

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT NO. 13, WUSE ZONE 2 FCT ABUJA
ON THE 26TH DAY OF APRIL, 2022

BEFORE THEIR LORDSHIPS: HON. JUSTICE A.S. ADEPOJU (PRESIDING JUDGE)
HON. JUSTICE BABANGIDA HASSAN (HON. JUDGE)
APPEAL NO: CVA/200/2019
SUIT NO: CV/83/2017

BETWEEN:

SONGHAI HEALTH TRUST LIMITED.....APPELLANT
AND
ABUJA CLINICS NIGERIA LIMITED.....RESPONDENT

JUDGMENT

(DELIVERED BY HON. JUSTICE BABANGIDA HASSAN (HON. JUDGE))

The appellant being dissatisfied with the decision of the Senior District Court of the Federal Capital Territory, Abuja presided over by Sharom Tanko Ishaya sitting in Life Camp in Suit No. CV/83/2017 appealed to this court upon the following grounds:

That the learned trial Judge erred in law when he held that the issue of proof of existence of board resolution or otherwise are issues for the members of the company to raise and such error occasioned a miscarriage of justice.

The particulars of error are that:

- a. It is trite law that there must be a Board Resolution to institute an action which is the condition precedent before any company can commence any legal proceeding.
- b. The respondent instituted the action at the Court below without any resolution from its Board members authorising it to do so.

- c. At the close of the respondent's case at the lower court, the appellant filed Notice of Preliminary Objection challenging the trial court's jurisdiction to hear the suit.
- d. The trial Judge dismissed the objection of the appellant by holding the objection lacks merit.
- e. That the absence of the Board Resolution before instituting an action is an issue of jurisdiction which can be raised at any time by any party in a suit.

The appellant seeks for the following reliefs:

1. An order of this Honourable Court allowing the appeal.
2. An order of this Honourable Court setting aside the ruling of the lower court.
3. An order of this Honourable Court dismissing the case against the appellant at the court below for want of jurisdiction.

The appellant filed its brief of argument on the 20th day of December, 2019, and the respondent filed its brief of argument on the 16th October, 2020, and both briefs were adopted by the respective counsel to the parties.

The brief facts and history of this case is that the appellant filed a notice of preliminary objection touching on the jurisdiction of the trial District Court to the effect that the respondent before this court instituted the suit before the trial court without a Board Resolution mandating the respondent to institute the suit, and that during cross-examination, the PW1 unambiguously told the court that the respondent before this court (the plaintiff before the lower court) did not obtain the authority of the Board of Directors, in form of a Board Resolution, to institute the suit.

The trial court discountenanced the objection and held thus:

“Clearly the issues before this court is not one of the internal management of the plaintiff but such that is with respect to a breach of contractual obligation between the plaintiff and the defendant.”

In his brief of argument, the counsel to the appellant raised this issue for determination as distilled from ground 1 of the Notice of Appeal, thus:

Whether the trial court has jurisdiction to proceed with the trial of this case without first determining whether it has jurisdiction to hear the case?

The counsel submitted that once the defendant shows that the court has no jurisdiction, the foundation of the case is not only shaken but is entirely broken, as the jurisdiction is the life wire which the court must have before invoking its power, and that no court assumes jurisdiction except it is statutorily prescribed, as it cannot be implied, nor can it be conferred by parties, and he cited the case of **Umannah V. Obong Victor Attah (2010) 12 NWLR (pt 120) p. 518 per Tobi JSC** to the effect that when the issue of jurisdiction is raised in a matter, the court determines it first, it needs not to proceed further to consider any other issue, and he also cited the case of **Ogunnokun V. Milad, Osun State (1999) 3 NWLR (pt 594) 261 at 265.**

The counsel also quoted the provisions of section 63(l) of the Companies and Allied Matters Act to the effect that except otherwise provided in the company's article, the business of the company shall be managed by the Board of Directors who may exercise such powers of the company. He argued that the word used in the section is “shall”.

The counsel referred this court to the case of **Incorporated Trustees of Holy Apostles, Ayetoro & Ors. V. Incorporated Trustees of Oneness Faith of Christ Ministry,**

Ayetoro & Ors (2016) LPELR – 41368 (CA) to the effect that it is only on being registered by the Corporate Affairs Commission (CAC) that any Incorporated Trustees becomes a corporate body, with the status of a juristic personality capable of suing or being sued, and he further submitted that an artificial person like the plaintiff vested with legal or juristic personality, lacks the natural or physical capacity to function like a human being, those who work in it do all things for and on behalf of it.

