

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 :SUIT NO: CV/746/2019

DATE: : TUESDAY 14TH DECEMBER, 2021

BETWEEN:

HENRY ENDELEY CLAIMANT/RESPONDENT

AND

1. BANK OF INDUSTRY LTD.

2. BANK OF INDUSTRY INVESTMENT AND TRUST COMPANY LIMITED

3. SYSTEM PROPERTIES FACILITY MANAGEMENT LIMITED

**APPLICANTS
DEFENDANTS**

RULING

This Ruling is at the instance of the 1st Defendant/Applicant who approached this Honourable Court vide a Motion on notice dated 6th of February, 2019 and filed on the same day; praying this Honourable Court to dismiss/strikeout the name of the 1st Defendant/Applicant from this suit and for an Order to strike out/dismiss this suit for disclosing any cause of action against the 1st Defendant/Applicant.

In support of the application is an affidavit of 5 paragraphs deposed to by Israel Istifanus.

It is the deposition of the Applicant that Bank of Industry Limited through its branch Office in Abuja received the Writ of Summons filed at the instance of the Claimant herein. That there is no privity of

contract between the Claimant and the 1st Defendant/Applicant.

The Applicant avers that the Tenancy Agreement is between the Claimant and the 2nd Defendant to the exclusion of the 1st Defendant/Applicant. That the 1st Defendant/Applicant did not and still does not perform any role in the tenancy agreement of the Claimant and the 2nd Defendant. That the 1st Defendant/Applicant is not a landlord of the Claimant and no rent or service charge had been paid to or through it for the benefit of the 2nd Defendant or anybody howsoever.

The Applicant further avers that the 1st Defendant/Applicant herein who took no part in the transaction culminating into this action is not a necessary or desirable party to this suit. That

1st Defendant/Applicant is a distinct legal entity different from the 2nd Defendant. No cause of action whatsoever has been disclosed in the Writ and statement of claim against the 1st Defendant/Applicant herein.

In line with law and procedure, written address was filed wherein;

Learned counsel submits, that for a court to have jurisdiction to entertain a matter or cause the following conditions must be present:-

- a. The proper parties are before the Court.
- b. The subject matter falls within the jurisdiction of the Court.
- c. The composition of the Court as to members and qualifications.

d. The suit commenced by due process of law and upon fulfilment of any conditions precedent to assumption of jurisdiction. *MADUKOLU VS. NKEMDILIM (1962)2 SCNLR 341* was cited.

Learned counsel further submits that where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to a nullity. *PEENOK INVESTMENT LTD. VS. HOTEL PRESIDENTIAL LTD. (1983)4 NWLR 122 and OSADEBAY VS. BENDEL STATE (1991)1 NWLR (Pt. 169) 525* were cited.

Learned counsel also submits that the 1st Defendant/Applicant in view of the tenancy agreement solely between the Claimant and the 2nd Defendant is not a necessary or proper party to this suit. This Honourable Court has the unfettered

power to strike-out the name of any party improperly joined as a party as that will affect the jurisdiction of the court one way or the other. Order 13 Rule 19 High Court Rules and *ADEFARASIN VS. DAYEKH (2007) ALL FWLR (Pt. 348) 91 at P. 937, Paras B – C, Ratio 9* were cited.

Learned counsel concludes by urging this Honourable Court to take judicial notice of the fact deposed to in Paragraph 3(i) – (viii) of the affidavit of Israel Istifanus in support of this application. The Bank of Industry Limited sued as the 1st Defendant herein, cannot be held liable for act of commission or omission (if any) as alleged in this case making this action against the 1st Defendant frivolous and incompetent.

Learned counsel prays this Honourable Court to invoke the provisions of Order 13 Rule 19 of the Rules of this Honourable Court to strike out the name of the 1st Defendant/Applicant who is not a necessary or proper party to this suit.

Upon service, Claimant/Respondent filed a 7 paragraph counter affidavit duly deposed to by Umar Mustapha.

It is the deposition of the Claimant that the depositions in the 1st Defendant/Applicant's affidavit in support of its motion are false as they do not represent the true status of the 1st Defendant with the 2nd Defendant. That a search at the Corporate Affairs Commission on the 1st Defendant by an independent legal practitioner Peace O. Arekhame reveals that the 1st Defendant has 99% (Ninety Nine percent)

share of the 2nd Defendant. That a certified true copy of the 2nd Defendant's Memorandum of Association filed at the Corporate Affairs Commission which confirms the search report referred to in paragraph 4 above is herewith attached and marked as Exhibit 'B1'. That a computer print-out from the 2nd Defendant's website <http://www.boitcnigeria.com.about-us/> on the 7th February, 2019 confirms that the 2nd Defendant is a subsidiary wholly owned by the 1st Defendant.

