

IN THE SMALL CLAIMS COURT OF FEDERAL CAPITAL TERRITORY ABUJA
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA.

BEFORE HIS WORSHIP CHIEMENA. K. NONYE-OKORONKWO

DATED 28TH MARCH, 2024.

SUIT NO. CV/ISCC/4/2023

BETWEEN
IHECHUKWU CHIMA.....PLAINTIFF
AND
STEPHEN ONYEKWERE.....DEFENDANT

RULING

Before this Honourable Court is a Notice of Preliminary Objection brought pursuant to Section 6 (6) of 1999 Constitution 2011 (AS Amended), Order 2 Rule 2 (1), Order XV of the District Courts Rule 2021 and the Inherent Jurisdiction of this Honourable Court.

The Notice of Preliminary Objection filed by Learned Counsel to the Defendant/Applicant on behalf of the Defendant prayed for the following:

1. **AN ORDER** of this Honourable Court dismissing/striking out this suit in it's entirety for want of jurisdiction.
2. **AN ORDER** of Court that the whole proceeding is a nullity.
3. **AN ORDER** of Court that the process before this Honourable Court amount to an Abuse of process.
4. **AND FOR SUCH FURTHER ORDER(S)** as the Honourable Court may deem fit

make in the circumstances of this case.

The Prayers/Application are made under the following ground:

- a. **A Declaration that the Defendant's action of refusing to give access to portable water for drinking and domestic use is a violation of the terms of**

FEDERAL REPUBLIC OF NIGERIA
F. C. T. JUDICIARY
CERTIFIED TRUE COPY
Sign: [Signature]
Name: [Name]
Date: [Date]
HIGH COURT OF JUSTICE, ABUJA

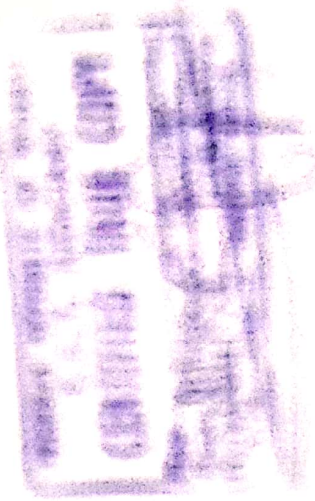
which agreement which upon its terms its own judgment fit for the Affidavit.

- 3. As Order of His Honorable Court directing the Defendant to pay the sum of \$10,000.00 (Ten Thousand Dollars Only) to the claimant as general damages.
- 4. As Order of His Honorable Court for the Defendant to pay the sum of \$100,000.00 (One Hundred Thousand and Two Hundred and Twenty Dollars Only) to get access to portable water for drinking and domestic use while in the property of the Defendant.
- 5. As Order of His Honorable Court for the Defendant to pay the sum of \$100,000.00 (One Hundred Thousand Dollars Only) as cost of prosecuting this suit.
- 6. As Order of His Honorable Court directing the Defendant to pay 10% of the judgment sum from the date judgment is delivered until the judgment sum is liquidated.

The Defendant's Objections & supported by 3 id paragraphs affidavit & deposition to the Supreme Court. (Evidence learned Court to the Defendant in 3, 4, 5) the sum of the 20,700.00 of the Court that the Defendant's Affidavit enough to rely on all the paragraphs of the Affidavit in support of the application. Also supporting the Defendant's Objections in support of the application which is to be considered as such for lack of evidence.

The Court's Respondent has filed a (3 Paragraphs Counter Affidavit) supported by 3-4 paragraphs Objections. The Counter Affidavit has been attached to the Court's Affidavit in support of the application. The Court's Affidavit is also supported by 3-4 paragraphs Objections. The Counter Affidavit is also supported by 3-4 paragraphs Objections.

- 4. Whether or not the Court's judgment by its record is such that the Defendant is bound by the Court's judgment as seen on the face of the record is before the Chief Justice Court and not the Small Claims Court.
- 5. Whether or not the Court's judgment by its provisions of law is binding on the Applicant/Defendant and the Defendant for constituting contempt of Court through representations of legal practitioners before the Honorable Court.



