

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 29, GUDU-ABUJA
ON THURSDAY THE 9TH DAY OF JULY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO- ADEBIYI
SUIT NO: FCT/HC/CV/2373/18

BETWEEN:

1. DEO GRATIAS INTERNATIONAL SCHOOL LIMITED }
2. DR. GEORGE ODABI----- } CLAIMANTS/APPLICANTS

AND

1. ECOBANK NIGERIA LIMITED }
2. CHIEF ALOY C. EZENDUKA }
3. THE HONOURABLE MINISTER,----- } DEFENDANTS/RESPONDENTS
MINISTRY OF FEDERAL CAPITAL TERRITORY }
4. FEDERAL CAPITAL DEVELOPMENT AUTHORITY }
5. ABUJA GEOGRAPHICAL INFORMATION SYSTEM (AGIS) }

RULING

Learned Counsel to the Applicant in the substantive suit filed a motion on notice dated the 21st day of January 2020, brought pursuant to Order 43(1) of the High Court of FCT (Civil Procedure) Rules 2018, Rule 17(5) of the Rules of Professional Conduct 2007, praying the Court for an Order dismissing the memorandum of conditional appearance of the 1st and 2nd Defendants filed on 28th August 2018 and the counter affidavit of 1st & 2nd Defendants filed on 31/8/2018 for being incompetent. The ground for this objection is that the counter affidavit of the 1st & 2nd Defendants filed on 31/8/2018 was filed and signed by the 2nd Defendant on behalf of himself & the 1st Defendant. That 2nd Defendant is a party to these proceedings and under Rule 17 (5) of the Rules of Professional Conduct 2007 the

2nd Defendant who is a lawyer must not appear as a counsel for a client in a matter he is a party to, as Section 17 (5) of the RPC states that:

“A lawyer shall not appear as counsel for a client in a legal proceeding in a matter he is a party to”.

Learned 2nd Defendant who is indeed appearing for himself & the 1st Defendant filed a counter affidavit in opposition and also filed a notice of preliminary objection pursuant to Order 43 Rules 1 (1) & (2) of the High Court of FCT (Civil Procedure) Rules 2018 & Section 6 (6) (a) of the constitution of the Federal Republic of Nigeria challenging the jurisdiction of this court. In his preliminary objection, Learned 2nd Defendant is seeking for an order dismissing this suit ‘in limine’ as it constitutes an issue of res judicata & abuse of court process.

This court is hereby faced with a motion challenging the appearance of the 2nd Learned Defendant on the grounds that this court cannot hear him as he ought not appear for himself and his client (1st Defendant) and also a motion filed by the 2nd Defendant challenging the jurisdiction of this Court.

Although authorities abound that when a court is faced with a motion challenging its jurisdiction, the court ought to regard that issue as paramount. Authorities also abound where Supreme Court stated that each case is determined according to its own peculiar circumstances. With these 2 issues before this Court, it is my view that the Court should first decide on the issue challenging the appearance of the 2nd Defendant who filed an application challenging the jurisdiction of this Court.

If the Court should go ahead, first to decide the motion challenging jurisdiction filed by the learned 2nd Defendant then the Court would have made a mockery of the motion filed by the Applicant challenging the propriety of the 2nd Defendant

appearing for himself and also as a legal practitioner for his client (the 1st Defendant) as learned 2nd Defendant filed his motion challenging the court's jurisdiction upon his belief that he can appear for himself and his client (1st Defendant) and that he does have a right of audience before this court.

