

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

THIS WEDNESDAY, THE 19TH DAY OF FEBRUARY, 2025

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

**SUIT NO: CV/2682/2016
MOTION NO: GAR/216/2025**

BETWEEN:

OBALLUM CHIKELU EDISON CLAIMANT/RESPONDENT

AND

- | | | |
|---|--------------|----------------------------|
| 1. VISIONI & STRAUSS LIMITED | } | ... DEFENDANTS/ |
| 2. CITY GATE HOMES & RESORTS LTD | | RESPONDENTS |
| 3. CHIEF MIKE EJIUGU | | DEFENDANT/APPLICANT |

RULING

By a Motion on Notice dated 27th December, 2024 and filed on 7th February, 2025, the 3rd Defendant/Applicant prays for the following order:

- 1. An Order striking out the name of the 3rd defendant from this suit.**
- 2. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances of this case.**

The grounds of the application as contained on the motion paper are as follows:

- a. Section 89 of the Companies and Allied Matters Act (CAMA) 2020 provides thus:**

“Any act of the members in general meeting, the board of directors, or of managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person.”

- b. **The alleged dispute disclosed in this suit is between the claimant and the 1st and 2nd defendants, which are limited liability companies and distinct persons from the 3rd defendant.**
- c. **The 3rd defendant is the Managing director of the 2nd defendant, an Officer and agent of a disclosed principal, and cannot be competently sued severally or jointly with the 2nd defendant for acts done on the company's behalf.**
- d. **The action discloses no cause of action against the 3rd defendant/applicant.**

The motion is not supported by an affidavit. A brief written address was filed in which one issue was raised as arising for determination:

“Whether the 3rd defendant who is the Managing Director and Officer of the 2nd defendant is a proper party to this suit between the claimant and the 1st and 2nd defendants which are limited liability companies?”

Submissions were made on the above issue which forms part of the record of court and the thrust of the address is that the dispute disclosed is between claimant and 1st and 2nd defendants; that the 3rd defendant is only the M.D. of 2nd defendant and thus an agent of a disclosed principal and cannot be sued severally and jointly with 2nd defendant and finally that no cause of action was disclosed against 3rd defendant/applicant.

The claimant/respondent in response filed a written address in opposition and raised one issue as arising for determination to wit:

“Whether in the light of the facts pleaded in the extant statement of claim filed by the claimant/respondent before this Honourable Court, this suit discloses a cause of action against the 3rd defendant.”

Submissions were equally made on the above issue which forms part of the Record of Court. The essence of the submissions made out is that from the materials particularly the statement of claim vide paragraphs 15 and 29 and the reliefs claimed situates that the 3rd defendant is a necessary party to this action in view of the critical parts he played in the dispute and the damages occasioned and accordingly that a cause of action was disclosed against him.

At the hearing, counsel on either side relied on the processes filed in urging the court to grant the application and on the other hand to refuse the application.

I have carefully considered the processes filed on both sides of the aisle and the oral submissions made. The application raises the question of whether a cause of action is disclosed against the 3rd defendant. In deciding the issue, the questions of whether the dispute is only between claimant and 1st and 2nd defendants and that 3rd defendant is only an agent of 2nd defendant and thus cannot be sued will be addressed.

Now since the Applicant in this case by his objection did not support same with an affidavit, he is deemed to have admitted and accepted the **averments** contained in the **writ of summons and statement of claim** put forward by the claimant and it is only upon those facts that the court can and will determine the application and not any other material(s) or extraneous consideration or submissions of counsel. I find authority for this in the pronouncement of the Supreme Court in **Woherem V Ehereuwa (2004) 13 NWLR (pt.890) 418 at 419** per Iguh JSC as follows:

