

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY THE 15TH DAY OF MARCH 2022
BEFORE HIS LORDSHIP: HON JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUITNO: FCT/CV/060/2021

BETWEEN

MR JUDE EGBITA

PLAINTIFF

AND

1) MR SHITTU AHMED

DEFENDANT/APPLICANT

**2) THE CHAIRMAN OF INDEPENDENT
NATIONAL ELECTORAL COMMISSION**

DEFENDANTS

**3) INDEPENDENT NATIONAL ELECTORAL
COMMISSION**

RULING

This is a Ruling on the Notice of Preliminary Objection brought by the 1st Defendant, challenging the suit of the Claimant.

The Claimant has commenced this suit by way of Writ of Summons, claiming against the Defendants the following reliefs:-

- 1) AN ORDER OF THIS HONORABLE COURT declaring that the Defendants occasioned a breach of the contract they made with the Plaintiff for the auction/sale of 4 vehicles, by collecting monies from the Plaintiff and failing to deliver the***

vehicles to the Plaintiff, the vehicles having the following descriptions and identifications-

- (a) Black Toyota Land Cruiser (V8) without a physical plate number.*
- (b) White Toyota Hiace 18-Seater Bus with registration number FG-500-V01.*
- (c) White Toyota Coaster 32-Seater Bus with registration number FG-789-V01.*
- (d) White Toyota Hilux Vehicle without a physical plate number.*

2) AN ORDER OF THIS HONORABLE COURT *declaring that the Plaintiff is entitled to refund in the sum of ₦17,000,000.00 (Seventeen Million Naira) being the total sum paid to the Defendants via the 1st Defendant's account for the purchase of 4 Vehicles which were auctioned in favor of the Plaintiff but were not delivered to the Plaintiff, and which sum is due for refund and owed to the Plaintiff by the Defendants.*

3) AN ORDER OF THIS HONOURABLE COURT *compelling the Defendants to jointly pay the Plaintiff the sum of ₦17,000,000.00 (Seventeen Million Naira) being the total sum paid to the Defendants via the 1st Defendant's account for the purchase of 4 vehicles which were auctioned in favor of the Plaintiff, but were not delivered to the Plaintiff and which sum is due for refund and owed to the Plaintiff by the Defendants and which sum has remained unpaid despite repeated demands.*

4) AN ORDER OF THIS HONOURABLE COURT *compelling the Defendants to jointly pay to the plaintiff the sum of*

₦10,000,000.00 (Ten Million Naira) as general damages for breach of contract.

5) AN ORDER OF THIS HONOURABLE COURT FOR PAYMENT OF INTEREST on the above-stated refundable sum calculated at 10% monthly from the date payment of the sum was due according to the agreement until the judgement sum is liquidated.

6) AN ORDER OF THIS HONOURABLE COURT compelling the Defendants to jointly and severally pay the sum of ₦1,500,000.00 (One Million, Five Hundred Thousand Naira) only being the cost of this action.

Responding to the suit of the Claimant, the 1st Defendant filed a Notice of Preliminary Objection challenging the jurisdiction of the Court and seeking the following reliefs:-

“AN ORDER STRIKING OUT THIS SUIT FOR WANT OF JURISDICTION”

The grounds upon which the 1st Defendant's objection was based and their respective particulars are as follow:-

The first ground is:-

1) There exists no privity of contract between the Claimant and the 2nd and 3rd Defendants as to make them liable under the contract entered into between the Claimant and the 1st Defendant/Applicant.

Particulars for the ground include:

a) The transaction relating to sale of vehicles by auction took place between the Claimant and the 1st Defendant only.

- b) The 2nd and 3rd Defendants were not parties to the contract and therefore could not have been in breach of the contract as to make them liable thereunder as they were not parties.
- c) Since there exists no privity of contract between the Claimant and the 2nd and 3rd Defendants, the Claimant lacks the requisite *locus standi* to sue the 2nd and 3rd Defendants.
- d) The Claimant's lack of *locus standi* robs the Honorable court of the requisite jurisdiction to adjudicate over the suit.

The second ground is as follows:-

- 2) The 2nd and 3rd Defendants being not parties to the contract between the Claimant and the 1st Defendant/Applicant have been improperly made parties to this suit. This feature makes the suit to be incompetent for misjoinder of parties.

