

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI**

THIS WEDNESDAY, THE 22ND DAY OF MARCH, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/82/2019

BETWEEN:

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| <p>1. THE INCORPORATED TRUSTEES OF THE NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA</p> <p>2. COMRADE JUDE AKOH
<i>(The President, National Association of Community Health Practitioners of Nigeria)</i></p> <p>3. COMRADE LAWRENCE EWDRUJAKPO, ESQ
<i>(The General Secretary, National Association of Community Health Practitioners of Nigeria)</i></p> | } | ... CLAIMANTS |
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AND

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| <p>1. ALHAJI MUSA KONTO</p> <p>2. IRABOR VICTOR O.</p> <p>3. JAFAR ABDULLAHI</p> <p>4. MUH'D YAHAYA</p> <p>5. ELIJAH ZAKWOYI</p> <p>6. BALA SALE</p> <p>7. ENOCH EMMANUEL</p> <p>8. YAKUBU A. ZAKSHI</p> <p>9. IBAMA ASITON A.S.</p> | } | DEFENDANTS |
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JUDGMENT

By an Amended Originating Summons filed on 25th February, 2022, the Claimants prayed for a determination of the following questions:

- 1. Whether by the Provision of the Constitution of the National Association of Community Health Practitioners of Nigeria, the Acting Registrar of the Community Health Practitioners Registration Board has the Power to convene any meeting of members of the Association without the consent, approval and inputs of the President and General Secretary of the Association in compliance with the constitution of the Association.**

- 2. Whether the meeting of members of the Association held on the 12th of September, 2018 which was summoned by the Acting Registrar of the Community Health Practitioners Registration Board is not ultra vires the powers of the said Acting Registrar and therefore the deliberations, resolutions and directives reached in the said meeting null, void and of no effect whatsoever same having been held in contravention of the constitution of the 1st Claimant Association.**

- 3. Whether the vote of no confidence passed against the 2nd Claimant at the said meeting summoned by the said Acting Registrar held on the 12th of September, 2018 without according the 2 claimant requisite fair hearing as required by the constitution of the 1st claimant is not illegal null, void and of no effect whatsoever.**

- 4. Whether the financing sponsoring and instigation of members of the 1st claimant by the said Acting Registrar to host the meeting held on the 29th September, 2018 to victimize the leadership of the 1st claimant is not malicious, illegal and ultra vires his powers as enshrined in the Act establishing the Board.**

- 5. Whether the purported National Executive Council meeting of the Association which purportedly held on the 29th day of September, 2018 at Summit Villas Hotel, Abuja duly financed, sponsored and instigated by the Acting Registrar to maliciously witch-hunt the 2nd and 3rd claimants and other leaders of the 1st claimant for daring to challenge his illegal appointment as the substantive registrar of the community Health Practitioners Registration Board in suit No. FHC/ABJ/CS/956**

Pending at the Federal High Court Abuja is not malicious, illegal, null and void and of no effect whatsoever.

- 6. Whether by the provision of Rule 17 (1) (b) and Rule 17 (v) (b) and (c) of the Constitution of the National Association of Community Health Practitioners of Nigeria, the purported meeting held on the 29th day of September, 2018 at Summit Villas Hotel, Abuja was properly convened and held same having not been summoned or convened by neither the President of the Association nor the General Secretary of the Association in compliance with the Constitution of the Association and the general convention relating to the powers of President and General Secretaries of the Association to summon and convene meetings of the Association.**
- 7. Whether by the Provision of Rule 28 (b) of the Constitution of the National Association of Community Health Practitioners of Nigeria, the purported National Executive Council meeting purportedly held on the 29th day of September, 2018 at Summit Villas Hotel, Abuja had the requisite number of members in attendance to form the quorum as required by Constitution of the Association to pass the purported resolution so passed at the purported National Executive Council meeting.**
- 8. Whether the purported resolution passed at the purported National Executive Council meeting purportedly held by the Defendants on the 29th day of September, 2018 at Summit Villas Hotel, Abuja is valid in the eyes of the law, such purported meeting not being convened and held in accordance with the provisions the Constitution of the National Association of Community Health Practitioners of Nigeria.**
- 9. Whether the purported resolution passed at the purported National Executive Council meeting purportedly held by the Defendants on the 29th day of September, 2018 at Summit Villas Hotel, Abuja is valued in the eye of the law, such purported resolution not being passed by the requisite quorum to attend the National Executive Council meeting and pass binding resolutions at such meeting not formed by those in attendance, as provided by the Constitution of the National Association of Community Health Practitioners of Nigeria, assuming but no**

conceding that the purported National Executive Council meeting of 29th day of September, 2018 held at Summit Villas Hotel Abuja was properly convened by the Defendants.

10. Whether the purported resolution of the purported National Executive Council meeting on the Association held on the 29th September, 2018 which inter alia expelled the 2nd Claimant from the membership of the 1st Claimant is not illegal, null and void and of no effect whatsoever same having been made without according the 2nd Claimant fair hearing as enshrined in the constitution of the 1st Claimant.

