IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO.: CV/124/2019

DATE: : FRIDAY 20TH MAY, 2022

BETWEEN:

BINA CONSULT AND INTERGRATED SERVICES LTD. — **CLAIMANT/ RESPONDENT**

AND

1. **THE ATTORNEY GENERAL OF ZAMFARA STATE**
2. **ZAMFARA STATE GOVERNMENT**
3. **SECRETARY OF THE ZAMFARA STATE GOVERNMENT**

— **DEFENDANTS APPLICANTS**

RULING

This Ruling is at the instance of the Defendants/Applicants who approached this Honourable Court vide a Motion on Notice praying for the following:-

a. An Order of this Honourable Court setting aside the entire proceedings and all orders made in and arising from this suit for lack of jurisdiction.

b. And for such order or other Orders as this Honoruable Court may deem fit to make in the circumstance.

In support of the application, a 4 (four) paragraph affidavit deposed to by one UsmanSalihu a litigation secretary at Mike Ozekhome's Chambers.

It is the contention of the Defendants/Applicants as distilled from the affidavit in support of the Motion that an amended writ was filed by the Plaintiff/Respondent, **Bina Consult and Integrated Services Limited** on 15th November, 2019, which bothered on a lease agreement, entered on 7th June, 2010, between **Zamfara State of Nigeria and Alhaji Hassan Ahmad Danbaba**(carrying on business under the name and style of **Bina Consult**).

That from the lease agreement so exhibited by the Plaintiff/Respondent, the Plaintiff/Respondent is not a party in the said lease agreement, and consequently lacks locus standi to bring this suit.

That there is no Plaintiff in the present suit known as either **Alhaji Hassan Ahmad Danbaba or**

BinaConsult, the very party to the lease agreement entered into with the 2nd Defendant herein.

That there is no privity of contract or any nexus howsoever between the Plaintiff in this suit and the Defendants on the writ and supporting documents.

That the absence of privity of contract vitiates the entire proceedings as no sanctity of contract can thereby arise or be envisaged.

That it is only where proper parties are before the court that the court can be clothed with the jurisdiction and competence to hear and entertain this suit.

That unless all the proceedings in this suit are set aside for want of jurisdiction and competence, the Plaintiff/Respondent will continue to waste the time

of this Honourable Court and inflict grave injustice on the Defendants/Applicants.

That unless restrained by this Honourable Court vide the grant of this application, the Claimant/Respondent will enforce the Orders and judgment sum made and given without jurisdiction, to the detriment of the Defendants/Applicants.

That damages will not be adequate remedy as the subject matter of the suit belongs to a whole State Government and as Claimant/Respondent will not be able to repay the funds of the Defendants/Applicants if it is not prevented from dissipating same and the Claimant/Respondent will not be prejudiced if this application is granted.

That the Defendants/Applicants hereby undertake to pay damages should this application be granted and later found to be frivolous.

In compliance with the Rules of this Court, learned counsel for the Defendants/Applicants filed a written address wherein a lone issue was formulated for determination to wit;

> "***Whether the Court can make an Order setting aside all proceedings in a suit, where it is found that the party is bereft of locus standi and the court lacks jurisdiction."***

In arguing the sole issue, learned counsel submits that it is trite law that jurisdiction is the spinal cord of every litigation and once raised, it must be resolved before further step is taken in the matter. For any court to be clothed with jurisdiction to hear

a case, the court must be properly constituted, the subject matter of the case is within its jurisdiction, and the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. ***MADUKOLU & ORS. VS. NKEMDILIM (1962) LPELR – 24023 (SC);***

EZE VS. PDP & 3ORS (2019) 1 NWLR (Pt. 1652) 1 SC at Page 18, Paragraphs B – D were cited.

Counsel respectfully submits that this court lacks the jurisdiction because the suit was not initiated by due process of law, and the required condition precedent to the exercise of jurisdiction was not fulfilled. It remains paramount that the Plaintiff is a meddlesome interloper who has no business

bringing this suit sequel to the backbone of his Statement of Claim, the lease agreement.

Learned counsel submits that the law is trite, that an action or suit instituted or commenced by wrong or improper parties cannot be sustained in law, same would be struck –out for being incompetent.

TILLEY GYADO & CO. (NIG.) LTD. & ANOR VS. AMCON (2014) LPELR – 22518 (CA);

ATHANISUIS VS.EWA & ORS. (2015) LPELR – 22518 (CA);

INEC VS. DPP & ANOR (2015) LPELR – 24900 (CA) were cited.

Counsel further submits, that one who is not a party to a contract cannot make a claim in contract in respect thereof unless, of course, he is privy thereto

or has acquired some legal interest, say by way of assignment of any rights there under.

