

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON TUESDAY, THE 29<sup>TH</sup> DAY OF NOVEMBER, 2016

BEFORE HIS LORDSHIP HON. JUSTICE A. R. MOHAMMED

(JUDGE)

SUIT NO. FHC/ABJ/CS/813/2012

IN THE MATTER OF AN APPLICATION BY CHINEDU FREDRICK ANAJE  
ESQ. FOR AN ORDER FOR THE ENFORCEMENT OF HIS FUNDAMENTAL  
RIGHTS.

AND

IN THE MATTER OF:

CHINEDU FREDRICK ANAJE ESQ. .... APPLICANT

AND

1. MALLAM DAHIRU ADO-KURAWA  
(Chairman, Presidential Committee  
on Trade Malpractices)
  2. HYACINTH NJOKU  
(Secretary to the Chairman, Presidential  
Committee on Trade Malpractices)
  3. SECRETARY TO THE GOVERNMENT  
OF THE FEDERATION
  4. ATTORNEY-GENERAL OF THE FEDERATION
- ..... RESPONDENTS
- 

RULING

By a Notice of preliminary objection dated and filed on 22/10/13,  
the 4<sup>th</sup> Respondent seek for an order of Court to strike out this suit  
or dismissed same.

The grounds of the objection were given as follows:-

1. The Court lacks jurisdiction to entertain the Applicant's suit.
2. The Applicant's claim does not come within Chapter iv of the Constitution as stipulated in the Fundamental Right Enforcement Procedure Rules, 2009.
3. The mode of commencement by originating motion under the Fundamental Right Enforcement Procedure Rules, 2009 in a case where there is a likelihood of substantial dispute of facts is fatal to the Applicant's case.
4. The Applicant's cause of action, if any, disclose a case of simple assault/battery and or tortuous act which the Court cannot entertain.



In the Alternative,

5. That the Applicant suit discloses no reasonable cause of action against the 4<sup>th</sup> Respondent.

The 4<sup>th</sup> Respondent's Notice of preliminary objection is accompanied with a written address also dated and filed on 22/10/13.

In response to the 4<sup>th</sup> Respondent's notice of preliminary objection, the Applicant filed written address on 8/11/13 in opposition to the Notice of preliminary objection.

During the hearing of the 4<sup>th</sup> Respondent's preliminary objection, learned Applicant's counsel drew the Court's attention to its earlier ruling directing the calling of oral evidence in this matter. In his response, learned 4<sup>th</sup> Respondent's counsel has urged the Court to discountenanced the above point or argument made by the Applicant's counsel since a further written address was not filed.

I have carefully read the 4<sup>th</sup> Respondent's Notice of preliminary objection dated and filed on 22/10/13 and the accompanied written address also dated and filed on 22/10/13. I have also read the Applicant's written address filed on 8/11/13 in opposition to the 4<sup>th</sup> Defendant's Notice of preliminary objection.



From the record of the Court, particularly, the ruling of 4<sup>th</sup> July, 2013, this Court took the view that in view of irreconcilable conflicts in the affidavits of the Applicant and the 1<sup>st</sup> - 3<sup>rd</sup> Respondents, oral evidence is to be called to resolve the said conflicts.

The ruling of the Court dated 4/7/13 was made after the argument had been offered on the Applicant's suit brought for enforcement



of fundamental right under Chapter IV of the 1999 Constitution. In the last paragraph of the Court's ruling dated 4/7/13 contained in page 12, the Court directed thus:-

*"I therefore hereby direct the parties to call oral evidence strictly on the issues and/or allegations of whether or not the Applicant was assaulted, molested and beaten on 19<sup>th</sup> November, 2012 in the office of the 1<sup>st</sup> Respondent and based on the instructions of the 1<sup>st</sup> Respondents. In this regard, the Applicant shall begin, after which the Respondents can call evidence of rebuttal, if they wish to do so."*



From the above directive of the Court in the ruling of 4/7/13, it is all the parties and not just the 1<sup>st</sup> - 3<sup>rd</sup> Respondents that have been directed to call evidence on the allegation of assault, molestation and beating by the Applicants in his substantive suit. In effect, the ruling of the Court made on 4/7/13, is binding on all the parties in the suit, inclusive of the 4<sup>th</sup> Respondent. For the Court to now turn round and take an application in the nature of the 4<sup>th</sup> Respondent's preliminary objection dated 22/10/13, would in my humble view, amount to setting aside or jettisoning the ruling/order of the Court made on 4/7/13. Learned 4<sup>th</sup> Respondent's counsel is not claiming that he is not aware of the Court's ruling containing the above quoted directive. It is also instructive to observe that none of the

parties in this suit, including the 4<sup>th</sup> Respondent, has appeal against the ruling of the Court made on 4/7/13 directing the calling of oral evidence to resolve the core issues in controversy in the suit.

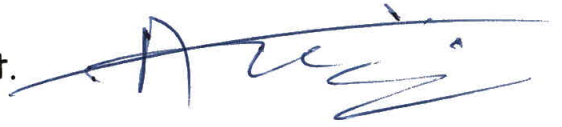
However, since the 4<sup>th</sup> Respondent's Notice of preliminary objection is questioning the competence of the suit and the jurisdiction of the Court and there being no prior process filed by the 4<sup>th</sup> Respondent in opposition to the substantive suit, I am of the view that the issues raised in the 4<sup>th</sup> Respondent's Notice of preliminary objection should be taken during the hearing of oral evidence to be called by the parties. In this way, the order of the Court for the parties to call oral evidence shall still stand and the 4<sup>th</sup> Respondent would have the opportunity to canvass argument or be heard on his Notice of preliminary objection dated 22/10/13 and all the issues raised therein. Hearing on the 4<sup>th</sup> Respondent's Notice of preliminary objection dated 22/10/16 is hereby deferred till oral evidence is called in this matter.



**HON. JUSTICE A. R. MOHAMMED**  
**JUDGE**  
29/11/16.

APPEARANCES:-

C. Caleb Esq. for the Applicant/Respondent.



Abdullahi Ahmad Esq. for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Abdullahi Abubakar Esq. for the 4<sup>th</sup> Respondent.