IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GARKI

CLERK: CHARITY ONUZULIKE
COURT NO. 9

SUIT NO: FCT/HC/CV/895/2020
DATE: 22/11/2024

BETWEEN:

DR. KENENNA OBIATUEGWU…… ..... CLAIMANT

AND

1. **NIGERIAN MEDICAL ASSOCIATION**
2. **THE REGISTERED TRUSTEE OF THE NIGERIA MEDICAL ASSOCIATION**
   (Joined subsequently pursuant to order of Court)
3. **THE NATIONAL EXECUTIVE COUNCIL OF THE NIGERIAN MEDICAL ASSOCIATION**
   (Joined subsequently pursuant to order of Court)

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By an Originating Summons dated 24/1/2020 and filed on the same day, the Claimant/Applicant Dr. Kenenna Obiatuegwu, asked this Court for the direction of this Court and for the determination of the following questions:

1. **Whether Article 7(10) of the defendant's constitution violates the provisions of Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended and the Claimant's right to vote.**

2. **Whether Article 8 of the defendant's constitution violates the claimant's right to seek justice as guaranteed under Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended.**

The Claimant in clear terms seeks the following reliefs from this Court;

1. **A Declaration that Article 7(10) of the defendant's Constitution violates the provisions of Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended and the claimant's right to vote.**

2. **A Declaration that Article 8 of the defendant's Constitution violates the claimant's right to seek justice as guaranteed under Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended.**

3. **An order directing the defendant to amend the aforementioned provisions of her Constitution to enable the claimant to participate in the election voluntarily.**

4. **An order that the amendment should be done before the next election scheduled for April/May, 2020 to enable the claimant vote.**

5. **An order directing the defendant to invoke extant provisions of its Constitution to suspend Articles 7(10) and 8 of the said Constitution to enable the claimant to vote, if the process of amendment does not happen before the said election in April/May 2020.**

6. **An order directing the defendant not to hold the said election in April/May 2020 if the claimant is not enabled to vote.**

7. **An order restraining the defendant or her agents from suspending the claimant from the association for seeking legal redress and justice in this Court of competent jurisdiction.**

8. **Ten Million Naira (N10,000,000) only as cost of this action.**

Upon service of the originating process on the Defendants/Respondents they filed a Notice of Preliminary Objection. They challenged the competency of this suit and urged the Court to dismiss it. The grounds of the objection are;

1. The suit as presented is incompetent
2. The suit has become academic and hypothetical
3. The suit constitutes an abuse of process of the court
4. The suit has no party cognizable by law and this Honourable Court.
5. There is no defendant known to law in this suit
6. The suit discloses no reasonable cause of action
7. The suit is incurably defective
8. The plaintiff lacks the *locus standi* to institute the action
9. The condition precedent to the invocation of the powers of the Court was not met.
10. The suit contains features that robbed the Court of its jurisdiction.

Subsequent upon service of the Preliminary Objection on the Claimant, they brought a Motion on Notice – M/158/2023 dated 29/11/2023 but filed on 4/12/2023. The Motion prayed for the following two principal reliefs:

1. AN ORDER granting leave to the Claimant/Applicant to amend the Originating Summons by substituting the phrase/wordings

"ARTICLE 7(10)" with "ARTICLE 7(8)(e)(i)-(iii)" and substituting "ARTICLE 8" with "ARTICLE 25(8a-8f)".

2. AN ORDER deeming as properly filed and served the Amended Originating Summons.

The Claimant had earlier on filed a counter-affidavits of 16-paragraphs deposed to by the Claimant – Dr. Kenenna Obiatuegwu – in opposition to the Notice of Preliminary Objection of the Defendant. The counter-affidavit is supported by a written address dated 29/11/2023 on the 30/3/2023, with the concurrence of both Counsel to the parties, we fixed 19/6/2023 from both the Preliminary Objection dated 12/3/2022 and the Originating Summon to be taken together.

The above was not done until 16/1/2024 when the Originating Summons and Preliminary Objection were argued together. But before then, Motion number M/158/2023 at the instance of the Claimant was taken and granted.

