

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 WEDNESDAY THE 29TH DAY OF JANUARY , 2020

SUIT NO: FCT/HC/CV/483/2018

BETWEEN:

LEEMS NIGERIA LIMITEDCLAIMANT/APPLICANT

AND

**ROAD TRANSPORT EMPLOYERS
ASSOCIATION OF NIGERIADEFENDANT/RESPONDENT**

CONSOLIDATED RULING

On 7/12/2018, the Claimant/Applicant took out a Writ of Summons against the Defendant. In the Statement of Claim filed along with it, it claims as follows against the Defendant:

“AN ORDER of this Honourable Court directing the Defendant to pay to the Claimant the sum of N4,000,000 (Four Million Naira) being the arrears of rent for the tenancy that commenced on the 20th February 2016 and expired on the 19th February 2017 forthwith.

(b) AN ORDER of this Honourable Court directing the Defendant to pay to the Claimant the sum of N500,000.00 (Five Hundred Thousand Naira) per month for the use and occupation of the premises by the Defendant from the 20th February 2017 to the 26th April 2018 when the Defendant vacated the premises.

- (c) AN ORDER of this Honourable Court compelling the Defendant to pay to the Claimant the sum of N10,000, 000,00 (Ten Million Naira) only as General Damages
- (d) Cost of this action in the sum of N1,500,000.00 (One Million Five Hundred Thousand Naira) only
- (e) 10% interest on the judgment sum from the date of Judgment until the judgment debt is fully liquidated”.

On 7/12/2018, the Claimant/Applicant filed motion on notice with number: M/1322/2018 seeking the following reliefs against the Defendant

- “(1) AN ORDER entering summary judgment for the Claimant in terms of the Claims as contained in the Writ of Summons
- (2) And such further other orders as this Honourable Court may deem fit to make in the circumstance.”

The application is supported by a 21-paragraph affidavit deposed to by Alhaji Muhammad Liman and Written Address of the Claimant/Applicant’s Counsel.

In response to the foregoing the Defendant filed a Statement of Defence on 17/5/2019. On the same 17/5/2019, it filed a Memorandum of Conditional Appearance and a notice of Preliminary Objection which is supported by a 4-paragraph affidavit deposed to by Comrade Yusuf Adeniyi. It is supported by a Written Address of the Defendant/Applicant’s Counsel.

On 15/9/2019, the Claimant/Respondent filed an 18-paragraph Counter affidavit in opposition along with Written Address of its Counsel.

On 28/10/2019, the Court made an order consolidating the hearing of the Preliminary Objection with the application for summary judgment. The Objection and application for summary judgment was heard same day and Consolidated Ruling reserved.

For the reason that the Preliminary Objection Challenges the competence of the Claimant's suit and this being a threshold issue, the Court shall proceed to consider the Preliminary Objection first and thereafter, if necessary, consider the application for Summary Judgment.

In the notice of Preliminary Objection, the Defendant/Applicant challenges the competence of the Claimant's suit on the following grounds:-

- “(a) There are no proper parties before this Honourable Court.
- (b) The Claimants (SIC) have disclosed no cause of action
- (c) There is no tenancy agreement between the parties
- (d) The Defendant is not indebted to the Claimant however whatsoever
- (e) The suit is not justiciable
- (f) Mallam Musa Na Alla Investment Ltd the tenant of the Claimant is a limited liability Company while the Defendant herein is a statutory Trade Union having nothing however whatsoever with the Claimant

- (g) The Defendant is not indebted to the Claimant for any sum however whatsoever be it four Million (4,000.00) (SIC) or whatever.

This Court lacks jurisdiction to entertain this suit”.

In the affidavit in support, it was avered on behalf of the Defendant/Applicant, inter alia, that the Defendant/Applicant is a statutory Trade Union vide the Trade Union Act Cap T14 LFN 2004 whereat it is listed as no 29 in schedule 2 part C with a certificate of registration. The said certificate is attached as Exhibit OOC1.

