

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/407/2018

BETWEEN:

KELBENI NIGERIA LIMITED.....CLAMANT/RESPONDENT

VS

- 1. MR TERRY LIGOM**
- 2. ESTHER GODFREY**
- 3. GIBEMI OLOGUN**
- 4. OKOYE CHIAMAKA DORATHY**
- 5. COKER TUOYO**
- 6. AKPAWUSI IKECHUKWU.O.**
- 7. FIRST BANK OF NIGERIA PLC**
- 8. CALEB OMONONYE**
- 9. CHUKWUNOMSO JAYDEN MVADI**
- 10. ONYIA O. PATRICK**
- 11. ACCESS BANK PLC**
- 12. ELEGA VICTOR**
- 13. ISRAEL EMMONI**
- 14. OSHENYI SOLOMON**
- 15. MACAULAY ABAYOMI OLUWAFUNSHO**
- 16. DIAMOND BANK PLC**
- 17. BENEDICTA U. ADILIEJI**
- 18. ECO BANK NIGERIA LIMITED**
- 19. EBERECHUKWU NWOSU**
- 20. ONARI GEORGEWILL**
- 21. FIDELITY BANK PLC**

22. **MODUPE ORİYOMI OLUKIHBI**
23. **MUTIAT MOTUNRAYO OWOLABI**
24. **INIMFOM SUNDAY UMOH**
25. **FIRST CITY MONUMENT BANK PLC**
26. **OKANLAWON OLUWANIFEMI PAUL**
27. **EKECHUKWU CHINEMEZIE WILLIAMS**
28. **AJAO DAVID OLUWADAMILOLA**
29. **BULAMA BABAGANA**
30. **UKAWABA JULIET**
31. **AKINWUNMI AZEEZ OLANREWAJU**
32. **GUARANTY TRUST BANK**
33. **PEEROYDIMENSIANS LTD**
34. **HERITAGE BANK PLC**
35. **JEMIMAH OLUKUNLE**
36. **STANBIC IBTC BANK**
37. **OPADAYO AOKUNLE**
38. **SKYE BANK PLC (NOW POLARIS BANK)**
39. **GIFT CHIOMA**
40. **BEULANDS SERVICES**
41. **UNITED BANK FOR AFRICA PLC**
42. **FALORE EMMANUEL**
43. **WEMA BANK PLC**
44. **AZIMI STELLA**
45. **JUSTINA & DAERAGO JACKSON**
46. **ZENITH BANK INT'L BANK LIMITED.....DEFENDANTS**

RULING

The Plaintiff commenced this action by a Writ of Summons filed under the "Undefended List" on 30/11/2018 and claims the following reliefs;

1. An Order of Court directing the 1st, 2nd, 3rd, 4th, 5th, 6th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 7th Defendants (FIRST BANK OF NIGERIA PLC)

OR in the alternative an Order of Court directing the 7th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 1st, 2nd, 3rd, 4th, 5th, 6th Defendants through the 7th Defendant in an event the 1st, 2nd, 3rd, 4th, 5th, 6th Defendants fail or neglect to pay the Plaintiff the exact amount of money as contained herein, the 7th Defendant having allowed the Defendants to use its platform to run Ponzi Scheme.

2. An Order of Court directing the 8th, 9th, 10th, 11th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through 11th Defendants, (ACCESS BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 11th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 8th, 9th, 10th Defendants through the 11th Defendant having allowed the Defendants to use its platform to operate run Ponzi Scheme.

3. An Order of Court directing the 12th, 13th, 14th, 15th, 16th Defendants to pay back to the Plaintiff individually the exact amount the Plaintiff paid to them individually through the 16th Defendant (DIAMOND BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 16th Defendant to pay back to the Plaintiff individually the exact amount of money the Plaintiff paid to the 12th, 13th, 14th, 15th Defendants through the

16th Defendant having allowed the Defendants to use its platform to operate fake Ponzi Scheme.

4. An Order of Court directing the 17th, 18th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 18th Defendant (ECO BANK NIGERIA LIMITED) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 18th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 17th, Defendants through the 18th Defendant having allowed the Defendants to use its platform to operate Ponzi Scheme.

5. An Order of Court directing the 19th, 20th, 21st Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 21st Defendant (FIDELITY BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 21st Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 19th, 20th Defendants through the 21st Defendant having allowed the Defendants to use its platform to operate Ponzi Scheme.

