

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 26TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/234/2020

BETWEEN:

VMPD LIMITED

PLAINTIFF

AND

CHARLES OKORONKWO

DEFENDANT

RULING

In this Suit the Plaintiff, VMPD claims for the following Reliefs against the Defendant – Charles Okoronkwo:

- (1) **An Order of this Honourable Court directing the Defendant to deliver up possession of Five (5) Bedroom Semi-detached duplex, with Two (2) Bedroom Guest House and One (1) room boys quarters with the appurtenances situate at Plot N. 1265 Mohammed Isma Street Asokoro District, Federal Capital Territory, Abuja.**

- (2) **An Order of this Honourable Court directing the Defendant to pay the Claimant the sum of One**

Million, Five Hundred and Fifty Thousand, Two Hundred and Twenty Six Naira (₦1, 550,226.00) only being the arrears of the rent due and payable from the 23rd day of November, 2019 to 12th day of February, 2020.

- (3) An Order of this Honourable Court directing the Defendant to pay Mesne profit of the sum of Seven Hundred Thousand Naira (₦700, 000.00) only per month from the date the Notice to Quit expired to wit 12th February, 2020 till Judgment is delivered and executed.**

- (4) An Order of this Honourable Court directing the Defendant to pay the Plaintiff interest on the amount ordered in favour of the Claimant on the prevailing commercial banking interest rate from date of institution of this Suit until the date of Judgment and its execution and thereafter at the rate of 10% per annum until the Judgment Debt is finally liquidated, paid or satisfied.**

- (5) An Order of this Honourable Court directing the Defendant to pay the Claimant interest on the sum awarded above at the rate of 10% per annum from the date of Judgment until the Judgment Debt is finally liquidated or satisfied.**

- (6) An Order of this Honourable Court directing the Defendant to pay the sum of Six Hundred Thousand Naira (~~N~~650, 000.00) only to the Claimant being his full taxed cost of the prosecution of this Suit.

- (7) An Order of this Honourable Court directing the Defendant to put the Claimant property to wit: Five (5) Bedroom Semi-detached duplex, with Two (2) Bedroom Guest House and One (1) room boys quarters with the appurtenances situate at Plot N. 1265 Mohammed Isma Street Asokoro District, Federal Capital Territory, Abuja in a tenable and habitable condition.

Upon receipt of the Writ the Defendant filed a Preliminary Objection seeking that the Court should strike out the Suit for being fundamentally defective and incompetent. The Preliminary Objection is based on the following grounds:

That the Statement of Claim and other Processes in the Writ were signed “for” the law firm of “**Jimoh Musa & Co**” and as such it renders the Processes invalid and divested this Court of its jurisdiction to entertain same.

That the Witness Statement on Oath filed on the 3rd of September, 2021 is incompetent not being in line with the provision of Order 2 Rule 2 (2) High Court Rules 2015.

That there is no seal of Counsel that filed the Processes filed by the Plaintiff as provided in Order 2 Rule 9 FCT High Court Rules.

That the Claimant to have served the Defendant Seven (7) days Notice to Quit where the Lease Agreement between the parties provided for Thirty (30) days Notice.

That the Lease provided for an Arbitration before resorting to Court but that was not complied with by the Plaintiff before commencing this action.

The Defendant also filed in support of the Preliminary Objection an Affidavit of 6 paragraphs and a Written Address.

In the Written Address he raised 3 Issues for determination which are:

- (1) Whether the said Statement of Claim signed by the unidentified person for Jimoh Musa & Co. does not amount to the law firm of Jimoh Musa & Co. settling and signing the Statement of Claim and whether a law firm can sign Court Processes, especially Originating Court Processes as to validly activate the jurisdiction of the Court to entertain this matter.**
- (2) Whether the seal of a Legal Practitioner is not mandatory on all Originating Processes filed in this matter for them to be deemed properly filed and served.**

- (3) **Whether the condition precedent to the activation of this Court jurisdiction in this matter were fulfilled by Plaintiff having regard to the provision of the Lease Agreement between the parties and the Process filed in Court including the Witness Statement on Oath.**

On Issue No. 1, he submitted that validity of Originating Process is fundamental as the competence of the proceeding is a condition sine quanon to the legitimacy of the Suit.

