

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/BW/CV/10/16

BETWEEN:

IDRISU SHAIBU.....PLAINTIFF
(Suing Through His Lawful Attorney Tina Ozukwe)

VS

1. TONY NNAMDI NGOKA
2. BWARI AREA COUNCIL
3. COMMISSIONER OF POLICE FCT.....DEFENDANTS

RULING

By a Notice of Preliminary Objection dated 5/3/2019 with No. M/3841/19, filed on 6/3/19, the Applicant herein is challenging the jurisdiction of the court to entertain this suit and urge the court to strike out this suit for lack of jurisdiction.

The grounds upon which the objection is predicated are as follows:-

1. The condition precedent to the commencement of this suit against the 2nd Defendant was not fulfilled.

2. The Claimant case is incompetent by reason of non-compliance with Section 124 of the Local Government Act Law of FCT 2004, that provides for service of Mandatory Pre-action Notice.
3. The suit does not disclose any reasonable cause of action against the 2nd Defendant.
4. The Honourable Court lacks the jurisdiction to entertain this suit.

In support of this Preliminary Objection is a 7 Paragraph affidavit deposed to by Victoria Oguine and a Written Address in support of the Preliminary Objection dated 5/3/19.

In the said Address settled by Ugbede Idachaba Esq. two (2) issues were formulated for determination;

1. Whether the failure of the Claimant to serve the 2nd Defendant Mandatory Pre-action Notice pursuant to Section 24 of the Local Government Act, Laws of FCT 2004, has divested this Honourable Court of jurisdiction.
2. Whether this suit disclose any reasonable cause of action against the 2nd Defendant.

On issue 1, Counsel contends that the requirement of pre-action notice which is Statutory and Mandatory must be complied with by a party seeking to sue the 2nd Defendant. That it is a condition precedent that must be fulfilled. That in this instance, the Claimant has failed to comply with this Mandatory Provisions, therefore this suit is liable to be struck for want of compliance, Counsel in urging this court to so hold referred the

court to several judicial authorities and Statutory Provisions. Texaco Panama Inc. Vs Shell Pet Dev. Corp of Nig (2000) 4 NWLR (PT. 653) 480 @ 491 Para D – E; Ministry of Education, Anambra State Vs Asikpo (2014) 14 NWLR (PT. 1427) 357 @ 356, Bakare Vs NRC (2007) 17 NWLR (PT. 1064) 806, Babalola Vs Osogbo Local Govt (2003) 10 NWLR (PT. 829) 465 @ 467 Ratio 6 – 7, Ugwu Vs Ararume (2007) LRECN 295 @ 330 Para E – G. and Section 124 of the Local Government Act 2004. And urge the court to resolve this issue 1, in favour of the 2nd Defendant.

On issue two (2), contends that a careful perusal of the set of facts as presented by the Claimant against the 2nd Defendant does not reveal any cause of action against the 2nd Defendant. Counsel in urging the court to so hold referred the court to several judicial authorities; Rinco Construction Co. Vs Vepee Ind Ltd (2005) 9 NWLR (PT. 929) 85 @ Para B – C; Onadeko Vs UBN Plc (2005) 4 NWLR (916) 440 @ 459 – 460 Para H – B @ 460 Para B – C Duru Vs Nwagu (2006) All FWLR (PT. 324) 1830 in urging the court to resolve issue 2 in favour of the 2nd Defendant.

In response, the Claimant Counsel/Respondent, filed a counter affidavit of 6 Paragraph deposed to by Godson Usang on 10/6/19 and a written reply to the 2nd Defendant Notice of Preliminary Objection, in said address settled Dr. Alex Akunebu Esq. no issue was formulated, but counsel in summary contend that the said failure of the Claimant to file a pre-action notice as required is a mere irregularity, which does not qualify to nullify the entire proceedings, particularly as it did not in any way affect the merit of the case or occasion miscarriage of justice. In urging this court to so hold, referred the court to the following judicial authorities; Egbo Vs Agbara

(1997) 1 NWLR (PT. 481) Pg. 293 Ratio 3; Kossen Nig Ltd Vs Savannah Bank of Nig Ltd (1995) 9 NWLR (PT. 420) Pg. 439 and urge the court to so hold.

In reply on point of law, the 2nd Defendant filed a reply dated 9/7/19, but filed on 10/7/19 and urged the court to discontinuance the submission of the Claimant in opposition, that it is settled law that pre-action notice is a condition precedent and mandatory, pursuant to Section 124 of the Local Government Act 2004 and that being a Statutory Provision and condition precedent, cannot be a mere irregularity, referred the court to the following judicial authorities; Governing Board Rugi Poly, Ondo State Vs Ola (2016) 16 NWLR (PT.1537) 1 @ 23 Para G – H. Governor of Ebonyi State Vs Isuama (2004) 6 NWLR (PT. 670) 518. NNPC Vs Eviwori (2007) All FWLR (PT. 369) Pg. 1324 @ 1345 – 1346 Para G – A. AGIP (Ng) Ltd Vs AGIP Petrol Int (2010) All FWLR (PT. 520) Pg. 119 @ 1205 Ratio 7.