The Defendant/Applicant never at any moment entered into any tenancy agreement with the Claimant neither does any contractual relationships exist between them.

The tenancy renewal the Claimant is placing heavy reliance on is between the Claimant and Mallam Musa Na Alla Investment Ltd, a limited liability company with RC no 301098 as shown in the document attached as Exhibit OOC2.

All payment from commencement of the tenancy has not been made by the Defendant but by the above mentioned company.

The Defendant never at any time took possession or occupied the said property, subject matter of this suit.

The Claimant has not disclosed any cause of action against the Defendant.

The Defendant is not indebted to the Claimant for any sum.

The Court should dismiss this action for being incompetent and an abuse of Court of Court process.

In his Written Address, C.A.S. Oshomegie Esq. of the Counsel for the Defendant/Applicant adopted the grounds of the objection as the issues for determination.

He submitted, inter alia, that the complaint of the Claimant is that the Defendant/Applicant owes it monies as arrears of rent. The Claimant has not shown any evidence or produced any instrument showing the Defendant was its tenant. There is no contractual relationship between the parties. The Defendant therefore cannot incur liability of a tenant without being a tenant.

The Court is robbed of jurisdiction to hear this suit. He referred to MADUKOLU V. NKEMDILIM (1962) 25 SCNLR P.341.

Having said that the Claimant has no contractual relationship with the Defendant per Exhibit OOC1, that there is no cause of action and in the absence of cause of action this Court is robbed of jurisdiction. He relied on ABUBAKAR V. FALOLA (1997) 11NWLR (Pt. 530) p.638.

Counsel next referred to the meaning of cause of action relying on LABODE V. OTUBU (2001) 7 NWLR (Pt. 712) P. 256 and CHEVRON (NIG) LTD V. LO (NIG) LTD (2007) 16 NWLR (Pt. 1059) p.168 and contended that the Claimant/Applicant has not in its Writ of Summon, Statement of facts, motion on notice and exhibits attached disclosed any

facts/cause of action against the Defendant/Applicant which vests jurisdiction on the Court. He referred to GOLDMARK (NIG) LTD V. IBAFON CO. LTD (2012) 10 NWLR (part not supplied), page 291 on the conditions that determine jurisdiction. He concluded that the claims of the Claimant are not justifiable as there exists no tenancy agreement or any nexus whatsoever showing any contractual relationship between the parties.

He urged the Court to hold that the Claimant/Respondent has no legal right to institute this action. The suit should therefore be dismissed.

In its Counter affidavit, it was averred on behalf of the Claimant/Respondent, inter alia, that the averments in the Defendant/Applicant's affidavit in support of the objection are false. Contrary to the averments, the Defendant/Applicant was a tenant of the Claimant. Sometime in February 2014, the Defendant entered into a tenancy relationship with the Claimant in respect of the Claimant's property situated at no. 11 Isoko Street, Wuse, Zone 1 Abuja for a period of two years commencing from the 20/2/2014 to 19/2/2016 at the agreed rent of N6, 000, 000.00 totaling N12,000,000.00.

The Defendant first made a part payment of N10,000,000.00 receipt of which it acknowledge and later it paid the balance of N2,000,000.00 for which a receipt was issued to it.

The initial deposit of N10,000,000.00 was made by the Defendant/Applicant by cheque issued in the name of Mallam Musa Na Allah Investment Ltd (also called M. M.N.A. Investment Ltd). Upon receipt of the money, the Defendant/Applicant caused the Claimant's

Managing Director to sign an acknowledgement of receipt which he did on 20/2/2014. A receipt was also issued in favour of the Defendant/Applicant same 20/2/2014. Copies of the Acknowledgment of receipt of N10,000,000.00 and the receipt issued with the cheque issued for the said sum are attached as Exhibits A1, A2 and A3.

Contrary to the averments, the tenancy was between the Claimant and the Defendant and the Defendant took possession of the premises on 20/2/2014.

