

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/718/2021

DATE: :MONDAY 16TH MAY, 2022

BETWEEN:

RM PARTNERS LP PLAINTIFF

AND

- 1. THE CHIEF JUDGE, HIGH COURT DEFENDANTS
OF THE FEDERAL CAPITAL TERRITORY**
- 2. CHIEF REGISTRAR, HIGH COURT OF FCT**

JUDGMENT

The Plaintiff vide originating summons approached this Honourable Court for the following reliefs:-

- a. A declaration that the High Court of the Federal Capital Territory practice direction for the enforcement unit, which came into effect on 19th October, 2016 is contrary to the decisions of the court of Appeal and Supreme Court in several cases including ***SP DC (NIG) LTD VS. AMADI & ORS (2011) LPELR – 3204 (SC) AND;***

ATTORNEY GENERAL OF ANAMBRA STATE VS. ROBERT C. OKAFOR & ORS. (1992)1 Nigerian Supreme Court cases (N.S.C.C) 264 and TIJJAN & ANOR VS FBN LTD. (2014) LPELR – 22977 (CA) and is therefore null and void.

b. An order setting aside the High Court of Federal Capital Territory, practice direction for the Enforcement Unit which came into effect on 19th October, 2016.

In support of the application is an affidavit of 4 paragraphs deposed to by one Philips Wemambu a litigation officer in the firm of RM Partners LP.

It is the deposition of the Plaintiff as distilled from the affidavit in support that on 19th October, 2016 the 1st Defendant signed the High Court of Federal Capital Territory, practice direction for the enforcement unit into effect. The said practice direction is now part of the High Court of the Federal Capital Territory Rules 2019 (The Rules).

That that said practice direction provides that the execution unit shall promptly carry out an execution

unless same is recalled or formally stayed by a judge/magistrate or Court of Appeal or Supreme Court.

That the practice direction permits the execution of judgments whilst a motion for stay of execution is pending.

That previous to the said practice direction, execution is suspended whenever there is a pending motion for stay of execution.

That there are decision of the Court of Appeal and Supreme Court that once there is a pending motion for stay of execution, execution of judgment must be stayed pending the formal determination the application.

That unless the practice direction is set aside there shall be a miscarriage of justice, in that, inter alia,

execution shall be carried out whilst motion for stay of execution are pending at the Court of Appeal and the Supreme Court and service of court processes shall be refused by the execution unit.

That this suit is brought to bring about peace, justice and order lines that will reflect the spirit of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

In line with procedures, written address was filed wherein a sole issue was formulated by counsel to wit:-

“Whether the High Court of Federal High Court practice direction for the enforcement unit dated 19th October, 2016 which is incorporated in and is now part of the High

**Court of the Federal Capital Territory Rules
2019 (the Rules) is valid and legal.”**

Counsel submits that the High Court of the Federal Capital Territory practice direction for the enforcement unit provides that upon receipt of a writ of execution duly signed by a High Court Judge/magistrate, the Execution Unit shall promptly carry out the execution unless same is recalled or formally stayed by a Judge/Magistrate or Court of Appeal or Supreme Court. Section 2 of the High Court of the Federal Capital Territory practice direction for the Enforcement Unit; ***ATTORNEY GENERAL ANAMBRA STATE VS. ROBERT C. OKAFOR (1992) 1 NIGERIA SUPREME COURT cases 264;***

SPDC (NIG) LTD VS AMADI & ORS (2011) LPELR – 3204 (SC) were cited.

Counsel further submits that the said provisions of the High Court of the Federal Capital Territory practice direction for the Enforcement Unit are contrary to the decision stated above. If followed they shall render any court order for stay of execution nugatory if an application for stay of execution is granted. This is because the execution would have taken place whilst the stay application is pending.

Counsel submits that the High Court of Federal Capital Territory practice direction for Enforcement Unit is contrary to the decision of the Appellate Court because it may render nugatory an order for a stay of execution granted by a superior court.