It is the contention of the counsel that the legal personality of a limited liability company is driven by its Board of Directors through the Board Resolutions and if it want sue, it must do same by a resolution of that same Board. To him, there is no evidence in the plaintiff's plaint before the trial court that its Board of Directors agreed that this matter be instituted by the plaintiff, and even the counsel to the plaintiff did not disclose same. He argued that it is trite law that locus standi and jurisdiction are intermixed, that is to say, the capacity of the plaintiff to institute an action goes to affect the jurisdiction of the court which such action is instituted.

The counsel submitted that the PW1 emphatically stated that this action was commenced before the trial court without the knowledge of the Board of Directors. He cited the case of **Shugaba V. UBN Plc (1999) LPELR 3068 (SC)** to the effect that where a statute provides for the fulfillment of a condition precedent before an action is commenced, failure on the part of the plaintiff to fulfill such condition will render the entire action and subsequent trial a nullity. He also cited the case of **Ladejobi & Ors. V. Odutola Holdings & Ors (2003) NWLR (pt 753) p. 121 at 159** to the effect that an action cannot be maintained in the name of a registered juristic personality without the express authority of that

registered company, and that if authority is required for the use of the name of the company, it must be gotten from the proper quarters, either from the directors, trustees or from the general meetings convened for such purpose. The counsel then finally submitted that the plaintiff commenced the action before the trial court without authority from appropriate quarters via Board Resolution, and he urged the court to so hold.

The counsel to the respondent filed his brief of argument dated the 16th day of October, 2020, and in it, he raised the following question for determination, thus:

Whether the issue of the existence of a Board Resolution before the institution of an action in court is an issue which only members of the respondent can raise and not the appellant? (This issue is distilled from the grounds of appeal in the notice of appeal).

Before raising the issue as above, the counsel to the respondent drew the attention of the court that the respondent's counter affidavit and written address filed on the 18th day of March, 2019 against the appellant's notice of preliminary objection are not compiled along with the Record of Appeal, but that what were compiled in the record is the further and better counter affidavit of the respondent filed on the 6th June, 2018 against the appellant's earlier notice of preliminary objection filed on the 25th April, 2018 which was already heard and dismissed by the trial court on the 9th July, 2018.

The counsel submitted that the sole issue formulated by the counsel to the appellant is not distilled or formulated from the grounds of appeal in the notice of appeal, and to him, the issue is incompetent and should be discountenanced together with the argument there under,

and for the court to deem that the appellant did not formulate any issue for determination in their brief, and so all the arguments must be discountenanced, and he cited the cases of **Chief John Oyegun V. Chief Francis Arthur Nzeribe (2010) 6 SCNJ 74 at 80 paras. 30-35**; and **Real Admiral Francis Achie Agbiti V. The Nigerian Navy (2011) 2 SCNJ 1 at p. 16** to the effect that when any issue is not distilled from ground or grounds of appeal, such an issue will be struck out, and in other words, issue formulated by an appellant must be based on and correlate with the ground of appeal. The counsel submitted that while the sole ground of appeal is questioning the decision of the trial court that the issue of proof of the existence of board resolution or otherwise are issues for the members of the company to raise, the sole issue formulated by the appellant for determination in page 31 of the Record of Appeal is seeking the determination of **“whether the trial court has jurisdiction to proceed with the trial of the case without first determining whether it has jurisdiction to hear the case?”** To him, it is abundantly clear that the sole issue formulated is not based on and/or correlated to the sole ground of appeal which thus: **“The learned trial Judge erred in law when he held that the issue of proof of existence of board resolution or otherwise are issues for the members of the company to raise and such error occasioned miscarriage of justice”**, and the counsel then urged the court to strike out the appellant sole issue for determination for being incompetent, and also to dismiss the appeal as there would not be any issue formulated by the appellant for the determination of the appeal.

