Statement of Claim, are speculative and premature before this Honourable court as there is***

***no report or investigation of the allegation by law enforcement agents.***

***vi. The Claimant lacks the “Locus Standi” to institute this suit.”***

The 1<sup>st</sup> Defendant subsequently applied to this Court to set the above issues raised in his Amended Statement of Defence down for hearing, pending the hearing and determination of the substantive suit, whereupon this court ordered the parties to address it on the issues so raised by the 1<sup>st</sup> Defendant in his challenge to the jurisdiction of this Court.

The 1<sup>st</sup> Defendant consequently filed a written address dated 12<sup>th</sup> day of February, 2021, wherein learned counsel for the 1<sup>st</sup> Defendant, Dominic Anyador, Esq. raised the following six issues for determination; namely;

- i. Whether this honourable Court has jurisdiction to entertain this suit being that the major claims before this honourable Court bother on payment of “Dividends” on “Shares” acquired by Daniel UrowinoMemuduaghan in a “Company” incorporated under the Companies and Allied Matters Act?
- ii. Whether the parties sued in this suit are proper parties to be sued in this honourable Court?
- iii. Whether the Claimant in this suit is “THE” Lawful Administrator/Executrix of the ***“Estate of Daniel UrowinoMemuduaghan”***?
- iv. Whether the “Letter of Administration” empowering the “Administrators” of the Estate of Daniel UrowinoMemuduaghan granted at the Probate Registry, High Court of Justice, the then Bendel State (now

Edo/Delta States) can best be adjudicated upon by this Court?

- v. Whether the allegations of “crimes” such as “conspiracy, fraud, and forgery” as contained in paragraphs 22, 23, 31 and 41 of the Claimant’s Amended Statement of Claim, are premature before this Honourable Court?
- vi. Whether the Claimant has the “Locus Standi” to institute this suit?

Proffering arguments on the first issue, learned counsel contended that the claims of the Claimant in her Amended Statement of claim centre on the allegation of the 1<sup>st</sup> Defendant being in control of the proceeds of the dividends of shares in possession of the 2<sup>nd</sup> Defendant in monetary form which were bought by the late father of both the Claimant and the 1<sup>st</sup> Defendant and managed by the 3<sup>rd</sup> to 8<sup>th</sup> defendants, by virtue of the Power of Attorney donated to the 1<sup>st</sup> Defendant by his Co-Administrators.

He submitted that by virtue of Section 251(1)(e) of the 1999 Constitution (as amended) and the case of **PDP v. Okorochoa (2012) 15 NWLR pg. 205**, this Court lacks the jurisdiction to entertain this suit.

Furthermore, that by virtue of the cases of **Goldmark (Nig) Ltd v. Ibafo Co. Ltd (2012) 10 NWLR pg. 291**, **Trade Bank PLC v. Benilux (Nig) Ltd (2003) 9 NWLR (Pt.825) 416**, and **Onuorah v. K.R.P.C. Ltd (2005) 6 NWLR (Pt 921) 393**, this Court is divested of the jurisdiction to entertain this case by the claims (sic) of the Claimant as contained in paragraphs 19, 20, 21, 36, 37 38, 39, 40, 41 and 43 of the Amended Statement of Claim.

Learned counsel posited that jurisdiction is the foundation of the exercise of any judicial power. That if a Court has no jurisdiction over a matter, it cannot exercise judicial powers over the matter.

He referred to **Edem v. Ayi (2017) 4 NWLR (Pt. 1555) 171 at 175.**

He argued that the case before this Court bothers on the payment of dividends by the various Registrars licensed by the Securities and Exchange Commission in respect of shares acquired in companies by the late Daniel UrowinoMemuduaghan. He therefore contended that this case cannot be effectively heard without recourse to the Companies and Allied Matters Act, and that by virtue of Section 251(1)(e) of the 1999 Constitution, the Federal High Court, to the exclusion of other Courts, is vested with the jurisdiction in respect of matters that bother on the operation of the Companies and Allied Matters Act. He further referred to Sections 114(a) & (b) and 131(1) of the Companies and Allied Matters Act, and the case of **Okoya v. Santili (1994) 4 NWLR (Pt.338) 256.**

He urged the Court to strike out this suit for lack of jurisdiction.