“Another point that ought to be borne in mind is that the application of the respondents, as defendants, before the trial court was by way of a preliminary objection for the dismissal of the appellant’s suit in limine on the ground of Limitation of Action Law of Rivers State of Nigeria, 1988. The principle of law is well established that an application by way of preliminary objection for the dismissal of a suit in limine may be made on points of law and where there are no facts in dispute for the purpose of determining such a objection. See Bello Adegoke Foko and others V Oladokum Foko and another (1968) NMLR 441. The applicant relies only on the facts as stated by the plaintiff in the writ of summons and statement of claim. The facts stated by the plaintiff in the writ of summons and statement of claim are for that purpose deemed to have been admitted by the defendant/applicant. See Ayanbode V Balogun (1990) 5 NWLR (pt.151) 392 at 407. Where, however, disputes as to facts appear on the pleadings of the parties, as is the case in the present application, it is only open to a defendant to raise a preliminary objection on the face of the plaintiff’s writ of summons if the said defendant accepts the plaintiff’s averments of fact either on the writ of summons or on his statement of claim but submits that even in those circumstances no cause of action

would appear to have been disclosed or that the court has no jurisdiction to entertain the suit or that the action is statute-barred by virtue of some Limitation Law. But, if facts exist, which must first be adduced in or established by evidence to enable a point of law to be sustained, the preliminary objection may not be properly taken. See *Banjo and others V Eternal Sacred Order of Cherubim and Seraphin (1975)3SC 37*. Similarly if the facts to sustain the preliminary point are obscure or at large, a preliminary objection may not properly be taken. A matter, therefore, which is raised by way of preliminary point but which may be answered if evidence is adduced cannot be properly raised as preliminary objection. Such a matter is more properly answered by evidence during the trial and shall constitute an issue for determination at the trial.”

The answer therefore to the question of whether the statement of claim discloses a reasonable cause of action against 3rd defendant is to be **found** in the **statement of clamant**. In considering whether there exist a reasonable cause of action, it is sufficient for a court to hold that a cause of action is reasonable once the statement of claim in a case discloses some cause of action or some question fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See *A.G. (Fed.) V A.G. Abia State & ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd V. LASEPA (2003) 1 MJSC 112 at 132*.

The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of *Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo V N.R.C (1992) 7 NWLR (pt.234) 471 at 483; Bello V A.G. Oyo state (1986) 5 NWLR (pt.45) 828*. to mention a few.

In *Akibu V Oduntan (2003) 13 NWLR (pt.685) 446 at 463*, the Supreme Court defined cause of action as:

“A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

- (a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and**

(b)The consequent damage.”

The question now is does the extant statement of claim disclose the above elements against 3rd defendant?

In so far as can be evinced from the statement of claim and the reliefs sought, the fact or combination of facts on which claimant has premised his right to sue the defendants including 3rd defendant is as pleaded in paragraphs 4-30. Contrary to the representation made in the **application**, the 3rd defendant was not sued as **Managing Director** but as the **alter ego** of both the 1st and 2nd defendant whom **claimant** directly transacted with and who is accused of the wrongful act(s) complained of which occasioned damages to claimant.

In paragraphs 4, 6, 7 and 8 of the claim, for example the claimant pleaded as follows:

- “4. The 3rd defendant is the alter ego of both the 1st and 2nd defendants and the person whom the 1st and 2nd defendants transacted with the claimant regarding the contract for the sale of Plot A28 measuring about 700 square metres from the city gate estate and purchase of same by the claimant.**
- 6. The Claimant avers that the 3rd defendant acting as the alter ego of the 1st and 2nd defendants offered the parcel of land for the construction of the said five (5) bedroom duplex for N20, 000, 000 (Twenty Million Naira) only to the claimant. The claimant avers further that he completed the application form for the purchase of the said land from the defendants. A copy of the application form completed and submitted by the claimant to the 1st defendant is attached hereto as Annexure A.**
- 7. The claimant avers that the defendants through the 3rd defendant informed him that the cost to construct the said five (5) bedroom duplex and the attached boy’s quarters on the said land he purchased up to the carcass level for him will be an additional sum of N16, 000, 000 (Sixteen Million Naira) only.**
- 8. The claimant avers that the 1st defendant thereafter issued a letter dated 8th June 2020 to the claimant captioned ‘Provisional Allocation for the**

