

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 9<sup>TH</sup> DAY OF MARCH, 2023.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO. CV/3341/2021**  
**MOTION NO: M/10302/2022**

1. ALH. ADAMU ANGULU  
(Suing via his Lawful Attorney ----- CLAIMANT/APPLICANT  
EZEGWU KINGSLEY EMEKA)
  2. NUEL OSILAMA GLOBAL INVESTMENT LIMITED
- AND
1. THE MINISTER, FED. CAPITAL TERRITORY
  2. NIGERIAN ARMY -----DEFENDANTS/RESPONDENTS
  3. MAJ. GEN. CHIJOKE ONWUNLE
  4. ALH. ADAMU ANGULU

**RULING**

The Applicant filed the instant Notice of preliminary objection on the 5<sup>th</sup> of September, 2022 praying this Court for the following reliefs:

1. AN ORDER of this Honourable Court Striking out/Dismissing this want of jurisdiction.
2. AN ORDER of this Honourable Court striking out and or dismissing the Plaintiff's suit for abuse Court Process.
3. AND FOR SUCH FURTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstances.

**ALTERNATIVELY**

AN ORDER of this Honourable Court striking out the name of the 2<sup>nd</sup> Defendant for failure to disclose any reasonable I cause of action against it.

**GROUND FOR THE APPLICATION ARE AS FOLLOWS:**

- a. This Honourable Court lacks the jurisdiction to entertain this case.
- b. The suit is speculative as the against the 2<sup>nd</sup> Defendant.
- c. The Plaintiffs' suit did not disclose any reasonable cause of action against the 2<sup>nd</sup> Defendant/Applicant.
- d. The Plaintiffs' action vis-d-vis the claims is not justiciable.
- e. The Plaintiffs lacks the locus standi to institute this action.

In support of the application is a 12-paragraph affidavit, deposed to by Captain Ubong Ndueso Nelson part of the legal team representing the 2<sup>nd</sup> defendant and a written address. While moving the preliminary objection counsel to the 2<sup>nd</sup> defendant/Applicant prayed the court to adopt their alternative prayer as their sole prayer hence withdrawing prayers 1 and 2

on the notice of preliminary objection. Claimants counsel not objecting to the application, the said prayer 1 and 2 were struck out respectively.

The deponent in the supporting affidavit to the preliminary objection averred that the 2<sup>nd</sup> defendant does not know the Plaintiffs and has nothing to do with the claims. That the 2<sup>nd</sup> defendant is not aware of the purported transaction that brought the Plaintiffs before this court. that the 2<sup>nd</sup> defendant only knows the 3<sup>rd</sup> defendant as one of her officers. The Plaintiffs' suit does not disclose any reasonable cause of action against the 2<sup>nd</sup> Defendant/Applicant. The Plaintiffs' reliefs do not have any nexus with the 2<sup>nd</sup> Defendant and are not against the 2<sup>nd</sup> Defendant/Applicant. The Plaintiffs' suit is incompetent and an abuse of the court process. That this Honourable Court does not have the jurisdiction to entertain this action on the ground that the Plaintiffs' suit is not justiciable. It will be in the interest of Justice to strike out the name of the 2<sup>nd</sup> Defendant/Applicant as the Plaintiffs' suit did not disclose any reasonable cause of action against the 2<sup>nd</sup> defendant.

Learned Counsel to the 2<sup>nd</sup> defendant/Applicant also filed a Written Address which he adopted. In his written submission, Learned Counsel raised two (2) issues for determination as follows:

1. Whether the Plaintiffs' suit disclosed any reasonable cause of Action against the 2<sup>nd</sup> Defendant/Applicant.
2. Whether this Honourable Court can exercise jurisdiction to determine this suit as presently constituted.

Summarily learned counsel submitted that the entirety of the Plaintiffs' suit does not disclose any reasonable cause of action against the 2<sup>nd</sup> Defendant. That reasonable cause of action is relevant to the determination of any case against a party. Counsel submitted that deducing from the Plaintiffs' pending suit, it is devoid of jurisdictional requirements, hence this Court does not have the requisite jurisdiction to entertain same. That throughout the Plaintiff's pleadings as contained in their joint Statement of Claim, no wrong was directly attributed to the 2<sup>nd</sup> Defendant. That the only remotereference to the 2<sup>nd</sup> Defendant were the alleged act of its officers who, unlike the 3<sup>rd</sup> Defendant, remained unnamed by the Plaintiffs. counsel submitted that the 2<sup>nd</sup> Defendant has no business with the Plaintiffs in the absence of a clear case against it and urged this Honourable Court to strike out the name of the 2<sup>nd</sup> Defendant/Applicant or dismiss this suit. He cited **BEBEJI OIL ALLIED PROD. LTD v. PANCOSTA LTD (2007) 31 WRN 163 at 198, Per Mshelia, JCA Lines 20-35; ELELU-HABEEB V. A.G. FED (2012) 13 NWLR (PT.1318) 423 AT P. 542, PARAS D-E; Ayogu v. Nnamani (2006) 8 NWLR**

(Pt. 981) 160 and BIYU V IBRAHIM, (2006) 8 NWLR, (Pt 981), 1 at 21. CA amongst others.

