

**IN THE HIGH COURT OF JUSTICE OF THE  
CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/1830/2022**

**BETWEEN:**

**1. PRINCESS ESOM NWAFOR-ORIZU**

(DOING BUSINESS IN THE NAME AND STYLE OF ERICA NIGERIA ENTERPRISES)

**2. THE INCORPORATED TRUSTEES OF ROYAL SPORTS CLUB  
INTERNATIONAL ABUJA.....CLAIMANTS/APPLICANTS**

**VS**

**1. THE HON. MINISTER OF THE FCT**

**2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)**

**3. ABUJA METROPOLITAN MANAGEMENT COUNCIL**

**4. WTL PROPERTIES & ESTATE LIMITED. ....DEFENDANTS/RESPONDENTS**

**RULING**

This is a Ruling on two Preliminary Objection filed by the Claimant and another filed by the 4<sup>th</sup> Defendant. I shall Rule on that of the Claimant before considering that of the 4<sup>th</sup> Defendant.

By a Notice of Preliminary Objection dated 21/1/2022 but filed on 24/1/2022 the Claimant/Applicant challenges the competence of the Counter-Claim and the jurisdiction of this court to hear and determine the Suit and prays the court to dismiss the Counter-Claim for being incompetent and for lack of vires by this court to hear and determine same.

The grounds of objection is that the counter claim is incompetent for non-compliance with the mandatory precondition for the initiation or commencement of an action which stipulates the filing of "Certificate of pre-action counseling signed by Counsel and litigant". This therefore robs this Honourable Court of the requisite competence and jurisdiction to hear and entertain the counter-claim.

In support of the Preliminary Objection in an affidavit of four (4) Paragraphs deposed to by one Mr. Salihu Omeiza a Litigation Secretary in the Law Firm of Counsel for Applicants with one Exhibit annexed and marked Exhibit "A". Also filed a Written Address and adopts the Address, in urging the court to dismiss the Counter-claim.

In response, 4<sup>th</sup> Defendant/Counter Claimant/Respondent filed a five (5) Paragraph Counter-Affidavit with 3 Exhibit attached deposed to by one Abimbola Afolabi a Litigation Secretary in the Law Firm of Counsel for 4<sup>th</sup> Defendant/Counter Claimant/Respondent also filed a Written Address in support and adopts the said address as oral submission, in urging the court to dismiss the Preliminary Objection.

1<sup>st</sup>/3<sup>rd</sup> Defendant not objecting to the Notice of Preliminary Objection.

The Claimant/Applicant in strengthening their Notice of Preliminary Objection filed a further and better affidavit on 7/2/2022 in reaction to the 4<sup>th</sup> Defendant Counter-Claimant/Respondent. And upon receipt of the said further affidavit, 4<sup>th</sup> Defendant/Counter Claimant/Respondent filed a further affidavit.

The 4<sup>th</sup> Defendant/Applicant filed a Notice of Preliminary Objection dated 31/1/22 challenging the competence of this suit and the jurisdiction of this Honourable Court and prays the court to strike out/dismiss the suit and make such other consequential Orders in the circumstances of this application.

The grounds for the objection are;

- (1) This suit is incompetent as the Claimants/Respondents did not comply with the Provision of Order 2 Rule 8 of the Rules of Court.
- (2) That the Pre-Action counseling certificate filed together with the originating processes was neither signed by one of the Claimants nor did it conform with Form 6 as clearly indicated by the Provisions of the Rules of Court.
- (3) That the 4<sup>th</sup> Defendant/Applicant shall rely on the processes filed by the Claimant/Respondent, the 4<sup>th</sup> Defendant/Applicant's processes, the relevant Rules of the Court and judicial decisions.

In support of the Preliminary Objection is a five (5) Paragraph affidavit with four (4) Exhibits annexed and marked Exhibit "P01" "P02" "P03" and "P04" deposed to by one Abimbola Afolabi a Litigation Secretary in the law firm of Counsel for Applicant's. Also filed a Written Address and adopts the address in urging the court to strike out the suit with substantial cost.

Responding, Claimant/Respondent filed a counter affidavit of 7 Paragraph deposed to by one Mr. Salihu Omeiza a Litigation Secretary in the Law Firm

of Counsel for Claimant/Respondent. Also filed a Written Address and adopts same in urging the court to dismiss the Preliminary Objection.

