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/CV/2932/18

BETWEEN: -

1. THE REGISTERED TRUSTEES OF OSHA ASSOCIATION FOR OCCUPATIONAL SAFETY AND HEALTH OF NIGERIA (KNOWN AS OSHA ASSOCIATION)
2. EMMANUEL UWALAKA — **PLAINTIFFS**

AND

MR. CLETUS AKHIGBE ….. DEFENDANT

RULING

On the 26th November, 2018 leave of this Court was granted to the Plaintiffs to issue and serve the writ of summons in this case on the Defendant in Rivers State. The instant suit was thus commenced by the Plaintiffs against the Defendant vide Writ of Summons and Statement of Claim seeking *inter alia*declaratory reliefs and damages as follows:-

(a) A declaration that the statement made by the Defendant against the persons of the Plaintiffs is defamatory and injurious.
(b) An order of this Honourable Court directing the Defendant to pay the sum of Fifty Million (N50,000,000.00) Naira only as damages against the Defendant for defaming the persons of the Plaintiffs.
(c) An order of this Honourable Court Directing the Defendant to publish an unqualified apology and retraction of the defamatory publication in equally conspicuous position in all the print and/electronic media where the publication appeared.
(d) An order of this Honourable Court directing the Defendant to publish the said apology in five national

dailies referring to such allegations as false and defamatory.

(e) An order of this Honourable Court directing the Defendant to pay the sum of Five Hundred Thousand (N500,000.00) Naira only as cost of professional fees, filing and prosecution of this suit.

On service, the Defendant subsequently filed a memorandum of conditional appearance as well as a notice of preliminary objection dated and filed on 27th March,2019 seeking to strike out the instant suit for lack of competence and want of jurisdiction of this Court to entertain same. In support of the preliminary objection, the Defendant's Counsel filed a written address dated 27th March,2019which he adopted as his oral arguments at the hearing of the preliminary objection. In opposition to the preliminary objection, the Plaintiffs filed their Counsel's Reply address dated 16th May, 2019.

Thus, in the written address of learned Counsel to the Defendant he formulated three issues for determination of the preliminary objection, to wit:-

i) *Whether the High Court of the Federal Capital Territory has territorial jurisdiction over the Defendant and the subject matter of this suit which did not take place in the FCT.*
ii) *Whether the Plaintiff has locus standi to institute this action.*
iii) *Whether the Plaintiffs' failure to endorse the originating summons with the endorsement prescribed in Section 97 of the Sheriffs and Civil Process Act, does not render the suit incurably defective.*

The Plaintiffs' Counsel distilled exactly the same issues as that of the Defendant. There is no point repeating the issues. I shall therefore adopt the issues as formulated by the Defendant's Counsel as follows:-

"Whether the High Court of the Federal Capital Territory has Territorial jurisdiction over the Defendant and the subject matter of this suit which did not take place in the FCT."

On this issue, learned Counsel to the Defendant submitted that the High Court of the Federal Capital Territory (FCT) has no territorial jurisdiction over the Defendant and the subject matter of this suit which did not take place in the FCT. He contended that the Defendant resides in Rivers State while the alleged defamatory statement was not in any way stated to have been made in the FCT. He posited that the subject matter leading to this suit all occurred outside the FCT. He submitted therefore that the High Court of FCT has no territorial jurisdiction over the subject matter of this suit which took place outside its jurisdiction. Counsel relied on a plethora of authorities including ***JOSHUA DARIYE V. FRN (2015) LPELR 24398 (SC), DALHATU V. TURAKI (2003) 15 NWLR (pt. 843) P. 310 and HON. MAILANTARKI V. HON. TONGO & ORS (2017) 42467 (SC).***He urged this Court to apply the doctrine of '*Forum Non-Conveniens'* to this case i.e. the doctrine that an appropriate forum, even though competent under the law, may divest itself of jurisdiction if for the convenience of litigants and the witnesses, it appears that the action should proceed to another forum in which the action might also have been properly brought in the first place. He further argued that the institution of this suit in this Court in the Abuja Judicial Division is in breach of Order 3 Rule 4(1) and (2) of the Rules of this Court in view of the fact that the Defendant resides outside the jurisdiction of this Court. He therefore urged this Court to decline from hearing this matter as it lacks the jurisdiction to do so.