6. An Order of Court directing the 22nd, 23rd, 24th, 25th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 25th Defendant (FIRST CITY MONUMENT BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 25th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 22nd, 23rd, 24th Defendants through the 25th Defendant having allowed the Defendants to use its platform to operate Ponzi Scheme.

7. An Order of Court directing the 26th, 27th, 28th, 29th, 30th, 31st Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 32nd Defendant (GUARANTY TRUST BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 32nd Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 27th, 28th, 29th, 30th, 31st Defendants through the 32nd Defendant, the 32nd Defendant having allowed the 27th, 28th, 29th, 30th, 31st Defendants to use its platform to operate Ponzi Scheme.

8. An Order of Court directing the 33rd Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them through the 34th Defendant (HERITAGE BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 34th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 33rd, Defendant through the 34th Defendant, the 34th Defendant having allowed the 33rd Defendants to use its platform to operate Ponzi Scheme.

9. An Order of Court directing the 35th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them through the 36th Defendant (STANBIC IBTCBANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 36th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 35th, Defendant through the 36th Defendant having allowed the 35th Defendant to use its platform to operate Ponzi Scheme.

10. An Order of Court directing the 37th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them through the 38th Defendant (SKYE BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 38th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 37th, Defendant through the 38th Defendant, in an event the Plaintiff fails and neglects to pay same having allowed the 37th Defendant to use its platform to operate Ponzi Scheme.

11. An Order of Court directing the 39th and 40th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 41st Defendant (UNITED BANK FOR AFRICA PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 41st Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 39th, 40th, Defendants through the 41st Defendant in an event the Defendants fails and neglects to pay same having allowed the Defendants to use its platform to operate Ponzi Scheme.

12. An Order of Court directing the 42nd Defendant to pay back to the Plaintiff the exact amount the Plaintiff paid to them through the 43rd Defendant (WEMA BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 43rd Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 42nd, Defendant through the 43rd Defendant in an event the Defendant failed and neglected to pay same, having allowed the 42nd Defendant to use its platform to operate Ponzi Scheme.

13. An Order of Court directing the 44th and 45th Defendants to pay back to the Plaintiff the exact amount the Plaintiff paid to them individually through the 46th Defendant (ZENITH BANK PLC) as contained in Paragraph 11 of the Writ of Summon.

OR in the alternative an Order of Court directing the 46th Defendant to pay back to the Plaintiff the exact amount of money the Plaintiff paid to the 44th, 45th, Defendants through the 46th Defendant in an event the Defendant fails and neglects to pay same, having allowed the Defendants to use its platform to operate Ponzi Scheme.

14. An Order of Court directing the Defendants to pay the exact amount which is liquidated money demand herein stated, which is the amount of money that was paid out to the Defendants by the Plaintiffs and same is herein reproduced so as to apply mutadis Mutandis from prayers contained from Relief No. to 13.

S/NO	NAMES	ACCOUNT NUMBER	BANK	AMOUNT
1.	Eshiet Godfrey	3029291475	First bank	₦150,000.00
2.	Elega Victor	0057024933	Diamond Bank	₦300,000.00
3.	Gbemi Ologun	3081584601	First Bank	₦300,000.00
4.	Okoye .Chiamaka Dorathy	3013866708	First Bank	₦300,000.00
5.	Modupe Oriyomi Olukihbi	0446276028	FCMB	₦904,000.00
6.	Okanlawon Oluwafemi Paul	0025954103	GTB	₦550,000.00
7.	Coker Tuoyo	3028126660	First Bank	₦600,000.00
8.	Mutiat Motunrayo	0504945015	FCMB	₦503,000.00
9.	Azimi Stella	2081956311	Zenith Bank	₦439,000.00
10.	Falore Emmanuel	0122593516	Wema Bank	₦667,000.00
11.	Justina And Daerego Jackreece	1001334989	Zenith Bank	₦459,000.00
12.	Israel Emmoni	0081403562	Diamond Bank	₦448,000.00
13.	Gift Chioma	2029838961	UBA	₦438,000.00
14.	Ekechukwu Chinemeze Williams	0122217231	GTB	₦534,000.00
15.	Eberechukwu Nwosu	6237244661	Fidelity Bank	₦667,000.00
16.	Caleb Omenonye	0030543933	Access Bank Plc	₦537,000.00
17.	Ajao David Oluwadamilola	0226295928	GTB	₦547,000.00
18.	Chukwuamso Jayden Nnadi	0691303345	Access Bank Plc	₦552,000.00
19.	Benedicta U. Adilieje	1293003955	Eco Bank	₦560,000.00
20.	Beulands Services	1019352414	UBA	₦428,000.00
21.	Peeroydimensions Ltd	6001432926	Heritage Bank	₦627,000.00
22.	Bulama Babagana	0026555624	GTB	₦628,000.00
23.	Ukawuba Juliet	01091139073	GTB	₦542,000.00
24.	Jemimah Olukunle	0000952539	Stanbic IBTC	₦698,000.00