The issues of renewal were between the Claimant and the Defendant although in less than three weeks to the expiration of the tenancy, one M.M.N.A Investment Ltd by its letter dated 1/2/2016 curiously informed the Claimant that it caused out renovation of the premises on behalf of the Defendant and that it incurred the sum of N5,300,000.00 as cost of the renovation.

The Claimant through its solicitor letter of 1/3/2016 informed the company that it never had any tenancy relationship with it but rather that the Claimant has a tenancy relationship with the Defendant which had expired by effluxion of time on 19/2/2016 and that a new tenancy had commenced from the 20/2/2016. That if the Defendant was not interested in renewing the tenancy, it should vacate same within 7 days. It further informed the company that the alleged renovation and alleged expenses incurred were not to the Claimant's knowledge as its consent was not sought and obtained.

The Claimant later received letter dated 1/2/2016 and 12/4/2016 from the Defendant's solicitors on record with incoherent figures on them.

Copies of the said M.M.N.A. Investment Ltd letter dated 1/2/2016 and 12/4/2016 and the Claimant's solicitors letters are attached as Exhibits B1, B2 and B3.

The Defendant/Applicant through its same solicitors instituted an action against the Claimant and its Managing Director before FCT High Court (Coram Hon. Justice S.C. Oriji) in suit no:- FCT/HC/CV/2176/2016 to contend that its tenancy had not expired. The suit was dismissed with cost of N20,000.00.

The two contentions of the Defendant/Applicant in its Statement of Defence are the same contentions expanded as grounds for the Objection.

In his Written Address, Pereboh/Sanami Esq. of counsel for the Claimant/Respondent submitted inter alia that there is no competent Written Address in support of the Defendant's Objection for the reason that the learned Defendant's Counsel did not submit any issue for determination having adopted the grounds of the objection as issues for determination. He urged the Court to discountenance the Address.

This said, counsel raised two issues for determination thus:-

- “(1) Does this suit disclose a cause of action against the Defendant
- (2) Is this application not an abuse of Court process filed to irritate the Claimant and to waste the precious time of the Court.

Arguing issue no. 1, learned Counsel, submitted that to determine whether a suit discloses a cause of action, what the Court looks at is the Statement of claim or supporting affidavit, as the case may be. He

submitted that the averments in paragraphs 3 to 17 of the Claimant's Statement of claim disclose a reasonable cause of action that give the Claimant its right of action against the Defendant.

With respect to issue no. 2, counsel contended that the instant application was filed to waste the time of the Court and irritate and annoy the Claimant. He referred to the processes filed and proceedings in suit no. FCT/HC/CV/2176/2016 and urged the Court that the instant application is an abuse of Court process and should be dismissed with substantial cost.

I have given due consideration to the averments in the affidavit of the parties and submissions of their counsel in relation to the instant Preliminary Objection. The cardinal issue that calls for determination is whether or not the Defendant/Applicant has made out a case to justify a grant of the Objection.

The crux of the Defendant's/Applicant's Objection is that the Claimant'/Respondent's suit discloses no reasonable Cause of action. For this reason it should be dismissed. The Claimant/Respondent has contended the contrary as set out above.

The issue of reasonable cause of action has engaged the attention of the Courts over the years. In *DANTATA V. MOHAMMED* (2000) 7 NWLR (Pt. 664) P. 176, the Supreme Court took time to explain what is meant by cause of action (reasonable cause of action) and how to determine its existence or otherwise in a suit.

The apex Court 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.

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

With respect to how to determine whether or not 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 same cause of action or raises some questions fit to be decided by the Court”

The above guides laid by the Supreme Court are self explanatory with regard to determining whether or not the Claimant Statement of Claim discloses a reasonable cause of action. In this wise, I have examined the Claimant's Statement of Claim to see if the averments therein raise some question fit to be decided by the Court between the parties. In this connection the said averments are deemed admitted by the Defendant/Claimant.

