

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 28TH FEBRUARY, 2023

FCT/HC/ CV/792/14

BETWEEN

**HABDEL MULTIPURPOSE COOPERATIVE SOCIETY
SUING BY ITS LAWFUL ATTORNEY CONFAV NIGERIA ----- PLAINTIFF
LIMITED.**

AND

- 1. KUJE AREA COUNCIL, F.C.T**
- 2. THE HON MINISTER OF F.C.T.A**
- 3. ABS-OMS LIMITED**

DEFENDANTS

RULING

This notice of Preliminary Objection was filed by the 3rd Defendant/Applicant on 26th November,2020. The grounds for the Applicant's objection are:-

1. That Habel Multipurpose Cooperative Society is not a registered entity and lacks the legal capacity to hold land or sue and be sued.

2. That the Plaintiff lacks the locus standi to institute this action.

The Applicant prayed for the court to strike out this suit for want of jurisdiction based on the grounds above.

The Application is supported by a 12 paragraph affidavit deposed to by one Emmanuel Ugbong, a Legal Practitioner in the law firm of Ikani Agabi & Co, and a written address.

In the written address, counsel to the Applicant raised and argued the following issues:-

1. Whether the Plaintiff has the locus standi to institute this action.
2. Whether this Honourable Court has jurisdiction to hear and determine this case as presently constituted.

On issue 1, counsel maintained that Hadel Multipurpose Cooperative Society is not a registered entity with the legal capacity to hold land, it is not registered under the Nigerian Cooperative Societies Act, neither is it registered as a legal entity with the corporate personality under the Companies and Allied Matters Act. Counsel referred the court to section 2 of the Nigerian Cooperative Societies Act which provides that a society can be registered as a cooperative society only when it is incorporated, that is, if it is a limited liability company.

Citing several judicial authorities, learned counsel to the Applicant stressed that an entity that is not duly registered cannot enjoy the benefits of a legal personality. He reasoned that Hadel Multipurpose Cooperative Society not being a registered entity, it therefore lacks the capacity to hold land, let alone transfer the land to Confav Nigeria Limited.

Relying on the case of **UGWUNZE V. ADELEKE (2008) 2 NWLR (PT. 1070) P. 171, paragraphs. C-D**, Counsel further argued that the issue of locus standi can be raised at any stage of the proceedings.

On issue 2, counsel stated that it is long settled that when a Plaintiff or prosecution lacks the locus standi to institute a case, it automatically robs the court of the jurisdiction to hear the case no matter the public importance of the issues raised in this suit. **LIBA V. KOKO (2017) 11 NWLR (PT 1576) page 335 @PP. 355-356, PARAS. H-C.**

It was submitted on behalf of the Applicant that the Plaintiff having no locus standi to prosecute this case, this Honourable Court invariably lacks the jurisdiction to hear same.

The Plaintiff/Respondent filed a counter affidavit on 15th January, 2021 deposed to by one Emmanuel Ikhamate, office secretary in the chambers of KaminAsunogie & Co. In the 7 paragraph counter affidavit, the Respondent averred that the issue of registration of Habel Multi-Purpose Cooperative Society or not never arose in the pleadings of both sides and was therefore not in contention during the trial, that the issue was only raised by the 3rd Defendant after trial has been concluded. The Respondent further averred that there is no evidence that any search, whether electronic or manual was conducted anywhere. He stated that cooperative societies and thrift societies are registered outfits duly accredited by Area Councils in the FCT without the necessity of prior incorporation with the Corporate Affairs Commission.

In its written address, the Respondent through its counsel raised a sole issue thus:-

“Whether the notice of preliminary objection filed by the 3rd defendant is not an abuse of process and unmeritorious?”

Arguing on the above issue, Counsel submitted that the preliminary objection of the Applicant is an abuse of court process having been filed after the hearing had come to an end. This is because it was filed after the trial and evidence and repeating the arguments already raised in its final address.

Counsel further argued that in the case of **ATAGUBA AND CO. V. GURA NIG. LTD (2005) LPELR, PG. 584; MRS. HENRIETTA O.M TALABI V. FCDA & 4 ORS (2018) LPELR 45969 AND IYKE MEDICAL**

MERCHANDISE V. PFIZER INC. & ANOR. (2001) LPELR, PG. 1579 (SC), the Supreme Court held that even when a body is not incorporated, recourse should be had to law and rules of court to empower them to sue and be sued. According to learned counsel to the Respondent, by the rules of this Honourable Court, **Order 13 Rules 25 and 26** empowers this court to do justice and enable parties in circumstances as we have before this court now to enable them sue and be sued.