BORISHADE VS. NATIONAL BANK OF NIGERIA LTD. (2005) LPELR – 11968 (CA);

UNANOWO VS UNION BANK (2018) LPELR – 47307 (CA);

ADABANYA VS. AIR FRANCE (2018) LPELR (2018) LPELR – 49894 (CA) were cited.

It is further submitted by counsel that it is trite that anyone, desirous of instituting a suit against another should have the pre-requisite locus standi to so do and failure to so possess, robs the court of its jurisdiction.

ALI VS UZOIGWE & ORS (2016) LPELR – 40972 (CA);

CENTRE FOR OIL POLLUTION WATCH VS. N. N. P. C (2019) 5 NWLR (Pt. 1666) 518 at 562, paragraphs B – F; at 594, paragraphs D – G) were cited.

With respect to cause of Action, counsel submits that the Plaintiff/Respondent is not a party to the lease agreement, the fulcrum of its case as evidenced herein and the lease agreement. Claimant /Respondentis not also protected by the doctrine of privity of contract because the company is a stranger to the lease agreement. Plaintiff does not possess any special interest to award him the locus to institute this suit. This as it remains trite, robs this court of jurisdiction to entertain this suit.

Conclusively, counsel argued that having shown to this court that the Defendants/Applicants have met

the condition set out by law, this is a proper case for which the court ought to grant the Defendants/Applicants prayer as sought.

On its part, Claimant/Respondent filed counter – affidavit in opposition to Defendants motion,duly deposed to by one Grace Amarachi Maxwell, a legal practitioner and counsel in the law firm of Messrs Country Chambers.

It is her deposition in her 7 paragraph affidavit that, **Bina Consult & Associates or Bina Consult**was not registered as a company with the Corporate Affairs Commission at the time the lease agreement was made.

That the undated lease agreement was made in 2009.

That the lease Agreement is a pre – incorporation contract which was executed between the

Claimantrepresented in the agreement by its Chairman and alter ego, **Alhaji Hassan Ahmed Danbaba (MagajinGarinSokoto**) and the **Government of Zamfara State.**

That it was agreed, that the Lease Agreement will commence effectively from when the renovation and upgrading of the building and appurtenances into a world class hotel would be completed and also when the Claimant (at the time being promoted for incorporation) is registered as a Limited Liability Company.

That the lease agreement was made prior to the formation of **Bina Consult and Integrated Services Limited,** the Claimant as presently instituted in contemplation that the agreement is a pre –

incorporation contract that will be ratified by the Claimant upon incorporation.

That although the agreement was signed by **Alhaji Hassan Ahmed Danbaba,** on behalf of the Claimant, the Defendants knew that the agreement was executed in contemplation of the formation of **Bina Consult and Integrated Services Limited.**

That the Claimant was eventually incorporated on the 3rd day of February, 2010.

That the Claimant ratified the agreement accordingly upon its incorporation.

That the Claimant's letter dated 15th March, 2011 signed by **Alhaji Hassan Ahmed Danbaba** on behalf of the Claimant, among other clearly shows the ratification of the lease agreement by the Claimant with the Defendants. The Claimant's letter

dated 15th March, 2011 signed by **Alhaji Hassan Ahmed Danbaba**on behalf of the Claimant which is shown to me is hereby attached to this affidavit and Marked Exhibit "A".

That the correspondences exchanged between the parties also shows that the Defendant knew that **Bina Consult & Associates. Bina Consult** and, or **Bina Consult and Integrated Service Limited** are one and the same entity.

In line with the law, a written address was filed wherein two issues were raised for determination to wit:-

1. ***Whether an application of this nature is competent to be heard by this Honourable Court at this stage of proceedings.***

2. ***Whether a pre – incorporation contract is not an exception to the general rule relating to privity of contracts.***

On issue 1, ***Whether an application of this nature is competent to be heard by this Honourable Court at this stage of proceedings.***

Learned counsel contended that an application filed on behalf of the Defendants/Applicants without filing a statement of defence, challenging the locus of the Claimant to institute this action, amounts to demurer.

It is his argument that this procedure has long been abolished by the court. Order 23 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure Rules) 2018 was cited.

Counsel submits further, that the issues raised in the Defendants/Applicants' application are not issues of jurisdiction but issues that bother on the proprietary or otherwise of the Claimant's capacity or locus to sue. The Defendants are therefore required by the extant law to file a defence to the Claimant's pleadings, incorporating the issues they desire to canvass in their pleadings.***TANGARAN VS.HAFIZU & ORS. (2013) LPELR – 22711 (CA) was cited.***

Onissue 2, ***Whether a pre – incorporation contract is not an exception to the general rule relating to privity of contracts,*** learned counsel stated the trite position of law that a company is entitled to the benefit of a pre – incorporation contract entered on its behalf by an individual prior to its incorporation. Section 96 (1) of the ***Company and Allied Matters***

Act (CAMA), 2020; ***MADUBUEZE & ANOR VS. MORTGAGES PHB LTD. & ORS. (2021) LPELR 53821 (CA) at page 44 – 45 were cited.***

It is further the submission of counsel, that this suit is properly instituted on the clear existence of a privity of contract between the Claimant and the Defendants. It is his argument that Exhibit "A" clearly shows that by the conduct of the parties, the contract signed by Alhaji Hassan Ahmad Danbaba on behalf of the Claimant, was ratified after its formation and the Defendants continued to deal with the Claimant as if the Claimant has been in existence at the time of entering the Lease Agreement.

