

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 14TH DAY OF DECEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CV/149/2023

BETWEEN:

SANUSI MUSA (SAN).....CLAIMANT/APPLICANT

AND

ATTORNEY GENERAL OF KANO STATE.....DEFENDANT

RULING/JUDGEMENT

This ruling is on notice of preliminary objection with motion number FCT/HC/GWA/M/523/2023. The notice is brought under the inherent jurisdiction of this Honourable court praying this Honourable Court for the following orders:

- 1. An order Dismissing the suit of the claimant for want of Jurisdiction.**
- 2. Such further order or other orders as this Honourable court may deem fit to make in the circumstance.**

The grounds upon which the application is predicated are as follows:

- 1. The claimant sued the defendant for act done on behalf of a known and disposed principal thereby rendering the suit incompetent against the defendant.**
- 2. The bill of charges served on the Defendant which is a condition precedent for the institution of this suit is invalid.**

Attached to the affidavit is a written address in support of notice of preliminary objection of 8 pages

The claimant/Respondent on being served with the claimant/Respondent notice of preliminary objection filed a written address in response to

Defendant/Objectors Notice of preliminary objection. Filed dated 23-10-2023 of 22 pages.

The Defendant/Objector in moving the notice of preliminary objection adopted the written address in support of the preliminary objection and urging this Honourable court to decline Jurisdiction and strike out the claimant substantive suit.

The defendant/objector in it's written address formulated two issues distilled for determination to wit:

- 1. Whether the suit of the claimant/Respondent as presently constituted is competent to warrant the activation of the Jurisdiction of this Honourable court to entertain the suit.**
- 2. Whether the bill of charges served by the claimant/Respondent complied with the condition stipulated under section 16 (2)(a) of legal practitioners Act.**
- 3. While the claimant/Respondent in it's written address also formulated two issues distilled for determination to wit.**
 - a. A. whether or not the defendant/objection being the Attorney General of Kano State can be served on behalf of the Government of Kano State.**
 - b. Whether or not the bill of charge dated the 15th day of May 2023 and served by the claimant/Respondent on the Defendant/Objector is valid.**

The issues so formulated by both the Defendant/Objector and the claimant/Respondent are still the same hence I shall adopt the said issues as mine and to be discussed based on the issues so captured on the written address.

On issue No:1 it is the submission of the learned Defendant/objector counsel, that it is trite law, that Jurisdiction is the livewire of all trials and a defect in competence is fatal to adjudication and renders an entire proceeding, trial and findings invalid, null and void ab-initio however well conducted and decided.

On this referred the court to the case of Fed Poly. Offa Vs UBA Plc (2014) ALL FWLR (part. 737) 739 at 771 paragraph G-A and the following: cases

- i. Shell Nig Ltd V Dec Oil & Gas Ltd (2011) FWLR(Prt. 580 1350 at 1365 paragraph. F-G.**
- ii. 7 UP Bottling Co Ltd V Abiola& Sons Bottling Co Ltd (2002) FWLR(pt.20)1611 and 1648 paragraph. D. E.**
- iii. Salah V Monguno (2006) FWLR(Prt 332)1411.**

and the classic case of MaduKolu V Nkemdilim (1962) 2 SCNLR-342 where the apex court outlined the constituents of Jurisdiction as follows:

- i. It is properly constituted as regard numbers and qualification of members of the bench and no member is disqualified for one reason or another.**
- ii. The subject matter of the case is within it's Jurisdiction and there is no feature in the case which prevent the court from exercising it's Jurisdiction.**
- iii. The case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of Jurisdiction.**

Base on the above stated outlined constituent of Jurisdiction submit that from the latter dated 7-2-2023 (exhibit AMLPI) it is clear that the instruction given to the claimant/Respondent to institute the action which has led to the instant suit was conveyed by the Defendant/Objector on behalf of the Kano State Government in other words that the claimant/Respondent Was acting as an agent of a disclosed principal, her Kano State Government when he gave the instruction to the Respondent/to institute the suit against the Attorney General of the Federation vide Exhibit AMLPI referred to exhibit AMLP5.

