

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

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/2884/2020

MOTION NO. FCT/HC/M/3354/2020

DATE: 13/12/2021

BETWEEN:

NOAH O. AGADA.....CLAIMANT/RESPONDENT
SUING THROUGH HIS LAWFUL ATTORNEY
NATHANIEL AMEH

AND

MATTHEW APOSO.....DEFENDANT/APPLICANT

APPEARANCES:

Oke Emmanuel Esq for the Claimant.

Jeffery Ogbaji Esq holding brief of A. C. Igbakwa Esq for the Defendant.

RULING

Before this Honorable Court is a notice of Preliminary Objection dated 30th day of March 2020 and filed on 1st April 2020 with motion number M/3354/2021. The Notice of Preliminary Objection is accompanied by a nine paragraphed affidavit deposed to by one Mathew Aposo, the Defendant/Applicant in this suit and documents marked as Exhibits A and B respectively. The grounds predicating this Preliminary Objection are as follows:

- “(1). That the Power of Attorney which forms the basis of the locus standi of the Defendant (Attorney) was not properly notarized and therefore invalid.***
- (2). That the said Power of Attorney dated 18/11/2018 was attested to on the same date without payment of the necessary fee.***
- (3). That the fact that the Claimant wrote on the said Power of Attorney that the oath fee was paid on the 20/11/2020 alone admits of the fact that the purported attestation that was done 2 years ago is invalid.***
- (4). That there is nothing on the face of the said Power of Attorney i.e. fee paid and receipt number, to show that the oath fee was paid.***
- (5). That the Claimant Nathaniel Ameh does not have the locus standi to institute this action”.***

In compliance with the rules of the court, the Defendant/Applicant filed a written address dated 30th day of March, 2021 and filed on the 1st day of April 2021. In the Written Address, the Defendant/Applicant raised two issues for determination to wit:

- “(1). Whether this suit is competent in view of the defective Power of Attorney through which authority the Claimant/Respondent filed this suit.***
- (2). Whether this honorable court has jurisdiction to entertain this matter.***

In arguing issue one, Counsel submitted that this suit is incompetent and liable to be struck out, while relying on the cases of ***ILLIYASU V. SHUWAKI & ORS (2009) LPELR -4305 (CA) and UAC LTD V.***

MCFOY (1961)3 ALL E.R 1160, Counsel submitted that one cannot place something on nothing. In his further submission, Counsel stated that there's nothing in the document that shows that oath fee was paid for the notarization and commissioning of the document, no receipt number and amount paid is contained therein. That it is lawfully impossible for the Commissioner of Oath to have given legality to a document in 2018 to be paid two years after.

In conclusion, Counsel submitted on behalf of the Defendant/Applicant that while there may not be a mandatory requirement for attestation of a Power of Attorney, when a party chooses to do so, he should validly do so and not make a mockery of the long-aged practice of our legal system. Consequently, counsel urged the court to hold that this suit is incompetent.

In arguing issue two, Counsel argued that the absence of locus standi of the Claimant/Respondent as in the instant case robs the court of its jurisdiction to entertain this suit. Reliance was placed on the case of **CHAIRMAN & ORS V RASHEED (2014) LPELR- 23594 (CA)**.

To this end, counsel urged this honorable court to hold that this suit is incompetent and strike out same for want of jurisdiction.

In opposing the Preliminary Objection, the claimant/respondent filed a reply address dated 1st July 2021 and filed same day wherein he raised two issues for determination, to wit:

- (1). Whether not writing the amount paid and the receipt number on the body of the power of attorney renders same incompetent thereby denying this court of jurisdiction.***
- (2). Whether the error of the commissioner for oaths in writing 2020 on the foot of the power of attorney renders same incompetent and robs this court of jurisdiction to hear this matter.***

In arguing issue one, Counsel submitted that the power of attorney is competent and proper before the Court, that nothing robs this Honorable Court of jurisdiction to entertain this suit and that the Preliminary Objection is ill conceived with aim of wasting the time of the court.

It is the contention of the learned counsel that the Defendant/Applicant did not supply this Court with the law requirement and the rule of Court that was flouted by the non-writing of the amount paid and the receipt number on the body of the Power of Attorney.

Therefore, counsel submitted that the Power of Attorney is valid. Reference was made to Sections 100 and 150 of the Evidence Act, 2011 and the case of ***GAABA V LOBI BANK (NIG) LTD (2003) FWLR (PT 173)106.***

Finally, on issue one, counsel submitted that the Power of Attorney is competent hence this court has the jurisdiction to entertain the claimant's suit.

On issue two, Counsel submitted that, writing of the date on the Power of Attorney is a mere surplusage which does not affect the validity and authenticity of the document. Reference was again made to ***GAABA V LOBI BANK (NIG) LTD (SUPRA).***

On the whole, Counsel urged this court to discountenance the Notice of Preliminary Objection of the Defendant/Applicant and hold that this court has jurisdiction to entertain this matter.

I have perused carefully the Notice of the Preliminary Objection, the reliefs sought the grounds upon which same was predicated, the affidavit in support, the annexures attached therewith and the Written Address in support. I have equally perused carefully the reply address in opposition to the Preliminary Objection. Therefore, in my humble view, the issue for determination is thus:

“Whether this Honourable Court has jurisdiction to entertain this suit”.

First and foremost, it should be reinstated that, jurisdiction is a fundamental issue and goes to the root of the matter, as such, it must be settled before the court can take further steps to adjudicate a matter. On this note, I refer to the case of ***REGISTERED TRUSTEES OF IMPORTERS ASSOCIATION OF NIGERIA & ORS v. OKEREKE (2019) LPELR-46967(CA)*** PER STEPHEN JONAH ADAH, JCA of page 9-9 paras B-E where the court held thus:

“...The issue of jurisdiction is so important that where in fact the Court has no jurisdiction with respect to a matter before it, the active support or ignorance or silence of the parties to that fact cannot vest the Court with the requisite jurisdiction which is the essential pre-condition to the exercise of judicial powers...”

