

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 11TH DAY OF FEBRUARY, 2020

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 10

SUIT NO: CV/303/2009

MOTION NO: M/7353/19

M/7354/10

BETWEEN:

MAXCALA NIGERIA LIMITED

PLAINTIFF/RESPONDENT

AND

PIPE SUPPORTS LIMITED

DEFENDANT/APPLICANT

RULING

Before the Court are two applications filed by the defendant. The first is a notice of preliminary objection with number M/7353/19, seeking for an order striking out this suit for want of jurisdiction. The reason being that on the 14/12/2016, the Registrar of the Corporate Affairs

Commission (CAC) struck out the name of the plaintiff/respondent from the Register of Companies and same was published in the official gazette of 14/12/2016.

The application is supported by a 13 paragraphs affidavit, 3 annexures marked as PSL1, PSL2 and PSL3, and a written address duly adopted by **Davidson Oturu Esq.**

The plaintiff/respondent filed 7 paragraphs counter affidavit supported by a written address filed by **M.I. Arikewuyo Esq** and adopted by **Victor Osakwe Esq.**

The applicant filed a reply on points of law dated 1/7/19.

The second application is M/7354/19 praying for an order staying further proceedings in this suit until the final determination by the Supreme Court of the appeal against the judgment of the Court of Appeal in Appeal No. CA/A/367/2010. Four grounds support this application and a 14 paragraphs affidavit. Two Exhibits are attached

marked as PSL1 and PSL2. Davidson Oturu Esq adopted the written address in support of the application.

The plaintiff filed an 8 paragraphs counter affidavit supported by a written address adopted by Victor Osakwe Esq.

The applicant again filed a further affidavit on the 15/8/19.

Starting with the Notice of Preliminary objection, learned counsel to the applicant raised a sole issue for determination in the written address in support. The issue is;

“Whether this Court has jurisdiction to entertain the plaintiff/respondent’s suit as it is being maintained by a non juristic person.”

He submitted that the juristic personality of any party to any proceedings, apart from the statutory jurisdiction conferred on any Court, forms the bedrock of the

jurisdiction of the adjudicating Court, as well as the locus standi of the party suing. He added that when it comes to incorporations, by virtue of Section 37 of the Companies and Allied Matters Act (CAMA) all incorporated companies are automatically vested with juristic personalities. Counsel made reference to Section 525(1-3) of CAMA on the effect of the striking out the plaintiff's name off the Register of Companies, and urged the Court to give the statute its literal rule of interpretation. Reference was made to Calabar Central Co-operative Thrift & Credit Society Ltd vs. Ekpo (2008) 6 NWLR (part 1083) 362 at 392, Marwa vs. Nyako (2012) 6 NWLR 9part 1296) 199 at 280, Uwazuruike vs. Nwachukwu & ors (2012) LPELR - 15353.

Counsel further submitted that the provisions of CAMA clearly show that companies struck off the list of companies are dissolved, thus the plaintiff lacks the legal capacity to maintain this suit being dead. That the fact the respondent is the only plaintiff in this suit, having been ousted of locus

standi to institute an action, the appropriate order to make by the Court is one of striking out. Reference was further made to CCB (Nig) Plc vs. O'Slivawax Intl. Ltd & anor (1999) LPELR – 13346 (CA), Zain Nig. Ltd vs. Alh. Mohammed Kawu Ilorin (2012) LPELR – 9249 (CA), Adeyemi vs. Opeyori (1976) 9 – 10 SC 31 at 51, Nimpa vs. Pyedang (1994) 7 NWLR (part 356) 335 – 345. He urged the Court to strike out this suit for want of jurisdiction.

On his part learned counsel to the plaintiff submitted that the only way the defendant/applicant could challenge the capacity or locus of the plaintiff/respondent to sue would have been to file a Statement of Defence which will meet the averment in the Statement of Claim headlong and disclose its incompetence to file the suit. That without the Statement of Defence there is no way the Court can determine the issue of locus standi. He cited Imade vs. Military Admin of Edo State (2001) 6 NWLR (part 709) 478. He added that the defendant has not filed a Statement of

Defence, and that the preliminary objection is to frustrate the hearing of the plaintiff's case before the Court. That the plaintiff has deposed to the fact that it has commenced the issue of relisting the plaintiff's company back to the Company's Register with Corporate Affairs Commission (CAC). He urged the Court to refuse the application.

After hearing both counsel in this application and before proceeding to the merits of this application, it is pertinent to determine whether the Notice of preliminary objection amounts to a demurer as argued by learned counsel to the plaintiff/respondent. A demurer has been defined by the Black's Law Dictionary 8th Edition to mean a pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer.

Karibi – Whyte JSC in Mobil Oil (Nig) Plc vs. IAL 36 INC
(2000) 4 SC (part 1) page 85 defines demurer as:

“a common law procedure which enables a defendant who contends that even if the allegation of facts as stated in the pleading to which objection is taken are true, yet their legal consequences are not such as to put the defendant (the demurring party) to the necessity of answering them, or proceeding further with the cause. The whole basis of a demurer is in effect to short circuit the action, and by a preliminary point of law show that the action founded on the writ and statement of claim cannot be maintained.”

