IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE AFUZE JUDICIAL DIVISION HOLDEN AT AFUZE
BEFORE HIS LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE
JUDGE ON THURSDAY THE 11TH DAY OF MAY 2017

B E T W E E N: SUIT NO. HAF/08/2016

1. DAVID AIRENDE ROBERT
2. OMOH ALABI
3. JULIUS AROGAGAH
4. SUNDAY EDEKI
5. AFEGEH EDEKI
6. KELVIN AKHARUME ..... CLAIMANTS/RESPONDENT
7. OHIWERE MIKE
8. ALABI OHIOZOKHAI
(Suing for and on behalf of Ihievbe-Ogben Youth Association)

A N D

1. CHIEF ANDREW OTOHINA OBOH ..... DEFENDANT/APPLICANT
2. PETRA QUARRIES LTD ..... DEFENDANT/RESPONDENT
3. SKAFF NIGERIA LTD ..... DEFENDANT/APPLICANT

R U L I N G

This is a preliminary objection filed by Counsel to the 1st and 3rd Defendants praying for :

1. An Order striking out or/and dismissing suit No. HAF/08/2016: David Airende & 7 Others Vs Chief Andrew Otokhina Oboh & 2 Others on the ground that it is incompetent as this Honourable Court lacks the jurisdiction to hear same.
2. An Order that "Ihievbe-Ogben Youth Association" is not a "PERSON" contemplated under Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) for the determination of any

question as to Civil rights and obligations before Courts in Nigeria and should be struck out.

3. An order that "Ihievbe-Ogben Youth Association" as in this instant suit or action or cause is not a Legal Personality or Juristic personality that have legal capacity to sue and be sued, and hence, the suit should be struck out.
4. An order that this instant suit at the instance of the 1st – 8th Claimants/Respondents should be set aside as the suit does not have the "consent" authority", authorization" of Ihievbe-Ogben Youth Association and does not emanate from Ihievbe-Ogben Youth Association and suit should be struck out.
5. An order that the 1st - 8th Claimants/Respondents lack the LOCUS STANDI to initiate this instant suit and it should be struck out.
6. An order that this instant suit by the 1st – 8th Claimants/Respondents is an abuse of the process of court and should be dismissed.
7. An order of Court striking out this instant on the ground that this Honourable Court lacks the jurisdiction to hear same.

Counsel for the 1st and 3rd Defendants formulated the following issues for determination:

1. Whether "Ihievbe-Ogben Youth Association" is a "PERSON" contemplated under Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) for the determination of any question as to the Claimants civil rights and obligations before this Honourable Court.

2. Whether "Ihievbe-Ogben Youth Association" is a Legal or Juristic Personality that has legal capacity to sue and be sued.

3. Whether on face of the Statement of Claim filed by the Claimants if this instant suit was initiated by the Claimants with the authorization, authority, consent, mandate and approval of the Ihievbe-Ogben Youth Association.

4. Whether if issues 1, 2 & 3 above are answered in the affirmative whether this Honorable Court has jurisdiction to entertain this action or cause?

Counsel to the Applicants submitted that the Ihievbe-Ogben Youth Association is not a juristic person as contemplated by Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 as amended. Counsel to the Applicants also referred Court to Section 18(1) of the Interpretation Act which defines "PERSON" to include any body of persons corporate or unincorporated.

Counsel to the Applicants submitted that the Ihievbe-Ogben Youth Association is a youth association registered with a State Ministry of Youths and Sports does not qualifies as any entity clothed with statutory of Legal Personality guaranteed in parts "B", "C" and "D" of the Companies and Allied Matters Act 2004.Counsel to the Applicants submits that apart from Human beings, however, there are two(2) major classes of entities which have been recognized at law as having legal personality, they are the Corporation Sole and the Corporation Aggregate and relies on the case of **Ataguba & Co., Vs. Gura Nig. Ltd (2005) 126 LRCN 982 @ 986 Ratio 2R @ 99 A-P.** Counsel to the Applicants submits that the Ihievbe-Ogben Youth Association does not qualify either as a Corporation Sole or a Corporation Aggregate to be treated as possessing Legal or Juristic personality and relied on the case of **Nigerian Bar Association Vs. Chief Gani Fawehinmi (1986) 2 NWLR (Pt. 21) 224@241**