- c. Whether or not, the Court is empowered by the provisions of law, to strike out the Affidavit in Support of the Preliminary Objection of the Defendant/Applicant or all the process filed by the Defendant/Applicant for being Defective?"

The written address contained legal argument in support of his prayers urging the court to dismiss the Preliminary Objection of the Defendant /Applicant in its entirety.

The Defendant/Applicant has challenged the Jurisdiction of this Honourable Court sitting as a Small Claims Court to the effect that the suit is incompetent before this Honourable Court as the subject matter does not fall within the Jurisdiction of the Small Claims Court but the District Court.

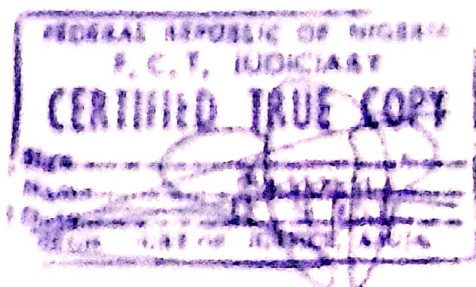
He relied on several cases including the case of **CBN .V. S.A .P Nigeria Ltd. (2005) 3 NWLR (Pt. 911) page 152 Ratio 2**. Where the Court held that "for a Court to have jurisdiction, the following conditions must be present:

- a. The proper parties are before the court.
- b. The subject matter falls within the jurisdiction of the court.
- c. The composition of the court as to the members and qualifications.
- d. The suit commenced by due process of law and upon fulfilment of any conditions precedent to assumption of jurisdiction.

Learned Counsel, Mr. G.O Ike Esq. argued summarily and in conclusion that a lack of jurisdiction will nullify the proceedings because jurisdiction is the pillar upon which the entire case stands. Where a Court goes ahead despite a lack of same will nullify the suit. This is a summary of his legal argument. (Please refer to the Written Address for the full argument).

In response, the Claimant/Respondent has argued that at the inception of the suit, he had instituted the suit before the "Regular District Court" but when he returned to take a date, he was informed that the suit was transferred to the Small Claims Court (Paragraph 2) of Witness Statement on Oath/Affidavit). That his idea was for the suit to be heard at the District Court. He argued that a Competent Court is bound by its record and address of Counsel cannot replace evidence. He relied on cited the following authorities & statutes:

- a. Section 122 (2) (m) of the Evidence Acts 2011
- b. **Akinpelu .V. Adegboye (2008) 10 NWLR (Pt. 10 96) 531 at 558, etc.**



He urged the Court to hold that the matter was filed by the Claimant/Respondent before the Chief District Court and not Small Claims Court, he urged the Court to so hold.

In Respect to this issue, I am in total agreement with both parties. Firstly, jurisdiction is most important, the life blood, the life, the pillar, the major foundation of any suit and the absence of same would render the judgment or any outcome from the suit a nullity, no matter how wonderful, brilliant such outcome or judgment is. The parties or the Court itself cannot cloak itself with jurisdiction suo motto or by agreement of parties. The only source of jurisdiction is the Constitution and/or the statute that created the Court.

Ugba & Anor V. Suswam & Ors (2011) LPELR 8635 (CA). IGP & Ors V. Jafary (2018) LPELR – 47361 (CA). I must also state that once the jurisdiction of a Court is challenged by either party to the suit or the Court raises it suo moto itself, the Court will give consideration to the following to ascertain whether it has jurisdiction or not, the are:

- a. The claims of the parties.
- b. The statutes creating the Court as Courts are creatures of statutes.

Ebohon Vs. A. G Edo State & Ors (2016) LPELR 41269 (CA)

A plethora of authorities are all in support of this principle. A few more others hold the same view in the following words:

“Jurisdiction of Court is neither a matter of desire of the parties nor their consent, parties or consent cannot confer jurisdiction on a Court, the nature of the claim before the Court and the constitution or other statutes are the parameters that determine the jurisdiction of the Court”.