Contrary to the position of the Defendant's Counsel, learned Counsel to the Plaintiffs submitted that the subject matter of

this suit took place in the FCT and this Honourable thus has territorial jurisdiction over the Defendant and the subject matter. It is Counsel's position that the fact that the Defendant lives outside jurisdiction will not purge this Court of its jurisdiction. He argued that the fundamental components of the Plaintiffs' suit had connection with Abuja. He submitted that the defamatory statement was posted online which went viral and was viewed by the public. He contended that as the internet has no territorial boundaries, jurisdiction is conferred on this Honourable Court. He also relied on a plethora of authorities. Counsel posited that the Defendant ought to have deposed to an affidavit showing that the cause of action arose outside the jurisdiction of this Court. He urged this Court not to act on speculation.

Having said the above,the position of the law is that a Court can only assume jurisdiction over a matter where the cause of action arose from within its territorial jurisdiction. Therefore, a Court in one state does not have jurisdiction to hear and determine a matter which is exclusively within the jurisdiction of another State. See the cases of ***RIVERS STATE GOVT. V. SPECIALIST KONSULT (2005) 7 NWLR (PT.923) P. 145 and ECONOMIC AND FINANCIAL CRIMES COMMISSION & ORS V. PHILIP ODIGIE (2012) LPELR-15324(CA).***

It is trite law that it is the plaintiff's pleadings that determines the jurisdiction of the Court over a matter before it. Consequently, in the determination of cause of action and its jurisdiction, a Court is restricted or should be confined to the consideration of the Plaintiff's originating processes (which are the writ of summons and the statement of claim filed by the Plaintiffs in the instant case). – see the cases of ***ABUBAKAR V. BEBEJI OIL & ALLIED PRODUCTS LTD & ORS. (2007) 18 NWLR (PT. 1066) P. 319 and OGUNDIPE V. NDIC (2009) 1 NWLR (PT. 1123) P. 473***. It follows therefore that the heavy weather made by the Plaintiffs' Counsel that the Defendant ought to have filed an affidavit (in

support of his preliminary objection) showing that that the cause of action arose outside the jurisdiction of this Court, goes to naught. Such an affidavit, even if filed, cannot be used by this Court to determine jurisdiction or cause of action.

Now, it is not enough for the Defendant to contend that this Court does not have territorial jurisdiction. The Plaintiffs' pleadings must show beyond mere speculation that exclusive territorial jurisdiction lies with a specific Court other than this Court. A careful perusal of the Plaintiffs' pleadings however does not indicate this at all.

I have looked at the Plaintiffs' originating processes in this suit. The Plaintiffs particularly alleged in their statement of claim that the Defendant published some statements, which are defamatory of the Plaintiffs, on electronic media and a newspaper hosted on the internet. In essence, the cause of action which the Plaintiffs have pleaded against the Defendant is one of libel.

Generally, a cause of action in the tort of libel arises where the libel is published. This is because in a defamatory action, publication of the defamatory statement is an essential element of the cause of action. Thus, it is the publication (and not the composition) of a libel that constitutes the actionable wrong as the effect produced upon its readers is the injury. This was the position of the Supreme Court in the case of ***DAIRO V. U.B.N. PLC. (2007) 16 NWLR (PT. 1059) P. 99***.See also the case of ***DR. CHINWOKE MBADINUJU V. I.C.N. LTD. (2007) 15 NWLR (Pt. 1058) P. 524***.

Judicial notice must be taken of the fact that the internet is a virtual world i.e. it does not exactly exist in the physical. Therefore, I must agree with learned Counsel to the Plaintiffs that the internet does not generally fall within the territorial boundaries of any State in Nigeria. It is practically

everywhere and thus does not fall ***exclusively***within the territorial jurisdiction of a particular State or its Court. It follows, that allegations of publication of libellous material on the internet (as in this case) is actionable in any state high Court including the FCT High Court. This Honourable Court therefore has the necessary territorial jurisdiction to entertain the Plaintiff's instant suit before it.

