

**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.
HON. JUDGE HIGH COURT NO.13
COURT CLERKS –T.P. SALLAH & ORS
DATE: - 21/01/2020
FCT/HC/M/9507/19
FCT/HC/CV/2278/19**

BETWEEN: -

ENGR. DZARMA DANIEL-----

PLAINTIFF

AND

YOHANNA MADU GADZAMA-----

DEFENDANT

RULING

The instant suit was commenced by the Plaintiff against the Defendant by way of writ of summons and statement of claim seeking the following reliefs:-

1. An order of this Honourable Court directing the Defendant to forthwith refund the sum of N4,500,000.00 (Four Million Five Hundred Thousand Naira) only being the purchase price paid to the Defendant in respect of the purported plot No. CRD ED120 measuring approximately 5 hectares situate at Lugbe 1, extension layout, Abuja allocated to Pentho Global Links Nigeria Limited dated 27th June, 1996 and approximately measuring 5 Hectares.
2. An order of this Honourable Court directing the Defendant to forthwith refund the sum of N225,000.00 (Two Hundred and Twenty Five Thousand Naira) only being the agency fee paid to the Defendant in respect of purported Plot No. CRD ED 120 measuring approximately 5 hectares situate at Lugbe 1, Extension Layout, Abuja allocated to Pentho Global Links Nigeria Limited dated 27th June, 1996 and approximately measuring 5 hectares.
3. An order of this Honourable Court directing the Defendant to forthwith refund the sum of N590,000.00 (Five Hundred and

Ninety Thousand Naira) only being the cost for opening a new file at Abuja Municipal Area Council (AMAC), recertification of title documents, change of ownership, Abuja Geographic Information System (AGIS) recertification, survey, beacons, other administrative charges and logistics paid to you in respect of purported Plot No. CRD ED 120 measuring approximately 5 hectares situate at Lugbe 1, Extension layout, Abuja allocated to Pentho Global Links Nigeria Limited dated 27th June, 1996 and approximately measuring 5 hectares.

4. An order of this Honourable Court directing the Defendant to pay to the Plaintiff the current differential value sum of N6,795,126.580,000.00 (Six Million Seven Hundred and Ninety Five Thousand One Hundred and Twenty Six Naira, Fifty Eight Kobo) only being special damages calculated at N158/\$1 in 2012 and N360/\$1 in 2019 (calculated as the sum of N5,315,000,000.00 (Five Million, Three Hundred and Fifteen Thousand Naira) only which was equivalent to \$33,639.24 at an average exchange rate of N158/\$1 as at 2012 and now translates into gross sum of N12,110,126.58 (Twelve Million One Hundred and Ten Thousand One Hundred and Twenty Six Naira Fifty Eight Kobo) only at an average exchange rate of N360/\$1 as at June 2019
5. An order of this Honourable Court directing the Defendant to pay to the Plaintiff the sum of N5,000,000.00 (Five Million Naira) only general damages for depriving and denying the Plaintiff the use and enjoyment of his hard earned money since the year 2012 till date.
6. An order of this Honourable Court for award of 10% interest on post judgment sum until finally liquidated.
7. N1,000,000.00 (One Million Naira) only being the cost of this suit.

The Defendant on service on him of the Plaintiff's writ of summons and accompanying process by the instant Motion on Notice No.M/9507/2019 dated and filed on 10th October, 2019 pursuant to Order 13 Rule 18(2) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court praying for the following reliefs:-

1. An order of this Honourable Court striking out this suit against the Defendant/Applicant for lack of locus standi on the part of the Plaintiff to maintain this suit.
2. An order of this Honourable Court striking out this suit against the Defendant/Applicant on the ground that same shows no reasonable cause of action against the Defendant.
3. And such further orders the Court may deem fit to make in the circumstance of this case.

In support of the application, the Defendant filed an affidavit of 18 paragraphs with one exhibit marked exhibit A. The Defendant's Counsel also filed a written address. The Defendant also filed and relied on a 12-paragraph further affidavit.

In opposing the application, the Plaintiff with leave of Court filed a counter-affidavit of 6 main paragraphs and together with his Counsel's written address.

In the written address of Counsel to the Defendant he formulated the following three issues for the determination of the instant application:-

1. Whether the case of the Plaintiff discloses any reasonable cause of action and or locus standi against the Defendant/Applicant.
2. Whether the Defendant/Applicant is a proper party in a suit seeking to enforce a contract between FUMWA Int'l Business Limited and Pentho Global Links Nigeria Limited.
3. Whether the suit of the Plaintiff as presently constituted is not an abuse of Court process.

Learned Counsel to the Plaintiff simply adopted the first issue formulated by the Defendant's Counsel and proceeded to argue the other issues thereunder.

To resolve the issues raised in the instant application, I hereby adopt the issues as formulated by the Defendant's Counsel. I shall however address the issues together.