The particulars for the second ground are:

- a) The Claimant did not enter into any contract relating to auctioning with the 2nd and 3rd Defendants.
- b) No representation, receipt issued or imputation was made to make the Claimant believe or labour under the impression that he was contracting with or on behalf of the 2nd and 3rd Defendants.
- c) There exists no legal justification for making them parties or suing them or joining the 2nd and the 3rd Defendants in this suit besides to embarrass them. The suit is bad for misjoinder.

The third ground is as follows:-

- 3) Assuming without conceding that the 1st Defendant/Applicant acted on behalf of the 2nd and 3rd Defendants, the Claimant cannot sue both the agent and the disclosed principal.

The particulars of the third ground are:-

- a) If the claims, pleading and assertion of the Claimant are to be believed, it follows that the 1st Defendant acted on behalf of a disclosed principal, who are the 2nd and 3rd Defendants.
- b) The Claimant can only sue the disclosed principal and not the agent.
- c) The Court ought to strike out the name of the 1st Defendant as party to this suit.

In support of the 1st Defendant's Notice of Preliminary Objection was a 4-paragraph affidavit deposed to by one Jennifer Onyeabor, the litigation secretary in the law firm of Anthony Agbonlahor & Associates. In the affidavit the deponent, who derived her information from the 1st Defendant on the 30th of March, 2021, deposed that the 1st Defendant entered into a private transaction with the Claimant relating to the auctioning of vehicles in different government departments, agencies and ministries. Pursuant to this transaction, the Claimant paid to the 1st Defendant the sum of ₦17,000,000.00 (Seventeen Million Naira) only in two installments. A copy of the handwritten acknowledgement of the first deposit was attached and marked as **Exhibit A**.

In addition to this, the deponent further averred that the 1st Defendant, in anticipation of the auctioning, distributed the money to deserving persons who were interested in helping him achieve his set objectives. The deponent swore that when the Claimant subsequently demanded for the refund of his money, claiming that he collected the money from other people (not known to the 1st Defendant), the 1st Defendant was able to pay back ₦9,000,000.00 (Nine Million Naira) to the Claimant. Copies of the document/receipts/tellers with which the 1st Defendant repaid part of the monies were attached and marked as **Exhibit B, B2, and B3** respectively.

It was further sworn on behalf of the 1st Defendant that he dealt personally with the Claimant in the transaction and on behalf of the 2nd and 3rd Defendants, adding that no official receipt of the 2nd and 3rd Defendants was issued to the Claimant nor was their account used in the receipt of payments made to the Claimant. Further to this, it was stated that there is no privity of contract between the Claimant and the 2nd and 3rd Defendants and that, as a consequence, the 2nd and 3rd Defendants should not have been sued or made parties in this suit because they neither know the Claimant nor did he act as their agent in the transaction.

In the written address in support of the application, the 1st Defendant through his Counsel, formulated two main issues for the Court to consider, to wit:

- 1) Whether there exists any privity of contract between the Claimant and the 2nd and 3rd Defendants as to make them parties to this suit?***
- 2) Whether based on the pleadings of the Claimant, the Claimant is justified in suing both the 1st Defendant and the 2nd and 3rd Defendants, who are disclosed principals and, on whose behalf, the 1st Defendant was purported to have acted?***

In his argument on the issues, Learned Counsel for the 1st Defendant contended that superior courts in a plethora of cases have laid down the criteria for determining whether a court has the competence to entertain an action brought before it. In stating these criteria, Learned Counsel cited these cases in supporting the two issues he formulated for the court to determine this matter before it. On Issue One he relied on these cases: ***Uba v. Jargaba (2007) 43 WRN 1 at 19 lines 5-10; Kemas Nig. Ltd v. Fab Anieh Nig Ltd (2007) WRN***

118; Chemical and Allied Products Plc v. Vital Investments Ltd (2006) 46 WRN 74; Ikpeazu v. ABC Ltd (1965) NMLR 374; Alfotrin Ltd v. A.G Federation (1996) 9 NWLR (Pt 475) 634; A.G. Federation v. AIC Ltd (2000) 4 WRN 96; Gombe v. P.W. Nig. Ltd (1995) 6 NWLR (Pt 402) 402- Ratio 7 Danjuma v. Iyagin (2002) 7 NWLR (Pt 766) 346 Ratio 2; Thomos v. Olufusoye (1986) INWLR (Pt 18) 669 at 672, para H; Fawehinmi v. President FRN (2008) 23 WRN 65; Kaka v. Adegbuyi (2012) 32 WRN 165; Tabiowo v Disu (2008) 28 WRN 81; Ejikeme v. Amaechi (1998) 3 NWLR (542) 456; Anyanwoko v. Okoye (2010) 18 WRN 34 at 51 lines 5-20; Bello v INEC (2010) 19 WRN 1; Iyere v. BFFM Ltd (2009) 3 WRN 139 and Sabo v. Sunmonu (2010) 27 WRN 28.

