

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 16TH DAY OF JULY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/0834/2018

BETWEEN

MARTIN OJONIMI ATOJOKO, ESQ. --- PLAINTIFF

AND

<p>1. AFOMA ANYAENE-ONYEANUSI</p> <p>2. STELLA MARIS SCHOOL LIMITED</p> <p>3. ALEX ONYEKURU, ESQ.</p>		<p>DEFENDANTS</p>
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RULING

The plaintiff filed this suit on 6/2/2018. Trial started on 27/5/2019 with the evidence of the plaintiff as PW1. He concluded his evidence on 15/10/2019. By a *Motion No. M/6278/2020* filed on 11/3/2020, AfomaAnyae-ne-Onyeanusi [the 1st defendant] prayed the Court for: *[i] an order dismissing/striking out this suit against the 1st defendant for lack of jurisdiction; and [ii] such further or other order[s] as this Honourable Court may deem fit to make in the circumstances of this case.*

The grounds of the application are:

1. The plaintiff's suit discloses no reasonable cause of action against the 1st defendant.
2. The plaintiff has failed to comply with condition precedent to instituting this action as provided for in Section 16[2] of the Legal Practitioners' Act.

In support of the application, Friday Nmoye, the litigation clerk in the law firm of A. A. Ejembi & Co., deposed to a 6-paragraph affidavit. M. Okere Esq. filed a written address with the motion. In opposition, plaintiff filed a counter affidavit of 5 paragraphs on 3/6/2020; attached therewith are Exhibits A & B. Eloka J. Okoye Esq. filed a written address with the counter affidavit. On 16/6/2020, M. Okere Esq. filed a reply on points of law. At the hearing of the application on 16/6/2020, both counsel adopted their respective processes.

From the grounds of the application and the submissions of learned counsel, there are two issues for determination. These are: [i] whether the suit has disclosed a reasonable cause of action against the 1st defendant; and [ii] whether the plaintiff complied with the provision of section 16[2] of the Legal Practitioners Act before instituting this action against the 1st defendant.

ISSUE 1

Whether the suit has disclosed a reasonable cause of action against the 1st defendant.

In PDP v. State Independent Electoral Commission [2017] LPELR-42507 [CA], it was restated that for a statement of claim or an originating process to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and the obligation of the defendant. It must then go on to set out facts constituting infraction of the plaintiff's legal right or failure of the defendant to fulfil his obligation in such a way that if there is no proper defence, the plaintiff will succeed in the relief or remedy he seeks. In a nutshell, a reasonable cause of action merely means a cause of action with some chance of success when only the allegations in the plaintiff's pleadings are considered. See also Ibrahim v. Osim [1988] 3 NWLR [Pt. 82] 257.

Let me first refer to the averments in the plaintiff's pleadings in order to determine whether his suit has disclosed a reasonable cause of action against the 1st defendant. For the purpose of this issue, the material averments in the amended statement of claim filed on 20/1/2020 are that:

1. The 1st defendant is one of the children of late Mrs.UchennaAnyae, the owner of Stella Maris School. The 1st defendant is a director and shareholder of Stella Maris School Ltd. [the 2nd defendant].
2. After the death of Mrs.UchennaAnyae, the 1st defendant and her siblings, i.e. ChukwuemekaAnyae, Patrick OguejioforAnyae [Jnr.] and ChinezeAnyae, who are also directors of the 2nd defendant, were unable to resolve their differences and agree on modalities for distributing the properties of their late mother amongst themselves.

3. They were constrained to engage the services of legal practitioners to protect their interests. The 1st defendant engaged the legal services of the plaintiff vide a power of attorney dated 23/6/2014 authorising him to represent and manage all her interests in the 2nd defendant and in the Estate of late Mrs.UchennaAnyae and to represent her in company and board meetings, among others.

4. ChukwuemekaAnyae engaged the services of ChukwunonsoUdegbumamEsq. while ChinezeAnyae engaged the services of Alex Onyekuru [the 3rd defendant]. The 1st defendant and her siblings urged the plaintiff and the other 2 lawyers to work as a team of lawyers to realise the following objectives:

- i. To trace and identify all landed properties belonging to late Mrs.UchennaAnyae whether held in her name or in the name of the 2nd defendant or otherwise.
- ii. To conduct all requisite legal and physical searches at land registries in order to ascertain the state of the legal title to the properties.
- iii. To identify the properties with good title and recommend appropriate steps to be taken to rectify the properties with defective titles.
- iv. To recommend Estate Valuers to be appointed by the 1st& 2nd defendants for purposes of valuing the properties.

