

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR  
ON THIS 21<sup>ST</sup> DAY OF JUNE, 2024

SUIT NO.: CV/130/2023

BETWEEN:

MAXWELL OPARA ..... CLAIMANT

AND

AIRPEACE NIG. LIMITED ..... DEFENDANT

**RULING**

**DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR**

Pending before this Court are two applications to wit; Motion No: M/6397/2024 filed on 18<sup>th</sup> March, 2024 by the Claimant and Preliminary Objection with Motion No: M/4340/2024 filed by the Defendant.

The Claimant in his Motion with No: M/6397/2024 sought the following reliefs from the Court:

1. For an order granting leave to the Claimant/Applicant to amend the originating processes and other accompanying documents to reflect the proper name of the Defendant in this suit.
2. An order granting leave to the Claimant/Applicant to amend the Writ of Summons.
3. An order deeming as properly amended and served the said Amended Writ and other accompanying documents, already filed separately, filing fees having been paid

And for such orders or further orders that this Honourable Court may deem fit to make in the circumstances.

In support of the application is 6 paragraph affidavit sworn to by Anselm O. Opara, Counsel to the Claimant and a written address which Counsel adopted.

The deponent deposed to the fact that an inadvertent mistake was made in the Writ filed on August 6, 2023 by him. Specifically, the Defendant's name was incorrectly stated as "Airpeace Nig Limited" instead of "Airpeace Limited." This error, he stated was discovered during a review of the matter. He urged the court to grant leave to the Applicant to amend the Writ and related documents to reflect the correct name.

The Claimant's Counsel in his written address raised one issue for determination as follows:

*Whether the Claimant/Applicants have made out a case for the grant of this application.*

In his address, he highlighted that Order 25 Rule (1) and (3) of the Court's Rules allows for amendments before the pre-trial conference and not more than twice during the trial and that the Claimant's supporting affidavit showed that the amendment would enable the Court to determine the issues with the Defendant's correct name. He referred to *IBE V. ONUORAH* (1998) 7 NWLR, Part 558, 383 at 391. He argued that the amendment sought would not change the nature of the case or result in injustice or surprise to the Defendant since the trial has not yet commenced. He concluded by urging the Court to grant the amendment in the interest of justice, noting that the

mistake was due to counsel's error and should not be held against the litigant.

The Defendant/Respondent in response filed a counter affidavit of 13 paragraphs deposed to by Chiamaka Nwanosike, Counsel representing the Defendant and a written address which Counsel adopted. She deposed to the fact that the Claimant filed a Writ of Summons before the High Court of the Federal Capital Territory and served it on "Air Peace Nigeria Ltd" on December 13, 2023. She averred that the Defendant objected to the Court's jurisdiction to entertain the suit, filing a Preliminary Objection on February 3, 2024, which has not yet been heard. She stated that the Defendant, as named, is a non-juristic person and that the court lacks jurisdiction over the aviation-related subject matter. To counter this, the Claimant served a Motion on Notice on April 8, 2024, seeking to amend the documents to reflect the proper name of the Defendant. She further stated that granting this motion would unfairly affect the Defendant and that the Preliminary Objection should be resolved first and in addition, the Writ of Summons to be amended was not attached to the motion.

The Defendant on the other side of the aisle raised two (2) issues for the determination of the Court to wit:

- 1. Whether the grant of the prayers sought in the Motion on Notice will be premature, unwarranted, and overreaching on the Defendant/Respondent having regard to the fact that the jurisdiction of this Honorable Court to entertain this suit is challenged.*

2. *Whether a preliminary objection challenging the jurisdiction of a court is to be considered first before the main suit is heard.*

On issue 1, counsel submitted that granting the prayers sought in the application would be premature, unwarranted, and overreaching on the Defendant/Respondent. The jurisdiction of the court to entertain this suit is challenged in a preliminary objection because jurisdiction is fundamental and must be considered first. Counsel referenced Order 23 Rule 2(1) & (2) of the High Court Rules of the Federal Capital Territory, which allows any party to raise a point of law that can be disposed of before, during, or after the trial. Counsel cited the Supreme Court case HERITAGE BANK LTD. Vs. BENTWORTH FINANCE (NIG) (2018) 1-2 S.C. (Pt. III) Pg 171, emphasizing that jurisdiction is a threshold issue and must be determined first before proceeding with the main suit as without jurisdiction, the case crumbles, and the court cannot adjudicate the merits of the case.

