

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA.
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO. 13
COURT CLERKS –T.P. SALLAH & ORS
DATE: 30/06/2020
FCT/HC/CV/4425/2011**

**BETWEEN:
DEJI ADEKEYE (SUING BY HIS ATTORNEY
ONYEIWU VICTOR CHIKA (DECEASED)
SUBSTITUTED WITH UCHENNA LEONARD
ONYEIWU BY ORDER OF COURT MADE
ON 29/4/2019) CLAIMANT/RESPONDENT**

AND

**1. THE HONOURABLE MINISTER FCT ABUJA DEFENDANTS/
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY } RESPONDENTS

3. JAMIL ENG. CO. NIG. LTD } DEFENDANTS/APPLICANTS
4. FIRST REAL PROPERTIES LTD }**

RULING

This is a part-heard matter transferred to this Court by Order of the Hon. Chief Judge of the High Court of the FCT, Abuja. The Claimant herein originally commenced this action for declaration of title to land against the 1st and 2nd Defendants and later joined the 3rd Defendant who joined the 4th Defendant upon orders of Court. The Claimant subsequently applied by ex-parte motion No. M/5019/2019 dated 28th March, 2019 for an order substituting Onyeiwu Victor Chika (who is now deceased) with one Uchenna Leonard Onyeiwu as Claimant. The application was granted by the Court on 29th March, 2019.

The 3rd and 4th Defendants have now filed the instant Notice of Preliminary Objection No. M/6907/19 dated and filed 7th June, 2019 contending as follows:-

1. That this Honourable Court has no jurisdiction to entertain this suit.
2. That the suit is an abuse of Court process.

The grounds of the preliminary objection are set out on the face of the notice as follows:-

1. That the Claimant (UCHENNA LEONARD ONYEIWU) was joined by the Order of this Honourable Court on the 29th day of April, 2019.
2. That the said Claimant (UCHENNA LEONARD ONYEIWU) joined by the Order of this Honourable Court has no Locus Standi to prosecute/Institute this suit against the Defendants.

The 3rd and 4th Defendants thus seek the following relief:-

1. An Order of this Honourable Court striking out this suit for lack of jurisdiction.

In support of the preliminary objection, the 3rd and 4th Defendants filed an affidavit of 7 main paragraphs (deposed to by one Celina Amuzie A.) as well as their Counsel's written address dated 29th January, 2019.

In opposition, the Claimant filed a 13-paragraphs Counter Affidavit as well as his Counsel's written address dated 28th June, 2019.

Learned Counsel to the 3rd and 4th Defendants formulated two issues for determination of the preliminary objection to wit:-

1. Whether the Claimant (UCHENNA LEONARD ONYEIWU) joined by Order of this Honourable Court on the 29th April 2019 has the locus standi to prosecute/institute this suit against the Defendants.

2. Whether this Honourable Court has jurisdiction to entertain this suit.

Claimant's Counsel for his part distilled the following as the sole issue for determination in his address:-

"Whether this Honourable Court was right to have substituted late Onyeiwu Victor Chika with Uchenna Leonard Onyeiwu."

I will adopt the second issue distilled by the 3rd and 4th Defendants as mine and address all other issues thereunder. The main issue for determination therefore is as follows:-

"Whether this Honourable Court has jurisdiction to entertain this suit."

Whether this Honourable Court has jurisdiction to entertain this suit.

Succinctly put, the 3rd and 4th Defendants' affidavit in support of their preliminary objection aver to the fact that Uchenna Leonard Onyeiwu, joined to this suit by order of Court granted on 29th April, 2019 to represent the deceased Onyeiwu Victor Chika, has no locus standi to prosecute/institute this suit against the Defendants. That the said Uchenna Leonard Onyeiwu neither presented any letter of administration to show that he is indeed the next of kin of late Onyeiwu Victor Chika nor has he shown any reasonable cause to warrant him prosecute the suit. That Uchenna Leonard Onyeiwu has no right to be heard before this Court.

By his Counter Affidavit, the Claimant averred that Uchenna Leonard Onyeiwu has long commenced the process of getting letters of administration from the Lagos State Judiciary but discovered there was a mistake in spelling late Victor Chika Onyeiwu's name which mistake is being corrected. Exhibits A, B and C were annexed as documents showing the commencement of process of securing letters of administration.