Counsel humbly urged the court to grant all the reliefs in the originating summons.

Upon service, Defendants filed counter affidavit of 13 paragraphs deposed to by one Anaele Osinachi Hope a legal practitioner, of legal Unit of FCT High Court.

It is the deposition of the Defendants that the practice direction for the Enforcement Unit was signed on the 19th October, 2019 by the 1st Defendant as supplemental protocol to the Rules of court guiding the operations of the Enforcement Unit.

That the 1st Defendant has the constitutional power to make practice direction regulating the practice and procedure of a court.

That the provisions of the High Court of the FCT practice direction for the Enforcement Unit came into effect when it was discovered that when judgment is delivered in favour of a party, some judgment debtor do not honour or comply with the judgment of the court until a writ of execution is obtained by the successful litigant.

That it is becoming a practice among some judgment debtor's counsel that when a writ of execution is obtained by a successful litigant, the judgment debtor's counsel usually file and abandon a notice and an application for stay of execution in court.

That this unprofessional conduct of some counsel mostly deprives a successful litigant or judgment creditor from enjoying the fruits of their justice as it is the responsibility of the judgment debtor or his

counsel to timeously file an appeal or stay of execution when he is dissatisfied with the decision of the court in the matter.

That no judge would have such an application for stay timeously filed before him and would still forge ahead to sign a writ of attachment, but counsel to unsuccessful party most times resort to court to file stay after writ has been signed.

That paragraph 3 of the Plaintiff's affidavit is not true, and that the provision of the practice direction mentioned are wellfounded and made based on the provision and guidance of the law.

Learned counsel for the Defendants filed written address wherein 2 (two) issues were raised for determination to wit;-

1. *Whether the Plaintiff has the locus standi to institute this action against the Defendants.*

 2. *Whether the practice direction of the High Court of the FCT for the Enforcement Unit is contrary to some decision of the Appex Court and should be rendered null and void.*
- Whether the Plaintiff has the locus standi to institute this action against the Defendants.*

Counsel contended on the issue of locus standi is that only a person who has interest in a subject matter is competent to bring an action. A busy body cannot institute an action.

It is trite that not only does the issue of locus standi affect a court's jurisdiction to hear a matter, it is also a condition precedent in giving consideration to a person's legal capacity to institute an action for the

determination of his legal right. To this extent, the relief sought must be personal in order for a person to have locus to institute an action.

Ogunwumiju, J.C.A in the case of *EDUN VS GOVERNOR OF DELTA STATE OF NIGERIA & ORS. (2019) LPELR – 47464 (CA)* at page 29 – 36, Paragraph B – D, has this to say

“In the absence of the Appellant showing that his civil rights and obligations has been infringed upon or failing to show an imminent threat thereof, which supersedes those of the other citizens of Delta State Origin, he has failed to persuade the court that he has or will be personally affected by the Pension Rights of Governor and Deputy Governor of Delta State Law, Cap. P5, Laws of Delta State, 2008. It should be noted that the

concept of locus standi was imported into Nigerian jurisprudence via the application of the principles of common law. It is a legal term which connotes the standing or title to sue. At common law, for a person to have locus standi to institute an action, he must have been shown to be personally aggrieved by the alleged wrong complained of. Thus, it is insufficient for the Plaintiff to show that the right of some other persons has been infringed upon. A Plaintiff must then reveal that he or she has special interest or has sustained some injury greater than those suffered by the ordinary members of the public.

The need for locus standi was developed to mitigate the interference of persons who have no interest or stake in the subject of a suit. It aims at shielding the legal system from superfluous litigations.”

Counsel contends that, upon the careful perusal of the Plaintiff's originating summons and the affidavit in support, it is apparent that no sufficient interest has been disclosed to permit him the legal standing to sue.

