

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER :HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/706/2021

DATE: : THURSDAY 17TH FEBRUARY, 2022

BETWEEN:

**INCORPORATED TRUSTEES OF
VOLUNTEER LEGAL PRACTITIONERS FOUNDATION FOR THE PROMOTION
OF MORALS AND VALUES** } **CLAIMANT**

AND

**THE HON. ATTORNEY GENERAL
OF THE FEDERATION AND
MINISTER OF JUSTICE** } **DEFENDANT**

JUDGMENT

The Claimant by an Originating Summons dated 9th March, 2021 and filed same date approached this Honourable Court for the following:-

- a. A Declaration that Section 2 of the Dishonoured Cheques (Offences) Act is inconsistent with Section 36(5) of the Constitution of the Federation Republic of Nigeria, 1999 (as amended) and therefore liable to be nullified and voided.
- b. An Order of this Honourable Court nullifying and voiding Section 2 of the Dishonoured cheques (offences) Act for being inconsistent with Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In support of the application is a 5 paragraph affidavit duly deposed to by Watchman Oshekun, Co-counsel to the Claimant.

It is the deposition of the Claimant's Co-counsel, that Section 2 of dishonoured cheques (offences) Act contains the expression "**deemed to be guilty**"; whereas Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) regarding a Suspect/Defendant says "**presumed to be innocent**".

That it will be in the interest of justice to grant the reliefs sought in the originating summons.

In compliance with the Rules of this Honourable Court, learned counsel for the Claimant filed a written address wherein sole issue was formulated for determination to wit;

Whether this Honourable Court can in the instant, nullify and void Section 2 of the Dishonoured Cheques (offences) Act for being inconsistent with Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Learned counsel submits, that it is quite obvious that Section 2 of the Dishonoured cheques (offences) Act for being inconsistent with the provisions of Section 36(5) of the Constitution of Federal Republic of Nigeria, 1999 (as amended); in that it deems the person charged to Court to be guilty, whereas the Constitution presumes the same accused person innocent until proven guilty. To buttress the above point, Sections 1(1) and (3), 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and ***A.G ABIA STATE VS. A.G***

***FEDERATION (2003)4 NWLR (Pt. 809) 124 SC.
A.G LAGOS STATE VS. A.G FEDERATION
(2003) 12 NWLR (Pt. 833) 1 SC.*** were cited.

Learned counsel respectfully urged this Honourable Court to grant the reliefs in the originating summons.

On their part, the Defendant filed their counter affidavit to Claimant's originating summons.

It is the deposition of the Defendant that there is nothing presently placed before the Court by the Claimant to justify any of its reliefs.

That the Defendant denies all allegations in all paragraphs of the Claimant's affidavit?

That Section 2 of the Dishonoured Cheques (offence) Act does not in any manner whatsoever violate Section 36(5) of the Constitution.

That Section 2 of the Dishonoured Cheques (offences) Act does not presume the guilt of any Defendant before trial under Section 3 of the Act.

That as a matter of fact, Section 2 of the dishonoured cheques (offences) Act was enshrined to ensure that companies do not escape the consequences of the action of their officers in relation to issuance of dishonoured cheques.

That there is no conflict or dispute of whatever nature between the Claimant and the Defendant.

Learned counsel for the Defendant filed a written address in compliance with Rules of this Honourable

Court, and formulated the following issues for determination to wit;

- a. Whether this Honourable Court has jurisdiction to entertain this Suit.*
- b. Whether the Claimant has locus standi to institute this action.*
- c. Whether Section 2 of the dishonoured cheque (offences) Act violates or contravenes the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

On issue one, *whether this Honourable Court has jurisdiction to entertain this Suit.*

Learned counsel submits that, it is clear that this matter did not arise from an ordinary banker-

customer relationship. It is therefore an action which ought to have been commenced before the Federal High Court. Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) was cited.

Learned counsel argues that, this matter relates to banking, but it was not filed by the Claimant in his capacity as customer to a Bank. Therefore, this Honourable Court has no jurisdiction over this matter based on the provision of the Constitution cited above. The dishonoured cheques (offences) Act Cap D11 LFN 2004 Section 2 of which the Claimant seeks to invalidate by filing this action is a Federal law. The Act is deemed to be made by both the National Assembly and the President, which are established as institutions of the Federal Government of Nigeria. ***JAMMAL STEEL VS.***

AFRICAN CONT. BANK (1973) N.C.L.R 94 at 110 – 111 was cited, to buttress the above point.

