

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 20TH DAY OF JANUARY , 2020

SUIT NO: FCT/HC/CV/1982/2018

MOTION NO: FCT/HC/CV/M/7183/2019

BETWEEN:

REGISTERED TRUSTEES OF PRIVATE TAXI }1ST CLAIMANT/
& CAR HIRE OPERATORS ASSOCIATION OF } RESPONDENT
NIGERIA ABUJA FCT

VIKO NIGERIA GROUP OF COMPANIES LTD.....2ND CLAIMANT/
RESPONDENT

VIKO TAXI GLOBAL NETWORK LTD.....3RD CLAIMANT/RESPONDENT

AND

UBER TECHNOLOGIES SYSTEM LTD.....DEFENDANT/APPLICANT

RULING

By a Notice of Preliminary Objection predicated on Order 43 Rule 1 of the Rules of Court 2018 and inherent jurisdiction of the Court, the Defendant/Applicant ("The Applicant") seeks for an Order striking out this suit in limine.

AND for such further or other Orders as the Court may deem fit to make in the circumstances.

The application is supported by a 12-paragraph affidavit deposed to by Adeniran Hastrup and Written Address of the Applicant's Counsel and Reply on points of law.

In opposition, the Claimants/Respondents filed a 6-paragraph Counter Affidavit deposed to by Roland Chiedozie on 18th February 2019 and Written Address of their Counsel.

At the hearing on 17th June 2019, Counsel for parties adopted their oral submissions in support of their respective contentions. Ruling was then reserved.

In the Affidavit in support it was averred on behalf of the Applicant, inter alia, that by a Writ of Summons dated 4th June 2018, the Respondents commenced this action against the Applicant claiming inter alia, (x) that the business of the Defendant is illegal (y) that the Defendant cannot engage in taxi or car hire business at the Nnamdi Azikiwe International Airport Abuja and (z) the sum of N10, 000, 000.00 representing the accruals and loss of taxi and car hire businesses which the Defendant through its partners have taken away from the Claimants..

From the nature of the reliefs sought by the Claimants they do not have the requisite locus standi to institute this action.

The Claimants/Respondent are not members of the Applicant's company and do not have the locus standi to complain about any alleged ultra vires acts of the Applicant.

The 1st Respondents does not claim to be licensed to operate commercial transportation of any kind within the Nnamdi Azikiwe International Airport.

The 2nd Respondent has by its pleadings shown that it has transferred its purported licence to the 3rd Respondent via the 2nd Respondent's letter dated 1st July 2015.

The suit in its entirety does not disclose any reasonable cause of action against the Applicant for the reasons that the intellectual property in Uber Technology platform including Uber application is the property of UBER BV, a Dutch registered company.

The Drivers – Partners are independent contractors of Uber BV who agree to pay a service fee to Uber BV in return for services provided by Uber BV in allowing them to be connected to the Uber Application to receive requests from riders. Uber BV does not direct or control the driver-partners

in the performance of the transportation businesses and particularly in relations to the provision by the Driver – Partners of their transportation services.

The Applicant is a Nigerian registered company separate and distinct from Uber BV and is only involved in the provision of local support and marketing services to companies with the Uber Group in Nigeria.

The Applicant neither carries on the business of taxi and/or car hire or transportation of any kind at the Nnamdi Azikiwe International Airport Abuja or solicits the services of private vehicles owners or any group of persons to engage in providing taxi and or car hire services.

The Applicant carries on its business within the ambit of its Memorandum of Association.

It will be in the interest of justice to grant this application.

In their Counter Affidavit, it was averred on behalf of the Respondents, inter alia, that the Federal Air Port Authority (FAAN) is the custodian of all the Airports in Nigeria and vested with the power of issuing concession rights to taxi and car hire operations in all the airports in Nigeria. The Respondents have taxi and car hire services as part of their businesses from which they earn income and create employment. The Respondents engage in legitimate taxi and car hire services at the Nnamdi Azikiwe International Airport and their complaint is about the activities of the Applicant at the airport which is affecting the authorized business of the Respondents.

The Respondents applied to the Federal Airport Authority of Nigeria to operate car hire business at the Nnamdi Azikiwe International Airport which was granted. This was after they paid Concessionaire fee. A copy of the evidence of the payment is attached as Exhibit A.