Counsel to the Applicants submits that whereas JURIDICIAL PERSONS possess separate entity, they can neither sue nor be sued, since the separate entity is not recognized nor ascribed by the Law. Counsel to the Applicants submits that the 1st – 8thClaimants/Respondents in their individual capacities are individually Juristic Persons or that can sue and be sued.

Counsel to the Applicants submits that for an action to be properly constituted so as to vest jurisdiction in the court to adjudicate on it, there must be a competent Claimant and a competent Defendant. Counsel to the Applicants submits that as a general principle, only natural persons, that is, human beings and juristic or artificial person such as body corporate are competent to sue or be sued. Counsel to the Applicants submits that where either of the parties is not a legal person, the action is liable to be struck out as being incompetent and refers to the case of **Ataguba & Co., Vs. Gura Nig. Ltd (supra) @ 985/986 Ratio 1 & @ 998 2-33 & 999A.**

Counsel to the Applicants submits that the Court should strike out this suit as being incompetent as there is no competent Plaintiff (Claimant) in this suit as Ihievbe-Ogben Youth Association is neither a natural person nor a juristic person.

On whether this suit is initiated with the authorization, authority, consent, mandate and approval of the Ihievbe-Ogben Youth Association, Counsel to the Applicants submits that:

A "REPRESENTATIVE ACTION" is an "Action brought by one or more members of a class on behalf of the entire class. Counsel to the Applicants submits that in a representative action, the party wishing to sue or defend in a representative capacity must obtain the authorization to sue or defend from the class or the Community or others parties (people) he wishes to represent and relies on the cases of

1. Wiri Vs. Wuche (1980) 1-2 SC 1

2. Obiode Vs Orewere (1982) 1-2 SC 170

3. Sule Adukwu & 4 Ors. Vs. Commissioner for Works, Land and Transport, Enugu State & 3 Ors. (1997) 2 NWLR (Pt. 489) pg. 588 @591 Ratio 5 & @ 596 paras D-E

4. Anieka Melifonwu & ors. Vs. Charles Ezenwa Egbuji & Ors. (1982) 9 SC 145 @ 163 paras 5-20

5. Onyekwulunne & Ors. Vs. Ndule (1997) 7 NWLR (Pt. 512) 250 @ 225 Ratio 6 272 paras C-G.

Counsel to the Applicants submits that the suit of the Claimants was not instituted with the authority, mandate, consent and approval of Ihievbe-Ogben Youth Association.

Counsel to the Applicants submits that the non-authorization of this instant suit by the Ihievbe-Ogben Youth Association ousts the Jurisdiction of this Court to entertain this suit, and also denies the 1st -8th Claimants/Respondents the Locus Standi in this action and relied on the case of **Sule Adukwu & 4 Ors. Vs. Commissioner for Works Lands and Transport, Enugu State & 3 Ors. (Supra)**

Counsel to the Applicant referred Court to Exhibit"FG2" wherein forty-five (45) persons with their signatories disclaimed that this instant suit was not instituted with the authority, mandate, consent and approval of Ihievbe-Ogben Youth Association.

Counsel to the Applicants submits that the Claimants without the Ihievbe-Ogben Youth Association authorizing the institution, initiation and commencement of this action do not have sufficient legal interests in seeking redress in Court and relies on the case of **Paulinus Okafor & 7 Ors. Vs. Chief**

Christopher Asoh& 11 Ors. (supra) @ 38 ratio 6 & @ 55 para E and @ 38 ratio 8 55 para D.