On issue two, ***whether the Claimant has locus standi to institute this action.***

Learned counsel submits that, the law requires the Claimant to establish by credible evidence, its legal right or sufficient legal interest greater than that of other members of the public that it seeks to protect by filing this case. The Claimant failed to satisfy this requirement. The Claimant whose legal status is not stated in its affidavit did not allege that Section 2 of the dishonoured cheques (offences) Act was applied against its interest in any way. ***KUTSE VS. BAKFUR OGUNSANYA VS. DADA (1990) 6 NWLR (Pt. 56) 347 at 359 – 360*** was cited.

Learned counsel urges the Court to apply the above cited authorities to the instant case and hold that the Claimant's rights has not been threatened or invaded pertaining to the subject matter of this action and has therefore not been wronged.

On issue three, *whether Section 2 of the dishonoured cheque (offences) Act violates or contravenes the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

It is the submission of learned counsel that the law is settled that in the interpretation of a statute, harmony should be attained, and conflict should be avoided. A phrase of a statute cannot be isolated and given an interpretation which would defeat the purpose of the statute. Section 2 of the dishonoured cheques

(offences) Act Cap D11 LFN 2004 is one of the substantive provisions of the Act. And it established a procedure and imposed obligation on joints after trial under the Act.

Learned counsel further submits that, the Claimant's arguments that this Section of the law contravenes Section 36(5) of the Constitution is untenable. Also, the position argued by the Claimant that Section 2 of the dishonoured cheques (offences) Act Cap. D11 LFN 2004 presumed the guilt of Defendants rather than the presumption of innocence required by the Constitution is blatantly false. The section opens with the words: "Where any offence under this Act by a body corporate is proved to have been committed", this in itself indicates clearly that the phrase being challenged by the Claimant in this action is meant to be applied by the trial court after

the actual trial which Section 3 of the Act prescribes to be summary in nature. In other words, the phrase: “shall be deemed to be guilty” does not remove the presumption of innocence of Defendants, it rather provides for corporate criminal liability for offences created under the Act committed by natural human beings in their capacity as Officers of Corporate bodies. *EGOLUM VS. OBASANJO & ORS (1999) 7 NWLR (Pt. 611) 355 at 393 and AWOJUGBABE LIGHT IND. VS. CHINUKWE & ANOR (1993) 1 NWLR (Pt. 270) 485 at 510* were cited.

Learned counsel concludes by urging this Honourable Court to either strike out this action based on submission on preliminary issues raised or dismiss the action in its entirety based on submissions made on the substantive issue.

The Claimant counsel in turn, filed a reply on points of law dated 16th of September, 2021.

On point of law, learned counsel for the Claimant argued that the application of ejusdem generis excludes the issuance of dud cheque from matters which the Federal High Court is accorded exclusive jurisdiction by Section 251(1)(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In fact, Section 3 (1) of the dishonoured cheques (offences) Act expressly accords jurisdiction to the High Court of a State in matters relating to dishonoured cheques.

Learned counsel further submits that in an attempt to appreciate the bone of contention, ***JAMMAL STEEL VS. AFRICAN CONTINENTAL BANK (1973) NCLR P. 94 at 110 – 11*** was conspicuously

cited by Defendant's counsel the portion cited even supports the position of the Claimant that it is the State High Court that has jurisdiction to entertain this matter.

Learned counsel further submits that the instant suit is a public interest suit touching on the Fundamental Rights of the individual citizens of Nigeria – which rights are inalienable and protected by the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The fact is clearly stated on the originating process. **Paragraph 3(e)(iv) of the Preamble of Fundamental Rights (Enforcement Procedure) Rules, 2009 and Abia State University, *UTURU VS. CHIMA ANYAIBE (1996)1 NWLR (Pt. 439) 646 at 660 – 661*** were cited. The rule referred to above enjoins the courts to encourage and welcome public interest litigators in

the human rights field and states that “no human rights case may be dismissed or struck out for want of locus standi”.

Learned counsel replied on issue three (3) raised by the Defendant by raising a poser from the analysis and submissions of the learned counsel to the Defendant.

How can the Director or other officer of the body corporate be proved to be complicit without first being charged and afforded a right to fair hearing as provided by law?

Learned counsel cited Section 36(4), (5), (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The position of counsel for the Defendant means that the Director or other officer of the body corporate needs not be given room to

defend himself or herself; which act undoubtedly is an affront and an abuse of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Learned counsel concludes by urging this Honourable Court to assume jurisdiction and grant the prayers on the face of the Originating Summons.

COURT:-

I have carefully ploughed through the submissions of both learned counsel in this discourse.

