

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 8TH DAY OF OCTOBER, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/1422/2014

BETWEEN:

1. JOE IDUN
2. XPERT BUILDING AND CIVIL ENGINEERING LTD.
PLAINTIFF

AND

1. ALHAJI IDRIS USMAN
2. RAYYAN VENTURES LTD.
3. ECO BANK LTD.
4. FEDERAL ROAD MAINTENANCE AGENCY
DEFENDANTS

RULING

The 3rd Defendant/Applicant (Eco Bank Ltd.) filed the instant Notice of Preliminary Objection on the 21st October, 2019 and is praying for an order of this Court striking out the name of Eco Bank Ltd. as 3rd Defendant in this suit as

the suit does not disclose any reasonable cause of action. The grounds upon which the Preliminary Objection is brought are as follows:

- i. The suit does not disclose any reasonable cause of action against 3rd Defendant.
- ii. The Court lacks jurisdiction to entertain this suit.

Mazi Afam Osigwe Esq, counsel to the 3rd Defendant/Applicant filed a written address wherein a sole issue was raised for determination as follows:

“Whether this suit as constituted is not an abuse of Court process, thereby robbing the Court of the jurisdiction to entertain the suit.”

Counsel submitted that this Court lacks the jurisdiction to entertain the suit in that the suit does not disclose a reasonable cause of action against the 3rd defendant.

Counsel further submitted that jurisdiction is fundamental issue that robs the Court of the competence to hear and decide a matter. A party that submit himself to a Court for adjudication of a matter for which he is seeking redress, but without cause of action, cannot clothe the Court with jurisdiction to hear and determine the matter. Counsel finally submitted that the claimant having failed to disclose any reasonable cause of action against 3rd defendant, the proper order for this Court to make is one striking the name of the 3rd defendant off the suit. He cited Ajayi vs. Military Admin. Ondo State (1997) 5 NWLR (part 504) 237, 7up Bottling Co. Ltd vs. Abiola (2001) 29 WRN 98 at 116, Fadare vs. A.G. of Oyo State (1982) 4 SC 1 at 6 -7, Nwaka vs. Shell (2003) 3 MJSC 136 at 149, Ibrahim vs Osim (1988) 3 NWLR (part 82) 257 at 271 at 272, Akibu vs. Oduntan (2000) 13 NWLR (part 685) 446 at 463 among others.

The 1st and 2nd Defendants filed a 30 paragraphs counter affidavit in opposition to the 3rd defendant Notice of Preliminary Objection. Dr. Nnanna Ewa for the 1st and 2nd Defendants equally filed a written address. He raised 4 issues for determination therein. They are:

“1. Whether the 1st and 2nd defendants/respondents hereto have placed sufficient facts before the Court to enable it refuse the relief of the 3rd defendant/applicant to strike out its name from this suit on ground that the suit does not disclose any reasonable cause of action against it.

2. Whether this suit does not disclose a reasonable cause of action against the 3rd defendant to warrant this Court to strike out its name from the case.

3. Whether the Court should strike out the name of the 3rd defendant from this suit in the light of its profuse departure from the provisions and stipulations of the High Court of the FCT civil procedure rules, 2018.

4. Whether the numerous blunder committed by the 3rd defendant do not amount to a gross abuse of the process of this Court.”

Learned counsel submitted that the applicant has not placed sufficient facts and material before the Court to warrant the Court exercising its discretion in its favour. He added that the submissions in the accompanying written address of the applicant are based on facts contained in the Writ of Summons, Statement of Claim and the Statement on Oath of the plaintiff. Therefore a preliminary objection that is not accompanied by an affidavit can only be argued purely and only on points of law and not facts. That the issue of cause of action in a statement of claim is factual.

Learned counsel further submitted that what determines a cause of action is the statement of claim. That the 3rd defendant is a proper and necessary party which has

deep interest in the case and who in their absence, the proceedings cannot be fairly and effectually dealt with.