The Claimant then sought for the following Reliefs on the resolution of the above questions as follows:

- 1. A Declaration by this Honourable Court that the Acting Registrar of the Community of Health Practitioners Registration Board has no power whatsoever under the constitution of the 1st Claimant to summon a meeting of members of the 1st Claimant without the approval, consent and input of the 2nd Claimant, the National President of the 1st Claimant.**
- 2. A Declaration by this Honourable Court that the purported meeting of members of the 1st Claimant, which meeting was summoned and convened by the Acting Registrar of the Community of Health Practitioners Registration Board on the 12th September, 2018, ultra vires the powers of the Acting Registrar of the Community of Health Practitioners Registration Board.**
- 3. An Order of this Honourable Court reversing and declaring the vote of no confidence passed on the 2nd Claimant at the purported meeting of members of the 1st Claimant, which meeting was summoned and convened by the Acting Registrar of the Community of Health Practitioners Registration Board on the 12th day of September, 2018, null, void and of no effect whatsoever.**
- 4. A Declaration by this Honourable Court that the purported National Executive Council meeting of the National Association of Community Health Practitioners of Nigeria purportedly convened and held by the Acting Registrar in concert with the Defendants on the 29th day of**

September, at Summit Villas Hotel, Abuja is null, void and of no effect whatsoever, as the Defendants lacks the constitutional power to convene such meeting.

- 5. A Declaration by this Honourable Court that the purported resolution passed by the Defendants at the purported National Executive Council meeting of the National Association of Community Health Practitioners of Nigeria purportedly convened and held by the Acting Registrar in concert with the Defendants on the 29th day of September, at Summit Villas Hotel, Abuja is null, void and of no effect whatsoever as the Defendants had no Constitutional power to convene the purported meeting and the requisite quorum provided by the constitution to pass such resolution, assuming the meeting was properly convened, was not constituted.**
- 6. A Declaration by the this Honourable Court that the purported National Executive Council meeting of the National Association of Community Health Practitioners of Nigeria purportedly convened and held by the Defendants on the 29th day of September, at Summit Villas Hotel, Abuja was contrary to the express provision of Rule 17(1) (b) and Rule 17 (v) (b) and (c) of the Constitution of the National Association of Community Health Practitioners of Nigeria.**
- 7. An Order of this Honourable Court reversing, nullifying and setting aside the purported resolution passed at the purported National Executive Council meeting of the National Association of Community Health Practitioners of Nigeria purportedly convened and held by the Defendants on the 29th day of September, at Summit Villas Hotel, Abuja, the said resolution having not been reached in line with the provisions of the Constitution of the 1st Claimant.**
- 8. An Order of Perpetual Injunction restraining the Defendants their Servants, Agents and Privies from giving effect howsoever described to the said purported resolution of the purported National Executive Council meeting of the National Association of Community Health Practitioners of Nigeria purportedly convened and held by the Defendants on the 29th day of September, at Summit Villas Hotel, Abuja.**

9. An Order of Perpetual Injunction restraining the 1st and the 9th Defendants from parading themselves at the Acting National President and acting General Secretary of the 1st Claimant Association respectively.

10. An Order of Perpetual Injunction restraining the Defendants their Servants, Agents and Privies from ever calling for, summoning, organizing, convening or convoking a National Executive Council meeting of the 1st Claimant Association except as expressly provided in the Constitution of the 1st Claimant.

11. The cost of this suit.

12. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstance.

The Grounds upon which the Reliefs are sought as contained on the application are as follows:

1. That on the 12th day of September, 2018, the Acting Registrar of the Community of Health Practitioners Registration Board, without the consent, approval and input of the 1st Claimant convened a purported meeting of members of the 1st Claimant.

2. That the Acting Registrar of the Community of Health Practitioners Registration Board, has not powers, right or authority whatsoever under the constitution of the 1st Claimant to convene the purported meeting of 12th September, 2018 without the consent, approval or input of the 1st Claimant.

3. That at the illegal, unlawful and unconstitutional meeting purportedly convened by the Acting Registrar of the Community of Health Practitioners Registration Board, a resolution was reached and a vote of no confidence was purportedly passed on the 1st Claimant by the Defendants.

4. That the Acting Registrar of the Community of Health Practitioners Registration Board instigated the Defendants to convene a purported meeting of members of the 1st Claimant on the 29th day of September,

2018, which meeting was purportedly held at Summit Villas Hotel, Abuja without the knowledge of the 2nd and 3rd Claimants.

