

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

ON MONDAY, 5TH OCTOBER, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/494/2019

BETWEEN

SALAMI ADOGU ABASS.

CLAIMANT

AND

1. ONE CARD TOP UP SERVICES LIMITED

2. FEMI MUKA

}

DEFENDANTS

RULING

The claimant instituted this suit on 27/11/2019 vide writ of summons. Upon being served with the originating processes, the defendants filed a notice of preliminary objection on 3/3/2020 wherein they prayed the Court to “*dismiss the suit in limine and ex debito justitiae.*”

The ground of the preliminary objection is that:

The Honourable Court does not have the territorial jurisdiction to entertain the suit as the suit amounts to forum shopping.

OlujumobiOrioyeEsq. filed a written address in support of the preliminary objection. AbassSanniEsq. filed a written address on 19/3/2020 in opposition. On 10/6/2020, Mr. Orioye filed a reply on points of law. At the hearing of the application on 13/7/2020, the counsel for the parties adopted their respective processes.

From the ground of the preliminary objection and the submissions of both learned counsel, the issue for determination is whether or not this Court has the jurisdiction to entertain this suit.

As rightly stated by OlujumobiOrioyeEsq., the position of the law is that for a court to determine whether it has jurisdiction to entertain a suit initiated by writ of summons, the processes to be considered are the writ of summons and the statement of claim. In other words, the case presented by the claimant determines the jurisdiction of the court to adjudicate in a matter. See **Inakoju v. Adeleke [2007] 4 NWLR [Pt. 1025] 423** and **Mohammed v. Babalola, S.A.N. [2011] LPELR-8973 [CA]**.

Let me first refer to the material averments in the claimant's statement of claim. In the 34-paragraph statement of claim, it is averred as follows:

- i. The claimant at all material times immediately preceding the filing of this suit was a Nigerian Corp Member undergoing his National Youth Service in Gombe State. 1st defendant carries on the business

- of mobile recharge voucher of different telecommunication networks in Lagos, Nigeria. The 2nd defendant is a director and alter ego of the 1st defendant.
- ii. Sometime in 2015, claimant developed a process, method, formula, technique or "*ways of doing things*" by using mobile telephone recharge card voucher of any telecommunication company for money deposit due to the issue of proximity to locate banks within reasonable distance, network service problem, inability of financial institutions to work on public holidays, weekends and a way to avoid long wait in bank queues. The said process or technique was not known to the public.
 - iii. As the claimant was not financially buoyant to achieve the aim for which he invented his said method, formula or technique, he started sourcing for individuals and corporate entities both online and offline until 2017 when he came across the 1st defendant online.
 - iv. Having gone through the 1st defendant's website, the claimant saw that the defendants are into printing and selling of recharge cards of different networks and denominations.
 - v. The claimant narrated how he spoke with the 2nd defendant on 27/9/2017 and informed the 2nd defendant that he has developed a process or method that is not known by the public and that he was looking for stakeholder to partner with.

- vi. After giving the 2nd defendant an overview of his idea, 2nd defendant told him that it sounded like something the 1st defendant would be interested in. He requested the claimant to email the details of his proposal to him.
- vii. The 2nd defendant acting on behalf of the 1st defendant assured the claimant that he would keep the idea confidential and he will not utilize, disclose, use and/or take any adverse step against the claimant's interest in the event the proposal to partner with him fails.
- viii. Based on the said assurance, the claimant sent the electronic copies of his detailed proposals to the 2nd defendant's email on 28/9/2018. The 2nd defendant promised to send same across to 1st defendant's chief executive.
- ix. The defendants acquired the trade secrets under circumstances giving rise to a duty to maintain its secrecy and prohibiting its use if the proposed partnership did not work, especially as the trade secret has been registered with Nigerian Copyright Commission as a literary work.
- x. On 29/9/2018, the claimant called 2nd defendant to get his thoughts on the proposal. The 2nd defendant told him that the 1st defendant was not interested because it was tied up in a lot of projects; but that the claimant should fully sponsor the project before they can partner with him.

- xi. In paragraph 24 of the statement of claim, the claimant stated that he was shocked when on 20/11/2017[sic] he visited the official Facebook page of the 1st defendant and saw that it has launched the business idea he shared with the defendants with the exact working details he sent to them as *“their Innovation of the year.”*
- xii. The claimant wrote letters to the defendants through his solicitors demanding that they desist from further usage of his business idea he shared with them. The defendants did not reply the letters.
- xiii. As a result of the defendants’ action, nobody is willing to enter into business negotiation and/or partnership with the claimant as they accuse him of trying to *“peddle an idea that lacks originality and already in use by 1st Defendant”*
- xiv. The defendants have by their action *“misappropriated, stolen and made unauthorized use of the claimant’s business secret as well as made secret profit”* from the unlawful use and violation of claimant’s intellectual property.