Learned counsel referred to some documents attached to the counter affidavit, stating that they are responses made by the 3rd defendant to the allegations in the statement of claim. Counsel alluded that the 3rd defendant departed from the rules of this Court by not filing memorandum of appearance, did not pay compulsory penalty for filing their statement of defence very late, and did not file notice of change of counsel when they changed their counsel. That this abuse of the rules of Court is against fair hearing. He urged the Court to hold the applicant in abuse of Court process and refuse this application. He cited Williams vs. Hope Rising Voluntary Funds Society (1982) 1 - 2 SC 45, ICAN vs. A.G. Federation (2004) 3 NWLR (part 259) 185, Okonkwo & Co. vs. UBA Plc (2011) 6 - 7 SC 165, A.G. Fed. vs. ANPP & ors (2003) 16

NSCQR 537, Chukwu vs. Akpely (2014) 13 NWLR (Part 424) 359, Chevron Nig. Ltd vs. Lonestar Drilling Nig. Ltd (2007) 16 NWLR (part 1059) 168 among others.

On their part, the claimant filed a reply on point of law in opposition to the 3rd defendant's notice Preliminary Objection dated 12th November, 2019. E.I. Eredey Esq. of counsel urged the Court to discountenance the submissions of the 3rd defendant/applicant as it is frivolous because the 3rd defendant who has no real defence to the action should not be allowed to dribble and frustrate the plaintiff and cheat him out of his judgment. He also urged the Court to be wary of delving into the substantive suit at this stage. He cited Iheanacho vs. Uzochukwu (1997) 2 NWLR (part 487) 257 at 270, Doma vs. Ogiri (1998) 3 NWLR (part 54) at 252, Agro Millers Ltd vs. CMS Ltd (1997) 10 NWLR (part 525) 469 at 477 – 478.

The 3rd defendant/applicant filed a reply on points of law to the opposition of learned counsel to the 1st and 2nd defendants. The Reply is dated and filed on the 5/2/2020.

From the submissions of all counsel the only issue for determination is;

“Whether there is cause of action against the 3rd Defendant/Applicant.

Learned counsel to the 1st and 2nd defendant has argued that the applicant did not file affidavit in support of the preliminary objection as the objection is based on facts contained in the Statement of Claim. Learned counsel to the 3rd defendant/applicant submitted that an affidavit is not necessary when filing a notice of preliminary objection.

The law is that a preliminary objection may be supported by affidavit depending on what is being objected to. If the preliminary objection is on law, an affidavit is unnecessary, but if on facts, an affidavit is mandatory. See

Contract Resources Nig. Ltd & anor vs. UBA Plc (2011)

LPELR – 8137. Where a preliminary objection is raised on point of law, and relevant facts upon which the objection is based are before the Court, there is no need for additional affidavit evidence to be filed. It is only where there are conflicting assertions as to any fact relating to the objection, or where the facts are not before the Court; that such an objection ought to be supported by an affidavit which would ensure that all relevant materials are placed before the Court for proper determination of the objection. See Mohammed vs. Babalola, SAN (2011) LPELR – 8973 (CA), Amah vs. Nwankwo (2007) 12 NWLR (part 1049) page 552 at 578.

My understanding of the above authorities is that a preliminary objection need not be supported by an affidavit so long as enough material is placed before the Court on which it can judiciously pronounce on the preliminary

objection. I am fortified by the decision of the Court in Bello vs. NBN (1992) 6 NWLR (part 246) page 206 at 219 where the Court held thus:

“Certainly, there is no hard and fast rule that a preliminary objection need be supported by an affidavit so long as enough material is placed before the trial Court on which it can judiciously pronounce on the preliminary objection. Where the alleged offending Writ of Summons ex-facie contains the relevant information against which an objection is being raised, it seems to me that the necessity to additionally rely on affidavit evidence is uncalled for.”

In this instance, I hold that the Writ of Summons and Statement of Claim contain the necessary averments which the Court can decide and pronounce on the preliminary objection which is based on law i.e. Cause of Action. It is

noted that learned counsel to the 1st and 2nd defendant, rather than face the preliminary objection frontally went on a wild goose chase by referring the Court to several documents that have nothing to do with the objection before the Court. I hold further that the 3rd defendant is not in abuse of Court process as erroneously alluded by counsel to the 1st and 2nd defendants. The submission of counsel in this regard is misconceived and hereby discountenanced.

What then in law is a cause of action and when is a cause of action said to be reasonable? A cause of action is a situation or state of facts that entitles a party to maintain an action in Court. The state of facts may be:

- i. A primary right of the claimant actually violated by the defendant, or

- ii. The threatened violation of such right, which violation the claimant is entitled to restrain or prevent, as in actions or suits for injunctions, or
- iii. It may be that there are doubts as to some duty or right or the right beclouded by some apparent adverse claim or right, which the claimant is entitled to have cleared up, that he may safely perform his duty or enjoy his property.

