

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA
SUIT NO: CV/2319/2021**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN

**1. HAMBOLU OLUSOLA OLABISI
(THE ADMINISTRATOR OF THE ESTATE
OF HAMBOLU SUNDAY BAYODE)**

2. KOLADE HAMBOLU

3. SOLA AKINLUDE

AND

CLAIMANTS

1. ORLIMOD VENTURES NIGERIA LTD

2. MICHAEL ROYAL'S FARMS INTERNATIONAL LTD

3. MICHAEL OLAOLUWA ODUOYE

4. OPEYEMI ELIZABETH ODUOYE

5. JUDITH ODUOYE

6. GABRIEL ODUOYE

DEFENDANTS

RULING

The 4th and 5th defendants filed this Notice of Preliminary Objection on the 17th October, 2022 and seek for the following orders:

1. An order of this Honourable Court striking out the names of the 4th and 5th defendants/applicants in this suit for lack of cause of action against them.
2. And for such further order or orders that the court may deem fit to make in the circumstances of this case.

The grounds upon which this application is filed are contained in page 2 of the notice of preliminary objection and are as follows:

1. That there is no cause of action against the 4th and 5th defendants/applicants in this suit as they were never parties to any of the Partnership Agreements, neither did they sign any of the said agreements, leading to the institution of this suit.
2. That the 4th and 5th defendants are not necessary parties for the determination of this suit.
3. That they were not parties to the transaction or agreement which is allegedly the bedrock of this suit.
4. That the 1st defendant is a corporate entity with a legal capacity that can sue or be sued and also enter a business transaction in its own name.
5. That the 1st defendant has a different personality entirely separate from that of its members.
6. That it will be in the interest of justice to strike out the names of the 4th and 5th defendants.

The notice of preliminary objection is supported by eleven paragraphed affidavit, and attached to it is EXH. A1, which is the Partnership Agreement, and attached to it is also a loan agreement between Michael Oduoye and Bayode Hambolu. The notice is accompanied by a written address of counsel.

The claimants/respondents filed their counter affidavit in opposition to the notice of the preliminary objection and attached to the counter affidavit are EXH. 'A', 'B', 'C', 'D', EXH. 'A1', and it is supported by a written address of counsel.

The 4th and 5th defendants/applicants filed a further and better affidavit in response to the claimants/respondents' counter affidavit, and is accompanied by reply on points of law.

Thus, it is in the affidavit in support of this application that there was no contract between the 4th and 5th

defendants/applicants to the claimant on record, and that the Partnership agreement leading to this suit, was between the 1st defendant and the deceased husband (Mr. Hambolu Sunday Bayode) of the 1st claimant, and that the Partnership agreement was never between the 4th and 5th defendants as the loan agreement was also executed between the 3rd defendant and the deceased only. It is stated that the 1st claimant in this suit is not and has never been privy to the contract leading to this suit neither was he a party to it.

It is stated that there is no cause of action against the 4th and 5th defendants on record, hence the claimants have no locus standi to bring this action against the 4th and 5th defendants/applicants.

In his written address the counsel to the 4th and 5th defendants/applicants raised this issue for determination, to wit:

Whether or not the claimants/respondents have disclosed a reasonable cause of action against the 4th and 5th defendants/applicants?

The counsel draw the attention of this court to the meaning of the term cause of action in the Black's Law Dictionary, and he cited the cases of **Chevron (Nig.) Ltd V. Lonestar Drilling (Nig.) Ltde (2007) LEPLR – 842 SC**; and **Kusada V. Sokoto Native Authority (1968) LPELR – 25424 (SC)** where their Lordship, quoted the case of **Jackson V. Spittal (1870) LR 5 Cap 542 pp. 522 – 522** to the effect that a cause of action is the act or the part of the defendant which gives the plaintiff his cause of complaint.

The counsel submitted that the Rules of this court are clear and to him, Order 13 Rule 4 of the Rules provides that a person may only be joined as a defendant where it is found that a right to relief exists between him and the

claimant in the suit. The counsel went further to quote Order 13 Rule 5 of the Rules of this court, and also cited the case of **Attorney General of the Federation V. Attorney General of Abia State & Ors (2001) LPELR – 24862 (SC)** to the effect that it is only the statement of claim that should be examined if a cause of action is disclosed. He further cited the case of **Barbus & Co. (Nig.) Ltd & Anor. V. Okafor Udeji (2018) LPELR – 4450. (SC)**.

