

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA
THIS THURSDAY 11TH JANUARY, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/158/2023

BETWEEN:

1. BALAREBE HASHIM 2. DR. UCHENNA HARRISON IGBOELI 3. MATHEW O. EBIE 4. AGBOR ALEXIS BASSEY..... 5. (SUING THROUGH THEIR REPRESENTATIVE CAPACITY AS MEMBERS OF SENIOR STAFF ASSOCIATION OF NIGERIA UNIVERSITIES (SSANU) ABUJA BRANCH	}	CLAIMANTS
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AND

1. NURUDEEN YUSUF TAIYE 2. RITA NGOBA IKIROMA 3. SENIOR STAFF ASSOCIATION OF NIGERIA UNIVERSITIES 4. CRESENT MULTI-PURPOSE CO-OPERATIVE 5. SENIOR STAFF ASSOCIATION OF NIGERIA UNIVERSITIES CO-OPERATIVE	}	DEFENDANTS
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RULING

This ruling is on a Notice of Preliminary Objection, with motion No: GWD/M/534/23, dated 26th October, 2023 filed the same date.

The notice of preliminary objection is on the Jurisdiction of this Honourable Court to hear and determine this case.

The grounds of objection are as stated below:

1. The 3rd Defendant is a Trade Union

2. **The Claimants and the 1st and 2nd Defendant are members of 3rd Defendant.**
3. **The 4th and 5th Defendants are affiliates of the 3rd Defendant.**
4. **The subject matter of this case is an intra Trade Union Dispute**
5. **The National Industrial Court has exclusive original Jurisdiction to hear and determine Intra Trade Union Dispute.**

Relief sought is an order of this Honourable Court striking out the suit for lack of Jurisdiction with substantial costs in favour of the Defendant/Applicants.

In support of the Defendant's Notice of Preliminary objection is a written address of 4 pages where a sole issue was distilled for determination to wit:

“whether having regard to the Claimant's claim, this Honourable Court has Jurisdiction to entertain this matter.

The claimants/Respondent filed a reply on points of law on the Defendant/Applicant's Preliminary Objection to the Jurisdiction of the Honourable Court of 5 pages.

The learned counsel to the Defendant/Applicant in moving the said Notice of Preliminary of Objection dated the 23rd November, 2023 submitted that, further to the Submission in paragraph 3-02 of the written address, that they want to place on record that section 254 (1) (c) paragraph B of the CFN 1999 as amended) is instructive in support of the Notice of Preliminary Objection.

Also further to the case of Umoren V Akpan (Supra) paragraph 3-05, the case which was decided under decree 47 of 1992 constitution and the Correspondent section in the laws of the Federation 2004 as it stands today, is section 2(1) of the Trade Dispute Acts Cap T8 CFN 2004 which includes all other courts and gave Jurisdiction to the National Industrial court. That the case of Umoren V Akpan (Supra) settled all relevant consideration, provided guard to the court determining this objections, it defines - at page 232 paragraph A ratio and within it has also defined dispute at page 232 paragraph A. ratio 8 to mean

“making a subject of argument to content etc.

That reference to ratio 2 of the case of Omoren V Akpan paragraph C-E, issue of an Intra Union Dispute is either between the members, and the Unions.

Furthermore, that in this case it is not in dispute that the matter before the court is between the members of trade union and the union, or between the member and other members, in the circumstance, and urged the court

to sustain their preliminary objection before the court by striking out this suit for want of Jurisdiction.

In response by the learned counsel to the claimant/Respondent here referred to paragraph 0.5 in the case of *Osoh & 40 Ors V Union Bank Plc* (supra) that a cursory note invites the court to the statement of account, wherein from the beginning to the end, there is no place neither the Claimant nor the Defendant to be worker or employer.

That it is also the premise of the law Reference *National Union of Electricity & others V Bureau of Public Enterprises* (2020).

4. part I sets out the ingredient for the National Industrial Court to determine any Dispute of Trade Union Dispute Act.

That a cursory look at the writ of Summons is that they are members of the third Defendant and that the 1st and 2nd Defendant were appointed to head the leadership of their association and that without their consent their money was fraudulently and illegally withdrawn by the 1st Defendant and their money were taken to hidden agenda.

