

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 11TH DAY OF MAY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2960/2017

BETWEEN

LLOYD ANGELA & CO. LTD.

CLAIMANT

AND

1. GREENWICH SECURITIES LTD.

2. SULE FRIDAY ENEOJO

}

DEFENDANTS

RULING

By way of introductory remarks and for proper understanding of the antecedents of this case, claimant filed this suit on 26/9/2017 in the Undefended List. The defendants were: [i] *Greenwich Securities Co. Ltd.*; [ii] *GreenWich Trust Group*; and [iii] *Sule Friday Eneajo*. The claims were the sum of N35 million; interest; and cost of the action. The matter was before My Lord, *Hon. Justice M. E. Anenih, J.*

On 20/11/2017, 3rd defendant [*Sule Friday Eneajo*] filed a notice of preliminary objection challenging the competence of the suit. The grounds of the objection included: [i] that the writ of summons ought to be served on the 1st defendant

at Plot 1698A OyinJolayemi Street, Victoria Island, Lagos, which is its registered address; [ii] that the 2nd defendant is not a juristic person; [iii] that the suit was not commenced by due process of law; and [iv] that the suit is statute barred having regards to section 7[1] of the Limitation Act. On 8/12/2017, the 1st defendant [*Greenwich Securities Co. Ltd.*] also filed a notice of preliminary objection on similar grounds except the ground that the suit is statute barred. The claimant opposed both applications.

In its Judgment delivered on 11/9/2018, the Court [Coram: *Hon. Justice M. E. Anenih*] held with respect to the 1st defendant's preliminary objection that the 2nd defendant [*GreenWich Trust Group*] is not a juristic person and struck out its name. The Court also set aside the service of the originating processes on the 1st defendant. In respect of the 3rd defendant's preliminary objection, the Court held that the suit is statute barred and dismissed same.

The claimant appealed against the Judgment by notice of appeal filed on 21/9/2018. By letter dated 3/12/2020 signed by Adekunle Oladapo Otitoju Ph.D on behalf of the claimant, the Hon. Chief Judge was informed that "*the Appellate Court dismissed the issue of jurisdiction reached by Hon. Justice Maryann E. Anenih and ordered that the matter be brought back to the High Court of FCT, to be tried by another Judge of the High Court for a full trial on the merit.*" I note that a copy of the Judgment of the Court of Appeal is not in the case file. My Lord, The Hon. Chief Judge of the Federal Capital Territory, Abuja re-assigned the matter to me by a Transfer Order dated 8/2/2021.

The claimant filed its statement of claim on 1/4/2021 with only 2 defendants; the name of *Green Wich Trust Group* was not included. This appears to mean that the Court of Appeal upheld the decision of *Hon. Justice M. E. Anenih* that *Green Wich Trust Group* is not a juristic person.

The 1st defendant filed its statement of defence on 19/6/2021. The 2nd defendant filed his statement of defence on 16/8/2021 along with a motion for extension of time to regularize the process. That motion has not been taken. On 29/9/2021, the claimant filed its reply to the 1st defendant's statement of defence.

This Ruling is on the 2nd defendant's preliminary objection filed on 29/10/2021 praying for: *[i] an order of this Honourable Court declining jurisdiction as the suit is not properly constituted as regards the parties before the Court; or in the alternative, [ii] an order of this Honourable Court striking out the name of the 2nd defendant from this suit for want of disclosure of cause of action.*

The grounds of the preliminary objection are:

1. By the averments in the statement of claim, particularly at paragraphs 3, 4 and 8, the plaintiff alleged that the 2nd defendant is an agent of the 1st defendant.
2. The 2nd defendant being an agent of a known principal is not liable for acts done on behalf of his principal.

Michael Bello Esq. filed a written address along with the preliminary objection. In opposition, Dr. Adekunle Oladapo Otitoju filed a written address on 5/11/2021. At the hearing of the application on 21/2/2022, both learned counsel adopted their processes.

