

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 5, MAITAMA ON THE 12TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/CV/2153/2020

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

DAPO APARA.....CLAIMANT/RESPONDENT

AND

ALPHA BETA CONSULTING LLP.....DEFENDANT/APPLICANT

RULING

The Claimant/Applicant's Motion is dated 19/03/21. It is brought pursuant to Order 43 Rule 1 of the rules of Court and Section 36 of the 1999 Constitution as amended. It prays for:

1. An Order of Court to amend/or substitute the Affidavit of Augustina Eberechukwu Okolike of 22nd March 2021 for the earlier one dated 13th July 2020 made in support of the Originating Summons.

2. An Order of Court to hear the Originating Summons together with the Defendant's Preliminary Objection.

In support is an 11 paragraph Affidavit deposed to by Okolike Augustina Eberechukwu, the Litigation Secretary in the law firm of Chidel Onuora & Co.

She deposes that she typeset and printed the Court processes in this matter filed on 13/07/21.

That she inadvertently omitted the heading of this Court.

That it was an error.

That the Affidavit clearly indicates that it was sworn to at the High Court Registry of the Federal Capital Territory.

That it is prudent to hear the Preliminary objection and Originating Summons together.

That the Defendant will not be prejudiced.

The Claimant's Counsel adopted his Written Address. He postulated an issue for determination which is whether this Court can exercise its discretion to permit Claimant to re-swear and or substitute his supporting Affidavit of 22/03/21 for that of 13th July 2020.

Learned Counsel agrees that every Affidavit must be headed in the Court and in the cause or matter pursuant to Section 117(1) (a) of the Evidence Act but argued that a defective and erroneous Affidavit can be re-sworn or amended by leave of Court or such terms as deemed necessary.

The Defendant's Counsel adopted its Written Address and canvassed that this Court cannot grant an amendment or substitution of an Affidavit that is void because it is not headed in any Court as enjoined by Section 117 of the Evidence Act.

That it is not a defect in form that can be waived under Sections 113 and 114 of the Evidence Act.

That the application is designed to overreach the Defendant. That no proposed amendment has been disclosed.

Section 117 of the Evidence Act specifies the formalities that an Affidavit must comply with before it can be sworn.

They include:

1. Every Affidavit taken in a cause or matter shall:
 - (a) be headed in the Court and in the cause or matter.
 - (b) It shall state full name, trade or profession, residence and nationality of the deponent.
 - (c) It shall be in the 1st person and divided into convenient paragraphs numbered consecutively.

2. Any erasure, interlineations or alteration made before the Affidavit is sworn shall be attested to by the person before whom it is taken etc.

On the effect of non compliance with Section 117, Section 113 of the Evidence Act states that provided an Affidavit is sworn before a person duly authorized to take oath, the Court may permit its use even though it is defective in form.

In ***LONE-STAR DRILLING LTD VS. TRIVENI ENG. (1999) 1 NWLR (PT. 588 at 622)***, the Court held that where the provision of the Section is substantially complied with, the Affidavit will be valid.

In the instant case, the defect is the failure of the Secretary to head the Affidavit properly i.e ***'IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY'***

The Affidavit is duly sworn before a person duly authorized to take Oath.

The Claimant deposes that it is a typographical error.

In ***UDUSEGBE VS. SHELL PETROLEUM DEVELOPMENT COMPANY LTD (2008) 9 NWLR (PT.1093) Page 593***, the Court further held that any defect in a Witness Statement on Oath under the frontloading procedure can be cured by the 2nd Oath made in Court before the adoption of the Witness Statement and Cross-Examination.

The argument of Learned Counsel to the Defendant that it is a void process does not in my view represent the position of the law.

The Claimant complied substantially with Section 117 of the Evidence Act. It is an error of the Secretary and it is not a disputed fact. The omission or proposed amendment

is known and clear. It is the heading. The Claimant has even sworn to a different Affidavit which he seeks the leave of Court to adopt in support of the Originating Summons.

In an era such as this, clinging to technicalities will not assuage parties. The Courts are now more interested in doing substantial justice. In the circumstance, prayer 1 succeeds.

On whether this Court can hear the Preliminary Objection together with the substantive suit. The law is clear that where an Objection is raised as to jurisdiction of the Court in a matter commenced by Originating Summons where the evidence required is in the form of Affidavit as in the instant case, it may be prudent to hear together the argument as to jurisdiction and the merit of the case.

See *DAPIALONG & ORS VS. DARIYE & ANOR. (2007)*

LPELR 928 SC.

If the Defendant is still bent on moving his Objection, I shall take the Preliminary Objection with the substantive suit.

In totality, it is my view and I so hold that the Motion has merit. It is granted as prayed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
12/10/21.

Parties absent.

Chidel Onwura for the Claimant.

Lawal Ijaodola for the Defendant.