

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI HIGH COURT
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO-JUDGE
DATED THE DAY OF 2021**

SUIT NO: FCT/HC/CV/7444/2020

BETWEEN:

ARGIJI PROPERTIES LIMITED.....JUDGMENT CREDITOR/RESPONDENT

AND

- 1. PINKY BLUE (MOTHERCARE) LTD...JUDGMENT DEBTOR/APPLICANT**
- 2. GLOBAL PAM RESOURCES LIMITEDJUDGMENT DEBTOR
/2ND RESPONDENT**

THE JUDGMENT CREDITOR IS REPRESENTED BY T.O. OMOTAYO ESQ WITH JOHN ABAH ESQ

THE 1STJUDGMENT DEBTOR/APPLICANT IS REPRESENTED BY A.N. NTUI ESQ

THE 2ND JUDGMENT DEBTOR/RESPONDENT IS NOT REPRESENTED

RULING

This Ruling is in respect of a Preliminary Objection filed on the 13th of October 2020 raised by the 1st Judgment Creditor/Applicant brought pursuant to **Section 6(1), (2), (3) and (5)(a) as well as Section 6(a), (b) and (c) of the 1999 Constitution (As Amended)** and finally, under **Sections 7(1)(a), 18, 29(1), 30 and 37 of the Companies and Allied Matters Act, 1990.**

In it, the Applicant relies on the following Grounds: -

1. The Condition Precedent to the Jurisdiction of the Court to entertain the Suit was not fulfilled and/or the Suit was wrongly commenced;

2. The Respondent herein has no Locus Standi to institute and/or maintain this Suit and in consequence, whether the Court has Jurisdiction to entertain this Suit;
3. The 1st Defendant as captured in the Order Nisi and the Terms of Settlement is not a Juristic Person;
4. Terms of Settlement herein was not duly executed by the Parties;
5. This Suit amounts to a Gross Abuse of Court Process; and
6. This Suit is otherwise wholly incompetent.

Based on the above Grounds, the Applicant is therefore seeking the following Orders: -

1. An Order declaring that this Honourable Court has no Jurisdiction and/or should not exercise any Jurisdiction in respect of this Suit;
2. An Order striking out and/or dismissing the Suit herein; and
3. The Omnibus Prayer.

Upon service of this Process on the Judgment Creditor, they filed a Counter-Affidavit in response filed on the 30th of October 2020, to which, the Judgment Debtor/Applicant reacted by filing a Reply on Points of Law filed on the 23rd of November 2020.

It is important to state at this stage that the Judgment of Court in respect their issues was held and determined by the Chief Magistrate's Court wherein Terms of Settlement were adopted by the Court, as a Consent Judgment. This Court is not informed by any of the Parties of any Pending Appeal over the Decision delivered by that Court.

The Notice of Preliminary is supported an Eighteen (18) Paragraph Affidavit, which had attached, the Certificate of Incorporation, the Order for Garnishee Nisi, the Terms of Settlement adopted before the Chief Magistrate's Court in Wuse Magisterial District and a Written Address of Learned Counsel.

In Summary, the Judgment Debtor/Applicant through one Mrs. Francisca Udo, disputed the fact that they were the Party named both in the Suit at the Magistrate Court as well as in the Terms of Settlement, claiming not to have any relationship whatsoever with the named Defendants in the Main Claim. They attached **Exhibit LR1**, a Copy of their Certificate of Incorporation to show that their company is known as Pinky Blue Limited, which carried on business as well as operated Bank Accounts in that name. They never, at any material time, through their Directors, Officials or Staff, Executed the Terms of Settlement on the 2nd of June 2018 nor was this Court's Order Nisi of the 9th of July 2020

addressed to them. Rather, the Terms of Settlement as well as the Court Order was directed at Pinky Blue (Mothercare) Limited or Pinky Blue Limited (Mothercare) or Pinky Blue Limited, which companies were unknown to them and they had no relationship whatsoever with those Companies.