We Further submit that it is the law in *Shena Security Co Ltd V NSCQR*.

Page 1299 ratio I that where there is no worker, they cannot be found a trade Union Dispute and therefore we urge the court to assume Jurisdiction to determine and entertain this suit in that there is no worker/employer relationship.

The learned Counsel to the Claimant Respondent Further submits that in the case of *Umoren V Akpan* cited by the Defendant., the matter is about Intra-Union and not workers and employer finally that the issue raised by the defendant Counsel with regards to section 251-257-254cc was quoted out of context. We urge the court to dismiss this application as of fallacious and we ask for a cost of N 300,000.00.

Before proceeding to the main issues slated in this ruling, I will first of all state as follows.

That the plaintiffs statement of claim is a dependable determinant, in the train of determination of jurisdiction in a matter. See *Umanah V Attah* (2005) 12 NWLR (Part 938) 103. This is done by leafing through the averment in the statement of claim.

In *Ikin V Edjerode C* (2001) 18 NWLR (prt.745) 445 at 499 Per Ogundare JHSC slated as follows:

“it is settled law that it is the plaintiff’s claim that determines the question of the court’s Jurisdiction... where pleadings have

been filed, the issue of the courts Jurisdiction is best determined from the averment of claim. Where this is not the case, one has to look at the claim as endorsed on the writ of summons.

A calm examination of the above three ways a look into the writ of summons will assist the court determine summons will assist the court determine it's Jurisdiction ooze out.

Firstly, it will reveal to the court the capacity in which the plaintiff is bringing the action and whether has the inevitable locus standi for audience in court. See Govt. Kogi State V Adani Local Government Council (2005)16 NWLR (Part. 951) 327.

Secondly, it will show if the party sued is the proper Defendant for the court to have Jurisdiction. See Min. of Internal-Affairs V Aliyu (2005) 3 NWLR (part 911) 30.

Thirdly, the writ will be useful for the court to know if the subject matter in question comes within it's Jurisdiction as otherwise it is Dispossessed of Jurisdiction. See Ogbebo V INEC (2005) 15 NWLR (part. 948)376.

It is also to be noted that, Jurisdiction of the court is limited when it is restricted to adjudicate over listed items/matters both in terms of subject matter and value of property. As stated in Halsbury's law of English land.

...the limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by similar means.... A limitation may be either as to the kind and nature of the actors and matters of which the particular court has cognisance or as to area over which the Jurisdiction extends or it may partake of both characters.

On the subject matter, Jurisdiction over the nature of the case and the type of relief sought. The extent to which a court can rule on the conduct of person or the status of things.

Jurisdiction is very important and indispensable in the administration of justice. It is the hub of all Judicial processes so much that the validity or otherwise of any proceedings turns on the existence or non-existence. The infusive words of Bello CJN in *Uti v Onoyiwe* (1991) 1 SCNJ. 25 ET 49 aptly captures it's fundamental nature in adjudication. He viewed it in an organic form thus:

“moreover jurisdiction is blood that gives life to the survival of an action in court of law and without jurisdiction the action will be like an animal that has been drained of its blood. It will cease to

have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.....”

And Tobi JSC sees eye to eye with Bello CJN in *Okoro v Egbouh* (2006) 15 NWCR (PT1001) 1 at 23-24 when he re-echoed...

“Although Jurisdiction is a word of large purport and significance in the Judicial process, it is not a subject of speculation or gossip – it is a matter of strict and hard law donated by the constitution and statutes. It is a threshold issue, the blood that gives life to the survival of the action and occupies such an important place in the judicial process

Jurisdiction is the meat and heartbeat of any proceedings. It cannot therefore be toyed with by any party else his action will inescapably be moved in the caustic consequences of lack of jurisdiction, nullity. Legal pundits have described it's importance in diverse fascinating forms. It has been alluded to, as the life wire, the blood stream, fire cannon to every litigation the proper horse of the court, the cornerstone of all litigation, the spinal cord of a court. Doubtlessly it is for its overriding importance that proceedings conducted in its absence, however brilliantly and especially will end in nullity and will remain so for all purposes. See *FHA V John Shoylat' LTD* (2005) NWCR (PT908) 637, *Ebhoyaghe v Okoye* (2004) 18NWLR (PT905)472. & *Elugbe v Omokhafa* (2004) 18 NWLR (PT 905) 319.

