

**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: WZ6/CV/736/2022

APPEAL NO: CVA/255/2022

BETWEEN

JACHINMA AMARACHI ORANU - APPELLANT

AND

CHISOM EZENWAJI - 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 ruling of the District Court sitting at Bwari before His Worship, Fatimah M. Nadoma delivered on the 27th day of January, 2021.

At the trial Court, the Appellant was the Defendant while the Respondent was the Plaintiff.

The Respondent instituted the suit at the trial Court alleging that she had asked the Appellant to help her bid for a vehicle, purchase same and ship vehicle at an agreed price from United states of America to Lagos Seaport. That after making payments for the purchase and shipment of the agreed vehicle from Boston, USA to Nigeria, the Appellant keeps demanding money from her and has threatened to sell the Respondent's Vehicle when the vehicle gets to Lagos seaport after clearing it.

The Appellant had filed a Notice of Preliminary Objection at the trial Court predicated on two [2] grounds namely that the subject matter of the suit falls within the exclusive jurisdiction of the Federal High Court and that the Defendant did not authorize Emmanuel Ihite Okorie M Okorie to represent her in the suit. In a considered ruling delivered by the trial Court, after a careful consideration of the argument for and against the Preliminary Objection, the trial Court found that the Court was competent to hear and determine issues bordering on simple contracts, that no Government agency is a party to the suit. Furthermore, that the issue of wrong endorsement touched on form and not on substance and that same can be cured by an amendment. The trial Court dismissed the Notice of Preliminary Objection. [the ruling is contained at pages 331-333 of the record of appeal

]The Notice of Appeal is dated and filed the 9/3/2021. The grounds of appeal are contained at pages 334 and 335 of the records of appeal.

The reliefs sought from this Honourable Court are an order allowing the Appellant's appeal, an order setting aside the ruling of the District Court delivered on the 27/1/2021 and an order striking out the Respondent's case for want of jurisdiction.

At the hearing of this appeal on the 28/11/2023, the Counsel for the Appellant adopted his Appellant brief filed on the 10/10/2023 and his reply brief filed on the 28/11/2023 while Counsel for the Respondent adopted his Respondent brief of argument dated 24/11/2023 along with his Preliminary Objection.

The following issues were submitted for determination by Learned Counsel for the Appellant:

1. Whether the learned trial District Judge was not wrong in dismissing the Appellant's objections and assuming jurisdiction to hear and entertain the suit.
2. Whether the learned trial District Judge was not wrong in holding that an improperly endorsed originating Court process by Counsel is an error that touches on the form and not the substance of the case which can be cured by an amendment.

Learned Counsel for the Respondent objects to the issue number two submitted by Learned Counsel for the Appellant. His contention is that the said issue number two did not emanant from any ground of appeal as required by order 50 rule 10[e] and[f]of the rules of this Honourable Court 2018. He relied on the case of **ADDAX PETROLEUM DEVELOPMENT NIG LTD V. DUKE [2010] ALL FWLR[PT 542]** amongst others in urging this Court to hold that the ground 2 is deemed abandoned and strike out the said ground 2. Learned Counsel for the Appellant in his reply brief submits that his issue 2 emanated from the ground two as contained at page 335 of the record of appeal, that the failure to specify the ground of appeal upon which the issue for determination is distilled from does not render the issue abandoned as same is a mere clerical error which should not affect the merit of the appeal.

After a careful perusal of the ground 2 of Appellant Notice of Appeal at page 355 of the record of appeal and the issue 2 submitted for determination by Learned Counsel for the Appellant, we agree with the Counsel for the Appellant that issue number two submitted for determination which is whether the Learned trial District Judge was not wrong in holding that an improperly endorsed originating Court process by Counsel is an error that touches on the form and not the substance of the case which can be cured by an amendment was distilled for the ground two which ground two is that the District Court erred in law when it refused to strike out the Respondent's suit improperly endorsed by the

Respondent's Counsel as Defendant's Counsel. We agree that failure to so state that same was distilled from the said ground two clearly is a slip and mistake of Counsel which should not be visited on litigant.

