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 FICMC

ON MONDAY THE 17TH DAY OF FEBRUARY , 2020

SUIT NO: FCT/HC/CV/1236/2019

MOTION NO: FCT/HC/CV/M/4067/20120

BETWEEN:

(1). DR. CHARLES OMALE

(2). FORTRESS EYE HOSPITAL AND MEDICAL CENTRE LTD } ..CLAIMANTS/RESPONDENTS

AND

ASIBI VERONICA INEDU……DEFENDANT/OBJECTOR

RULING

By a Notice of Preliminary Objection filed on 10th January 2020, the Defendant/Objector ("The Objector") raises an objection to the competence of the Claimants' suit and jurisdiction of the Court to entertain it on the grounds that: -

> *"(1). The letter (alleged cause of action herein) is privileged communication and cannot be a basis for an action at law.*
>
> *(2). The letter which found the basis for the instant action was not written by the Defendant who in turn cannot be vicariously liable in defamation by the action of another.*
>
> *(3). The instant suit is premature and no cause of action has accrued therein.*

(4). The instant suit discloses no reasonable cause of action, is vexatious, offensive, odious, distasteful, an abuse of process and liable to be struck out in limine with substantial cost".

The application is supported by a Written Address of the learned Objector's Counsel.

The Claimants/Respondents ("The Respondents") did not file any process in response to the Objection. At the hearing on 13th January 2020, learned Objector's Counsel adopted his Written Address in support of the Objection.

The learned Respondents' Counsel with leave of Court responded orally on points of law in opposition to a grant of the objection. Ruling was then reserved for today 17th February 2020.

In his Written Address, P.U. Ogbadu Esq of Counsel for the Objector raised a sole issue for determination, thus: -

> *"Whether having to the facts disclosed on the Plaintiff's own pleadings, this suit is not incurably defective, and liable to be struck out in limine with substantial cost."*

Treating the issue, learned Counsel referred to ***MIL. ADMIN AKWA IBOM STATE V OBONG (2001) 1 NWLR (PT. 695) P. 214*** and submitted that a Plaintiff cannot validly sue a Defendant against whom he has no reasonable cause of action.

He contended that a letter written by a Counsel on his client's instruction cannot found an action in defamation against the client. Counsel himself is immune from a third party action as the letter is written on a privileged occasion. He referred to ***MAMMAN V SALAUDEEN (2005) LPELR 1833-SC and DAURA V DANHAUWA (2009) LPELR – 3714 (CA) and OMOFOMAN V CECIL (Suit No: FCT/HC/CV/622/2016)*** *decided by Oji, J of this Court.*

Counsel submitted that in the instant case, the Respondents' case is hinged on the letter written by the Defendant's Counsel to NAPTIP requesting for an investigation into the sexual abuse of her children. Such

letter written by Counsel in the ordinary course of his duties towards his client is privileged and cannot found an action in defamation.

Arguing in the alternative, perchance the Court holds otherwise. Counsel submitted that the said letter was not written by the Defendant and she is an improper party to the proceedings. The proper person to sue is the author ie the Counsel who is alleged by the Respondents to have shared the letter. The instruction of the Applicant to her Counsel is privileged communication and cannot be the basis for an action.

Counsel further canvassed that the suit discloses no reasonable cause of action and liable to be struck out in limine with substantial cost. This is because the petition (the purported cause of action) is devoid of any defamatory intent or expression. It did not suggest that the Respondents are the ones who defiled these children neither did it suggest them as suspects. The effort of the Respondents to impose their own meaning on an otherwise clear petition for investigation cannot legitimize an otherwise incompetent suit. He referred to ***SKETCH PUBLISHING COMPANY LTD V AJAGBEMOKEFERI (1989) 1NWLR (PT. 100) P. 678*** on the contention that the Courts in deciding whether a word is capable of defamatory meaning, will reject that meaning which can only emerge as the product of some strained or wittingly unreasonable interpretation.

He urged that the Respondents' interpretation that the Applicant's petition is suggestive of a paedophilic disposition is strained, forced and unreasonable. That the only reasonable interpretation that right thinking members of the society will give to the petition is no more than a cry for investigation.

Counsel also referred to ***EKONG V OTOP & ORS (2014) LPELR 23022 SC)*** on the test in determining whether the words complained of are defamatory and urged that in the instant case, the Respondents interpretation of a petition for investigation is strained and does not disclose a reasonable cause of action. He equally contended that the action, being that it seeks to gag and deepen the pains of a mother who seeks answer on the sexual abuse of her children, constitutes an abuse of Court process. He referred to ***LADOJA V AJIMOBI & ORS (2016) LPELR – 40658 (SC).***

He urged the Court to strike out the suit in limine with substantial cost of N8, 000, 000.00 cost against the Respondent based on the grounds of this objection as set out earlier.