That in this case, the Statement of Claim has a signature above the name of three (3) persons without any indication as to who among the three (3) persons signed the powers. That one of the person listed who might have signed for Jimoh Musa & Co. is not a lawyer as Esq. was not put against one of the names. That the Statement has fundamental problem which impugned on the jurisdiction of this Court to hear the case. That the identity of the person who signed the said Statement was not indicated exfacie the document.

Again, all the other documents were equally signed for Jimoh Musa & Co. which means it is the law firm on whose behalf the Statement was signed, settled and filed. That the identity of the person who signed the document was not disclosed. That it makes the Process incurably bad. He relied on the cases of:

Elaigwu V. Tong

(2016) 14 NWLR (PT. 1532) 165 @ 180

Raji V. Uni Ilorin

(2018) 15 NWLR (PT. 1642) 220 @ 235

That the document being signed for and on behalf of Jimoh Musa & Co. robs Court of its jurisdiction to entertain the Suit. That law firm cannot file a Process and cannot settle one and/or cannot win one. He relied on the case of:

SPDCN Limited V. Obonogina

(2018) 17 NWLR (PT. 1648) 221 @ 235

That the said Statement as signed is incompetent as the law firm is unknown to the law. That the entire Suit is incompetent too as the issue is not on technicality but is fundamental. He referred to cases of:

Okpe V. Fan Milk PLC

(2017) 2 NWLR (PT. 1549) 282 @ 306

Nnalimuo V. Elodumuo

(2018) NWLR (PT. 1622) 512 @ 563

They urged Court to hold that the Process was signed by an unknown person and as such incompetent and therefore Court has no jurisdiction to entertain same.

On Issue No. 2, on non-sticking the NBA Stamp on the Processes, they submitted that Process filed without NBA Seal is improper before the Court. That it cannot activate the jurisdiction of the Court as it is not initiated in accordance with a procedure of law. He referred to the case of:

Igbinedion V. Antia

(2018) 15 NWLR (PT. 1642) 262 @ 279 – 280

He urged Court to declare that the failure to affix the Seal means that the document was not properly filed and that the Suit was not initiated by a proper procedure.

On Issue No. 3, on the gross activating the Court jurisdiction on the service of Seven (7) days Notice instead of Thirty (30) days Notice as contained in the Lease Agreement, the Defendant submitted thus: that the Statement on Oath of Plaintiff Witness is incompetence because of the Seven (7) days Notice as against the Thirty (3) days Notice parties agreed.

That Statement on Oath did not accompany the Writ. That Writ was filed on 4th September and Oath filed on 3rd of November. That it therefore did not meet with the provision of Order 2 Rule 2 (2) FCT High Court Rules. That it makes the case not to be initiated by a procedure permitted by law. That the Court should hold that the document is incompetent.

That the provision of the Lease Agreement on the Thirty (30) days Notice is sacrosanct. That Claimant's failure to abide by the Agreement makes the Suit incompetent.

On the Issue of Plaintiff not exploring Arbitration first before litigation as contained in the Lease Agreement, the Defendant submitted that since parties inserted arbitration clause on the Agreement, the Court is duty bound to give effect on that provision of the Agreement. He referred to the case of:

Muonanu V. Nwaemelu
(2021) 3 NWLR (PT. 1763) 216 @ 240

He urged Court to decline jurisdiction to entertain the Suit based on the above. He urged the Court to uphold the Preliminary Objection and strike out the Suit. That Plaintiff can start the Suit afresh if she wishes.

In a fiery opposition the Plaintiff filed a Counter Affidavit of 5 paragraphs and a Written Address.

In the said Written Address she raised one Issue for determination which is:

“Whether having regard to the facts of this case and its circumstance the Defendant has shown any condition procedure that would warrant the Court to strike out the Suit for being fundamentally defective and incompetent.”

They submitted that Court should resolve the Issue in the negative and discontinuance the Defendant/Applicant application filed on 18th October, 2021.