Counsel urged the court to dismiss the objection of the Applicant and to hold that by the course of dealings between the Plaintiff and the 1st and 2nd Defendants, the Plaintiff has been held out and presented to the public with a recognized and de-facto legal personality which can sue and be sued.

The 3rd Defendant/ Applicant in response, filed a reply on Points of Law to the Respondent's Counter Affidavit and argued that the 3rd Defendant's notice of Preliminary Objection cannot be regarded as an abuse of Court Process. Counsel submitted that an abuse of court process contemplates multiplicity of suits between the same parties in regard to the same subject matter and on the same issues. He reasoned that the 3rd Defendants Preliminary objection does not fall under any of these situations.

Counsel also argued that the burden of providing evidence or proof of incorporation lies with the Respondent, whose incorporation and legal personality is in question, but the Respondent has failed to discharge this burden.

In determining this application, I shall adopt a sole issue to wit:-

"Whether the Claimant has the locus standi to institute this action".

Before delving into this issue, I must state, that the issue of locus standi touches on the jurisdiction of the court to hear and

determine a matter brought before it. It is a fundamental jurisdictional issue which can be raised at any point during trial, and even for the first time on appeal.

It is instructive to note that an unregistered organization is a non-juristic person, and therefore incapable of suing or being sued unless of course such right to sue or be sued is created and/or vested by Statute. This being so, an unregistered organization can also not enter into any contract. Parties doing business in the names of unregistered organizations, must enter into agreement with their names.

Again, I must re-iterate that an unincorporated body is not a juristic person and cannot enter into any contract or transaction and/or own land in its unincorporated name save through trustee(s) that are natural persons - see **GARBA AND ANOTHER V. SHEBA INTERNATIONAL (NIG,) LTD. (2002) 1 NWLR (PT.748) 372 AT 401, N.I.P.C. LTD. V. B.W.A. LTD. (1962) 2 N.S.C.C. 357.**

In **IYKE MEDICAL MERCHANDISE VS PFIZER INC. & 1 OR(2001) LPELR-1579-SC**, IGUH JSC at page 1012 held as follow:-

"As a general rule only juristic persons have the inherent right and or power to sue and be sued. Non-legal persons or entities again as a general proposition of law may neither sue nor be sued except, of course where such right to sue or be sued is created and/or vested by or under a Statute."?

Uwaifo in his concurring judgment at page 1011 in the same case had this to say:-

"It could happen that a person may carry on business in a name other than his name, but may fail to register it as required under part B - business

names of the Companies and Allied Matters ACT, 1990. Such person undoubtedly comes within those who conceal their names. The solution to such device by that type of persons can be found in the rule that allows suing them in the name in which they carry on business"

Now, the question is, how is incorporation to be proved? And on whom lies the burden of proving the fact of incorporation?

In ***IYKE MEDICAL MERCHANDISE V. PFIZER (SUPRA) @ P. 62***; the Court held thus:

"In case of partnership companies, trade unions, sole proprietorship or corporations, sole or aggregate, the best evidence in view of a dispute as to their juristic personalities or right to sue or be sued is the production of their certificate of registration or incorporation under the relevant laws."

The proof that a Company is a juristic person is the evidence of its Certificate of Incorporation. See the case of ***MAGBAGBEOLA VS. SANNI (2005) LPELR - 1815 (SC)*** wherein the Supreme Court per Katsina-Alu, JSC reiterated thus:-

"The best evidence of incorporation is the production of the certificate of incorporation."

Now, taking a look at the position of the law as regards proof in litigation, by virtue of Section 135(1) and (2) of the Evidence Act, 2011 (as amended), whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists and when a person is bound to prove the existence of any

fact, it is said that the burden of proof lies on that person. See the case of **IMANA VS. ROBINSON 1979 3 - 4 SC 1**.

It is after a Plaintiff has proved his case that the burden of proof shifts to the defendant.

In the case of **DAIRO & Amp; ORS VS. REGISTERED TRUSTEES OF THE ANGLICAN DIOCESE OF LAGOS (2017) LPELR - 42573 (SC)**, the Supreme Court reiterated thus:

"In *G & T invest Ltd v. Wit & Bush Ltd* (2011) 8 NWLR (Pt. 1250) 500 at 540 Paras C - D this Court per Adekeye JSC said: "The law is that where the legal personality of Incorporated Company is called into question and issue joined thereon" the onus is on the party claiming the status of juristic person to establish it and the corporate status of a body is established by the production of its Certificate of Incorporation.... "

In **Nduka VS. EZENWAKU (2001) 6 NWLR (PT 709) AT 517**, it was held that:

"... Where the juristic status of a Defendant company is put in issue, the plaintiffs must prove that legal personality by producing the company's certificate of incorporation...."