5. That by the provisions of Rule 17 (1) (b) and Rule 17 (v) (b) and (c) of the Constitution of the National Association of Community Health Practitioners of Nigeria (1st Claimant), the 2nd and 3rd Claimants are constitutionally empowered to attend every meeting of the 1st Defendant and in this particular instance the National Executive Council Meeting.
6. That the Defendants, in total violation and flagrant disregard for the constitution of the 1st Claimant surreptitiously convened and held a clandestine meeting on the 29th of September, 2018 at Summit Villas Hotel, Abuja and purportedly dubbed the said meeting a National Executive Council Meeting of the 1st Claimant, which meeting was not attended by the 2nd and 3rd Claimants who are constitutionally empowered and mandated to attend every meeting of the 1st Defendant by reason of the sensitive position they occupy respectively in the 1st Defendant.
7. That at the purported National Executive Council Meeting convened and held by the Defendants on the 29th of September, 2018 at Summit Villas Hotel Abuja, which meeting was clandestine and convoked in bad faith and in total disregard for the constitution of the 1st Claimant, hence the 2nd and 3rd Claimants were not notified of the meeting for the 2nd and 3rd Claimants to jointly determine the items to be included in agenda in line with powers of vested on the 2nd and 3rd Claimants under Rule 8 (vi) of the Constitution of the 1st Claimant; the Defendants purportedly passed some resolutions, among which were:
 - i. The indefinite expulsion of the 2nd Defendant from the Association.
 - ii. The appointment of the 1st Defendant as the Acting national President, who is currently parading himself as such, thereby usurping the position of the 2nd Claimant.
 - iii. The setting up of a disciplinary committee of mete out disciplinary action against the 2nd Claimant who is actively and efficiently serving the association.

- 8. That the 1st Defendant, in giving effect to the purported resolution reached at the purported National Executive Council meeting convened and held by the Defendants on the 29th of September, 2018 at Summit Villas Hotel, Abuja in flagrant disregard for the provision of the constitution of the 1st Claimant, has been parading himself as the Acting National President of the 1st Claimant, thereby usurping the position of the 2nd Claimant.**
- 9. That the purported resolutions reached at the clandestine and purported National Executive Council meeting convened and held by the Defendants on the 29th of September, 2018 at Summit Villas Hotel Abuja in flagrant disregard for the provision of the constitution of the 1st Claimant have subjected the 2nd and 3rd Claimants to severe**
- 10. That under Rule 8 (vi) of the constitution of the 1st Claimant, the 2nd and 3rd Claimants are empowered to jointly determine the items to be included in the agenda of the National Executive Council meeting of the 1st Claimant, however, the agenda of the purported National Executive Council meeting convened and held by the Defendants on the 29th of September, 2018 at Summit Villas Hotel Abuja in flagrant disregard for the provision of the constitution of the 1st Claimant was not prepared by the 2nd and 3rd Claimants as stipulated by the Constitution of the 1st Claimant, thereby making the purported National Executive Council meeting and the resolutions passed thereat illegal, unlawful, unconstitutional, illegitimate, null, void and of no effect whatsoever.**
- 11. That under Rule 9 (x) of the constitution of the 1st Claimants, the Defendants have no power whatsoever to convene, convoke, call for, summon or hold the purported National Executive Council meeting convened and held by the Defendants on the 29th of September, 2018 at Summit Villas Hotel Abuja in flagrant disregard for the provision of the constitution of the 1st Claimant.**
- 12. That the 1st Claimant and its members are being directly affected by the illegal and unlawful acts of the Defendants in brazen, flagrant and blatant disregard of the clear provisions of constitution of the 1st Claimant.**

13. That the Claimants herein had earlier approached the National Industrial Court but the said Court declined jurisdiction and struck out the said suit.

In support of the application is an 8 paragraphs affidavit with 5 annexures marked as **Exhibits A-F**.

A written address was filed in compliance with the Rules of Court in which 10 issues were raised as arising for determination as follows:

- 1. Whether by the provision of the constitution of the National Association of Community Health Practitioners of Nigeria the Acting Registrar of Community Health Practitioners Registration Board has the power to convene any meeting of members of the Association without the consent, approval and inputs of the President (the 2nd Claimant) and General Secretary of the Association (the Claimant) in compliance with the constitution of the Association.**
- 2. Whether the meeting of members of the Association held on the 12th September, 2018 which was summoned by the Acting Registrar of Community Health Practitioners Registration Board is not ultra vires the powers of the said Acting Registrar and therefore the deliberations, resolutions and directives reached in the said meeting null, void and of no effect whatsoever same having been held in contravention of the constitution of the 1st Claimant Association.**
- 3. Whether the vote of no confidence passed against the 2nd Claimant at the said meeting summoned by the said Acting Registrar held on the 12th September, 2018 without according the 2nd Claimant requisite fair hearing as required by the constitution of the 1st Claimants not illegal, null, void and of no effect whatsoever.**
- 4. Whether the financial, sponsoring and investigation of members of the 1st Claimant by the said Acting Registrar to host the meeting held on the 25th September, 2018 to victimize the leadership of the 1st Claimant is not malicious, illegal and ultra vires his powers as enshrined in the Act establishing the Board.**

