

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI – ABUJA

THIS 12TH DAY OF APRIL, 2022

BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA

SUIT NO. FCT/HC/CV/625/2011

BETWEEN

- | | | |
|------------------------------|---|----------------|
| 1. UZOEZI CHRISTABEL OLAPKPE | } | -----CLAIMANTS |
| 2. JUSTINA OBERURU OLAKPE | | |

AND

EBENEZER NONJU ALAMIE-OMU - - - DEFENDANT

RULING

The Claimant's in the instant suit by a Writ of Summons dated the 16th September 2020 and filed on the 3rd of March 2021 claims from the defendant as follows:

- 1. A Declaration of this Honourable Court that all the posts on Facebook made by the Defendant alleging that the 1st Claimant is being manipulated for prostitution for monetary gains are false and libellous.*

2. *A declaration of this Honourable court that all the posts, online news, letters to the United States Embassy, Inspector General of Police, National Human Rights Commission either made by the Defendant or at the instance and/or instruction of the Defendant alleging that the Children of the marriage between the 1st Claimant and the Defendant have either been killed, or kidnapped for a honour killing or for monetary gain by the 2nd Claimant are false and libellous.*
3. *A declaration of this Honourable Court that all the posts, online news, letters to the United States Embassy, Inspector General of Police, National Human Rights Commission either made by the Defendant or at the instance and/or instruction of the Defendant alleging that the 1st Claimant is still married to the Defendant are false and libelous.*
4. *A declaration of this Honourable Court that all the posts, online news, messages to third parties alleging the 1st Claimant is not mentally healthy are false and libellous.*
5. *An order of this Honourable Court perpetually restraining the Defendant from further posting on facebook or any other social media platform, currently existing or not yet created platform, telling third parties in writing or by word of mouth*

that the 1st Claimant is being manipulated for prostitution for monetary gains by the 2nd Claimant.

- 6. An order of this Honourable Court perpetual restraining the Defendant from further posting on facebook or any other social media platform currently existing or not yet created platform, telling third parties in writing or by word of mouth that the Children of the marriage between the 1st Claimant and the Defendant have either been killed, or kidnapped for monetary gain by the 2nd Claimant.*
- 7. An order of this Honourable Court perpetually restraining the Defendant from further describing himself as the husband of the 1st Claimant or describing the 1st Claimant as his wife by any means whatsoever, to any third party.*
- 8. An order of this Honourable Court perpetually restraining the Defendant from further posting on facebook or any other social media platform, currently existing or not yet created platform, telling or suggesting to their parties in writing or by word of mouth that the 1st Claimant is not mentally healthy.*
- 9. An order of this Honourable Court directing the Defendant to not later than 7 days after the delivery of judgment in this*

case publish a retraction of and apology to 1st and 2nd Claimants for all the allegations of adultery, prostitution, kidnapping, killing, mental unhealthiness, made jointly and severally against the 1st and 2nd Claimants on all mediums through which the Defendant has made the allegations.

- 10. An order of this Honourable Court directing the Defendant to pay the 1st and 2nd Claimants, jointly and severally, the sum of N50,000,000.00 (Five Million Naira) only as punitive damages for the libellous statements made against their persons.*
- 11. An order of this Honourable Court directing the Defendant to pay the 1st and 2nd Claimants, jointly and severally, the sum of N50,000,000.00 (Five Million Naira) only as general damages for the libellous statements made against their persons.*
- 12. An order of this Honourable Court directing the Defendant to pay 10% post-judgment interest on the judgment sum annually till the judgment sum annually till the judgment sum is fully and finally liquidated.*
- 13. And such further or other order(s) as the Court would deem fit to make in the circumstance of this case.*

Upon service of the Writ of Summons and other accompanying processes on the defendant. The defendant filed a Notice of Preliminary Objection dated the 8th November 2021 and filed on the 9th November 2021 the defendant/applicant is praying this honourable court for the following reliefs:

