IN THE HIGH COURT OF JUSTICE

OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON THE 17TH DAY OF SEPTEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

COURT 25.

SUIT NO.: FCT/HC/CV/10/17

BETWEEN:

1. SAMUEL EMMANUEL
(Suing through His Attorney
LAKEBATO VENTURES LIMITED)
2. LAKEBATO VENTURES LIMITED ---------- **PLAINTIFFS**

AND

1. HONOURABLE MINISTER
FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY ---------- **DEFENDANTS**

RULING

The Plaintiff in this Suit brought an action against the Defendants by way of Originating Summons. The Suit was filed on the 9th of January, 2017. Upon receipt of the Originating Processes the

Defendants filed a Preliminary Objection challenging the Suit that the Suit was commenced by a wrong Process. This Court on the ___ in 2017 in a well reasoned Ruling transferred the case to be tried by Writ of Summons by upholding the Preliminary Objection.

On the 29th day of November, 2018 the Plaintiff opened its case, called its one and only Witness who testified in chief on the 21st of January, 2019. The Court adjourned the matter for Cross-examination of the PW1 to be held on the 25th of March, 2019. It never was because that day the Defendant and his Counsel were absent. Meanwhile the adjournment to the 25th day of March, 2019 was at the instance of the Defendant who claimed that the day was convenient to them. There was no reason given for the absence of the Defendant and the Defendant Counsel.

The Court in the interest of justice and fair-hearing adjourned the matter for 22nd day of May, 2019. The Defendant came up with another gimmick. They fielded a new Counsel who claimed that they were just briefed and needed time to go through the Processes. The Court again granted adjournment sought by the Defendant team. Matter was adjourned to the 8th day of October, 2019. The long adjournment was because of the Annual Vacation of the Judges.

When eventually the matter came up on the 20th day of January, 2020 the parties raised the issue

of none payment of the penalty fees by both parties on the Preliminary Objection by the Defendant Counsel and the Plaintiff Counsel's response to the Preliminary Objection. The Court in order to do substantial justice and fair-hearing decided to adjourn the matter since it was obvious that the parties were not ready to let go on each other. Matter was adjourned to 17th and 19th of March, 2020.

Then came the Covid-19 Pandemic. The Court eventually adjourned the matter to the 27th day of May, 2020. That day the Defendant Counsel moved the Preliminary Objection in which they challenged the competence of the Court challenging the jurisdiction of the Suit and urging Court to dismiss same.

The Preliminary Objection was based on the ground that the 2nd Plaintiff is the Attorney of the 1st Plaintiff. Again that being the Attorney of the 1st Plaintiff cannot bring the action in his name but in the name of the principal alone.

Also that 2nd Defendant is not a competent party in this Suit. That this Suit is not properly constituted so as to rest jurisdiction in the Court to adjudicate on it.

That the Suit is incompetent and Court lacks jurisdiction to hear the Suit on the ground of incompetency of the Suit. They want an Order to strike the Suit out for want of jurisdiction.

They supported the Preliminary Objection with an Affidavit of 5 paragraphs and a 3 pages Written Address. In that Written Address, they raised 2 Issues for determination which are:

(1) Whether the Suit is competent and
(2) Whether or not the Court lacks jurisdiction to adjudicate over the Suit on ground of the Incompetency.

On Issue No.1, they submitted that the donee of Power of Attorney of Agent in the presentation of a Suit pursuant to his power must sign in the name of the donor or his principal. They referred to the case of:

Dr. John D. Ntia V. Emmauel Jones
(2007) All FWLR (PT. 351) 1600 @ 1608 – 1610

Vulcan Gases Limited V. Gesellschaft
(2001) All FWLR (PT. 282) 1965 @ 1974

That 2nd Defendant having signed as Attorney of the 1st Plaintiff cannot make himself a party by signing as 2nd Defendant because it lacks the locus standi to bring the action in its own name and that makes the Suit incompetent and must therefore be struck out for lack of Locus Standi. That the onus is on the Plaintiff to determine if it has competency. It is imperative to state that contrary to what the Defendant Counsel had said above it is trite that whoever asserts has the onerous task to prove. Where the Defendant

claims there is no competency it has the duty to prove such allegation.

The Defendants further submitted that the present Suit as it is constituted is incompetent as 2nd Plaintiff lacks jurisdiction Locus Standi to bring his action in its own name or be a party in the Suit. They urged Court to so hold and strike the Suit out.

On Issue No.2 whether the Court has jurisdiction to entertain the Suit, they submitted that it is only when the proper parties are in Court that Court can be competent to adjudicate on the Suit. They referred to the case of:

Hon. Martin Okonta V. Kingsley Nonye Phillips & ors
(2011) All FWLR (PT. 568) 977 @ 980 – 981

That for Court to have jurisdiction there must be competent Plaintiff and Defendant. They referred to:

Ataguba & Co V. Gura Nigeria Limited
(2005) All FWLR (PT. 258) 1219 @ 1228

That 2nd Plaintiff lacks Locus Standi to sue. That it can only sue through its principal Samuel Emmanuel. That the 2nd Plaintiff as a party makes the Suit to be incompetent and therefore they urged the Court to strike the Suit out for want of jurisdiction.