In opposition to the application is a 5-paragraph counter affidavit, deposed to by Ifeoluwalasiaka, a litigation secretary in the law firm of Claimant's counsel, an annexure and a written address. The deponent averred that contrary to paragraph 4 of the Affidavit in support of the Preliminary Objection, the 2<sup>nd</sup> Defendant knows the 1<sup>st</sup> Claimant's Attorney, Ezegwu Kingsley Emeka and the 2<sup>nd</sup> Claimant. That after the dispute over the subject land arose between the Claimants and the 3<sup>rd</sup> Defendant, the Real Estate Developers Association of Nigeria (REDAN) through her President wrote the 2<sup>nd</sup> Defendant to complain against the use of her officers by the 3<sup>rd</sup> Defendant to harass and intimidate the 2<sup>nd</sup> Claimant and her Chief Executive Officer on a purely civil dispute. That the 2<sup>nd</sup> Defendant consequently set up a committee to investigate the Case and they severally invited the 1<sup>st</sup> Claimant's Attorney and the 2<sup>nd</sup> Claimant's CEO for that purpose. The Committee had two of her officers — Major C. Egbeta [080386868501 and one Warrant Officer 2 Alexander 1081011311321. That 2<sup>nd</sup> Defendant eventually wrote the REDAN President who wrote on behalf of the 2<sup>nd</sup> Claimant and advised that the dispute be submitted to Court for adjudication. That it is neither true nor correct that the 2<sup>nd</sup> Defendant does not know the Claimants or the transaction that brought them before this Honourable Court. That he knows the Claimants' Statement of Claim discloses sufficient reasonable cause of action against the 2<sup>nd</sup> Defendant/Applicant. That the reliefs sought in this Suit have sufficient nexus with the 2<sup>nd</sup> Defendant and some are against the 2<sup>nd</sup> Defendant especially reliefs 19, 26, 27, 28, 29 and 30 in the Amended Writ of Summons. That the Claimants' Suit is competent and is not abuse of court process. That this Honourable Court has the jurisdiction to internal in this Suit as presently constituted.

Learned Counsel to the Claimant adopted their Written Address wherein he relied on the two (2) issues for determination raised by the 2<sup>nd</sup> Defendant/Applicant to wit;

1. Whether the Plaintiffs' suit disclosed any reasonable cause of Action against the 2<sup>nd</sup> Defendant/Applicant.
2. Whether this Honourable Court can exercise jurisdiction to determine this suit as presently constituted

Succinctly, Counsel submitted that as valid as the reference and reliance by the 2<sup>nd</sup> Defendant on the case of **Nigerian Railway Corporation Vs. Mr. Patrick Nwanze (2008) 4 NWLR (Part 1076) 92, 104** is, the facts and circumstances of this Case are clearly and simply distinguishable from

those upon which that authority stands. That the authority applies to circumstances where no reasonable cause of action is disclosed against a Defendant. That in this Case, adequate reasonable Cause of Action has been disclosed against the Defendant and the authority does not apply to this Case as referred to. Counsel submitted that the Claimants Suit discloses reasonable Cause of Action against the 2nd Defendant. Furthermore, that when the court considers reliefs 'b', 'c', 'd' and 'e', this Honourable Court will in addition find that besides disclosing reasonable cause of action against the 2nd Defendant, there are reliefs being sought against her that makes it necessary for her to remain a party to this Suit until it is finally determined. Counsel submitted that this Honourable court has the jurisdiction to hear and determine this Suit as presently constituted and urged the court to dismiss same with cost.

