

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIRO,
JUDGE, ON THURSDAY THE
24TH DAY OF SEPTEMBER, 2020.

SUIT NO: HCU/1CA/2019

BETWEEN:

EHIA BHI AREBAMHEN.....APPELLANT
AND
DR. STEPHEN E.O. ORIAFO.....RESPONDENT

JUDGMENT

This is an appeal against the judgment of Chief Magistrate F. E. Okunrobo sitting at the Magistrate Court, Uromi delivered on the 23rd day of March, 2018 wherein the Court gave judgment against the Appellant as follows:

1. To pay up the sum of N1, 000, 000: 00 (one million naira) his father owed the Plaintiff to him.
 2. To pay accumulated interest from the said amount at the Central bank lending rate from March 2015 till today the day of the judgment to the Plaintiff
 3. Pay the Plaintiff the sum of N250, 000: 00 as against N500, 000: 00 claimed as general damages.
- Being dissatisfied with the judgment, the Appellant filed his Notice and Grounds of Appeal as follows:

GROUND ONE

The Judgment is against the weight of evidence.

GROUND TWO

The Lower Court erred in Law when it awarded judgment against the appellant in respect of thrift contribution organized without the knowledge, consent and participation of the appellant by a group of Businessmen and Academics.

- (i) When the appellant was never aware of the existence of such a thrift meeting.***
- (ii) When the appellant was not a member of the said thrift meeting or association.***
- (iii) When benefits and/or obligations flow directly to members of the said thrift meeting.***
- (iv) When the said thrift meeting was an unincorporated association.***

GROUND THREE

The Lower Court erred in Law when he assumed jurisdiction to entertain the respondent's claim against the appellant who was not a proper party to the said proceedings.

PARTICULARS OF ERROR

- (i) That the appellant had no business with the respondent in respect of any sum of money, the subject matter of the claim at the Lower Court.***

- (ii) That the appellant never had any dealings with the respondent's thrift meeting to warrant any liability therefrom.*
- (iii) That the appellant had no interest whatsoever in of the said thrift meeting, an association of Businessmen and Academics.*
- (iv) That the personal obligation and/or affiliation of the appellant's father to the said meeting is not transferable, let alone being transferred to the appellant.*

GROUND FOUR

The Lower Court erred in Law when it assumed competence to entertain and determine the respondent's claim who had no locus standi to institute the action in his personal capacity.

PARTICULARS OF ERROR

- (i) That the said thrift contribution was not a personal transaction between the respondent and the appellant's father, late Vincent Arebamen.*
- (ii) That the thrift contribution was organized under the umbrella of a meeting with principal officers acting on behalf of the meeting.*
- (iii) That all monetary contributions are routed through the thrift meeting to beneficial members.*
- (iv) That the thrift meeting is the proper party to institute any suit for recovery of any sum due to her for disbursement to members and not the respondent.*

GROUND FIVE

The Lower Court erred in Law when it held that the appellant was liable to the respondent in respect of his late father's obligation to the thrift meeting without recourse to the doctrine of privity of contract.

PARTICULARS OF ERROR

- (i) When only parties to a contract are bound by the terms and conditions of the said contract.*
- (ii) When a stranger/third party cannot benefit or incur liability in respect of a contract between two parties.*
- (iii) When the contract, the subject matter of the claim at the Lower Court was a personal contract between the appellant's father and the thrift meeting.*
- (iv) When a personal contract cannot be enforced against a third party.*

GROUND SIX

The Lower Court erred in Law when it awarded judgment in favour of the respondent who could not discharge his evidential burden of proof in respect of his claim, the subject matter of this appeal.

PARTICULARS OF ERROR

- (i) When the evidence of the PW2 revealed that the exact amount the respondent paid to the appellant's father was not known.*
- (ii) When evidence from the respondent's witness also revealed that the exact number of members of the meeting who contributed money, was not known.*
- (iii) When the contract between the appellant's father and the thrift meeting was not predicated on Central Bank lending rate and in which case was not even a money lending contract.*
- (iv) When no evidence whether documentary or oral was shown or led in respect of showing the current Central Bank lending rate.*

- (v) *When the Cheque purportedly relied on by the respondent to establish the appellant's father's indebtedness, has nothing on it to link it with payment in respect of the respondent's thrift meeting.*
- (vi) *When a Cheque is only binding on the parties thereto and in any other case, a dud Cheque attracts criminal sanction and nothing more.*

The Respondent on his part filed a Cross appeal with a sole ground of appeal as follows:

GROUND OF APPEAL

The learned trial Judge failed to contemplate the possibility of an appeal when it restricted the payment of accumulated interest from the said amount of N1, 000, 000:00 (One Million Naira) at Central Bank lending rate from March, 2015 till the 23rd day of March, 2018.