Purchase of Five Bedroom Duplex at Plot 524, Cadastral Zone B00, Kukwaba District, FCT Abuja’ and therein allotted Plot No. A28 within City Gate Estate being developed on Plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja to the claimant vide the said letter and incorporated the cost of the construction of the five (5) bedroom duplex to carcass as agreed. The claimant shall at the trial place reliance on the said letter. A copy of the said letter is attached hereto as Annexure B.”

In the light of the above, it is clear that the submissions of Applicant in paragraph 3.03 of his address wherein he stated that the claimant pleaded in paragraphs 2 and 3 of the Statement of Claim as follows:

- “2. The Claimant stated that the 1st defendant is a company registered under Part A of the Company and Allied Matters Act 2020 with RC: 1583393...**
- 3. The Claimant states that the 2nd defendant is the Managing Director of the 1st Defendant.”**

is clearly erroneous and a complete misrepresentation of what is contained in the statement of claim and particularly in **paragraphs 2 and 3 of the statement of claim** which reads thus:

- “2. The 1st defendant is a company which is engaged in the business of real estate development and carried on business within the Federal Capital Territory.**
- 3. The 2nd defendant is a company which is engaged in the business of real estate development and carried on business within the Federal Capital Territory.”**

The above is clear. I hope and pray that **paragraph 3.03** of the address is not a deliberate ploy at mischief making and an attempt to deliberately mislead the court. I say no more.

This being an interlocutory application, the court must be careful and not make comments that may turn out to be ultimately prejudicial to the substantive issue(s) which the court is yet to determine. As stated earlier, the Applicant by the objection he raised in law is deemed to have admitted the facts in the statement of claim. The case of the claimant from the above quoted paragraphs

of the claim against 3rd defendant is simply that he is a person that is considered to be the same as the 1st and 2nd defendants for legal purposes sharing the same rights, duties and liabilities.

The alter ego doctrine is often applied in cases where:

1. A corporation is used to shield an individual from personal liability.
2. A person is using a trust or other entity to hide the true identity or interest.
3. A company is acting as a mere shell or conduit for another entity or individual.

By treating the alter-ego as the same as the original entity or person, the law can:

1. Pierce the corporate veil i.e. disregard the separate legal entity of a corporation.
2. Hold individuals or entities accountable for their actions.
3. Prevent abuse of the legal system through shell companies or other mechanisms.

The alter-ego doctrine is an important tool in ensuring accountability and preventing the use of legal entities as cover for purposes that may not be salutary. I leave it at that.

Now whether **the 3rd defendant is an alter-ego or not**, is not open for inquiry at this stage, but that is the case projected on the pleadings by claimant and a matter for trial; that is if issues are ultimately joined by the defendants on that fact.

Now with respect to specifics of the grievance, the claimant in **paragraphs 15, 16, 17, 18, 29 and 30** pleaded thus:

“15. The claimant avers that while waiting for the defendants to allow him to commence the construction of the five (5) bedroom duplex for which purpose he bought the said plot A28 within City Gate Estate, Cadastral Zone B00 Kukwaba District, FCT, Abuja, he received a letter dated July 13th 2023 from the 3rd defendant on the letter head of the 2nd defendant which he captioned ‘RE: FINAL NOTICE TO OUR EARLIER DECLARATION OF FORCE MAJEURE ON THE PROPOSED CITY GATE HOMES PHASE 2’ which is addressed

thus: 'To out subscribers.' A copy of the said letter shall be relied upon at the trial and a copy is attached hereto as Annexure F.

