

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

BEFORE HON. JUSTICE J.E. OBANOR
ON THURSDAY THE 21ST DAY OF OCTOBER, 2021.

SUIT NO: FCT/HC/CV/3316/2020
MOTION NO: FCT /HC/CV/M/1974/2021
MOTION NO: FCT/HC/CV/M/1454/2021

BETWEEN:

OMOLARA NOSIRAT BAKRE
(Suing through the Guardian
Abiodun Bakre)

.....CLAIMANT/RESPONDENT/APPLICANT

AND

- 1. BUKKY FAVOUR BAKRE ...DEFENDANT/APPLICANT/RESPONDENT**
- 2. CORNERSTONE INSURANCE LTD.....DEFENDANT/RESPONDENT**
- 3. ARM PENSIONDEFENDANT/RESPONDENT.**

RULING

By a Motion on Notice filed on 26th February 2021 and predicated on Section 6(6) (A,B) 36(1) of the Constitution of the Federal Republic of Nigeria 1999(Amended) and inherent jurisdiction of the Court, the 1st Defendant/Applicant challenged the jurisdiction of this court to entertain this suit by seeking for the following orders:-

- “1. An Order dismissing the suit of the Claimant and holding that the purported Guardian of the Claimant did not have an authority from the 1st Defendant to sue whatsoever.
2. An Order of the Honourable Court holding that the Guardian, Abiodun Bakre did not have any

substantial Document or Authority to show that he can maintain the suit for the Claimant except the 1st Defendant.

3. An Order of the Honourable Court striking out the name of the purported Guardian, Abiodun Bakre in the suit as the court of law has given him order to stand as Guardian.
4. AND for such further order or other orders as the Honourable Court may deem fit to make in the circumstance of the case.”

The application is predicated on four grounds as set out in the motion paper. It is supported by a 9-paragraph affidavit deposed to by Mrs Bukky Favour Bakre and Written Address of the learned 1st Defendant/Applicant’s Counsel.

In reaction to the application, the Claimant/Respondent on 10th March 2021 filed a 22-paragraph Counter Affidavit deposed to by Abiodun Bakre along with the Written Address.

Moreover the Claimant filed a Motion on Notice also on 16th February 2021 seeking for the following orders:

1. An Order of Interlocutory Injunction of this Honourable Court restraining the Defendants or their representative and the Late Otunba Olugbenga Bakre Place of work (Stetis Ltd) or their representative to act or temper with monies or properties belonging of the Late Otunba Olubenga Bakre pending the hearing of this suit.
2. An Order of this Honourable Court directing that all rents from Late Otunba Olugbenga Bakre 2 bedroom bungalow at Dutse Sokale third high tension area painted cream colour with black burglary gate and 1 bedroom bungalow at 160, Zone B, Dutse

Sokale, Abuja be paid directly to the Court pending the determination of the rights of the parties.

3. And For such further or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by a 4-paragraph affidavit deposed to by Nkechi Augustine and Written Address of Counsel.

On 26th February, 2021, 1st Defendant/Respondent filed an 11-paragraph Counter affidavit deposed to by Bukky Favour Bakre and a written address in support of same in opposition to a grant of the application. In reply, the Claimant on 10th March 2021 filed a Reply on points of law.

Both motions were served on the 2nd and 3rd Defendants but they did not file a counter affidavit in opposition to same.

On 28th June 2021, the Court in order to save time and resources, in the exercise of its discretion made an Order for consolidated hearing of both applications.

At the hearing, Counsel for the parties adopted their Written Addresses as their oral submissions for and against the two applications. Consolidated Ruling was then reserved.

For the reason that challenge to jurisdiction is a threshold issue which once raised the Court is under a duty to resolve same first, the Court shall proceed to consider the 1st Defendant's Motion on Notice which challenges the capacity of the claimant to institute this action and thereafter if necessary, consider the Claimant's Motion on Notice.

In the affidavit in support of the 1st Defendant/Applicant's Motion on Notice it was averred inter alia that the 1st Defendant/Applicant was legally married to late Otunba Olugbenga Bakre. A copy of the marriage certificate was attached as Exhibit A. The purported

Guardian Abiodun Bakre lacks authority and consent to sue as Guardian for Omolara Nosirat Bakre. The said Guardian did not have a Letter of Administration upon her husband Estate, Late Otunba Olugbenga Bakre. She has the Letter of Administration given to her as Bukky Favour Bakre GRD to Olugbenga David Bakre (the lawful next of kin) and the said letter of administration was attached as Exhibit B. The Guardian lied on oath when he alleged same on the statement of claim without exhibiting same. It will be in the interest of justice to dismiss the suit.