Whereas, learned counsel for the Claimant seeks the Court to hold that Section 2 of the Dishonoured Cheques (Offences) Act is inconsistent with Section 36(5) of the Constitution of Federal Republic of Nigeria 1999 as amended and therefore liable to be nullified and voided, and an Order nullifying and voided the said Section 2 of the Dishonoured

Cheques (Offences) Act for being inconsistent with Section 36(5) of the Constitution of Federal Republic of Nigeria 1999 as amended.

Learned counsel for the Defendant on the other hand filed affidavit of 4 paragraphs when he challenged the competence of this Court jurisdictionally speaking to attend to the reliefs of the Claimant.

The issues of Section 251 of the Constitution of Federal Republic of Nigeria 1999 touching on the exclusive jurisdiction of the Federal High Court, locus standi and whether Section 2 of the Dishonoured Cheques (Offences) Act contravenes Section 36(5) of the 1999 Constitution of Federal Republic of Nigeria 1999 are the issues so raised by the Defendant.

In an attempt to determine the said issues, I shall deal with them conjunctively in view of the fact that they both possess the same lethal effect of destroying the case of the Claimant.

May I restate the age long position of the law with respect to declaratory reliefs in view of the fact that Relief 1 as sought by Claimant is declaratory in nature.

Any person who seeks the Court to declare any relief in its favour shall satisfy the Court by leading evidence to show its entitlement to such relief as declaratory reliefs are not granted as matter of course...

Absence of defence, admission cannot be the basis for granting declaratory reliefs.

See ***GOVT. OF GONGOLA STATE VS. TUKUR (1989)4 NWLR (Pt. 117).***

Jurisdiction be it subject matter or parties, once challenged, has to be dealt with first, before delving into the issue before the Court because of its importance... Where the subject matter is expressly provided to be instituted before a particular Court, non other can have the jurisdiction to try such a matter.

See Section 251(1) of the Constitution of Federal Republic of Nigeria on the exclusive jurisdiction of the Federal High Court...

The said Section provides as follows:-

“Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred

upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in Civil Causes or Matters; A...B...C...D connected with or pertaining to Banking, Bank and other financial institutions, including action between one Bank and another, any action by or against the Central Bank of Nigeria (CBN) arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit; provisional notes and other fiscal measures; provided that this paragraph shall not apply to any dispute between an individual customer and his Bank in respect to transaction between the individual customer and the Bank”...

Let me clearly state here that the issue before the Court is not with relation to banking matter specifically. The grouse of Claimant has to do with Section 2 of the Dishonoured Cheques (Offences) Act being in violation of Section 36(5) of the 1999 Constitution.

The law as I understand it is that once a rule or doctrine of common law has been codified into statute or Constitution, the Court's duty is simply to apply the statutory or Constitutional Provision to the matters on the pleadings and evidence brought before it and not to rely on the common law doctrine or rules.

See ***PARKON INDUSTRIES LTD. VS. NIGER SHOES MANUFACTURING CO. LTD. (1988) 5 NWLR (Pt. 93) 138 at P. 152***

Courts are precluded from reading into provision words which are not found in it.

See *EFFIONG VS. HENSHAW (1972) 7 NSCC 329;*

SUNMONU VS. OLADOKUN (1996) 8 NWLR (Pt. 467) 387.

The provision of Section 251(d) is most unambiguous.

The issue of Dishonourd Cheque (Offences) Act clearly has not been donated to the Federal High Court in the said provision under scrutiny.

The argument, therefore, that the said issue touching on Dishonoured Cheques (Offences) Act being within the exclusive jurisdiction is a non-starter...

the argument of Defendant cannot stand in law. Defendant is hereby overruled on this score.

The next jurisdictional issue is that of the locus standi of the Defendant to have filed the instant suit as contended by the Defendant.

Black's Law Dictionary fifth (5th) edition at page 848 defined the term "**locus standi**" as:-

“A place of standing; standing in Court. A right of appearance in a court of justice, or before a legislative body, on a given question.”

See ***ADESANYA VS. PRESIDENT OF FEDERAL REPUBLIC OF NIGERIA (1981) 5 SC. 112;***

AERO BELL (NIG) LTD. & ORS VS. FIDELITY UNION MERCHANT BANK LTD. (2005) LPELR 11339 (CA).

Locus standi to sue is an aspect of justiceability and as such the problem of locus standi is surrounded by the same complexities and vagaries inherent on justiceability. Locus standi focuses on the party seeking to get his complaint before the High Court not on the issues he wishes to have adjudicated... it is indeed the cause of action that one has to examine to ascertain whether there is disclosed a locus standi to sue. For a party to have the locus to approach the Court, there must be an interest which such a person stands at risk or stake of relevance, equally to the issue of locus standi is the provision of Section 6(6)(b) of the Constitution of Federal Republic of

Nigeria which places great unfettered emphasis on the civil rights and obligations of the person suing.

