

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:- 24/5/2022

FCT/HC/CV/2552/2021

BETWEEN

**PADDINTON NIGERIA LIMITED
(Suing through its Lawful Attorney
BARR.HENRY MAGAJI DANJUMA)**

CLAIMANT/RESPONDENT

AND

- 1. MR. JOHN JOSIAH BALA**
- 2. MINISTER OF FEDERAL CAPITAL TERRITORY**
- 3. BWARI AREA COUNCIL**

DEFENDANT/APPLICANT

RULING

This is a Notice of Preliminary Objection brought pursuant to Order 43 Rule 1 and 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Section 6(6) (B) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and under the inherent jurisdiction of this Honourable Court. The 3rd Defendant/Applicant is seeking for the following reliefs:-

1. An Order of this Honourable Court striking out/dismissing the suit for want of jurisdiction.
2. An Order of this Honourable Court striking out this suit as the condition precedent for the exercise of jurisdiction has not been complied with and/or fulfilled by the Claimant herein.

3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which this Application is made are as follows:-

1. The Claimant/Respondent has failed, refused and/or neglected to serve the 3rd Defendant/Applicant with the required mandatory pre-action Notice, in compliance with Section 124 of the Local Government Act, 1976, Laws of the Federal Capital Territory.
2. That the issuance and service of Pre-Action Notice is a condition precedent to the assumption of jurisdiction by this Honourable Court, in any matter between any person and the Area Councils in the FCT.
3. That failure to serve the Defendant/Applicant the required Pre-Action Notice robs the Court of the requisite jurisdiction to hear the instant suit.

The 3rd Defendant/Applicant is contesting the jurisdiction of the Honourable Court to hear and determine this matter on the ground that the action is incompetent for none compliance with due process of Law before the commencement of the suit. The 3rd Defendant/Applicant in support of Preliminary Objection filed a 10 Paragraph affidavit deposed to by one Kelvin Nwabueze. Also, in compliance with the rules of Court, the 3rd Defendant/Applicant filed a written Address in support of the Application.

The 3rd Defendant/Applicant raised a sole issue for determination to wit:-

"Whether this Honourable Court has the Jurisdiction to hear and determine this suit against the Defendant/Applicant without the required mandatory Pre-Action Notice properly issued and served in strict compliance to Section 124 Local Government Act No 8, 1976 Laws of FCT".

In arguing this issue, 3rd Defendant's Counsel submitted that issue of jurisdiction is the live wire of adjudication and that where a Court lacks jurisdiction to entertain a matter, every decision reached thereof becomes a nullity and an exercise in futility no matter how well conducted and decided by the Court.

Counsel to the 3rd Defendant stated that where there is non-compliance with the condition precedent for setting a legal process in motion, any suit instituted in contravention of such laid down preconditions becomes incompetent and robs the Court of the jurisdiction to hear the matter. Counsel cited the case of ***BABALOLA V OSOGBO L.G (2003) 10 NWLR (PT 829) 465 @ 471 Ratio 6 and GAMBARI V GAMBARI (1990)5NWLR (PT 52) P572***. Counsel also drew the attention of the Court to the locus-classicus case of ***MADUKOLU V NKEMDILIM (1962) ALL NLR 587*** on the conditions required for the assumption of jurisdiction by a Court of law.

In conclusion, Counsel to the 3rd Defendant/Applicant in light of all arguments canvassed, judicial and statutory authorities cited in its brief of argument submitted that the failure of the Claimant/Respondent to serve the 3rd Defendant/Applicant with the requisite Pre-Action Notice as provided for by section 124 of the Local Government Act No.8 1976, FCT, clearly robs this Honourable Court of the jurisdiction to hear the instant suit on the merit. Counsel urged the Court to resolve the sole issue for determination herein in favour of the 3rd Defendant/Applicant and strike out this suit for being premature, frivolous and abuse of Court process.

Arguing per-contra, the Claimant/Respondent filed a reply on points of law to the 3rd Defendant's Application, the reply on points of law is dated 31st January, 2022 and filed on the same date.

