

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/983/2022

DATE: 12TH JULY, 2023

BETWEEN:

DUNES INVESTMENT & GLOBAL SERVICESAPPLICANT

AND

- 1. ABUJA MUNICIPAL AREA COUNCIL**
- 2. FEDERAL CAPITAL TERRITORY ADMINISTRATION.....RESPONDENTS**

APPEARANCES:

S.A. Mohammed Esq for the Applicant

J.D. ElogunEsq for the 2nd Respondent

1st Respondent unrepresented.

JUDGMENT

By an Originating Summons dated 21st day of March, 2022 and filed on 22nd day of March, 2022.

The Clamant raised the following question for determination thus:-

"1. Whether having regards to the extant provisions of Section 52 and 54 of the National Environmental Health practice regulation 2016, the 1st Respondent or the

department of Public of Health of the 2nd Respondent is the authorised authority to access and receive payment and issue medical Certificate of fitness for food handlers in Abuja."

Consequently, the Claimant Claims the following reliefs:-

1. An order of this Honourable Court determining the agency and/or authority the Applicant should relate with and to pay relevant fees and or charges.
2. Cost of this suit assessed at the sum of ₦2,000,000.00 (Two Million Naira) payable to Adamu Ahmed Ibrahim & co.

Filed in support of the Originating Summons is a 19 paragraphed Affidavit deposed to by one Adaobi Igweze, a Litigation Secretary in the law firm of Adamu Ahmed Ibrahim & Co. Attached to the Affidavit are some annextures. Equally filed in support is a written address dated the 21st day of March 2022.

In the said written address, learned Counsel formulated a lone issue for determination to wit:-

"Whether this Honourable Court has the power to the grant the reliefs as sought by the Applicant".

In arguing the issue, learned Counsel submitted that it is trite that Rules of Court are made for the smooth administration of justice and are intended to advance the course of justice and when a Rule of Court has clearly and unambiguously provided for a particular act or a situation, the Court has a duty to enforce the act or situation as the guiding principle on the commencement of an interpleader proceeding such as in the instance case is contained in the provisions of the rules of Court. In this respect, reliance was placed on order 48 Rule 1, 2, 3 and 5 of the FCT High Court Civil Procedure Rules 2018.

In another submission, Learned Counsel gave a succinct explanation of what interpleader Proceedings entail where it states that ifis a suit to determine a right to property heldby disinterested thirdparty (called a stakeholder) who is in doubt about ownership and who therefore deposits

the property with the Court to permit interested parties to litigate ownership. Counsel cited the cases of **TANGENT LIMITED VS OGAMBA& 2 ORS (2018) LPELR – 44803 (CA)** and **OLAWALE VS FIRST BANK PLC (2015) LPELR – 40386.**

Moreso, Counsel stated that the grant of Applications of this nature is subject to the discretion of the Court which is to be exercised judicially and judiciously. Reliance was placed on the cases of **OLUSOLA VS TRUSTHOUSE PROPERTY LTD (2010) 8 NWLR (PT. 1195) PG 1 @ PG 31 PARAS C – E; AKIODE & ORS VS OBI & ORS (2021) LPELR – 56005 (CA) AND SUNMONU VS SUNMONU (2021) LPELR – 5602(CA).**

Consequently, Learned Counsel submitted that the Applicant is seeking the discretion of this Honourable Court in determining the appropriate government agency to whom the amount payable for the conduction of screening and issuing of certificate for food handlers in Abuja as the Applicant has shown through the averments contained in its Affidavit that it has no interest whatsoever in the subject matter nor has it colluded with any of the respondents.

Finally, Counsel urged the Court to grant all the reliefs as prayed in this suit.

It is instructive to note that the 1st Respondent who was served with the originating processes and hearing notice via personal service refused, neglected and/or avoided to file their Counter Affidavit and written address to challenge this interpleader.

The 2nd Respondent on its part filed a Counter Affidavit of 13 paragraphs deposed to by one Mr. Ojo Adewole an assistant Director and the officer in charge of enforcement and compliance on food safety and hygiene in the department of Public Health of the 2nd Respondent.

Equally filed in support of the counter affidavit is a written address dated the 14th day of November, 2022.

Addressing the Court on 2nd May, 2023 learned counsel to the 2nd respondent J. D. Elogun adopted their processes in opposition to the

Originating Summons and informed the Court that they rely on their Counter Affidavit as well as the written address and urged the Court to hold in their favour.

In the said written address learned Counsel to the 2nd Respondent formulated a lone issue for determination to wit:-

"Whether having regards to the extant provisions of the law, the 1st Respondent or the department of Public Health of the 2nd Respondent is authorised to receive payment and issue medical certificate of fitness for food handlers."

