IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,

ON WEDNESDAY THE

25TH DAY OF MAY, 2022.

BETWEEN: ***SUIT NO. B/15A/2021***

1. ***PETER OGBONDEMINU***
   (STATE PASTOR, LIVING FAITH CHURCH AKA WINNERS)
2. ***PROFESSOR PASTOR STEVE IYAYI……APPELLANTS***
3. ***JOHN OKONMAH ESQ.***
   (CHAIRMAN, BUILDING COMMITTEE LIVING FAITH CHURCH AKA WINNERS)

AND

MR. NOSA UWAGBOE……..RESPONDENT

JUDGMENT

This is an Appeal against the judgment of Edo State Magistrates Court sitting at Evboriaria District, Benin City, Edo State, delivered on the 31st day of January, 2020 wherein the Learned Trial Magistrate delivered judgment in favour of the Respondent and awarded the sum of N3,400,000.00 (Three Million Four Hundred Thousand Naira) to the Respondent.

In the course of the proceedings at the trial court, the Appellants raised a Preliminary Objection, challenging the jurisdiction of the court on the ground that the proper parties were not before the Court. The Appellants' position was that since the property was purchased in the name of the Registered Trustees of the Living Faith Church, the failure of the Respondent to join the Registered Trustees of the Living Faith Church as a party robbed the trial court of the jurisdiction to entertain the matter.

The learned counsel for the parties articulated their arguments on the Preliminary Objection and the Trial Magistrate dismissed the Appellants' objections and proceeded to hear the case on the merits.

At the trial court, the Respondent's case as the Claimant was that on 07/05/2018, the 2nd Appellant contracted him to source for a residential property for the 1st Appellant, the State Pastor of Living Faith Church (A.K.A. Winners Chapel), along Benin-Sapele Road, Benin City. According to him, although there was no written authority from the 1st Appellant for the Respondent to source for a befitting property for the State Pastor of the Church, there were telephone conversations and text messages, authorizing the Respondent to carry out the said assignment.

According to the Respondent, sequel to the assignment, he set the machinery in motion to secure a suitable property for the Church and in the course of the assignment, he was introduced to the 1st Appellant.

Eventually, he secured a property for them at Plot 7476, Etete Layout, Country Home Motel Road, Benin City and the property was inspected by the 1st Appellant, in the company of the 2nd Appellant, and after a satisfactory inspection, the 1st Appellant instructed the Respondent vide a text message to arrange for a meeting with the owner of the property so that the terms of purchase can be agreed upon. At the meeting the sum of N65, 000,000.00 (Sixty-Five Million Naira) was agreed upon as the purchase price.

After carrying out the instruction of the 1st Appellant, the Respondent requested for his professional fee of 5% of the consideration of N65, 000,000.00 (Sixty-Five Million Naira) paid to the Vendor, but he was allegedly rebuffed by the Appellants, hence he filed the suit at the lower court.

However, the Appellants' case as Defendants at the trial court was that it was the Registered Trustees of the Living Faith Church also known as Winners Chapel (hereinafter called "the Church") that embarked on the purchase of a residential property that will serve as accommodation for any of the state pastors posted to the state. That in furtherance of this, the Church allegedly engaged one Mr. Raphael Ijiekhuemhen, a property agent to look for a suitable property for them to purchase.

According to the Appellants, the terms of the engagement inter alia was that the value of the property must not be above N65, 000,000.00 (Sixty-Five Million Naira) and the agency fee for the transaction will not be above N500, 000.00 (Five Hundred Thousand Naira).

The said Mr. Raphael Ijiekhuemhen allegedly engaged Mr. Nelson Ugbekile and the Respondent to assist him to search for a suitable property and when they found one, Mr. Raphael Ijiekhuemhen directed the Respondent to liaise with the 1st Appellant to visit the place and meet with the owner of the property.

When they visited the property, the Church was satisfied with it and the agreed agency fee of N500, 00.00 (Five Hundred Thousand Naira) was paid by the Church to Mr. Raphael Ijiekhuemhen.

The Appellants said that they were surprised when they subsequently received a letter from the Respondent demanding for the payment of the sum of N3, 250,000

(Three Million Two Hundred and Fifty Thousand Naira) being 5% of the purchase price as his agency fees.

Upon the conclusion of the hearing, the court gave judgment in favour of the Respondent.

Dissatisfied with the judgment of the trial court, the Appellants filed a Notice and Grounds of Appeal dated the 3rd day of February, 2020.

The Notice of Appeal, bereft of their particulars are as follows:

GROUND 1:

The Learned Magistrate erred in law when she held that there were proper parties before the court.

GROUND 2:

The Learned Magistrate erred in law when she awarded the total sum of Three Million, Four Hundred Thousand Naira (N3, 400,000) only in favour of the Claimant without any credible evidence before the court to sustain the relief claimed.