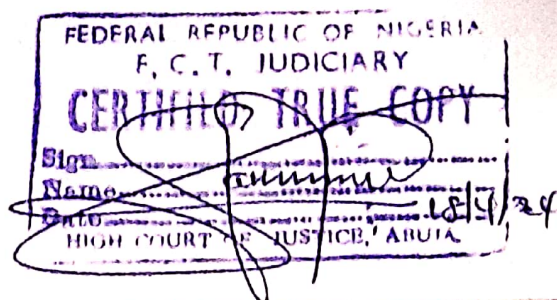
Another hold the view that ***“It is the statement of claim that activates and breathes life to the jurisdiction of the Court and when that statement of claim is irregular, it will be held to be defective and in capable of activating the jurisdiction of the Court”***

Adeniyi V. Ogunlana (2015) LPELR – 40908 (CA)

I have looked upon the claims of the Claimant against the Defendant/Applicant are hereunder reproduced:

- a. A Declaration that the Defendant’s action of refusing to give access to portable water for drinking and domestic use is a violation of the terms of

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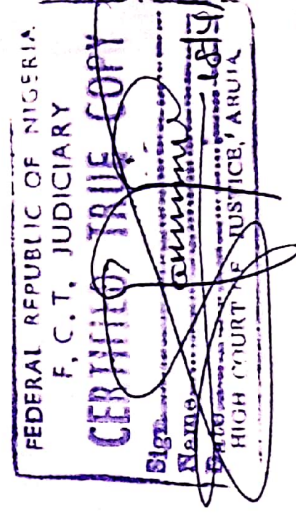
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verbal agreement which upon he rented his one bedroom flat to the claimant.

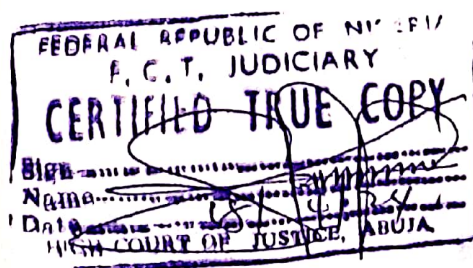
- b. An Order of this Honourable Court directing the Defendant to pay the sum of **₦2,000,000.00 (Two Million Naira Only)** to the Claimant as general damage.
- c. An Order of this Honourable Court for the Defendant to pay the sum of **₦8500 times twelve, totaling ₦102,000 (One Hundred and Two Thousand Naira)** only as cost for using his car to get access to portable water for drinking and domestic use while in the property of the Defendant.
- d. An Order of this Honourable Court for the Defendant to pay the sum of **₦50,000 (Fifty Thousand Naira)** only as cost of prosecuting this suit.
- e. An Order of this Honourable Court directing the Defendant to pay 10% of the judgment sum from the date judgment is delivered until the judgment sum is liquidated”.

Also it is imperative to reproduce the area or subject matter or suits competent for the Small Claims Court. **Article 2 Rule 1 of the District Courts Act Practice Directions on Small Claims 2022** provides that the Small Claims Court will have jurisdiction to entertain suits where:

- a. The Defendant or one of the Defendants reside or carry on business in FCT, Abuja
- b. The cause of action arose wholly or in part in the FCT, Abuja.
- c. The claim is for a liquidated monetary demand in a sum not exceeding **₦4,000,000** excluding interests and costs;
- d. The Claimant has served on the Defendant a letter of demand as in form SCA1

The enabling statutes conferring jurisdiction on the Small Claims Court to adjudicate over disputes is the District Court Act, from which the Practice Direction is derived. I thought this was worthy mentioning. The suit is completely not in compliance as per subject matter (Claims of the Claimant) for the Small Claims Court. I understand the Defendant's view that the Court is bound by it's record, considering the fact that the suit was initially instituted before the District Court of the FCT, Holden at Bwari. I have looked at the minutes of the Acting Chief Magistrate. It reads **“Please assign to His Worship Chiemena N.O” (Small Claims)**. It is the true position that the suit was assigned to the Small Claims Court. But should the Small Claims Court continue in that light to hear the suit even if it lacks

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jurisdiction solely because it was assigned? I do not think in the affirmative. Also **Article 16 (1) of District Courts Act Practice Directions** provides that Every District Court Judge presiding in a Small Claims Court must take judicial control and management of all cases allocated to him/her by the Chief Registrar/Administrative District Judge.