See also the cases of ***MADUKOLU V. NKEMDILIM (1962) 2 SCNLR 341; AND IJEBU-ODE LG. V. ADEDEJI (1991) 1 NWLR (Pt. 166) 136.***

Moreso, it is settled law that in determining jurisdiction of Court, it is the claims of the Claimant before the Court that will be examined to determine the jurisdiction of the court. In this regard, see the case of ***NAS V ADESANYA (2003) 2 NWLR (PT 803) 97 @ 106, PARAS F-G*** where the court held thus:

“...at the risk of over emphasising the point we repeat that it is a fundamental principle of law that, it is the claim of the Plaintiff which determines the jurisdiction of a court entertaining the same, this is because only too often this point is lost sight of by court of trial, as has happened in the instant case...”

At this juncture, the focal point of this Preliminary Objection is whether or not this Court has jurisdiction to try this suit reason being that, the Claimant/Respondent failed to write on the Power of Attorney, the amount paid for oath fee and the date the attestation was made is different from the date of payment of the oath fee.

Indeed, compliance with the provision of the Oaths Act is fundamental. However, nothing in the Oaths Act states that the amount paid for oath fee must be written on every public document. I believe the whole essence of the oath is to ensure that the deponent makes a sincere and honest deposition. In this regard, see the case of ***ABLEEM PETROLEUM CO. (NIG) LTD v. AMCON(2020) LPELR-50334(CA) Per ABUBAKAR DATTI YAHAYA, JCA (Pp 25 - 27 Paras E – F***, where it was held thus:

"...There is compliance with Section 13 of the Oaths Act where the statement made on oath:- "...contains the words that 'I make this Statement on Oath in good faith believing its contents to be true and correct and in accordance with the Oaths Act..."", because the whole essence of Section 13 of the Oath Act "is to ensure that the deponent is solemn and sincere in making the declaration and in the firm belief that the contents of the deposition are true and correct in accordance with the Oath Act..."

Furthermore, section 150 of the Evidence Act lays a presumption that every document purporting to be a Power of Attorney has been duly authenticated by a notary public. For clarity, I will reproduce the provision of section 150 of the Evidence Act hereunder for ease of reference. It provides thus:

"The Court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public or any Court, Judge, Magistrate, Consul or representative of Nigeria or as the

case may be, the President was so executed and authenticated.”

From the provision quoted above, the most fundamental thing is to ensure that the said attestation is true and was made in the presence of the commissioner of oath or any person authorised to administer oaths.

This position of the law was further buttressed in the case of **UNITY BANK v. ZAMFARA STATE COMPULSORY FREE UBEB (2020) LPELR-52782 (CA), Per ABUBAKAR MAHMUD TALBA, JCA (Pp 16 - 19 Paras B - D)**; where the court held thus:

“... For the Court to accept the written depositions as proof of the facts it contains, it must be made on oath before a commissioner for oaths or a person duly authorized to administer oaths. By the provisions of the Evidence Act, where there is evidence that the depositions were not sworn before a person duly authorized to administer oath, such deposition would be defective and the Court would have to discountenance it. However, by virtue of Section 82 of the Evidence Act 2011, the signature of a person authorized to administer oath, on the written deposition is prima facie evidence that the deposition was duly sworn before the person authorized to administer oaths...”

See also the case of **MARAYA PLASTIC INDUSTRIES LTD V INLAND BANK (NIG) PLC (2002) 7 NWLR (PT 765)109**

In the instant case, the Defendant/Applicant has not in any way shown that the document, i.e. Power of Attorney was not duly sworn before a Commissioner for Oath. Therefore, it is my humble view that the issue of date and writing the amount of oath fee paid by the Claimant/Respondent is a mere procedural irregularity.

In that respect, I also refer to the case of **ODOM & ORS v. PDP & ORS(2015) LPELR-24351(SC), Per CLARA BATA OGUNBIYI, JSC (Pp 56 - 56 Paras A - B)** where it was held thus:

"...where an irregularity is substantive in nature, it renders a process incompetent; where however it is procedural, the effect is not to operate for purpose of defeating the course of justice, because the court is set out to do justice..."

To this end, it is settled principle of law that courts of law should not be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. In support of this, see the case of **OBONG V EDET & 1 OR (2018) LPELR - 8454 (CA)** where it was held by Per OMOKRI (JCA) that:

"...The hay days of technicalities are now over the courts are now more interested in doing substantial justice. The instant case on appeal is an example of what happens when a court relies on technicalities to determine a matter. The duty of courts is not to adhere to technicalities at the expense of justice. Reliance on technicalities in determining sensitive matters has always been frowned upon by courts. It only prevents the other side from being heard. In a situation where a party is in prison custody, to shut him up does much harm to the course of justice..."

See also the case of **FAMFA OIL LTD V. A.G OF THE FEDERATION (2003)18 NWLR (PT 852) 453**

In the final analysis, it is my considered opinion that failure to write the amount paid and attach the receipt of payment on the power of attorney for the commissioner for oath is a mere irregularity, I so hold.

In view of the above, I am of the considered opinion that the Claimant/Respondent has locus standi to institute this matter. I so hold.

Consequently and without further ado, I hereby resolve the issue for determination in favour of the Claimant/Respondent against the Defendant/Applicant and hold very strongly that this Honourable Court has unfettered jurisdiction to hear and determine this suit. In that regard, this Preliminary Objection lacks merit and is hereby dismissed in its entirety.

HON. JUSTICE S.U. BATURE
13/12/2021