On the whole, counsel submits that the Defendants have woefully failed to place sufficient material before this court to exercise discretion in its favour.

The application therefore ought to fail and counsel urged the court to dismiss it accordingly.

On their part, Defendants/Applicants filed further affidavit in support of their motion deposed to by UsmanSalisu.

It is his deposition that he has read the Claimant's/Respondent's counter affidavit in opposition to the Defendants/Applicants' motion dated 14th October, 2020.

It is the argument of counsel that the Rules of this court providing that there must be at least two (2) clear days between the service of motions on notice and the day for hearing did not contemplate shutting out the Defendants/Applicants who has Seven (7) clear days, within which to respond to the Motion on Notice.

It is counsel's argument that Order 43 Rule 6 of the Rules of this Honourable Court is not invoked when a party is acting within the allocated clear Seven (7) days to respond to a Motion on Notice, and that Defendants/Applicants never complained about the non – service of Motion No: M/9604/2020 served on the 10th of September, 2020, at 12:22pm.

That by the Rules of this Honourable Court, the clear Seven (7) days period for the Defendants/Applicants to respond to the said Motion on Notice started from the 11th of September, 2020 (excluding the date of service and Sunday) and lapsed at 12.00am of 18th September, 2020.

That he knows as a fact that the earliest date this Honourable Court ought to have heard Motion No.

M/9604/2020 ought to be on a date from 18th September, 2020.

That paragraph 7 of the counter affidavit is completely false. The return date endorsed on the face of **Motion No. M/9604/2020** offends the provisions of the Rules of this Honourable Court.

That paragraph 8 of the counter affidavit is completely false. That the Defendants/Applicants were still within time as at 17th September, 2020, to demonstrate their intention to oppose or challenge Motion No. **M/9604/2020.**

A written address was filed wherein counsel urged the court most respectfully, to set aside its order of 21st September, 2020, and uphold all the arguments as canvassed in this reply and in their application leading to this reply.

Court:-

I have read and assimilated the arguments of learned counsel for the Defendants/Applicants on the issues of locus standi and jurisdiction on one hand, and the reaction of learned counsel for the Claimant/Respondent on the other hand.

To resolve the legal impasse, I shall briefly but succinctly consider the status of the Claimant/Respondent as a party to this suit, vis- a – viz his locus to maintain this action as contained in the statement of claim, which shall be the basis of the jurisdiction of this court.

It is the contention of Claimant/Respondent as averred in paragraphs of its statement of claim that the Lease Agreement is a pre-incorporation contract which was executed between the Claimant

represented in the agreement by its chairman and alter ego, Alhaji Hassan Ahmed Danbaba (MagajinGarinSokoto) and the Government of Zamfara State.

Although the agreement was signed by Alhaji Hassan Ahmed Danbaba, on behalf of the Claimant, the Defendants knew the agreement was executed in contemplation of the formation of Bina Consult and Integrated Services Limited. The Claimant ratified the agreement accordingly, upon its incorporation. This is evidenced by Exhibit “A”.

The position of the law is very clear on issues of this nature. It is instructive to state, that the fulcrum of this case is the Lease Agreement. The Claimant/Respondent protected by the doctrine of privity of contract because it is certainly not a

stranger to the Lease Agreement. Exhibit "A" clearly shows that by the conduct of the parties, the contract signed by Alhaji Hassan Ahmad Danbaba on behalf of the Claimant, was ratified after its formation and the Defendants continued to deal with the Claimant as if the Claimant has been in existence at the time of entering the Lease Agreement.

The term locus standi denotes the Plaintiff's capacity to sue in a court of law to enforce a legal right. Once the Plaintiff has a right or vested interest to protect and enforce legally and this has been disclosed in the statement of claim, the onus on him to establish locus standi to sue would have been discharged.

In other words, the Plaintiff must in the statement of claim disclose sufficient interest or threat of injury and show a nexus between them and the right

claimed to enable him invoke the judicial process. ***UGWUNZE VS ADELEKE (2002) 2 NWLR (Pt. 1070) 148 at Page 171 Paragraph F – H.;***

DISU VS AJILOWURA (2006) 14 NWLR (Pt. 1000) 783 are cited.