The counsel drew the attention of the court to the principle of privity of contract, and cited the case of **Ali & Anor. V. Maradi (2018) LPELR – 49383 (CA)** as to what doctrine of privity of contract postulates, and he cited the case of **Akinde V. Adireji West Africa Ltd (2017) LPELR – 47142 (CA)**.

The counsel submitted that in the statement of claim, the claimants relied heavily on the investment contract executed between Orlimond Ventures Ltd and the deceased, and further submitted that the claimants have failed to disclose a reasonable cause of action against the 4th and 5th defendants as they are not parties to the contract which form the basis of this suit and as such the said contract should not be enforced against them, and he cited the case of **Octorus Investments & Finance Co. Ltd. V. Vascrawl & Ors (2015) LPELR – 25755 (CA)** to the effect that it is settled that once incorporation takes place, a company becomes a separate legal entity from those who incorporate it, and he cited the provisions of section 89 of **CAMA 2020**, and he cited the case of **New Nigerian Newspapers Ltd V. Olayinka Agbomabini (2013) LPELR – 20741 (CA)** and finally submitted that an incorporated company such as the 1st defendant is different from its directors or management.

It is in the counter affidavit of the claimant that all the money her late husband intended to use as post retirement investment to keep family running were kept in custody of the defendants which were fraudulently and mischievously diverted which is the reason she is in court to recover the money as things have been very difficult for the family.

It is stated that on the 7th January, 2022, the counsel to the 1st to 6th defendants filed Notice of Preliminary Objection against the claimant, and issues were joined, and the defence counsel having entered appearance for all the defendants are not unaware of the writ of summons and the accompanying notices served on the defendant in this suit with response to the 4th and 5th defendants before raising the first preliminary objection, and that the 3rd and 6th defendants are sued in their capacity as directors is either the 1st or 2nd defendants and this preliminary objection has not incorporated them to show the intent the preliminary objection rules raised to abuse the procedure of the court.

It is stated that the defendants raising preliminary objection in piecemeal is not in aid of justice but to irritate and annoy the claimants, and that the 3rd, 4th, 5th and 6th defendants are either directors of the 1st or 2nd defendants and same facts pleaded in the statement of claim before this court.

It is stated that at paragraph 33 (i) (ii) (iii) (iv) (v) (vi) (vii) of the statement of claim in the substantive suit fraud was pleaded against the 1st, 2nd, 3rd, 4th, 5th and 6th defendants with particulars which will require the defendants to jointly and severally exonerate themselves at the trial.

It is stated that the deponent of the supporting affidavit of the 4th and 5th defendants did not state the source of the facts derived from the defendants, and the EXH. 'A'

attached to the 4th and 5th preliminary objection are issues to be established in the substantive trial.

It is stated that paragraphs 5 and 6 of the affidavit in support of the preliminary objection are issues the 1st to 6th defendants already jointly raised in the preliminary objection filed on the 7th January, 2022, and the 4th and 5th defendants are raising again, this is an abuse of judicial process. That an action brought against a director of a company where fraud is alleged against the company is not frivolous, vexatious and a nullity, and it will not be in the interest of justice to strike out the names of the 4th and 5th defendants/applicant as they are necessary parties to the substantive suit.

In his written address, the counsel to the claimant formulated two issues for determination in this application, to wit:

Whether 4th and 5th defendants/applicants' affidavit in support of preliminary objection is competent in law and ought to be discountenanced by the Honourable Court?

2. Whether 4th and 5th defendants' preliminary objection ought to be dismissed for being an abuse of court process with punitive cost?

