IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 18TH DAY OF DECEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/816/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

THE INCORPORATED TRUSTEES OF
NIGERIAN BAR ASSOCIATION ……………… CLAIMANT

AND

DAME PAULINE TALLEN, OFR, KSG …………… DEFENDANT

JUDGMENT

The Claimant's Originating Summons against the Defendant is dated 14/12/2022. It seeks for the determination of the following questions from this Court.

They are:

(1) Whether having regard to the express, clear and unambiguous provisions of Section 3 (1) of Constitution of the Nigeria Bar Association, 2015 (as amended) that set out the aims and objectives of the Claimant and other enabling provisions, the Claimant is not under an obligation to maintain, advance and defend the integrity of the Bar and the judiciary in Nigeria.

(2) Whether having regard to the Defendant's express, clear and unambiguous statement made on the 15th of October 2022 regarding the Judgment of the Federal High Court in Suit No. FHC/YL/CS/12/2022 between MALLAM NUHU RIBADU vs. ALL PROGRESSIVE CONGRESS (APC) & 3 ORS. delivered on the 14th day of October 2022 whereby Defendant uttered the statement thus: "The Court is declaring that the party has no candidate. This is unacceptable, it is like a kangaroo judgment but we will not give up." As reported in several media including but not limited to the Guardian Newspaper, the Periscope and the Punch Newspaper, the Defendant has not contemptuously disparaged the integrity of the said Court and the judiciary as established under Section 6

of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

(3) Whether considering the relevant provisions of Sections 240, 241, 242 and 243 of the 1999 Constitution, the Defendant who was dissatisfied with the decision of the Federal High Court in Suit No. FHC/YL/CS/12/2022 between MALLAM NUHU RIBADU vs. ALL PROGRESSIVE CONGRESS (APC) & 3 ORS. delivered on the 14/10/2022 ought not to have channelled her grievance by exploring legal options provided by the Constitution of the Federal Republic of Nigeria, 1999 without making the aforesaid disparaging statement in public against the Court.

(4) Whether by the express, clear and unambiguous statement of the Defendant made on the 15/10/2022 regarding the aforesaid Judgment, the Defendant has not impugned the integrity and sanctity of the judiciary, thus portrayed herself as unfit to hold public office in Nigeria.

(5) Whether considering the sacred provisions of the 7th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Oaths Act, 1963, the actions/statement of the Defendant referring to the Judgment of the Court of law as kangaroo is not a clear violation of the oath of office sworn to by the Defendant as Minister of the Federal Republic of

Nigeria, 1999 (as amended) and therefore makes her unfit to occupy any office of public trust in any government of the Federation of Nigeria.

(6) Whether considering the position of the Defendant as Minister of the Federal Republic of Nigeria, the Defendant is not under a mandatory obligation to uphold, protect and defend the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) particularly Section 287 (3).

Whereupon the Claimant sought the following reliefs:

(1) A declaration that *"the Defendant's statement that the ruling that sacked Aishatu Binani, the only female governorship candidate in the country is a kangaroo Judgment that should be rejected by well-meaning Nigerians. The Court is declaring that the party has no candidate. This is unacceptable. It is like a kangaroo judgment but we will not give up"* made on the 15th day of October 2022 at the sideline of the First Global Reunion and yearly meeting of the Federal Government Girls College Bida Old Girls Association in Abuja within the jurisdiction of this Court in reference to a Judgment of the Federal High Court is unconstitutional, careless, reckless, disparaging, a call to disobey the Judgment of Court and contemptuous of the Federal High Court.

(2) A declaration that by virtue of the aforesaid statement of the Defendant referring to the Judgment of Court as kangaroo, the Defendant is unfit to hold and continue to hold the respected and distinguished office of Honourable Minister of Women Affairs and Social Development of the Federal Republic of Nigeria.

(3) A declaration that by virtue of the Defendant being a public officer and a Minister of the Federal Republic of Nigeria, her statements inciting the public against the Judgment of the Federal High Court is a flagrant breach of her oath of office and a disregard to the provisions of the Constitution particularly Section 287 (3).

(4) An Order directing and compelling the Defendant to forthwith publish a personally signed apology to Nigerians and the judiciary on a full page of the Guardian and the Punch Newspapers respectively.

(5) A perpetual injunction restraining the Defendant from holding any public office in Nigeria by reason of her conduct complained of unless she purges herself of the ignoble conduct by publishing the said written apology.

(6) And for such further or other Orders as the Court may deem fit to make in the circumstance.

Learned Counsel to the Claimant relies on the 27-paragraph Affidavit filed in support of the Originating Summons sworn to by Nwabueze Obasi-Obi of Plot 1101, Muhammadu Buhari Way, Cadastral Zone A00, Central Business District, Abuja.

He deposes that he is a Legal Practitioner and Technical/Personal Assistant to the President of the Nigerian Bar Association (NBA).

