

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
THIS 3RD DAY OF NOVEMBER, 2022**

SUIT NO: CV/12/2022

BETWEEN:

BARRISTER DAUDA D. MUHAMMED-----CLAIMANT

AND

- 1. RAZOR SHARP COLLECTIONS LIMITED**
- 2. MR. UCHE IGBOKWE**



DEFENDANTS

U. I. Okworie for the claimant

P. O. Oghagbon for the defendant.

JUDGMENT

The claimant instituted this action on the 14th of October, 2019 and claims against the defendant as follows;

1. A declaration that the swapping of the goods bought by the plaintiff, by the defendants unknown to the claimant amounts to breach of contract.
2. An Order of this Honourable Court directing the defendants to pay the claimant the sum of N55,000.00(Fifty five Thousand naira) only being the value of the goods(a suit) bought by the plaintiff from the 1STdefendant's branch in Abuja of which its trouser was deliberately swap (sic) by the defendant during the packing of the said goods.
3. General damages against the defendants jointly and severally and in favour of the claimant for breach of contract in the sum of N10,000,000.00(Ten Million naira) only.

4. The sum of N1,500,000.00(One Million Five Hundred Thousand naira only) being the sum for the paid (sic) to lawhaven Solicitors and Advocates to institute this suit.

The plaintiff in his adopted witness statement on Oath averred that on the 21st day of September, 2019, he went to the branch office of the 1st defendant's company and purchased a suit(a jacket and trouser), and in a bid to select his size, did test about five different suits, some of which were gray and blue in color with the sizes 56 & 58, and later settled for a blue suit marked size 58, with the trouser also marked 58. That the employee of the 1st defendant company could not find a suit case in the defendant's store to pack the suit and had to go to the inner store to pick a suit case and pack the suit, and that while the packing was going on, he was directed to the pay point to make payment via the P. O. S. machine provided by the defendant while the suit was still with the employee of the defendant who was looking for a suit case to pack it. He paid the sum of N55,000.000 (Fifty Five Thousand Naira) for the suit via the P. O. S. and a receipt was printed for him, headed Zenith bank, the employee of the 1st defendant came out of the inner store with a suit case, packed the suit inside , and accompanied him to his car to drop it.

He took the suit home the way it was packed and on getting home, he immediately gave the trouser to his tailor and asked him to fit the length. And on getting back the trouser, he discovered that the waist size does not correspond to what he bought as it could not enter his waist. He checked the size marked on the trouser and found out that it was not the size he picked and paid for as the size given to him was size 50 and not 58 he immediately got the 1st defendant phone number from the souvenir given to him by the 1st defendant and put a phone call across to the 1st defendant's branch at Gwarimpa to report his observation to him. The employee

of the 1st defendant that was called informed him that since he had amended the trouser, there is nothing the company could do about it. He was not satisfied with the answer and drove back to the 1st defendant's branch at Gwarimpa where the transaction took place, and was told the same thing.

He consequently briefed his counsel Bankoleola Opashi Esq. who wrote to the 1st defendant and copied their branch office in Gwarimpa requesting for a refund of the sum paid by the claimant for the goods bought from the company. That his intention of the purchasing the suit was to wear it for wedding and churches but had to resort to alternative wears after the disappointment by the defendants. The plaintiff tendered in evidence documents and the contentious suit as Exhibits A1-A5 respectively.

The defendant on the other hand called its witness, the branch manager of the 1st defendant's office in Gwarimpa, Itopa Michael Musa. He adopted his witness statement on Oath on the 19th day of October 2021. He contained in his statement on Oath that the plaintiff tested a size 58 blue suit and thereafter proceeded to make payment for same after being satisfied with it. That contrary to the belief of the claimant there are more than enough suit cases in the open store of the Gwarimpa branch of the 1st defendant and so the employee, himself inclusive is not required to go to the 1st defendant's inner store to source for suit cases to give customers. That all transaction between the 1st defendant and any of its customers are usually carried out in the open store of the 1st defendant so as to ensure transparency. That the claimant made payment for the size 58 blue suit which he bought and consequently proceeded to defray payment for it, having tested and being satisfied with it. And that when the claimant put a call across to representative of the 1st defendant in a bid to return the trousers, which he had earlier paid for but had been amended, he was duly

informed that having amended the pair of the trouser, he cannot possibly return same, as it is against the policy of the 1st defendant. That the claimant while making attempt to return the suit on the 21st day of September, 2019 at the 1st defendant office made a scene at the aforesaid office threatening to deal with staff in the employ of the 1st defendant if his demands were not met. And that the action of the claimant caused severe damage to the 1st defendant's reputation and this has led to loss of revenue on the part of the 1st defendant as some of his customers are apprehensive to further patronise the 1st defendant because of the threat by the claimant.