1<sup>st</sup>-3<sup>rd</sup> Defendant/Respondents not objecting to the Preliminary Objection.

In the Written Address of the Claimant /Applicant, Learned Silk for Applicant formulated a sole issue for determination that is;

“Whether having regards to the facts and circumstance of this case, the failure of the 4<sup>th</sup> Respondent/Counter Claimant to sign the certificate of Pre-Action counseling does not render the counter-claim incompetent and robs the court of jurisdiction to entertain the Counter-Claim.

And submits relying on a Plethoraof authorities that the 4<sup>th</sup> Defendant/Counter - Claimant/Respondent’s Pre-Action counseling certificate signed by only her Counsel, whereas Order 2 Rule 8 prescribes that the pre-action counseling certificate be signed by both Counsel and litigant makes this suit incompetent and therefore court lacks the requisite jurisdiction to entertain same. Commend court to the cases of Lokpobiri Vs Ogola & Ors (2015) LPELR – 40838 (CA), Diamond Bank Vs Tranter International Ltd & Anor (2019) LPELR 47618, Multichoice Nigeria Ltd Vs Akpan (2014) LPELR 22681 (CA) and Ilokson & Co. (Nig) Ltd Vs Union Bank (2021) LPELR 55626 (SC). Therefore urge court to dismiss the counter claim.

In the same vein, Counsel for 4<sup>th</sup> Defendant/Counter-Claimant/Respondent formulated a sole issue for determination in their Written Address which is;

“In view of the facts and circumstances of this case, whether this Honourable Court has jurisdiction to entertain the 4<sup>th</sup> Defendant/Counter-Claimant’s Counter – Claimant filed on the 20<sup>th</sup> day of December 2017”

And submits that the pre-action counseling certificate filed along with the other processes is according to the prescribed Form 6, attached as Exhibit to their Counter-Affidavit, thus in substantial compliance with the Order 2 Rule 2 (2) of the Rules of Court. And where the court finds that it is not in total compliance with the Rules of Court, it would only be tantamount to a mere irregularity, refer to Order 5 Rule 1 (1) of the Rules of Court and called on the court to discountenance the submission of the Claimant/Applicant’s Counsel and make a specific Order declaring the pre-action Counseling certificate in issue as regular.

Also drew court’s attention to the Pre-Action counseling certificate filed by the Claimant/Applicant pointing out that same was signed by only one of the two Claimants, therefore not in complete compliance with the Rules of Court, is incompetent and has no foundation to predicate the claim of the Claimant. Refer to Alalade Vs President of the Ota Grade/Customary Court & Ors (2021) LPELR 55656 (CA) Obaro Vs Hassan & Ors (2017) LPELR – 42077 (SC). Asunibare Adebayo (2021) LPELR – 55593 (CA) PDP & Ors Vs Ezeonwuka & Anor (2007) LPELR 42563 (SC), Jegede & Anor Vs INEC & Ors (2021) LPELR – 55481 (SC) and Karaye Vs Wike & Ors (2019) LPELR - 49382 (SC). Urge court to dismiss the Claimants/Defendant by Counter-claim Notice of Preliminary Objection.

Having considered the submission of Counsel and the authorities cited the issue that can be distilled for determination is;

“Whether the Applicant has made out a ground for court to grant this application”

In this instant case the contention of Applicant is that the pre-action counseling certificate of the 4<sup>th</sup> Defendant/Counter-Claimant was signed by only her Counsel contrary to the Provision of Order (2) Rule 8 of the Court’s Rules, therefore questions the competency of this suit and the jurisdiction of court to hear and determine same, on the other hand 4<sup>th</sup> Defendant/Counter-Claimant/Respondent contends that her pre-action counseling certificate is in line with the prescribed form 6, thus substantially in compliance with the Order 2 Rule 8 of the Rules of Court.

The Order 2 Rule 8 Reads;

“A certificate of pre-action counseling signed by Counsel and the litigant shall be filed along with the originating processes where proceedings are initiated by Counsel, showing that the parties have appropriately advised as to the relative strength or weakness of their respective cases and the Counsel shall be personally liable to pay costs of the proceedings where it turns out to be frivolous as in Form 6.