That Claimant is an Incorporated Trustee with perpetual succession. The Defendant is a Federal Minister of Women Affairs and Social Development who swore the oath of office of allegiance to obey and defend the

provisions of the Constitution, a public servant answerable to the people for all her actions.

That the Federal High Court sitting at Yola Division delivered Judgment on the 14/10/2022. It held that the Adamawa State All Progressive Congress (APC) Governorship Primary Election which took palce on the 26th of May 2022 was invalid having been conducted in violation of the provisions of the Electoral Act, 2022 and the All Progressive Congress Constitution and Guidelines.

The Federal High Court consequently voided the return of Senator Aishatu Dahiru Ahmed who was the 2nd Defendant in the said suit and refused to order fresh primaries.

That it was reported on the 16th and 17th of October 2022 in the Punch, Guardian and the Periscope Newspapers respectively, that the Defendant on 15/10/2022 while speaking to journalists on the sideline of the Global Reunion and Annual General Meeting of her alma mater said, referencing the Judgment thus:

> *"The Court is declaring that the party has no candidate. This is unacceptable, it is like a kangaroo judgment but we will not give up."*

The Guardian Newspaper of 15th October 2022 reported the story thus, *"according to Tallen, the ruling that sacked Aishatu Binani, the only female governorship candidate in the country is a 'kangaroo' Judgment that should be rejected by well-meaning Nigerians."*

It is further reported that the Defendant said that *"It is very worrisome. I feel like shedding tears. My heart is broken because all the political parties have not done well to women. The Court is declaring that the party has no candidate. This is unacceptable. It is like a kangaroo judgment, but we will not give up."*

Copies of the publications by the Punch, Guardian and Periscope online posts are Exhibits NBA 2, 3 and 4 respectively.

The Statements of the Defendant were published and circulated widely on both social and print media.

That he read the Defendant's statement quoted above where she likened the decision of the Federal high Court sitting in Yola to a kangaroo judgment both on social and print media.

That the President of the Nigeria Bar Association in the discharge of his responsibility contacted the Defendant several times vide Whatsapp, SMS and phone calls, but the Defendant failed, refused and or neglected to reply to his messages. The copy of the message is in evidence.

The purport of the message is to confirm if indeed she was quoted correctly as reported by the newspapers.

The President of the Bar did a follow up message to the Defendant when Defendant refused to respond or reply his message despite reading same.

The copies of the printout are Exhibits NBA 5(A) and (B). The Certificate of Compliance is Exhibit NBA 6.

That by a letter dated 14/11/2022, the President of the Nigerian Bar Association (NBA) wrote to the Defendant with the title, "YOUR COMMENTS ON THE JUDGMENT OF THE FEDERAL HIGH COURT IN SUIT NO. FHC/YL/CS/12/2022 DEMAND FOR RETRACTION AND AN APOLOGY." The copy is Exhibit NBA 7.

The said letter was served on the Defendant on the same date but the Defendant failed, refused or neglected to respond to the letter. A copy of Receipt/Acknowledgment is Exhibit NBA 8.

The Defendant did not deny or refute calling the Judgment delivered by the Court a kangaroo judgment. That the Claimant is not a party in the said suit wherein Judgment was delivered.

That he has read the aims and objectives of the NBA particularly Section 1 (3) of the NBA Constitution, 2015.

That by virtue of the status of the Defendant as a Federal Minister, she is required to act and comport herself

responsibly and not do anything that will desecrate the provisions of the Constitution of the Federal Republic of Nigeria, which she swore to defend at all times.

That the Defendant will not be prejudiced by the grant of the reliefs.

Learned Counsel to the Defendant filed and relied on the 4-paragraph Counter Affidavit deposed to by Tajudeen Ayeni of Plot 1805, Damaturu Crescent, Garki II, Abuja.

He deposes that the Affidavit is full of falsehood and misrepresentation of facts. That Defendant was a Minister of Women Affairs and not Social Development. That she is presently no more the Minister of Women Affairs.

That Social Development has been subsumed under the Federal Ministry of Humanitarian Affairs. That Defendant was not a public servant but a public officer.

The Defendant admits paragraphs 6, 7 and 8. The Defendant in reaction to paragraphs 9, 10 and 11 of the Affidavit states that some newspaper publications misquoted her and inaccurately reported that she made comments on the Judgment of the Federal High Court describing same as a kangaroo judgment among others.

That the newspaper reports relied upon by Claimant are all inaccurate and the contents are hereby denied.

The Judgment has been upturned by the Court of Appeal and the Defendant read same. The Certified True Copy (CTC) of the Judgment is Exhibit TA 1.

The Defendant denies paragraphs 14, 15 and 16 of the Affidavit and states that she does not have the phone number of the President of the NBA.

She admitted that the President of the NBA wrote to her, which is contained in paragraph 19 of the Affidavit.

