

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS WEDNESDAY THE 3RD DAY OF JULY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/197/2023

BETWEEN:

LINC NIGERIA LIMITED.....CLAIMANT
AND

HERITAGE BANK PLC.....DEFENDANTS

RULING

The defendant on the 18th day of January, 2024 filed a motion of preliminary objection with motion number M/23/2024 brought pursuant to order 43 rule 1 of the FCT High court civil procedure rules 2018 and under the inherent jurisdiction of this Hon. Court praying this court for the following order/Reliefs

- 1. An order of this Hon. Court striking out and or dismissing this suit in its entirety.**
- 2. Omnibus prayers.**

The grounds upon which the P.O. is brought in addition to the grounds in the affidavit in support are as follows:

- 1. The claimant/respondent commenced this suit against the defendant/Applicant vide a writ of summons/Statement of claim filed on the 29 Nov, 2023.**
- 2. The Hon. Court lacks territorial jurisdiction to entertain this suit Alternatively the Hon. Court is not the most convenient forum for the trial of this suit.**

3. That the said account no 1201031055 is domiciled in Lagos.
4. The contract for which the statement of account is required (building development) is also situated in Lagos.
5. The claimant's cause of action is Academic as same is centered on release of claimant's statement of account No 1201031055 which forms part of the documents already show with claimant/tendered at the lower court of apex in appeal No CV/CAG/CV/353//2033 Linc Nigeria Ltd V Heritage Bank Plc.
6. The contract for which the statement of account is required (building development) is also situated in Lagos.
7. The claimant failed to disclose that all the documents requested for in his letter of 13th September, 2023 forms part of the Appeal in Appeal No. CA/CAG/CV/353/2023 Linc Nigeria Ltd V Heritage Bank Plc suit has failed to disclose a reasonable cause of action against the applicant.
8. The suit is frivolous and unsustainable against the applicant and ought to be struck out by this Honorable court.
9. The action was instituted malafide

Attached to the notice of P.O is an affidavit of 8 paragraphs deposed to by one Friday Philip Chario of No. 19ASani Close off Mabolaji Johnson Street Gudu Abuja Annexed to the affidavit are annexure marked as exhibit A, B, & a written address in compliance with the rules of this court of 7 pages where the defendant/Applicant formulated alone issue for determination to wit:

“Whether the defendant/Applicant has established grounds for the grant of this application.

The plaintiff on the receipt of the defendant/Applicant's P. O. filed the plaintiff's counter affidavit in opposition to the defendant's P.O. filed on 18/1/2024. The said counter affidavit was deposed by one Ukpong Gregory of 7b Suez Crescent Abacha Street Wuse Zone 4, Abuja the affidavit is of 7 PARAGRAPHS.

Accompanying the affidavit is a written address of 3 pages wherein the affidavit the claimant/Respondent counsel formulated a sole issue for determination to wit:

“Whether the defendant/Applicant's motion is sustainable?

The defendant/Applicant's counsel in moving the said motion adopted the written address as their oral submission in support of this application and urged the court to grant the reliefs sought.

Furthermore stated that, the counter affidavit of 7 paragraphs on the 28/2 /2024 and replying on points of law. Relied on order 43 rule (1)(2) of the rules of this court which stipulated time of the filing of counter and a written address which is 7 days and the written address filed was out of time since the claimant was served on the 18-01-2024 and the counter and written address filed on the 28-01-2024. Well above the 7 days provided by the rules of this Honourable court and order 43 rules (1)(2). This he submitted that rules of court were made to be obeyed, on this he referred this court to the case of Ogunpehin V Wiglos Ventures (2019) LPELR-48772 urged this court to discountenance the counter affidavit, the written address and dismiss this suit.

In response by the claimant/Respondent counsel, he adopted all the arguments therein in the written address in urging the court to dismiss the application with punitive and substantive cost.

As rightly said, that the defendant/applicant's notice of P.O. seeks for two reliefs as stated on the face of the notice of preliminary objection including two grounds which bothers on the territorial jurisdiction of this court and alternative grounds of 8 paragraphs as stated on the face of the notice of preliminary objection and 8 paragraphs affidavit annexed as exhibit A & B .

I will proceed to deal with the argument formulated by the learned defendant/Applicant wherein he submitted that, and the jurisdiction of a court is formulated to the adjudication of a dispute and is the pillar upon which the entire case before the court stands. Hence where a court lacks the requisite jurisdiction to entertain a suit, the proceedings or determination reached in the suit amounts to a nullity no matter how well conducted. See L. S. W. C. V Sakamori construction (Nig) Ltd (2011) 12 NWLR (part 1262) 569 paragraph (C-F)

Furthermore, the learned counsel submitted that this issue interrogates the Jurisdiction of this Honourable court to entertain claimant's suit and grant her reliefs, in respect of the subject matter that is outside its territory i.e. in Lagos, Lagos State. That the issue queries the territorial/Geographical Jurisdiction of High Court of FCT Abuja, to deal with a case of the subject matter when the defendant's registered place of business is situated in Lagos, Lagos State. Furthermore argued that there are two major aspects of Jurisdiction: there are Jurisdiction over subject matter and geographical/territorial jurisdiction. That the two must be present before a court can competently assume jurisdiction in a matter. Therefore absence of one

deprives the court of the jurisdiction to entertain the suit. On this referred the court to the case of *Tukur V Govt of Gongola State* (1989)4 NWLR (part 117) 517.

