

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS.

COURT NO: 6

SUIT NO: FCT/HC/CV/2005/2022

BETWEEN:

PRINCE JOSEPH KPOKPOGRI.....PLAINTIFF

VS

- 1. HON. MINISTER FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL TERRITORY ADMINISTRATION**
- 3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)**
- 4. ABUJA METROPOLITAN MANAGEMENT COUNCIL (AMMC)**
- 5. FEDERAL HOUSING AUTHORITY**
- 6. ATTORNEY GENERAL OF THE FEDERATION.....DEFENDANTS**

RULING

This Ruling is premised upon a Notice of Preliminary Objection dated 11/8/2022 filed by the 5th Defendant. The 5th Defendant/Objector prays the court to decline jurisdiction and strike out/dismiss this suit.

The grounds upon which the application is brought are as follows:

- (i) The matter is not properly constituted as it were against the 5th Defendant.

- (ii) The Originating process of the Plaintiff is not franked or signed by a legal practitioner known to the law.
- (iii) The Originating process is not competent hence, robs the court of the requisite jurisdiction to try and entertain this matter.
- (iv) The Plaintiff's case disclosed no reasonable cause of action against the 5th Defendant.
- (v) The entire gamut of the Plaintiffs' action is an abuse of court process.
- (vi) The case contains some features that make the case of the Plaintiffs not to be within the jurisdiction of this Honourable Court.
- (vii) This Honourable Court has the inherent and vested powers to strike out or dismiss this suit and;
- (viii) It is in the interest of justice to strike out/dismiss this instant suit.

In canvassing argument in support of the Notice of Preliminary Objection, the 5th Defendant/Applicant Counsel filed a 20-page written address dated 11/8/2022 where learned counsel distilled a singular issue for determination, thus:

“Whether the Plaintiff’s suit is not incompetent and the court thereby deprived of the requisite jurisdiction to entertain the suit as constituted”?

On this singular issue, it is the submission of the learned counsel to the 5th Defendant that the case of the Plaintiff is not competent as it contains some features that prevent this court from hearing this case, hence rob off the court of requisite jurisdiction to entertain same. See cases of ODOFIN Vs AGU (1992) 3 NWLR (PT 229) 350 at 365 – 366 Paras H – A; MADUKOLU Vs NKEMDILIM (1962) All NLR (PT 2) 581.

It is submitted that once the court finds that there is features in the suit that prevent the court from entertaining same, the court is to strike out the case herein for lack of jurisdiction.

It is the contention that in the instant case, the Writ of Summons and Statement of Claim of the Plaintiff is not signed by a Legal Practitioner known to law or signed by the name of a Legal Practitioner on the roll of call in the Supreme Court and that this action as it were, disclosed no cause of action against the 5th Defendant. Court is referred to Section 2 (1) & 24 of the Legal Practitioners Act.

That the Writ of Summons and Statement of Claim in the instant case were franked by one Chief Mike A.A. Ozekhome, SAN, OFR which is not the name by which the learned highly referred counsel is called and contained on the roll of call of Supreme Court of Nigeria. That the name of call of the learned senior counsel is as contained in the NBA Stamp attached/affix to the process which is simply Mike Ozekhome, SAN. There is nothing on the NBA Stamp which suggests that the learned Silk bears another name from Mike Ozekhome as indicated in the way and manner the originating process was franked. Court is referred to the case of AHMAD & ORS Vs

HUSSAINI & ORS (2021) LPELR at 8 – 10. Court is urged to hold that the writ of summons and statement of claim herein is not franked by a Legal Practitioner known to law; hence, incompetent, null and void and should be struck out.

On the issue of Plaintiffs' case discloses no reasonable cause of action. It is the submission of learned counsel to the 5th Defendant, that the case of the Plaintiff did not disclose any reasonable cause of action against the 5th Defendant. See case of UWAZURUONYE Vs GOV. IMO STATE (2013) 8 NWLR (PT 1335) 28 at 56 – 57 Paras H – B.