25.	Onari Geogewill	5010043947	Fidelity Bank	₦454,000.00
26.	Inimfon Sunday Umoh	0173365011	FCMB	₦536,000.00
27.	Opadayo Ayokunle	2020553899	Skye Bank	₦565,000.00
28.	Onyia O. Patrick	0733262579	Access Bank	₦422,000.00
29.	Akpawusi Ikechukwu .O.	3083389927	First Bank	₦627,000.00
30.	Akinwunmi Azeez Olanrewaju	0125880711	GTB	₦614,000.00
31.	Oshenyi Solomon	0050920373	Diamond Bank	₦503,000.00
32.	Macaulay Abayomi OLuwafunsho	0083396213	Diamond Bank	₦440,000.00

The Writ of Summons is supported by an affidavit deposed to by one Kelvin Nnamdi Mbaokoro a Director in Claimant Company. The processes were served on the Defendants by substituted means; vide an Order of Court made on 14/2/2019. The court also made an order, placing a new debit order on the account of the Defendants.

In response to the Suit made out against them, 7th Defendant filed a Notice of Intention to Defend, an affidavit to show cause in response to the Order Nisi and a Preliminary Objection. 11th/16th Defendants filed a Preliminary Objection and counter-affidavit to the main Suit. 32nd Defendant in the same vein filed her Notice of Intention to Defend and a Motion on Notice to regularize their process. 34th Defendant filed an affidavit to show cause on 11/4/19. 36th Defendant filed a Notice of Intention to Defend and a counter affidavit in opposition to the Suit of the Claimant on 11/4/19. 38th Defendant in response to the Suit filed a Notice of Intention to Defend accompanied by an affidavit in compliance with Rules of Court. 41st Defendant also filed a Notice of Intention to Defend along with a supporting affidavit. Similarly, 43rd Defendant filed an affidavit to show cause, Notice of Intention to Defend together with a Notice of Preliminary Objection to Claimant Suit. 46th Defendant responded to the Suit

by filing a Notice of Intention to Defend along with an affidavit in compliance with the Rules of Court on 12/4/2019.

The Claimant/Respondent filed her Reply to the Preliminary Objection of 11th/16th Defendants on 3/10/19 and upon being served. 11th/16th Defendants filed a further affidavit on 10/2/2020.

Issues having being joined, the case came up for hearing. And upon an application of 7th Defendant's counsel, the court allowed the withdrawal of Motion No. M/5573/20 and accordingly struck it out. Thus making way for the hearing of the Preliminary Objection of the 11th/16th Defendants and that of 43rd Defendant. The 32nd Defendant counsel was not in court to move the application to regularize their process.

The grounds for the objection to the Suit of the Claimant by 11th/16th and 43rd Defendants are similar, this court will determine the objection of the 11th/16th Defendants and adopts its outcome to the objection of the 43rd Defendants to the extent of their similarities.

The Notice of Preliminary Objection of the 11th/16th Defendants dated 23/4/2019, but filed on 24/4/19 brought under the inherent jurisdiction of court. The 11th/16th Defendant/Applicant seeks the court the following reliefs;

- (1) An Order of Court striking out the name of Diamond Bank Plc as the 16th Defendant no longer exists as a legal entity.
- (2) An Order of Court striking out the name of Access Bank Plc and Diamond Bank Plc as the 11th and 16th Defendants in this Suit as

the Suit does not disclose any reasonable cause of action against them.

The grounds of their objection are;

- (1) The Suit does not disclose any reasonable cause of action against 11th and 10th Defendants.
- (2) The 16th Defendant no longer exists as a legal entity pursuant to the order sanctioning its Merger with the 11th Defendant.
- (3) The court lacks the jurisdiction to entertain this Suit.