She denies paragraphs 20 and 21 of the Affidavit. That the President of the Bar and Nwabueze Obasi-Obi the deponent did not attend the Global Reunion and Annual General Meeting. That she is not a member of the NBA.

That she did not violate and or in any way contravene her oath of office as a then Minister of the Federal Republic of Nigeria.

That she will be highly prejudiced by the grant of the reliefs sought.

That the suit is mainly instituted to harass, intimidate and annoy the Defendant.

Jerusa Nimfel of Plot 1101, Muhammadu Buhari Way, Central Business District, Abuja swore to a Further and Better Affidavit. She deposes that paragraphs 3.2, 3.8, 3.9,

3.11, 3.12, 3.14, 3.23, 3.24 and 3.25 are false and distorted facts.

The Defendant is one and the same person referred to in the Originating Summons.

That at a Ministerial Forum of the News Agency of Nigeria (NAN), the Defendant repeated the statement calling the Judgment of the Federal High Court a “kangaroo” and the video of the Ministerial Forum of the News Agency of Nigeria is on social media uploaded on the Youtube as stated in paragraph 12.

The downloaded video is Exhibit Video Clip 1.

The screen grabs of the transcript are Exhibits Transcript 1, 2, 3, 4, 5, 6 and 7 wherein she described the Judgment in issue as a kangaroo Judgment.

The Defendant further filed a Notice of Preliminary Objection dated 19/04/2023. The Notice of Objection prays the Court to strike out the suit for being incompetent, fundamentally defective and vesting no jurisdiction on this Court.

The grounds for the objection are:

(1) There is no competent supporting Affidavit.

(2) The Claimant's processes do not reveal any *locus standi* to institute the instant action.

(3) The suit is not properly instituted having not been commenced by a Writ of summons.

Learned Counsel relies on the 4-paragraph Affidavit sworn to by Tajudeen Ayeni. That the deponent of the Claimant, Nwabueze Obasi-Obi, is a Counsel in the matter and appeared in the matter as Counsel on Thursday, 19/01/2023. That he also appeared on 6/03/2023.

That a Writ of Summons is an Originating Process suited for contentious matters. That no direct injury is revealed against the Claimant or any breach of its right.

The Claimant filed and relied on the Counter Affidavit deposed to by Jerusa Nimfel, sworn to on the 26/05/2023.

She deposed that on the 19/01/2023 when the case came up, Nwabueze Obasi-Obi, Esq. announced the appearance of Counsel in the matter who were in Court for Claimant and thereafter sought the leave of Court for T. J. J. Danjuma to conduct proceedings, which the Court granted.

That T. J. J. Danjuma, Esq. informed the Court that the Claimant had a pending Motion Exparte, which he was ready to move and he moved the application. That on 6/03/2023, Nwabueze Obasi-Obi, Esq. reported service of the Originating Summons filed on 14/12/2022.

The issues raised for determination in this Notice of Objection are:

(1) Whether there is a competent Affidavit in support of the Claimant's Originating Summons.

(2) Whether the Claimant has the requisite *locus standi* to institute the action.

(3) Whether this matter ought to have been commenced via Writ of Summons.

On Issue 1, Learned Counsel to the Defendant argues that by Order 2 Rule 3 (5) of the Rules of this Court, an

Originating Summons must be filed with a supporting Affidavit.

Thus, failure to file an Affidavit or filing of an incompetent supporting Affidavit will make the entire Originating Summons incompetent and liable to be struck out.

That in the instant case, the Affidavit is incompetent because the deponent is also a Counsel in the matter and appeared on 19/01/2023 and Monday, 6/03/2023. That by his conduct, the supporting Affidavit has become incompetent. That a lawyer cannot depose to an Affidavit and act as Counsel in the same matter.

See MARIGOLD vs. NNPC (2022) LPELR-56858 (SC).

That given that Nwabueze Obasi-Obi, Esq. deposed to the Affidavit in support of the Originating Summons and also acted as Counsel in the matter, the Affidavit has been vitiated and contaminated by his conduct thus making it incompetent.

That he also breached Rules 20 (1) & (6) of the Rules of Professional Conduct. He therefore submits that the Originating Summons is incompetent.

The Claimant raised a preliminary issue as regards the Defendant's Affidavit filed in support of the Preliminary Objection, particularly paragraphs 3.3, 3.4, 3.5 and 3.6 as being arguments contrary to Section 115 of the Evidence Act. He urges the Court to strike out same.

Paragraphs 3.3, 3.4, 3.5 and 3.6 complained of state:

"3.3 Originating Summons is used by persons who claim to be interested under a deed, will, enactment or other written instruments for the determination of any question of construction arising under the instrument and for a declaration of the right of the person interested."

"3.4 That a Writ of Summons is an Originating Process suited for contentious matters."

