

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

BEFORE HIS LORDSHIP :HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUITE NO: CV/1598/2021

DATE: :THURSDAY 11TH NOVEMBER, 2021

BETWEEN

**DR. ABDULLAHI UMAR GANDUJE } CLAIMANT/
RESPONDENT**

AND

1. JAAFAR JAAFAR
2. PENLIGHT MEDIA LIMITED
(Conducting Media Practice under the
Name and Style of “Daily Nigerian”) } **DEFENDANTS/
APPLICANTS**

RULING

This Ruling is at the instance of Defendants, who filed a notice of preliminary objection challenging the jurisdiction of this court on the grounds that; the cause of action arose in Kano State; that the Plaintiff by their pleadings in Suit No. **K/519/2018** know that the Defendants/Applicants reside and carry – on business in Kano State; by initiation of the suit **K/519/2018** in Kano (which was subsequently withdrawn but in which there is a pending counter claim) Claimant/Respondent is fully aware that the Defendants/Applicants reside and carry-on business in Kano State; the Claimant/Respondent instituted this Suit because it feels it will gain some advantages against the

Defendants and intentionally so as to irritate and annoy the Defendants/Objectors;

To bring this Suit in another jurisdiction outside Kano State where all the parties reside and carry on business and where the purported tort was committed presupposes that the Claimant/Respondent has other motives that do not serve the interest of justice;

Instituting this matter before this Court amounts to forum shopping by the Claimant/Respondent as this Court is not forum convenience;

This Court is not clothed with jurisdiction to entertain this suit; striking out the matter will be in the interest of justice and will save the precious judicial time of this Honourable Court.

An affidavit of six paragraphs duly deposed to by one Catherine Joseph, a front desk officer in the law firm of Defendants/Applicants was filed in support of the Preliminary Objection. Defendants/Applicants annexed as exhibits, Form CAC 7 i.e particulars of change of Directors of the 2nd Defendant showing the residential address or postal address of the 2nd Defendant; registration documents of 2nd Defendant under Part B of CAMA 2020 which shows the registered Office address as No. AC Murtala Mohammed Way, Kano State and certified true copy of the amended Writ of Summons dated the 9th day of January, 2019 in Suit No. **K/519/2018** as Jaafar 1, 2 and 3 respectively.

An 8 page written address of legal argument was equally filed in support of the application.

On the part of Claimant/Respondent, an affidavit of 14 paragraphs was filed, opposing the preliminary objection, with certified true copy of Defendants/Applicants' amended Statement of Defence and Witness Statement on oath showing the address of 1st Defendant/Applicant in Suit No. **K/519/2018** before the Kano High Court;

Certified true copy of Order of Kano State High Court showing the fact that the earlier suit has been discontinued and a document filed by the 2nd Defendant in the present suit who was 2nd Defendant in the suit before Kano High Court earlier struck-out.

The documents were marked as Exhibits “1”, “2” and “3” respectively.

Claimant’s counsel filed a 7 paragraph written address of legal argument in support of its opposition to the said preliminary objection.

A reply on points of law was equally filed by learned counsel for the Defendants/Applicants.

I have read with interest, the contents of the Preliminary Objection and reply on points of law filed by Abdul Mohammed, SAN, for the Defendants/Applicantson the one hand, and the corresponding response by Claimant’s counsel, Chief O.E.B Offiong, SAN, on the other hand.

I shall address all the issues therein raised conjunctively in the course of this ruling.

My take off point would be to address the issue of jurisdiction frontally as same seem to be the kernel of Defendants objection.

Jurisdiction, whether subject matter, parties or territorial, is a threshold issue.

By the amended Writ of Summons filed by the Claimant, i.e Dr. Abdullahi Umar Ganduje, the following was stated in paragraphs 8 and 10 of the Statement of Claim against the Defendants JaafarJaafar, Penlight Media Limited as follows:-

Paragraph 8

“The Claimant avers that the 1st Defendant as the Editor-in Chief and Publisher of the Daily Nigerian of the 2nd Defendant carries on

business in Abuja within the jurisdiction of this Court”.

Paragraph 10

“The Claimant avers that the 2nd Defendant is a duly registered Limited Liability Company that co-owns and publishes the online news outlet known as Daily Nigerian with the 1st Defendant and they both carry on business among other places, in Abuja, within the jurisdiction of this Honourable Court”.