Thus, having briefly perused and consider the affidavit evidence of both parties in this preliminary objection, in his address, learned Counsel to the 3rd and 4th Defendants submitted that the Claimant Uchenna Leonard Onyeiwu, joined in this suit by order of this Court on 29th April, 2019, has no locus standi to prosecute/institute this matter against the Defendants. He submitted that the person in whom the personal right resides is the one having locus standi to sue and not busybodies. He cited the case of *ONUWUKWUSI V. RTCMZ (2011) 6 NWLR PT. 1243 P. 341*. Counsel argued extensively on the implication of the Claimant Uchenna Leonard Onyeiwu failing to produce letters of administration authorising him to step into late Onyeiwu Victor Chika's shoes to institute this suit against the Defendants. He said the Claimant Uchenna Leonard Onyeiwu lacks the competence to institute this action. He relied on the case of ***THE ADMINISTRATORS/EXECUTORS OF THE ESTATE OF GENERAL SANI ABACHA (DECEASED) V. SAMUEL DAVID EKE-SPIFF (2009) 7 NWLR (PT. 1139) P. 97***. Citing the case of ***ADESANYA V. PRESIDENT, REPUBLIC OF NIGERIA (1981) 2 NCLR 358***. He submitted that where it is established that a plaintiff has no locus standi to sue, his claim must be dismissed. He urged this Court to declare that Uchenna Leonard Onyeiwu is a busybody and strike out this suit as he lacks locus standi. Counsel further submitted that locus standi is an issue which goes to jurisdiction of the Court to adjudicate on this matter and as there is nothing that authorises the Claimant to administer the estate of late Onyeiwu Victor Chika, this Court is robbed of the legal capacity to hear the suit. He finally urged this Court to strike out this suit as it has no jurisdiction to entertain same.

Arguing against the grant of the instant preliminary objection, learned Counsel to the Claimant submitted in his address that the main claimant died during the pendency of this suit and was substituted by order of this Court under Order 30 Rules 30 and 31 Rules of this Court. He contended that the aforesaid Rules of Court did not state that a person to be substituted upon the death of a party must show evidence that he has letters of

administration. He submitted that the person who brought this action to Court is DejiAdekeye who authorized the claimant to sue on his behalf and DejiAdekeye is still party to this suit. Counsel submitted that late Onyeiwu Victor Chika was properly substituted with Uchenna Leonard Onyeiwu and as such this Court has jurisdiction to hear and determine this suit. He further argued that this Court cannot sit on appeal over its own decision having made the order of substitution which was not shown to have been obtained by fraud. He referred this Court to the case of **AKPAN V. EKPO (2001) 5 NWLR (PT.707) P. 502**. He posited that Uchenna Leonard Onyeiwu is not suing as the administrator of the estate of late Onyeiwu Victor Chika. He finally urged this Court to dismiss the preliminary objection with substantial cost and determine this suit on its merit.

Now after due consideration of the arguments canvassed in the respective written address of Counsel, in resolving the issue for determination herein, it is relevant to note that the object of the 3rd and 4th Defendants' instant preliminary objection is to challenge the jurisdiction of this Court to entertain this suit on grounds that one Uchenna Leonard Onyeiwu (referred to as the Claimant) does not have the locus standi to prosecute this suit and this essentially the crux of the preliminary objection.

What is therefore the meaning of locus standi? In the legal parlance,

Locus standi to institute an action in a Court of law is the legal capacity, based upon sufficient interest in the subject-matter, to institute proceedings in a Court of law to pursue a certain cause. The law is that where a person institutes an action to claim a relief, which on the facts of the case is enforceable by another person, then the former cannot succeed because of lack of locus standi. And in determining the issue of locus standi it is only the plaintiff's claim (originating processes) that will be considered. See collectively the cases of **ADENUGA V. ODUMERU (2002) 8 NWLR (PT. 821) P. 163**, **BEWAJI V. OBASANJO (2008) 9 NWLR (PT.1093) P. 540** and **AYORINDE V. KUFORJI (2007) 4 NWLR (PT. 1024) P. 341**.

In the instant application, the locus standi of one Uchenna Leonard Onyeiwu (who was brought in upon an order of substitution) is being challenged. The question is; who is Uchenna Leonard Onyeiwu? I have observed that parties have referred to him as 'the Claimant' in this suit. Therefore to understand Uchenna Leonard Onyeiwu's position in this suit it is important to identify who actually is the Claimant in this suit.

Before the order of 29th April, 2019 substituting Uchenna Leonard Onyeiwu, the Claimant on the record was 'DEJI ADEKEYE (SUING BY HIS ATTORNEY ONYEIWU VICTOR CHIKA)". See the Claimant's 'Further Amended Statement of Claim' dated 2nd June, 2016 and filed on the same day. The law is that where an attorney/donee of a power sues on behalf of the principal/donor, it is to be indicated that 'the principal is suing by his lawful attorney'. - see the case of **C. N. EKWUOGOR INVESTMENT (NIG) LTD. V. ASCO INVESTMENT LTD. (2011) LPELR-3899(CA)**. In such a situation, the attorney/donee is NOT the plaintiff. The plaintiff is and remains the principal/donor. - see the case of **LAAH V. OPALUWA (2004) 9 NWLR (PT.879)558; (2003) LPELR-7297(CA)**.