- 5. Whether the purported National Executive Council meeting of the Association which purportedly held on the 29th day of September, 2018 at Summit Villas Hotel, Abuja duly financial, sponsored and instigated by the Acting Registrar to maliciously witch-hunt the 2nd and 3rd Claimants and other leaders of the 1st Claimant for daring to challenge his illegal appointment as the substantive Registrar of the Community Health Practitioners Registration Board in Suit No. FHC/ABJ/CS/956 pending at the Federal High Court Abuja is not malicious, illegal, null and void and of no effect whatsoever.**
- 6. Whether by the provision of Rule 8 (v) and (vi) of the constitution of the National Association of Community Health Practitioners of Nigeria, the purported meeting held on the 29th day of September, 2018 at Summit Villas Hotel, Abuja was properly convened and held, as the agenda of the said meeting was not jointly determined by the National President (the 2nd Claimant) and the General Secretary of the Association and the general convention relating to the powers of President and General Secretary of the Association to determine the agenda of the National Executive meeting of the Association.**
- 7. Whether the purported resolution passed at the purported National Executive Council meeting purportedly held by the Defendants on the 29th day of September, 2018 at Summit Villas Hotel, Abuja is valid in the eye of the law, such purported meeting not being convened and held in accordance with the provisions the constitution of the National Association of Community Health Practitioners of Nigeria.**
- 8. Whether the purported resolution of the purported National Executive Council meeting of the Association held on the 29th September, 2018 which inter alia expelled the 2nd Claimant from the membership of the 1st Claimant is not illegal, null void and of no effect whatsoever same having been made without according the 2nd Claimant fair hearing as enshrined in the constitution of the 1st Claimant.**
- 9. Whether by the judgment of National Industrial Court delivered on the 17th June, 2019 this Honourable Court can still sit and determined this suit also as regard the 3rd Claimant appointed.**

10. Whether the 1st Claimant is a legal personality known to law to sue and be sued as regard to this suit as it presently before the court.

Submissions were then made in support of these issues which forms part of the Records of Court. The essence of the submissions in summary is simply that the actions of the defendants in conveying a meeting vide **Exhibit C** without the consent, approval and input of the 2nd and 3rd Claimants who are (President and General Secretary of 1st Claimant) contrary to the constitution of the National Association of Community Health Practitioners of Nigeria was wrongful and that the meeting held and the resolutions reached in the said meeting are all null and void. The claimants in response to the Counter-Affidavit of Defendants filed two (2) further processes to wit:

1. Claimants Further and Better Affidavit in response to the defendants Counter-Affidavit filed on 25th February, 2021 with two (2) annexures marked as **Exhibits G and H**. A Reply on points of law was filed which sought to accentuate the position earlier made.
2. Claimants Further Affidavit in support of originating summons dated 10th October, 2019 filed on 25th February, 2021 with one annexure marked as **Exhibit F**.

At the hearing, counsel to the Claimants relied on the paragraphs of the affidavits filed in support of the originating summons and adopted the submissions in the addresses filed in urging the court to grant the Reliefs sought in the summons.

On the part of the Defendants/Respondents, they filed three processes in response, to wit:

1. Counter-Affidavit filed on 26th January, 2022 with 13 annexures marked as **Exhibits A-M**. A written address was filed in compliance with the Rules of Court in which they equally raised 10 issues as arising for determination and equally proffered submissions on the issues which equally forms part of the Record of Court. I need not reproduce all the issues but I note that **Issues 1-5** are similar or the same issues raised by claimants but **Issues 6-10** are essentially different issues from that raised by the claimants.

The substance of the submissions especially with respect to **Issues 1-3** is that **Exhibit C** on which the complaints of claimants is centered does not support or ground their complaints as there is nothing in the said letter to show that the

Registrar convened an Emergency National Executive Council (NEC) meeting of the Association. That the letter was by the Community Health Practitioners Registration Board of Nigeria and simply an invitation to members of the national Executive of National Association of Health Practitioners and some selected members of the profession to discuss urgent matters germane to the development of the profession. That the Registrar is not an executive member of the association nor does he hold any position in the Association. That the letter does not support the complaints formulated by claimant under Issues 1-3 and that they must thus fail.

With respect to the other issues raised (4-8), the case of the defendants is that the actions taken were wholly consistent with the provisions of the constitution of the Association. On **issue 9**, the case of defendants is that there is a subsisting judgment of the National Industrial Court on the same issues raised by the extant case and that this case is thus not maintainable. Finally on issue 10, the case made out is that the 1st Claimant is not a juristic person known to law and can therefore not maintain this action.

2. The Defendants filed a Further and Better Counter-Affidavit on 24th January, 2022 with 4 annexures marked as **Exhibits A-D** in response to the Further and Better Affidavit filed by Claimant.
3. The Defendants then filed on 24th January, 2022 a further Counter-affidavit to the claimants further affidavit dated 6th July, 2020 with 5 annexures marked as **Exhibits A-E**.

At the hearing, Counsel to the defendants similarly relied on the contents of the Counter-Affidavits filed and adopted the submissions in the written address in praying the Court to dismiss the originating summons.

I have carefully gone through the processes filed on both sides together with the oral adumbration by counsel on either side of the aisle. In the Court's considered opinion and from the materials filed, two issues arise for determination:

- 1. Whether the court can entertain and determine the present action?**
- 2. Whether the claimants have established the complaints made to be entitled to any or all of the Reliefs sought?**

Issue 1 is a jurisdictional and threshold issue while **Issue 2** relates to the complaints of claimants with respect to whether the actions of defendants can be constitutionally countenanced; that is the constitution of the 1st claimant. These issues are not raised in the alternative but cumulatively with the issues raised by all parties. It is however necessary to point out at the outset that the determination of the jurisdictional question will determine whether the court can make any inquiry and determination of the second issue raised by court.

It is on the basis of the above issues that I will shortly proceed to resolve the questions posed by the extant dispute.

