

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO: FCT/HC/CV/2632/2024

MOTION NO. FCT/HC/GWD/M/402/2024

DELIVERED: ON THE 27/02/2025

BETWEEN:

MRS. AUGUSTINA ONYA.....CLAIMANT/RESPONDENT

(Suing Through Her Lawful Attorney Solomon Teru)

AND

- | | | |
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| 1. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY ABUJA | } | ...DEFENDANTS/RESPONDENTS |
| 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY | | |
| 3. ABUJA MUNICIPAL AREA COUNCIL (AMAC)..... | | DEFENDANT/APPLICANT |
| 4. PERSON UNKNOWN..... | | DEFENDANT/RESPONDENT |

RULING

By a Notice of Preliminary Objection, the 3rd Defendant Objector is praying this Honourable Court for an Order striking out the suit for lack of Jurisdiction.

This objection is predicated upon the ground that the action is incompetent due to non-service of a valid pre-action Notice in accordance with provision of section 124 and 125 of the Local Government Act, 1976, the Laws of the Federal Capital Territory of Nigeria Volume 3.

In support of the objection counsel only filed a written address wherein he formulated a sole issue for determination to wit:

“Whether this suit is competent against the 3rd Defendant, having regards to the provision of section 124 and 125 of Local Government Act, 1976, the Laws of the Federal Capital Territory of Nigeria Volume 3”

Counsel argued succinctly in urging the Court to grant the Objection. Counsel cited section 124 and 125 of Local Government Act, 1976, the Laws of the Federal Capital Territory of Nigeria Volume 3 which provided thus:

Section 124:

“No suit shall be commenced against a Local Government until after one Month written Notice of intention to commence the same has been served upon the Local Government by the intending Claimant or his agent such Notice shall state the case of action, the name and place of abode of the intending Claimant and the relief which he Claims”

Section 125:

“The notice referred to in section 124 and any summons, notice or other documents required or authorized to be serve on the local government in connection with any suit by or against such local government shall be served by delivering the same to or by sending it by the registered post addressed

to, the secretary to the local government at the principal office of the local government”.

Counsel argued further that pre-action Notice is condition precedent to the institution of a suit and the onus is on the Claimant to satisfy the Court that the condition was fulfilled in this case the Claimant did not mention doing so in his Claim.

He cited the case of *ODEOMELAM V. AMADIUME (2008) 2 NWLR (Pt. 1070) 179* ratio 2. He also cited the case of *UGWUANYI V. NICON INSURANCE PLC (2004) 15 NWLR (Pt. 897) 612* at ratio 3 where it was held as follows:

A suit commenced in default of service of a pre-action Notice is incompetent as against the party who ought to have been served with the pre-action Notice, provided such a party challenges the competence of the suit the failure to give a pre-action Notice is fundamental omission. It is not a mere irregularity the action is a nullity and should ordinarily be struck out.

Counsel finally concluded by urging the Court to sustain the Preliminary Objection and strike out the suit for lack of jurisdiction or the name of the 3rd Defendant from the suit with substantial Cost for the Claimant has failed to comply with the provisions of the law.

In response, the Claimant Counsel filed an address to the Notice of Preliminary Objection wherein he formulated a sole issue for determination of this Court to wit:

“Whether this suit is incompetent in it’s entirely for failure to serve a pre-action Notice on the 3rd Defendant/Applicant”.

Counsel argued succinctly in urging the Court to overrule the objection. He argued on the condition for a Court to assume jurisdiction in a matter where he cited the case of *MADUKOLU V. NKEMDILIM (1962) 2 SC NLR p. 34 and the Case of SKYE BANK PLC V. PENBURU NIGERIA LIMITED & ANOR (2016) ALL FWLR (Pt. 833) P. 1898, para E-F.*

Counsel further argued that going by the argument of the 3rd Defendant/Objector Counsel who submits that the failure to service pre-action Notice on the 3rd Defendant makes the suit incompetent. It is his submission that due suit against the other Defendant is not incompetent as such it does not render the entire suit incompetent that the process was followed and fulfilled in commencing the suit against other Defendants.

He finally submits that this suit is not incompetent in its entirety and urges the Court to so hold and dismiss the objection with Cost against the 3rd Defendant/Objector.

I have carefully perused the relief and written addresses of both Counsel. It is my firm believe the law should be obeyed and due process followed relying on the case of MADUKOLU (Supra) it is on this note that I make the following orders:

It is my considered opinion that the failure to serve a pre-action Notice on the 3rd Defendant does not render the entire suit incompetent. However, relying on the authorities cited by Counsel, I agree with the parties that the suit is incompetent only as it pertains to the 3rd Defendant.

In view of the foregoing, the name of the 3rd Defendant is hereby struck out, and the hearing shall proceed with the remaining parties.

I so hold.

SIGNED:
HON.JUDGE
27/02/2025.

APPEARANCE:

Kolo Million, Esq, for the Claimant

Tola Olorunfunmi, Esq, with M. S. Awwal for the 3rd Defendant