On issue two, of ***‘whether the parties sued in this suit are proper parties to be sued in this honourable Court’***; learned counsel contended that the parties sued as Defendants before this Court are not proper parties as they ought not to be made Defendants before this Court pursuant to Section 251(1)(e) of the 1999 Constitution and the case of **Irving Asset & Management Co. Ltd v. Rock Trust Invest. Ltd (2007) 4 NWLR (Pt.1554) 52.**

He argued that all the Defendants, with the exception of the 1<sup>st</sup> Defendant, are all in the business of management of shares

bought in companies, and that as such, they are not proper parties to be sued before this Court, and that this Court therefore, has no power and jurisdiction to entertain this suit.

Learned counsel argued on issue three that the Claimant is only a Co-Administrator along with other Administrators such as the 1<sup>st</sup> Defendant, and therefore, that stating categorically that she is “**THE**” Lawful Administrator/Executrix, is to state that she is, to the exclusion of any other, the only Administrator to the Estate of Daniel UrowinoMemuduaghan, which is not true.

He contended that the Letter of Administration attached by the Claimant to her Statement of Claim appointing them as Administrators never stated that she is “**THE**” Lawful Administrator/Executrix, but that she is one of the Administrators of the Estate of Daniel UrowinoMemuduaghan.

In respect of the 4<sup>th</sup> issue, learned counsel relied on Sections 257(1) and 270(1) of the 1999 Constitution to contend that since the letters of Administration empowering the Administrators of the Estate of Daniel UrowinoMemuduaghan was granted at the Probate Registry of High Court of Justice in the then Bendel State (now Edo/Delta States), that its adjudication would best be done by the High Court of Justice in Edo States; Benin City to be precise. He therefore urged this Court to so hold and to decline jurisdiction to entertain this suit.

On “***whether the allegations of crimes***” such as “***conspiracy, fraud, and forgery as contained in paragraphs 22, 23, 31 and 41 of the Claimant’s Amended Statement of Claim, are premature before this Honourable Court***”,(issue 5), learned counsel argued that the allegation of crimes in the said

paragraphs of the Amended Statement of Claim are premature as the condition precedent to proving them had not been met so as to confer this Court with the jurisdiction to hear and ascertain the allegations of forgery.

Relying on Section 465 of the Criminal Code Law, Sections 363 and 96(1) of the Penal Code, he contended that the allegations of forgery and conspiracy have not been investigated for this Court to assume jurisdiction to entertain and hear same. He further urged the Court to decline jurisdiction on this ground.

Lastly, on issue six; on, ***“Whether the Claimant has the “Locus Standi” to institute this suit”***, learned counsel conceded in paragraph 6.1.1 of his submission and stated thus,

***“We answer the above issue in the affirmative... by virtue of the above principle of law the Claimant has the locus standi to sue being one of the administrators of the Estate.”***

Yet he argued that the suit must be commenced in the appropriate Court which has the jurisdiction to entertain same in order not to dissipate the time of the Court.

He urged the Court in conclusion, to hold that the Claimant’s suit is not competent for lack of jurisdiction, and to strike same out with substantial cost.

In response to the 1<sup>st</sup> Defendant’s Address on Points of Law, the Claimant filed a Reply Address dated 26<sup>th</sup> day of February, 2021, wherein she replied respectively to each of the points/issues raised by the 1<sup>st</sup> Defendant.

On whether this honourable Court lacks the jurisdiction to entertain this suit for being incompetent, learned Claimants' counsel, Helen Ndubunma Dickson, Esq, submitted that the suit as presently constituted satisfies all the conditions which must be present before a Court can exercise jurisdiction over a matter as laid down in the notable case of **Madukolu v. Nkemdilim (1962) 2 SCNLR 341.**

He contended that the crux of the case of the Claimant in this suit centres on rights and interests of Administrators and beneficiaries over benefits accruing from investments in shares owned by the Estate of Daniel UrowinoMemuduaghan, and that the suit therefore, falls within the purview of cases that can be commenced under Order 3, Rule 4 of the High Court of the FCT Civil Procedure Rules, 2018.

He argued to the effect that the questions to be determined by this Court in this case, do not involve the operations of the 2<sup>nd</sup> to 8<sup>th</sup> Defendants, and that as such, this Court does not have to make any recourse to the Companies and Allied Matters Act in the effective determination of this suit.

He further posited that this suit did not disclose any of the matters stipulated under Section 251(1)(e) of the Constitution of Federal Republic of Nigeria, 1999, as amended.