The Respondents already have huge customer base and patronage at the Nnamdi Azikiwe International Airport Abuja from where they generate money with which they pay concession fee to FAAN. Engaging in taxi and car hire business is not part of the functions of the Federal Airport Authority of Nigeria.

An FCT High Court has in Suit No: FCT/HC/CV/1733/2014: OSCAR EMMA OBIORA & ANOR V VIKO NIGERIA GROUP OF COMPANIES LTD delivered a Judgment on 25th November 2016 and pronounced the 2nd Respondent as lawfully licenced and authorized by FAAN to operate car hire services at the Nnamdi Azikiwe International Airport. A certified true copy of the judgment is attached as EXH. B.

The Applicant does not have the permission of FAAN to operate taxi and car hire business at the airport. The Applicant deploys its mobile application to solicit for and pick up passengers of the Nnamdi Azikiwe International Airport Abuja without the license of FAAN to engage in such business.

The unauthorized car hire activities of the Applicant at the said airport through the deployment of her mobile application for car hire activities at the airport using her agents known as Uber Partners deplete the Respondent's daily income from the taxi and car hire business at the airport.

The Respondent is charged fees at the Airport by FAAN based on the projected income the 2nd Respondent would make from car hire services at the airport over a specified period. The continued operation of the Applicant's taxi and car hire business at the Abuja through the deployment of its mobile application device which is used by the Uber Partners takes away the estimated income of the Respondent at the airport on the bases of which they are charged the concession fee by FAAN.

The operation of the Applicant's agents – Uber Partners depletes the projected income of the Respondent whilst the concession fee which FAAN charges the Respondent which are based on the projected incomes does not reduced.

The continued operation of the Applicant's activities by deploying mobile application to attract customer for her agent at the airport without the approval of FAAN would make it difficult for the Respondent to pay for the renewal of their concession at the expiration of the current licence.

The Respondents' case is for redress on the income they are losing as a result of the Applicant's refusal to have a legalized operation at the airport.

The Nnamdi Azikiwe International Airport, Abuja is an organized place where only authorized taxi and car hire operators are allowed to operate.

There have been reported cases of nefarious and criminal activities of theft robbery, assault and rape committed by car hire drivers against passengers that are picked up from the airport and which reports the Respondents are certain that their drivers were not involved.

It is now difficult to track down miscreants on any allegation of criminal act against car hire drivers.

The Respondents in the bid to save their business have on many occasions tried to stop the Applicant's Uber Partners from operating car hire services at the airport but the Applicant's Uber Partners gathered and fought the Respondents drivers and injured some of them of which the matter was reported at the Airport Police Outpost.

Uber Partners is not a legal personality that can sue and be sued. The Applicant is the company that engages the services of Uber Partners.

The Respondents by the concessionary rights granted to them by FAAN have pecuniary interest in the issue before the Court.

The 2nd Respondent's established business of taxi car hire services is grossly undermined and destroyed through the use of mobile application deployed by the Applicant to solicit and pick up passengers at the airport.

The Respondents had complained to the Applicant about the prejudicial effect of her activities at the airport. A copy of the letter is attached as Exhibit C.

As aforesaid, the parties filed Written Address in support of their respective contentions. Their Counsel adopted them in Court at the hearing.

I have carefully read and digested the said Written Addresses. The cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the relief sought.

As shown by the records, the Applicant's objection is predicated on two grounds, to wit: -

- (1). That the Respondents lack the locus standi to institute the substantive suit, and
- (2). That the suit discloses no reasonable cause of action.

I will proceed to resolve the ground predicated on want of locus standi first.

The Supreme Court took time to explain what is meant by locus standi, and how to determine whether or not a Claimant has it in suit in ***OWODUNNI V REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST & 3 ORS (2000) 10 NWLR (PT. 675) P. 315.*** The apex Court defined the concept of "locus standi in these words: -

"The term "Locus Standi." (or standing) denotes the legal capacity to institute proceedings in a Court of law.... Standing to sue is not depended on the success or merits of a case but on the showing of the Plaintiff's case in his Statement of Claim. It is a condition precedent to a determination on the merits. It follows therefore that if the Plaintiff has no locus standi or standing to sue, it is not necessary to consider whether there is a genuine case on the merits; his case must be struck out as being incompetent".

