

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE**

ON MONDAY 23rd DAY OF MARCH, 2020

SUIT NO: FCT/HC/CV/954/2019

MOTION NO: FCT/HC/CV/M/5876/2019

BETWEEN:

- | | | |
|---|---|------------------------------------|
| <p>(1) FOLARIN ALUKO</p> <p>(2) EBUKA NWAEZE (<i>For themselves
and on behalf of the members
of the Nigerian Bar Association,
Abuja Branch (Unity Bar)</i>)</p> | } | CLAIMANTS/
RESPONDENTS. |
|---|---|------------------------------------|

AND

- | | | |
|---|--------------|------------------------------------|
| <p>(1) ABIMBOLA KAYODE</p> <p>(2) CHIDI EZENWAFOR</p> | } | DEFENDANTS/
APPLICANTS. |
| <p>(3) ACCESS BANK PLC</p> | | DEFENDANT/
APPLICANT. |

RULING

By a Notice of Preliminary Objection filed on 7/5/2019 and predicated on Order 5 Rules 3 & 4 of the Rules of Court 2018 and inherent jurisdiction of the Court the 1st and 2nd Defendants/Applicants (“The Applicants”) seek for the following orders.

- “1. An order dismissing/striking out this suit for

want of jurisdiction.

IN THE ALTERNATIVE

AN ORDER of the this Honourable Court converting the Claimants' Originating Summons dated and filed 1st February 2019 to Writ of Summons and directing parties to file pleadings.

AND FOR SUCH ORDER OR FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.”

The objection is predicated on four grounds as shown on the face of it and supported by a 4-paragraph affidavit deposed to by Godfrey Onuoha and Written Address of the Applicants' Counsel.

In opposition, the Claimants/Respondents (“The Respondents”) on 16/5/2019 filed a 10-paragraph Counter Affidavit deposed to by the 1st Respondent and Written Address of their Counsel.

The Applicants on 24/8/2019 filed a Reply on points of law.

The 3rd 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. Ruling was then reserved.

In the affidavit in support, it was averred on behalf of the Applicants, inter alia, that save for the deposition in paragraphs 5, 6, and 9 the averments in the affidavit in support of the Originating Summons are false and misleading.

The reliefs sought by the Respondents in this suit are predicated on **Suit NO: FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES OF THE NIGERIA BAR ASSOCIATION** which does not enure to the Respondents.

The facts of this suit are very hostile and contentious.

In his Written Address, Abimbola Kayode Esq of Counsel for the Applicants raised three issues for determination by the Court thus:-

- “1. Whether this suit should be dismissed/struck out for want of jurisdiction by this Honourable Court.
- (2) Whether this suit discloses a reasonable cause of action against the 1st and 2nd Defendants.
- (3) Whether the Claimants’ suit was validly commenced by Originating Summons.”

Treating issue No.1, Learned Counsel relied on **SHELIM V. GOBONG (2009) 12 NWLR (Pt.1156) p.435** and submitted that jurisdiction is the life wire of adjudication and in the absence of it, proceedings conducted by the Court, no matter how beautiful amounts to a nullity.

He submitted that in determining jurisdiction, the relevant processes the Court considers are the Writ of Summons and Statement of Claim. In this case, the Originating Summons and affidavit and exhibits in support of it. Reference was made to **A-G FEDERATION V. GUARDIAN NEWSPAPERS LTD (1999) 9 NWLR (Pt.618) p.187.**

Counsel contended that it is not in dispute that the Respondents instituted this action solely for the purpose of deriving benefit from Exhibit 1 arising from **Suit No:- FCT/HC/CV/277/2016: EZENWA ANUMNU V. INCORPORATED TRUSTEES** of the Nigerian Bar Association. It is also not in doubt that the Respondents were not parties to **Suit No: FCT/HC/CV/277/2016** and as such Exhibit 1 cannot enure to them. The Respondents not being parties to **Suit No: FCT/HC/CV/277/2016**, Exhibit 1 has no bearing and could not have been made to bind them. He urged the Court to decline jurisdiction.