Let me however quickly point out that the jurisdictional questions raised by the defendants vide **issues 9 and 10** have no legal traction and will be discountenanced. The judgment of the National Industrial Court dated 17th June, 2019 attached as **Exhibit A** to defendants Counter-Affidavit may have been “dismissed” using the words of the learned trial judge at paragraph 31 of the judgment but it is clear that the case was not determined on the merit. The decision on the case was decided on want or absence of jurisdiction. No more.

The questions posed by the originating summons in the case was thus not determined. In that clear specific situation or context, there cannot be any argument or dispute that the case was determined. At the risk of sounding prolix, it was not, for the jurisdictional reasons advanced by the learned trial judge.

It is axiomatic or a settled principle of General application that this court cannot obviously sit as a Court of Appeal over cases decided or determined by a court of coordinate jurisdiction. Again there is no argument about that.

Where however a court reached a decision that it has no jurisdiction to entertain a case, the jurisprudence is settled; indeed it is a principle cast in stone, that the proper order to make is that to strike out the action. I leave it at that. The decision of the National Industrial Court does not therefore create any legal impediment to the determination of the merit of this case.

Now with respect to the question posed by issue 10, as to whether the 1st defendant is a legal personality known to law that can sue and be issued, I think that issue has since been overtaken by events. This court on 11th February, 2021 granted the application of claimants to amend or correct the name of 1st claimant to reflect its proper registered name with the Corporate Affairs Commission (CAC). The claimant has since complied with the Order of Court and

subsequently filed Amended processes reflecting the proper name. Indeed all subsequent processes filed by parties have reflected the correct and proper name of 1st claimant. We need therefore not be detained by that issue.

Issues 9 and 10 raised by defendants shall accordingly be discountenanced.

Now back to the substance of the two issues formulated by court.

I start with issue 1 which raised a threshold jurisdiction point. It is settled principle of general application that the question of the jurisdiction of a court to entertain any matter is critical and fundamental. A court of law can only act legally and validly when it has power over the person and the subject matter brought before it. Where it lacks jurisdiction, it also lacks competence. The issue of jurisdiction cannot thus be glossed over. If the court decides to close its eyes over the issue of jurisdiction, it may end up essentially be engaging in an exercise in futility.

In other words, any judgment however well written or articulated if given without jurisdiction will completely lack legal validity. That explains why it is treated as a threshold issue and dealt with immediately.

In the case of **Madukolu V Nkemdilim (1962) 1 All NLR 587 at 595** the Apex Court stated as follows:

“A Court is competent to adjudicate when –

- (a) It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and”**

- (b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction; and**

- (c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.**

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication.”

Jurisdiction is the threshold of judicial power and judicialism; and the very lifeline of all proceedings in a court or tribunal without which the entire proceedings, trial, findings, orders and pronouncements are futile, invalid, null and void abinitio however brilliantly they must have been conducted. Once the jurisdiction of a court in respect of a cause or matter is ousted, the court will lack the competence to entertain and determine that cause or matter. See **Rossek V ACB Limited (1993) 8 N.W.L.R (pt.312) 382 at 437 C-G; 487 G-B; AG, Lagos V Dosunmu (1989) 3 N.W.L.R (pt.111) 552.**

The pith or focus of issue 1 falls within the second element of the ingredients streamlined by the Apex Court above.

I had earlier on from the affidavits filed by parties identified or streamlined the issues arising from the contested assertions in this case.

From the affidavit which precisely situates the dispute, the complaint(s) of 2nd and 3rd claimants is essentially that a meeting was convened by the Acting Registrar on 12th September, 2018 and on 29th December, 2018 outside the provision of the constitution of the 1st claimant and accordingly that deliberations, resolutions and directions all taken at the meeting are null and void and of no effect whatsoever. The crux of the complaints of the claimants is rooted on this alleged action of the Acting Registrar.

On the materials supplied by parties, there are **two cases** filed which may or may not impact the present case. Let us situate the cases.

As alluded to already, it is not in dispute that the present Applicants had filed a similar action on 12th October, 2018 as the present one raising the same questions and seeking the same Reliefs at the Industrial Court in **Suit No: NICN/ABJ/260/18**. As stated earlier, the suit was dismissed for want of jurisdiction vide the judgment **Exhibit A** dated 17th June, 2019 attached to the Counter-Affidavit of Defendants.

Now after the said decision by the Industrial Court, the **1st Claimant** in this case as **Claimant** filed an action against **1st and 2nd Claimants** (who strangely are co-claimants in this case) in **Suit No. CV/313/18** dated 22nd November, 2018 and filed on 22nd November, 2018. That **case** is on the materials still pending at the **High Court**, a Court of coordinate jurisdiction with this court.