The process was served on the 1st and 3rd Defendant but failed to react to 1st Defendant Counsel in court aligns himself with the submission of the 2nd Defendant/Applicant.

Having carefully considered the submission of both counsel and the judicial authorities cited, the court shall adopt the issues formulated by 2nd Defendant Counsel for determination and deal with them in that order.

On issue 1, whether the failure of the Claimant to serve the 2nd Defendant Mandatory Pre-action Notice pursuant to Section 124 of the Local Government Act, Laws of FCT 2004 has divested this Honourable Court of jurisdiction.

In this instant application, it is the contention of the 2nd Defendant that the Claimant/Respondent failed to serve on the 2nd Defendant, pre-action notice pursuant to the Section 124 of Local Government Act, Laws of FCT, 2004, which is condition precedent and mandatory requirement of the law. That this failure is fatal and fundamental and liable for the court to decline jurisdiction and strike out the suit.

On the other hand the Claimant/Respondent contends that this failure is a mere irregularity, which should not warrant this court to strike out.

The starting point is to ask what is Pre-action Notice, the Apex Court has described Pre-action in the case of Netiero Vs N.P.A (2008) 10 NWLR (PT. 1094) 129 Para D – E as;

“A pre-action notice connotes some form of legal notification or information requirement by law or implied by operation of law, contained in an enactment, agreement or contract, which requires compliance by the person who is under legal duty to put on notice the person to be notified, before the commencement of legal action against such person”

It is not in doubt that the provision of the said Section 124 of the Local Government Act, clearly makes it mandatory and a condition precedent that a Pre-action Notice, should be served on a body like the 2nd Defendant before commencement of action against it. A careful perusal of the Originating Process filed by the Claimant initiating this action does not reveal any compliance of this Statutory Provision. The

Claimant/Respondent, merely responded by submitting that it is a mere irregularity which should not cause this court to grant the relief of the 2nd Defendant.

For purpose of clarity, I shall reproduce the said Section 124 of the Local Government Act, provides;

“No suit shall be commenced against Local Government until one month at least after a Written Notice of intention to commence the same, has been served upon the Local Government by the intending Plaintiff or his agent”

It is settled law that where words of statute is clear, it should be given a clear and unambiguous meaning.

In this instant, it clear and unambiguous. The question therefore to ask is whether this condition has been complied with. My answer is No, as it is clearly revealed from the processes of the Claimant. On the point contended by the Claimant, that it is a mere irregularity. I am unable to agree with this submission, as I find that it is not within these class matters that is covered by the Rules and more importantly the law is clear. It is therefore, the court firm view that this failure is fatal and fundamental in nature, that would warrant the exercise of the court discretion in favour of the Applicant. Accordingly, I resolve this issue one (1) in favour of the 2nd Defendant/Applicant.

On the second issue, whether this suit disclose any reasonable cause of action against the 2nd Defendant.

It is the contention of the Claimant/Applicant that in line with the settled law on what gives rise to a cause of action, that a careful perusal of the process of the Claimant does not reveal any controversy between the Claimant and the 2nd Defendant.

The Claimant on the other hand contend that the 2nd Defendant was merely brought in to testify on Exhibit "05" as contained in the process, during the trial, no more.

In considering, whether there is reasonable cause of action, the determining factor is the Statement of Claim, that the court can look at. See *Osigwe Vs PMPSP Management Consortium Ltd* (2003) 3 NWLR (PT. 1128) 378. It is sufficient to hold that a cause of action is reasonable once the Statement of Claim disclose some cause of action or question fit to be decided by the court, notwithstanding the weakness or likelihood of success. The facts that the cause of action is weak or unlikely to succeed is no grounds to strike out. See *Mobil Producing Nig Unltd Vs LASEPA PT.* (2003) 1 MJSC 112 @ 132 cause of action has been defined in Plethora of judicial authorities, see *C.B Ltd Vs Intercity Bank Plc* (2009) 15 NWLR (PT. 1165) Pg. 445 @ 448; as;

“Facts or combination of facts which give rise to a right to sue”

In this instance, there is nowhere, the Claimant stated expressly any act of the 2nd Defendant which is wrongful, giving a right to complain and a subsequent damage. A perusal of the Statement of Claim of the Claimant, the Claimant in Para 11 referred to the investigation activities of both Police and the 2nd Defendant, and this fact was stated in Claimant Counsel

submission in his address, that the reason for the 2nd Defendant is to give evidence of this fact without more. It is the firm view of this court that this does not fall within the set of fact that has been shown to give rise to cause of action against the 2nd Defendant. It is in the light of this, I hold that no reasonable cause of action has been revealed against the 2nd Defendant. Accordingly, I resolve this second issue in favour of the Applicant.

From all of these; I hold that this Preliminary Objection and accordingly this suit is hereby struck out.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

13/1/2020

APPEARANCE:

ANTHONY NDANUSA FOR THE CLAIMANT

J.A. AUGUSTINE FOR THE 1ST DEFENDANT

U.IDACHABA WITH V. OGUIME ESQ, ODIGHE FOR THE 2ND DEFENDANT

NO APPEARANCE FOR THE 3RD DEFENDANT