

**THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY**

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU

ON TUESDAY 16th DAY OF NOVEMBER, 2021

SUIT NO: FCT/HC/CV/3493/2020

MOTION NO: FCT/HC/M/3014/2021

BETWEEN:

- (1) GARGIL GLOBAL LIMITED
(2) CHIEF DENNIS KWUBAKOTO OKANIME } .. CLAIMANTS/
RESPONDENTS.

AND

- (1) ABUJA ENVIRONMENTAL PROTECTION BOARD
(2) ABUJA ENVIRONMENTAL PROTECTION BOARD (MONITORING & ENFORCEMENT UNIT)
(3) ABUJA METROPOLITAN MANAGEMENT COUNCIL
(4) FEDERAL CAPITAL DEVELOPMENT AUTHORITY
(5) HONORABLE MINISTER OF THE FEDERAL CAPITAL TERRITORY
(6) DR. HASSAN ABUBAKAR
(7) ILIYA DUDU RIBAH } DEFENDANTS/
RESPONDENTS.

(8) **ALI MOTORS NIGERIA LIMITED..... DEFENDANT/
APPLICANT.**

RULING

By a Notice of Preliminary Objection the 8th Defendant in this matter is praying for the following orders.

- (1) An order of this Honourable Court striking out the Claimants' suit for being incompetent.
- (2) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the Notice of Preliminary Objection was brought are:-

- (1) The 1st Claimant is not a juristic person or Limited Liability Company duly registered under the Companies and Allied Matters Act Cap C20 LFN 2004 or the Companies and Allied Matters Act 2020 and therefore lacks the capacity to sue/maintain the present suit as presently constituted against the 8th Defendant/Objector.
- (2) It is only a juristic person or Limited Liability Company duly registered under the Companies and Allied Matters Act Cap C20 LFN 2004, or the Companies and Allied Matters Act 2020 that can sue or be sued in its corporate name.
- (3) The 2nd Claimant in this suit has no title to the Res in this suit and therefore lacks the Locus Standi and capacity to co-institute this suit as presently constituted against the 8th Defendant/Objector.

- (4) The 1st and 2nd Claimant lack the Locus Standi and legal capacity to institute this suit as presently constituted against the 8th Defendant/Objector in this suit.
- (5) The 1st Claimant in this suit Gargil Global Ltd, not being an incorporated Company or a natural person, lacks power to hold land, lacks perpetual succession and cannot sue or be sued in its unregistered name.
- (6) This suit as presently constituted is incompetent.
- (7) This Court lacks the jurisdiction to entertain this suit as it is presently constituted.

In support of the Notice of Preliminary Objection is an affidavit of 17 paragraphs with 4 annexure marked Exhibits A, B1, B2 & C deposed to by one Barrister Iberi Joy Ogidi and a Written Address wherein two issues were formulated for determination, to wit.

- (i) Whether Suit Number **FCT/HC/CV/3493/2020** is not incompetent as it is presently constituted.
- (ii) Whether this Honourable Court has the jurisdiction to entertain this suit as its presently constituted.

At the hearing of this application on the 30/9/2021 Learned Objector's Counsel relied on all the paragraphs of the affidavit and Exhibits attached thereto and adopted the address as their legal argument in support of the application.

In the Written Address, Learned counsel argued the issues succinctly in urging the Court to grant the application and strike out this suit for being incompetent.

I shall return to relevant paragraphs of the affidavit in support of the application later in this ruling, where the need arises.

In response to the Notice of Preliminary Objection the Claimants/Respondents filed a Counter Affidavit of 7 paragraphs with one annexure marked as Exhibit UC1. Respondents also filed a Written Address and adopted the issues for determination raised by the Objector.

The Learned Respondent's Counsel placed reliance on the paragraphs of the affidavit and adopted the address as their legal arguments in opposition to the application.

In response to the Counter Affidavit and Written Address of the 8th Defendant/objector, the Objector filed a 7 paragraph further and better affidavit with two annexures attached thereto and marked Exhibits D1 and D2 respectively. The Objector also filed an address on point of law.

Learned Objectors' Counsel places reliance on the further and better affidavit and adopt the address as their argument on points of law.

It should be noted that though served the process, the 1st – 7th Defendants did not file any papers.

I have carefully read and considered the affidavits before the Court and argument canvassed by both Counsel for the Objector and the Claimants/Respondents.

The issues before the Court are as captured by both parties to this in their respective addresses and for clarity I shall reproduce same below, to wit.

- (i) Whether Suit Number **FCT/HC/CV/3493/2020** is not incompetent as it is presently constituted.
- (ii) Whether this Honourable Court has the jurisdiction to entertain this suit as it is presently constituted.