A written address was filed wherein sole issue was formulated for determination to wit;

Whether the 1st Defendant/Applicant is entitled to the grant of this application.

Learned counsel submits that the 1st Defendant/Applicant's application is premature at

this stage. The suit as presently constituted discloses enough and sufficient cause of action against the 1st Defendant/Applicant. A cursory look at the objection of the 1st Defendant reveals that the objectors want this Honourable Court to dismiss this suit in limine or strike out same because in its word *“for disclosing any (sic) cause of action against the 1st Defendant/Applicant”*.

Learned counsel argues that from the foregoing, it is evident that the presence of the 1st Defendant in this suit is proper, most especially as the 2nd Defendant is owned by the 1st Defendant for the benefit of the 1st Defendant's staff and the purpose of joining them in this suit is for them to be bound by the decision of the court. Also, the essence of joining a party is to avoid multiplicity of action.

See OSIGWE VS. PL MANAGEMENT CONSORTIUM LTD. (2009) 3 NWLR (Pt. 1128) 46 WRN 86 at 97 Ratio 10 was cited.

In consideration of the pleadings made by the Claimant and weighing the same side by side with Order 13 Rules 19 of the Rules of this Honourable court referred to by the 1st Defendant/Applicant, learned counsel argues that the 1st Defendant/Applicant misconceived the position of the law on where a case can be struck out for want of jurisdiction. Striking out a suit for want of jurisdiction with respect to the parties before the court, has to do with where the parties before the court are not properly constituted and unlike in the instant case wherein the ground of the 1st Defendant/Applicant's objection is allegation of

none disclosure of cause of action and lack of privity of contract.

Learned counsel further submits that paragraphs 3(ii), (vi), (vii) and (viii) of the 1st Defendant/Applicant's affidavit in support of their application are liable to be struck out for offending the provisions of Evidence Act on affidavit of Evidence. The depositions are merely conclusions and it is only the Court that is saddled with the power to draw conclusion after evaluation of evidence and ascription of probative value of evidence. Also, the depositions in sub-paragraph (iii), (iv) and (v) of paragraph 3 of the 1st Defendant/Applicant's affidavit in support of its motion are facts which the court should not determine at this stage as they border on the substantive matter. The law is trite that substantive

matter should not be determined at the preliminary stage. Section 115 (2) of the Evidence Act and *NYAME VS. STATE (2011) 6 WRN 1 at 72 LINE 30-40* were cited.

Learned counsel concludes, that if the subparagraphs (ii), (vi), (vii) and (viii) of paragraph 3 of the affidavit in support of the 1st Defendant/Applicant's application are struck out, and subparagraph (iii), (iv) and (v) of paragraph 3 of the 1st Defendant/Applicant's affidavit in support of its motion are discountenanced, there is nothing left in the affidavit to sustain the application and urge this Honourable Court to so hold and dismiss this application.

COURT:-

I have gone through the application filed by learned counsel for the 1st Defendant/Applicant for dismissal/striking out the name of the 1st Defendant/Applicant on one hand and the response of the Claimant/Respondent on the other hand.

The issue in contention as earlier enumerated is narrowed since it is geared towards challenging the striking out of the name of the 1st Defendant/Applicant.

Although jurisdiction is very important being the key of any Court, it should not be dangled like a piece of carrot with plan to trap the good intention of court, which is a temple of justice.

The wisdom is to ensure that a baby shall not be thrown away with the bathed water.

From the names of the Defendants and the Tenancy Agreement entered into, it can easily be gleaned that Bank of Industry's name is nowhere mentioned in the said Tenancy Agreement but Claimant chose to join them in view of their relationship with the 2nd Defendant who dealt with them. Though joinder is meant to ensure any Party likely to be affected by the outcome of a proceeding is made a party to avoid re-litigation, I am more than satisfied that joining the Bank of Industry in this situation is most unusual and unnecessary.

I say this because 2nd Defendant which dealt with the Claimant is a Limited Liability Company which can sue and be sued in its name.

The transaction is simpliciter a tenancy issue which I believe can be settled without necessarily dragging the 1st Defendant's name into the matter.

I am in agreement with the submission of counsel for the Defendants that the Court strike-out the name of the 1st Defendant once satisfied that 1st Defendant isn't a necessary party.

I am fortified by the authorities cited.. 1st Defendant is clearly not a necessary party and an Order striking-out its name shall be made. Same is hereby made.

In consequence of the afore-made Order, the name of the 1st Defendant joined as 1st Defendant is hereby struck-out.

Justice Y. Halilu
Hon. Judge

14th December, 2021

APPEARANCES

Martin I. Kalu, Esq. – for the Claimant.

I.D Bob-Manuel, Esq. – for the 1st and 2nd
Defendants.

3rd Defendant not in Court and not represented.