IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 57 KUJE ABUJA
THIS 16TH DAY OF JULY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni

SUIT NO. FCT/HC/CV/265/2025

BETWEEN

KELVIN AYOGU……CLAIMANT

AND

1. EL-SUNNIC INTEGRATED RESOURCES LTD)
2. SUNDAY OKECHUKWU ECHEM)……DEFENDANTS

REPRESENTATION
S. A. Manga Esq, for the 1st Defendant.
Chibuzor C. Ezike Esq, for the Claimant.

JUDGMENT

INTRODUCTION

The Claimant by Writ of Summons dated and filed on the 12th of May 2025 seeks the following reliefs:

1. An order of the Honourable Court directing the Defendant to pay to the Claimant the sum of N20,000,000.00 (Twenty Million Naira) only being the amount paid by the Claimant to the Defendants to facilitate an award of a contract from Tertiary Education Fund (TETFUND) in favour of the Claimant's company.
2. An order of the Honourable Court directing the Defendants severally and jointly to pay the Claimant 10% post judgment interest from the date of the judgment until the entire judgment sum is liquidated.
3. An order of this Honourable Court mandating the Defendants to pay the Claimant the sum of N10,000,000.00 (Ten Million Naira) cost of this action.

The Defendants were served with the writ on 17th June 2025.

The 1st Defendant entered a conditional appearance on the 2nd of July 2025, and filed a preliminary objection on the same date. The Claimant filed a reply on points of law on the 9th of July 2025.

Meanwhile the Claimant had earlier on the 8th of May 2025 filed an application for summary judgment under Order 35 Rule 1 of the Federal Capital Territory (Civil Procedure) Rules 2025. The Defendants did not file any processes in response to this except for the preliminary objection filed later by the 1st Defendant.

I intend to first take the preliminary objection of the 1st Defendant, and if a decision on this permits, take the application for summary judgment.

THE PRELIMINARY OBJECTION

By a Notice of Preliminary Objection, the 1st Defendant objects to the jurisdiction of the Court to hear this matter on the grounds that:

1. The Claimant is not the proper party to institute this action as presently constituted.
2. The Plaintiff lacks the locus standi to institute this suit.

And further that the grounds of objection are that:

1. There is no proof that the Claimant did any transaction with the 1st Defendant.
2. The suit is premised on corporate entities.
3. There is nothing to show that the Claimant transferred any money to the 1st Defendant.

The Defendant submits two issues for determination, namely:

1. Whether by the constitution of this case the proper parties are before this Court to enable the Court adjudicate on this suit.
2. Whether by the constitution of this suit the Claimant has the locus standi to institute this suit.

Arguing the two issues together, Marcus A. Abu Esq. submits that the Court lacks jurisdiction due to the absence of proper parties and lack of locus standi by the Claimant to institute the suit. Counsel argues that Exhibits 'A' and 'B' do not disclose any cause of action between the parties on record; that Exhibit 'A' is questionable and that nothing shows that Exhibit 'B' was served on any of the Defendants. That to give effect to the exhibits the Court would have to speculate and this is forbidden by law, citing **IKEMEFUNA & ORS v. ILONDIOR & ORS (2018) LPELR-44840.**

Counsel submits that the status of the Claimant to institute the suit is challenged by his proof of transfer of N20 million to the Defendants by exhibit 'A' which did not state who made the transfer or whether it is a bank statement. Counsel then

cites **GOODWILL & TRUST INV. LTD v. BRUSH LTD (2011) ALL FWLR Pt.576, 517 at 542-543, and AKINDELE v. ABIODUN (2009) 11 NWLR Pt.1152, 356 at 381 B-D,** to the effect that a court's jurisdictional competence is dependent on identification of proper parties.

Counsel once more argues that there is nothing to show the Claimant paid the sum in question to the 1st defendant and fails to show his locus standi to prosecute the case, and cites **UNITY BANK PLC v. TAMBUWAL CONSTR. & TRADING CO. LTD (2025) 8 NWLR Pt.1992, 211.**

Chibuzor Ezike Esq. submits on behalf of the Claimant that the grounds relied on by the Defendants are questions of facts to be proved by evidence. That proceedings in lieu of demurrer has been abolished by Order 22 Rule 1 of the Civil Procedure Rules, 2025. And that the grounds relied on by the Defendants are unknown to law.