GROUND 3:

The Learned Magistrate erred in law by relying on the evidence of the Claimant, the Claimant testified on the 25th day of April, 2019, his witness CW1 testified and was cross examined on the 21st of June, 2019 before the Claimant was again put on the witness box to be cross examined by the Defendant's Counsel despite the objection by the Defendants which was overruled.

GROUND 4:

The Learned Magistrate erred in law when she admitted Exhibits C, D, & G respectively.

In accordance with the rules of this Court, the Appellants filed their Brief of Argument which they adopted at the hearing of this Appeal.

In his Brief of Argument, the learned counsel for the Appellants, ***C. O. Izomon Esq.*** formulated two issues for determination as follows:

(1)Whether the Learned trial Magistrate was right when she assumed jurisdiction to hear this matter in the absence of the proper parties to the transaction. (Distilled from ground 1 of the Notice of Appeal).

(2)Whether the Learned Magistrate was right when she held that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3,250,000 (Three Million Two Hundred and Fifty Thousand Naira) and cost of N150,000.00 (One Hundred and Fifty Thousand Naira) in favour of the Respondent. (Distilled from grounds 2, 3 and 4 of the Notice of Appeal).

Thereafter, the learned counsel articulated his arguments on the two issues seriatim.

ISSUE 1:

Whether the Learned Trial Magistrate was right when she assumed jurisdiction to hear this matter in the absence of the proper parties to the transaction. (Distilled from ground 1 of the Notice of Appeal).

Arguing Issue One, learned counsel submitted that it is now trite law that jurisdiction is fundamental and it is the threshold of the Court's interpretative and adjudicatory powers. He posited that any action or orders made by a Court without requisite jurisdiction amounts to nullity ab initio. See ***Mcfoy v. U.A.C (1961) WLR 405; Sken- Consult v. Sekondey-Ukey (1981) 1.S.C. 6***; and ***Madukolu v Nkemdilim (1962) All NLR, Pt. 2) 581 at 589 – 590, reprint edition.***

Counsel posited that one of the condition precedents to be fulfilled by the Plaintiff in this case was that the proper parties must be in court. That it is the duty of the Plaintiff to ensure that the persons he brings to court are the necessary parties who would bear the eventual liability of the outcome of the case.

He posited that a necessary party to a proceeding is a party whose presence and participation in the proceedings is necessary or essential for the effective and complete determination of the claim before the court. See: ***PANALPINA WORLD TRANSPORT (NIG) LTD V. JB OLAUDEEN INTERNATIONAL & 4 ORS (2010) 12 SC (PT. 111)30.***

Counsel submitted that the fundamental reason which makes it necessary to make a person a party to an action is to make him bound by the result of the action. That in determining who is a necessary party, what is considered is whether the question in the action cannot be effectively and competently settled unless the person is made a party? See ***HON. MARTIN OKONTA V. KINGSLEY NONYE PHILIPS & ORS (2010)7 – 12 SC 173.***

He submitted that the plaintiff missed the point when he proceeded against the 1st to 3rd defendants (now 1st to 3rd Appellants) who were not parties to the transaction (Deed of Transfer) that resulted in this suit.

He maintained that the issue of 5% percent agency fee claimed by the plaintiff is ancillary to the main issue of the purchase of the property; as without the purchase of the said property, there would not be the issue as to payment of the agency fee.

He said that a cursory look at the Deed of Assignment would reveal that the transaction was between the Registered Trustees of the Living Faith Church (the Purchaser of the property) and Mrs. Florence Osagie (the seller of the property). He referred to ***section 128 of the Evidence Act 2011*** which provides thus:

"When a contract or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of

such contract, grant or disposition except the document itself, nor may the contents of any such documents be contradicted, altered, added to or varied by oral evidence".

He contended that the Respondent sued the Appellants in their personal capacity without joining the principal even when it was disclosed to the Respondent, and he reasonably ought to know, that the transaction was between the Church and the seller of the property. He said that by his pleadings, the Respondent acknowledged that the capacity upon which the 1st defendant acted was that of agent/principal relationship. He said that this was revealed by the signature page of the pleadings at the address for service where the Respondent directed his processes to the Living faith Church State Headquarters, Sapele Road, Benin City.

He maintained that the Respondent was aware that the pastors who are posted to the church are not posted on a permanent basis and that there was no way a property could be purchased in the name of a state pastor whose services to the church has a determinable date, usually three years. He informed the Court that after the 1st Defendant served as the state pastor, there have been other state pastors posted to the church between the time the transaction was done till date.

He contended that if the presence of the Church (Registered Trustees of the Living Faith Church) was not relevant to this case, the Respondent would not have sued the 1st Appellant in the manner in which he sued, i.e., "Peter Ogbondeminu (State Pastor, Living faith Church, AKA Winners Chapel).

He also referred to some Letters dated 20th June, 2018 and 28th June, 2018 and posited that the letters are correspondences flowing from the Registered Trustees of the Living Faith Church to the Respondent and the Respondent's response to same.

