

**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/301/19  
**DATE:** : WEDNESDAY 5<sup>TH</sup> FEBRUARY, 2020

**BETWEEN**

**ROT ULTIMATE PROPERTIES LTD** } **CLAIMANT**  
(Suing as the Lawful Attorney of  
AlhajiSadiqAbubakar Bello)

**AND**

**MR. BODE NETUFO** } **DEFENDANT**  
(Trading Under the Name &  
Style of Neltop Interiors)

# **RULING**

This Ruling is at the instance of Defendant's/Applicant Preliminary Objection which was filed in reaction to the suit of the Plaintiff.

The said Preliminary Objection which was dated 3<sup>rd</sup> December, 2019 prays this court for;

- a. An Order of this Honourable Court striking out this Suit as presently constituted in limine on grounds of lack of jurisdiction.
- b. And for Such further or other Order(s) as the Honourable Court may deem fit to make in the circumstances.

The ground upon which the application is brought are:-

1. The Legal Practitioner who signed the Claimant's Originating and Accompanying Processes has no National Identification Number displayed on the

Processes Contrary to the Provisions of the mandatory use of National Identification Number Regulation 2017.

2. The Claimant has no capacity to institute the action and this Honourable Court is therefore bereft of the jurisdiction to entertain same.
3. The Claimant lacks the locus standi to institute this Suit and seek the reliefs claimed.

11 paragraph affidavit deposed to AfolabiOluwasogo was filed wherein Applicant averred that the said Charles UchechukwuEzeukwu Esq. did not provide his National Identification Number (NIN) on any of the Processes, and that there was no Power of Attorney amongst the documents pleaded and filed by the Claimant in this Suit, therefore Claimant is not a party or privy to the contract.

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

- a. Whether this Suit is competent in the face of the noncompliance with the mandatory use of the National Identification Number Regulation, 2007.
- b. Whether the Claimant has capacity and locus standi to institute and maintain this action.

On issue i.e, Whether this Suit is competent in the face of the non compliance with the mandatory use of the National Identification Number Regulation, 2007.

Learned counsel anchored his argument on section 27 of the National Identity Management Commission Act. The said section 27 has this;

1. As from the date specified in that regard in regulations made by the commission the National Identification Number issued to an individual must be presented for the following transactions that is:-
  - a. An application for, and issuance of a passport;

1. Any transaction which the commission may so prescribe and list in the Federal Government Gazette.

Learned Counsel submit that Government Notice No. 123 was gazette and that the Regulation 1(u) of the mandatory use of National Identification Number Regulation, 2017 provides thus;

*“In accordance with the provision of Section 27(1)(1) of the Act, the use of the National Identification Number (NIN) shall be mandatory for the following additional transactions”*

*“Filing and registration of criminal and civil actions in court and other arbitration processes”*

Based on the above authority, Learned Counsel urge the court to answer this issue in the negative and uphold the preliminary objection on this ground.

On issue two, whether the Claimant has capacity and locus standi to institute and maintain this action.

Learned Counsel argued that the Law is trite that a party must prove the capacity in which he/she is sued. Counsel submit that in the instant case, it is clear from the Claimant's statement of claim that the purported lease was strictly between the Defendant and one AlhajiSadiqAbubakar Bello, and therefore, the Claimant lacks the capacity to institute this action. Counsel relied on ***RUTHLINZ INTERNATIONAL INVESTMENT LTD. VS IHEBUZOR (2016)11 NWLR Part 1524***. In urging the court to so hold that Claimant has no locus.

Upon service, the Respondent filed a reply on points of law wherein two issues were distilled for determination to wit;

- a. In view of the extant decision of the Supreme Court, is the use of National Identity Number Mandatory for the competence of an action.

b. Whether or not the issuance of Power of Attorney is an issue for trial and a such cannot be determined at this preliminary stage;

On issue one, *In view of the extant decision of the Supreme Court, is the use of National Identity Number Mandatory for the competence of an action.*

Learned Counsel submitted that the mandatory requirement of endorsing National Identity Number is not contained in the rules of this Honourable Court and therefore cannot apply to processes filed before this Honourable Court.

Learned Counsel relied and cited Section 259 of the 1999 Constitution of the Federal Republic of Nigeria and the case of ***ALL PROGRESSIVE CONGRESS & ANOR VS SENATOR KABIRU GARBA MARAFA & 179 ORS SC 377/2019 AT PAGE 55.***

On issue two, Whether or not the issue of Power of Attorney is an issue for trial and a such cannot be determined at this preliminary stage.

Learned Counsel further argued that, the law is trite that the determination as to the issue or whether or not the Claimant was given a Power of Attorney with which he carried out his duties as the Property Manager (Agent) is an issue for trial and a matter which cannot be determined without going into the substance of the case. ***BANK OF BARODA VS IYALABANI CO. LTD. (2002)12 SCN 30.***

Finally Learned Counsel urge the court to dismiss the application.

Court:-I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the reaction of the Defendant on the other hand.



I have also considered the arguments of both counsel on the said preliminary objection. The issues raised by Claimant's counsel for determination seem to have covered the scope of the entire conundrum, I therefore adopt same as issues for determination by court.

On issue one, whether the Suit is competent in the face of the noncompliance with the mandatory use of the National Identification Number Regulation, 2007.

It is trite position of the law that mandatory requirement of endorsing National Identity Number is not contained in the rules of this Honourable Court.

The Supreme Court in the case of ***ALL PROGRESSIVE CONGRESS & ANOR VS SENATOR KABIRU GARBA MARAFA & 179 ORS SC. 377/2019 Page 35*** held as thus;

***“Section 27 of the National Identify Management Commission Act of 2007 and it regulations are not***

***part of the rules of this Court and can therefore not apply to the process filed in this Court”***

Indeed, the Supreme Court is the Highest Court of the land. And by virtue of the doctrine of the Judicial Precedent I am bound by the decision of the Supreme Court. I say no more.

I therefore resolve issue one in the favour of the Claimant  
I so hold.

On issue two, whether or not the issuance of Power of Attorney is an issue for trial and as such cannot be determined at this Preliminary stage.

The Claimant in paragraph one of the statement of claim before the court stated as thus;

***“The Claimant to the knowledge of the Defendant is the manager of all the Six (6) Bedroom Detached Duplex with Two (2) Bedroom Guest Chalet Lying Situate at Plot 2496, Yakubu Gowon Crescent,***

*Asokoro, A4, Federal Capital Territory, Abuja. The letter of appointment as Manager over the said property by the Owner dated 22<sup>nd</sup> of April, 2015 is hereby pleaded and will be relied upon at the trial of this Suit”.*

From above, it is obvious that the issue of Power of Attorney is part of the claims of the Claimant and therefore, cannot be determined at this Preliminary stage.

On the whole, I find no merit in this Preliminary Objection and shall dismiss same, same is hereby dismissed in part.

*Justice Y. Halilu  
Hon. Judge  
5<sup>th</sup> February, 2020*

## **APPEARANCES**

U.C. Ezeukwu - for the Claimant.

Chuks U.K. - for the Defendant.