In his response, Dr. Soni Ajala of Counsel for the Respondents submitted inter alia that the Objection is predicated on "letter". That the letter was not attached. There is no affidavit in support of the objection. For this reason, the objection is incompetent. He relied on ***AMA V NWANKWO (2007) 12 NWLR (PT. 1049) P. 552.***

Counsel also contended that the subject matter letter is the bases of the Respondents' action. The Court is not to delve into the substantive matter at the stage of interlocutory matter as that would amount to delving into substantive issues at interlocutory stage. He referred to ***D.P.C.C.LTD V UPC LTD (2008) 4 NWLR (PT. 1077) P. 576.***

Dwelling further, learned Counsel urged the Court to discountenance the authorities cited by the Applicant's Counsel in his Address with respect to privileged occasion. That the suit of the Respondent is against a disclosed principal (the Defendant) and not the attorney.

He further contended that the letter referred to was admitted in evidence by Court on 23rd October 2019 as Exhibit A. Hearing notice was duly served on the Applicant. Therefore the Court is functus office with regard to the letter.

He urged the Court to dismiss the objection for being frivolous.

In his reply on points of law, the learned Applicant's Counsel referred to the case of ***AMA V NWANKWO*** supra cited by the learned Respondents' Counsel and contended that it is not in every objection that an affidavit is filed. That the Applicant gave notice that she would rely on the originating processes filed to argue the application. That the cause of action is attached to the originating processes. A court of law is entitled to look at the documents in its file whether or not tendered in evidence for the purpose of achieving justice. He referred to ***AKINOLA Vs V. C. UNILORIN & ORS (2004) LPELR – 107898.***

He equally canvassed that the document referred to has been admitted in evidence as Exhibit A and so is already before the Court.

With respect to delving into the substantive suit, counsel contended it does not arise. He urged the Court to strike out the suit with cost of N8, 000, 000.00.

I have carefully weighed the submissions of learned Counsel for the parties. An overview of the Applicant's objection shows that it is essentially predicated on the contention that the Respondents' suit discloses no reasonable cause of action in that the letter which gave rise to the suit was written on a privileged occasion by the Respondents' Counsel. That a letter written on a privileged occasion (as in the case of a Counsel on behalf of his client) cannot found an action in defamation.

The learned Respondent's Counsel on his part, contended, inter alia, that the Court cannot at this interlocutor stage of the suit determine whether or not the letter (the subject matter of the suit) is defamatory.

From the foregoing, the cardinal issues that call for determination are: -

(1). Whether or not the Respondents suit discloses a reasonable cause of action.

(2). Whether or not the Court can determine at this interlocutory stage whether or not the letter (subject matter of the suit) is defamatory.

I shall proceed and consider issue no.1 raised above first.

The Supreme Court took time to deal with the issue of reasonable cause of action, and how to determine whether or not it is disclosed in a suit in ***DANTATA V MUHAMMED (2000) 7 NWLR (PT. 664) P. 176.*** It explained the phrase "cause of action" thus: -

> *"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 his 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".

It 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 factors to consider in determining whether a suit discloses 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…."*

By the foregoing guides given by the apex Court, in determining whether or not the Respondents action discloses a reasonable cause of action or put in simpler words, whether the Statement of Claim raises some questions fit to be decided by the Court, the Court is under a duty to examine only the averments in the Respondents' Statement of Claim. The said averments for the purpose of the determination, are deemed admitted by the Applicant.

I have accordingly examined the averments in the Respondents' Statement of Claim. It was averred therein, inter alia, that the 1st Respondent is a private medical practitioner, a Consultant Ophthalmic Surgeon while the 2nd Respondent is engaged in Specialist eye care Consultancy, diagnostic services and allied medical support in Abuja. The 1st Respondent has versatile working experience and voluntarily disengaged from the services of the State House Medical Centre (the Presidency) and started private medical practice vide the 2nd Respondent. He has never engaged in any unwholesome or unethical practices including sexual wrong doing with patients of the 2nd Respondent.

The Applicant and her two children seldom receive treatment in the 2nd Respondent's facility. The 1st Respondent had never found himself in solitary confinement or secluded place with the Applicant's children.

The Applicant without just cause willfully caused to be published libelous material against the 1st Respondent to several officers and men of the National Agency for the Prohibition of Trafficking in person vide the petition dated 31st January 2019 captioned "SEXUAL ASSUALT OF MINORS AGED 4, AND 6; REQUEST FOR INVESTIGATIONS AND PROSECUTION".

The Applicant knew her said petition is false. Summarily, the contents of the petition which was pleaded is that while the Applicant and her husband were locked in matrimonial dispute on account of which she left the matrimonial home, their two children aged 4 and 6 years old respectively were in the custody of her former husband while the 1st Respondent carried on his medical practice in his hospital located in the same premises where the Applicant's matrimonial home was. Her demands to have the children released to her were denied by her husband who cited refusal by the 1st Respondent as one of the reasons. When custody of their matrimonial matter against her husband was determined and she got custody of the children of the marriage, she was advised in some healthcare facilities that the children had been sexually abused. She suspects the 1st Respondent, amongst others, were responsible for the abuse. For these reasons she wrote the petition.

It was further averred that the petition aforesaid was submitted by the Applicant and received by NAPTIP on 31st January 2019 and endorsed upon by multiple levels of officers of the organization. The Applicant, also accompanied by her lawyer on 8th February 2019 visited the 1st Respondent's residence and gave a copy of the petition to him.