The counsel submitted that assuming but not conceding that the sole issue for determination is competent, the appeal would be liable to be dismissed since the record of appeal before this court is incomplete as

it did not contain the counter affidavit and written address filed by the respondent on the 18th March, 2019 in opposition to the appellant's notice of preliminary objection as are contained in pages 11 – 17 of the Record of Appeal, the ruling which is the subject matter of the instant appeal. The counsel further clarified that the purported further and better counter affidavit of the respondent filed the 6th day of June, 2018 and as are contained in pages 18 – 26 of the Record of Appeal is in respect of the appellant's earlier notice of preliminary objection filed on the 25th April, 2018 and was determined by the trial court on the 9th July, 2018, and he prayed to the court to strike out or dismiss the appeal as it cannot be heard based on incomplete Record of Appeal, and he cited the case of **Chief Thomas Ekpemupolo & 4 Ors. V. Godwin Edremoda & 5 Ors. (2009) 3 SCNJ 77** where the Supreme Court held that it is the duty of the appellate court not to hear an appeal on incomplete records, this is because a court is entitled to look at and refer the contents of the record in the consideration of any matter before it.

The counsel also submitted that assuming the issue formulated by the appellant is competent, it is that the trial court heard arguments on the issue of the competence of the suit and the jurisdiction of the trial court raised in the appellant's notice of preliminary objection, and the trial court determined the said issue in its ruling on the 16th April, 2019, and to him, the appellant is therefore not correct to raise or suggests in its issue formulated for determination that the trial court did not hear and determine the issue of jurisdiction raised before the trial court proceeded to trial or put it differently, that the trial court refused and/or failed to hear and determine the issue of jurisdiction before proceeding to trial. He opined that if the trial court had not

determined the issue of jurisdiction in its ruling on the 16th April, 2019, there would not have been the need for this appeal as the instant appeal is predicated on the ruling of the trial court on the competence and jurisdiction of the trial court to determine the case, and he referred the court to paragraphs 27 – 30 of the Record of Appeal on the ruling of the trial court in the appellant's notice of preliminary objection challenging the jurisdiction of the trial court, and he prayed the court to dismiss the appeal since the sole issue raised by the appellant was not established by the appellant as the Record of Appeal in pages 27 – 30 which shows that the trial court delivered its ruling on the issue of jurisdiction.

On the issue raised by the counsel to the respondent, he submitted that the issue of whether or not the respondent or its counsel obtained the resolution of the board of directors before instituting this suit can only be raised by members of the respondent and not the appellant who is not a director or shareholder of the respondent, and he cited the case of **Nidocco Ltd V. Mrs. I. A. Gbajabamila (2013) 14 NWLR (pt 1374) 350 at pages 377-387, paras. H-A;** and **Olumuyiwa Sotuminu & Anor. V. Ocean Steamship (Nig.) Ltd (1987) 4 NWLR (pt 66) p. 691 at 704, para. D,** all to the effect that where the authority of a company to commence legal proceedings is challenged, the burden is on the objector to prove that there is a presumption of regularity and the onus is on him to show that there is that lack of authority for the company to commence the suit. He also cited the case of **Haston (Nig.) Ltd V. African Continental Bank Plc (2002) 7 SCNJ 376,** and he submitted that the appellant is not competent as rightly held by the trial court to challenge the issue of the existence or non-existence of the resolution of the respondent before

instituting the action at the trial court, and urged the court to so hold.

The counsel submitted further that the solicitor as well as the director of the respondent can institute the instant case in the name of the respondent without being formally authorised to do so by the respondent if it appears to the solicitor or director that the respondent's interest, property or right are in immediate jeopardy, and he opined that the respondent's solicitor is therefore right to have instituted this action, without first being formally authorised by the respondent via resolution to recover the respondent's debt or to enforce the contract between the respondent and the appellant. He referred further to the cases of **Nidocco Ltd. V. Mrs. I.A. Gbajabiamila (supra) at page 388, paras. A-B;** and **Haston (Nig.) Ltd V. African Continental Bank Plc (supra) at pages 391 – 392.**

The counsel cited the case of **Olumuyiwa Sotuminu & Anor. V. Ocean Steamship (Nig.) Ltd (supra) 4 NWLR at p. 704, paras. F,** to the effect that when a secretary of a company is found doing certain things in the name of and on behalf of his company which could legally be authorised, and no resolution or minutes is proved authorising him to do those things, the maxim *Omnia praesumuntur rite esse acta* will be applied and the necessary authority will be presumed, to have been lawfully given to him. He then submitted that the action was instituted with a view to protect the interest of the respondent, and in the **Nidocco's case (supra)** the Supreme Court held that in a situation like that the court would have to take steps to ascertain the stand of the company in the matter, and it is when it becomes evident that the company has dissociated itself from the action of the solicitor that the suit will be struck out.

