

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY, THE 8<sup>TH</sup> DAY OF JANUARY, 2017**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/BW/CV/143/19**

**BETWEEN:**

**MR. OCHIEFIJE DANLADI AIKA ..... CLAIMANT**

**AND**

**MTN NIGERIA COMMUNICATIONS LTD..... DEFENDANT**

## **RULING**

In this Writ filed on the 17/6/19 Ochiefije Danladi Aika the Plaintiff claims the following as MTN Nigeria Communication Ltd.

1. AN Order deeming the act of the Defendant as trespass on the parcel of land situate at opposite Redeem Church, Guto Road, Sabon Gari, Bwari FCT measuring 100ft x 50ft. ( the said plot hereinafter called the Res).
2. Perpetual Injunction against MTN, its agent or representative from disturbing the ownership and possession of the said Res.

3. Payment of N10 Million as specific and general Damages for the trespass on the Res.

The Defendant was served and upon receipt of the process it filed a Preliminary Objection challenging the Suit of the Plaintiff seeking the following Orders.

1. An Order striking out the Suit as there is no dispute between MTN and the Claimant and that the Defendant had never had anything whatsoever to do with the Res in this Suit.
2. Cost of the Suit.

The Preliminary Objection is based on the following grounds.

That the suit does not disclose any cause of action against MTN Nigeria Communications Ltd which is the Defendant in this suit. That the Defendant has no dispute whatsoever with the Claimant and that the Court lacks Jurisdiction to entertain the Suit.

The Preliminary Objection is supported with Affidavit of 6 paragraphs. In the written address the Applicant raised an issue which is:

“Does the Court has Jurisdiction to entertain the suit against the Defendant as it discloses no dispute between the parties to justify making MTN a party to the suit”.

He submitted that the Court lacks Jurisdiction to entertain the suit as no reasonable cause of action is disclosed against the Defendant to justify making the MTN a party in this suit. That there is no dispute between the parties which the Court is called upon to adjudicate on. He referred to the Supreme Court case of:

A.G ABIA STATE VS A.G FEDERATION (2002) FWLR  
(PT.101) 1419

That by the definition of Dispute in the above case there is no contention between the Applicant and Claimant. That a closer look at the Affidavit of the Claimant it is evidently clear that there is no dispute between the parties. He referred to the case of:

7UP BOTTLING CO. LTD VS ABIOLA (2001) 29 WRN 98@  
116

“That the said affidavit disclosed no cause of action against 11<sup>th</sup> & 16<sup>th</sup> Defendant/Applicant”.

There is only one Defendant in this Suit. It is strange to see the Applicant referring to 11<sup>th</sup> and 16<sup>th</sup> Defendant Applicant in this case. I guess the Learned Counsel meant the Defendant. This is a clear case of copy and paste.

That there is no cause of action against the Defendant/Applicant to be retained as such in this suit. That there is no dispute or complaint between the defendant and Claimant. That it is not enough to retain the Defendant/Applicant in this suit as a party on the believe the Defendant is the owner of the Mast on its land. That for that to be the Plaintiff must show that it has a dispute or complaint against the Defendant. Which will entitle the Plaintiff to the reliefs sought against the Defendant. That there is no factual connection between the Defendant and the subject matter of the suit. That failure to show existence of a dispute between the parties robs the Court the competence to entertain this suit. He referred to the case of:

That the Claimant alleged that he has a right of relief against the Defendant but woefully failed to show the existence of any dispute or relationship between it and the Applicant.

They submitted that in the suit the Plaintiff have failed to disclose a reasonable cause of action against the Defendant. They urged Court to strike out the suit by striking the name of the Applicant as a Defendant from this suit as the suit is incompetent.

Upon receipt of the Preliminary Objection the Claimant/Respondent filed a Counter Affidavit of 21 paragraphs. He attached 3 documents. In the written address he raised 2 issues for determination which are:

1. "Whether a land matter can be thought by Affidavit Evidence?"
2. "Whether upon pleading of the Statement of Claim the Plaintiff did not show that it has reasonable cause of action against the Defendant/Applicant.
3. Whether mere fact that Defendant said in affidavit of Preliminary Objection which is bordered on a land matter can preclude the Court not to hear the Claimant on the pleading considering the fact that the land case must be fought on pleading and not on Affidavit Evidence.

