

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

BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE
ON MONDAY THE 9th DAY OF MARCH, 2020

SUIT NO: FCT/HC/CV/436/2018

MOTION NO: FCT/HC/CV/M/4810/2019

BETWEEN:

(1) **BUSSDOR AND COMPANY LTD** } ... CLAIMANTS/
(2) **KAILASH DEV. BUILD (INDIA) DUT LTD** } **RESPONDENTS.**

AND

(1) **TRASMISSION COMPANY OF NIGERIA** }
(2) **THE WORLD BANK (NIGERIA GAS CTCN)** } **DEFENDANTS/**
AND ELECTRICITY IMPROVEMENT } **RESPONDENTS.**
PROGRAM }
(3) **AF CONSULT SWITZERLAND** }

(4) **MBH POWER LTD** **DEFENDANT/**
APPLICANT.

RULING

By a Motion on Notice filed on 1/4/2019 and predicated on Order 13 Rule 19 of the Rules of Court 2018 and inherent jurisdiction of the Court, the 4th Defendant/Applicant (“The Applicant”) seeks for an order of the Court striking out/dismissing the Claimants’ suit against it on the ground that the Court lacks the jurisdiction to hear and determine the suit as presently constituted on the grounds that the action does not disclose any reasonable cause of action against it.

The application is supported by a 12-paragraph affidavit deposed to by Mrs. Temilade Ojo and Written Address of the Applicant's Counsel.

In opposition, the Claimants/Respondents ("The Respondents") on 13/5/2019 filed a 4-paragraph Counter Affidavit deposed to by Emmanuel Tsebo along with the Written Address of their Counsel.

The 1st Defendant/Respondent did not file any process in response to the application though served on it.

At the hearing Counsel for the contending parties adopted their Written Addresses as their oral submissions for and against the objection. The Learned 1st Defendant / Respondent's Counsel informed the Court he was not opposed to the objection.

In the affidavit in support, the Applicant averred inter alia that after studying the Respondents' processes it was difficult to pin point any wrong which the Applicant occasioned to the Respondents. That the Writ of Summons and Statement of Claim disclose no injury or claim against the Applicant. The Applicant was not part of the agreement between the Claimants/Respondents and 1st to 3rd Defendants/Respondents.

The originating processes have not disclosed any fact or issue of law for which this Court is being invited to determine against the Applicant. It has not been shown by the Respondents that the Applicant infringed on the Respondents' right or committed any wrong against them.

In his Written Address, Mr. Oladukun Ibitoye Esq of Counsel for the Applicant referred to the meaning of cause of action and contended that there is nothing in the Writ of Summon and Statement of Claim of the Respondents which disclose any fact or combination of facts on which their claim is hinged.

He referred to paragraph 43 of the Respondents' Statement of Claim and contended that therein the Respondents admitted that the contract has since been re-awarded to the Applicant and the Applicant has been mobilized to site. That by this admission, the Respondents cannot ask for the relief in paragraph 47 (27) against the Applicant because a Court will not stop an action which has already been carried out.

He referred to **ADESOKAN V. ADEGOROLU (1993) 2 NWLR (Pt.179) p.293** and **KOLO V. FBN (2003) 3 NWLR (Pt.806) p.216** on the point that in determining whether a suit discloses a reasonable cause of action, that it is the Writ of Summons and Statement of Claim that it will look out.

Concluding, he canvassed that there is no fact in the Respondents' Statement of Claim which can be relied on to support the action. He called in aid **BELLO V. A-G OYO STATE (1986) 5 NWLR (Pt.45) p.828**; **ADEPOJU V. AFONJA (1994) 8 NWLR (Pt.363) p.437** and **AKILU V. FAWEHINMI (No.2) (1989) 2 NWLR (Pt.12) p.122**.

He urged the Court to grant the objection by striking out/dismissing the Respondents' suit against the Applicant.

In their counter affidavit, it was averred on behalf of the Respondents that the Applicant is the party to whom the 1st Respondent re-awarded the contract subject matter of this action. The Applicant has been joined as a necessary party so as to be bound by the decision of the Court.

In his Written Address, Gordy Uche (SAN) of Counsel for the Respondents raised a sole issue for determination, thus:-

“Whether the 4th Defendant is a necessary/proper party to be joined to this suit.”

Treating the issue, the Learned Counsel submitted that the Applicant is a necessary party to be joined to this action as it is the party to whom the

contract, the subject matter of this suit was re-awarded to. He referred to **NWEKE & ANOR V. NWEKE (2014) LPELR-23563 (CA)** where the Supreme Court referred to **GREEN V. GREEN** as having held that necessary parties are those who are not only interested in the subject matter of proceedings but also, who in their absence the proceedings cannot be fairly dealt with.