Until the visit, the 1st Respondent noticed general coldness and resentment from the 2nd Respondent's notable patients and clients, staff and colleagues and in the Igalla community.

The Respondents were unsettled by the recklessness and spiteful petition by the Applicant that they instructed their solicitors to send a letter dated

18th February 2019 to the Applicant demanding a retraction and apology for the petition.

The contents of the Applicant's petition are blatantly false and was understood to meant that 1st Respondent is a dubious healthcare provider and sexual pervert, etc.

The publication by the Applicant grossly lowered the estimation, rating and patronage of the 2nd Respondent in the eyes of the patients of the 1st and 2nd Respondents; likewise in his ECWA Church Wuse 2 Abuja and his colleagues.

For reasons of the foregoing, the Respondents seeks for declarations of the Court that the Applicant's said letter dated 31st January 2019 has injured the Respondents in their standing as professional medical doctor and care giver; it has injured the 1st Respondents reputation, credit and goodwill and has eroded the patronage of patients to the 2nd Respondent. They also claim general damages in the sum of N250, 000, 000.00 and apology in the newspaper against the Defendant for the publication.

From the foregoing averments in the Respondents' Statement of Claim (which are deemed admitted) can it be said there is an issue or matter fit to be decided by the Court? I do consider that there is – the issue is whether or not the Respondent's reputation was injured by the words contained in the said letter dated 31st January 2019 written by the Applicant through her Counsel and submitted to the officials of NAPTIP. This, in my respectful view discloses a cause or gives the Respondents right to sue, if they can, vindicate and protect their names and reputation.

The learned Applicant's Counsel has stringently contended that communication by a Counsel to a third party on behalf of his client is privileged and cannot be the basis for an action in defamation. So many judicial authorities were referred to in this connection. I do agree with the learned Applicant's Counsel that, that is the correct state of the law. The Court will however only make such a finding where the written communication has been after it was duly placed before it subjected to the processes of adjudication. The Court is to determine whether or not the writer of the letter has made out a case sufficient for it to hold that the communication is privileged. Where, for instance, the Applicant fails to plead and prove privileged occasion with respect to the letter, the Court will

ordinarily hold the letter to be libelous. Privileged occasions is a matter of fact which a party who relies on it ought to plead and prove vide evidence. It is observed that in all the cases cited by the learned Applicant's Counsel, which were decided by the appellate Courts, the Courts came to the view that the letters written by the lawyers were privileged after trials during which the parties duly ventilated their cases hence the letters were referred to as Exhibits. In none of them was the suit struck out in limine for the reason that the letter without more was privileged.

As eminently stated by the apex Court in the *DANTATA V MUHAMMED* case supra, what is important in determining whether a suit discloses reasonable cause of action is whether the cause of action has some chance of success notwithstanding that it may be weak or not likely to succeed. It is thus irrelevant to consider the weakness of the Plaintiff's case. It is irrelevant at this stage to go into a determination of whether or not the Respondents' cause of action founded on the aforesaid letter is weak or not likely to succeed. The important thing is whether or not the suit has some chance of success. As aforesaid, the suit may succeed where the Applicant fails to plead and/or prove that the letter was written on a privileged occasion which involves an admixture of facts and law.

By reasons of the foregoing, I resolve issue no.1 raised above against the Applicant in favour of the Respondents.

With regard to issue no.2, the Court holds that to the extent that it cannot validly determine at this stage whether or not the Respondents claim is weak or strong, it stands to reason that the issue of the letter being privileged can only be validly determined at the substantive stage of the case after pleadings had been duly filed and exchanged and evidence led on them by the parties. I do agree with the learned Respondents' Counsel that it is improper for a trial Court to dabble or delve into matters that ought to be delt with at the substantive stage at the interlocutory stage of the proceedings. The Supreme Court strongly condemned this in a number of cases. See: ***FSB INT. BANK LTD V IMANO NIG LTD (2000) 7 SCNJ P65; OYESOH V NEBEDUM (1999) 3 SCNJ P 129 and OBEYA MEMORIAL SPECIALIST HOSPITAL V A-G OF FEDERATION (1987) 7 SCNJ P. 42.*** This Court is well guided by these decisions of the apex Court.

The two cardinal issues raised above having been resolved against the Applicant, this objection can only but fail. The objection fails and is dismissed for being misconceived and lacking in merit. The learned Applicant's Counsel had urged the Court to dismiss the Respondents suit and grant a cost of N8, 000, 000.00 against them. Now she is the one who has failed, I wonder what to grant against her as cost. N8, 000, 000.00? That will be excessive and punitive though what may be good for the goose may be sauce for the gander. All said, the Applicant has only wasted the time of this Court by this application. She shall pay a cost assessed and fixed at N100, 000.00 to the Respondents. The cost is to be paid before the next date of the case.

Signed
Hon. Judge
17/2/2020

LEGAL REPRESENTATIONS:

(1). P. O. Ogbadu Esq for the Defendant/Objector.

(2). Dr. Son. Ajala for the Claimants/Respondents.