The claimant claims *inter alia*: [i] a declaration that he is the owner/proprietor of the business idea known as Money Deposit Card being used by the defendants; [ii] a declaration that the usage of the Money Deposit Card [MDC] by the defendants as introduced to them by him without his consent is unlawful; and [iii] the sum of N100 million as general damages against the defendants jointly and severally.

Learned counsel for the defendants/applicants pointed out that from the statement of claim, the address of the claimant is in Gombe State while the defendants carry on business in Lagos State. He submitted that the parties and the subject matter of the suit do not have any connection with the territorial jurisdiction of this Court. There is nothing in relation to the alleged contact of the claimant with the defendants that took place in Abuja.

Olujumobi Orioye Esq. cited the cases of Rivers State Government of Nigeria v. Special Konsult [Swedish Group] [2005] 7 NWLR [Pt. 923] 145, Dalhatu v. Turaki [2003] 15 NWLR [Pt. 842] 310 and Mailantarki v. Tongo & Ors. [2017] LPELR-42467 [SC] to support his submission that a court in one State of the Federation lacks the jurisdiction to hear and determine a matter which arose within the territory of another State. It was further submitted that this case constitutes forum shopping on the part of the claimant who decided to institute this action in this Court merely because it is the most convenient for him. Mr. Orioye concluded that the court that has territorial jurisdiction in respect of the facts presented by the claimant is the relevant court of coordinate jurisdiction within Lagos State.

For his part, learned counsel for the claimant/respondent argued that the claimant instituted this suit in this Court due to the special circumstances and facts that constituted this suit. He submitted that the implication of the averment in paragraph 24 of the statement of claim [which I had set out earlier] is that the cause of action arose on 20/11/2017 [*sic*] when 1st defendant

made the publication stated in the said paragraph. AbassSanniEsq. referred to **Labode v. Otubu [2001] 7 NWLR [Pt. 712] 256** for the meaning of cause of action; and submitted that the cause of action in this case arose at the time the defendant made the said online publication to the whole world claiming that they have made an invention. He posited that the said publication is such that the Apex Court "*in plethora of cases*" has held that actions in respect of online publications being such made to the whole world can be instituted anywhere.

Mr. AbassSanni further submitted that the cases cited by the defence counsel are not applicable to this case. This case cannot be struck out on ground of territorial jurisdiction because the claimant never alleged that he had a contract with the defendants, which will require the institution of this action either where the parties reside or where the parties do business or where the contract is to be performed. He referred to the case of **Mrs. Matilda AderonkeDairo v. Union Bank of Nigeria Plc. & Anor. [2007] LPELR-913 [SC]** to support the principle that it is the nature of the claim before the court and the Constitution that confer jurisdiction on a court. Learned counsel concluded that the cause of action in this case is of a special nature that the suit can be instituted in any court in Nigeria.

In the reply on points of law, counsel for the defendants/applicants stated that the claimant's case is not about any online publication or any publication at all; his case is for the alleged usage of a purported Money Deposit Card business idea. Paragraph 24 of the statement of claim only relates to how the

claimant got to know that the defendants were making use of his business idea through the Facebook social media page. Mr. Orioye stressed that this case is not a libel case or a case based on publication of idea. It is a case based on an alleged usage of business idea.

In **Mailantarki v. Tongo & Ors.** [supra] cited by Mr. Olujumobi Orioye, the Supreme Court held that the jurisdiction vested in the High Court of the FCT [Federal Capital Territory] by section 257[1] of the 1999 Constitution [as amended] 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 is only to the extent of the disputes that arise within the territory of the FCT, Abuja. It was further held that a court in one State of the Federation does not have jurisdiction to hear and determine a matter either exclusively within the jurisdiction of another State or which arose within the jurisdiction of another State. No Court in any State, including the FCT High Court, has extra territorial jurisdiction.

In the instant case, which is predicated on the allegation that the defendants used the claimant's business idea known as Money Deposit Card without his consent, the averments in the statement of claim are that the claimant's address is in Gombe State while the defendants carry on business in Lagos State. There is nothing in the statement of claim that connects the claimant or the defendant or the issues that gave rise to this suit to the Federal Capital Territory, Abuja, which is the territorial jurisdiction of this Court.

AbassSanni did argue that by paragraph 24 of the statement of claim, the cause of action in this case is of a special nature and the suit can be instituted in any court in Nigeria.Learned claimant’s counsel stated that the Apex Court “*in plethora of cases*” has held that actions in respect of online publication can be instituted anywhere as it is made to the whole world. As rightly stated by Mr.Orioye, the claimant’s counsel did not cite any case out of the “*plethora of cases*”.In my limited research, I was unable to find any judicial authority which supports the argument of Mr.AbassSanni. With due respect,I find no merit in his argument.

CONCLUSION

The decision of the Court is that it lacks territorial jurisdiction to entertain this suit. The suit is hereby struck out. No order as to cost.

HON. JUSTICE S. C. ORIJ
[JUDGE]

Appearance of Counsel:

Ilumah Thomas Esq. for the defendants; with OlusolaBukola Esq.