- 1. An order dismissing or in the alternative striking out this suit, suit No. CV/623/2021 from this honourable court for want of jurisdiction.*
- 2. And for such further other orders as this honourable court may deem fit to make in the circumstances.*

The grounds upon which the objection is brought are as follows:

- 1. The condition precedent for the commencement of this suit has not arisen and the case of the claimants/respondents is speculative and pre-emptive.*
- 2. The subject matter of the suit is still under investigation and no report of the investigation nor findings has been issued by the agencies conducting the investigation.*
- 3. The suit discloses no reasonable cause of action.*
- 4. The suit is an abuse of court process.*

Attached to the motion on notice is a 6 paragraphs affidavit deposed to by one Cordelia Ogbonna a litigation secretary in the

law firm of counsel to the defendant/applicant, annexed are Exhibits 1, 2, 3, 4, 5 the defendant/applicant avers that he and the 1st claimant were on the 28th day of July 2012 married under the Act in Yenagoa Local Government of Bayelsa State. That their marriage is blessed with two children namely Tamunonemi Alamie-omu Moujo Ebenezer and Inowari Lily Alamie-omu Monjo Ebenezer who were both given birth to in the United State. That he and the 1st claimant had a cordial relationship and lived happily with one another until the 13th of August 2015, when he came back from work and found their home empty. That he embarked on a search and discovered that the 2nd claimant herein and the Father in-law were involved in the sudden disappearance of his family. That the father in-law informed his family that his daughter and grand children are in the United States of America. That on the strength of that he travelled to America to find his family, that all efforts to locate them were in vain. That after series of engagement with the relevant agencies in America and the American Embassy in Nigeria. He was advised to forward a formal complain of his missing family to the American Embassy and other government agencies in Nigeria as well as to the Nigerian Police and National Human Right Commission. That he was still engaged in the search when the 1st claimant purportedly

forwarded a “decree Absolute” via his email, when in fact he was never made aware of any proceeding in court for dissolution of marriage that he engaged his lawyer to approach the court for an order setting aside the judgment of the court giving rise to the decree absolute. That despite the pending investigation of his complaints, the subject of this suit before the Nigerian Police, the National Human Rights and the American Embassy in Nigeria, the claimants proceeded to commence this suit without waiting for the outcome of the investigation.

LIST OF EXHIBITS

1. Exhibit 1 is a letter written by Okparaolu Essien and Co to the American Ambassador to Nigeria dated the 27th December 2019.
2. Exhibit 2 and 3 are DHL waybill receipts.
3. Exhibit 4 is a waybill receipt by ERS.
4. Exhibit 5 is the motion on notice to set aside the judgment of Niger State High Court.

Learned counsel to the defendant/applicant in his written address dated 8th November 2021 and filed on the 9th November 2021 formulated a lone issue for determination to writ:

1. *Whether in the circumstances and the facts of this case this honourable court has the jurisdiction to entertain this matter?*

Learned counsel submitted that the purity of every legal proceedings flows from the legitimate use of legal process to seek judicial redress. Counsel argued that the condition precedent for the commencement of this suit has not arisen and the case of the claimants/respondent is speculative and pre-emptive.

It is the submission of counsel to the defendant/applicant that the instant suit is an abuse of process of court and as such this court lacks the requisite jurisdiction to hear and determine the suit. He relied on the case of **OGBORU V UDUAGHAN (2013)13 NWLR (PT. 1370)33 AT 60 Para B**, wherein the Supreme Court held that:

"The power of the court to ward off an abuse of its process is inherent for it to exercise for purpose of maintain its sanctity".

Learned counsel submitted that from the Writ of Summons commencing this proceeding as alluded by the claimants as the subject matter of this suit is still under investigation by the Nigerian Police, National Human Rights Commission and the American Embassy. He relied on **A.G. CROSS RIVER STATE V. FRN (2019)10 NWLR (PT. 1681)401 AT 465 para E-F** to the effect that:

"where a statute or the constitution of the Federal Republic of Nigeria set out conditions for the activation or invocation of court's jurisdiction, failure of a plaintiff to comply, abide or follow the statutory conditions or procedural steps will deny the court of competence to proceed in the proceedings".

