

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 4TH DAY OF MAY, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. CV/296/2022
MOTION NO: M/3203/2023

CHINYERE A. OBIARAERI----- CLAIMANT
AND

- 1. PROF. GEORGE ODABI ----- DEFENDANTS**
- 2. DEO-GRATIAS INTERNATIONAL GROUP OF SCHOOLS**

RULING

The Applicant filed the instant Notice of preliminary objection on the 12/08/2023 stating that the Defendant at the hearing of this case shall challenge the jurisdiction of this Honorable Court to entertain this suit and shall urge this Honorable Court to strike out and dismiss this suit.

Grounds for the application are as follows:

- a. That the proper parties are not before this Honorable Court.
- b. That the Defendant is not a necessary party to be sued in this case.
- c. That the 1st Defendant is a director and not a necessary party to be joined in this suit.
- d. That the 2nd Defendant is not a juristic person as joined in by the Claimant in this suit.
- e. That this Honorable Court lack the requisite jurisdiction to entertain this suit as the proper parties are not before this Honorable Court.
- f. That the issue of party is what determines the jurisdiction of this Honorable Court.

In support of the application is an 8-paragraph affidavit, deposed to by Yenle Josephine Istifanus the Litigation Secretary in the law firm of Compendium Chambers, counsel to the Defendant. The deponent averred that the proper parties are not before this Honorable Court. That the 1st Defendants is only a director of the company. That the 2nd Defendant is not a juristic person to be sued. That the suit of the Claimant is defective abinitio. That since the proper parties are not before this Honorable Court, this Court lack the jurisdiction to entertain this suit.

I have read the application of counsel to the applicant very well. It is trite that the use of the word ‘SHALL’ indicate a mandatory action when used in a statute. When the word SHALL is couched in any legal brief it is interpreted to impose an imperative duty. In essence it is used to imply an obligation. Learned counsel to the defendant/applicant in his preliminary

objection stated clearly that “the defendant at the hearing of this case shall challenge the jurisdiction of this court to entertain this suit and shall urge this Honourable court to dismiss this suit”. This is clearly a futuristic intention as outlined in the defendant/applicant preliminary objection and definitely not a pressing obligation that needs to be discharged immediately. Defendant/applicant has also filed an affidavit in support of his intention to challenge the jurisdiction of the court during the hearing of the substantive suit. I do not see the need for a counter affidavit as filed by Respondent counsel as Defendant /applicant simply expressed his future intention to the court hence this court will discountenance the counter affidavit of the Respondent counsel. The power of the court is not to decide or rule on applications seeking for intended action.

Since Defendant/applicant has categorically stated in his preliminary objection that he shall challenge the jurisdiction of this court during the hearing of this suit then it behooves on the court to entertain his preliminary objection whenever he deems it fit to challenge the court’s jurisdiction. The use of the word “shall” as used by learned counsel more importantly the use of the phrase that he “shall challenge the jurisdiction of this court”, implies that he intends to bring up his objection whenever he deems fit.

As stated above, the courts does not have jurisdiction to rule on application seeking for intended action. Consequently, the preliminary objection is hereby struck out for being incompetent.

Parties: Absent

Appearances: NkasiobiMgbemele appearing for the Plaintiff. Defendant is not represented.

**HON. JUSTICE MODUPE R. OSHO-
ADEBIYI
JUDGE
4TH MAY, 2023**