It is to my mind that the Respondent in this case, has a duty to establish his claim that the Respondent/Claimant was incorporated under the Companies and Allied Matters Act or registered by AMAC, thus assuming the status of a juristic person. The Respondent failed to prove its incorporation by production of the certificate of incorporation.

This is a ruling in respect of the objection filed in 2023 in respect of this suit commenced in 2014 but reassigned to this Court, upon the elevation of the former presiding judge.

I have gone through the argument in support of the application to the effect that the Hadbel Multipurpose Cooperative society has no locus standi having not been registered and therefore lacks the capacity to hold land for allegedly not been registered under CAMA or Nigeria Cooperative Societies Act and cannot transfer title to confav Nigeria Limited. Several judicial decisions were cited in support of this objection.

With respect to non- registration under CAMA, I have considered the provisions of section 55 (4) of the Nigeria Cooperative society Act, which states:-

“(4) The provisions of the companies and Allied matters Act and the Trade Unions Act shall not apply to a registered society

With respect to non registration under Nigeria cooperative Act, it is expected that the certificate of registration be produced with power to institute and depend suits and other legal proceedings. What then is the fate of a cooperative society that has not shown its certificate of registration. Without much ado, I hold that section 2 of the Nigeria Cooperative Societies Act specify society that may be registered as a cooperative society. In otherwords, there are other classes of cooperative society that may not be registered under the Nigeria Cooperative Societies Act. Such group fall under the

friendly Society which include cooperatives for consumers, workers, agriculture and housing etc. they are alternatively called mutual aid society, benevolent society etc. these are mutual organization or benefit society composed of a body of people who join together for a common financial or social purpose. They exist before modern registered cooperative society in Africa. The legal personality of such body has been described in the case of **MAERSK LINE VS ADDIDE INVEST. LTD (2001) 1 NWLR (pt 694) @ pg 413-414 paragraphs A-D** where Oguntade JCA held as follows:

*“It seems to me that the useful authority on the point is **FAWEHINMI VS NBA (NO.2) (1989) 2 NWLR (PT 105) 558 at 596**, where Agbaje JSC quoted with approval the **DICTION OF MOCATA J IN KNIGHT & SEARLE VS DOVE (1964) 2 ALL NLR 307 AT 309** thus:-*

“That Counsel for the Defendants formulated a general proposition as to when in the English Courts an action can be brought by or against a party other than a natural person and gave illustrations of each party of the proposition. Counsel for the Plaintiff was prepared to accept the proposition, though he questioned the classification of some of the illustrations. The proposition was that no action can be brought by or against any party other than a natural person or persons unless such party has been given by statute, expressly or impliedly or by the common law, either (a) a legal persona under the name by which it sues or sued or (b) a right to sue or be sued by that name. as to (a) namely legal, personae, this may be divided into (i) corporations sole (ii) corporations aggregate, incorporated by Royal charter or special Act of parliament or under the companies Act; (iii) bodies in

corporated by foreign law and (iv) quasi –corporations” constituted by Act of parliament , such as the war damage Commission: see Inland Revenue Commissioners VS BEW Estate Ltd. (2) As to (b) namely, parties which are not legal personae but have a right to sue or be sued by a particular name, these may be sub-divided into (i) partnership: see R.S.C. Order 81 (ii) trade union and friendly societies, both of which types have a membership; and (iii) foreign institutions authorized by their law to sue and be sued but not incorporated by their own law to sue and be sued but not incorporated: see for example, Chaff and Hay Acquisition Committee vs Hamphill (3) a decision of the High Court of Australia on appeal from New South Wales”

I therefore hold that the Hadel Multipurpose Cooperative Society need not be registered under CAMA or Nigeria Cooperative Societies Act to vest them with prior to hold movable and immovable property, unless section 2 of the Nigeria Cooperative Societies Act being part of the society that “may be registered as a cooperative society under this Act”. I am afraid that point cannot be determined now at the interlocutory stage of this proceeding, I thereby direct that trials be commenced expeditiously in this case.

In the circumstances I have no hesitation in dismissing this application. Full opportunity should be given to parties in the interest of justice without due regards to technicalities. Gone are the days when Courts of law were only concerned with daily technical and abstract justice based on arid legalities these are the days when Courts of law do substantial justice, in the light of the prevailing

circumstances of a case. The days of the Courts doing technical justice should not surface again see **ABUBAKR VS YAR ADU (2008) 4 NWLR (PT 1078)465.**

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)**

Appearance

Ben Okizie:- Holding the brief of K.Bello for the Claimant/Respondent

T.I Adesanya:- For the 3rd Defendant/Applicant