The counsel further submitted that even the case of **Kunle Ladejobi & 12 Ors. V. Odutola Holdings Ltd & 9 Ors (2002) 3 NWLR (pt 753) p. 121** which was relied upon by the counsel to the appellant, the court held that an action that is brought to enforce a company's right is an exception to the rule in **Foss V. Harbottle (1843) 2 Hare 461**. He also submitted that the cases of **Barrister Danladi Ochekepe & Anor. V. Taen Nig. Ltd. (supra)** and **Ladejobi & Ors. V. Odutola Holdings Ltd & Ors (supra)** do not represent the position of the law and should be discountenanced, and he urged the court to rely on the Supreme Court cases cited above.

The counsel took his time to draw a distinction between the decisions in **Ladejobi V. Odutola Holdings Ltd** and that of **Nidocco Ltd. V. Mrs. I.A. Gbajabiamila (supra)**, in that in the former case, the issue was on the validity of the appointment of directors and the persons that can challenge the use of the appointment of directors and the person that the use of the company's name to sue which the court held that it is the right of the majority shareholders, unlike the instant case which is for the enforcement of the right of the respondent, while in the later case, the decision represent the position of the law as at now, that the Board needs not to give express authority before the director or solicitor could sue in the name of the company to enforce its rights.

The counsel then urged the court to uphold the ruling of the trial court delivered on the 16th April, 2019 and to dismiss the appeal with cost to the respondent.

Let us adopt the issue for determination already formulated by the counsel to the appellant, and together with one another, thus:

1. **Whether the trial court has jurisdiction to proceed with the trial of this case without first determining whether it has jurisdiction to hear the case? (Distilled from Ground I of the Notice of Appeal)**
2. **Whether the trial District Judge erred in law when he held that clearly the issue before the trial court is not one of the internal management of the plaintiff but such that is with respect to a breach of contractual obligation between the plaintiff/respondent and the defendant/appellant?**

On the issue No. I, the counsel to the appellant with the aid of some judicial authorities emphasized on the position of the law that when an issue of jurisdiction is raised in a matter, the court has to determine such an issue, and it needs not to proceed further to consider any other issue, and it is only after that, that it can proceed to consider other issues. It is his argument that locus standi and jurisdiction are intermixed, in that locus standi which is the capacity of the plaintiff to institute an action in court against the defendant goes to affect the jurisdiction of the court before which such action is instituted. He argued further that Limited Liability Company has its legal personality driven by its Board of Directors through Board Resolutions, if it wants to sue, it must do so by a resolution of that same Board, while it is the contention of the respondent that the issue raised by the counsel to the appellant is not distilled from the ground of appeal and is therefore liable to be struck out as it must be based on and correlate with the ground of appeal, and he cited the case of **Chief Oyegun V. Chief Francis Arthur Nzeribe (supra)** where the Supreme Court held that such an issue is incompetent and must be discountenanced together with the argument advanced there under in the consideration of the appeal. The counsel

further argued that while the sole ground of appeal is questioning the decision of the trial court that the issue of proof of the existence of Board resolution or otherwise are issues for the members of the company to raise, the sole issue formulated from the sole ground of appeal by the appellant which is contained in page 31 of the Record of Appeal is seeking the determination of “**whether the trial court has jurisdiction to proceed with the trial of the case without first determining whether it has jurisdiction to hear the case**”. To him, it is abundantly clear that the sole issue for determination formulated by the appellant is not based on and/or correlated to the ground of appeal, and urged the court to strike out the sole issue for it being incompetent and also to dismiss the appeal.