In arguing the first issue, Learned Counsel contended that from the averments in the pleadings of the Claimant and that of the 2nd and 3rd Defendants, there was no privity of contract between the parties as to make the 2nd and 3rd Defendants liable for any breach of contract in the transaction entered solely between the Claimant and the 1st Defendant. He further argued that the 1st Defendant had shown from the **Exhibits B, B1, B2, and B3** that the contract was between himself and the Claimant. He further pointed out that the 1st Defendant had gone far in repaying the received sum back to the Claimant, as he has paid ~~₦~~9,000,000.00 (Nine Million Naira) only so far, adding that what is outstanding is ~~₦~~8,000,000.00 (Eight Million Naira). He contended that the Claimant has not brought the correct state of affairs to the Court.

Relaying on the authorities of the superior courts, Counsel further argued that the Claimant has no right to enforce against the 2nd and 3rd Defendants, that a contract only affects the party thereto and cannot be enforced by or against a

person who is not a party to it. This, Counsel pontificated, is the doctrine of privity of contract.

It was learned Counsel's further argument that the 2nd and the 3rd Defendants have been improperly made parties in this suit as there is no link or nexus between them as to make them liable to the Claimant. He contended that the Claimant lacked the *locus standi* to sue them in the circumstance of this case. According to the learned Counsel, the Claimant has failed to show how the 2nd and 3rd Defendants violated their rights. He added that in the absence of any violation of their rights, the Claimant lacks the *locus standi* to have instituted the suit against the 2nd and 3rd Defendant. Defining *locus standi* as the legal capacity to institute proceedings in a court of law or tribunal or the right of a party to appear and be heard on the question before a court or tribunal, Counsel for the 1st Defendant submitted that if a person has no legal standing to institute an action, the Court will have no jurisdiction to entertain the claim.

In view of this, therefore, learned Counsel contended that the onus was on the Claimant to establish his *locus standi*. Counsel further pointed out that there is no provisions for speculative, futuristic, or imaginative violations in other genre of civil rights and in the absence of any breach of his rights, the Claimant misapplied the law in the circumstance when he made the 2nd and the 3rd Defendants parties to the suit. He further prayed this Honorable Court to invoke **Order 13 Rules 5 & 6 of the FCT High Court Civil Procedure Rules 2018** and strike out the names of the 2nd and the 3rd Defendants as they were wrongly made parties to this suit. Relaying on more authorities of the superior Courts, learned Counsel humbly urged the Court to resolve Issue One in favor of the 1st Defendant/Applicant.

Arguing the second Issue, Learned Counsel cited the following authorities of the superior Courts in support of his argument. The authorities are as follows: ***Osigwe v. PSPLS Mgt Consortium (2009) 16 WRN 1; Federal Ministry of Health v. Comet Shipping Agencies (2010) 12 WRN 1; Niger Progress v. NEL Corp. (1989) 3 NWLR (Pt 107) 68; and Carlen (Nig.) Ltd v. UniJos (1994) 1 NWLR (Pt 323) 631.***

Learned Counsel opined that the Claimant is suing the 2nd and 3rd Defendants and is seeking to make them liable because the 1st Defendant acted as their agent. Counsel further stated that against all odds, the Claimant appears to have forgot that an agent acting on behalf of a known and disclosed principal incurs no personal liability.

Concluding, Learned Counsel contended that, the Claimant cannot sue the 1st Defendant and the 2nd and 3rd Defendant since the Claimant is aware that the 1st Defendant acted on behalf of a disclosed principal. Learned Counsel therefore prayed the Honorable Court to decline jurisdiction as it affects the Claimant's claim/suit against the 2nd and 3rd Defendants on the ground that there is no privity of contract between them and that they have been wrongly and improperly joined as parties to this suit. He also submitted that the suit can continue against the 1st Defendant with whom the Claimant contracted and who had returned over half of the contract sum back to the Claimant. He urged that the names of the 2nd and the 3rd Defendants be struck out.