Taking all the issue together. He submitted claims is based on land matter not on affidavit evidence which can only be fought by pleading determined on preponderance of evidence. That Plaintiff has shown in the Statement of Claim that the Defendant had trespassed into his land

and caused him damages. That Defendant has not filed any Statement of defence challenging this suit. That the Preliminary Objection is a ploy to waste the time and resources of the Court. That the affidavit filed by the Defendant in this Preliminary Objection on a matter predicated on land dispute is unknown to law.

That evidence has to be led in the circumstances of the case for Court to determine the issues in dispute. That there is a cause of action unlike the submission of the Defendant in the Preliminary Objection. They referred to the case of:

ODUKO Vs GOVERNMENT EBONYI STATE (2004) 13 NWLR (PT.891) 491-492

Referring Court to the Statement of Claim he submitted that the Plaintiff has filed and served the Defendant with the said Statement of Claim where it listed the facts upon which the claim is based and had pointed out the acts of the Defendant that constitute the trespass as alleged. That the Defendant did not file any Statement of Defence to challenge or debunk such claim or the assertions made by Plaintiff.

That land matter and issue of trespass cannot be resolved by Affidavit evidence except by oral evidence and tendering of documentary evidence too. So that Court can fully consider and determine the issues in dispute on preponderance of such evidence.

That land case must be fought on preponderance of evidence. That the Plaintiff has shown in his Claims in his pleadings what the issues are but Defendant has not debunked same since it did not file any Statement of

defence. That Preliminary Objection in a land matter has no place in law and is therefore unknown. That the 21 paragraph Affidavit of the Claimant debunked all the assertion in the Preliminary Objection. That the Statement of Claim shows the act of trespass and threat on the Plaintiff. That failure of Defendant to file any Statement of Defence means it had admitted all the claims of the Plaintiff. He urged the Court to consider the Counter affidavit and dismiss the Preliminary Objection and order Hearing of the case.

### COURT:

Once a Plaintiff is able to show facts that his rights has been trampled upon by another person based on the action or inaction of such other person, it is said that such person Plaintiff has a cause of action against that person. Again any factual situation which makes a person to obtain remedy against another from a Court of competent Jurisdiction, it means there is a cause of action in existence. That is the Court decision in the case of:

LETANG Vs COPER (1965) 1 QB 222 @ 242

So every material fact which a person Plaintiff can prove to enable him-Plaintiff succeed in establishing the wrong done to it by the action of the Defendant, is said to be a cause of action such action or inaction of the Defendant must have accrued over time for there to be a cause of action. Once there are facts which the Plaintiff must traverse to support his claims against the Defendant, it is said that there is a cause of action against the Defendant. That's the decision of Court in the case of:

FADARE Vs A-G OYO STATE (1982) 4 SC 6-7

For Plaintiff to have cause of action must include every fact or combination of facts that gives such Plaintiff right to sue and seek redress in Court against the Defendant.

So once there is a wrong or wrongful acts of the Defendant that gives the Plaintiff cause to complain and to seek damages, it is said to be a cause of action against such Defendant. Such fact are usually set out in the Statement of Claim in which the legal rights of the Plaintiff are set out and the action or inaction or obligations of the Defendant. Such Statement of Claim also set out the action constituting the infractions of the Plaintiff's legal right and/or the action of the Defendant to .....his.

Once it is done and the defendant does not file any defence to debunk those facts, it is said that there is no defence and the fact are held to be uncontroverted. See the case of:

NWAKA Vs SHELL (2003) 3 MJSC 136 @ 149

AKIBU Vs ODUNTEM (2002) 13 NWLR (PT.685) 446@463

In the Jurisdiction of this Court Demurrer Proceeding does not exist. It is such that in any matter where the defendant is served a Statement of Claim but refused to file a Statement of Defence it is held that the case of the Plaintiff is unchallenged the whole essence of that is to avoid delay in prosecuting matter pending before a Court of competent jurisdiction. It makes for quick dispensation of Justice. Yes parties have right to challenge the Jurisdiction of a Court. Again once a

Preliminary Objection is raised the Court has to halt everything, entertain the Preliminary Objection before delving or further delving in issues in dispute in that case.

But note issue of Jurisdiction can come up even at the Court of Appeal or Supreme Court. But issue challenging the Jurisdiction of a Court should not be used as a ploy to delay and prolong the journey to Justice in a case. And matter are determined on Oral and mostly documentary evidence. In such case parties are expected to call witness issue of allegation of trespass are also determined by Oral and Documentary evidence where necessary.

