

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 15<sup>TH</sup> JANUARY, 2020**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/2396/2018**

**BETWEEN**

**REGISTERED TRUSTEES OF SOCIETY AGAINST  
FAKE AND SUBSTANDARD GOODS AND  
PRODUCTS IN NIGERIA [SAFE GP NIGERIA]** } **CLAIMANT/  
RESPONDENT**

**AND**

**H-MEDIX PHARMACY LIMITED** --- **DEFENDANT/  
APPLICANT**

**RULING**

The claimant instituted this suit on 23/7/2018 by writ of summons. In the statement of claim filed along with the writ of summons, which was signed by IbukunOlaomiEsq., the claimant claims the following reliefs against the defendant:

1. An order of this Honourable Court declaring the activities of the defendant to be illegal and a sabotage to our economy and rip off to innocent citizens in Nigeria.

2. An Order of Court directing National Agency For Food and Drugs Administration and Control [NAFDAC] to conduct adequate investigation on the defendant not only on the drugs mentioned in this suit but also on all other drugs on display at the defendant's shop at A03 District, opposite FCDA Quarters, Ahmadu Bello Way, Garki II, Abuja.
3. An Order of Court directing National Agency For Food and Drugs Administration and Control [NAFDAC] to destroy any unregistered drugs on sale/display at the defendant's shop at A03 District, opposite FCDA Quarters, Ahmadu Bello Way, Garki II, Abuja.
4. An Order of Court directing the defendant to forthwith stop the nefarious activities, importation, distribution and sale of unregistered drugs so as to reduce the overwhelming rate of youths *[sic]* and untimely death of the citizens of our dear Country.
5. An Order of this Honourable Court directing the defendant to pay the sum of N50 million as cost of investigating and prosecuting them *[sic]* in Court.

In its statement of claim, the claimant stated the following facts in support of its reliefs:

1. The claimant is a non-governmental organization registered in Nigeria. Its sole mandate is *"complementing the efforts of other agencies of*

*government towards curtailing the patronage, sale and usage of fake and substandard goods and products in Nigeria ... as contained in its incorporation document, the claimant can only use the Court room as its instrument of waging war against merchants of death."*

2. There is high level of kidney diseases in Nigeria caused mainly by fake and substandard goods and products which need to be tackled head on.
3. The defendant is a known pharmaceutical company in Abuja and is notorious in the sale and distribution of unwholesome drugs and as a result, the claimant approached the defendant to purchase same so as to ascertain the facts as presented to the claimant.
4. On 6/4/2018, the claimant bought the following drugs from the defendant: [i] Zediten tablet [used for the management of allergies]; and [ii] Efemoline eye drop [used for eye treatment].
5. The claimant discovered that there are so many unregistered drugs at the defendant's place of business and the defendant is busy selling unregistered drugs and products. The claimant could only buy the above two drugs because of the limited resources at its disposal. Innocent citizens are buying these drugs without knowing that the drugs are not registered as provided by NAFDAC.
6. There is urgent need to stop the nefarious activities of the defendant since its activities directly or indirectly have caused the untimely death of Barrister Ifeanyi Okonkwo on 23/6/2018 and Mr. Anthony

Ozoemenaon 12/1/2018. Both of them died as a result of the use of counterfeit and unregistered drugs they respectively used for chemotherapy treatment for cancer of the intestine.

7. The claimant filed this action as a way of contributing its own quota in sanitizing our environment from the activities of merchants of death. This action is basically "*public interest litigation*" to compliment the activities of other government agencies so as to sanitize our health sector and other sectors under grave attack.

Upon being served with the originating processes, the defendant filed its statement of defence on 17/6/2019, which was served on the claimant on 18/6/2019; Barrister Itodo Emmanuel Joseph received the process. The statement of defence was deemed as properly filed and served by Order of the Court granted on 29/10/2019.

On the same date [17/6/2019], defendant filed a motion on notice praying for:

1. An order of Court dismissing the claimant's suit *in limine*.
2. And such further order as the Court may deem fit to make in the circumstance.

Suzan Obianuju, a manager in the defendant, filed a 24-paragraph affidavit in support of the motion; attached thereto are Exhibits D1 & D2. Abubakar Sadiq Muhammad Esq., filed a written address with the motion. From the records

in the case file, the claimant was served with the motion on 18/6/2019; Barrister Itodo Emmanuel Joseph received the process. The claimant did not file any process in opposition. At the hearing of the motion on 29/10/2019, AbubakarSadiq Muhammad Esq. adopted the defendant's processes.

In the affidavit in support of the application, Suzan Obianuju stated that:

- i. The claimant is not legally mandated to regulate and administer drugs or any products in Nigeria. NAFDAC is the exclusive agency legally mandated and empowered to administer/regulate food and drug in Nigeria.
- ii. Standard Organization of Nigeria is exclusively empowered by law to regulate standards of products in Nigeria.
- iii. The claimant is not a certified member of any medical/drug research agency in Nigeria and is not an agent of NAFDAC in the regulation and administration of food and drug in Nigeria.
- iv. The defendant does not indulge in the business of fake or substandard drugs. The defendant does not sell unregistered/illegal drugs in any of its outfits.
- v. The claimant is not known to the defendant and the defendant did not sell any unregistered/illegal drug to the claimant. The receipt presented by the claimant has no nexus with drugs purportedly bought from the defendant. The receipt presented by the claimant is not an item's receipt

but a point of sale [POS] receipt for items other than the purported drugs. The claimant has not shown any receipt indicating that it bought unregistered/illegal drugs [Zaditen and Efomoline] or any kind of item from the defendant.

