

**IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS**

BEFORE HIS LORDSHIP, HON. JUSTICE IKECHI GERALD NWENKA

Date: 3rd June 2022

SUIT NO. NICN/LA/348/2021

BETWEEN

MR. OBIORA VICTOR EMEKA

... **CLAIMANT** NATIONAL INDUSTRIAL COURT OF NIGERIA
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09 JUN 2022

AND

**1. JAYA CONFECTIONARIES LTD]
2. QMED DIAGNOSTIC LTD]**

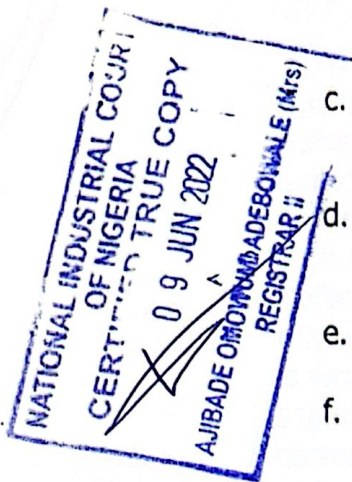
... **DEFENDANTS**
AJIBADE OMOWUMI ADEBOWALE (M)
REGISTRAR II

RULING

1. By notice of preliminary objection dated 28th September 2021, but filed on 29th September 2021, the 2nd Defendant objected to the jurisdiction of this Honourable Court to entertain this suit on the following grounds:
 - a. This Honourable Court has no jurisdiction to grant the reliefs claimed against the 2nd Defendant in this suit as they fall outside the jurisdiction conferred by the Constitution of the Federal Republic of Nigeria.
 - b. Misjoinder – the 1st and 2nd Defendants are sued jointly on a cause of action which lies against them individually if proven.
 - c. Misnomer - The name of the 2nd Defendant is wrongly stated.
2. The application is supported with 6 paragraphs affidavit sworn by Ms. Vivian Nwofia, business manager of the 2nd Defendant on 29th September 2021, and a written address dated 28th September 2021. In opposition to the application, the Claimant filed a motion on notice dated 7th December 2021 for leave to amend the complaint by substituting the 2nd Defendant on record with Q.Med Diagnostic Services Ltd and a written address dated 6th December 2021 filed on 9th December 2021.
3. The 1st Defendant also filed a notice of preliminary objection dated and filed on 4th February 2022 and brought pursuant to Section 254C of the 1999 Constitution, as amended, Section 7 of the National Industrial Court Act, 2006, Order 3 Rule 13, Order 17 Rule 9, National Industrial Court of Nigeria [Civil Procedure] Rules, 2017 and under the inherent jurisdiction of the Honourable Court, praying the Court for an order dismissing and /or striking out the entire suit for want of jurisdiction, and for such further orders as the Honourable Court may deem fit to make in the circumstance on the following grounds:

- a. The Claimant/Respondent brought this suit outside the civil causes and matters which this Honourable Court can adjudicate upon under the Constitution and extant laws.
- b. The Claimant/Respondent's claims are outside the jurisdiction of this Honourable Court.
- c. There was no contract of employment entered into between the 1st Defendant/Applicant and the Claimant/Respondent.
- d. There was no wrongful revocation of employment between the 1st Defendant/Applicant and the Claimant/Respondent.
- e. The Claimant/Respondent lacks the locus standi to institute this suit.
- f. The Claimant/Respondent has no reasonable cause of action against the 1st Defendant/Applicant.