Learned counsel argued that it is the 2nd Respondent that is the authorised agency/body that is mandated under the laws to carry out food handlers in the FCT and not the 1st Respondent. Reliance was placed on the mandate of the Environmental and Occupational Health Division of the Public Health Department which was derived from Section 2 of the third schedule to the FCT (Establishment of the functionaries) and Departments and ministry of the Federal Capital Territory (Dissolution) order No. 1 of 2004, part vii Section 4 of the National Health Act of 2014, the National Policy on food safety and its implementation strategy and Resolution(xii) of the 61st National Council on Health.

Counsel further submitted, that the purpose of the mandate is to reduce the incidence of food borne illness by ensuring that food stored is safe, unadulterated, fit for human consumption and will not cause food poisoning.

In another submission, Counsel stated the National Policy on food safety and its implementation strategy of 2014 clearly provides specific roles for the state ministry of Health and local Government (including Area Councils in FCT) as it is in line with the provision of the law that the public Health Department of the 2nd Respondent is mandated to carry out oversight functions and activities as it affects food safety and hygiene in the FCT.

Submitting further, Counsel stated that the policy specifically assigned the Responsibility for inspection and the registration of all food premises and Hospitality establishments within the state to the state ministry of Health, and Human services secretariat of the FCTA which serves as the ministry of

Health of the FCT, which is the equivalent of Ministry of Health in the 36 states of the Federation, carries out these functions as mandated by the law, while the Area Councils in FCT which are the equivalents of Local Government in the states are to handle the control of street food vending/vendors/bukaterias, catering establishments, abattoirs and traditional markets.

Consequently, learned counsel submitted that the authority of the Minister of Health to approve the above mentioned policy was derived from section 4 part vii of the national Health Act 2014 as the extent of participation of the local Government/Area Council in the provision and maintenance of Health services is in compliance with Section 2 (c) of the 4th Schedule of the 1999 Constitution and the Resolution xii of the 61st National Council on Health mandated all state ministries of Health to take the lead in food safety management and to also ensure proper implementation of the National policy on food safety and its implementation strategies at all levels.

Moreso, Counsel further submitted that the doctrine of “covering the field” is very apt in resolving the conflict between the national Health Act of 2014 and AMAC bye law of 2015 which provides that where there is conflict between the legislature of a state and the Federal parliament on matters in the concurrent legislative list and inconsistency arises between the two laws, the one passed by the Federal parliament prevails and that of the state is rendered inoperative during the life time of the Federal law. Counsel cited the provision of Section 4(5) of the 1999 Constitution.

In another submission, learned Counsel stated that the National Health Act of 2014 which is an of the National Assembly prevails over the AMAC Bye law of 2015 and is the only operative law in respect of the subject matter in the Federal Capital Territory.

To that extent, Learned Counsel further submitted that the National Policy on food safety and its implementation strategy which clearly assigned different roles to state/FCTA and Local Government/Area Council is production of the Federal Ministry of Health approved by the Minister of Health whose authority was derived from the National Health Act of 2014. Submitted that it has been held, that a subsidiary legislation derives its

authority and validity from a substantive law and it does not have the capacity to extend such authority. Counsel cited the case of **S. E. C VS KASUNMU (2009) 10 NWLR (PT. 1150) 509 (CA)**.

Finally, Counsel urged the Court to resolve the issue raised by the Applicant by holding that it is the Public department of the 2nd Respondent that is authorized by law to receive payment and issue the medical certificate of fitness for food handlers and not the 1st Respondent.

I have carefully perused the originating summons, the relief sought, the supporting Affidavit, the annexures attached therewith as well as the written address in support. I have equally perused the 2nd Respondent's Counter Affidavit in opposition and the written address. Therefore it is my humble view that the issue for determination is.

"Whether the Applicant has made out a case for the grant of the reliefs sought."

Before I dwell on the issue for determination, it is necessary to begin by stating that it is the case of the Applicant as distilled from the Affidavit in support of the Originating Summons briefly inter alia that the Applicant is a limited liability company incorporated under the companies and allied matters act LFN 2020 with its registered address at Plot 44 AgunyiIrons way, Maitama Abuja.

The Applicant states that in order to protect foods and edibles consumed in Abuja, the law encourages personal hygiene and mandates the screening of food handlers every Six Months and the Applicant, in compliance with the law, has always ensured the screening of its food handlers through the authorized partners of the Department of Public Health of the 2nd Respondent.

