

**IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA, NIGERIA**

**ON WEDNESDAY THE 1ST DAY OF MARCH, 2017
BEFORE THE HONOURABLE JUSTICE J.T. TSOHO
JUDGE**

SUIT NO.: FHC/ABJ/CS/978/15

BETWEEN:

**LEGAL DEFENCE AND ASSISTANCE PROJECT
(LEDAP) GTE & LTD**


..... **PLAINTIFF**

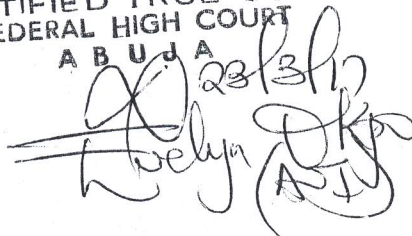
AND

FEDERAL MINISTRY OF EDUCATION & ANOR DEFENDANT

RULING

This case was heard in the absence of the Defendants' appearance and defence and was first slated for judgment against 31/1/2017. Due to some unforeseen constraints, the judgment was adjourned to 28/2/17. On this date however, this Courts' attention was drawn to a Notice of Preliminary Objection dated and filed on 27/02/2017 by the 1st Defendant. While Chinonye Obiagwu Esq. of Learned counsel for the Plaintiff asked the Court to ignore the objection and deliver its judgment, Mrs. U.C. Ikpe of Learned Counsel for the 1st Defendant justified the objection on the basis that it challenged the Court's jurisdiction and that this can be done at any time before judgment is


**CERTIFIED TRUE COPY 1
FEDERAL HIGH COURT
ABUJA**


23/3/17
290155610957



delivered. This Court resolved to entertain the Notice of Preliminary Objection in the interest of fair hearing and especially that it raises the issue of jurisdiction.

The 1st Defendants Notice of Preliminary Objection dated and filed on 27/02/2017 prayed as follows:

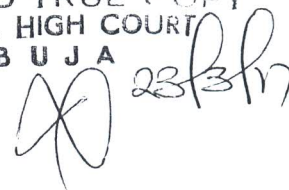
1. An order striking out this suit for lack of jurisdiction.
2. An order striking out the suit or setting aside the proceeding for not disclosing any cause of action against the Defendants.
3. An order striking out the suit or setting aside the proceeding for lack of locus standi.

The objection is supported by a 6 paragraph affidavit deposed to by Mrs. Ugwu-Shime C. Ikpe, Assistant Legal Adviser of the Legal Unit, Federal Ministry of Education, Abuja. Also filed in support is a Written Address dated 27/2/2017.

It is interesting to observe that in the course of the application, rather than adopt her 4 page Written Address and adumbrate upon same, Mrs. Ikpe resorted to a completely new line of argument. Instead of highlighting points in relation to the two grounds contained in the objection, being alleged non-disclosure of cause of action and the Plaintiff's lack of locus standi, she delved into arguments on non-justiciability of this action. This clearly breached established rules of



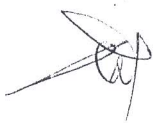
CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

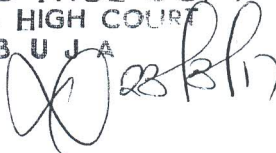


practice. Nevertheless, since that point was recorded, this Court deems it necessary to make pronouncement on the issue.

The Learned Counsel for the Plaintiff, Obiagwu Esq. elected to peremptorily reply to the 1st Defendant's objection. He submitted that the Notice of Preliminary Objection is incompetent and should be dismissed for non-compliance with the provisions of Order 29 Rules 1 and 4 of the Federal High Court (Civil Procedure) Rules, 2009. HE argued that the objection was not filed within the time prescribed by the Rules of Court and there is no application for extension of time in order to regularize it.

Order 29 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2009 provides to the effect that where a defendant wishes to dispute the Courts jurisdiction, he may file an application urging the Court not to exercise jurisdiction. That such application must be first filed along with the Defendant's Memorandum of Appearance stating that he is appearing conditionally. Then Rule 4 (a) of Order 29 states that such application shall be made within twenty – one (21) days after service on the defendant of the originating process. Rule 5 thereof states that if the defendant does not make such application within the period specified in Rule 4, then such application can only be taken at the conclusion of the trial.

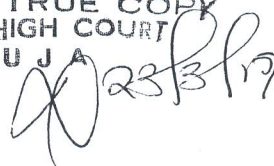


CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA


The instant suit is an Originating Summons which does not involve the taking of oral evidence and therefore, if the 1st Defendant's dispute to the Courts jurisdiction had been filed within time, the application should have been taken together with the Plaintiff's substantive Case, pursuant to the provision of Order 29 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2009.