PARTICULARS:

- a. The evidence before the Lower Court from all the parties showed that the principal sum of N1, 000, 000:00 (One Million Naira) had remained unpaid.*
- b. That in the case of a commercial nature where money ought to have been paid but was not paid, it ought to carry interest until paid.*

In his cross appeal, the Respondent is praying this Court for an order confirming the decision of the lower Court and further ordering the Appellant to pay accumulated interest on the said amount of N1, 000; 000: 00 (one million naira) at the Central Bank lending rate from March, 2015 until the money and judgment sum is fully paid.

Learned Counsel for the parties filed and exchanged their respective briefs of arguments in consonance with the rules of this Court.

In his Brief of Argument, the learned Counsel for the Appellant, *Dr. P.E. Ayewoh-Odiase* formulated three issues for determination as follows:

- 1. Whether liability can flow from the appellant to the respondent in respect of a contract which the appellant was not a party to? And if the answer is in the affirmative;*
- 2. Whether the respondent led credible evidence in proof of his claim at the Lower Court particularly his entitlement to accumulated interest at Central Bank lending rate?*
- 3. Whether the Lower Court had the jurisdictional competence to entertain the respondent's claim against the appellant in the absence of proper parties?*

Thereafter, the learned counsel for the Appellant articulated his arguments on the three issues seriatim.

ISSUE 1:

Whether liability can flow from the appellant to the respondent in respect of a contract which the appellant was not a party to?

On issue one, the learned counsel submitted that the doctrine of privity of contract recognizes that only parties to a contract can incur liability in respect of the contract and not strangers as in the instant case. That there is evidence in the record of appeal that the transaction which led to the action in the Lower Court was between the respondent and the appellant's father, both of whom were members of a thrift meeting which engaged in monthly financial contributions for its members.

He further submitted that the issuance of a cheque to the respondent by the appellant's father, cannot in any way, transfer liability to the appellant as same was a personal transaction in respect of a personal contract. He submitted that since the appellant was not a party to the said contract, he cannot be bound by the terms of the contract and referred the Court to the case of *Ebhota V Plateau Investment and Property Development Co. Ltd (2006) 1 FWLR part 286 page 134 at p. 158 paras B – E* where the Court of Appeal held that only parties to a contract are bound by that contract.

Furthermore, he submitted that the enforcement of the said contract against the appellant amounts to forcing a third party into accepting obligations in respect of a strange contract. He relied on the case of *Makwe V Nwukor (2001) 89 LRCN page 2381 at 2382* where the Supreme Court held as follows:

“It is trite law that as a general rule, a contract affects only the parties thereto and cannot be enforced by or against a person who is not a party to it. In other words, only parties to a contract can sue or be sued on the contract and generally, a stranger to a contract can neither sue nor be sued on the contract even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. In the same vein the fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue or be sued upon the contract”.

Counsel submitted that even if the contract between the respondent and the appellant's father had ascribed liability to the appellant in the event of a breach, the appellant would still not be liable. He referred to the case of *Ladimeji V Federal Ministry of Works & Housing (2002) 7 WRN Page 39 at Pp. 47-49, lines 45 – 5* where the Court of Appeal relied on the decision of the Supreme Court in the case of *A.G. Federation, V A.I.C. Ltd (2000) 10 N.W.L.R. (Pt. 675) 293*, and held as follows:

“The Law is sacrosanct that a contract binds only the parties to it and cannot be enforced by or against a person who is not a party even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it.”

Learned counsel contended that in as much as a contract cannot be enforced against a third party, a third party cannot also enforce any contract to which he was never a party however beneficial the contract may be. See the case of *Rebold Industries Ltd V Magreola & ors (2015) 4 – 5 M.J.S.C, page 1 at Pp. 15 – 16, paras. F – B* where the Supreme Court held as follows:

“There is in the Law of Contract what is referred to as privity of contract. It is always between the contracting parties who must stand or fail, benefit or lose from the provisions of their contract. That is to say, their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit thereunder. Put differently, only parties to a contract or an agreement can enforce it. A person who is not a party to it cannot do so even if the contract was made for his benefit”.

He therefore submitted that since the appellant was not a party to the said contract upon which the Lower Court delivered judgment against him, issue one should be resolved in the negative.

ISSUE TWO:

Whether the respondent led credible evidence in proof of his claim at the Lower Court particularly his entitlement to accumulated interest at Central Bank lending rate?

Arguing issue two, counsel submitted that there was no credible evidence before the Lower Court upon which it predicated its findings before delivering judgment against the appellant. He submitted that in spite of the obvious lack of proof of the respondent's claim, the Lower Court delivered judgment against the appellant.

He posited that the PW2 testified under cross-examination that there was no proof that every member of the informal association paid money to appellant's father. Furthermore, that the PW2 admitted under cross-examination that he doesn't know the exact number of people that contributed money.