Learned 2nd Defendant filed a 17-paragraphed counter-affidavit in opposition to the motion challenging the propriety of his appearance before this Court. The said counter-affidavit is deposed to by one Obi Roseline; a litigation clerk in the law firm of 2nd learned Defendant (EZENDUKA & Co.). The summary of his objection is as follows:

That there is nothing banning a counsel that has joint interest with other parties in the same action from representing himself & the other parties if their interest is joined. That learned 2nd Defendant is an agent of a disclosed principal who can sue in his own name or in the name of his principal and in both of their names. That the rights of the parties had been earlier determined by the Federal High Court in respect of the subject matter of this suit, which gave rise to the 1st Defendant appointing 2nd Defendant as a receiver/manager hence there is a joint interest. That there is no likelihood of him (2nd Defendant) being called as a witness. That it is only in criminal proceedings that a counsel cannot represent himself and the matter before this Court is a civil matter. Moreover Section 17 (5) of the Rules of Professional Conduct as cited by the Applicant is discretionary & not mandatory. That a similar application filed by the Applicant in suit No: FHC/L/CS/672/2019 ECOBANK NIG LTD & ANOR VS DEOGRATIAS INTERNATIONAL SCHOOL LTD & ANOR was dismissed on the 2/03/2020 by Hon. Justice Hassan of the Federal High Court.

The Court in ABDULLAHI VS YUSUF & ORS (2013) LPELR – 22361 (CLA) held that the only circumstances where a legal practitioner who is a party in a case in which he

chose to appear in person, can be denied the privilege of conducting his case from the Bar is when he is sitting or standing as a litigant to give evidence, or is an accused person in a criminal trial, in which case he is expected to stay in the dock during hearing of the case.

Section 17 (5) of the Rules of Professional Conduct states

“a lawyer shall not appear as a counsel for a client in legal proceeding in a matter he is a party to”.

The use of the word “SHALL” makes it mandatory when the legal practitioner is standing as a litigant to give evidence or is an accused person in a criminal trial in which case it would indignify the wig & gown of counsel to shuttle between the Bar and the dock.

In UNITED FOAM PRODUCTS NIG LTD & ORS VS OPOBIYI (2012) 25 WRN 83; (2012) ALL FWLR (Pt. 645) 303 the Court of Appeal observed as follows;

“It is an absurd reasoning, devoid of truth & candour to say that neither the Supreme Court nor the Rules of Professional Conduct for legal practitioners, 2007 prohibits or frowns at counsel giving evidence in a case he is conducting as a witness & thereafter continuing to do the case as counsel (for any of the parties). I believe the whole essence of Rules 17 (4), 20 (3) (6) and 49 (3) (among others) of the Rules of Professional Conduct for legal practitioners was meant to save a legal practitioner from the embarrassing situation of acting in conflict of interests. Ordinarily the sight of counsel/advocate stripping his wig & gown at the bar to go into witness box in a matter he is playing the role of counsel/advocate, for whatever reason is not salutary. It is not pleasant

& honourable in my view for a counsel to de-robe at the bar, descend from the high office of the advocate to the witness box, to give evidence as a witness & be subjected to the barrage of cross-examination & then climb back to assume his role as counsel & advocate in the same case, after the ruffling. In such a situation, it appears ideal to engage another lawyer to help conduct the evidence-in-chief for the lawyer/litigant”.

Learned 2nd Defendant has elected to appear in person in this case and also to represent his client (1st Defendant).

Learned counsel to the Applicant had cited the case of GANI FAWENHIMI VS NBA in support of his submission but Learned Counsel to the Applicant did not focus on the ratio decidendi of the decision in GANI FAWEHINMI CASE and it is trite that it is the ratio decidendi of the decision of a higher court that is binding on the lower court for purpose of judicial precedent. See EBENGE VS ONYENGE (2000) 3 the NWLR (Pt. 643) 62. Rather the Supreme Court in the case of FAWENHIMI VS NBA (No.1) (1989)2 NWLR (Pt. 105) 494 and reiterated in ATAKE VS AFEJUKU (1994)4 NWLR (Pt. 368) 379 HELD that

“where a legal practitioner who is a litigant is exercising his right to conduct his case in person, he can speak from Bar wearing his robes in a “civil case””.