Counsel submits further that even if the issue of misjoinder was valid, same is not a matter of jurisdiction, and that Order 13 makes provisions for misjoinder in that no proceedings shall be defeated by reason thereof, citing **JULIUS BERGER (NIG) PLC v. ALMIGHTY PROJECTS INNOVATIVE LTD & ANOR. (2021) LPELR-56611 (SC) pp.25-27 D.**

Counsel further submits that the Defendants never filed any processes to counter the clear averments of the Claimant or denied ownership of the account number into which money was paid. That the averments in the affidavit attached to the application for summary judgment can only be controverted by a counter affidavit, referring to **MABAMIJE v.OTTO (2016) LPELR-26058 (SC) p.18 B.**

Counsel submits also that Claimant's locus standi was challenged by lack of evidence that he paid money to the Defendants. That locus standi is determined by the Claimant's statement of claim or affidavit, and from issue of locus standi is inferred from the Claimant's claim as decided in **AKPAN & ORS v. UMOREN & ORS (2012) LPELR-7909 (CA) pp.12-13 F, and AYORINDE v. KUFORIJI (2022) LPELR-56600 (SC) pp.9-10 D.** And further that from the facts averred the Claimant has the locus standi to institute the suit.

DECISION ON PRELIMINARY OBJECTION

The issue of locus standi, which invariably is the same as proper parties, is a crucial issue that goes to the competence of a court to entertain a matter before it. See **H.R.H SAMUEL OLUKA EJIRE & ANOR. v. CHIEF JOHNSON EMERE NKPORNWI (JP) (2024) 18 NWLR Pt.1969, 1**. Where the Supreme Court held at p.19 A-D that ***"...a person is said to have locus standi to sue if he is able to***

show to the satisfaction of the court that his civil rights and obligations have been or are in danger of being infringed... The issue of locus standi is a threshold issue which has a direct bearing on the jurisdiction of the Court. The reason is not farfetched, for where a plaintiff is unable to show that he has a connection to the subject matter of the suit or that his rights have been or are likely to be infringed by the subject matter of the suit, then there would be no dispute for the Court to adjudicate over. If there is no real plaintiff who can show a genuine connection with the suit, the court cannot bring or manufacture an imaginary plaintiff to maintain the action."

The Court went on to say at p.19 G-H that ***"As a general rule, when the issue of locus standi or any other issue bordering on the jurisdiction of Court is raised before evidence is led, the only processes to be considered by a Court in the determination of whether it has jurisdiction are the originating processes and the reliefs sought therein. At that stage, no other process is relevant for the determination of the jurisdiction of the Court."***

Similarly in **HON. AHMED ABUBAKAR NDAKENE v. SARA AHMED ADAMU & ORS. (2023) 9 NWLR Pt.1889, 389** at p.407 G the Supreme Court held that ***"Issue of competence or jurisdiction is validly determined and tested by the litmus paper of the plaintiff's pleadings/process and not by the roaring or pleadings of the defendant... It is now fairly settled law that it is the cause of action as endorsed on the writ of summons that determines the proper parties before the court."***

I agree with the Defendant only to the extent that jurisdiction is fundamental and impacts a court's competence to hear a matter, however, the argument that exhibits attached do not show any cause of action is not only farfetched but clearly not what the law allows or contemplates in establishing this point. Similarly whether exhibit B was served on the Defendants, or whether the Claimant paid any sums of money to the defendants are matters of evidence that have nothing, preliminarily to do with the jurisdiction of the court.

On issue of locus standi, counsel correctly stated the position of the law by reference to decided cases, but misapplied the principles to the facts of this case by the proposition that there was nothing to show that the Claimant transferred money to the 1st Defendant, so lacked locus standi to sue.

The argument of counsel to the Claimant is most apt on the points that the grounds of objection as canvassed by the Defendants are not germaine to the jurisdiction of the Court.

Again, I refer to **UNITED BANK FOR AFRICA PLC v. BTL INDUSTRIES LTD. (2006) 19 NWLR Pt.1013, 61** at p.127 E that ***"The settled principle of law is that it is the averments in the statement of claim that determines a plaintiff's locus standi. If the averments disclose that the rights or interests of the plaintiff have been or in danger of being violated or adversely affected by the act of the defendant, he would be deemed to have sufficient interest to have locus standi to sue."***

I have looked at the writ of summons and the statement of claim and I am satisfied that the Claimant's main reliefs and the averments in the statement of facts are quite sufficient to establish the Claimant's locus standi to institute this suit. The Claimant has presented a prima facie case that a certain sum of money was paid to the Defendants to facilitate award of contract to his company from TETFUND. The proof of this is dependent on the evidence that would be presented during trial and the same cannot preliminary be the basis for challenging the jurisdiction of the Court with respect to the issue of locus standi.

In view of the foregoing, the preliminary objection raised by the 1st Defendant is hereby dismissed.

DECISION ON SUMMARY JUDGMENT

On the 12th of May 2025, the Claimant filed an application for summary judgment under Order 35(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 which provides that: ***"Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the documents to be relied upon, the depositions of his witnesses and an application for summary judgment supported by an affidavit stating the grounds for his belief and a written address in support of the application."***

Rule 4 provides that ***"Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he shall, not later than the time prescribed for defence, file:***

(a) His statement of defence;
(b) Depositions of his witnesses;
(c) The documents to be used in his defence;
(d) Counter affidavit;
(e) A written address in reply to the application for summary judgment."