It is submitted that a cursory perusal of the Plaintiffs' Statement of Claim show that the grouses of the Plaintiffs are against the 1st – 4th Defendants and nothing more.

It is the contention that Paragraphs 30, 36 and 37 of the Statement of Claim absorbed the 5th Defendant of any wrong doing and her name ought to be struck out. Court is urged to so hold.

The 1st – 4th Defendants' counsel did not file any process; counsel urged the court to use its discretionary power accordingly.

In response to the Notice of Preliminary Objection the Plaintiff counsel filed a 7-point counter affidavit dated 11/11/2022 deposed to by one Usman Salihu, a Litigation Secretary in the law firm of Chief Mike Ozekhome SAN. reliance is placed on all the point of the said affidavit.

Learned counsel equally filed a 22-Page Written Address dated 11/10/2022 wherein counsel distilled the following issue for determination:

- (1) Whether the 5th Defendant's Notice of Preliminary Objection seeking to dismiss the suit or strike out the name of the 5th Defendant for non-disclosure of reasonable cause of action is competent and can be entertained by this Honourable Court, same having been filed by the 5th Defendant without filing a statement of defence in the case.**

If the first issue is resolved in the affirmative, thus:

- (2) Whether the Originating processes duly franked by Chief Mike Abu Agbedor Ozekhome, SAN, OFR a legal Practitioner whose name is on the Roll of Legal Practitioners, with the abbreviated name of "Chief Mike A. A. Ozekhome, SAN, OFR" is competent before the court.**
- (3) Whether in the light of the Plaintiffs' claims and pleadings before this Honourable Court, it can be said that no reasonable cause of action has been disclosed against the 5th Defendant.**

On Issue 1, it is the submission that this objection as presently constituted is incompetent and liable to be struck out or dismissed by this Honorable Court. The submission is anchored on the ground that the 5th Defendant

has not filed any statement of defence before bringing this application. Court is referred to Order 23 Rule 1 & 2 of the Rules of this court which abolished demurrer proceedings.

It is submitted that by the above Provision of the Rule of Court, any point of law such as non-disclosure of reasonable cause of action, absence of locus standi, limitation of action etc can only be raised by the Defendant in his pleading. If he raised any such point of law without filing a Statement of Defence, his action amount to demurrer which is not allowed. See cases of MADU Vs ONONUJU (1986) 3 NWLR (PT 26) 23 at 24 Ratio 1; TABIOWO Vs DISU (2008) 7 NWLR (PT 1087) 533 at 550 Para E – G. Court is urged to hold that the Notice of Preliminary Objection filed by the 5th Defendant is incompetent and liable to be struck out.

On Issue 2, it is the submission that the originating processes in the instant case was duly franked by a Legal Practitioner in the person of Chief Mike Abu Agbedor Ozekhome, SAN, with the abbreviations name of Chief Mike A. A. Ozekhome, SAN, OFR.

It is submitted that the name "Chief Mike A. A. Ozekhome, SAN OFR" and Chief Mike Abu Agbedor Ozekhome, SAN" or simply "Mike Ozekhome, SAN" refers to one and the same person that is called to the Nigeria Bar and enrolled in the roll of Legal Practitioners.

It is further submitted that the issue raised by the 5th Defendant in this case is an issue of fact that ought to be pleaded in an affidavit. It is not purely an issue of law.

It is the submission that the law allows Legal Practitioners to use titles and educational qualifications in describing themselves and also allows them to use abbreviations to shorten their given names. See case of DANKWAMBO Vs ABUBAKAR & ORS (2015) LPELR – 25716 (SC) (PP 42 – 44 Paras F – C).

It is the submission that the provision of Section 2 (1) and 24 of the Legal Practitioner Act is to dissuade non lawyers from signing court processes and not to stop lawyers from using abbreviated names or initials to sign the court processes. Court is urged to resolve this issue in favour of the Plaintiff.

