

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION**

HOLDEN AT JABI –ABUJA

BEFORE HIS LORDSHIP: HON.JUSTICE D.Z. SENCHI

COURT CLERKS: – T. P. SALLAH & ORS

COURT NUMBER: 13

DATE: 14/02/2020

FCT/HC/CV/1378/2018

BETWEEN:

BARRISTER PATRICK M. EHINMIDUN----- PLAINTIFF

AND

IHS TOWERS NIGERIA PLC----- DEFENDANT

RULING

The Plaintiff by a writ of summons accompanied with a statement of claim and other processes commenced this suit filed on the 3rd April, 2018 wherein the Plaintiff claims against the Defendant as follows:-

1. A declaration that the area where the land, plot number CRD4196A in Cadastral Zone Lugbe 1 Layout of Abuja Municipal Area Council (AMAC) is situate, falls within the Federal capital Territory and under the powers of the Minister of the Federal Capital Territory.
2. A declaration that the Plaintiff is the, rightful allottee and owner of all that piece of land known as plot number CRD 4196A, File number RV42798 measuring about 800 22square

meters in Cadastral Zone 07/07 (Lugbe 1), Lugbe District, Federal Capital Territory, Abuja.

3. A declaration that any act of construction, installation of masts, ingress or egress, pledge, mortgage, transfer, alienation or used of any kind, of the said piece of land known as plot number CRD 4196A, File number RV 42798 measuring about 800 22 squaremeters in Cadastral Zone 07/07 (Lugbe1), Lugbe District, Federal Capital Territory, Abuja by the Defendant without the authority of the Plaintiff as the owner amounts to an act of trespass.
4. An order directing the Defendant to immediately remove forthwith the mast with mast number IHS ABJ 1468C and any other installation, masts, structures or anything brought onto, fixed or left on the said piece of land known as plot number CRD 4196A, file number RV 42798 measuring about 800.22 square meters in Cadastral Zone 07/07 (Lugbe1), Lugbe District, Federal Capital Territory, Abuja .
5. An order of perpetual injunction restraining the Defendant, whether by itself, its agents or any person claiming through it from further trespassing into the said plot or interfering with the Plaintiff's right over plot number CRD 4196A, File number RV 42798 Measuring about 800.22 square meters in Cadastral Zone 07/07 (Lugbe 1), Lugbe District, Federal Capital Territory Abuja.
6. An order directing the Defendant to pay to the Plaintiff the sum of N50,000,000.00 (Fifty Million Naira) as general damages for their trespass to the Plaintiff's land known as plot number CRD 4196A, file number RV42798 measuring about 800.22 square meters in Cadastral Zone 07/07 (Lugbe1).Lugbe District, Federal Capital Territory, Abuja.
7. An order directing the Defendant to pay the Plaintiff 25% interest on the judgment sum, being post judgment interest until the final liquidation of the entire judgment sum.

8. An order directing the Defendants to pay the Plaintiff the sum of N3, 000,000.00(Three Million Naira) being the cost of the action.

The Defendant on 11thMay, 2018 was duly served with the Plaintiff's writ of summons and other processes in this suit. Consequent upon the service, the Defendant filed on the 1st June, 2018 a memorandum of conditional appearance which was deemed as properly filed and served by the order of this Court granted on 13th February, 2020. The Defendant further filed on 1st June, 2018 a notice of preliminary objection challenging the competence of the instant suit and that the Court lacks jurisdiction to entertain the suit.

The ground objection is that the Defendant is not a juristic person and lacks the capacity to be sued. The Defendant therefore prays the Court to strike out this instant suit.

In support of the preliminary objection the Defendant/Applicant filed an affidavit of 11 paragraphs with one exhibit marked IHS.

The Defendant/Applicant also filed a written address and same was adopted by Defendant's Counsel on 13th February, 2020 as his oral arguments in support of his notice of preliminary objection.

The Plaintiff/Respondent's Counsel did not file any process in response to the notice of preliminary objection. However, the learned Counsel to the Plaintiff on the otherhand replied on points of law.

In the written address of the Defendant/Applicant distilled a sole issue for determination as follows:-

"Whether this suit as presently constituted is competent to cloak the Honourable Court with jurisdiction to entertain same."

In his argument in support of the sole issue for determination learned Counsel to the Defendant submitted that it is trite law that a court will be competent only in the following circumstance:-

- (i) When it is properly constituted as regards numbers of the bench and no member is so disqualified for one reason or another,
- (ii) When the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
- (iii) When the case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction. He submitted that any defect in competence is fatal and the proceedings will amount to a nullity, no matter how well conducted and decided. He relied on the cases of **MADUKOLU V JOHNSON NKEMDILIM (1962) 2SCNLR 341 at 348, MADAM ABUSATU AGBOGUNLERI V JOHN DEPO & ORS (2008)1 SCM1 at 17 -18.**

At paragraphs 3.2-3.9 of the written address, learned Counsel to the Defendant submitted to the effect that the Defendant sued in the instant case is **IHS TOWERS NIGERIA PLC** and the processes in this suit were served on IHS (Nigeria) Limited, through its Abuja office which raises a question of competence of the party sued.