Furthermore, submitted that, a contract made by an agent within the scope of his authority for a disclosed principal is in law the contract of the principal. This he referred the court to the following:

- a. Iwochukwu V Nwizu (1994) 7 NWLR (pt. 357) at 396.**
- b. Yusufu V Kupper International N. V. (1996) 5 NWLR (pt. 446)28-29.**
- c. Maina Numinees Ltd V Fid. Board of Internal Revenue (1986) 2 NWLR (pt. 20)48**
- d. R. O. Iyere V Bendel Feeds & Flour Mill Ltd (2008) 7-12 SC. 151 at 168.**
- e. Samuel Osgwe V PSPLS Management Consortium Const. Ltd & 13 ors (2009) ALL FWLR (Prt. 470) 607.**

The learned Defendant Counsel Submit further that where a person making a contract disclosed the existence and name of a principal on whose behalf he purports to make that contract he is not liable on the contract to the other contracting party. Reliance on the case of Yusufu V Kupper International N. V. (Supra).

It is equally his submission that the Defendant/objector in the instant suit acted for and on behalf of Kano State Government with respect to the instruction given. To the claimant/Respondent to institute the suit against the AG. of the Federation as ostensibly shown by exhibit AMCP1. Thus it is the principal i. e. Kano State Government that is liable, if any and not the Respondent/Objector.

Hence the Claimant/Respondent cannot sue the defendant/Objector who acted for and on behalf of a disclosed principal, Kano State Government. Referred the court to case of *Osigwe V P.M.C.L.1-2 SC* (pat.)79.

Furthermore, that a suit instituted against an agent for acts done on behalf of a known and disclosed principal is incompetent and liable to be struck out. See *SGNTE FE-DRILLIN (NIG)Ltd V Mr George Awale and Anor* (1999)6 NWLR (pt. 608) at 629 paragraph D-H where it was Stated as follow:

“it is quite obvious from these finding of the learned trial judge that proper defendant in the case was not before the court. It is therefore a futile exercise to allow the Plaintiff/Respondent to engage the Defendant/Appellant in a battled in which the appellant has not been shown to be interested in. Thus, in the absence of a proper defendant in the action, the lower court had no Jurisdiction

See the following: case as referred

- a. Barrister AnikonKapanahV Surveyor AsuquoAyaya(2010) LPELR-8590(CA)**
- b. UBA PlcV Ogundekon (2009) 6 NWLR (PT. 1138)450**
- c. In conclusion urge the court to resolve this issue in favour of the Defendant objector and hold that the suit of the claimant is incompetent having not been initiated by due process of law and upon fulfilment of condition precedent of suing the proper defendant.**

in response by the Claimant/Respondent the learned counsel, submit that the contention of the Defendant/Objector is that by exhibit AMLP1, the instruction given to the claimant/Respondent to institute the suit was conveyed by the Defendant/Objector on behalf of the Kano State Government that the defendant/objector was acting on as an agent of a disclosed principal, the Kano State Government, the Defendant/Objector cannot be liable for the failure of the Kano State Government to pay the claimant/Respondent.

On this it is the submission of the learned counsel to the claimant/Respondent that the contention was misconceived and cited the case of *Ezomo V A. G. Bendel State* (1986) LPELR-1215 (SC) PG. 19-20 paragraph E-. 6 and the case of *A. G. of Kano State Vs A. G. of the Fed* (2007) LPELR-618 (SC) Pg. 28 paragraph B-C where it was contended that, the A. G. of a State can be sued as a defendant in all civil matters in which a claim is properly made against the State Government arising from any act or Omission complainant of. also in the case

of Sambo V Bello & ors (2017) LPELR-43022(CA) Pg. 22-23 paragraph (D) where in this case it was held thus:

“it is settled law that the A.G. is the chief law officer of the State. He is the person of the State. He is the person vested with the responsibility under the constitution for bringing and defending actions on behalf of the State. the A.G. can be sued as a Defendant in all civic matter in which a claim is properly made against the F G or the State Government or any of it’s authorised agencies arising from any act or omission complained of.