In the counter affidavit it was averred by Abiodun Bakre that this application is baseless as such will cause great injustice to the Claimant and the public at large. The 1st Defendant is married to Late Otunba Olugbenga Bakre. He is the only surviving brother of late Otunba Olugbenga Bakre and by custom he oversee his children and ensure his wealth is evenly distributed. Since the death of his brother Late Otunba Olugbenga, he has been responsible for the education, health and maintenance of the Claimant. Receipts of money he has spent on her on different occasions were attached as Exhibits A-D. The Responsibility for her upkeep and maintenance lies on him as her caregiver. From the pleading before the court the claimant is requesting for her own share of the inheritance and has stated that the 1st Respondent have 75% of the Estate of Late Otunba Olugbenga Bakre. Nowhere in the pleading was his name stated as a beneficiary or requested that he should be given a portion of the estate. The claimant ought to be entitled to 50% of her late father's property as the 1st child of Late Otunba Olugbenga Bakre. His father Alhaji Fatai Bakre and the family agreed that since the 1st Defendant has more children, she should go with 75% of the estate and give 25% to the Claimant. The 1st Defendant through her lawyer has refused to share. They are of the opinion that she the Claimant is an illegitimate child and she is a girl hence their plan to disinherit her. He never mentioned he obtained a letter of administration. A letter of administration is a public document and it can be obtained by any willing party. The said letter of administration obtained by the 1st Defendant was obtained fraudulently and with deceit. The 1st Defendant deliberately did not detail all the properties and estate of the late Otunba Olugbenga

Bakre before the probate registry. The 1st Defendant also did not include the Claimant as a beneficiary. The 1st Defendant and her lawyer boasted that they will ensure that the Claimant does not partake in any of the estate because she is an illegitimate child and a girl. What the Claimant is asking is 15% of the estate and one out of the three houses belonging to Late Olugbenga Bakre. That haven lied to probate to obtain a letter of administration by excluding vital details such as houses and estate of late Otunba Olugbenga Bakre the court has a duty to hear the case of the Claimant and it will be in the interest of justice that the 1st Defendant's application is refused.

As aforesaid, Counsel for the parties filed and exchanged Written Addresses in support of their respective contentions. The Court has given due consideration to the averments in the affidavits of the parties and their respective submissions. The cardinal issue that calls for determination is whether or not the Defendant/Applicant has made out a case to justify a grant of an order of this court dismissing or striking out this suit for lack of authority to act or sue as a guardian in this suit thus depriving this Court the power to entertain this suit for want of jurisdiction.

The ***Supreme Court Per VAHE ROBERT BAIRAMIAN, J.S.C*** took time to consider conditions that must be satisfied before a Court is competent to exercise its jurisdiction in respect of any matter in ***MADUKOLU & ORS v. NKEMDILIM (1962) LPELR-24023(SC)*** as follows:

"Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a Court is competent when (1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and (2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and (3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of

jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication."

Order 13 Rule 12 of the Rules of this Court 2018 made provisions guiding persons under legal disability and who may sue or be sued as their guardian as well as the condition precedent to the exercise of this right.

Order 13 Rule 12 provides thus:

"Where the name of any person is to be used in any action as guardian of a person under legal disability or other party or as a relation, a written authority for that purpose signed by that person shall be filed with the process."

Order 1 Rule 5 states that "legal disability" means " person who lacks capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise."

Being properly guided by the foregoing guidelines, the crucial question is whether or not the Guardian in this matter has the authority to act as one which is a condition precedent that must be met before the filing of this suit.

In line with the foregoing, I have painstakingly examined and considered the parties affidavits especially the Claimant/Respondent's depositions in his counter affidavit as well as the Exhibits attached thereto and all other documents accompanying the Writ of Summons filed in this case to find the written authority obtained by the Abiodun Bakre as guardian to Omolara Nosirat Bakre (the claimant) before filling this suit but I found none. My conclusion on this is that Abiodun Bakre neither obtained nor filed his written authority as required by law. The requirement of the obtainment of this written authority is a condition precedent that must be met before filling the Originating process and which must be filed along with the process. The requirement of the law is that this case must come by due process of law and fulfillment of any condition precedent to the exercise of jurisdiction by this court. The proceedings of this court will amount to a

nullity no matter how well conducted if this condition precedent is not met.

For reason of the foregoing, the Court resolves the sole issue raised above against the Claimant/Respondent in favour of the 1st Defendant/Respondent.

In consequence, this application succeeds and this suit is hereby struck out.

I make no order as to cost.

SIGNED
HON.JUDGE
21/10/2021.

LEGAL REPRESENTATIONS:

1. Henry Barnabas Ehi Esq for the Claimant/Respondent/Applicant.
2. Blessing Ebeye Esq for the 1st Defendant/Applicant/Respondent.
3. Kelechi Nwaiwu Esq for the 2nd Defendant/Respondent.
4. No legal Representation for the 3rd Defendant/Respondent.