

**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/1557/2017

BETWEEN:

1. NNAEMEKA AGBO ESQ

(Trading professionally under the name and style of
NNAEMEKA AGBO & CO.....**PLAINTIFF**

AND

1. MR FINBARR OKOYE

2. DR BEN IGBINOSA

3. MR JOSEPH BAMIDELE MAJIYAGBE

**4. THE REGISTERED TRUSTEES OF LANDLORDS AND
TENANTS ASSOCIATION OF CO-OPERATIVE CITY GARDEN
ESTATE**

**5. THE REGISTERED TRUSTEES OF PENTHOUSE ESTATE 3
LUGBE RESIDENTS ASSOCIATION**

**6. THE REGISTERED TRUSTEES OF LIGHTHOUSE ESTATE
RESIDENTS/LANDLORDSASSOCIATION.....DEFENDANTS**

RULING

Before this court are two (2) Notices of Preliminary Objections to the Suit of the Claimant, the Preliminary Objection were filed separately by 2nd Defendant on 13/6/18 and another filed by 1st and 3rd Defendants on 25/1/19.

The Preliminary Objection filed by the 2nd Defendant/Applicant is brought pursuant to Order 42 of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court. The 2nd Defendant/Applicant prays the court the following relief;

- (1) A Declaration that the Claimant has no cause of action against the 2nd Defendant/Applicant.
- (2) An Order striking out the name of the 2nd Defendant/Applicant from this Suit.
- (3) And the Omnibus Relief.

The grounds for the application as disclosed by the 2nd Defendant/Applicant are;

- (1) That the Claimant has no reasonable cause of action against the 2nd Defendant/Applicant.
- (2) That the 2nd Defendant is an Agent of a disclosed principal hence not a necessary party in this Suit.

In support of the Notice of Preliminary Objection is a Five (5) Paragraph affidavit deposed to by one Cecilia Oglagu, a Litigation Secretary in the law firm of 2nd Defendant/Applicant's counsel. Also filed a Written Address and adopts same as oral argument.

The processes was served on all other parties in the Suit, Claimant/Respondent filed a Claimant/Respondent Written Address in opposition to 2nd Defendant/Applicant's Preliminary Objection on 18/9/18.

1st/3rd/4th/6th Defendants are not opposed to the Preliminary Objection of the 2nd Defendant/Applicant.

The Preliminary Objection of the 1st and 3rd Defendants/Applicants is brought pursuant to Order 42 Rule (2) of the High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court. The 1st and 3rd Defendants seek the court the following prayers;

- (1) That the court lacks the jurisdiction to entertain this action against them as presently constituted and therefore seek the order of court striking out the names of the 1st and 3rd Defendants.

The grounds upon which the prayers are premised are;

- (1) That there is no cause of action disclosed by the Claimant's Writ of Summons against the 1st and 3rd Defendants/Applicants respectively.
- (2) That the 1st and 3rd Defendants/Applicants are agents of disclosed principals (4th and 5th Defendants respectively) hence not necessary nor proper parties in this Suit.

In support of the application is a 5 (Five) Paragraph affidavit deposed to by the Ihekuna Vivian a Litigation Secretary in the law firm of 1st and 3rd Defendants/Applicant's counsel. Also filed a Written Address in compliance with the Rules of Court.

The application was served on all the respective parties. Claimant/Respondent filed a Claimant/Respondent Written Address in opposition to

1st and 3rd Defendants/Applicant's Preliminary Objection on 6/5/2019. 2nd Defendant does not object to the application.

A reading of the respective applications before court reveals that they are similar application. In the light of this, the court will consider the two Notices of Preliminary filed by the 2nd Defendant and that filed by the 1st and 3rd Defendant together. It is on this basis the court will determine all the issues raised by the parties in their application and responses.

In the Written Address of the 1st and 2nd Defendants/Applicants, Nicholas Eku Esq of counsel formulated Two (2) issues for determination that is;

- (1) Whether or not the Claimant herein have discloses any cause of action against the 1st and 3rd Defendants/Applicant herein in their private/personal to justify being sued as such?
- (2) Whether an agent acting on behalf a known and disclosed principal can be liable for acts done on behalf of the principal.

He urge court to strike out the name of the 1st and 3rd Defendant be struck out with substantial cost.

In the Written Address of the Claimant/Respondent, Okechukwu Opara Esq of counsel formulated a sole issue for determination that is;

"Whether the 1st and 3rd Defendants/Applicants are proper and/or desirable parties in this Suit".

He urge court to hold that 1st and 3rd Defendants/Applicants are proper and/or desirable parties in this Suit.

In the written submission of the 2nd Defendant/Applicant, Okoli Ezenwa Esq of counsel formulated Three (3) issues for determination namely;

- (1) Whether the Plaintiff has a reasonable cause of action against the 2nd Defendant/Applicant.
- (2) Whether the 2nd Defendant/Applicant is a necessary party to this Suit.
- (3) Whether an agent of a disclosed principal can be liable for acts done on behalf of the Principal.