He said that by the letter of 20th June, 2018, the office of F. O. Ogun, acting on the instructions of the Living Faith Church wrote the Respondent advising him to thread with reason in his desperate action to indict the church. That the Respondent replied vide his letter of 28th June, 2018 through his counsel Prince Felix Mbanefo Nwoko and admitted that it was the Living Faith Church that instructed the Respondent to perform a professional job and threatened to take out a writ against the Living Faith Church in compliance with the Respondent's instructions.

He maintained that by his letter of 28th June, 2018, the Respondent was already aware that the Registered Trustees of the Living Faith Church was the principal party in the transaction. He said that it was clear that the person who would bear the eventual liability of the payment of the agency fee of the sum of N3,250,000 (Three Million Two Hundred and Fifty Thousand Naira) is the Registered Trustees of the Living Faith Church ("the Church") who was not made a party to the proceedings at the lower court.

He therefore submitted that the Respondent failed to fulfil the condition precedent of ensuring that the necessary party, against whom the judgment of the court will be enforced, was made a party to the proceedings and he urged the Court to resolve Issue One in favour of the Appellants.

ISSUE 2:

Whether the Learned Magistrate was right when she held that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3,250,000 (Three Million Two Hundred and Fifty Thousand Naira) and cost of N150,000.00 (One Hundred and Fifty Thousand Naira) in favour of the Respondent. (Distilled from grounds 2, 3 and 4 of the Notice of Appeal).

Arguing this issue, learned counsel posited that the Respondent who was Plaintiff at the Lower Court claimed that he was the only person engaged by the church as an agent for the purchase of the property that led to this suit and denied ever working with the DW1 and DW2.

He said that it is a fundamental principle of law that he who asserts must prove and he cited ***section 131 (1) of the Evidence Act, 2011*** which provides as follows:
"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist".

He said that the Respondent did not supply any concrete proof in his witness statement filed at the lower court to show that he was solely engaged by the Church for this purpose. Furthermore, he maintained that the Respondent merely asserted that he was engaged by the defendant to act and no letter of engagement was supplied in proof of this assertion. He said that the Respondent only relied on a text message which was sent in the middle of the transaction.

On the other hand, he said that the Appellants called the two people that were engaged and were paid at the completion of the job as witnesses during the trial. He said that the DW2 testified that he was directly engaged by the church as an agent and he engaged the services of the DW1 and the Respondent to assist him.

He said that a closer look at the records of proceedings will show that the first communication the plaintiff (now Respondent) had with the defendant (now Appellant) was when arrangements were being made to see the owner of the property in order to make payments. He referred to the text message log at page 16 of the records and paragraph 10 of the Respondent's witness statement on oath.

He pointed out that the Respondent relied only on text messages as the substratum of his engagement and submitted that the said text message leaves much

to be desired. He referred to the text message of 16th of May, 2018 which reads as follows:

"We are estate agents the pastor use for church".

He wondered whether it was at that stage that the Respondent would inform the Defendant that he was the estate agent the pastor uses. He posited that from the tone of the said text message, it is clear that the 1st Defendant (state pastor) did not know the particular agents he was interacting with him at that moment. He said this accords with the evidence of the DW2 that the Respondent was brought into the transaction when he was asked to represent him at a meeting with the Defendants.

He maintained that from the records, it can be seen that it was the state pastor (1st Defendant/ 1st Appellant) who opened the conversation in the text message. He said that this is in consonance with the fact that the agents engaged by the Church (i.e. DW1 and DW2) engaged the Respondent to act in their absence and forwarded his phone number to the state pastor who then opened a conversation with the respondent. He referred to the text message log of 8th May, 2018 at page 16 of the records.

He said that there was no proof that the Respondent had any previous conversation with the state pastor before the text messages of 8th and 16th of May, 2018. That from the foregoing, it is clear that the previous steps taken towards finding the property and the other necessary steps had been concluded before arrangements were made for payment.

Counsel posited that the Respondent in his claim, stated that the Seller had her agent, one Mr. Odia while he acted as the agent for the defendant. He said that the Respondent however failed to call the said Mr. Odia whom he dealt with as a co-agent to come and give evidence in proof of the facts that he alleged. He therefore submitted that the Respondent failed to prove that he was the one engaged by the Church to act as an agent in connection with the property purchased by the Church.

He said that the Appellant in rebuttal to the claims made by the Respondent called the two agents who acted for the Church and they gave evidence which supported the position of the Appellant. That the only grouse which the Respondent has against the DW1 and DW2 is that they are not professionally qualified to act as estate agents and therefore had no power to instruct him to represent their interest. Furthermore, that the agency fee was paid to persons who are not as qualified as himself, so he must be paid again.

He submitted that the Church has kept part of its obligation by paying the agency fee as agreed between the parties and the Church should not be made to pay twice for the agency fee due to the insatiable demands of the Respondent. He said that it is trite law that no one should be vexed twice for the same cause. See ***JEGUN V. CHIN (2018) LPELR 45891 (CA).***

He submitted that to ask the Appellants to make another payment to the Respondent will amount to double compensation and that the Respondent's option should be to proceed against his fellow agents to have his own share of the agency fee already paid.