The court is of the firm view that the objection of the Claimant/Applicant touches on the form and not the substance of the suit. And the court has been admonished severally to do substantial justice and not to dwell on

forms and technicalities. In *A. A & Sons Ltd Vs F.H.A Homes Ltd* (2006) 2 NWLR (PT. 963) 139 @ 147 Paras B – C the court had this to say;

“Courts are set up to do substantial justice between the parties that came before them for the settlement of their disputes and in so doing Rules of court must at all-time be interpreted by judges to prevent undue adherence to technicalities”.

Again, Order 5 Rule 1 (2) of the Rules of Court, the non-compliance with the Provisions of the Rule is treated as mere irregularity, which does not invalidate the Writ or rob the court of jurisdiction to hear and determine the Suit. This position is affirmed in the case of *Bajoga Vs FRN* (2008) 1 NWLR (PT. 106) 87 @ 114 Para C when it held thus;

“A breach of Rule of practice can only render a proceeding an irregularity and not a nullity”.

However, I have taken a look at the pre-action counseling certificate filed by the 4<sup>th</sup> Defendant Counter-Claimant/Respondent and I find that it is in substantial compliance with the Rules of Court same having been filed in the prescribed Form 6. And this in the opinion of the court cannot render void the Writ and rob the court of jurisdiction to hear and determine the suit as canvassed by counsel for the Claimant/Applicant.

In conclusion the court holds that this objection of the Claimant/Applicant lacks merit and is hereby dismissed.

I now turn to consider the Preliminary Objection of the 4<sup>th</sup> Defendant/Counter-Claimant/Applicant.

In the Written Address of 4<sup>th</sup> Defendant/Counter-Claimant/Applicant Tochukwu Peter Tochukwu Esq of Counsel formulated a sole issue for determination which is;

“Whether the failure of the Claimant to file their Certificate of Pre-Action counseling in accordance with the Provisions of Order 2 Rule 8 does not rob this Honourable Court the jurisdiction to entertain their claim?

And submit that Rules of Court are made to be obeyed since the Claimant failed to obey the Provisions of Order 2 Rule 8 of the Rules of Court, the court cannot assume jurisdiction as the issue of jurisdiction goes to the root of the case. Refer to *Madukolu Vs Nkemdilim* (1962) 2 SCNLR 341, *Imoh O. Ojugbele Vs Mr. Musefiu O. Lamide* (1999) 10 NWLR (PT. 621). Submits further that Rules of Court have the force of law and courts must strictly adhere to them. Commend court to the cases of *Dr. Arthur Agwuncua Nwankwo Vs Alhaji Umaru Yar’adua & 4ORS* (110) 3 – 5 SC (PT. 111) and *Buhari Vs Independent Electoral Commission & Ors* (2008) 12 SC (PT.1) 1.

Submits finally that on the strength of the cases of *Diamond Bank Vs Transfer International Limited & Anors* (2019) LPELR 47618, *Multichoice Nigeria Limited Vs Akpa* (2014 LPELR 22681 (CA) and *Ilokson & Co Nig Ltd Vs Union Bank* (2021) LPELR 55626 SC. Applicant have demonstrated satisfactorily that the Claimants/Respondents failed to strictly comply with the contents of Form 6 or have the two Claimants sign the Pre-Action counseling certificate and in effect, their suit is incompetent and liable to



striking out or dismissing depending on the Order of this Honourable Court urge court to strike out the Suit.

Responding, Claimant /Respondent's counsel in their Written Address formulated a sole issue for determination that is;

“Whether having regards to the facts and circumstances of this case, the court ought not to dismiss the Notice of Preliminary Objection of the 4<sup>th</sup> Defendant.

Submits that the Claimant/Respondent complied to the mandatory Provisions of Order 2 Rule 8 of the Rules of Court by filing a certificate or Pre-Action counsel signed by both counsel and Litigant. Urge court to hold that the said certificate is proper before the court. Submits further that the word “shall” used in the Provision connotes mandatoriness and same must be followed. Refer to Lambo Vs International S.O.S & Anor (2021) LPELR 56133 (CA).

Submits further that Claimant is not unaware of the Civil Form 6 as contained in the annexure to the Rules of Court. And the Forms contained in the annexure to the court's Rules cannot be said to be superior to the express mention of the signing of the certificate of Pre-Action counseling by counsel and Litigant. And where there is inconsistency between the Forms in the appendix and the wordings of the Rules of Court, the wording of the Rules of Court is bound to prevail. Refer to the commencement page of the FCT High Court Rules and the case of Ilokson & Co (Nig) Ltd Vs Union Bank (2021) LPELR 55626 (SC).

