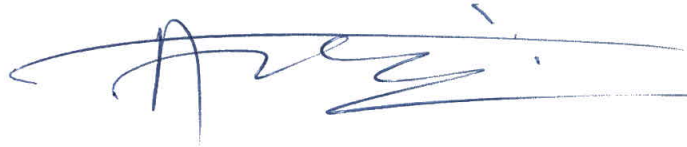




2. The Plaintiff's case was not initiated by due process of law in that the Plaintiff failed, contrary to the provisions of section 16 (1) of the Federal Road Safety Commission (Est.) Act, 2007 to serve the defendants with a PRE-ACTION NOTICE prior to the commencement of this suit.



3. The 2<sup>nd</sup> defendant is not an Agency of the Federal Republic of Nigeria having regard to the provisions of section 251(1) of the Constitution of the federal Republic of Nigeria, 1999, this Court therefore has no jurisdiction to entertain the plaintiff's claim against the 2<sup>nd</sup> Defendant.

The Court was therefore urged to strike out the Plaintiff's action as the Court lacks the competence/jurisdiction to entertain this suit.

The Defendants' preliminary objection is accompanied with a written address dated 26/6/15.

The Plaintiff then filed written address against the Defendants' preliminary objection. In the Plaintiff's written address dated and filed On 26/10/15,

the Plaintiff raised the issue of competence of the Defendants' application, that is, the Notice of Preliminary objection dated 26/6/15.

Learned senior counsel for the Plaintiff relied on the provision of order 29 Rule 4 of the Federal High Court Rules 2009 and contended that the Defendants' preliminary objection ought to have been brought within 21 days after service of the originating process. It was stated by Plaintiff's senior counsel that the originating process in this suit was served on the Defendants on the 4<sup>th</sup> of June, 2015, while the Defendants' Notice of preliminary objection was filed on the 26<sup>th</sup> of June, 2015. It was then stated by senior counsel for the Plaintiff that 21 days had expired before the Defendants filed their application (that is, the Preliminary objection).

On the need to obey Rules of Court, the Court was referred to the following cases: **IKEME VS UGWU (2013) 15 NWLR PART 1377, 358**

**at 371, OWNERS OF THE MV "ARABELLA" VS N.A.I.C. (2008) 11**

**NWLR PART 1097, 182 at 205 AND AKAMBI & ORS VS ALAO &**

**ANOR (1989)3 NWLR PART 108 118.** Learned senior counsel for the

Plaintiff therefore urged the Court to strike out the Defendants' preliminary objection having been filed contrary to the provisions of the Rules of this

Court.





In the Defendants' Reply address on points of law, the Defendants replied the preliminary issue of the competence of their Notice of Preliminary objection raised by the Plaintiff.



In their Reply address, the defendants counsel contended that it is trite law that jurisdiction, being a threshold issue can be raised at any stage of the proceedings before Judgment. Reference was made to the cases of **ABEL ISAIAH VS SPDC (2001) 5 SC PART 11** and **OBI – EZE VS A. G.**

**RIVERS STATE (2001) 12 SC PART 11, 21 at 30.** Learned

Defendants' counsel also contended that neither the procedure employed nor the stage of the proceedings in which an objection to jurisdiction is raised would stop a Court from hearing and entertaining an objection to its jurisdiction. The Court was referred to the cases of **EBEBI VS SPEAKER**

**BAYELSA HOUSE OF ASSEMBLY (2012)5 NWLR PART 1292, 1** and

**UMANNAH VS ATTAH (2006) 17 NWLR PART 1009, 503.**

Learned Defendants' counsel further submitted that failure to comply with the Rules of Court will not nullify any process, rather same may be treated as an irregularity. Reference was made to order 51 Rule 1 of the Federal High Court rules, 2009. Learned Defendant's counsel also contended that

the Plaintiff's preliminary objection to the hearing of the Defendants' Notice of preliminary ought to have been made by summons or notice pursuant to order 52 Rule 2 (2) of the Federal High Court (Civil Procedure Rules), 2009. It was also contended for the Defendants that failure to apply within time under order 29 Rule 4 does not lead to the striking out or dismissal of such application, rather, the application can be taken at the conclusion of the trial.

