

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT AREA 11, COURT 10, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

MOTION NO. FCT/HC/CV/1996/2020

DATE: 30-5-23

BETWEEN

JIBRIN MOHAMMED HASSAN

}

PLAINTIFF/RESPOND.

AND

1. KHALIFA LAWAL MOHAMMED

2. ALHAJI ALHASSAN BABANTINDI

**(Sued for and on behalf of the Family and/orExecutors
and Administrators of Estate of Late Alhaji Lawal Mohammed)**

}

DEFENDANTS/APPL

R U L I N G

The Defendants/Applicants in this case vide a preliminary Objection brought under the inherent jurisdiction of this Court pray the Court for the following reliefs;

1. An Order striking out the suit for want of jurisdiction.
2. An Order striking out the present suit for being incompetent and an abuse of Court's process.

3. And for such order(s) that the Court may deem fit to make in the circumstances of this case.

The grounds upon which this objection is premised are as follows;

1. The suit of the claim cannot be maintained in the names of the named Defendants as he has not disclosed if they are the Executors/Administrators of the Estate of Alhaji Lawal Mohammed.
2. An action only be brought in a representative capacity or in the names of the Executors/Administrators of the Estate of Alhaji Lawal Mohammed and not in both respects.
3. The Estate of the deceased is currently in the process of being administered in tandem with Islamic law in the settlement of the deceased legitimate debts and liabilities.
4. It is the Sharia Court with respect, that has jurisdiction over the subject matter.
5. The deceased, from whom the alleged cause of action arose lived in Niger State and until his death he was in Niger State and the transaction leading to the instant action took place in Niger State and the properties of the deceased are also in Niger State.
6. The instant suit of the Claimant is a clear case of forum shopping.

7. This Honourable Court, most respectfully, lacks the requisite power to entertain the suit against the Defendants/Applicants as presently constituted.

In support of this application is a 5 paragraphed affidavit deposed to by one Alice John. Also attached is a written address.

In moving the application in Court, the Learned Counsel to the Defendants/Applicants Mr. D. A. Ubana placed reliance on the supporting affidavit and as well adopted the written address as his argument in urging the Court to strike out this suit for want of jurisdiction.

In a swift response by the opposing Counsel, Mr. Chinedu Nnadi, he referred the Court to their counter affidavit of 13 paragraphs deposed to by the Plaintiff/Respondent and a written address filed in opposition. He relied on the depositions contained in the counter affidavit and adopted his written address as his argument in urging the Court to refuse this preliminary objection.

Both Learned Counsel submitted one issue for determination in their written addresses.

As for the Applicant's Learned Counsel, the issue for determination is "Whether or not the action is competent and this Honourable Court has the requisite jurisdiction to entertain the instant action as presently constituted"

In the written address of the opposing Counsel, the only issue for determination is “Whether this Honourable Court has jurisdiction to entertain this suit and if the said suit is an abuse of Court process”

With due respect to the two Learned Counsel, the only issue for determination without proliferation of issue is whether this Honourable Court has jurisdiction to entertain this suit or not? It is the contention of the Applicant’s Counsel that the case against the Defendants is improper. He submitted that the case is purportedly brought against the Defendants in a representative capacity for and on behalf of the family Alhaji Lawal Mohammed. He said the action was also brought against the Executors/Administrators of the Estate of Alhaji Lawal Mohammed. He referred the Court to Order 4 Rules 2 and 3 of the High Court of FCT, Abuja (Civil Procedure) Rules 2018.

He submitted that the Claimant did not state capacity in which he is suing. He said that the capacity in which the Defendants are sued is nebulous and incompetent. He submitted that a person cannot be sued as a representative at the same time as he is sued as an Executor/Administrator of Estate of a deceased.

He further contended that where the Rules of Court prescribe a particular method of beginning or commencing an action, that method must be used to commence such action. He relied on the case of **MUDASHIRU VS. PERSONS UNKNOWN (2006) 8 N.W.L.R. (PART 982) 267.**

In his further submission, he said it is the Sharia Court that has jurisdiction over the Administration of the Estate of the deceased. He cited the case of **ECOBANK (NIG.) PLC v. INTERCONTINENTAL BANK PLC (2012) 5 N.W.L.R. (PART 1293) 219; Section 262 of the 1999 Constitution, Federal Republic of Nigeria.**

Another contention is the argument of the Applicant's Counsel that this suit ought to have been filed in Niger State being the Resident and where the Defendant carries on business. He relied on **Order 3 Rule 4 of the FCT, Abuja (Civil Procedure) Rules 2018** and the case of **OGUNDE v. GATEWAY TRANSIT LTD. (2010) 8 N.W.L.R. (PART 1116) 207.**

Finally, he urged the Court to strike out this case for being incompetent and want of jurisdiction.