In paragraphs 4 (f) and (g) of the claimants Further and Better Affidavit in response to Defendants Counter-Affidavit filed on 25th February, 2021, the Claimants averred as follows:

“4. That I have seen and read the Defendants’ Counter-Affidavit (hereinafter referred to as Counter Affidavit) deposed to by one Elijah Zakwoyi and stated as follows:

...f. That upon the striking out of Suit No. NICN/ABJ/260/18 by the National Industrial Court Coram Agbakoba J. Counsel for Defendants herein knowing fully well that the issue of the President and the General Secretary i.e. the 2nd and 3rd Claimants respectively having not been decided on its merit, have continued to maintain Suit No: CV/313/18. A Certified True Copy of the Originating Summons in the said suit is hereby attached and marked as Exhibit G.

g. That it is clear the from the filing and the continual maintenance of Exhibit F (sic) above that Suit No. NICN/ABJ/260/18 was not heard on merit and as such could not have been dismissed as counsel to the Defendants herein would want us to believe.”

This actions in **Suit No. CV/313/18** was annexed to the above Further and Better Affidavit of Claimants as **Exhibit G** and it is clear that it was filed on 22nd November, 2018 well before the present action before me in **CV/82/19** which was filed on 10th October, 2019. Let us perhaps situate the action filed by the claimant in **CV/313/18** and the Reliefs sought against the defendants (who are now co-claimants in the case before me).

In the said action **CV/313/18**, the claimant sought for a determination of the following Questions and the Reliefs against defendants (2nd and 3rd Claimants in this case) as follows:

“1. Whether having regard to the combined effect of Rule 8 (xv/c) of the National Association of Community Health Practitioners of Nigeria Constitution decision reached at the National Executive Council (NEC) meeting on the 29th September, 2018 of the National Association of Community Health Practitioners of Nigeria, can the 1st Respondent parade and conduct himself as the National President of the National Association of Community Health Practitioners of Nigeria?

- 2. Whether having regard to the combined effect of Rules (17va) and (24) of the National Association of Community Health Practitioners of Nigeria Constitution and the decision reached at the National Executive Council (NEC) meeting on the 11th day of November, 2018 of the National Association of Community Health Practitioners of Nigeria can the 2nd Respondent parade and conduct himself or holdout himself as the general secretary of the National Association of Community Health Practitioners of Nigeria?**
- 3. Whether having regard to the decision reached at the National Executive Council (NEC) meeting of the National Association of Community Health Practitioners of Nigeria held on the 29th September, 2018 and the 11th November, 2018. Can the 1st and 2nd Respondents still carry out their duties and functions as contained in the constitution of National Association of Community Health Practitioners of Nigeria.**

RELIEFS SOUGHT

- 1. AN ORDER of Court restraining the Respondents from parading, holding out or conducting themselves as the National President and General Secretary of the National Associations of Nigeria.**
- 2. AN ORDER of Court restraining the Respondents from organizing any meetings, seminars, conventions and conferences of whatever nature on behalf of the National Association of Community Health Practitioners of Nigeria in any State of Nigeria.**
- 3. AN ORDER of Perpetual Injunction restraining the Respondents from parading, holding out or conducting themselves in whatever manner as the President or General Secretary of the National Association of Community Health Practitioners of Nigeria.**
- 4. SUCH additional orders this Honourable Court may deem fit to make in the circumstances of this suit.”**

The above questions and Reliefs sought are clear. The case essentially seeks to validate the call for the meeting of 12th September, 2018, the meeting itself of 29th September, 2018 and indeed the deliberations, resolutions and actions, product of the said meeting.

Indeed the case seeks an **Order** restraining defendants (2nd and 3rd claimants in the case before me) from among other things from parading, holding or conducting themselves as the **National President** and **General Secretary** of Claimant.

This **action** or **case** as the materials project is still **pending**. Now in the light of this pending case, the **defendants** in **CV/313/18** now chose or elected to file the present action in **CV/22/19** on **10th October, 2019**. What is **interesting** here is that in this case, the **present 2nd and 3rd Claimants** added **claimant** who sued them in CV/313/18 as a **co-claimant**.

I had earlier at the beginning of this judgment stated the questions posed and the Reliefs sought by the claimants in this case in CV/82/19.

It is clear that this **present case** seeks for the **invalidation** of the actions the earlier case filed in **CV/313/18** **seeks for a validation**. It is also curious and a contradiction difficult to fathom that the party or claimant in CV/313/18 that seeks a validation of certain defined action is also new, made 1st claimant in another action in CV/82/19 which seeks to undermine the actions it has already said was valid. A party such as 1st claimant cannot project or take two mutually exclusive and diametrically opposed positions in two pending cases in the same court. It is either it is a claimant or defendant. It cannot be both.

Now in the light of this still pending case in **CV/313/18**, it will be putting the present court in a most untenable position to answer the questions posed by the extant case and the Reliefs sought. The substance of the issues sought in the 2 cases are the same. The parties are also all the same as the defendants in this case are all part of 1st claimant under whose umbrella, they allegedly executed the actions complained off.

If this court were to perhaps answer the questions in the positive and grants the Reliefs sought meaning that the call for the meeting; the meeting held on 29th September, 2018; the deliberations and resolutions reached were invalid, what would then happen if the court in CV/313/18 also answers the questions in the positive and grants the reliefs sought meaning that the actions complained of in the case are valid? The confusion this will engender if courts of coordinate jurisdiction gives contradictory or conflicting decisions should not even be contemplated.

In law, the present suit CV/83/19 in the light of the pending action in CV/313/18 will constitute even an abuse of process.

