

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON WEDNESDAY THE 23RD DAY OF JANUARY, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/1337/2019

MOTION NO: M/8699/2019

DIVINE OGLI-OJOBI ----- CLAIMANT/RESPONDENT

(Carrying on business as and in the name of SISI TRUST VENTURES)

AND

NIGERIAN NATIONAL PETROLUUM

CORPORATION (NNPC) ----- DEFENDANTS/APPLICANTS

RULING

Before this Honourable Court is a Notice of preliminary objection filed on the 11th of September, 2019 challenging the jurisdiction of this Honourable court to entertain this action.

The Notice of preliminary objection is accompanied with an affidavit deposed to by Emeka Ike a legal assistant with the Defendant/Applicant and a written address. The reliefs sought by the Defendant/Applicant are as follows:

- a. An Order of this Court striking out the instant Writ of Summons filed on 15/3/19; or in the alternative
- b. An order dismissing the suit in its entirety.

The grounds upon which this application is predicated are as follows:

1. The suit is against the Defendant, a statutory corporation established by Act of National Assembly.
2. The Honourable Court lacks jurisdiction to entertain suits brought against the Defendant without compliance with Sections 12 (1) & (2) and 13 of the National Petroleum Corporation Act, Cap 123 LFN, 2004.
3. The requisite mandatory statutory conditions precedent to the invocation of the jurisdiction of this honourable court as contained in sections 12 (1) & (2) and 13 of the Act have not been fulfilled.
4. The action as presently constituted is also incompetent by virtue of Sections 12 (1) & (2) and 13 of NNPC Act.
5. This Court lacks the jurisdiction to hear and determine the suit as presently constituted.

In opposition to the notice of preliminary objection, the Claimant/Respondent filed on the 24th of October, 2019 an 11 paragraph Counter-Affidavit, attached 2 exhibits and a written address in opposition.

On the 20/11/19 the matter came up for preliminary objection the Defendant/Applicant Counsel was not present in court hence Claimant/Respondent Counsel applied to the Court that the Defendant/Applicant written address in support of the preliminary objection be deemed adopted in the absence of the Defendant/Applicant Counsel which same written address was deemed adopted.

Claimant/Respondent also adopted their written address in support of their Counter-Affidavit.

The Defendant/Applicant raised a sole issue in their written address in support of the preliminary objection which is “whether the Claimant fulfilled the requisite statutory conditions precedent to the invocation of court jurisdiction so as to vest this Honourable Court with jurisdiction to entertain the suit against the Defendant? ”

Learned Counsel submitted that the law is strict that jurisdiction is most fundamental to the adjudication of a suit and argued that parties cannot by agreement clothe the court with jurisdiction and the court cannot acquire it by acquiescence or submission as it is only conferred by statutes. Counsel cited the cases of **NNPC & 1 OR V. CHIEF STEPHEN ORHIOWASELE & 2 ORS (2017) 8 WN 26; HON. ABDULLAHI BELLO & 1OR V. HON. YUSUF AHMED TIJANI DAMISA (2017) 8 WRN 1; MADUKOLU NKEMDILIM (1996) 2 ALL NLR 581 AT PGS 589-590; ADEIGBE V. HUSHIMO (1965) 1 ALL NLR 248; MATARI V. DANGALADINMA (1993) 3 NWLR (PT. 281) 266 AT 275 AND NNSC V. SABANA & ORS (1986) 5 NWLR (PT. 40) 204.** In resolving the issue of jurisdiction raised by the Defendant, counsel made reference to Sections 12 (1) & (2) and 13 of the National Petroleum Corporation Act and submitted that the words of the sections are clear and hence should be construed literally and given their ordinary meaning. Counsel urged the court to hold that the pre-action notice mandatory requirement was not served on the Defendant. He cited the cases of **NTIERI V. NPA (2008) 10 NWLR (Pt. 1094) 129; FEED AND FOOD FARMS (NIG) LTD V. NNPC (2009) 39 WRN; (2009) 12 NWLR (PT 1155) 387; NDC LTD V. ASWB (2008) 20 WRN166; (2008) ALL FWLR (PT 422) 1052; CHIEF (HON)**

OBONG SMITH UDOEKA & 3 ORS V. ISIKOBO JOHN ISIKOBO (2013) 1 WRN 130; CHIEF BERTHRAND NNONYE V. D.N. ANYICHIE & ORS (2005) 8 WRN 1 AT 22; NNPC V. SELE (2002) 2 NWLR (PT 910) at 620. Learned Counsel submitted that by applying the provisions of Sections 12 (1) & (2) and 13 of the National Petroleum Corporation Act to the instant suit, the Claimant action as it relates to the Defendant is firmly defective as the pre-action notice required by the above section was never served at all or if served was never in compliance with the above sections and the action cannot be entertained by the honourable Court. To buttress this point, counsel cited **MADUKOLU V. NKEMDILIM (1962) 2 ALL NLR 581 at 589-590** and **INAKOJU V. ADELEKE (2007) 4 NWLR (Pt. 1025) 427 at 590.** Finally counsel urged this Honourable Court to ~~strikeout~~/dismiss the suit of the Claimant.