He submitted that where a party as in the instant case, fails to discharge the onus of proof on the balance of probabilities, his case should be dismissed. See the case of *Consolidated Resources Ltd V Abofar Ventures Nigeria Ltd (2007) 6 NWLR, part 1030, page 221 at P. 234, para. B.*

He said that the respondent also failed to lead any evidence in proof of his entitlement to accumulated interest at Central Bank lending rate. He submitted that where a party claims interest at a prevailing rate, he must lead evidence as to what the prevailing rate is at the relevant time in a claim for interest. He relied on the case of *Daniel Holdings Ltd V United Bank for Africa PLC (2005) 4 FWLR Part 294, Page 2364 at P. 2382, para. A*, where the Supreme Court refused to grant the interest claimed by the appellant on the ground that there was no evidence on record as to what the prevailing market rate was at the relevant time.

Furthermore, he submitted that where no interest is fixed by law, contemplated by parties to a contract or implied by custom, the Court lacks the power to award same as in the instant case. See: *Union Bank of Nigeria PLC V Ironbar Esq.*

He therefore submitted that in view of the incredibility of the respondent's evidence at the Lower Court, particularly his inability to discharge his burden of proof, issue two should be resolved in the negative.

ISSUE THREE:

Whether the Lower Court had the jurisdictional competence to entertain the respondent's claim against the appellant in the absence of proper parties?

On issue three learned counsel submitted that the Lower Court lacked the jurisdiction to entertain and determine the respondent's claim. On when a Court is competent, see the case of *Ayinke Stores Ltd V Adebogun (2008) 25 WRN, page 61 at P. 80 lines 20 – 45.*

He further submitted that where the proper parties are not before a Court of competent jurisdiction as in the instant case, the Court has no competence to entertain the claim.

On the meaning of proper party, counsel referred to the case of *Best Vision Centre Ltd. V U.A.C.N Property Development Company PLC (2003) 13 NWLR part 838 page 594* where the Court of Appeal held that for a Court to be competent to have jurisdiction over a matter, the proper parties must be identified. In espousing the rationale behind the aforesaid principle of law, the Court of Appeal in the above cited case, held as follows:

“In the instant case, the respondent was not a proper party to the appellant's suit because it was a third party who collected the service charges on which the appellant's suit was based. In the circumstance, the trial Court lacked jurisdiction to hear the appellant's suit”.

He submitted that from the printed record of Appeal, there is evidence that the respondent and appellant's father, were members of an informal association of Businessmen and Academics which was not registered. He questioned whether the Lower Court had the jurisdictional competence

to entertain the respondent's claim against the appellant in the absence of proper parties? He said that the evidence revealed that the appellant's father, was the Secretary of the Meeting and was in charge of co-ordination on behalf of the association.

He submitted that where a member of an unincorporated association is aggrieved as in the instant case, he had no legal right to sue in his personal capacity in respect of any matter involving the association. He relied on the case of *Union Bank of Nigeria PLC V Ntuk (2003) 16 NWLR Part 845 page 183 at Pp. 206 – 207, paras. H – B*, where the Court of Appeal held as follows:-

“An unincorporated association of persons does not have the Legal Status of a juristic person. Consequently, it can sue only by a representative action. Likewise, any person who has been wronged by such an association of persons can only sue it by suing some of its members as representatives of the association”.

Counsel therefore submitted that the respondent lacked the *locus standi* to sue in his personal capacity as distinct from a representative capacity when the interest of the association is involved. On the test for determining Locus Standing, see the case of *Arowolo V Akapo (2003) 8 NWLR, part 823, page 451 at Pp. 502 – 503, Paras G.A.* where the Court of Appeal held as follows:

“There are two tests used in determining the Locus Standi of a person, namely:

- (a) the action must be justiciable; and***
- (b) there must be a dispute between the parties”.***

Learned counsel further submitted that the respondent had no cause of action against the appellant worth protecting and maintaining. On the meaning of cause of action, he cited the case of *Shonybi V Onafeko (2003) 12 NWLR part 834 page 254 at P. 266 – 267, paras H – E* where the Court of Appeal held thus:

“The term ‘cause of action’ denotes every fact, though not every piece of evidence, which it would be necessary for the plaintiff to prove if traversed to support his right to the judgment of Court. A cause of action is also an act on the part of the defendant which gives the plaintiff a cause of complaint. The obligation and rights of parties are referable to the time when the cause of action, arose”.

Finally, he submitted that since the Lower Court had no competence to entertain and determine the claim which gave rise to this appeal owing to fundamental and irredeemable defects, issue three should be resolved in the negative.

In conclusion, he urged the Court to set aside the judgment of the Lower Court with substantial costs.

In his own Brief of Argument, the learned Counsel for the Respondent, ***Gbenga Adejokun Esq.*** adopted the three issues for determination as formulated by the Appellant's Counsel and articulated his arguments on them seriatim.

ISSUE 1

Whether liability can flow from the Appellant to the Respondent in respect of a contract which the Appellant was not to party to?

