

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 8 NYANYA –ABUJA ON THE 9TH DAY OF NOVEMBER,
2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/2928/18

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

ENGR. V.I.P. OKOYE.....PLAINTIFF

AND

1. IPCO (NIGERIA) LIMITED)

2. OLU ADEWUNMI).....DEFENDANTS

RULING

The 2nd Defendant/Applicant's Motion dated 11/12/18 but filed on the 12/12/18 is brought pursuant to Order 13 Rule 19 and Order 43 (1) of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court.

It prays the Court for:

1. An Order striking out the name of 2nd Defendant as a party to the action.
2. And for such Order or Further Orders as the Court may deem fit to make in the circumstance.

The grounds for the application are;

1. The 2nd Defendant is an agent of a disclosed principal (1st Defendant)
2. The 2nd Defendant is not a party to the agreement between the Claimant and the 1st Defendant.
3. The claim does not disclose a reasonable cause of action against the 2nd Defendant.

Learned Counsel relies on the six paragraph Affidavit deposed in support of the application.

He succinctly deposed that sometime in 2002, the 1st Defendant commenced arbitral proceedings against the NNPC claiming damages for breach of a Construction contract between NNPC and the 1st Defendant dated 14/03/94 in relation to the Bonny Export Terminal Project.

By a letter dated March 2nd 2009, the 1st Defendant appointed Claimant as its Consultant/Adviser to aid in the expeditious resolution of the payment of the sums awarded to the 1st Defendant in the arbitral

proceedings but which the NNPC failed to pay over the years.

The 1st Defendant was not a party to this agreement as he expressly signed the agreement for and on behalf of the 1st Defendant and as the 1st Defendant Chairman. That paragraphs 3, 6 and 8 of the Statement of Claim there is an express admission of the 2nd Defendant as an agent of a disclosed principal.

The Claimant opposed the application by filing a Counter Affidavit of 9 paragraphs. He deposed that;

1. The 2nd Defendant at all times acted for the 1st Defendant.
2. That all correspondences and negotiations were done between him and the 2nd Defendant including the telephone messages.
3. That 2nd Defendant is Chairman of the 1st Defendant and the sole person controlling the affairs of the 1st Defendant.
4. That the 2nd Defendant has closed the operations of the 1st Defendant since receiving the said money.
5. That the company is a Sham and cannot be located anywhere.

6. That the Company is no longer operating anywhere.

I have equally read and considered the Written Addresses of Counsel.

A necessary party to a suit is a party who is not only interested in the subject matter of the proceedings but also a party in whose absence the proceedings could not be fairly dealt with.

Consequently, without his being a party to the suit, the court may not be able to effectually and completely adjudicate upon and settle all questions involved in the Suit.

An interested party includes a person affected or likely to be aggrieved by the proceedings.

See **OJUKWU VS. GOV, LAGOS STATE (NO.1) 1985 2 NWLR (pt.10) 806 SC.**

I shall have recourse to the Statement of Claim.

Paragraphs 3, 4, 5, 6 9 and 10 states:

“3. The Claimant avers that sometimes in February 2009, the 2nd Defendant

approached him on behalf of the 1st Defendant to act as a Consultant in resolution of the dispute with NNPC in respect of the arbitral award which NNPC disputed and refused to honour.

4. The Claimant avers that as a result of their meeting, he was formally engaged by the Defendants vide a letter dated March 2nd 2009.

5. The Claimant further avers that both parties executed the said letter of engagement constituting their agreement and terms and conditions thereof.

6. The Claimant avers that as a result of his acceptance and execution of the agreement, the 2nd Defendant on behalf of the 1st Defendant paid him the sum of N800,000 which is the total sum of one month of their agreed two hundred thousand Naira weekly expenses until the successful completion of negotiations as

per the terms of their agreement in the letter of their engagement.

9. The Claimant avers that he set down to work and attended several meetings with NNPC officials and engaged in negotiations and carried the 2nd Defendant along in all his negotiations.

10. The Claimant avers that on the 22/05/09, the 2nd Defendant forwarded to him a letter via e-mail which was his conversation or correspondences on e-mail with JIM Bazor & SIR CLEMENT EZE etc.”

From the totality of the averments in the Statement of Claim reproduced above, the 2nd Defendant is an interested party without whom the case cannot be effectively and effectually disposed off.

I have read the 2nd Defendant's argument in his Written Address particularly as it relates to the letter dated

March 2nd, 2009 appointing or engaging the Claimant as Consultant/Adviser. It is true that a Company is in law a person distinct from its Promoters and Directors. A Director of a Company is in the eyes of the law, an agent of the Company for which he acts and the general principle of the law of principal and agent will apply.

Consequently, where a director enters into a contract in the name of or purporting to bind the company, it is the company, the principal, which is liable in it not the Director.

See ***OKOLO VS. U.B.N. LTD (2004) 3 NWLR (PT. 859) 87.***

A perusal of the whole Statement of claim shows that the 2nd Defendant is an interested party acting for himself and on behalf of the 1st Defendant. There is a reasonable cause of action.

The Claimant/Respondent in his Counter Affidavit deposed that the Company is a sham. That it cannot be located anywhere.

The above deposition is not controverted by way of a Further Affidavit.

In the circumstance, the application fails.

It is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
09/11/20.