See: ***ADEFULU V OYESESOH (1989) 5 NWLR (PT. 122) P. 377.***

With respect to how to determine whether or not a Claimant has the locus standi or standing to institute an action, the Court explained thus: -

"The question whether or not a Plaintiff has a locus standi on a suit is determinable from a totality of all the averments in his Statement of Claim. Thus in dealing with the locus standi of a Plaintiff, it is his Statement of Claim alone that has to be carefully scrutinized with a view to ascertaining whether or not it has disclosed his interest and how such interest has arises in the subject matter of the action".

The Court explained further, that:

"Where the averments in a Plaintiff Statement of Claim disclose the rights or interests of the Plaintiff which have been or are in danger of being violated, invaded or adversely affected by the act of the

Defendant, the complaint of such a Plaintiff would be deemed to have shown sufficient interest to give him the locus standi to litigate over the subject matter in issue”.

The above explanations and guides are self explanatory. Being so guided, I am to, in determining whether or not the Respondents suit discloses his locus standi to institute it examine the averments in their Statement of Claim. I have in this wise read the said Statement of Claim. In summary, it is one in which the Claimants aver that they are authorized by the Federal Airport Authority of Nigeria (FAAN), having obtained its Concession/License, to operate car hire and taxi services at the Nnamdi Azikiwe International Airport Abuja. They are therefore thus in the business of transportation, commercial taxi and car hire operations in the said airport. With over 300 operational vehicles in the 2nd and 3rd Respondents fleet. Each of the vehicles yields an average of N10, 000.00 daily. The Applicants however is into commercial transportation of taxi and car hire services through its Uber Partners who do not have any Concession/License to operate commercial transportation in Abuja and at the Nnamdi Azikiwe International Airport. The Applicant using its technology based mobile application solicits for unlicensed private vehicle owners to register with it and become its partners whom it engages in commercial transportation, taxi and car hire operations in Abuja and the Nnamdi Azikiwe International Airport, Abuja even when the said partners are not registered or authorized to carry on the business of commercial transportation under any law in Nigeria. The acts of the Applicant soliciting for private vehicle owners to become Uber Partners and operating taxi and car hire services in the said airport deprives them their concessioned business opportunities and goodwill. This is made worse by the fact that they operate on-line and off-line to access passengers and render taxi and car hire services its operations are unlawful and purposely made to destroy the Respondents’ established taxi and car hire business. The FCT High Court in judgment delivered in Suit No: **FCT/HC/CV/1733/2014: OSCAR EMMA OBIORA & 2 ORS V VIKO NIGERIA GROUP OF COMPANIES LTD** on 21st November 2016 pronounced the 2nd Respondent as lawfully licensed and authorized by FAAN to operate car hire services in the said Nnamdi Azikiwe International Airport Abuja.

The Applicant receives payment from every enrolled Uber partners of an average of 25% of amount paid by any passenger using the taxi provided by the Applicant for car hire services.

Since 2016 when the Applicant commenced its illegal operation in the airport, the Respondents have suffered huge business loses and economic down turn. This has resulted to clashes between the Respondent's and the Applicants members. Despite the Respondents plea to the Applicant to refrain from their car hire operations in the airport, the latter has persisted and threatened that its parent company has a right to operate anywhere in Nigeria without any hindrance.

By reasons of the foregoing, the Respondents claim in the terms of the Statement of Claim.