The learned counsel maintained that the only issue in contention is who amongst the Respondent and the DW1 & 2 acted as the agent for the church. He said that if the contention of the Respondent in his deposition that the DW1 and DW2 are quacks is anything to go by, it is for the Respondent to take out an action against the DW1 and DW2 or to report them to the appropriate body for prosecution. He said that it is not for the Respondent to deny that he was engaged by the DW1 and DW2 to represent their interest in their absence at a meeting with the 1st Defendant.

He contended that the text messages of the 8th and 16th of May were cleverly contrived by the Respondent in preparation for his claim of 5% agency fee in this case. He said that the said messages were sent on the 8th and 16th of May and he filed his action in July, 2018 just two months after the messages were sent.

From the foregoing, he submitted that the Respondent did not prove his claim at the trial court and the trial Magistrate was wrong in awarding the Respondent the sum of N3, 400,000. (Three Million Four Hundred Thousand Naira). He therefore urged the Court to resolve issue No. 2 in favour of the Appellants, allow the Appeal and set-aside the decision of the trial Court.

In his Respondent's Brief of Argument, the learned counsel for the Respondent ***Prince Mbanefo Nwoko*** formulated two issues for determination as follows:

1) ***Whether the Learned trial Magistrate was right when she assumed jurisdiction to hear this matter in the absence of the proper parties to the transaction. (Distilled from ground 1 of the Notice of Appeal); and***
2) ***Whether the Learned Magistrate was right when she held that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3,250,000.00 (Three Million, Two Hundred and Fifty Thousand Naira) and cost of N150,000.00 (One Hundred and Fifty Thousand Naira) in favour of the Respondent. (Distilled from grounds 2, 3 and 4 of the Notice of Appeal).***

Thereafter, learned counsel argued the two issues seriatim.

ISSUE ONE:

Whether the Learned trial Magistrate was right when she assumed jurisdiction to hear this matter in the absence of the proper parties to the transaction. (Distilled from ground 1 of the Notice of Appeal).

Arguing this issue, learned counsel submitted that the issue of proper parties not been before the Court was raised by the Appellants by a Preliminary Objection which was dismissed by the trial Court and Appellants failed to appeal against the said dismissal.

He submitted that the Respondent sued the Appellants in their capacities as State Pastor, Pastor and member (and Chairman, Building Committee) of Living Faith Church (A.K.A. Winners Chapel) Benin Headquarters, Edo State, respectively. That it was the 1st Appellant who had a telephone conversation and an SMS communication with the Respondent and he referred to Exhibit "G", i.e., the telephone conversations between the 1st Appellant and the Respondent.

He submitted that the Appellants did not disclose any principal, neither did they plead nor tender any of Power of Attorney, showing that authority was donated to them to perform the transaction of securing a property for the Church.

He further submitted that the suit was instituted against the principal actors involved in securing the said property, that is why the name of the 1st Appellant is captioned (State Pastor), specifying that the suit was instituted against him as the Head Pastor of the Church in Benin City, Edo State. He maintained that the suit was not against the International Headquarters, based at Ota, Ogun State. He said that the other Appellants are Pastor and member (and also Chairman, Building Committee) of the Church, respectively.

He said that under cross-examination, the D.W. 1 (Mr. Raphael Ijiehhuemhen) stated that the said property was bought in the name of 1st Appellant. He maintained that this is clear evidence that the said 1st Appellant is a proper party before Court and he urged the Court to so hold.

He posited that in dismissing the Appellants' Preliminary Objection the trial Court held that the respondent was entitled to sue the appellants in their personal capacity. He said that in the said objection, the Appellants had contended that the Deed of Assignment was between the Registered Trustees of Living Faith Church (A.K.A. Winners Chapel) and Mrs. Florence Osagie. However, he said that the Appellants did not tender the said Agreement as Exhibit in Court.

Furthermore, he posited that there was personal and physical discussion between the Respondent and the 3rd Appellant (who Respondent did not know prior to the said transaction) and he referred the Court to P.169 of the Record of Appeal.

He said that on 07/05/2018, the 2nd Appellant contracted the Respondent to source for a residential property for the 1st Appellant, State Pastor of Living Faith Church (A.K.A. Winners Chapel), along Benin-Sapele Road, Benin City. He said that under cross-examination, the Respondent stated that he knew the Appellants very well, in their official capacities as ministers of God in the said Church. That though there was no written authority from the 1st Appellant to the Respondent, for the latter to secure a befitting property for the State Pastor of the Church, nevertheless, there

were telephone conversations and text messages, authorizing the Respondent to carry out the said instruction in securing a befitting property for the Church. He referred the Court to Exhibit 'G' at page 169 of the Record of Appeal.