Also the case of FIRS V A.G. Lagos State & Anor (2022) LPELR-5802 (CA) In this case the court held:

“the question now is when the Fed Government seek to enforce a liability or there is a claim against the F.G who is the right party to sue or be sued? I think the answered to this question is a sufficiency answered by extent constitutional provisions, section 150(1) of the 1999 constitution (as amended) provides. There shall be an A.G. of the Federation who shall be the Chief law officer of the Federation and a minister of the GOVERNMENT OF THE Federation. There constitutional provision makes it clear that the A.G. of the Federation is the chief law officer of the Federation similar provisions are found in section 195 of the 1999 CFN (as amended) in respect of the A.G. of State. Nigeria Engineering Works Ltd Denap Ltd & Anor (2001) LPELR-(2002) Sambo V Bello (2017 LPELR-13022 (CA). the implication of section 150 have been judicially pronounced upon in a number if decision. As the chief law officer of the Federation, the Fed Attorney General, is the custodian and protector of the constitution. The constitutional responsibility for bringing and defending actions on behalf of the Federal Government and its on agencies is vested in him. See EteluHabeeb& Anor V AG Federation & Ors (2012) LPELR -15515 (SC), A.G. Rivers State & Anor (2011) LPELR-633(SC), AG of Federation V AG of Imo State & ors (1982) LPELR-24941 (SC). In Ezomo V AG Bendel State (1986) LPELR-1215(SC) at page. 19-20, SC paragraph Aniaolu JSC gave a historical explanation “even before the 1999 constitution, in civil claims, the A.G. under the petitions of Right Act Cap 14 UR. S CFN and Lagos 1955, was the one sued. Where an individual had a claim against the Government

and was the one who instituted actions on behalf of Government where Government had claim against an individual. See Section 2& 3 of the petition of Right Act Cap 149 and the amending law L.N. 122 of 1964.

With the coming into force of the 1999 constitution. By section 6 thereof, the Government of the Federation of a State is liable to be sued, like any other individual, by any person aggrieved by it's act without reference to the petitions of Right Act. In civil cases in which the Government is sued, the A.G. is the Defendant/or at least the nominal defendant. In AG Kano State V AG Fed (2007) LPELR 618 (SC), the SC gave further clarification to the effect that, while it was not in dispute that the AG of the Fed can be sued as a defendant in all civil matters in which a claim can properly be made against the FG on any of it's authorised agencies, arising from any act or omission complained of, this can only properly happen where the claim or complaint is directly against the State or F.G. concerned'

This is the submission of the learned counsel to the claimant/Respondent that the Defendant/objector in the instant suit, was the plaintiff in A.G. of Kano State V AG of the Fed (supra) wherein the Kano State Government through Defendant/objector filed a suit against the AG of the Fed at the SC. Involving it's original Jurisdiction. The government held in this case thus:

“it is not in dispute that the AG of the Fed can be sued as a defendant in all civil matters in which a claim can properly be made against the Fed Government or any of it's authorised agencies, arising from any act or omission complained of .

The learned claimant/respondent counsel submitted that, while the decisions in Ezomo V AG Bendel State (supra), and FIRS V AG Lagos State & Anor (supra) are on all fours with the instant suit, the decision cited by the defendant/objector are not, as have not met with the circumstances of the provisions of section 195 of the CFN 1999 (AS AMENDED) and there submit that the defendant/objector can be sued and even ought to be in place of the Kano State Government, hence urge the court to resolve this issue infavour of the claimant/respondent

I have carefully scrutinized the argument canvassed herein on whether the claimant/respondent has the jurisdiction to sue the defendant/objector?

I will first of all referred this court to the case of Ikine V Edjerode (2002) 18 NWLR (pt. 745) 446 at 499 PARAGRAPH Ogundere JSC held.

