

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY, THE 10TH DAY OF JUNE, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE A.R. MOHAMMED
JUDGE

SUIT NO: FHC/ABJ/CS/1005/2019

BETWEEN:

IGHODALO IMADEGBELO (SAN)
(Carrying on Legal Business under the name and
Style of Ighodalo Imadegbelo (SAN) and Co. } PLAINTIFF

AND

1. NATIONAL POPULATION COMMISSION
2. THE ATTORNEY-GENERAL OF THE
FEDERATION. } DEFENDANTS

R U L I N G

This suit was instituted via a writ of summons dated 10/9/18 but filed on 17/9/18 against the 1st Defendant seeking for:-

- i. Payment of the sum of N400,000,000.00 (Four Hundred Million Naira) being outstanding professional fees for representing the 1st Defendant at the Court of Appeal, Abuja Division in sixteen appeals filed against the 1st Defendant in this suit.

- ii. Interest at the rate of 21% per annum of the sum of N400,000,000.00 (Four Hundred Million Naira) from 2014 when the sum became due and payable till Judgment and thereafter 10% per annum until the Judgment sum is paid.
- iii. Post Judgment interest of 10% per annum until the debt is paid by the Defendants to the Claimant until payment of the entire Judgment sum.

OR

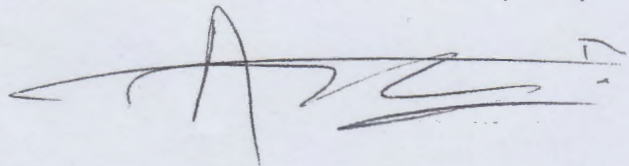
IN THE ALTERNATIVE as per paragraph 26 of the Statement of Claim whereof N400,000,000.00 (Four Hundred Million Naira) upon a Quantum Meruit with interest at 21% per annum from 2014 till Judgment and thereafter 10% per annum until the Judgment debt is paid.

Pursuant to the application of the 1st Defendant, the 2nd Defendant was joined as a co-Defendant, consequence upon which the writ was amended pursuant to the order of the Court dated 6/11/19. Prior to the amendment of the writ, the 1st Defendant on 22/11/18 filed both the Memorandum of Appearance and Statement of Defence.

On being served with the originating processes in this suit, the 2nd Defendant entered a conditional appearance and also filed its statement of Defence on 15/1/20. Both processes are dated

13/1/20. In addition to the above, the 2nd Defendant also filed a Motion on notice dated 13/1/20 but filed on 15/1/20 praying the Court for:-

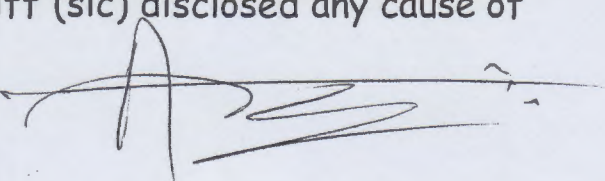
1. An order striking out the entire suit for want of jurisdiction or
2. An order striking out the name of the 2nd Defendant as a party in this suit.

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The grounds for seeking the reliefs are contained on the face of the motion papers.

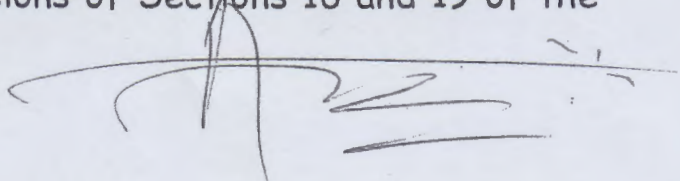
In the affidavit in support of the application consisting of 5 paragraphs and sworn to by one Thomas Etah of the litigation Department, Federal Ministry of Justice, it was deposed that from the writ of summons and the attached documents, this suit borders on recovery of legal practitioner's charges fee by virtue of which the Court lacks jurisdiction to hear and determine it. It was also the case of the 2nd Defendant that the 1st Defendant is a creation of statute with legal personality to sue and be sued and that no reasonable cause of action was disclosed clearly against the 2nd Defendant.