Defendants’ counsel, Abdul Mohammed, SAN, filed the instant application challenging the jurisdiction of this Court, territorially speaking, wherein he contended that Claimant had commenced this action at Kano State High Court

against the named Defendants, but withdrew same only to file same at the FCT High Court, Abuja. The processes filed at the Kano High Court which I had mentioned in the preceding part of this ruling, bore the address of service of the Defendants which equally was in agreement with the incorporation documents of the 2nd Defendant. The kernel of Abdul Mohammed, SAN's, argument simpliciter, therefore is that Claimant having filed the present action in Kano State where the address of both Defendants were correctly stated is barred from coming to FCT High Court to file the present suit.

The argument of Defendants' counsel clearly touches on territorial jurisdiction, and to that extent, I shall dwell on same. Undoubtedly and

unquestionably, the importance and criticality of the question of jurisdiction, with respect to an action in a court of law, cannot be taken for granted nor can it be overemphasized.

Being a threshold issue and fundamental to adjudication, the Court is under an obligation to determine it.

First, for where it does not possess the vires, the jurisdiction to entertain the matter before it and still goes ahead to hear and determine same, albeit in a well conducted proceedings, it will be a clear futile exercise as such proceedings remain a nullity.

See ***GOLDMALK VS. IBAFON (2012) 3 SCNJ (Pt. 11) 565 at 597;***

***FEDERAL AIRPORT AUTHORITY OF NIG.
VS. NWOYE (2012) 16 WRN 154 at 184.***

The time-honoured golden rule of jurisdiction was succinctly laid-out in the case of ***MADUKOLU VS. NKEMDILIM (1962) 1 ALL NWLR (Pt. 1) 587***, by Supreme Court of Nigeria, to the effect that 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;
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 the law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Jurisdiction is the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. Such authority is controlled or circumscribed by the statute which created the Court or by condition precedent created by a legislation which must be fulfilled before the Court can entertain the Suit.

See *LAWAN VS. ZENON PETROLEUM & GAS LTD. & ORS (2014) LPELR - 23206 (CA).*

Just as the subject matter of a case has to come within the Court's jurisdiction, the Court's territorial jurisdiction is essential an aspect of jurisdiction.

It is indeed the nature of the subject matter or parties or the territorial limits over which the Court can exercise jurisdiction that restricts the exercise of jurisdiction of Courts.

See *DAIRO VS. U.B.N PLC. (2007) 7 SC (Pt. 11) 94.*

MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLR 587.

The Court however, in determining whether it possesses the requisite jurisdiction to determine a

matter shall only look at the Plaintiff's claims as per the Writ of Summons and Statement of Claim.

See *MECILL VS. WORLGATE (2012) 3 SCNJ (Pt. 11) 639 at 662;*

NIHA VS. LAVINA (2008) 7 SCNJ 72 at 85.

It is also settled, by plethora of judicial authorities that a Court would have the territorial jurisdictional competence to entertain a matter where any of the following factors exists, viz:-

1. Where the contract in question was made
2. Where the contract in question is to be performed
3. Where the Defendant reside.

See *MEGATECH ENGINEERING LTD. VS. SKY VISION GLOBAL NETWORKS LLC (2014) LPELR – 22539 (CA)*

The Rules of this Court i.e Order 3 Rule 4 (1) is equally clear on when a Court shall have the competence, jurisdictionally speaking, to entertain a matter.

Above provision is on all fours with the decision in Megatech (Supra).

The said Order 3 Rule 4(1) of the Civil Procedure Rules of the FCT High Court, 2018, provides as follows:-

“All other Suits may be commenced and determined in the judicial division in which the Defendant resides or carries on business”.

It is instructive to note at this juncture that it is not just enough to say the court does not have jurisdiction, there has to be evidence and or facts to substantiate such argument. Any feature which is not patent enough but latent must be resolved by evidence.

Claimant who took out the writ against the Defendants has copiously stated in its statement of claim that Defendants do their business in Abuja within the jurisdiction of this court.