On Issue 3, it is the submission that the whole crux of this case cannot be justifiably decided without the presence of the 5th defendant as a necessary party in the suit. See AZUBUIKE Vs P.D.P. & ORS (2014) LPELR – 22258 (SC). It is submitted that the 5th Defendant levied on the Plaintiff several levies and other payment that the Plaintiff paid. That going by the Plaintiff's pleadings there is a cause of action against the 5th Defendant. Court is referred to paragraphs 10, 13, 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 50, 59, 62 and 63 of the Statement of Claim. Court is urged to dismiss this Preliminary Objection.

Learned counsel to the 5th Defendant filed a 5-Page Reply on Points of Law dated 17/10/22 wherein counsel in responding to Paragraph 3.01 – 3.11 of the Plaintiffs written address, submitted that the application of the 5th Defendant is challenging the jurisdiction of this court to entertain this suit. Court is referred to Order 5 Rule 2 (1) & (2) of the Rules of this Court and

the case of BRITANNIAU – NIG LTD. Vs SEPLAT PETROLEUM DEVELOPMENT & ORS (2016) LPELR – 40007 (SC) at 87; EBENEZER ALADEJU YIGBE & OR v GOV. OF EKITI STATE & ORS (2019) LPELR – 49352 (CA).

It is submitted that the Notice of Preliminary Objection not being a procedural issue, jurisdiction can be raised at any stage of the proceedings and even for the first time at the Apex Court orally. Court is urged to discountenance the issue of demurrer as same is not applicable to the present case.

It is further submitted that the name Chief Mike A. A. Ozekhome, SAN is unknown to law because it is not the name that appears on the roll call of Legal Practitioners. Court is urged to uphold the Preliminary Objection.

On the part of the court after a careful consideration of the processes filed and submission of learned counsel on both sides, I adopt the issues formulated by counsel to the Plaintiff as the issues for determination by this court, to wit:

- (1) Whether the 5th Defendant's Notice of Preliminary Objection seeking to dismiss the suit or strike out the name of the 5th Defendant for non-disclosure of reasonable cause of action is competent and can be entertained by this Honourable Court, same having been filed by the 5th Defendant without filing a Statement of Defence in the case.**

If the first issue is resolved in the affirmative, thus:

- (2) Whether the Originating processes duly franked by Chief Mike Abu Agbedor Ozekhome, SAN, OFR a Legal Practitioner whose name is o the Roll of Legal Practitioners, with the abbreviated name of “Chief Mike A. A. Ozekhome, SAN, OFR” is competent before the court.**
- (3) Whether in the light of the Plaintiffs’ claims and pleadings before this Honourable Court, it can be said that no reasonable cause of action has been disclosed against the 5th Defendant.**

On Issue 1, it is the contention of the Plaintiff’s counsel that the 5th Defendant has not filed any statement of defence before bringing this application and therefore his application amounts to a demurrer which has been abolished by Order 23 Rule of the Rules of this Court.

On the other hand, the 5th Defendant Counsel contended that the provision of Order 23 Rule 1 and 2 of the Rules of this court is not applicable to a situation where an applicant is challenging the jurisdiction of the Honourable Court.

I agree with the submission of learned counsel to the 5th Defendant in paragraph 1.5 of his Reply on Points of Law that where the issue of jurisdiction has been raised, such must be taken first before the court takes

any other steps in the proceedings. However, this position will only stand where the Defendant challenges the substantive jurisdiction of the court simpliciter. It must be a challenge to jurisdiction on substantive law, not where he challenges the procedural jurisdiction of the court or the pleadings of the plaintiff and argues that there is non disclosure of reasonable cause of action against him as in the instant case. See the case of SHELL PET. DEV. Vs NAWKA (2001) 10 NWLR (720) Pg 64 at 80 Para H.