Counsel to the Applicants submits that where a Claimant lacks locus standi, the proper order the court has to make is striking out of the suit and refers to the case of **Paulinus Okafor & 7 Ors. Vs. Chief Christopher Asoh & 11 Ors. (supra) @ 38 ratio 7 & @ 57 para C.**

Counsel to the Applicants submits that **Attorney-General of Lagos State Vs. Hon. Justice L.J. Dosunmu (1989) 3 NWLR (Pt. 111) pg. 552 @ 558 ratio 2 & @ 556 para A & @ 567 paras A-C** settled how competence and incompetence of an action affects the jurisdiction of court.

Counsel to the Applicants submits that a Court of law has no jurisdiction to hear and determine a matter that is brought by persons without the requisite locus standi or an action not commenced under the due process of law and relies on the case of **Madukolu&Ors. Vs. Nkemoilim (1962) All NLR (Pt. 1) 581 @ 590 (2001) 46 WRN 1**

Counsel to the Applicants submits that where Claimant lacks locus standi, the proper order to make is the striking out of the Suit and refers to the case of **Paulinus Okafor & 7 Ors. Vs. Chief Christopher Asoh& 11 Ors. (supra) @ 38 ratio 7 & @ 57 para C.**

Counsel to the Applicants submits that Exhibits "FG1" and "FG2" and the depositions of 1st Defendant/Applicant when read communally reveals that the Claimants/Respondent do not have the requisite locus standi to initiate this suit, a suit initiated in a Representative Capacity "on behalf of Ihievbe-Ogben Youth Association" without the requisite authorization, authority and mandate of Ihievbe-Ogben Youth Association.

Counsel to the Respondents filed a Counter affidavit opposing the preliminary objection and also filed a written address. Counsel to the

Respondents submitted that the claim was instituted by named individuals of a registered Association. Counsel to the Respondents submits that the Ihievbe-Ogben Youth Association is duly registered by the Ministry of Youth and Sports, Edo State of Nigeria.

Counsel to the Respondents submits that in the interest of fair hearing and pursuant to the rule of natural justice and equity the state of legal personality of Ihievbe-Ogben Youth Association cannot be used to defeat the end of Justice.

Counsel to the Respondents submits that party being represented in a representative action need not be a legal person, it is the person invoking the jurisdiction of the court, that is the named party who is dominuslitis, that must be a juristic person and not the party being represented and relies on the case of **Ifekwe Vs. Madu (2000) 14 NWLR (Pt. 475) paras B-C.**

Counsel to the Respondents submits that even where there is no formal authorization by way of document, the Court of law will not hold that a Plaintiff has no authority to sue in a representative capacity. Counsel to the Respondents submits that the Court adopts a flexible attitude, based on the facts and circumstances of each case and relies on the case of **Animashaun Vs. Osuma (1972) 4 S.C. 200, Obiode Vs. Orewere (1982) 1-2 S.C. 170.**

Counsel to the Respondents submits that since the rule as to representative action is a rule of convenience which ought not to be treated as rigid but as a flexible tool in the administration of Justice. Counsel to the Respondents submits that Plaintiff in a representative action would only be denied representation order when it is shown that there has been a substantial opposition to the representation by members of the group and not when disgruntled elements descends from a general authorization of a groupand relies on the case of **Melifonwu Vs. Egbuji (1982) S.C 147.**

On the issue of locus standi, Counsel to the Respondents submits that the Claimants as members of Ihievbe-Ogben Youth Association have locus standi in this suit as they have interest to protect in the subject matter of this suit.

I have carefully read the submissions of both Counsel and the Writ of Summons and the Statement of Claim in this suit.

In the case of H.K.S.F. v. Ajibawo (2008) 7 NWLR (Pt.1087) 511 at 531-532, the Court of Appeal per Augie, JCA(as she then was) stated inter alia that:

> "For an action to lie in a representative capacity, the following must exist:-
>
> (a) there must be a common interest;
>
> (b) a common grievance; and
>
> (c) the relief claimed must be beneficial to all.