With the advent of computers, internet and advance technology and electronic ways of doing business and super high speed means of communication, communication gadgets are abound in every nooks, corners and cronies. These communications are based on advance telecom equipment ranging from satellites to Mask to computers. They do not exist in the air. They are propelled by communication equipments mounted in the houses or outside.

Such equipments involves the in tec telecom 'poles' and sophisticated masts planted or installed for easy access to distribution of communication services to internet/computer users world over. This brought birth of communication companies like the Defendant/Applicant and other similar companies like Airtel, Glo, 9mobile and the like.



These companies rely heavily on various masks scattered all over there places of interest in order to effectively provide good services to their teeming clients. These effective service delivery is based on the use of masks. Which is often install on land around the areas where the want to provide services. To distinguish the max of one telecommunication company from the other, each company must have its name in aboard attach to such max. These maxs are run by generators which provides non stop electricity for effective service delivery. For a company to ave a mask it must have its license as a telecom company.

There is no reason for rogue service in such service as the mask are known the company which has it is equally known by the sign post on it. That's the story of mask in Nigeria.

In this case the Plaintiff has raised the issue of trespass to his land situate at opposite Redeem Church auto Road, Sabon –Gari, Bwari Abuja measuring approximately 100ft by 50ft. he had attached papers evidence his “ownership” and title to the land most importantly he had exhibited 2 pictures showing a mask with the sign board of the Defendant, MTN on it. He had stated that he had not given any consent for the mask to be planted in the said land and that it had caused him disruption and hazard.

Again that when he complained to MTN, he was threatened by MTN and its agent who threatened to ensure that the allocation will be revoked if he disturbed them. He decided to seek redress in Court since his right to the property has been threatened by the action of the

Defendant. The Defendant was given ample opportunity to have their say. But they did not file any statement of defence to challenge the Suit or debunk the facts they said that they have no interest in the land, and are not claiming ownership too. They only filed a Preliminary Objection where they stated all those denials. But they did not deny that the said mask bears their name and sign board. They only want the Court to remove their name as Defendant and nothing more. They want Court to strike out the Suit for not raising any cause of action against the Defendant as required by law. The Plaintiff hold otherwise.

But the question is, is there really no cause of action against the MTN since they claimed that they have no interest in the land and are not claiming ownership too? Should this Court strike there name out of the suit as Defendant. As the Defendant is postulating and strike the suit out as the Defendant is postulating bearing in mind that the defendant did not file any statement of defence challenging the suit of the Plaintiff and that demurrer proceedings no longer exists in our jurisdictional clime since 2004 and held that there is a cause of action against the Defendant.

It is the humble view of this Court that there is a cause of action by virtue of exhibit A and the facts as stated in the statement of claim and the Counter Affidavit filed by the Plaintiff. That cause of action is predicated on the allegation of the trespass to the plot in issue. Exhibit A show mask bearing MTN Notice Board. But most importantly there is no evidence that those facts are debunked in this case. Those facts and allegation of

trespass are all issues which this Court can determine those issues are based on the actions of the defendant – mounting the said mask on the land allegedly belonging to the Plaintiff. That fact and fact that Plaintiff is the owner of the land and has been threatened by Defendant and its agents are not challenged. There is no demurer proceeding as stated earlier. This Court cannot therefore strike out the name of the defendant as sought in this Preliminary Objection the case of the Plaintiff is competent too. There is the alleged wrongful act of the defendant which is the trespass to the land by mounting of the mask. The Plaintiff has a right to seek redress in this Court. This Court therefore has jurisdiction to entertain the suit. There is a dispute between the Plaintiff and MTN. that dispute is on the installation of the mask on the land of the Plaintiff. Having that mask in the land with MTN Notice Board glaringly displayed on the said mask showing that MTN has something to do with the land.

This Court therefore holds that this Preliminary Objection lacks merit and this Court cannot therefore strike the suit out.

The Court hereby dismisses the Preliminary Objection for lacking in merit. The Preliminary Objection is also struck out based on the issue Demurrer as the Defendant non-filing of Statement of defence further makes the Preliminary Objection to be unmeritorious. The name of MTN is therefore hereby retained as a defendant in this case. The Court has jurisdiction to entertain the Suit too.

**This is the Ruling of this Court delivered today**  
**.....day of**  
**.....2021 by me.**

.....  
**K.N.OGBONNAYA**  
**HON. JUDGE**