On the other hand, the Claimant/Respondent in their written address in opposition to Defendant/Applicant preliminary objection raised two issues for determination, which are;

1. Whether the Claimant has a cause of action and if so whether same has being cut short by sections 12 (1) & (2) and 13 of the National Petroleum Corporation Act 2004 thereby being statute barred.
2. Whether the court has the jurisdiction to entertain this suit.

On the first issue, learned counsel submitted that the objection is misconceived and as such inapplicable in the circumstances of this case. Counsel stated that a cause of action depends on the circumstances of each particular case and it is the claim of the Plaintiff that determines when a cause of action accrues. He cited **NWAOGWUGWU V. PRES FRN (2007) 6 NWLR (Pt. 1031) Pg 274 Paras A-B** and **BAKARE V. NRC**

(2007) Pt. 1064, PG 606 Paras E-F. Counsel submitted that the Claimant has a good cause of action, that sections 12 (1) & (2) of the National Petroleum Corporation Act does not apply in this case and as such the cause of action cannot be said to be statute barred. Counsel submitted that in the instant case perusing through the statement of claim, paragraph 21 of the statement of claim, one would see that the none payment of the contract sum to the claimant has caused continuous damage to her in that the interest rate on the said loan she collected to carry out the contract jobs on recurring even till date. He cited the cases of **NNPC V. DR I NWODO & 22ORS (2018) LPELR 45872 (CA);A.G. RIVERS STATE V. A.G BAYELS STATE (2013) 3 NWLR PT 1340, P 149, (2012) LPELR-9336 SC @ 20-30 and DAUDU V. SHELU (2019) ALL FWLR Pg. 296 Para A-A per Admen JCA.** He urged the court to resolve issue one in favour of the claimant. Counsel also submitted that the demand for a pre-action notice by section 12 (2) of the National Petroleum Corporation Act is a condition precedent to the institution of an action against the NNPC which if not complied with goes to the jurisdiction of the court to handle the case. He cited **NIGERCARE DEV. CO. LTD V. ASWB (2008) 9 NWLR PG 501 At PP 520, Paras E-F, Paras B-C; 522 Paras E-F.** Counsel submitted that the argument of the defendant in this respect is again misconceived in that the Claimant not only served the required pre-action notice on the defendant/applicant but also served same on both the Minister of State for Petroleum Resources and Minister of Petroleum Resources respectively and either of whom acts as the chairman of the board before filing the suit against the defendant/applicant and as such fulfilled the condition precedent to the exercise of jurisdiction by the trial court.

On the second issue which is “whether the court has the jurisdiction to hear this suit”, counsel submitted that the jurisdiction of the court is determined by the case and facts presented by the Claimant, that in an action commenced by pleadings, it is the entire facts in the statement of claim including the reliefs that are considered. Counsel cited **ADEYEMI V. OPEYORI (1976) 9-10 SC and DANGIDA V. MOBIL PRODUCING NIGERIA (UNLTD) (2002) 7 NWLR (Pt. 766) 482 @ 500-501 D-A.** Learned counsel further submitted that a court of law is competent and can lawfully exercise jurisdiction when the three conditions established by the Supreme Court in **MADUKOLU & ORS V. NKEMDILIM (1962) ANLR 589** have been satisfied and that these are when “ it is properly constituted as regards number and qualification of the member of the bench and no member is disqualified for one reason or another; the subject matter of the case is within the jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and the case comes before the court initiated by due process of law”. Counsel finally submitted that this Honourable Court is not in any way disqualified by the conditions as enumerated in **MADUKOLU & ORS V. NKEMDILIM (supra)** and urged the court to discountenance the objections raised by the defendant/applicant and move to hearing the case on the merit.

Now after considering the arguments for and against the Notice of Preliminary Objection, in order to resolve the contending issues raised by both parties, I have raised two (2) issues for determination as follows: -

- (1)“Whether the Claimant fulfilled the requisite statutory conditions precedent to the invocation of court jurisdiction so as

to vest this Honourable Court with jurisdiction to entertain the suit against the Defendant? ”

(2)“Whether same has been cut short by section 12 (1) of the National Petroleum Corporation Act 2004 thereby being statute barred”.

