

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 15**  
**CASE NUMBER : SUIT NO: CV/337/18**  
**DATE: : FRIDAY 23<sup>RD</sup> JULY, 2021**

**BETWEEN:**

**HON. ENIOLORUNDA OMOSULE } CLAIMANT/  
} RESPONDENT**

**AND**

**1.MDETIS ST'UZOR } DEFENDANT/APPLICANT**  
**2.AGHOGBO WILLIAMS } DEFENDANT/RESPONDENT**

**RULING**

This ruling is at the instance of the 1<sup>st</sup> Defendant/Applicant who approached this Honourable Court vide a Notice of Preliminary Objection challenging the competence of this Suit on the following grounds:-

1. That the 1<sup>st</sup> Defendant/Applicant is not a juristic person this Court therefore lacks jurisdiction.
2. That the present Suit constitutes an abuse of Court Process and ought to be dismissed.
3. Order 23 Rule 2(1)(2) of the High Court of Federal Capital Territory, Abuja Civil Procedure Rules 2018.

In support of the application is an affidavit of 18 paragraphs deposed to by One Ayemi Adekunle O.a legal practitioner in the law firm of Agape Legal Consult.

It is the deposition of the Applicant that the Claimant in the instant Suit filed this Suit since 26<sup>th</sup> November, 2018 and never served Defendant/Applicant nor their attention drawn to the Suit.

That the Claimant act of suing the 1<sup>st</sup> Defendant/Applicant in the instant name is a Sham and a deliberate attempt and not a misnomer as the Claimant not only executed instruments in favour of Liverpool Estate Limited but fully participated at the trial at the Lower Court vide Exhibit 'A' herein.

That the Applicant in the instant Suit transacted with the Claimant and consideration paid to him which he acknowledged in the name of Liverpool Estate Limited and not as MDETIS ST' UZOR. From the

instruments executed between the Claimant and Liverpool Estate Limited vide Exhibit 'B'.

Applicant avers that the Claimant has also made statement at the Intelligence Response Team of the Inspector General of Police in respect of a petition against him by Liverpool Estate Limited. The said investigation report is hereby annexed as Exhibit 'C'.

It is further affidavit of the Applicant that for a period of over 2 years now and counting the Claimant cannot claim ignorance or mistaken identity as a careful scrutiny of the exhibits as to parties, subject in issue will reveal the truth that the Claimant is fully aware of the true position.

That the 1<sup>st</sup> Defendant/Applicant is still at loss and wondering whether the name MDETIS ST' UZOR refer to him or someone else.

That it is in the interest of justice and rule of law that the name of the 1<sup>st</sup> Defendant/Applicant be struck out.

In line with law and procedure, written address was filed wherein, a sole issue was formulated for determination to wit;

*Whether this Suit is properly constituted as to parties so as to confer jurisdiction on this Court?*

*Or*

*Whether proper parties are before the Court to assume jurisdiction?*

Adumbrating on the afore-formulated issue, learned counsel submitted that jurisdiction is the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision such authority of the Court is controlled or circumscribed by the statute creating the court itself or it may even be circumscribed by a condition precedent created by legislation which must be fulfilled before the Court can entertain the Suit. Thus, jurisdiction is fundamental and it is the centre point upon which the entire litigation hinges on.

***ALHAJI MUHAMMADU MAIGARI DINGYADI  
& ANOR VS. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION & 2 ORS No. 2  
(2010) 18 NWLR (Pt. 1224), C.B.N VS. S.A.P  
(NIG.) LTD (2005) 3 NWLR (Pt. 911) 152,***

***MADUKOLU VS. NKEMDILIM (1962) 2 SCNL 341, THE ADMINSTRATORS/EXECUTORS OF THE ESTATE OF GENERAL SANI ABACHA (DECEASED) VS. EKE – SPIFF (2009) 7 NWLR (Pt. 1139) 97 at 136*** were cited.

Learned Counsel further submit that the 1<sup>st</sup> Defendant/Applicant is not a legal entity with the required legal personality to sue or be sued specifically, there is nobody known to law as MDETIS ST' UZOR. Counsel submit most humbly that the option open to the Court is to have the name of the 1<sup>st</sup> Defendant struck out of this case.