Thus, we agree with the submission of the counsel to the appellant that once the defendant shows that the court has no jurisdiction, the foundation of the case is not only shaken but that is entirely broken, and the court has to determine that it has or it does not have the jurisdiction in the suit, and where it determine that it does have the jurisdiction, that is when it can proceed to consider other issues, and we therefore rely on the case of **Umannah V. Obong Victor Attah (supra)** already cited by the counsel. See also the case of **Azubuogu V. Oranezi (2018) All FWLR (pt 927) p. 123 at pp. 129-130, paras. H-B.**

It is the argument of the counsel to the appellant that there is no evidence on the plaintiff's plaint before the trial court that if Board of Directors agreed before this matter was instituted by the plaintiff, and therefore it is unknown who instructed the plaintiff's counsel to institute the action as same was not disclosed, and argued further that locus standi and jurisdiction are intermixed in that locus standi, which is the capacity of the plaintiff to institute an action in

court against the defendant goes to affect the jurisdiction of the court before which such an action is instituted.

So, having looked at the Record of Appeal at pages 11 – 17, it can be seen that it was the notice of preliminary objection filed by the appellants/defendants at the trial court upon which its jurisdiction was challenged on the ground that the Board Resolution giving the respondent/plaintiff consent to file the suit is not among the documents tendered in evidence by the respondent/plaintiff, and this, therefore robs the trial court of its jurisdiction to entertain the suit. It is in the affidavit in support of the notice of preliminary objection that the appellant/defendant deposed to those facts the Board resolution giving the plaintiff/respondent consent to file the suit is not among the documents tendered in evidence by the respondent/plaintiff. More so, it can be seen that the counsel to the appellant/defendant has proffered an argument in that regard. Now putting the lone issue formulated by the appellant side by side with the lone ground of appeal as is contained in the Notice of Appeal, it can be inferred that even though the trial court has decided on the issue raised in the preliminary objection, still the trial court will not proceed to deal with main issue in the suit, until this court decides as to whether the trial judge has erred or not. If this is the correct position, to our mind, the issue correlate with the ground of appeal which bothers on the authority of the plaintiff/respondent to file the suit at the trial court, this is because, when this court decides on the issue formulated by the appellant, the decision must be either of the following, that is to say, either to agree with the decision of the trial court that the trial judge did not err thereby giving trial court to proceed to determine the main issues or to disagree with the trial court thereby giving it the

authority to strike out the suit. See the case of **UBN V. Uke-Fayanju (2019) All FWLR (pt 1017) p. 608 at 638, paras. C-D** where the Court of Appeal, Akure Division held that an issue for determination is a combination of facts and law which, when decided, determines and affects the fate of an appeal. An issue for determination must flow from a ground of appeal.

It is instructive to note that this issue raised by the counsel to the appellant was the same canvassed at the trial court. See the case of **Veepee Industries Ltd. V. Cocoa Industries Ltd (2008) All FWLR (pt 425) p. 1672 at 1686, para. G**, where the Supreme Court held that an appeal cannot legitimately be made to an appellate court on a point that did not form part of the case argued and decided by the court below. This is because the part not canvassed before a trial court cannot be entertained without the requisite leave sought and obtained.

In the circumstances, we hold the view that the issue formulated by the counsel to the appellant relates to the ground of appeal, and the argument of the counsel to the respondent is hereby discountenanced.

Let us observe that it might have been that the counsel to the appellant did not correctly and appropriately couch the issue, as it supposed to be, and this court has the power to reframe it. See the case of **Unity Bank Plc V. Bouari (2008) All FWLR (pt 416) p. 1829 at pp. 1846 – 1847, paras. D-B** where the Supreme Court held that a court can and is entitled to reformulate issues formulated by parties or counsel in order to give it precision and clarity. The purpose of reframing issues is to lead to a more judicious and proper determination of an appeal, that is to narrow the issues in controversy in the interest of accuracy, clarity and brevity.

In the instant case, it is on the above premise, the second issue was formulated by this court.

On the issue No. 2 as to whether the trial District Judge erred in law when he held that clearly the issue before the trial court is not one of the internal management of the plaintiff but such that is with respect to a breach of contractual obligation between the plaintiff and the defendant?