In opposition to the 1st Defendant's Notice of Preliminary Objection, Learned Counsel to the Claimant filed a 12-paragraph Counter-Affidavit deposed to by one Uwakmfon J. Sampson, who is the Counsel to the Claimant in the law firm of Swim Partners (Legal Practitioner & Consultant). Basically, the facts deposed to

in the Counter-Affidavit in opposition, were denials of the averments of the 1st Defendant's affidavit in support of the Preliminary Objection, which had three Exhibits attached and marked as **Exhibits A1 and A2 and Exhibit B**. These exhibits are the said bank statements evidencing the transaction and the hand written acknowledgement/receipt.

In support of the of the application was a written address, in which Learned Counsel formulated this sole issue for determination:

“Whether the 2nd and 3rd Defendants are privies to the contract between the Claimant/Respondent and the 1st Defendant/Applicant?”

In his argument on this sole issue, Learned Counsel submitted that when an agent negotiates a contract between his principal and a third party, it is generally regarded as being between the principal and the third party. Employer, according to the Counsel, are vicariously liable for acts committed by their employees in the course of their employment. Vicarious liability means that employers would be held liable to the third parties with whom they have had no contract simply because it was their employees that committed an act against the third party. Counsel cited the case of ***Sharon Paint & Chemical Co Ltd v. Ezenwa (2001) FWLR (Pt 43) 290 at 312*** and the case of ***Various Claimant v. Catholic Child Welfare Society (2012) UKHL 56; (2013) ACI*** in support of his argument.

Learned Counsel for the Claimant next opined that in this instant case the 1st Defendant is a servant of the 3rd Defendant and thus acted according to the directives of the 2nd and 3rd Defendants. He added that the Claimant who is an innocent law-abiding citizen became a prey in a bid to participate in the auction.

He relied on the Supreme Court case of *Ifeanyi Chukwu v. Soleh Boneh Ltd (2000) FWLR 2046 at 2065*, in support of his argument.

Finally, learned Counsel to the Claimant submitted that the 2nd and 3rd Defendants in this suit are privies to the contract between the 1st Defendant/Applicant and the Claimant. He accordingly urged the Court to dismiss and jettison the endless but unreasonable argument of the 1st Defendant to enable the matter to continue as filed.

The above is an extensive summary of the arguments of both parties to this suit. After due consideration of the grounds upon which the Notice of Preliminary Objection is founded and all the issues raised and canvassed in the arguments, it is my considered view that the objection revolves round the competency of the suit of the Claimant. Accordingly, I have formulated this issue to enable the Court resolve the bone of contention. This issue is:

“Whether there exists a privity of contract between the Claimant and the 2nd and 3rd Defendants?”

In resolving this Issue, the Court must highlight the facts and evidence placed before it, and from the evidence before this Court, it is clearly not in dispute that the Claimant and the 1st Defendant entered into some kind of oral contract whereby the parties agreed that the Claimant was to purchase four (4) different vehicles of the 3rd Defendant which were for auctioning. After the 1st Defendant invited the Claimant on a guided tour to inspect the proposed vehicles for auctioning, the Claimant then made a payment of ₦17,000,000.00 (Seventeen Million Naira) only which was paid in installments into the 1st Defendant's personal account and which the 1st Defendant acknowledged and issued the Claimant a handwritten acknowledgement/receipt. This clearly shows that the

Claimant has performed his own part of the said oral contract between the parties.

At this juncture, it is important we spare some moment to appreciate the concept of contract. Let me first take us back to the law of contract and define what a contract means: a contract is simply a promise or set of promises that the law finds enforceable. In the case of ***Are v. Owoeye (2014) LPELR-41096 (CA) at p.12, paras D-E***, the Court of Appeal per Adiza Gana Mshelia JCA adopting the Black's Law Dictionary definition of the word, defined contract as "***An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law – a binding contract.***"

A valid contract possesses certain factors which are: an intention to enter a legal relationship, an agreement, and a deed under seal (written) or supported by consideration or payment. See the case of ***KLM Royal Dutch Airlines v. Idehen (2017) LPELR- 43575 (CA) per Yargata Byenchit Nimpar JCA at p. 22 paras A-B.***