Learned counsel further submitted that in the determination of an objection to the jurisdiction of a Court to entertain a suit, the Statement of defence is not relevant as the Court will only consider the Writ of Summons and Statement of Claim. Referring inter alia, to the cases of **Governor of Kwara State v. Lafiagi (2005) 5 NWLR (Pt.917) 139 at 151; Egbuonu v. B.R.T.C. (1997)**

**12 NWLR (Pt. 531) 29**, he urged the Court to consider the claims of the Claimant and discountenance the points raised by the 1<sup>st</sup> Defendant.

On whether the parties in this suit are not proper parties to be sued in this honourable Court; learned Claimant's counsel posited, with reliance on **Ipadola v. Oshowole (1987) 3 NWLR 18** and **Peenok Investment Limited v. Hotel Presidential Ltd (1982) 12 SCNJ1, 54**, that it is the position of the law that before a declaratory order is made in an action, all necessary parties must be made parties before the Court.

He argued that the 2<sup>nd</sup> to 8<sup>th</sup> Defendants are not just proper parties, but are necessary parties whose interests are definitely going to be affected by the outcome of this suit, and that their presence is therefore extremely important in this suit.

On the Claimant not being "***THE***" Lawful Administrator/Executrix, of the Estate of Daniel UrowinoMemuduaghan, learned counsel contended that the use of the article "***THE***", does not change the status of the Claimant as one of the Administrators of the Estate of Daniel UrowinoMemuduaghan, and neither does it deprive her of the right to have sued in this case as an interested party.

Regarding the 4<sup>th</sup> issue of whether this Court has jurisdiction to adjudicate on matters relating to a letter of Administration granted by the Probate Registry of the former Bendel State, learned counsel submitted that this Court is clothed with the requisite jurisdiction to try this suit by the combined effect of Section 251(1) of the 1999 Constitution and Order 3 Rule 4 of the High Court of the FCT Civil Procedure Rules, 2018.

He further submitted that it is the cause of action that determines the proper place and Court in which action can be instituted. He argued that this suit is not challenging the grant of letter of administration by the Bendel State High Court. That the Claimant, on the contrary, is challenging the wrongful and irresponsible acts of the Defendants over benefits accruing to the Claimant and the 1<sup>st</sup> Defendant, and which have affected the interest and rights of the Claimant.

He contended that the Claimant and the 1<sup>st</sup> Defendant both reside and carry on business within the jurisdiction of this Court, and that the account being called into question is operated by the 1<sup>st</sup> Defendant and domiciled with the 2<sup>nd</sup> Defendant within the jurisdiction of this Court. He referred to **Federal Government of Nigeria v. Oshiomole (2004) 3 NWLR (Pt. 860) 305.**

In respect of the 5<sup>th</sup> issue, learned counsel posited that the 1<sup>st</sup> Defendant was being pre-emptive and speculative in raising the point at this stage as the said allegation of conspiracy, fraud and forgery could only be determined by the Court after evidence have been led.

On the 6<sup>th</sup> issue of whether the Claimant lacks the locus standi to institute this suit, learned Claimant's counsel posited to the effect that the Claimant being an Administrator of the Estate of Daniel Urowino Memuduaghan and a beneficiary of the proceeds of the dividends accruing to the Estate, a fact admitted by the 1<sup>st</sup> Defendant in paragraph 1 of his Amended Statement of Defence; that she is fully clothed with the Locus Standi to bring this action against the Defendants.

He urged the Court in conclusion, to discountenance the points raised by the 1<sup>st</sup> Defendant and dismiss same with substantial costs against the 1<sup>st</sup> Defendant.

Order 23 Rule 2(1) of the High Court of FCT, Civil Procedure Rules, 2018, allows a party to raise point(s) of law in his pleadings, and empowers the Court to dispose of the point(s) of law so raised before, at or after the trial. The 1<sup>st</sup> Defendant having exercised his right within the law and raised some points of law in his Amended Statement of Defence, this Court deemed it appropriate to dispose of same before trial, particularly as the points raised by the 1<sup>st</sup> Defendant touch on the jurisdiction of this Court to entertain the suit.

Having however, carefully and painstakingly gone through the 1<sup>st</sup> Defendant's written address in respect of the points so raised, it became apparent to this Court that the learned counsel for the 1<sup>st</sup> Defendant has either misconceived the position of the law on the points so raised, or has deliberately taken this Court on a voyage solely intended to waste the judicial time of this Court.

