

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON FRIDAY, 10TH DAY OF FEBRUARY, 2023

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/724/2022

BETWEEN

1. ADAMU SARKI
2. SHEKWOYI GAZA
3. PHILIP TANKO
4. VICTOR OROKO
5. ISMAILA IBRAHIM
6. MOHAMMED ROBO
7. YUNUSA MUSA GANI
8. HELEN LUKA
9. SULEIMAN YUSUF
10. ADAMU GAIDAM ASU

*[FOR THEMSELVES AND/OR ON
BEHALF OF 20 MILLION UNBANKED
NIGERIAN CITIZENS]*

APPLICANTS

AND

1. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA
2. ATTORNEY GENERAL OF THE FEDERATION
3. CENTRAL BANK OF NIGERIA
4. GOVERNOR, CENTRAL BANK OF NIGERIA

RESPONDENTS

RULING& JUDGMENT

The 10 applicants on record instituted this action on 7/12/2022 vide Originating Motion for themselves and/or on behalf of 20 million “Unbanked Nigerian Citizens”. The suit is for the enforcement of their fundamental right to personal liberty, right to dignity of human person and right to property. The applicants seek these 5 reliefs:

1. A declaration that the announcement of the redesign of the N200, N500 and N1000 notes by the 3rd and 4th respondents without taking into cognizance the corresponding negative effects it will have on the applicants and particularly the over 20million unbanked Nigerian Citizens in the Rural Communitiesand non-financial inclusion is vindictive, unwarranted, abrasive, oppressive and same constitutes a flagrant breach of the applicants’ rights to personal liberty, dignity of human person, and right to property as respectively provided and enshrined under the Constitution of the Federal Republic of Nigeria, 1999 [as amended] and the African Charter on Human and Peoples’ Rights[Ratification and Enforcement] Act and therefore, unconstitutional and illegal.

2. A declaration that the implementation of the 4th respondent's ill-conceived attempt and plan to hastily redesign the N200, N500 and N1000 notes and consented to by the 1st respondent to which the 3rd and 4th respondents have announced a date for the commencement of the use of the new Naira notes constitutes a flagrant violation of the rights of the applicants as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 [as amended] as well as the African Charter on Human and Peoples' Rights [Ratification and Enforcement] Act.

3. A declaration that the policy of the implementation of the revised cash withdrawal limit issued by the 3rd respondent on 6th December, 2022 limiting the maximum cash withdrawal over the counter [OTC] by individual and corporate organizations per week to N100,000.00 and N500,000.00 respectively is a violation of the provisions of the Money Laundering [Prevention and Prohibition] Act, 2022, which also constitutes a flagrant violation of the rights of the applicants as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 [as amended] as well as the African Charter on

Human and Peoples' Rights [Ratification and Enforcement] Act.

4. An order of injunction restraining the respondents, whether by themselves, their officers, agents, servants, privies or acting through any person or persons howsoever from proceeding with the 31st January, 2023 deadline of the use of the current N200, N500 and N1000 as it affects the applicants and other unbanked Nigerians without the possibility of financial inclusion.

5. An order setting aside the policy of the implementation of the revised cash withdrawal limit issued by the 3rd respondent on 6th December, 2022 limiting the maximum cash withdrawal over the counter [OTC] by individual and corporate organizations per week to N100,000.00 and N500,000.00 for being vindictive, self-serving, null and void, ultra vires the Constitution of the Federal Republic of Nigeria 1999 [as amended] and a violation of the rights of the applicants as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 [as amended] as well as the African Charter on

Human and Peoples' Rights [Ratification and Enforcement]
Act.

In support of the Originating Motion are: [i] Statement setting out the names and descriptions of the applicants, the reliefs sought and the grounds upon which the reliefs are sought; [ii] the 21-paragraph affidavit of the 4th applicant, and Exhibit A attached therewith; and [iii] the written address of Chief Morrison Onunu Esq.

On 9/1/2023, the 1st& 2nd respondents filed a preliminary objection challenging the jurisdiction of the Court to entertain this suit. On the same date, they filed their counter affidavit and written address in opposition to the Originating Motion.