In the written address of the Defendant's Counsel he submitted to the effect that the Plaintiff has not disclosed any reasonable cause of action and/or *locus standi* against the Defendant and as such, the instant suit ought to be struck out. On the meaning of the term '*locus standi*', he submitted that it denotes legal capacity to institute proceedings in a Court of law. He posited that failure to disclose any *locus standi* is as fatal as failure to disclose any reasonable cause of action. He cited the case of **ADESANYA V. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA (1981) 2 NCLR 358**. He argued that the issue as to whether a plaintiff has *locus standi* is determined by examining only the statement of claim. It is his position that the Plaintiff's statement of claim in this suit does not show that the Plaintiff has whatever relationship with the Defendant that would give the Plaintiff the legal right to institute this action against the Defendant. Counsel posits therefore that the Plaintiff's failure to establish *locus standi* means his claim must fail. He relied on the case of **GAMIOBA V. ESEZI II (1961) 2 SCNLR 237**. He submitted that the reliefs sought cannot be granted by this Court as the Plaintiff has no right to enforce the contract entered into by two legal personalities which are neither the Plaintiff nor the Defendant. He urged this Court to hold that the Plaintiff lacks the *locus standi* to bring this action against the Defendant.

Counsel to the Defendant further contended that cause of action is the entire facts or circumstances giving rise to an enforceable claim and the Court is to consider only the writ and statement of claim in the determination of cause of action. He submitted that there is no paragraph in the Plaintiff's statement of claim showing any relationship between the Plaintiff and either parties to the contract to be enforced or linking the Defendant to any of the parties to the contract. Counsel urged this Court to hold that the Plaintiff has not shown any reasonable cause of action against the Defendant and thus urge me to strike out/dismiss the Plaintiff's suit. He further argued that the Plaintiff's case, as per his statement of claim, is to enforce a contract between FUMWA Int'l Business Limited and Pentho Global Links Nigeria Limited and as

such, the Plaintiff's case cannot be defeated by non-joinder. It is however the Defendant's Counsel's contention that the Defendant has been wrongly joined in this suit as he is neither a member, staff or director of the parties to the contract. He submitted that the proper order to make in the circumstances is one striking out the case against the Defendant. He relied on Order 13 Rule 18(2) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018. He finally urged this Court to strike out this suit against the Defendant for lack of *locus standi*, lack of reasonable cause of action and for misjoinder.

On the otherhand, learned Counsel to the Plaintiff conceded to the meaning of *locus standi* as submitted by the Defendant's Counsel. He however submitted that the Plaintiff's case, as presently constituted, has sufficiently disclosed that the Plaintiff has *locus standi* and there is reasonable cause to maintain the instant suit. He referred this Court to the Plaintiff's pleadings in his statement of claim. He posited that the Plaintiff would suffer if this Honourable Court does not hear him ventilate his grievances. He urged this Court to hold that the Plaintiff has *locus standi* to initiate the instant suit. He further urged this Court to hold that the Defendant is the proper party to answer to the Plaintiff's claim. He contended that a summary of the Plaintiff's claim against the Defendant is for a refund of the money the Defendant fraudulently received from the Plaintiff and as such the Plaintiff has disclosed a reasonable cause of action against the Defendant. He urged this Court to dismiss the instant motion on notice with cost.

On the meaning of *locus standi*, the Supreme Court held as follows in the case of **ADENUGA V. ODUMERU (2002) 8 NWLR (PT. 82)1 P. 163 at P. 184 paragraph. E-H;**

"Locus standi denotes the legal capacity, based upon sufficient interest in the subject-matter, to institute proceedings in a Court of law to pursue a certain cause. In order to ascertain whether a Plaintiff has locus standi, the statement of claim must be seen to disclose a cause of action vested in the Plaintiff and also establish the rights and obligations or interests of the plaintiff which have been or are

*about to be violated, and in respect of which he ought to be heard upon the reliefs he seeks: See **ADEFULU V. OYESILE (1989) 5 NWLR (Pt. 122) 377; ODENEYE V. EFUNUGA (1990) 7 NWLR (Pt. 164) 618; ADESOKAN V. ADEGOROLU (1997) 3 NWLR (Pt. 493) 261; OWODUNNI V. REG. TRUSTEES of CCC (2000) 10 NWLR (Pt. 675) 315.***

The interest which a Plaintiff alleges must be such, as pleaded, which can be considered real not superficial or merely imaginary.”