Learned Counsel to the Defendant, Mr. Kehinde Pele in arguing the Preliminary Objection referred to the grounds, the 24-paragraph affidavit in support, Exhibits A, B & C attached and the written address as his argument in support of the Preliminary Objection. He urged me to uphold same and dismiss the Originating Summons with cost.

Turning attention to the main suit, Mr. K. Pele submitted that the suit is an abuse of Court process and that it has become academic and hypothetical as the election the claimant is challenging has already been done and the administration has already completed their term of office.

Furthermore, the learned Counsel to the Defendant submitted that the claimant has not shown any harm or injury against him

personally; that he is challenging procedure; that he has no *locus standi* since he has no consent of the other members of the Association; that he has not sued a party KNOWN TO LAW and finally that these are features that rob the Court of jurisdiction.

On his part, Counsel to the Claimant, Mr. Johnson Ahuruonye, referred to their 16-paragraph counter-affidavit dated 14/12/2023 and filed same day. He adopted the content of it opposed the Preliminary Objection and urged me to dismiss same.

Further turning to their amended Originating Summons with 21-paragraphs affidavit deposed to by the Claimant himself; with Exhibits A, B & C attached; the written address filed, Mr. Ahuruonye adopted the address filed as his arguments and urged me to enter Judgment in their favour.

Learned Counsel also abandoned reliefs 4, 5 and 6 of the Originating Summons saying same has become academic.

They filed no Response by way of counter-affidavits to the Amended Originating Summons by the Defendants.

I have considered this case critically. The arguments of counsel are on record. We need not repeat.

As a starting point, let me deal with the Preliminary Objection.

DECISION ON THE SOLE ISSUE FOR DETERMINATION

It is most imperative to state that the law is settled, an incompetent Writ can never be amended under any disguise. An incompetent Writ has to be withdrawn and struck out (if issues have not been joined) or dismissed (if issues have been joined. An incompetent and

defective Writ does not enjoy the privilege of correction, amendment, review, variation and or addition.

It is on this premise that I hold that this suit, which was originated by Exhibit A, is on the face of it, *ab initio* incompetent having not sued a defendant at all. The Court has no jurisdiction to look into an incompetent suit. In the eye of the law, it does not exist. It must therefore be dismissed. No form of amendment can cure the defect, as there is nothing to place on it.

Whenever there is a challenge to the competence of an action, the Court is under a restrictive obligation to make its findings from the plaintiff originating processes alone.

In this particular case, the suit was commenced via originating summon procedure, therefore the processes to view and examine are the originating summons itself and the affidavit in support of same.

A simple look at the said processes right from the choice of the court to the presentation of parties and to the reliefs sought, one will have no difficulty in confirming that the only defendant on record is "the Nigerian Medical Association" nothing more:

I hold that content of a document speaks for itself and as such oral analysis will not be allowed to vary the express content of a document.

From the foregoing, I state with all form of responsibility that there is no such person either in fact, natural or artificial known or registered as the "Nigerian Medical Association". I therefore make bold to say that this present case is incurably defective, because it seems to present a case with only a plaintiff but no defendant. No court of law will adjudicate on this type of suit.

This obvious omission of the plaintiff has rendered the suit incompetent and consequently robs the court of its jurisdiction.

The above position of the law was entrenched in the celebrated case of **Chief Gani Fawehinmi v. NBA & 4 Ors. (1989) 4 SC (Pt. 1) 63.** Where in holding as submitted above, the Supreme Court laid the Matter to a rest in the following words:

