

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS THURSDAY THE 4TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/3194/2021

BETWEEN:

**SKILLS PHARMACEUTICAL & CHEMICAL
INDUSTRIES LIMITED.....CLAIMANT
AND**

- 1. MAHMUD ABUBAKAR MAGAJI (SAN)**
- 2. RABIU SULEIMAN ESQ.....DEFENDANTS**

RULING

The defendant/Applicant by a notice of preliminary objection with motion Number, M/6781/2023 DATED THE 28TH March, 2023 and brought pursuant to order 43 rules 1, High Court of the FCT, Abuja civil procedure rules 2018, section 6 (6) of the CFN 1999 (as amended) and under the inherent jurisdiction of this court.

The defendants/Applicant counsel sought for the following orders from this court.

- 1. An order of this Honorable court striking out this suit for lack of jurisdiction.**
- 2. An order of this Honorable court striking /dismissing this suit for want of locus standi.**
- 3. An order of this Honorable court striking out/dismissing this suit for failure to disclosed reasonable cause of action against the 1st Defendant.**

And for such further orders as the Honorable court may deem fit to make in the circumstance.

The grounds upon which this preliminary objection is predicated are as follows:

- 1. The claimant has no locus standi to commence and prosecute this matter against the 1st defendant/Applicant as it is not the party aggrieved in this suit.**
- 2. The 1st defendant is immune from liability in his capacity as legal practitioner for an action taken on behalf of his client.**
- 3. This honorable court lacks the jurisdiction to hear this matter.**
- 4. There is no resolution of the claimant that the claimant should file this action/suit.**
- 5. The claims of the claimant against the 1st defendant is not justifiable.**
- 6. The claimant reliefs a, b, c, d, and f, do not incur any personal benefit on the claimant.**
- 7. That the claimant has not disclosed any reasonable cause of action against the 1st Defendant/Applicant.**
- 8. The suit of the claimant is an abuse of court processes.**
- 9. The claimant suit is frivolous, vexatious, baseless, brought in bad faith and ought to be strike out.**

Attached to the said motion is an affidavit in support of the notice of preliminary objection of 7 paragraphs and same was deposed to by one Nansat Christopher of No. 9 Bozoum Close, Off AdemolaAdetokunbo, behind A P Plaza Wuse 2 Abuja and accompanying the affidavit is a written address of 13 pages where the learned counsel to the 1st Defendant/Applicant raised three issues distilled for determination to wit:

- 1. Whether having regard to the subject matter, of this suit and considering the reliefs sought by the Claimant as well as the averments in the statement of claim, the claimant has the capacity/locus standi to file this suit.**
- 2. Whether the claimant has disclosed any reasonable cause of action against the 1st defendant.**
- 3. Whether the 1st Defendant is not immune from liability when the action in his capacity as a legal practitioner on the instruction of his chiefs.**

In response to the motion, the 1st defendant/Applicant in opposition to the preliminary objection filed a counter affidavit of 5 paragraphs same deposed to by one TaiwoOlumide a litigation secretary in Dim-Udebuani & Co of Block A, suit 33Emab Plaza Wuse 2 FCT, Abuja attached to the affidavit is the claimant/Applicant/Respondent's written address of 5 pages and he argued his application on the issue raised by the 1st defendant/Applicant in his written address which are issues asstated above. The response was dated 3 May, 2023 and filed on the 4-05-2023.

The 1st Defendant/Applicant on receipt of the claimant/Respondent's counter affidavit in support of his preliminary objection of 10 paragraphs same deposed to by Nansat Christopher and annexed to the further affidavit are exhibits marked MAM1, MAM2, MAM3, MAM4, MAM5 & MAM6.

The 1st Defendant/Applicant's counsel, one OkewchukwuEdaize in moving the said notice of preliminary objection adopted his written address as it's oral submission in support of his application in urging this court to grant the prayers and dismiss/strikeout this suit. Furthermore upon the receipt of the counter affidavit filed a further affidavit on said which was served on the claimant/respondent in court. The further affidavit also raises points of law, on this he submitted that he relied on all the points on the further affidavit adopted and the reply on points of law as their oral submission and urged this court to grant their prayers and strike out the suit.

ADUMBRATION.