4. The application is supported with 36 paragraphs affidavit sworn by its director, Ms Olufunmilayo Chidera Anazodo. Attached to the affidavit are 5 exhibits marked Exhibits Q1 – Q5, and a written address of even date. The Claimant filed 22 paragraphs counter affidavit which he swore on 22nd February 2022 and a written address of even date. On receipt of the Claimant's process, the 1st Defendant filed a further affidavit of 19 paragraphs and reply on points of law both dated 3rd March 2022.
5. The applications were heard on 7th March 2022. Mr. O. Cheetham-West for the 2nd Defendant adopted the processes in support of the notice of preliminary objection and urged the Court to strike out the name of the 2nd Defendant. Mr. Olawale Ogunseitan for the 1st Defendant did not object to the grant of the application. Responding, Mr. Chizelu Emejulu, learned counsel for the Claimant, adopted his written address and urged the Court to dismiss the application. Mr. Olawale Ogunseitan also argued the 1st Defendant's notice of preliminary objection, and urged the Court to grant the application. Mr. O. Cheetham-West, learned counsel for the 2nd Defendant, aligned himself with the submissions of learned counsel for the 1st Defendant. Mr. Chizelu Emejulu, learned counsel for the Claimant, adopted the counter affidavit and written address in urging the Court to dismiss the 1st Defendant's application. He notes that the Claimant complied with the terms of the offer of employment, and the 1st Defendant cannot resile. In response, Mr. Olawale Ogunseitan adopted the further affidavit and reply on points of law in further urging the Court to dismiss the suit for want of jurisdiction.
6. Learned counsel for the 2nd Defendant raised three issues for determination in the written address filed in support of the preliminary objection, to wit:
 - a. Whether this Honourable Court has jurisdiction to hear and determine this suit against the 2nd Defendant?



- b. Whether there is not a misjoinder in this suit by the Claimant wrongly joining the 1st and 2nd Defendants against whom he has separate and distinct causes of action?
- c. Whether a misnomer has occurred in this suit by the Claimant suing 2nd Defendant under a wrong name?

Counsel answered issue one in the affirmative, and submits that the cause of action against the 2nd Defendant is for professional malpractice which falls outside the jurisdiction of this Court as specified in Section 254C [1] of the 1999 Constitution, as amended, and which action should properly be brought at the High Court of the State. On issue two, counsel notes that the claims against the Defendants are distinct and Claimant ought to have sued them separately; and relying on the case of **Toriola & Ors v. Arewa 12 WACA 505**, submits that it is wrong to join parties in a suit when the claim against them is individual and separate. Arguing issue three, counsel submits that a misnomer occurs when the correct person is brought to Court under a wrong name and relied on the case of **Emespo J. Continental Ltd v. Corona Shifah & Ors [2006] 5 SC [Pt. I] 19 at 27**. The Court was urged to strike out the name of the 2nd Defendant from this suit with substantial costs.

7. Responding, learned counsel for the Claimant referred to Section 254C [1][a] and [d] of the 1999 Constitution, as amended, and paragraph 13 of the statement of facts, and submits that the 2nd Defendant's communication of Claimant's HIV status to his employer elevated the matter to a level where it is related to or connected with labour and employment. The Court was urged to hold that it has jurisdiction to entertain the suit. On the second ground of 2nd Defendant's objection, counsel submits that the two causes of action in this suit are violation of Claimant's fundamental right by the Defendants during the pendency of his employment, and the subsequent revocation of the offer of employment by the 1st Defendant. He argued that the violation of Claimant's fundamental right by the Defendants does not give rise to two separate and distinct causes of actions to warrant the filing of separate suits against the Defendants. Reliance was placed on Order 13 Rules 4, 6 and 7, National Industrial Court of Nigeria [Civil Procedure] Rules, 2017. Counsel argued further that assuming the 2nd Defendant was wrongly joined, the law is settled that misjoinder of parties cannot defeat a cause of action. The cases of **C.B.N. v. Shipping Company Sara B.V [No. 10] [2015] 11 NWLR [Pt. 1469]** [incomplete citation] and **Okoye v. Nig Construction & Furniture Co. Ltd [1991] 6 NWLR [Pt. 199] 501** were cited in support. Lastly, on the third issue, counsel submits that an innocuous slip will not be allowed to vitiate proceedings where there is an inadvertent error in the name of a juristic person, on the authority of **Omisore & Anor v. Aregbesola & Ors [2015] 15 NWLR [Pt. 1482] 256**.