A court is generally competent to adjudicate over a matter only when the conditions precedent for its having jurisdiction are fulfilled. A court will be competent when:-

(i) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or the other;

(ii) The subject matter of the case is within its jurisdiction and there is no feature in the case

which prevents the court from exercising its jurisdiction;

(iii) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are nullity, however well conducted and decided. Above was stated in the case of ***MINISTER OF WORKS & HOUSING VS SHITTA (2008) ALL FWLR (Pt. 401) 847 at863 – 864 Paragraphs G – C.***

One of the most important features that isfundamental to the exercise of jurisdiction by a court of law in a matter is for parties to be known to law.

Having established that there is indeed nexus between the Plaintiff in this suit and the Defendants on the writ and supporting documents, it then implies the existence of the basic locus standi to have filed this action.

Indeed, there is no specific format for raising the issue of jurisdiction and same must not be contained in any pleading. The case of ***S.O AKEGBEJO &ORS VS DR. D.O. ATAGA & ORDS (1998) 1 NWLR (Pt. 534) Page 459 Paragraphs A – B Ratio 5*** buttresses this point.

The issue of jurisdiction is radical in nature and at the very foundation of adjudication and therefore cannot be defeated by the provisions of rules of court. The case of ***S.O. AKEGBEJO & ORDS VS***

DR. D.O. ATAGA & ORS (SUPRA) Page 469 Paragraphs B-C. Ratio 4 is cited.

Jurisdiction is blood that gives life to the survival of an action in a court of law and without jurisdiction; the action albeit will be like an animal that has been drained of its blood.

It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise. ***BELLO, CJN (of pressed memory)*** stated in the case of ***UTIL VS ONOYIUWE (1991) 1 SC (Pt. 1) 61.***

It is settled law that jurisdiction is determined on the writ and or statement of claim, not on the statement of defence and or counter affidavit and exhibits attached thereto by the adverse party.

See ***TALAJU – AMAYE VS A.R.E.C. LTD (1990) 4 NWLR (Pt. 145) 422 at 441.***

It is clear that the said Alh. Hassan Danbaba entered into a contract with the Government of Zamfara State on behalf of Bina Consult.

Contractually speaking, a company is entitled to the benefit of a pre – incorporation contract entered on its behalf by an individual prior to its incorporation. Section 96 (1) of the ***Company and Allied Matters Act (CAMA), 2020***; ***MADUBUEZE & ANOR VS.MORTGAGES PHB LTD. & ORS. (2021) LPELR 53821 (CA) at page 44 – 45*** buttresses this point.

The Defendants/Applicants cannot raise a Preliminary Objection challenging the locus standi of the Claimant/Respondent to institute this action

by filing an application on behalf of the Defendants/Applicants without filing a statement of defence. This amounts to demurer.

Demurrer is a long standing procedure known to the common law for determining suits on points of law only.

Plucket, in his concise history of common law (4th edition) at page 339 – 390, explained that, the object of pleadings is to explore the law and the facts of a case by means of the assertions and denials of the parties until an issue has been reached.

If it is an issue of fact, then the parties will have ascertained a material fact which one asserts and the other denies in terms so precise that a jury will have no difficulty in hearing evidence on the matter and finding the truth of it. If it is an issue of law, the

parties will have admitted the relevant facts, leaving it to the court to decide whether the law applicable to them is as the Plaintiff or Defendant maintained.

This is called "demurrer" because one of the parties has pleaded that he is entitled to succeed on the admitted facts by the other, and is willing to (demurrer) at that point.

If his opponent does the same, then demurrer is joined, the pleadings are at the end, and the court hears the argument on the point of law and decides it"

Per Ayoola JSC (as he then was) in the case of ***MOBIL OIL (NIG.) PLC VS IAL 36 INC (2000) 4 SC (Pt. 1) 85.***

Permit me to state at this juncture that proceedings in lieu of demurrer has been abolished.

Before demurrer was abolished, one of the methods of challenging an opponent's pleadings was by demurrer. The party who demour, as done by Defendants in this case, would not proceed with its pleading but, having raised a point of law as to whether any case has been made out in his opponent's pleading for him to answer, await the decision on that point.

Order 23 of the Rules of the High Court of FCT prohibits demurrer.

A party dragged before a court of law may raise any point of law by his pleadings, which point shall be disposed of by the trial judge at or after the trial.

As mind swaying as the issues raised in the Preliminary Objection seems, nothing stops the Defendants/Applicants from filing their respective

pleadings and raising same to afford court the opportunity of appreciating the issues of facts and law raised therein.

Preliminary Objection fails for the reason advanced and is hereby dismissed.

Suit adjourned to the 21st June, 2022 for definite hearing.

Justice Y. Halilu
Hon. Judge
20th May, 2022