He urge court to grant the application.

Responding, Claimant/Respondent in his Written Address submits a sole issue for determination that is;

“1st and 2nd Defendants a proper party in this suit?

Heurge court to hold that the 2nd Defendant is a proper party in this Suit.

I have mentioned earlier in the course of this Ruling that there are similarities in the applications before the court. The issue which is at the core of the contention between the parties is the issue of cause of action. In resolving this issue I shall deal with the application of the 1st and 3rd Defendants/Applicants. Whatever outcome reached shall be adopted by the court as the Ruling in the application of the 2nd Defendant/Applicant.

Having said that, I now turn to the determination of the Preliminary Objection of the 1st and 3rd Defendants/Applicants.

Having given an insight consideration to the affidavit evidence of the 1st and 3rd Defendants/Applicants, the submission of counsel as well as the judicial authorities cited, I find that the issue which calls for determination is;

“Whether the Suit of the Claimant discloses a cause of action against the 1st and 3rd Defendants/Applicants”.

Cause of action has been defined severally in a Plethoral of cases. In *Ezerebo Vs I.G.P* (2009) 11 NWLR (PT. 1151) 117 @ 130 Paras C – E the court held that;

“A cause of action is that action which connotes every fact, material to be proved before a competent court of law to entitle the Plaintiff to succeed or all those things necessary to give a right to relief in law or equity. It is the factual base or some factual situation, a combination of which makes the matter in litigation an enforceable or an actionable wrong”.

The court further gave criteria on how to determine the existence of a cause of action when it held that;

“The criteria employed by the court in determining the existence or non-existence of a cause of action is for the court to consider the Writ of Summons and the Statement of Claim, 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 averment in the pleadings and see if they disclose cause or raise some questions fit to decide by a court".

See Ezerebo Vs I.G.P. (Supra) 131 Paras B – C.

In the instant case, the contention of the 1st and 3rd Defendants/Applicants is that being agents of a disclosed principal and having only acted in their official capacities they ought not to be joined in the Suit where their principals have been joined and that throughout the Claimant's Statement of Claim, claimant failed to disclose any cause of action against them. On the other hand, the Claimant/Respondent contends that the 1st and 3rd Defendants/Applicants are proper parties in this Suit, who have been joined as parties for good reason, having been instructed to act by them.

To resolve this contending issues, the court must take a look at its records and this the court is empowered to do. See Agbareh Vs Mimra (2008) ALL FWLR (PT. 409) 559 and Ezerebo Vs I.G.P, (Supra). I have taken a look at the Writ of Summons of the Claimant/Respondent. I find that the Claim of the Claimant is that he was instructed by the Defendants herein to act for them he did acted based on their specific instructions hence they are responsible for his fees. The question which follows is; is the presence of the 1st and 3rd Defendants/Applicant necessary for the effective determination of the Suit. The case of Green Vs Green (2001) ALL FWLR (PT. 26) 795 has long settled the issue of who should be a party and it include, desirable party, proper party and necessary party. The 1st and 3rd Defendants/Applicant having given specific instruction to the Claimant and

being the alter ego of their respective associations that is the 4th and 6th Defendants/Applicants are in my opinion persons whose presence is imperative for the effective determination of the Suit and also for them to be bound by the outcome of the substantive Suit. I so hold.

In all of these, the court holds that the Claimant/Respondent by his Writ of Summons a cause of action against the 1st and 3rd Defendants/Applicants thus making them desirable parties to the Suit. And the fact of whether or not they acted as agents of a disclosed principal can only be determined at the hearing of the main Suit. The court accordingly holds that this the Notice of Preliminary Objection filed by the 1st and 3rd Defendants/Applicants lacks merit and is hereby dismissed.

I have earlier stated in the course of this Ruling that I shall adopt the outcome of the application filed by the 1st and 3rd Defendants/Applicants as the decision of court in the application of the 2nd Defendant/Applicant. I hereby adopt my decision in the Ruling just delivered in the Motion filed by the 1st and 3rd Defendants/Applicants and accordingly hold that the application of the 2nd Defendant/Applicant lacks merit and is therefore dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

13/5/2020

APPEARANCE:

OKECHUKWU OPARA WITH HIM IFENKWE UDIGWE ESQ FOR THE CLAIMANT/RESPONDENT.

NICHOLAS O. EKU WITH HIM D.T. AHUA FOR THE 1ST& 3RD
DEFENDANTS/APPLICANTS AND 4TH/6TH DEFENDANTS. ALSO HOLD BRIEF
FOR EZENWA OKOLIE ESQ FOR 2ND/5TH DEFENDANT.