On the other hand, the Respondent's Counsel submitted that the matter is competent considering the nature of claim contained in the statement of claim particularly paragraphs 5 and 9 respectively.

He argued that it is trite that where a suit pertains to a specific performance or breach of contract, the division that the contract ought to have been performed has the jurisdiction to entertain the matter. He referred to **Order 3 Rule 1 of the High Court of FCT, Abuja (Civil Procedure) Rules 2018.**

It is the Plaintiff's argument that the law is settled that statement of claim determines the jurisdiction of the Court. He cited the case of **HALL MARK PLC & ANOR. v. OBASANJO (2013) L.P.E.L.R. – 20552 (CA)**. Also, he said paragraphs 5 – 10 reveal a contract between the Plaintiff and the Late Alhaji Lawal which was to be performed in Abuja but breached by issuing a fake receipt as in paragraph 14 of the statement of claim

They contended further that this suit is competent and maintainable against the Defendants and the capacity in which the Defendants are sued to Court is clearly stated.

I have considered this simple application and issues raised in this preliminary object. Also, I have considered all the arguments and submissions both for and against the grant of this application.

It has been settled over time that the jurisdiction of a Court is determined by the Plaintiff's claim and not by the Defendant's defence and this is

determined by merely looking at the Plaintiff's statement of claim to see the nature of the claim. This is the decision of the Appellate Court in the case of **GARBA v. LABBO (2018) L.P.E.L.R. – 46598 (CA)**.

Looking at the statement of claim in this case, I agree totally with the Plaintiff/Respondent that this case is competent and that this Court has jurisdiction to entertain this matter.

Going by paragraphs 5 – 10 of the statement of claim including 11 – 13 clearly depict the breach of contract to perform a specific act on the part of the Late Alhaji Lawal for which act he had been paid.

Paragraphs 5 says;

- 5) The Plaintiff avers that on his encounter with the late Alhaji Lawal Mohammed, having been introduced to me, he (the deceased) offered to carry out the said task diligently and accepted it on condition that there would not be failure.
- 6) The Plaintiff avers that he agreed the late Alhaji Lawal on the obtaining the Certificate of Occupancy at the rate of ₦7,500,000.00 (Seven Million Five Hundred Thousand Naira) which he gave him the sum of ₦7,000,000.00 (Seven Million Naira) in the presence of his driver.

- 7) The Plaintiff avers that he had completed the remaining payment for the above tasks afterwards with the knowledge of his driver unfortunately the receipt he gave turned out to be a fake and forged one as he was nearly arrested in AGIS at the point of verification. Copy of the said receipt is pleaded and shall be relied upon at the trial.
- 8) The Plaintiff avers also that upon the discovery that the document was forged, no sooner had he wanted to draw the attention of the late Alhaji Lawal than he was informed that he (Alhaji) had passed on.
- 9) The Plaintiff avers during the pendency of the above engagement, the Plaintiff wanted to seek for regularization of an Offer Letter of Plot No. 1375 from FCDA and the late Alhaji Lawal accepted to do same. Copy of the said Offer Letter is pleaded and shall be relied upon at the trial.
- 10) The Plaintiff avers further that the late Alhaji Lawal agreed with the Plaintiff at the rate of ₦6,500,000.00 (Six Million, Five Hundred Thousand Naira) as money for the regularization and obtaining of

Certificate of Occupancy on the title document which is a distinct engagement.

- 11) The Plaintiff avers that he did pay the late Alhaji these various sums through his Banks and personally in the presence of his driver. Statements of Accounts supporting the various payments are pleaded and shall be relied upon at the trial.
- 12) The Plaintiff avers that the Late Alhaji Lawal collected from the Plaintiff the sum of N500,000.00, N300,000.00 and N200,000.00 respectively upon complaint that he wanted to further perfect the work.
- 13) The Plaintiff avers that the late Alhaji Lawal promised to produce the two Certificates in respect of the said tasks given to him the very week the Plaintiff received so sadly the news of his demise.

In the case of **AFRICAN PETROLEUM PLC v. AKINNAWO (2012) 4 N.W.L.R. (PART 1289) 100**, the Appellate Court held thus:

“In considering whether or not a Court has jurisdiction or competence to entertain an action, it is only the Plaintiff’s claim as endorsed on the writ of summons and the statement of claim that to be examined by the Court. In

other words, it may entertain a case and arrived at solely, on the facts disclosed in the statement of claim. Therefore, to determine whether the lower Court is vested with the requisite jurisdiction to entertain the case, the Applicant's statement of claim before the trial Court is the reference point"

It is in the light of the foregone that I pitch my tent and in the same page with the Learned Counsel to the Plaintiff/Respondent that this case as it is presently constituted is competent before the Court and that this Court has jurisdiction to entertain this matter and I so hold.

Therefore, this preliminary objection lacks in all merit and it is hereby dismissed.

.....

S. B. Belgore
(Judge) 30-05-2023

