

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO

CLERK: CHARITY ONUZULIKE
COURT NO. 15

SUIT NO: FCT/HC/CV/006/20
M/9075/20
DATE: 18/02/2021

BETWEEN:

ADEBIMPE JENNIFER ATINUKE ADEBAYO.....PLAINTIFF

AND

HON. BOLAJI YUSUF AYINLA.....DEFENDANT

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

By a Motion on Notice number M/9075/20, dated 10/8/20 and filed same day, the Defendant/Applicant Hon. Bolaji Yusuf-Ayinla prayed essentially for the following principal relief:

“An Order dismissing this suit for lack of jurisdiction as this Court cannot hear and/or determine this suit as presently constituted.”

The application was brought pursuant to Order 23 Rule 3 and Order 43 Rule 1 of the Federal Capital Territory High Court (Civil Procedure) Rules 2018. And the grounds upon which the application is predicated are:

- (1) The suit discloses no cause or reasonable cause of action;

- (2) The claimant by her own showing, lacks requisite *locus standi* to commence this action against the Defendant;
- (3) The claimant lacks the capacity to seek reliefs endorsed on the statement of claim;
- (4) The suit in its entirety is frivolous, vexatious, speculative and an abuse of Court process and
- (5) The suit is fundamentally defective and incurably incompetent.

In support is a 4-paragraphed affidavits with exhibits BYA1-BYA6 attached and a written address dated 10/8/20.

Learned Counsel to the applicant Mr. Okwuril Abanum moved the application *brevi manu* on 3/12/20. He relied on the averments in the supporting affidavits especially paragraph's 3 thereof and adopted the written address as his argument in urging to grant the application. He cited *inter alia* the cases of UWAZURONYE VS GOVERNOR IMO STATE (2013) 8 NWLR (PT. 1355) 28, U.O.O. NIG. PLC VS OKAFOR (2020) LPELR -49570 (SC); NSCDC & ORS VS OKO (2019) LPELR-48347 (CA); SALIK VS IDRIS & ORS (2014) LPELR-22909(SC); EKWEOZOR & ORS VS REG. TRUSTEES OF THE SAVIOR'S APOSTOLIC CHURCH OF NIGERIA (2020) LPELR-49568 (SC) etc.

Upon service of the Motion on the Claimant/Respondent, they filed a counter-affidavit of 6-paragraphs and a written address. Learned Counsel to the Claimant/Respondent - A. U. Mustapha SAN, relied on all the processes filed and urged me to dismiss the application. The learned SAN by way of adumbration, emphasised the point that it is the statement of

claim and reliefs the claimants claim in Court that the Court would consider when it come to the issue of reasonable cause of action. He said from their Writ of Summons, the claims are un-assailable, since a wrong was committed against the claimant by the Defendant.

Furthermore, the learned SAN submitted that the issue of resignation is not of the moment but for a matter of evidence at a later stage of proceeding.

And lastly, learned silk argued that since the applicant had joined issues with a 26-paragraphs statement of defence, with some exhibits attached, then they cannot come up with this application again. He relied *inter alia* on the cases of **A.G. KWARA STATE VS. OLAWOLE (1993) 1 NWLR (PT. 272) 645; KUSADA VS. SOKOTO NATIVE AUTHORITY (1968) ALL NWLR 377; OGBUMI VS OLOLO (1993) 7 SCNJ 447** etc.

On this last point submitted by the A. U. Mustapha SAN, Mr. Okwurili Abanu of Counsel to the applicant replied that they had to file the statement of defence because that is what our Rules require. NO MORE DEMURRER.

I have considered all the arguments canvassed by both sides in this application.

For a start, I agree with the learned Counsel to the applicant that the provision of our Rules has abolished DEMURRER. So, they are in order in filing a statement of defence before bringing this application.

But that is as far as I can agree with him. The law is trite and long settled that it is the statement of claim that determines whether a court has jurisdiction or not.

See ALHAJI AMINU IBRAHIM VS. MR. FELIX OSHU (1988)
3 NWLR (PT. 82) 257 where it was held:

“The law is settled that when an objection is raised that the statement of claim does not disclose a reasonable cause of action, it is the statement of claim that has to be examined and not the statement of defence.....”

There are long lines of authorities on this point, but the one I cited above suffices for this moment.

Now, what do I find in the statement of claim of the Claimant/Respondent? The parties are Husband and Wife. Their relationship has gone sour. Claimant (Wife) pleaded and alluded to facts that she contributed some money towards the completion of their property described and known as No. 6, Juba Street, Suncity Estate, Abuja. She further alleged that while she was sick, the applicant/Husband took away the Mercedes Benz E500 with Registration number BWR 995 PV which was bought for her as a birthday gift by the applicant.

Lest I forget, their marriage is blessed with a baby boy. And the Respondent (Wife) now alleged that the applicant has abandoned her and the boy without any provision for feeding and other important expenses. Finally, the Respondent claimed the applicant is about to dispose off the 3 bedrooms bungalow described and known as No. 6, Juba Street, Suncity Estate, Abuja. For all the above narrative and claims you can see paragraph 5 to 22 of the statement of claim.

The big question is, can we say in all circumstances that there is no perceived wrong or claim which if the Court believe would

not give a right to the Respondent in this case? What is a reasonable cause of action? It is the entire set of facts that can constitute a right against another party.

A cause of action means a civil right or obligation for determination by a Court of law, a dispute in respect of which a Court of law is entitled to invoke the judicial powers to determine. See **A. G. FEDERATION VS. ABUBAKAR (2007) 10 NWLR (PT. 1041) SC.**

So, in my view, the entire circumstance of this case shows somegrievous, civil rights and complaints that cannot be wished away.

All those argument by the learned Counsel to the applicant, that no receipts of contribution to the house or property etc are not of the moment. Those are matters of prove by credible evidence for which I am not concerned now.

In effect therefore, I find no merit in this application. On the contrary, I find reasonable cause of action for which this Court can validly take note of and consequently determine.

This application is hereby dismissed.

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S. B. Belgore
(Judge) 18/02/21