It is settled law that is the plaintiff's claim that/determines the question of the court Jurisdiction.... where pleadings have been filed, the issue of the court's jurisdiction is best determined from the averments in the plaintiff's statement of claim. Where this is not, the case, one has to look at the claim as endorsed on the writ of summons"

It is trite law, that a court does not chicken out in searching for whether or not it has Jurisdiction. More often than not, it may be that the only process before a court is the writ of summons. In such a case, a court is enjoined to browse through the writ of summons to fathom out if it has the jurisdiction to hear the matter.

In AG Kwara Sate V Olawole (1993) NWLR (pt. 272) 645 at 594-675 Karibi Whyte JSC observed.....

"there is no doubt the issue of whether a plaintiff action is properly within the jurisdiction or indeed jurisdiction can be determined even on the endorsement of the writ of summons, as to the capacity in which the actions was being brought. It may also be determined on the subject matter endorsed on the writ of summons, if this is not Justiciable.

A calm examination of the above unfaultable observation, three ways to look into the writ of summons will assist the court determine it's jurisdiction ooze out.

- 1. It will reveal to the court the capacity in which the plaintiff is bringing the action and whether ha has the inevitable locus standi for audience in court. See Government of Kogi State v Adavi CGC (2005)16 NWLR (pt. 951) 327 .**
- 2. it will show if the party sued is the proper defendant for the court to have Jurisdiction. See Agin of Int. Affairs V Aliyu (2005) 3 NWLR (pt. 911)30**
- 3. the writ will be useful for the court to know 6 the subject, matter in question comes within it's jurisdiction or otherwise it is disposed of jurisdiction See Ogbebo V INEC (2005) 15 NWLR (pt. 948) 376.**

In the present case however, if is a fundamental principle that jurisdiction is determined by the plaintiff's. demand and not by a defendant/ objectors answer which as in this case, only disputes the existence of the claim, but does not alter

or affect it's nature. In other words, it is the claim and not the defence which this court is to look at to determine the jurisdiction of this court.

From the claim of the claimant/respondent I can say that this court has the jurisdiction to determine this case, as it remains the law that a defendant statement of defence or counter affidavit as the case may be, serves no useful purpose in the arduous task of ascertaining if this court has the Jurisdiction to adjudicate over the instant -suit.

Hold that the argument of the defendant/objector on this first issue lacks merit. Hence I shall resolve the first issue in favour of the claimant/respondent.

I so hold.

On the 2nd issue.

“Whether or not the bill of charges dated the 15th day of May, 2023 and served by the claimant/respondent on the defendant/objector is valid.

On this I will first all dwell on recovery of a legal practitioner's charges. Here it is necessary to rely, on a bill of charges subject to section 16-19 of the legal practitioner Act, by virtue of section 16 of the Act a legal practitioner shall not be entitled to begin an action to recover his charges unless.

- 1. A bill for the charges containing particulars of the principal items included in the bill and signed by one of the firm, has been served on the client personally or left for him at his last address as known to the practitioner or sent by post addressed to the client at that address and**
- 2. The period of one month's beginners with the date of delivering of the bill has expired.**

see N B A V Gbenobo (2015) 15 NWLR (pt. 483) 585, and the case of Oyekanmi V NEPA (2000) 15 NWLR (pt. 690) 414.

Having said so, I will now look at the argument of both counsel in their written addresses.

The defendant/objector learned counsel 1 on this issue submitted that a legal practitioner should present a bill of charges which inter alia particulars his fees and charges: e.g

- a. Perusing documents and given professional advice.**
- b. Conducting necessary specified inquiries.**
- c. Drawing up the writ of summons and statement of claim.**

- d. Number of appearance in court and the dates.**
- e. Summarisation statement of work done in court indicating some peculiar deficit nature of the case (if any) so as to give an insight to the client as to what he is asked to pay for**
- f. The standing of counsel as the bar in terms of years of experience and/or the rank with which he is invested in the profession**
- g. Indicate amount of fees against each of these items.**
See Oyekanmi V NEPA (2000) 19 NWLR (pt. 690)414 at 437 and savannah Bank of Nigeria Plc V PadipoOpanubi (2004) LPELR 2023 (SC) on this submitted that, a careful reading of the claimant purported bill of charge dated 15th May, 2023 (exhibit AMLP5) it is crystal clear that the claimant failed to particularise the service allegedly rendered to the defendant.