Counsel concluded by urging the court to first address the issue of jurisdiction raised in the preliminary objection before considering the main suit or any other application related to the suit by the Claimant/Applicant.

The argument in issue 2 is not unlike that canvassed in issue 1.

Now to the 2<sup>nd</sup> Application being a Preliminary objection with Motion No:M/4340/2024 wherein the Defendant sought the following reliefs:

*(1) AN ORDER of the Honourable Court setting down for disposal the points of law contained in the Defendant's Statement of Defence.*

- (2) *UPON THE GRANT OF PRAYER 1, AN ORDER of the Honourable Court striking out the Claimant's suit for lack of jurisdiction to entertain the suit as presently constituted*
- (3) *AN ORDER of the Honourable Court striking out the suit for the joinder of a non-juristic person, Air Peace Nigeria Limited as a defendant to the action;*
- (4) *AN ORDER of the Honourable Court setting aside the service of all the originating processes purportedly served on the Defendant at a place neither its head office nor a branch office of AirPeace Ltd*
- (5) *AND FOR SUCH ORDER OR FURTHER ORDERS as the Honourable Court may deem fit to make in the circumstances.*

Filed alongside the Preliminary Objection is a 13-paragraph affidavit deposed to by Kachollm Nyam-Zang, a document marked as Exhibit A and a written address adopted by Counsel.

The affidavit of Kachollm Nyam-Zang is to the effect that he is the Station Manager of AirPeace Limited. He asserts that the originating processes filed by the Claimant were not properly served at AirPeace Limited's head office or its business location in the Federal Capital Territory, but were instead left at the airline's ticketing kiosk at Transcorp Hilton Hotel, Abuja, which is not an office of AirPeace Limited.

He further avers that the Claimant's claims relate to aviation and aviation safety, which fall under the jurisdiction of the Federal High Court, not the High Court of the FCT. Furthermore, he points out that AirPeace Nigeria Limited, the entity sued by the Claimant, does

not exist in the Corporate Affairs Commission's register of incorporated entities and that the Defendant cannot be sued under its present misnamed identity and contends that it would be in the interest of justice to strike out the suit.

In the written address of the Claimant a single issue was raised thus:

*Whether the suit filed by the Claimant/Respondent is liable to be struck out by the Honourable Court for lack of jurisdiction.*

In support of the above issue, Counsel argued that Sections 251(1)(k) of the 1999 Constitution and 7(1) of the Federal High Court Act, grant the Federal High Court exclusive jurisdiction over matters related to "aviation and safety of aircraft."

He pointed out that the Claimant's suit, which involves claims related to the purchase of an airline ticket and subsequent flight delay, is essentially an aviation matter. Therefore, the Federal High Court has exclusive jurisdiction over such disputes, not the State High Court. He referenced the case AZMAN AIR SERVICES LIMITED Vs. MR. DAVID ANIKOH (2021)LPELR-56690(CA). He also highlighted that the Claimant's action included suing a non-juristic entity, "Airpeace Nigeria Limited." He pointed out that no entity by this name existed, rendering the suit against a non-juristic person invalid.

Additionally, he stated that service of the processes was effected at a ticketing kiosk in Transcorp Hilton, not at the registered or head office of the company. Thus, he concluded that the service in this case was fundamentally defective.

In summary, he urged the court to uphold the objection on these grounds and strike out the suit due to lack of jurisdiction and improper service.