It is also trite principle that the issue of jurisdiction can be raised at any time even for the first time when the matter is at the Supreme Court. But I am of the respectful view that it is raised earlier for the good of the parties and the Court and in order to save precious time. **British Airways Plc V. Amadi (2011) LPELR 3890 (CA)**

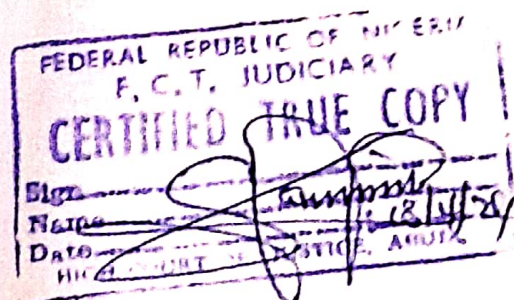
I am also of the respectful view that none of the claims of the Claimant is Small Claims compliant. The Small Claims Court can only assume jurisdiction where the Claimant's Claim are liquidated debts and within **N4,000,000** and not including interest or costs. The sum must be ascertainable, liquidated etc.

A liquidated money demand or claim may be defined as a claim or demand, in which the amount is fixed or has been agreed upon or is capable of ascertainment by mythical computation or operation of law. See **Iron Products Ltd Vs. S.A.C (Ltd) LPELR**. The Black Law Dictionary at pg 240 defines what a liquidated claims is, it defines it as:

"A Claim for an amount previously agreed on by parties or that can be precisely determined by operation of law or by the terms of the parties agreement"

Following these definitions, I do not see how the claims of the Claimant are liquidated. General damages can never be called or considered as liquidated amount, interest on judgment sum is certainly not liquidated (as a matter of fact, Small Claims Court lacks jurisdiction to grant any interests or costs). To cut the very long story short, this suit is not fit for the Small Claims Court.

However, considering the fact that it was earlier instituted before the **"Regular District Court"** proper. It would be in the interest of justice to strike same out of the Small Claims Court and direct that it is moved to the general cause list. I make this directive relying on **Article 17 of District Courts Rule Practice Directions on Small Claims** to the effect that



where no provision is made in the practice direction, a District judge shall rely on the District Court Rule 2021, the High Court Civil Procedure Rules or any other written law as far as they can be conveniently applied for the purpose of the Small Claims Court.

In relying on Order XXXII (6) (2) of the District Court Rule 2021 which provides:

“Where at any stage in the course of or in connection with any proceeding there has by reason of anything done or left undone been a failure to comply with the requirement as to time, place, manner or form, the failure shall be treated as an irregularity and may not nullify such steps taken in the proceedings. The District Court Judge may give any direction as he deems fit to regularize such steps”.

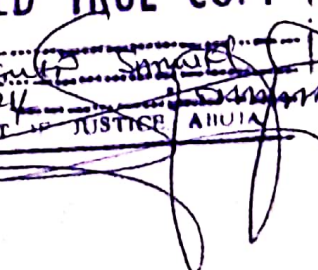
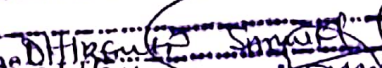
I believe that I am empowered to make the above directive that is striking the suit from the Small Claims cause list and reassigning to the General cause list. It is also in the interest of justice that I make the said direction.

In respect to the other argument of the Claimant/Respondent in the area of contempt of Court and the other, it is my firm believe that there is no need to delve into same, considering the fact that the main issue which is the jurisdiction of the Court has been dealt with. The other issues are consequential or ancillary issues and flow from the principal issue, which is whether or not the Court is empowered to hear the suit. Since the Court is not empowered to hear the suit, I do not see the need to delve into other issues.

I thank parties for listening.

SIGN:  DATE: 18/4/24
CHIEMENA .K. NONYE-OKORONKWO
DISTRICT JUDGE.....
F.C.T. HIGH COURT, ABUJA

Chiemena .K. Nonye-Okoronkwo
Presiding District Judge 2

FEDERAL REPUBLIC OF NIGERIA
F. C. T. JUDICIARY
CERTIFIED TRUE COPY
Sign: 
Name: 
Date: 18/4/24
HIGH COURT OF JUSTICE ABUJA