"3.5 The Claimant/Respondent's Originating Summons does not reveal any direct injury to the

Claimant or any breach of the right of the Claimant."

"3.6 That the Constitution of the Nigerian Bar Association is neither an act of the National Assembly nor is it a subsidiary legislation."

Truly, Section 115 (1) of the Evidence Act commanded that an Affidavit used in Court shall contain only a Statement of facts and circumstances to which the witness deposes.

It further commanded that an Affidavit should not contain extraneous matters by way of objection or prayer or legal argument or conclusion.

The Defendant in her Reply on Points of Law argued that paragraphs 3.3, 3.4, 3.5 and 3.6 of the Affidavit filed in support of the Preliminary Objection is not in contravention of Section 115 (2) of the Evidence Act.

That the paragraphs are not offensive. That they are permissible and not in any way, shape or form, objections, prayers, legal arguments or conclusions.

An Affidavit filed for use in Court is required by virtue of Section 115 of the Evidence Act to contain only statement of facts and circumstances derived from the personal knowledge of the deponent or from information which he

believes to be true. An Affidavit should avoid matters of inference, conclusion, objection, prayer or legal argument.

Consequently, where an Affidavit is in the form of a conclusion, inference, legal argument, prayer or objection, it raised no fact which needs to be controverted but rather, is simply regarded as extraneous to the determination of facts and disputes.

See GEN. & AVIATION SERVICES LTD vs. THAHAL (2004) 10 NWLR (PT. 880) 50 (SC).

The test for determining whether a matter is extraneous by way of objection, prayer, conclusion or legal argument is to ascertain whether the deposition is fit for argument only which Counsel ought to urge upon the Court. If it is, then

such deposition is offensive to Section 115 of the Evidence Act.

See BAIMAIYI vs. STATE (2001) 8 NWLR (PT. 715) 270.

I find after reading the paragraphs complained of severally that they are only fit as arguments, which Defendant's Counsel ought to urge the Court upon.

They are legal arguments and conclusions. They are accordingly struck out.

On Issue 1, Learned Counsel to the Claimant/Respondent canvassed it is not the position of the law that a lawyer cannot depose to an Affidavit and act as Counsel in the

same matter whether in a contentious or non-contentious matter.

That the case of MARIGOLD vs. NNPC cited by Defendant/Applicant's Counsel is an orbiter.

Learned Counsel refers to Rule 20 (1) & (6) of the Rules of Professional Ethics and canvassed that the deponent of the Affidavit in support of the Originating Summons has not breached Rules 20 (1) & (6) of the Rules of Professional Conduct.

That the deponent did not argue the Originating Summons in issue. That the matter is not contentious.

Section 175 (1) of the Evidence Act states:

> *"All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by reason of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind."*

In ABUBAKAR vs. CHUKS (2007) 18 NWLR (PT 1066) 386, the Court held that any competent witness is qualified to swear to an Affidavit as to facts within his knowledge or on information as stipulated in the Evidence Act.

BWACHA vs. KENTE & ORS. (2022) LPELR-58989 (CA) deals with the propriety of a Legal Practitioner swearing to

an Affidavit in support of an application in a case in which he is a Counsel. The Court held that every fact deposed to in an Affidavit is akin to evidence given by a party in litigation, which a Court can rely on to take a decision. That since 1964, the Supreme Court has continued to emphasise the undesirability of a Counsel swearing to an Affidavit in support of an application in which he is appearing in a professional capacity.

In OBADARA & ORS. vs. PRESIDENT OF IBADAN WEST DISTRICT GRADE B CUSTOMARY COURT (1964) LPELR-25219 (SC) at pp. 13-12, the Supreme Court, per Brelt, JSC held:

> *"There will be little harm in Counsel swearing an Affidavit setting out formal facts required to be*

established to support a purely formal exparte application where there is no possibility of those facts being disputed but even in such a case, there would be little need for Counsel himself to swear to the same facts as a matter of information and belief.

If on the other hand, Counsel finds himself in the position where he is the only person with the knowledge necessary to swear to the Affidavit, and where the facts to which he is to swear to are likely to be in dispute, he should for that purpose withdraw from the case and brief other Counsel."

See EKPETO & ORS. vs. NWAOGHO & ORS (2004) LPELR-1094 at p.17 (SC).

NWEKE vs. F.R.N (2019) LPELR-46946 (SC)

AKINLADE & ORS. vs. INEC & ORS.

I have also read the case of MARIGOLD vs. NNPC cited by Defendant's Counsel. It is not on all fores with this case.

In the instant case, the Claimant is the Incorporated Trustee of the Nigerian Bar Association.

The deponent described himself in the Affidavit as a Legal Practitioner, the Technical/Personal Assistant to the President of the Nigerian Bar Association.