In the Statement of Claim, the Claimant avered inter alia, that in February 2014, the Defendant entered into a tenancy relationship with it in respect of the Claimant's property being no. 11 Isoko Street, Wuse Zone 1 Abuja for a period of two years commencing from 20/2/2014 to 19/2/2016 at an agreed rent of N6,000,000.00 per annum which totalled N12,000,000.00.

The Defendant made a part payment of N10,000,000.00 the receipt of which it acknowledged and the Defendant later paid the balance of N2,000,000.00 for which the Claimant issued a receipt to it.

Less than three weeks to the expiration of the tenancy, one M.M.N.A Investment Ltd, by its letter dated 1/2/2016 curiously informed it that it carried renovation of the premises on behalf of the Defendant and that it incurred expenses in the sum of N5,300,000.00 and that same will be deducted from the next rent.

The company further requested that "The payment of the renewal of tenancy be on the 24th April 2016 and that a proper tenancy agreement be reached".

The Claimant through its solicitors by a letter dated 1/3/2016 responded to the said Company's letter and informed it that it never had any tenancy relationship with it. That rather it had a tenancy relationship with the Defendant herein which had expired by effluxion of time on 19/2/2016 and that a new tenancy had commenced from 20/2/2016 and that if the Defendant was not interested in renewing the tenancy, it should vacate the premises within 7 days. It also informed the Company that the alleged renovation and expenses were not to its knowledge as its consent was not sought and obtained. The Defendant paid only N2,000,000.00 out of the agreed rent of N6,000,000.00 through the M.M.N.A. Investment Ltd and refused to pay the balance of the agreed rent which it purportedly deducted as the cost of the alleged renovation of the premises. The Claimant vide its solicitors letter dated 27/6/2016 notified the Defendant that the period for which the N2,000,000.00 it paid had expired on 20/6/2016 and that the letter served as notice to it to quit the premises within 7 days.

Upon receipt of the letter, the Defendant filed suit with number:- FCT/HC/CV/2176/2016 against the Claimant and its alter ego on 15/7/2016 over the alleged expenses incurred on renovation.

In a judgment delivered on 15/3/2017, the Court (Coram Oriji, J) demises the suit. That despite the above judgment. The Defendant continued its occupation of the premises without paying the balance of N4,000,000.00 till 26/4/2017 when it vacated the premises.

The outstanding balance of N4,000,000.00 remains unpaid till date. The Defendant has not only refused to pay the balance of the rent but

also refused to pay for the use and occupation of the premises from 20th February 2017 to 26/4/2017 when it vacated the premises.

For the reason of the foregoing the Claimant instituted the instant action in this Court seeking to recover the said sum of N4,000,000.00 being arrear of rent from the Defendant etc.

From the foregoing averments in the Claimant/Respondent Statement of Claim, can it be said the averment did not raise question fit to be decided by the Court between it and the Defendant/Applicant?

There is no gainsaying that the averment disclosed dispute between the Claimant/Respondent and the Defendant/Applicant with regard to unpaid arrears of rent of N4,000,000.00 in respect of the Claimant property being no. 11 Isoko Street, Wuse Zone 1 Abuja as well as money due and payable to the Claimant by the Defendant/Applicant for use and occupation of their premises after expiration of tenancy relationship.

The foregoing constitute cause of action for which the Claimant/Respondent could and did validly commence the instant action. Whether or not the claim will succeed are not matter to be determine at this interlocutory stage of the case. That will be determined at the substantive stage of the case. Suffice it to say that, at present, the Claimant/Respondents Statement of Claim discloses reasonable cause of action fit to be adjudicated upon by the Court between it and the Defendant/Applicant. Likewise, whether, or not Mallam Musa Na Alla Investment Ltd is the tenant of the Claimant and not the Defendant/Applicant is matter to determined at the substantive stage of the case.

By reason of the foregoing, the Court resolves the sole issue raised above against the Defendant/Applicant in favour of the Claimant/Respondent. This being the case.