For their part, the 3rd& 4th respondents filed a motion on notice on 20/12/2022 to challenge the competence of the suit and jurisdiction of the Court to entertain same. On 20/1/2023, the 3rd& 4th respondents filed their counter affidavit and written address in opposition to the Originating Motion.

On 10/1/2023, the Court directed that the 1st& 2nd respondents' preliminary objection, the 3rd& 4th respondents' motion on notice

and applicants' Originating Motion shall be heard together. On 2/2/2023, Morrison C. OnunuEsq. adopted the applicants' processes; Musa Abdul Esq. adopted 1st& 2nd respondents' processes; while Emeka Obegolu, SAN adopted the 3rd& 4th respondents' processes.

The Court will first deliver a composite ruling on the 1st& 2nd respondents' preliminary objection and the 3rd& 4th respondents' motion on notice since both of them challenge the competence of the suit and the jurisdiction of the Court to entertain it. If the applications fail, the Court will then consider the merits of the applicants' Originating Motion.

RULING ON THE 1ST& 2ND RESPONDENTS' PRELIMINARY OBJECTION FILED ON 9/1/2023; AND THE 3RD& 4TH RESPONDENTS' MOTION ON NOTICE FILED ON 20/12/2022

In the 1st& 2nd respondents' preliminary objection filed on 9/1/2023, they prayed for an order of the Court dismissing this suit.

The grounds of the preliminary objection are:

- a) The Court lacks the jurisdiction to entertain the suit having commenced same via under wrong procedure.

b) Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria [as amended] does not envisage an action for enforcement of fundamental right by a group of unknown persons.

c) The aggrieved 20 million persons whom the applicants/respondents alleged to have filed the suit on their behalf are unknown, improperly described and unidentifiable.

Oni Michael, a litigation officer in the Civil Litigation Department of Federal Ministry of Justice, deposed to a 5-paragraph affidavit in support of the preliminary objection. Abdullahi Abubakar Esq. filed a written address.

In opposition, Kenneth Ugwu, a litigation secretary in the law firm of Messrs Isaac Dennis Folorunsho & Co., filed a 5-paragraph counter affidavit on 23/1/2023 together with the written address of Chief Morrison Onunu Esq.

On 30/1/2023, the 1st & 2nd respondents filed 3 additional grounds in support of the preliminary objection, which are:

- a) The matter at hand, though a fundamental rights enforcement matter, consists of facts leading to the alleged violation, which the State High Court has no jurisdiction to make pronouncement on.
- b) The Redesign of the Naira Note and regulation of withdrawal limit is a decision of the Federal Government.
- c) By the combined effect of section 46[2], section 251[1][r] and Item 15 of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 [as amended], the State High Court lacks jurisdiction to entertain the suit as founded on Currency.

For the 3rd& 4th respondents' motion on notice, the prayers are:

- a) An order of this Honourable Court dismissing and/or striking out this suit *in limine* for want of jurisdiction.
- b) An order striking out the name of the 4th respondent/applicant from this suit.
- c) And for such further order[s] or other orders as this Honourable Court may deem fit to make in the circumstances of this suit.

The grounds of the application are:

- a) There is no cause of action to be enforced by the respondents/applicants against the applicants.
- b) The respondents have no legal authority to sue the applicants on the subject matter of the instant suit.
- c) The people the respondents allege to have brought the action on their behalf are unknown and unidentifiable.
- d) The 4th applicant is an agent of the 3rd applicant, a disclosed principal.
- e) This Honourable Court lacks the jurisdiction to entertain the instant suit, as presently constituted.

In support of the application is the 8-paragraph affidavit of Ahijah Yunana, a litigation officer in the law firm of Kenna Partners, and the written address of Matthew Echo Esq.

In opposition, Kenneth Ugwu filed a 5-paragraph affidavit on 23/1/2023 with the written address of Chief Morrison Onunu Esq.