It is trite law that a Defendant wishing to challenge the competence of a suit by a Preliminary Objection on point of law is entitled to file his statement of defence and raise the point of law therein. See case of DASUKI v MUAZU (2002) 16 NWLR (PT 793) 319; MADU Vs ONONUJU (Supra). It is not in doubt that one of the grounds for bringing this application is that the Plaintiff's case discloses no reasonable cause of action against the 5th Defendant. The Supreme Court in the case of SHELL PET. DEV. Vs NAWLA (Supra) inter alia as follows:

"I pause here and state that it is not on all cases that the court should ignore the provisions of Order 24 Rule 2 of the Rules State High Court (Civil Procedure) Rules, 1987). It may do so where the only issue to argue is that of lack of jurisdiction. It seems to me that where the Defendant conceives that there is no cause of action and that the pleading should be struck out then he ought to file a

statement of defence and thereafter raise preliminary point which can be taken”

Going by the above decision, I am of the firm view that this issue be resolve in favour of the Plaintiff and it is so resolved in favour of the Plaintiff.

On Issue 2, it is the contention of the 5th Defendant’s counsel that the writ of summons and statement of claim are not duly signed by the Legal Practitioner known to law as required by the Legal Practitioner Act. The two processes were franked by one Chief Mike A. A. Ozekhome, SAN, OFR which is not the name by which the learned counsel is called and contained on the roll of call of Supreme Court of Nigeria. The name of call of the learned senior counsel is as contained in NBA Stamp attached/affix to the process which is simply Mike Ozekhome, SAN. As a result of the above, learned counsel to the 5th Defendant is of the view that the originating processes before this court are incompetent.

I agree without more with the submission of learned counsel to the Plaintiff on paragraph 4.03 of his Written Address that the counsel to the 5th Defendant had erroneously mistaken the name on the seal (Mike Ozekhome, SAN) for the name of the Learned Silk in the roll of Legal Practitioners. This is erroneous as the seal was simply printed with that name by the NBA.

It is also instructive to note that a person could not have been a SAN at the time of his call. In Paragraph 4 (a) of the Counter-Affidavit the name

on the roll is Mike Abu Agbedor Ozekhome. That the name "Chief Mike A.A. Ozekhome, SAN, OFR is just the abbreviated form of the name on the roll of legal practitioners with the appellation. It is trite that the law allows Legal Practitioners to use appellation and educational qualification in describing themselves and also allow them to use abbreviations to shorten their given names. See the Supreme Court case of DANKWAMBO Vs ABUBAKAR & ORS (Supra).

In the light of the above, I am of the considered view that the contention of learned counsel to the 5th Defendant on this issue is pedestrian and unwarranted. Accordingly this issue is resolved in favour of the Plaintiff.

On Issue 3, it is the contention of counsel to the 5th Defendant that the statement of claim did not disclose any reasonable cause of action against the 5th Defendant. However, a cursory perusal of paragraphs 10, 13, 14, 19, 20, 21, 22 – 34, 50, 54, 62 and 63 of the Statement of Claim reveals that there is a cause of action against the 5th Defendant.

It is also without doubt that the whole crux of this case cannot be justifiably decided without the presence of the 5th Defendant as a necessary party in this suit. See case of AZUBUIKE Vs P.D.P. (2014) LPELR – 22258 (SC).

In conclusion I hold the considered view that in the light of all stated above, this Notice of Preliminary Objection is incompetent, unwarranted and lacking in merit, it is accordingly dismissed in the interest of justice.

Signed

HON. JUSTICE C.O. AGBAZA

Presiding Judge.

6/12/2022

APPEARANCE:

BENSON IGBANOI ESQ, WITH RICHARD EBIE ESQ FOR THE CLAIMANT

M.S. UGWU ESQ FOR THE 1ST, 2ND AND 3RD DEFENDANT

A. S. AJIKOBI ESQ, HOLDING BRIEF OF DR M.T. ADEKILEKUN FOR THE
5TH DEFENDANT

N.C. NKEM (MRS) FOR THE 6TH DEFENDANT