In law, abuse of process is a term which is not capable of precise definition and may be more easily recognised than defined. But it is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. It means the abuse of legal procedure or the improper use or misuse of the legal process (to vex or oppress the adverse party). See **Amaefule V. The State (1988)2 N.W.L.R (pt.75)156 at 177** (per Oputa, JSC); **Arubo V. Aiyeleru (1993)3 N.W.L.R (pt.280)126 at 142**. The court has the duty under its inherent jurisdiction to ensure that the machinery of justice is duly lubricated and that it is not abused. In **Saraki V. Kotoye (1992)9 N.W.L.R (pt.264)156 at 188 E-G** the Supreme Court (per Karibi-Whyte, JSC) opined that:

“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See **Okorodudu V. Okorodudu (1977)3 SC 21; **Oyagbola V. Esso West African Inc (1966)1 AII NLR 170**. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se.”**

See also the cases of **Akinrole V. Vice Chancellor University of Ilorin (2004)35 WRN 79**; **Agwasim V. Ojichie (2004)10 N.W.L.R (pt.882)613 at 624-625**; **Kolawole V. A.G. of Oyo State (2006)3 N.W.L.R (pt.966)50 at 76**; **Usman V Baba (2004)48 WRN 47**. I leave it at that.

It is thus obvious that this **present case** is caught by the second element conferring competence on a court as streamlined in **Madukolu V Nkemdilim (supra)**. There is thus a clear feature preventing the court from assuming jurisdiction to entertain the present case as I have demonstrated above.

Flowing from the above, this then leads us to the **second case** filed by 2nd claimant in Suit No. FHC/ABJ/CS/956/2018 dated 4th September, 2018 against Hon. Minister of Health, **1st claimant** in this case and Mallam Mohammed Adebayo.

Again let me again repeat at the risk of prolixity the key crux or substance of the complaints of claimants in this case which border on actions allegedly taken by the **Acting Registrar of 1st claimant** in calling for a meeting which led to certain resolutions been taken or passed against the purview of the constitution of 1st claimant or outside the purview of the constitution of 1st claimant. The 2nd and 3rd claimants want these actions to be declared null and void.

Let us perhaps situate the facts leading to the filing of the case - **FHC/ABJ/CS/956/2018** at the **Federal High Court** by 2nd claimant. The claimants affidavit in support of the originating summons dated 25th February, 2021 provides the material facts as follows:

“4. That I was informed by R.O. Adakole, Esq. of the following facts in our office at Suit 31 A and B Anon Plaza, Gudu District, Abuja on the 5th of October, 2019 at about 2:30 pm and I verily believe him to be true...

4.3. That the 1st Claimant is registered under the extant laws of Nigeria. A copy of her registered constitution is hereby attached and marked as Exhibit A.

4.4. That the 2nd Claimant is the National President of the 1st Claimant.

4.5. That the 3rd Claimant is the General Secretary of the Claimant.

4.6. That on or about the first week of August, 2018, the leadership of the 1st Claimant got information that the Honourable Minister for Health had appointed the acting Registrar of the Community Health Practitioners Registration Board, Mallam Mohammed Adebayo Yahaya as the substantive Registrar of the Board.

4.7. That the leadership of the 1st Claimant believe this appointment was illegal since by the Act establishing the Board, it is the sole prerogative of the Constituted Board to make such appointment not the Minister for Health.

4.8. The leadership of the Claimant thereafter wrote the letter dated 10th August, 2018 to the Honourable Minister, notifying him of the illegality of his action and giving him 7 days within which to reverse the said illegal appointment made by him. A copy of this letter is hereby attached and marked as Exhibit B.

4.9. That after the expiration of the 7 days notice, the leadership of the 1st Claimant filed Suit No. FHC/ABJ/CS/956/2018 at the Federal High Court, Abuja to challenge the said illegal act of the Minister for Health. The case is still pending before the Honourable Court.

4.10. That however, the acting Registrar whose appointment was being challenged by the suit at the Federal High Court felt aggrieved by the action of the leadership of the 1st Claimant led by the 2nd Claimant against his purported appointment and went about bad mouthing them for their action.

4.11. That the acting Registrar thereafter, without the knowledge, consent, approval of the 2nd and 3rd Claimants summoned a meeting of members of the 1st Claimant by his letter of 29th August, 2018. A copy of this letter is hereby attached as Exhibit C.

4.12. That the purported meeting summoned by the Acting Registrar was slated and held on the 12th of September, 2018.

4.13. That the 2nd and 3rd Claimants and other leaders of the 1st Claimant did not attend the meeting since the acting Registrar acted ultra vires his powers by summoning the said meeting.”

