

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 27TH APRIL, 2022.

BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/916/21
MOTION NO.:-FCT/HC/M/8197/2021

BETWEEN:

DR. AGADA ELACHI:.....CLAIMANT/RESPONDENT

*(Carrying on business in the name
and style Greenfield Chambers)*

AND

**REGISTERED TRUSTEES OF
ASSOCIATION OF LOCAL
GOVERNMENTS OF NIGERIA (ALGON).....DEFENDANT/
APPLICANT**

FeranmiTehinse for the Claimant.
Haruna Wada for the Defendant.

RULING.

The Defendant/Applicant by a Motion on Notice dated the 15th day of October, 2021 and filed the 19th day of November, 2021 brought this application seeking the following reliefs:

1. An order striking out this suit for want of jurisdiction.
2. Any further order(s) this honourable Court may deem fit to grant in the circumstances.

The ground for the application is that the Claimant failed to serve on the Defendant/Applicant a valid bill of charges containing particulars of principal items and cost.

Learned counsel for the Defendant, B.O. Onamusi, Esq, in his written submission in support of the application, raised a sole issue for determination, to wit;

“Whether this Honourable Court has the jurisdiction to hear the Claimant’s suit as presently constituted?”

Proffering arguments on the issue so raised, learned counsel contended that the Claimant failed to comply with a condition precedent. He posited that judicial authority is only lawfully triggered when the essential and mandatory conditions for commencement of actions in Court are complied with by a Claimant.

He contended that the failure of the Claimant in this case, to serve a Bill of Charges with particulars of work done, constitutes a fundamental and irreparable flaw as it has deprived his claim of the exercise of this Court’s jurisdiction.

He further contended that the Claimant has failed to set legal process in motion and that as such, his suit which clearly contravenes relevant provisions of the Legal Practitioners Act (LPA), is incompetent and that this Court lacks the jurisdiction to entertain it. He referred to **EtiOsa L.G. v. Jegede (2007)LPELR-8464(CA)**, Section 16 of the LPA and **AlhajiO.A.Oyekanmi v. National Electric Power Authority (2000)LPELR**.

Learned counsel argued that the Claimant’s Exhibits GF2 – GF6 headed Bill of Charges, are equivalent to letters of instruction and do not qualify as actual work done. He contended that one peculiar defect in all the bills of charges submitted by the Claimant, is that particulars of work done and cost is not indicated at all. That by failing to give particulars of his items of claim, the Claimant has acted in complete defiance

of the Supreme Court's guidelines/interpretation of the requirements of Section 16 LPA.

Learned counsel posited that by forwarding insufficient bills by the Claimant, this Court is robbed of the jurisdiction to entertain this claim. He urged the Court to so hold and strike out this suit.

In opposition to the notice of preliminary objection, the Claimant/Respondent filed a written address wherein learned Claimant's counsel, Onyinye Princess James, Esq, raised a sole issue for determination, to wit;

“Whether this Honourable Court has the jurisdiction to hear the Claimant’s suit as presently constituted?”

Placing reliance on **Oyekanmi v. NEPA (2001)FWLR (Pt.38) 404**, he submitted that it is a trite and well established principle of law that a legal practitioner by virtue of the provisions of the Legal Practitioners Act, is entitled to his fees, and that when a client has defaulted in the payment of the legal practitioner's fees, the legal practitioner has the right to recover his charges by instituting an action in a Court of competent jurisdiction.

He argued that the Defendant's contention that the Claimant failed to serve on her a valid bill of charges is misconceived. That the various bill of charges sent to the Defendant at different dates were attached as Exhibits GF2 – GF7 to the affidavit in support of the Writ of Summons.

He referred to **F.B.N. PLC v. Ndoma-Egba (2006) FWLR (Pt.307)1012** and posited that the Claimant fully complied with the provisions of the Legal Practitioners Act.

He urged the Court to dismiss the application for lacking in merit.

Jurisdiction is a cardinal issue in adjudication that the absence of it will turn to a nullity whatever action, decision or steps taken by a Court or tribunal.

To have the vires or jurisdiction to adjudicate over a matter;

- a. the Court must be properly constituted as regards members and qualification of the members of the bench;
- b. the subject matter of the case must be within the jurisdiction of the Court and there must not be any feature in the case which prevents the Court from exercising its jurisdiction, and
- c. the case must have been instituted by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

See **Madukolo v. Nkemdili (1962)2 SCNLR 341.**

The basis of the Defendant/Applicant's objection to the jurisdiction of this Court to entertain this suit, is that a condition precedent to the exercise of jurisdiction by this Court, was not complied with by the Claimant/Respondent. In this regard, the Defendant/Applicant contended that the Claimant/Respondent failed to serve on the Defendant/Applicant, a valid bill of charges containing particulars of principal items and cost as required by Section 16 (2) of the Legal Practitioners Act.

In the determination of this application therefore, this Court will adopt for consideration, the issue raised by both counsel in their respective written addresses to wit;

“Whether this Honourable Court has the jurisdiction to hear the Claimant's suit as presently constituted?”

The provisions of Section 16(2) of the Legal Practitioners Act upon which the Defendant/Applicant hinged her objection, states thus:

“(2) subject as aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless –

- (a) a bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of a firm, by one of the partners or in the name of the firm, has been served on the client personally or left for him at his last address as known to the legal practitioner or sent by post addressed to the client at that address; and***
- (b) the period of one month beginning with the date of delivery of the bill, has expired.”***

By the above provision, the Act requires a legal practitioner to first serve his client with a bill of charges containing particulars of the principal items included in the bill, at least, one month before commencing an action to recover his charges.

The Defendant/Applicant did not dispute the receipt of the bill of charges, Exhibit GF2 –GF7 served on her by the Claimant/Respondent a month before the commencement of this action. The said bill of charges contains particulars of the principal items for which the Claimant is claiming professional fees.

The contention of the Defendant/Applicant however, is that the content of the said bill of charges are insufficient and therefore invalid as the particulars of the principal items do not comply with the requirements of the Legal Practitioners Act. The

Defendant/Applicant has not stated the insufficiency of the said bills collected and signed by the Defendant.

It is however, my considered view that the Claimant having served the Defendant with bill of charges timeously before commencing this action, there is a substantial compliance with the provisions of the Legal Practitioners Act as to clothe this Court with the jurisdiction to entertain this suit.

In the circumstances therefore, it is my considered view that there is nothing in this suit as presently constituted, that robs this Court of the jurisdiction to entertain same.

Accordingly, I find no merit in this application and same is therefore, dismissed with a cost of N100,000.00 (One hundred thousand naira).

HON. JUSTICE A. O. OTALUKA
27/4/2022.