

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU - ABUJA
DELIVERED ON THURSDAY THE 30TH DAY OF SEPTEMBER 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI
SUIT NO.FCT/HC/CV/1919/2020

BETWEEN:

SERAH SANNI=====CLAIMANT

AND

COLD STONE CREAMERY LIMITED ==DEFENDANT

RULING

I have read the Applicant's application for preliminary objection and the Claimant's counter affidavit before this court. The issue to be determined is "**whether or not this Court has jurisdiction to entertain this application**".

The Applicant is urging on this Court to strike out this suit for lack of jurisdiction on the ground that the Defendant before this court is not the proper party, the service of the originating process is defective, and the Claimant failed to disclose reasonable cause of action against the Defendant. Applicant has submitted that Cold Stone Creamry where the event took place is a brand name owned by Eat N' Go Ltd, hence the Claimant has inadvertently sued the wrong party and this robs the Court of its jurisdiction. It is trite that only natural persons, juristic or artificial persons are competent to sue and be sued. Hence parties in a suit must be juristic persons or natural persons existing or living at the time of institution of action. In *AGBONMAGBE BANK LTD. VS. G.B. OLIVANT LTD & Anor* (1961) 16 NLR 21, the

Court held that the first Defendant was a non-juristic person which cannot be sued as “general manager Olivant ltd” was merely the post of the Defendant in the company. Hence the name of parties to a suit must be the registered company name or individual name in the case of an individual. I quite agree with Counsel to the Applicant that in the case of a company, only a registered company under CAC can be sued. In this instant application, the Claimant sued a company registered which is “Cold Stone Creamery Limited”. The Claimant from their counter affidavit stated that there is no mistake as to the Defendant the Claimant intended to sue and the short form of the Defendant’s name “COLD STONE CREMREY” was boldly written at the counter area where customers normally place orders. The Supreme Court in the case of SAPO & ANOR v. SUNMONU(2010)LPELR-3015(SC), Per IKECHI FRANCIS OGBUAGU, JSC (Pp 19 - 22 Paras E - B) held “.....*It is the undisputed right of a plaintiff, to choose the person or persons against whom he wishes to proceed against.....*”

The law places a legal responsibility on the Claimant to sue a Defendant whom he has any grouse against. The Claimant has sued the Defendant on record, and it is not in contention that the Defendant is a juristic person. The Claimant being sure of the party she is seeking her relief against has the right to bring that party before this Court.

The Applicant claiming to be different from the Defendant on record is not a party before this Court and ought not to be heard. If the Applicant (Eat N’ Go or Cold Stone Creamery) feels that it will be aggrieved by the outcome or result of this suit, Applicant should

apply to be joined. There is therefore no basis upon which this Court will determine the preliminary objection and it is hereby struck out.

Claimant is hereby ordered to serve hearing notice on the Defendant.

Parties: Parties absent.

Appearances: P. F. Joseph, Esq., appearing with S.E Omagbemhe, Esq., and Rukayo Mohammed, Esq., for the Claimant. Kanu C. Imo, Esq., for the Applicant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
30THSEPTEMBER 2021**

By a motion on notice brought pursuant to Order 43 Rule 1 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this honourable Court, the Applicant is praying this Court to strike out this suit for lack of jurisdiction, same being improperly constituted in law and for want of a reasonable cause of action.

The grounds upon which this application is sought are;

1. That this Honourable Court lacks the jurisdiction to adjudicate or entertain this matter as against the Defendant.
2. That the Defendant sued in this suit is the wrong party.
3. That the Service of the Originating process on the Defendant is improper and wrong in Law.
4. That the Claimant has failed to disclose any reasonable cause of action against the Defendant.
5. That it is in the interest of justice to grant this application.
6. That the Claimant/Respondent will not be prejudiced if this application is granted.

Also filed along with the application is an affidavit of 8 paragraphs deposed to by Toyin Anagbor a staff of Eat N' Go Limited and a written address. From the written address filed, Counsel raised three issues for determination thus:

1. whether the Defendant is the proper party sued in this suit.
2. whether the service of the Writ of Summons was proper in law.
3. whether the Claimant has disclosed a reasonable cause of action for this Honourable Court to assume jurisdiction.

Arguing the first issue, Applicant's Counsel submitted that the Claimant sued the wrong party in this suit and the law is that the name of a competent party to a suit must be the real name by which he is known in the case of a natural person and its corporate name in the case of a non-natural legal personality. Submitted that Cold Stone Creamery Limited is a brand owned by Eat N' Go Ltd and not the juristic person capable of being sued.

Submitted that Cold Stone Creamery Limited exist as a corporate entity however, it does not own Cold Stone brand, nor the store situate at Plot 204 Bunkoro District, Gwarinpa, Abuja. Submitted that a mistake as to the identity of the party to be sued cannot be corrected by an amendment and any Judgment gotten against Cold Stone Creamery Limited is a judgment gotten in futility as the Claimant will not be able to reap the fruit of Judgment against Cold Stone Creamery Limited and urged the Court to decline jurisdiction to entertain this matter.