Opening his arguments on Issue One, the learned counsel contended that the Appellant's Counsel is trying to misdirect this Court that there was no privity of contract between the Respondent and the Appellant and therefore he cannot be bound by the terms of the contract because in actual fact there was no contract between the Respondent and the Appellant's father. He submitted that this

was a pure case of indebtedness of the Appellant's father to the Respondent simpliciter. He said that there was no evidence of any contract entered into by the Respondent and the Appellant's late father. He posited that the Court has held in the case of *Mr. Sidiku Ajala Suber v. Atiba Iyalamu Savings Loans Ltd (2007) 1502 ELC p.g 1 at Ratio 1* that for a contract to come into being in law there must have been a definite offer by the Offeror and definite acceptance by the Offeree.

He also referred to the decision of the Court of Appeal in the case of *B. F. I. G. V, B. P. E (2008) ALL FWLR (Pt. 416) 1919 at 1937-1938 Paras H- B* where they held that there are five ingredients that must be present in a valid contract, to wit: offer, acceptance, consideration, intention to create legal relationship and capacity to contract.

He maintained that all the five ingredients are autonomous and unequal in the sense that a contract cannot be formed if any of them is absent.

Learned counsel contended that none of these vital ingredients of a contract existed in the relationship between the Respondent and the Appellant's father to cloak their relationship as contractual.

He posited that when the Respondent testified before the lower court on the 12th day of May, 2016 as PW1, he never mentioned that he entered into any contract with the Appellant's father; rather he told the court that he joined an Association of big men who came together to be paying monthly contribution in 2011 till it collapsed in 2015. That he stated that the father of the Appellant acted as the treasurer and he tendered bank statements with which he paid the claimed sum of N1,000, 000: 00 (one million naira) to the Appellant's fathers account which was admitted by the lower court as Exhibits B, B1 – B9.

Learned counsel pointed out that one Dr. Abdulahi. Ikhuoria who testified as PW2 informed the court that ***“the association is not a formal association. It was a gathering of friends. We paid to Vincent Arebamhen and he would in turn pay it to the person who was due to collect the money for that month.”***

He submitted that the above piece of evidence revealed that the arrangement was merely an informal gathering of friends who came together to undertake a monthly thrift contribution and there was nothing contractual about their relationship. He emphasised that there was no intention to create contractual legal relations between the Respondent and the Appellant's father personally.

He submitted that the Respondent further led evidence of how the PW2 informed him sometime in May, that the meeting had closed down and that he should go and collect his contribution so far paid to the Appellant's late father. That the Respondent also led evidence that upon demand for his money, the Appellant's father pleaded for time and acknowledged the alleged sum of N1, 000,000:00 (one million naira) owed the Respondent as his personal debt when he issued the Respondent a post-dated cheque in his name and account for the said sum which was tendered and admitted as Exhibit C at the lower court. He said that the above piece of evidence therefore puts the Respondent's Claim at the trial court as one of indebtedness of the Appellant's father to him simpliciter.

He submitted that the Respondent testified that it while he was waiting for the cheque issued to him to mature that the Appellant's father died and upon refusal of the Appellant to honour his father's debt he sought redress at the trial court, which raises the fundamental question which ought to be determined by this Honourable Court; ***which is whether or not a deceased person's debt can be enforced against his estate?***

Counsel submitted that in the case of *Mrs Sinmisola Carew v. Mrs Iyabo Omolara Oguntokun & Ors (2011) LPELR -9355 (SC)* alternatively cited in *(2011) 5 NWLR 376*, the Supreme Court defined estate as the property that one leaves after death; that is the collective assets

and liabilities of a dead person. He submitted that it is a cardinal principle of law that where a man dies, his heirs do not only inherit his assets and liabilities they equally inherit all obligations left behind unfulfilled by the deceased. For this view, he relied on the case of *African Petroleum Plc & Anor v. Otunba Jonathan Olaniyan Farayola (2009) LPELR – 8902 (CA) Ratio 4*.

Counsel posited that one Dr. Ikhuoria who testified as Pw2 led evidence to establish the fact that the Appellant's father has died and has been buried. He said that the Appellant also admitted under cross examination that he is the one now supervising and managing the properties of his late father. He contended that the Appellant's father's indebtedness to the Respondent debt is to be charged to his estate and was inherited by the Appellant which makes him liable to pay same to the Respondent.

On the state of a debt under Esan Native Law and Custom, learned counsel referred to *Dr. C. G. Okojie's* book titled: *ESAN NATIVE LAWS AND CUSTOMS WITH ETHNOGRAPHIC STUDIES OF THE ESAN PEOPLE published and printed by Illupeju Press Ltd, Benin City at Pg. 123* where the author stated thus:

“(g) DEBTS: Assets and liabilities were in Esan Custom inheritable. A man’s unpaid debt passes squarely unto his first son and to no one else. Like property, he must face the consequences of the debt alone with the difference that the other children of their father helped to pay the debt AT PLEASURE. There was only one way in Esan Custom by which he could avoid inheritance of his father’s debt; if the father died leaving huge debt which the heir did not want to face, all he did was to renounce his claim TO ALL INHERITANCE- property, wives and all! That of course included assets and liabilities! Egbonughele then buried the dead man, and since technically, the man died without an heir, the Onogie inherited his property and liabilities; but since no one would go to demand payment of money from that feared member of the community, the debt became a BAD DEBT.”

