

**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: 10

SUIT NO: FCT/HC/CV/2215/2017

MOTION NO: M/5310/19

BETWEEN:

1. EMMANUEL DANGANA OCHEJA, ESQ

(Practicing under the Name and Style of
"Danagana Global Legal Services" formerly known
as "Dangana, Musa & Co)

2. CHIEF TAIWO AJALA ESQ

(Practicing under the Name and Style of "
"Taiwo Ajala & Co")

3. MUSTAPHA HARUNA SOBA, ESQ.

(Practicing under the Name and Style of "
"Haruna Soba & Associates")

4. DR. FATIHU .A. ABBA, ESQ.

(Collectively known as the "ICC Legal Consortium").....**CLAIMANTS**

VS

1. CENTRAL BANK OF NIGERIA

2. THE ATTORNEY –GENERAL OF THE FEDERATION.....DEFENDANTS

RULING

By a Notice of Preliminary Objection filed on 24/11/2017, the 1st
Defendant/Applicant challenges the competence of this court to hear and
determine this Suit.

The grounds upon which the objection is anchored are;

- (a) The Plaintiffs suit is incompetent for non-compliance with Section 16 (2) of the Legal Practitioner's Act Cap L11, Laws of the Federation of Nigeria 2004 robbing the Honourable Court of jurisdiction.
- (b) The Hon. Court is coram non-judice in respect of the Suit as presently constituted.

Accompanying the Notice of Preliminary Objection is a 17 Paragraph affidavit with 7 Exhibits marked as Exhibits "A1 – 4", "B", "C" and "D" deposed to by one Jude Ifeanyi Onwuharonye of the Legal Services Department of the 1st Defendant/Applicant. Also filed is a Written Address and adopts same as oral argument in support of the application.

Responding, Claimants/Respondents filed an 8 Paragraph counter-affidavit deposed to by Enoch Akubo a Litigation Secretary in the law firm of Claimants/Respondents counsel. Also filed a Written Address and adopts same as oral argument in support of their counter-affidavit.

In their Written Address, 1st Defendant/Applicant's counsel formulated two (2) issues for determination namely;

- (1) Whether having regard to the Claimants bill of charges (Exhibit "D") and Section 16 (2) of the Legal Practitioner's Act Cap L11 Laws of the Federation of Nigeria, 2004 this Suit is incompetent such as to make the court lack jurisdiction to entertain it; and

- (2) Whether the court has subject matter jurisdiction to entertain the Plaintiff's Suit.

On issue one, submits that the Claimants Exhibit "D", Bill of Charges is not in compliance with the Provision of Section 16 (2) of the Legal Practitioner's Act LPA which is a condition precedent for the exercise of the Court's jurisdiction, the Joint Bill presented by the Claimants fails short of that condition precedent and is a fundamental defect which goes to the competence of the entire Suit and is fatal to the court's jurisdiction. Refer to the cases of FBN Plc Vs Ndfoma Egba (2006) ALL FWLR (PT.307) 1012 @ 1034, Udene Vs Ugwu (1997) 3 NWLR (PT.491) 57, Nonye Vs Anyichie (2001) NWLR (PT.639) 66, Oyekanmi Vs NEPA (2000) 134 NWLR (PT.690) 414; Savannah Bank of Nigeria Plc Vs Opanubi (2004) 15 NWLR (PT.896) 437 @ 457 – 458 2004 Guinness (Nigeria) Plc Vs Pat Onegbedan Esq. (2011) LPELR – CA/B/198/2009; Madukolu Vs Nkemdilim (1962) NSCC 374; Abgiti Vs Nigeria Navy (2011) 18 NWLR (PT.1279) 659; Lawal Vs Oke (2001) 7 NWLR (PT. 711) 88 and Lagos State Vs Dosunmu (1989) 3 NWLR (PT. 111) 552.