All the above ingredients are present in the evidence before me. Now, coming back to the issue at hand, let me delve into the concept of privity of contract. Generally, the doctrine of privity of contract stipulates that only parties to a contract have a right to sue and be sued and to enforce the rights and the obligations arising from the contract. Hence, a third party to a contract cannot sustain any claim arising from a contract. Also, the doctrine of privity of contract stipulates that a contract cannot confer rights or impose those obligations arising under it on any person except parties to it. See the case of ***Ali & Anor v. Maradi (2018) LPELR-49383 (CA) Pp 13 paras A*** where the Court of Appeal per Danjuma JCA held that:

“The sanctity of privity of Contract cannot be overemphasized. The doctrine of privity of contract postulates in the main, that only parties to a contract can be entitled to rights and liabilities arising from the contract. See also the case of United Bank for Africa Plc & Anor v. Alhaji Babangida Jargabe (2007) 5 SCNJ 127”

Also, in the case of ***Ogundare & Anor v. Ogunlowa & Ors (1997) LPELR 2326 (SC) pg 14 paras E-F***, the Supreme Court per Onu JSC held that:

“In law there is privity of contract. It is always between the contracting party who must stand or fall benefit or lose from the provisions of their contract. Their contract cannot bind the parties, nor can third parties take or accept liabilities under it, nor benefit there-under.”

But there are exceptions to the general rule of privity of contract which have been distilled in a plethora of judicial decisions of superior courts. Some of these exceptions have to do with agency, trust, third party insurance, suretyship, collateral contracts etc. In the case of ***Reg Trustees of Masters Vessels Ministries (Nig.) Incorporated v. Emenike & Ors (2017) LPELR-42836 (CA) pp 14-15 paras D***, the Court of Appeal Per Ogunwu JCA held that:

“There are exceptions to the general rule, where agency relationship can be established, where a deed of sale of family land has been executed without consent of the members of the family, where a trust is created for the benefit of a third party, are some exceptions to general rule of privity of contract.”

In another Supreme Court case of *African Insurance Dev. Corporation v. NLNG Ltd (2000) LPELR-210 (SC) pp 17 paras D*, the Court per Belgore JSC, held that:

“Privity of contract is still very much a part of our law of contractual liability. A third party who was not privy to a contract cannot ordinarily be held responsible for damages incurred by default of one of the parties.”

In the case of *The Vessel Leona II v. Fuels Ltd (2002) LPELR-1284 (SC)*, the Court held that:

“The law is clear that, as a general rule, a contract cannot confer rights or impose obligations on any person except parties to it or, as an exception to the general rule, a person on whom such parties confer a benefit who is to be distinguished from a person who may benefit from the contract, that a person may benefit from the performance of a contract does not alone give him right to enforce the contract.”

With the evidence before this Honorable Court which I have carefully scrutinized, it is obvious that the agreement for the purchase of the four (4) vehicles was solely between the Claimant and the 1st Defendant. This is notwithstanding the fact that the 1st Defendant is a Director and Chairman of the Auction Committee set up by the 2nd and 3rd Defendants and that the Claimant was invited by the 1st Defendant, to a guided tour/inspection of the proposed vehicles for auctioning at the INEC head office, which is the office of the 2nd and 3rd Defendants. Further to this is the fact that the sum of ₦17,000,000.00 (Seventeen Million Naira) which

was agreed between the 1st Defendant and the Claimant was paid into the personal account of the 1st Defendant. See **Exhibit A1 and A2** attached to the Counter-Affidavit of the Claimant. Also, it is important to note that there was a handwritten acknowledgement of the money by the 1st Defendant. See **Exhibit B** attached to the Counter-Affidavit and **Exhibit A** attached to the affidavit in support of the Notice of Preliminary Objection.

From the totality of the scenario which was deposed to in the affidavits of both the Claimant and the 1st Defendant, I am minded to agree with the 1st Defendant that the transaction relating to the sale of the four (4) vehicles is between the Claimant and the 1st Defendant **ONLY**. To be quite specific, from the facts contained in the affidavits before me and the exhibits attached, there exists no privity of contract between the Claimant and the 2nd and 3rd Defendants. The Courts have held repeatedly that, the basic premise of the common law doctrine of privity of contract is that contracts cannot be enforced either by or against third parties, that is, parties not included in the contract. See the case of **Chuba Ikpeazu v. African Continental Bank (1965) NMLR at pg 374** where the appellat court made reference to the UK case of **Tweddle v. Atkinson 30 LJQB 265** and held that:

“Generally, a contract cannot be enforced by a person who is not a party to it, even if the contract is made on his behalf and purports to give him right to sue upon it”

See also the case of **Shuwa v. Chad Basin Authority (1991) 7 NWLR (Pt 205) at pg 250.**

In view of the foregoing, I therefore find and so hold that there is no privity of contract between the Claimant and the 2nd and 3rd Defendants. The only

agreement that exists is between the Claimant and the 1st Defendant which appears from the facts deposed to in the affidavits and the exhibits attached. Accordingly, in so far as the issue of the privity of contract between the Claimant and the 2nd and 3rd Defendants is concerned, it is thereby resolved against the Claimant.