He also referred to **MOBIL OIL PLC V. DREXEL ENERGY NATURAL RESOURCES LTD & ORS (2003) LPELR-7266 (CA)** where the Court of Appeal held the reason which makes it necessary to make a particular person a party to an action is that he should be bound by the result of the action.

The Learned silk referred to the averments in paragraphs 23 to 27 of the Respondents' Statement of Claim as touching on preventing the 1st Respondent from re-awarding the contract to a third party and declaring any purported termination, take over and re-awarding of contract as wrongful, illegal, null and void.

He canvassed that the Applicant being the party to whom the contract was purportedly re-awarded to, will be directly affected by the decision of the Court in the suit and as such in order for it to have an opportunity to be heard as well as be bound by the decision of the Court, it should be joined as a necessary/proper party.

Learned Counsel referred to **AWONIYI & ORS V. THE REGD. TRUSTEES OF AMORC NIG. (2000) LPELR-655 (SC)** on the purpose of joinder of parties which is to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the cause or matter. That a judgment in personam . . . is only binding on the parties to the lis. Accordingly all parties who may be affected by the result of the litigation may be joined either as Plaintiffs or Defendant.

In conclusion, he urged the Court to dismiss the objection.

I have given due consideration to the averments in the affidavits of the contending parties and submissions of their Learned Counsel. The crucial issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the order sought.

The issue of whether or not a suit discloses a reasonable cause of action and how to determine it engaged the attention of the Supreme Court in **DANTATA V. MOHAMMED (2000) 7 NWLR (Pt.664) p.176**. The Apex Court explained the phrase “cause of action” in these words:-

“The phrase “cause of action” means simply a factual situation the existence of which entitles one person to obtain a remedy against another person. It is a fact or combination of facts which when proved would entitle a Plaintiff to a remedy against a Defendant. It consists of every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support the right to judgment of the Court. That is, the fact or combination of facts which gave rise to a right to sue. It is a cause for an action in the Courts to determine a disputed matter.”

The Court defined a “reasonable cause of action” as a cause of action which when only the allegations in the Statement of Claim are considered, has some chance of success.

On the relevant factors to consider in determining whether a suit discloses a reasonable cause of action,

The Court held thus:-

“In order to determine whether the

Statement of Claim has disclosed a reasonable cause of action, what the Court should consider are the contents of the Statement of Claim and not the extent to which one relief can co-exist with another. Having considered the contents of the Statement of Claim, deemed to have been admitted, the question is whether the cause of action has some chance of success notwithstanding that it may be weak or not likely to succeed. Thus, it is irrelevant to consider the weakness of the Plaintiff's claim. What is important is to examine the averments in the Statement of Claim and see if they disclose some cause of action or raise some questions fit to be decided by the Court.”

Being guided by the foregoing guides laid down by the Supreme Court, the duty of the Court in determining whether or not the Respondents' Statement of Claim discloses a reasonable cause of action is to examine the contents of the Statement of Claim (which for the purpose of the determination are deemed admitted by the Applicant) and see if they disclose some cause of action or raise some question fit to be decided by the Court, irrespective of whether or not the claim is weak or strong.

I have accordingly examined the averments in the Respondents' Statement of Claim in this case. Summarily, the Respondents' case is that by a letter dated 27/1/2016, the 1st Respondent awarded contracts to it for the construction, rehabilitation, and reinforcement of 330/132KV and 132/33KV Transmission Substation-BID NGP-T4 LOT 1 to them at 9th Mile Corner in Enugu State and upgrade of a 2X 30MVA 132/33KV to 60 MVA 132/33KV Transmission Substation at Nibo-Awka in Anambra State and upgrade of 15MVA to 60MVA 132/33 KV Transmission Substation at Yandev-Gboko, Benue State.

The contracts which initially was in the sum of \$8,534,119.42 plus ~~₦~~588,816,976.84 was subsequently reviewed upwards by the 1st Respondent to the sum of \$9,140,244.95 and ~~₦~~691,259,868.99.

When the Respondents embarked upon the execution of the contract they ran into problems at the site in 9th Mile Corner in the hands of Fulani Herdsmen who occupied the place. They monetarily compensated them and relocated them. Thereafter the site was stormed by the Youths of Umuezeani and Aboh host communities who stopped their work at the site beat up their staff and destroyed some of their equipments at the site.

As a result of the foregoing work was stopped at the site for over 3 months. When this was resolved, another stop work order was issued to them by the 3rd Respondent on the ground that there will be excess earth work at the switch yard at the 9th Mile Corner site due to bad topography. The stop work order lasted for a period of five months.