8. The issue raised in the 2nd Defendant's notice of preliminary objection is simple, and that is, whether the Court has jurisdiction to adjudicate on this suit as constituted against the 2nd Defendant? The objection was argued on three grounds. Undoubtedly, jurisdiction is fundamental to any adjudication, and no



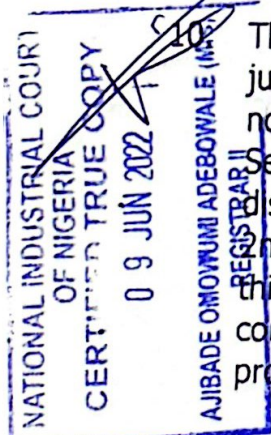
amount of logic can make up for absence of jurisdiction. Unless the Court has jurisdiction whatever it does with respect to a case before it is an exercise in futility. See **Obiuweubi v. CBN [2011] 2-3 SC [Pt. I] 46 at 91** and **Attorney General of Kwara State & Anor v. Adeyemo & Ors [2017] 1 NWLR [Pt. 1546] 210 at 239**.

Jurisdiction has been described as the authority given to a Court by the Constitution or statute to decide matters that come before it. It is the limits imposed on the power of a validly constituted Court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are joined or to the reliefs sought. The jurisdiction of a Court is different from the competence of the Court. A Court must have both jurisdiction and competence to be properly seised of a matter. While jurisdiction is conferred on the Court by the Constitution or statute, a Court is competent when: it is properly constituted with respect to the number and qualification of members; the subject matter of the action is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; the action is initiated by due process of law; and any condition precedent to the exercise of its jurisdiction has been fulfilled. A Court cannot entertain a case which it has no jurisdiction to adjudicate upon. See **Obiuweubi v. CBN [supra]** at pages 91–94 and **Attorney General of Kwara State & Anor v. Adeyemo & Ors [supra]**.

- 9.. Undoubtedly, it is the subject matter that determines whether or not this Court has jurisdiction in any given case. Therefore, in determining the issue of jurisdiction, the Court will consider the claim endorsed on the originating processes. See **Society BIC S.A. & Ors v. Charzin Industries Ltd. [2014] 2 SC [Pt. II] 57 at 87**, **Salami v. National Judicial Council [2014] LPELR-22774[CA] 27** and **Central Bank of Nigeria v. Okefe [2015] LPELR-24825[CA] 43-44**. The Claimant seeks two reliefs against the 2nd Defendant, reliefs 3 and 6, and the basis of the action against the 2nd Defendant is its wrongful communication of the Claimant's medical result in breach of Section 13 of the HIV and Aids [Anti-Discrimination] Act, 2014. The facts justifying the reliefs are pleaded in paragraphs 12 and 13 of the statement of facts which, in my view, disclose a reasonable cause of action against the 2nd Defendant.

The question is whether the cause of action as disclosed falls within the jurisdiction of the Court. Learned counsel for the 2nd Defendant submits it does not, while learned counsel for the Claimant argued that it does and relied on Section 254C [1][a] and [d] of the 1999 Constitution, as amended. It is not disputed that there is no employment relationship between the Claimant and 2nd Defendant. However, as rightly argued by learned counsel for the Claimant, this Court has jurisdiction in causes and matters which are related to or connected with labour and employment. For clarity, I reproduce the relevant provision here. Section 254C[1][a] and [d] of the 1999 Constitution provides:

"[1] Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National



Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

- [a] relating to or connected with any labour, employment, Trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;
- [d] relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;"

11. These provisions have received judicial interpretation. In **Medical and Health Workers Union of Nigeria v. Dr. Alfred Ehigiegba [2018] LPELR-44972[CA]**, Oho, JCA, noted that:

"It is now settled principle of interpretation of statutes that the law maker does not use any words in vain. The argument here is that the repetitive use of the words; "connected with", "related to", "pertaining to", "arising from", "incidental thereto", or "connected therewith" used in Section 254[1][a] of the Nigerian Constitution, 1999 as Amended were not used in vain as the law makers must have meant their use to emphasize and reiterate the wide jurisdiction of the National Industrial Court over all issues arising from employment and labour disputes regardless of the nature of the claims or reliefs in the suit. Generally, the nature of the dispute between parties and the set of facts giving rise to the dispute should naturally determine whether the National Industrial Court has jurisdiction in a particular matter or not."