The Claimant/Respondent in its final address raised a sole issue to wit:-

"Whether the 3rd Defendant has not waived their right by virtue of their unequivocal act of filing their pleadings"

Counsel to the Claimant/Respondent in arguing the sole issue submitted that it is trite law that where a party complains of irregularities in procedure and has gone ahead to do some unequivocal act, he is deemed to have waived that right. Counsel in support cited the case of ***AUTO IMPORT EXPORT V ADEBAYO (2005) 19 NWLR (PT. 959) 44 AT 122 Paragraphs E-G; Paras H-A. and OLUMIDE V O.A.U (1998) 5 NLWR (Pt. 549) 128.***

Counsel to the Claimant/Respondent contends that the decision of the 3rd Defendant in filing a robust defence to the action devoid of the Claimant not serving the 3rd Defendant pre-action notice before filing the action against them amounts to a waiver of such condition.

Counsel to the Claimant similarly stated that the Pre-action notice as contemplated by the 3rd Defendant is only applicable to the 3rd Defendant and does not affect other Defendants to the suit.

In conclusion, Counsel to the Claimant/Respondent urged the Court to resolve the sole issue in favour of the Claimant/Respondent , and proceed with the case to be heard on the merit.

I have carefully read the Notice of Preliminary Objection as filed by the 3rd Defendant and have also read the legal argument proffered by Counsel. In similar vein, I have read the reply on point of law filed by the Claimant as well as the legal argument proffered by the Counsel in opposition to the Preliminary Objection.

This preliminary objection is predicated upon a simple issue of law. Wherein the 3rd Defendant is objecting to the Claimant's case on the ground that the Claimant did not file or serve on the 3rd Defendant a pre-action Notice as required by law.

The 3rd Defendant in this case is a Local Government within the federal capital territory. To sue a Local Government in the federal capital territory, the aggrieved party is required to issue to the Local Government a pre-action Notice. This position is in accordance with the provision of law.

In this instance, the applicable law is the laws of the federal capital territory of Nigeria vol. 3, the Local Government Act No. 78, 1976, Section 124 which provide as follows:-

Section 124(1):

"No suit shall be commenced against a Local Government until one month at least after a Written Notice of intention to commence the same has been served upon the Local Government by the intending Plaintiff or his agent".

Section 124(2):

"Such Notice shall state the cause of action, the name and place of abode of the intending Plaintiff and the relief which he claims".

From the tenor of Section 124 of the Local Government act 1976, an intending Plaintiff must mandatorily serve a Local Government a written pre-action Notice which length of time must be one month prior to commencing an action against the Local Government. By the same token, the said Section 124 clearly state the content of such Notice which has to contain the cause of action, the name of the intending Plaintiff and his place of abode as well the relief which the Plaintiff intends to claim. This Notice is mandatory.

In the case of ***MINISTRY OF EDUCATION ANAMBRA STATE V ASIKPO (2014) 14 NWLR (Pt. 1427) 351 OTISI J.C.A*** held as follows:-

"A pre-action Notice is therefore a mandatory Notice that has to be given by the Plaintiff in required cases before this action can be competent. It is a pre-condition that must be complied with. Any action commenced in breach of this requirement would be incompetent".

Not only is the pre-action Notice required to be given in writing, it must comply strictly with the provisions of the law. In **NETIERO V NIGERIAN PORTS AUTHORITY (1998) 6 NWLR (Pt. 555) 640**. The Supreme Court in considering Section 110 (2) of the ports act 1990 which is in pari-materia with Section 124 (2) of the Local Government act 1976 as applicable in the case provide as follows:-

"No suit shall be commenced against the authority until one month at least after written notice of intention to commence the same shall have been served upon the authority by the intending Plaintiff or his agent. Such Notice shall state the cause of action, the name and place of abode of the intending Plaintiff and the relief which we claim".

"The provisions as set out above are clear, direct and mandatory. The required Notice is expected to be given when the decision to commence an action has been taken and it must be given and served on the chairman or secretary of the authority (as provided in section III of the act) latest one month before the commencement of the action. The Notice is also required to be in writing. It follows therefore that any purported Notice which fails to meet any of the conditions specified in the section of the act will be null and void. Any action commenced in breach

of the provision will also have been commenced without complying with one of the required due process or pre-condition and such action would be incompetent. See Madukolu v Nkemdilim (1962) 2 SCNLR, 341”.

Fortified by the above decision, I shall turn my attention to the instant application. The 3rd Defendant in this case has argued that the Claimant did not serve the 3rd Defendant with a pre-action notice prior to the commencement of the action.