I must at this stage refer to the case of ***DR. CHINWOKE MBADINUJU V. I.C.N. LTD. (supra)***.In that case, an action for libel was instituted at the FCT High Courtand it was alleged that the defamatory statement was published in a newspaper which was circulated nationwideincluding the FCT – Abuja.Upon hearing a preliminary objection to the territorial jurisdiction of the Court in that case, the FCT High Court per Oniyangi J. (as he then was) held that it had jurisdiction just as Courts of other states to entertain the suit. The FCT High Court however held that from the facts of the statement of claim, it would be appropriate and better to try the case in the Anambra State High Court than in FCT High Court and thus declined jurisdiction to entertain the suit. The Court of Appeal subsequently upheld this decision and dismissed an appeal filed against same. The Court of Appeal held as follows per Rhodes-Vivour JCA (as he then was):-

> *"My Lords, it is entirely at the discretion of the trial Judge to decide which is the appropriate Court or forum convenience, and the test is where the interest of justice is best served. In exercising his discretion the trial Judge is expected to choose a venue in which the case can be tried more suitably for the interest of all the parties and for the ends of justice. Two principles must be borne in mind (a) the principle of effectiveness and (b) the principle of submission. See* ***OLAYIWOLA V. NWADIKE*** *(****1967) NMLR P. 15****. The Courtwill look for the venue where the action has real connection in terms of convenience or expense, availability of*

witnesses, and place where the parties reside or carry on business. The statement of claim is replete with averments, which show the action to have real connection with Anambra State. The Judge taking into consideration these facts exercised his discretion by stating that the High Court in Anambra State would be appropriate for the trial."

In the instant case, even though the facts pleaded indicate that the High Court of any State of the Federation, including the FCT, would have the necessary territorial jurisdiction to entertain the instant suit, there is nothing in the statement of claim before this Court to show that the suit would be more conveniently tried in any particular one of the High Courts of these states (or the FCT). The Statement of claim does not indicate that witnesses are located in any particular jurisdiction and the mere allegation at paragraph 3 that the Defendant resides 'outside jurisdiction' is most insufficient for the purpose of declining jurisdiction. There are simply no facts pleaded in the statement of claim to suggest that a venue other than this Honourable Court is more appropriate for the trial of the Plaintiffs' claim in the instant suit. The principle of*forum non-conveniens*, which appears to have been applied by the Court in ***MBADINUJU V. I.C.N. LTD. (SUPRA)*** and relied upon by Counsel to the Defendant in the instant preliminary objection, is thus inapplicable to the instant case.

I state further that Counsel to the Defendant's reference to Order 3 Rule 4(1) and (2) of the Rules of this Court cannot avail him in the circumstances. This is because **Order 3 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** deals with the *judicial division* of the FCT High Court within which to *conveniently* try a suit filed in the FCT High Court. The provision of the Rule itself does not determine the territorial jurisdiction of the FCT High Court to entertain the instant suit (which is the issue now before this Court). See the cases of ***INTERNATIONAL NIGERBUILD***

CONSTRUCTION CO. LTD. V. GIWA (2003) 13 NWLR (PT. 836) P. 69, DALHATU V. TURAKI (2003) 15 NWLR (PT. 843) P. 310*and* ***DAIRO V. U.B.N. PLC. (supra)****.*

Suffice it to say that this Honourable Court has the necessary territorial jurisdiction to entertain the instant suit and there is nothing before it to justify declining jurisdiction. The first issue is hereby resolved against the Defendant and in favour of the Plaintiffs.

The second issue distilled for determination is:-

> "Whether the Plaintiff has locus standi to institute this action."

Counsel to the Defendant has submitted that the Plaintiffs have no *locus standi* to institute the instant action as the alleged defamatory statement referred to one OSHA Association UK and not the Plaintiffs. He contended that the absence of *locus standi* on the Plaintiffs' part robs this Court of jurisdiction to entertain this suit. He relied on the case of CBN V. KOTOYE (1994) 3 NWLR PT. 330 P. 66 and a plethora of other judicialcases. Counsel urged this Court to therefore strike out the Plaintiffs' suit.

Counsel to the Plaintiffs, on the otherhand, submitted that the Plaintiffs have a requisite *locus standi* to institute this suit against the Defendant as the statement of claim discloses clearly the interest which the Plaintiffs have in the suit.