The counsel quoted paragraph 4 of the supporting affidavit in support of the preliminary objection and submitted that there is no distinction as to the facts within the personal knowledge of the deponent and those derived from the defendants which the deponent believe to be true, and the deposition is in violation of section 115(4) of the Evidence Act, and to him, this court cannot speculate or distinguish on the specific information derived from the defendants/applicants related to the deponent and those within the deponent's personal knowledge forming ground

for his believe and deposition, thereby rendering the whole information/deposition as incompetent in law and urge the court to so hold, and he cited the case of **A.G. Adamawa V. A.G., EED (2005) 18 NWLR (pt 958) 581 at pp. 657 – 658**, and prayed to the court to discountenance the affidavit in support of the preliminary objection.

On the issue No. 2 for determination, the counsel cited the case of **Hanatu V. Amadi (2020) 9 NWLR (pt 1728) p. 115 amd 127 paras. C-D per Kekiva Ekon JSC** to the effect that counsel in a matter as officers of the court, have a duty to assist the court in reaching a just and speedy determination of the dispute before it. He submitted that it is trite that counsel owes it a duty to help reduce the period of delay in determining cases by avoiding unnecessary preliminary objections, and he cited the case of **Amadi V. NNPC (2000) 10 NWLR (pt 674) p. 100 paras. G-H**.

The counsel submitted that it is not in doubt that the defendants' counsel entered conditional appearance for the defendants, and he referred to EXH. 'A' attached to the counter affidavit of the claimant, and also filed EXH. 'D' which is the notice of preliminary objection and is therefore fully abreast of the facts of the instant suit, and the defendants have not changed their counsel in the instant suit, and to him, the 4th and 5th defendants/applicant only want to waste the time of this court and occasion unmitigated delay of the cause of justice, and he cited the case of **PML (Nig.) Ltd V. FRN (2018) 7 NWLR (pt 1619) 448** where one of the features of abuse of court process was listed.

The counsel invited the court to look at the 17 paragraphs of the affidavit in support of the 1st to 6th defendants' preliminary objection against the 1st claimant filed on the 7th January, 2022 EXH. 'D', and the 71

paragraphs affidavit in support of this instant preliminary objection and the argument canvassed in the written addresses and urge the court to make its finding.

The counsel submitted that where fraud is pleaded against an incorporated company, the veil of incorporation must be lifted unravel the fraud being perpetuated in the name of the company by directing minds of the company, that is the directors, and the 4th and 5th defendants are directors of either of 1st and 2nd defendants jointly, and severally which are question of evidence to be proved during the trial, and he cited the case of **Delak Distribution Service Ltd & Anor. V. Ugbow Awkwo (2018) LPELR – 46480 (CA) Per Garba JCA** (as he then was).

The counsel urged the court to look at the writ of summons and statement of claim with a view to see whether they raise fraud which requires the veil of incorporation of the 1st and 2nd defendants to be lifted, and he then urged the court to dismiss the preliminary objection with substantial cost of ₦1,000,000.00 for being raised mala fide.

It is in the further affidavit of the 4th and 5th defendants/applicants that the motion filed by them has no effect of delay on the Fast Track the claimants have paid for and that the 4th and 5th defendants have never held the money of the claimants fraudulently neither have they mischievously directed any funds belonging to the claimants/respondents.

The counsel to the applicants in his reply on points of law referred this court to the case of **Limak Yatirim, Enerji Oretim Isletme Hizmetleri VE Insaat A.S. & Ors V. Shelian Energy & Integrated Services Ltd (2021) LPELR – 58182 (CA)** with respect to the provision of section 115 (1) (3) and (4) of Evidence Act to the effect that where the information is

from the knowledge of another person the deponent must clearly say so and disclose the informant's name; that the deponent to an affidavit must have faith and believe in facts deposed to even if it is derived from a third party; and that where the ground for believing a fact is derived from another person, the deponent must in addition state the time, place and circumstance of the information, and the counsel went further and submitted that the deponent to the affidavit supporting the 4th and 5th defendants' application is brought properly before this court, and quoted paragraph 4 of the affidavit. He then submitted that it is clear that the fact the deponent deposed to in the said affidavit were facts within the personal knowledge, and therefore needs further ground to believe what was deposed to, and that the facts were already in the deponent's personal knowledge which were re-iterated by the 4th and 5th defendants/applicants, and not that he solely got the information or facts from another person.