A cause of action is thus defined as the entire set of facts or circumstances giving rise to an enforceable claim. See Adesina vs. Ojo (2012) 10 NWLR (part 1309) 562, Alhaji Abudu W. Akibu vs. Odutan (2000) 10 WRN 48.

It needs to be said here that the proposition that a plaintiff has no reasonable cause of action can only be made upon an examination of the facts pleaded in the statement of claim. It has nothing to do with the nature of the defence which the defendant may have to the plaintiffs

claim. The Court must therefore confine itself only to the averments in the statement of claim in assessment of whether or not the plaintiff has a reasonable cause of action. See Okoli & ors vs. Onwugbufor (2018) LPELR - 46660 (CA).

Perusing the entire Writ of Summons and Statement of Claim of the claimant, the 3rd defendant is only mentioned in two paragraphs of the Statement of Claim i.e. paragraphs 17 and 19. The paragraphs state:

“17. The 1st and 2nd defendants illegally took over the project about the end of July, 2013 without the consent of the plaintiffs this time around with the assistance of 3rd defendant.

19. The plaintiff avers that one of the safest means they could get their money is for the 4th defendant to pay to the Chief Registrar of this Court the sum

meant to pay to the plaintiffs by 1st , 2nd and 3rd defendants so that the plaintiffs will get his due.”

The entire grouse of the plaintiff in this suit is that the 1st and 2nd defendants were awarded a contract by the 4th defendant. When they could not execute the contract, the 1st and 2nd defendants sub-letted the contract to the plaintiffs who executed about 51% of the job. The 1st and 2nd defendants have only paid the plaintiff about N20 Million when the evaluated work done is worth about N86.9 Million. The plaintiff has categorically stated in paragraph 15 thus:

“15. The 1st and 2nd defendants owes the plaintiffs a total sum of N65,864,027.00.”

This amount is the subject matter of this suit. The plaintiff has also claimed for general damages against the 1st, 2nd and 3rd defendant in the Writ of Summons.

In Shell Petroleum Development Co. Nig. Ltd vs. Nwawka (2003) 1 SC (part II) page 127 at 138 the Supreme Court per Ayoola, JSC, held inter alia:

“Facts do not by themselves constitute a cause of action. For a statement of claim 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 plaintiff’s legal right or failure of the defendant to fulfill 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 Yusuf vs. Akindipe (2000) 8 NWLR (part 669) page 376, the Supreme Court again had succinctly stated what would amount to a reasonable cause of action. The Court held thus:

“A reasonable cause of action means a cause of action with some reasonable chance of success when only the allegations in the pleadings (statement of claim) are considered. So long as the statement of claim discloses some cause of action or raises some questions fit to be decided by a Judge.”

In this instance, there is nothing linking the 3rd defendant to the plaintiffs and the transaction between the plaintiffs and the 1st and 2nd defendants. Neither is there anything linking the 3rd defendant to the subject matter of this suit.

For a statement of claim to be said to disclose no cause of action, it must be such as nobody can understand what claim he is required to meet. The case stated in it must be unsustainable, or unarguable or it is incontestably bad. See Okoli & ors vs. Onwugbufor (supra). Where the

statement of claim discloses no cause of action and if the Courts is satisfied that no amendment however ingenious will cure the defect, the statement of claim will be struck out. See NBC Plc vs. Ezeifo (2001) 12 NWLR (part 726) 11 at 28 – 29.

In this instance, plaintiff has not disclosed any cause of action against the 3rd defendant. In Veralam Holdings Ltd vs. Galba Ltd & anor (2014) LPELR – 22671 the Court held:

“Where no cause of action is disclosed against a defendant, the trial Court, on proper application of the party, may strike out such party.”

See also Duru vs. Nwagwu (2006) All FWLR (part 334) 1830.

Consequently, the preliminary objection filed by the 3rd defendant is hereby sustained and the appropriate order to make in the circumstance is to strike out the name of the 3rd defendant from this suit. Accordingly, Ecobank Ltd is struck off this suit.

Signed
Honourable Judge

Appearances:

Dim Theckular C. Esq – for the claimant

Ijeoma Nwosu – for the 3rd defendant

1st, 2nd and 4th defendants absent and not represented.