Learned Counsel also cited the case of **OSSIIEC VS N.C.P. (2013)9 NWLR (PT. 1360)451 AT 466 para D-F** to the effect that abuse of judicial process is imprecise; it involves circumstances and situations of infinite variety and conditions.

Counsel argued that the claimants/respondents herein have improperly commenced this suit, when they have full knowledge of the pending investigation of the complaints by the defendant/applicant. He relied on the case of **UNITY BANK PLC V. OLATUNJI (2013)15 NWLR (PT 1378)503 AT 533 Paras C-G** where the court of Appeal stated the circumstances that will give rise to an abuse of judicial process as follows:

"a. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

- b. Instituting different actions between the same parties simultaneously in different courts, even though on different grounds.*
- c. Where two similar processes are used in respect of the exercise of the same right, for example, across appeal and a respondent's notice.*
- d. Where an application for adjournment is sought by a party to an action to bring an application for leave to raise issue of fact already decided by courts below.*
- e. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness".*

It is the contention of learned counsel that the claimants/respondent in the instant case fails under sub (e) above.

On the whole counsel to the defendant/applicant urged this honourable court to dismiss the instant suit as it amounts to abuse of court process.

In response to the Notice of Preliminary Objection the claimant/respondent filed a 4 paragraphs counter affidavit

deposed to by one Uzoeu Christabel Olakpe, the 1st claimant herein, the counter-affidavit is dated the 15th day of November 2021 and filed on the same date. Annexed are exhibits 1, 2, 3, and 4 respectively The 1st claimant avers that her marriage to the defendant/applicant was never a happy marriage but an abusive one as the defendant/applicant would always hit her at the slightest opportunity. That each time he hits her she always sustained injuries. That she feared for her life and fled their matrimonial home with their children for safety. That she engaged her lawyer after some years to file a petition for divorce on her behalf in 2018. That the processes of court were served on him via their last known address by pasting same on the address as ordered by the court. That the defendant/applicant took to facebook to disparage the court processes by saying the order was fraudulent and signed in a far Northern and Moslem enclave. That the defendant suggested that the 1st claimant father and the husband of the 2nd claimant bribed the judge to grant the divorce. That the defendant/applicant only engaged his lawyer to set aside the judgment after a year the order was made. That the application to set aside the judgment was dismissed with cost which the defendant is yet to pay. That there is no investigation ongoing. That the police have never tried to

reach her. That there is no appeal to the ruling of the High Court of Nigeria State dismissing the application to set aside its judgment. That the defendant/applicant made statements suggesting that her mental health is in question, as well as made allegations of lying, deceiving and bribing a judge. That these are defamatory statements. That the defendant/applicant has been making defamatory publications about her, and her mother and the family members on facebook. That the instant suit is as a result of the defamatory statements that the defendant continues to make and publish.

LIST OF EXHIBITS:

1. Exhibit 1 is a facebook post
2. Exhibit 2 is an email message dated 24 October 2019.
3. Exhibit 3 is a facebook post
4. Exhibit 4 is a Ruling of the High Court of Nigeria State dated 25th November 2020.

Learned Counsel to the claimants/Respondent in his written address dated the 12th November 2021 and filed on the 15th November 2021 formulated the following issues for determination to wit:

1. *Whether or not this suit discloses a reasonable cause of action?.*

2. *Whether or not this court has jurisdiction to adjudicate this suit?*

On the first issue above, learned counsel to the claimant/respondent cited the case of **ATOLAGBE & ANOR V. AWUNI & SONS (1997) LPELR 593** where it was held that:

"Both condition and "condition precedent" have been defined by Osborn's concise Law Dictionary, 7th Edition as follows: "Condition " a provision which makes the existence of a right dependent on the happening of an event: the right is then conditional as opposed to absolute right. A true condition is where the event on which the existence of the right depends is future or uncertain "A condition precedent is one which delays the vesting of a right until the happening of an event."