The counsel argued that the entire paragraph or sentence should be read together for an opposite and right interpretation, and he urged the court to remember ejusdem generis rule of interpretation, and he urged the court to discountenance the argument of the counsel to the claimants/respondents.

The counsel to the 4th and 5th defendants/applicants claims that the claimants/respondents in their counter affidavit grossly vitiates section 115 (2) of the Evidence Act of 2011 which clearly states that an affidavit shall not contain extraneous matters, by way of objection, prayer or legal argument or conclusion. He submitted that the claimants/respondents cleverly tried to win the said paragraph 10i – xix of their supporting affidavit by stating arguments and conclusions, and submitted that several

arguments and conclusions were made in their counter affidavit, and he referred to the case of **Limak & Ors V. Sahelian Energy Ltd (supra)**, and the case of **Ishaya Bamaiyi V. The State (2001) 8 NWLR (pt 715) 270 at 289 paras. C-F**, all to buttress his previous argument on the provisions of section 115 of the Evidence Act, and therefore argued that the paragraph 10(i) to (ix) of the counter affidavit has been rendered incompetent in law, and urged the court to so hold and strike out same.

On the argument of the counsel to the claimants/respondents that the preliminary objection is brought malafide, the counsel to the 4th and 5th defendants/applicants submitted that proper dispensation of justice is as important as a speedy dispensation of justice, and he cited the case of **A.G., Fed. & Anor. (2018) LPELR – 46596 (CA)** (citation not properly supplied) to the effect that justice rushed is justice crushed, herein, to him, they brought the application on the ground of locus standi, and more so more so to exercise their right to fair hearing as envisaged in section 36 of the constitution, and that the 4th and 5th defendants/applicants are aggrieved for being brought into the suit that has no business to do with them in their personal capacity. He submitted that no court that cannot entertain objection which bothers on jurisdiction to try a matter and he referred to the case of **Ajayi V. Abebiyi & Ors (2012) LPELR – 7811 (SC)** to the effect that locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought, and he cited the case of **Galadima V. Tambai & Ors (2000) LPELR-1302 SC** to the effect that issue of jurisdiction if being raised in the course of the proceeding can neither be too early or premature nor be for late, and

to him, the 4th and 5th defendants/applicants are within their right to bring the said application before the court.

The counsel submitted that the prayers in the two different applications are praying the court for two very different things, and to him, the claimants/respondents cannot say that the two applications are similar, and he then urged the court to look at all the processes and documents relied on by all the parties in this suit, and the averments of the claimants/respondents are lacking in merit and should be discountenanced.

On the averment that there is an allegation of fraud allegedly made by the 4th and 5th defendants. He cited the case of **Onuchukwu V. Nnoli & Anor. (2013) LPELR -21223 (CA)** where the counsel found the meaning of fraud, and submitted that he cannot see how the said allegation relates to the 4th and 5th defendants in this matter on the grounds that the 4th and 5th defendants have never seen pary to the said partnership Agreement necessitating this suit, and the 4th and 5th defendants never portrayed themselves as an investment company as pleaded in paragraph 33 (i) – (vii) of the claimants/respondents statement of claim, and then put the claimants/applicants to the strictest proof, and he cited section 131 (1) (2) and 136 (1) of the Evidence Act as to who asserts most prove, and also the case of **Nigerian Railway & Ors V. Akinbode & Ors (2007) LPELR – 4603 (CA)**. The counsel also cited the case of **AMCON V. Canvass Farms (Nig) Ltd & Ors (2021) LPELR – 54651 (CA)** on the liability or directors, shareholders and creditors of a company in debt and exception thereto, and to the effect that in law and by reason of the incorporation of a company under the Companies and Allied Matters Act 2004, neither a shareholder nor a director nor a member of an incorporate company can be held

personally liable for the liabilities and or debts of the company beyond the unpaid value of his shares unless the veil of incorporation is lifted on grounds of fraud, illegality, sham etc, and submitted that a company is an artificial entity which is separate and distinct from its shareholders and directors or from the members and organs of the company. He opined that the claimants/respondents have no proof of actual fraudulent activities against the 4th and 5th defendants/applicants.