Submissions of Learned Counsel for the 2nd Defendant/Applicant:

Michael Bello Esq. stated that the issue for determination is whether this suit discloses a reasonable cause of action against the 2nd defendant. He referred to **Araka v. Egbue [1988] 7 SC [Pt. III] 98** for the meaning of cause of action; and argued that in paragraphs 2 to 9 of the statement of claim, the claimant averred that the 2nd defendant transacted with it as an agent of the 1st defendant. He submitted that it is a well-established rule in the law of agency that a defendant who acted on behalf of a known principal incurs no liability. In support, he relied on the cases of **Okafor v. Ezenwa [2002] FWLR [Pt. 121] 1837, Vassile v. Pass Industries [Nig.] Ltd. [2000] FWLR [Pt. 19] 418** and **Alhaji M. Balogun v. Panalpina World Transport [Nig.] Ltd. & Anor. [1999] 1 NWLR [Pt. 585] 66.**

The 2nd defendant's counsel further argued that since the 2nd defendant acted as the agent of the 1st defendant, he cannot be liable for his acts under that agency capacity. The exception to the above rule is the case of joint tortfeasors where the agent can be sued with his principal. For this principle, he referred to **R. O. Iyere v. Bendel Feeds & Flour Mill [2008] 7-12 SC 151.** It was argued

that the claimant's case does not disclose an action in tort. Therefore, this case does not fall under the exception where an agent may be sued along with his principal. The case of the claimant does not disclose that the 2nd defendant took any personal benefit from the N35 million allegedly paid to the 1st defendant. Michael Bello Esq. concluded that the claimant's case has not disclosed a cause of action against the 2nd defendant. He urged the Court to strike out the name of the 2nd defendant from the suit.

Submissions of Learned Counsel for the Claimant/Respondent:

Dr. Adekunle Oladapo Otitoju argued that the preliminary objection must fail for not serving what it is called. He reasoned that since the suit has been set down for hearing, a preliminary objection is incompetent and the Court cannot entertain it. He further argued that the issue in the preliminary objection is a substantive issue which cannot be determined without going through trial. Also, this application is against the order of the Court of Appeal that the matter be sent back to the trial Court to be heard on the merit. He referred to the case of **Akinyemi v. Soyawo & Anor. [2000] LPELR-363 [SC]** to support the principle that every party to a suit has an obligation to obey the subsisting decision or order of the court in the suit unless it is set aside.

Learned counsel for the claimant further argued that the 2nd defendant is approbating and reprobating when he stated in his statement of defence that he is not an agent of the 1st defendant while also arguing in this application

that as an agent of a disclosed principal, he cannot be held liable. He relied on **Intercontinental Bank Ltd. v. Brifina Ltd. [2012] LPELR-9717 [SC]** to support the principle that a party will not be allowed to approbate and reprobate at the same time. Since the 2nd defendant in his statement of defence denied that he is an agent of 1st defendant, it means that issues have been joined, which requires evidence to prove. Thus, the issue cannot be resolved at the interlocutory stage.

The claimant's counsel also pointed out that the 1st defendant averred in its statement of defence that no agency relationship exists between it and the 2nd defendant. He stressed that the 2nd defendant cannot rely on the rule in the law of agency that an agent who acted on behalf of a known or disclosed principal incurs no liability.

Finally, Dr. Otitoju stated that it is clear that the claimant alleged that the defendants have committed conversion of his N35 million and that the 2nd defendant connived with his principal [the 1st defendant] to defraud it [the claimant]. He submitted that where it is clear that an agent participated in a fraudulent activity, he must be held liable to the extent of his fraud. This can only be proved upon hearing the substantive suit. He referred to the case of **Dunu Merchants Ltd. v. Obanye [2015] All FWLR [Pt. 768] 267** to support the view that an agent who commits an act of trespass on behalf of his principal is jointly and severally liable with the principal for such act.

Decision of the Court:

From the grounds of the preliminary objection and the arguments put forward by both learned counsel, the Court is of the view that the two related issues for determination are first, whether 2nd defendant [*Sule Friday Eneajo*] is a necessary party in this suit; and second, whether the claimant's suit has disclosed a cause of action against the 2nd defendant.

Let me first consider - as preliminary issues - the arguments of learned counsel for the claimant that since the suit has been set down for hearing, a preliminary objection is incompetent; and that the preliminary objection is against the order of the Court of Appeal that the matter be sent back to the trial Court to be heard on the merit.

With profound respect, I do not agree with the contention of Dr. Otitoju that a preliminary objection filed after a matter has been set down for hearing is incompetent. I say so because a preliminary objection on the ground that a suit does not disclose a cause of action [like the present application] is an objection to the jurisdiction of the Court. It is trite law that an objection to the jurisdiction of a court to entertain a suit can be raised at any stage of the proceedings. See the case of **Omomeji v. Kolawole [2008] 14 NWLR [Pt. 1106] 180.**

I also hold the view that the filing of this preliminary objection is not an act of disobedience or violation of the Order of the Court of Appeal for the case to

be sent back to the trial court to be heard on the merit. As I said before, a party is entitled to raise a preliminary objection to the jurisdiction of the Court at any stage of the matter notwithstanding that the Court of Appeal sent the case back to the trial court for it to be heard and determined on the merit.