The rule applies only where the representative as well as those represented have the same interest in the action before the court. In this case, the Respondents ought to show from their pleadings and evidence that they are entitled to bring the representative action because they and those that they represent suffered a common injury and the relief being claimed is of common benefit to all of them equally, which they failed to do.'

The Statement of Claim pleads in paragraph 2 that the Claimants are members of the Ihievbe-Ogben Youth Association which is the umbrella body of Ihievbe-Ogben Youth, the Claimants have revealed a common interest and the reliefs sought is such as would be for the benefit of all sought to be represented by the Claimants in this suit.

In the case of Adeleke v Anike (2006) 15 NWLR (Pt.1004) @ 162 para. G-H:

It is well settled, that a representative suit would be deemed in order, if there is common interest or a common grievance, and the relief sought is such

as would be for the benefit of all sought to be represented by the plaintiff. See Ogamioba v. Oghene (1961) 1 All NLR 59 (1961) 1 SCNLR 115. Per Nzeako JCA.

In the case of Idise v. Williams (1995) 1 NWLR (Pt.370) 142

The Supreme Court stated inter alia per Wali JSC that:

> "For an action to lie in a representative capacity, there must be- (i) a common interest; (ii) a common grievance and (iii) the relief must be beneficial to all

I agree with the submission of Counsel to the Respondent that the person being represented need not be a legal person , it is the person invoking the jurisdiction of the Court, that is the named party who is dominuslitis, that must be a juristic person and not the party being represented. From section 18 of the Interpretation Act which defines 'person' to include any body of persons corporate or unincorporated, Ihievbe-Ogben Youth Association does not have to be incorporated under the Company and Allied Matters Act before it can be regarded as a person. In the case of Ifekwe v. Madu (2000) 14 NWLR (Pt.688)459 Opene, J.C.A stated inter alia :

In this action, the plaintiff, Prince Joe Madu sued for himself and on behalf of the Master Bakers and Caterers Association of Nigeria, Cross River State Branch. It is the contention of the Appellant that the Respondent's Association which is Master Bakers and Caterers Association of Nigeria, Cross River State Branch was not registered as provided under section 673(1) of the Companies and Allied Matters Act and that the Respondent cannot sue on its behalf or purport to represent it in any proceedings and that in a representative proceeding that the other party not stated must be a person who is capable of suing and being sued.

I must confess that I find it very difficult to understand the basis of this submission and not to talk of agreeing with it. The argument that if a person or

a group of persons are suing for themselves and on behalf of the members of a community, village, town, association or a body that the members of the community, village, town, association or the body is a party to the case and that it must be registered and that if it is not registered that a person cannot sue on its behalf and that it can also not authorise anyone to sue on its behalf because it is not a juristic person.

If this argument is followed to its most logical conclusion, it means that if any company causes an oil spillage or hazard which caused a damage to the town like Akamkpa or Akpabuyo that the people of Akamkpa or Akpabuyo cannot authorize one or two people to sue for themselves and on behalf of the members of the town, because Akamkpa or Akpabuyo is not registered under section 673(1) of the Companies and Allied Matters Act.

In the case of Mozie v. Mbamalu (2006) 15 NWLR (Pt. 1003) 466 the Court stated inter alia:

> "The rule as to representative actions was delivered from the Court of Chancery in England which required the presence of all parties to an action so as to put an end to the matters in controversy. See Anatogu v. Attorney-General of East Central State of Nigeria (1976) 11 SC 109. The rule has been described as a "rule of convenience only". See Hamisu v. Abergavenny (marquis of) (1887) 3 TLR 324 at 324. As a rule that was originated for convenience, and for the sake of convenience, it has been relaxed. (see Bedford (Duke of) v. Ellis (1901) AC 1 at page 8). As a rule of convenience, it is a matter which ought not to be treated as rigid but as a flexible tool of convenience in the administration of justice. See Anatogu v. Attorney-General of East Central State of Nigeria. In other words, Courts of law should not myopically

follow the rule rigidly and fall into a big ditch and find themselves in a state of mirage where it becomes impossible to retrace their steps to do justice in a given case. On the contrary, Courts of law should invoke the rule where it is convenient to do so to assist them in doing justice in a given case. It is this aspect of doing justice in a case that vindicates the element of convenience built into the rule. The rule is not cut-and-dry. After all, justice is paramount in the judicial process. It is the cynosure of the process".