It is submission of the plaintiff that the first respondent (NBA) is a statutory body, and therefore a body corporate. The plaintiff has not directed us to any statute to which the first defendant owes its creation. Nor has he directed us to any statute by virtue of which the first respondent has been incorporated. For my part, I cannot find such a statute, The conclusion I reach therefore is that the first respondent is not a corporation. The first respondent is evidently an association of individuals with its own constitution containing its aims and objectives…….Counsel to the first to the 1st – 4th respondents, Chief FRA Williams as on the point of the general law as to who can sue or be sued eo nomine drawn our attention to the American case of Forest City MFG, et al v. Garment workers Union 2 33 Missouri report (1935) a decision of ST Lous Court of Appeal, opinion filed January 4 1938. There was held as follows: Associations- In the absence of statutory authority, held that is a general rule that a voluntary unincorporated association does not have the legal capacity to sue or be sued in its common or associate name, for the reason that such as association purely a creature of convention organize and existing under the common law right or "contract only" and having no legal entity distinct from that of its members….The general principles stated in that case are not in my view different from the general principles of law I have earlier on stated in this judgment….However, having approached the matter in a correct manner in my view, the conclusion I reached having regard to all I have hitherto said, is that the first respond cannot be

sued eo nomine in this case. So for different reasons I agree that the Court of Appeal the lower court, was correct in the decision on the point at issue."

I hold that the above authority is one and the same with the present case. It fits into the present circumstances to the extent that the plaintiff having presented a non-existing defendant and a fictitious defendant (an artificial person unregistered and therefore incapable of being sued), the suit is incompetent *ab initio* and must be dismissed with substantial cost.

The important of Writ of Summons was entrenched in the case of **GWALEM VS. DAURA (2019) LPELR – 48435 (CA)** where the Court held as follows:

> ***"It is settled law that a writ of summons is an initiating legal process by which the jurisdiction of a trial High Court can properly and validly be invoked by a person or party who intends to utilize the judicial process of that Court to seek for reliefs or remedies from the Court against another on any legal ground. It is one way or mode of commencing actions in the High Court that is provided for in the Rules of that Court. As an initiating or originating process for the invocation of Court's jurisdiction, a writ of summons is the foundation and the process which gives life to a valid action before a High Court without which there could be no action before the Court in respect of which it can properly in law, assume jurisdiction to conduct proceedings or adjudicate. A valid writ of summons is thereof one of the due processes of the law by which jurisdiction of the Court can be invoked and vested in the Court to adjudicate over a matter. It is thus a sine qua non to the assumption of the requisite jurisdiction by a Court to entertain or adjudicate over a matter commenced by that process. Any material***

and fundamental defect in a writ of summons would affect its validity and thereby be rendered legally incapable of invoking the requisite jurisdiction of the Court to adjudicate over it. See ZENITH BANK PLC v. UMOM (2013) LPELR 22001 (CA)." Per ABOKI, J.C.A (Pp. 43-44, para. A).

Unfortunately, this present suit was initiated with a defendant unknown to law and that does not exist. It is therefore void abinitio. The Claimant rather than doing the needful-withdrawing the suit, moved the hand of the court to make further orders for joinder, amendment etc. However, the courts which have witnessed this situation severally have maintained their firm stand on this in **ALABI & ORS. V. OYEWUMI & ORS. (2015) LPELR-24271 (CA)** the Court emphasized the effect of failure to commence an action with a valid writ of summons as follows:

"Once the Writ of Summons is void, it is void and nothing can be added to it. See Nzom & Anor v. Jinadu (1987) 2 SC 205. The failure to commence the proceedings with a valid writ goes to the root of the proceedings and any order emanating from such proceedings is liable to be set aside as incompetent and a nullity. It clearly borders on the issue of jurisdiction and the competence of the Court to adjudicate on the matter. Such issue can be raised any time. See Kida v. Ogunmola (2006) 13 NWLR (Pt. 997) 377, Per ABIRIYI, J.C.A. (Pp. 20-21), paras. F-D)

Similarly, in **HYUNDAI HEAVY INDUSTRIES CO. LTD vs. NNASIA & ORS (2019) LPELR – 47116 (CA)** on whether a defective writ of summons can be cured by an amendment, joinder or alterations, the court held as follows:

"……By the said preliminary objection, the appellant prayed for a striking out of the claimants/respondents' suit No. PHC/1875/2007 on the grounds that: 1. The Amended Writ of