The Claimant thus applied for summary judgment in compliance with the Rules and has averred that the Defendants have no defence to the action.

For this, the Claimant submits a sole issue for determination, namely, **whether the Claimant has made out a case to be entitled to summary judgment of this Honourable Court.**

Learned counsel submits that Order 35 r.1 is geared towards speedy but substantial justice where there is no defence to a claimant's claim, citing BELLVIEW AIRLINES LTD v. CARTER HARRIS (PROPRIETARY) LTD. (2017) ALL FWLR Pt.869, 923 at 954-955 E-D; and NISHIZAWA LTD v. JETHWANI LTD (1984) 12 SC 234 to the effect that a defendant who has no defence should not be allowed to dribble and frustrate a plaintiff.

Counsel urges the Court to enter judgment in favour of the Claimant.

In **MOSES RAPHAEL v. UBAMACCO VENTURES LTD (2024) LPELR-79943 (SC)** pp.22-23 E-A the Supreme Court held that ***"It is trite that the law sets criteria for ascertaining whether a case should be heard on the undefended list. These criteria are: (1) that ex facie the claims of the plaintiff must satisfy the court that there is no defence to the action which must be for recovery of a debt certain or liquidated money demand; and (2) that the plaintiffs claim is not contradicted by the notice of intention to defend the action filed by the defendant which notice discloses a defence on the merit or triable issue."***

The court at pp.24-24 D-D defined liquidated money demand as ***"A debt and a specific amount which accrued in favour of the plaintiff from the defendant... A liquidated demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation. Whenever, therefore, the amount to which a plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data, it is to be liquidated or made clear. Again, where the parties to a contract, as part of the agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated damages where it is in the nature of a genuine pre-estimate of the damage which would arise from breach of the contract so long as the agreement is not obnoxious as to constitute a penalty and is payable by the party in default. The term is also applied to sums expressly made payable as liquidated damages under a statute."***

Furthermore, seeing that fraud was imputed in the Claimant's affidavit, it is apposite to refer to the case of **MICHAEL F'OLUWASO ODUWOBI& ORS. v. BARCLAYS BANK, D.C.O(1962) LPELR-25108 (SC)** where payment of money was induced by fraudulent conduct.

The decision turned on the consideration of the general principles relating to an action for money had and received. The Supreme Court held at pp. 3-4 B-B that ***"The action is based on what is generally described as quasi contract and which was explained by Lord Haldane, in Sinclair v. Brougham...: 'Consideration of the authorities has led me to the conclusion that the action was in principle one which rested on a promise to pay, either actual or imputed by law. Moses V. Macferlan(l) is the leading case on this point. It was an action on the case for money had and received under circumstances where any notion of an actual contract was excluded. But Lord Mansfield explained how in such circumstances the law treated the defendant as being in the same position as if he had incurred a debt; 'If the defendant be under an obligation, from the ties of natural justice, to refund; the law implies a debt, and gives this action, founded on the equity of the plaintiff's case, as it were upon a contract.' Lord Mansfield, in the case of Moses v. Macferlan referred to above, said that the action lies 'for money paid by mistake; or upon a consideration which happens to fail, or for money got through imposition, express or implied; or extortion. Or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances."***

Again, in **G.N NWAOLISAH v. PASCAL NWABUFOH (2011) LPELR-2115 (SC)** the court held at p.49 G, that ***"it is trite law that a party who has paid money to another person for a consideration that has totally failed under a contract is entitled to claim the money back from the other party."***

On the basis of the above decisions, it can be concluded that money gotten by fraud is deemed by law to be money had and received and to which the Defendants have an obligation to repay to the Claimant.

However, in the circumstances of this case, where the money paid appears to be in furtherance of an illegal cause, would equity come to the aid of the Claimant? Equity follows the law, therefore in this case, I believe it suffices to state the position of the law in such circumstances.

In **PRIMEVIEW HOTELS LTD & ANOR v. HOTEL PRESIDENTIAL LTD & ORS (2020) LPELR-50642 (CA)** p.19 A-E the Court of Appeal held that ***"Although it is the duty of a trial court to enforce agreements between parties and not***

speculate or question the reasons for their entering into such agreement, where such agreement is illegal or contrary to public policy, such agreement or contract should not be enforced by the court… It is trite that illegality renders a contract unenforceable no matter the obligations incurred by the parties in pursuance thereof. Basically, a contract is illegal if the consideration or the promise involves doing something illegal or contrary to public policy or the intention of the parties in making the contract is to promote something which is illegal or contrary to public policy."

