

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ON THE 22ND DAY OF SEPTEMBER, 2022
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/CV/1180/21

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

PARTNERSHIP FOR SUPPLY CHAIN MANAGEMENT INC..CLAIMANT
AND
MDS LOGISTICS LIMITED.....DEFENDANT

RULING

The Defendant's application is dated 15/09/21 but filed on the 19th of November 2021. It is brought pursuant to Section 6 (6) (a) of the 1999 constitution, Section 7(4) of the Limitation Act, Order 15 Rules 16 & 18 (1) and (2) and order 43(1) of the rules of Court.

The application prays for:

- (1) An Order dismissing or striking out the suit in its entirety.
- (2) And for such order or further orders as the Court may deem fit to make in the circumstances.

The grounds for the application relied upon by the Defendant's Counsel are:

- (1) That the suit is statute barred under Section 7 (4) of the Limitation Act.
- (2) That the Claimant lacks locus standi to institute the suit.
- (3) The suit is an abuse of Court process.

The application is supported by a 10 paragraph Affidavit sworn to by Godwin Tyokaa, a Litigation Officer of Abia House Plot 979 First Avenue, Off Ahmadu Bello Way, Central Business District, Abuja.

He deposes:

That the Writ of Summons and Statement of Claim in this suit was filed on June 21, 2021. That by the occurrence of a fire incident in April 28, 2015, the Applicant breached the duty of care owed by the Applicant to the Respondent in respect of certain pharmaceutical goods. That in respect of the same subject matter, the Respondent has also commenced arbitration proceedings at the International Centre for Dispute Resolution

against Imperial Health Sciences a Division of Imperial Group Ltd.

The Respondent commenced the said arbitration by a demand for arbitration dated April 21, 2021. Exhibit A attached is a copy of the Respondent's Demand for Arbitration dated April 21, 2021 while Exhibit B is a letter to IHS from ICDR (International Centre for Dispute Resolution) dated April 26, 2021 while Exhibit B is a letter to IHS from ICDR dated April 26, 2021. That the description of the dispute as garnered from Exhibit A is "This claim involves a breach of contract resulting in loss of and damages to Claimant's cargoes as a result of fire on or about April 28, 2015 at a warehouse in Abuja Nigeria while the cargoes were under the care and custody and control of the Respondent Imperial Health Sciences (IHS) and its agents, servants, contractors and or representatives. This demand is without prejudice to any other proceedings".

That paragraph 24(b) of the claim herein seeks a declaration that the Defendant/Applicant was negligent in dealing with and or taking all reasonable and necessary care with respect to the Claimant's (Respondent) Pharmaceutical products while the said

products were under the care and custody of the Defendant/Applicant at its warehouse located at Idu which said products were destroyed by fire incident of 28th April, 2015. The said products were stored in the Applicant's warehouse by IHS not the Respondent. The Respondent will not be prejudiced.

The Claimant's Counter Affidavit relied upon by the Claimant's Counsel is deposed to by John Gambo Kogi of 2nd Floor Abia House, Plot 979 Central Business District, Abuja. He is also a Litigation Clerk. He deposes that the Claimant had earlier filed a suit in respect of this matter in the Lagos High Court via a Writ of Summons dated 26 April 2018. It was struck out on 22/01/21 at the instance of the Defendant for want of territorial jurisdiction. The tortious act having occurred in the FCT. That during the pendency of the Lagos suit and prior to the filing of this suit, there were supervening events etc. general lockdown due to Covid-19 and JUSUN strike, which led to total shut down of Courts. That the arbitration proceedings commenced by the Claimant is against an entirely different party.

The Applicant is a distinct legal personality. That the subject matter in this suit is bailment as there is no contract between

Claimant and the Defendant. That it will be in the interest of justice to dismiss the application.