On the second issue submits that jurisdiction is derived from constitution and some specific law and is a crucial to a case and where a court lacks jurisdiction the proceedings will remain a nullity. Refer to Madukolu Vs Nkemdilim (Supra) and Onyeanucheya Vs The Military Administrator of Imo State (1997) 1 NWLR (PT.482) 429. And Plaintiff's pleading determine jurisdiction. Refer to Elabanjo Vs Dawodu (2006) 15 NWLR (PT. 1001) 76. PCHSC Ltd Vs Migfo Nig Ltd (2012) 6 SC (PT.3) 1 and Inakoju Vs Adeleke (2007) 1 SC (PT. 1). Submits further that this court has no jurisdiction over the Suit of the Claimant as the jurisdiction over the Suit is the Federal High Court by virtue of Section 251 (1)

of the 1999 Constitution (As Amended). Relies on the cases of CBN Vs Okojie (2015) LPELR – 2474 (SC) Obiuwebi Vs CBN (2011) 2 – 3 SC (PT1) 46, Oloruntoba Oju Vs Abdulraheem (2009) 5 –n 6 (PT. 11); NEPA Vs Edegero (2002) 18 NWLR (PT.798) 72; James Vs INEC (2015) ALL FWLR (PT. 787) 704.

Submits that Claimants Paragraph 2, 3, 4, 12 and 13 and the reliefs sought leaves no one in doubt that the proper forum to hear this action is the Federal High Court. Urge court to uphold the objection of 1st Defendant/Applicant and strike out the entire Suit.

In their Written Address, Claimant /Respondents' counsel formulated three (3) issues as that which calls for determination namely,

- (i) Given the nature of the objection and its purported factual and legal bases is any evidence admissible to determine it at this stage and if not should the issues raised in the objection (particularly the alleged legal inadequacy of the bill of charges served by the Plaintiffs on the 1st Defendant) not be reserved for the trial proper?
- (ii) If the objection (or any part thereof) is properly raised at this stage, has the 1st Defendant satisfied all the legal requirements for it to be sustained?
- (iii) As between the Federal high Court and this Honourable Court, which is the proper forum for litigating this matter.

Arguing issue one and two submits that the two grounds for 1st Defendant's Preliminary Objection does not require a supporting affidavit as both issues bothers on questions of law. Submits further that having joined issues with

the 1st Defendant on her supporting affidavit by their counter-affidavit and having denied all material averments and having also offered their own version of event, that both affidavits are irreconcilable in conflict, only oral evidence adduced by both parties can reconcile both affidavits. Refer to Section 16 (2) of the Legal Practitioners Act, Sections 257 (1) and 251 (1) of the Constitution of the Federal Republic of Nigeria 1999, Section 116 of the Evidence Act Falobo Vs Falobo (1976) 9 – 10 SC.1, Banjo Vs Eternal Sacred Order of Cherubim & Seraphim (1975) 3 SC. 37; Wdherem Vs Emeruwa (2004) ALL FWLR (PT. 221) 1570 Odemelem Vs Amadium (2008) ALL FWLR (405) 1760 @ 1766; Elebanjo Vs Durodu (2006) 15 NWLR (PT. 1001) 76 @ 137 and Emecheta Vs Ogueri (1990) 5 NWLR (PT. 447) 227 @ 239.

Submits that the issue of the alleged insufficiency of the Bill of charges served by them on the 1st Defendant is best resolved after a full trial.

On the absence of particulars in the Claimants bill submits that the affidavit evidence of 1st Defendant/Applicant lacks probative value having violated the Provision of Section 115 of the Evidence Act. 1st Defendant alleged insufficiency of the Bill of the Claimants has no basis either in law or facts as Section 16 (2) of the Legal Practitioner Act which is relevant in the instant case did not prescribe the nature of the particular which a Legal Practitioner is required to specify in such a bill. Submits that the Claimants joint bill suffices, 1st Defendant having waived the right to make this complaint when it wrote to the Claimants on 9/11/2015 jointly and addressed them collectively as "ICC Legal Consortium". Refer to Ogbonna Vs Attn –Gen of Imo State (1992) 1 NWLR @ Pg 547 @ 696. Having thus recognized them in that name 1st Defendant lost the right to insist that they should send separate bills refer to

the case of Bakare Vs L.S.C.S.C. (1992) 10 SCNJ 173 and MFA Vs Inongha (2014) ALL FWLR (PT.727) 628 @ 463.

