

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

BEFORE HIS LORDSHIP: HON. JUSTICE M.S. IDRIS

COURT: 28

Date:- 31st MAY, 2022

**FCT/HC/CV/080/2022
FCT/ M/3416/2022**

BETWEEN

E-IKRAX VENTURES NIG. LTD CLAIMANT/RESPONDENT

AND

IHS TOWERS LIMITED DEFENDANT/APPLICANT

RULING

This is a Notice of Preliminary Objection brought by the Defendant in this action contending that this suit is incompetent and the Honourable Court lacks jurisdiction to entertain same as presently constituted. The Defendant is seeking for the following relief:-

1. An Order of this Honourable Court striking out this suit.

The ground upon which this Application is made is as follows:-

1. The Defendant is not a juristic person and lacks capacity to be sued.

Attached to the Application is an 8 paragraph affidavit deposed to by one **Providence Chinemerem Chinedu** in support of the preliminary objection.

Also filed in support of this Application is a written address, the Objector adopting same as his oral argument in support of this Application.

The Defendant is contesting the jurisdiction of this Honourable Court to hear and determine this matter on the ground that the party sued as Defendant is not a juristic party and therefore lacks the capacity to be sued.

The Defendant raised a sole issue for determination to wit:

"Whether this suit as presently constituted is competent to cloak the Honourable Court with Jurisdiction to entertain same."

In arguing the above issue, Counsel to the Defendant/Objector relying on the case of **MADUKOLU V JOHNSON NKEMDILIM (1962) 2 SCNLR 341 at 348** enumerated the circumstances upon which a Court will be said to possess the requisite authority to assume jurisdiction over a matter.

Counsel to the Defendant/Objector stated that it is trite that only a natural or juristic person can sue or be sued, submitting that where either parties to a suit is not a legal person capable of exercising legal rights and obligation under the law, the other

party may raise this fact as a preliminary objection which, if upheld, would normally result in the action being struck out.

Counsel to the Defendant submitted in conclusion that the lack of legal personality on the part of the Defendant is a salient and fundamental feature that vitiates this suit and any proceedings ensuing here from and ultimately robs this Court of the jurisdiction to entertain same. Counsel cited the case of ***UZOHO V N.C.P. (2007) 10 NWLR (Pt. 1042) 225 at 429.***

Arguing per contra, the Claimant filed a 13 paragraph counter-affidavit deposed to by one **Chukwu Patricia** of No. 2 Piertersburg street, Wuse II Abuja. Also filed in opposition to the Defendant's objection is a written address, Counsel to the Claimant adopting same as his oral argument in opposition to the Defendant's application.

Counsel to the Claimant in his written address adopted a sole issue to wit:-

"Whether the Defendant/Applicant is entitled to the grant of its Application"

In arguing the above issue, Counsel stated that the rules of this Court like many others have abolished the practice of demurer, hence a Defendant seeking to raise objection to the suit of the Claimant must first file a Statement of Defence and other accompanied processes. Counsel cited **Order 23(1) and (2) of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018.**

Counsel to the Claimant contends that the Defendant is a juristic person and that the Defendant is duly registered with the Corporate Affairs Commission and by operation of law is a juristic person. Counsel stated that the objection of the Defendant is at best a misnomer and does not go to the issue of the matter and as such should not lead to the nullification of the proceedings. Counsel referred this Court to the provisions of **ORDER 13 RULE 5** of the Rules of this Honourable Court which provides a direction for the Court to follow where issues of this nature arises.

Counsel to the Claimant in conclusion submitted that the Court has been enjoined in plethora of authorities not to dwell on technicalities but on the merit of a case before it. Counsel urged this Court to discountenance the application of the Defendant/Applicant in the interest of justice as same is lacking in merit and does not hold water.

I have read carefully the arguments canvassed by Counsel to the Defendant and Claimant respectively and it is discernable that the pit and substance of this objection rests on a sole issue to wit:

"Whether this Court has the Jurisdiction to entertain this matter"

The position of the Rules of this Honourable Court on issues as in the present case is instructive. **ORDER 13 RULE 5 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018** provides thus:-

"Where an action has been initiated against a wrong defendant or where the name of a defendant has been incorrectly stated, the Court may upon application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just."

The above position therefore gives the Court the powers to make consequential orders where the name of a defendant as in the present case was incorrectly stated in a process.

The Court has in a plethora of cases enunciated the position of the law where the name of a party to an action is wrongly stated in an application before the Court. The Court in the case of ***REGISTERED TRUSTEES OF ACTS OF APOSTLE CHURCH V FATUNDE & ORS (2015) LPELR- 24727 (CA)*** stated in principle thus:-

"A misnomer is said to be a mistake in name and it occurs when there is a mistake as to the name of a person who sued or was sued, or when an action is instituted by or against the wrong person. In other words, the correct person is taken to Court under a wrong name or incorrect name is given to a person in Court. Usually, where there is an error only as to the correct name of a party

to a suit, an amendment may be sought to correct the name of a party to a suit and the Court should be disposed to granting such an application”

Armed with the above case, it is pertinent to point out that the objection raised by the Defendant falls under a misnomer in law and the consequences to be meted on such mistakes are usually at the discretion of the Court with strict recourse to the circumstances of the case.

I agree with the submission of Counsel to the Claimant that a misnomer when associated with issues of juristic personality and mis-description of names of parties simply means the wrong use of a name or a mistake in naming a person, place or thing especially in a legal instrument which should ordinarily not lead to a nullification of the proceedings.

I therefore resolve the sole issue in favor of the Claimant that this Court has requisite jurisdiction to hear and determine this suit. Therefore, the preliminary objection of the Defendant is accordingly dismissed. I therefore Order the Claimant to make consequential amendments through an application before this Court forthwith. I would like to add in this ruling the object of trial in every case is for the case to be tried solemnly in accordance with the law. In this respect this Court has the jurisdiction to try this matter the issue of technicalities in our judicial system have

been severely addressed in plethora of cases by the Supreme Court.

It is helpful to always remember that technical justice is no justice at all, and a Court of law should distance itself. Courts of law should not be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. Justice can only be done in substance and not by impeding it with mere technical procedural irregularity that occasioned no miscarriage of justice. Where the facts are glaringly clear, the Court should ignore mere technicalities in order to do substantial justice see ***ABUBAKAR VS YAR ADUA (2008) 4NWLR (pt 1078) 465. AKAN VS BOB (2010)17 NWLR (pt 1223) 421. FAMFA OIL LTD VS A.G FEDN (2013) 18 NWLR (pt 852) 543.*** I so hold.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

appearance

M. A Shedrach:- For the Claimant

M. J Haruna:- For the Defendant.