He posited that the Appellant did not lead any evidence before the lower court that he had renounced his claim to his late father's inheritance so he is liable for his late father's liabilities and obligations which includes the debt to the Respondent.

He therefore urged the Court to affirm the decision of the lower court that since the Defendant admitted that he is now the person supervising and managing his late father's estate, this puts him in a position of managing his deceased father's credit and debit.

ISSUE 2

Whether the respondent led credible evidence in proof of his claim at the Lower Court particularly his entitlement to accumulated interest at Central Bank lending rate?

Arguing Issue Two, learned counsel submitted that the Respondent proved his claim to his entitlement to interest on the principal sum of N1, 000, 00: 00 (one million naira) at the trial court. He said that it is trite law that accrued interest on a principal sum withheld and not paid at the stipulated time attracts an interest by operation of law. He relied on the case of *Union Bank of Nigeria Plc v. Awmar Properties Ltd (2019) 280 LRCN Pg. 39 at 48 Ratio 6* where the court held that in a case of a commercial nature where money should have being paid some time ago but was not paid, interest ought to be paid because a person deprived of his money must be compensated.

He said that the Respondent led uncontroverted evidence of his several demands from the Appellant who refused to settle his father's debt from his late father's estate now in his care and management since 2015. He said that the value of the said sum of N1, 000, 000: 00 (one million naira) in 2015 cannot be the same in 2020 and if same had being deposited in an interest yielding

account since 2015 the value would also have increased. That it was for this reason that the trial court ordered that interest at the Central Bank lending rate on the withheld sum should be paid to the Respondent.

The Respondent's counsel further contended that he need not lead evidence on the current Central Bank lending rate from the month of March, 2015 as they are claiming because this fact falls under the provisions of *Sections 124 (C) (1) of the Evidence Act 2011* and need not be proved. He maintained that the Central Bank Lending rates is a fact of public common knowledge which is readily available by a search on the internet, the pages of Newspapers, Central Bank of Nigeria websites and Circulars and any Financial Institution in Nigeria. He referred to *Sections 124 (C) (1) of the Evidence Act 2011* which provides as follows:

“1) Proof shall not be required of a fact the knowledge of which is not reasonably open to question and which is-

a) Common knowledge in the locality in which the proceeding is being held, or generally: or

b) Capable of verification by reference to a document the authority of which cannot reasonably be questioned.”

He therefore urged this Court to discountenance the arguments of the Appellant's counsel on Issues Two and affirm the judgement of the trial Court and also grant the relief sought by the Respondent in his Cross Appeal. He submitted that the trial Court was right to give Judgement in favour of the Respondent and urged the Court to dismiss this appeal with substantial costs and uphold the Judgement of the trial Court.

ISSUE 3

Whether the Lower Court had the jurisdictional competence to entertain the respondent's claim against the appellant in the absence of proper parties?

On Issue 3, learned counsel relied on his previous arguments on issue one and further contended that the Appellant was properly sued as a party at the trial court as he is liable for his late father's indebtedness to the Respondent having inherited his late father's estate or by managing and supervising his late father's properties as rightly observed by the trial court in her judgment. He said that the law frowns at a situation where the Appellant can only enjoy the benefits of his late father's assets without bearing the liabilities left behind by his late father.

On the authorities cited by Counsel to the Appellant in his argument on this issue, he submitted that a decision is only authority on the facts and the law on which it was decided. That where the facts can be distinguished, the court need not apply a decision which does not support the facts before it. For this submission, he relied on the case of *Mallam Saidu Amori v. Yakubu Iyanda (2007) LPELR CA/IL/2006 Ratio 4*.

Counsel posited that there is no evidence from the printed records of appeal that the Appellant's father was a secretary of an informal Association of Businessmen and Academics as stated by the Appellant's Counsel in his address or that the Respondent was aggrieved by this allegedly unincorporated association and was suing on their behalf.

He reiterated that this is a simple case of recovering a debt owed him by the Appellant's late father in his personal capacity and nothing more. He pointed out that the Respondent led evidence at the trial court that the alleged informal gathering of friends had already closed down before the Appellant's father issued him a post-dated cheque for N1, 000, 000 :00 acknowledging the debt. He therefore posited that the Appellant's Counsel's arguments on juristic personality of an

unincorporated association of persons is misdirected, misplaced and inapplicable to the Respondent's claim and should be discountenanced by this Honourable Court.