In their Written Address, Learned Counsel contended that Pinky Blue Mothercare was not a Juristic Person and therefore, was unknown to Law. For an Action to be properly constituted so as to vest Jurisdiction on a Court, there must a Competent Claimant and a Competent Defendant. Learned Counsel referred to the Case Law and Principles on Non-Juristic Personality, Juristic Capacity to Sue and be Sued, and finally, centred the bulk of his Submission on the Issue of Jurisdiction.

In conclusion, he submitted that this Court has no Jurisdiction to hear and determine the Case, as the defect in the Competence of the Parties was not only intrinsic but also extrinsic to the entire process of adjudication. Further, he urged the Court to strike out or dismiss the Suit for want of Jurisdiction, as any Proceeding conducted without Jurisdiction, would amount to a Nullity and any Decision reached therein, is liable to be set aside.

In response, the Judgment Creditor contended that Parties to the Suit before the Magistrate Court had entered into a Terms of Settlement, which was adopted and upon Delivery of that Judgment, Series of Correspondences were exchanged between Counsel as informed by **Exhibits GR3, GR4, GR5, GR6, GR7 and GR8** for the settlement of the Judgment Debt.

Further, the Trade Name, “Mothercare”, featured in the Letterhead Paper of the Judgment Debtor through which their correspondences were served on the Facility Manager of the Judgment Creditor and the signature of Mrs. Francisca Udo appeared in one of those Letters as informed by **Exhibit GR10**.

Apart from that, the RC Number of Pinky Blue Limited’s Certificate of Incorporation in **Exhibit LR1** also featured in **Exhibit GR9** as well as in **Exhibit GR10**, wherein Pinky Blue Limited identified themselves as Mothercare.

Learned Counsel representing the Judgment Creditor initially challenged the Validity of the Stamp and Seal of Learned Counsel representing the Judgment Debtor/Applicant, stating that the Seal had expired thereby running foul of the provisions of **Rule 10 of**

the Rules of Professional Conduct for Legal Practitioners 2007. He relied on Two Case Law Authorities to submit that the Expired Stamp and Seal on the face of the Preliminary Objection was not one approved by the Nigeria Bar Association in line with the Rules. Therefore, the Process was incompetent and not proper before the Court.

In their Reply Address on Point of Law, Learned Counsel representing the Judgment Debtor/Applicant submitted that it is the Law that affixing an Expired Seal on a Court Process cannot affect the Process or the Preliminary Objection. In the event that this Court holds that it affects the Validity of the Process, he urged the Court to hold this as a mere procedural irregularity, curable by Counsel through the directive of the Court. This is more so as no Party suffered any Miscarriage of Justice. He copiously discussed on the intendment of **Rule 10 of the Rules of Professional Conduct for Legal Practitioners** and concluded that the Expired Seal did not affect the Substance of the Case.

He further stated that the Current Stamp and Seal of Counsel in Chambers was affixed to the Reply on Point of Law and urged the Court to strike out the Garnishee Proceedings for the reasons set out in the Preliminary Objection.

Turning back to the Written Address of Learned Counsel representing the Judgement Creditor, he argued that the question of Proper Party was an issue that goes to the Jurisdiction of the Court to determine any Suit. He noted that the discrepancy was in the use of the word, "Mothercare" in the Process. He explained that this word was in Parenthesis, and was used to qualify the Applicant and not to define her Legal Personality. He urged the Court to perceive this inclusion, as a Misnomer. Further, he argued that the Applicant had held herself out with the Brand Name, "Mothercare" and had in fact, transacted business with the said Name. Therefore, she could not deny the existence of the Brand Name.

More importantly, the Applicant was a Party to the Suit at the Trial Court, and had signed the Terms of Settlement upon which the Court entered a Consent Judgment. He urged the Court regard the Applicant's position as approbating and reprobating, which is frowned upon in Law.

The Applicant had also submitted to the Jurisdiction of the Court, signed the Terms of Settlement and should not be allowed to deny that Personality.

