

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

**ON WEDNESDAY, 3<sup>RD</sup> MARCH, 2021**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**SUIT NO. FCT/HC/CV/2627/2019**

**BETWEEN**

**HANSPETER ACKERMANN --- CLAIMANT**

**AND**

**SANDRA ACKERMANN-SCHAUFLE --- DEFENDANT**

**RULING**

This suit was instituted by the claimant on 8/8/2019 vide writ of summons. Upon being served with the originating processes, the defendant filed a statement of defence on 29/1/2020.

On the same date, the defendant filed a notice of preliminary objection seeking the following orders:

1. An order of this Honourable Court striking out this suit for lack of jurisdiction.
2. An order dismissing this suit for being an abuse of court process.

3. An order that this Honourable Court lacks the jurisdiction to grant the relief sought which seeks to bar a non-Nigerian, not resident in Nigeria, from exercising her right of action in any jurisdiction.
4. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds of the preliminary objection are that:

- i. The defendant does not reside in nor carry on business in the Federal Capital Territory or in Nigeria at all.
- ii. The cause of action in this suit did not arise and has not been alleged to have arisen in the Federal Capital Territory or in Nigeria at all.
- iii. A divorce proceedings instituted by the claimant against the defendant as *Suit No. PET/151/17* in the High Court of the Federal Capital Territory, Abuja is still pending and the money alleged to be owed between the spouses which is the subject matter of this suit is within the province of matters to be resolved by the court in a divorce proceeding.

In support of the application is the defendant/applicant's 13-paragraph affidavit sworn to on 16/1/2020 at the Notary Public Office in the State of New York, United States of America [USA]. Attached to the affidavit are Exhibits A, B, C & D. RoselineOkpeteEsq. filed a written address, which was adopted on 8/12/2020 by Stanley NmorEsq.

In opposition, Evelyn Dele, a counsel in the Law Office of Pitcher & Courts, filed a 4-paragraph counter affidavit on 3/3/2020 on behalf of the claimant/respondent. Edwin InegeduEsq. filed a written address with the counter affidavit, which was adopted on 8/12/2020 by Graham OchogwuEsq.

From the grounds of the preliminary objection and the submissions of both learned counsel, two issues call for resolution, namely:

1. Whether this Court has territorial jurisdiction to entertain this suit.
2. Whether this suit is an abuse of court process.

## **ISSUE 1**

*Whether this Court has territorial jurisdiction to entertain this suit.*

It is trite that jurisdiction is fundamental to the competence of a court to hear a case. Where a court conducts a case without jurisdiction, the proceeding is a nullity no matter how well conducted. Jurisdiction may be territorial or substantive. Territorial jurisdiction implies a geographical area within which the authority of the court may be exercised and outside which the court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the court by the law creating it. See **Abraham v. FRN [2018] LPELR-44136 [CA]** and **Dariye v. FRN [2015] LPELR-24398 [SC]**.

In order for a court to determine whether it has jurisdiction to entertain a suit initiated by writ of summons, like the instant case, the only processes to be

look at or considered are the writ of summons and the statement of claim. Put differently, the case presented to the court by the claimant [or plaintiff] is what determines the jurisdiction of the court to adjudicate in a matter. See the cases of **Inakoju v. Adeleke [2007] 4 NWLR [Pt. 1025] 423** and **Mohammed v. Babalola, S.A.N. [2011] LPELR-8973 [CA]**. The effect of this principle is that for the purpose of determining whether or not it has jurisdiction to entertain this suit, the Court is not entitled to consider the depositions in the affidavits of the parties filed in respect of the preliminary objection, most of which relate to the issues in the substantive suit.

For better understanding of the submissions of both learned counsel, let me refer to the statement of claim where the claimant averred that:

1. He is a Swiss Citizen and resides at Julius Berger Camp, Gwarinpa Life Camp, Abuja. He is an Executive Director and the Chief Investment Officer of the Nigerian Sovereign Investment Authority. He has been resident in Nigeria since 2013 and intends to remain permanently domiciled in Nigeria. The defendant is an Austrian Citizen, who resides in Pennsylvania, USA.
2. On or about 6/4/2002, he married the defendant at the Marriage Registry, Salzburg, Austria. He and the defendant lived together in the USA between 2002 and 2009.
3. The parties started living apart sometime in 2010, after he secured an employment in the Kingdom of Saudi Arabia and moved from the

USA. The defendant refused to move with him and remained resident in the USA.

4. In 2013, he relocated to Nigeria to take up his present employment. The defendant also refused to move to Nigeria. Due to their difference, both parties agreed that their marriage had broken down. He filed a petition for the dissolution of the marriage in Nigeria while the defendant wanted the petition filed in the USA.
5. The defendant had consistently stated to his friends and other third parties that he was indebted to her in the sum of Euro 115,000 and USD 200,000; and could not pay the sums owed.
6. He no longer has any dealings in the USA as his two children are now adults, and he renounced his USA citizenship in 2010.
7. He has asked the defendant to forward any claims of indebtedness to him, and if verified, he will pay her the sums agreed to. The defendant sent him a list made up mostly of her personal expenses and other unverifiable expenses.
8. He informed the defendant that he was ready to meet verified expenses made on his behalf and on behalf of his children. Rather than clear the issue, the defendant has failed to verify the said indebtedness but has kept using same as the basis for referring to him as a person who is running away from his debts.

9. The defendant's action and attitude have caused him pain. The campaign of calumny also has the effect of affecting his employment in Nigeria within the jurisdiction of this Court and his intention to remain permanently domiciled in Nigeria.

10. He is ready to pay any amount verified as due to the defendant.

The claims of the claimant against the defendant are: [i] a declaration that he is not indebted to the defendant in the sum of Euro 115,000 and USD 200,000 or any amount whatsoever; and [ii] an order of perpetual injunction restraining the defendant from further giving third parties the impression that he is a bankrupt.