On adumbration he stated that there were exhibits attached to the further affidavit and same marked as exhibit MAM1-MAM6 and went further to submit that the court will find that the basis of this suit is the alleged grievance of the claimant and emanates from two letters addressed to the Grand Khadi of the FCT, Abuja 2021 AND ONE ADDRESS TO Hon. Musa Angulu UAC Zuba dated 20/10/2021. That the court will also observe that the two letters which form the complaint of the claimant known to them were authored by the 1st Defendant.

Furthermore, that the only thing the Honourable Court can find here is M. A. Mamud a firm of lawyers on the foot note of the letter head Chamber, the court will also observe that there are several lawyers in the chambers and there is nothing to link the defendant also that he has also the CTC of form CAC 7A from

showing the directory of the plaintiffs and the name and one Joe Ben earlier mentioned and saying these are written on behalf of the said Mr. Zhou Junpeng who are directors of the company. Furthermore that the court will also observe that there is a name ZhorJunpeng look of exhibit MAM1-the defence letter which is the basis of the complainant case, says we are solicitors of ZhorJunpeng a Chinese Nationale who is not a client of the author of the letter but a director with the claimant. That order made by the UAC Zuba on court will observe that the opening paragraph is saying upon filing, access Bank lawyer to the 2nd paragraph says upon reading the attached.....? that it is on the basis of this application of the access Bank that the UAC vacated the said order of the author exhibit MAM1 or MAM2 as being alleged went further to submit that, the total case before the court will show that there is no reasonable cause of action by the 1st-2nd defendant, and on this submitted that, being that there is no reasonable cause of action for this court to order for dismissal.

In response, the claimant/Respondent counsel one B. Y. Garba adopted all the averments on the face of the counter affidavit as their argument to the written address.

Adumbration, submitted that by the rules of professional conduct which guide the actions of a legal practitioner, minister of justice and the relationship to client reference to rule 15 of the rules of professional conduct and going by the action of the 1st Defendant and also by the adumbration which has also put the 1st defendant under the light shifted the responsibility to the 2nd Defendants.

The counsel to the 2nd defendant informed the court that he has not filed anything in response; however a party in this matter adopted the processes and argument of the 1st Defendant/Respondent's resolution in this argument.

I have carefully gone through the processes filed before this court, the issues raised for determination by the 1st Defendant/Applicant which said issue was adopted by the claimant Respondent as the basis of his response. This court will adopt the three issues formulated by the 1st Defendant/Applicant as mine.

This issues formulated are as follows:

- 1. Whether having regards to the subject matter of this suit, and considering the reliefs sought by the claimant as well as the**

avermment in the statement of claim, the claimant has the capacity and locus standi to file this suit.

- 2. Whether the claimant has disclosed any reasonable cause of action against the 1st defendant.**
- 3. Whether the 1st defendant is not immune from liability when he acts in his capacity as a legal practitioner on the instruction of his clients.**

The 1st defendant/Applicant argued issue one and two together as same are interwoven, on this submits that the claimant in the instant suit lacks the locus standi to institute this action and has also failed to disclose any reasonable cause of action against the 1st defendant. On this submitted that, the whole defence against the claimant's suit is hinged firmly on the 1st defendant on behalf of his client one ZhorJunpeng and J. Biotech against the Judge of the upper Area court Zuba Hon. Musa's account without first giving them fair hearing among others.

On the issue of locus standi he submitted that the claimant lacks the locus standi in law to institute the action on this regard the letter dated 11th and 20th October, 2021 from the law firm of the 1st defendant Mahmud & Co against the presiding judge of upper Area Court Hon. Musa Umar Angulu which is crux of the action of the claimant on this he submitted that, it is a settled principle of law that any party who intends to institute an action by any means recognized by the law must take some necessary factors into consideration.

“Legal capacity to institute the action, absence of which would not only disqualify him to sue but also robs the court the necessary jurisdiction to entertain the suit in it's entirety. See the case of Odemegwu Vs Ibezim (2019) 9 NWLR Pt. 1677 at 244 page 256 paragraph B-D

Locus standi is latin for place of standing and it means, the right to bring an action or to be heard in a given forum” see Blacks Law dictionary 9th Edition this concept is predicated on the assumption that no court is obliged to provide remedy for a claim including the Applicant has a remote hypothetical or no interest’

On this he contended that the claimant in this matter based his allegation on the law firm of the 1st Defendant against the judge of the Upper Area court Zuba,

alleging that the judge was intimidated by the said petition letter which resulted in setting aside the order of that court.