It is the contention of the appellant/defendant that the respondent/plaintiff filed the suit at the trial court without obtaining an authority to do so upon passing a Board Resolution by Board of Directors of the plaintiff/respondent. He further contends that there is no evidence in the plaintiff's plaint that its Board of Directors agreed before this matter was instituted, and even under cross-examination, the PW1 emphatically stated that this court action was commenced without the knowledge of the Board of Directors. While it is the contention of the counsel to the plaintiff/respondent that by the authority of **Nidocco Ltd V. Mrs. I. A. Gbajabamila (supra)** the onus is on the objector, that is the appellant to show that there is that lack of authority for the company, that is, the plaintiff/respondent, to commence the suit. He also relies on the case of **Olumuyiwa Sotuminu & 1 Anor. V. Ocean Steamship (Nig.) Ltd (supra)** to the effect that there is always the basic presumption that when a solicitor files a writ in the name of a juristic person, there is presumption that he has the authority of that juristic person to institute the action, and the onus definitely rest on the person or body asserting the contrary to show that the solicitor has no authority, and therefore submitted that the appellant/defendant is not competent as rightly held by the trial court to challenge the issue of existence or non-existence of resolution of the

respondent/plaintiff before the later or its counsel could institute or commence the action at the trial court.

Thus, we agree with the position of the counsel to the plaintiff/respondent on the extant position of the law as enunciated in **Nidocco's case (supra)** that where the authority of the company to commence legal proceedings is challenged, the burden is on the respondent/objector to prove that there is a presumption of regularity and the onus is on the objector to show that there is that lack of authority for the company to commence the suit. See the case of **Resurrection Power Investment Ltd V. Union Bank of Nigeria Plc (2018) All FWLR (pt 941) 215 at 250, paras. C-D** to the effect that where the authority of a company to commence legal proceedings, in court is challenged, the burden is on the objector to prove lack authority to sue, that burden is not discharged by merely stating in a final address or brief of argument that the company lacks authority to sue. In the instant case, it is the contention of the appellant that the PW1 during the trial at the trial court emphatically stated that this court action was commenced without the knowledge of the Board of Directors. To our mind, that is his proof. See the case of **Abubakar V. INEC (2019) All FWLR (pt 1010) p. 232 at 416, paras. F-H** to the effect that evidence elicited from a party or his witness under cross-examination, which goes to support the case of the party cross-examining, constitutes evidence in support of the case on defence of the party. The exception is that the evidence so elicited under cross-examination must be on facts pleaded by the party concerned for it to be relevant to the determination of the issue in controversy between the parties having regard to the fact that the relevant evidence elicited from the plaintiff relates to the facts pleaded by way of defence to the action.

To further rely on the case of **Resurrection Power Investment Ltd V. Union Bank of Nigeria Plc (supra)** to the effect that the burden is not discharged by the appellant/defendant that the PW1 during cross-examination has admitted that the plaintiff has no authority to institute the action at the trial court also in his brief of argument, however, that there should be an evidence to that effect. This boils down to the need for this court to have recourse to the Record of Appeal, more particularly the proceedings in which the PW1 during the trial stated that the plaintiff has no authority to institute this action at the trial court. See the case of **Usman V. Kaduna State House of Assembly (2008) All FWLR (pt 397) p. 82 at 106, paras. E-G** where the Court of Appeal, Kaduna Division held that a court is entitled to look at the record in its possession and make use of the information. An appeal court is fully and correctly entitled to look or refer to the record of appeal before it in consideration of any matter before it. In the instant case, we have painstakingly gone through the Record of Appeal, from pages 1 – 32, and we have not found the copy of the proceedings conducted during the trial of the main case in which the PW1 stated that the plaintiff has not obtained the resolution of the board to institute this action. See the case of **Positive V. Ugbane (2004) All FWLR (pt 219) p. 1173 at 1180, para. A** where the Court of Appeal, Abuja Division defined record of appeal to mean the aggregate of papers relating to an appeal including the pleadings, proceedings, evidence and judgments proper to be laid before the court in the hearing of the appeal. In the instant case, the record of proceedings of the trial court has not been compiled. See the case of **Dick V. Oar And Oil Co. Ltd (2019) All FWLR (pt 1021) p. 270 at 299, paras. G – H** where the Supreme