- v. To recommend appropriate and equitable sharing formula for the properties and how they can be evenly distributed or shared amongst the 1st defendant and her siblings.
 - vi. To carry out all other actions that may be necessary for the realization of the above objectives.
5. The plaintiff and the other two lawyers carried out the assignment diligently. They were able to trace and identify 18 properties listed in paragraph 12 of the amended statement of claim. Following their recommendation, 1st defendant and her siblings appointed Oyabomeh Consulting Estate Valuers and Surveyors to value the properties. The report of the Estate Valuer put the total value of the said properties at over N2 billion.
 6. The team of lawyers prepared a 77-page legal report where, among others, they stated an equitable sharing formula of the properties for the 1st defendant and her siblings. They recommended that Plot No. 408 in Durumi, Abuja and Plot No. 76 in Wumba District, Abuja, which could not be shared amongst the 1st defendant and her siblings, be sold and the proceeds shared amongst them.
 7. On 28/10/2014, a meeting was held between the lawyers and the board of the 2nd defendant. The plaintiff presented the report and a proposal was made for the payment of the professional fees of the lawyers. The 1st defendant, her siblings and the 2nd defendant agreed with the team

of lawyers that the professional fees for the services rendered shall be paid in two tranches:

- i. An initial sum of N20 million.
 - ii. Plot No. 408 Durumi, Abuja valued at N630,437,966 and Plot No. 76 Wumba District, Abuja valued at N450 million will be sold and 5% of the proceeds of sale will be paid to the team of lawyers. The 1st defendant, her siblings and the 2nd defendant paid the first tranche but have failed to pay the second tranche.
8. Instead of selling the two plots and pay the 5% to the lawyers as agreed by the parties, they began to develop and erect structures on the plots for their economic use.
9. 5% of the value of the two properties including value added tax is N56,722,993.2, which is the sum due to the lawyers. When this sum is divided equally among the three lawyers, the plaintiff will be entitled to the sum of N18,907,664.405.

In relief 1, the plaintiff claims a declaration that the conduct of the 1st& 2nd defendants in developing and erecting structures on the two plots instead of selling the properties and paying 5% of the proceeds of sale to the team of lawyers as agreed by the parties amounts to breach of the terms for payment of his professional fees. In relief 2, the plaintiff claims an order of specific performance compelling the 1st& 2nd defendants to sell the said two plots for

purposes of satisfying his professional fees as conveyed in his bill of charges dated 13/7/2017; or in the alternative, an order compelling the 1st& 2nd defendants to pay the sum of N18,907,664.405 as professional fees to him in respect of the legal services rendered to them.

In the affidavit in support of the motion, the deponent stated that the plaintiff testified during cross examination, *inter alia*, that: [i] 1st defendant engaged his services for a different transaction covered by the power of attorney [admitted as Exhibit 1] and she had paid him off with the sum of N1 million; [ii] they [the team of lawyers] were briefed by the board of the 2nd defendant; [iii] the 2nd defendant instructed him to act on its behalf; and [iv] he acted for the board of the 2nd defendant and not the 1st defendant in respect of the claims before the Court. The deponent stated that the plaintiff has no claim or reasonable cause of action against the 1st defendant.

In his counter affidavit on the other hand, the plaintiff stated that the 1st defendant is the chairman of the board of directors of the 2nd defendant. He reiterated the facts stated in his amended statement of claim. The plaintiff further stated that: [i] there is a reasonable cause of action against the 1st defendant both as a result of her position in the 2nd defendant and by the role she played in the events leading to this suit; and [b] in the minutes of the meeting of the board of directors held on 28/10/2014 [attached as Exhibit A], it was stated that his professional fees will be paid to him by the 2nd defendant through the 1st defendant.

The argument of the learned counsel for the 1st defendant is that from the evidence of the plaintiff during cross examination that he was instructed by the board of the 2nd defendant and acted for the 2nd defendant, there was no need for the suit against the 1st defendant. He submitted that the plaintiff has not disclosed any contractual or legal obligation of the 1st defendant which she breached to his detriment. The 1st defendant is not privy to, and cannot be sued in respect of, the contractual relationship the plaintiff had with the 2nd defendant. He cited **Ukiwo v. Onwudiwe & Anor. [2016] LPELR-40511 [CA]** to support the view that a person who is not a party to a contract cannot be sued on it. Mr. M. Okere further submitted that the 1st defendant cannot be held accountable in her personal capacity for the action of the board of directors of the 2nd defendant. The case of **Emco & Partners Ltd. & Ors. v. Dorbeen [Nig.] Ltd. & Anor. [2017] LPELR-43453 [CA]** was cited in support.