It is necessary to point out that the Originating Summons herein required the Defendants to within 30 days after its service on them, inclusive of the day of such service, cause appearance to be entered for them to the Summons. An Affidavit of Service sworn to on 22/4/2016 by Amarachi Nwabia, a Legal Practitioner in the Law firm of the Plaintiff's Counsel shows that the Defendants were served the Originating Summons on 20th April, 2016. Receipt of the processes is shown to have been acknowledged by endorsement and use of the official stamps of the respective Defendants. Though Mrs. Ikpe maintained that she had filed a memorandum of Appearance in this case, none has been found after an intensive search of the files relating to this case. There is no reason why a memorandum of Appearance, if really filed, should not be contained in the Court's file, just like the other processes in this case.

Another question however is, whether if really filed; that it was filed within prescribed time. It is nevertheless beyond dispute that the



Notice of Preliminary Objection has not complied with the provisions, of Order 29 of the Rules of this Court. Therefore, by a rigid application of the Rules, the 1st Defendant's Notice of Preliminary Objection is incompetent before this Court. In the case of *Olafisoye V. F.R.N.* (2004) 4 NWLR (Pt. 864) S.C. 580 at 643, paragraph D, the Supreme Court held that Courts of law will not accept innovations of Counsel where rules of Courts clearly spell out the Court process in any given litigation or situation. The 1st Defendants Counsel herein is hence not at liberty to deviate from procedures prescribed by the rules of this Court.

Notwithstanding the clarity of the position as stated, as the 1st Defendant's Notice of Preliminary Objection purports to challenge the Court's jurisdiction to entertain this suit and the issue of jurisdiction is fundamental, this Court shall consider its merit by examining the grounds upon which it is based.

As stated earlier, the Notice of Preliminary Objection is founded on alleged lack of disclosure of cause of action against the 1st Defendant and lack of locus standi to sue. However, Mrs. Ikpe surreptitiously introduced arguments on non-justiciability of the subject matter of litigation, as a quick and sure way of killing the Plaintiff's action. She submitted that Section 6 (6) (c) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) takes away the power of the Court to adjudicate on any matter under Chapter II of the Constitution as to the



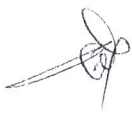
5 CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B U J A

23/3/17

fundamental Objectives and directive principles of state Policy. On this basis she urged the Court to decline jurisdiction over this suit.

In that regard, I find as appropriate and sufficient reply, the assertions in Grounds 1, 2 and 3 of the stated grounds upon which reliefs are sought by the Plaintiff in the summons. These Grounds are to the effect that though the provisions of Chapter 2 of the Constitution are not enforceable by virtue of Section 6 (6) (b) ((c) ?) of the Constitution, once a legislation is enacted to give legal effect to any of the provisions of Chapter 2, the right addressed in that provision becomes enforceable. That by the enactment of the compulsory, Free Universal Basic Education Act, 2004, the National Assembly has given legal effect to the rights to free education at the levels contained in section 18 (3) (a) of the Constitution.

I completely agree with these assertions of the Plaintiff. This is particularly in view of the decisions of the Supreme Court in A – G., Ondo State v. A – G., Fed. (2002) 9 NWLR (Pt. 772) 222 at 382 paragraphs A – D & P.391 paragraphs F – H; Olafisoye v. F.R.N. (2004) 4 NWLR (Pt. 864) S.C. 580 at 661 paragraphs B – G. The Supreme Court held in the latter case that by the Joint reading of Section 6 (6) (c) of the Constitution which provides an exception clause, it anticipates among other possible provisions, the provision, of Item 60 (a) of the Exclusive Legislative List of the Second Schedule to the Constitution which is as to

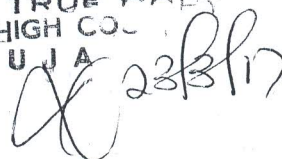
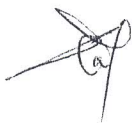


6 CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
23/3/17

establishment and regulations of authorities for the Federation or any part thereof. The Apex Court held that this provision vindicates the law making power of the National Assembly. In view of this, the point of non-justiciability of the Plaintiff's action is defeated.

The 1st Defendant's Written Address argued that the Plaintiff has not made out any cause of action against the 1st Defendant in this suit. A cause of action is defined therein, with references to several decided cases, including **ORJI V. UGOCHUKWU (2009) 14 NWLR (Pt. 1161) 207 at 281; SCC (NIG.) LTD & ANOR V. CHINYERE ANYA & 4 ORS (2012) 9 NWLR (Pt. 1305) at P. 217 – 218**. It is contended that the entire case of the Plaintiff has shown any wrongful act of the 1st Defendant against the Plaintiff or injury suffered by the Plaintiff to warrant the prosecution of this case.

A cause of action is defined as the entire set of circumstances giving rise to an enforceable claim and is in effect, the fact or combination of facts giving rise to a right to sue. The law is trite that to determine whether or not a cause of action is disclosed, the Court looks only at the Originating Processes filed and without resort to oral evidence. See **INAKOJU V. ADELEKE (2007) 4 NWLR (PT. 1025) 423 AT 588 – 589; NICON INSURANCE CORPORATION V. OLOWOFOYEKU (2006) 5 NWLR (Pt. 973) 244 at 257; ORJI V. UGOCHUKWU (supra)**. In the present case, a look at the affidavit deposition is support of the Originating



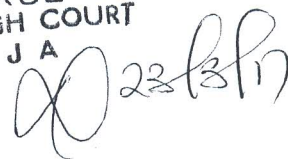
Summon will suffice. Having done that, I find paragraphs 3 – 15 instructive.