The Preliminary Objection fails. It is dismissed with cost assessed and fixed at N50,000.00 in favour of the Claimant/Respondent.

With respect to the application for summary judgment, Order 11 Rule 11 of the Rules of Court 2018 provides that:-

“where a Claimant believes that there is no defence to his claim he shall file with his originating process the Statement of Claim, the exhibits, the deposition of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application”

In Rule 4 of the Order, it is provided that:-

“Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit, he shall, not later than the time prescribed for defence file:-

- (a) His Statement of Defence
- (b) Deposition of his witnesses
- (c) Counter affidavit and
- (d) A written brief in reply to the application for summary judgment”

Rule 5 of the Order gives the Court the power to grant leave to the Defendant to defend the suit where it consider it has a good defence as well as the power to enter judgment for the Claimant where it consider the Defendant has no good defence to the suit.

A cardinal requirement of the provision of Order 11 Rule 4 is that a Defendant who intends to defend the suit pursuant to which the Claimant's Statement of Claim and the processes mentioned in Order 11 Rule 1 were served on him, is under a duty to file his Statement of Defence along with the processes mentioned in Order 11 Rule 4 not later than the time prescribed for defence.

In this case, records of Court show that the Claimant's originating processes were served on the Defendant on 30/4/2019. In response to it, the Defendant filed its Statement of Defence on 17/5/2019 and served it on the Claimant on 23/5/2019. Rule 4 requires that the Statement of Defence ought to be filed within the time prescribed for filing of Defence. It did not say anything about time for service of the Statement of Defence. No penalty has been prescribed for service effected after prescribed time for filing of Statement of Defence. In the circumstances, the Court holds that the Defendant filed its Statement of Defence within the time required by Order 11 Rule 4 of the Rules of Court. Having so found, the next question is whether or not the Defendant has a good defence to the Claimant's claim so as will enable the Court exercise its discretion under Order 11 Rule 5 of the Rules of Court to grant leave to defend the suit.

The learned Claimant's Counsel has urged the Court that the Court is to consider the defence raised by the Defendant in his response to the Application for summary judgment and not that raised in a defence filed separately.

I have carefully considered the words of the provision of Order 11 Rules 4 and 5 of the Rules of Court 2018, it does appear to me that Rule 5 flows from the provision of Rule 4. In other words, Rule 4 having provided that the Defendant, where he intends to defend is to file Defence within prescribed time and in Rules. A Statement of Defence within prescribed time and in Rule 5 gives the Court a discretion to grant him leave to defend where he has a good defence, the good defence can only be discerned from the Statement of Defence required and provided for on Rule 4. It appears to this Court inconceivable that the Rule envisages a defence disclosed in another process. Rule 5 simply provides for the step the Court will take where the Defendant complies with the provision of Rule 4. In the light of this, the learned Claimant's contention on this issue is rejected.

With regard to the defence described, the Court has taken a serious consideration of the issues raised by the Defendant in its brief Statement of Defence vis-a-vis the Claimant Claims. Summary of the defence is that there is no tenancy relationship between the Claimant and the Defendant. It does not appear to this Court that the defence can be classified as frivolous or be dismissed with a wave of the hand when same has not be subjected to the vigord of interrogation under cross examination . It is the view of the Court that until evidence is led on same and the witness is subjected to the fires of cross examination that it will be hasty to dismiss the defence as not being good enough. The defence as raised raises triable issues which calls for trial.

For these reasons, the Court is minded to grant leave of the Defendant to defend the suit. Consistent with the discretion given to the Court in

Order 11 Rule 5, of Rules of Court 2018 leave is granted to the Defendant to defend the suit.

The implication of the foregoing finding is that the Claimant's application for summary judgment cannot be granted. It is dismissed with cost of N50,000.00 in favour of the Defendant.

Signed
Hon. Judge
29/01/2020

LEGAL REPRESENTATIONS:

- (1). Peneboh Sanami Esq for the Claimant
- (2). C.A.S. Oshomegie Esq for the Defendant