With respect to issue no. 2 Counsel submitted that the issue of service is fundamental to conferring jurisdiction on the Court and combining the provisions of Section 78 of CAMA and Order 7 Rule 8 of this Court, the appropriate address to serve Eat N' Go Ltd would have been Plot 1715 Idejo Street, Victoria-island, Lagos. Submitted that where there is no service of such process on a party the Court seized with the case lacks the necessary competence to hear or determine the matter, even when an appearance has been entered, the trial court has no jurisdiction to entertain the claim and should decline to hear the Plaintiff. Counsel urged the Court to resolve issue no. 2 in their favour.

Arguing issue 3, Applicant's Counsel submitted that the Claimant has failed to disclose a reasonable cause of action against the Defendant and as such, this Court lacks the jurisdiction to entertain this suit. Submitted that the Claimant failed to show the nexus between the alleged stack of ice-cream in the Defendant store and her fall as her statement of claim never established that her falling in the Defendant's store was as a result of stepping on any "melted ice-cream" on the floor. Submitted that facts do not by themselves constitute a cause of action and for a statement of claim to disclose a reasonable cause of action, it must set out the legal right of the claimant and the obligation of the defendant, and it must then go on to set out facts constituting infraction of the claimant's legal right or failure of the defendant to fulfil his obligation. Submitted that the claims of the Claimant are merely speculating, and the Claimant has failed to show any reasonable cause of action against the

Defendant and the option available to this Honourable court is to make an order striking out this suit.

Counsel urged the Court to hold that the Claimant has failed to establish a cause of action and decline jurisdiction to entertain this suit as it is presently constituted.

Counsel relied on amongst others, the following authorities:

1. The Administrators/Executors of the Estate of General Sani Abacha (Deceased) v Samuel David Ekespiff (2009) 37 NSCOR Page 364 at 409 paragraph D-F,
2. Fawehinmi v Nigerian Bar Association (No.2) (1989) 2 NWLR (Pt. 105) page 558 at 595.
3. Osun State Government v. Olawi (Nig.) Ltd (2003) 7 NWLR (Pt. 816) Pg 72;
4. Jaipe v. Abiope (2003) 4 IVWLR (Pt. 810) P? 397;
5. Maersk Line & Anor v Addide Investments Ltd & Anor (2002) LPELR 811 (SC) at 64-65 (D-F)
6. Ononpe & ors v. Chukwuma (2005) LPELR-7526 (CA)
7. Cross River University of Technology v. Obeten (2011) LPELR4007(CA).

In response, the Respondent filed a counter affidavit of 17 paragraphs and annexed 6 Exhibits as well as a written address wherein counsel raised a sole issue for determination, thus: "Whether the Defendant/Applicant has placed sufficient materials before the Court for the grant of the reliefs contained in the preliminary objection?"

Counsel submitted that from a totality of the facts as stated in the statement of Claim and the counter affidavit it shows the cause of action in this present case started and ended at the Defendant's business premises at Plot 204, Bunkoro District Gwarinpa, Abuja on the 29th day of April, 2020 and this automatically makes the Defendant a necessary party in this case.

Submitted that on the issue of service of Court process on the Defendant who is a corporate entity, the rules of this Court provides that service is either by delivering the court process at the head office or any other place of business of the company within the jurisdiction of the Court. Counsel urged the Court to discountenance the argument and contention of the Defendant on the issue of service of the originating process and resolve the issue raised by the Defendant against the Defendant.

Submitted that the Applicant's contention that no cause of action has been established is baseless as the contents of the Statement of Claim, has some chance of success, notwithstanding that it may be weak or not likely to succeed and it is irrelevant to consider the weakness of the Plaintiff's claim. Counsel submitted finally that the Applicant's application is gold digging and frivolous which should be dismissed with substantial punitive cost against the Applicants who brought this preliminary objection as a ploy to delay the hearing and determination of the substantive case.

Counsel relied on the cases of *Bwacha v. Ikenya & Ors* (2011) 3 NWLR (pt.1235) 610 at 626; *Kalu V. Uzor* (2004) 12 NWLR (pt.1235) 610 at 626; *N. B. C. v. UBANI* (2014) NWLR, PT 1398 at 421, 3.7; *Dantata V. Mohammed* (2000) 7 NWLR (Pt.664) P.176.

The Applicant filed a further affidavit of 12 paragraphs stating that cold stone Creamery is a Trademark and a franchisee of Eat N' Go Ltd. That Cold Stone Limited is unconnected to Cold Stone Creamery. That Eat N' Go Limited controls the business brands of Cold Stone Creamery and not Cold Stone Limited.

Applicant's counsel also filed a reply on points of law, which this court has read, and I must state at this point that a reply on points of law is a reply based on new issues of law raised by an adverse party in his reply. See the case of HUSSENI & ANOR VS. MOHAMMED & OR (2014) LPELR-24216(SC). However, in this instant case, the Applicant has utilised it to improve his argument. The said reply on points of law is merely a repetition and improvement of argument in the applicant's application as there are no new issues raised by Respondent that required a reply on points of law. This Court will therefore ignore the said reply on points of law.