It is noted that the preliminary objection is challenging the jurisdiction of this Court, and the question is whether it amounts to a demurer. The Supreme Court in Nigeria

Deposit Insurance Corporation (NDIC) vs. Central Bank Ltd & anor (2002) 3 SCNJ 75 at 89 Uwaifo, JSC had this to say:

“The tendency to equate demurer with objection to jurisdiction could be misleading. It is a standing principle that in demurer, the plaintiff must plead and it is upon the pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or where appropriate, no locus standi...the issue of jurisdiction is not a matter for demurer proceedings. It is much more fundamental than that and does not entirely depend as such on what the plaintiff may plead as facts to prove the reliefs he seeks.”

It is therefore misleading to equate demurer with objection to jurisdiction. An objection to the jurisdiction of the Court is a threshold issue. It goes to the root of

adjudication and touches on the competence of the Court to entertain the matter. Where it is raised, it has to be taken first before taking any further steps in the matter. The issue can be raised at any time, even where there are no pleadings filed. Once raised, the Court has power to entertain it notwithstanding that the only processes filed is the writ of summons. For all these principles of law see the cases of Arjay Ltd vs. A.M.S. Ltd (2003) 7 NWLR (part 820) page 577, Owners of M.V. Arabella vs. N.A.I.C. (2008) 11 NWLR (part 1097) 182, Liverpool and London Steamship Plitech and Indemnity Ass. Ltd vs. M/T Tuma (2011) LPELR – 8979 (CA), Usman vs. Baba (2005) 5 NWLR (part 977) page 775 and Microsoft Corporation vs. Franike Associates Ltd (2011) LPELR – 8987(CA).

This preliminary objection in my considered view which is challenging the jurisdiction of the Court cannot be equated to a demurer as presented by learned counsel to

the plaintiff/respondent. I hold that it is proper before the Court and not an abuse of Court process.

Now the issue here is that the defendant applicant has challenged the jurisdiction of this Court to entertain this suit because the plaintiff has lost its juristic personality in the eyes of the law, it's name having been struck off the Register of Companies with the Corporate Affairs Commission (CAC) as contained in Exhibit PSL3 attached to the preliminary objection. The plaintiff/respondent has admitted this fact but added that the plaintiff has taken steps to be relisted.

The fact that the plaintiff has taken steps to be relisted in the Register of companies is immaterial at this stage. As it stands the plaintiff has lost its legal capacity and juristic personality in law. It is a fundamental principle of law that only a natural or juristic person can sue or be sued. See Xingjiang Power Transmission & Transformation

Engineering Co. vs. Motract Global Networks Ltd (2019)
LPELR – 47677 (CA).

In the absence of this juristic personality, I align myself with the reasoning of the Supreme Court in Admin/Execs, Estate, Abacha vs. Eke – Spiff (2009) 7 NWLR (part 1139) 97, where Mohammed, JSC held thus:

“As a general rule, only natural persons, that is to say, human beings and juristic or artificial persons such as bodies corporate are competent to sue and be sued before any Court of law. In other words, no action can be brought by or against any party other than a natural person or persons unless such a party has been given by statute expressly or impliedly or by common law either a legal personality under the name by which it sues or it sued or a right to be sued by that name... This is because a law suit is in essence, the

determination of legal rights and obligations in any given situation. Therefore, only such natural juristic person in whom the rights and obligations can be vested are capable of being proper parties in law suits before Courts of law. Following this general rule, where either of the parties is not a legal person capable of exercising legal rights and obligations under the law, the other party may raise this fact as a preliminary objection which, if upheld, normally leads or results in the action being struck out.”

See also ACB vs. Emostrade Ltd (1997) LPELR – 5213 (CA), Fawehinmi vs. NBA (No. 2) (1989) 2 NWLR (part 105) 558.

This Court is at one with the submission of learned counsel to the applicant citing the case of CCB (Nigeria) Plc vs. O’Silvawax International & anor (1999) LPELR –13346

(CA) where the Court of Appeal Per Mohammed J.C.C citing Oputa JSC (as he then was) in Nzom vs. Jihadu (1987) 1 NWLR (part 51) 563 stated thus:

“The dissolution of legal person is analogous to the death of an ordinary person. Now dead men are no longer persons in the eye of the law as they have laid down their legal personality with their lives at death. Being destitute of rights or interest they can neither sue nor be sued.”

For this reason, I hold that the plaintiff/respondent is not a legal entity that can sue or be sued, its name having been struck off the Register of companies by the Corporate Affairs Commission (CAC) and published in the Official Gazette of 14th December, 2016.

In effect the preliminary objection is sustained and the plaintiff’s suit is hereby struck out. I hold further that it will

be of no consequence to proceed with the motion for stay of proceedings and it is also struck out.

Signed

Honourable Judge

Appearances:

Victor Osakwe Esq – for the plaintiff

Davidson Oturu Esq – for the defendant