On the first issue, the ground of objection by the Defendant/Applicant is that the Plaintiff failed to comply with the requisite mandatory statutory condition precedent as contained in Sections 12 (1) (2) and 13 of the Nigerian National Petroleum Corporation Act Cap 123, LFN, 2004. The Defendant/Applicant therefore prayed for an order of this Court striking out/dismissing the Plaintiff’s suit as this Honourable Court lacks jurisdiction to entertain it.

Firstly, it is correct as submitted by the learned Counsel for the Defendant/Applicant that jurisdiction is most fundamental to the adjudication of a suit. In the case of **LOCAL GOVERNMENT SERVICE COMMISSION, EKITI STATE & ANOR V MR M. A. JEGEDE, (2013) LPELR 21131**, the Court of Appeal, Ekiti Judicial Division held: -

“It is trite that jurisdiction is crucial, fundamental and a threshold issue. Hence, where it is lacking, the proceedings can be better described as being dead on arrival, so to say”

Further, it is elementary that to determine Court’s jurisdiction to hear and determine an action, the principle laid down in the case of **MADUKOLU V NKEMDILIM (1962)2 SCNLR 341 at 348** is the locus classicus.

The objection of the Defendant/Applicant bothers on the Plaintiff’s none compliance with the provisions of section 12 (1) (2) and 13 of the NNPC Act Cap 123 LFN 2004. The said sections provides as follows:-

12. (1) Notwithstanding anything in any other enactment, no suit against the Corporation, a member of the Board or any employees of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof.

(2) No suit shall be commenced against the Corporation before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending plaintiff or his agent; and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

13. The notice referred to in subsection (2) of section 12 of this Act and any summons, notice or other document required or authorised to be served upon the Corporation under the provisions of this Act or any other enactment or law may be served by delivering the same to the Chairman or the Managing Director of the Corporation, or by sending it by registered post addressed to the Managing Director at the principal office of the Corporation.

The Defendant/Applicant in this suit is challenging the failure of the Plaintiff to comply with the requisite mandatory condition precedent as

contained in S. 12(1) (2) & 13 of the NNPC Act Cap 123, LFN, 2004 whilst Plaintiff is contending that pre-action notice was served on the Defendant/Applicant as evidenced in Exhibits A & B annexed to the statement of claim.

S. 12 (2) & 13 of NNPC Act 2004 used the word “SHALL” which makes it mandatory that pre-action notice must be served on Defendant/Applicant as a condition precedent to the institution of an action against the NNPC which if not complied with goes to the jurisdiction of the court to handle this case. Generally omission to serve required notice in a deserving case would be fatal to the suit. In the case of **AMADI VS NNPC (2000) 10 NWLR (Part 674)76** the court in this case confirmed the necessity and importance of serving pre-action notices but held that a defective pre-action notice should not be rendered as no notice at all due to its defective nature, hence a defective pre-action notice as opposed to no notice at all, should not be an impediment to access the court.

Hence, a suit commenced in default of service of Pre-action Notice as laid down in the NNPC Act is incompetent against the party who ought to have been served with the Notices. It is worthy to state that the rationale behind the requirement for pre-action notice is to enable the Defendant to know in advance the anticipated action and a possible amicable settlement of the matter between the parties, without recourse to the adjudication by the court. It is a harmless procedure designed essentially to stop a possible litigation, thus saving money and time of the parties.

Per NIKI TOBI (JSC) 9 NWLR (Pt. 1093) Pg. 498 @ 526-527 Para H-C

A Pre-Action Notice as described in S. 12 (2) NNPC Act 2004 “SHALL” clearly and explicitly state the cause of action; the particulars of claim, the name and place of abode of intending Plaintiff and the relief which he

claims” I reiterate again that the use of the word “SHALL” in the section makes it mandatory that the Pre-action Notice must contain the said features.

A thorough look at both Exhibits A & B attached to the counter claim does not contain the particulars of claim more particularly so as the amount claimed in the Statement of Claim & Writ of Summons does not reflect on both Exhibits A & B and without the particulars of claim which incorporates the main issues in contention between parties, Exhibits A & B falls short of a pre-action notice. At best both Exhibits A & B can be described as pre-action letters.

I have looked at the pre-action notices served by the Plaintiff on the Defendant as evidenced in Plaintiff’s Exhibits A & B attached to the counter affidavit and it would be necessary for me to reproduce part of the contents of both Exhibits A & B.

Exhibit A

The Hon Minister of State

23/10/2018

Ministry of Petroleum Resources

NNPC Towers,

CBD Abuja.

