

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT MAITAMA ABUJA**

DATE: 4<sup>TH</sup> NOVEMBER, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 5  
SUIT NO: CV/420/2018

**BETWEEN:**

HUSSEIN HASSAN

(Trading under the name and style Clear Conscience Business Concept) ----- CLAIMANT/APPLICANT

**AND**

1. HON. MIN. OF FEDERAL CAPITAL TERRITORY
  2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
- DEFENDANTS/APPLICANTS

**RULING**

Before this Court is a motion on notice dated 7/10/2021 filed on behalf of the defendants. The application is brought pursuant to the provisions of Order 43 of the Rules of this Court. The applicants are seeking for an order dismissing this suit for lack of the claimant's personality, parties having joined issues.

The grounds upon which the application is brought are as follows:

- That the claimant/respondent Clear Conscience Business Concept, a business name, lacks the capacity to own land and cannot sue or be sued in respect of land.
- That the claimant/respondent is not a juristic person to maintain this suit.
- That hence the claimant/respondent has no juristic personality to maintain this suit, the suit is good to be dismissed as issues have been joined by parties.

In support of the application is a 6 paragraphs affidavit deposed to by one Faith Braimoh. Also in support is a written address filed by J.O. Okpor Esq. Learned counsel raised a sole issue for determination i.e.

*“Whether the reliefs/orders being sought by the applicant can be granted by the Court”*

Learned counsel relied on the case of FCDA vs. Unique Future Leaders International Ltd (2014) 17 NWLR (part 1436) 213I at 244 to submit that the claimant being a business name cannot hold title to land in its own

name. He further made reference to Nigerian Army vs. SGT Asanu Samuel (2013) 14 NWLR (part 875) 466 at 482. He added that issues have been joined in the pleadings, therefore the only order the Court can make is that of dismissal of the suit. He cited Young Shall Grow Motors Ltd vs. Okonkwo (2010) 15 NWLR (part 1217) 524 at 543. He urged the Court to grant the application.

Upon receipt of the application, the claimant filed a 10 paragraphs counter affidavit and a written address wherein learned counsel **Emeka Ugwuowo Esq** formulated two issues for determination. The issues are:

- “1. Whether the defendants established that the claimant is not a juristic person and therefore not qualified to be granted a land in FCT.*
- 2. Whether the affidavit in support of this motion sworn by one Faith Braimoh, litigation secretary is not based on incompetent hearsay evidence.”*

Counsel submitted that there is no evidence or exhibit showing anything contrary to the claimant's

assertion that it is a limited liability company. Learned counsel argued that it is for the defendants who asserted to lead credible evidence to show otherwise. He added that evidence in order to be admissible as well as enjoy probative value ought to be direct and ought to be rendered by a person who is not only capable of testifying as to the truth of the matter asserted, but who could be legally cross - examined as to testimony. Reference was made to Permanent Secretary, Chieftancy Affairs vs. Bologi (Nig) Ltd (2017) LPELR - 42989 (CA), General & Aviation Services Ltd vs. Thahar (2004) 10 NWLR (part 880) 50. Learned counsel urged the Court to strike out the application.

For a start, it is important to address the submission of learned counsel for the claimant/respondent that paragraph 4 of the affidavit in support of this application offend the provisions of Section 115 Evidence Act, 2011. Learned counsel for the defendant/applicant submitted that reliance on Section 115 of the Evidence Act

strengthens the case of the defendant/applicant. In the supporting affidavit one Faith Braimoh litigation secretary in the law firm of Bridget Olotu & Co. with the consent of the defendants/applicants deposed to the affidavit and in paragraph 4 stated thus:

*“That I was informed by J.O. Okpor, Esq, the counsel handing this case, in the above named office M.J’s plaza, suite 0011, plot 518, Olu Awotesu Street, Behind Police Pension office, Jabi, Abuja of the following facts and I verily believe the facts to be true as follows,”*

This paragraph showed compliance with the provisions of the Evidence Act rather than running foul of the provisions. Section 115 (3) and (4) of the Evidence Act, 2011 states:

*“(3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth*

*explicitly the facts and circumstances, forming the ground of his belief.*

*(4) When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.”*

It is trite that where the contents/paragraphs of an affidavit fails to meet the requirement of the Evidence Act the Court will ordinarily expunge the paragraphs from the record of the Court. See Hahman vs. Wolowicz (1993) 3 NWLR (part 282) 443 at 457. The deponent in this instance has stated clearly the source of his information and met the requirement of the section above. In this circumstance the submission of learned counsel for the claimant/respondent is hereby accordingly discountenanced.

Now to the merits of the application. It is premised on the fact that Clear Conscience Business Concept is a

non – juristic person and lacks the capacity to own land and therefore cannot sue or be sued in respect of land.