With respect to issue No.2, Counsel referred to **OHAJI V. UNAMKA (2011) 4 NWLR (Pt.1236) p.148** on the point that in order to invoke the jurisdiction of the Court the Respondents are required to disclose a reasonable, justifiable and non frivolous cause of action in the originating processes. He referred to the definition of reasonable cause of action per **DRUMMOND-JACKSON V. BRITAIN MEDICAL ASSOCIATION (1970) 1 ALL ER p.1094** and submitted that no reasonable cause of action has been disclosed against the Applicants herein in the Respondents' Originating Summons. That an examination of the Respondents' Originating Summons and affidavit in support show that the issues complained about by the Respondents started in 2016 culminating in **Suit No:- FCT/HC/CV/277/2016**. There is nothing to show in the affidavit that the Applicants interfered with the tenure of the Plaintiff in

Suit No: - FCT/HC/CV/277/2016. There is nothing in the affidavit to show that the Respondents herein were parties in that suit or that Exhibit 1 was made in their favour. There is nothing to show that the said account was opened by the Applicants. It is also not the case of the Respondents that the Applicants prevented the legally recognised Executives of the Nigerian Bar Association Abuja Branch from having access or maintaining the said account.

He urged the Court to hold that the suit discloses no reasonable cause of action against the Applicants and strike it out.

Arguing issue No.3, Learned Counsel submitted that Originating Summons can only be used in very straight forward cases which are controversy free/non contentious. It is not for cases where facts are either contentions or disputed. He contended that the facts of this suit are hostile and the suit cannot be determined on affidavit evidence alone. Consequently, the Respondents ought not to have commenced it by way of Originating Summons. He referred to **OSUAGWU V. EMEZI (1998) 12 NWLR (Pt.579) p.640.**

He referred to paragraphs 6 to 19 of the affidavit in support of the Originating Summons and said they are replete with allegations which are contentious and which the Applicants have vehemently disputed in their Counter Affidavit in response. The Applicants also joined issues with the Respondents on the reliance on Exhibit 1. He surmised that where, as in this case facts/issues have emerged which will require the leading of evidence or which are hostile and contentious, the Court is empowered to order for conversion of the Originating Summons to a Writ of Summons and order parties to file pleadings. He referred to **MINISTER FED. MINISTRY OF HOUSING and URBAN DEV. V. BELLO (2009) 12 NWLR (Pt.1155) p.345** and **ORIANWO V. ORIANWO (2001) 5 NWLR (Pt.707) p.516.**

He then urged the Court to grant the instant objection.

In their Counter Affidavit, it was averred on behalf of the Respondents inter alia, that they were validly voted in as Executive Officers of the Nigerian Bar Association, Abuja Branch in the branch election held on 11/6/2018. The Respondents are privies and successors-in-title to Mr. Ezenwa Anumnu the parties in **Suit No:-**

FCT/HC/CV/277/2016 between **EZENWA ANUMNU V. INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION.**

The Applicants were participants in an election conducted and supervised by agents of Nigeria Bar Association. The Applicants derive their claims to Chairmanship and Secretaryship from the contemptuous acts of the immediate past administration of the Nigeria Bar Association. The injunction granted by Hon. Justice U. P. Kekemeke of the FCT High Court in **Suit No: FCT/HC/CV/277/2016** between **EZENWA ANUMUNO V. INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION** binds the parties and their agents, assigns, privies and successors-in- title including the Applicants. The suit is still pending in Court and has not been determined and so the order remains valid and subsisting. A copy of the order dated 29/6/2017 is attached as Exhibit 1.

The Respondents seek the interpretation of the Ruling of Hon. Justice U. P. Kekemeke in the said suit and its effect on the legality of the action of the Applicants.

In his Written Address, Chijioke Kanu Esq of Counsel for the Respondents raised three issues for determination by the Court.viz:-

- “1. Whether this Honourable Court has jurisdiction to determine this suit

- II. Whether the Claimants action discloses a reasonable cause of action against the objectors

- III. Whether the instant action ought to be commenced by Originating Summons.”

Arguing issues Nos.1 and 2 together, Learned Counsel referred to **A-G FEDERATION V. GUARDIAN NEWSPAPERS LTD (1999) 9**

NWLR (Pt.618) p.187 on the point that it is the Claimants claim which determines whether the Court has jurisdiction or not. That in this matter, the objectors failed to demonstrate how the Court lacks jurisdiction to determine the subjectmatter presented to the Court in the Originating Summons.

He contended that the objectors admitted that the basis of the instant suit is the interpretation of the Ruling of the FCT High Court in **Suit No: FCT/HC/CV/277/2016:- EZENWA ANUMUN V. INCORPORATED TRUSTEES OF THE NIGERIAN BAR ASSOCIATION**. That by this, the objectors questions the Courts jurisdiction to interpret its own Ruling.