In a state of mirage where it becomes impossible to retrace their steps to do justice in a given case. On the contrary, Courts of law should invoke the rule where it is convenient to do so to assist them in doing justice in a given case. It is this aspect of doing justice in a case that vindicates the element of convenience built into the rule. The rule is not cut-and-dry. After all, justice is paramount in the judicial process. It is the cynosure of the process.'

What is the legal burden cast upon a Plaintiff and Defendant in a representative action? In the case of J.W. Amu Vs. J.B Atane & Anor. 1 (1974) All N.L.R. 678 Irikefe, J.S.C. stated inter alia that:

"...in a representative action such as this, the only legal burden cast upon a plaintiff is that of establishing the existence of a common interest and a common grievance. Such a plaintiff is in fact not bound to obtain the consent of others whom he might claim to represent. The position is otherwise in the case of a representative defendant. See OTUGUOR OGAMIOBA VS. CHIEF D.O. OGHENE AND ORS. - (1961) 1 ALL NIGERIA LAW REPORTS 59." Per IRIKEFE, J.S.C. (P. 9, paras. D-F) .

The case of Otapo v. Sunmonu 1987 5 SC 228is a case where the Supreme Court had outlined the principles applicable, where a party failed to obtain leave to sue in a representative capacity. I have carefully read the above stated case which appears to be the locus classicus because the matter was a constitutional issue in which seven Supreme Court Justices decided. It is as stated by Obaseki, JSC at page 244 of the report thus: -

> "It is settled law that the failure to obtain leave to sue in a representative capacity does not vitiate the validity of the action.'

At page 253 Obaseki JSC further stated that:

> ' This court has held times without number that once the pleadings and evidence show conclusively a representative capacity and the case was fought throughout in that capacity, the trial court can justifiably properly enter judgment for or against the party in that capacity even if amendment to reflect that capacity had not been applied for and obtained. See **Ayeni Vs. Sowemimo (1982) 5 SC. 60, Docuko Vs. Bob Manuel (1967) 1 All NLR. 113 at 121, Mbe Nta & Ors. Vs. Ede Nweke Anigho & Anor. (1972) 5 SC. 156 at 174-175, Shelle Vs. Chief Asajon (1957) 2 FSC.68, Habib Disu Vs. L.W. Daniel Kalio, FSC 216/1962 decided on 7/3/64.**

.At page 266Obaseki JSC held -

> 'It had committed a serious breach of the principle of fairness and the audi alteram partem rule a breach which truncated the constitutional right of the Appellants herein to fair hearing as guaranteed by section 33(1) of our constitution.

Pg 282- However, it is only here necessary to say that the Court of

Appeal would seem to have misunderstood the principles applicable in representative actions when it said that because Plaintiff did not obtain leave of the Court to represent members of the Isele-Oja and Gbogunlari section of Ogunji Adebari Otapo and Asunmoge Olu Chieftaincy families, the action was not properly before the court. This was their interpretation of Order 13 rule 14 of the Lagos State High Court Rules.'

Pg 283 Karibi Whyte JSC held that-

' where both parties to an action failed to describe themselves as appearing in representative capacities, if it is abundantly clear from the proceedings that that was the true position in which the action was brought and defended, the court will ignore the omission. See **Laribigbe Vs. Motola &Ors. 12 NLR. 17, at 18.** This is because as was stated in Divisional **Chief Gbogboluhi of Vakpo Afeyi Vs. Head Chief Hodo of Anfoega Akukome 7 W.A.C.A. 165 at pg. 165**

In the instant case the action was described in the Writ of Summons as having been brought in a representative capacity.