He said that since the Appellant did not renounce his late father's estate and having stepped into his father's shoes, he is the proper person to be sued for his late father's debts and the lower court had unlimited and unfettered jurisdiction to entertain this suit and deliver its judgement. He submitted that the learned trial court did not err in law or facts when it delivered judgement in the Respondent's favour. He therefore urged this Court to dismiss this appeal with substantial costs and grant the reliefs of the Respondent as prayed in his cross appeal.

At the hearing of this appeal the learned counsels for the parties made some further oral submissions in support of their briefs. In his further oral submissions, the learned counsel for the Appellant, **Dr.P.E. Ayewoh Odiase** informed the Court that he would be relying on further authorities on points of law. He posited that from the Cross Appellant's Notice of Cross Appeal dated 28/5/19 filed same day, the Cross Appellant filed a sole ground of appeal. He said that no Issue was formulated on that ground of appeal and it is deemed abandoned and liable to be struck out. See **UNION BANK OF NIG PLC V IRON BAR ESQ (2010) 37 WRN 160 at 187 Line 5.**

He therefore urged the Court to strike out the sole ground of appeal contained in the cross appellant's notice of appeal. He submitted that since there is no other ground to sustain the cross appeal the Court should strike out the entire cross appeal and cited the case of **BILWADAMS CONSTRUCTION CO. V DRAGOMIR (2002) FWLR 1630 at 1644 par G-H.**

Learned counsel contended that the arguments canvassed must be directly related to the issues formulated. He maintained that the submission of the Respondent's counsel relating to indebtedness under Esan native law canvassed under Issue I has no bearing with the said Issue. He submitted that the arguments are therefore incompetent and cited the case of **UNDRIVE SUPERMARKET V AFRICAN REINSURANCE CORPORATION (2010) 6 WRN 149 at 163 Lines 25 – 40.** He urged the Court to strike out the Respondents Cross Appeal for being incompetent and allow the Appellant's appeal.

In his further arguments, **F.O. Daudu Esq.** learned counsel for the Respondent submitted that the issue of indebtedness under Esan native law was properly canvassed under Issue I. He submitted that the case of **UNDRIVE SUPERMARKET supra** cited does not apply to indebtedness raised under the said Issue I. He contended that Issue I covers the ground of their cross appeal hence there was no need to raise a new issue.

He finally urged the Court to uphold the judgment of the lower court except that the accumulated interest should continue after the date of the judgment. He said that the interest should continue until the judgment sum is paid. Court.

I have carefully considered all the processes filed in this appeal, together with the arguments of the learned counsel for the parties.

Before I delve into the issues for determination, I will comment on the objection raised by the learned counsel for the Appellant on the competence of the Cross Appeal. According to him in the Cross Appellant's Notice of Cross Appeal, the Cross Appellant filed a sole ground of appeal. He contended that no Issue was formulated on that ground of appeal and it should be struck out. The Respondent's counsel has argued otherwise. I am of the view that the determination of this preliminary point may affect the determination of the merits of the Cross Appeal. I would rather determine that point when I consider the merits of the Cross Appeal. At this stage I will proceed to consider the merits of the main Appeal.

In respect of the main Appeal, I will adopt the three Issues for Determination as agreed upon by the learned counsel for the parties and resolve them seriatim.

ISSUE 1

Whether liability can flow from the appellant to the respondent in respect of a contract which the appellant was not a party to?

The doctrine of privity of contract postulates that only parties to a contract can be entitled to rights and liabilities arising from the contract. See: *United Bank for Africa Plc and Anor v. Alhaji Babangida Jargabe* (2007) 5 SCNJ 127, *J. E. Oshevire Ltd v. Tripoli Motors* (1997) 4 SCNJ 246 and *Alfotrin Ltd v. The Attorney General of the Federation and Anor* (1996) 12 SCNJ 236.

As a necessary prelude, the doctrine of privity of contract has been defined as "*that connection or relationship which exists between two or more contracting parties*", see *Rebold Ind. Ltd. v. Magreola* (2015) 8 NWLR (Pt. 1461) 201 at 231, per Fabiyi, JSC.

The doctrine postulates generally that a contract cannot confer rights, or impose obligations arising under it, on any person except parties to it. Put simply, a stranger to a contract cannot gain or be bound by it even if made for his benefit. See *ALI & ANOR v. MARADI* (2018) LPELR-49383(CA).

In the instant case, the Appellant is maintaining that he was never privy to the alleged transaction between the Respondent and his late father. That the Respondent and his late father were members of a thrift meeting which engaged in monthly financial contributions for its members. According to him the issuance of a cheque to the Respondent his father cannot transfer any liability to him in respect of the aforesaid transaction.

Curiously, the Respondent's position is that the issue of privity of contract does not even arise because there was no evidence of any contract between him and the Appellant's late father. He is seriously contending that the elements of a valid contract are absent from the transaction between him and the Appellant's father. He maintains that the Appellant's father was simply indebted to him and he pointed to the failed cheque (Exhibit "C") as proof of the debt.