On the issue of the Respondents not being parties to the said action, hence they are not bound by the rules of the Court, Counsel referred to the rule that a person is not prejudiced by a cause he is not a party to.

He referred to **DADIEL V. KADIRI & ANOR (2010) LPELR-401** which held that a person who is not a party to a suit is not bound by the result of the action. No person is to be adversely affected by a judgment, order or decree of a Court in an action to which he is not a party. However, a person who is in privity with a party is equally bound with the party.

Dwelling further, Counsel contended that it is an admitted fact that the Respondents are successors-in-title to the Claimants in **Suit No: FCT/HC/CV/277/2016**. It is also admitted that the objectors trace their legitimacy to the Nigerian Bar Association – the Defendant in the said suit. It is therefore logical that as privies to the Respondents in the said action, the objectors are bound by the order of the Court in that case.

Counsel next referred to the facts in the Originating Summons and canvassed they disclose multiple causes of action against the objectors in terms of capacity to hold themselves out as Chairman and Secretary of

the Nigeria Bar Association, Abuja Branch or to operate and manage or administer any account for that purpose. That from these, a valid and substantive cause of action exists against the objectors.

With regard to issue No.3, Learned Counsel submitted that the matter before this Court is for construction of the Ruling of the FCT High Court.

That the objectors seem to have misconstrued legal hostility for political hostility. That the cases cited by the objectors relate to matters where the subjectmatter of the dispute contained legally contentious subjectmatter.

Counsel further contended that all actions by their nature involve one dispute or the other. While the subtext to the instant action reveals existence of political dispute, the context and purport of the suit does not require the taking of oral evidence or protracted process of a writ of summons.

He urged the Court to discountenance the alternative prayer.

In their Reply on points of law, the Applicants contended inter alia, that the Respondents' Written Address was neither dated nor signed and sealed by a legal practitioner. For this reason, the said process is incompetent and the Court should strike it out.

On the issue of the Applicants being privies to the case, the Counsel contended that the order of Court relied upon by the Respondents in this case was obtained pending the determination of **Suit No:- FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEE OF THE NIGERIAN BAR ASSOCIATION**. That the tenure of office being challenged have since elapsed and new officers duly elected and sworn in, the alleged Court order is deemed abated in the circumstances as neither the Respondents in this suit nor the Claimant in that suit can claim tenure of term (June

2016-June 2018) any more. He relied on **AZOH V. UBN PLC (2014) 1 NWLR (Pt.1419) p.580** and urged that the Applicants are not successors in title to an expired tenure of office as they were duly elected to serve their own terms in offices that had been vacated due to the expiration of tenure

With respect to issue No.3 the Learned Counsel contended that from the Applicants' affidavit and exhibits before the Court, there is need for the Respondents herein to prove their entitlement to the reliefs sought particularly in view of the fact that the parties in **Suit No:- FCT/HC/CV/277/2016** and the instant one are different which cannot be discharged by mere affidavit evidence as issues joined need to be tested under cross examination. He referred to **OLUMODA V. MUSTAPHA & ORS (2019) LPELR-46439(C) p.16**.

He urged the Court to uphold the objection.

I have given due consideration to the averments in the affidavits of the parties and submissions of their Learned Counsel. The cardinal issue that calls for determination is whether or not the Applicants have made out a case to justify a grant of substantive relief or that sought in the alternative in the motion paper.

An overview of the Applicants' objection show it is predicated on three broad platforms to wit (1) the Court has no jurisdiction to entertain the Respondents' claim for the reason that the Respondents in the suit seek to derive benefit from Exhibit 1 in **Suit No:- FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES** of the Nigerian Bar Association even when they were not parties to that suit hence the Exhibit does not enure to their favour; (2) the Respondents' claim discloses no reasonable cause of action against the Applicants for the reason that the Respondents' suit is predicated on Exhibit 1 of **Suit No: FCT/HC/CV/277/2016** in respect of which the

Respondents were not parties; and (3) the action was commenced vide an Originating Summons even when the facts relied on are contentious and in dispute.