Learned Counsel drew the attention of the Court as to what will amount to a misnomer. That in the context of litigation is said to occur where the entity

suing or intended to be sued exists, but a wrong name is used.

Upon service, Claimant/Respondent filed a 5 paragraph counter affidavit duly deposed to by Ugwu Joy a litigation secretary in the law firm of Tolu Babaleye & Co.

It is the deposition of the Claimant/Respondent that the Suit was filed on 26<sup>th</sup> November, 2018 and the matter was assigned to Hon. Justice C.U. Ndukwe sitting at Kuje, however before all the Defendants could be served with the processes, my lord died as a result of which the matter was sent back for re-assignment.

Claimant avers that all through this transaction with the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant held out himself and name as MDETIS ST' UZOR, he also assured

the Claimant at the time of the transaction, he is a Director at United Surgical Limited. That all through their transaction, the 1<sup>st</sup> Defendant never brought in nor represent himself as being Liverpool Estate Limited.

That all the monies paid to the Claimant was paid with United Surgical Limited where he held out himself to be a Director and not Liverpool Estate Limited. Copies of the Claimant statement of account showing the transaction between him and the 1<sup>st</sup> Defendant and him is hereby attached and marked as “Exhibit Hon. Omosule 1”.

That the purported Deed of Assignments and Power of Attorney attached to the 1<sup>st</sup> Defendant application was never executed by the Claimant and the

purported signature of the Claimant was forged and the said documents were not dated.

That the matter before this Court is not the same as that before the lower court, the subject matter of the dispute before the lower court is recovery of premises while that before this Court is for declaration of title and actionable trespass.

That it is in the interest of justice that the application of the Applicant is discountenanced.

A written address was filed wherein a sole issue was formulated for determination to wit;

***Whether the Applicant in their application has satisfied the Court to warrant the grant of their application.***

Learned counsel argued that as at the time of the transaction between the Claimant and the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent held out his name to be MDETIS ST' UZOR, he further informed the Claimant that he is a Director in United Surgical Limited as a result of which some of the transaction sum was transferred from the accounts of United Surgical Limited into the Claimant's account shown in Exhibit Hon. Omosule '1', the 1<sup>st</sup> Respondent who alleges that he is Liverpool Estate Limited did not transact or send money with such name. Thus, counsel averred that this is a clear case of misnomer.

***EMESPO J. CONTINENTAL LTD. VS CORONA SHIFAH – RTSGESELL SCHAFT MBH & COMPANY (2006) LPELR – 1129 (SC), MTN NIGERIA COMMUNICATIONS LTD. VS. ALUKO & ANOR (2013) LPELR – 20473 (CA),***

***AGB PLC. & ANOR VS. EMOSTRADE LTD.  
(1997) LPELR – 5213 (CA).***

Learned counsel argued on the second ground of the Applicants objection which is that the present Suit constitutes an abuse of Court Process. Counsel submit that this Suit as constituted does not amount to an abuse of court process. That court have in plethora of authorities stated when a Suit will amount to an abuse of Court process as thus;

- a. The parties must be the same
- b. The subject matter must be the same
- c. The reliefs sought must be the same

***AMINU CHINDO VS. SAMAILA ISAH (2010)  
LPELR – 3975 (CA), GENERAL TELEPHONE &***

***ELECTRONICS LTD VS. AMCON (2017) LPELR  
– 43558 (CA).***

Learned Counsel further submit that in the present Suit, it is crystal clear that the parties in this Suit and the parties in the Exhibit ‘A’ annexed by the Applicant in his affidavit are respectively stated as follows: **Hon. Eniolorunda Omosule**. Thus, the parties in both the present suit and that at the lower court are two different people.

Learned counsel submit that from the counter affidavit, the Exhibit annexed thereto and written address of counsel, it is our firm submission that the Applicant has failed to satisfy this Honourable Court to warrant the grant of their application and counsel pray this Honourable Court to so hold.

