

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 13TH DAY JULY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: CV/1792/2018

BETWEEN:

RINZ (WEST AFRICA) LTD. -----
CLAIMANT/RESPONDENT

AND

1. FABCOM STRUCTURAL LTD. }
2. MR. REN CHIGANG. } ----- DEFENDANTS/APPLICANTS
3. MR. LI MING }

RULING

Before this Court is Motion on Notice filed and dated on the 28th September, 2020.

The Defendants/Applicants are praying this Court for the following reliefs:

1. An order of this Honourable Court dismissing this suit for want of jurisdiction.

2. And for such further or other orders as the Honourable Court may deem fit to make in the circumstances.

The Application is supported with an 18 paragraphs affidavit sworn to by one Obiageri Henshaw, an employee of the 1st Defendant. Also, attached to the Motion on Notice are three annexures marked as exhibits N,O and P respectively.

Lebechi Anayo Esq. Counsel for the Applicants equally filed a Written Address wherein learned counsel raised a sole issue for determination as follows:

“Whether the Claimant as an unregistered company have the legal right to sue or be sued.”

Counsel submitted that their answer to the aforementioned issue for determination is in the negative. He submitted that the law is settled that it is only a natural person or an artificial person that can sue or be sued.

Counsel submitted further that exhibits O and P attached to the motion on notice are prove beyond Preponderance of doubt that as of 14th day of May when this suit was filed before this Honourable Court, the Claimant/Respondent do not have both the legal and moral right to do so.

Finally, counsel cited and referred this Court to the case of NNPC vs. Lutin Ltd. (2006) Vol.2 MJSC particularly at page 5 where the Court held as follows:

“The best evidence of proof of incorporation of a company is the production of a genuine certificate of incorporation from the company Registration Authority of any particular country. See: Fawehinmi vs. N.B.A. (No.20)(1989) NWLR (Part 105)558 at 632.”

Counsel then urged this Court to grant their application. In opposition to the motion on notice, the Claimant/Respondent filed a 12 paragraphs Counter

affidavit on the 16th November, 2020. Attached to the Counter affidavit are two exhibits marked as RINZ 1 and RINZ 2 accordingly.

Mathew Torsaa Esq. for the Claimant/Respondent also filed a Written Address which was duly adopted by Chuka Egbo Esq. In their written address Learned counsel raised a lone issue for determination as follows:

“Whether having regard to affidavit evidence before the Court the Defendant’s motion does not constitute abuse of the process of the Court.”

Counsel submitted that the Defendants’ motion constitute a gross abuse of process of Court. Counsel submitted that the Defendants/Applicants know that the Claimant/Respondent is a registered Company and in order to annoy and irritate the Claimant, they filed an application seeking to dismiss the Claimant suit on the footing that the Claimant has no locus to institute the

present suit. That the Defendants went as far as registering an imitation of an existing Claimants Company in order to mislead the Court into striking out the Claimants action.

Counsel finally submitted that the Court are enjoined to jealously protect its process to prevent it from been abuse. He urged the Court to resolve this issue in favour of the Claimant/Respondent and dismiss the Defendants application with a cost of N250,000= (Two Hundred and Fifty Thousand Naira).

From the affidavit evidence of the parties and the written addresses of learned counsel across the divide, the only issue for determination is as follows:

“Whether the Claimant has the requisite legal right to sue.”

In a nutshell, the crux of the Defendants/Applicants case according to their supporting affidavit is that the Claimant/Respondent is not a Company duly registered

or incorporated under the law of the Federal Republic of Nigeria. That when the Defendants/Applicants enquired about the status of the Claimant from the Corporate Affairs Commission, the Commission confirmed that the Claimant is not a registered Company via a letter exhibited before this Court as exhibit 'N'.

The Defendants/Applicants averred that on further enquiry at the Corporate Affairs Commission it was discovered that "RINZ WEST AFRICA LTD." was incorporated on the 21st day of October, long after this suit was filed against the Defendants/Applicants. It is based on this revelation that the Defendants/Applicants filed the instant motion on notice challenging the jurisdiction of this Court.