In this application, it is the contention of the Objector that the 1st Claimant is not a juristic person and therefore lacks the capacity to sue. It is further argued that it is a fundamental different that cannot be cured by amendment of the Writ of Summons. They relied on the decisions in **NIGERIA FOOTBALL COACHES ASSOCIATION V. LALOKO (2003) FWLR (Pt.144) 482, AGBONMAGBE BANK LTD V. GENERAL MANAGER G. B. OLIVANT (1961) ALL NLR 116, OKECHUKWU & SONS V. NDAH (1967) NMLR 368. EMECHITA V. OGUERI (1996) 5 NWLR (Part 447) Pg.228.**

Paragraph 4 of the supporting affidavit is most instructive in support of this contention and for clarity is reproduced here under.

“That I have read all the processes filed by the Claimants in this suit and I know as a fact that the 1st Claimant is not a juristic person or Limited Liability Company duly under the CAMA ACT C20 LFN 2004 or the CAMA 2020 and therefore lacks the capacity to sue/maintain the present suit as presently constituted against the 8th Defendant/Objector.” and

Paragraph 7 states

“That I know as a fact that GARGIL GLOBAL RESOURCES LTD the Registered Limited Liability Company whose records exist with C.A.C, Abuja is different and distinct from GARGIL GLOBAL LTD,

the 1st claimant in this suit which has no record of registration or existence with the C.A.C.”

Exhibit B1 attached to the affidavit is the Certificate of Incorporation of GARGIL GLOBAL RESOURCES LTD with RC 691204 dated 15th May 2007.

Exhibit C, D1 & D2 are Approval to develop a recreational Centre, site plan and Recertification Form respectively all public documents in the name of GARGIL GLOBAL LTD (Name of 1st Claimant).

The Claimant/Respondent in their Counter Affidavit admitted paragraphs 1-3 of the affidavit in support of the Preliminary Objection and state further in 3b thus:-

“That paragraphs 4, 5, 6, 7 & 8 are false and in addition, was further stated that the Claimant has a juristic personality and Registered with the C. A. C, with Registration No. 691204 dated 15/5/2007, the Claimant name was mistakenly written and stated, instead of GARGIL GLOBAL RESOURCES LTD.” and incorrect name was written “GARGIL GLOBAL LTD” which is a misnomer in law and an application for Amendment has been filed and moved.....”

Exhibit UC1 attached to the Counter Affidavit of the Respondent is same with Exhibit B1 (Certificate of Incorporation of GARGIL GLOBAL RESOURCES LTD).

It is the contention of the Respondents that the 1st Claimant is a juristic personality and it was a clear case of misnomer in law and the Court ought to allow for an amendment. Counsel relied on the decision in **REGISTERED TRUSTEES OF MASTER’S VESSEL MINISTRIES (NIGERIA) INCORPORATED V. EMENIKE &**

ORS (2017) LPELR-42836 (CA). APGA V. UBAH & ORS (2019). OMISORE V. AREGBESOLA (2015) 15 NWLR (Pt.1482); 205.

The question that comes to mind is this, is this mistake in stating the 1st Claimants true name or something else. Because if it a honest mistake then case law will apply making it a misnomer wherein the Court will allow for an amendment. However, I would rather believe that it was not a mistake, as the 1st Claimant has always been referred to and in some cases referred to itself as “GARGIL GLOBAL LTD” as can be seen in the documents attached to the Writ of Summons including Exhibits C, D1 & D2.

I agree with the Objector that this is a fundamental defect which cannot be wished away even by an amendment to the Originating Process.

Also it is clear to me that the 2nd Claimant as Managing director of the 1st Claimant is an agent of the 1st Claimant (an in this case a principal found to be non-existent) cannot sustain or maintain this action with the principal or as an agent and therefore no title to Res in this suit lacks the Locus Standi and capacity to constitute this matter. See: **OSEIGWE V. PSPLS MANAGEMENT CONSORTIUM LTD & ORS (2009) LPELR-2807 (SC).**

In line with the foregoing findings I resolve the 1st issue in favour of the Objector. The Claimants lack the capacity to institute this action as presently constitution.

And consequent upon the above finding, it robs this Court of the jurisdiction to hear and entertain this suit as constituted.

Accordingly the Preliminary Objection succeeds and matter is hereby struck out for lack of competence robbing this Court of jurisdiction.

**SIGNED
HON. JUDGE
16/11/2021.**

LEGAL REPRESENTATIVE

- (1)** A. U. Umoso with J. C. Adediran (Mrs) for 8th Defendant.
- (2)** Arome Onaji holding the brief of I. L. Uudu.