Having said all this now to the issues raised in the written address.

It is the argument of the learned counsel to the defendant/applicant that this court lacks jurisdiction to entertain this matter, the matter being an intra- trade union dispute between the members of the union (senior staff association of Nigerian universities(SAANU)and the union for which the National Industrial court is vested with exclusive Jurisdiction.

On this hereferred the court to section 254(c) of the CFN1999(as amended) an Alterationwhich provides thus:

Notwithstanding the provisions of section 251, 257, 272 and anything 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 National Industrial court, shall have and exercise Jurisdiction to the exclusion of any other court in civil cases and matter.

(a) Relating to or connected with any labour, employment trade Unions industrial relations, and matters arising from workplace, the condition of service, including health, safety welfare, of labour,

employee, worker and matters incidental thereto or connected therewith.

(b) Relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits, and any other entitlement of any employee workers, political or public office holder, Judicial officer or any civil or public servant in any part of the federation and matters incidental thereto.

Section 52 of the Trade Union Act laws of the federation of Nigeria Cap T14 2004 provides no question as to the validity of any action can be taken by any court other than the appropriate court having the jurisdiction to entertain such matters.

On this, it is the submission of the learned counsel to the defendant/respondent that the subject matter of this suit being trade union related dispute between the parties and submit that this court does not have the jurisdiction to hear and determine this suit. Further submit that, the National Industrial Court is the appropriate court vested with the jurisdiction to entertain trade union related disputes by the CFN. Furthermore, that it is trite law, that an inter trade union disputes is a dispute within the union either between the members or between the members and the union for which the High court of a state has no Jurisdiction to entertain. Only the National Industrial court is vested with original Jurisdiction over such matters. See *Umoren V Akpan* (2008) 1 NWLR (pt. 1113) 223 of ratio 2,3, & 4.

The Defendant/Respondent Counsel further submit that, they have no doubt that the 3rd Defendant is a Trade Union while the Claimant 1st & 2nd Defendant are members of the 3rd Defendant. Whereas the 4th and 5th Defendants are affiliates of the 3rd Defendant., and that it is clear that the subject matter of this suit resulted from the activities of the parties as members or affiliates of the 3rd Defendant, thus an intra trade Union dispute. Reference to paragraphs 1-12 of the statement of claim.

In view of the facts above stated, submits that, the matter before the Honourable court is that of an intra-trade Union Dispute for which the Honourable Court Lacks Jurisdiction, hence this suit is liable to be struck out and therefore urged the court to sustain their objection to the effect that it declines Jurisdiction

On this it is the submission of the learned counsel to the claimant/Respondents that this court has jurisdiction to entertain and determine this suit as same does not constitute or affect issues arising from

a. Trade union Dispute in that, the 1st -4th Claimants and the 1st and 2nd Defendants are members of the 3rd Defendants which is a voluntary Association Incorporated with corporate Affairs Commission.

- b. That the 1st and 2nd Defendant, are also members of the 4th and 5th Defendant a voluntary Association.**
- c. That the 4th and 5th Defendant are also a voluntary Organisation without being a Trade Union.**
- d. That on the writ of summons have no element of Trade Union or employer and employee's relationship in any ramification to inhibit this court it's requisite Jurisdiction to entertain same.**

Therefore, submit that, it is the premise of the law in section 54 of the Trade Union Act 2004 which Defined thus:

“Worker under Trade Union means an employee that is to say any member of the public Service of the Federation or State or any individual whether a member of such service who had entered into or works under any contract with an employee whether the contract is for manual”

On this submit that this court has Jurisdiction to entertain this suit as same has no dealing with trade Union and labour related matter. On this he referred the court to the case of Osoh & 40 ors V Union Bank Plc (2015) EJSC (Vol 7. 1-196 ratio 5 Per CM Chukwuma – EnehJSC (pp. 143-144 paragraph G-E Pp 145-146 paragraph D-G- that

“Having scrutinized that above provision, of the enactments and have found them, each one of them plain and unambiguous and applicable to this matter, the issue of Jurisdiction as contested between the National Industrial Court and the ----- state High Court has to be Predicated on the facts as pleaded in the amended Statement of claim in this matter. In Principle it has to depend on the facts that the cause of action in this matter has arisen from.