That it is the department of public health of the 2nd Respondent who have always issued the Applicant certificate of medical fitness for its food handlers and to the dismay of the Applicant, sometimes in November, 2021, the 1st Respondent sued the Applicant for failure to conduct screening and training for the food handlers in its establishment.

That the Applicant provided evidence of payment and certificate issued by the 2nd Respondent but was nevertheless charged for failure to conduct training for food handlers organized by the 1st Respondent and the Applicant is required to conduct its food handlers screening for the year 2022 and it is muddled as to whom the payment should be made.

The Applicant further states that the 1st Respondent contended that conducting training and screening for food handlers falls within the purview of its functions, while the department of public Health of the 2nd Respondent on the other hand wrote to the Applicant notifying it that activities relating to screening of food handlers is still within its purview.

That the Applicant Claims no interest in the subject matter other than cost of filing this suit and the Applicant has not colluded with any of the Respondents.

That the Applicant is willing to pay or transfer the subject matter into Court pending the determination of this suit.

Having stated briefly the case of the Applicant, I will proceed to consider the issue for determination, formulated earlier:-

From the above facts vis-à-vis the depositions in the Affidavit evidence before the Court, it is not in dispute that the Applicant is mandated by law to ensure the screening of its food handlers every Six Months in order to protect foods and edibles consumed in FCT Abuja. What appears to be in dispute is under whose purview is conducting training and screening of food handlers. In other words, both the 1st and 2nd Respondent are contending that conducting training and screening of food handlers is within their functions.

In this respect, the Applicant approached this Honourable Court via interpleader proceedings seeking among other things a directive as to which agency the said Applicant should relate with and to pay the relevant fees.

To this extent, it was held in the case of **A. Y RIMI VENTURES LTD & ANOR VS SAGIR & ORS (2018) LPELR – 45100 (CA) PER NDUKWE ANYANWU, JCA at page 80 paras E – F**, where it was held thus:-

"It is therefore said that an interpleader proceedings is an equitable proceedings to determine the rights of rival Claimants to property held by a third person having no interest therein."

However, in the instant case, what is before this Honourable Court is that the Applicant is not disputing that the is mandated by law to ensure screening and training of its food handlers. But, a perusal of the reliefs sought by the Applicant as endorsed in the originating summons will show basically that the Applicant wants a directive from this Honourable Court on which agency or authority the Applicant should relate with and to pay the relevant fees or charges in respect of screening and training of its food handlers.

On order 48 Rule 2 of the Rules of this Court It provides thus:-

Order 48 Rule 2

The Applicant must satisfy the judge by Affidavit or otherwise therefore that he

- a. Claims no interest in the subject matter in dispute other than for charges or costs.***
- b. Does not collude with any of the Claimants and***
- c. Is willing to pay or transfer the subject matter into Court or to dispose of it as the judge may direct."***

Now the question that comes to mind is who is empowered to conduct screening and training of food handlers. In this respect let me refer to the provisions of State Ministry of Health mandate on National Policy on food safety and its implementation strategy 2014 produced by Federal Ministry of Health which provides thus:-

- "(i) Transform food hygiene and safety policies into programmes of activities for implementation in the states.***
- (ii) Coordinate and supervise all activities on food hygiene and safety within the LGA(S) and other Sectors in the state.***

- (iii) Provide Technical support to the LGA (s) in the Development and implementation of food hygiene and safety programmes, inspect and register all food premises and hospitality establishments within the state.***
- (vi) Act as liason between the Federal and local Government on food hygiene and safety surveillance reporting and information system.***
- (v) Conduct public Health surveillance on the food premises under their jurisdiction.***
- (vi) Investigate food hygiene and safety complaints in food establishments.***
- (vii) Conduct by annual medical examination of food handlers and issue medical certificate of fitness accordingly."***

Consequently, the Applicant deposed in the supporting Affidavit particularly at paragraphs 9, 10, 11, 12, 13, 14, 15, 16, and 17 to wit:-

- "9. That it is the Department of Public Health of the 2nd Respondent who have always issued the Applicant certificate of medical fitness for its food handlers. Copies of the certificate issued is herein attached.***
- 10. That to the dismay of the Applicant, sometimes in November, 2021 the 1st Respondent sued the Applicant for failure to conduct screening and training for the food handlers in its establishment. A copy of the summons served on the applicant is herein attached.***
- 11. That the Applicant provided evidence of payment and the certificate issued by the 2nd Respondent but was nevertheless charged for failure to conduct training for food Handlers organized by the 1st Respondent.***

