

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,**  
**ON TUESDAY THE**  
**12<sup>TH</sup> DAY OF APRIL, 2022.**

**BETWEEN:** **SUIT NO: B/121/2020**  
**DEACON COLLINS NWAGBUOGWU----- CLAIMANT /RESPONDENT**

**AND**

- 1. COMPTROLLER GENERAL,**  
**NIGERIA IMMIGRATION SERVICE-----1<sup>ST</sup> DEFENDANT/APPLICANT**
- 2. CHRISTOPHER ODIASE**
- 3. CATHERINE UZZI**

**RULING**

This is a Ruling on a Notice of Preliminary Objection dated on the 22<sup>nd</sup> of February, 2021, filed on the 3<sup>rd</sup> of March 202, challenging the jurisdiction of this Court to hear and determine this suit on the ground that the suit disclosed no cause of action against the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant/Applicant is therefore seeking an order of this Honourable Court striking out the name of the 1<sup>st</sup> Defendant from the suit and for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the Preliminary Objection, the learned counsel for the 1<sup>st</sup> Defendant/Applicant, ***Mallam J.A.Adamu*** filed a Written Address. In his written address, the learned counsel formulated a sole issue for determination as follows:

***“Whether the Claimant has disclosed any reasonable cause of action against the 1<sup>st</sup> Defendant.”***

Arguing the sole issue, learned counsel submitted that a glance at the Claimant’s Statement of Claim reveals that the Claimant has not disclosed any reasonable cause of action against the 1<sup>st</sup> Defendant. He posited that the crux of the matter is that the 1<sup>st</sup> Defendant is vicariously liable for the trespass of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants having directed them to trespass on the Claimant’s land.

He posited that the Claimant has not shown how the 1<sup>st</sup> Defendant directed or authorised the actions which were done outside the scope of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant’s duties and in their private capacity.

He submitted that the general principle of law relating to Agency is that the agency relationship exist where one person has the authority or capacity to create a legal relationship where an Agent who acts on behalf of a Principal, whereby the latter undertakes to be answerable for the lawful acts of the former with a third party, provided it was done within the scope of his authority or ratified by the latter .He referred the Court to the case of ***Edward Okwejinor vs. Gbakeji & NBC PLC(2008)33(Pt2 )NSCQR 863 at 927, I.t Muhammed JSC.***

Learned counsel submitted that the Principal is not liable where the tort by the agent falls entirely outside the scope of his duty or authority and he cited the case of ***R.O Iyere.V. BendelFeed and Flour Mill Ltd (2009) 3 NSQR 290 at 320 ration 5.***

Furthermore, he submitted that there is a misconception that the 1<sup>st</sup> Defendant is vicariously liable for the alleged acts of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. That there is no nexus between the Claimant’s case and the 1<sup>st</sup> Defendant in this matter to warrant the Claimant having a cause of action against the 1<sup>st</sup> Defendant.

He said that a cause of action has been defined as the operative facts or facts which gives rise to a right of action which itself is a remedial right. He posited that it is the emergence of a factual situation which enables a party to an action in Court to have a cause of suing a party and he referred to the cases of ***Federal Housing Authority (2008)11 NWLR (Pt1099)539 at 551; and Assistant Inspector General of Police V Ezeanya (2016) ALL FWLR(Pt830)1373 Para A-C.***

He submitted that it is trite law that where a party fails to disclose a cause of action in a Suit against the party, no further evidence shall be required to determine the action against such party. He referred the Court to the case of ***Tabiowo v. Disu (2008)7 NWLR (PT1087)533 at 545-546; and that of Osigwe v PSPLS***

*Management Consortium Ltd (2009) 3 NWLR (pt1128) 378 at pages 399, paragraph D-E*, where the Apex Court held thus:

***“It is only the writ of summons or the Statement of Claims that one has to look at to see if there is a cause of action. In this instant case, from the Originating Application of the Applicant, there was no reasonable cause of action revealed by the appellate against any of the Respondent”***

He submitted that the Claimant in this case was unable to show any cause of action or any wrongful act of the 1<sup>st</sup> Defendant.

In conclusion, he urged the Court to uphold this preliminary objection and strike out the name of the 1<sup>st</sup> Defendant from the suit of the Claimant/Respondent in its totality.

In opposition to this preliminary objection, the learned counsel for the Claimant, *Umeanadu Kamuche Esq.*, filed a Written Address. In his written address, the learned counsel formulated a sole issue for determination as follows:

***“Whether this Honourable Court can grant a demurrer application hidden under a claim of non-disclosure of a reasonable cause of action.”***

Arguing the sole issue, learned counsel submitted that the position of the law is that demurrer proceedings have long been buried under the rules of court. In support of this submission, he referred to *Order 22 Rules 1 and 2 of the High Court (Civil Procedure) Rules, 2018* which provides that no demurrer shall be allowed and that any party that deems it fit shall raise any point of law that is favourable to his case by way of his pleadings and not by a motion.