Furthermore, submitted that from the claimant's pleading, it is obvious that the petition letters which is the cause of action in this suit was neither directed against the claimant nor was it addressed to the claimant. That the said letters of complaint written by the 1st defendant law firm on the instruction of his client (ZhorPunpeng and J Biotech International company Ltd against the presiding Judge of the UAC Zuba Act. Abuja Hon. Musa Umar Angulu to the Secretary of the employer of the judge on the conduct of the said Judge and also copied same to the Chief Justice of the High Court of the FCT Abuja.

The learned counsel further submitted that the 1st Defendant in the letter dated 20th October, 2021 withdrew the said complaint on behalf of his client against the presiding Judge of the UAC Zuba FCT Abuja Hon. Musa Umar Angulu on the grounds of misinformation on this referred the court to paragraphs a, b, c, & d of the claimant's statement of claim and reliefs wherein the claimant blatantly showed that he is a busybody and a meddlesome interloper complaining on a petition against Hon. Musa Umar who neither briefed him nor gave it's power of attorney to the claimant to sue on his behalf. See the reliefs as captured in this ruling on this he submitted that, the proper person with any right to initiate this suit (if any) or to seek any redress and assert rights for libel in that regard ought to be Hon. Umar Angulu in the office of Judicial Service Committee, FCT Abuja the employer of the Judge the person whom the letters were written against and addressed to as such the claimant cannot sue under any guise or manner whatsoever.

Furthermore submitted that the claimant lacks the locus standi to institute this action as there is no legal right for him to protect and enforce in respect of the subject matter, rendering any claim by him non-justifiable in this court. Therefore submitted that there is nothing in the claimant's reliefs, statement of claim and acknowledging document that shows that the claimant's letter dated 11th and 20th October, 2014 were petitions against the claimant. Based on the foregoing urged the court to strike out the case of the claimant for lacking locus standi.

The learned counsel to the claimant/Respondent in arguing the issue so formulated argued that, a person who alleges that an act conduct commission or omission of another has affected and caused damage to his interest has the right to approach the court by way of a suit to seek redress for the damages alleged. That suit against the

1st defendant/applicant on grounds that the letter dated the 11th and 30th day of October, 2021 damaged it's interest and reputation. Other arguments made by the claimant/Respondent are merely academic.

The 1st Defendant/Applicant in it's further affidavit to the counter affidavit of the claimant/Respondent denied paragraph

4(a)(b)(c)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii)(ix)(x)(xi) and 5 other paragraphs of the counter affidavit as false. Furthermore submitted that, the said letter dated 11th and 20th October 2023 were not the basis on which the UAC sitting at Zuba set aside it's order earlier made infavour of the claimant on the 29th September, 2021. That the said letter was set aside pursuant to an application brought by access Bank Plc seeking that the said order be set aside see exhibit MAM6. And that the said letter of 11th& 20th October, 2021 were written on behalf of a client MrZhorJunpeng who is a director and also a shareholder in the claimant Respondent's exhibit MAM1, MAM2, MAM3, MAM4, MAM5& MAM6. And submit in the interest of justice to dismiss/strike out the claimant's suit for being incompetent, an abuse of judicial process and want of jurisdiction.

Now the claimant/Respondent's grievance on the issues is that the 1st defendant/applicant was the author of the letter which damaged the interest and reputation of the claimant/Respondent and that MrZhorJunpeng is not a director of the company and cannot speak for the director and the claimant/Respondent on this the 1st Defendant/Applicant counsel debunked this assertion and annexed exhibit marked MAM3 being the CAC form CAC 2A. Which clearly shows MrZhorJunpeng as one of the Director of Skills Pharmaceutical and Chemical Industries Ltd with CAC ref No RcNo.278550.

In due loyalty to the expectation of the law, I have closely gone through the submission, I have painstakingly perused it with the finery of a tooth comb. Admirably all the submission made are comprehension friendly.

I am unable to find, even with the prying eagle eye of a court, where the claimant/Respondent avers facts to convince this court of the interest of the claimant/Respondent in this suit. Throughout the length and breadth of the succinct and clear statement of claim which is a micro image of this present suit necessitating the claimant claimant/Respondent to file this suit before this court, this to say does the claimant/Respondent have the locus standi to sue the defendant in this present suit as the crux of this suit is in respect of the court order made by

the UAC and letters dated 11th & 20th October, 2021 from the law firm of Mahmud & Co against the presiding Judge of Upper Area Court Zuba Hon. Musa Umar Angulu said letter address to the secretary of Judicial Service Committee copied to the Hon. Chief of the FCT, High Court who are the employers of the presiding Judge of the UAC Zuba.