The above principle was affirmed by the Supreme Court when the decision was appealed in **PRIMEVIEW HOTEL LTD & ANOR v. HOTEL PRESIDENTIAL LTD & ORS (2024) LPELR-80029 (SC)** at p.19-20 E-B that "…***it would not be out of place for me to reiterate the trite doctrine settled by this court in a plethora of authorities, to the effect that neither a court of law nor a tribunal is cloaked with jurisdictional competence to enforce an illegal contract, In the case of Ekwunife v. Wayne (W/A) Ltd, this court was recorded to have aptly held: No court of law or judge has the jurisdiction to enforce an illegal contract. The duty of a court of law or a judge is to administer justice according to law. Therefore, it will be a breach of that duty and the oath of office to enforce an illegal contract. None of the parties to an illegal contract is entitled to any remedy or relief from the court of law and once a court or judge becomes aware of the illegality, it is the duty of the court or judge to stop the case and dismiss the claim for being void and unenforceable."***

It is important to clarify here that the issue of legality or otherwise of the contract in this case emanates from the issues validly brought before the court. In the circumstances, the issue can be raised suo motu and decided by the court from the issue on record without inviting the parties to address the court on the issue raised.

The Supreme Court in the same case held at p.22 C-E, that ***"…a distinction must be drawn between a court raising an issue suo motu and looking into its records to resolve the issue, and the court looking into its records suo motu to resolve an issue raised by the parties. In respect of the former, a court raising an issue suo motu, must invite the parties to address it before using the issue in the judgment. But in the latter situation where the court looks into the record to resolve issues raised by the parties, it is not obligated to seek further input from them"*** And further at p.23 D-F, ***"A court can only be accused of raising an issue, matter or fact suo motu if the issue, matter or fact did not exist in the litigation. A court cannot be accused of raising an issue, matter or fact suo motu if the issue, matter or fact exists in the litigation. A judge, by the***

nature of his adjudicatory functions, can draw inferences from stated facts in a case and by such inferences, the judge can arrive at conclusions. It will be wrong to say that inferences legitimately drawn from facts in the case are introduced suo motu. That is not correct."

The issue is clearly on record before this court, particularly paragraph 2 of the Claimant's affidavit, reproduced thus: ***"That one Barome introduced the 2nd Defendant to me sometimes (sic) in 2023, and in the course of our discussion, the 2nd Defendant informed me that he has the necessary contacts that can he (sic) deploy to facilitate a contract from TETFUND in favour of my company within two weeks, if I will be able (sic) to raise N20,000,000.00"***

Whatever is the interpretation given to the word 'facilitate,' the same is contrary to the law and policy of government as provided in the Public Procurement Act, 2007. I say this for the following reasons:

TETFUND is the acronym for the Tertiary Education Trust Fund set up by the Tertiary Education Trust Fund (Establishment Etc) Act, 2011, wherein S.3 provides that ***"There is established the Tertiary Education Trust Fund... for the rehabilitation, restoration and consolidation of tertiary education in Nigeria which shall be managed by the Board of Trustees established under section 4 of this Act."***

On the other hand, S.15 (1) of the Public Procurement Act provides that ***"The provisions of this Act shall apply to all procurement of goods, works and services carried out by:***

(a) the Federal Government of Nigeria and all procurement entities;

(b) all entities outside the foregoing description which derive al least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of the Consolidated Revenue Fund."

S. 16 provides that ***"(1) Subject to any exemption allowed by this Act, all public procurement shall be conducted: ...***

...(c) by open competitive bidding;

(d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom...

...(8) Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out exist, a bidder may have its bid or tender excluded from any particular procurement proceeding if:

(a) there is verifiable evidence that any supplier, contractor or consultant has given or promise a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau, in an attempt to influence any action, or decision making of any procurement activity."

Particularly, S.58 (4) provides that ***"The Following shall also constitute offences under this Act: ... (b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption..."***

In **PAN BISBILDER (NIG) LTD v. FIRST BANK NIG LTD. (2011) 1 NWLR Pt.642, 684** at p.695 A it was held that ***"Generally, the consequence of illegality in relation to the parties contract is that the court will not come to the assistance of any party to an illegal contract who wishes to enforce it. This position of the law is founded on the principle of public policy and is expressed in the maxim ex turpi causa non oritur actio, meaning that an action does not arise from a base cause."***

For the above reasons, the claim of the Claimant is hereby dismissed in its entirety.

I must observe, however, that the Defendants having not filed any defence to the Claimant's action, it would be unconscionable for the Defendants to think that the law could be used in their favour to escape or enjoy with impunity their wrongdoings. The procedure adopted by the Claimant may be the wrong one, but I suspect that the Claimant could have recourse to proceedings under the criminal law.

This is the judgment of the Court.

HON. JUSTICE O. O. BAMODU, mni
(Presiding Judge)