IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
BEFORE HIS LORDSHIP HON. JUSTICE C.A. EMEMBOLU
ON MONDAY THE 16TH DAY OF SEPTEMBER, 2013

SUIT NO. A/53C/2013
MOTION NO. A/223M/13

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

AND

1. REV. FR. SILAS NWEKE
2. HOLY FAMILY GROUP OF COMPANIES } ..... APPLICANTS

JUDGMENT

This is a notice of preliminary objection filed by the Applicants pursuant to Section 36(6) (b) & (d) of the Constitution of the Federal Republic of Nigeria 1999, Section 141, 142, 146, 220, and 222 of the Administration of Criminal Justice Law of Anambra State, 2010 and the inherent Jurisdiction of the court on the grounds that the Honourable court lacks jurisdiction to entertain the information, in that the proof of evidence have not been served on the 1st & 2nd Applicant as required by law, as such the Honourable court has no jurisdiction over the person of the 1st Applicant.

(2) That the 2nd Applicant does not exist, is not a legal person nor a juristic person of any kind, as such the court has no jurisdiction over it.

(3) The Respondents, Economic and Financial Crime Commission (EFCC) has no competence to bring this information as the offences charged therein are not economic and financial crime.

(4) The information and proof of evidence have not made out prima facia case for the offence charged.

(5) The proof of evidence in this matter are incompetent and constitute an abuse of court's processes in charge No. FHC/AWK/75^{C}/2010 pending at the Federal High Court of Awka.

(6) Information filed in this court against each of the Applicants is incompetence for failure to charge an offence known in law and for failure to contain the proper proof of Evidence as required by Section 220(f) and 146 of the Administration of Criminal Justice Law 2010.

(7) This proceeding is contemptuous of the order of court of competent jurisdiction and should be quashed/dismissed.

(8) The Honourable court lacks jurisdiction to try the offence as they were brought in violation of each of the Applicants Constitutional rights to fair hearing.

Application is supported by an affidavit of 25 paragraphs and exhibits and the applicants' written address.

The Respondents in opposition filed a 17 paragraphs affidavit, with exhibits and written address.

Parties adopted other written submissions in court, as their argument in this case. I have read the affidavit evidence before the court and the written submission of counsel.

The issue for determination in this case is whether the court has jurisdiction to entertain this suit?

It is trite that the jurisdiction of court is so fundamental that it forms the foundation of adjudication. It is the lifeline of an action. Thus if a court lacks jurisdiction, it automatically lacks the necessary competence to try the case at all.

See Achebe V Nwosu (2003) 7 NWLR (pt 818) 103.

It is settled that the service of court process on a party is fundamental. The failure to serve a process on a party is a fundamental commission which vitiates the subsequent proceeding, no matter how well conducted and renders them void.

See Mbadinuju V Euke (1994) 8 NWLR (pt 364) 532.
Odutola V Kayode (1994) 2 NWLR (pt 324) 1

In this case, there is an admission in paragraph 8 of the Applicants' affidavit evidence that the Respondent filed what is purported to be proof of evidence on the same November, 2012.

The Respondents in paragraph 4 of their counter affidavit stated that the information was served on Chiamaka Nnaeme, the deponent to the Applicants affidavit and annexed a copy of service of acknowledgment marked Exhibit EFCC 2. The said exhibit is annexed to the Respondents' counter affidavit, the document speaks for itself, at the back of the document the said Nnaeme Chiamaka signed receipt of the information date of service 12/11/12 at 02.42 p.m. at No. 251 Zik's Avenue. There is no denial by the applicant that the said Nnaeme Chiamaka is unknown to them.

I hold that Exhibit EFCC 2 is proof that the information was served on the applicants.

The Applicants further contended that the proof of evidence is incompetence and abuse of court process in Charge No. FHC/Awka/75^{C} pending at Federal High Court Awka.

It is settled law that generally, abuse of process contemplates multiplicity of suits between same parties in regards to same subject matter and on the same issue. The bottom line in regard to abuse of process is to institute an action during the pendency of another suit claiming the same relief in an abuse of court process and the only course open to the court is to put an end to the suit.

See Okafor V Attorney-General of Anambra State (1991) 6 NWLR (pt 200) 659.
Okorodudu V Okoromadu (1977) 3 SC 21.