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JIBADE CONSUMMI ADEBOWALE (MR)
REGISTRAR II

Similarly, in **Nwagbo & Ors v. National Intelligence Agency [2018] LPELR-46201[CA]**, Mustapha, JCA, observed that:

"It is very important to emphasize also that the words 'relating to or connected with' used to state the jurisdiction of the National Industrial Court in Section 254[C][k] of the Constitution of the Federal Republic of Nigeria, 1999, as amended are very clear in both intent and meaning, and as such ought to be interpreted to be inclusive rather than exclusive the jurisdiction of the National Industrial Court is not-limited to disputes between employer and employee only; it extends to any dispute related to labour and industrial relations."

While, as argued by learned counsel for the 2nd Defendant, the case against the 2nd Defendant may relate to professional malpractice, there is no doubt that it

is related to and connected with Claimant's employment, and therefore within the jurisdiction of this Court.

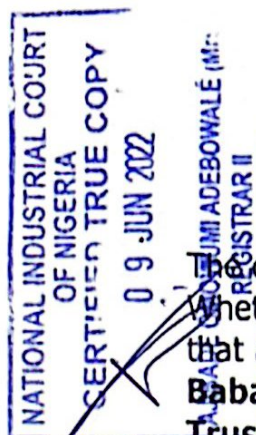
12. The question whether the 2nd Defendant was wrongly joined in this suit must be considered from the standpoint that, generally, it is the prerogative of the Claimant to determine the Defendant[s] in a suit. However, the Court will usually examine the claim to determine whether a party is a proper or necessary Defendant; and for this purpose, the Applicant is deemed to admit the facts averred in the statement of facts. See Order 13 Rules 4, 6, 7 and 8 of the Rules and the case of **Bello v. INEC [2010] LPELR-767[SC] 75**. Order 13 Rule 4 of the Rules provides that:

"Any person may be joined as Defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the Defendants as may be found to be liable, according to their respective liabilities, without any amendment."

The operative phrase is 'against whom the right to any relief is alleged to exist'. Whether the right to any relief exists in fact is a matter for evidence. It is trite that an action cannot be defeated on account of misjoinder of parties. See **Mr. Babatunde Harding & Anor v. The Administrator General and Public Trustee of Lagos State & Anor [2016] LPELR-40990[CA] 15-17**. Order 13 Rule 7, National Industrial Court of Nigeria [Civil Procedure] Rules, 2017, allows the Claimant, at his option, to join as parties to the same action all or any of the persons severally, or jointly and severally liable on any reliefs in the matter. Consequently, I hold that the 2nd Defendant has not made out a case of misjoinder to warrant an order striking it off from this suit.

13. Lastly, on the issue of misnomer, learned counsel admits that there is indeed a misnomer in that the name of the 2nd Defendant was wrongly written. A misnomer is said to occur when the correct person is brought to Court under a wrong name. See **Maersk Line & Anor v. Addide Investment Ltd & Anor [2002] 4 SC 157 at 176** and **So Safe Table Water Technologies Ltd v. Obafunmilayo Ayinoluwa & Anor [2014] 5 NWLR [Pt. 1401] 549 at 563**. In a case of misnomer, an application can be made to amend the originating processes by substituting the proper names. This is what the Claimant has done in filing the motion for leave to amend his originating processes by substituting the proper names of the 2nd Defendant. Parties should at all times strive to ensure that cases are decided on merit. Technicality in the administration of justice shuts out justice. A litigant sent out of Court without a hearing is denied justice. It is therefore better to have a case heard and determined on merits than to leave the Court with a shield of victory on mere technicality. See **Ayankoya & Ors v. Olukoya & Anor [1996] LPELR-669[SC] 18-19**.

In the circumstance, I find no merit in the preliminary objection and it is consequently dismissed.

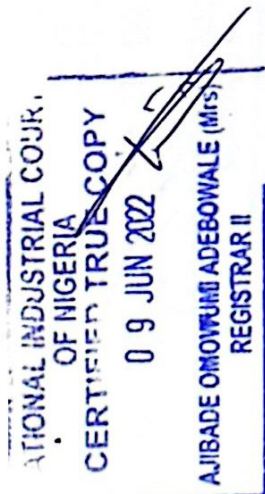


14. This leads me to the preliminary objection by the 1st Defendant. The grounds of the objection have been set out earlier in this ruling. In the written address filed in support of the objection, learned counsel for the 1st Defendant canvassed three issues for determination, viz:

- a. Whether this Honourable Court has the requisite jurisdiction to adjudicate over this suit that borders on and float in the realm of speculation, when there is no scintilla of credible evidence in support of or to prove the allegations contained therein?
- b. Whether the Claimant/Respondent's suit disclosed any reasonable cause of action against the 1st Defendant/Applicant and same is not liable to be dismissed or struck out?
- c. Whether the Claimant/Respondent can rely on a conditional offer letter that is subject to terms and conditions as an appointment letter or contract of employment?