In his reply on points of law, M. Okere Esq. stated that the plaintiff admitted in the counter affidavit that the 1st defendant is the chairman of the board of directors of the 2nd defendant. It was submitted that the role played by the 1st defendant in the events that gave rise to this suit was in her capacity as the chairman of the board of directors of the 2nd defendant. Therefore, she acted as the agent of the 2nd defendant. Learned counsel cited the case of **Uwah & Anor. v. Akpabio & Anor. [2014] LPELR-22311 [SC]**; and submitted that as an agent of a disclosed principal acting within the scope of her authority, the 1st defendant cannot be held personally liable for her actions.

On the other hand, the learned plaintiff's counsel referred to Green v. Green [1987] 3 NWLR [Pt. 61] 480 where the Supreme Court stated the various types of parties to an action i.e. proper parties, desirable parties and necessary parties. It was argued that 1st defendant played active roles in the activities and events that led to this suit. From the minutes of the meeting of the board of directors held on 28/10/2014 [attached to the counter affidavit as Exhibit A], it was agreed that the professional fees of the plaintiff shall be paid by the 2nd defendant through 1st defendant. Eloka J. Okoye Esq. submitted that the 1st defendant is a necessary, proper and desirable party for the effectual and just determination of the claims of the plaintiff; and that the plaintiff has disclosed a reasonable cause of action against the 1st defendant.

Now, from the averments in the amended statement of claim, 1st defendant engaged the services of the plaintiff to represent and manage her interest in the 2nd defendant and in the Estate of late Mrs. Uchenna Anyaene by virtue of the power of attorney dated 23/6/2014. The plaintiff is not claiming any relief for the services he rendered to the 1st defendant pursuant to the power of attorney as there is no dispute in that regard. The plaintiff's case is that the board of directors of the 2nd defendant - made up of the 1st defendant and her siblings - instructed him, Barrister Chukwunonso Udegbonam and the 3rd defendant to work as a team to, *inter alia*, identify the properties of late Mrs. Uchenna Anyaene and recommend appropriate/equitable sharing formula of the properties amongst them [i.e. the 1st defendant and her siblings].

The plaintiff's claim is for part of his fees [called second tranche] for services which the 1st defendant and her siblings [as members of the board of directors of the 2nd defendant] instructed him and the two other lawyers to render. As Mr. Elokari rightly stated in paragraph 3.7 of his written address, "... *the case of the plaintiff is predicated on the instructions issued to the team of lawyers and the agreement for payment of professional fees as agreed by the parties in the meeting of Board of Directors of the 2nd defendant held on 28/10/2014. ...*"

I am of the considered opinion that with regards to the plaintiff's cause of action and the facts relied upon for his claims, the 1st defendant is in the same position as her siblings. As members of the board of directors of the 2nd defendant, 1st defendant and her siblings acted as agents of the 2nd defendant. The plaintiff sued Chukwuemeka Anyaene, Patrick Oguejiofor Anyaene [Jnr.] and Chineze Anyaene as the 2nd, 3rd & 4th defendants in this suit. 2nd, 3rd & 4th defendants filed *Motion No. M/4104/2020* on 13/1/2020 for an order dismissing or striking out the suit against them on the same grounds as the present application. On 14/1/2020, the Court struck out their names from the suit as the plaintiff's counsel did not oppose the application.

The position of the law is that a contract made by an agent, acting within the scope of his authority and for a disclosed principal is, in law, the contract of the principal; and the principal and not the agent is the proper person to sue or be sued upon such a contract. In **Fairline Pharmaceutical Industries Ltd. & Anor. v. Trust Adjusters Nig. Ltd. [2012] LPELR-20860 [CA]**, it was held

that an action against an agent in his private capacity for the acts done on behalf of a known and disclosed principal is incompetent. In that respect, such agent of a disclosed principal cannot be joined as a party with his principal in a claim arising from such agency relationship, and if he is so joined, the court will strike out the case against such agent. See also the case of **Ibrahim v. Musa [2019] LPELR-47757 [CA]**.

Since the 1st defendant, as the chairman of the board of directors of the 2nd defendant, acted as agent of the 2nd defendant, she cannot be joined as a party in this case with her principal. Therefore, the suit against the 1st defendant in her personal or private capacity for acts done on behalf of the 2nd defendant is incompetent.

The plaintiff's counsel relied on the minutes of the meeting of the board of directors of the 2nd defendant held on 28/10/2014 to support his argument that plaintiff has disclosed a reasonable cause of action against the 1st defendant. Mr. Eloka J. Okoye stated that it was agreed in the meeting that the plaintiff's professional fees will be paid by the 2nd defendant through the 1st defendant.