Furthermore, that there is nothing in the said claimant's purported bill of charges that suggests that the claimant particularized his fees and charges, by stating the nature of document filed in the case or the number of appearance he entered in courts but only wrote suit No SC/CV/200/2023, e.g. of the Kano State V A.G. of the Federation and nothing more. Submit that this does not satisfy the requirement for particularisation of the work done by the claimant. that a bill of charge must contain adequate information for it's taxation and the gross sum bill must contain a summarized statement of the work done to inform the client what he is being asked to pay for and it should show the whole of the fees, charges and disbursement in respect of the particular task. It should also contain it's subject matter precisely and not in vague and general terms/ in accordance with the statutory requirement.

The learned counsel submitted that, there is nothing in the claimant/Respondent purported bill of charges dated 15th May, 2023 that gave the Defendant/objector sufficient information about the duties performed by the claimant/Respondent rather, the claimant/Respondent only stated the amount without stating and/or giving sufficient information as the duties performed.

In view of the forgoing we urge the court to resolve issue two in favour of the Defendant and hold that the bill of charges dated 15/5/2023 failed to meet the requirement under the Act and further urge the court to decline jurisdiction and strike out the claimant's suit with substantial cost.

In support, the learned claimant/Respondent counsel, submit that, the contention of the Defendant/Objector is a rather desperate attempt by the Defendant/objector to distort the nature of the bill of charges in question. On this submitted that exhibit. AMLPS. Contain the particulars of the principal item on mandated by section 16(2)(a) of the legal practitioner Act.

The bill of charges reads as follows:

“recall that consequent upon your instruction as contained in your letter of instructions to us dated 7th, February, 2023 we instituted an action (suit No: SC/CV/200/2023 against the honourable Attorney General of the Federation on behalf of the Kano State Government in the said action on 3rd March, 2023.

Also re-call that on the 17th February, 2023 we served your notice with a letter contain our professional fees for executing your instruction. Photocopy of the acknowledgement copy of the said letter is attached to this bill of charges for ease of reference”

On this the learned claimant/Respondent counsel submitted that, it cannot be said to have failed to give particular of the principal item as required by section 16(2)(a) of the legal practitioners Act after having stated clearly that the claimant/respondent Instituted an action (Suit No SC/CV/200/2023 wherein Judgement was given in favour of the Kano State Government. Further that even if it can be said that the claimant/respondent failed to provide particulars, in the case of Overkannmu V NWEPA (supra) the supreme court held the following on the effect of failure to itemise a bill of charges thus.

“whereas an itemised bill of costs as required by section 16(1) of the Legal Practitioner Act is desirable failure to itemised the bill of cost on the part of the appellant with particularity would not in my view render it nullify for non-conformity with the Act or law”

Referred the court to the case of Akingbehim V Thumpson (2007) LPELR-8168 (CA) page. 20-23 paragraph E where Per Adamu JCA (resolve) the issue as to whether failure of a legal practitioner to itemise the bill of charges will render the said bill a nullify in the following words:

It is pertinent to observe that the LPA (supra) does not provide any guideline as to the contents and forms of the bill of charges. It only requires the particulars of the principal items or the said bill to be served personally on the client or left at his last known address. Luckily however, there are some

pronouncements by our superior court, which serve as a guideline on the contents and form of the bill of contents and form of the bill of charges referred to under section 16(2) (a) of the LPA (supra). in SBN Plc V Opanubi (supra) the.