Pg. 284-285 The trial Judge was right therefore in regarding the action which was brought and fought throughout in a representative capacity as a representative action – see **Lediju Vs. Odulaja 17 NLR. 15, AfolabiVs. Adekunle (1983) 8 S.C. 98, Dokubo Vs. Bob-Manuel (1967) 1 All NLR, 113, Ayeni Vs. Sowemimo (1982) 5 SC 60.'**

Pg 299- Representative Actions.

What are the necessary pre-requisites for a representative Action? Lord Macnaghtan in the Privy Council in **Duke of Bedford Vs. Ellis (H.L.) (P.C.) (1901) A.C.1 at pg8** observed:-

> "Under the old practice, the Court required the presence of all parties interested in the matter in suit, in order that a final end might be made of the controversy. But when the parties were so numerous that you never could come at justice, to use an expression in one of the older cases, if everybody interested was made a party the rule was not allowed to stand in the way. It was originally a rule of convenience: for the sake of convenience it was relaxed. Given a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent.

Pg 300- But the rules as to parties to suits in equity were not the same as those which governed Courts of common law, and were long since adapted to meet the difficulties presented by a multiplicity of persons interested in the subject matter of litigation. Some of such persons were allowed to sue on behalf of themselves and all others having the same interest. This was done avowedly to prevent a failure of justice. The principle on which the rule was based forbids its restriction to causes for which an exact precedent can be found in our law reports. The principle is as applicable to new cases as to old, and ought to be applied to the exigencies of modern life as occasion requires: see **The Taff Vale Railway Company Vs. Amalgamated Society of Railway Servants (1901) A.C. 426 (H.L.).** This is almost similar to the principle enunciated by Lord Penzance in **Wytcherley Vs. Andrews (1871)** L,R, 2 P & D at pg. 328, a principle described by Lord Denning in **Abuakwa Vs. Adanse (1957) 3 All E.R. 559 at pg. 563** as "founded on justice and common-sense" for all persons with the same interest …… to regard this party named on the writ as their champion ….. if he fails they fall with him and must take the

consequences. These are the basic principles on which representative actions are founded.'

I do not agree with Counsel to the Applicants when he submits that the 1st to 8th Claimants do not have sufficient legal interest in this suit without the authorization of the Ihievbe-Ogben Youth Association. The Writ of Summons and Statement of Claim reveals that the 1st to 8th Claimants are members of the Ihievbe-Ogben Youth Association and were one time members of the Executive Committee of the Association. That in my opinion discloses sufficient legal interest and locus standi to institute the action as jusitic persons for and on behalf of the Ihievbe-Ogben Youth Association. I agree with Counsel to the Respondents that the Claimants as members of Ihievbe-Ogben Youth Association have locus standi in this suit as they have interest to protect in the subject matter of this suit.

By his own admission, Counsel to the Applicants admit that the 1st to 8th Claimants are competent juristic persons. In the case of Ifekwe V Madu 2014 14 NWLR(688)459 the Court held that:

> it is the party invoking the jurisdiction that is the named person who is dominuslitus that must be a juristic person and not the party being represented. The party represented therefore need not be.

Where an action in a representative capacity is not properly constituted, it could be treated as a personal action. See Adegbite V Lawal 1948 12 WACA 398

> "Failure to obtain leave of the court to sue in a representative capacity does not vitiate the validity of the action: Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 589.