He submitted that the application of the 1<sup>st</sup> Defendant that is brought by way of notice of preliminary objection is a delay tactic and a subterfuge especially as it pretends to challenge the jurisdiction of this Honourable Court. He urged this court to accordingly discountenance the application of the 1<sup>st</sup> Defendant and dismiss same for lack of merit and flagrant non-compliance with rules of this court, especially as the 1<sup>st</sup> Defendant has filed a motion to bring in his Defence.

Learned counsel posited that the law is clear that in ascertaining whether there is cause of action, a fortiori, reasonable cause of action, the court examines the writ of summons and the statement of claim in reaching its conclusion and he relied on the case of *Nicon Trustees v. Alma Beach Estate Ltd (2017) ALL FWLR 914, 1079 at 1109, para. C*.

He also referred to the case of *Afelumo v. Chibeze (2018) ALL FWLR 955, 546 at 556, para. C-D* where the Court of Appeal stated thus on the meaning of cause of action:

***“It consists of every fact which it would be necessary for the plaintiff to prove if traversed, in order to support his right to judgement and of course, it is the entire set of circumstances that gives rise to an enforceable claim.”***

He said that in the case of *Afelumo v. Chibeze (supra) at 557, para. E* the Court stated that a cause of action is determined by reference to the plaintiff’s statement of claim alone.

Counsel posited that in the light of the admission that the 1st Defendant is the overall superior of the 2nd and 3rd Defendants, he urged the court to uphold the submission of the Claimant that a reasonable cause of action has been made out against the 1st Defendant in vicarious liability for the tortuous liability of the 2nd and 3rd Defendants which actions the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants carried out in their official capacity.

He further relied on the Supreme Court’s decision in the case of *Nweke v. State (2017) 899, 323 at 346-347, Paras G-A*.

He urged the Court to refuse the relief of the 1st Defendant as there is no legal basis for the 1st Defendant’s request and for granting same as the suit of the Claimant is well made out against all the Defendants.

He posited that assuming without conceding that the court and the rules allow for such *in limine* determination of this suit by the preliminary objection of the 1st Defendant, the Claimant in his statement of claim stated expressly and clearly the chain of command and hierarchy relating to the Defendants and how the 2nd Defendant carried out the unlawful instruction and command of his superiors the 1st and 3rd Defendants in paragraphs 2, 3, 4, 11, 12, 14, 16, & 17 of the statement of claim.

Furthermore, he referred to paragraph 11 of the statement of claim which discloses that the 2nd Defendant under the instructions of the 1st and 3rd Defendants invaded the claimant’s land in his official immigration uniform with other ferocious looking men garbed in their official immigration outfit. He urged the court to dismiss the objection of the 1st Defendant.

I have carefully examined the submissions of the learned counsels in this matter in relation to this preliminary objection. By this Notice of Preliminary Objection, the 1<sup>st</sup> Defendant/Applicant is contending that the suit does not disclose any cause of action against the 1st Defendant. I observed that while filing this Preliminary Objection, the 1<sup>st</sup> Defendant also filed a Memorandum of Appearance and a Statement of Defence. This observation is pertinent because in his opposition to this Preliminary Objection, the learned counsel for the Claimant/Respondent contended that the Preliminary Objection which he alleged was raised *in limine* amounts to a demurrer proceedings which have been abolished by ***Order 22 Rules 1 and 2 of the Edo State High Court (Civil Procedure) Rules, 2018.***

I will first of all determine whether this application is a demurrer proceeding which has been clearly abolished by the aforesaid provision of our rules. As I earlier pointed out, the 1<sup>st</sup> Defendant has already filed a Statement of Defence in response to the Statement of Claim of the Claimant. If the preliminary objection was filed without a Statement of Defence, such an objection *in limine*, on points of law, made without first filing a statement of defence would clearly amount to a demurrer. Such an objection would be contending that even if all the allegations in the statement of claim were true, it still does not in law disclose a cause of action to warrant a defence thereto. For the purpose of a demurrer, the allegations in the statement of claim are taken as admitted, hence there is no need to file a Statement of Defence.

In the case of ***NDIC v CBN [2002] 7 NWLR (PT 766) 272, paras A - F; OBA JACOB OYEROGBA v CHIEF LAMIDI AKINYEMI & ORS (2016) LPELR - 41940 (CA)***, the Court of Appeal in differentiating between the preliminary objection and demurrer stated thus:

***" ... There is difference between the objection on jurisdiction and demurrer, an objection on jurisdiction can be raised at anytime and anywhere but in a demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action or where appropriate, no locus standi."***

Thus, from the foregoing, it is clear that the present objection is not a demurrer but a Preliminary Objection which can properly be raised at this stage of the proceedings.

The law is well settled that where in a suit, a preliminary objection is raised, the Court's duty is to hear and determine the preliminary objection immediately before delving into the main suit and where a determination of the preliminary

objection decides the suit completely, then the need to determine the main suit becomes obviated. See: *ALLANAH Vs. KPOLOKWU (2016) LPELR- 40724 (SC) Pg. 10-11, Paras. D – A*; and *MUSA & ANOR Vs. IBRAHIM (2017) LPELR- 43101 (CA) Pg.5, Paras. A – D*.