In a Further Affidavit, Defendant deposes that the Lagos suit is not the same as this suit. That Defendant was wrongly described by the Claimant. That it was commenced by Claimant on behalf of four subrogated insurance companies known as Chubb Syndicate 1882. That the reliefs are also different from the reliefs herein.

Learned Counsel to the Defendant/Applicant argues that the suit is statute barred under Section 7(4) of the Limitation Act. That this suit is founded on tort. That the cause of action accrued on April 25, 2015. The cause of action giving rise to this suit became statute barred on 27th April, 2021 which is the expiration of six years.

The suit was commenced on June 21, 2021. That this is an action in bailment. The Respondent is not involved in the bailment relationship. The Claimant therefore lacks the locus standi to institute and maintain this action. The Court should

examine the Statement of Claim to find if the Claimant has locus to bring this action. The proper order to make is a dismissal of the suit.

Learned Counsel also contends that the suit is an abuse of Court process. That the description of the dispute in the ICDR arbitration and this Court is the same. The Respondent is the Claimant in both proceedings. Learned Counsel urges the Court to dismiss this suit.

The Claimant's Counsel raised a lone issue for determination which is whether having regard to the true state of the facts before this Court, whether the Applicant is entitled to the reliefs sought. He contends that the Court's statutory powers to hear and determine disputes can only be curtailed under certain conditions which are settled. That Claimant filed a suit in Lagos dated 26/04/18 in respect of the same matter.

That limitation time will freeze during the pendency of an earlier suit. That the period of JUSUN Strike constitute a force majeure which incapacitated the Claimant. He finally urges the Court to

hold that the present suit is not statute barred. That bailment can arise without a contract or tort. The parties, subject matter and issues in this matter are not the same as the other suit.

He urges the Court to dismiss the application. The issues for determination in this application are:

- (1) Whether this suit is statute barred under Section 7 (4) of the Limitation Act.
- (2) Whether or not the Claimant lacks the locus standi to institute this action.
- (3) Whether the suit as presently constituted is an abuse of Court process.

Section 7(4) of the Limitation Act states:

“Subject to the provisions of Section 8 of the Act, an action founded in tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.”

The present suit is hinged on negligence. Reliefs 24(a) & (b) is to the effect that the Defendant has a duty of care to deliver in good and same condition, the Claimant's Pharmaceutical

products. That the Defendant was negligent in dealing with and or taking all reasonable and necessary care with respect to the Claimant's Pharmaceutical products while the said products were under their care and custody. The law is that where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly brought or instituted after the expiration of the prescribed period. Thus, an action instituted after the expiration of the prescribed period is said to be statute barred.

See OGUNKO VS. SHELE (2004) 6 NWLR (PT. 868)17

OSUN STATE GOV. VS. DANLAMI NIG. LTD (2007) ALL FWLR (PT. 365) 438.

Time begins to run for the purposes of the Limitation law from the date the cause of action accrues.

See JALLCO LTD VS. OWONIBOYS TECH SERVO LTD (1995) 4 NWLR (PT. 391) 534 at 538 SC.

From paragraph 10 of the Statement of Claim, the Claimant avers that on the 28/04/15 the Defendant's warehouse was gutted by fire which spread to the Defendant's large warehouse

due to the Defendant's negligence. The Claimant's Pharmaceutical products in the Defendant's custody were completely destroyed. The cause of action accrued on 28/04/2015.

This suit was filed on 21/06/21. Generally the cause of action under normal circumstances extinguishes around 28/04/21. From the Counter Affidavit of the Claimant, deponent deposes that the Claimant activated its right of action with respect to the subject in dispute at the Lagos High Court in LD/361 6CMW/2018 on the 26/04/18. The suit was struck out on 22/01/21 at the instance of the Defendant for want of territorial jurisdiction. There was also supervening events for about 64 days i.e. lock down and JUSUN strike which led to the late filing of the suit.

