

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON TUESDAY, THE 09<sup>TH</sup> DAY OF NOVEMBER, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/1255/2021**  
**MOTION NO.: M/6282/2021**

**BETWEEN:**

**HYACINTH OSEJI**  
**(Practicing under the name**  
**and style of OSAS & OSEJI**

**CLAIMANT/RESPONDENT**

**AND**

**ZENITH MEDICAL AND KIDNEY CENTER**

**DEFENDANT/APPLICANT**

**RULING**

This Ruling is in respect of an application for dismissal of the suit of the Claimant/Respondent on the ground that the Defendant/Applicant is not a juristic person known to law.

By a Motion on Notice dated and filed on the 18<sup>th</sup> of August, 2021, the Defendant/Applicant brought this application praying this Honourable Court for the following orders:

- 1. An Order dismissing this suit in its entirety against the Defendant/Applicant as the Defendant/Applicant is not a juristic personality known to law that can sue and be sued.*

2. *And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances.*

In support of the application were a written address and a 13-paragraph affidavit deposed to by one Ayodeji Ibikunle to which were annexed two exhibits marked as **Exhibits HO 01** and **HO 02**. In the affidavit, the deponent averred that as far as he knew, only natural and juristic persons could be sued; and that the result of his search on the portals of the Corporate Affairs Commission (CAC) revealed that while there was no incorporated entity known as “*Zenith Medical and Kidney Centre*”, “*Zenith Medical and Kidney Center Ltd*”, on the other hand, was a registered body. The outcome of the searches were **Exhibits HO 01** and **HO 02**.

In the written address in support of the application, the Defendant/Applicant formulated the following issue for determination: “*Whether or not this Court has the necessary vires and or jurisdiction to entertain this suit as presently constituted.*” In his submission on this issue, learned Counsel reiterated the settled position of the law that the question of jurisdiction was a threshold issue, adding that it was the responsibility of the Court to determine, at the earliest stage, whether it had the jurisdiction to entertain a suit before it. Relying on the *locus classicus* ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341***, he reproduced the elements which vested jurisdictional competency on a Court to be proper constitution of the Court with regards to numbers and

qualifications of members, the subject matter of the suit being within the jurisdiction of the Court and the initiation of the case *via* due process of law and upon the fulfilment of any condition precedent to the exercise of jurisdiction.

Arguing further, he submitted that only natural persons or juristic persons could maintain actions in Court. In view of this settled position of the law, he contended that the Defendant/Applicant was neither a natural person nor a juristic person and, therefore could not be sued in law. Adding that this error was not a misnomer, he urged this Court to dismiss the action. For all his submissions, Counsel relied on ***Dr Taiwo Oloruntoba-Oju & Ors v. Professor Shaibu O. Abdulraheem & Ors (2009) 13 NWLR (Pt. 1157) pp. 124 – 125, paras H – A; the Administrators/Executors of the Estate of General Sani Abacha (deceased) v. Samuel David Eke-Spiff & Ors (2009) 7 NWLR (Pt. 1139) pp. 126, paras A – B; 136, paras E – H; 147, paras A – C; G 7 T Invest Ltd v. Witt & Bush Ltd (2011) 8 NWLR (Pt. 1250) 500 at 512 Ratio 12*** among other cases.

The Claimant/Respondent, on the other hand, did not file any process in opposition to the processes of the Defendant/Applicant. On the 5<sup>th</sup> day of October, 2021 when the application was argued, learned Counsel for the Claimant/Respondent responded *inter alia* thus in reply to the Defendant/Applicant's arguments:

*“We were served with the motion on 20/9/2021. We have looked at the motion. We decided not to file a counter because we believe it will serve us better in the long run. Argument on this and ruling on it will be a waste of judicial time.*

*However, the proper application to be brought by the Applicant is order for striking out and not dismissal; reason being that the case is not heard on the merit and the evidence not heard. Our authority is the case of **Administrators and Executors of the Estate of the late Sani Abacha (deceased) v. Samuel David Eke-Spiff & Others...**”*

By the above oral submissions, learned Counsel for the Claimant/Respondent practically conceded to the application of the Defendant/Applicant – except that he wanted the Court to strike out the suit and not to dismiss it. In view of this point of divergence, therefore, the issue before this Court is: ***“Whether the proper order this Honourable Court should make in this suit is not an Order of dismissal?”***

I have considered the submissions of learned Counsel for the Defendant/Applicant in respect of this application. The authorities therein clearly put it beyond every scintilla of doubt that jurisdiction is the foundation upon which the blocks of a case before a Court are placed. See ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341***. In ***First Deepwater Discovery Limited v.***

***Faiceck Petroleum Limited (2020) 11 NWLR (Pt. 1736) 535 at 576, paras A – D, the Court of Appeal per Ogakwu, JCA held that “Jurisdiction is the fons et origo, the threshold of judicial power. It is fundamental to all proceedings in a court or tribunal. Where jurisdiction is lacking, the entire proceedings are a nullity however well conducted as the want of jurisdiction is extrinsic to the adjudication.”***