- 12. That the Applicant is required to conduct its food handler screening for the year 2022 and it is muddled as to whom the payment should be made.**
- 13. That the 1st Respondent contended that conducting training and screening for food handlers falls within the purview of its functions.**
- 14. That the Department of Public Health of the 2nd Respondent on the other hand, wrote to the Applicant notifying it that activities relating to screening of food handlers is still within its purview.**
- 15. That the Applicant claims no interest in the subject matter other than the cost of filling this suit.**
- 16. That the Applicant has not colluded with any of the Respondents.**
- 17. That the Applicant is willing to pay or transfer the subject matter into Court pending the determination of this suit."**

The Said Respondent on the other hand deposed in the Counter Affidavit particularly at paragraphs 6(a), (b), (c), (d) and (e) as follows:-

- "a. That it is the Responsibility and duty of the Public Health Department of the Health and Human services Secretariat of the 2nd Respondent to conduct food handlers screening and issue certificates as imposed by law.**
- b. That the Federal Ministry of Health under the National Policy on food safety and its implementation strategy 2014 amongst other legislations mandated the 2nd Respondents through its Public Health Department to carry out certain functions with regards to food sanitation and hygiene.**
- c. That it is the Federal Ministry of Health that clearly spelt out the functions for all levels of government via**

Federal, State and Local Governments (including Area Councils in FCT).

- d. That there is no power delegated by the Federal Ministry of Health to the Area Council to carry out food handlers screening.***
- e. That the Minister of FCT established Public Health Laboratory for the purpose of screening food handlers in all food service establishments, hospitality industries, Restaurants, Bakeries, Dairy farms, butchery, (Regulated premises)."***

In view of the foregoing, it is my considered opinion that the Applicant has satisfied the conditions for bringing this suit via interpleader proceedings. I so hold.

At this juncture, a careful study of the state Ministry of Health mandate on National Policy on food safety and its implementation as well as the Affidavit paragraphs quoted above will reveal that the issuance of medical certificates of fitness as well as conducting training and screening of food handlers is within the purview of the 2nd Respondent. I so hold.

Moreso, it should be pointed out that the depositions in both the Applicant's Affidavit and 2nd Respondent's Counter Affidavit is unchallenged and/or uncontroverted by the 1st Respondent neither did they file a Counter Affidavit nor reply on points of law. To this extent, the law is settled that where evidence adduced before the Court is unchallenged and credible, the Court will be left with no option other than to accept same. This position of law was re-echoed by the Court of Appeal in the case of **CHAIRMAN EFCC & ORS V LITTLE CHILD (2016) 3 NWLR (PT. 1498) PG 1 PARAS F – H PER OSEJI J.C.A** where it was held thus:-

"Facts contained in an Affidavit form part of the documentary evidence before the Court. Thus where an Affidavit is filed before deposing to certain facts and the other party does not file a Counter Affidavit or reply Affidavit, the facts deposed to in the Affidavit or Counter Affidavit would be deemed unchallenged and undisputed.

Simply put, paragraphs Affidavit not denied or controverted are deemed admitted."

Similarly, it was held in the case of **S. P. D. C. N LTD VS ESOWE (2008) 4 NWLR (PT. 1078) PER GUMEL JCA AT PG 88 PARAS E – F** that:-

"Ancontradicted or unchallenged evidence must be used against the party who ought to have contradicted or challenged the evidence but failed to do so".

In the light of the above, it is my considered opinion that from the totality of the depositions adduced in the Affidavit evidence of the both the Applicant and 2nd Respondent which is unchallenged by the 1st Respondent, the Applicant has successfully made out a case to be entitled to the grant of the reliefs sought. I so hold.

On the Applicant's Claim for ₦2,000,000.00 (Two Million Naira) as cost of this suit, the Applicant has pleaded it in his depositions in the supporting Affidavit particularly at paragraph 15, even though he did not attach any documentary evidence in proof of same but the Court has taken judicial notice that he has incurred expenses in engaging the services of a legal practitioner to prosecute his case and it is settled law that a successful party is to be indemnified for cost of litigation. See **NAUDE & ORS VS SIMON (2013) LPELR – 20491 (CA) PAGE 24 – 28 PARA A.**

In that respect and without further ado, I hereby resolve the issue for determination in favour of the Applicant, and order as follows:-

1. That the Applicant shall relate with the 2nd Respondent as the agency that will issue certificate of medical fitness as well as train and screen its food handlers.
2. I award ₦500,000.00 as cost of this suit in favour of the Applicant to be paid by both the 1st and 2nd Respondents.

Signed:

***Hon. Justice S. U. Bature
12/7/2023.***