Counsel relied on the case of **NATIONAL INVESTMENT & PROPERTIES CO. LTD V THE THOMPSOL ORGANISATION (1969) LPELR 25549(SC)** to the effect that a condition precedent must be pleaded. It is the submission of learned counsel to the claimants/respondent that the defendant has failed to state any stipulation or requirement of the law i.e. the condition precedent that needs to be fulfilled before instituting an

action for libel being the subject matter of the present suit before this honourable court.

Learned counsel submitted that the issue before the court is not whether or not there is an ongoing investigation, but whether the defendant actually made defamatory publications against the claimants. That the publications made via the facebook account of the defendant amounts to libelous statements.

He relied on the case of **OKE ATUKWU VS UBA PLC & ANOR (2017)LPELR 43100 (CA)** where it was held that the law is well settled that to prove libellous publication and sustain an action for libel the plaintiff must establish that:

- i. There was a publication of the offending article
- ii. The publication was in writing.
- iii. The publication was in respect of the plaintiff.
- iv. The publication was false and defamatory of the plaintiff.
- v. The publication was made by the defendant.
- vi. The publication was made to another person(s) apart from the plaintiff.
- vii. The defendant had no justification a lawful excuse for the publication against the plaintiff.

Learned counsel cited the case of **A.G. ADAMAWA VS A.G. FEDERATION (2014) LPELR 23221(SC)** to the effect that a cause of action is the fact or aggregate of facts which establish or give rise to a right of action.

He cited **RINCO CONSTRUCTION CO. LTD VS VEEPEE INDUSTRIES LTD & ANOR (2005) LEPELR – 2949(SC)** to the effect that a reasonable cause of action means a cause of action with some chances of success. He cited the case of **DAIRO V UNION BANK & ANOR (2001) LPELR 913** to the effect that generally a cause of action in the tort of libel arises where the libel is published.

It is the argument of counsel to the claimant/respondent that the cause of action in the instant suit arose the moment the defendant started making libelous publications about the claimants vide his facebook account.

Learned counsel cited the case of **IBRAHIM V. COP. KWARA STATE (2021) LPELR – 53989(SC)** to the effect that where the defendant alleges an ongoing investigation, he must prove it beyond a criminal complaint, by demonstrating that the police are actually investigating.

On the second issue above, learned counsel to the claimant/respondent argued that the jurisdiction of a court goes to the threshold of the suit. He relied on the case of **AG RIVERS STATE V. AG AKWA IBOM STATE (2011) LPELR 633** to the effect that the principle of law that what primarily confers jurisdiction on a court of law is the statute that creates the court and other enabling laws to that effect. The subject matter of the cause of action may as well, be of relevance in determining the jurisdiction of a court.

On the whole, counsel to the claimant/respondent argued that a look at the Writ of Summons and statement of claim discloses a reasonable cause of action, that this court has the jurisdiction to entertain this matter.

In response to the counter affidavit of the claimant/respondent the defendant/applicant filed an 11 paragraphs further affidavit dated and filed on the 12th January 2022.

The further affidavit is deposed to by one Cordelia Ogbonna, litigation secretary in the law firm of counsel to the defendant/applicant. Wherein the defendant applicant avers that there are documents which contains communications between the defendant/applicant and the 1 of claimant/respondent showing

they had intimate and peaceful marriage. That the documents containing the communications between the defendant/applicant are marked as Exhibits 5 (a-m).

In his reply on point of law learned counsel to the defendant/applicant submitted that paragraph 2(a)(o) of the 1st claimant counter affidavit are arguments and offends section 115(1)& (2) of the Evidence Act 2011. Counsel submitted that Exhibits 5 (a-m) attached to the further affidavit is an indication of love between the parties. It is the argument of counsel that the 1st claimant took the children away from the defendant to satisfy the bidding of her father and mother. Counsel contended that police investigation has no limitation period, that the act of the 1st claimant, making her whereabouts deliberately unknown has made the investigation hard.

Learned counsel submitted that paragraphs 3(c, d, e, f, g, h, i and l) of the defendant/applicant affidavit have not been specifically denied by the claimant/respondent and are deemed admitted.