The first point I need to resolve before proceeding further is whether the transaction between the Respondent and the Appellant can be classified as a valid contract. At this juncture it is pertinent to know what constitutes an enforceable contractual relationship in law. In the case of *FIC Construction Ltd. v. NDIC* (2013) 13 NWLR Pt.1371 p.390 @ 406 - 407, the court explicated that a contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. That it is a promise or a set of promises the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Parties must reach a consensus "ad idem" for a contract to be regarded as binding and enforceable. The two or more minds of the parties must meet at the same point, event or incident. The meeting of the minds of the contracting parties is the most crucial and overriding factor or determinant in the law of contract.

Furthermore, in the case of *Best (Nig.) Ltd vs. BH (Nig.) Ltd.* (2011) 5 NWLR Pt.1329 P.95 @ 127, the Supreme Court defined a contractual relationship to mean a legally binding agreement between two or more persons by which rights are acquired by one party in return for acts or forbearances on the part of the other. It is a bilateral affair which requires the 'ad idem' of the parties. See the following decisions on the point: *Odutola v. Papersack (Nig.) Ltd.* (2006) 18 NWLR Pt.1012 P.470; *Orient Bank (Nig.) Plc. v. Bilante Int'l Ltd.* (1997) 8 NWLR Pt.515 P.37 and *S.G.B. (Nig.) Ltd. v. Safa Steel and Chemical Manufacturing Ltd.* (1998) 5 NWLR Pt.548 P.168.

In considering whether an enforceable contract has been formed or entered into, there are certain factors to be considered. In *Amena Suits Hotels Ltd. v. PDP* (2007) 6 NWLR Pt.1031 P.453

@ 476 it was held that for a contract to be validly formed or entered into there must be: (i) Offer (ii) Acceptance (iii) Consideration (iv) Intention to create legal relationship, and (v) Capacity to enter into contract. All the five (5) elements or ingredients enumerated supra must be satisfied before there can be a valid contract in law. A contract cannot be legally entered into if any of these elements or ingredients is not satisfied or fulfilled. See also the cases of *Okubule v. Oyegbola (1990) 4 NWLR Pt.147 P.723* and *PTF v. Uwamu (2001) 5 NWLR Pt.705 P.112*.

The formation of contract is therefore governed by the making of an offer by the offeror and the acceptance of same by the offeree. The offer and the acceptance constitute an agreement of the two parties as "consensus ad idem", that is, the intention of both parties are same. Therefore, for a contract to be valid in law, there must be an offer and an acceptance. An acceptance of an offer may be in writing, by conduct or by other means agreed to or acceptable to the parties. See *Johnson Wax (Nig.) Ltd. vs. Sanni (2010) 3 NWLR Pt. 2010 P. 235 @ 245*.

From the evidence adduced at the trial, the Respondent testified that he joined a thrift association of elites who agreed to be making some monthly contributions which each person collected in turn on monthly basis. The Appellant's father acted as the treasurer of the association. According to the Respondent, sometime in October 2014, when it was his turn, he collected the sum of N2, 000,000.00 (two million naira) as his own entitlement from the thrift association.

He informed the Court that in 2015, he was supposed to collect his contribution sometime around September/October but he requested to collect the money a bit earlier. He said that the Appellant's father promised to pay him in April 2015 but failed to pay. That before he died, the Appellant's father gave him a post-dated cheque, Exhibit C which he has been unable to cash up till now and upon the demise of the Appellant's father, he confronted the Appellant who also failed to pay him.

From the evidence adduced at the trial, it is clear that the Respondent is suing the Appellant for the refund of his contribution to the thrift association. The alleged indebtedness of the Appellant's father is as a result of his failure to refund the Respondent's contribution to the thrift. The Respondent has however maintained that the thrift relationship was not a contractual relationship. I do not agree with the Respondent that the thrift transaction was not a valid contract. From the evidence adduced at the trial, the transaction had all the trappings of a valid contract. Clearly there was an offer and acceptance as evinced in an agreement by the members of the thrift association to contribute money on monthly basis with a roster scheduling the time for collection.

The monthly contribution was the consideration and the entire transaction showed that there was an intention to create a legal relationship. When the Appellant refused to pay him, the Respondent instructed his lawyer to write him a demand letter (Exhibit D). When he failed to accede to the demand, he filed a claim in court. Clearly, the Respondent was enforcing the contract.

The question now is whether the Respondent can enforce a contract against the Appellant who evidently was not a party to the said contract. In *Rebold Ind. Ltd. v. Magreola (2015) 8 NWLR (Pt. 1461) 201* (Supra) the Supreme Court dealt extensively with this point and made some key pronouncements on the principle. The Court held that as a general rule, a contract cannot confer rights or impose obligations on strangers to it and that a contract cannot be enforced by a person who is not party to same even if made for his benefit. The real purport of the doctrine was succinctly stated by the Court in the following words; "*the import of the doctrine of privity of contract is that a contract or an agreement cannot bind a person who is not a party to it nor can such person take or accept liabilities under the contract or agreement nor benefit thereunder.*"

Sequel to the foregoing, I agree entirely with the learned counsel for the Appellant that since the Appellant was not a party to the said contract, he cannot be liable in respect of same. Issue one is therefore resolved in the negative.