Submits that this court lacks jurisdiction to entertain the Suit, in that the Suit does not disclose a reasonable cause of action against 11th and 16th Defendants to justify making them parties to the Suit. Refer to the case of Attorney General, Abia State Vs Attorney General Federation (2002) ALL FWLR (PT. 101) 1419. Black's law Dictionary 7th Edition, 7UP Bottling Co. Ltd Vs Abiola (2001) 29 WRN 98 @ 116; Letsing Vs Cooper (1965) 1 QB 222 @ 242; Nwaka Vs Shell (2003) 3 MJSC 136 @ 149; Ibrahim Vs Osim (1988) 13 NWLR (PT. 685) 446-463 and Civil Procedure in Nigeria by Fidelis Nwadialo. Submits further that, the Claimant failed in their averment to show any wrongful act of the 11th and 16th Defendants. Therefore Claimant have no dispute against them.

Submits that Claimant seeks an order placing a post no debit on the accounts of the Defendants with them or alternatively compelling them to pay monies which she paid into their accounts, however this cannot serve as a complaint against them. Claimant failed to place anything before the court to show how

11th/16th Defendants were involved other than as Bankers, in the transaction between the parties and this robs the court of competence to entertain this Suit. Refer to Madukolu & Ors Vs Nkemdilimi (1962) 2 SCLR 34.

Submits that if court's jurisdiction is challenged, the court has the powers to use the claim of the Claimant to determine if it has jurisdiction. Refer to Umanah Vs Attah (2005) 12 NWLR (PT.938) 103. Ikine Vs Edjode (2005) 18 NWLR (PT.745) 466 @ 499. A – G Kwara State Vs Olawale (1993) NWLR (PT. 272) 645 @ 674 – 675; Gafar Vs Kwara State (2007) 4 NWLR (PT. 1024) 375 @ 403.

Submits finally that the totality of facts averred and deposed to in the originating process with front loaded document, failed to disclose facts which the law will recognize as giving the Claimant right to the reliefs claimed. Refer to Cookery Vs Faombo (2003) 15 NWLR (PT. 947) 182 and Haruna Vs Kogi State House of Assembly (2005) 6 WRN 121 @ 134 – 141. Urge court to strike out their names from the Suit for being incompetent

Responding Claimant/Respondent filed a Reply to the Preliminary Objection of the 11th/16th Defendants on 3/10/2019 and formulated a sole issue for determination that is;

“Whether the 11th and 16th Respondents has made out a case that will warrant this Hon. Court granting them any or all of the prayers sought”.

Submits that, the processes filed by the 11th and 16th Defendants constitute an abuse of court process since Order 35 of the Rules of Court requires them to

file a Notice of Intention to Defend failing which the court will give judgment to the Claimant.

On the 16th Defendant's claim that it no longer exists, submits that it is settled law that revocation of a Banking licence by the Central bank of Nigeria does not necessarily make the Bank incapable of suing or being sued. And that is the reason, why the alternate prayer against the 11th and 16th Defendants would apply, where they fail to bring the pendency of this Suit to the knowledge of customer/Defendants.

Submit further, relying on the case of Ifeanyi Chukwu (Osondu) Company Ltd Vs Solel Bonel (Nig) Ltd (2000) LPELR 1432 that Access Bank Plc and Diamond Bank Plc has not communicated to the Claimant the level of their marriage and has placed nothing before the court to establish same. Counsel has stated in his Memorandum of Appearance that Diamond Bank Plc briefed him to represent them in court, therefore cannot blow hot and cold at the same time.

Submits further that Plaintiff's Statement of Claim determine cause of action and not Statement of Defence or facts contained in a Preliminary Objection. Refer to Babajide Oil And Allied Products Ltd Vs Abubakar (2007) 147 LRCN 1051 1121 and Honourable Faroye Lawan Vs Zenon Petroleum & Gas & Ors (2014) LPELR 23206.

Submits finally that 11th and 16th Defendants were joined not as proper parties, but as necessary party which the law permits. Refer to Right Choice Stationeries Ltd Vs Kelvin Fortes International Ltd (2002) LPELR 19726. Urge

court to discountenance the Preliminary Objection of the 11th and 16th Defendants as provided by the Rules of Court.

The affidavit of facts filed by 11th/15th Defendants' counsel discloses that the 11th Defendant has acquired the 16th Defendant and the two Banks have merged their operations.

