

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

THIS WEDNESDAY THE 1ST DAY OF FEBRUARY, 2023.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

**SUIT NO: CV/3144/2020
MOTION NO: M/10795/2022**

BETWEEN:

**ZHEJIANG PUFA GROUP BUILDING
MATERIALS LTD CLAIMANT/RESPONDENT**

AND

1. CHRIS JONATHAN OLUWAFEMI
(Also known as Ajongolo Oluwafemi John and Ajongolo
Oluwafemi Jonathan, doing business as Tin Tan Services)
**2. NIGERIA NATIONAL PETROLEUM
CORPORATION** } **DEFENDANTS/
RESPONDENTS**

3. FIDELITY BANK DEFENDANT/APPLICANT

RULING

By a Motion on Notice dated 14th September, 2022 and filed on 20th September, 2022 at the Court's Registry, the 3rd Defendant/Applicant prays for the following Reliefs:

- 1. AN ORDER dismissing this matter against the 3rd Defendant/Applicant in limine.**
- 2. AND further order(s) as the Honourable Court fit proper to make in the circumstance of this matter.**

The Grounds of the Application as contained on the motion paper are as follows:

- 1. That the entire statement of claim as well as evidence on oath did not disclose any cause of action against the 3rd Defendant/Applicant.**
- 2. That the entire Statement of Claim is frivolous and vexatious against the 3rd Defendant/Applicant having merely abused her and her staff without disclosing any cause of action against them.**

The application is supported by a 5 paragraphs affidavit together with a written address. In the address, no issue was defined or streamlined but submissions were made which forms part of the Records to the effect that on the pleadings and materials attached by claimant, no cause of action was made out against 3rd defendant and accordingly that it has no business in the dispute subject of this action. The 3rd defendant also filed a further Affidavit and a reply address to the plaintiff's counter-affidavit and written address. I shall make references to these submissions where necessary in the course of this Ruling.

At the hearing, counsel to the 3rd defendant/applicant relied on the contents of the affidavit and further affidavit and adopted the submissions in the two written addresses in praying the court to grant the application.

The claimant/respondent in response filed a 6 paragraphs counter-affidavit and a written address. In the address, one issue was raised as arising for determination:

“Whether the 3rd defendant/applicant is a necessary party?”

Submissions were equally made on this issue in the address which forms part of the Records of court. I will similarly refer to the submissions as I consider necessary in the course of this Ruling. The summary or the substance of the address is that on the materials, the claimant has made out a reasonable cause of action against 3rd defendant which is its alleged failure or negligence to adhere to relevant laws and this occasioned or led to financial losses it suffered.

At the hearing, counsel to the claimant/respondent relied on the contents of the counter-affidavit and adopted the submissions in the written address in praying that the objection be dismissed.

I have carefully considered the processes filed and the submissions made on both sides of the aisle, and the narrow issue is whether the extant statement of claim discloses a cause of action against the 3rd defendant. It is a matter to be decided on well developed and settled principles and legal parameters.

It is settled law that in deciding whether there is a reasonable cause of action, the determining factor is the Statement of Claim. The court needs only to look at and examine the averments in the statement of claim of the plaintiff. See **Ajayi V Military Admin. Ondo State (1997) 5 NWLR (pt.504) 237; 7up Bottling Co. Ltd V Abiola (2001) 29 WRN 98 at 116**. The facts as contained in the affidavit in support of the application cannot form the basis on which to determine if there is a reasonable cause of action. The answer to the question of whether the statement of claim discloses a reasonable cause of action is to be found in the statement of claim itself and not in any affidavit or other extraneous document.

In considering whether there exists a reasonable cause of action, it is sufficient for a court to hold that a cause of action is reasonable once the statement of claim in a case discloses some cause of action or some question fit to be decided by a Judge notwithstanding that the case is weak or not likely to succeed. The fact that the cause of action is weak or unlikely to succeed is no ground to strike it out. See **A.G. (Fed.) V A.G. Abia State & ors (2001) 40 WRN 1 at 52; Mobil Producing Nig. Unltd V. LASEPA (2003) 1 MJSC 112 at 132**.

What then is a cause of action, which has to be reasonable failing which the court would strike out the pleadings? The phrase cause of action has been given different definitions in a plethora of cases by our courts. It is however soothing that the array of definitions bear the same meaning and connotation. See the cases of **Egbe V Adefarasin (1987) 1 NWLR (pt.47) 1 at 20; Omotayo V N.R.C (1992) 7 NWLR (pt.234) 471 at 483; Bello V A.G. Oyo state (1986) 5 NWLR (pt.45) 828**. to mention a few.

In **Akibu V Oduntan (2003) 13 NWLR (pt.685) 446 at 463**, the Supreme Court defined cause of action as:

“A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

- (a) The wrongful act of the Defendant which gave the Plaintiff his cause of complaint, and**
(b) The consequent damage.”

The question now is does the extant statement of clear disclose the above elements.

Now in so far as can be evinced from the statement of claim, the fact or combination of facts in which plaintiff has premised its right to sue seem to be pleaded in the entire statement of claim and in particular paragraphs 26-48 of the statement of claim. The alleged wrongful act(s) of 3rd defendant and the damages suffered were copiously highlighted in these paragraphs. These include receiving huge sums from claimant and failing to report the payments to relevant authorities as required by law; that the negligence or failure of 3rd defendant to carry out its duty aided the fraudsters in defrauding the plaintiff and that 3rd defendant was complicit in the activities of the fraudsters which occasioned huge financial losses to claimant amongst other complaints.

A statement of claim is said to disclose a reasonable cause of action when it sets out the legal right of the Plaintiff and the obligations of the Defendant. It must further set out the action constituting the infraction of the plaintiff's legal right or the failure of the Defendant to fulfill his obligation in such a way that if there is no proper defence, the Plaintiff will succeed in the relief or remedy which he seeks. See **Nwaka V Shell (2003) 3 MJSC 136 at 149, Ibrahim V Osim (1988) 2 NWLR (pt.82) 257 at 271 – 272.**

After a careful consideration of the Statement of Claim, I am satisfied that it has clearly set out the legal rights of the Plaintiff and the obligation of the Defendant. It has further set out the failure of the 3rd Defendant to meet its obligations. The Statement of Claim clearly discloses a reasonable cause of action. It discloses questions fit to be decided by a Court. At the risk of prolixity, any perceived weakness of the Plaintiff's case is not a relevant consideration when the question is whether or not the Statement of Claim has disclosed a reasonable cause of action.

The fact that learned counsel to the 3rd defendant perceives and had indeed submitted that the plaintiff's action is bound to fail is no ground to strike the action out. No.

As I round up, I note that in the address of Applicant, the 3rd defendant contends that the contract between claimant and 1st defendant is an “illegal contract”. It is stating the obvious that the court cannot at this point make an inquiry as to the legality or otherwise of the contract. That will be prejudging the substantive issue at the interlocutory stage. At the appropriate time, the court will look into these critical issues and make a determination one way or the other. For now however, the court has no jurisdiction to engage in such an exercise at this stage.

This assertion of illegality of contract by 3rd defendant/applicant rather than derogate only confirms the need for the 3rd defendant to be present in the case to explain its role, if any in relation to the contract which claimant claims it has a hand in and played a role leading to the losses it allegedly suffered.

On the whole, the objection fails and it is hereby dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. O. Maduabuchi SAN with Farouk Mamodu for the Claimant/Respondent.***
- 2. Yunus Abdulsalam, Esq. With Fatiu Abdulrahim for the 2nd Defendant/Respondent.***
- 3. Caleb Momoh, Esq., for the 3rd Defendant/Applicant.***