Both parties are settled that to determine issues of this nature, the Court is under a duty to examine the Claimant's Writ of Summons and Statement of Claim. In this case, the Originating Summons and affidavit in support of it. I do agree this represents the true state of the law. Only to add that the averments in the said Statement of Claim (in this case averments in the affidavit in support) are deemed admitted by the Applicant for the sole purpose of determination of the objection. **See: - DANTATA V. MOHAMMED (2000) 7 NWLR (Pt.664 p.176).**

I have accordingly read the averments in the Respondents' affidavit in support of the Originating Summons. Summarily it was averred that the 1st Respondent is the Chairman of the Nigerian Bar Association Abuja branch while the 2nd Respondent is the secretary. They were elected into the positions in the election of the Association held on 11/6/2018. The Applicants are legal practitioners and members of the Nigerian Bar Association, Abuja Branch. The 3rd Respondent is a banker of the Association which maintains Account **No: 0694758692** with it which is currently inaccessible due to activities of the Applicants.

The Applicants along with their cohorts sought to unlawfully impose themselves and forcefully take over the affair of the branch which led the former executive officers of the branch to institute suit with **No:- FCT/HC/CV/277/2016: EZENWA ANUMNU V. INCORPRATED TRUSTEES** of the Nigeria Bar Association pending before Hon. Justice U. P. Kekemeke of the FCT High Court.

Following the activities of the Applicants, the Court issued an order in the suit restraining the Applicants and their cohorts from conducting any election or taking any steps that could interfere with the authority of the executive officers led by Ezenwa Anumnu Esq. A copy of the order made on 29/6/2017 is attached as Exhibit 1.

The above mentioned suit is still pending and has not been determined.

On 11/6/2018, the incorporated Trustees of Nigeria Bar Association through a Caretaker Committee conducted parallel election from which the Applicants' emerged in contravention of the pending order of the Court.

On 30/12/2018, it came to the notice of the 1st Respondent that the Applicants opened the account with number: 0772753960 in the name of the Nigeria Bar Association, Abuja Branch (Unity Bar) with signatories who are neither members of the Branch executive nor howsoever authorized to operate an account in the name of the branch, against the Constitution of the association, with the aim of unlawfully collecting and dissipating the funds of the association.

By directing members of the Association to pay into the account with number 0772753960, the Applicants are encouraging members of the association to engage in the wholesale disregard of the orders of the Court.

The 3rd Respondent against prudent banking practices has continued to collude with the Applicants. He wrote a letter of complaint to the 3rd Respondent and a Petition to the Central Bank of Nigeria. The letters are marked Exhibits 2 and 3 respectively.

Unless the Court restrains the Applicants, they will continue to carry out/permit the reckless dissipation of the funds collected as annual branch membership dues and other funds of the association through their unauthorized account.

It is in the interest of justice to grant this application.

In the Originating Summons supported by the foregoing averments, the Respondents raised the following question for determination by the Court.

- “1. Whether in view of the order of the High Court of the Federal Capital Territory made on the 29th day of June 2017 by Hon. Justice U. P. Kekemeke, in **Suit No:- FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES** of Nigerian Bar Association, the 1st and 2nd Defendants can parade themselves as Chairman and Secretary respectively of the Nigerian Bar Association, Abuja Branch (Unity Bar) having participated in an election in disobedience to the Court.

- (2) Whether in view of the provision of the Articles 13 (3) (a) & (b) of the Nigerian Bar Association uniform Bye-laws for branches relating to the branch and considering the order of the High Court of the Federal Capital Territory made on the 29th day of June 2017 by Hon. Justice U. P. Kekemeke in Suit No: **FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES** of the Nigerian Bar Association, the 1st and 2nd Defendants have the authority to open or operate the Access Bank Account with number: 0772753960 with the 3rd Defendant or any account whatsoever in the name of Nigerian Bar Association Abuja

Branch (Unity Bar) in contravention of the order.

- (3) Whether the Access Bank Account with number:- **0772753960** opened and operated by the 1st and 2nd Defendants in the 3rd Defendants and any/all other accounts so opened and operated by the 1st and 2nd Defendants by themselves or in conjunction with any other person(s) is not in contravention of the uniform Bye-laws of the Nigeria Bar Association and in willful Breach of the order of the High Court Federal Capital Territory made on the 29th day of June 2017 by Hon. Justice U. P. Kekemeke in **Suit No: - FCT/ HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES** of the Nigeria Bar Association?”

