IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE THEIR LORDSHIPS:

(1). HON. JUSTICE Y. HALILU
(2). HON. JUSTICE S. U. BATURE

SUIT NO. FCT/HC/CR/023/21
APPEAL NO. CRA/04/2022

ON THE 16TH DAY OF SEPTEMBER, 2022

BETWEEN:

A.E.P.B.....COMPLAINANT/RESPONDENT

AND

AJB MALL.....DEFENDANT/APPELLANT

APPEARANCES:
Eburuekwe B. Odira Esq for the Appellant.
A. Tokula Esq for the Respondent.

JUDGMENT

This is an Appeal against the Ruling of the Chief Magistrate Court of the FCT in case No. MC/CR/023/2022 between Abuja Environmental Protection Board Vs AJMB Plaza, delivered on the 20th day of January, 2022.

Aggrieved with the said Ruling, the Appellant (sued as Defendant before the Lower Court) filed a Notice of Appeal dated and filed 21st day of January, 2022.

THE GROUND OF APPEAL is as follows:-

"The trial Magistrate erred in law when he proceeded to try the matter even when the proper parties were not in Court. AJMB Plaza was sued when the proper party is AJB Mall."

In his brief of argument, Eburuekwe B. O. Esq, learned Counsel for the Appellant raised a sole issue for determination as follows: -

"Whether the trial Court has jurisdiction to entertain the matter when the necessary parties were not before the Court."

In arguing the sole issue, learned Counsel submitted that necessary parties are those who have an interest in the subject matter of the proceedings but who also in their absence the proceedings could not be fairly dealt with.

Counsel cited the case of ***GREEN V GREEN (1987) 3 NWLR (Pt.61) P.480; BABAYEJU V ASHAMA (1998) NWLR (Pt.567) P. 546.***

Submitted further that the Complainant took out a summons against AJMB Plaza an unknown person as such the outcome of the trial cannot affect AJB Mall who was not sued in the matter, since the necessary party in the suit is AJB Mall.

Submitted moreso that the two parties are quite distinct and cannot sue or be sued in place of the other, that in determining whether or not the Court has jurisdiction to entertain an action, it is the Claimant's originating process i.e, a Writ of Summons or Statement of Claim that has to be considered. Counsel cited the following cases in support of the argument to wit:-

(1). ***OKOROCHA V UNITED BANK FOR AFRICA PLC (2011) 1 NWLR (Pt.1228) 348 at Page 373, Para E.***

(2). ***AG FEDERATION V AG ABIA (2001) 11 NWLR (Pt.725) 689 at 740.***

(3). ***ORTHOPAEDIC HOSPITAL MANAGEMENT BOARD V GARBA (2002) 14 NWLR (Pt.788) 538 at 564, Para C – D, per Ogundare JSC.***

(4) . OKOLO V UNION BANK OF NIGERIA LTD (2004) 3 NWLR (Pt.859) 87 at 188, Para D, per Tobi, JSC.

Appellant therefore prayed the Court for the following reliefs:-

(i). An Order allowing the Appeal.

(ii). A declaration that the trial Court lacked the jurisdiction to entertain the matter.

(iii). A declaration that the Ruling of the trial Court ordering that the Defendant's premises be sealed be set aside.

Consequently, learned Counsel for the Appellant finally urged the Court to hold that the trial Court erred in law by assuming jurisdiction in the matter when the necessary parties were not in Court.

Meanwhile, in the Respondent's brief of argument, Arome Tokula Esq, learned Counsel for the Respondent (the Plaintiff before the Lower Court) raised two issues for determination in this appeal to wit:-

(1). Whether necessary parties are before the Court.

(2). Whether the trial Court has the jurisdiction to entertain the matter.

In arguing issue one, learned Counsel submitted that in the circumstances of this case, the necessary party i.e. AJB Mall was sued in the case.

Learned Counsel cited ***GREEN V GREEN (1987) 3 NWLR (Pt.61) P. 480; BABAYEJU V ASHAMA (1998) NWLR (Pt.567) P. 546.***

Submitted further that the Respondent's office who renders liquid and solid waste services to the Appellant's occupying a tenement along Oladipo Diya Way, Apo, BO1, Gudu Apo, served them a Waste Disposal Bill to pay for services rendered collectively to them.

