

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT

RESUMED ON WEDNESDAY THE 24TH DAY OF APRIL, 2024
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ, SENIOR MAGT. GD. I
HOLDEN AT SMALL CLAIMS COURT 6 PORT HARCOURT

PMC/SCC/61/2024

BETWEEN

MAXWELL TUBONEMI

CLAIMANT

AND

RICHARD SOMIEARY

DEFENDANT

RULING

Before me is a notice of preliminary objection brought by the counsel to the Defendant/Applicant dated the 1st day of April, 2024 and filed on the 2nd day of April, 2024. The motion is brought pursuant to Article 2 of the Small claims Court Practice Direction 2023, the motion is supported by an 8 Paragraph affidavit and a written address. The motion is seeking for the following orders :

A. An Order striking out this suit PMC/SCC/61/2024 for want of jurisdiction on the part of this honourable court to entertain the same.

And for such Orders or other Orders as this court may deem fit to make in the circumstances of this case. The Claimant/Respondent in reaction filed a reply on points of law dated and filed the 12th day of March, 2024.

On the 16-04-24 when the matter came up for motion, the Defendant/Applicants counsel was absent in court and her motion was deemed adopted. The Claimants/Respondents counsel also adopted his response to the Defendants/Applicants motion and prayed the court to discountenance same.

The Defendant/Applicants counsel in her written address attached to this application raised four issues for determination to wit:

- I. Whether claimant have the locus standi to institute and maintain this suit?
- II. Whether or not this suit discloses any reasonable cause of action?
- III. Whether this suit is not an abuse of the process of court?
- IV. Whether the honourable court lacks the jurisdiction to entertain this suit?

in this ruling I shall consider a sole issue which is *“Whether considering the facts and circumstances of this case, this court can make an order as prayed by the Defendant/Applicant?”*

I have carefully considered the argument of both counsels for and against the grant of this application the affidavit in support of the motion paper and the issues joined by the counsel to the Claimant/Respondent, and I find that there is no way this court can at this stage determine the four issues raised by the Defendant/Applicants counsel as her grounds for this application without delving into the substantive suit, conversely there has to be calling of evidence and hearing of the substantive matter before the issues raised can be determined one way or the other.

On the issue of jurisdiction - This is a small claims court and the proceedings are commenced by forms RSSC 2 and 3 and being a court of summary jurisdiction witness depositions are not filed as to have further particulars of the claim as such only a summary of the claim is filed and once what is claimed is for a claim of simple liquidated money demand and/or related matters in the sum not exceeding N5,000,000 including costs this court can assume jurisdiction. See Article 2 (1) (d) of the Small claims Court Practice Direction 2023.

On the face of form RSSC3 as filed by the claimant before this court there is due compliance with Article 2 (1) (2) and this court can proceed with hearing this matter and will so do.

On the other issues as raised by the Defendant/Applicants counsels in her written address. Counsels have advanced argument and joined issues before this court on the four issues raised by the Defendant/Respondents counsel.

However, the law remains that no matter how beautiful or succinctly prepared a counsels argument are they cannot take the place of evidence needed to prove a case. See *ALIKHA & ANOR V. ELECHI & ORS (2017) LPELR-7823 (SC)* and *ACCESS BANK PLC V. K. C. INTERNATIONAL LTD (2018) LPELR – 43668 (AC)*.

To determine the other issues in this application one way or the other will be to determine the substantive issue in the matter at a preliminary stage.

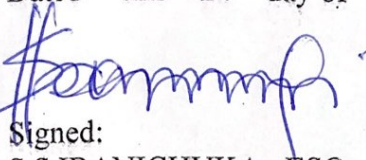
On this score this court shall avoid the pitfall of determining or deciding the substantive case at a preliminary stage as the courts in a plethora of cases have warned against such, see the cases of *Ndoma-Egba v Govt of Cross Rivers State,(1991) 4 NWLR (pt 188) 733* and *ICON v F B N Ltd (1995) 6 NWLR (pt 401) 370* among others.

Furthermore, Article 13 (2) of the Small claims Court Practice Direction 2023 is in line with the aforementioned judicial authorities as it says

“the judgement shall include the courts determination of issues raised in any interlocutory filed by any of the parties.”

In the circumstances I hold that ruling on the other issues in this application are reserved only to be considered during the judgement of the substantive suit,

Dated this 24th day of April, 2024



Signed:
S.S. IBANICHUKA, ESQ.
24/04/2024.

