

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 8 APO, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

SUIT NO. CV/2701/2019

BETWEEN:

ESTHER BOSEDE EMIOLA

CLAIMANT

AND

SANI KAITA HARUNA

DEFENDANT/APPLICANT

RULING

DELIVERED ON THE 6TH OCTOBER, 2021

Before me is a Motion on Notice dated **the 1st day of September, 2020** and filed by the Defendant/Applicant on the same day, pursuant to **Order 8 Rules 1 and 8 of FCT High Court Civil Procedure Rules, 2018, Section 97 of the Sheriff and Civil Process Act** and under the inherent jurisdiction of this Honourable Court, imploring the Court to favour her with the under-listed reliefs:

1. **AN ORDER** dismissing this suit on the grounds that it does not qualify for adjudication by this Honourable Court because – (a) the alleged promise to marry was made in Moldova i.e. outside Nigeria and (b) the Defendant is not domiciled in or ordinarily resident in Nigeria.

AND IN THE UNLIKELY EVENT PRAYER 1 IS NOT GRANTED-

2. **AN ORDER** setting aside the Order for leave to serve the Originating Court processes by substituted means on the grounds that – (i) the Order for pasting in Kano was obtained fraudulently because the Claimant knew that the Defendant resides outside Nigeria (ii) the Order of service by email required leave for service

outside the jurisdiction of Nigeria as the Defendant resides abroad as aforesaid and no such leave was obtained.

3. **AN ORDER** setting aside the Writ of Summons/Statement of Claim and service of same on the Defendant for failure to obtain leave before same was served outside Nigeria and in the United Kingdom and (ii) endorse same with a notice that it is being served outside jurisdiction, as required by the Sheriff and Civil Process Act.
4. **ANY FURTHER ORDER(S)** this Honourable Court may deem fit to grant in the circumstances.

There is a **twenty-two (22) paragraphed affidavit** in support to which **Exhibit A and Exhibit B** are attached (respectively at paragraphs 4 and 12 thereof). The said affidavit was deposed to by one Ibrahim Simoa said to be a Legal Practitioner of No. 8 Mahatma Gandhi Street, Asokoro, Abuja. There is also a written address of eight (8) pages in support. In opposition, the Claimant/Respondent filed a written address in reply to the Defendant/Applicant's motion. I realize there is no counter-affidavit filed by the Claimant/Respondent in opposition to the Affidavit in support of the Motion. Rather, at **paragraph 2.1 of the said written address**, the Claimant/Respondent begs *"to rely on the facts contained in the affidavit in support of the Motion Ex-parte dated and filed on the 8th of January, 2020 and is hereto attached to this written address."* This is to me is rather most unfortunate to the extent that it will determine the application before me. It is my respectful view that if the Claimant/Respondent had wanted to rely on the "rely on the facts contained in the affidavit in support of the Motion Ex-parte dated and filed on the 8th of January, 2020" to ward of the depositions of the Defendant/Applicant in his Motion on Notice, she could have deposed to a counter affidavit and used one paragraph to incorporate same. The

Claimant/Respondent cannot be heard to be attaching an affidavit from a previous proceedings to a written address of a subsequent proceedings without deposing to a fresh affidavit to either incorporate it or attach it as an exhibit. This is a lazy and bad practice which obviously will now cost the Claimant/Respondent some fortunes! What it comes to is that the Claimant/Respondent not having deposed to a counter-affidavit in opposition to the affidavit of the Defendant/Applicant's Motion, she has no answer to all the agitations tabled by the Defendant/Applicant vide his affidavit. Simply put, the Claimant/Respondent accepts as true all the depositions in the Defendant/Applicant's affidavit leaving this Court with the only option of acting on same in arriving at its decision. This has shortened the journey of this Ruling.

Effect of uncontroverted facts in an affidavit has been stated in a plethora of cases. In **APC V. INEC & ORS (2014) LPELR-24036(SC)** this effect was brought to light in these words:

"Firstly, the averments in the affidavits in support of the 3rd respondent's preliminary objection as well as those in his counter affidavit in opposition to the application to which this ruling also relates, remain uncontroverted. This Court, it is the practice, has to accept those averments as true. See *Badejo V. Minister of Education* (1996) 9 - 10 SCNJ 51 at 69, *Amgbare V Sylva* (2007) 18 NWLR (Pt. 1065) 109 and *Dokubo-Asari V FRN* (2007) 12 NWLR (Pt. 1048) 320."