He submitted that it is trite law that only a natural or juristic person can sue or be sued. He cited the case of **FAWEHINMI V**

NBA (numbers 2), (1989) 2 NWLR (pt 105) page 558 at 595.

In conclusion the Defendant's Counsel urged me to strike out this suit as the Defendant in this case is unknown to law.

As I said before, the Plaintiff did not file any process in reaction to the notice of preliminary objection. However Counsel to the Plaintiff submitted that the objection filed by the Defendant without filing a statement of defence is a demurrer which has been abolished by the Rules of Court especially order 23 Rules 1 and 2 (1) of the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2018. According to Counsel to the Plaintiff, the Defendant ought to file his statement of defence and then raise the points of law in the statement of defence as his objection(s). The Plaintiff's Counsel also refers me to order 13 rule 1 and 2, Rules of this Court.

Now without much ado, the Defendant has exhibited its certificate of incorporation marked as exhibit IHS to its affidavit supporting the notice of preliminary objection. The Plaintiff did not challenge the averments in the affidavit or the exhibited certificate of incorporation. In other words, the Plaintiff himself has admitted that the proper name of the Defendant is IHS (Nigeria) and NOTIHS TOWERS NIGERIA PLC.

The objection raised by the Defendant has been answered in the case of **TITLEY GYADO & CO (NIG) LT & ANOR V ASSETS MANAGEMENT CORP OF NIGERIA, (2014) LPELR 22-518**, the Court of Appeal held:-

"The law is trite, an action or suit instituted or commenced by wrong or improper parties cannot be sustained in law, same would be struck out for being incompetent. Therefore, any action, whether an

originating one or an Appellate one, f commenced or initiated by wrong or improper parties would be incompetent in law”

See *ADELAKUN V ORUKU, (2006) 11 NWLR (pt992)page 625 at 646.*

Now the instant suit appears to be in all fours with the case of ***NNAMDIAZIKWE UNIVERSITY V GLORIA UKAMAKA NWOKOYE & ANOR, (2018);PPELR 43961 (CA)***.the Court held.

“The first issue nominated for the determination of this Court has to do with the problems of suing the wrong name of party and the likely consequences of such a development. In the instant Appeal, the Appellant had been sued as; ***NNANMDI AZIKKWE University, AWKA instead of NNANDI AZIKWE UNIVERSITY.***”The contention of Appellant’s Counsel under this issue is that a juristic person cannot be substituted as Defendant where a non –juristic defendant had been sued. Counsel buttressed his arguments with the provision of section 1 of theNnamdiAzikwe University Act Cap 139 LFN 2004 which created a legal person called “NnamdiAzikwe University “Simpliciter. He argued that from the provisions of section 1 of the NnamdiAzikwe University Act, it cannot be in dispute that to sue ; NnamdiAzikwe University, Awka as the 1st Respondent had done, is to sue a non-juristic person since NnamdiAzikwe University Act or any other Act or law created no such body,

The Court of Appeal then held.”

“This issue, it would be recalled was exhaustively deliberated upon by the Court below and at the end of which Court resolved in favour of the 1st Defendant. It is therefore the decision of the Court below on the

issues that has given rise to this issue here on Appeal. On the question of whether a defect in name can be cured by an amendment, the way the Court below had allowed, Counsel argued that that would only be possible where the entity whose name is sought to be amended is ab-initio a juristic person. That, no doubt represents the accurate position of the law."

See also ***NJOKU V U.A.C FOODS, (1999) 12 NWLR (pt 632) Page 552 at 565.***

In the instant case, by exhibit IHS attached to affidavit in support, certainly the Defendant is not the proper party in this suit and the Defendant sued IHS Towers (Nigeria) Plc while by exhibit IHS the name or proper name is IHS(Nigeria) Limited.

The attempt by the Plaintiff's Counsel to smuggle in order 13 of the Rules of this Court to urge me to amend the name of the present Defendant to IHS Nigeria Limited cannot be position of the law pursuant to exhibit IHS which name the Companies and Allied Matter Act or the statute recognizes

Further, on the issue of demurrer a demurrer is a pleading which the Plaintiff's Counsel is of the view that by our Rules of Court, the Defendant ought to file same and then raise his objection. The Counsel might be correct. However, there are three ways or approaches to raise an objection in a suit. The party, the Defendant in the instant suit can raise it by his pleading or before taking any step, enter a conditional appearance and then take out a motion or summons to raise the objection especially where it borders on jurisdiction. And by order 23 Rule 2(1) of the Rules of this Court the trial judge may dispose of the point so raised before at trial or after the trial.

In the instant case, by the Defendant filing a conditional appearances or an appearance in protest to submitting to the jurisdiction of the Court, the Defendant intends to raise the jurisdictional issue before trial commences. The position of the Plaintiff's Counsel is therefore misconceived and not the position of the law. Accordingly, the Plaintiff having commenced its suit against a wrong or improper party, the suit is incompetent and this Court lacks the jurisdiction to entertain same. The suit is hereby struck out.

HON. JUSTICE D. Z. SENCHI
PRESIDING JUDGE
14/02/2020

Parties:- Absent
A.C Agbakua :-Holding the brief of J.K Akerigba for the Plaintiff.
M.JHaruna:-With me is I.T Opeke for the Defendant

Sign
Judge
14/02/2020