Thus, the main issue for determination in this application is well formulated by the counsel to the 4th and 5th defendants/applicants, and I adopt it as it is apt, to wit:

Whether or not the claimants/respondents have disclosed a reasonable cause of action against the 4th and 5th defendants/applicants?

Before resolving the above formulated issue, let me consider number of issues raised by the counsel in this application:

1. Whether, considering the Notice of Preliminary Objection filed on the 7th January, 2022 by the 1st to 6th defendants the 4th and 5th defendants can relitigate by filing this instant Notice of Preliminary Objection?
2. Whether filing of this Preliminary Objection deplete the essence of placing this matter on Fast track thereby causing a delay in the determination of the substantive suit?
3. Whether the entire paragraphs of the affidavits in support and paragraphs 10(i) to 10(xix) of the counter affidavit offend section 115 of the Evidence Act, 2011?

It is the contention of the claimants/respondents in their counter affidavit that on the 7th January 2022, the counsel

to the defendants/applicants filed a memorandum of conditional appearance for the 1st to 6th defendants, including the 4th and 5th respondents, against the 1st claimant/respondent. It is contented that the same counsel filed on behalf of the 1st to 6th defendants a Notice of Preliminary Objection against the claimant, and to him, therefore, the counsel to the defendants having entered into appearance for all the defendants, is it that they are not unaware of the writ of summons and the accompanying processes served on them in this suit including the 4th and 5th defendants before raising the preliminary objection, that is to say, the Notice of Preliminary Objection filed on the 7th January, 2022, is it not similar to this Notice of Preliminary Objection under consideration, thereby occasioning an abuse of court process?

It is worthy of note that the Notice of Preliminary Objection filed jointly by the 1st to 6th defendants dated the 7th January, 2022 the principal relief sought is for an order of this court striking out the name of the 1st claimant/respondent in this suit for lacking locus standi to institute same suit. While the 4th and 5th defendants filed this instant preliminary objection seeking this court to strike out the names of the 4th and 5th defendants/applicants in this suit for lack of cause of action against them.

To my mind, the issue of the locus standi of the 1st claimant to institute this action is different from the issue as to whether the suit discloses a reasonable cause of action against the 4th and 5th defendants, as both issues are not synonymous, that is to say, determination, that the plaintiff has a standing to sue does not depend on the investigation of examination of the later. See the case of **Sehindemi V. Gov. of Lagos State (2006) All FWLR (pt 3(1) p. 1866 at 1886; paras. C-E** where the Court of Appeal, Lagos Division held

that the issue of standing to sue must be separated from whether a plaintiff has a reasonable cause of action. They are not co-extensive, nor does a finding in favour of the former depend on the examination of the later. In the circumstances, I hold the view that the issue of locus standi raised by the 1st to 6th defendants dated the 7th January, 2022 in their Notice of Preliminary Objection will not prevent this court from determining whether this suit discloses a reasonable cause of action against the 4th and 5th defendants. The contention of the 1st claimant is hereby discountenanced.

On the issue of whether filing this Notice of Preliminary Objection defeats the essence of placing this matter on Fast Track thereby causing a delay in the determination of the substantive suit. I am of the firm view that time is of the essence in determining cases placed on Fast Track, however Order 37 Rule 12(e) of the Rules of this court made provisions for this court to entertain motions and other applications within a specified time limit after the close of pleadings, and in the instant suit, the defendants have not filed their statement of defence even after the time allowed by the Rule has elapsed, and the hearing of the Notice of Preliminary Objection on the part of the defendants is completely against the Rules of this court, this is because by the provision of Order 37 Rule 12(c) and Order 37 Rule 13(2) of the Rules of this court, the defendants failed, having served with the writ of summons and statement of claim, they failed to file their statement of defence within the time limit prescribed by the Rule, and the implication is that they cannot be heard on an interlocutory applications, however, for the fact that the preliminary objection touches on the foundation of this court, it is deemed expedient to hear and determine each an application. See the case of **Sani V.**

Okene L.G. Traditional Council (2008) All FWLR (pt 429) p. 466 at to the effect that apart from preliminary objection as to the jurisdiction of the court, most others are liable to time and would be subject of a waiver.

