

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 24**  
**CASE NUMBER : SUIT NO: CV/1490/18**  
**DATE: : TUESDAY 12<sup>TH</sup> MAY, 2020**

**BETWEEN**

**N.D.I.C. PLAINTIFF/RESPONDENT**  
**(Liquidator of Hall mark Bank Plc.)**

**AND**

**MR. SUNDAY OGAR ..... DEFENDANT/APPLICANT**

## **RULING**

The Applicant vide a Motion on Notice approached this Honourable Court for the following:-

1. An Order of Court declining jurisdiction to hear this matter.
2. An Order striking out this Suit for being incompetent.
3. Any further Order or further Orders the Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which the Applicant was brought is as follows:-

1. The proper Plaintiff is not before the court.
2. The relevant statutory Notice necessary before the commencement of the Suit were not served.

3. The purported 7 days Notice of Owner's Intention to proceed to court is incompetent and was never served on the Defendant.

In support of the application is a 9 paragraph affidavit deposed to by the Defendant himself.

It is his deposition that he has been occupying a 3 bedroom apartment in the premises situated at No. 11 Parakou Crescent, Wuse II, belonging to Hallprops Estates Limited and as a tenant he has been dealing with the said Hallprops Estate Limited until recently when the Chambers of Mohammed Shuib laying claim to the Management of the property on behalf of the Claimant (N.D.I.C).

It is the averment of the Applicant that when they discovered different faces on the property with threat of evicting them, a letter was written to the Inspector General of Police vide Exhibit 'A'.

That the Hallmark Bank Plc. is not known to them as a tenant and Exhibit 'B' herein which is Corporate Affairs Commission (CAC) search show same.

That the Chambers of Mohammed Shuib did not show them any Court Order to show that indeed N.D.I.C was appointed provisional liquidator.

That the Plaintiff is not fully clothed by law to sue on behalf of the Defunct Hallmark Bank Plc.,and that he has never received any Quit Notice or 7 days Notice of Owner's Intention to proceed to court for recovery of the property.

A written address was filed wherein 2 issues were formulated for determination to wit;

- 1. Whether the proper Plaintiff is before the court and***
- 2. Whether the conditions precedent for initiating an action such as this have been fulfilled to warrant the court assuming jurisdiction.***

On issue number one, *whether the proper Plaintiff is before the court.* Learned Counsel submits that the proper Plaintiff is not before the court and the present Plaintiff (N.D.I.C) is an imposter not known to the Defendant.

Counsel argued further that, if a party lacks the locus to bring an action and he brings such action, the court cannot and will not hear him. *AJAYI VS ADEBIYI (2012)11 NWLR (Pt. 1310)1371 at 176.*

Learned Counsel further argued that there is no evidence before the court that Hallprops Estates Limited was a subsidiary of the Defunct Hallmark Bank Plc. and there is no link between the owner of the property (Hallprops Estate Limited) and the present Plaintiff (N.D.I.C).

On issue two, *whether the conditions precedent for initiating an action such as this have been fulfilled to warrant the court assuming jurisdiction.*

Learned Counsel submits that the Plaintiff has failed to fulfil the mandatory conditions precedent to commencing this action and as such, the court lack the necessary jurisdiction to hear this matter.

Counsel maintained that by virtue of the provisions of the recovery of premises Act, Defendant is entitled to be issued and served a Quit Notice and a 7 days Notice of Owner's Intention to proceed to Court to recover possession and that such was not done.

***IWUAGOLU VS AZYKA (2007) Vol. 29 WRN 120 at Page 136 Line 25.***

Upon service, the Plaintiff filed a counter of 20 Paragraph deposed to by One Oghenerd Bewon Tedjere.

It is the deposition of the Respondent that the Defendant/Applicant had never worked with the National Hospital nor had he been a Tenant of Hallprops Estate Limited, and that National Hospital had entered into a

tenancy agreement with Hallprops for a period of one year certain vide Exhibit '1'.

That a new tenancy was subsequently taken each year until 2006 and it was terminated vide Exhibit '2' and that the National Hospital Staff put in occupation of the property were aware of the termination of the tenancy vide Exhibit '3'.

It is the deposition of the Respondent that the Defendant/Applicant had been putting Tenants and collecting rent on the property ever since because he is aware that Hallmark Bank Plc. had been wound up and the assets of its subsidiaries including that of Hallprops Estate Limited had been vested on the liquidator.

That despite the Plaintiff not been a tenant, the Respondent's Solicitor through a bailiff of this court served him with 7 days Notice of Owner's Intention to recover possession which he refused to acknowledge but collected it vide Exhibit '7'.

A written address was filed wherein two issues were formulated for determination to wit;

- 1. Whether N.D.I.C as the official liquidator of Hallmark Bank and its subsidiaries has the locus standing to sue.*
- 2. Whether in instituting this action, the Plaintiff/Respondent in any way contravene the law.*

On issue one, *whether N.D.I.C as the official liquidator of Hallmark Bank and its subsidiaries has the locus standing to sue.*

Counsel maintained that Section 40(1) of N.D.I.C Act empowers the Plaintiff to act as liquidator of a failed Bank whenever the license of an insured institution is revoked.

