

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT COURT NO. 22
WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 28TH DAY OF FEBRUARY, 2020

FCT/HC/CV/766/19

BETWEEN:

T. Z. CONFIDENCE NIG LTD -----CLAIMANT

AND

1. THE NATIONAL ASSEMBLY
2. THE CLERK OF THE NATIONAL ASSEMBLY } -----DEFENDANTS

SANDRA OZOEMENAM for the claimant

OBI CHIDINMA for the defendant

RULING

The plaintiff's claim is for liquidated sum of ~~₦~~**₦4,800,000 (Four Million Eight Hundred Thousand Naira)** being the agreed contract sum for already supplied 16 No. **HP Laptop Computer Intel 7/15.6, 2GB Graphic 8GB RAM, 750GB HDD** to the National Assembly, the sum of ~~₦~~**₦500,000 (Five Hundred Thousand Naira)** being the cost of this suit. And post judgement interest at the court rate from the day judgement is delivered till the judgement sum is liquidated. And for such Order or Further Orders that the court may deem fit to make in the circumstance.

In support of the claimant's claim is a 15 paragraph affidavit deposed to by the Manager to the plaintiff. The deponent annexed the contract award letter as Exhibit A, the Waybill/delivery note and a Proforma invoice dated 12th June 2014 as Exhibits B1 and B2 respectively. A job completion and compliance certificate dated 15th August 2014, Exhibit C was also issued to the claimant.

The deponent averred that despite several reminders, the defendants have failed/neglected to pay the claimant the sum of ~~₦~~**4,800,000 (Four Million Eight Hundred Thousand Naira)** being the contract sum. The claimant through his counsel wrote a demand letter dated 27/11/2018. Attached to the affidavit and marked as Exhibit D. He further averred that the defendants have no defence to the plaintiff's claim.

In response the defendant filed a Notice of Intention to defend together with a 16 paragraph affidavit of defence. The counsel to the parties filed written addresses in support of their Undeferred Writ and the affidavit of defence accompanying the Notice of Intention to defend respectively.

The main plank of the defendants' contention is that this court lacks jurisdiction to entertain the plaintiff's claim for failure to secure a pre-action notice on the defendant in accordance with Section 21 of the Legislative House (Powers and Privileges) Act 2017 which states:

"A person who has a cause of action against a Legislative House shall serve three (3) months written notice to the office of the Clerk of the Legislative House describing the cause of action and relief sought."

The defendants' counsel submitted that for a suit to be competent before a court, it must have been initiated by due process of law and upon fulfilment of any condition precedent to the exercise of court's jurisdiction. The defendant relied on the cases of **ABDULHAMID V AKAR (2006) 13 NWLR PT. 996 @ 127 PG 140 PAR G-H, ALAO V ACB (2000) 2SCNQR (PT.2) 1067 @ 1083-1084 PAR F-A**. The court was urged to strike out this suit for lack of jurisdiction.

In reply, the claimant's counsel argued that the action is for simple contract which has nothing to do with the Legislative House and its duties as created by the law. That privileges of pre-action notice are not applicable to specific contract. The claimant counsel relied on the case **OF N. P. A. V COSTRUZIONI GENERALI FCS & ANOR (1974) NSCC 622 @ 63** and urged the court to discountenance the submission of the Learned Counsel to the defendants.

It is an unassailable fact that jurisdiction is the bedrock upon which the success of an action is anchored. It determines the competence of the court to adjudicate on the claim of the plaintiff. Where a court lacks jurisdiction to entertain a claim before it, the decision of the court is an exercise in futility no matter how brilliant the judgement turns out to be. Jurisdiction is therefore the live wire of an action.

There are instances where it may be said that a court does not have jurisdiction to entertain an action. The Supreme Court in the case of **EZE V OKECHUKWU & SONS (2002) LPELR 1194 SC** held:

“It is necessary to state that there are circumstances where a court has no original or any constitutional jurisdiction to hear a matter. There are others where owing to operation of law, the jurisdiction is either taken away or merely put on hold pending compliance with certain pre-condition.”

It is pertinent to ask whether the provision of Section 21 of the Legislative House (Powers and Privileges) Act 2017 is applicable to the issue at hand. I answer in the affirmative. While it is trite that the claim of the plaintiff is for liquidated money demand and is qualified to be instituted under the Undefended list procedure for quick dispensation, the defendant however has a defence in law notwithstanding that it is a simple contract, in that the condition precedent to the institution of the action was not duly followed by the plaintiff.

On the effect of non-service of pre-action notice, the Supreme Court went further to hold in the case of **EZE V OKECHUKWU & SONS Supra** that:

“The requirement of pre-action notice where this is prescribed by law is known to have one rational; It is to appraise the defendant before hand of the nature of the action contemplated and to give him enough time to consider or reconsider his position on the matter as to whether to comprise or contest it. The giving of pre-action notice has nothing to do with cause of action. It is not a

substantive element but a proscribed requirement, albeit statutory, which a defendant is entitled to before he may be expected to defend the action that may follow.”

The Supreme Court **Per Uwaifo JSC** further held:

*“I think that is the correct view as expressed by Salami JCA on the issue of pre-action notice. It is a special defence available to an appropriate defendant by statute or contract which he ought to raise to the effect that he has not been served with the requisite pre-action notice and therefore that the action is incompetent or premature. Such a defence of non-service which is a matter of fact should be raised in the proper manner at the trial court preferably soon after the defendant is served with the writ of summons. If not so raised the fact of non-service ought to be pleaded in the statement of defence. See **ADEMOLA II V THOMAS (1946) 12 WACA 81 @ 89. KASTSINA LOCAL AUTHORITY V MAKUDAWA (1971) 7 NCC 119 @ 124**. If it is raised and it is shown that there has been non-service the court is bound to hold that the plaintiff has not fulfilled a pre-condition to instituting his action.”*

While it may be said that the defendant does not have any good defence on the merit to the plaintiff’s cause of action, the plaintiff however have failed to comply with the condition precedent to the institution of the action against the defendants. The non-service of the Pre-action Notice on the defendants therefore put the claim of the plaintiff in abeyance. The jurisdiction of the court is put on hold pending compliance with the Pre-condition. See the case of **NNONYE V ANYICHIE & ORS (2005) LPELR 2061, SC**. The plaintiff’s claim fails for non-compliance with condition precedent to the institution of the action. And it is hereby struck out.

SIGN

HON JUDGE

28/2/2020