Learned counsel for the defendant/objector referred to the case of **Savage & Ors. v. Uwechia [1972] 3 SC 24** for the meaning of cause of action, which is the entire set of facts and circumstances giving rise to an enforceable claim. A cause of action consists of two elements, which are: [i] the wrongful act of the defendant which gives the plaintiff his cause of complaint; and [ii] damage. Counsel stated that from the averments in the statement of claim, claimant has not dismissed the possibility that he is indebted to the defendant as he stated that he is ready to pay the defendant the expenses she incurred on his behalf and on behalf of his children. He only wants the defendant to verify the claims he can pay. It was submitted that the claimant's cause of action is the allegation by the defendant that she incurred various expenses on his behalf and for which she is entitled to reimbursement.

Roseline Okpete Esq. referred to Order 3 rules 3 & 4 of the Rules of the Court, 2018 on situations or circumstances when suits can be commenced in this Court; and argued that this suit ought to be filed where the defendant resides or where the cause of action arose. According to learned defence counsel: [i] the defendant resides in the USA; [ii] the cause of action arose in USA; [iii] the alleged payments made on behalf of the claimant were made in USA; [iv] the list sent by the defendant to the claimant contained expenses she incurred on his behalf in the USA and in Europe; and [v] the expenses are verifiable in USA and Europe. It was submitted that since the cause of action in this suit arose in the USA, this Court has no territorial jurisdiction to entertain the suit. Learned counsel relied on the case of Mailantarki v. Tongo & Ors. [2017] LPELR-42467 [SC].

For his part, learned counsel for the claimant/respondent posited that the cause of action in this case is the allegation that the claimant is indebted to the defendant and is running away from paying such debts. He stated that: [i] the allegation of indebtedness was made by the defendant to the claimant while he was resident in Nigeria; [ii] all correspondences in respect thereof were sent to the claimant in Nigeria; [iii] the claimant's agreement to pay the verified sum was made by him in Nigeria; and [iv] the place for payment, if any, is also in Nigeria. It was submitted that the cause of action arose in Abuja, the place where the contract to reimburse the defendant ought to be performed. Thus, the Court has territorial jurisdiction to determine the issue of the indebtedness and thereafter order the reimbursement from Abuja.

Edwin Inegedu Esq. also reasoned that the claimant is at liberty to institute the action in any of the countries where the alleged indebtedness arose and the fact that the defendant resides in the USA is not enough to compel the claimant to institute the suit in USA. The claimant's counsel further argued that claimant is a person in Nigeria and can assert his civil rights as provided under section 6 of the Constitution [as amended]. The claimant has a right to protect himself and his integrity in Nigeria from the defendant and the Court has jurisdiction to protect him. He further submitted that the foreign status of the defendant notwithstanding, where her actions infringe on the interest of any person residing in Nigeria, she can be validly sued in Nigeria. He cited the case of Watanmal [Singapore] Pte Ltd. v. Liz Olofin & Company Plc. [1997] LPELR-6224 [CA].

Now, in Chevron Nig. Ltd. v. Lonestar Drilling Nig. Ltd. [2007] 16 NWLR [Pt. 1059] 168, a cause of action was defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements namely, [i] the wrongful act of the defendant which gives the plaintiff his cause of complaint; and [ii] the consequent damage.

Mr. Edwin Inegedu did submit that there was a contract or agreement made by the claimant in Abuja to reimburse the expenses incurred by defendant; and that the cause of action arose in Abuja where the contract or agreement to reimburse the defendant ought to be performed. Based on this reasoning, he



submitted that *“the Court has territorial jurisdiction to determine the issue of the indebtedness and thereafter order the reimbursement from Abuja where the said agreement was to be performed.”*

It seems to me that the above submission does not represent the case of the claimant. If I may be prolix for emphasis, claimant’s reliefs are a declaration that he is not indebted to the defendant in the sum of Euro 115,000 and USD 200,000 or any amount at all; and an order of perpetual injunction restraining the defendant from giving third parties the impression that he is a bankrupt. My respectful view is that, contrary to the submission of Edwin Inegedu Esq., the case of the claimant is not for the Court to determine the extent of his indebtedness to the defendant and to order reimbursement of the verified sum to the defendant.

From paragraph 7 of the statement of claim, I take the view that the alleged wrongful act of the defendant, which gave claimant his cause of complaint, is that the defendant *“has consistently stated to his friends and other third parties that he was indebted to her ... and could not pay the sums owed.”* Since defendant resides in USA, there can be no doubt that she allegedly made the statement in USA. I hold that the claimant’s cause of action arose in USA.

In **Mailantarki v. Tongo & Ors. [supra], [2018] 6 NWLR [Pt. 1614] 69**, the Supreme Court restated the principle that the jurisdiction vested in the High Court of the Federal Capital Territory [FCT] 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 no Court in any State, including the FCT High Court, has extra territorial jurisdiction. Applying the above decision to the instant case, I hold that since the facts that gave the claimant his cause of complaint occurred in USA - but did not occur in Abuja - this Court lacks the territorial jurisdiction to entertain the suit.

### **CONCLUSION**

The result of the above decision of the Court is that the suit ought to be struck out. Thus, it will not serve any useful purpose to consider Issue 2, which is whether the suit is an abuse of court process. The preliminary objection has merit. The suit is struck out. The parties shall bear their costs.

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**HON. JUSTICE S. C. ORIJI**  
**[JUDGE]**

### **Appearance of Counsel:**

Evelyn Dele Esq. for the claimant/respondent.

Stanley Nmor Esq. for the defendant/applicant.