Counsel submitted that it is trite that a proper party is one who is directly involved in the cause of action, i.e. the Plaintiff or person who has suffered damages and the Defendant or person whose act or omission has occasioned the damages. He referred to the case of: ***MOBIL PRODUCING (NIG) LTD. v. LASEPA & ORS. (2002) 12 SCNJ, 1 AT 25***, where it was held that any party whose interest will be directly affected if a relief claimed in the action were granted, is a proper party to the suit.

He submitted that jurisdiction of a court connotes the limits imposed on its power to hear and determine the issues between the parties and it is conferred by statutes and cannot be waived or conferred on the court by acquiescence of the parties, or capable of expansion by the general or inherent powers of the court. See the cases of: ***GOMBE v. P. W. (NIG.) LTD. (1995) 7 SCNJ 19; ADEJOLA v. ABIDOYE (1999) 12 SCNJ 61; NDAYAKO v. DANTORO (2004) 13 NWLR (PT.889) 187.***

Counsel submitted that it is settled law that it is the statement of claim that determines whether a court has jurisdiction to entertain a suit and he relied on the case of: ***ADEYEMI & ORS. v. OPEYORI (1976) 9 & 10 SC, 31 AT P.92Z.***

Counsel posited that it is instructive to note that the Appellants did not take plea, neither did they file their Statements on Oath (except for the 2nd Appellant, who later deposed to his Statement on Oath) to controvert the Respondent's Claim. He said that the Appellants' contention that the Church is a renowned, registered, religious Organization in Nigeria was not supported by credible evidence. That he who asserts must prove.

He maintained that a party shall rely on the strength of his case and not on the weakness of his opponent's case. He said that the purported document which the Appellants attached to their Notice of Preliminary Objection did not meet the legal requirement because the said document was not signed by the purported Trustees. He referred the Court to P.195 of the Record of Appeal.

He submitted that the Appellants knew that tendering the Deed of Assignment would have worked against them, so they failed to do so and he relied on SECTION 167(D), EVIDENCE ACT, 2011.

He posited that the DW I (Raphael Ijiehhuemhen) under cross-examination and in paragraph 1 of his Statement on Oath, stated that the Respondent is his friend and that he (DWI) is not a qualified Estate Surveyor and Valuer. That the Respondent is a qualified Estate Surveyor and Valuer and has a registered office.

Furthermore, he said that under cross-examination, the DW I stated that the demised property was bought in the name of 1st Appellant. That the DWI has long been in

the agency business. That an agent is paid a commission after securing a property for a client. That such commission can either be in percentage or it is negotiable.

He submitted that the Respondent was right to have sued the Appellants in their respective positions as State Pastor, Pastor and member of Living Faith Church (A.K .A. Winners Chapel) along Benin-Sapele Road, Benin City, Edo State. Besides, he re-emphasised that the Appellants did not disclose any principal that they were representing, neither did they tender any Power of Attorney to that effect. .

He therefore submitted that the Appellants are the proper parties before court and he urged the Court to so hold.

Counsel submitted that in the case of ***MADUKOLU V NKEMDILIM (1962) SCNLR, 241*** the Supreme Court exposited that a Court is said to have jurisdiction where:

i. It is properly constituted as regards members and qualifications of the members of the bench, and no member is disqualified for one reason or another;
ii. The subject-matter of the case is within the jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and;
iii. The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

He submitted that the trial Court complied with all the requirements in the MADUKOLU V. NKEMDILIM case (supra), thus, empowering the court with the requisite authority to hear this suit.

He urged the Court to resolve Issue One in favour of the Respondent.

ISSUE TWO:

Whether the Learned Magistrate was right when she held that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3,250,000.00 (Three Million, Two Hundred and Fifty Thousand Naira) and cost of N150,000.00 (One Hundred and Fifty Thousand Naira) in favour of the Respondent. (Distilled from grounds 2, 3 and 4 of the Notice of Appeal).

Arguing this second issue, learned counsel submitted that the Respondent is a qualified Estate Surveyor and Valuer, whose registered office is at No.95, Forestry Road, Benin City. He said that in the month of May, 2018, the 2nd appellant (who is well known to Respondent) instructed the Respondent to help him look for a good house in G.R.A., Benin City, for the State Pastor of Living Faith Church (A.K.A. Winners Chapel) Benin City. That based on this information, the Respondent put machinery in motion to secure the said property.

He said that the Respondent was then introduced to the 1st Appellant, who gave the Respondent the go ahead to search for a suitable property that will accommodate the State Pastor. He said that after confirmation of his intention to get the said property, the 1st Appellant had a telephone conversations and a sms communication with the Respondent, instructing him to secure a property for the State Pastor of the Church. He said that the Respondent eventually secured a property for them and he demanded for his professional fee of 5% of the consideration of N65, 000,000.00 (Sixty-Five Million Naira) paid to Mrs. Osagie, but was rebuffed by Appellants.