15. Arguing issue one, counsel submits that the Court can only have jurisdiction to hear and determine a matter when it is properly constituted as regards the number and qualification of members of the Bench and no member is disqualified for one reason or the other; the subject matter of the suit is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; the case comes before the Court initiated upon fulfilling condition precedent to exercise of its jurisdiction; and the case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of its jurisdiction. Reliance was placed on the case of **Alhaji Usman Magaji v. Maidorowa Matari [2003] 8 NWLR [Pt. 670] 722 at 735**. He concedes that in determining whether the Court has jurisdiction, the Court will consider the originating processes. The case of **Attorney General, Kwara State v. Olawale [1993] 1 NWLR [Pt. 272] 645** was cited in support. Adverting to the reliefs and the case of **Abdulhamid v. Akar & Anor [2006] LPELR-24[SC] 24**, counsel submits that once a Court lacks jurisdiction on the main claim, it will also lack jurisdiction on the ancillary reliefs, noting that the main claim is that the oral revocation of his employment by the 1st Defendant is unlawful; and the other reliefs are ancillary to the main claim. Counsel contends that the main claim is not a cause of action cognizable under Section 7 of the National Industrial Court Act, 2006 because it is not a labour or trade union related matter; and since the principle is that the jurisdiction of the Court is delimited by the enabling law, the Court cannot go outside the jurisdiction expressly donated by statute. He referred to Section 254C of the 1999 Constitution, as amended, and submits that since no employment relationship has been disclosed in the originating processes, the Court lacks jurisdiction to entertain the suit, which should consequently, be dismissed or struck out with substantial cost.

16. On issue two, counsel defined a cause of action as the entire set of circumstances giving rise to a legally enforceable claim. The case of **Akinsete & Ors v. Kiladeji [2013] LPELR-20215[CA] 17-18** among others was referred to. He

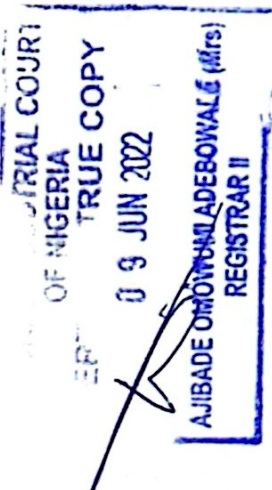


submits that the Court will look at the processes filed by the Claimant to determine if it discloses a cause of action, but argues that the processes do not disclose a reasonable cause of action against the 1st Defendant. The Court was urged to dismiss or strike out the suit on this ground. On the third issue, counsel argued that from the facts, Claimant was not employed by the 1st Defendant and did not work for the 1st Defendant; and there was no formal contract of employment to enable the Claimant succeed in this suit. He submits that the jurisdiction of the Court can only be invoked to remedy a wrong on a valid contract of employment or to enforce its terms, noting that there must be an enforceable contract of employment and not a conditional offer to activate the jurisdiction of the Court. Counsel asked rhetorically whether there exists a trade dispute between the Claimant and the 1st Defendant? Counsel proceeded to define a trade dispute and the ingredients which must subsist to render a dispute a trade dispute; and concluded that on the facts there is none. **Osoh v. Unity Bank Plc [2013] All FWLR [Pt. 690] 245** was referred to. Counsel referred to Sections 5, 10, 14[5] and 21 of HIV and AIDS [Anti-Discrimination] Act and submits that the 1st Defendant did not carry out the food handler's test, but the Claimant voluntarily submitted to the test to meet statutory and regulatory guidelines; and in any event, the 1st Defendant did not violate the human right of the Claimant. On this premise, he urged the Court to dismiss or strike out this suit with substantial cost.