16. The claimant avers that by the said letter dated July 13th 2023, the defendants alleged that they were not able to obtain the 'expected allocation and land use change'. The defendants further alleged that the title of the 1st defendant over the said plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja was revoked and reallocated to the first allottee and that they had to re-purchase the said plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja from the said first allottee for the sum of 'over One Billion Naira.' The defendants vide the said letter of July 13th 2023 also acknowledged the N20, 000, 000 (Twenty Million Naira) only paid by the claimant as the full purchase price for Plot A28 within City Gate Estate, situate at Plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja in line with the agreement of the parties but informed the claimant that the purchase price already paid for the said parcel of land known and described as Plot A28 within City Gate Estate, situate at Plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja, by the claimant on 8th June 2020 had changed to N70, 000, 000 instead of the N20, 000, 000 for old subscribers like the claimant. The defendants in the said letter unilaterally changed the terms of the contract with the claimant and demanded that the claimant should pay an additional sum of N50, 000, 000 for the said Plot A28 within City Gate Estate, situate at Plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja.

17. Upon receipt of the said letter dated 13th July, 2023 the claimant caused the law firm of Temple Grey Attorneys to write the defendants vide a letter dated 25th July, 2023. The said letter is hereby pleaded and shall be relied upon at the trial. A copy of the said letter is hereto attached as Annexure F.

18. The claimant avers that the contract with the Defendants was completed when he was issued the letter of provisional allocation dated 8th June 2020 and he accepted the terms therein and proceeded to make the payments of the sum of N20, 000, 000 (Twenty Million Naira) only demanded vide the said letter of provisional allocation by the Defendants being the full purchase price for the parcel of land allotted

to him as Plot A28, City Gate Estate, Plot 524, Cadastral Zone B00, Kukwaba District, FCT, Abuja and was issued the receipt of payment dated 8th June, 2021.

29. The claimant avers that the defendants have not at any time serve him with any valid notice of revocation prior to the attempt by the defendants to re-acquire and re-sell the said parcel of land to a third party. The claimant avers that the 1st defendant has been acting in concert with the 2nd and 3rd defendants to interfere with the rights of the claimant over the said parcels of land by making unwarranted and unauthorized visits to the said parcel of land with third parties.

30. The claimant avers that the unwarranted and unauthorized visits by the defendants to the said parcel of land with parties constitutes a violation of his right to ownership of property. The claimant avers that he is entitled to the award of damages against the defendants.”

The above averments again are clear. The alleged wrongful acts of the defendants including 3rd defendant and the damage suffered by the claimant has been clearly set out in the pleadings. It is the alleged failure of the defendants to keep to the terms of a concluded agreement parties had; the attempts by them to re-acquire and resell the property sold to him to a third party.

The statement of claim clearly raised a reasonable cause of action against the 3rd defendant. It has clearly set out the legal rights of claimant and the obligations of defendants. It has further clearly set out the actions including specific actions of 3rd defendant as alter-ego of 2nd and 3rd defendants constituting the alleged infraction of the claimants legal rights or the failure of the defendants to fulfill their obligations in such a way that if there is no proper defence, the plaintiff will succeed in the reliefs or remedy which he seeks. See **Nwaka V Shell (2003) 3 NIJSC 136 at 149; Ibrahim V Osim (1988) 2 NWLR (pt.82) 257 at 271-272.**

The claimant has clearly raised questions fit to be decided involving 3rd defendant requiring a response. Any perceived weakness in the plaintiffs case against 3rd defendant is not a relevant consideration when the question is whether or not a statement of claim has disclosed a reasonable cause of action. No.

On the whole, it is not for the applicant to seek to alter or change the contents of the statement of claim of claimant to suit a particular purpose. The 3rd defendant was not sued as M.D. or as an agent of 1st and 2nd defendants. This application wholly fails as it is lacking in merit and is dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Chike S. Ekeocha, Esq. for the Claimant/Respondent.***
- 2. A.E. Adeyeye, Esq., for the 1st and 2nd Defendants and the 3rd Defendant/Applicant.***