Learned counsel cited the cases of **LEWIS & PEAT (NRI) LTD V AKHIMIEN (1976)1 ALL NLR (PT.1)460, HOUTMAN GRADFI V ODUBA (1995)1 NWLR) PT. 371(295, KOTOYE**

U SARAKI (1993)5 NWLR (PT. 269)710 to the effect that where averments in affidavit are not challenged they are deemed admitted. He relied on the case of **ADEKPEMEUOR V ONAFEKO (200) FWLR (PT.9)at 1436** to the effect that

"where it is intended to deny specific allegations of facts contained in paragraphs of an affidavit, such demand must be clear and direct, where a denial falls short of this requirement, the relevant paragraphs shall be deemed admitted and the courts shall hold and act accordingly".

Counsel argued that the applicant's application is simply challenging the procedure adopted by the claimants/respondent to commence this suit while investigation is still ongoing. He relied on the case of **CIL RISK & ASSET MAGT LTD VS EKITI STATE GOVERNMENTS (2020)12 NWLR (PT. 1738)203 at 284** para B-F to the effect that a court is required to avoid making pronouncement of deciding issues at the preliminary stage which would touch on or decide the issues to be decided in the substantive suit. It is the submission of counsel that the claimant's counter-affidavit has collapsed.

On the whole the defendant/applicant submitted that the claimants have failed woefully to prove her assertions with credible evidence and as such goes to no issue.

I have perused the Notice of Preliminary objection as filed by the defendant/applicant. I have equally in the same vein pursued the claimants/respondents counter affidavit in opposition to the defendant's preliminary objection. I also read very carefully the further affidavit and reply on point of law as filed by the defendant/applicants in their processes. It is my considered legal opinion that this application raises a lone issue for determination to wit:

Whether or not this Honourable Court has jurisdiction to hear this matter:-

It is a well known elementary law that the issues of jurisdiction can be raised at any stage of the proceedings, even in the Supreme Court. It is fundamental and the issues is pivotal the court can also raise the issue of jurisdiction suo motu see the case of **SLB Consortium VS Nigerian National Petroleum Corporation Ltd (2011) 9 NWLR (PT.1252) 317 at page 335.**

The jurisdiction of a court is of such a fundamental and crucial nature in judicial proceedings that it is regarded as a threshold issue. See the case of **SULE KABIR (2011) 2 NWLR (PT.1232) 515.**

The position of the law is that in determining whether or not a court has jurisdiction to hear and determine an action, the court is to take a look at the claimant's originating processes i.e the writ of summons or statement of claim. It is the writ of summons or the statement of claim of the claimant that has to be considered. See the case of **AG FEDERATION VS AG ABIA STATE (2001)11 NWLR (PT.725)** the jurisdiction of a court should be examined, not when it is invoked, but when the cause of action arose. It is the law and it is sacrosanct that is the claim of the claimant which determines the jurisdiction of the court. See the case of **IBAFON CO LTD VS NIGERIAN PORTS PLC (2000)8 NWLR (PT.667) page 86 at 100.**

In the case of **OKOLO VS UNION BANK OF NIGERIA LTD (2004)3 NWLR (PT.859)** it was held that where a court holds that it has no jurisdiction to hear and determine the matter before it the proper order to make is that of striking out the action and not dismissing same.

A careful perusal of the instant action as constituted would show that this Honourable court has the requisite jurisdiction to hear and determine this action as constituted. The issues and grounds raised by the defendant applicant in his Notice of preliminary objection are issues which cannot be fully dealt with at interlocutory stage. These are issues for trial. Consequently, applicant notice of preliminary objection dated 8th November 2022, file on 19th November 2021 is lacking in merit, it is hereby struck out.

Appearances:

Parties absent

Claimant in court

Y.B Usman for the claimant with FT. Yusuf & D.P wuyep

Michael Ajara for the defendant

Ruling read in open Court

Signed
Presiding Hon Judge
12/04/2022