- i. A trade Dispute as Per the Trade Dispute Act, 1992.**
- ii. That the trade Dispute is between employers and employees or between workers and worker and**
- iii. That the subject matter of the cause of action relates, to the term(s) of the employment of the workers as the Appellant here.**

On this it is his submission that, nothing in the pleadings inhibits or robs this Honourable Court power to adjudicate on this matter in that this suit does not deal with employees and workers relationship as the parties herein are not employers and employees or between worker and workers. On this he referred the court to have a cursory look at paragraph 12 & 14 of the Claimant Statement of claim reproduced below.

Part 1

The 1st Claimant is a member of the 3rd Defendant member of the 3rd Defendant electoral Commission, 2023 and Chief Data Processing officer, ITMS department of the 3rd Defendant, who resides within the Jurisdiction of this Honourable court.

Part 2

The 1st, 2nd, & 3rd & 4th Claimant are aggrieved member of 3rd Defendant whose fund and others member, was fraudulently and illegally authorised by the 1st, and 2nd Defendant, to the integrated payment and payment information system to divert and pay the Hazard and Responsibility allowances of some of the member into the 4th and 5th Defendant Accounts with a hidden agenda during and after months of May, and June 2023.

Paragraph 15.

The Claimant avers that the total sum fraudulently and illegally authorised by the 1st and 2nd Defendant to the integrated payroll and personal information system to pay the Hazard and Responsibility allowance of the Claimant into the 4th and 5th Defendant Account is N30,000,000.00 (Thirty Million Naira) the claimant pleads and shall rely on the evidence of N30,000,000 and (thirty Million Naira) During trial of this case.

on this the learned counsel to the claimant/Respondent stated that the Government herein is a complainant of the aggrieved members of 3rd Defendant whose fund and that of other members was fraudulently and illegally authorised by the 1st and 2nd Defendant to the Integrated payroll and personal information system to divert and pay the Hazard and Responsibility allowance of some of the members into the 4th and 5th Defendant account with a hidden agenda, during and after the months of May and June, 2023. On this he submits that, the pleadings neither stated that the 1st to 4th Claimant and the 1st and 2nd Defendant are the employers and employees or workers of the 3rd Defendant, but a mere association which is not within the purview of the trade union as such the suit is within the Jurisdiction of this Honourable Court.

The learned Claimant counsel further submit that this suit does not fall under the Trade Dispute as contemplated in section 47 of the Trade Union Dispute Act, 2004 which defined Trade Dispute

“any dispute between employer and workers or between workers and worker which is connected with the employment or non- employment or the form of employment and physical condition work of any person.

That the 1st -4th Claimant and the 1st and 2nd Defendants are not in the employment of the 3rd Defendant with any work remuneration to qualify to be a Trade Union. But they are merely individuals who contribute fund, gather to assemble their funds for safe keep and not under the payment of any of the parties as workers contemplated under section 47 of the Trade Union Dispute Act, 2004.

Furthermore, that the Defendants misconstrued the provision of section 254 (c) of CFN 1999 (as amended) which deals with employees and employers Dispute relation within the Federation to means members of Association who are not employees and employers in this instant. The section is as reproduced below:

Section 254 (1) provide

“Notwithstanding the provision of section 25, 257, 272 and anything contained in this constitution and in addition to such other Jurisdiction, as may be conferred upon it by an act of National Assembly, the National Industrial Court Shall have 7 exclusions of any other court in civil Causes and matters.

a. relating or connected with any labour, empowerment Trade Unions, Industrial relations, and matter arising from workplace the condition of service including health I, safety, welfare of labour, employee, work and matter incidental thereto or connected therewith.

b. Relating to or connected with dispute arising from payment of salary, wages, pension, gratuitous, allowance benefit and any employee worker, political or public officer holder, judicial officer or any civil or public served in any part of the Federation and matter related thereto.