It is important, right from the onset to understand the meaning of the term*locus standi* the Supreme Court inthe case of***ADENUGA V. ODUMERU (2002) 8 NWLR (pt. 821) P. 163 at P. 184 paragraphs. E-H***held thus:-

> ***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.

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 the case of ***BEWAJI V. OBASANJO (2008) 9 NWLR (pt. 1093) P. 540***. 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***.

It is elementary position of law that in determining the issue of *locus standi* it is only the plaintiff's statement of claim that will be considered. – see the case of ***AYORINDE V. KUFORIJI (2007) 4 NWLR (pt.1024) P. 341***.

In the instant case, the Plaintiffs alleged in their Statement of Claim that the Defendant made publication of defamatory statements about them on the internet which went viral and was widely read. That the said defamatory statement falsely made of them particularly injured their person and posed a threat to their reputation. It is based on these allegations

that the Plaintiffs instituted the instant suit against the Defendant claiming the reliefs contained in the Statement of Claim. It is my humble opinion that the Plaintiffs have disclosed sufficient interest in their Statement of Claim to maintain this action. All that is left would be to determine if the Plaintiffs have sufficiently proved their case as to be entitled to Judgment as per the reliefs sought. See the case of ***OWODUNNI V. REG. TRUSTEES OF C.C.C. (2000) 10 NWLR (pt. 675) P. 315 at PP. 346–347 paragraphs F-A***where the Supreme Court held that where a plaintiff's pleadings clearly discloses his interest in a matter in dispute, it is gross error to deny him *locus standi*.

The Defendant's Counsel's contention that the alleged defamatory statement is directed at one OSHA Association UK and not the Plaintiffs is not pleaded anywhere in the Plaintiffs' statement of claim (which is the only process this Court can consider to determine *locus standi*). To my mind, the contention is one that is more suitable as the Defendant's defence to the Plaintiffs' allegations in the circumstances. Suffice it to say that the Plaintiffs' pleadings have disclosed that they have adequate *locus standi* to institute the instant suit against the Defendant and the second issue for determination is hereby resolved in favour of the Plaintiffs and against the Defendant.

ISSUE NO. THREE

> **"***Whether the PLAINTIFFS' failure to endorse the originating summons with the endorsement prescribed in Section 97 of the Sheriffs and Civil Process Act, does not render the suit incurably defective."*

Arguing this third issue for determination, learned Counsel to the Defendant submitted that the Plaintiffs' failure to endorse the originating summons with the endorsement prescribed in the mandatory provision of Section 97 of the Sheriffs and Civil Process Act renders the suit incurably defective. He submitted that a writ of summons must be

endorsed by the registrar in compliance with Section 97 but the Plaintiffs' summons in this case is completely bereft of such an endorsement. He contended that such failure renders the writ and proceedings in this case incompetent and this Court lacks the jurisdiction to entertain same. He relied on the cases of ***NWABUEZE V. OKOYE (1998) 4 NWLR (pt. 91) P. 661, OTITI V. MOBIL (1991) 7 NWLR (PT. 206) P. 700*** and a plethora of other cases.

In his own argument, learned Counsel to the Plaintiffs posited that the failure to endorse the originating summons with the endorsement under Section 97 of the Sheriffs and Civil Process Act does not render the suit incurably defective. He referred this Court to Order 5 Rule 1(1) and (2) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 to further posit that the non-compliance is curable. He cited the case of ***DR. YUSUF NAGOGO V. C.P.C. & ORS (2013) 2 NWLR (pt. 1339) P. 403***. Counsel argued that the Plaintiffs cannot be punished for the non-endorsement by the registrar as it is the mistake of the registrar.