The Claimant on his part has argued that the 3rd Defendant had waived his right to a pre-action notice having filed his Statement of defence and that the pre-action notice in any case only avails the 3rd Defendant and not the 1st and 2nd Defendants.

It is clear that the Claimant failed to serve the 3rd Defendant a pre-action notice as contemplated by Section 124 of the Local Government act of 1976. What is the consequence? The failure is most regrettably fatal to the Claimant’s case as against the 3rd Defendant. Where it is shown that the Claimant did not fulfill the pre-conditions for instituting his action, the said action will be considered premature and liable to be struck out. See the case of ***EZE V OKECHUKWU (2002) 18 NWLR (Pt. 799) 348.***

Further to the above, it is important to state clearly that the pre-action notice as contended by the 3rd Defendant solely applies to the 3rd Defendant by virtue of being a Local Government in Nigeria governed by the Local Government Act of 1976. Therefore, the mandatory requirement of a pre-action notice does not apply to the 1st and 2nd Defendant in this action.

In the case of ***MOBIL PRODUCING NIG. LTD V LASEPA (2003) FWLR (Pt. 137) 1029 @ 1050. AYOOLA J.S.C*** held as follows:-

"There is no dearth of authorities as to the consequence of failure to serve a pre-action Notice when such is made a condition precedent for the commencement of a suit. A suit commenced in default of service of pre-action Notice is incompetent as against the party who ought to have been served with pre-action Notice provided such party challenges the competence of the suit".

It is trite, that you cannot put something on nothing and expect it to stand. No it will fall, this is also trite in law where a suit against a Defendant is incompetent as in this case against the 3rd Defendant as a result of non fulfillment of a pre-condition in commencing the action, the Court will therefore give consequential orders to do justice to the case before it. The 3rd Defendant by virtue of filing a Statement of Defence does not waive his right to this Application as contended by the Claimant/Respondent, the issue of waiver in the instant case does not arise.

In the light of the above, I hold that this suit is incompetent solely at the instance of the 3rd Defendant as same is pre-mature, a condition precedent to the institution of same haven not been complied with. I therefore Order as follows:-

1. That the name of the 3rd Defendant be struck out of this suit for being pre-mature further to a condition precedent.
2. The suit of the Claimant subsists against the 1st and 2nd Defendants, same is to be heard on the merits.

I will like to add in this ruling that jurisdiction of a Court to try a matter before it is very important because a judgment delivered by a Court without a jurisdiction is a nullity see **LAWANI VS SHETTIMA(2001) FWLR (pt 71) at 1870** and objection to jurisdiction touches the competence and legality of the trial Court to try a case see **SHELL**

PETROLEUM DEVELOPMENT CO. OF NIG VS ISAIAH (2001) 11 NWLR (pt 723) at 168-173 and 174, jurisdiction is radical in nature and at the foundation of adjudication. So important is it that it cannot be defeated by the provision of the rules of Court. **AKEGBEJO VS ATAGA (1998) 1 NWLR (PT 534) at 462.**

Jurisdiction is a threshold issue. Thus, once the issue of jurisdiction is raised, the Court must consider it first because where a Court takes upon itself to exercise a jurisdiction which it does not possess its proceedings are futile and its decision amounts to a nullity see *SHELL COMPANY (supra)* it was for this reason that the Court in **A.G ANAMBRA VS AGF SHELL PETROLEUM COMPANY (supra)** held that the request that the resolution of the question of the Courts jurisdiction be deferred until the Plaintiff's have been heard on their Claim cannot be acceded to because where a Court examines a jurisdiction it does not possess, its decision amounts to nothing; it is thus clear that there is no point a Court proceeding in a matter without the necessary jurisdiction.

A party raising an objection to jurisdiction need not even bring the application under any rule of Court see **WURO BOGGA NIG LTD VS HON. MINISTER FCT ABUJA & ORS (2009) LPELR 20032 CA.** Although the 3rd Defendant/Applicant had filed his statement of defence that cannot change the position of the law you cannot put something on nothing and expect it to stand this is trite.

I therefore on the final analysis grant the prayers so prayed in favour of the 3rd Defendants only.

HON. JUSTICE M.S IDRIS
(Presiding Judge)