The defendant also counter claim against the claimant/defendant as follows;

- a. A declaration of court that the action of the claimant coming to the 1st defendant's branch office situate at 1st Avenue Gwarimpa causing a scene in a bid to return the already purchase suit is overreaching.
- b. An Order of perpetual injunction restraining the claimant/defendant to counter claim from entry into any of the 1st defendant's office outlet in Nigeria.
- c. General damages against the claimant/defendant to counter claim in favour of the defendants/counter claimants in the sum of N10,000,000.00(Ten Million Naira) only
- d. The sum of N1,500,000.00(One Million Five Hundred Thousand Naira only)as cost of this suit.

The witness tendered three documents as Exhibits –viz-(A) Computer generated receipts both dated 21st September, 2019-Exhibits D1 and D2. (b) Cash receipts headed Sale Farrae Solicitors- Exhibit D3.

Both witness to the plaintiff and the defendant were examined under cross examination by counsel to the respective parties. The

relevant part of the evidence shall be considered in the course of the Judgment.

ADDRESS OF COUNSEL AND RESOLUTION OF ISSUES:

The defendant's counsel P.O. Oghagbon Esq. in the written address, dated 8th November, 2021 contended that there was no cause of action against the 2nd defendant. He submitted that the general rule is that a claimant is at liberty to join any person(s) whose presence he feels is needed in the suit to be commenced by him. He referred to the provision of Order 13 Rule 4 of the rules of this Honourable Court which states that "Any person may be joined as defendant against whom the right to any reliefs is alleged to exist whether jointly, severally or in the alternative".

He argued that litmus test which every claimant must pass before joining any person as defendant is that there must be a cause of action. He relied on the case of **Chevron Nig. Ltd. Vs. Lorestar Drilling (Nig) Ltd.(2007) LPELR 842, OLUWATOSIN & ANOR V. OLD NAUTICAL (NIG) GENERAL INSURANCE CO. LTD.(2017) LPELR 45351**. He stated that apart from the paragraph 4 of the statement of claim which states "The 2nd defendant is one of the directors of the 1st defendant company and manages the 1st defendant's office at **Drumstix building, 1st Avenue Gwarimpa Estate Abuja**". There are no other averments or evidence from the claimant that alleges cause of action against the 2nd defendant. He further submitted that a duly registered company as the 1st defendant in this suit is for all intent and purposes distinct from its promoters and /or Directors. He relied on the case of **AFROSTUFF(SAS) (NIG) LTD. V AZEDAMA INVESTMENT CO. LTD.(2015) LPELR 25797**. In addition he referred to the case of **Ajayi&Ors Vs. Jolayemi(2001)LPELR 292**, where the Supreme Court held inter-alia "It is improper to join as co-defendant, persons against whom the plaintiff have no cause of action and against whom he has made no claim and whose interest is adverse to that of the

defendant". He urged the court to strike out the name of the 2nd defendant in line with the provisions of Order 13 rule 18(2) of the rules of this court.

I do not agree with the submissions of learned counsel to the defendants that there was no cause of action against the 2nd defendant. The 2nd defendant being one of the directors of the 1st defendant is an alter ego of the 1st defendant. These persons because of their position are the directing mind of the company and the will of the company. They are its cooperate personality. See the case of **Orji V. Anyabi 1999 LPELR 5710 CA**. It is elementary to state that companies carry out their activities through the personalities of their directors, and other persons who are agent servants of the company. The acts of any of the servants of the company may in most cases bind the corporate entity. The joinder of a director of the company therefore does no harm to the substance of an action after all whatever is the decision of the court binds its corporate personality who are the organs directing the affairs of the company. On the principles governing the issue of joinder of parties, the Supreme Court in the case of **Ige & ORS Vs. Farinde & ORS. (1994) LPELR 1452 SC** held thus "I will conclude by re-emphasizing that the cardinal principle of law governing the issue of joinder of parties is whether the interveners are necessary parties to the action and whether they will be directly affected or bound by the decision of the court in the suit by interfering with their legal rights over the matter in dispute"

In my view, I do not think that there ought to be cause of action against the director of a company where an action ensued against the company before he is joined as a party to the suit. In any event, assuming but not conceding that the 2nd defendant was wrongly joined as a party, the case of the claimant from the pleadings still stand against the 1st defendant. The preliminary issue raised by the

counsel to the defendants therefore does not hold water and is hereby discountenanced.

To the substantive action, the defendant counsel distilled two issues for determination, to wit;

- a. Whether the plaintiff on the preponderance of evidence before this Honourable Court is entitled to the reliefs sought.
- b. Whether the defendants/counter claimants are entitled to the reliefs sought vide their counter claim.