Court held that an appellant is bound by the record of appeal and cannot go outside the record and canvass to an appellate court what he thinks is in favour of his case, which is not in the record. Thus, it behoves on appellant to do everything legally permissible to bring all materials before the court. In the instant case, failure on the part of the appellant/defendant to bring the record, which tends to show that the PW1 in the course of cross-examination stated that this action was commenced at the trial court without Board resolution, is fatal to his own case. See the case of **A.L.B. International Bank Plc V. Out (2008) All FWLR (pt 406) p. 1821 at pp. 1842 – 1843 paras. G-A** where the Supreme Court held that those whose responsibility it is to sponsor the compilation of records must insist that a current and decent record is transmitted to an appeal court. That will facilitate the quick and smooth dispensation of cases in the appeal courts. In the circumstances, we hold the view that the appellant/defendant has not discharged the burden placed upon it to prove that the plaintiff/respondent did not have the authority of the Board of Directors through Board Resolution to institute the action before the trial court. And so the argument of the counsel to the appellant/defendant that the plaintiff's plaint did not capture that this resolution was ever obtained before the institution of the present action before the trial court is hereby discountenanced, as that does not obviate its burden to prove the lack of authority, on the part of the plaintiff, to institute the action, and to this, we therefore, so hold. See the cases of **Nidocco Ltd V. Gbajabiamila (supra)** and **Resurrection Power Investment Ltd V. Union Bank of Nigeria Plc (supra)**.

The counsel to the appellant/defendant in his brief of argument argued that there must be an authority given by

the Board of Directors, and relied on the case of **Ladejobi & Ors V. Odutola Holdings & Ors (supra)** where the court held that an action cannot be maintained in the name of a registered juristic personality without the express authority of that registered company, which such authority must be gotten from the proper quarters either from the directors, trustees or from the general meeting, and he also relied on the case of **Barr. Danladi Ochekepe & Anor. V. Taen Nig. Ltd (supra)**. While the counsel to the respondent/plaintiff argued that the case of **Ladejobi & Ors V. Odutola Holdings & Ors (supra)** which was heavily relied upon by the counsel to the appellant that there must be express authority to institute an action by the board, the same court at page 156 paragraphs A – B held that an action that is brought to enforce a company's right is an exception to the rule in **Foss V. Harbottle (1843) 2 Hare 461**, and he further argued that the two cases of **Ladejobi & Ors v. Odutola Holdings & Ors; Barr. Danladi Ochekepe & Anor. V. Taen Nig. Ltd** are decided by the Court of Appeal while the cases of **Nidocco Ltd V. Gbajabiamila (supra)**; and **Haston (Nig.) Ltd V. African Continental Bank Plc (supra)** were decided by the Supreme Court, and to him, the position of the law was correctly stated to the effect that the solicitor can act without being authorised by the company in order to protect the company's interest, property or right, and that it must be presumed that the Board authorised that action be taken until the contrary is proved by the party who asserts to the contrary, and therefore, it behoves upon the appellant to prove that there is no authority to institute the action.

Thus, taking into consideration the above two arguments, we are inclined to follow that of the respondent/plaintiff. This is because, under the doctrine of

stare decisis, decisions of superior courts are binding on inferior courts.

Thus, in the hierarchical system of courts operated in Nigeria, the decision of the Supreme Court is binding on all the other courts. See the case of **Ado V. State (2017) All FWLR (pt 897) p. 1944 at pp. 1957 – 1958, paras. H-A**. In the instant case, we stick to follow the decision of the Supreme Court in the case of **Nidocco Ltd V. Gbajabiamila**. That the burden is still on the appellant to prove that there is no authority to institute this action at the trial court, which such burden has not been proven to have been discharged, and to this, we therefore, so hold.

In the circumstances, we hold that the trial District Judge was right to have discountenanced the argument of the appellant/defendant, and to that, the appeal is hereby dismissed.

The sum of N3,000.00 is hereby awarded as cost to the respondent.

HON. JUSTICE A.S. ADEPOJU
(Presiding Judge)

HON. JUSTICE B. HASSAN
(Hon. Judge)

Appearances:

Onuoha Isaac Esq for the appellant.

Joequine O. Thompson Esq for the respondent.

RC – CT: We like to respond to our written address having the time given for the judgment has elapsed, that is beyond three months.

We therefore move in terms of our appeal papers.
AC – CT: We are not opposed to the application for
readoption of our address, and we adopt.

HON. JUSTICE A.S. ADEPOJU
(Presiding Judge)

HON. JUSTICE B. HASSAN
(Hon. Judge)