I therefore, hold that notwithstanding that the Rules of this court does not allow the entertainment of such application having the defendants failed to file their statement of defence, and for the fact that the preliminary objection touches on the jurisdiction of this court, the contention of the claimants goes to no issue. Therefore, even though the suit was placed on Fast Track the preliminary objection would have to be determined, and will not be considered as a delay tactic, and to this, I so hold.

On the issue as to whether the entire paragraphs of the affidavit in support and the paragraphs 10(i) to 10(xix) of the counter affidavit contravene section 115 of the Evidence Act, 2011, it is the contention of the counsel to the claimants/respondents that according to the deponent to the 4th and 5th defendants/applicants' affidavit in support of the preliminary objection and more particularly at paragraph 4, there is no distinction as to the facts within the personal knowledge of the deponent and those derived from the defendants/applicants which the deponent believed to be true, and to the counsel this is in violation of section 115(4) of the Evidence Act and should be discountenanced.

Thus, paragraph 4 of the supporting affidavit as quoted by the counsel to the claimants/respondents reads:

“That all the facts to which I now deposed to, are facts within my personal knowledge or otherwise facts derived from the defendants/applicants, which I verily believe to be true”

Section 115(4) of the Evidence Act reads:

“When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.”

Taking into consideration paragraph 4 of the supporting affidavit of the 4th and 5th defendants/applicants, it can be seen that the deponent did not specify any of the facts in the affidavit to which are within his personal knowledge, and which ones that he derived from the defendants/applicants, and at what time, place and circumstances the facts were derived from the defendants/applicants, and even the names and particulars of the 4th and 5th defendants/applicants have not been mentioned by the deponent and to my mind, this is in clear violation of section 115(4) of the Evidence Act, and the whole paragraphs of the affidavit in support are hereby discountenanced.

It is the contention of the counsel to the defendants/applicants in his reply on points of law accompanying the further affidavit that paragraph 10(i) to 10(xix) of the counter affidavit of the claimants/respondents in contravention of section 115 (2) of the Evidence Act, 2011 which provides:

“An affidavit shall not contain extraneous matter by way of objection, prayer or legal argument or conclusion.”

Let me also consider the provisions of section 115(1) of the Act which provides:

“Every affidavit need in the court shall contain only a statement of fact and circumstance. To which

the witness deposes, either of his own personal knowledge or from information which he believes to be true.”

The provisions of section 115(2) of the Act cannot be read in isolation of the provisions of subsection (1) of section 115 of the Act, and therefore, I have gone through the counter affidavit of the claimants/respondents which the deponent stated that he was informed in the circumstances to which deposes and that he believes the facts to be true, and therefore, I could not see where the paragraph 10 in its entirety offends the provisions of section 115(2) of the Evidence act, 2011 and to this, I so hold.

In addition to the above, the counsel to the 4th and 5th defendants/applicants did not specify as to which of the subparagraph of paragraph 10 of the counter affidavit of the claimants/respondents that offends the section of the Act, rather he considered that the entire paragraph is in contravention of section 115(2) of the Evidence Act, and to this, the argument of the counsel to the 4th and 5th defendants/applicants is hereby discountenanced, and I hold the firm view that paragraph 10(i) to 10(xix) of the counter affidavit of the claimants/respondents is not in contradiction of section 115(2) of the Evidence Act.

Now, having determined the three issues above, let me consider the main issue in this application, that is to say, whether or not the claimants/respondents have disclosed a reasonable cause of action against the 4th and 5th defendants, and in considering the above questions, recourse has to be had to the statement of claim of the claimant. See the case of **PFIZER SPECIALTIES Ltd V. Chyzob Pharmacy Ltd (2008) All FWLR (pt 414) p. 1458 at 1475, paras. F-H** where the Court of Appeal, Lagos Division held that the court in determining whether a case discloses a reasonable

cause of action, if examines the statement of claim and sees whether on the face of it, it discloses facts which if proved would entitle the plaintiff to a remedy.

Thus, it is the contention of the 4th and 5th defendants/applicants that there is no cause of action against the 4th and 5th defendants on record, hence the claimants have no locus standi to bring this action against the 4th and 5th defendants/applicants, and that the said Partnership Agreement was never between the claimants and the 4th and 5th defendants but was rather between the deceased husband of the claimant and the 1st defendant, and that the Loan Agreement was executed between the 3rd defendant and the deceased only.