In SIFAX (NIG.) LTD & ORS VS. MIG (NIG) LTD & ANO 2018 LPELR – 49735, the Court held that where an aggrieved person commences an action within the period prescribed by the statute and such action is subsequently struck out for one reason or the other without being heard on the merit or subjected to an outright dismissal, such action is still open to be recommenced at

the instance of the Claimant and the limitation period shall not count during the pendency of the earlier suit.

In the instant case, the earlier suit in the Lagos High Court was initiated on 26/04/18. It was struck out on 22/01/21. It is a period of about 2 years 9 months. By the judgment of the Supreme Court this period does not count during the pendency of the earlier suit. I do not agree with the Defendant's Counsel arguments that the parties in that case are different. The time or period of the pendency of the earlier case in the Lagos High Court is frozen or suspended in determining the period of limitation. When the period of the Lagos suit is frozen, the action would have been deemed to have been filed within 3 years and 4 months. The JUSUN strike action was from 6th April 2021 and 9 June 2021 as contained in evidence i.e. 64 days.

In the circumstance of this case, I hold the view that the suit is not caught by Section 7(4) of the Limitation Act. It is to note that the Claimant is not claiming damages so Section 8 of the Limitation Act is not applicable.

On whether or not the Claimant lacks the locus standi to institute this action. The Defendant contends that this action is in bailment. That the Claimant is not involved in the bailment relationship. The Claimant therefore lacks the locus standi to institute the action. Locus standi or standing to sue is the legal right of a party to an action to be heard in litigation before a Court of Law. A person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligation have been or are in danger of being infringed.

See *OLAGUNJU VS. YAHAYA* (1998) 3 NWLR (PT. 542) 501
INAKOJU VS. ADELEKE (2007) NWLR (PT. 1025) 423.

It is the statement of claim or evidence adduced that must be gleaned to find out whether or not a Litigant has locus standi to sue

See *EZECHUGBO VS. GOV. ANAMBRA STATE* (1999) 9 NWLR (PT. 619) 386.

I have perused the Statement of Claim particularly paragraphs 5 – 14. The law is that locus standi or legal capacity to institute proceedings in a Court of Law is not dependent on the success or

merits of a case. It is a condition precedent to a determination of a case on the merit.

See OWODUNMI VS. REGISTERED TRUSTEES OF CCC (2000) 6 SC (PT. 111) 60.

It is my view and I so hold that the Claimant has shown sufficient interest in the action and that his civil right and obligations have been breached.

On whether the suit is an abuse of Court process. The Supreme Court held in OGOEJEORO VS. OGOEJEORO (2006) 3 NWLR (PT. 966) 205 thus:

“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite varieties and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with due administration of justice”.

This can only arise the Court held in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. Thus multiplicity of actions on the same

matter between the same parties even where there exist a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right. The deposition of the Defendant/Applicant is that Claimant instituted an arbitration proceedings. Exhibit A dated 21 April 2021 is said to be the said proceedings. It is titled Commercial Arbitration Rules demand for arbitration. The names of the Respondent is said to be Imperial Health Science, a Division of Imperial Group Limited. The Claimant is Procurement and Logistics. The 3rd page is a document dated 26 April 2021. The parties are said to be Partnership for Supply Chain Management Inc., Usaid and their duly subrogated Underwriters vs. Imperial Health Science, a Division of Imperial Group Limited.

The processes are Notice of Arbitration. There is nothing to suggest that any arbitration proceeding is ongoing. The Defendant/Applicant has not put sufficient materials to the Court to enable the Court hold that an arbitration proceeding is ongoing. The Defendant/Applicant did not place materials he filed in that proceedings and or the record of proceedings. The parties in that proceedings if any are not the same with the

parties in this proceedings. No issues or subject matter have been streamlined in the said arbitration.

In the circumstance, it is my view and I so hold that this suit is not an abuse of Court process.

In the totality the Defendant/Applicant's Motion lacks merit, it fails and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
22/09/22