**Court:-**

Jurisdiction of court is a threshold matter as court must possess jurisdiction before it can determine any matter. Jurisdiction is activated when certain conditions are present. One of the constituents of jurisdiction is competent parties, *C.B.N VS S.A.P (NIG.) LTD (2005) 3 NWLR (Pt. 911) 152.*

Similarly in *MADUKOLU VS NKEMDILIM (1962) 2 SCNL 341*, it has been stated that for a court to have jurisdiction, the following conditions must be present:

- i. The proper parties are before the court;
- ii. The subject matter falls within the jurisdiction of the court.
- iii. The composition of the court as to members and qualifications, and

iv. The suit is commenced by due process of law and upon fulfillment of any conditions precedent to assumption of jurisdiction.

Indeed, competence of parties before the court is fundamental for any matter to be instituted and sustained before any court of law.

Now, the law is settled that only natural or artificial persons can initiate action in a court of law. In other words, only persons, natural or artificial with requisite juristic personality can initiate a legal action in court or to be proceeded against. *See AG FEDERATION VS ANPP (2004) 114 LRCN (188).*

The law however recognizes the fact that apart from the afore category of people who can sue and be sued, some non-legal entities can sue and be sued

where such a right has been given by statute, expressly or implied or by common law, either as a legal person under the name by which it sues or is sued, e.g. cooperation sole and aggregate, bodies incorporated and quasi corporations, constituted by Acts of parliament or, (b) a right to sue or be sued by that name, e.g. Partnership, Trade Unions, Friendly Societies and Foreign institutions Authorities by their own law to sue and be sued but not incorporate.

See *FAWEHINMI VS NBA (1989) SC (pt. 1) 63*, *CALEN (NIG) LTD VS UNIJOS (1994) 1 NWLR (323) 631*.

Qst...Is 1<sup>st</sup> Defendant/Applicant Mdetis St' uzor a juristic personality?

It is the counter affidavit of the Claimant/Respondent that all through the transaction

that led to this suit, the 1<sup>st</sup> Defendant held out himself and name as Mdetis St'uzor, he also assured the Claimant at the time of the transaction that he is a Director at united Surgical Ltd. claimant annexed Exhibit "Hon. Omosule 1" to it counter showing the transaction between him and the 1<sup>st</sup> Defendant.

I have gone through the said Exhibit, a perusal of Exhibit "Hon. Omosule 1" will shows that on the following dates there is transaction between the Claimant and United Surgical Limited.

1. 12<sup>th</sup> September, 2018.
2. 27<sup>th</sup> September, 2018.
3. 12<sup>th</sup> October, 2018 and
4. 30<sup>th</sup> October, 2018.

It is instructive to state here that the transaction as captured above, is between United Surgical Ltd and Not Mdetis St'uzor the 1<sup>st</sup> Defendant herein.

The name United Surgical Ltd, suggest that same is a juristic personality which could have been sued and not 1<sup>st</sup> Defendant.

It is obvious that the 1<sup>st</sup> Defendant/Applicant is not a legal entity with the required legal personality to sue or be sued.

Indeed, the judicial powers vested on this court by virtue of section 6(6)(b) of the constitution of FRN 1999 is only exercisable against legal or juristic person. ***THE ADMINSTATOR/EXECUTORS OF THE ESTATE OF GENERAL SANI ABACHA VS EKE – SPIFF (2009) 7 NWLR (Pt. 1139) 97 at 136***, is instructive.

It is now well settled that a non – existing person, natural or artificial cannot institute an action in court, nor will an action be allowed to be maintained against a Defendant, who as sued, is not a legal person.

Indeed, Mdetis St’uzor, is not a misnomer when associated with issues of juristic personality and mis- description of names of parties which is simply the wrong use of name.

I shall therefore do the needful by striking out the name of the 1<sup>st</sup> Defendant from this suit.

Consequently 1<sup>st</sup> Defendant (Mdetis St’uzor) is hereby struck – out from this suit.

***Justice. Y. Halilu***

*Hon. Judge*  
*23<sup>rd</sup> July, 2021*

**APPEARANCE**

Justina A. Adeniyi - for the Claimant/Respondent.

Francis S. with Kelechi Onyekwe – for the 1<sup>st</sup>  
Defendant.

2<sup>nd</sup> Defendant not in court and not represented.