Learned counsel further argued that, when the locus standi of a party is questioned in any proceeding the Court is being called upon to determine if there is sufficient interest in the party to warrant or give him authority to bring the action. It is a principle of law meant to check busybodies or interlopers from meddling in judicial proceedings. In the case of ***THOMAS VS. OLUFOSOYE (1986) NWLR (Pt. 18) 669.***

It is therefore the submission of counsel that for a person to have an interest in relation to locus standi,

it must be shown that he has rights, advantages, duties, liabilities, losses the are connected with the subject matter of litigation whether present or future, ascertained or potential provided that the connection, and in the case of potential rights and duties, the possibility is not too remote.

It is the argument of learned counsel for the Defendants that Plaintiff has failed to establish any of this precondition to confer the locus standi to institute this action against the Defendants. *ADESANYA VS. PRESIDENT, FRN (1981) 5 SC 112;*

IMADE VS MILITARY ADMINISTRATOR EDO STATE (2001) 6 NWLR (Pt. 709) 478 were cited.

Whether the practice direction of the High Court of the FCT for the Enforcement Unit is contrary to

some decisions of the Apex Court and should be rendered null and void.

Counsel humbly submit that the provisions of the practice direction are well founded and made based on the provision and guidance of the law. In filing of an application for stay of execution, it was held in the case of ***THE REGD. TRUSTEES OF ACTS OF THE APOSTLES CHURCH VS. FATUNDE (2010) ALL FWLR (Pt. 510) page 662 at 677 paragraphs F – G.***

Finally, it is based on the provisions of the law made above that we humbly submit that the High Court of the FCT practice direction for the Enforcement Unit which came into effect on the 19th October, 2019 should be declared validly made and in compliance with provisions of the law.

Furthermore, counsel contended that, by the combined effect of all our submissions in this matter is that the Plaintiff's suit ought to fail entirely and same dismissed accordingly with substantial cost.

On its part, Plaintiff replied on point of law.

Counsel contends that it is the contention of the Defendants that the Plaintiff did not disclose sufficient interest to permit them the legal standing to sue cannot be correct. As deposed in paragraph 3 (a) of the Plaintiff's affidavit in support of the originating summons, the Plaintiff is a partnership firm of legal practitioners practice in Abuja.

Counsel submits that the Supreme Court, in a number of cases has expanded the scope of locus standi beyond the narrow interpretation to include public interest litigation. ***CENTRE FOR OIL***

POLLUTION WATCH VS NNPC (2018) LPELR – 50830 (SC);

BEWEJI VS OBASNJO (2008) 9 NWLR (Pt. 1093) 540. 581, Paragraphs C-H;

FAWEHIM VS AKILU & ANOR (1987) 12 SC109

were cited.

Learned counsel posit that while practice directions are subsidiary legislation, they will not have the force of law if they are in conflict with the constitution, the statute that enables them or with any other law including case law. The law only empowers the 1st Defendant to make rules of procedure. What the 1st Defendant has done by making the said practice direction, with utmost respect, is to make rules of substantive law in the

guise of rules of procedure. The 1st Defendant cannot legislate on substantive law.

Similarly, counsel submits that it is a long – established principle of law that it is a duty of court to hear all pending application before it. ***ABAH VS MONDAY & ORS, (2015) LPELR – 24712 (SC); ELIKE VS NWANKWOALA (1984) 12 SC 301,*** were cited.

Consequently, counsel humbly urged the court to discountenance the arguments of the 1st and 2nd Defendant in their counter affidavit and written address.

COURT:-

I have considered the arguments of both Counsel for the Plaintiff on the one hand, and Defendants on the other hand.

The gravement of Plaintiff against the Defendants have been reproduced in the body of this Judgment. It solely touches on the practice Direction of the High Court of the FCT for the Enforcement Unit which came into effect on the 19th October, 2016 made by the 1st Defendant, which Plaintiff seeks to have nullified for being contrary to the decision of the Court of Appeal and Supreme Court.

Defendant have argued on the other hand that Plaintiff does not have the locus standi to have filed the instant suit having not stated how the said practice direction affects him in person.