As aforesaid, the Court while determining whether or not a Claimants have the locus standi to initiate a suit is to consider only the averments in his Statement of Claim to see whether or not they disclose this right or interests affected adversely, violated or about to be violated by this act of the Defendant. In this case, the Claimants has averred quite clearly how they enjoy the concession and authorization of Federal Airport Authority of Nigeria to operate car hire and taxi services in the Nnamdi Azikiwe International Airport Abuja. The authorization was sanctioned by an FCT High Court in the judgment delivered in Suit No: FCT/HC/CV/1733/2014: **OSCAR EMMA OBIORA & 2 ORS V VIKO NIGERIA GROUP OF COMPANIES LTD** on 21st November 2016. How the Applicant who is not licensed or registered has using its mobile application engaged in using its Partners who are private vehicle owner to solicit for passengers in the airport to their detriment. How this has occasioned financial losses to them by occasioning down turn in their incomes. This has resulted in clashed between its members and the Applicant's partners. For these reasons they instituted the instant action against the Applicant where they seek, inter alia, for declaration of the Court that the Applicant not being a transport company nor licensed to operate commercial services in the Nnamdi Azikiwe International Airport either by itself or through its partners engage in taxi or car hire business in the airport.

There is no gainsaying the fact that the foregoing Respondent's averments in their Statement of Claim disclose not only their rights but also pecuniary interests which the alleged acts of the Applicant adversely affect in their car hire and taxi businesses in the Nnamdi Azikiwe International Airport Abuja. By reason of these, the Court is of the view that the Respondents amply have locus standing to institute the instant action which is aimed at

redressing the alleged wrongs or infractions on their business rights by the Applicant.

In the light of the foregoing, the Court resolves the issue of locus standi in favour of the Respondent against the Applicant. The Applicant's objection on this ground against the Respondent's suit fails and is accordingly dismissed.

With regard to the ground predicated on the contention that the Respondent's suit discloses no reasonable cause of action, the Court is guided by the guides laid down by the Supreme Court in **DANTATA V MOHAMMED (2000) 7 NWLR (PT. 664) P. 176** where the 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 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".

On how to determine whether or not an action discloses a reasonable cause of action, the Court held thus: -

"In order to determine whether a 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 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 question fit to be decided by the Court."

Being properly guided by the foregoing guides, I have read the relevant averments in the Respondent's Statement of Claim as set out above and which for purpose of determination of this application are deemed admitted by the Applicant. The Respondent's complaints as disclosed are that though they are duly authorized by the Nigerian Airports Authority (FAAN) which right is sanctioned by the FCT High Court in Suit No: FCT/HC/CV/1733/2014: OSCAR EMMA OBIORA & 2 ORS VS VIKO NIGERIA GROUP OF COMPANIES LTD on 21st November 2016 to carry on car hire and taxi business in the Nnamdi Azikiwe International Airport Abuja. The Applicant who is not registered or authorized has invaded their business space by engaging in the business of taxi and car hire services through its Uber Partners (who are private car owners) in the said airport. That this has resulted to loss of earnings and clashes between their members and that of the Applicant who has insisted on going on with the business despite their protests. It is for these reasons that they instituted the instant action seeking for declarations of the Court in their favour. It cannot be gain said that by these complaints, the Respondents have pleaded before the Court justiceable matter which the Court ought to determine between them and the Applicant. As pointed out by the Supreme Court in the said case of **DANTATA V MOHAMMED** supra, so long as the Respondents (Claimants) suit discloses some matter fit for the Court to adjudicate upon between them and the Applicant, it is of no moment that their suit is weak or strong. Indeed, it is not the business of the Court to dabble into a determination of whether or not the Plaintiff's suit is weak or strong or likely to fail or succeed. That is a matter to be determined at the conclusion of trial of issue in controversy between the parties.

The Court having find that the Applicant's alleged conduct in interfering with the Respondents' operations in the Nnamdi Azikiwe International Airport raises dispute worthy of adjudication between the parties by this Court, the Court holds the Respondents' suit discloses a reasonable cause of action. For this reason, this ground of the Applicant's objection also fails for want of merit. The ground is accordingly dismissed.

Both grounds of the Applicant's objection having failed, there is nothing to sustain this Preliminary Objection. The sole issue raised above is in consequence resolved against the Applicant in favour of the Respondent. In consequence the objection, can only but be dismissed. It is dismissed

for lacking in merit with cost assessed and fixed at N30, 000.00 against the Applicant in favour of the Respondent.

Signed
Hon. Judge
20/1/2020

LEGAL REPRESENTATIONS:

- (1). Olaniwon Ajayi Esq/Ogunmuyiwa Balogun Esq for the Defendant/Applicant.
- (2). Atuegwu C. Okafor Esq for the Claimants/Respondents.