In response to the Preliminary objection, the Claimant's Counsel filed a Reply on Points of Law on 20<sup>th</sup> March, 2024. He raised three (3) issues for determination viz:

1. *Whether the usage of "Nig Ltd" rather than "Ltd" is incurably fatal to affect in entirety the jurisdiction of this Honourable Court.*
2. *Whether the service of the Originating process either at the Defendants' Head, Branch or Business office is bad service which would affect the jurisdiction of this Honourable Court to hear and determine this case on the merit.*
3. *Whether a breach of simple contract by an airline company which occurs prior to a passenger embarking a journey qualifies as a Federal High Court exclusive aviation matter.*

The arguments canvassed in the Reply on Points of Law have already been captured above.

Succinctly put the question before this Court for determination is *Whether the suit filed by the Claimant is liable to be struck out by the Honourable Court for lack of jurisdiction.*

In resolving the contention of the Defendant that the Preliminary Objection should be heard first, I will rely on the case of ABIOYE v. ISMAIL & ORS(2023) LPELR-59828(SC) where my Lord AMINA ADAMU AUGIE, JSC at (Pp 41 - 43 Paras B - F) held that:

*"It is also an elementary principle that the Court must take the Application to regularize the proceedings first before considering the Application to dismiss or strike out an appeal for non-compliance - see Nalsa & Team Associates V. NNPC (1991) 8 NWLR (Pt. 212) 652."*

The application of the Claimant is straightforward. He simply wants to effect a correction in the name of the Defendant as it appears on the Writ and Statement of Claim. It appears that the primary purpose of the amendment sought by this application is to correct the name of the Defendant. This amendment does not aim to make substantial changes to the Claimant's case. It is well-established that courts have the discretionary power to allow amendments to correct a party's name or even to substitute a new party. Such an order can be made if the court is convinced that the error or mistake to be corrected is honest and genuine, and not intended to disadvantage the opposing party. This amendment can be made even after judgment, and even on appeal, to substitute the correct name of a party for an incorrect one. See OMEGA MARINE & ENERGY LTD v. OKODIYA(2021) LPELR-56631(CA)

It was held in the case of EZE v. UNIZIK (2021) LPELR-56186(CA)

*"... In the case of OLOKUN V AIYELABEGAN (2004) 2 NWLR, PT 858, 504, this Court held that the mere fact that a defendant was sued in a wrong name would not amount to bringing the action against a non-juristic personality. For as the Court reasoned in that case, a name is a word or phrase identifying or designating a person or thing or distinguishing that person or thing from others. This means that a person can sue or be sued by the name he is known by or his alias. Drawing from this authority, it means at the worst, the purported*

*wrong name of the defendant/respondent can be taken as an alias. Furthermore, where the mistake is as to the name and not the identity of the party, it is a mere misnomer. A misnomer is said to occur when the correct person is brought to Court under a wrong name."*

In the case at hand, there is no question or mistake as to the identity of the Defendant. The Defendant's Statement on Oath was deposed to by Kachollm Nyam-Zang, who identified herself as the Station Manager of the Defendant.

It is my view that the error in the name of the Defendant is a misnomer that the Court can grant leave to correct.

Reliefs 1 and 2 hereby succeed.

The Claimant as his 3<sup>rd</sup> relief in his application applied for the Court to grant an order deeming the Writ and other accompanying processes as properly filed and served.

This Court has searched through its file and there is no proposed Amended Writ and accompanying processes found anywhere. The Claimant did not also attach as Exhibit the proposed amendment. In the absence of these, this Court cannot speculate by granting a deeming order in relation to a document that is not yet in existence.

The effect of a deeming order was enumerated in BUILDERS PRODUCTS INDUSTRIES (NIG) LTD v. REGISTERED TRUSTEES OF COCIN(2021) LPELR-56295(CA) by MOHAMMED BABA IDRIS, JCA (Pp 19 - 19 Paras C - D) as follows:

*"It is trite that the effect of a deeming order is that it regularizes the processes before the Court. See the case of AKPER ININMAH VS. RICHARD KYAASHIMA & ORS (2019) LPELR - 48079 (CA)."*

In the current case, there is no process before the Court to regularize or deem as properly filed. The 3<sup>rd</sup> relief therefore fails.