Having carefully considered the submissions of counsel and the judicial authorities cited, I find that two (2) issues calls for determination namely;

- (1) Whether the 16th Defendant is a competent party in the face of merger with 11th Defendant in the Suit as disclosed by affidavit of fact of the Applicant.
- (2) Whether the case of the Claimant discloses a reasonable cause of action against the Applicants.

On issue one (1) distilled above, it is trite that the issue of parties to a Suit is an important factor to be considered in any proceeding in court. There must be a competent Claimant and a competent Defendant, for a trial court to exercise its jurisdiction to determine a suit. See *Mabakwe Vs RMS Africa & Anor* (2001) ALL FWLR (PT. 59) 1343 @ 1354 – 5.

In the instant case, the 16th Defendant/Applicant objects to being a party to the Suit on the grounds that having been merged with the 11th Defendant by Order of Court, hence no longer a legal entity. On the other hand, Claimant/Respondent contends that a revocation of banking licence by the Governor of Central Bank does not necessarily make the bank incapable of suing or being sued. I am in agreement with the submission of the

Claimant/Respondent counsel on this score, however, 15th Defendant/Applicant did not claim anywhere that the Governor of Central Bank revoked the licence of the 16th Defendant/Applicant. But that 16th Defendant had been merged with the 11th Defendant therefore that submission cannot avail the Claimant/Respondent.

On the submission that the 16th Defendant/Applicant did not place anything before the court to establish the claim of a merger with the 11th Defendant. In the record of court is an affidavit of fact with Exhibit attached deposed to by one Ndidi Ejimadu a Litigation Clerk in the law firm of Applicant's counsel. Contained in paragraph 5 (a) of the affidavit is the fact that, the 11th Defendant has acquired the 16th Defendant and the two banks have since merged their operations. And also stated in item 6 of the Order of Court attached as Exhibit to the said affidavit is that all legal proceedings, claims and litigation matter pending by or against the 2nd Petitioner (Diamond Bank Plc) shall be continued against the 1st Petitioner (Access Bank Plc). This affidavit evidence of the 11th/16th Defendants/Applicants was not challenged by the Claimant/Respondent by filing a counter-affidavit as required to challenge and controvert an affidavit. It is the law that where an affidavit does not attract a counter-affidavit the facts deposed therein are therefore uncontroverted and deemed admitted and must be taken as true and correct. See Egbuna Vs Egbuna (1989) 2NWLR (PT.106) 773 See also Gana Vs FRN (2012) ALL FWLR (PT.617) 1793 @ 800 Paras D – E. Therefore this court will deem those facts contained in the Applicants affidavit of facts as admitted and act on them.

Thus from the affidavit evidence of the 11th/10th Defendants/Applicants, which shows that parties have been merged and that the Access Bank Plc the 11th Defendant herein inherit all legal proceedings claims and litigation matters pending, by or against the 16th Defendant, Diamond Bank Plc since this suit commenced on 30/11/2018 before the Order of the Federal High Court attached to the further affidavit of the Applicant was made on 19/3/2019. This court holds that the 16th Defendant is no longer a competent party to be sued in this Suit. I so hold. The 11th Defendant should be the party to proceed against and no more on the 16th Defendant.

On the second issue, whether the case of Claimant discloses a reasonable cause of action against the Applicant. In the case of Idachaba Vs Ilona (2008) ALL FWLR (PT. 425) 1747 @ 1761 Paras D – E the court defined cause of action as;

“A cause of action is admittedly an expression that defines precise definition. A cause of action includes all those things necessary to give a right of action and every fact which is material to be proved to entitle the Plaintiff to succeed”.

On the proper approach to determine whether a reasonable cause of action is disclosed; the court in the case of Ikenne Local Government Vs West African Portland Cement Plc (2012) ALL FWLR (PT.642) 1747 @ 1770 – 1771 Paras H – F had this to say;

“Where a Statement of Claim discloses some reasonable cause of action on the facts alleged in it is where the Claim has some chances of success and once it raises some issues of law or fact calling for determination by

the court, it cannot be struck out. For a Statement of Claim to be said to disclose no cause of action, it must be such as nobody can understand what claim he is required to meet. The case stated in it must be unsustainable or unarguable or it is incontestably bad when considering the disclosure of cause of action, it is irrelevant to consider the weakness of the Plaintiff's claim. What is always important is to examine the averments in the pleadings and see if they disclose cause of action or raise some questions fit to decide by a court in other words, in the determining whether a reasonable cause of action is disclosed in a Suit, the court confines itself to taking a glance at the Statement of Claim on its face value where pleadings are in place. The court does not scrutinize or examine documents or affidavit evidence whether from the Defendant or the Plaintiff for the purpose of ascertaining whether a reasonable cause of action is disclosed in the Suit. All that the court is concerned with at that stage is whether the Statement of Claim standing alone or on its own discloses a cause of action that has a chance of success".