Exhibits FG1 and FG2 are documents showing the signatories of some members of the Ihievbe-Ogben Youth Association stating that the Claimants do

not have their authorization to initiate the suit. Counsel to the Applicants submits that these documents show that the Claimants do not have the requisite authorization. In the case of ALHAJI SALIU IREYEMI SANNI & ORS V. ALHAJI TAJUDEEN BABATUNDE HAMZAT & ANOR

CITATION: (2012) LPELR-8010(CA)

> "The mere fact that some factional members of the Muslim community sympathetic to the cause of the Appellants were not in support of the representative action by the Respondents would not have defeated the representative action, save the Appellants had shown those in opposition were in the majority - See Melifonwu &Ors v, Egbuji and Ors (1982) N.S.C.C, 341 at page 348 thus- "However, because of incompatibility of human nature, it has been appreciated that the Plaintiff needs not have the authority of the entire interested groups Sogunle v. Akerele (supra). I would respectfully adopt the view expressed by Idigbe J., as he then was in Nsima v. Nnaji (1961) ALL NLR 441 and 449 that disgruntled elements dissenting from a general authorization of a group ought not to be permitted to frustrate the common interest of the group. It is only when it is shown that there has been a substantial opposition to representation by members of the group that the Plaintiff may be denied representation."PER IKYEGH, J.C.A (P.17, Paras. A-F)

Decided cases have clearly shown that the issue of legal representation is a rule of convenience. As a rule of convenience, it is a matter which ought not to be treated as rigid but as a flexible tool of convenience in the administration of justice. In other words, Courts of law should not myopically follow the rule rigidly and fall into a big ditch and find themselves in a state of

mirage where it becomes impossible to retrace their steps to do justice in a given case. On the contrary, Courts of law should invoke the rule where it is convenient to do so to assist them in doing justice in a given case. It is this aspect of doing justice in a case that vindicates the element of convenience built into the rule. The rule is not cut-and-dry. After all, justice is paramount in the judicial process.

In the case of MR. ISRAEL IDOWU & ORS v. THE REGISTERED TRUSTEES OF ONA IWA MIMO CHERUBIM AND SERAPHIM CHURCH OF NIGERIA AND OVERSEAS

CITATION: (2012) LPELR-7865(CA) FASANMI, J.C.A stated inter alia:

> 'Representative actions may be accommodated without obtaining an order of court for bringing the action in a representative capacity. Once an action is constituted in such a manner, the option is to amend the proceedings to reflect the representative capacity or to allow the action to survive in a representative capacity, not to strike out or dismiss the action. See GBOGBOLU VS. HODO (1941) 7 W.A.C.A. at 164. In effect, the issue of whether an action is brought in a representative capacity should not be rigidly enforced by the court."

Order 13 rule 12 of the High Court Civil Procedure Rules Edo State states:

> (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf or for the benefit of all persons so interested.

An interpretation of this rule shows that once the parties have the same interest one or more persons may sue simpliciter. The rules makes no provision for prior authorization, once there is a common interest, one or more persons

may sue. The Writ of Summons and Statement of Claim reveals that 1st to 10th Claimants as members Ihievbe-Ogben Youth Association have a common interest with the Association and have shown sufficient locus standi to sue on behalf of themselves and Ihievbe-Ogben Youth Association andI so hold.

I do not agree with Counsel to the Applicants that this Court does not have jurisdiction to hear this suit. In the case of

UMOH & ANOR V. AKPAN & ORS (2011) LPELR-5045(CA)

It is settled that a court is competent when the court is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or the other; the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent, to the exercise of jurisdiction. All the requirements must co-exist conjunctively before jurisdiction can be exercised by the court. It therefore means that where a court has no jurisdiction to hear and determine a case, but goes ahead to do so, it becomes an exercise in futility, as the decision arrived of in such a case amounts in law to a nullity, irrespective of how well the proceedings was conducted. This Court therefore has a competent suit before it and has jurisdiction to hear the suit.

I find that this Court has jurisdiction to hear this suit and I so hold.

This preliminary objection is therefore dismissed.

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HON. JUSTICE N. A. IMOUKHUEDE,

J U D G E.

11/5/2017

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