Finally, Suits involving Garnishee Proceedings are Sui Generis and the Rules of Court did not permit an Application of this nature and he urged the Court to dismiss the Preliminary Objection with Costs.

Now, it is clear that the Law is as held in the Case of **GENERAL BELLO SARKIN YAKI (RTD) & ANOR VS SENATOR ABUBAKAR ATIKU BAGUDU & 2 ORS (2015) 64 NSCQR PAGE 93** is that, the Consequence of a Document signed and filed in contravention of **Rule 10(1)** is found in **Rule 10(3)**. The effect is that the Document so signed or filed, shall be deemed not to have been properly signed or filed but not incompetent. It could be recognized only if it was regularized. An Extension of Time and a Deeming Order can regularize it. In the Case referred to above, it was held that a Process filed in Breach of **Rule 10(1)** could be saved and its Signing and Filing regularized by Affixing the Approved Seal and Stamp on it. It is a Legal Document improperly filed and the fixing of the Seal and Stamp would make the filing proper in Law. Since this was not done in this Case, the Court could not take cognizance of a Document not filed and the filing not regularized. Further, non-compliance rendered the Document Voidable but not Void.

In this instant case, no Application was made by Learned Counsel representing the Applicant to regularize the Preliminary Objection before it was moved and in fact, it appears that Counsel did not avert his mind to it, until pointed out by the Counsel to the Respondent in their Counter-Affidavit.

Now, at this Stage of his awareness, he ought to have sought for an Extension of Time to regularize his Processes by updating his Seal, but he failed to do so. Therefore, he moved an Improper Process. In his Reply on Point of Law after centring all his Arguments on the Seal, and the fact that he had updated it, he interestingly referred the Court to his now updated, "Current Stamp and Seal" of Counsel in Chambers, which he stated was affixed to the Reply on Point of Law.

A cursory glance at the only Seal in the said Reply on Point of Law would show that the Seal was far from being updated. In fact, it was valid upto March 2020, a period well before the filing of the Reply on Point of Law, thereby still being in active breach of **Rule 10(1) of the Rules of Professional Conduct for Legal Practitioners**.

In other words, the Voidable Process **still remained** Voidable with no formal application explaining the usage of an Expired Seal and therefore, technically this Court ought to summarily dismiss the Notice of Preliminary Objection as incompetent.

However, in the interest of doing substantial justice, the Court will proceed to determine the Main Issue for Consideration, which is whether the Grounds adduced and relied upon in the Preliminary Objection are well-founded and established.

Now, the whole contention on Jurisdiction centered on the Non-Juristic Personality of the Judgment/Debtor/Applicant, the Competence of a Party to sue and be sued and the denial that the Parties referred to are one and the same Party.

In this instant, the Judgment/Debtor had contended the fact that she was not the Party involved in the Main Suit and had no relationship with the Defendant in that action. Furthermore, she disputed the fact that she executed any Terms of Settlement adopted as a Consent Judgment before the Magistrates Court. Therefore, she had no part in the Judgment delivered involving PINKY BLUE (MOTHERCARE) LIMITED.

To back up her assertions, she attached the Certificate of Incorporation of Pinky Blue Limited, the Terms of Settlement as well as the Order of this Court dated the 9th day of July 2020 directing the Order for Garnishee Nisi on Pinky Blue (Mothercare) Limited.

It is clear that the Issue of Jurisdiction rests on the Authority of a Court to decide Matters before it, or to take cognizance of Matters presented in a Formal Way for its decision. It is the Live Blood of any Adjudication without which no Proceeding, however brilliantly conducted by the Court can be valid. It is really a threshold matter or sometimes referred to as a Periphery Matter to be dealt with once raised or challenged in any Proceeding. A Court is Competent when (1) it is Properly Constituted with respect to the Number and Qualification of its Members; (2) the Subject-Matter of the Action is within its Jurisdiction; (3) the Action is initiated by Due Process of Law; and (4) any Condition Precedent to the exercise of its jurisdiction has been fulfilled. Regard is had to the Locus Classicus Case Authority of **MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587** and the Case Authority of **ONYEKWULUJE & ANOR VS ANIMASHAUN & ANOR(2019) LPELR-46528(SC)**, which held that Jurisdiction, is fundamental to adjudication. Further reference is made to the Case Authorities of **OLORIODE VS OYEBI (1984) 5 SC 1 AT 32 – 33; MUSTAPHA VS GOVERNOR OF LAGOS STATE; MUSACONI**

