

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS  
COURT: 28**

**DATE: 15<sup>th</sup> DECEMBER, 2021**

**FCT/HC/GWD/CV/39/2021**

**BETWEEN:**

1. BELWIGG LIMITED }  
2. NURA BASHIR SULAIMAN } **APPLICANTS**

**AND**

1. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) }  
2. GUARANTY TRUST BANK PLC } **RESPONDENTS**

## **RULING**

The 1<sup>st</sup> Respondent/Applicant brought this application (preliminary objection) dated and 13<sup>th</sup> April, 2021 and filed on the 17<sup>th</sup> June, 2021 praying for the following orders:-

1. An order of this Court striking out this suit for want of jurisdiction.
2. And for such order(s) as this Court may deem fit to make in the circumstances.

The grounds upon which the application is brought vis:-

1. That application is grossly incompetent as it is jointly brought by two separate person contrary to the provisions of the Fundamental rights (Enforcement Procedure) Rule.
2. That Court therefore lacks jurisdiction to entertain this suit.

In support of the preliminary objection the 1<sup>st</sup> Respondent filed an affidavit of 5 paragraphs and a written address.

The affidavit relied upon by the 1<sup>st</sup> Respondent contain inter alia the following facts:-

That the received the Applicants process on the 26<sup>th</sup> March, 2021 with the principal relief bordering on arrest, detention and freezing of Applicants account and an order of perpetual injunction restraining the 1<sup>st</sup> Respondent from investigating the Applicant. The said suit pursuant to the provision of the chapter iv of the 1998 Constitution (as amended) the African Charter on Human and Peoples Rights Act and the Fundamental Right Enforcement Procedure Rules 1<sup>st</sup> Respondent states that the Applicant suit is filed by more than one person to enforce Rights under the Fundamental Right Enforcement Procedure Rules. That the suit has two separate applications. The 1<sup>st</sup> being Belwgg limited and the 2<sup>nd</sup> being Nura Basher Sulaima. That the right to enforce fundamental Rights is an individual right therefore the Applicant suit is in competent and as such, this Court lacks jurisdiction.

In their written address Counsel on behalf of the 1<sup>st</sup> Respondent raised a one issue for determination.

“Whether two Separate person can jointly bring an application for the enforcement of fundamental right having regards to the provision of see 46 (1) of the 1999 Constitution and order 4 rules 1 of Fundamental Right Enforcement Procedure Rules 2009. Counsel on behalf of the 1<sup>st</sup> Respondent answered this in the negative and states that the provisions of section 46 (1) 1999 Constitution (as amended) and order 4 rule 1 Fundamental Right Enforcement Procedure Rules 2009 contemplate personal action and not joint action. The operating word “any” used denotes singular and does not admit plurality in any form Counsel cited the case of ***KPORHAROR & ANOR VS YEDI & ORS (2017)***

***LPELR 42418 (CA)*** . same concludes that the suit is incompetent therefore the Court lacks jurisdiction to entertain this suit and same urge the Court to strike out on the other hand the 2<sup>nd</sup> Respondent also filed a notice of preliminary objection dated 12<sup>th</sup> July, 2021 and filed on the 13<sup>th</sup> July, 2021 praying the Court for the following:-

1. An order dismissing/striking out this suit for being incompetent and thereby rob's the Court of jurisdiction to determine the case.
2. And for such further order(s) as this Court may deem fit to make in the circumstances.

The ground upon which the application is brought are:-

- i. The originating motion in this suit against the Respondent particularly 2<sup>nd</sup> Respondent is incurably defective, invalid, null and void and as such render the suit incompetent and deprive this Honorable Court jurisdiction.
- ii. The originating motion being one that bother on the enforcement of the fundamental rights of the Applicant cannot be taken out jointly by the Applicant as prescribed by section 46 (1) of the 1999 Constitution (as amended) and order 4 (1) of the Fundamental Right Enforcement Procedure Rules 2009.

In their affidavit attached 2<sup>nd</sup> Respondent deponent one Margret E. Ogbonnah a legal practitioner in the law firm of Counsel to the 2<sup>nd</sup> Respondent avers that the Applicants brought this suit jointly against the Respondents in enforcing fundamental right and should be sought individually. Going by the parties of section 46

(1) and order 4 Rules 1 of the 1999 Constitution that the Court lacks jurisdiction to entertain the suit and that same should be struck out. In their written address Counsel on behalf of the 2<sup>nd</sup> Respondent raised a sole issue for determination see **MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587 KIDA VS OGUNMALI (2006)13 NWLR (pt.997) 372 Q 394 E-F. See also KPORI & ANOR VS YEAI & 2ORS (2017) LPELR 42418 CA.** Counsel finally apply that the proper order is for the case to be dismissed .on the otherhand the Applicant filed a reply as to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's preliminary objection dated and filed on the 22<sup>nd</sup> September, 2021 wherein they submit that in a more recent case of **MAITANGARAN & ANOR VS DANKOLI & ANOR (2020) LPELR 52025.** There is no express provision in the Fundamental Right Enforcement Procedure Rules permitting or forbidden such joinder of cause action that order xv rule 49 the rules permits where in the cause of any fundamental right proceedings any situation arise for which there is an appearance to be no adequate provision in the rules. The civil procedure rules of the Court for the time being in force shall apply and that order 9 rule 1 of the Federal High Court(Civil Procedure) Rules no 9 permits.