The supreme court held Per Uwaifo JSC of pages 457-458 of the report as follows:

A bill of charges should among other things, particularise the service rendered and the fees and charges therefore, where the present is a legal practitioner the bill should state details of the service provided for example:

- a. Perusing documents and giving professional advice.**
- b. Conducting necessary specified inquiries.**
- c. Drawing up the writ of summons and statement of claim.**
- d. Number of appearance in court and the dates.**
- e. Summarisation statement of work done in court indicating the peculiar deficit nature of the case (if any) so as to give an insight to the client as to what he is asked to pay for**
- f. The standing of counsel at the bar in terms of years of experience and/or the rank with which he is invested in the profession.? Also Oyo V Mercantile Bank (Nig) Ltd (1989) 3 NWLR (PT. 108)213, and Oyenkanmi V NEPA (2000) 15 NWLR (pt690)414.**

A more detailed guideline on the form content and purpose of a bill of charge are given in the earlier decision of the Supreme court (by the same Justice) in Oyenkanm V NEPA (supra) at page 437 of the report). It was however held in that case (supra) that the failure of a legal practitioner to itemise the bill of charges or a bill of costs with particularity will or does not render the said bill nullified and will not amount to non-compliance with the law provided that its purpose of giving sufficient information to the client on the duties performed or the service rendered by the legal practitioner and the amount of money earned or claimed in respect of such services are given or provided. The letter in exhibit GA4 and GA5 in the present case though not headed as a bill of charges but rather as letters of demand for professional fees on legal documentation, and also not itemised are in my view sufficient and detailed enough to give the respondent enough information of the service tendered by the appellant as well as the fees charged for such services. In any case there is no denial or

objection of such service by the said respondent who has admitted them in her pleadings. Consequently, it is my humble view that the appellant's letter of demand for professional fees (in exhibit GA4 and GA5) have satisfied the requirement of bill of charges as described in section 16 (2) (a) if the CPA (supra) and the is no contravention on the said provision by the appellant.

The learned senior counsel submits that even if the claimant/ Respondent in the instant suit can be said to have failed to particularise the bill of charges in question, such failure does not render the bill of charge void and therefore urge the court to so hold and resolve this issue in favour of the claimant/Respondent.

I have carefully gone through the submission of both learned counsel, statutes and cases cited for and against, and in the instant the issue was whether exhibit AMLPS qualifies as a bill of charges, to enable the claimant/respondent claim his entitlement. On this I have to agree with the submission of the learned/Respondent and the case of Oyekanmi V NEPA (supra) to say that exhibit AMLPS sent by Aliyu & Musa Legal Practitioner addressed to the Hon. Attorney General & Minister of Justice Kano State titled Re-instruction to institute an action against the Attorney General of the Federation on behalf of Knao State (Bill of charges) reads:

The above subject matter refers Recall that consequent upon your instruction as contained in your letter of instruction to us dated 7th February, 2023 instituted an action/suit No: SC/CV/200/2023 against the honourable Attorney General of the Federation on behalf of Kano Sate Government at the Supreme Court of Nigeria, wherein judgement was given infavour of the Kano State Government in the said action on 3rd March, 20-23.

Also recall that on 17th February, 2023, we served your office with a letter containing our professional fees for executing your instruction photocopy of the acknowledgement copy of the said letter is attached to this bill of charges for ease of reference:

Please find our bill of charges on the successful execution of your instruction below.

It is instructive to note that, the bill of charges contain the suit number as suit No SC/CV/200/2023 between Attorney General of Kano Sate V Attorney General of the Federation, the amount stated therein to be 268, 750.000.00 and vat (7.5%) N18,750,0.

This to my view is enough evidence and detailed to effect the charges.

So the argument of the learned counsel to the defendant/objector cannot hold.

In summation therefore I hold that the notice of preliminary objection filed by the defendant/objector cannot hold. Hence I resolve this second issue infavour of the claimant /respondent.

As a whole, the two issues are resolved infavour of the claimant/Respondent, hence the Notice of preliminary objection filed by the Defendant/Objector lacks merit and it is hereby dismissed.

I so hold.

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Hon Justtice A. Y. Shafa

Appearance:

1. M. J. Numa (SAN) with B. J. Tabai Esq, Q. M. Jim Ogbolo Esq and Aminu Sani Yakasai for the Claimant.
2. Chief Samson Okpetu for the Defendant.