In the written address in support of the application, learned counsel to the 2nd Defendant formulated two issues for determination:-

1. Whether the jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution (as amended) includes recovery of legal practitioner charges fee?
 2. Whether in the circumstances of this and the facts before this Honourable Court, the Plaintiff (sic) disclosed any cause of action against the 2nd Defendant.
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Arguing issue one, learned counsel to the 2nd Defendant stressed the importance of jurisdiction and cited the case of MADUKOLU VS. NKEMDILIM (1962) 2 SCNLR page 341 on when a Court is competent to entertain a matter before it. Learned counsel also cited Section 251 (1) of the 1999 Constitution on the jurisdiction of this Court and Sections 16 and 19 (1) of the Legal Practitioners' Act, 2014 on the jurisdiction of the Court in respect of recovery of legal practitioners' charges fees. Learned counsel then referred the Court to the reliefs sought in the writ of summons and submitted that the Plaintiff's claim borders on the recovery of professional fees outside the ambit of Section 251 (1) (r) of the 1999 Constitution. Learned counsel further submitted that it is a misconception of the law to vest the jurisdiction of the recovery of

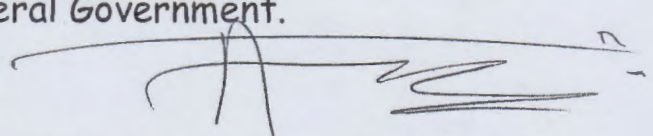
legal professional fees on Section 251 (1) (r) of the 1999 Constitution. Learned counsel to the 2nd Defendant further argued that Section 251 (1) (r) must not be read in isolation in any matter that has to do with legal professional fee between the Plaintiff and the 2nd Defendant with the provisions of Sections 16 and 19 of the Legal Practitioners' Act, 2004.



Learned counsel to the 2nd Defendant went on to reproduce Sections 16 and 19 of the Legal Practitioners' Act and went on to argue that the Plaintiff cannot validly invoke the jurisdiction of this Court under Section 251 (1) (r) on recovery of legal professional charges between him and the Defendants.

On issue two, learned counsel to the 2nd Defendant submitted that throughout the entire originating process, no cause of action was disclosed against the 2nd Defendant. That a cause of action was defined as the operative fact or facts which give rise to a right of action which in itself is a remedial right. Learned counsel then went on to cite the case of ADEKOYA VS. FED. HOUSING AUTHORITY (2008) 11 NWLR PART 1099, 539 at 551 paragraphs D - F on the definition of the term "cause of action". Learned counsel further submitted that for a cause of action to arise, there must be the wrongful act of the Defendant that gives rise to the Plaintiff's cause of complain and the consequential

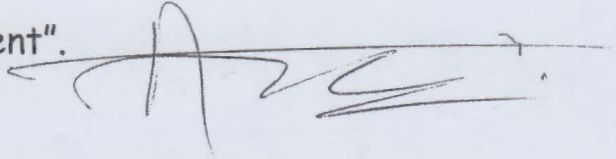
damage. That the 2nd Defendant cannot suffer for an act which it neither committed nor aided its commission. That the 1st Defendant being a statutory body can sue and be sued in its own name without involving the 2nd Defendant. Learned counsel concluded by referring the Court to the case of A.G. KANO STATE VS. A.G. FEDERATION (2007) 6 MJSC 8 to the effect that the A.G. of a State can be sued in any civil claim or complaint against the Government of a State or Federation where the claim or complaint is directly against the state or the Federal Government.