Upon receipt of the Preliminary Objection the Plaintiffs filed a Written Address on the 15th of November, 2019. They submitted that the Preliminary Objection should be discountenanced for being incompetent baseless and of no substance. That there is no law that forecloses an agent who has a personal cause from suing or defending any action before a Court in conjunction with his principal where both can be joined. That there is nothing wrong in the Attorney being a party in this cause. That there is no law that has affected or impugned on the jurisdiction of the Court to entertain the Suit. That it has been held by the Supreme Court that to determine jurisdiction it is pleading of the Plaintiff which is the Statement of Claim that determines the jurisdiction and not the parties or any other issue. That is the decision of the Supreme Court in the case of:

Inakoju & 17 Ors V. Adeleke & 3 Ors
(2007) 1 SCNJ 1 @ 57

Vulcan Gas Limited V. G.E Ino AG
(2001) 9 NWLR (PT. 719) 610 @ 659

They urged Court to dismiss the Preliminary Objection.

That the Affidavit in support of the Preliminary Objection falls short of the provision of **S. 115 Evidence Act 2011 as amended** in that they contain arguments and extranet materials and derived from information received from external

person. Again it contains several statements of facts. That by their pleading in paragraphs 3, 9, 10, 15, 16, 17, 18, 19, 20, 21 – 27, 32, 38, 39, 41, 42 and 59, of the Statement of Claim or contains the Plaintiff's Cause of Action. That there is Locus Standi and that the panes show that Plaintiff have Cause of Action. So also are the Reliefs sought.

That the Suit of the Plaintiff is competent. They relied and referred to the case of:

Alh. Abudu Akibu & 2 Ors V. Munirat Odutan & Ors
(2000) 7 SCNJ 189 @ 207

They urged the Court to dismiss the Preliminary Objection as lacking in merit and a calculated attempt to waste the time and resources of the Court and the Plaintiffs with cost.

COURT:

Technicality is no longer part of our jurisprudence. It never does any good to both the parties in a Suit and the polity. It does not lead to justice. It only waste the time and resources of the Court, the parties and the polity dwelling in technicality in the case of a proceeding is condemned and should not be tolerated or encouraged. Yes it is the right of a party – Defendant to use all the legal arsenals to defend a case but technicality does not win a case. It is not a good defence too.

In this case as stated earlier the Defendant challenged the Suit on the ground that it was

convinced by the wrong method. The Court gave its reasoned Ruling and dismissed the Preliminary Objection. It took close to one year.

The Plaintiff had opened its case, called sole Witness who testified in chief waiting to be cross-examined by the Defendant. They came with this Preliminary Objection challenging the fact that the Attorney of the Plaintiff is a party to the case.

It is important to state that once anyone has an interest or will be affected by the outcome of a Suit, it can be made a party if not one already.

It is the claim of the Plaintiff that cloth the Court with jurisdiction. It is the same claims as in its pleading, contained in the Statement of Claims that give the party Locus Standi. In this case the facts are well known to the parties. The Defendants who now are clamoring that the presence of the 2nd Defendant is wrong has already filed a Statement of Defence as Counter Claim against the same parties – Plaintiffs whose presence they are now raising hell about.

There is no law that prohibits an Agent to be a party in a Suit where his principal is a party. More so when such Agent is an Attorney of the principal.

The presence of the 2nd Plaintiff will not in any way occasion injustice against the Defendants. His presence will equally not affect their Defence or negatively affect their Counter-Claim. So this Court holds.

It is very evident that the Plaintiffs have good cause of action. This Court has the required competence to entertain this Suit. The presence of the 2nd Plaintiff cannot and will never affect the jurisdiction of the Court to entertain this case. By the claim of the Plaintiffs it is obvious that they have Locus Standi to institute this action.

It is imperative to point out that the right of a party to challenge the jurisdiction in a Suit is not and should not be open ended. It is important to point to the parties especially the Defendants that there is what is called "Close of Pleadings".

It is time to let litigants and their Counsel to know that where a party has taken bold steps in a proceeding by filing papers in defence of a Suit and also Counter-claiming in the same Suit, such party cannot turn around after years of being in the Suit to challenge such elementary issues like the competency of the parties and the like. Our jurisprudence has developed beyond such 18th century practice where parties wait until after the case has gone far before they will come up with frivolous application challenging jurisdiction of the Court in a Suit they have fully participated in for years.

The Supreme Court had on several cases frowned at the use of frivolous application to abuse Court Processes. In the landmark case of:

NJC V. Agumagu
(2015) 16 NWLR (PT. 1611)

had stated that multiplicity of actions/applications based on the same facts or couple of related facts and circumstance in a matter or several matters is an abuse of Court Process. The Apex Court had even admonished Court not to condone such practice by Counsel and their clients no matter who is involved.

In this case going by the totality of the proceeding and particularly this application, it is glaringly clear that the Preliminary Objection from all indication is a gross abuse of Court Process. This is because the Plaintiff has the Locus Standi, they have a good cause of action. The issue of challenging the parties after three (3) years of filing of the Statement of Defence and Counter-Claim is far for long a time to have challenged the parties in the Suit as Defendants have done in this application. Challenge of a party is so vital that it should have been done long before now and as early as the time the Defendants challenged the mode of commencement of the Suit. Having delayed to do so till now is a clear ploy to delay and unnecessarily prolong the Suit. That issue is what should ordinarily be raised before the close of pleading and not after the Plaintiffs have opened their case. Technicality is no longer in vogue. It is never a good defence.

Without further ado, it is my humble view that this application lacks merit and it is a gross abuse of

Court Process. This Court cannot allow that. It is therefore DISMISSED.

The Defendants should on the next adjourned day Cross-examine the PW1 and also be ready to open their defence the same day.

This is the Ruling of this Court.

Delivered today the ____ day of _____, 2020 by me.

_____

K.N. OGBONNAYA
HON. JUDGE