17. Learned counsel for the Claimant formulated four issues for determination in the written address in support of the counter affidavit, that is:

- a. Whether this Honourable Court is allowed to determine the substantive suits in this case at this preliminary stage?
- b. Whether this suit falls under the civil causes and matters which this Honourable Court has the jurisdiction to entertain?
- c. Whether there is a valid contract between the 1st Defendant and the Claimant?
- d. Whether this suit discloses any reasonable cause of action against the 1st Defendant?

On issue one, counsel submits that no court is allowed to delve into the substantive matter at the interlocutory stage and decide it, on the authority of **FSB International Bank Nig Ltd v. Imano Nig Ltd [2000] 11 NWLR [Pt. 679] 620 at 639**. Addressing issue two, and relying on Sections 7[1], National Industrial Court Act, 2006 and Section 254C [1][a] and [d], 1999 Constitution, he submits that flowing from these provisions and the Claimant's pleadings the Court has the jurisdiction to entertain the suit. The Court was urged to so hold. On the third issue, counsel referred to the cases of **Akin Akinyemi v. Odu'a Investment Co. Ltd [2012] 17 NWLR [Pt. 1329] 209 at 236** and **Omega Bank Nigeria Plc v. O.B.C Limited [2005] 8 NWLR [Pt. 928] 586**, and submits that the Claimant promptly accepted the offer in the way and manner prescribed by the 1st Defendant. He submits further that where parties have



reduced their agreement into a written document, oral evidence will not be allowed to alter the contents of the document. Reliance was placed on **International Messengers [Nig] Ltd v. Pegofor Industries Limited [2005] 15 NWLR [Pt. 947] 16-17**. The Court was urged to resolve this issue in favour of the Claimant. On issue four, counsel defined a reasonable cause of action as a cause of action with some chance of success when only the allegations of the Claimant are considered, and in determining whether a statement of facts discloses a reasonable cause of action, the statement of facts is to be read as a whole. The case of **Katol Investment Ltd v. TAJ Development Co. Ltd & Ors [2018] LPELR-46483[CA]** was cited in support. He contends that the reliefs and statement of facts disclose facts which, if proved, would entitle the Claimant to a judicial remedy. The Court was urged to dismiss the preliminary objection in its entirety.

18. The reply on points of law is largely a re-argument of the preliminary objection. On the Claimant's first issue, learned counsel for the 1st Defendant argued that the Claimant having failed to show how a determination of the preliminary objection will result in determination of the substantive case at the preliminary stage, the Court ought to hear and determine the preliminary objection. In response to the second issue, counsel contends that the provisions of Section 7 of the National Industrial Court Act, 2006 and Section 254 of the 1999 Constitution do not support the Claimant's case and as such his cause of action does not fall within the purview of the Court's jurisdiction. On whether there is a valid contract between Claimant and 1st Defendant, counsel submits that a conditional contract will not become binding until some conditions are fulfilled, on the authority of **Ajayi-Obe v. Executive Secretary [1975] 3 SC 1 at 6-7** and **Enelinks Resources Ltd v. Sterling Bank Plc [2019] LPELR-50824[CA]**. He argued that there was never a valid contract of employment between the parties since the Claimant failed the food handler's test which is a condition precedent for the offer of employment; and that the cases of **Omega Bank Nigeria Plc v. O.B.C Limited [supra]** and **International Messengers [Nig] Ltd v. Pegofor Industries Ltd [supra]** relied on by the Claimant are not on all fours with the facts of this case and therefore not applicable to this case. The Court was urged to discountenance the Claimant's submission and dismiss the suit for lack of jurisdiction with cost.
19. The issues raised in this application are straight forward, and they are whether this suit discloses a reasonable cause of action against the 1st Defendant, and if that cause of action is within the jurisdiction of this Court? Parties have passionately argued the application with supporting authorities. However, I dare say that the affidavit of the 1st Defendant and its submissions dwelt extensively on the substantive issues to be determined after trial. The law is firmly settled that the Court hearing an interlocutory application must refrain from commenting or determining any issues in dispute in the substantive case. See **Akinrimisi v. Maersks Nigeria Limited & Anor [2013] LPELR-20179[SC] 11**. I will, therefore, refuse the invitation by learned counsel for the 1st Defendant to determine the substantive case at this interlocutory stage.