I have perused the Originating Summons before this Court dated 14/12/2022. Nwabueze Obasi-Obi is not among the lawyers listed as instituting this action on behalf of the Claimant. He deposed to the Affidavit in support of the Originating Summons.

It is true he appeared among others for the Claimant on 19/01/2023 to move an exparte application for substituted service. Nevertheless, he did not argue this Originating Summons.

In the circumstance, the case of MARIGOLD vs. NNPC (supra) and AKINLADE vs. INEC (supra) do not apply in the instant case.

I have also taken a cursory look at Rule 20 (1) & (6) of the Rules of Professional Conduct. It states:

> *"(1) Subject to Sub-rule (2) of this Rule, a lawyer shall not accept to act in any contemplated or pending litigation if he knows or ought to know that he or a lawyer in his Firm may be called or ought to be called as a witness.*

> *"(2) A lawyer may undertake an employment on behalf of a client and he or a lawyer in his Firm may testify for the client*

> *(a) If the testimony will relate solely to an uncounted matter.*

(b) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(c) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or Firm to the client.

(d) As to any matter if refusal would work hardship on the client because of the distinctive value of the lawyer or his Firm as lawyer."

In the circumstance of this case, where the Claimant is a body of lawyers, the refusal of the Affidavit will work hardship on the Claimant. The Claimant should not be allowed to suffer disadvantage as a result of its nature and form.

The interest of justice will be defeated and substantial justice sacrificed on the altar of technicality.

I have earlier reproduced the Affidavit evidence of the Claimant and the Defendant. Substantially, it is not contentious. A mere denial without more cannot amount to a contention or argument.

In the circumstance, I hold the view that Nwabueze Obasi-Obi did not breach Section 20 (1) of the Rules of Professional Ethics.

I further hold the view with respect that the Claimant's Affidavit in support of the Originating Summons is competent and valid.

I now proceed to Issue 2, which is: *Whether the Claimant/Respondent has the requisite locus standi to institute the action.*

Learned Counsel to the Defence contends that the Claimant's Constitution does not vest Claimant with the right to institute this action. That the Constitution of the

NBA is that of an Association and not a statutory instrument.

That there is nothing in Section 3 (1) of the Constitution of the Nigerian Bar Association that clothes it with the mandate to institute this action as the provision is merely the aims and objectives of the Claimant/ Respondent to regulate its affairs and that of its members.

The Defendant is not a member and therefore is not bound by the Claimant's Constitution. That Claimant/Respondent is a meddlesome interloper in the instant suit as Claimant has not shown that any of its rights has been breached nor that it suffered any injury.

The Claimant on this issue argues that it is an Incorporated Trustee with perpetual succession and a Common Seal. That it is clothed with legal personality to sue and be sued.

That the Defendant's argument that Claimant does not have the right to rely on its Constitution as a basis to institute an action against the Defendant is hinged on the assumption that the Defendant can only be sued by the Claimant in execution of its aims and objectives if the Defendant were a member, is misconceived.

That the Defendant needs not be a member of the Claimant before her actions against the judiciary is called to order or challenged.

The Court whose Judgment was called kangaroo is the "farm" of the Claimant/Respondent, meaning it is the place of business of the Claimant and its members. That if the Claimant is allowed to go free from her actions, there will be no means of livelihood for Claimant/Respondent.

The role of the Claimant is not limited to its members but expands to society.

That the statement of the Defendant therefore gives rise to a right of action.

Locus standi or standing to sue is the legal right of a party to an action to be heard in litigation before a Court of law or Tribunal.

A person is said to have *locus standi* if it has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed.

See OLAGUNJU vs. YAHAYA (1998) 3 NWLR (PT. 542) 501.

GUDA vs. KITTA (1999) 12 NWLR (PT. 629) 21.

OGUNMOKUN vs. MILITARY ADM. OSUN STATE (1999) 3 NWLR (PT. 594) 261 (CA)

Locus standi or standing to sue is the legal right of a party to an action to be heard in litigation before a Court of law. The term entails the legal capacity to institute or

commence an action in a Court without any inhibition, obstruction or hindrance from any person or body whatsoever.

See INAKOJU vs. ADELEKE (2007) 4 NWLR (PT. 1025) 425.

AKANNI vs. ODEJIDE (2004) 9 NWLR (PT. 879) 575 (CA)

It is trite that for a litigant to invoke the judicial power of the Court, he must show sufficient interest or threat of injury he has or will suffer from the infringement complained of.

The interest or injury test is the yardstick in determining the question of the *locus standi* of a complainant and it is to be determined in the light of the facts and special circumstance of each case.

See AKINNUBI vs. AKINNUBI (1997) 2 NWLR (PT. 486) 144 (SC).

A-G AKWA-IBOM STATE vs. ESSIEN (2004) 7 NWLR (PT. 872) 288 (CA).

ATTAHIRU vs. BAGUDU (1998) 3 NWLR (PT. 543) 656.