The presence of proper parties is a composite of jurisdiction. If proper parties are not before the Court, then the Court lacks the ground upon which to stand to exercise its adjudicatory powers. In ***U.O.O. (Nig.) Plc v. Okafor (2020) 11 NWLR 409***, the Supreme Court per Augie JSC held that ***“The question of proper parties is a very important issue which affects the jurisdiction of the Court, since it goes to the foundation of the suit in limine. In effect, where the proper parties are not before the Court, then the Court lacks jurisdiction to entertain or hear the suit. So, before an action can succeed, the parties must be shown to be the proper parties to whom rights and obligations arising from the cause of action can attach.”*** See also the case of ***Cotecna Int’l. Ltd v. Churchgate (Nig.) Ltd & Anor (2010) 18 NWLR (Pt. 1225) 346 SC; Utiih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166 SC; Ehidimhen v. Musa (2000) 8 NWLR (Pt. 669) 540 SC and Peenok Ltd v. Hotel Presidential (1983) 4 NCLR 122.***

I have studied the affidavit in support of the application and the exhibits annexed thereto. I have also considered the name of the Defendant/Applicant as disclosed on the originating and other processes in this suit. There is no doubt in my mind that the entity described thereon as “*Zenith Medical and Kidney Center*” is not a person known to law. It is neither a natural person nor a juristic person. The consequence therefore is that the suit against it is incompetent; as an action in Court is an invitation to the Court to determine the rights and obligations of the persons before it. There must be persons, therefore, whether natural or artificial, in whom inhere those rights and obligations and over whom this Court can exercise jurisdiction. See ***The Registered Trustees of the Airline Operators of Nigeria v. Nigerian Airspace Management Agency (2018) 8 NWLR (Pt. 1408) 9 at 30, paras C – F.***

Having found that the Defendant is not a proper party in this suit, being neither a natural person nor a juristic person, this Court has to determine whether the proper order to make is an order dismissing the suit or one striking out the suit. It is settled that whether the Court has to make an order striking out a suit or an order dismissing a suit is a decision that rests within the discretion of the Court upon a careful consideration of the facts of the case and the stage of the proceedings. In *Ogunpehin v. Nucleus Venture (2019) LPELR-48772 (SC) AT pp. 11 – 12, paras A per Peter-Odili, JSC*, the Supreme Court held *inter alia* that

***“...whichever of the alternative orders of a striking out or dismissal of the action is at the discretion of the Court and in that, certain guiding principles are called in aid so that the discretion is exercised judicially and judiciously in the overall interest of justice...”***

In *Ekudano v. Keregbe (2008) 4 NWLR (Pt. 1077) 422; 2008 All FWLR (Pt. 405) 1641 para A – B*, the Supreme Court per Akintan, JSC held that ***“Where the request for discontinuance is made after the date fixed for hearing, the Plaintiff may discontinue only with the leave of the Court and subject to conditions that may be imposed by the Court. The trial judge may order that the case be struck out or make an order of outright dismissal. Whichever order the court makes will depend on all the circumstances of the case and an appellate court will not ordinarily tamper with the trial court’s exercise of such discretion.”***

In *Re: Apeh & Others (2017) LPELR-42035(SC) at pp. 16 – 18, paras A*, the Supreme Court per Muhammad, JSC (as he then was) drew a distinction between an order of striking out and an order of dismissal in the following words:

***“I think I should re-state the well settled principle of the law and permanent feature of the practice of the Courts that when an action is struck out, it is still alive and could be resuscitated by***

***the Plaintiff/appellant. It is not so when a matter is dismissed. The matter comes to a final bus-stop and the particular claim or relief suffers the vicissitudes of death and it can hardly be revived...***

As to the circumstances under which either of the orders could be made, the apex Court in ***Panalpina World Transport (Nig.) Ltd v. J.B. Olandeen International & Others (2010) LPELR-2902 (SC) at pp. 23 – 24, paras A***, the Supreme Court per Adekeye, JSC held that

***“When an order of Court is made in respect of an application not heard on the merits, it amounts to striking out simpliciter. Even when an order of dismissal is made following a hearing which is not based on the merits, such order is still considered in law a mere striking out...”***

Though the application to which this Ruling relates is a notice of preliminary objection which the Defendant/Applicant brought and not a notice of discontinuance from the Claimant/Respondent, the same principles enunciated in ***Ekudano v. Keregbe (2008) supra*** can be applied here *mutatis mutandis* in determining whether to make an order striking out the suit or an order of outright dismissal.

I have gone through the processes filed in this suit. I have equally given serious thought to the circumstances of this suit and its stage in this Court.



Though the Defendant/Applicant had filed its statement of defence alongside this application, thereby joining issues with the Claimant/Applicant, evidence has not been led in proof of the pleadings. Besides, the Defendant/Applicant was the party who brought this application to terminate this suit *in limine* on the ground that proper parties were not before the Court. This objection is grounded on the jurisdiction of this Court. When the Court is invited to exercise its discretion where the ground of objection borders on its jurisdiction, the proper order to make is an order of striking out and not dismissal. This is particularly so where the case has not been heard on the merits. See ***Adesokan & Others v. Adetunji & Others (1994) LPELR-152 (SC); Obala of Otan-aiyegbaju & Others v. Adesina & Others (1999) LPELR-2149 (SC); Ajilola v. Rasaki & Others (2019) LCN/4831 (SC)*** among other cases. The proper order to make in this suit, therefore, is an order to strike out the suit and not to dismiss same.

In view of the foregoing therefore, this suit is accordingly struck out. I make no order as to cost.

This is the Ruling of this Court delivered today, the 09<sup>th</sup> day of November, 2021.

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**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**09/11/2021**