Summons commencing this action and Claimants' Amended Statement of Claim filed on 14/12/09 were signed by proxy i.e. by an unidentified or an unknown person for and on behalf of M. C. Wilcox, Esq. and therefore incurably defective and incompetent. 2. By virtue of the Court of Appeal's decision in ONWARD ENTERPRISES LIMITED vs. OLAM INTERNATIONAL LIMITED (2010) All FWLR (Pt. 531) P. 1503, 1514, paras. A-E, a Court process signed by an unidentified or unknown person is incompetent and must be struck out. [See 143 – 148 of the record of appeal]. On the other part, the claimants (respondents herein) on the 20th March, 2012 brought their own Motion on Notice praying the lower court as follows: 1. AN ORDER extending time within which the applicants can file their Amended Writ of Summons and Other ancillary processes already filed and served. 2. AN ORDER deeming the Writ of Summons and other ancillary processes in this suit as being properly filed and served. [See pages 149 – 151 of the record of appeal). Prior to the hearing of the aforementioned applications, the learned Counsel for the claimants/respondents applied to withdraw their defective writ of summons filed 14-12-09 together with the statement of claim. With the consent of the learned Counsel for the defendant/appellant, the learned trial Judge struck out the defective Writ of Summons as well as the Amended Statement of Claim. (See page 184 of the record of appeal). Having so struck out the said Writ of Summons, the learned trial Judge felt the need to also strike out the defendant/appellant's Notice of Preliminary Objection reason being that the offensive Writ of Summons which it sought to attack had been withdrawn and struck out. With the striking out of the offensive and fundamentally defective Writ of Summons dated and filed 14th December, 2009, it followed at that juncture that suit No. PHC/1875/2007, wrongly initiated by the said Writ of Summons had automatically abated and was no longer in existence. This is to say that the striking out of the defective Writ of Summons

brought to an end the action purportedly initiated by it as well as any other motion pending therein. Going further to determine the respondents' pending motion was an exercise in futility given that the lower Court was no longer seised of the jurisdiction to do so. The window open to the claimants at that point was to go back to the registry of the lower Court and apply for a fresh writ of summons as opposed to seeking to amend a non-existent Writ of Summons as if something put on nothing can stand.

A Writ of Summons being an originating process if found to be defective remains defective ab initio and for all purpose and therefore not subject to amendment. At the end of the day and from all that I have said above, it is without doubt that raising and determining the issue of jurisdiction once detected, helps to save the precious time of the Court and that of the litigants. All the same it is better raised late than never. Much as the blood in suit No. PHC/1875/2007 was drained from it at the withdrawal and striking out of the incurably defective originating process i.e. the Writ of Summons, the learned trial Judge ought to have followed it up with a striking out of the suit itself. Because he failed to do the needful, I shall, pursuant to the provisions of Section 15 of the Court of Appeal Act, 2004, strike out suit No. PHC/1875/2007 which I found dead on arrival and it is so struck out. "Per JOMBO-OFO, J.C.A (Pp. 14-17), paras. C-D).

On the ineffectiveness of the Joinder of the two persons on the already defective writ, the court in **LALA & ORS VS. AKALA & ORS. (2018) LPELR 46470** settled same as follows:

"The initiation of the Writ of Summons in the suit being incompetent, all other processes that followed are similarly tainted by that vitiating irregularity." **Per OKORONKWO, J. C. A (P. 10, para. A).**

Having regard to all the above expositing law both statutory and case law, I am of the view that this Preliminary Objection has considerable merit. It is liable to be uphold. I therefore do so.

Even, the learned Counsel to Claimant on the merit, conceded that the suit is now academic since the election has been concluded, officer elected and they have even completed their term of office. Hence, the Claimant's Counsel dropped reliefs 3, 4 & 5 & 6. But it would even be an exercise in futility to consider the remaining reliefs being sought. This is because, the original process that commenced this action was incompetent. The fact of an amendment of it which I granted does not cure the defect.

This suit is in the main struck out.

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S. B. Belgore

(Judge) 22/11/2024