In a civil suit such as this, the standing of the Claimant to institute the suit cannot always be taken for granted.

In other therefore to determine the *locus standi* of a Claimant, the Courts have been enjoined by law to look at the Statement of Claim filed by the Claimant.

It is the Statement of Claim that exclusively determines the *locus standi.*

See ADESANOYE vs. ADEWOLE (2006) 14 NWLR (PT. 1000) p. 242 (SC), per Niki Tobi.

OWODUNNI vs. REGISTERED TRUSTEES OF THE CELESTIAL CHURCH OF CHRIST (2000) 10 NWLR (PT. 675) 315.

ADEFULU vs. OYESILE (1989) 5 NWLR (PT. 37) 632.

In the light of the above, I shall tirate and proceed to examine the Affidavit filed in support of the Originating Summons to determine if the Claimant possesses the *locus standi* to institute the action.

The Claimant deposes and I shall mention relevant paragraphs.

Paragraph 3:

"That the Claimant is an Incorporated Trustee with perpetual succession, registered with the Corporate Affairs Commission. A copy of the Certificate of Incorporation is Exhibit NBA 1."

Paragraph 6:

"The Federal High Court in Yola Division in Suit No. FHC/YL/CS/12/2022 delivered a Judgment on the 14/10/2022."

Paragraph 9:

"That it was reported on the 16th and 17th of October 2022 in the Punch, Guardian and Periscope

Newspaper respectively that on the 15th of October 2022 while speaking to journalists on the sideline of the Global Reunion and Annual General Meeting of her alma mater said referencing the Judgment thus: 'The Court is declaring that the party has no candidate. This is unacceptable. It is like a kangaroo Judgment but we will not give up.'"

Paragraph 12:

"That the statement was published and circulated widely on both social and print media."

Paragraph 14:

"That my principal, the President of the Nigerian Bar Association (NBA) in the discharge of his responsibility contacted the Defendant several times but Defendant failed, refused and or neglected to reply or return his calls."

Paragraph 23:

"That as a member of the Nigerian Bar Association, I have read the aims and objectives of the Nigeria Bar Association particularly Section 1 (3) of the Constitution of the Nigerian Bar Association, 2015 (as amended)"

From the Affidavit attached to the Originating Process, which serves as the Statement of Claim in this instance, the Claimant avers it is an Incorporated Trustee with perpetual succession and registered with the Corporate Affairs Commission.

In ATAGUBA & CO. vs. GURA (2005) 2 SC (PT 1) 101 at 105, the Supreme Court per Edozie, JSC held:

> *"As a general principle, only natural persons, that is human beings and juristic or artificial persons such as body corporate are competent to sue and be sued…"*

The Claimant is no doubt a juristic or artificial person clothe with legal personality and the capacity to sue and be sued.

On whether the Claimant has sufficient interest or incur any injury, the Affidavit referred to its obligation contained in Section 1 (3) of the Nigerian Bar Association Constitution which states:

"3. Aims and Objects

(1) The aims and objects of the Association shall be the

(a) maintenance and defence of the integrity and independence of the Bar and the judiciary in Nigeria.

(b) promotion and advancement of legal education, continuing legal education, advocacy and jurisprudence.

(c) Improvement of the system of administration of justice, its procedures and the arrangement of Court business and regular law reporting.

(k) Promotion and protection of the principles of the rule of law and respect for the enforcement of fundamental human right."

The deponent avers in the Affidavit filed in support of the application that it has an obligation as stated above, i.e. Section 3(1)(a), the defence of the integrity and independence of the Bar and the judiciary.

It is now crystal clear that by Section 3 (1) of the NBA Constitution, the Claimant is clothed with the mandate, power and has sufficient interest in the matter complained of hence has the *locus standi* to institute this action.

With respect to Learned Counsel to the Defendant, I am unable to agree with his assertion that the NBA Constitution only regulates its affairs and that of its members.

The Claimant, it was shown is not a meddlesome interloper but is by this suit performing one of its core obligation.

The injury complained about can be garnered from the Affidavit – the calling of the Judgment of the Federal High Court Yola Division as a kangaroo Judgment.

In totality on this issue, it is my respectful view and I so hold that the Claimant has *locus standi* or the standing to bring this action.

Now on the third issue: *Whether this matter ought not to have been instituted via Writ of Summons.*

I have read the arguments for and against on this issue. By Order 2 Rule 3 of the High Court of the Federal Capital Territory (Civil Procedure) Rules states:

Rule 3 (1) *"Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of rights of the persons interested.*

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right, deeds or a question of construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed."

From the provisions of this Rules of Court cited above, it is clear that the issue of having substantial dispute does not even arise and even if it does, the dispute is not riotously so. It is not substantial.

I shall travel to the Originating Process to find out what issues there are and whether they have to do with a legal or equitable right where such entitlement depends on a question of construction of an enactment.

