

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON TUESDAY, THE 15<sup>TH</sup> DAY OF MAY, 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**  
**SUIT NO.: FCT/HC/CV/1355/19**

**BETWEEN:**

1. AL-NAJAH NIGERIA LIMITED } ----- PLAINTIFFS  
2. ALHAJI ABUBAKAR IMAM } -----

**AND**

UNITY BANK PLC } ----- DEFENDANT

**RULING ON PRELIMINARY OBJECTION**

On the 19<sup>th</sup> day of March 2019, Al-Najah Nigeri Ltd and Alhaji Abubakar Iman instituted this Originating Summon against Unity Bank of Nigeria PLC. In it they want the Court to resolve the following questions which are:

- (1) Whether the plaintiffs are entitled to the interest waiver granted by the Defendant to the indebtedness owed to the Defendant?
- (2) Whether Defendant is not in breach of the waiver granted to it following the payment of Four Million Naira (~~N~~4, 000,000.00) and medical evidence of the

- 2<sup>nd</sup> Plaintiff as the final settlement of the Plaintiffs following the Defendant letter of the 7<sup>th</sup> day of November, 2017?
- (3) Whether the Defendant can claim that they have sold the Plaintiffs' debt to a unit in part of the Defendant's bank in 2017 while still giving the plaintiffs a go ahead to pay the Four Million Naira (~~N~~4, 000,000.00) as full and final settlement of the indebtedness?

They asked the Court to grant the following Reliefs:

- (1) An Order declaring that the Plaintiffs are not indebted to the Defendant in any form or shape.
- (2) An Order of this Court restraining the Defendant, their agents, associates, representatives, cronies or anybody by whatever name called acting for or on behalf of the Defendant demanding or claiming any debts from the Plaintiffs.
- (3) A Declaration that the Plaintiffs have settled their indebtedness in full to Defendant.
- (4) A Declaration that the Defendant give full account of the Plaintiffs monies in the Defendant's bank.
- (5) A Declaration that the Defendant releases all the Plaintiffs documents concerning the indebtedness.

The Plaintiffs supported the application with an Affidavit of 23 paragraphs deposed to by the 2<sup>nd</sup> Plaintiff. They attached several documents – EXH ALN 1 – 5.

The Defendant was served. It filed a Preliminary Objection challenging the competence of the Suit of the Plaintiffs. That it did not disclose any cause of action and that it was commenced by the wrong procedure and therefore should be dismissed in limine. The Defendant also filed a Counter Affidavit of 16 paragraphs.

In the Preliminary Objection, the Defendant also said that the Plaintiffs did not follow the due process of law in filing the Originating Summons as it did not comply with the Rules. That Court can only move into action when due process is followed. That in the heading, the Originating Summons did not disclose or state the law upon which the application is anchored on, contrary to **Order 2 Rule 3 High Court Rules. Form 3, 4 & 5 of the Rules of 2018.**

That the Plaintiffs did not disclose cause of action and expect the Court to fish out the cause of action. That since that is the case the Court should either strike out the Suit or dismiss same.

On their own part, the Plaintiffs filed a Counter Affidavit of 13 paragraphs deposed to by Kennedy Collins Etifit. The Plaintiffs stated that they have a cause of action contrary to what the Defendant said. That the application is only a ploy to delay the hearing of the Suit and deceit the Court. That there was a contractual agreement between the parties through offer of interest waiver made by Defendant to the Plaintiffs through their Solicitor which the Defendant accepted and advised the Plaintiff to make a payment of Four Million Naira (~~N~~4, 000,000.00) to enable the

Defendant grant the waiver as final settlement of the Plaintiffs indebtedness to Defendant going by **EXH ALN 5, 4 & 3** as attached. That such shows that there is a cause of action.