Now since this Honourable Court has established that there exists no privity of contract between the Claimant and the 2nd and 3rd Defendants, I will return to the Notice of Preliminary Objection of the 1st Defendant in which one of the grounds is whether the 2nd and 3rd Defendants have not been improperly joined as parties in this matter and, if so, if this does not rob this Honourable Court of the requisite jurisdiction to adjudicate over this suit. As to how to determine this matter, I must now refer to the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018. Order 13 Rule 1 states that:

“All parties may be joined in one action as claimant(s) in whom any right to relief is alleged to exist whether jointly or severally and judgement may be given for such claimant(s) as they may be found to be entitled to, without any amendment.”

Then Rule 18 of the same Order 13 went further to state that:

“(1) No proceedings shall be defeated by reason of misjoinder or non-joinder of parties and the court may deal with the matter in controversy so far as regards the right and interest of the parties actually before him.

(2) The court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may

appear to the court to be just, order that the names of any parties improperly joined be struck out.”

In the case of ***FMC IDO-EKITI & ORS v. ALABI (2011) LPELR-10931 p. 51 paras A-A***, the Court of Appeal per Abba-Aji JCA, held that:

“Non-joinder or misjoinder of a necessary party is only a procedural irregularity which does not affect the jurisdiction of the court”

See the case of ***Teri v. Augustine (2021) LPELR-52655 (CA) Pp 21-22 paras F***, where the Court held:

“The Respondent’s Counsel refers this court to Order 17 Rule 16(1) of the High Court of Borno State Civil Procedure Rules 2017 which provides that “no proceedings shall be defeated by reason of misjoinder or non-joinder of the parties and a Judge may deal with this matter in controversy so far as regards the rights and interest of the parties actively before him.” What the rule provides is that a matter cannot be declined hearing merely on the ground of misjoinder or non-joinder of parties. It however does not stop the court hearing a matter in which there is either misjoinder or non-joinder of necessary parties from making appropriate orders either to strike out such misjoined parties or order the inclusion of such necessary parties”

In the Court of Appeal case of ***CBN v. AZORO & ORS (2018) LPELR-44389 CA (Pp 11 paras B)***, Per Abiru JCA, it was held that:

“Additionally, it is a long standing rule of judicial adjudication that no cause or matter shall be allowed to be defeated by reason of misjoinder or non-joinder of parties and that such misjoinder or non-joinder is not fatal to the proceedings and a court is enjoined in every such cause or matter to deal with the matter in controversy so far as regards the rights and interest of parties actually before it – Oriare v. Govt of Western Nigeria (1971) ALL NLR 139, Kalu v. Odili (1992) SCNJ 76 at 115.”

Fortified with the above authorities, I therefore hold that the 2nd and the 3rd Defendants were improperly joined as parties to this suit. And since there is no privity of contract among the Claimant and the 2nd and 3rd Defendants in respect of the said contract, the 2nd and 3rd Defendants cannot rightly be described as parties to whom rights and obligations have arisen from the cause of action in this matter.

For reasons stated in the foregoing paragraphs of this Ruling and on the whole therefore, the Preliminary Objection raised by the 1st Defendant partially succeeds. Accordingly, it is hereby ordered as follows:

- 1) The names of the 2nd and 3rd Defendants are hereby struck out because there exists no privity of contract between the Claimant and the 2nd and 3rd Defendants and therefore the 2nd and 3rd Defendants cannot be described as parties in this matter; they were improperly joined.***
- 2) With the striking out of the 2nd and 3rd Defendants, this Court has the jurisdiction to entertain this matter and by virtue of this order, parties***

are hereby ordered to file amended processes to reflect the new parties in the suit.

This is the Ruling of this Court delivered today the 15th day of March 2022.

**HON. JUSTICE A.H. MUSA
JUDGE
15/03/2022**