On the other argument, Defendants are of the opinion that even if Plaintiff does have the requisite locus standi, the said practice direction does not is not in any way in conflict with the decision cited of Court of Appeal and Supreme Court.

Issue of locus is more or less jurisdictional since there has to be a valid suit instituted by a competent party before the Court can assume jurisdiction competently.

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

From an etymological perspective, the cliché expression, locus standi, traces its roots to latin language which means; “place of standing”...

In its expanded legal form, it denotes the legal right or capacity to institute an action in a Court of law

when his right is trampled upon by somebody or authority.

ABRAHAM ADASANYA VS. THE PRESIDENT FRN (1981)5 SC, remains the locus classicism on locus standi... all citizens of Nigeria derive their locus standi from the Constitution, Statutes, Customary Law or Voluntary Arrangement, the issue of locus standi was evolved to protect the Courts from the action of meddlesome interlopers and busy bodies who may comment the Court into a jamboree by Professional Litigants who truly have no interest in such matters.

See ***TAIWO VS. ADEGBORO (2011) 11 NWLR (Pt. 1159) 562.***

I have read with interest the argument of learned counsel for the Plaintiff. There is nowhere counsel

for the Plaintiff has stated how the said practice direction affected him other than the fact that it is contrary to the decision of the Court of Appeal and Supreme Court in the case of *S.P.D.C (NIG.) LTD. VS. AMADI & ORS;*

A.G ANAMBRA STATE VS. ROBERT C. OKAFOR & ORS Paragraph 2

I now gravitate, Plaintiff seem not at home as contained in the said practice direction. It provides as follows:-

“Upon receipt of a Writ of Execution duly signed by a High Court Judge/Magistrate, the Execution Unit shall properly carry-out the Execution known same is recalled or formally stayed by a Judge/Magistrate or Court of Appeal or Supreme Court”

I now pause for a moment and ask Plaintiff the following;

What is the grouse of Plaintiff with the said provision of the afore-produced practice direction?

Is Plaintiff directly affected by the said provision in any way?

I ask the said questions because Plaintiff merely filed the said process challenging the practice direction without necessarily placing before the Court how he is affected by the said provision.

The action of Plaintiff is akin to that of a Professional Litigant, meddlesome interloper.

Clearly Plaintiff has no locus standi at all on this situation but decided to institute this action for his name to be mentioned in Court.

The argument of learned counsel for the Defendant on lack of locus standi is timely and hereby upheld. The said process of Plaintiff is hereby struck-out for want of locus standi.

In the event that I am wrong, which I strongly and very much doubt, I shall attempt to consider the merit of the case.

I have looked at the said paragraph 2 of the practice direction which has been reproduced in the body of this Judgment. I am not in doubt that there are canons of interpreting provisions of Statutes, Law, and Bye-Law excreta –excreta.

The interpretation that best represents the mind of the makers of the law is what shall be adopted.

As it relates to the practice direction, the Hon. the Chief Judge of the FCT had in mind the antecedents

of counsel for Judgment Debtor who usually would not take steps to appeal Judgments only to start flying papers months after Judgment has been handed down which is all geared towards frustrating a successful Judgment Creditor from reaping the fruit of their labour. It is not the procedure that a Judge would proceed to sign Execution warrant after application to stay such execution is filed and pending.

It is patently clear that Plaintiff wrongfully read and misinterpreted the said practice direction for whatever reason. The argument of learned counsel for the Plaintiff is containable and relied. The said practice direction of the FCT High Court is not in any way in conflict with any Court of Appeal or Supreme Court Judgment. If anything at all, Plaintiff is afflicted with hallucinating convulsion.

I shall dismiss the said argument and originating summons. Suit **CV/718/2021** is hereby dismissed.

Justice Y. Halilu
Hon. Judge
16th May, 2022

APPEARANCES

Catherine Akaas, Esq. – for Defendants.

A.C Amamgbo, Esq. for the Plaintiff.

Defendants not in Court and not represented.