In opposing the application, the Plaintiff filed a counter affidavit of 16 paragraphs sworn to by one Damilola Odesola, a legal practitioner in the Chambers of the Plaintiff. The response of the Plaintiff as can be seen in the counter affidavit to which were annexed exhibits A - F is that the 1st Defendant used its administrative powers to engage/instruct the Plaintiff as can be seen in exhibits A, B and C which exhibits were covered by approvals vide management and administrative decisions of the 1st Defendant as shown therein. That on 22/12/10, the chairman of the 1st Defendant took an administrative decision to write exhibit D to the 2nd Defendant to request for guidance and intervention to pay the Plaintiff's professional fees. That the Plaintiff sent exhibits E and E¹ to the 1st Defendant.

In the written address in support of the counter affidavit, learned counsel to the Plaintiff formulated a sole issue for determination:

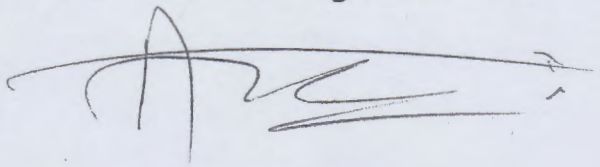
"Whether the Federal High Court has jurisdiction to entertain the claim of the Plaintiff/Respondent".



Arguing the sole issue, learned counsel to the Plaintiff urged the Court to bear in mind that the jurisdiction of this Court is determined, entirely by the issue submitted to the Court by the Plaintiff for determination. That it is the statement of claim and not the answer contained in the statement of defence that is important in determining jurisdiction of the Court. Learned counsel referred the Court to the case of ADEYEMI VS. OPEYEMI (1976) 9 - 10 SC Page 31. Learned counsel then referred the Court to the endorsement on the amended statement of claim and contended that the endorsed claim is a claim for recovery of debt or sum due and owed and not for breach of contract.

Learned counsel to the Plaintiff also submitted that the Federal High Court has jurisdiction over matters in which the Federal Government or any of its agencies is involved and that by virtue of Section 251 (1) (p) of the 1999 Constitution, this Court has the jurisdiction to entertain administrative and management actions of Federal Government agencies. Learned counsel cited in support

thereof the case of NPA VS. AMINU IBRAHIM & CO. (2018) 12 NWLR PART 1632, 62 at 83, 91, 92 - 93. Learned counsel drew the Court's attention to exhibit D and submitted that it related primarily to the administrative decision and power of the 1st and 2nd Defendants to decide what should be paid and sum due and owed the Plaintiff. That the Federal Government and it's agencies are directly involved in this matter.

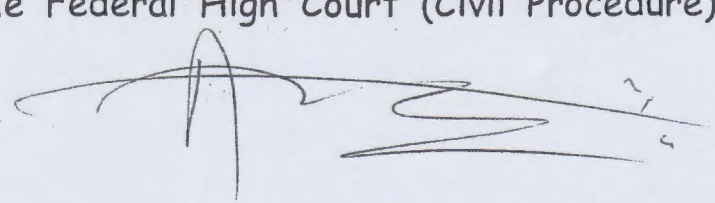


On Section 16(1) and (2) of the Legal Practitioners' Act, learned counsel to the Plaintiff cited the case of OYEKANMI VS. NEPA (2000) 15 NWLR PLART 690 which interpreted the provision and submitted that by paragraphs 18 of the Amended statement of claim, the Plaintiff has complied with the said provision.

In response to the submission and the argument of learned counsel to the 2nd Defendant/Applicant that this Court cannot invoke it's jurisdiction under Section 251 (1) (r) of the 1999 Constitution, learned counsel to the Plaintiff submitted that the provisions of Sections 16 and 19 do not require the satisfaction of the conditions precedent in Section 163 (a), (b) and (c) of the Legal Practitioners Act of filing of a Motion exparte if the Bill of charges complied with Section 16(1) and (2) of the Legal Practitioners Act where the action was filed after exhausting the 30 days stipulated in Section 16(2) of the Legal Practitioners' Act, 2004.