On the issue of locus standi of the claimant to institute this action, this court has taken a decision on the 22nd day of November, 2022 pursuant to a Notice of Preliminary Objection filed on the 7th January, 2022 by the 1st to 6th defendants where they challenged that the 1st claimant has no locus standi to institute the suit, and the court in that decision dismissed the Preliminary Objection to sustain the suit, and therefore, to my mind, the 4th and 5th defendants/applicants cannot be allowed to relitigate same issue. See the case of **Mogaji V. N.E.P.A (2003) FWLR (pt 153) p. 241 at 249, paras. B-D.**

So, what I will only consider now is whether this suit discloses a reasonable cause of action, and in doing that I have to go through the statement of claim with a view on the face of it to see whether it discloses a reasonable cause of action against the 4th and 5th defendants/applicants.

The claimants/respondents in their counter affidavit stated that at paragraph 33(i) (ii) (iii) (iv) (v) (vi) (vii) of the statement of claim, fraud was pleaded against the 1st, 2nd, 3rd, 4th, 5th and 6th defendants with particulars.

Where the 4th defendant featured in the statement of claim is in paragraph 33 subparagraph (iii) and (v) where it was stated that the claimants subsequently discovered that contrary to the 1st, 2nd, 3rd, 4th, 5th and 6th defendants projected investment partnership, all the invested money on the 1st defendant and the loan extended to the 2nd defendant were merely fraudulently diverted to fund the building and an acquisition of the defendants' private luxurious residence at Gwarinpa, Abuja and that the 1st, 2nd, 3rd, 4th, 5th and 6th defendants refused and neglected to declare and or account to the 1st claimant or a court, all the personal asset and investments/loans of the deceased to the 1st claimant, however, it is stated in paragraph 7 of the statement of claim that the 4th defendant is the wife of the 3rd defendant and a director of the 2nd defendant, and also in paragraphs 24 of the statement of claim it is claimed that the 4th defendant with the other defendants paid the sum of \$1000 out of \$15,000 leaving the balance of \$14,000.

The 5th defendant featured in paragraphs 18, 19, 21, 24, 25, 26, 30, 31, 33, 35(iii) (v), 36, 38, 39, 40, 42, 43, 44 and 45(i) (ii) of the statement of claim.

In all these paragraphs, there is no where it is particularised what the role played by the 4th and 5th defendants, rather the paragraphs are in a form of general statement without stating the role played by both the 4th and 5th defendants in the transaction leading to the filing of the suit. See the case of **Okoli V. Morecab Finance (Nig.) Ltd (2007) All FWLR (pt 369) p. 1168 at 1183, paras. C-D** where the Supreme Court held that fraud unravels everything. It must be specifically pleaded and its particulars, failing which the evidence obtained thereof would not be admissible. In the instant case, no mention of any role

performed by the 4th and 5th defendants in the statement of claim.

Thus, going by the definition of a reasonable cause of action as was held in the case of **Pfizer Specialties Ltd V. Chyzob Pharmacy Ltd (supra)** that a reasonable cause of action in general terms a fact or a combination of facts which if proved, would entitle a plaintiff to a remedy against a defendant. In the instant suit, and going by the statement of claim, it is so glaring that the fact or combination of facts linking the 4th and 5th defendants of this suit, rather it was generally alleged that the 4th and 5th defendants jointly with others committed fraud without mentioning the role the 4th and 5th defendants played which would entitle the claimants a remedy, and to this I so hold.

In the circumstances of this application, the names of the 4th and 5th defendants are hereby struck out in this suit.

Hon. Judge
Signed
1/6/2023

Appearances:

The 1st claimant is in court.

R.A. Olutekunbi Esq appeared for the claimant.

B.I. Miduoi Esq appeared for the defendant.

CT: The ruling is delivered and the matter is adjourned to 20th day of November, 2023 for hearing of the counsel to the claimant and that of the defendants should do the needful.

Hon. Judge
Signed
1/6/2023