Upon resolution of these questions, the Respondents seek for the reliefs, interalia:-

- “(1) A DECLARATION that the 1st and 2nd Defendants are not the Chairman and Secretary of the Nigerian Bar Association, Abuja Branch.
- (2) A DECLARATION that the 1st and 2nd Defendants have no authority to open or operate the Access Bank account with No: 0772753960 in the name of Nigerian Bar Association (Unity Bar) or howsoever conduct themselves in

contravention of the order of the High Court of the Federal Capital territory made on the 29th day of June 2017 by Hon. Justice U. P. Kekemeke in **Suit No: FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES** of the Nigeria Bar Association.

- 3. . . .
- 4. . . .
- 5. . . .
- 6. . . .
- 7. . . .
- 8. . . .
- 9. . . .

The foregoing represents in a nutshell the questions raised by the Respondents in the Originating Summons for determination by the Court, the reliefs sought upon determination of same and facts in support of the reliefs sought.

It is the contention of the Applicants that this Court has no jurisdiction to entertain the action for the reason that the order of the FCT High Court (coram: Kekemeke J) pursuant to which the Respondents' action has been commenced does not enure to their benefit in that neither the Respondents nor the Applicants herein are parties to the action.

That the said orders was not made binding on the Applicants.

It was also contended that for same reason there is no reasonable cause of action disclosed in the suit against the Applicants.

I have given a serious thought to the foregoing contentions of the Applicants vis-à-vis the Respondents' response as disclosed in the records.

For the purpose of determination of the objection, the said order (Exhibit 1) made by His Lordship Kekemeke J calls for interpretation or construction. Does it, in its plain terms, enure to the benefit of the Respondents to give them a right of action against the Applicants. For ease of reference, I reproduce the words of the order as hereunder appearing:-

- “(1) AN ORDER of Interlocutory Injunction is hereby issued restraining the Defendants/Respondent either by itself, agents, officials and privies or the purported Caretaker Committee or any other Committee by whatever name called and constituted pursuant to the Resolution of the National Executive Committee of the Nigerian Bar Association (NBA) from putting into effect the Resolutions made at the National Executive Meeting (NEC) pending the determination of this suit.

- (2) The Defendant/Respondent is further restrained either by itself, agents, officials, officers, privies and or Caretaker Committee or any other Committee by whatever name called and constituted pursuant to the Resolution of the National Executive Committee of the Nigerian Bar Association from conducting any election whatsoever for the offices of Chairman and Secretary of Nigerian Bar Association, Abuja Branch pending the determination of the subsisting suit.

The suit stands adjourned accordingly . . .”

It is observed upon a perusal of the order that neither the Respondents herein nor the Applicants were listed as parties to the suit in which the order was made. The order appears to have been made for the benefit of or put in another way, to protect the right of the Plaintiff/Applicant in the suit (ie Ezenwa Anumnu) in having the resolution of the National Executive Committee (NEC) of Nigerian Bar Association not put into effect. It also seeks to restrain the Defendant to the action by itself, agents, officials, officers, privies or Caretaker Committee from conducting any election for offices of the Chairman and Secretary of Nigeria Bar Association Abuja Branch pursuant to the Resolution of the National Executive Committee of NBA pending the determination of the suit.

Whilst the order, in the view of this Court, is targeted at the Defendant and its agents, officers and privies, in that suit from conducting the said election, it is one made in personam in favour of the Claimant in the suit (Ezenwa Anumnu). It is not an order made in rem.

For ease of understanding, there is a difference between a right in personam and right in rem. The Black's law Dictionary Eight Edition at page 1349 defines the two phrases thus:-

“right in personam. An interest protected solely against specific individuals. Also termed personal right.

Right in rem: A right exercisable against the world at large.”

Applying these to Exhibit 1, to the extent that the order was made in protection of the personal right of Ezenwa Anumnu, who was the sole Plaintiff in the suit. It does appear inconceivable to this Court that same right can validly be exercised by the Respondents herein who were not parties to that action. This is particularly so, as the Court did not in any way state that the right can be exercised by, or is made for the benefit of

Ezenwa Anumnu, his agents, agents, servants, privies, or successors in title or personal representatives.