Submits finally that the essence of Forms in Appendix to the Rules of Court is for aid and guide and same is subject to modification. And if the Rules of Court provides expressly that a counsel and a Litigant shall sign the Certificate of Pre-Action counseling, such cannot be overridden by the content of the form.

While adumbrating on the issue of signature relying on the case of FCT/HC/CV/1908/2017 Engr Isatifioghor Vs Patricia Etteh (Unreported) submits that where there are multiple Claimants, the signature of one suffices.

On whether the name of the Litigant was contained in the process commend court to the Amended Writ of Summons and the Oath therein as they state clearly person who signed them.

Submits that where a party has taken step the party will be precluded from raising same. Refer top Ebechikwude Vs Ozorgwu (2021) LPELR 55027, FRS CVs Orumuyi (2016) LPELR 40150 (CCA). Urge court to dismiss the Notice of Preliminary Objection.

Adumbrating also, 4<sup>th</sup> Defendant/Respondent's counsel submits that the two Claimants are two separate entitles therefore improper for only one Claimant to sign for the two. Urge court to allow their prayer.

Having given an insightful consideration to the affidavit evidence of the parties, submissions of counsel as well as the judicial authorities cited, I find that only one issue calls for determination that is;

“Whether the Applicant has made out sufficient ground to warrant the grant of the relief sought”.

The ground of objection of the 4<sup>th</sup> Defendant is still on the Order 2 Rule 8 of the Rules of Court which instructively is the same ground. Upon which Claimant objected and which the court just Rule upon. However, it is the contention of the 4<sup>th</sup> Defendant that in complying with the said Rule of Court, only one of the two Claimants signed the Pre-Action counseling certificate, contrary to the Provisions of Order 2 Rule 8 on the other hand Claimant Respondent `s counsel canvassed strongly that they are in compliance with the Rules which provides that both counsel and litigant append their signature to the certificate in issue and that the Provision of the Rules supersedes the Form 6 in the annexure of the Rules of Court heavily relied upon by the 4<sup>th</sup> Defendant for their objection.

I have reproduced the Order 2 Rule 8 in my Ruling on the objection of the Claimant above therefore the court will not reproduce it here but only make reference to it in this Ruling, a well-considered look at the 4<sup>th</sup> Defendant’s Affidavit in support of the application particularly the Exhibit “PO2” annexed to and I find that the Pre-Action counseling certificate filed by the Claimant was duly signed by counsel and the Litigant as prescribed by the Order 2 Rule 8 of the Rules of Court. The court is of the opinion that the Rule of Court in issue expressly stated that “ a certificate of Pre-Action counseling certificate signed by counsel and the Litigant shall be filed along with the Originating Summons”....and the certificate of the Pre-Action Counseling is in conformity with the Provision of Order 2 Rule 8 of the Rules of Court, in any case, the Provision of Order 5 Rule 1 (2) is to the

effect that the non-compliance with the Provisions this Rule is treated as mere irregularity which does not invalidate the Writ or robs the court of jurisdiction to hear and determine the Suit, therefore the court is of the opinion that this application merely dwellson the form of the Suit, rather than the substance ofthe Suit. And it is trite that court will dwellsonly on the substance of a Suit and not technicalities. See A. A. & Sons Ltd Vs FHA Homes Ltd (Supra).

From all of these and having found the Pre-Action counseling certificate filed by the Claimant as in conformity with Order 2 Rule 8 ofthe Rules of Court, this court therefore holds that the Preliminary Objection ofthe 4<sup>th</sup> Defendant lack merit and is accordingly dismissed.

**Signed**  
**HON. JUSTICE C.O. AGBAZA**  
Presiding Judge  
22/09/2022

**APPEARANCE:**

EMEKA OBEOGULU (SAN) WITH DAVIDSON DURU FOR THE CLAIMANT

MARTIN EMOKPARE FOR THE 1<sup>ST</sup> - 3<sup>RD</sup> DEFENDANTS

T.P. TOCHUKWU ESQ FOR THE 4<sup>TH</sup> DEFENDANT WITH HIM C. J. NWIZU  
ESQ AND B.O. EJERI ESQ