On 27/1/2023, AhijahYunana filed a further affidavit of 6 paragraphs; attached therewith is Exhibit A. Matthew Echo Esq. filed a reply on points of law on the same date.

In the affidavit in support of the preliminary objection of the 1st & 2nd respondents, the depositions of Oni Michael are similar to the grounds of the application earlier set out.

In the affidavit in support of the 3rd & 4th respondents' motion, AhijahYunana stated that:

- a) The 3rd applicant is an institution of the Federal Government of Nigeria vested amongst other things with the statutory powers and duties of regulating, ensuring monetary and price stability, promoting a sound financial system in Nigeria, and acting as banker that provides economic and financial advice to the Federal Government.
- b) The respondents have not disclosed any reasonable cause of action against the applicants. The applicants have not infringed or positioned to infringe on the rights of any of the citizens of Nigeria whose interest they are there to serve and

there is no aggrieved person[s] on whose behalf the suit can be commenced.

- c) The aggrieved persons whom the respondents allege to have filed the suit on their behalf are unknown, improperly described and unidentifiable.
- d) The 4th applicant is an agent of the 3rd applicant [a disclosed principal].
- e) This Honourable Court lacks jurisdiction to entertain this suit. The suit is speculative and ought to be struck out or dismissed with substantial cost.

In the 2 counter affidavits of Kenneth Ugwu in opposition to the preliminary objection of the 1st& 2nd respondents and the 3rd& 4th respondents' motion on notice, he stated as follows:

- a) The suit is proper and commenced under the Fundamental Rights [Enforcement Procedure] Rules, 2009 and the reliefs sought are those provided under Chapter IV of the 1999 Constitution [as amended].

- b) The applicants are persons suing under their individual names on the first hand and for other 20 million unbanked Nigerians as described by the 3rd& 4th respondents.
- c) The Fundamental Rights [Enforcement Procedure] Rules, 2009 encourages public interest litigation as well as class action in order to prevent multiplicity of suits.
- d) The suit which bothers on the enforcement of the applicants' fundamental rights is predicated on the constant announcement of the 3rd& 4th respondents backed by the 1st respondent to redesign the N200, N500 and N1000 notes and the hasty issuance of 31st January, 2023 deadline for the use of the current N200, N500 and N1000 notes without any guidelines or modalities to cover the over 20 million unbanked citizens of Nigeria who are vulnerable to information and the use of technologically driven money platforms and lack of financial inclusion.
- e) The 4th respondent is not an agent of the 3rd respondent but an employee that is covered with statutory flavour with powers and functions expressly spelt out under the Central Bank of Nigeria Act.

In the further affidavit of the 3rd& 4th respondents filed on 27/1/2023, Ahijah Yunana stated that:

- a) This suit was not properly commenced under the Fundamental Rights [Enforcement Procedure] Rules, 2009. The reliefs sought in this suit are not those provided for under Chapter 4 of the 1999 Constitution [as amended].
- b) The 4th respondent's policy regarding the redesign of the N200, N500 and N1000 notes was done in compliance with the law and the power statutorily conferred on the Governor of the Central Bank of Nigeria. All necessary modalities were put in place to protect the interest of all citizens of Nigeria.
- c) The Naira redesign policy is neither intended nor does it deprive any Nigerian citizen of his or her rights.

Issues for Determination:

In the written address of Abdullahi Abubakar Esq. filed in support of the 1st& 2nd respondents' preliminary objection, he formulated one issue for determination, to wit:

Whether the intendment of section 46[1] of 1999 Constitution of the Federal Republic of Nigeria 1999 [as amended] is to confer on the applicants the enforcement of group rights under the Enforcement Procedure Rules, 2009.

In support of the additional ground of the preliminary objection, Abubakar A. Nuhu Esq. posed one issue for determination, viz:

Whether in view of section 46[2], section 251[1][r] and Item 15 of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 [as amended], this Honourable Court has the jurisdiction to hear and determine the Applicants' suit when the complaint was purely against the decision of the Federal Government.