Learned counsel submitted in the alternative that the actions pursuant to Section 16 (1) and (2) of the Legal Practitioners' Act filed after the expiration of 30 days statutory period can be filed at the Federal High Court for matters against a Federal Government agency once it falls under Section 251 (1), (p) and (r) of the 1999 Constitution, the Court is the supreme and fountain of laws in Nigeria which provisions override provisions in any other Act of the National Assembly. Learned counsel cited the case of SARAKI VS. KOTOYE (2016) 3 NWLR PART 1500, 531 at 594, among others.

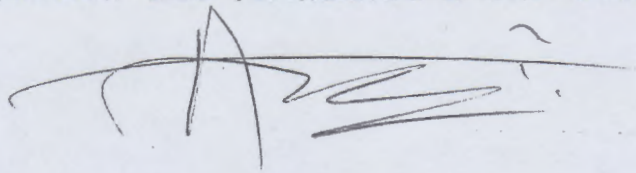
Learned counsel to the Plaintiff/Respondent argued that assuming without conceding that this Court lacks the requisite jurisdiction, it can by virtue of Section 22 (2) of the Federal High Court Act transfer the case to the appropriate High Court of a state or of the FCT and not strike it out. Learned counsel also referred the Court to Order 49 Rule 5 of the Federal High Court (Civil Procedure) Rules, 2019 in that regard.



The 1st Defendant has also reacted to the application by filing a counter affidavit on 17/2/2020 consisting of 6 paragraphs deposed to by one Ugwuta Emmanuel Ugochukwu, one of it's officers. Attached to the counter affidavit are exhibits marked exhibits A1 - A6. The gist of the 1st Defendant's counter affidavit is that it cannot pay any legal fee without seeking and obtaining the approval

of the 2nd Defendant. That it has been the practice of the 1st Defendant to seek, obtain and convey the approval of the 2nd Defendant in matters of professional fees payable to solicitors in the Commission. That the 2nd Defendant is a necessary party as shown in the exhibits attached to its counter affidavit.

Learned counsel to the 1st Defendant also formulated a lone issue for determination:

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"Whether the Attorney General of the Federation and Minister of Justice is a necessary party to be joined in the suit".

Arguing the issue, learned counsel to the 1st Defendant submitted that the 2nd Defendant is a necessary party who should be bound by the decision in this suit.

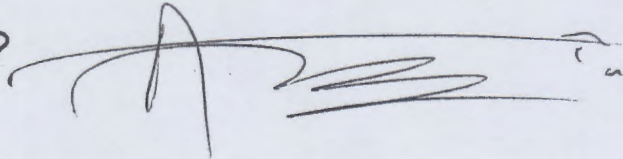
The 2nd Defendant on 8/2/2020 filed a Further Affidavit to its motion challenging the jurisdiction of the Court. The affidavit was deposed to by the same Thomas Eta, the deponent of the main affidavit in support of the motion on notice.

According to the Further Affidavit, the 2nd Defendant is not aware of any meeting or purported instruction given to the 1st Defendant

or any person to join him in this suit. That exhibit A¹ attached to the 1st Defendant's counter affidavit is dated 15/10/12 while the transaction that gave rise to this suit was made in the year 2009.

A sole issue was also submitted for determination by the 2nd Defendant in respect of the Further Affidavit.

"Whether having regard to the Plaintiff's statement of claim and the reliefs sought, there is any cause of action against the 2nd Defendant in this suit?"

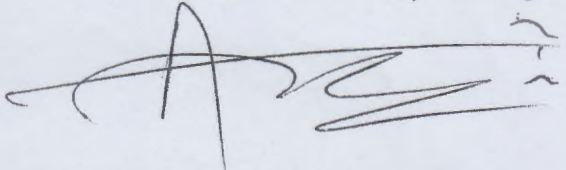


Arguing the issue, learned counsel to the 2nd Defendant submitted that it is trite law that it is only the statement of claim and the reliefs sought that the Court would look at to determine whether there is a cause of action against a Defendant or not referring the Court to the case of BAKARE VS. NIG. RAILWAY CORP. (2007) LPELR - 712 (S.C.). Learned counsel further submitted that there is no averment in the statement of claim or the reliefs that relate to the 2nd Defendant. Learned counsel urged the Court to strike out the name of the 2nd Defendant as there is no privity of contract between the Plaintiff and 2nd Defendant and no cause of action was disclosed against the 2nd Defendant.