He submitted that it is trite that a cause of action is "the facts which when proved" will entitle a plaintiff to a remedy against the defendant". (Underlining for emphasis and referred to the case of ***OSHOBOJA v. AMUDA (1992) 7 SCNJ 317 AT 326.***

He reiterated that under cross-examination, the Respondent stated that he is a qualified Estate Surveyor and Valuer. That when the Appellants failed to pay his professional fee of 5% his solicitor wrote them a Letter of Demand, dated 21/05/2018, which was tendered as Exhibit 'C' at the trial. They wrote another Letter of Demand to the 1st Appellant, dated 05/06/2018, admitted in evidence as Exhibit 'D'.

That in response to the Respondent Solicitor's Letter above, the 1st Appellant's Solicitors, F.O. Ogun & Co., wrote a Reply, dated 20/06/2018, admitted in Court as Exhibit 'E' and the Respondent's Solicitor wrote a Reply, dated 28/06/2018, in reaction to 1st Appellant's Reply Letter, admitted in evidence as Exhibit 'F'.

Counsel submitted that it is settled law that the party bearing the legal burden of proof must first make out a prima facie case in his favour and by making out such a case, he has discharged the evidential burden placed on him. That it then becomes necessary for his opponent to call contrary evidence to challenge the case set up by him. He said that by the necessity to adduce this contrary evidence, the evidential burden of proof is shifted to the opponent and if that opponent supplies no evidence the court can make a finding against him. See the case of: ***DUNN V. DUNN (1949) P.98 AT 103.***

Learned counsel submitted that the Appellants did not tender any Exhibit in Court and were not able to establish their case with credible documentary and oral evidence. That apart from the 2nd Appellant who testified in Court, the other Appellants did not give evidence in Court. Also that they did not take plea nor file their Statements on Oath, except for 2nd Appellant so they were not able to controvert the Respondent's Claim in Court.

Counsel submitted that it is trite law that if a party's averment is admitted, there will no longer be any onus to prove what has been admitted by the opposite party. He posited that the court must critically look at the pleadings to discover where

the burden of proof lies. That where an assertion is not controverted by the opponent, there is no issue between the parties and, thus, the question of onus of proof does not arise. See the case of: ***ONOBRUCHERE V. ESEGINE (1986) 1NWLR (PT. 19) 799.***

He submitted that since the Appellants did not lead credible evidence nor tender any Exhibit in Court in contradiction, they admitted the facts stated in Respondent's Claim. He referred to P.24 of the Judgment of the Honourable trial Court to show that the Respondent is entitled to the Judgment of Court, and that he was awarded the said Judgment on the merits of his case.

He urged the Court to resolve this second issue in favour of Respondent, dismiss the Appeal with crushing costs and add interest on the Judgment sum.

I have carefully gone through the evidence adduced at the trial court, the judgment of the court, the Grounds of Appeal and the Briefs of Argument of the learned counsel for the parties. I am of the view that the two issues for determination as formulated by the parties are quite germane to the just determination of this appeal and I adopt them as the issues to be determined in this appeal. I will proceed to resolve the issues seriatim.

ISSUE 1:

Whether the Learned trial Magistrate was right when she assumed jurisdiction to hear this matter in the absence of the proper parties to the transaction. (Distilled from ground 1 of the Notice of Appeal).

It is settled law that for a Court to be competent and have Jurisdiction over a matter, proper parties must be identified, and shown to be proper parties to whom rights and obligations arising from the cougrse of action attach. The question of proper parties invariably, is such an important question as same affects the jurisdiction of the Court and goes to the root of the suit in limine. It is the existence of the proper parties that cloths the Court with jurisdiction. Thus, where one of the parties or both parties are not proper parties before the Court, the Court lacks jurisdiction to hear the suit. See the following decisions on the point:

1. PEENOK INVESTMENT LTD V. HOTEL PRESIDENTIAL LTD (1982) 4 NCLR 122;

2. EHIDIMHEN V. MUSA (2000) FWLR (PT 21) 930;

3. GOODWILL & TRUST INV. LTD V. WITT AND BUSH LTD (2011 ALL FWLR (PT 576) 517; and

4. AKINDELE V. ABIODUN (2010) ALL FWLR (PT.518) 894, 913.

In the instant appeal, the Appellants are seriously contending that the Respondent sued the wrong parties as Defendants at the lower court. According to

the Appellants, the 1st to 3rd Defendants (now 1st to 3rd Appellants) were not parties to the transaction of the purchase of the property which was the basis of this suit. The Appellants contended that in the Deed of Assignment it was clear that the transaction was between the Registered Trustees of the Living Faith Church (the Purchaser of the property) and Mrs. Florence Osagie (the seller of the property).

This point was earlier raised as a preliminary objection at the trial and the trial court overruled the objection and held that the proper parties were before the Court. The point is being raised again in this appeal. I think the matter is weighty enough to be considered in this appeal.