In the case in hand the charge at the Federal High Court and the instant charge are between the same parties, the Respondent in paragraph 6&7 of their counter-affidavit averred that the Respondents amended its charge to thirty four counts, that the Dishonoured Cheque (offence) Act Cap D II, Laws of the Federation of Nigeria 2004 vest the jurisdiction to try the offences on the State High Court and not the Federal High Court.

The charge before this court, is issuance of 'Dishonoured Cheque' which the Respondent withdrew in the amended charge before the Federal High Court.

In this regard I hold that the charge before the court is not an abuse of process, the Respondent having amended the charge at the Federal High Court. The offence of issuance of dub cheque is an offence known under the law, an offence contrary to Section 1(1) (offence) Act Cap D II Laws of the Federation of Nigeria 2004 and punishable under Section 1 (1) (b) (1) of the same Act.

The Applicants contended in their affidavit evidence that in the proofs of Evidence supporting this information, 5 material witnesses were listed, but the respondent refused to include the mandatory material in the proof of evidence of the statements of Mr. Jiddah Mohammed, Adewale Adediran, name, address and statement of Deacon M.O. Chiejine. The Respondent in paragraph 11 of their counter affidavit stated that they did not refuse to file all the proof of evidence, but are at liberty to file and serve notice of additional evidence before Judgment is entered.

I am of the view that it is mandatory for the Respondent to comply with Section 146(b) of the Administration of Criminal Justice Law 2011. The witnesses are listed, it is mandatory to file the statement of the listed witnesses. This is not a case of calling additional witnesses. I am in agreement with Applicants submission that the word 'shall' as provided in Section 146 of the Law is mandatory. Counsel pleaded reliance on Gov Ebony State V Isuame (2004) 6 NWLR (pt 870) 511. Ration 4.

It is settled law that where an interpretation of a statute will result in defeating the object of the statute, the court will not lead its weight to such interpretation. In other words an interpretation which appears to defeat the intension of the

legislative should be by passed in favour of that which would further the object of a statute.

See Onochie vs Odogun (2006) 6 NWLR (pt 975) 65 at 88-89
Savannah Bank (Nig) Ltd vs Ajilo (1989) 1 NWLR (pt 97) 305.

The respondents are ordered to comply with the provision of Section 146 of the Administration of Criminal Justice Law Anambra State 2010 on contents of proof of evidence.

The Respondents further submitted that the Respondents Economic and Financial Crime Commission (EFCC) has no competence to bring this information as the offences charged therein are not economic and financial crimes. I shall in this regard reproduce the relevant provisions of the Economic and Financial Crimes Commission (Establishment) Act 2004.

See 7(1) The Commission has powers to:

(a) Cause investigation to be conducted as to whether any person, corporate body or organisation has committed an offence under this Act or other law relating to economic and financial crimes, including Criminal Code and Penal Code".
(b) In addition to the powers confirmed on the Commission by this Act, the Commission shall be coordinating agency for the enforcement of the provision of any other law or regulation relating to economic and financial crime, including Criminal Code and Penal Code, the Economic and Financial Crime Commission has powers to prosecute such offences as long as they are financial crimes.

See Ahmed V F.R.N. (2009) 13 NWLR 536 at 540 Ratio 2.

I therefore resolve this issue in favour of the Respondent. I hold that the EFCC has the competence to bring this information.

It is submitted by the Applicant that the proceedings is contemptuous of the orders of court of competent jurisdiction and should be quashed/dismissed and also brought in violation of Applicants legal and constitutional right to fair hearing. The Respondent in paragraph 10, 13, of their affidavit evidence refereed to the orders

Exhibits 'C' & 'D', annexed to the application, which order is for enforcement of Applicants Fundamental Rights guaranteed under the Constitution of the Federal Republic of Nigeria 1999, in which order the Honourable Courts ordered the Respondents to maintain the status quo pending the determination of the motion on notice.

It is settled law that the police has the statutory power to arrest and investigate allegation of crime. The offence of fraud is a criminal offence. The court has not got the supervisory jurisdiction over the police in the exercise of its statutory duty to investigate crime. The police are given free hand to investigate their case. The criminal aspect is not a bar to the fundamental Rights. The Applicants are not by this action estopped from the fundamental Rights provided under Chapter IV of the 1999 Constitution or the contempt charge before the court.