Now, I shall delve into the Defendant's Preliminary objection.

The issue of jurisdiction is fundamental and affects the very foundation or existence of the case. Consequently, this application before us is a substantive one, questioning the Court's authority to hear the case initiated by the Claimant. See NGERE & ANOR v. OKURUKET 'XIV' & ANOR (2023) LPELR-60001(SC).

The Defendant's argument that the error in the Defendant's name renders the Defendant a non-juristic person, has already been addressed in this ruling. Therefore, I will not engage in an academic exercise on this matter.

The Defendant is also objecting on the ground that the originating processes were not served at its registered or head office but at a ticketing kiosk in Transcorp Hilton Hotel, Abuja.

To address this issue, it is necessary to re-examine Section 104 of the Companies and Allied Matters Act (CAMA) 2020. Section 104 states:

*104. "A Court process shall be served on a Company in the manner provided by the Rules of Court and any other document may be served on a Company by leaving it at, or sending it by post to, the registered office or head office of the Company."*

This section identifies two categories of documents for service on companies: "Court Processes" and "any other documents." "Court Process" refers to documents forming part of the court's records or issued by the court, which must be served according to the relevant Rules of Court. "Any other document" can be served by leaving it at or sending it to the company's registered or head office.

The applicable rules of Court in this matter is the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018. Order 7 Rule 8 of these rules specifies that:

*8. Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the head office or any other place of business of the organisation within the jurisdiction of the Court.(Underlined for emphasis).*

Reading Section 104 of CAMA alongside Order 7 Rule 8 of the High Court (Civil Procedure) Rules of the FCT, it is clear that "Court Process" can be served at any office of the company, whether registered, head, branch office or any other place of business of the Company. This interpretation aims to simplify the process of serving court documents on companies. See SALE & ORS v. OCHEME & ANOR(2020) LPELR-51315(CA).TheDefendant has not denied that it conducts business at the address the Writ was served on it.

Furthermore, the purpose of serving a court process is to ensure the Defendant is informed of the case against him, enabling a proper defense.

To buttress this point, I shall obtain support from the case of SALE & ORS v. OCHEME & ANOR (SUPRA) where OLU DOTUN ADEBOLA ADEFOPE-OKOJIE, JCA at (Pp 17 - 18 Paras B - A) expressed as follows:

*"Service of a Court process, in contradistinction to service of any other document can be effected by leaving it at any office of the corporation or the company. See First Bank of Nigeria Ltd v. Njoku (1995) 3 NWLR Part 384 page 457 at 478 - 479 Para E - G per Orah J.C.A. It has indeed been held that where service of process is delivered to a third party who delivers it to the principal members of the company, this amounts to personal service. See Panache Communications Ltd v. Mrs. Rebecca Aikhomu (1994) 2 NWLR Part 327 Page 420 at 431 para B - G per Sulu Gambari J.C.A. The entire purpose of service, I hold, is to bring the process to the attention of the party against whom the writ is issued. Courts should and indeed are turning away from technicalities which only tend to hamstring justice."*

Therefore, I hold that serving the Writ and accompanying documents at Transcorp Hilton Hotel, where the Defendant conducts business, constitutes proper service.

The final ground of the objection is that since the claims of the Claimant relate to Aviation, the Court with jurisdiction of the matter is the Federal High Court and not this Court by virtue of Section 251 (1)(k) of the 1999 Constitution (as amended).