ISSUE 2

Whether the respondent led credible evidence in proof of his claim at the Lower Court particularly his entitlement to accumulated interest at Central Bank lending rate?

Having resolved Issue One in the negative, it is apparent that resolving this issue will become a mere academic exercise. It is settled law that Courts have no jurisdiction to entertain and determine questions that have no utilitarian value. In the case of ***NWOBOSI VS ACB LTD (1995) 6 NWLR Part 404 Page 658 at 681***, the Apex Court held that where the resolution of an issue one way or the other, will be no more than engaging in an academic exercise, a Court will not entertain such an issue. See also - ***AGBAKOKA VS INEC (2008) LPELR - 232 (SC)***. - ***GLOBAL TRANSPORT OCEANICO SA AND ANOR VS FRED ENTERPRISES NIG. LTD. (2001) 2 S.C. Page 154***.

In the event, Issue 2 becomes irrelevant and it is accordingly struck out at this stage.

ISSUE 3

Whether the Lower Court had the jurisdictional competence to entertain the respondent's claim against the appellant in the absence of proper parties?

Already, I have made a finding that there was no privity of contract between the Respondent and the Appellant. Furthermore from the evidence it is clear that the Respondent and Appellant's father, were members of an informal association which was not registered.

It is settled law that an unincorporated association does not legally exist and must of necessity act through its appointed representatives. On the other hand a corporate entity i.e. an association that has been incorporated, has legal personality. It can sue and be sued in its corporate name. See ***ANYAEGBUNAM v. OSAKA & ORS (2000) LPELR-508(SC)***.

Furthermore, for an action to be properly constituted so as to vest jurisdiction in the Court to adjudicate on it, there must be a competent Plaintiff and a competent Defendant. See ***ATAGUBA V GURA (NIG.) LTD. (2005) ALL FWLR (PT. 265) PG. 1219, (2005) 2 SCNJ PG. 139***. As a general principle, only natural persons, that is human beings and juristic or artificial persons such as a corporate body are competent to sue or be sued. Consequently, where either of the parties is not a vested with legal personality, the action is liable to be struck out as being incompetent.

As a matter of fact, an unincorporated association, does not legally exist and must of necessity act through its appointed representatives. In the instant case the learned Counsel for the Appellant has contended that the Respondent lacked the *locus standi* to sue in his personal capacity as distinct from a representative capacity when the interest of the association is involved. Furthermore he has contended that the Respondent had no cause of action against the appellant worth protecting and maintaining.

It is worthy of note that in the case of ***Rebold Ind. Ltd. v. Magreola (2015) supra*** the Court emphasised the same point thus: "***A plaintiff who has no privity of contract with the defendant will fail to establish a cause of action for breach of contract as he will simply not have a locus standi to sue the defendant on the contract.***"

Thus it is evident that the absence of any privity of contract between the Respondent and the Appellant has robbed the Respondent of the *locus standi* to sue the Appellant. The law is firmly settled that where there is no *locus standi*, there is no jurisdiction in the Court to entertain the suit of the Plaintiff or Claimant. Also where an action is improperly constituted, whether on the side of the Claimant or Defendant the action is incompetent and no adjudication can validly be undertaken on the suit by a Court. The principle of *locus standi* is intertwined with jurisdiction.

In the case of **ALHAJI SAKA OPEBIYI & ANOR VS. LAYIWOLA MUNIRU (2011) 18 NWLR (PT. 1278) 387 AT 403 D-F, ADEKEYE, JSC** expounded thus: "***Locus Standi is the legal capacity to institute an action in a Court of law. Where a Plaintiff is held to lack locus standi to maintain an action the finding goes to the issue of jurisdiction as it denies the Court of jurisdiction to determine the action.***"

Issue 3 is therefore resolved in favour of the Appellant.

Having resolved the three issues in this Appeal in favour of the Appellant, ***this Appeal succeeds and all the orders made by the trial court are hereby set aside.***

Having set aside the judgment and orders of the trial court, the substratum of the Cross Appeal has collapsed. The issue of an order for the Appellant to pay accumulated interest on the judgment debt is now overtaken by events. ***The Cross Appeal is accordingly dismissed. Costs of N50, 000.00 (fifty thousand naira) is awarded in favour of the Appellant.***

P.A.AKHIHIERO
JUDGE
24/09/2020

COUNSEL:

Dr. P.E.Ayewoh-Odiase.....Counsel for the Appellant

Gbenga Adejokun Esq.....Counsel for the Respondent.