I will take the pains of explaining the phrase most legal practitioners use when they appear in a case where they are parties and announce to the court “I appear in person”. This is the raw principle of right to fair hearing. When a legal practitioner chose to “appear in person” it should be noted that the phrase “appear in person” does not connote that he is appearing as a legal practitioner but rather it connotes that he is exercising his right as a litigant to appear for himself. Any litigant or a

citizen of Nigeria who has a case in court can choose to either appear in person & defend his case in a civil case or secure the service of a legal practitioner. Hence there cannot be a mixture of a legal practitioner conducting his own case as a legal practitioner and a legal practitioner appearing in person for himself. The former is as a lawyer which is forbidden under Section 17(5) of Rules of Professional Conduct while the latter is as a litigant which exercises his right to fair hearing and freedom to conduct his case himself if he so wishes although he may choose to import his knowledge of law into the case he is 'appearing in person' as a litigant. That is allowed in law and an inherent right of every litigant/citizen of the Federal Republic of Nigeria.

But a different scenario plays out where a legal practitioner as in this case chose to "appear in person" as a 2nd Defendant and further announce appearance as legal practitioner for another party in the same case. This is totally unacceptable. The minute 2nd Defendant announced he is "appearing in person" for himself he is automatically stripped of his legal practitioner status and adorn the garments of a litigant who chose to conduct his case himself. There cannot be a mixture of his character as a litigant and a legal practitioner simultaneously. Once 2nd Defendant 'appears in person' for himself, he ceases to be a legal practitioner but becomes a litigant and cannot do a turnaround & appear as a legal practitioner representing the 1st Defendant in the same case notwithstanding that they enjoy a principal/agent relationship, neither does it matter that they have a joint interest in this suit, rather 2nd learned Defendant can only speak for himself and appear in person as a litigant conducting his own case. It therefore follows that 2nd Defendant who is now a litigant in respect of this suit cannot also appear as a counsel defending the 1st Defendant. This is a clear contravention of Section 17 (5) Rules of Professional Conduct (2007). See **ATAKE VS AFEJUKU (1994) 4 NWLR (Pt.368) 379 where the Supreme Court**

in deciding the issue whether a legal practitioner appearing in person to conduct his case can in the same proceeding appear as a legal practitioner for another party; the Supreme Court held that a legal practitioner could not hold such dual position simultaneously in a case and hence could not also appear for another party as a lawyer in the same proceedings. Consequently in deference to the above-cited authorities it is my candid view and I therefore hold that the learned 2nd Defendant is at liberty and it is his constitutional right to appear in person for himself in which case he becomes a litigant. I further hold that while appearing for himself as a litigant he has for that purpose been de-robed of his status as a legal practitioner and learned 2nd Defendant cannot appear as a lawyer for the 1st Defendant as this contravenes Section 17 (5) of the Rules of Professional Conduct and I so hold.

It is worthy to note that learned 2nd Defendant in his counter Affidavit (paragraph 14) stated that the Plaintiff/Applicant had filed a similar application at the Federal high Court and between same parties and same was dismissed on 2/3/2020 by Hon. Justice M. S. Hassan. Unfortunately 2nd Defendant failed to furnish the court with copies of the ruling of the Court in proof of his submission. It is trite that he who asserts must prove; hence it is not the duty of the court to go 'shopping' for evidence in support of counsel's case as the said ruling is a recent year 2020 ruling.

From the above, the question that arises is whether the action of the 2nd Defendant appearing in person for himself and also on behalf of the 1st Defendant negates the foundation of this case? I think not, rather the proper order for this court to make is to order for the 1st Defendant to secure the services of a lawyer to represent him as 2nd Defendant cannot hold that dual position as it is in contravention of Section 17 (5) of the Rules of Professional Conduct.

In the alternative, both 1st & 2nd Defendants can choose to be represented by another legal practitioner. Whichever way, this Court hereby restrains the 2nd learned Defendant from appearing in person for himself & simultaneously as a legal practitioner for the 1st Defendant.

Parties: Parties are absent.

Appearances: Ifeanyi Nrialike, Esq., for the Claimant/Applicant. Charles Abulata, Esq., for the 1st and 2nd Defendants. T. C. Omenma, Esq., for the 3rd to 5th Defendants.

HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

JUDGE

9TH JULY, 2020