LIMITED VS MR. H, ASPINALL (2013) LPELR 20745 (SC); IKE VS NZEKWE (1975) 2 SC AT 1; UKWU VS BUNGE (1997) 8 NWLR (PART 518) 527" PER MUHAMMAD, JSC (PAGE 29, PARAS B-F) AND OHAKIM VS AGBASO & ORS 19 NWLR (PART 1226) 172 SC.

It is Trite Law that it is only Juristic Persons that can sue and be sued and regard is had to the Case Authority of **FAWEHINMI VS NBA NO. 2 (1989) 2 NWLR PART 105 AT PAGE 558**. Categories of such Juristic Persons are: Natural Persons; Companies incorporated under the Corporate and Allied Matters Act; Corporations Aggregate or Corporations Sole; Perpetual Succession; Unincorporated Associations granted Status of Legal Personality by the Law such as Registered Trade Unions; Partnerships; Friendly Societies and Sole Proprietorships.

It is equally clear that Non-juristic Persons cannot sue or be sued as held in the Cases of **AGBONMAGBE BANK VS G.M.G.B. OLLIVANT (1961) 1 AUNLR 116; EMECHETA VS OGUERI (1996) 5 NWLR PT 447 PAGE 227, EJIKEME VS AMAECHI - (1998) 3 NWLR PART 542 PAGE 456** and where a Non-Juristic Person is a Party to an Action, that Person should be struck out.

Now, as Evidenced by **Exhibit LR1**, Mrs. Francisca Udo demonstrated the juristic personality of Pinky Blue Limited by attaching their Certificate of Incorporation to show that she was not the same person as Pinky Blue Limited (Mothercare). The Judgment/Creditor however contended that the name "Mothercare" was the Trade Name used by the Judgment/Debtor/Applicant for the purposes of identification during service of letters to their Facility Managers and can also be seen on the Letter Head Paper of the Applicant. Learned Counsel to the Respondent/Judgment Creditor attached the Correspondences exhibited as **GR9 and GR 10**, showing that Mrs. Francisca had even signed off on Exhibit **GR10**. Further, the R.C. Number in the Certificate of Incorporation before the Court, as **Exhibit LR1**, as well as the Letter Head Paper of the Applicant were identical.

Therefore the Court must carefully peruse the Processes to determine the use and inclusion of the name "MOTHERCARE". This is necessary in order to discern whether the correct Defendant is properly before this Court.

A close look at the Motion brought Ex Parte seeking for a Garnishee Order Nisi will show that the 1st Judgment Debtor was described as PINKY BLUE (MOTHERCARE) LIMITED.

Critically attached to this Process was the Terms of Settlement dated the 2nd day of June 2018 as well as the Certificate of Judgment evidencing the fact that the Terms of settlement was adopted by the District Court as its Consent Judgment dated the 8th of June 2018. In both these two Processes, the name reflected as 1st Defendant was PINKY BLUE (MOTHERCARE) LIMITED. Now, this is the same name reflected in the processes filed before this Court.

The question to determine is whether the Judgment Debtor/Applicant is a Necessary Party to this Proceeding and in order to determine this, the Court must first ascertain whether Mr. Ayodeji Akande was actually authorized by the 1st Judgment Debtor/Applicant to represent her before the District Court and to act on her behalf by signing the Terms of Settlement. This is to determine the commitment of the Defendant to obey the decision delivered at the District Court. In the case of **CHIEF M.K.O. ABIOLA VS FEDERAL REPUBLIC OF NIGERIA SC (1996) PAGE 44 OR 1995 7 NWLR PT 405 AT 1 PER BELGORE JSC**, it was held that the best person to decide who represents him as Counsel is the Applicant and that is his Constitutional Right. The best ways of determining authority to represent is by three ways; namely, a) by having physical access to him to give instructions in writing; or by his swearing to an affidavit or even by writing a letter under his long hand to the trial court and the contending counsel.