Submits finally that the case cited by the 1st Defendant/Applicant is inapplicable as they are distinguishable from the instant case and that the alternative claim for quantum meruit of the Claimants in paragraph 19 (ii) of the Statement of Claim makes the difference. Refer to Black's Law Dictionary 8th Edition; Owena Bank Plc Vs Adedeji (2007) 7 NWLR (PT.666) 609 @ 620 – 621 and Oyo Mercantile Bank (1989) 3 NWLR (PT. 108) 3 NWLR (PT.108) 213, that the particulars in the bill served by them on the 1st Defendant/Applicant satisfied the Provisions of Section 16 (2) of the Legal Practitioners Act at the very least for the purpose of their alternative relief of quantum Meruit therefore urge court to resolve the issue against the 1st Defendant.

On issue three; as between the Federal High Court and this Hon. Court which is the proper forum for litigating this matter? Submit that the claim made out by the Claimants is simply to be paid for work done or services rendered by them either on a contract or on quasi contract and the Federal High Court does not have jurisdiction over cases of simple contract even if the Federal Government or any of its agencies is a party to the contract. Refer to University of Calabar Vs Socket Works Ltd (2014) ALL FWLR (PT. 743) 1947 and Federal College of Education Vs Akinyemi (2008) 15 NWLR (PT.1109) 21 @ 58.

Having carefully considered the affidavit evidence of the parties, the submission of counsel as well as the judicial authorities, cited for and against the application, the court distills this issue as that which calls for determination;

“Whether this court is competent to entertain this Suit in the face of the subject matter of the suit if yes, whether the condition precedent for the hearing of the suit has been fulfilled”.

In the case of *Arewa Vs Olarewaju* (2008) ALL FWLR (PT.427) 160 @ 172 Paras G – H the court of Appeal re-affirmed the factors that could cloth a court with competence to determine any matter before it thus;

- (1) When it is properly constituted as regards members and qualification of the members;
- (2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and;
- (3) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See also *Madukola Vs Nkemdilim* (1962) 1 ALL NLR 587; *Skenconsult Nig Ltd Vs Ukey* (1981) 1 SC 6.

The question of competence of a court to determine a case is crucial so much that any defect in the competence of a court renders the proceedings a nullity. Any defect of competence is said to be extrinsic to the adjudication of the court. See *Asupaka Vs Onukaba* (2001) ALL FWLR (PT. 77) 957 @ 966 Para C.

In the instant case, 1st Defendant’s counsel objects to the competence of the court to hear this suit on the ground that since the 1st Defendant is an agent of the Federal Government this court is not the competent forum to hear the suit

relying on Section 251 (1) of the 1999 Constitution and other decided cases. On the other hand Claimants contend that this court is competent to hear the suit, the subject matter of the suit being a simple contract. To reconcile these conflicting positions, the court is duty bound to have a look at the Statement of Claim of the Claimant and the court is empowered to so do. See the case of Agbareh Vs Mimra (2009) ALL FWLR (PT. 409) 559 @ 585 Paras D – F. I have taken a look at the Statement of Claim of the Claimant and I find that the subject matter of the suit arose from contracts entered into by the parties. The pertinent question which arises is; is the FCT High Court empowered to hear such cases whose subject matter touches on contract notwithstanding whether the party involved is an agent of the Federal Government. Section 257 (1) of the 1999 Constitution provides for the jurisdiction of the FCT High Court thus;

- (1) Subject to the Provision of Section 251 and any other Provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory Abuja shall have jurisdiction to hear and determine any Civil Proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to penalty, for future punishment or other liability in respect of an offence committed by any person.
- (2) The reference to Civil or Criminal proceedings in this Section includes a reference to the proceedings which originate in the High Court of the Federal Capital Territory, Abuja and those which are

brought before the High Court of the Federal Capital Territory, Abuja to be dealt with by the court of the exercise of its Appellate or supervisory jurisdiction.

These Provisions are very clear and unambiguous a court is bound to confine itself with what powers are conferred upon it by statute. The cases of University of Calabar Vs Socket Works Ltd (Supra) and Federal College of Education Vs Akinyemi (Supra) cited by the Claimant/Respondent is instructive and the court will go by them. It is the opinion of the court that the subject matter of this suit as found above falls within the competence and jurisdiction of this court even though the 1st Defendant is an agent of the Federal Government. I so hold.