While the stop work orders were in place, the Respondents maintained payment for its workers and equipments hired and used at the site.

In order to resolve the foregoing problem, the Respondents and 1st Defendant agreed that additional works be added to the contract made to the Respondents. It took over 13 months before the MD of the 1st Defendant accepted the proposal. In consequence of these, the completion date of the contract was later extended to 30/6/2018 for the project at the 9th Mile Corner Enugu State and 30/9/2018 for the Awka Anambra State and Yandev Benue State.

By 6/7/2018, the Respondents' had completed an overall 70% of the contract on the three project sites. There are however several unpaid monies for the jobs already done at the various sites which invoices have been forwarded to the 1st Defendant.

In a meeting held on 6/7/2018, the management of the 1st Defendant informed the Respondents of its decision to take over the 9th Mile site while the Awka site was given up to 30/9/2018 for completion.

The 1st Defendant failed to take into consideration the several delays that occurred during the contract in arriving at its decision to take over the contract site.

By a letter received on 31/10/2018, the 1st Defendant asked the Respondent to hand over the 9th Mile Corner, Awka and Yandev sites to General Manager. Prior to this, the Respondents had sent to the 1st Defendant all expenditures they incurred in the course of executing the contract at the three sites.

The 1st Respondent unilaterally re-awarded the completion of the contracts at the three sites aforesaid to the Applicant herein and mobilized it to the sites.

The Respondents are not in default of any term or condition of the contract agreement. The activities of the Defendants are malicious, unlawful and arbitrary and they have caused them untold hardship and loss.

In consequence of the foregoing the Respondents' claim, inter alia, declaration of the Court that pursuant to the contract agreements between them and the 1st

Respondent, they are entitled to the contract price attributable to the parts of the facilities executed by them as at the date of termination of the contract, payment of costs incurred, cost for cancellation of the contracts etc. They also seek declarations of the Court that any purported termination, take over and re-awarding of the contract aforesaid to the Applicant or any other persons without following due process paying full remuneration to them for work already done and costs incurred is wrongful, illegal null and void. They equally seek for an order of the Court setting aside any purported taking over and re-

awarding of the contracts aforesaid by the 1st Respondent to the Applicant. Finally, they seek for an order of injunction restraining the Applicant from accepting any purported re-award of the contracts aforesaid or moving to any of the contract sites pending the determination of this suit.

From the fore going averments in the Respondents' Statement of Claim, can it be said that there is an issue presented for determination by the Court between the Respondents and the Applicant? It is the Respondents' contention that the circumstances in which the 1st Respondent terminated and re-awarded the contracts for the sites in Enugu Anambra and Benue States to the Applicant are wrongful, illegal, null and void for failure to follow due process. For this reason, they seek to have the award to the Applicant set aside as well as have the Applicant restrained from accepting the purported re-award of the contracts to it. These, undoubtedly disclose the Respondents' cause of action against the Applicant and the 1st Respondent.

Additionally, for the reasons that the Respondents seek to have the contracts previously awarded to the Applicant in unacceptable circumstances, set aside the Applicant who will be affected by the order (where granted) is no doubt a necessary party in the action, for the reason that the Respondents seek to restrain the Applicant from accepting the re-awarding contracts or moving to the contract sites, the Applicant is a necessary party to the action. Its presence in the action will enable the Court hear its own side of the story in coming to a determination as to whether or not to grant the orders sought against it particularly, as the orders if made against it will be binding on it.

As laid down by the Supreme Court in the guides set out above, it is irrelevant to venture into a determination of how strong or weak the Respondents' contentions are at this stage. The important thing is that there is an issue presented by the Respondents for determination by the Court against the Applicant and the 1st Defendant/Respondent.

By reasons of the foregoing findings, the Court resolves the sole issue raised above against the Applicant in favour of the Respondents. The Court holds that the Respondents' claim as presently constituted discloses a reasonable cause of action against the Applicant. In consequence, this objection cannot be sustained. It is dismissed with cost assessed and fixed at ₦100,000.00 against the Applicant in favour of the Claimants/

Respondents. The cost is to be paid before the next date of the case.

SGND.

HON. JUDGE

9/3/2020.

LEGAL REPRESENTATIONS

- (1) Gordy Uche SAN with Isaac Nwachukwu Esq, Francis Nsiegbonam Esq and Blessing Glem Esq for the Claimants/Respondents.
- (2) Ola Ibitoye Esq for the 4th Defendant/Applicant
- (3) Igwe Ugochukwu Esq for the 1st Defendant/Respondent.