I now turn to the main issue for determination in the preliminary objection. In determining this issue, the starting point is the statement of claim. In the statement of claim filed on 1/4/2021, some of the claimant's averments are:

1. The 2nd defendant is one of the agents of the 1st defendant who markets for the 1st defendant. Sometime in 2007, the 2nd defendant approached the claimant through its managing director, Mr. Ameh Sherry, that he should consider investing with 1st defendant as there was future in the company [i.e. the 1st defendant].
2. Mr. Ameh Sherry was sceptical about investing at first since he did not know the 1st defendant. The 2nd defendant, being a former account officer to Mr. Ameh Sherry [in the defunct Bank PHB], eventually persuaded him to invest with the 1st defendant on behalf of the claimant.
3. The 2nd defendant *"headed himself out, as a marketer and a chartered stock broker looking out for customers for the 1st Defendant company"*. Mr. Ameh Sherry gave a cheque of N35 million in the name of the 1st defendant to the 2nd defendant for them to invest in the company shares.

4. After the 1st defendant cleared the said cheque, the 2nd defendant refused to pick the calls of Mr. Ameh Sherry. The 2nd defendant has not given the claimant the details of how the sum of N35 million was invested in spite of several calls by the claimant's managing director [Mr. Ameh Sherry]. The claimant does not have share certificates or the shares details on how the money was invested.
5. The claimant's managing director has requested for the return of the money but the defendants have refused to return same.

It seems to me that at the trial of this suit, some of the questions or issues that will arise from the averments in the statement of claim are: [i] Did the claimant give a cheque for the sum of N35 million issued in the name of the 1st defendant to the 2nd defendant? [ii] If yes, what happened to the cheque? [iii] Was the cheque cleared? [iv] If it was cleared, who cleared it?

In my considered view, these questions become critical and fundamental in the light of the averments in paragraphs 5, 8, 9 & 10 of the 1st defendant's statement of defence filed on 19/6/2021 to the effect that:

- i. The 2nd defendant is not an agent of the 1st defendant; the 2nd defendant is unknown to the 1st defendant; and the 1st defendant had no dealings whatsoever with the 2nd defendant.
- ii. The 2nd defendant is not a marketer, chartered stock broker of the 1st defendant.

- iii. No cheque of N35 million or any other sum was issued in the name of, or paid to, the 1st defendant by the 2nd defendant or the claimant or any other person.
- iv. The allegation of issuance of cheque of N35 million is a fact within the knowledge of the claimant and the 2nd defendant, a fact which the claimant has the duty to prove at the trial.

In the light of the foregoing averments of the claimant and the 1st defendant, if the claimant's allegations that: [i] it issued a cheque for the sum of N35 million in the name of the 1st defendant; [ii] that it gave the cheque to the 2nd defendant; and [iii] that it has not received details or information of the investment for the sum of N35 million are true, then, as rightly argued by Dr. Otitoju, the claimants' case is for conversion, which is a tort.

In the circumstance, the 2nd defendant, who allegedly collected the cheque for N35 million [issued in the name of the 1st defendant] from the claimant is an alleged joint tortfeasor for the tort of conversion and may be personally liable if it is proved that the claimant gave him the cheque and that the 1st defendant did not receive and/or clear the cheque.

I pause to remark that the tort of conversion is committed where one, without lawful justification, takes a chattel out of the possession of another, with intention of exercising a permanent or temporary dominion over it, because the owner is entitled to the use of his property at all times. The usual method

of proving that a detention is adverse is to show that the plaintiff demanded the delivery of the chattel, and that the defendant refused or neglected to comply with the demand. See Ezeugo v. Agim [2015] LPELR-24572 [CA].

The Court holds that the 2nd defendant is a necessary or proper party for the complete and effectual determination of the issues in this suit. In the same vein, the Court holds that the claimant has disclosed a cause of action against the 2nd defendant. Further, the Court is of the respectful view that in the light of the peculiar facts of this case, the legal principle that an agent who acted on behalf of a known or disclosed principal incurs no liability is not applicable.

Conclusion:

From all that I have said, the preliminary objection lacks merit. It is dismissed. I award cost of N40,000.00 to the claimant/respondent payable by the 2nd defendant/applicant.

HON. JUSTICE S. C. ORIJ
[JUDGE]

Appearance of Counsel:

1. Dr. Adekunle Oladapo Otitoju for the claimant.

2. Friday Philip Chori Esq. for the 1st defendant.
3. Michael Bello Esq. for the 2nd defendant.