***ANOZIA VS A.G. LAGOS STATE (2010)15 (Pt. 1216) Page 207.***

On issue two, *whether in instituting this action, the Plaintiff/Respondent in any way contravene the law.*

Counsel submit that the Plaintiff has not contravened any law that requires the Plaintiff to give any statutory Notice Counsel cited and relied on ***ODUTOLA VS PAPERSACK (NIG) LTD. (2006)18 NWLR Page 270.***

Court:- I shall proceed to consider the issue of locus standi raised by learned counsel for the Defendant to ascertain the competence of this action in view of its jurisdictional significance.

The issue of locus standi to sue is indeed primeval and fundamental in any action in court.

The law is trite that in our civil jurisprudence, a Defendant, as in this case, can impeach the locus standi of a Plaintiff under Section 6 (6) (b) of the 1999 constitution of Federal Republic of Nigeria as amended.

Once the issue of locus standi is challenged, the court must resolve same before any further consideration of the matter.

It is jurisdictional in nature in view of the fact that the legal capacity of Plaintiff to have instituted the action in view is being challenged.

***See OYEWOMI VS OSUNBODE (2004) FWLR (pt. 82) 1919.***

Now, the law is settled that only natural or artificial persons can initiate action in a court of law. In other words, only persons, natural or artificial with requisite juristic personality can initiate a legal action in court or to be proceeded against. ***See AG FEDERATION VS ANPP (2004) 114 LRCN (188).***

In considering the locus standing of Plaintiff, reference is usually made to the writ of summon all averment in the

statement of claim. It is the Justifiability of the issues therein that the court considers.

***AGBOOLA VS AGBODENU & ORS (2008) LPELR 84661.***

The essence of the condition of locus standi is to sieve and separate genuine litigants from mere busy bodies or impulsive who may be more mindful to be seen only to fight other people's cause against imaginary enemies.

It is also to protect the court from being used as a playground by professional litigants, busy body, meddlesome interlopers and cranks who have no real legal state or interest in the subject matter of the litigation pursue.

***PDP VS LAWAL (2012) LPELR 7972.***

It is the contention of the Defendant that the proper Plaintiff was not before this court and that the relevant Statutory Notices necessary before the commencement of

the suit were not served, and further that the Plaintiff is not fully clothed by law to sue on behalf of the defunct Hallmark Bank Plc.

Plaintiff on its part, maintained that the proper Plaintiff is N.D.I.C and it is the Plaintiff before this court by virtue of Section 40(1) of N.D.I.C Act.

Indeed, to have locus standi or standing to institute an action in court or tribunal, a Plaintiff must establish;

- i. “That the act being challenged has caused the Plaintiff actual injury.*
- ii. That the interest sought to be protected is within the zone of the interest meant to be regulated by the Statutory or Constitutional guaranteed question”.*

***ANOZIA VS A.G. LAGOS STATE (2010)15 (Pt. 1216)  
Page 207 at 234.***

Indeed capacity to institute and maintain an action in a court of law is not an all – corners affair. It is closely censored and strictly constricted by law. It is trite that in the case of a company, the right to litigate is exclusively vested in corporate bodies that are duly incorporated. ***FAWEHINMI VS N. B. A (2) (1982) 2 NWLR (Pt. 105) 558 at 645 paragraph F-G. See also section 36(6) of the Companies and Allied Matters Act, 1990.***

I have read section 40 (1) of the N.D.I.C Act.. there is no gain saying that N.D.I.C statutorily speaking is saddled with the responsibility as aptly stated in the counter affidavit of the Plaintiff/Respondent.

I further wish to observe that contrary to the argument of Defendant/Applicant, N.D.I.C at all times is a provisional liquidator with all the powers vested thereon for the sole purpose of bringing or defending in its name any action or legal proceeding which relates to the property of a Bank

so vested, for the purpose of recovering same and winding up the Bank.. I rely on the following authorities;

a. ***OREDOLA OKOYA TRADING CO.& ANOR VS BANK OF CREDIT & COMMERCE INT. & ANOR (2014) LPELR – 22011 (SC)***

***B. NDIC VS FMBN (1997) 4 NWLR (Pt. 501) 519.***

Defendant/Applicant argument that there isn't a proper Plaintiff before the court is not just misplaced, but completely mischievous and unfortunate.

N.D.I.C is proper Plaintiff before the court, and is competently clothed to bring the present action.

The argument of Defendant/Applicant is refused and dismissed.. Next is the issue of requisite notices.

On the issue of Statutory Notice, I have perused through Exhibit '7' annexed to the Counter Affidavit, which is Notice of Tenant of Owner's Intention to apply to recover possession and the affidavit of service deposed to by One

Yakubu Abdulkadir (Chief Bailiff) of this Honourable Court.

Indeed, when a Bailiff has sworn to affidavit of service, it is in law a compelling prima facie proof of service on the party of the Writ of Summons. ***EGBAGBE VS ISHAKU & ANOR (2006)LPELR 1156.***

From above, I have no difficulty in dismissing this application; consequently **Motion No.M/1942/19** is hereby and accordingly dismissed.

***Justice Y. Halilu  
Hon. Judge  
12<sup>th</sup> May, 2020***

**APPEARANCES**

JAMES O. – for the Defendant/Applicant.

Plaintiff/Respondent not in court and not represented.