In the instant case the ground for the objection that the Suit has not disclosed a reasonable cause of action against the Applicant's is that Claimant failed to disclose any alleged wrongful act or damage caused by them on the person of the Claimant and that the only connection with the Claimant is the money paid into accounts maintained with them by the other Defendants who maintain accounts with them. On the other hand Claimant/Respondent contends that the Applicants are parties to the Suit because it is through their platform that

the Claimant transacted with the Defendants who are their customer, hence the alternative prayer in the Suit. And were joined as necessary party.

To resolve the question whether or not the Claimant disclosed a reasonable cause of action, it is settled that the court must consider the Statement of Claim of the Claimant in the determination of that question. See *Ikinne Local Government Vs West African Portland Cement (Supra)*. I have taken a look at the claims of the Claimant stated in her Writ of Summons filed under the "Undefended List" and the affidavit in support of the Writ and I find that the Applicants are joined as parties to the Suit because the 8th, 9th, 10th, 12th, 13th, 14 and 15th Defendants were paid the monies subject matter of the Suit via the 11th/16th Defendants therefore whatever binds the said recipient of the monies should also bind the 11th/16th Defendants whose facilities were used to pay the monies. Thus in my view making them necessary party to the Suit whose presence is necessary for the effectual determination of the Suit.

From all of these, this court having resolved that the 16th Defendant, Diamond Bank Plc can no longer be a competent party to this suit and having also resolved that the Applicants herein are necessary party to the Suit Claimant having disclosed a reasonable cause of action, orders as follows:-

- (1) That the name of Diamond Bank Plc 16th Defendant be struck out of this Suit.
- (2) The name of Access Bank, 11th Defendant remains as party to the Suit.

I now turn to determine the Preliminary Objection of the 43rd Defendant.

The Preliminary Objection of the 43rd Defendant as was filed on 11/6/19, the grounds for her objection are;

- (1) That 43rd Defendant is not a proper party to the case before the court.
- (2) That there is no privity of contract between the Plaintiff and the 43rd Defendant.
- (3) That the 43rd Defendant is not indebted to the Plaintiff.
- (4) That the reliefs sought against the 43rd Defendant is not grantable under the extant Rules of Court which the Plaintiff purports to initiate the action.
- (5) This court lacks jurisdictional power to entertain the action against the 43rd Defendant under the Rules of Court pursuant to which the action was granted.
- (6) No cause of action disclosed against the 43rd Defendant.

In the Written Address, 43rd Defendant/Applicant's counsel formulated a sole issue for determination that is;

“Whether having regard to the circumstance of this case against the 43rd Defendant to warrant the court exercise its judicial power to grant the relief sought”.

Relying on the authorities of *Angadi Vs PDP* (2018) 15 NWLR (PT.1641) 1 @ 22 – 33; *Madukolu Vs Nkemdilim* (962) 252 NLR 131, submits that jurisdiction is the power and authority of a court to hear and determine judicial proceeding

and power to render particular judgment, submits further that Claimant cannot commenced this Suit under the "Undefended List". Refer to Order 35 of the FCT High Court Rules, SBN Plc Vs Kiyentu (1998) 2 NWLR (PT. 536) 41 and Garba Vs Sheba Int'l (Nig) Ltd (2002) 1 NWLR (PT. 748) 372, submit that the Claimant's affidavit did not show any work or contract done for the 43rd Defendant or paid her any money for her benefit or in respect of any obligation to grant the order for refund, now sought by the Claimant, therefore cannot bring this Suit under Order 35 of the Rules of Court. Submits further that the Claimant also did not show that 43rd Defendant is in a joint business with 42nd Defendant or was urged or deceived by the 42nd Defendant to part with its money to the 42nd Defendant.

Submits that court will not be competent to grant the reliefs of the Claimant should it decide to transfer the case to the General Cause List for trial on pleadings on the ground of doctrine of privity of contract, refer to Mbaja Vs Amanze (2018) 15 NWLR (PT. 1643) 520 @ 573 and Order 13 Rule 1 and 4 of the Rules of Court.