A juristic person is a natural person, that is, a human being of requisite capacity or an entity created by law, which includes an incorporated body or a special artificial being created by legislation and vested with capacity to sue and be sued. It is a fundamental principle of law that a non juristic person cannot sue or be sued before a Court of law. See Registered Trustees of Iroyin Ayo Baptist Church vs. Sanusi & anor (2019) LPELR – 47720 (CA)

Undoubtedly for an action to be properly constituted so as to vest jurisdiction in the Court to adjudicate on it, there must be a competent plaintiff and a competent defendant. As a general principle, only natural persons, that is human beings and juristic or artificial persons such as body corporate are competent to sue or be sued. Consequently, where either of the parties is not a legal person, the action is liable to be struck out as being

incompetent. See Talabi vs. FCDA & ors (2018) LPELR – 45969 (CA).

It is pertinent to state that a business name registration is one done under Part B of the Companies and Allied Matters Act (CAMA). The rationale for registration is to ensure the identity of the individuals operating through the business name. There is a clear manifestation pursuant to Order 13 Rule 25 and 29 of the Rules of this Court that an unincorporated partnership or a business name as the case may be, may sue or be sued in its name. See Joe – Manco Agric Company vs. Tanidon Nig. Ltd (2009) 1 SJRTA page 111 at 114.

The law is trite that the plaintiff who takes out an action must be competent to institute such action. Where a challenge has been made on a party as it regards the competence to sue, it needs to prove its competence. To be able to prove in law the corporate statutes of a body or company, one must produce a certificate of incorporation



in respect of the body or the company. See Yellow & anor vs. Yunus (2018) LPELR - 45101 (CA).

The defendant challenged the capacity of the claimant to maintain this action in paragraph 9 of the Statement of Defence when it stated that the claimant is not an incorporated or registered entity. This was further stated in paragraph 3(a) and (b) of the affidavit in support.

The claimant in the counter affidavit at paragraphs 3,4 and 5 stated thus:

*“3. That the claimant is a limited liability company fully registered according to Companies and Allied Matters Act.*

*4. That the company has a company secretary and I stated it in my paragraph 6 of the witness statement on oath which is before this Court.*

*5. That during the trial, I made it clear that I am the Managing Director of the claimant.”*

Learned counsel for the Claimant submitted that it is for the defendants who challenged the legal capacity of the claimant to establish it in evidence. The law is settled beyond argument that a person must have the requisite legal capacity to be a party to a legal suit. See Iga vs. Amakiri (1976) 11 SC 1 at 8 - 9. Where the legal capacity of party to a suit is challenged the only way that such challenge can be rebutted is by production of a certificate of incorporation, where the party so challenged is not a human being, but a company or a body subject to registration. See ACB vs. Emostrade Ltd (2002) 8 NWLR (part 770) 501.

The position of the law is that if there is a pleading that impugns the juristic personality of the plaintiff, the evidence needed would be to tender the certificate of incorporation at the trial even if there is evidence of admission about the status of the plaintiff. The plaintiff herein failed to establish the legal capacity to institute the action as required by law. To depose to the fact that the

claimant is a limited liability company fully registered under CAMA is not sufficient to prove legal personality. The certificate of incorporation must be produced before the Court.

Another pertinent question is whether Clear Conscience Business Concept, a business name has the capacity to own land in its name. In the case of Bankole & ors vs. Emir Industries Ltd (2012) LPELR – 19719 (CA) the Court held:

*“an unincorporated body is not a juristic person and cannot enter into any contract or transaction and/or own land in its unincorporated name, save through trustees.”*

Furthermore, in the case of FCDA & ors vs. Unique Future Leaders International Ltd (2014) LPELR – 23170 (CA) rightly cited by the Applicant’s counsel, the Court of Appeal Per Mustapha J.C.A. held that capacity to hold land is not, and cannot be equated by any means to capacity merely to sue and be sued.

The claimant herein is not a juristic person capable of acquiring title to land in its name and therefore cannot sue and be sued in respect of land. The totality and the effect of all I have been saying is that the action was initiated by an incompetent party.

Examining the facts of this case from the angle of jurisdiction as expounded in the case of Madukolu & ors vs. Nkemdilim (1962) NSCC 374 at 399 – 380 Per Bairamian JSC,

*“...a Court is competent when it is properly constituted as regards numbers and qualification of the members of the bench and no member is disqualified for one reason or another; and (1) 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 (2) the case comes before the Court initiated by due process of law and fulfillment of any of the*

*conditions precedent to the exercise of jurisdiction.”*

The bottom line of the foregoing facts vis-à-vis this matter is that a Court has to be so constituted accordingly otherwise it lacks the vires to deal with any matter before it. In this instance, this suit is examined on whether the action has come before the Court upon the fulfillment of the condition precedent to ignite the Courts jurisdiction to deal with the matter. The answer here is in the negative.

For the foregoing reasons, I hold that the application is meritorious and in that vein this suit is hereby struck out.

Signed

Honourable Judge

**Appearances:**

Emeka Ugwuowo Esq with him I.N. Okonkwo Esq and John Okoroafor Esq – for the claimant/respondent

J.O. Okpor Esq – for the defendants/applicants