Submitted in that regard that the Appellants were served with Court Summons with the name AJMB Plaza instead of AJB Mall. But that the recovery of Waste Bills being owed was obviously meant for the Appellants being the only ones occupying the tenements in addition to being the sole generators of the waste. Learned Counsel referred the Court to Section 30(4) of the AEPB Act, 1997.

The Court is then urged to be guided by the record of proceedings of the trial Chief Magistrate Court to see that the Appellants never at any time in their series of official correspondences with the Respondent nor the entire Court proceedings against them ever denied being the proper party or raise any objection as to being the proper party before the trial Court.

That all the while they had indicated willingness to pay the Waste Disposal Bills as shown in the Record of Proceedings filed in this Appeal.

Submitted moreso that the waste disposal bill is the responsibility of and is addressed to the occupants being the appellants.

We have read meticulously the Record of Appeal, the brief of arguments filed by Counsel to both Appellant and Respondent and we hereby adopt the two issues for determination distilled by the Respondent in his brief of argument in resolving this appeal.

The issues are namely:-

(1). Whether the necessary parties are before the Court?

(2). Whether the trial Court has the jurisdiction to entertain the matter?

First of all the main grouse of the Appellants in this Appeal is that the necessary party is not before the Court, thus robbing the Lower Court of jurisdiction to entertain the matter.

At this juncture, we find it imperative to consider who are necessary parties in a suit.

On the meaning of necessary parties see the case of ***NWEKE & ANOR V NWEKE (2014) LPELR-23563, Pages 31 – 32, Para C – B,*** where the Court per AGIM, JCA held as follows:-

> ***"...the Supreme Court held in GREEN V GREEN (supra) "necessary parties are those who are not only interested in the subject matter of the proceedings, but also who, in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the***

existing parties must be a question which cannot be properly settled unless they are parties to the action instituted....”

See also, ***ABUBAKAR DUDU MOTORS & ANOR V KACHA (2016) LPELR-40228 (CA).***

In this case, it is the case of the Appellant that the Complainant/Respondent took out a Summons against AJMB Plaza an unknown person as such the outcome of the trial cannot affect AJB Mall who was not sued in the matter, being the necessary party in the suit.

Meanwhile, although the Respondents have conceded in paragraph 4:4 of their brief of argument that the Appellants were served with Court Summons with the same name AJMB PLAZA instead of AJB Mall, it is their argument that the Waste Disposal Bill was served on the Appellants as the sole generators of the waste serviced by the Respondents, also being the “subject matter” of the suit. That the recovery of waste bill being owed was meant for the Appellants being the only ones occupying the Tenement pursuant to Section 30(4) of the AEPB Act, 1997.

The Respondents have further urged the Court to look at the record of proceedings to see that the Appellants never raised any objection as to being the proper party before the Court. And that all the while they had indicated willingness to pay the Waste Disposal Bills as shown in the record of proceedings.

Well, we have studied extensively the said record of proceedings and we cannot fail to agree with the arguments of the Respondents that there was never a time where the party sued, (the Appellants herein) ever raised any objection of not being proper or necessary parties in the suit.

Most importantly, we have averted our minds to page 8 of the record where Eburuekwe Esq for the Defendants/Appellants acknowledged receipt of Board Response and promised to revert to his client and do the needful. Where the Court thereafter adjourned on record to enable the Defendant AJMB PLAZA confer with their client and make payment. We have observed that no objection was raised by the Defendants/Appellants to the name AJMB Plaza.

Equally on 30th November, 2021 when the Court resumed sitting, Eburuekwe Esq for the Defendant/Appellant stated thus:-

"We have not made payment, I ask for a short time/adjournment to enable us make payment."

We further refer to page 9 of the record of proceedings, where Eburuekwe Esq for the Defendants/Appellants stated inter alia:-

"My clients have not paid anything and they have asked me to further engage AEPB with a view to getting a reduction. We are sorry about this. I plead for soft landing to enable us make payment even though the Court has so much indulged us."

Still on page 10 of the record, while reacting to the objection of the Prosecutor for adjournment of the suit, Eburuekwe Esq states:-

"Giving us another adjournment will be in the interest of justice. I plead and promise we will do the needful."