I have earlier reproduced the questions sought for determination in the Originating Summons.

The questions seek the construction of:

- ✓ Section 3(1) of the Constitution of the Nigerian Bar Association, 2015 (as amended),

- ✓ Sections 240, 241, 242 and 243 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended),

- ✓ The 7th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 and the Oaths Act, 1963 and finally,

- ✓ Section 287 (3) of the 1999 Constitution.

See Questions 1, 3, 5 and 6 contained in the 1st and 2nd pages of the Originating Summons.

As it is in the beginning so is it now, the form of commencement of an action does not make it

incompetent. It does not matter whether the action was begun by Writ of Summons or by Originating Summons. What is important is the question of justice of the case.

See F.G.N vs. ZEBRA ENERGY LTD (2002) 18 NWLR (PT. 798) 162.

FAMFA OIL LTD vs. A-G FEDERATION (2003) 18 NWLR (PT. 852) 453.

DAPIALONA vs. LALONG (2007) 5 NWLR (PT. 1026) 199.

In totality, the Preliminary Objection lacks merit and it is dismissed.

I now migrate to the merit of the Originating Summons. I have earlier reproduced the evidence of both parties. The issue for determination captured by both parties is:

"Whether the Claimant is entitled to the reliefs sought."

In proof of its case, the Claimant tendered Exhibits NBA 2, which is the Punch Online Report of 16th October 2022 titled: Adamawa Court Judgment against Female Candidate Unacceptable – Minister.

Exhibit NBA 3 – Guardian Online Report of 17th October 2022 titled: Minister faults Binani's Sack as Adamawa APC Guber Candidate.

Exhibit NBA 4 – Periscope Online News dated 17/10/2022 titled: Adamawa Court Judgment against

Female Guber Candidate Unacceptable – Women Affairs Minister.

I have perused the above evidence wherein the Defendant described the said Judgment of the Federal High Court as a kangaroo Judgment and should be rejected by well-meaning Nigerians.

In further proof, the Claimant downloaded from the Youtube account of the News Agency of Nigeria marked Exhibit Video Clip 1, wherein the Defendant referred to the nullification of the only female candidate for the governorship in Adamawa State as unacceptable. She further stated that she considers the Judgment as a kangaroo Judgment.

Learned Counsel to the Claimant canvasses that the reference made by the Defendant to the Judgment of the Federal High Court as kangaroo was disrespectful and contemptuous.

That a person dissatisfied with the Judgment can only appeal or fairly criticise the decision within the ambit of the law. That referring to the Judgment of the Court as kangaroo is a breach of her sworn oath of office as a Minister of the Federal Republic of Nigeria.

That kangaroo Judgment is amongst others, a sham proceeding, a self-appointed tribunal or mock Court in

which principles of law and justice are perverted or disregarded.

Learned Counsel submits that the Federal High Court is a creation of the Constitution. That Defendant’s remark is scandalous, inviting chaos, disregard of the authority of Court.

He finally urges the Court to declare Defendant unfit to hold or continue to hold office or any other office of trust in the Federal Republic of Nigeria and further grant all the reliefs sought.

The Learned Counsel to the Defendant on the other hand contends that he who asserts must prove and that

the Claimant has not discharged the burden imposed on them under the Evidence Act to prove the allegation.

That the newspaper reports and or publications cannot prove the truth of the contents of its report.

That at best, the publication expresses the author’s opinion or report of an occurrence without a guarantee of its accuracy.

That statements that have been inaccurately reported by the newspapers are at best documentary hearsay.

That the breach of an oath is not actionable. No portion of the oath breached is shown.

By Sections 131, 132 and 133 of the Evidence Act, whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section 131 (2) – When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 132 – The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

He who asserts must prove same. The standard of proof required is on a preponderance of evidence and balance of probabilities.

See BRAIMOH vs. ABASI (1998) 13 NWLR (PT. 581) 167 SC.

ALHAJI OTERU & SONS LTD vs. IDRIS (1999) 6 NWLR (PT. 606) 330 SC.

KALA vs. POTISIKUM (1998) 3 NWLR (PT. 540) 1 SC.

It is also the law that a party must prove its case on credible evidence and is not at liberty in law to rely on the weakness of its opposite party in order to succeed.

See AGBI vs. OGBE (2006) 11 NWLR (PT. 990) 65 SC.

As I earlier said in this Judgment, the Claimant relied on Exhibits NBA 2, 3 & 4. The Claimant also relied on a Video Clip 1.

The Defendant denied the reports contained in NBA 2, NBA 3 and NBA 4 and states that some newspaper publications misquoted her and inaccurately reported that she made comments on the Judgment of the Federal High Court describing same as a kangaroo Judgment amongst others.

That the deponent and the President of the NBA did not attend the Global Reunion and Annual General Meeting where the words were allegedly spoken. The Defendant did not deny attending the said meeting.