The law is trite that jurisdiction is the live wire of any judicial proceedings and that any proceeding conducted in the absence of jurisdiction is a nullity.

See **A.C. &Anor v. Manzo&Ors (2008) LPELR-3582(CA), Afrocontinental (Nig) Ltd &Anor v. Co-op. Assoc. of Prof. Inc. (2003)LPELR-217 (SC).**

It is also settled law that what determines the jurisdiction of Court is the claims of the Claimant as endorsed on the Writ and Statement of Claim and not the Defendant's defence or any other process. See **United Bank of Africa PLC v. BTL Industries Ltd**

**(2007) All FWLR (Pt 352) 1615 at 1657 paras D-G (SC),Gafar v. Govt. Kwara State (2007) 4 NWLR (Pt. 1024) 375 at 404 paras A (SC).**

Regarding the territorial jurisdiction of the Court, which is one of the issues being contended by the 1<sup>st</sup> Defendant, the Court of Appeal in **Megatech Engineering Ltd v. Sky Vision Global Networks LLC (2014) LPELR-22539 (CA)**, held per Pemu, JCA, thus:

***“Basically, and indeed decidedly, a Court would have territorial jurisdiction to entertain a dispute where any of these factors exists, viz:***

- (a) Where the contract in question was made***
- (b) Where the contract is to be performed.***
- (c) Where the Defendant resides...”***

An examination of the claims of the Claimant in this suit reveals clearly, that the suit is a challenge to the propriety of the 1<sup>st</sup> Defendant’s action in purporting to constitute himself as the sole Administrators of the Estate of Daniel UrowinoMemuduaghan and in that regard, opening and operating a bank account with the 2<sup>nd</sup> Defendant in the name of the Estate of Daniel UrowinoMemuduaghan, to which the 1<sup>st</sup> Defendant is the sole signatory and into which the 3<sup>rd</sup>-8<sup>th</sup> Defendants were mandated to pay the proceeds of the dividends on the shares owned by the Estate.

The bank account in question was opened in Abuja within the jurisdiction of this Court and all the parties, save the 7<sup>th</sup> Defendant, reside in or carries on business in Abuja within the jurisdiction of this Court.

There is nothing, from the claims of the Claimant, that deprives this Court of the jurisdiction to entertain this suit and from the address of service of the Defendants as endorsed on the Writ of Summons, this Court is clearly clothed with the requisite territorial jurisdiction to entertain the instant suit.

Contrary to the contentions of the 1<sup>st</sup> Defendant;

- (a) The questions before this Court in this suit do not call for inquiry into the administration or activities of the companies named as defendants in this suit or the operation of the Companies and Allied Matters Act.
- (b) It does not lie in the mouth of the 1<sup>st</sup> Defendant to make case for the 2<sup>nd</sup>-8<sup>th</sup> Defendants as to the propriety of their being made parties to the suit. This Court in a considered ruling to the objection raised by some of the said parties, has held that they are not only proper parties, but necessary parties to this suit.
- (c) The use of the article **“THE”** in the description of the Claimant, has no bearing to the jurisdiction of this Court.
- (d) This Court is not called upon by this suit to inquire into the grant of letter of Administration by the High Court of the defunct Bendel State.
- (e) Proof of allegations or claims are not done on the pleadings of parties; they are to be established by evidence led before the Court during trial. Therefore, the contention of the 1<sup>st</sup> Defendant in his preliminary objection that the allegations made by the Claimant in paragraphs 22, 23, 31 and 41 of the Amended Statement of Claim are speculative and premature, are indeed speculative and pre-emptive.

- (f) After asserting that the Claimant lacks the locus standi to institute this suit, the 1<sup>st</sup> Defendant turned around in his Written Submission and conceded that the Claimant indeed has the locus standi to institute the suit. Nothing more needs be said in that regards.

I am in total agreement with the learned Claimant's counsel's submission that by the combined effect of Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order 3 Rule 4 of the High Court of the FCT Civil Procedure Rules, 2018, this Court is clothed with the requisite jurisdiction to entertain this suit.

I find no merit whatsoever in the points of objection raised by the 1<sup>st</sup> Defendant in his challenge to the jurisdiction of this Court.

This objection is accordingly dismissed with the cost of N200,000.00.

**HON. JUSTICE A. O. OTALUKA**  
**22/6/2021.**