That Plaintiff’s case is proper and Court has to exercise its jurisdiction in favour of the Plaintiff.

That a look at the Writ showed it was issued and signed by Jimoh Dayo Musa. That all other Processes were so signed as necessary. That Defendant failed to show which document was not so signed. That the stamp of Jimoh Dayo Musa was also affixed in the document. That from all indication, the said Originating Processes were signed by a Legal Practitioner and that the

Processes complied with the extant laws and decided cases.

That the Defendant is a Tenant at will as his tenancy has expired by effluxion of time. That Plaintiff served the appropriate Notice statutorily. That even if the Seven (7) days Notice served on Defendant is faulty, he should not take advantage of it. They referred to the cases of:

**Odutola V. Papersack Nigeria Limited
(2006) 18 NWLR (PT. 1012) 487**

**Pillars Nigeria Limited V. Deshordes
(2021) 12 NWLR (PT. 1789) 122 @ 144**

That this Suit is competent. It was initiated by due process of law and condition precedent merit and it was not an abuse of Court Process. They urged Court to discontinuance the application as same is lacking in merit.

In response to the Counter Affidavit the Defendant filed a reply on point of law. He raised an Issue therein replying on the Writ Affidavit. He said that the way the Claimant signed Written Address is radically different from the way all other Processes was signed. That it is an admission that the Statement of Claim was not properly signed.

That the Counter Affidavit did not contradict the facts on Affidavit in the Preliminary Objection. And that the paragraphs of the Counter offends the provision of the Evidence Act 2011. He relied on the case of:

Zakari V. Mohammed

(2017) 17 NWLR (PT. 1594) 239 @ 240

Jukok International Limited V. Diamond Bank PLC

(2016) 6 NWLR (PT. 1507) 55 @ 111

That paragraph 4 b – d & h of the Counter Affidavit contains legal argument and offends **S. 115 (2) Evidence Act 2011.**

He urged Court to strike out the said paragraph of the Counter Affidavit.

On failure of the Defendant to exhibit the Process in support of his Preliminary Objection, the Defendant submitted that since the document is already before the Court, the parties relying on it need not exhibit same before Court can rely on it.

That the reliance of Plaintiff on amended Process cannot avail them in responding to the Preliminary Objection on improper filing of the claims as it is separate from the Writ. That even if the Writ was amended that Plaintiff should have responded to the Preliminary Objection. That where a Court Process is defective, it cannot be amended, and where Court had inadvertently granted leave to amend it, an amendment will be a nullity amounting to putting something on nothing.

That the amendment only corrected the NBA Stamp but was still signed for Jimoh Musa & Co. That cases cited by Plaintiff are not applicable.

Odufola V. Papersack Supra

Pillars Nigeria Limited V. Deshordes Supra

That they have nothing to do with the Issues raised in the Preliminary Objection on issue of Thirty (30) days Notice and signature of an unidentified person. He urged Court to discontinuance the submission of Plaintiff and those cases.

He urged Court to hold that Plaintiff did not respond to issues in the Preliminary Objection. He urged Court to strike the Suit out to want of jurisdiction.

COURT:

The tripod upon which this application – Preliminary Objection stands are that the Statement of Claim was signed by an unidentified person who is not a lawyer and it was signed for and on behalf of the Plaintiff by Jimoh Musa & Co. This Court holds that it is not true.

A look at the original Writ shows that it was settled, signed and filed by Jimoh Musa. It was not signed by the Chambers or Law firm of Jimoh Musa & Co. as the Defendant Counsel has deceptively portrayed.

The document also has the NBA Stamp contrary to the assertion and wrong allegation of the Defendant Counsel which is the 2nd ground upon which the Preliminary Objection was anchored. There is nothing like “for” as Defendant Counsel falsely alleges.

As the Plaintiff Counsel put it, the Defendant Counsel was busy fishing out on issue of technicality and failed to notice that the Suit was properly filed, the Statement

of Claim properly signed by a Legal Practitioner of repute.