In all these does the claimant/Respondent in view of the above have the locus standi to institute this suit. Locus standi denotes the capacity the plaintiff has to seek a determination of his civil rights against the defendant. It only means or it is on whether the plaintiff has showed sufficient interest or legal right in the subject matter of the dispute. See *Ladejobi & ors V Ogunlayo & ors* (2004) 18 NWLR (Pt. 504) 204. The locus standi, the plaintiff has to institute and maintain the suit does not depend on the success or merit of the case. See *Ojukwu V Ojukwu & Anor* (2008) 18 NWLR (Part 1119) 439. All that the plaintiff needs to show either in his writ of summons or the statement of claim to demonstrate his locus standi to prosecute the case is merely to establish that he has a justifiable dispute or a reasonable cause of action against the defendant. What matters is whether the cause of action averred supports a *prima facie* case, the reliefs sought?

In *Mrs Laurifan Okafor & Anor V Mrs Elizabeth Onebibe & ors.* (1992) LPELR-1464(SC), when we talk of locus standi in a case what do we mean. We mean that the person against whom the complaint of locus standi is made has no place to stand in the suit. The complaint is usually made against the plaintiff. The complaint means that the plaintiff or person against whom it is made has no place to stand in the suit. That he cannot prosecute the suit, that he is not competent to bring the suit.

Before a complaint of lack of locus standi can be made against a person that facts of the case must be before the court. The facts of the case are before the court when pleadings are settled it is after the pleadings had been filed that it can be said with a measure of certainty that the person against whom the complaint is made has or has not a place to stand. (locus standi) in the case. There could be extremely exceptional cases when it can be made after the summons only. That would depend on the fact and circumstances of each case and the nature of the writ of summons. In the present case, is certainly not one of such case.

In view of the foregoing I hold that the 1st & 2nd issues for determination is resolved in favour of the 1st Defendant/Applicant

I so hold.

On the issue of failure to disclose a reasonable cause of action against the 1st Defendant/Applicant it is the submission of the learned counsel to the 1st Defendant where he submitted that apart from not having no locus standi, the claimant has not also disclosed in any way a reasonable cause of action against the 1st Defendant in this suit.

He Submitsthat a person who commences an action without reasonable cause of action lacks capacity in the eyes of law to sue.

That in the determination whether a matter discloses reasonable cause action is for the court to examine the statement of claim presented by the claimant before it. See Oshoboja V Amuda (1992) the Part 250 at 690 Page 704 paragraph C-D

“as stated in Drumond- Jackson case (supra) what both lower court should have done in determining whether the amended statement of claim filed by the plaintiffs discloses a reasonable cause of action was to examine the amended statement of claim and see whether on the face of it, it since no statement of defence had been filed, it disclosed facts which if proved by the plaintiff they would be entitled to a remedy from the trial court. This both lower courts has failed.

The learned counsel went further to submit that, the settled position of the law is that failure to disclose locus standi or a cause of action is fatal, with the effect that the suit ought to be dismissed. See Agwarangbo V Union Bank of Nigeria (2001) 4 NWLR (Part 702) 1, 16th-17th the court of Appeal Per ECPC JCA held that.

“Failure of a plaintiff to disclose his locus standi an action is fatal to the case as failureto disclose any reasonable cause of action and the result is that the action stands to be dismissed by the court.

On this urged this court to declare jurisdiction in entertaining the claim of the claimant for failure to disclose reasonable cause of action and dismiss same.

In response, the learned claimant counsel submitted that the suit the claimant/Respondent has before the court is all important cause of interpretation of the acts of the 1st Defendant/Applicant letters as they relate to the complaint of the claimant/Respondent further more urged this court to look at the statement of claim

and the reliefs sought in the suit by the plaintiff/Respondent to determine whether the suit disclosed a reasonable cause of action against the defendant to warrant the defendant to be a defendant in this suit.

As earlier stated on the 1st issue and having closely perused the suit filed by the claimant/Respondent I resolved the 1st issue infavour of the claimant that the claimant/Respondent has no locus standi to institute this action, since the plaintiff have no locus standi to institute, this action anything built on it cannot stand, hence I shall equally resolve issue two infavour of the defendant/Applicant. I so hold

On the third issue as to whether the 1st defendant is not immune from liability when he acts in his capacity as legal practitioner on the instruction of his clients.

