

**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: 2ND FEBRUARY, 2023

FCT/HC/ CV/2163/2021

BETWEEN

SENATOR ATHAN NNEJI ACHONU-----

CLAIMANT/RESPONDENT

AND

1. FIDELITY BANK PLC

DEFENDANT/RESPONDENT

2. INKAS ENVIRONMENTAL PROTECTION LIMITED

DEFENDANT/APPLICANT

RULING

This Ruling is in respect of a preliminary Objection filed on 5th October, 2022 by the 2nd Defendant to Counter-claim in the believe that this Honourable Court is deprived of jurisdiction to adjudicate over the Counter-claim against the Applicant herein and seeks the following reliefs to wit:-

- a. An Order of this Honourable Court declining jurisdiction to entertain the Counter-claim
- b. An Order of this Honourable Court striking out the Counter-claim on the grounds afore-listed.
- c. And for such further order or orders as this Honourable Court may deem fit to grant in the circumstance.

The said preliminary objection filed by the 2nd Defendant to Counter-claim is supported by a 21 paragraphed Affidavit and a Written Address.

In response, the Counter-claimant filed a 6 paragraphed Counter-affidavit with one exhibit and a Written Address in support on 2nd November, 2022. The Defendant to Counter-claim/Applicant herein filed a 19 paragraphed Further Affidavit and a Reply on points of law in support of its Preliminary Objection filed on 5th October, 2022. In response, the Counter-claimant also filed a reply on points of law on 7th December, 2022. Processes of parties were therefore adopted on 8th December, 2022.

Having gone through the submissions of Counsel on both sides, it is pertinent to note that the issue of jurisdiction is foundational and must be dealt with once same is raised in order to pave way for the Court to adjudicate over a Matter or respectfully recuse itself from same having not been clothed with the requisite jurisdiction. See **MADUKOLUM V. NKEMDILIM (1962) 2 SCNLR 341.**

In the extant Case, the Applicant herein relied on the following grounds in drawing the conclusion that this Honourable Court lacks jurisdiction to wit:-

- a. That the Applicant has not been served the originating process in compliance with the law.

- b. That the mode of commencement of the Counter-claim against the Applicant is inappropriate.
- c. That the Counter-claimant did not comply with the condition precedent to counter-claim against a non-party.
- d. That no reasonable cause of action has been disclosed against the Respondent in the Counter-claim.
- e. That the Counter-claim against the Applicant is frivolous and a palpable abuse of Court process.
- f. That there is misjoinder of cause of action.

Therefore, in determining whether this Court has jurisdiction, the following issues are crucial and must be resolved to wit:-

1. Whether there is a competent counter –claim before this Honourable Court.
2. Whether the Applicant herein was duly served in accordance to law.

On the first issue above, it is pertinent to reproduce the provisions of **ORDER 17 RULE 8** of the Rules of this Honourable Court wherein it provides that:

"Where any person stated in rule 7 of this Order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and counter-claim and such service shall be regulated by the same rules as those governing the service of the originating process. Every defence

and Counter-claim so served shall be endorsed in Form 13 with such modifications or variations as circumstances may require.”

Also, since the Applicant herein is a Company, it is pertinent to state what rules apply to the service of originating processes on companies. Therefore, **ORDER 7 RULE 8** of this Honourable Court provides thus:-

“Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate by delivery at the head Office or any other place of business of the organization within the jurisdiction of the Court.”

Furthermore, **SECTION 104 OF THE COMPANIES AND ALLIED MATTERS ACT (2020)** provides that:-

“A Court process shall be served on a company in the manner provided by the rules of Court and any other document may be served on a company by leaving it at, or sending it by post to the registered office or head office of the company”

In the extant Case, the Counter-claimant in paragraph 4(b)(iv) of its Affidavit exhibited a Certificate of Service (**EXHIBIT DCC1**)

which to my mind is proof that the Counter-claimant complied with the Rules of Court as to service of an Originating Process on the Applicant herein. I therefore hold the view that there is a valid Counter-claim subsisting against the Applicant herein and that the Applicant was duly served in accordance to law. See ***EFFIOM V. IRONBAR (2000) 11 NWLR (PT.678) 344***

Furthermore, it is pertinent I state that the era of technicalities is dead and has been thrown into the abyss and God forbid that such should resurrect. The duty of a Court is to determine the disputes of Parties on the merits and in so doing, I hold firmly that the Counter-claim against the Applicant herein is competent, is not an abuse of Court process and the Counter-claimant having complied with the Rules of this Honourable Court, this Court is clothed with the requisite jurisdiction to adjudicate over the matter.

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