Now, the writ of summons in this case indicates that the Defendant's address for service as being in Rivers State. By virtue of **Section 97 of the Sheriffs and Civil Process Act, CAP. S6 LFN 2004**, such summons issued in this Court for service outside its jurisdiction i.e. outside the FCT, shall carry an endorsement to the effect that it is to be served outside the FCT and in the state in which it is to be served (i.e. Rivers State in this particular case). See also **Order 2 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018**. I also refer to the cases of ***KIDA V. OGUNMOLA (2006) 13 NWLR (pt. 997) P. 377*** *and* ***S.C. ENG. NIG. V. NWOSU (2008) 3 NWLR (pt. 1074) P. 288****.*
It is a firmly established principle of law that the endorsement required by **Section 97 of the Sheriffs and Civil Process Act** is the act of the Court through its

Registrar. It is therefore the duty of the Registrar of this Court to endorse the copy of the writ of summons in this case meant for service on the Defendant in accordance with **Section 97** of the said Act. – see the cases of ***ADEGOKE MOTORS V. ODESANYA (1988) 2 NWLR (pt.74). P. 108, B.B.N. LTD. V. S. OLAYIWOLA & SONS LTD. & ANOR. (2005) 3 NWLR (pt. 912) P. 434*** *and* ***G. CAPPA PLC V. FRANCIS NNAEGBUNA AND SONS LTD & ANOR. (2009) LPELR-8349(CA*****)** to mention but a few.

The endorsement of the originating summons by the Registrar of Court is thus an official act. Being an official act, the law presumes in favour of same i.e. that it was carried out appropriately. – see **Section 168(1) and (2) of the Evidence Act 2011**. See also ***BUHARI V. OBANSANJO (2005) 13 NWLR (pt. 941) P. 1, SHITTA-BEY V. A.G.F. (1989) 10 NWLR (pt. 570) P. 392, U.D.F.U., SOKOTO V. BALOGUN (2006) 9 NWLR (pt. 984) P. 124 at 142 paragraphs. G-H and NWANKWO V. ABAZIE (2003) 12 NWLR (pt. 834) P. 381 at P. 422 paragraphs A-F***.The presumption is therefore that since the Defendant was served in this case, he was served in compliance with the provisions of Section 97 of the Sheriffs and Civil Process Act i.e. the writ served on him carries the required endorsement by the Registrar of this Court. The onus of rebutting this presumption therefore falls upon the Defendant who appears to be challenging service of the writ of summons on grounds of non-compliance with Section 97 of the Sheriffs and Civil Process Act.

The Defendant in this case merely filed his notice of preliminary objection and written address of his Counsel. He did not file an affidavit placing the necessary fact before this Court that there was no endorsement as required by Section 97 on the copy of the writ served on him. Such fact is not before this Court. The Defendant has thus failed to discharge the onus placed on him by the law to rebut the presumption that the copy of writ of summons served on him was

endorsed by the Registrar of this Court in accordance with the requirement of the provisions of the Sheriffs and Civil Process Act.

In any case, since the duty to endorse a writ or summons as prescribed in **Section 97of the Sheriffs and Civil Process Act** is solely that of the Registrar of the Court, it has been held that a litigant cannot therefore be punished for the failure of the Registrar to comply with that provision. See the cases of ***B.B.N. LTD. V. S. OLAYIWOLA & SONS LTD. & ANOR. (supra), DAVANDY FINANCE AND SECURITIES LIMITED & ORS V. ELDER EMMANUEL MBA AKI & ORS(2015) LPELR-24495(CA), G. CAPPA PLC V. FRANCIS NNAEGBUNA AND SONS LTD & ANOR. (SUPRA)*** *and* ***PANALPINA WORLD TRANSPORT HOLDING AG V. CEDDI CORPORATION LIMITED & ANOR (2011) LPELR-4827(CA)***. Consequently, even if failure on the part of the Registrar of this Court has been established, the Plaintiffs cannot be punished by setting aside their writof summons in this case on account of any remiss in the Court Registrar's duty to endorse the writ as required by Section 97 of the Sheriffs and Civil Process Act.

Either way one looks at it, the instant issue must be resolved against the Defendant and in favour of the Plaintiffs. And it is accordingly resolved in favour of the Plaintiffs.

Pursuant to my foregoing this Honourable Court possesses the necessary jurisdiction to entertain the Plaintiffs' suit. Hence the instant Notice of Preliminary Objection must therefore fail and it is accordingly dismissed.

_____

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

Parties :- Absent.
Umar Saleh:-For the Plaintiffs holding the brief of U.M Aminu.
Ochai J. Otokpa:-For the Defendant.

Sign
Judge
21/01/2020