This case filed above under paragraphs 4.9 was subsequently attached by claimants as **Exhibit F** in the further affidavit they filed in support of the originating summons dated 10th October, 2019. Before pointing out the issues raised by this Suit **FHC/ABJ/CS/956/2018**, it may be relevant to reiterate that by **paragraph 4.6** of the affidavit above, the appointment of the Acting Registrar to become **substantive Registrar** was done “**on or about first week of August, 2018.**”

Exhibit F or Suit **FHC/ABJ/CS/956/2018** is dated 4th September, 2018 and it sought to essentially invalidate the appointment of the Acting Registrar as the

substantive Registrar. For purposes of ease of understanding and clarity, the action sought for a determination of the following questions:

- “1. Whether by the provision of Section 7(1) of the Community Health Practitioners (Registration, etc.) Act, 2004, the 1st Defendant (Minister for Health) has not acted ultra vires his powers by Appointing MOHAMMED Y. ADEBAYO, the 3rd defendant as the substantive Registrar of the Community Health Practitioners Registration Board of Nigeria without the input, contribution, recourse to or formal appointment of the said person as such by the constituted Board of Community Health Practitioners Registration Board of Nigeria.**
- 2. Whether by the provisions of Sections 7(1) of the Community Health Practitioners (Registration, etc) Act, 2004, it is not an aberration, illegal and unlawful for MOHAMMED Y. ADEBAYO to continue to parade himself as the substantive Registrar of the Community Health Practitioners Registration Board of Nigeria on ground of his illegal and unlawful appointment as such by the 1st Defendant.**
- 3. Whether by the provision of Section 2 (2) of the Community Health Practitioners (Registration, etc) Act, 2004 it is not an aberration, unlawful and illegal for the defendant (Minister for Health) to deliberately fail, refuse and neglect the Board of the Community Health Practitioners Registration Board despite several overtures, letters and reminders to him by the plaintiff.”**

The claimant (2nd claimant in this case) then sought for about **10 Reliefs** which in substance sought to invalidate his appointment as Chief Registrar and to restrain the defendants in the case from given effect to purported appointment as substantive Registrar of the Incorporated Trustees of National Association of Community Health Practitioners of Nigeria among other Reliefs.

It is therefore to be noted that the Registrars’ actions complained of to wit:

- 1. The summoning for a meeting by his letter of 29th August, 2018 – see paragraph 4.11 (supra); and**
- 2. The meeting he summoned which held on 12th September, 2018.**

all occurred after the appointment as substantive Registrar and before the filing of the case in FHC/ABJ/CS/956/2018 – Exhibit F.

Now if the appointment of the **Registrar** *ab initio* is now a product of challenge at the Federal High Court in FHC/ABJ/CS/956/2018, then it is logical to hold that the exercise of powers by the Registrar cannot be subject of a different challenge at a court of coordinate jurisdiction.

If the 2nd claimant in this case has exercised his right to file FHC/ABJ/956/2018 as the sole claimant and against the Minister FCT, the Registrar and Incorporated Trustees of National Association of Community Health Practitioners of Nigeria (who are now co-plaintiffs in the case before me) for declarations and orders to invalidate the appointment of the Registrar, then the exercise of the Powers of this alleged flawed appointment cannot be treated independently and in a different court with coordinate jurisdiction.

Again the confusion the case may engender is clear. If the Federal High Court finds the appointment of the Registrar as valid and not in contravention of any extant laws, this then validates all actions taken pursuant to the exercise of his powers as Registrar.

If on the other hand this court proceeds to hear the present case and finds for example that the summoning of the meeting by the Registrar, the holding of the meeting and the Resolutions arrived at are invalid, it meant effectively that this court has overturned the decision of a court of coordinate jurisdiction in **FCT/ABJ/CS/956/2018**.

To the clear expressed indication that the **cases filed earlier in time** are still pending, it will be remiss on the part of the court to pretend that these cases don't exist. Indeed, it will be overtly presumptuous on the part of a court of coordinate jurisdiction to attempt to ventilate a grievance that has already been presented for determination before another sister-court.

Again it is curious that the Incorporated Trustees of National Association of Community Health Practitioners of Nigeria is a defendant in that case while in the case before me, it is a co-plaintiff.

The question that arises here is how can the same party be a plaintiff and defendant in a case that significantly impacts it one way or the other? I just wonder. These cases as presented is clearly a recipe for confusion. This again, is another significant feature that impacts negatively on this case and detracts from the competence of the court to fairly entertain and determine the contested assertions. See **Madukolu V Nkemdilim (supra)**.

This case as I have sought to demonstrate, suffers from serious challenges at different levels. It will be difficult to undertake a dispassionate resolution of the contested assertions without going into issues already submitted before coordinate courts of competent jurisdiction.

Cases of this nature presented by parties have the effect of allowing the courts to work at cross-purposes which in turn affects or leads to the loss of confidence in the machinery for the proper administration of justice.

As I round up, I note as an aside that the Registrar whose actions are the subject of the present complaint has since retired; one or two persons who were alive when this case was filed are no more. Indeed the positions over which this case is been fought are not permanent positions for life. Parties should therefore **sheate their swords**, and sincerely work towards resolving peacefully and amicably any dispute involving the Association they all belong to.

Having found that there are clear features preventing this Court from entertaining the present action, it is clear as a logical corollary that there will be no factual and legal basis to determine the second issue raised. The want of jurisdiction or competence is fatal. In the circumstances, the proper Order to make is to strike out the case. It is accordingly hereby struck out. No Order as to Cost.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. R.O. Adakole, Esq., for the Claimants.*
- 2. I.A. Adejemi, Esq., for the Defendants.*