On this it is the submission of the learned defendant/Applicant counsel that the claimant cannot maintain action against the 1st defendant who merely acted as a legal practitioner based on the instruction of his client.

The bases which stem from the claimant pleading that the contention and subject matter of the claimant's case are the letters of 11th and 20th October, 2021 written by the law firm of the 1st Defendant on behalf of ZhorJunpeng and J-Mex Biotech international company Ltd against Hon. Musa Umar Angulu, the presiding Judge of the Upper Are court Zuba FCT, Abuja. From the letter submitted that, the law firm of the 1st Defendant only acted and wrote the said letters of complaint on behalf of ZhorJunpeng and J-Mex Biotech International company Ltd.

That the 1st Defendant's law firm did not write the letters on behalf of the 1st defendant against Hon. Musa Umar Angulu reference to first second, third and last paragraphs of the letter marked exhibit MAM1 and from exhibit MAM1 submitted that it is clear or obvious that the 1st Defendant's law firm acted as solicitors and was instructed by ZhorJunpeng (a Chinese National) and J-Mex- Biotech International Company Ltd to write the letter of complaint of 11th October, 2021 and the letter of withdrawer of the letter of complaint on the 20th October, 2021.

Furthermore, that assuming but without conceding that the claimant has any legal capacity to complain on the letters dated 11th October, 2021 and 20th October, 2021 which though it does not have, the 1st defendant who merely acted as legal practitioner cannot be held to have personal interest in the subject matter that led to the letter of complaint and the 1st Defendant cannot be held liable for a letter written on behalf of his client, such letters is written on a privileged occasion.

In response the learned claimant/Respondent counsel submitted that the 1st defendant is not immune from liability when he acts in his capacity as a legal practitioner on the instructions of his client when that act is challenged.

Furthermore submitted that, where a legal practitioner is acting for his client and such acts causes damage to a third party, the legal practitioner is liable until he shows that such damage caused by his act is clearly within his express instruction.

On this I wish to state that, counsel who has been briefed and has accepted the brief and also indicated to the court that he has instruction to conduct a case has full control of the case. The assumption is that he has the full mandate of his client to conduct the case in the manner he deems proper so far as he is not in fraud of his client. He is clothed with some apparent authority and he can in the course of performing his professional duties commit his client.

By virtue of rule 14(1) of the rules of professional ethics, it is the duty of a lawyer to devote his attention/energy and expertise to the service of his client and subject to any rule of law, to act in a manner consistent with the best interest of the client.

See N. B.A V Nwoye (2016) 17 NWLR part 1522. The rules of professional ethics further provides that a lawyer should uphold and observed the rules of law, promote and foster they cause of justice, maintain in high standard of professional conduct and shall not engage in any conduct which is unbecoming of a legal practitioner see N.B. A. V Nwoye (supra) .

On all that I have said, it is the submission of the learned counsel to the 1st claimant/Respondent that, letters written by the 1st Defendant/Applicant is not reasonably necessary and usual in the discharge of his duty to his client and in the interest of his client. Finally hold that the 1st Defendant/Applicant is not entitled to the reliefs sought by his application on any ground at all and refuse the application and dismiss same accordingly.

I have carefully gone through the issues and having resolved issues 1 & 2 in favour of the 1st Defendant I will also hold that, the 1st Defendant/Respondent is free from his liability when he acts in his capacity as legal practitioner on the instructions of his client the reasons advanced by the claimant/applicant in it's submission cannot hold water, it is an empty shell devoid of a cover to see the inside of the yoke.

In view of the foregoing I shall equally resolve this issue in favour of the 1st Defendant/Respondent

I so hold.

On the issue of general damages and cost of action applied by the claimant/Applicant, that cannot be granted, as the claim of the claimant lacks locus standi and does not disclose any cause of action to warrant this court to award the general damages and the course of action of this court is to award general damages in cost of action as such will be given to the 1st Defendant/Respondent whose time has been wasted by the claimant/Applicant.

In view of the foregoing, I hold that this claim in its entirety ought to be dismissed, hence the claim and the reliefs sought therein is hereby dismissed.

Parties to bear their respective cost.

This is my ruling.

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Hon. Justice A. Y. Shafa

Appearance:

1. Kolo-M for the claimant
2. Okechukwu Edeze with M. Abdullahi for the 1st Defendant/Applicant
3. Danjuma T. Ayeye for the 2nd Defendant.