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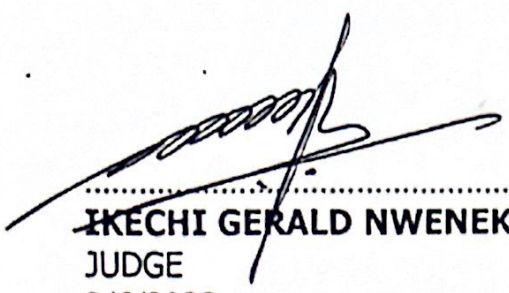
20. What constitutes a reasonable cause of action has been judicially defined in a plethora of cases and explained by the parties. Suffice to say that a cause of action comprises every fact which is material to be proved to enable the Claimant to succeed. It is a factual situation the existence of which entitles the Claimant to obtain from the Court a remedy against a Defendant. It is also the entire set of circumstances which gives rise to an enforceable claim. It is the reason for Claimant's grievance and complaint to the Court for redress. See **Thomas & Ors. v. Olufosoye [1986] LPELR-3237[SC] 22-23, Ibrahim v. Osim [1988] LPELR-1403[SC] 15-16 and CIL Risk & Asset Management Limited v. Ekiti State Government & Ors. [2020] 12 NWLR [Pt. 1738] 203 at 247.**
21. A reasonable cause of action is thus a cause of action with some chance of success when only the allegations of the Claimant are considered. In so far as the statement of facts discloses a cause of action or raises some questions fit to be decided by the Court, the mere fact that the case is weak and not likely to succeed is not a ground for striking it out. See **Thomas & Ors. v. Olufosoye [supra] 23-24, CIL Risk & Asset Management Limited v. Ekiti State Government & Ors. [supra] at pages 247-248. and Adesola & Anor. v. Falade-Fatila & Ors. [2014] LPELR-23800[CA] 39-40.**

As rightly argued by the parties, in determining whether a suit discloses a reasonable cause of action, the processes to consider are the Claimant's processes; that is, the complaint, statement of facts and supporting documents. See **Attorney General of Anambra State v. Attorney General of the Federation [2007] LPELR-24343[SC] 91-92.** For the purpose of this application, the 1st Defendant is deemed to admit the facts averred in the statement of facts.

22. Applying this principle to the instant suit, can it be said that the statement of facts does not raise some questions against the 1st Defendant fit to be decided by this Court? I do not think so. A review of some paragraphs of the statement of facts, particularly paragraphs 1 to 12, 15, 17 and 18 and reliefs 1, 2, 4, 5 and 7 shows that the statement of facts raises a substantial question which ought to be interrogated by this Court. Whether there exists a contract of employment between the Claimant and 1st Defendant is a critical issue to be decided in this case.
23. The question one may ask is, does the cause of action disclosed in the statement of facts come within the jurisdiction of this Court? Section 254C(1)[a] of the 1999 Constitution, as amended, has been reproduced elsewhere in this ruling. It is indisputable that this Court has jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith. There is no gainsaying that the cause of action disclosed relates to labour and employment. Whether the Claimant will succeed in his claim is immaterial at this stage. For this reason, I hold that this Court has jurisdiction to adjudicate on this case.

24. In the final analysis, I hold that the Claimant has disclosed a reasonable cause of action against the 1st Defendant, and this Court has jurisdiction to adjudicate on this case; and the 2nd Defendant was properly joined as a Defendant in this suit. The two notices of preliminary objection filed by the Defendants are without merit and consequently dismissed. As cost follows event and a successful party is entitled to his costs, see **DHL International Nigeria Limited v. Eze-Uzoamaka & Anor. [2020] 16 NWLR [Pt. 1751] 445 at 500**, and this Court has unfettered discretion to award cost, which discretion must be exercised judicially and judiciously - see Order 55 Rule 1, National Industrial Court of Nigeria [Civil Procedure] Rules, 2017 - I hold that the Claimant is entitled to cost of the applications. Cost of ₦25, 000 [twenty-five thousand naira] is awarded against each of the Defendants in favour of the Claimant payable within seven days from today.

Ruling is entered accordingly.


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IKECHI GERALD NWENEKA
JUDGE
3/6/2022