It is trite law that the Court does not normally punish a litigant for the mistake of his Counsel. See the case of **OGUNDOYIN & ORS V. ADEYEMI (2001) LPELR-2335(SC) (PP. 16-17 PARAS. E).** Courts have been enjoined to look at substance and not form. While it is clear that in formulating his issues for determination, the Appellant failed to state the ground of appeal the said issue is distilled from, however a detailed look at the said issue two vis a vis the grounds of appeal, it is clear that it was distilled from ground 2.

We disagree and reject the argument canvassed by the Respondent in his Preliminary Objection. We accordingly overrule the Respondent's Preliminary Objection.

Now to the substantive appeal, in consideration of the issue one for determination which is whether the learned trial District Judge was not wrong in dismissing the Appellant's objections and assuming jurisdiction to hear and entertain the suit. We have read the argument canvassed by Learned Counsel for the Appellant and the Respondent in their respective briefs. Learned Counsel for the Appellant contends that paragraphs 6,7,8,11 and 21 of the Respondent's claim discloses that the matter is connected

and related to customs import duties therefore the District Court lacks jurisdiction to hear and determine the suit.

On his part, Learned Counsel for the Respondent contends that this suit has no nexus and no connection with the administrative acts of the Nigeria Customs Services as contended by Counsel for the Appellants. It is trite law that, it is the case presented by the Plaintiff/Claimant in his Statement of Claim that determines the issue of the jurisdiction of the Court." J.S.C in **OLAGUNJU & ANOR V. PHCN PLC (2011) LPELR-2556(SC)**.

All that the trial Court is to look at in determining if it has jurisdiction to hear and determine the suit is the claim as endorsed in the plaint. The plaint as contained at page 3 of the record of appeal is indeed against the Respondent. The Cause of action as disclosed in the particulars of claim at page 1 of the record of appeal arose from simple contract between the Appellant and the Respondent and indeed no agency of government is a party to the suit. The purported contention between the Appellant and the Respondent on refusal on who to pay custom import duty on the imported car in our view falls within the ambit of a simple contract between the Appellant and Respondent. We cannot fault the reasoning of the trial Court. This issue is resolved in the negative and against the Appellant.

On issue two which is whether the learned trial District Judge was not wrong in holding that an improperly endorsed

originating Court process by Counsel is an error that touches on the form and not the substance of the case which can be cured by an amendment.

Learned Counsel for the Appellant's case is that the Counsel for the Respondent endorsed the Amended Writ of Summons as Counsel for the Defendant as such the Amended Writ is incompetent and ought to be struck out. On his part, Learned Counsel for the Respondent argued that the fact that Respondent Counsel as Plaintiff Counsel before the trial Court erroneously wrote Defendant instead of Plaintiff does not touch on the jurisdiction of the trial Court as same is an obvious error which can be corrected.

We have held earlier in the cause of determining the Preliminary Objection by Counsel for the Respondent the trite law that the Court does not normally punish a litigant for the mistake of his Counsel. **OGUNDOYIN & ORS V. ADEYEMI [supra]**. What is more, parties are not in any way misled by the said endorsement which indeed can be corrected.

It is not news that the Courts have moved away from the era of technicality to the era of substantial justice. See the case of **APUUN V. REGISTERED TRUSTEES OF N.K.S.T & ORS (2016) LPELR-42938(CA) (Pp. 11 paras. B)** where per Ogbunya JCA held thus:

"...It will be recalled that substantial justice and technical justice have been arch enemies in the struggle to earn the prime attention of the Courts. Incidentally, the case-law had

slaughtered technicality and buried it under the temple of substantial justice. In effect, substantial justice holds dominion over the ostracized technical justice. This Court is an ardent apostle of substantial justice and a foe to the resurrection of the already buried technical justice. We find support in the above principle in resolving this issue in the negative and against the Appellant.

Conclusion

From all said in this judgment, we find no reason to disturb the ruling of the trial Court. This appeal fails, it is dismissed for lacking in merit.

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

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

Appearances