I have considered all the processes filed on both sides. The issue to be resolved revolves around whether there is a proper claimant that can sue and be sued in this case. Now it has long been settled that jurisdiction is a crucial question of competence extrinsic to the

adjudication on the merits. Lack of jurisdiction cannot be waived by one or both parties as it is a hard matter of law clearly beyond the compromise of the parties. This has been captured in the leading case of Madukolu vs. Nkemdilim (1962) 1 All NLR 587 at 595 as follows:

“A Court is competent when

- a) It is properly constituted as regards members and qualification of the members at the bench, and no member is disqualified for one reason or another;*
- b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction, and;*
- c) The case comes before the Court instituted by the due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.*

Any defect in competence of the Court is fatal...”

In this case it is alleged that the claim has not been brought upon fulfilment of a condition precedent to the exercise of the Courts jurisdiction, the claimant is not a registered company and does not have juristic personality and as such that it cannot properly or legally present this action. It is settled that if a plaintiff is incompetent to bring the action, the Court as well will not be competent to hear an incompetent plaintiff for then the action would not have been brought upon fulfilment of a condition precedent to the exercise of the Courts jurisdiction. See Green vs. Green (1978) 3 NWLR (part 61) 450 at 500.

The question herein is whether there is validity in the contention of the applicant.

The claimant by the Writ of Summons is seeking for the following reliefs:

“1. A declaration that the claimants right of occupancy over Plot CP87 Section Centre B layout still subsists.

2. *A declaration that the acts of the defendant on the said plot of land constitute trespass.*
3. *An order of perpetual injunction restraining the defendants, their agents, staff, servants and privies from further acts of trespass on the claimant's piece and parcel of land lying and situate at Plot CP87 Section Centre B layout, Kuje Abuja.*
4. *N500,000,000 being special, aggravated and general damages for trespass."*

And by paragraph 1 of the Statement of Claim, the claimants pleaded that:

"The claimant is a company duly incorporated under the laws of Federal Republic of Nigeria"

The defendant's/applicant's have joined issues with the claimant on the averment that it is a registered corporate body with Corporate Affairs Commission (CAC). The defendant's averred in paragraph 3 as follows:

“The 1st, 2nd and 3rd defendants deny paragraph 1 of the claimants Statement of Claim and states that the claimant is not a company duly incorporated under the law of the Federal Republic of Nigeria.”

Authorities are clear that it is only where issues are joined with respect to legal capacity of a corporate body to sue or be sued, is made in a statement of defence, that the question then becomes an issue to be resolved by tendering the certificate of incorporation at the hearing. The question which comes to mind at this stage is whether the question is even one that the Court can even properly determine at this stage?

In F.B.I.R vs. Integrated Data Services Ltd (2009) All FWLR (part 490) page 788, the Court of Appeal per Ogunwumiju JCA (as she then was) held as follows:

“In any event, the status of a company can only be proved by tendering its certificate of

incorporation: Bank of Baroda vs. Iyalabani Ltd (2007) 7 SCNJ 287, N.N.P.C. vs. Lutin Investments (2006) 1 SCNJ 131. _Tendering of the Articles and Memorandum of Incorporation is also the best evidence of ownership of a company.”

Also in Nduka vs. Ezenwaku (2001) 6 NWLR (part 706) 494, the Court held:

“Where the juristic status of a defendant company is put in issue, the plaintiffs must here prove the legal personality by producing the company certificate of incorporation. The best evidence of incorporation is the production of the certificate of incorporation.”

The above decisions make it clear that where issues are joined or whether the corporate status of a company is in issue, then it has to be determined or proved at trial and not otherwise. Hearing in this instance has not yet commenced. There is no requirement on the claimant to

prove its corporate personality at this point even when the claimant has not frontloaded the certificate of incorporation. The claimant said it is a registered corporate body in paragraph 1 of its claim. This in my view suffices for now as pleading is not evidence. This issue can only be resolved at trial by the claimant leading evidence that it is indeed registered.

This preliminary objection in my view is premature. This is a matter to be appropriately determined if raised during hearing. The proper order to make in the circumstance is the one striking out the preliminary objection.

Signed
Honourable Judge

Appearances:

Lebechi Anayo Esq – for the defendant/applicant

Chika Agbo Esq – for the plaintiff/respondent