The Supreme Court upheld this view in the case of **OWNERS OF M/V GONGOLA HOPE & ANOR v. SMURFIT CASES NIGERIA LIMITED & ANOR (2007) LPELR-2849(SC)** thusly:

"...Also firmly settled, is that where the evidence of a plaintiff is unchallenged and uncontroverted and particularly, where the

opposite party or side, had the opportunity to do so, it is always open to the trial court seised or the manner, to accept and act on such unchallenged and/or uncontroverted evidence before it. There are too many decided authorities in respect thereof. See *Odulaja v. Haddad* (1973) II S.C. 357; *Isaac Omoregbe v. Lawani* (1980) 3 - 7 S.C. 108 at 117 and recently. *Chief Durosaro v. Ayorinde* (2005) 3 SCNJ 8 at 18, (2005) 8 NWLR (Pt. 927) 407; (2005) 3 - 4 S.C. 14 and *Newbreed Organisation Ltd. v. Erhomosele* (2006) S.C. (Pt. 1) 136 at 150; (2006) 2 SCNJ 198; (2006) 5 NWLR (Pt. 974) 499; (2006) 1 JNSC (Pt. 1) 1 and (2006) Vol. 140 LRCN 2064; (2006) 5 NWLR (Pt. 974) 499"

In **IFEANYI CHUKWU OSONDU COMPANY LIMITED & ANOR v. DR. JOSEPH AKHIGBE (1999) LPELR-1433(SC)**, the Supreme Court re-affirmed the settled principle thusly:

"...When admissible evidence has been adduced which remains uncontroverted, it becomes part of what will lead to a decision in the case and, unless the evidence is palpably incredible, the court is not only entitled to, but has no reason not to, accept it. see *Odulaja v. Haddad* (1973) 11 SC 357; (1973) 8 NSCC 614 at 618."

Yet again, we find the enunciation and application of this principle by the same Supreme Court in the case of **IJEBU-ODE LOCAL GOVERNMENT v. ADEDEJI BALOGUN & COMPANY LIMITED (1991) LPELR-1463(SC)** where the Court teaches us that:

"Where there is evidence to support a claim, as here, which remains unchallenged or uncontroverted by the other party, the court is bound to accept the evidence in support of the claim. - *Incar Nigeria Ltd. v. Adegboye* (1985) 2 NWLR (Pt.8) 453 at 460. *Obanor v. Obanor* (1976) 2 S.C.1 at pp. 4-

6. There was no contrary evidence challenging these claims, and the cross-examination of the witnesses did not affect the credibility of the witnesses or weight to be attached to the evidence."

The argument put forward that the Defendant should proceed to file his defence since demurrer has been abolished will not stand in the face of the fact that the preliminary objection filed by the Defendant/Applicant challenges the jurisdiction of this Court to enter into adjudication in this matter, an issue which he (the Defendant/Applicant) under our civil jurisprudence is entitled to raise at any time, and any how even viva voce.

This is what the Apex Court said concerning the importance of jurisdiction in the process of adjudication as found in the case of **Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd (1992) 5 NWLR (Pt.244) 675 at 693:**

"Jurisdiction is the very basis on which any tribunal tries a case; it is the lifeline of all trials. A trial without jurisdiction is a nullity.... This importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to Court of Appeal or to this court; a fortiori the court can suo motu raise it. It is desirable that preliminary objection be raised early on issue of jurisdiction; but once it is apparent to any party that the court may not have jurisdiction it can be raised even viva voce as in this case. It is always in the interest of justice to raise issue of jurisdiction so as to save time and costs and to avoid a trial in nullity."

The above authority utterly confirms that the Defendant/Applicant was/is entitled to have brought this Motion challenging the jurisdiction of this

Court even when he has not filed his Statement of Defence. I find and agree with the Defendant/Applicant that the purported promise to marry as alleged by the Claimant/Respondent against the Defendant/Applicant was made not in Nigeria but in Moldova. I equally find and hold as established that the domicile of the Defendant/Respondent is United Kingdom far outside the territorial jurisdiction of this Honourable Court. On these premises, I proceed to declare that this Honourable Court is devoid of the jurisdiction to exercise its adjudicatory powers over the case as formulated and instituted by the Claimant/Respondent leading me to the appropriate Order which I must now make. In consequence, I enter an Order striking out this suit. This suit is hereby struck out.

There shall be no order as to cost.

APPEARANCE

Babakemi Ogunkolo, Esq. for the Claimant.

Mustapha Lawal Esq. for the Defendant.

Sign

Hon. Judge

06/10/2021