It is imperative to point out to the Defendant Counsel that Statement of Claim just like the Writ is signed by the Counsel to the Plaintiff and not by the Plaintiff himself as he stated in his Reply on Points of Law. The Writ and Statement of Claim complied with the provision of the Rules of this Court, Order 2 Rule 2 (2) and Order 2 Rule 2 (9) contrary to what the Defendant Counsel claims.

It is imperative to state that the Defendant/Defendant Counsel wasted his time and resources of the Defendant citing laws and cases to show that the Defendant was not served 30 days Notice. It is the view of this Court that at Preliminary Objection, the Court is not expected to delve into issues in dispute at this stage. This Court will not do so as the Defendant want the Court to do in this Preliminary Objection. Doing so is not the right procedure permitted by law. So where a Preliminary Objection goes into the issue in dispute in that the Court determining that will mean determining the issue before parties and heard the Court will not take judicial notice of it serving or not serving the proper Notice as raised in the Preliminary Objection shall not be entered into until the matter is set to be heard.

The cases cited by the Plaintiff Counsel are relevant in this case at this stage as far as the issue of competency and jurisdiction are concerned. It is wholistically relevant.

The Supreme Court had reiterated that where a party did not or failed to do certain act in the cause of filing a Process, that it will not vitiate or nullify the matter. That it can only ensure that such party does so subsequently once it does not affect the Core issue in dispute.

In this case, the issue in dispute is on the failure of the Defendant to vacate the premises demised to him by the Plaintiff. So not having NBA Stamp or the signature being irregular or the Writ being signed by a person who has no "Esq." after his name will not make the Suit incompetent and will not also make Court to decline jurisdiction to entertain the Suit when the act in dispute is within the jurisdiction of this Court and the Court has the requisite qualification among other things.

Again, once a Writ is amended with all the accompanying Processes, it becomes new. So also Statement of Claim. Old Process dies off and the new replaces it. No Court can take two (2) Writ or Statement in a Suit where there is an amendment.

Parties should not use Preliminary Objection to delay a case as many do especially where the matter concerns Tenancy and Vacating action on recovery on premises.

From all indications, going by the grounds upon which this Preliminary Objection is anchored, it is vividly clear that the Defendant had and intentionally filed this Preliminary Objection in order to waste the time of this case as the said Preliminary Objection is froth with

unnecessary Technicality and frivolities which lead to nowhere.

The 19 pages Written Address by the Defendant Counsel in support of the Preliminary Objection is an abuse of Court Process in that the three (3) Issues /grounds which he anchored the Preliminary Objection on are what should have been done in a page or two. Citing and misciting Court decisions are no longer in vogue. More so, when such references are out of place and are based on little issues as nomenclature of not having “Esq.” on the name of a person that signed the document and where the submissions are on issue which are obviously not true and which can be dealt with while the main issue in dispute goes on. Repeating submission in both Written Address and Reply on Points of Law is equally very bad. After all, winning a case is not based on many cases cited. They are based on merit and few but strong points which hit directly at the issues in dispute not on misspelling or surnatism.

Again, contrary to the repeated assertion and false submission made by the Defendant Counsel there is no Arbitration Clause in the Tenancy Agreement. There is only a paragraph – paragraph 3 (d) of Tenancy Agreement that states that parties shall mediate in good faith in the event of a dispute in respect of the Lease Agreement. That is to be done towards resolving the Issues before going to Court. There is no doubt that parties mediated before they came to this Court. That is before the Plaintiff instituted this action. The Defendant

repeatedly stating that there was Arbitration Agreement which Plaintiff failed to explore is not true. There is no Arbitration Clause in the Lease Agreement.

Instituting this action as the Plaintiff did cannot violate a non-existing Arbitration Clause. So on that point and on the several other technical points and technical reasons on which the Preliminary Objection is based makes the Preliminary Objection very incompetent and frivolous. It makes it unmeritorious too.

The said Preliminary Objection is a ploy to deceive and delay the quick dispensation of justice in this case. It is therefore **DISMISSED**.

This is the Bench Ruling of this Court.

Delivered today the ____ day of _____ 2021 by me.

K.N. OGBONNAYA
HON. JUDGE