- vi. The alleged victims of illegal drugs stated by the claimant never bought or used any drug from the defendant. There is no nexus between the defendant, its business and the alleged victims of fake/illegal drugs.
- vii. The rights and obligations of the claimant or any of its members have not in any way been adversely affected by the defendant's business.

In his written address, AbukakarSadiq Muhammad Esq., learned counsel for the claimant, formulated two issues for determination, to wit:

1. Whether the claimant possesses the necessary *locus standi* to institute this action against the defendant in order to invoke the jurisdiction of this Honourable Court.
2. Whether from the totality of the claimant's processes, this Honourable Court has the jurisdiction to entertain this suit.

The two issues formulated by the defence counsel are interrelated. This is because the position of the law is that where it is found that a person has no *locus standior* legal standing to institute an action, the court will have no jurisdiction to entertain his claims. When the *locus standi* of the claimant is attacked, it is a challenge to the jurisdiction of the court to hear and determine

the suit. See the cases of Dada v. Ogunsanya [1992] 3 NWLR [Pt, 232] 754 and Okon v. Ekpenyong & Anor. [2014] LPELR-23496 [CA]. Therefore, I adopt Issue No. 1 above as the issue for determination in this application.

Learned counsel for the defendant posited that *locus standi* can only be accorded to a claimant who shows that his civil rights and obligations have been adversely affected by the defendant. When a person's *locus standi* is attacked, the question is whether the person is a proper party to request the adjudication of a particular issue and not whether the issue is justiceable. He referred to Sen. Abraham Adesanya v. The President of Nigeria [1981] 2 NCLR 358. Abukakar Sadiq Muhammad Esq. submitted that the proper persons to sue for fake/unregistered drugs or substandard products are NAFDAC and Standard Organization of Nigeria respectively; and not the claimant.

The defence counsel further argued that the claimant is not a customer of the defendant and it did not produce any sufficient evidence that it patronized the defendant. The claimant has not proved that the alleged patients/victims bought and used drugs from the defendant. He submitted that the claimant is "*on a malicious wild goose chase*" and lacks the *locus standi* to institute this suit against the defendant. Therefore, the Court has no jurisdiction to entertain the suit. He concluded that the claimant's suit is not sustainable for want of *locus standi* and same should be dismissed.

In Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280, it was restated that the term *locus standi* denotes the legal capacity to institute an action in a court of law. In an action commenced by writ of summons, the question whether a plaintiff[or claimant] has *locus standi* to institute an action is determinable from the totality of the averments in the statement of claim. In a suit commenced by originating summons, what determines whether the claimant has *locus standi* to institute the action are the questions for determination, the reliefs sought and the affidavit in support of the suit. In Taiwo v. Adegboro [2011] 11 NWLR [Pt. 1259] 562, the Supreme Court held that the rule about *locus standi* developed primarily to protect the courts from being used as playground by meddlesome interlopers or busy bodies who really have no real stake or interest in the subject matter of the litigation.

I have earlier referred to the averments in the statement of claim where the claimant stated that the suit is “*basically public interest litigation to compliment the activities of other government agencies so as to sanitize our health sector and other sectors under grave attack.*” It is evident that by instituting this action, the claimant ignored NAFDAC, which is the government agency responsible for the regulation and administration of foods and drugs in Nigeria. In reliefs 2 & 3, the claimant prays the Court to: [i] direct NAFDAC to conduct adequate investigation on the drugs sold by the defendant; and [ii] to direct NAFDAC to destroy any unregistered drugs on display at the defendant’s shop. There is nothing to show that the claimant reported its observations upon which the suit is predicated to NAFDAC for investigation before it instituted this suit.



In relief 1, the claimant seeks an order of the Court *“declaring the activities of the defendant to be illegal and a sabotage to our economy and rip off to innocent citizens in Nigeria.”*The Court is of the view that since NAFDAC was set up for the regulation and administration of foods and drugs in Nigeria,the claimant ought to have reported its observations which led to this suit to NAFDAC for investigation and necessary actions in line with its statutory mandate.

It is also important to point out that the claimant alleged that Barrister IfeanyiOkonkwo and Mr. Anthony Ozoemena died as a result of the use of counterfeit and unregistered drugs,which they used for chemotherapy treatment for cancer of the intestine.There is nothing to show that the drugs which allegedly caused the death of Barrister IfeanyiOkonkwo and Mr. Anthony Ozoemena were from the defendant. There is also nothing to establish a nexus between Barrister IfeanyiOkonkwo and Mr. Anthony Ozoemenaand the claimant to entitle it to institute this action to complain of their death.

The Court is of the considered view that the claimantcan be described as a meddlesome interloper or busy body that really has no real stake or interest in the subject matter of this litigation. As the Court had found, the subject matter of this suit is within the purview of the statutory responsibilities of NAFDAC.

The Court agrees with the submission of the learned defence counsel that the claimant has *nolocus standior* legal standing to institute this action and therefore the Court lacks jurisdiction to entertain the suit. Accordingly, the suit is struck out. The claimant shall pay cost of N50,000.00 to the defendant.

---

HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of counsel:*

AbubakarSadiq Muhammad Esq. for the defendant/applicant; with A. D. Farouk Esq.