The claimant's counsel on the other hand formulated two issues for determination in the written address dated and filed on the 10th of February, 2022. They are;

- a. Whether the claimant is not entitled to the reliefs claimed having discharged the burden of proof placed on him.
- b. Whether a counter claim succeeds on its own without establishing same.

I have calmly considered the argument of counsel for the parties and of the view that the substance of this action can be determined based on the two issues formulated by both counsel as they are one and the same. On whether the plaintiff is entitled to the reliefs sought, it is evident that the parties are ad-idem that the plaintiff purchased Exhibit A5 (The pair of suit in contention) from the 1st defendant, it is also admitted by the witness to the 1st defendant that the size which the plaintiff chose and purchased was size 58. In paragraph of the defendant joint statement of defence and counter claim and paragraph 3 of the witness statement on Oath Musa Itopa Michael, the defendant stated on the 21st day of September 2019, when "the claimant came to the Gwarimpa branch of the 1st defendant, he tried and only tested a size 58 of this suit and thereafter proceeded to make payment for same after being satisfied with it". The defendants however in trying to deny that

the representative swap the trouser that came with the suit with another size(50) which was not fitted for the plaintiff when he took the suit home, “That contrary to the allegation of the claimant, there are more than enough suit cases in the open store at the Gwarimpa branch of the 1st defendant 's office, and so no employee, myself inclusive is required to go to the inner store for suit cases to give customers. That all transaction between the 1st defendant and any of its customers (the claimant inclusive) are usually carried out in the open store of the 1st defendant to ensure transparency”.

It is usual that a piece of suit come in with both the top (jacket) and the pant having the same size. The defendant have not satisfactorily explained or rebutted the claim of the plaintiff that he tested the suit size 58 and was fitted at the 1stdefendant's store but got home to meet different trouser size accompanying the jacket. The suit bought by the claimant on getting home did not meet the description or specification the claimant chose in the 1st defendant's store.

The argument of the defendant's counsel in his written address that the plaintiff failed to substantiate the allegation that the trouser of the suit was swapped by not producing to the court CCTV footage which he said under cross examination would prove it, is baseless. The plaintiff tendered before this court Exhibit A5, the suit (the jacket and trouser) are of the same make, the property of the 1st defendant, with the size of the trouser labeled as 50 and the jacket 58. To me it is enough proof that both the trouser and the jacket are of different sizes, what evidence or proof again does the plaintiff need when the defendant's witness has informed the court unequivocally that the plaintiff tried the suit on, it was size 58 and it fitted him. The burden is on the 1stdefendant to explain why a trouser that was size 58 suddenly changed to size 50 when the plaintiff took it home. The **CCTV** camera if any which the claimant referred to under cross examination is that of the 1st defendant, and it is their

business to produce it in order to prove the transaction that took place and in particular as it relates to the claimant and the 1st defendant. On the contention of the defendant that the claimant failed to speak to the said Exhibit A5, It is my view that the Exhibit speaks for itself. It also accords with common sense that size 58 and 50 are not one and the same. I do not agree with the defendant's counsel that the evidence of the claimant is a mere speculation.

I endorse the argument of the plaintiff's counsel that the contract was for a specific goods a suit jacket and trouser all of the same body size and that the defendant sales boy mismatched the jacket with the wrong trouser.

The plaintiff's counsel relied on case of **GITTO CONSTRUCTION GENERALI (NIG) LTD. VS. INNOVATE & CO. ENTERPRISES & ANOR (2015) LPELR 25725 CA.** where the Court of Appeal defined a contract of sale of goods as follows thus ***"A contract of sale of goods is defined in Section 3(1) of the sale of goods law or section 2(1) of the Act to be a contract whereby the seller transfers or agrees to transfer, the property in the goods to the buyer for a money consideration called the price"***. The mismatching of the sizes amount to damage to the said suit, which makes it unfulfilled for the purpose it was meant to serve, it is a breach of contract of sale of the goods to the claimant and I so hold. The defence put by the defendants is that the claimant is aware of their no return policy as contained in the receipt issued to the claimant by the 1st defendant. The receipt admitted as Exhibit D1 was tendered by the defence as what was issued to the claimant. I find it difficult to attach any probative value to the said receipt with exemption clause inserted in it. The exemption clause did not state that the defective goods will not be returned but merely stated when and how goods are to be returned. On the propriety of the no-return, no refund policy, a consumer under the Consumer Protection Act has the right to reject an item

purchased, which is not in conformity with the specification, or it is defective in nature.