Submits finally that, where a necessary party is not joined in a case, the court or tribunal lacks jurisdiction to entertain the case. Refer to Amuda Vs Ajobo (1995) 7 NWLR (PT 406) 170, but where a party who is not necessary is joined in a case, the party wrongly joined is entitled to bring an application to strike out the case on the ground that his presence in the case was not necessary or useful to the determination of the dispute. Urge court to strike out the name of the 43rd Defendant since the Claimant failed to disclose any reasonable cause of action against her.

And in the 4 Paragraph affidavit in support of the Notice of Preliminary Objection deposed to by one Habila A. Akwanga a Litigation Manager in the law firm of 43rd Defendant/Applicant counsel, denies any relationship whatsoever with the Claimant/Respondent.

Having carefully considered the submission of counsel, the judicial authorities cited as well as the unchallenged evidence of the 43rd Defendant/Applicant the court finds that two issues calls for determination that is;

- (1) Whether the 43rd Defendant/Applicant is a competent party in this case.
- (2) Whether the court has the jurisdiction to hear the case under the Undefended List.

The Claimant/Respondent did not file any process in the form of a Reply to the Preliminary Objection or a counter affidavit to the affidavit in support of the said Preliminary Objection. I am, however, of the opinion that the 43rd Defendant/Applicant's Notice of Preliminary Object should succeed on its strength and not on the absence of any Reply from the Claimant since the issues raised therein touches on jurisdiction and it is settled principle of law that parties cannot confer jurisdiction on the court where there is none. See *Ukpong Vs Commissioner, Finance & Economic Development Akwa Ibom State* (2007) ALL FWLR (PT.350) 1246 @ 1274 Para C – D.

I have mentioned earlier in the course of this Ruling the outcome of the Ruling just delivered shall be adopted to the extent of the similarity of the issues raised in both Preliminary Objections.

Now issues 1, 2, 3 and 6 are similar to the issue just determined in the Preliminary Objection of the 11th/16th Defendants which touches on competent of party/reasonable cause of action. I hereby adopt the decision therein as that of the court in resolving the issue whether or not 43rd Defendant is a competent party whom the Claimant has a reasonable cause of action against and hold that the 43rd Defendant/Applicant is a competent party in this Suit. I so hold.

On the issue of whether this court have the jurisdiction to hear the Suit under the "Undefended List". The Claimant filed this Suit under Order 35 Rule 1 of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018, to recover liquidated money. All that the Claimant is required, to do is to file along the Writ an affidavit stating the facts that in the deponent's belief there is no defence to the Suit. The court is empowered by its Rules to hear and determine any matter brought before it for a claim to recover debt or liquidated money demand. See Order 35 Rule 1 of the Rules of Court.

Order Rule 35 Rule 3 of the Rules requires the Defendant to file a Notice of Intention to Defend together with an affidavit disclosing a defence on the merit. The 43rd Defendant/Applicant and other Defendants in this Suit have complied with this Provision by filing their respective Notice of Intention to Defend along with affidavit.

I have perused the Provisions of the Rules of Court stated above vis-a-vis the Writ of Summons of the Claimant filed under the "Undefended List" and I find that while the court is empowered to hear any Suit under the "Undefended List", where the claim bothers on debt or liquidated money this particular case

is one which cannot be effectively determined by affidavit evidence. I am of the opinion that oral evidence must be called to assist the court in the just and effective determination of the Suit by the very nature of the issues raised by the 43rd Defendant/Applicant Preliminary Objection as well as the Notice of Intention of Defend filed by the 43rd Defendant and other Defendants in this Suit.

From all of these, this issue is hereby resolved in favour of the 43rd Defendant/Applicant and this Suit is accordingly transferred to the General Cause List to be heard on pleadings of the parties I so hold.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

15/6/2020

APPEARANCE:

E.J. ITODO ESQ FOR THE CLAIMANT

U.R. AFIADIGWE ESQ FOR THE 11TH/16TH DEFENDANTS

KARL C. IMO ESQ FOR THE 17TH DEFENDANT.

NNEKA ABU ESQ FOR THE 38TH DEFENDANT.

OTUNDIA ESQ FOR THE 41ST DEFENDANT

A.AYOPEMI ESQ FOR THE 43RD DEFENDANT.

OLORUNTOBA ELISHA ESQ FOR THE 46TH DEFENDANT.

VICTOR EMENIKE ESQ FOR THE 7TH DEFENDANT