Both Counsel representing the Parties executed the Terms of Settlement, and representing the Defendant was Mr. Ayodeji Akande Esq. and it was this same fellow who on the 22nd of September 2020, received the Order of Garnishee Nisi granted by this Court on behalf of the Judgment Debtor. Further, a close look at the Documentary Exhibits attached to the Counter Affidavit deposed in opposition to the Notice of Preliminary Objection will show correspondences between the Judgment Creditor's Legal Representation and Mr. Deji Akande in respect of the subject matter of the Suit before the District Court. In the Letter dated the 10th of January 2020, Learned Counsel to the Judgment Creditor referred to their Client as Pinky Blue Limited.

In one correspondence dated the 23rd of April 2018, Mr. Deji Akande acknowledged the above letter in the following manner: "*We act as Solicitors to Pinky Blue Limited (Mothercare) of 21B, Idowu Martins Street Victoria, Lagos hereinafter referred to as **our client** and on whose instructions we write to you on the above subject matter.*" This opening Paragraph was repeated in another letter from Mr. Deji Akande Esq. dated the

7th of April 2019, and the 27th of December 2019, the name “Mothercare” was not included in the 1st Defendant’s name. It is clear from the above that the first person to use the name “Mothercare” at all was Mr. Deji Akande, acting on the instructions of the 1st Defendant.

At this stage, one may be tempted to give the benefit of doubt that Mr. Deji Akande was acting for a Client with similar name as the Applicant but in a Letter dated the 4th of March 2015, addressed to the Counsel representing the Judgment Creditor, one Mr. Tope Ajayi Head, Logistics, for Pinky Blue Limited, signed on a Letter Head Paper of “mothercare” in respect of the same subject matter. More, telling was the Letter dated the 11th of January 2016 with the Letter Head Paper of mothercare in regard to her rent payment, which was personally signed by **Francisca Udo (Mrs.)** She had referred to her Company’s Cheque with No. 1949 and attached a copy of the Cheque. This Cheque bore the name PINKY BLUE LIMITED with the exact amount specified in her letter.

This irresistibly ties Pinky Blue Limited to “mothercare” and to Pinky Blue (Mothercare) and the Judgment Debtor can no longer deny knowledge of this name before this Court.

Had she disputed the representation of Mr. Deji Akande Esq., and had she alleged fraud or misrepresentation in committing her to the Terms of Settlement, she may have gotten away, but she did not. There was nowhere in the Supporting Affidavit where she distanced herself away from the acts and conducts of Mr. Deji Akande, who affirmatively stated that he acted on her instructions in correspondences between the Parties.

Even when confronted by these correspondences in the Counter Affidavit, there was no rebuttal or denial in the Reply Affidavit and the failure to respond connotes that she had no answer to the facts presented.

In the Case Authority of **ADMIRAL MURTALA NYAKO VS ADAMAWA STATE HOUSE OF ASSEMBLY & 1 OR ELC (2016) 2310 SC AT PAGE 1 DELIVERED 16TH DECEMBER 2016 PER DATTIJO MUHAMMAD, His Lordship** held that *“Decisions of this Court. Too numerous to count, recognize the very wide powers of a Counsel, being an Agent and Mouthpiece, in the course of performing his professional duties, to commit his Client by way of concession or admission of facts and same may be binding on his Client, except same is against Express Authority of or by Retraction by the Client before Judgment”* His Lordship went further to state that *“The authority of senior appellant’s counsel in the*

conduct of the case, on the authorities, extends to compromising his client's case except same is expressly shown to be otherwise restricted. The evidence of such express limitation placed on the appellant's Counsel authority remains unavailing." **His Lordship I.T.**

Muhammad JSC in this Case, reminded Counsel of the "fiduciary relationship existing between a Legal Practitioner and his Client and pointed out that a Counsel representing his Client in a Civil Cause or Matter, has got enormous powers of making concessions on behalf of his Client which binds the Client. Therefore, a Counsel can, in the course of performing his performing his professional duties, commit his Client either by way of a Specific Undertaking or by Clear Admission. It is rather too late in the day to raise such a protest or objection".

