

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON TUESDAY THE 29TH DAY OF JUNE, 2021.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/887/2020

MOTION NO: M/11127/2020

VINCENT KPAMIOSE ----- APPLICANT/RESPONDENT

AND

1. EBENEZER OBIAJUNWA

2. AMAKAOBJAJUNWA-----RESPONDENTS/APPLICANTS

RULING

The Respondents filed a preliminary objection dated 22/10/2020 praying this court for the following;

1. An Order of this Honourable Court dismissing this suit in limine for want of Jurisdiction of this Honourable Court to entertain same.

ALTERNATIVELY

2. An order of this Honourable Court striking out the suit for want of Jurisdiction of the Court to entertain same.
3. And for such further/other order(s) as this Honourable Court may deem fit to make in the circumstance.

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

- a. That the Applicant is a person under legal disability and therefore cannot sue by himself.
- b. That the instant application is an abuse of court process.
- c. That this Honourable Court is not a family court having not been designated and constituted as such.
- d. That it is against public policy and the overriding objectives of the enforcement of Child's Rights to be exposing a child of 12years to the psychological perils of litigation.
- e. That the Applicant's inalienable right as a Child has been flagrantly abused by his parents' which abuse cannot guarantee that the child is in normal mental state to know what he is doing having been exposed to hotel living and its attendant apparent corruption.
- f. That the parents of the Applicant having shown lack of moral and legal good standing towards the child should first take the Applicant to a rehabilitation centre to be certified by the court before the Applicant can be adjudged to be mentally, morally and legally fit for court.

Having gone through the prayers and the grounds of the preliminary objection, it is trite law that Children are entitled to sue by their next friend. However, Section 1 of the **Child's Right Act 2003** provides thus;

“In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of

law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

The Court of Appeal in **MAJOMI & ORS V. MAJOMI, JNR & ORS (2007) LPELR-3854 (CA)** held;

“An infant who wants to sue at all must do so by his next friend. But no one can sue as a next friend of a child who had not come into existence at the time the action was commenced.... Similar to the case of the infant, a person of a weak or unsound mind cannot commence or continue proceedings except by his next friend or committee in lunacy if one has been appointed. In both cases, if the action has been commenced by the plaintiff himself, the proper procedure is for the defendant to apply to the court to stay the proceedings until the next friend or committee has been added: Re Townshend (1908)¹ Ch. 201; Re Hunt (1906)² Ch. 295. It will be improper for the plaintiff himself to make an application to the court for the appointment of a next friend, or other guardian ad litem. The court should not dismiss the suit merely because of a failure to commence it by the next friend, although it may set aside the writ if there is no next friend willing, or the committee is not willing or able to carry on the proceedings on behalf of the plaintiff: An application by the next friend or committee to be added to the suit should in ordinary circumstances be granted, after which the suit should proceed normally.”

Thus, although an infant may only sue by his next friend, whereas in this case he brings the action in his own name, the suit is not ipso facto

incompetent. Ideally the Applicant should have instituted the suit by his next friend but his failure to do so does not affect the competence of the suit. A next friend may be appointed for the infant applicant even after instituting the action, but proceedings must be stayed until next friends are appointed for the Applicant.

Having stated the above, for the court to entertain the other grounds of the preliminary objection the suit has to be properly before the court, therefore it is ordered as follows:

1. Proceedings in this suit is hereby stayed.
2. The applicant is ordered to amend parties by suing by his next friend i.e.

“VINCENT KPAMIOSE

(Suing by his next friend -----)”

PARTIES: Absent

APPEARANCE: Festus A. Osimhen for the Applicant. Watchman Oshekun for the Respondents.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE**

29THJUNE,,2021