I have perused the motion on notice and the affidavit in support thereof. I have also read the written address accompanying the

application. Similarly, consideration was extended to the various counter affidavits to the application including the exhibits attached thereto and the written addresses.

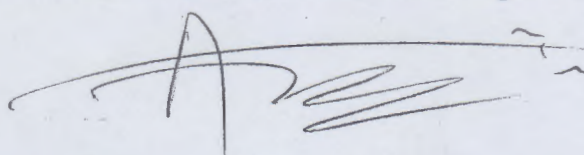
In resolving the application, I hereby adopt the issues formulated by learned counsel to the 2nd Defendant/Applicant. For ease of reference, the issues are hereby reproduced:

1. Whether the jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution includes recovery of legal practitioners' charges fees? 
2. Whether in the circumstance of this case and the facts before this Honourable Court, the Plaintiff has disclosed any cause of action against the 2nd Defendant?

Learned counsel to the 2nd Defendant argued that the reliefs sought by the Plaintiff border on the recovery of professional fees. To that extent, the Plaintiff's claim is predicated on contract for which this Court by virtue of Section 251 (1) of the 1999 Constitution does not have jurisdiction to entertain.

The law is settled to the effect that it is the claim of the Plaintiff that determines the jurisdiction of the Court and not the response

of the Defendant to the claim. From the reliefs sought by the Plaintiff which I reproduced above in the course of this ruling, I am satisfied that what the Plaintiff is claiming is for an amount due and owing to him by the 1st Defendant decision to engage him to represent him in Court. Consequently, the decision to engage the Plaintiff emanated from the administrative/management decision of the 1st Defendant, an agency of the Federal Government of Nigeria to engage as it's counsel.



From the authority of **N.P.A. VS. AMINU IBRAHIM**, supra, this Court is convinced that the Plaintiff's claim falls within the provision of Section 251 (1), (p) of the 1999 Constitution. Consequently, the Plaintiff's claim is not predicated on a simple contract as learned counsel to the 2nd Defendant would want this Court to believe.

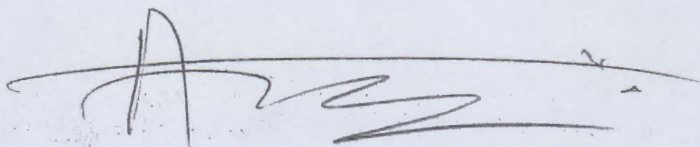
Apart from that, the 1st Defendant against which the claim is made is a Federal Government Agency. That being the case, this Court is imbued with jurisdiction to entertain the Plaintiff's action. See the case of **ADEGBITE VS. AMOSU**, supra.

In the light of the above, this issue is resolved in favour of the Plaintiff.

On the 2nd issue, I am satisfied that the Plaintiff complied with the requirement of Section 16(1) and (2) of the Legal Practitioners' Act

as clearly borne out by paragraphs 18 of the Amended statement of claim.

On the alternative prayer seeking to strike out the name of the 2nd Defendant from this suit, I agree in toto with the submission of learned counsel to the 2nd Defendant that no cause of action has been disclosed against the 2nd Defendant. This issue succeeds in part in consequence of which the name of the 2nd Defendant is struck out for non-disclosure of a cause of action against him.



HON. JUSTICE A. R. MOHAMMED
JUDGE
10/6/20.

APPEARANCES:

A.O. Ikeaya-Inneh SAN with U. Egbon Esq. and Damilola Odesola (Mrs.) for the Plaintiff.

Remigius Edebianga Esq. holding brief of C. N. Odili Mrs. with Onyeye Ezeji (Miss) for the 1st Defendant.

Abdullahi Abubakar Esq. (PSC) (FMOJ) for the 2nd Defendant.