In his written address in support of the 3rd& 4th respondents' motion on notice, Matthew Echo Esq. distilled three issues for resolution:

- a) Whether the applicants/respondents' suit discloses any cause of action and enforceable right against the 3rd& 4th respondents.

- b) Whether the extant suit commenced on behalf of unknown, untraceable and unidentified people is not incompetent.
- c) Whether the Honourable Court ought not to strike out the name of the 4th respondent/applicant who is not a necessary party from the suit.

For his part, Chief Morrison OnunuEsq. posed one issue for resolution in his written address in opposition to the 1st& 2nd respondents' preliminary objection, which is:

Whether it is in the interest of justice for this Honourable Court to allow the notice of preliminary objection and dismiss the applicants' Originating Motion in its entirety.

In his written address in opposition to the 3rd& 4th respondents' motion on notice, Chief Morrison OnunuEsq. also formulated one issue for determination, namely:

Whether it is in the interest of justice for this Honourable Court to refuse and dismiss the applicants' application in its entirety.

From the submissions of learned counsel for the parties in respect of the preliminary objection of the 1st& 2nd respondents and the 3rd& 4th respondents' motion on notice, the Court is of the considered opinion that four issues call for resolution. These are:

1. Whether this suit instituted by the 10 applicants on record for themselves and on behalf of 20 million "*Unbanked Nigerians*" is competent.
2. Whether the applicants' suit has disclosed a cause of action against the respondents; and if the answer is in the affirmative, whether the cause of action is maintainable under the Fundamental Rights [Enforcement Procedure] Rules, 2009.
3. Whether this Court has the jurisdiction to determine the subject matter of this suit in view of the provisions of section 251[1][d] & [r] of the 1999 Constitution [as amended].
4. Is the 4th respondent [Governor of Central Bank of Nigeria] a necessary party in this suit?

ISSUE 1

Whether this suit instituted by the 10 applicants on record for themselves and on behalf of 20 million “Unbanked Nigerians” is competent.

Submission of Learned Counsel for the 1st& 2nd Respondents:

Learned counsel for the 1st& 2nd respondents referred to section 46[1] of the 1999 Constitution [as amended], which provides:

Any person who alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

Abdullahi Abubakar Esq. argued that the literal interpretation of this provision does not envisage an application by a class of persons or group of persons or in a representative capacity. The use of the words “a person” and “him” in the provision gives credence to this view. The applicants did not take into account the fact that the alleged infraction of the rights of one [if any] differs in content and degree from the complaints of others. It was submitted that there ought to be a separate application for each person who alleged that his fundamental right is violated. He referred to the case of

Registered Trustees of F.T.C.C.N. v. Ikwechegh [2000] 13 NWLR

[Pt. 683] 1 where it was held that:

“If an individual feels that his fundamental right or human right has been violated, he should take action personally for the alleged infraction, as rights of one differ in content and degree from the complaints of the other. It is a wrong joinder of action and incompetent for different individuals to join in one action to enforce different causes of action.”

The 1st& 2nd respondents’ counsel urged me to give the provision of section 46[1] its literal interpretation as it is clear and unambiguous. He referred to **Araka v. Egbue [2003] 17 NWLR [Pt.848] 1** on the principle that the duty of the courts is to interpret the words in a statute once they are clear and unambiguous. He concluded that the said section 46[1] does not confer on the applicants the enforcement of group rights or on behalf of unidentified 20 million unbanked Nigerian citizens living in different rural areas. Therefore, the Court lacks jurisdiction to entertain the suit.

Submission of Learned Counsel for the 3rd & 4th Respondents:

Learned counsel for the 3rd& 4th respondents posited that for the jurisdiction of the Court to be activated, there must exist a competent and identifiable plaintiff in whom the cause of action inures and a defendant [in the instant case, applicant and respondent]. He cited the case of Ukaegbu v. APGA [2020] 8 NWLR [Pt. 1725] 88 on the importance of the parties to a suit to be identifiable. It was submitted that the actual people on whom the cause of action allegedly inures in this case are not identifiable from the processes before the Court and their existence is questionable.