*"All persons may be joined in one action as Plaintiff in which any right to relief is alleged to exist whether jointly or severally-----"*

Applicant Counsel cited **HYSAN NIG LTD VS IJEOMA (2008)11 NWLR (PT1097) 18 NGUN VS MOBIL PRODUCING NIG LTD (2013) LPELR 20197 CA.** Counsel further submit that where the Court is faced with two conflicting

decision of the Supreme Court on an issue the Court is bound to follow the latest see ***DAHIRU VS KAMALE (2005) 9 NWLR (pt927) page 8.*** Counsel urge the Court to dismiss the preliminary objection filed as lacking in merit. The position of all the Counsel aforesaid for and against is being considered by this Court. An action under the Fundamental Right Enforcement Procedure Rules is a peculiar action it is a kind of action which may be considered as *sin genere* it is a clear in a class of its own though with closer affinity to a civil action than a criminal action. The available remedy by this procedure is to enforce the constitutional right available to citizen which had contravened by another person or persons.

Fundamental rights are also basic and inalienable to every man that they have been enshrined directly in the Constitution see chapter iv 1999 Constitution see ***RAYMOND DANGOTE VS CIVIL SERVICE COMMISSION, PLATEAU STATE & ORS (2001) 4 SCNJ page 131.*** The right to approach a Court to enforce a fundamental right is conferred by section 46 91) a7 (2) of the 1999 Constitution of the Federal Republic of Nigeria. The same provision is made in order 4 Rule1 of the Fundamental Right Enforcement Procedure Rules 2009.

The adjective used in both provision is qualifying who can apply to a Court to enforce a right is "Any" which denote singular and does not admit pluraties in any form. It is individual rights and not collective rights that being talked about. It is patent to note that in ***R.T.F.T.C.I N VS IKWEICHEIGH (2000) 13 NWLR (pt683) at page 1 and OKECHUKWU VS ETUKOKWU (1998) 8 NWLR (pt562) page 51,*** essentially deals with the

issue with any application brought before the Court such application shall be filed individually and not collectively. In other words such application if brought before the Court incomplete like the case at hand accordingly to the applicant Counsel who filed this preliminary objection. The ----- of the learned Counsel to the Applicants that it is proper in law for two or more person to apply jointly for the enforcement of their fundamental rights can be sustained see ***MAITANGARAN & ANOR VS DANKOLI & ANOR (2020) LPELR 52025***. A perusal of the said case ***MAITANGARAN (supra)*** which emanated from Court of Appeal Kano Division shows that the upper Court was referring to the manner in which the Court is approached for enforcing of a fundamental right and not whether 2 or more persons could be joined for enforcing of their fundamental rights see also order 7 rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 which essentially falls on consideration of cases praying for the same reliefs. What it means is that spate application have to be filed 1<sup>st</sup> before thing may be considered by an order of the Court if necessary. See order 7 rule 1 of the Fundamental Rights Enforcement Procedure Rules 2009. If I may recall in this ruling the basis of the filing of the preliminary objection is that the Applicants are two and therefore each shall be considered by the Court instead of coming together as done jointly. Counsel have argued that the entire application is incompetent because of the reasons stated above. I have look at the entire process wholly so also the cases cited by all the Counsel in this matter. However I am convinced that parties seeking joint reliefs can come together and filed their

action. Under the enforcement procedure rules this can be seen from the case of **GOVT. OF ENUGU STATE OF NIG & ORS VS ONYA & 2ORS (2021) LPELR 52688 CA**. Enforcement of Fundamental Human whether a joint application can be filed by more than one person to enforce a right under the Fundamental Rights Enforcement Procedure Rules

*"I also think Appellant were in error to say that 32 Applicant were wrong to bring this suit together , alleging misjoinder of parties , parties are rather always encouraged to come together , either as individual or as a group and or in representative capacity, when they have a common interest or grievance seeking redress in Court. It would even amount to multiplicity of action and abuse of the Court processes in my view if the parties (like the 34 Applicant) who have identified their common interest and grievance in the suit"*

Were to have filed separate action. 34 Applicants in the same Court seeking the same reliefs thereby overwhelming and overburden the Court and increasing the cost of litigation and the judicial cost/time. In the case of **NZERIBE VS NZERIBE & ANOR (2013) LPELR 21930** held the rules in the Federal High Court of the States primarily permitting joinder of parties or joinder of action are designed primarily to prevent multiplicity of action and to avoid delay and thus save the parties unnecessary costs and expenses. In otherword the primary



purpose of joinder of parties is to avoid multiplicity of action so as to save time and expenses of litigation in the judicial process. See also ***OGOLO & ORS VS FUBARA & ORS (2003) 11 NWLR (pt. 831)231*** as earlier stated in this judgment persons who have a common interest in a suit and/or common grievance are permitted to come together to invoke the remedial powers of the Court. See ***REGT. TRUSTEES OF NATURE ASSOCIATION of COMMUNITY HEALTH PRACTITIONER OF NIG & ORS VS MEDICAL AND HEALTH WORKER UNION OF NIG (2008) ALL FWLR (pt.412) 1013***, where the condition for joinder of parties in an action were stated that

- (1) The right of relief must be in each be in respect of or arise out of the same transaction
- (2) There must be some common question of law or facts from the above judicial authority cited.

The application brought before the court is proper the application filed by the Respondent Applicant is reused and same is hereby struck out. The quotation is from per Ita George Mbaba JCA pp – 32-33 paragraphs F-E.

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**HON. JUSTICE M.S IDRIS**  
**15/12/2021**