It is settled law that it is the prerogative of a claimant to determine the defendants in a suit. The liability of each of the parties in the suit would be determined having regards to the pleadings and evidence led by the claimant in the light of the applicable laws. Therefore in order to determine whether a party is a proper defendant to a suit, all the Court needs to do is to examine the claim of the claimant before the Court. It is the plaintiff's claim that gives him the right to initiate the action of the alleged wrongful act. See the following decisions on the point: ***Dantata Vs Mohammed (2000) 7 NWLR (Pt 664) 17;, Adekoya Vs Federal Housing Authority (2000) 4 NWLR (Pt 652) 215; Ogbebo Vs Independent National Electoral Commission (2005) 15 NWLR (Pt 948) 376; and Bello Vs Independent National Electoral Commission (2010) 8 NWLR (Pt 1196) 342.***

At the lower court, the Respondent's claimed inter alia against the Appellants ***jointly and severally for the sum of N3, 250, 000 (Three Million Two Hundred and Fifty Thousand Naira) being professional fees for services rendered on the instruction of the Defendants fort the purchase of Mrs Osagie's property known as Plot 7474, Etete Layout, Country Home Motel Road, Benin City.***

At the trial court, the Respondent maintained that he was contracted by the Appellants to source for a property to purchase as a residence for some Pastors of their Church. He maintained that his contract was with the Appellants.

However, the Appellants' case is that the property was purchased by the Living Faith Church also known as Winners Chapel. They emphasized that a careful examination of the Deed of Assignment reveals that the transaction was between the Registered Trustees of the Living Faith Church (the Purchaser of the property) and Mrs. Florence Osagie (the seller of the property).

Curiously however, the alleged Deed of Assignment was not tendered by the Appellants at the trial to substantiate their assertion that the purchase was made by the Registered Trustees of the Living Faith Church. As a matter of fact under cross examination the D.W. 1 (Mr. Raphael Ijiehhuemhen) who testified on behalf of the Appellants stated that the property was bought in the name of the 1st Appellant. The admission of the D.W1 is clearly at variance with the assertion of the Appellants that the purchase was made by the Registered Trustees of the Living Faith Church.

It is settled law that he who alleges must prove. ***Section 139 of the Evidence Act*** provides for the proof of a particular fact. By the Section, the burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. See ***BUHARI V. INEC & ORS (2008) LPELR-814(SC)***.

I am of the view that since the Deed of Assignment was not tendered as an exhibit at the trial, the Court cannot speculate about the contents of the Deed. In the case of ***ILIYAMUS TRUST (NIG) LTD V. ZAINAB (2018) LPELR-46969(CA)*** the Court of Appeal exposited as follows:

"The law is that a Court should discountenance any document not tendered in evidence and marked as an Exhibit in a case before it. In the case of NIGERIA PORTS PLC VS. B. P. P. LTD (2006) 7 NWLR (PT. 979) 323 AT 379 PAPAS C-D, this Court held as follows:- "A trial or Appellate Court must not rely on a document not tendered as an exhibit before it. It must not also rely on the contents of a document it had itself rejected or excluded as an exhibit as same is irrelevant and goes to no issue."

Furthermore, in the case of ***OBEYA V. OKPOGA MICROFINANCE BANK LTD (2019) LPELR-47615(CA)*** the Court held that ***"A Court can only make use of exhibits properly admitted before it".***

Again in ***FRN V. EMIRATES AIRLINES & ORS (PP. 65 PARAS. D)***

"A Court of law can only rely on a document tendered as an exhibit before it and vice versa…. It is not part of the duty of Court of law to speculate."

Furthermore, in his arguments the Appellants' counsel contended that by his pleadings, the Respondent acknowledged that the capacity upon which the 1st defendant acted was that of agent/principal relationship. He argued that this was revealed by the signature page of the pleadings at the address for service where the Respondent directed his processes to the Living faith Church State Headquarters, Sapele Road, Benin City.

The point must be made that in order to establish the existence of agency, the Appellants must adduce evidence of the terms of the agency. The scope of authority must be specified and ratified by the principal. At the trial court, the Appellants did not show the authorization from the Church to the 1st Appellant to act for it nor did they show the scope of the agency. Agency cannot remain fluid or uncertain. Furthermore, the consent of the principal must be evident. See ***MIKANO V EHUMADU (2013) 1 CLRN 83 and SDV NIGERIA LTD V. PHILIP KAYODE OLUSEGUN (2016) LPELR-40323(CA).***

Since the Appellants' position is that the Registered Trustees of the Living Faith Church are the proper parties to be sued and not the Appellants, the burden is on them to establish this fact. From the totality of the evidence adduced at the trial, I am of the view that the Appellants failed to discharge the burden to prove that the

purchase was made by the Registered Trustees of the Living Faith Church and the failure of the Appellants to prove this fact is fatal to their challenge of proper parties in this suit.

In the event, I hold that the Appellants were proper parties to be sued by the Respondent in this suit.

Issue One is therefore resolved in favour of the Respondent.