On whether the condition precedent for the hearing of the suit has been fulfilled, the Claimants seeks to recover from the Defendants Professional Fees for legal advisory services rendered by them to the Defendants. Relying on Section 16 (2) of the Legal Practitioners Act, 1st Defendant objector contends that the Claimants having failed to fulfill the conditions before instituting this action, the suit is incompetent therefore court lacks jurisdiction to entertain it. It is further the contention of the 1st Defendant that a joint bill of charges does not satisfy the Provisions of the Section 16 (2) of the Legal Practitioners Act thus a fundamental defect which goes to the competence of the Suit. On the other hand, Claimants/Respondents contend that the joint bill of charges presented to the 1st Defendant/Objector meet the requirement of Section 16 (2) of the Legal Practitioner Act.

Section 16 of the Legal Practitioners Act provides for recovery of charges by a Legal Practitioner. The Section 16 (2) in contention reads;

“Subject as aforesaid, a Legal Practitioner shall not be entitled to begin action to recover his charges unless:-

- (a) A bill for the charges containing particulars of the principal items included in the bill and signed by him or in the case of a 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 the post addressed to the clients at that address; and
- (b) The period of one month beginning with the date of delivery of the bill has expired.

To reconcile the contention between the parties on the Provision of Section 16 (2) of the Legal Practitioners Act and more importantly to determine whether or not Claimants complied with the Provision of the said Act, the Court must consider its record as empowered by the Supreme Court in the case of *Agbareh Vs Mimra (Supra)*. A well-considered look at the record of court particularly the Claimant's Statement of Claim reveal that Claimants, vide Exhibit "FAA" 10 presented a Bill of Charges dated 3/4/2017 to the 1st Defendant and was acknowledged by her security service department on 4/4/2017. Contained in the said bill of charges are items i – viii without particulars of principal items in the bill which amounts to the total sum of ₦800,000.000.00 (Eight Hundred Million Naira) now being sought to be recovered from the 1st Defendant. However, the provision of Section 16 (2) of the Legal Practitioners Act requires further that the person or the law firm

recovering charges, sign the Bill of Charges in the instant case, the Bill of Charges was signed by Dangana .E. Ocheja Esq for ICC Legal Consortium, who is neither a person nor a law firm as stated in Paragraphs 3 of Statement of Claim of the Claimants and this, in my opinion, cannot suffice as compliance to the Provisions of Section 16 (2) of the Legal Practitioners Act. The words used in the said Provision are clear and unambiguous and should be accorded their ordinary meaning. The submission that the 1st Defendant waived her right to object to the joint Bill cannot avail the Claimants/Respondents as they failed to place sufficient facts from which the court may infer a waiver.

On the submission of the Claimants/Respondents counsel that court may go on to hear their alternative claim for quantum meruit, where it makes a difference between the cases cited by the 1st Defendant/Objector. The Provision of Section 16 (2) of the Legal Practitioner Act forbids a Legal Practitioner from commencing an action to recover his charges without first presenting his bill of charges and having found that the Claimants failed to comply to the prescribed standard for presenting a Bill of Charges I am of the opinion that this court cannot go on to hear the case since a condition precedent before commencing the action has not fulfilled. And a court can only be competent to hear a matter where the condition for precedent to the exercise of jurisdiction has been fulfilled. See *Arewa Vs Olarenwaju* (Supra). Having failed to present a valid Bill of Charges as required by Section 16 (2) of the Legal Practitioners Act this court therefore holds that it lacks jurisdiction to hear this case.

From all of these, the Preliminary Objection of the 1st Defendant/Objector has merit and should succeed. Accordingly, this Suit is hereby struck out.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

15/7/2020

ALBERT OGUAH OSHOKE FOR THE CLAIMANTS/RESPONDENTS

BABAJIDE BABATUNDE FOR 1ST DEFENDANT/APPLICANT

NO APPEARANCE FOR THE 2ND DEFENDANT