I have read processes filed by respective learned counsel and the issue for determination is:

**“Whether the Claimant/Respondent disclosed any cause of action against the 1<sup>st</sup> Defendant/Applicant to warrant his joinder in the suit.”**

Generally, the term cause of action entails the fact or combination of facts from which the right to sue accrues. The supreme court in **Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669** defined the term “cause of action” as;

*“As a matter of fact, an act on the part of a defendant which gives the plaintiff a cause of complaint, is a cause of action”.*

The law is settled that, it is the Statement of Claim that determines cause of action. It is a cardinal principle of law that to ascertain a cause of action, the immediate materials a Court should look at are the Writ of Summons and the averments in the Statement of Claim. This is because it is by examining them that a Court can satisfy itself on the actual grouse of a party and remedy or relief it is seeking from the Court. The Supreme Court in **UBN Plc. vs. Umeoduagu (2004) LPELR – 3395 (SC)** held thus: *“In determining whether a Plaintiff has a cause of action against any Defendant, the Court will restrict itself to the statement of claim and nothing more.”*

By the affidavit in support of this application, the 2<sup>nd</sup> Defendant/Applicant’s contention is that there is no cause of action against it and as such was wrongly joined in this suit. That the reliefs sought do not have any nexus with the 2<sup>nd</sup> Defendant and are not against the 2<sup>nd</sup> Defendant. Upon proper perusal of the Claimant’s averment contained in its Statement of Claim as stated in paragraphs 26-30 and paragraphs 33-34 on the activities of the officers of the 2<sup>nd</sup> defendant and

the 3<sup>rd</sup> defendant on the land the subject matter of this suit, without delving into the substantive case before this Court, the Claimants/Respondents has shown through the pleadings that the officers of the 2<sup>nd</sup> Defendant acted on behalf of the 3<sup>rd</sup> Defendant. Specifically, in paragraph 26 of the statement of claim the Claimant states thus;

“The Claimants aver that they were later shocked again to be called from the land on 9<sup>th</sup> November, 2021 and to be informed that the officers of the 2<sup>nd</sup> defendant went there to take possession thereof for the same 3<sup>rd</sup> defendant”.

From the above it is clear that the Claimants are not in doubt who the officers of the 2<sup>nd</sup> defendant were working for. Hence the acts of the officers of the 2<sup>nd</sup> defendant were not for the office of the Nigerian Army but for a named disclosed officer of the Nigerian Army concerning his personal claim to land title and not in any official capacity. Let me also quickly add that it will be difficult to situate how the Nigerian Army can be held vicariously liable for the actions of the 2<sup>nd</sup> defendant acting for an officer, an assignment clearly outside the remit of its duties or official functions and a duty which he was not assigned by the Nigerian Army. In common law, a master is taken to be liable for any wrong or misdeed, whether criminal or tortuous act committed by his servant in the course of his official duty as held in **BEKS KIMSE (NIG) LTD V. AFRICA & ANOR (2015) LPELR-24436(CA)**. The purported action(s) of the 2<sup>nd</sup> defendant cannot be said to be in the course of his official duties. They were without any iota of doubt on a frolic of their own and the Nigerian Army cannot in the circumstances be even vicariously liable.

Now the classification of parties is well established in our civil Jurisprudence as follows:

1. Proper parties
2. Desirable parties
3. Necessary parties

Proper parties are those who, though not interested in the Plaintiff's claim are made parties for some reasons, and desirable parties are those who have an interest or who may be affected by the result. A necessary party to a suit is a party who is not only interested in the matter of the proceedings but also party in whose absence, the proceedings could not be fairly dealt with. In such a situation it becomes almost impossible for the Court to effectively and conclusively decide upon and settle all questions arising in the suit in the absence of such. The questions this Honourable court must ask itself are: -

1. Is the 2<sup>nd</sup> defendant a person whose presence before the court as a defendant necessary in order to enable the court to effectually and completely adjudicate or settle all questions involved in the matter?

2. Would the 2<sup>nd</sup> defendant be affected by the order of the court?

In answering the above questions, from the statement of claim attached to the writ it is obvious that the 2<sup>nd</sup> defendant is not needed in prove of title to Plot 736, (old Plot No. H403) with File No. NSIOIII (Old File No. MFCT/LA/PL.620), measuring 1700.m2, Cadastral Zone C04, Dape District, Abuja. Also on the reliefs sought, there cannot be any doubt that the Claimants targeted the reliefs sought against all the Defendants hence it was couched to reflect same. All through the pleadings the names of the said officers of the 2<sup>nd</sup> Defendant were not mention.

From the above, the claimants have failed to prove that the 2<sup>nd</sup> Defendant is a necessary party to this suit and it is on this premise that I uphold 2<sup>nd</sup> Defendant's application and grant its prayer.

Consequently, it is hereby ordered as follows: -

The 2<sup>nd</sup> Defendant's name (Nigerian Army) is hereby struck out of this suit for mis-joinder.

**Parties:** Absent

**Appearances:** Ayuba Abang appearing for the Claimant. Chibuike Chima appearing for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. 1<sup>st</sup> and 2<sup>nd</sup> Defendants not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**JUDGE**  
**9<sup>TH</sup> MARCH, 2023**