There is no evidence as to what exactly she spoke and how it was misinterpreted. There must be an original from which a fake can be invented.

The original version of what she spoke was not laid before the Court.

The statement were said to have been made on the 15th of October 2022.

Exhibits NBA 2, NBA 3 and NBA 4 were published and circulated worldwide on the 16th and 17th of October 2022.

The Defendant had all the opportunity in the world to deny same. She failed, refused and or neglected to deny same.

The evidence is that texts, calls and a formal letter was written to her.

The Defendant's averment is that she does not have the phone number of the President of the Nigerian Bar Association yet his name was on the texts sent.

To Exhibit NBA 7 dated 14/11/2023 titled: "Your Comments on the Judgment of the Federal High Court in Suit No. FHC/YL/CS/12/2022 – Demand for Retraction", she feigned busy, complaining that the suit

was hurriedly filed barely a month of despatch even before she could attend to the letter and respond accordingly.

The Defendant from evidence did not deny the contents of the publications at the earliest opportunity and did not make any retraction or even put a call through to the Claimant alluding to the inaccuracy. No inaccuracy of the said statement were proved.

What is contained in all the newspaper publication is contained in the Video Clip 1 and transcripts. The Video Clip is attached to the Further and Better Affidavit.

Even if the newspaper publication are inadmissible because they are documentary hearsay as contended by Defendant’s Counsel, the same words complained of are contained in Exhibit Video Clip 1 and the Transcripts 1 – 7, and the Certificate of Compliance.

The words are the same but transmitted via different channels. The Ministerial briefing of NAN Video Clip 1 is clear. I watched the video and read the transcripts.

It is my view and I so hold that the words complained of were uttered by the Defendant. The video and the words spoken are graphic, clear and unambiguous.

I have earlier produced Section 3 (1) of the NBA Constitution. I have also read Sections 240, 241, 242 and 243 of the 1999 Constitution, which provide for appellate jurisdiction for persons dissatisfied with a Judgment or Ruling of the High Court.

The 7th Schedule if the Oath Section. The Oath of the office of a Minister taken by the Defendant is to bear true allegiance to the Federal Republic of Nigeria.

She took an oath to discharge her duties to the best of her ability, faithfully and in accordance with the Constitution.

She also made oath to the best of her ability to preserve, protect and defend the Constitution of the Federal Republic of Nigeria.

Taking an oath cannot be regarded as a ceremony as Learned Counsel to the Defendant would want us to believe.

In my respectful view, the cases cited are out of context. This case has nothing to do with Defendant's tenure of office.

It is sacred and cast a duty on the person taking the oath to abide by it.

Calling a Court Judgment a kangaroo Judgment is a desecration of the judiciary, it casts aspersion on the hallowed temple of justice, particularly when that utterance is by a highly placed person enthroned into office via the same Constitution that set up the Federal High Court with its jurisdiction to dispense justice to all manner of persons without fear or favour is a breach of that duty. It is a denigration of the status and substance of the Federal High Court.

I repeat, the utterance and or statement of the Defendant therefore is a breach of her oath of office and a breach of the Constitution.

The statement is such that tarnished the image of the Court and the judiciary in general. It is such that has lowered the integrity and reputation of the Court *afortiorari* the judiciary in the eyes of reasonable and unreasonable members of the society. It is inciting the public against the Court. It is demeaning to say the least.

In totality, it is my view and I so hold that the Claimant has proved its case on the preponderance of evidence and balance of probability having regard to the questions posited for determination.

I resolve all the questions posited for determination in favour of the Claimant against the Defendant.

Consequently, Judgment is entered in favour of the Claimant against the Defendant as follows:

1. It is hereby declared that the Defendant's statement that the Ruling that sacked Aishatu Binani, the only female governorship candidate in the country should be rejected and referring same as a kangaroo Judgment is unconstitutional, careless, reckless, disparaging, a call to anarchy, therefore contemptuous of the High Court of Nigeria.

2. It is further declared that by virtue of the aforesaid statement, the Defendant is hereby declared unfit to hold and continue to hold any public office.

3. It is declared that the aforesaid statement is tantamount to inciting the public against the Judgment of the Federal High Court which is a breach of her oath of office and Section 287 (3) of the 1999 Constitution.

4. The Defendant is hereby ordered to forthwith publish an apology letter signed by her to Nigerians and the judiciary on a full page of the Punch and Guardian Newspapers respectively and if Defendant fails to obey Order 4 above within 30 days from now,

5. An Order of perpetual injunction is hereby granted restraining her from holding any public office in Nigeria by reason of her conduct complained of.

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HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

18/12/2023

Claimant represented by Jerusa Nimfel (Legal Officer).

Defendant absent.

Anne Agi, Esq. for the Claimant.

Chidera Mgbe, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
18/12/2023