Matthew Echo Esq. further argued that the applicants failed to name who the 20 million unbanked Nigerians are, which makes them unidentifiable and impossible to determine whether any of their rights is threatened. He relied on Adediran v. Interland Transport Ltd. [1991] 9 NWLR [Pt. 214] 155 to support the view that where the parties are unidentifiable, it robs the Court of jurisdiction. Learned counsel submitted that where there is no proper applicant before the Court, the suit is bound to be struck out. He urged the Court to strike out the suit for the absence of proper and identifiable applicants.

In the reply on points of law, Matthew Echo Esq. submitted that fundamental rights are personal in nature and can only be enforced on a personal basis. He relied on Kporharor& Anor. v. Yedi&Ors. [2017] LCN/9840 and Nasiru& Anor. v. EFCC &Ors. [2022] LPELR-56976 [CA] to support the submission that fundamental rights are individual rights and not collective rights and any application filed by more than one person to enforce a right under the Fundamental Rights [Enforcement Procedure] Rules is incompetent.

Submission of Learned Counsel for the Applicants:

Learned counsel for the applicants submitted that the Court is vested with the jurisdiction to entertain this action as presented under its powers under section 6[6] of the 1999 Constitution [as amended]. The applicants, having shown the existence of a common right which is likely to be infringed, are vested with the competence to institute an action for the enforcement of their fundamental rights for a common cause.

Chief Morrison OnunuEsq. relied on Paragraph 3[d] of the Preamble to the Fundamental Rights [Enforcement Procedure] Rules 2009, which provides that: “*The Court shall proactively pursue*

enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented."He also relied on Paragraph 3[e] of the Preamble, which provides:

The Court shall encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- i. Anyone acting in his own interest;*
- ii. Anyone acting on behalf of another person;*
- iii. Anyone acting as a member of, or in the interest of a group or class of persons;*
- iv. Anyone acting in the public interest; and Association acting in the interest of its members or other individuals or groups.*

Based on the above, the applicants' counsel submitted that this suit is competent *"as it is one that touched on the rights of the Applicants as*

it were as well as the rights of other vulnerable Nigerians and could necessarily be classified as a public interest litigation.” Thus, the suit is covered under the Fundamental Rights Enforcement Rules. Counsel referred to the case of Benson v. COP [2016] All FWLR [Pt. 840] 1255 on the import of the fundamental rights of individuals.

Decision of the Court:

From the above submissions of learned counsel, one of the issues for consideration is whether two or more persons or a group of persons can competently institute a joint action for the enforcement of their fundamental rights. In Kporharor & Anor. v. Yedi & Ors. [supra]; [2017] LPELR-42418 [CA] decided on 4/5/2017, Benin Division of the Court of Appeal considered this issue and held:

“The adjective used in both provisions in qualifying who can apply to a Court to enforce a Right is “any” which denotes singular and does not admit pluralities in any form. It is individual right and not collective rights that is being talked about.

In my humble view, any application filed by more than one person to enforce a right under the Fundamental Rights [Enforcement Procedure] Rules is incompetent and liable to be struck out. ...”

In the case of Mr. Archibong Tom Udo v. Ibanga Udo Robson &Ors. [2018] LPELR-45183 [CA] delivered on 20/7/2018, the Calabar Division of the Court of Appeal adopted the above decision.

In Finamedia Global Service Ltd. v. Onwero Nig. Ltd. &Ors. [2020] LPELR-51149 [CA] decided by the Abuja Division of the Court of Appeal on 8/10/2020, 1st& 2nd respondents whose shops were locked up by the appellant, resulting in loss of livelihood and goodwill, filed a joint application for the enforcement of their fundamental rights praying for, *inter alia*, the enforcement of their fundamental rights.