See also **BANKOLE V. DADA (2003) 11 NWLR (pt. 830) P. 174 at P. 201 paragraphs. A-CanA. G., AKWA IBOM STATE V. ESSIEN (2004) 7 NWLR (pt. 872) P. 288 at P. 320 paragraphs. D-E.**

The law is that where a person institutes an action to claim a relief, which on the facts of the case is enforceable by another person, then the former cannot succeed because of lack of *locus standi*. – see **BEWAJI V. OBASANJO (2008) 9 NWLR (pt. 1093) P. 540 and A.G., ANAMBRA STATE V. A.-G., FED. (2007) 12 NWLR (pt. 1047) P. 4.** It is also trite law that where a plaintiff’s *locus standi* is not disclosed by his originating process, there is no need to consider whether there is a genuine case on the merit and where a plaintiff lacks *locus standi* the Court would lack jurisdiction. – see **B.M. LTD. V. WOERMANN-LINE (2009) 13 NWLR (pt. 1157) P. 149.**

Cause of action, on the other hand, has been described as the fact or combination of facts which give rise to a right to sue. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the Plaintiff to succeed. – see **U.B.N. PLC. V. UMEODUAGU (2004) 13 NWLR (pt. 890) P. 352 at PP. 364-365 paragraphs G-B. See also KADZI INT’L LTD. V.KANO TANNERY CO. LTD. (2004) 4 NWLR (pt. 864) P. 545 at PP. 569-570 paragraphs E-G.**

It is however elementary position of law that in determining the issue of *locus standi*, cause of action and jurisdiction, it is only the

Plaintiff's originating process (such as the writ of summons and statement of claim as in this case) that will be considered. See the cases of **BAMISILE V. OSASUYI (2007) 9 NWLR (pt. 1042) P. 225**, **IYANDA V. LANIBA II (2003) 1 NWLR (pt. 801) P.267** and **OMEGA BANK PLC.V. GOVT., EKITI STATE (2007) 16 NWLR (pt. 1061) P. 445**. Both parties to the instant case appear to be in agreement on this position of the law.

This notwithstanding, it has come to my attention that parties filed various affidavits for and against the instant application, making allegations of facts in respect of the issues of *locus standi* and cause of action which this Court is expected to determine. This Court cannot (and would not) look at the allegations in these affidavits as it is restricted to only consider averments in the Plaintiff's statement of claim in order to determine the issue of the Plaintiff's *locus standi* and cause of action.

A summary of the facts pleaded by the Plaintiff in his statement of claim before this Court is that the Defendant had approached him with an offer of a land for sale in the FCT and covered by a Conveyance of Provisional Approval issued in the name of one Pentho Global Links Nigeria Limited. Both the Plaintiff and the Defendant negotiated and eventually agreed at a purchase price of N4,500,000 in consideration of which the Defendant purportedly handed over possession to the Plaintiff via an irrevocable power of attorney donated by Pentho Global Links Nigeria Limited to Fumwa Int'l Business Limited. The Defendant demanded a further sum of N225,000.00 representing 5% agency fees from the Plaintiff. The total sum thus advanced to the Defendant by the Plaintiff thus came to N5,815,000.00. The Plaintiff however discovered from AGIS that the plot of land purportedly sold to him does not exist and he brought this to the Defendant's attention who revealed that he wasn't actually the owner of the land but will consult the owners. Upon being approached, the Corporate Affairs Commission responded that it had no records of Pentho Global Links Nigeria Limited as a registered entity. The Plaintiff has lost the total sum of N5,315,000.00 to the Defendant in respect of the purported sale of land and all efforts by the Plaintiff to recover his money from the Defendant has proved abortive.

I think the Plaintiff's allegations in his Statement of Claim are very clear. I have also looked at the reliefs sought by the Plaintiff against the Defendant in this suit. The Plaintiff is by the instant suit making an effort to recover monies which he allegedly paid over to the Defendant for the purchase of a land that is inexistent. The Plaintiff's claim is not one for enforcement of a contract (as posited by Defendant's Counsel) but for money had and received. The Plaintiff has by his pleadings in his statement of claim disclosed a reasonable cause of action enforceable by him (Plaintiff) against the Defendant. He has established his *locus standi* to bring the instant suit. This Honourable Court therefore has the necessary jurisdiction to entertain the Plaintiff's instant suit. All that is left is for the Plaintiff to establish his allegations with evidence in proof of his claim. The Statement of Claim clearly shows that it is the Defendant that is the proper party in the Plaintiff's instant action for money had and received. The heavy weather made by learned Counsel to the Defendant about misjoinder of the Defendant to this suit cannot therefore avail the Defendant in the circumstances. Whatever contention the Defendant is making in respect of privity or lack of liability on his part should be directed at his defence on the merits of the Plaintiff's claim as it does not affect the jurisdiction of this Court to entertain the instant suit. Presently, the Defendant has woefully failed to establish that the instant suit amounts to an abuse of the process of this Honourable Court.

Pursuant to all the foregoing, all the issues for determination must be resolved against the Defendant and in favour of the Plaintiff. I reiterate that this Honourable Court has the necessary jurisdiction to entertain the instant suit. The Defendant's preliminary objection must therefore fail and it is accordingly dismissed.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
21/01/2020

Parties:- Absent.

U.A Diba:-for the Plaintiff.

S. N Oluchube:-For the Defendant/Applicant.

Sign
Judge
21/01/2020