

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY, ABUJA**
IN THE APPEAL SESSION HOLDEN AT JABI, ABUJA
ON WEDNESDAY, 27TH MARCH, 2024

SUIT NO: BAC/MF/0971/2020
APPEAL NO: CVA/106/2022

BETWEEN

ARISTO TABLE WATER - APPELLANT

AND

BWARI AREA COUNCIL - RESPONDENT

BEFORE THEIR LORDSHIPS:

HON. JUSTICE B. HASSAN (PRESIDING JUDGE)

HON. JUSTICE F.E. MESSIRI (HON. JUDGE)

[JUDGMENT.]

(DELIVERED BY HON. JUSTICE. F.E. MESSIRI)

This appeal is against the decision of the Magistrate Court sitting at Dutse Alhaji, Abuja presided over by His Worship, Maryam I. Yusuf on 19/5/2022.

At the trial Court, the Appellant as Defendant was found to be in contravention of Sections 52 and 54 of the National Environment Health Practice Regulations. The trial Court ordered the Defendant to comply with those Sections and pay the sum of Four Hundred Thousand Naira [~~N~~400,000,00] on or before Seven [7] days or the entire premises be sealed up.

The Appellant being dissatisfied with this decision has approached this Court on the grounds as contained on pages 5, 6 and 7 of the records of appeal.

The reliefs sought by the Appellant are an order allowing this appeal and an order setting aside the order of the trial Court.

The case file discloses that the Notice of Appeal was served on the Respondent on 30/5/2022 while the Respondent was served with the Appellant's brief on 21/10/2022. The Respondent elected not to file a Respondent's brief.

At the hearing of the appeal on 27/11/2023, the Respondent was absent, there was proof in the case file that a hearing notice was issued and served on the Respondent on 23/11/2023. Learned Counsel for the Appellant adopted his brief of argument dated 16/9/2022 in urging this Court to set aside the Judgment of the trial Court and allow this appeal.

Learned Appellant's Counsel submitted two issues to this Court for determination, they are:

1. Whether by the provision of the National Environmental Health Practice Regulations and the rules of interpretation, the definition of a Local Health Authority means a Public Hospital, not a Private Hospital (Grounds 1 and 2).
2. By the preponderance of evidence at the trial Court, was there proper evaluation by the trial Court to arrive at its decision? (Grounds 1 and 2).

In support of issue one, Learned Counsel for the Appellant reproduced the Sections as follows:

Section 52 of the National Environmental Health Practice Regulations, 2016.

"Every food handler or any other person involved in handling food for public consumption shall be medically examined and issued with a Medical Certificate of Fitness signed by a qualified medical practitioner approved by the Local Health Authority. Such certificate shall be renewable every six months."

While Section 54 of the National Environmental Health Practice Regulations 2016 provides:

"Every food handler shall undergo a food handler's training and retraining as approved by the Environmental Health Authority of the area".

According to the Appellant's claim, the Respondent sent a request for a medical screening certificate and screening on

April 25th, 2022. The Appellant asserts that upon receiving the Demand Notice, they wrote to the Respondent for clarification. In his argument on issue 1, the Appellant prays this Court to determine whether, by the provisions of the National Environmental Health Practice Regulations and the rules of interpretation, the definition of a Local Health Authority means a Public Hospital, not a Private Hospital. Appellant from his argument suggests that it was directed to a doctor in a Private Hospital to obtain the said certifications, which in the Appellant's view is in line with the enabling law.

We have scanned through the Records of Appeal, the Demand Notice being challenged or better put, which the Appellant alleged that it sought clarification about is not contained in the record, neither is the mail said to have been sent by the Appellant to the Respondent in response to the Demand Notice contained in the records. This Court can therefore not determine issue 1 as formulated by the Appellant without seeing the Demand Notice. It is on seeing the Demand Notice that this Court would juxtapose it with the law and come to a finding on whether the said Demand Notice aligns with the law. We see nothing on the record to suggest that the trial Magistrate examined the said Demand Notice and the Appellant's reply to the Demand Notice before coming to its decision. We believe that the Magistrate in charge of the trial should have evaluated the impact of the Appellant's response to the Demand Notice before reaching a verdict. As this evaluation was not carried out, the decision

made is hereby invalidated, and the case will be referred back for a new trial with a different Magistrate. These are the Court's orders.

**HON. JUSTICE B. HASSAN
(PRESIDING JUDGE)**

**HON. JUSTICE F.E. MESSIRI
(HON. JUDGE)**

Appearances