Dear Sir,

RE-LETTER END OF YEAR SUPPLY DATED 23/01/2018

I am compelled to write this letter after such a long wait and persistent personal visits which has yielded no positive outcome indicative of a calculated ploy to buy time and wish this payment away by your corporation.

It is on good record that I have exercised an unusual leave of patience largely due to the length of our business relationship which cuts across

subsidiaries, but without any iota of doubt I am convinced that except via litigation this long overdue payment may not be resolved.

I have therefore resolved that this seven (7) days final request notice for payment of our outstanding monies with your corporation precedes legal redress.

Yours faithfully

For: Sisi Trust Ventures.

(Signed)

Exhibit B on the other hand was written by J.I ONWUGBOLU & CO (Solicitors) on behalf of the Plaintiff.

THE HON MINISTER

MINISTRY OF PETROLEUM RESOURCES

NNPC TOWERS

CBD ABUJA

Dear Sir,

RE: SUPPLY OF END OF YEAR GIFT

We are solicitors to SISI TRUST VENTURES (Hereinafter called our client and on whose behalf we write you this letter)

It is our clients instruction that following a letter from your corporation dated 16th December, 2014, with Ref No: GGM/GPAD/SA/30 to our client to supply ZEENAB OIL with delivery date of on or before Wednesday 31st December, 2014, they made the supply of the said gift and submitted a waybill indicating the product (ZEENAB OIL) was supplied.

They also provided an invoice indicating the amount to be paid by your esteemed establishment and their Bank Details wherein the amount due will be paid.

That after the said submission of the above details, they waited in vain for the amount due to be paid into their account all to no avail despite the fact that the supplies were effected in due time, just for them to receive a disturbing news that the amount due them had been paid to a wrong account.

That they were left with no option but to pursue the reversal of payment. They wrote several letters to the Accounts Department and the Group Public Affairs Department to ensure the reversal of payment all to no avail.

They again wrote in January this year despite the series of calls made ever since they got to know about the wrongful payment and another in October this year all in a bid to ensure that the wrongful payment would be reserved.

It is our clients further instruction that you use your good office to look into the said disturbing issue with an aim to resolving same and making sure that they are being paid otherwise sir, they will be left with no other option than to seek redress in a court of law.

Thanking you in advance while awaiting your response;

Yours faithfully

MIRROR OF JUSTICE CHAMBER

Signed

J.I ONWUGBOLU

From the contents of Exhibits A & B as reproduced above, it is my view and I so hold that both Exhibits A & B are pre-action letters.

There is a clear distinction between pre action letters of demand and pre-action notice and under no circumstances must both be lumped together. A pre-action notice is quite distinct from a pre action letter of demand. While a notice is a notification or warning of something given to another especially to allow preparation to be made; in legal terms it can be described as the legal concept describing a requirement that a party be aware of legal process affecting their rights, obligations or duties and the purpose. The letters as evidenced in Exhibit A & B are mere pre-action letters demanding for restitution or performance of Plaintiff's claim. The Supreme Court Per Justice Niki Tobi in **FEED & FOOD FARMS (NIG) LTD VS NNPC (2009) LPELR 1274 (SC)** compared statutory pre-action notice to the usual pre-action letter of demand emanating from chambers of counsel from Plaintiff to a Defendant asking for specific conditions to be fulfilled in order to avoid litigation. While a pre-action notice is a statutory requirement, a pre-action letter is not statutorily required and provides an opportunity for people and company in dispute to correspond before resorting to court action.

It is my view and I so hold that both Exhibit A & B as attached to the counter affidavit of the Plaintiff are more pre-action letters of demand and do not satisfy the requirement of a pre-action notice. Moreover both Exhibit A & B are addressed to the "Honourable Minister of State, Ministry of Petroleum Resources" whilst S. 12 (2) and S. 13 NNPC Act, 2004 specifically states that the pre-action notice be served by delivering same to the Chairman or the Managing Director of the corporation but

the said Exhibit A & B were addressed to both the “Minister of State” and the Honourable Minister respectively.

Where a pre-action notice is not served as required by law before the institution of an action, such action as in this case is incompetent as against the party who ought to have served it and the proper order to make in the circumstances is to strike out suit.

Having treated issue one above it would be a mere academic exercise in futility to go ahead with the issue of statute barred.

Consequently case is hereby struck out for failure to comply with condition precedent which ousts this Court of jurisdiction to proceed with this matter.

PARTIES: Absent

APPEARANCE: Paul Ashimiakpeokha appearing with J. I. Onwugbolu for the Claimant. Okani Emmanuel appearing for the Defendant.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
23RD JANUARY, 2020**