Under Section 128(1) of the Evidence Act, 2011, where a judgment of a Court or any other judicial or official proceeding has been reduced to the form of a document, no evidence may be given of such judgment or proceeding or of the terms except the document itself nor may the contents be contradicted, altered or added to or waived by oral evidence. In line with the provision of Section 128 (1) of the Evidence Act 2011, the Court cannot read into the words of Exhibit 1 (an order of Court) the words which are not there which will tend to alter or vary it. The Court cannot read into it a meaning to effect that it enures to the benefit of Ezenwa Anumnu's agents, servants, or privies so as to make it enure to the benefit of the Respondents in the instant action. What this translates to is that the order begins and ends with Ezenwa Anumnu with regard to the beneficiary to it and extends to the Applicants herein if they are the proven to be agents or privies of the Defendant in that suit.

In this action, the Applicants herein have not been listed as agents or privies of the Incorporated Trustees of the Nigerian Bar Association (the Defendant in that suit) they were simply described in paragraph 5 of the affidavit in support of the Originating Summons as "Legal practitioners and members of the Nigerian Bar Association, Abuja branch." They have not been listed in their title to the suit as having been sued as agents, or privies, etc of Nigerian Bar Association Incorporated Trustee.

By the foregoing, what stands before the Court is a scenario in which the Respondents commenced the instant action on the basis of a Court order which does not enure to their benefit against the Applicants who are not shown to be privies of the Defendant in Exhibit 1 against whom the order was made. By this, it is discernible that Exhibit 1 on the basis of which the Respondents' commenced the instant action has not donated a right of action to them against the Applicants.

In **DANTATA V. MOHAMMED** supra the Supreme Court in explaining the meaning of cause of action, stated that it consists of inter alia “the facts or combination of facts which give rise to a right to sue. It is a cause for an action in the Courts to determine a disputed matter.”

The foundation of the Respondents case in this matter (ie Exhibit 1) having given a right in personam to Ezenwa Anumnu and the Applicants herein having not been listed or described as privies of the Incorporated Trustees of Nigerian Bar Association, the Respondents have no valid cause or right to sue the Applicants herein in this action. To this extent the suit cannot be said to disclose a reasonable cause of action against the Applicants. In the circumstances, the Court lacks the jurisdiction to entertain the action. The first leg of the Applicants’ objection therefore succeeds and is sustained.

Assuming however I am wrong in my above view and it can be said the Respondents’ action discloses a reasonable cause of action against the Applicants, the Applicants’ in grounds (b) and (c) of the objection contend that the action was wrongly commenced vide an Originating Summons. That the facts are essentially hostile and in the circumstances it ought to have been commenced vide a Writ of Summons.

The Respondents contended otherwise ie that the suit is one which seeks for construction of the Ruling of FCT High Court coram: Hon Justice P. U. Kekemeke attached as Exhibit 1. That there is a difference between a legal hostility and political hostility. That while the subject of the instant action reveal the existence of a political dispute, the context and purport of the action does not require the taking of oral evidence or the protracted processes of a Writ of Summons.

Order 2 Rule 3(1) and (2) of the Rules of Court 2018 have made provisions showing the nature of actions which can be commenced vide an Originating Summons. Rules 3 (1) and (2) provide thus:-

- “(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by Originating Summons for the determination arising under the instrument and for a declaration of the rights of the persons interested.
- (2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed.”

A strict reading of the words of Order 2 Rules 3 (1) and (2) of the Rules of Court shows that it is only permissible to institute an action vide an Originating Summons where the action entails interpretation or construction of rights of a party in relation to a deed, will, enactment or other written instrument. The Respondents’ instant action involves determination of their rights in relation to Exhibit 1. In other words, it involves construction of Exhibit 1. Exhibit 1 is an order of Court. It is neither a deed, nor a will nor an enactment. It is also not a written instrument. The Blacks’ law Dictionary (6th Edition) at page 801 defines an instrument in these words.”

“A formal or legal document in writing such as a contract, deed, will, bond or lease. A negotiable instrument or a security or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment.

Anything reduced to writing, a document of a formal or solemn character, a writing given as a means of affording evidences. A document which gives a formal expression to a legal act or agreement for the purpose of creating, securing, modifying or terminating a right. A writing executed and delivered as the evidence of an act or agreements.”

Clearly, Order 2 Rules 3 (1) and (2) do not envisage an Order of Court which the same Black’s law has not included a Court Order as an instrument. The Dictionary defines an order as:-

“A mandate, precept, command or direction authoritatively given, rule or regulation. Direction of a Court or judge made or entered in writing and not included in a judgment, which determines some point or directs some step in the proceeding.”