Therefore, all the above clearly proves that the proper and necessary party was sued before the Lower Court.

In addition, the correspondences between the parties as seen in the Exhibits annexed by the Respondents clearly reveals that the Appellants acknowledged their indebtedness as at 24th August, 2021 by their calculations to be N1, 860, 000.00 (One Million, Eight Hundred Sixty Thousand Naira Only). This is contained in a letter dated 24th August, 2021 addressed to the Director, Abuja Environmental Protection Agency (A.E.P.B) Plot 776, Independent Avenue CBD 1, Abuja, written and signed by Eburuekwe B. Odira Esq for Barth Eburu & Associates. Same was annexed by Respondents as Exhibit A2.

Consequently, therefore, in view of the record of proceedings and the documentary Exhibits annexed by the Respondents, it is our considered view that the proper and necessary party was sued before the trial Court.

We are however not unmindful of the admission of the Respondents in their brief of argument in paragraph 4:4 thereof that the Summons served on the Appellants was in a wrong name of AJMB Plaza instead of AJB Mall.

However, since the Appellants are said to be the sole occupiers of the said premises and also the sole generators of the waste, subject matter of the

suit, being sued in the wrong name in our humble view can only be a misnomer. A misnomer, therefore is one that is curable and which does not and cannot affect the jurisdiction of the Court.

On this premise, we humbly refer to the case of ***MTN NIGERIA COMMUNICATIONS LTD V ALUKO & ANOR (2013) LPELR-20473 (CA) where the Court, per OKEDOLA JCA, held at PP: 34 – 38, Para B – F*** as follows:-

> ***"Now, where there is a mistake with regard to the name of a litigant in an action, such a mistake is described as a misnomer. It simply means a misdescription or wrong use of a name. It is a mistake as to the name and not a mistake as to the identity of the particular party to the litigation. The former can be corrected while the latter cannot be corrected. Hence, in the case of a misnomer, an application can be made to amend the Writ in order to substitute the mistaken name for the correct one...."***

See: ***S.A. ABDULAZEEZ INTL. RESOURCES LTD & ANOR V FBN & ANOR (2020) LPELR-51229 (CA).***

Consequently, therefore, when both parties are quite familiar with the entity envisaged in the originating process and could not have been misled nor have any real doubt or misgiving as to the identity of the persons suing or being sued (such as in this case owing to the correspondences between the parties and conduct of the Appellants as borne on the record of proceedings), then there can be no problem of mistaken identity to justify striking out the action. Misnomer that will vitiate the proceedings would be such that will cause reasonable doubt as to person intending to sue or be sued. As in the case of ***A.B. MANU & CO (NIG) LTD V COSTAIN (W.A) LTD (1994) LPELR-14550 (CA).***

In the instant case, we have observed that there's no such case of mistaken identity which is incurable and capable of vitiating proceedings or the entire action. We so hold.

We therefore resolve issue one in favour of the Respondents against the Appellants.

On issue two, which is whether the trial Court has the jurisdiction to entertain the matter.

Indeed, we must state here that the issue of jurisdiction being so fundamental can be raised at anytime even on appeal.

See: ***OLOBA V AKEREJA (1988) LPELR-2583 (SC); MTN V TAKON & ANOR (2013) LPELR-20709 (CA).***

In the instant case having resolved issue one in favour of the Respondents in holding that the necessary parties are before the Court, and also having carefully analysed the record of proceedings and other documents placed before us in this appeal, it is our considered view that all the essential elements for the exercise of a Court's jurisdiction clearly highlighted in the locus classicus of ***MADUKOLU & ORS V NKEMDILIM (1962) LPELR-24023 (SC)*** are present in this case to have clothed the trial Court with the requisite jurisdiction to entertain the suit.

We therefore have no hesitation whatsoever in resolving issue two in favour of the Respondents against the Appellants.

On the whole, we find no reason to disturb the Ruling of the trial Court and we equally find that non of the reliefs sought by the Appellant is grantable.

To this end, we affirm the Ruling of the Lower Court and consequently find no merit in this appeal and therefore dismiss it in its entirety.

Hon. Justice Y. Halilu
Presiding Hon. Judge
16/9/2022

Hon. Justice S. U. Bature
Hon. Judge
16/9/2022