In the instant case, the gravamen of the Preliminary Objection is that there is no cause of action against the 1<sup>st</sup> Defendant.

It is settled law that a cause of action is the fact or aggregate of facts which establish or give rise to a right of action. It is a factual situation which gives a person a right to judicial relief. It is thus the factual situation stated by the Claimant which if proved, will entitle him to a remedy against the Defendant, See the following decisions on the point: *A. G ADAMAWA V. A. G FEDERATION (2014) LPELR - 23221 (SC) PER ODILI JSC*; *NIGERIAN PORT AUTHORITY PLC V. LOTUS PLASTTCS LTD (2005) LPELR - 2028 SC* and *OSHOBOJA v. AMUDA (1992) NWLR (pt 250) 690*.

In ascertaining the cause of action, Courts are enjoined to consider the primary Originating process such as a Writ of Summons and the Statement of claim. See the case of *BRAWAL LINES LTD V DEE - DAMOR DEVELOPMENT COMPANY LTD (2015) LPELR - 2451-5 (CA)*.

In the Statement of Claim in the substantive suit, the Claimant/Respondent instituted this action against the Defendants claiming inter-alia, “*A Declaration that the unwholesome act of the 2nd Defendant entering the Claimant’s land with his confederates all acting on the instructions of the 1st and 3rd Defendants to demolish the Claimant’s peripheral fence and actual destruction of a total number of 10,000 blocks upon the Claimant’s land measuring 200 ft by 500 ft at Ikhueniro Benin City, amounts to trespass*”.

Furthermore, in several paragraphs of the Statement of Claim, the Claimant pleaded some salient facts to support his allegation that the 2<sup>nd</sup> Defendant carried out the alleged acts of trespass upon the instructions or directives of the 1<sup>st</sup> Defendant.

In order to determine whether there is any cause of action by the Claimant against a Defendant, the legal rights of the Claimant must be made clear and the obligations of the Defendant must also be discernible upon perusal of the writ of summons and statement of claim. Unless a cause or matter discloses reasonable cause of action against the Defendant, the suit will be struck out or dismissed for its failure to link the Defendant with the cause of action culminating in the suit filed

against him. See the case of ***OKONKWO V. A.G OF THE FEDERATION AND MINISTER OF JUSTICE & ANOR*** (PP. 25-30 PARAS. F).

In the old case of ***Savage & Ors. v. Uwechia*** (1972) 1 All N.L.R. (Part 1) 251 at p.257; (1972) 3 SC. 24 at p.221, Fatai-Williams, J.S.C. (as he then was) expounded as follows:

***"A cause of action is defined In Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts, which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage"***

Upon a careful perusal of the part of the Statement of Claim referred to above, the Claimant is alleging that the 2nd Defendant entered his land with his confederates, acting on the instructions of the 1st and the 3rd Defendants to demolish the peripheral fence on the land. By these averments, the Claimant is suing the 1<sup>st</sup> Defendant for his alleged wrongful act of instructing the 2<sup>nd</sup> Defendant to enter his land to demolish his fence. By this, if proved, the Claimant would be entitled to damages against the 1<sup>st</sup> Defendant for trespass to his land. Clearly, on the Claimant's pleadings, the Claimant has a cause of action against the 1<sup>st</sup> Defendant. So long as the Statement of Claim or the particulars disclose some cause of action or raise some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. See the following English decisions on the point: ***Moore v. Lawson*** 31 TLR. 418 C.A.; ***Wenlock v. Moloney*** (1965) 1 WLR. 1238; (1965) 2 All EA. 871 C.A.). See also the Nigerian case of ***DR. IRENE THOMAS & ORS VS THE MOST REVEREND T. O. OLUFOSOYE*** (1986) 1 NWLR (PT. 18) 669 AT 682 (F-H) TO 683.

Furthermore, I am of the view that at this stage, I cannot determine the issue of whether the alleged tortious acts of the agent falls outside the scope of his duty or authority. That issue will be one of the live issues to be contested during the main trial. It will be premature for me to make any finding on such a salient issue at this stage.

It is settled law that the Court has a duty not to determine substantive issues at the stage of considering an interlocutory application. It is an established rule that live issues in a case must be left for the substantive trial of the suit. If live issues are tried at the interlocutory stage, there will be nothing left for the trial at the substantive hearing of the suit. See the following decisions on the point: ***Hashim Ogunsola v.***

*Usman (2002) 14 NWLR (Pt.788) 636, North-South Petroleum (Nig.) Ltd. v. FGN (2002) 17 NWLR (Pt. 797) 639; and Adedolapo & Ors V. The Military Administrator of Ondo State & Ors (2005) LPELR-7538(CA) (Pp. 18 paras. C).*

*Sequel to the foregoing, the preliminary objection is overruled and the application is dismissed with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Claimant.*

**P.A.AKHIHIERO**

**JUDGE**

**12/04/2022**

**COUNSEL:**

*Umeanadu Kamuche Esq.....Claimant/Respondent*

*Mallam J. A. Adamu.....1<sup>st</sup> Defendant/Applicant*

*K. I. Iyamu Esq.....2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Respondents*