The said Constitutional provision has this to say:-

“6(6)

The judicial powers vested in accordance with the foregoing provisions of this Section... (b) shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.”

From the deductions of the provisional sub-section, locus standi would then only be accorded to a Plaintiff who shows that his civil right and obligations have been, or are in danger of being

violated or adversely affected by the act complained of.

In *THOMAS VS OLUFOSOYE (1986) 1 NWLR (Pt. 18) Page 669*, the issue of locus standi also came up.. Obaseki J.S.C (as he then was), at Page 684, stated that the Courts under Section 6(6)(b) of the constitution are vested with judicial powers to adjudicate on a justiciable issue touching on the rights and obligations of the person who brings a complaint before it..

There is therefore an onerous duty on such a person to show that the act he complain of affects his rights and obligations which must be peculiar or personal to him.

Court have equally similarly held that a party prosecuting an action would have locus standing

where the reliefs claimed would confer some benefit on such a party.

See ***OLOYIODE VS OYEBI (1984) 5 SC Page 1 at 16, per Irehefe JSC (as he then was).***

In order to establish its locus standi, a party must seek to protect his legal right or interest, nor a right common to the community at large unless such a person suffered damages more, than any other person.

The issue of locus standi touches on the jurisdiction of court which cannot be properly constituted in the absence of a competent party before the court.

See ***MADUKOLU VS NKEMDILIM (1962) SC.***

The Claimant i.e Incorporated Trustees of Volunteer Legal Practitioners Foundation for the Promotion of Morals and Values.

In its 5 paragraph affidavit in support of the originating summons, Claimant introduced itself as a public policy advocacy group committed to public interest matters and to upholding the laws and Constitution of the Federal Republic of Nigeria, in addition to the moral values of public officers and the Nigerian Citizenry.

Claimant has not disclosed its promoters and how the issue of Section 2 of the Dishonoured Cheques (Offences) Act which Claimant contends violates section 36(5) of the 1999 Constitution has affected any particular Nigerian or Claimant, and the Claimant much more than all.

I am most in agreement with the argument of Defendant's counsel that claimant has not adduced facts capable of disclosing any legal interest to institute this action.

Claimant clearly is a busy body, meddlesome interloper and crank.

I shall decline jurisdiction to so proceed in the absence of a competent Claimant.

I hereby so decline jurisdiction. Suit No. **CV/706/2021** is hereby struck – out for want of jurisdiction.

In the even that I am not correct, a position I am not in doubt, I shall proceed to determine whether Section 2 of the Dishonoured Cheques (Offences) Act is incompetent with Section 36(5) of the 1999 Constitution of Federal Republic of Nigeria.

I shall reproduce the said Section 2 of the Dishonoured Cheques (Offences) Act for clarity;

“2. Offences by body corporate

Where any offence under this Act by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager or secretary or other similar officers, servant or agent of the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and punished in the same manner as an individual.”

A literal interpretation of the afore – reproduced section of the law in issue is clearly to suggest that a company is being referred to as a natural person

liable to be prosecuted in the event of any malfeasance on the part of the company or her agent.

The argument by Claimant's counsel that the provision of section 2 of the Dishonoured Cheques (Offences) Act is in conflict with section 36(5) of the Constitution is most unattainable, this is so because the issue of presumption of innocence which is a constitutional provision has not in any way been removed by the phrase "*shall be deemed to be guilty*" as provided under section 3 of the Dishonoured Cheques (Offences) Act.

Where the words of a statute are clear and unambiguous, it is then unnecessary to travel beyond the Act for the purposes of constituting them.

See *ONA VS ATANDA (2000) 5 NWLR (Pt. 565) 244.*

The argument of learned counsel for the Claimant in its reply that this suit is a public interest litigation in the human rights filed is most laughable and unattainable in view of the fact that there is nothing on the face of the reliefs sought that is human right related.

The authority of *ABIA STATE UNIVERSITY, UTURU VS CHIMA (1996) 1 NWLR (Pt. 439) 646* cited on the issue of locus standi therefore is most inapplicable to this case.

If section 2 of the Dishonoured Cheques (Offences) Act is not in any way in violation of section 36(5) of the 1999 Constitution, the case of Claimant then comes to an end.

I shall consign same into the forlorn of judicial debris by dismissing same.

Accordingly, Suit is hereby dismissed.

Justice Y. Halilu
Hon. Judge
17th February, 2022

APPEARANCES

I.O Nweze, Esq. – for the Claimant.

C.J Ijara, Esq. – for the Defendant.