The Plaintiffs raised two (2) Issues for determination in support of their Counter Affidavit which are:

- (1) Whether Defendant is entitled to an Order to dismiss this Suit and whether Court lacks jurisdiction to entertain for same being incompetent?**
- (2) Whether this is not an abuse of Court Process?**

They submitted that the application is not misconceived and misplaced. That the Plaintiffs have a cause of action. That the Plaintiffs put the Defendant on notice by serving them a notice of intention to sue if the Defendant fail to honour the agreement of the parties as it concerns the agreement of waiver of interest. That the documents attached to this Counter Affidavit are apt and evidential enough. They referred to the case of:

**Mokwe V. Ezeuko**  
**(2000) 14 NWLR (PT. 686) 142 @ 152**

That there is a cause of action against the Defendant. That the cause of action gives the Court requisite jurisdiction to entertain the case and that the Suit is competent. He referred to the cases of:

- (1) Ezeonu V. Agheze**  
**(1991) 4 NWLR (PT. 187) 631**

- (2) **Oshobojo V. Amuda**  
(1992) 7 SCNJ 317 @ 326
- (3) **Kolo V. 1<sup>st</sup> Bank PLC**  
(2002) LPELR 7106 (CA)
- (4) **Fred Egbe V. Adefarasin**  
(1987) 1 NWLR (PT. 47) 1 @ 20

That this Preliminary Objection is an abuse of Court Process and a ploy to cause delay and mischief. They urged Court to dismiss the Preliminary Objection for being frivolous and vexatious with substantial cost.

### **COURT:**

The Court has gone through the submission of the parties for and against this Preliminary Objection and holds that the Originating Summons filed by the Plaintiffs in this Suit disclosed a cause of action which is the issue surrounding the waiver or agreement to waiver of interest in the agreement between the parties in this Suit. That issue is not alien to the Defendant in this Suit. The agreement and the extent thereof is not strange to the Defendant also.

It is important to point out that it is the claim of the party – Plaintiff, that determines whether there is a cause of action or not. It is same that gives Court all the requisite jurisdiction to entertain the Suit. See the cases of:

**Kolo V. First Bank PLC (Supra)**

**Fred Egbe V. Adefarasin (Supra)**

It is important to note that the Court is not at this stage to determine the merit or otherwise of the Suit of the plaintiffs. The Court is only here to determine whether they have a cause of action in the Suit. The Court is called upon to do substantial justice at any point or stage in a case. At this preliminary stage this Court has been by this Preliminary Objection called upon by the Defendant to know and state if there is a disclosed cause of action by the Plaintiffs.

It is the humble view of this Court to state that the Plaintiffs have a good cause of action and that the Court has the requisite jurisdiction to entertain same. The Court also holds that the Suit of the Plaintiffs is very competent.

It is no secret that the Court is called upon this day to do substantial justice at every stage. But that technical justice is no longer part of jurisprudence. It has long being dead and buried. This is so because the submission of the Defendant's Counsel that the Plaintiffs' failure to state the provision of the Rules of Court or law upon which the application is brought pursuant to, is purely on technicality and nothing more. That issue cannot make this Suit incompetent. Failure to state section of Rules under which the application is brought is mere irregularity.

This Court cannot strike out this Suit let alone dismiss same because of the failure of the Plaintiffs' Counsel to state the provision of the Rules of Court or law upon which the application is brought. Granting that application as sought by the Defendant's Counsel will be doing technical

justice and delaying the doing of substantial justice at this stage.

If the Court strike the Suit out, it can only take the Plaintiffs' Counsel a minutes to get by to Process Registry to file another Process. If that is done it means that the time the Court would have spent to delve into the issues in dispute and settle same has been used to do technical justice.

This Court cannot allow itself to be deceived into doing so because delayed justice does no one any good not even the public or polity. Without further ado this Preliminary Objection lacks merit and it is therefore **DISMISSED**.

**This is the Ruling of this Court.**

Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2020  
by me.

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**K.N. OGBONNAYA**  
**HON. JUDGE**