I have read the minutes of the meeting attached to the counter affidavit as Exhibit A, which shows that the board of directors of the 2nd defendant approved N20 million *"to the Directors from which they were meant to settle the fees of their individual Lawyers. The Board also recommended that 5% [Five Percent] of the proceeds of the sale of the two properties that had been recommended to be*

jointly sold be given to the Lawyers". It must be noted that on that day, a cheque for the sum of N5 million was issued by the board of directors of the 2nd defendant to the plaintiff. I agree with Mr. Okeke in his reply on points of law that by Exhibit A, no obligation was placed on the 1st defendant to pay the plaintiff. I hold that Exhibit A does not support the submission that plaintiff has disclosed a reasonable cause of action against the 1st defendant.

From all that I have said, the decision of the Court is that the plaintiff has not disclosed a reasonable cause of action against the 1st defendant.

ISSUE 2

Whether plaintiff complied with the provision of section 16[2] of the Legal Practitioners Act before instituting this action against the 1st defendant.

Section 16[1] & [2] of the Legal Practitioners Act provide:

[1] *Subject to the provisions of this Act, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.*

[2] *Subject as aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless –*

[a] *a bill for the charges containing particulars of the principal items included in the bill signed by him, or in the case of a firm by one of the partners or in the name of the firm, has been served on the*

client personally or left for him at his last address as known to the legal practitioner or sent by post addressed to the client at that address; and

[b] the period of one month beginning with the date of delivery of the bill has expired.

In **Oyekanmi v. NEPA [2000] LPELR-2873 [SC]**, the Supreme Court referred to the above provisions and held that in order for a legal practitioner to be able to begin an action to recover his fees upon a bill of charges he has to satisfy three conditions namely: first, he must prepare a bill of charges or a bill for the charges which should duly particularize the principal items of his claim; second, he must serve his client with the bill; and third, he must allow a period of one month to elapse from the date the bill was served. See also **Rebold Industries Ltd. v. Magreola&Ors. [2015] LPELR-24612 [SC]** cited by the 1st defendant's counsel.

In the affidavit in support of the motion, it is deposed that the plaintiff in pursuit of a purported professional fee owed him has not served any bill for his professional fee personally on the 1st defendant before filing this action.

In the counter affidavit, the plaintiff stated that he served the bill of charges [attached to the counter affidavit as Exhibit B] on the 1st& 2nd defendants at the registered address of the company which was duly acknowledged by the company secretary before he instituted this action.

Learned counsel for the 1st defendant submitted that the bill of charges was to the 2nd defendant and not the 1st defendant in her personal capacity. In the reply on points of law, Mr.Okeke emphasized that the bill of charges was addressed to Stella Maris Schools Ltd. [the 2nd defendant]. The cover letter forwarding the bill of charges was addressed to a person who is merely an agent of the company for the consideration and attention of the company. The bill of charges itself was not addressed to the 1st defendant.

For his part, learned plaintiff's counsel posited that the Legal Practitioners Act allows service of bill of charges on a client by leaving same at his known address or even by post. He submitted that 1st defendant, being the chairman of the 2nd defendant, was served with the bill of charges by leaving same at the registered address of the 2nd defendant; and the bill of charges was duly acknowledged by the company secretary of the 2nd defendant.

Now, Exhibit B attached to the counter affidavit is the plaintiff's letter dated 13/7/2017 addressed to the chairman, board of directors of Stella Maris Schools Ltd. [the 2nd defendant]. The letter is said to be for the attention of all board members/company secretary. Attached to the letter is the plaintiff's bill of charges addressed to Stella Maris Schools Ltd. There is nothing to show that any bill of charges was addressed to the 1st defendant or served on her personally before the suit was instituted. Therefore, I hold that the plaintiff did not comply with the provision of section 16[2] of the Legal Practitioners Act before he instituted this action. This ground of objection also has merit.

CONCLUSION

In the light of the decisions of the Court on Issues 1 and 2, the two grounds of objection are sustained. Accordingly, the name of the 1st defendant, Afoma Anyaene-Onyeanusi is struck out of the suit. The plaintiff is directed to file and serve his amended processes within 10 days from today. The defendants are directed to file and serve their amended processes within 10 days from the date of service of the plaintiff's amended processes.

HON. JUSTICE S. C. ORIJI
(JUDGE)

Appearance of counsel:

1. Eloka J. Okoye Esq. for the claimant.
2. Martin Luther Okere Esq. for the 1st defendant.
3. E. Elaigwu Esq. for the 2nd defendant.