I am in agreement with the Respondents counsel that the court cannot stop or suspend the investigation of criminal complaint involving any person, counsel placed reliance on the case of Fawehinin V IGP (2002) (FWLR (pt 108) 1355. See also Dokubo Asari V F.R.N (2007) Vol 152 L.R.C.N. This action is not a bar to the Fundamental Rights of the applicants.

Applicants further submitted that the information and proof of Evidence have not made out a prima facie case for the offence charged.

The Applicant in his submission placed reliance on the case of Grange V F.R.N. (2010) 7 NWLR pt (1192) 135, 164-5, Ratio 5 where the court defined what prima facia case means in connection with quashing a charge on the preliminary objection that "The question that rears its head is; what is a prima facie case ? A prima facie case in criminal trial in a sense, only means that there is a ground for proceeding with the trial. At that stage, whether the evidence is sufficient to ground a conviction is not the issue. When a court states that a prima facie case has been made, or that the evidence disclose a prima facie case, it means that the evidence is such that it is uncontradicted and if believed, is sufficient to prove the case against the accused".

It is my view from the foregoing definition of prima facia case in a criminal trial, does not arise when the prosecution has not put in any evidence. The court cannot

on an information or proof of evidence hold that a prima facie case has not been made.

Section 151 of the Administration of Crime Justice Law 2010, provides that if the proof of evidence does not in the opinion of the Attorney-General disclose sufficient evidence to support the change or changes against the defendants, the Attorney General shall discharge him. It is the Attorney General who shall pronounce if there is a prima facie case on the proof of evidence and not the court.

A submission of no case to answer could therefore only be properly made and upheld when (a) there has been no evidence to prove an essential element in the alleged offence and (b) when the evidence adduced by the prosecution has been so discreted as a result of cross examination or is so manifestly unreasonable that no reasonable tribunal could safely convict on it.

See Ibeziako Vs Commissioner of Police (1963) 1 SCNLR 99
Owonikono V The State (1999) 7 NWLR (pt 162) 381. What is considered at this stage is whether a prima facie case requiring at least some explanations from the accused has been made.

I hold that at this stage where no evidence has been adduced by the prosecution, I cannot act on the proof of evidence to rule on whether a prima facie case has been made out.

The Applicant further submitted that the 2nd Applicant does not exist, that he is not a legal person nor a juristic person of any kind. It is trite that a legal person means a human being or a body corporate, and includes anybody, organisation or Institution empowered by law to enter into contacts with others or to do acts that involve or render necessary the entering into contractual relations with others.

The law recognizes two categories of persons who can sue and be sued. They are natural persons and other bodies having juristic personality. They are referred to as artificial pesons. It is the law that a body not vested with juristic or legal personality cannot sue or be sued.

See Buhari V INEC (2008) 4 NWLR (pt 1078) 546.

I am therefore in agreement with the Applicants submission that the 2nd Applicant does not exist and is not a juristic or judicial entity. In Isola V Societe General Bank Nig. Ltd. (1997) 2 NWLR (pt 486) 405 at 424. The Supreme court held that "a company being a legal and juristic person can only act through its human agents and servants who are competent to give evidence on any transaction entered by the company.

In conclusion I hold as follows:

1. That the applicants have served with the information and proof of evidence as required by law.
2. That the charge before the court is not an abuse of court process and that the offence charged is not unknown under the law.
3. That the Respondents has not complied with Section 146 of the Administration of Criminal Justice Law of Anambra State 2010, on proof of Evidence.
4. That the Respondent Economic and Financial Crime Commission are competent to bring the information on the offence charged.
5. That this charge is not a bar to the contempt charge or Fundamental Right proceeding before the court.
6. That at this stage of proceeding the court cannot on proof of evidence rule on prima facie case.
7. That the 2nd Applicant is not a legal or juristic person and does not exist and cannot be changed, a charge cannot be brought against a non existence person.

In the final analysis:

1. I make an order directing the Respondent to frame a new charge to reflect the proper parties, as provided in S 269(1) of the Administration of Criminal Justice Law 2010.

2. The Respondents are further ordered to comply with Section 146(b) of the Administration of Criminal Justice Law 2011 on the content of proof of evidence.

SGD:

HON. JUSTICE C.A. EMEMBOLU
JUDGE
16/09/2013

COUNSEL:

Ijeoma Igbokwe Esq. for the Defendant/Applicant