From the records of this Court therefore, the Claimant is '**DejiAdekeye**' although suing through his attorney 'Onyeiwu Victor Chika'. 'Onyeiwu Victor Chika' is NOT the Plaintiff or Claimant in this suit. This is very important. Any reference to any other person but DejiAdekeye as the 'Claimant' or 'Plaintiff' in the statement of claim or any other pleading in this suit can be blamed on inelegant drafting of pleadings. Be that as it may, DejiAdekeye is the Claimant on record albeit suing through an attorney.

Records also show that while this matter was pending, application was brought ex-parte by the Claimant (i.e. DejiAdekeye) to substitute his attorney on record i.e. Onyeiwu Victor Chika with one Uchenna Leonard Onyeiwu (his brother) on the grounds that the said attorney 'Onyeiwu Victor Chika' had died during the

pendency of this suit. The application was considered and granted by this Court.

The 3rd and 4th Defendants have not contended in their preliminary objection that DejiAdekeye (who is the actual Claimant in this suit) does not have locus standi to maintain this action. They have therefore not challenged the Claimant's locus standi. Their grouse is that Uchenna Leonard Onyeiwu, who has been brought in to substitute the Claimant's deceased attorney, lacks locus standi to institute the suit. It is my humble view that it is the Claimant's locus standi that makes the action competent and donates jurisdiction to this Court to determine this suit and not the locus standi of Uchenna Leonard Onyeiwu who is not the Claimant and I so hold. Whoever the Claimant choses to maintain this suit on his behalf is his business. In so far as the Claimant's (DejiAdekeye's) locus standi to institute this suit has not been challenged or put in issue by the instant preliminary objection, this Honourable Court has the necessary jurisdiction to entertain this suit. The 3rd and 4th Defendant's challenge to the locus standi of Uchenna Leonard Onyeiwu is thus of no moment and does not deny this Honourable Court of jurisdiction to entertain the Claimant's suit.

Counsel to the Claimant has raised the issue of the propriety of this Court's order substituting late Onyeiwu Victor Chika with Uchenna Leonard Onyeiwu.

The position of the law is that a party against whom an ex-parte order is obtained can apply to have it set aside by the same Court that made it on grounds that it was wrongly or fraudulently obtained. See the case of **UMAR V. ONWUDINE (2002) 10 NWLR (PT.774) P. 129.**

It is also trite position of the law that where there is no evidence that it was set aside by the same Court(or any other Court), an ex-parte order remains valid and subsisting till when it is set aside. - see the cases of **OTU V. A.C.B INT'L LTD. (2008) 3 NWLR**

(PT.1073) P. 179 and F.A.T.B. LTD V. EZEGBU (1992) 2 NWLR (PT. 264) P. 132.

The instant preliminary objection is not one challenging the order of substitution made ex-parte by this Court on 29th April,2019 certainly the answer is a capital No. The instant preliminary objection is one which challenges the jurisdiction of this Court to entertain this suit on grounds that Uchenna Leonard Onyeiwu (already substituted by order of this Court) lacks locus standi to institute same. I have however already found that Uchenna Leonard Onyeiwu is not the Claimant in this suit, the challenge to his locus standi to institute the suit is ill-conceived and misplaced as it does not deny this Court of jurisdiction to entertain this suit. Thus, there is no application pending before this Court challenging the order of substitution made ex-parte by this Court on 29th April,2019 and equally there is no application to set same aside. Hence, the issue of the propriety of that order of substitution is not a live matter before this Court but a purely academic issue, the resolution of which achieves no purpose. This Court will therefore ignore such an academic issue. – see the cases of **MAMMAN V. SALAUDEEN (2005) 18 NWLR (PT. 958) P. 478** and **JOE BEST ESTATE DEVT. & PROPERTIES LTD V. NZEGWU & ORS (2015) LPELR-24314(CA)**.

In sum, the Claimant's issue not being a live issue is hereby discountenanced while the 3rd and 4th Defendant's issues are resolved against them and in favour of the Claimant. The instant preliminary objection to this Court's jurisdiction is misconceived in law and it fails. It is accordingly dismissed with cost assessed at N25,000.00 in favour of the Claimant and against the 3rd and 4th Defendants.

HON. JUSTICE D. Z. SENCHI
(PRESIDING JUDGE)
30/06/2020

Parties:-Absent.

N.J Kalu:- For the Claimant.

Akin Olugunyu:-With me is E.L Ekon for the 3rd and 4thDefendants.

Court:- Case adjourned to the 8th October, 2020 for hearing.

Sign
Judge
30/06/2020