Section 251 states as follows: *(1) Notwithstanding anything to the 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*

*(k) aviation and safety of aircraft*

It is not in dispute that matters that involve simple contracts are within the jurisdiction of the State High Court. However, to determine if this Court has jurisdiction, it is appropriate to examine the reliefs sought by the Claimants as follows:

- a. A DECLARATION OF THIS HONOURABLE COURT THAT that by virtue of the Claimant booking the Defendant's flight to travel to Lagos state from Abuja on the 24<sup>th</sup> of July, 2023; precisely by 3:45pm, the Claimant and Defendant had entered into a contractual relationship and the parties thereof are by law not permitted to deviate from and/or alter the terms of the contract without the agreement of the other.*
- b. A DECLARATION OF THIS HONOURABLE COURT THAT the actions of the Defendant in unilaterally altering the departure time of their flight booked by the Claimant without Notice from 3:45pm to 6:30pm on the 24<sup>th</sup> of July, 2023; against their initial agreement which fixed time at 3:45pm and without prior notice whatsoever, amount to a fundamental breach of the terms of their contract and accordingly wrongful, unjustifiable and improper.*
- c. A DECLARATION OF THIS HONOURABLE COURT THAT when the Claimant booked the Defendant's flight to travel to Lagos state from Abuja on the 24<sup>th</sup> of July, 2023 by 3:45pm, the Defendant had acquired a duty of care and owes same to the Claimant to*

*ensure that all facilities to ensure that the services booked were rendered are in place and that no damage accrues to the Claimant as a result of any of their negligence in delivering of the said service.*

- d. *A DECLARATION OF THIS HONOURABLE COURT THAT the action of the Defendant when they solely altered the departure time of their flight booked by the Claimant without Notice from 3:45pm to 6:30pm on the 24th of July, 2023, without prior notice to the Claimant whatsoever; which action resulted in huge loss to the Claimant, amounts to a breach of the duty of care which the Defendant owes the Claimant and ultimately an act of tortious negligence.*
- e. *AN AWARD of #50,000,000.00 (Fifty Million Naira) as general damages for breach of contract.*
- f. *AN AWARD of #50,000,000.00 (Fifty Million Naira) as general damages for negligence.*
- g. *AN AWARD of #25,000,000.00 (Twenty-five Million Naira) as special damages for breach of contract and negligence.*
- h. *AN AWARD of #5,000,000.00 (Five Million Naira) for cost of action.*
- i. *AN AWARD of 10% interest per annum on the judgment sum from the day of judgment till it is liquidated.*

In AIR FRANCE v. OLUNDEGUN (2017) LPELR-44951(CA) the Court of Appeal held that:

*"... In KLM ROYAL DUTCH AIRLINES v. ANTHONY IDEHEN Unreported Appeal No. CA/L/526/2015, delivered on 12th July 2017, NIMPAR, JCA aptly held: "The question to ask is whether the contract allegedly breached is one for carriage by air? The provision is quite clear and straight forward and it does not include a mere contract relating to carriage by air if carriage by air has not commenced at all. It is only when the cause of action is intricately connected with being on an aircraft and injuries or any event untoward occurs or where goods are in an aircraft and something happens, that gives a claimant a cause of action under the Federal High Court. But here the issue is beyond the nature of the ticket because the contract of carriage by air had commenced the first leg concluded. It was a two way ticket and the first carriage had taken place. What became an issue was the return leg of a two way contract. The issue is whether the ticket was a special ticket with a validity period travel restrictions or an open ticket with its attendant options of date change. That cannot alter the two way nature of the contract and as conceded to by parties, the first leg fulfilled without any hitch. If the contract had not been part performed, then the claim will come under the State High Court. (Underlined for emphasis).*

See also SOSOLISO AIRLINES & ORS v. STARBURST AVIATION (UK) LTD & ORS (2022) LPELR-58743(CA).

Based on the claims before the Court, the Claimant had not boarded the flight and his reliefs are simply for an alleged breach of contract entered between the parties. Therefore, drawing from the aforementioned authorities, the suit does not fall under the jurisdiction of the Federal High Court but rather this Court.

On the whole, the reliefs 1 and 2 of the Claimant's motion succeed. The Claimant is hereby ordered to file and serve the amended Writ and accompanying processes within 7 days. The Preliminary objection of the Defendant fails and is dismissed.

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HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant; Wayne Chikezie Elijah, Esq.

For the Defendant; Onyeka Stanley Obiajulu, Esq.