In this Case, it was also decided that a Party must be consistent with the case he sets up and not shift ground in another Court as it suits his fancy.

SANUSI JSC, on his own part held that the Law is settled that a Counsel/Legal Practitioner has a duty to conduct a Case and has General Authority to consent to the withdrawal of a Case or any part of the reliefs earlier sought and can compromise within his Apparent Authority, and such compromise he makes, is binding on his Client, notwithstanding that the Client may have dissented, unless the dissent was brought to the Notice of the Adverse Party at the time.

Therefore, Mr. Deji Akande is held to have had the apparent authority of Pinky Blue Limited to **commit** the Defendant, who was also known as "mothercare" to the executed Terms of Settlement and the use of the word interchangeably did not deceive or confuse the 1st Defendant or any of the Parties, as to who the Processes actually referred to.

Now as to whether the use of the name PINKY BLUE (MOTHERCARE) amounted to bestowing legal Personality on it, it is trite that there is a need to raise the objection to mis-description timeously. Reference is made to the Case of **KALU VS ODILI (1992) 6 SCNJ 76 ALSO CITED AS 5 NWLR PART 240 PAGE 130**. Mis-description of Parties is not fatal to an Action especially where Parties and Court are not misled and there is no Miscarriage of Justice occasioned. This error can still be corrected by the erring party with Diligent explanations for the mistake given before judgment, and this could be on payment of costs to the other party **MARTINS VS FEDERAL ATTORNEY GENERAL AND PT (1962) 1 SCNLR 209 KALU V. ODILI (1992) 5 NWLR PART 240 PAGE 130 AND MAERSK LINE VS ADDIDE (2002) 7 SCM PAGE 87**.

Finally, Parties are not permitted to resile unilaterally from Proceedings, which they consented to as held in **ENIGHWE VS AKAIGWE (1992) 2 SCNJ PAGE 316**. It is clear that the 1st Defendant held out Mr. Deji Akande Esq. as her Legal Representation over the years and furthermore, participated actively at the District Court, with the said misnomer at the as aptly held by His Lordship, **KEKERE-EKUN, J.C.A (AS SHE THEN WAS, NOW JSC) AT PAGE 35, PARAS. C-F, in MADAKI VS GOVERNOR NASARAWA STATE & ORS (2011) LPELR-5115 (CA)** when referring to the old Evidence Act that "Section 151 of the Evidence Act, relied upon by the appellant in relation to Exhibits 8, 19 and 22 provides: "When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representatives in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest to deny the truth of that thing".

Here, in this instant case, the 1st Defendant can be seen to Hold Out Mr. Ayodeji Akande as her authorized Legal Representation and cannot be seen to refute knowledge or authority at this late stage after Judgment was delivered in the Action. She also cannot refute the existence of mothercare as can be seen from the Exhibits and the connection with Pinky Blue Limited. The Case cited by Learned Counsel to the Judgment Creditor/Respondent of **XINGJIANG POWER TRANSMISSION & TRANSFORMATION ENGINEERING COMPANY VS MOTRACT GLOBAL NETWORKS LIMITED (2019) LPELR-47677 (CA)** on denial of brand names is also very relevant.

Finally, to allege that the parties did not duly execute the Terms of Settlement is to impute fraud or misrepresentation, which must be clearly set out with particulars of fraud and also must be proved beyond reasonable doubt. This, the Applicant failed to do, and without further ado, the Preliminary Objection is found to be unmeritorious and is accordingly dismissed in its entirety.

HON. JUSTICE A.A.I. BANJOKO

JUDGE