ISSUE 2:

Whether the Learned Magistrate was right when she held that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3,250,000 (Three Million Two Hundred and Fifty Thousand Naira) and cost of N150,000.00 (One Hundred and Fifty Thousand Naira) in favour of the Respondent. (Distilled from grounds 2, 3 and 4 of the Notice of Appeal).

In her judgment, the Learned Magistrate made a finding that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3,250,000 (Three Million Two Hundred and Fifty Thousand Naira) and cost of N150,000.00 (One Hundred and Fifty Thousand Naira) to the Respondent.

The issue to be determined at this stage is whether the evidence adduced by the Respondent was sufficient to support the finding of the trial court.

At the trial, the Respondent maintained that he was the only person engaged by the church as an agent for the purchase of the property that led to this suit. He described the DW1 and DW2 as unqualified quacks. This issue for determination borders on the burden and the sufficiency of proof.

It is a fundamental principle of law that he who asserts must prove. This principle is further captured by ***section 131 (1) of the Evidence Act, 2011.***

Going through the entire gamut of the evidence adduced by the Respondent, I observed that he did not adduce any documentary or oral evidence to prove that he was solely engaged by the Church to source for the property. The Respondent only relied on a long list of call logs which was admitted as Exhibit "G" at the trial. A careful examination of Exhibit "G" revealed that the exhibit does not contain a transcript of the recorded telephone conversations between the Respondent and the alleged representatives of the Church.

The Respondent also relied on an isolated text message to prove his engagement as an agent. The text message which is dated 16th of May, 2018 simply reads as follows:

"We are estate agents the pastor use for church". It is difficult to understand the implication of this terse statement. Certainly it cannot sustain the standard of proof

required to establish the engagement of the Respondent as the sole agent of the Church to source for the property to purchase.

There are certain elements that must be proved in order to establish agency. In the case of ***MEGAMOUND INVESTMENT LTD & ANOR V. OMOTOSHO & ANOR (PP. 24-25 PARAS. B),*** the Court exposited thus:

"For agency to be established, certain factors must be evident. For the creation of agency to exist, there must be one person called the agent who has authority to act on behalf of another called the principal and consensus to act. Whether such a relationship exists will depend on the facts of each case. The relationship exists in any one of the following ways:

i. By express appointment whether orally or by letter of appointment, or indeed by Power of Attorney

ii. By ratification of the agents acts by the principal

iii. By doctrine of estoppels

iv. By implication of law in the case of necessity and

v. By presumption of law in the case of cohabitation. See VULCAN GASES LTD V G.F. IND. A.G (2001) LPELR 5 S.C.(PT. 1) 1.;

Going through the evidence adduced by the Respondent, it is apparent that the evidence was grossly inadequate to establish the essential factors to prove the existence of agency.

When the evidence of the Respondent is juxtaposed with that of the Appellants, it is apparent that the Appellants adduced more credible evidence to prove that the D.W 1 and D.W 2 were actually engaged as agents to source for the property. The DW2 testified that he was directly engaged by the church as agent and that he engaged the services of the DW1 and the Respondent to assist him. See pages 151 to 154 of the records, they actually co-opted the Respondent into their team and upon the completion of the assignment they were paid for the job.

For certain inexplicable reasons, the Respondent rejected the amount which they offered to pay him and insisted that he was entitled to 5% commission of the purchase price. Unfortunately, the Respondent did not lead any evidence of any prior agreement where the Church agreed to pay 5% as agency fee.

In his deposition which he adopted at the trial, the Respondent made a feeble attempt to justify his entitlement to the 5% agency fee by vaguely asserting that the Institute of Estate Surveyors and Valuers have their scale of fees but he did not tender any document to validate his assertion. He did not even lead any oral evidence of the alleged scale of fees.

On the part of the Appellants, they led cogent evidence of the scope of the agency engagement with the Church which pegged the agency fee at N500, 000.00 (Five Hundred Thousand Naira).

It beats my imagination how the trial court was able to arrive at its findings that the Respondent was entitled to 5% of the purchase price as his agency fee. That salient finding was not supported by any evidence adduced at the trial. The Respondent's evidence on the scale of fees was palpably weak and unreliable.

In the event, I hold that the Learned Magistrate was palpably wrong when she held that the Respondent was the appropriate person engaged to search for a property for the church and thereby granted the sum of N3, 250,000 (Three Million Two Hundred and Fifty Thousand Naira) and cost of N150, 000.00 (One Hundred and Fifty Thousand Naira) in favour of the Respondent. I therefore resolve Issue Two in favour of the Appellants.

Having resolved this salient issue in favour of the Appellants***, I hold that the Appeal succeeds and the Judgment and Orders of the Magistrate Court delivered on the 31st of January, 2020 are set aside. Costs assessed at N100, 000.00 (One Hundred Thousand Naira) is awarded in favour of the Appellants.***

P.A.AKHIHIERO
JUDGE
25/05/2022

COUNSEL:
C.O.IZOMON ESQ----------APPELLANTS
PRINCE MBANEFO NWOKO----------RESPONDENT