He Submits that, the purpose of the above section, is to give exclusive power to the National Industrial Court of Nigeria to determine Disputes arising from employment related matter, payment or non-payment of Salary, Wage, pension, gratuity, allowance, benefits and any other entitlement of any employee, worker, political or public office holder, Judicial officer or any civil/or public servant in any part of the Federation and matters related thereto and not outside the purview of employee and employer which this suit does not constitute but

mere individuals not under any employment. As such this suit is within the Jurisdiction of this Honourable court.

Furthermore, he submitted that the authorization cited by the Defendant Counsel are not of point and did not affect the issue before the court in that it is not a dispute arising from employee, employer, labour, employment related matter, payment or non-payment of salary, wages pension, gratuity allowance benefits and any other entitlement of any employee, worker, political or public officer holder, Judicial officer or any civil or public servant in any part of the Federation and matter related thereto.

That this cause is based on fraudulent and an illegal/unauthorized Act of the 1st and 2nd Defendant to the integrated payroll and personal information system to divert and pay the Hazard and responsibility allowance of some of the members of the Association funds into the 4th and 5th Defendant Account with a hidden. Agenda during and after the months of May and June 2023 who were neither their employees nor are they in the employment of the 3rd Defendant.

I have carefully gone through the writ of Summons, the Declaration sought therein, the claimant's joint Statement of Claim paragraph 1-22 the exhibits attached thereto, marked as exhibit A being employee payslip Exhibit B, C, D, E F the memorandum of conditional Appearance, which to my mind supposed to accompany the Defendant's Statement of defence, which in accordance with the law is supposed to be filed along, instead he filed a notice of preliminary objection the arguments canvass therein in the written address and response from the Claimants counsel what is germane before one is whether this court has requisite Jurisdiction to entertain this matter?

As stated earlier, in the case of *Min of Internal Affairs V Aliyu* (Supra) that it is the court of Summary that is useful in the determination as to whether this court has Jurisdiction to entertain this matter or not.

From the Notice of preliminary objection and the grounds of objection vis-a-vis the provisions of section 254 (c) of the CFN 1999 (as amended) reproduced in this ruling (Sic). I beg to disagree with the submissions made by the learned Counsel to the Claimant/Respondent as section 254 (1) (c) as reproduced in this ruling shows clearly that the 3rd Defendant is a trade union, and that the 1st and 2nd Defendant are members of 3rd Defendant, the 4th and 5th Defendant are affiliated to the 3rd Defendant and therefore, that the proper court as it is the court that has exclusive Jurisdiction to handle such matter.

It is not doubt by the claim of the Claimant as endorsed that it's the 1st 2nd 3rd Defendants whose funds and other members funds was fraudulently and illegally authorised by the 1st and 2nd Defendant to the integrated payroll and personal Information system, it is also clear that the 4th and 5th Defendant is a

legal personal saddled with the responsibility of promoting the monetary welfare of all the members in all ramification and that the 1st Defendant is the of the 3rd Defendant, it is also clear that the 1st Defendant is the Chairman of the account of the 3rd Defendant and is a signatory to the account of the 3rd to the 5th Defendants. Hold that the argument canvassed therein by the learned Counsel to the Claimant. On this I have to disagree with the learned Counsel to the Claimant as section 245 (c) of the 1999 CFN as amended on this instant cases.

Hence I shall from all I have stated above, and the reading of the provision of section 245 (C) of the CFN hold and that this case falls in the exclusive Jurisdiction of the National Industrial Court. In view of the above this suit is hereby strike out for lack of Jurisdiction. I say no more.

As to the cost, parties Should bear their cost.

This is my ruling.

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Hon. Justice A. Y. Shafa

Appearance:

1. K. O. N. Osemeka for the Claimant/Respondent
2. A. y. Zubairu with Hafsat Aliyu for the Applicant.5;;