For enhancement of clarity, paragraphs 3, 4, 5 and 8 are reproduced as follows:

3. The 1st Defendant is the minister in charge of Education Ministry and has the responsibility for over-seeing the provision by the Federal government (sic) of free, compulsory, universal primary and free junior secondary education in the Federation.
4. The Federal and State Government (sic) have the Constitutional obligation to provide equal and adequate educational opportunities at all levels for the citizens of Nigeria.
5. In 2004, the National Assembly enacted the Compulsory, Free Universal Basic Education Act, which guaranteed the right of Nigerians to free, compulsory and Universal primary education and free secondary education.
8. The Federal and state governments are required under the Constitution (sic) and the compulsory, Free Universal Basic Education Act to provide financial and institutional resources for free, compulsory and Universal primary education and free junior secondary



CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA



education to every Nigerian child whose parents are living in Nigeria.

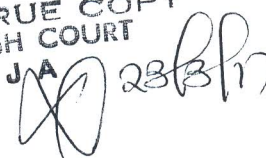
In my humble opinion, the foregoing paragraphs, even taken alone disclose a grievance and hence a cause of action, not just against both Defendants, but particularly against the 1st Defendant by the averment in paragraph 3 of the affidavit. I therefore hold that the contention that a cause of action has not been disclosed by the Plaintiff is unfounded.

It is noteworthy that while the Plaintiff's lack of locus standi to prosecute this case is made one of the grounds of the 1st Defendant's Notice of Preliminary Objection, there is no submission whatsoever on that issue in the 1st Defendant's Written Address. The Court however has a duty to pronounce on it.

The term 'locus standi' means the place of standing; that is, the right to be heard in Court or other proceeding. Therefore, a person has locus standi to sue in an action if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed. See **PACERS MULTI-DYNAMICS LTD V. THE M.V. "DANCING SISTER" & ANOR. (2012) 1 S.C. (PT. 1) 75; SUNDAY TAIWO V. SERAH ADEGBORO & 2 ORS (2011) 5 SC (Pt. II) 179.** In ascertaining the locus standi of a Plaintiff, it is the statement of claim or pleadings that is examined. See **BENEDICT OJUKWU v. LOUISA**



9 CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA 23/3/17


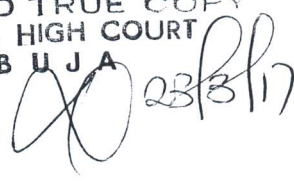


OJUKWU & ANOR (2008) 12 S.C. (Pt. III) 1; CHIEF AROWOLO V. CHIEF OLOWOOKERE & 2 ORS (2011) 11 – 12 S.C. (Pt. II) 98. Having perused the depositions in the affidavit in support of the Plaintiff's Originating Summons, which assumes the status of the Statement of Claim in the context of this case, I find paragraphs 2, 6 – 10, 14 and 15 useful in ascertaining the existence of locus standi.

In this regard, paragraphs 2 and 15 are reproduced thus:

"2. The Plaintiff is a Nigerian Organization with over 2,500 members across all 36 states of Nigeria and the Federal Capital Territory, and registered under the relevant law as non-profit non-political and non-governmental organization whose diverse mandate includes promotion and protection of Human Rights and good governance in Nigeria. The certificate of registration and its memorandum and articles of association is hereby attached and marked Exhibit A:

15. That it is the duty and right of all Nigerians including the Plaintiff and their members to take any lawful action to protect and safeguard the



CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA
 23/3/17

**sacred provisions of our Constitution whenever
it is threatened.”**

It is my humble opinion that these paragraphs of the affidavit in support of the Originating Summons sufficiently project the locus standi of the Plaintiff to prosecute this action. This is particularly so, as far as the law accords recognition to public interest litigation in Nigeria. I accordingly hold that the Plaintiff has established that it has the locus standi to maintain this case. The 1st Defendant's contrary contention is not sustained.

On the whole, the 1st Defendant's Notice of Preliminary Objection is wanting on all the grounds upon which it is made. It grossly lacks merit and is consequently dismissed.

This being the position, the Court will proceed to deliver its judgment, which was ready before the 1st Defendant brought its objection.

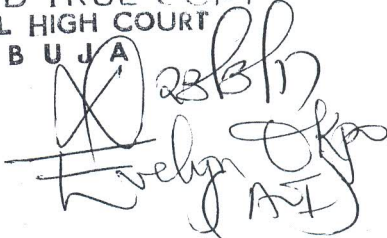

J.T. TSOHO
JUDGE
1/3/2017

Parties absent.

E.C. Obiagwu Esq with P. Egbele (Miss) for the Plaintiff.

Mrs. U.C. Ikpe for the 1st Defendant.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA


23/3/17
Evelyn Okp
(AT)