Defendants' counsel who filed the present preliminary objection is therefore under an obligation to lead evidence to show that Defendants by reason of their Incorporation documents and who have Kano State as their address of business have not left the said address

to any other address outside Kano State especially, now that Claimant has decided to file the instant suit in another jurisdiction. Eventhough it is spent that only the statement of claim should be considered in determining whether a court has jurisdiction, that is applicable only where patently, the court does not have jurisdiction from the claim before the court.

Defendants who have filed the instant preliminary objection challenging the jurisdiction of this court have been confronted by Claimant's counsel with evidence showing that Defendants, on their own volition stated that they reside and do business in Abuja and not Kano State.

Learned senior counsel for the Claimant, Offiong, SAN, argued that Defendants are estopped from

saying anything to the contrary Pursuant to Section 169 Evidence Act, 2011 having stated the fact that they both reside and do business in Abuja in their earlier respective Statement of Defence filed at the Kano State High Court which was struck-out.

Offiong, SAN, contended that the FCT High Court is forum convenience for hearing the case of Claimant, being a case of Defamation by Publication.

Above was stated by Claimant/Respondent in the counter affidavit to the affidavit in support of the preliminary objection filed by Defendants wherein the 1st and 2nd Defendants' statements of defence filed in Suit No. **K/519/2018** were exhibited showing where Defendants clearly stated that they

reside and do business in Abuja. Paragraphs 5 and 7 of the said statements of defence states as follows:-

Paragraph 5

“The 1st Defendant admits paragraph 7 of the statement of claim to the extent that he is the editor of Daily Nigerian but currently resides at No. 50 Usman Street, Abuja, FCT which the Plaintiff is fully aware of.”

Paragraph 7

“The 2nd Defendant further to paragraph 6 above avers that the 2nd Defendant has relocated to

Abuja and same was boldly published on her website facts which the Plaintiff is aware of but chose to deny same, copy of the home page is hereby pleaded and shall be relied upon at the trial.”

If Defendants who now contest the competence of the suit before this court on account of territorial incompetence were the same Defendants who stated in their previous statements of Defence earlier filed at the Kano State High Court, aforementioned that they live and do business in Abuja as reproduced above, which was indeed believed by the Claimant, Defendants cannot now turn around to deny such facts which remains the truth. See ***POPOOLA BOMGBEGBIN & 9ORS VS JIMOH ATANDA ORIALE & ORS.***

A party, just as Defendants cannot be allowed to approbate and reprobate which is expressed in latin maxim, *Allegans contraria non est Audiendus*".

Defendants are estopped from running away from their previous admission on the issue of their address.

I am most at home with the argument of Offiong, SAN, that Defendants are trapped in the web of Estoppel.

The court cannot and should not be compelled under such a situation as argued by Abdul Mohammed, SAN, to limit its gaze only to the statement of claim in determining its jurisdiction when the same Defendants are the same people

who posited that they live and do business in Abuja, only to turn around in another style of dance to say that this Court does not have jurisdiction territorially speaking to determine this suit. This, I must say, is most preposterous and worrisome.

Abdul Mohammed, SAN, for the Defendants/Applicants cited the authority of *MAILANTAKI VS. JONGO (2018) 6 NWLR (Pt. 1614) 69 SC* which Supreme Court dealt with the issue of forum shopping.

The situation in Mailantaki (Supra) is not the same as the present case.

This is clearly because, the same Defendants stated in their respective statements of Defence in an

earlier Suit before Kano State High Court which was struck-out, that they no longer live and carry-on their business in Kano State but Abuja.. this is a fact the Court ought to take judicial notice of.

Defendants' counsel is a Senior Advocate of Nigeria (SAN) and by implication a member of the Inner Bar. Defendants' counsel is very knowledgeable in law and I do not doubt his credibility in terms of integrity.

I however wish to restate the fact that proceedings in Court must be done in obedience to standard Rules and Procedure. Proceedings in Court though presided-over by a Judge, shall be regulated by conscience, law, procedure and morality.

This is not a game of football, chess or cat and mouse. No... This is law supported by facts and evidence.

I agree with Offiong, Offiong, SAN, for the Claimant that the present Preliminary Objection has to fail for being unmeritoriously argued.

An Order of this Court is hereby made dismissing Preliminary Objection No. **M/5881/2021** for the reasons advanced.

Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
11th November, 2021

APPEARANCE

I.P Ndumnego, Esq. with Blessing L.Uchenna, Esq. - for the Claimant/Respondent.