The Federal Competition and Consumers Protection Act of 2018 regulates and Protects the interest and welfare of consumers. Under the Act, a consumer has the right to reject good under the following circumstances;

1. Where the goods are intended to satisfy a particular purpose which is communicated to the supplier and upon delivery, the goods are not fit for that purpose.
2. Where the consumer did not have the opportunity of examining the goods before purchase for example, e-commerce and upon delivery the goods do not match the sample and or description or they do not meet up to the quality and type envisaged in the sales agreement.
3. Where the goods are defective and unsafe.

Where a consumer returns goods in any of these circumstances the consumer is entitled to a full refund of money paid for the goods. See the provisions of section **122** of the **FCCPA**, the circumstances of this case is such that can be attributed to either negligence on the part of the representative of the 1st defendant that packed the goods for the claimant, or deliberate swapping by the agent of the 1st defendant in order to cause loss to the claimant, and undue advantage to the defendants. One would have expected the 1st defendant to protect its business in good stride by accepting the return of the item from the claimant in order to promote a good business relationship with its customers. I am not unmindful of the facts that the claimant stated that he took the trouser to his tailor to adjust the length, while acting under the honest belief that he was mending a size 58 trouser. To uphold the defence of the defendant that the claimant cannot return the pair of trouser having adjusted

it, will be tantamount to allowing the defendant benefit from its own wrong-doing as provided in section 129(1) of the Act.

The act of the mismatching of the suit with the trouser of size 50 and packaging same for the claimant after he had tested and fitted into size 58 is misleading and deceptive on the part of the 1st defendant.

The provision of section 121(3) is apt and it states “where a consumer has agreed to purchase goods solely on the basis of a description or sample or both provided by the supplier, the goods delivered to the consumer shall in all material respect and circumstances correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or in a reasonable examination of the sample as the case may be”.

The no return, no refund policy inserted in the receipt of the 1st defendant is not applicable to the claimant's case. It is inconsistent with the rights of the claimant as a consumer and as protected by the Act.

I therefore declare no refund of money policy in Exhibit D1 as illegal, unwarranted and inconsistent with the Act.

Issue no, 1 is therefore resolved against the defendant.

Issue no. 2, on whether the defendants are entitled to their counter claim. It is trite that a counter claim is an independent action, it has its own life independent of the main claim and must be proved on preponderance of evidence See section 131 of the Evidence Act and the authorities of **DozyGroup of Company Limited Vs. MR L.N. Okeke(2016) LPELR 41522 CA.**

It is law that a counter claim is a separate independent and distinct action from the main claim. The burden of proof is on the counter-claimant to prove the counter claim by credible evidence Just as in

the main claim. See the case of **AdekunleTaiwo Vs. Chief felix Kola Ogunwole(2019) LPELR 47058 CA**. These authorities were copiously cited by the claimant's counsel at page 15 of his written address.

The fact that the claimant did not accompany the defence to the counter claim with a witness statement on Oath does not relieve the defendants of the burden to prove its counter-claim". The claim of the defendants that the claimant when he came to return the contentious suit, created a scene which led to their loss of customers and loss of revenue was not proved by any iota of evidence. The claim of the defendants on loss of customer and revenue is a special damage that must be specifically proved before it would be said that the defendants are entitled to their claim for loss of revenue. The defendants have not pleaded their particulars of damages resulting from the losses. The court is not a father Christmas that acts on speculations or sentiment. See the cases of **Yakubu V. Adamawa State Govt& ORS (2020) LPELR 5114 CA**, where the Court of Appeal held that "It is trite law that special damages must be pleaded and proved by the claimant. The claimant must satisfy the court as to how the sum claimed as special damages was quantified. See **Onyiorah Vs. Onyiorah&Anor(2019) LPELR 49096 SC, page 6**" See **Ado Ibrahim Vs. Ado Ibrahim 2014, LPELR 22850 CA. UBN PLC. V.AYABULE &ANOR(2011) LPELR 8239 SC .**

Based on the above reasoning and the authorities cited, I hold that the defendants have failed to prove their counter claim, and I hereby dismiss same. Issue no 2 is also resolved against the defendants.

On the whole, the claim of the plaintiff succeeds in the following terms;

1. The first leg of the claim succeeds as prayed.
2. The 2nd leg also succeeds.

3. On the claim for general damages, the plaintiff is entitled to the general damages for the loss of his money and the inability to use the suit for the purpose it was meant for when it was purchased, I hereby award the sum of Two Million Naira (N2,000,000.00) as general damages.

Finally, the sum of **N 1,500,000.00 (One Million Five Hundred Thousand Naira)** is awarded as sum paid by the claimant to his counsel law haven solicitors for prosecuting this action.

Signed

Hon. Judge