- 1. Vanguard Media Ltd V AG & ORS (2022) LPELR-57800 (CA)**
- 2. Adefona& ors V Igele General Entertainment Ltd (2011) LPELR (SC)**

The learned defendant/Applicant counsel further submitted that in determining whether or not court is vested with requisite jurisdiction over an action the relevant processes that must be examined are the originating processes filed by the applicant. See the following case under reference

- 1. R. T. E. A. V NUR. TW (1996) 8 NWLR (part401) 737 AT 743 per F-H**
- 2. Abdul-Raheem V Oloruncoba – Oju (2006) 16 NWLR (part 1003) 581 at 624 paragraph F-G.**
- 3. Adeleke V O. S. H. A. (2006) 16 NWLR (PART1006) 603 of 814 paragraph H.**

Furthermore that on the principles determining the jurisdiction of a court, the law is that the claim of the plaintiff determines the jurisdiction in other words, the jurisdiction of a court to adjudicate on a matter is predicated upon the facts placed before it, and more importantly by the phraseology of the plaintiffs claim.

The learned defendant/Applicant counsel on this stated that the case of the subject matter of this suit is outside the geographical territory of the court. Referred to paragraph 5(x-xii) of the affidavit before the Hon. Court that it is crystal clear that the registered place of business of the defendant is Lagos State, the cause of action is in Lagos which is outside the territory of this Hon. Court.

However, that the claim before this hon. Court failed to disclose where the claimant's resides, therefore this hon. Court is stripped of the jurisdiction to entertain suit and to grant the reliefs sought by the claimant.

Before I proceed to the Respondent of the claimant/Respondent, I shall refer to the rules of this court that is order 3(1) of the rules of the court provides thus:

“All suits relating to land or nay mortgage or charge on land or nay interest in land, or nay injury or damage of land injury for damage to land and action relating to personal property detrained or seized for any cause,

May be commenced and determined in the judicial division in which the land is situated or the detained or seizure took place.

By the provision of the rules of this court as stated above and by paragraph 6 of the statutory of claim of the claimant reproduce below:

“that sometimes in March, 2023 the claimant was approached by messrsKenshard Homo & Properties Ltd, a renowned property Developer for a real Estate joint Development of the claimant Properties located at member at No 50 Bourdillis Road Lagos, in the Osa Local Govt Area Lagos State measuring approximately 4417-598 squire meters registered at No 83ata page 83 in volume 107 at the Federal Land Registry Ikoyi with beacord number EGPLA. 4340, FGPL 4339, FGPCA. 4340, and FGPLA4341 located within Ikoyi in the name of ShorebeachNig Ltd & No 54a BourdillionRordIkoyi Lagos in the Osa Local Govt Area Lagos State, measuring approximately 2281..291 squire meter registered as no 71 at page 71 in volume 103 at the Federal Land Registry, Ikoyi-with beacon Number FGPLA-665 FGPLA, 666 FGPCA 667, FGPCA, 668 & FGPCA 669 located within Ikoyi in the name of ShorebeachNig Ltd.

From the above paragraph of the statement of claim can it be said that, this court has the requisite jurisdiction to entertain this matter in view of the provision of order 3 rule 1 of the FCT, High court civil procedure rules 2018?

On this the defendant/Applicant counsel referred this court to paragraph 5 (x-xii) of the affidavit before the court. The paragraph is hereby reproduced here under for ease of reference

PARAGRAPH x

That the defendantcounsel arebased in Lagos State

PARAGRAPH xi

That Lagos is the territorial Jurisdiction most convenient forum for the trial of this suit

Paragraph Xii

That on the face of the claimant's claim he has not shown the territorial Jurisdiction he resides.

On this submitted that the registered place of business of the defendant is Lagos State, the cause of action is in Lagos and the claim before this court is to be performed in Lagos which is outside the territory of this Hon. Court.

Now the Fundamental question that rears its head in the instant case is which division of the court has the territorial Jurisdiction to entertain this suit?

On this stated on the burden of ruling reference to order 3 rule (1) of the High Court of the FCT civil procedure rule 2018 and the statement of claim of the claimant paragraph 6 reproduced in this ruling it is crystal clear that the FCT High Court lacks the territorial Jurisdiction to adjudicate in the instant suit as it is constituted.

The plaintiff in the instant suit failed to tailor its claim to show that the cause of action is connected to its claim on this I wish to state that, territorial Jurisdiction has to do with the area a matter arises or parties reside.

A court lacks the competence to adjudicate over matters and persons outside its territorial jurisdiction.

Furthermore, territorial jurisdiction is the court's power to bind the parties to the action. The law determines the scope of the FCT, court power and this is by order 3 rule 1 of the FCT laws.

The territorial Jurisdiction of High Court of FCT is a fundamental concept that delineates the geographical area in which the High court of FCT holds authority to exercise its power and adjudicate cases.

This aspect is paramount for the effective dispensation of justice and is enshrined in the constitution.

In the general purview a High court wields the power to adjudicate cases that arise within its territorial ambit.

But in the instant case/Suit it is clear that the dispute in this case arose in Lagos, Ikoyi Lagos where the subject matter of this case arose therefore the proper venue for the trial of this instant suit is Ikoyi in Lagos State and not in FCT, Abuja.

The issue of Bank statement relied upon by the claimant is just a cover up to give this court the jurisdiction to entertain this matter.

I Therefore hold that, there is no reasonable cause of action to be tried before this court of FCT, Abuja.

In view of the foregoing, I hold that this Suit cannot stand hence suit No. CV/177/2023 is hereby refused for lack of jurisdiction to entertain same.

I so hold.

Parties to bear their cost

This is my ruling.

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Hon. Justice A.Y. Shafa

Appearance:

1. GregreyUkpong for the Claimant
2. A. N. Kayode and I. A. Hegbome for the defendant