

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 GUDU-ABUJA
ON 3RD DAY OF MAY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/CV/153/2023

BETWEEN

1. SA'ADU YAHAYA
2. HABIBU MUSTAPHA ANGO CLAIMANTS

AND

1. THE CHARTERED INSTITUTE OF PROJECT MANAGERS OF NIGERIA
 2. DR. (MRS) VICTORIA OKORONKWO
 3. PROF. CYPRAIN F. EDWARD-EKPO
(practicing under the name and style of law ICONS)
 4. MULTI-INTELLIGENCE DEVELOPMENT COMPANY LIMITED
- } DEFENDANTS

BENCH RULING

Learned Counsel to the 1st & 2nd Defendant have filed a Motion on Notice seeking the Honourable Court's directions that parties file pleadings in this suit. This is based on their grounds that there are disputed facts in this suit hence the filing of an originating summons is not proper. Learned Counsel to the Defendant has succinctly laid out grounds of facts which in his opinion are disputed facts that can only be resolved by parties filing pleadings.

Learned silk to the Claimant/Applicant with the permission of the Court simply replied on points of law. Submitted that a perusal of the originating summons

before the Court is simply on interpretation of the first Defendant establishment Act of 2017 which can only come by way of originating summons. That 1st & 2nd Defendant's counter affidavit to the originating summons have attached exhibits which said exhibits the Court can look into in order to resolve this issue.

Having listened to both Counsel, first and foremost Learned silk has made heavy whether as to the fact that the 3rd & 4th Defendant are yet to file their counter affidavit to the originating summons and hence it is deemed that they have no defence to this suit as they are also deemed to have admitted all facts on the originating summons. Unfortunately that is not the present issue before the Court "The issue before the Court as contained in the Motion on Notice is whether or not this Court should order pleadings to be filed rather than go by way of affidavit evidence. Going into whether 3rd & 4th Defendant have filed a counter affidavit to the originating summons or not is tantamount to prejudging the substantive suit at an interlocutory stage and the Apex Court has warned against this in a Plethora of cases. Until the originating summons is moved the issue whether 3rd and 4th Defendant filed a counter cannot be entertained.

Going into the motion on notice at hand, I have read the motion and listened to both parties arguments for and against the motion and the only issue that can be distilled is:-

"Whether having regard to the processes before this Court, the suit can be determined by affidavit evidence."

Originating summons is a special procedure adopted in cases where the fact are not in dispute and where the sole issue in question is the interpretation or

construction of a written law, constitution or statute. In other words originating summons is used for non-contentious issues. See: FAMFA OIL LTD. V. A.G. FEDERATION (2013) 18 NWLR (pt. 852) 453 where Onnoghn JSC held.

“The very nature of an originating summons is to make things simpler for hearing. It is a procedure where the evidence is by way of documents and there is no serious dispute as to their existence in the dealings of the parties to the suit. If there are serious issues as to the facts then a normal Writ must be taken out and not an originating summons.”

The general principle of law is that where there are conflicts in affidavits then the Court must order for pleadings in order for the parties to lay oral evidence to resolve such conflict.

Claimant in this suit is seeking the interpretation of the interpretation act and sections in the Chartered Institute of Project Manager of Nigeria Act and also declarative reliefs. I have looked at the Motion on Notice filed by the Counsel to the 1st & 2nd Defendant and without going into the substantive suit, issues as distilled in the Motion on notice which Defendant Counsel seeks the Court to order for pleadings are all issues which can only be determined upon the interpretation of the instrument/Law as contained in the originating summons. The issue of appointment of persons, tenure of people, supervisory powers of the Minister of Industry, Trade and Investment, Quorum of Council in decision making, appointment of Registrar and Secretary to the Council and other issues raised in the Motion on Notice are all issues that can only be determined through interpretation of the Law/instrument establishing the 1st Defendant. They are not

issues of disputes but issues of Law. I do not see how facts can be imported into the interpretation of Law/instruments.

Consequently this Motion on Notice is lacking in merit and consequently struck out.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

3RD MAY, 2023