An Order of Court not having been classified as either a deed or a will or an enactment or an instrument, does not qualify as one of the matters which can be interpreted vide an Originating Summons in order to determine the rights of a party or parties in relation to it.

By reason of this, the Respondents instant action which seeks to interpret the rights of the Respondents in relation to Exhibit 1 was wrongly commenced vide an Originating Summons. It ought to have been commenced vide a Writ of Summons which is a mode mandatorily provided for in Order 2 Rule 2(1) (c) of the Rules of Court showing situations or circumstances on which an interested person claims a declaration. For clarity, Order 2 Rule 2 (1) (c) provides:-

“The under listed proceedings shall be

commenced by writ except any applicable law requires that the proceedings shall begin otherwise, than by writ:-

a . . .

b . . .

(c) Where an interested person claims a declaration.”

In this case, a reading of the Respondents’ reliefs in the Originating Summons shows they seek for:-

- “(1) A DECLARATION that the 1st and 2nd Defendants are not Chairman and Secretary of the Nigerian Bar Association, Abuja Branch.
- (2) A DECLARATION that the 1st and 2nd Defendants have NO authority to open or operate Access Bank Account with **No:- 0772753960** in the name of Nigerian Bar Association Abuja Branch (Unity Bar) or howsoever conduct themselves in contravention of the order of the High Court of the Federal Capital Territory made on the 29th day of June 2017 by Hon. Justice U. P. Kekemeke in **Suit NO: FCT/HC/CV/277/2016** between **EZENWA ANUMNU V. INCORPORATED TRUSTEES** of the Nigerian Bar Association.”

The Respondents having sought these declarations in protection of their interests or rights as Chairman and Secretary respectively of Nigerian Bar Association Abuja Branch against the Applicants as averred in paragraphs 1 to 4 of the affidavit in support of the Originating Summons ought to have commenced the action vide a Writ of Summons so that the

issues involved would be properly delineated in the parties pleadings, and evidence properly led on them. Order 2 Rule 2(1) of the Rules of Court has provided the way for commencement of this kind of action but the Respondents chose another way which is forbidden by the rules.

Beyond the foregoing provision of the Rules of Court on when a matter is to be commenced vide an Originating Summons or Writ of Summons, judicial authorities are settled that Originating Summons is not veritable mode of commencement of an action where the facts in issue will be likely to be contentious or hostile. See: - **PAM V. MOHAMMAD (2008) 35 NSCQR p.123; AMASIKE V. REGISTRAR GENERAL OR CORPORATE AFFAIRS COMMISSION (2010) 43 NSCQR p.581.**

In this case, a reading of the Respondents' affidavit in support of the Originating Summons shows averments on facts which are potentially contentious and hostile. There are averments that the Applicants meddlesomely opened account with **No:- 0772753960** with the 3rd Respondent in the name of the Nigerian Bar Association Abuja Branch without the Respondents knowledge and with signatories who are neither members of the Branch executive nor authorized to open an account in the name of the Branch – all with an aim of unlawfully collecting and dissipating the funds of the association for their personal purposes. That the 3rd Respondent against all reasonably diligent and prudent banking practices has continued to collude with the Applicants to undermine the interest of the members of the branch.

These averments alone (though there are many more) by their tenor and nature are hostile, contentious and controversial. They contain an open invitation to disputes from the Applicants who naturally in paragraphs 3(a) to (g) of their Counter Affidavit heavily joined issues with the

Respondents on them thus making those facts contentious and roundly disputed.

By reasons of these findings, the Court holds the clear but firm view that the Respondents ought not to have commenced their instant action vide an Originating Summons but rather a Writ of Summons. The action having been commenced vide the wrong mode of action and inconsistent with the provision of Rules of Court 2018 is incompetent and the Court lacks the jurisdiction to entertain it. By reason of these, the sole issue raised above is resolved in favour of the Applicants against the Respondents. The Court having found that it lacks jurisdiction to entertain the suit, the option open to it is to strike out the suit and not dismiss it.

In the light of this, this suit is struck out with cost assessed and fixed at ₦100,000.00 against the Respondents in favour of the Applicants.

SIGNED
HON. JUDGE
23/3/2020.

LEGAL REPRESENTATIONS

- (1) Abimbola Kayode Esq for the 1st and 2nd
Defendants/Applicants.
- (2) Chijioke Kanu Esq for the Claimants/Respondents.
- (3) Ngozi Ufelle Esq for the 3rd
Defendant/Respondent.