One of the issues before the Court of Appeal was whether the trial Court had jurisdiction to entertain the joint application filed by the respondents to enforce their fundamental rights. The Court of Appeal [Per *Mohammed Mustapha, JCA*] held:

"On the propriety of two or more persons filing a joint application for the enforcement of their fundamental rights, it is important to understand that, as rightly pointed out, an action for the enforcement of fundamental rights is quite unlike an action in a civil suit, where

parties may, expectedly, be joined in an action as plaintiff. This cannot happen in an action under the Fundamental Rights Enforcement Procedure Rules 2009, because of the sui generis nature of fundamental rights. ... That explains the use of the word "any person" in Section 46[1] of the Constitution ...

The words used in Section 46[1] of the Constitution are very clear, and it is not by accident that the constitution and the rules use the same adjective in qualifying who can apply to a Court to enforce a Right as, "any", which denotes singular, and does not admit pluralities in any form.

The respondents' case before the trial Court was incompetent for all these reasons, thus the judgment emanating from the incompetent action cannot stand."

However, in the case of Maitagaran & Anor. v. Dankoli & Anor. [2020] LPELR-52025 [CA] decided on 27/10/2020, the appellants' complaint before the lower court was that the action was bad for joinder of the causes of action of the respondents for the breach of their fundamental rights. The Kano Division of the Court of Appeal held that the respondents' case shows that the rights they

sought to ventilate arose from a common cause. The finding of the lower court that the action of the respondents was competent was upheld.

The most recent decision which I was privileged to read on the issue under focus is Chief of Naval Staff Abuja & Ors. v. Archibong & Anor. [2020] LPELR-51845 [CA] delivered on 4/12/2020. In that case, the Court of Appeal [Calabar Division] adopted the earlier decisions. *His Lordship, Shuaibu, JCA* held:

"It was also contended by the appellants that there is no room for joint or group enforcement of fundamental right in a single application. ... let me quickly state that the applicants at the trial Court are husband and wife and therefore brought a single application for the enforcement of their Fundamental rights. ...

Neither the 1999 Constitution nor the Fundamental Rights [Enforcement Procedure] Rules 2009 defines the word 'person' but in the context of Section 46 [1] of the Constitution and Order 1 Rule 2 [1] of the extant Fundamental Rights [Enforcement Procedure] Rules it refers to an individual. The adjective used in both provisions

in qualifying who can apply to a Court to enforce a right is "any" which also denotes to singular and does not admit pluralities in any form. ...

I cannot therefore deviate from the previous decision which prohibits joint and or group application for the enforcement of fundamental rights."

By the immutable or inflexible doctrine of *stare decisis* [or judicial precedent], this Court is bound to follow the decision of the Court of Appeal. It is also the law that when a lower court is faced with two conflicting decisions of a superior Court on an issue, as in the instant case, the proper approach is to follow the most recent decision. See Isaac Obiweubi v. CBN [2011] 3 SCNJ 166.

The Court will follow the decision in Chief of Naval Staff Abuja & Ors. v. Archibong & Anor. Therefore, the decision of the Court is that the joint action by the 10 applicants on record for themselves and/or on behalf of 20 million "Unbanked Nigerian Citizens" for enforcement of their fundamental rights is incompetent and the Court has no jurisdiction to entertain it.

Let me however add that where two or more persons have a common grievance or cause of action for the enforcement of their fundamental rights, the proper approach is to file separate suits and thereafter apply to the Court for consolidation of the suits. This is in line with Order VII of Fundamental Rights [Enforcement Procedure] Rules, 2009, which provides for consolidation of several applications relating to the same infringement.

In the light of the decision of the Court that the suit is incompetent and therefore it lacks jurisdiction to entertain same, it will not serve any useful purpose to consider the other Issues for resolution and the merits of the Originating Motion.

In conclusion, the suit is struck out. I award cost of N50,000 to the 1st& 2nd respondents and N50,000 to the 3rd& 4th respondents payable by the applicants.

HON. JUSTICE S. C. ORJI
[JUDGE]

Appearance of Learned Counsel:

1. P. A. ObuEsq. for the applicants.
2. Abdullahi Abubakar Esq. for the 1st& 2nd respondents; with Musa Abdul Esq.
3. Grace EhusaniEsq. for the 3rd& 4th respondents.