Now, since the Plaintiff had raised objection to the hearing of the defendants' Notice of preliminary objection, the Court will determine the issue first. The crux of the Plaintiff's objection to the hearing of the defendants' Notice of preliminary objection is anchored on the provisions of order 29 rules 4 of the Federal High Court Rules, 2009.

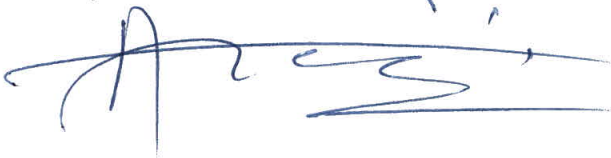
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Order 29 rule 1 states thus:

"Where a defendant wished to:-

- (a) dispute the court's jurisdiction to try the claim; or
- (b) argue that the Court should not exercise its jurisdiction, which it may have, he may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any

jurisdiction which it may have, and the Court may take such application together with the Plaintiff's substantive suit in so far as the substantive suit does not involve the taking of oral evidence."

2. A defendant making such application must first file along with the application a memorandum of appearance stating that he is appearing conditionally.
  3. A defendant who files a memorandum of appearance does not, by so doing, lose any right that he may have to dispute the court's jurisdiction.
  4. An application under this order shall:
    - (a) Be made within twenty one days after service on the defendant of the originating process, and
    - (b) Be supported by affidavit where it is not based on ground of law alone".
- 

In the defendants' Reply address on points of law, particularly, in paragraph one of the said Reply address, learned defendants' counsel stated thus:

"The Plaintiff's writ of summons was served on the Defendants on the 4<sup>th</sup> of June, 2015. The Defendants' Notice of preliminary objection was filed on the 26<sup>th</sup> of June, 2015 (twenty one days after the service of the writ of summons)".

It is thus clear that by the defendants' counsel admission, the defendants' Notice of preliminary objection dated 26/6/15 was indeed filed outside the twenty one days stipulated in order 29 rules 4 of the Federal High Court Rules, 2009.



Learned senior counsel for the Plaintiff has urged the Court to strike out the defendants' Notice of preliminary objection for non-compliance with the provisions of Order 29 rule 4 of the Rules of this Court reproduced above. The question to be resolved therefore is, does non-compliance with the provisions of order 29 rules 4 attracts the sanction of striking out an application of the nature brought by the defendant? I must quickly answer this question in the negative. This is because, Rule 5 of order 29 of the Federal High Court rules, 2009 states thus:



“If the defendant files an acknowledgement of service and does not make such application within the period specified in Rule 4 of this order, any such application can only be taken at the conclusion of trial.”

From the express provision in Rule 5 of order 29 reproduced above, non-compliance with the provisions of Rule 4 of order 29 does not attract the sanction of striking of an application brought under order 29 rule 1 of the Rules of this Court. What is envisaged by the Rules is that hearing of any such application would be postponed until at the stage of conclusion of trial.

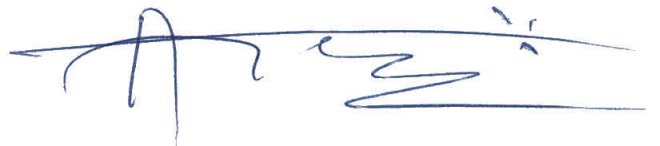


Although, I am not unmindful of the contention of learned defendants' counsel to the effect that issue of jurisdiction can be raised at any stage of the proceedings even for the first time on appeal to the Supreme Court and that neither the procedure employed nor the stage of the proceedings in which an objection to jurisdiction is raised would stop a Court from hearing and entertaining an objection to jurisdiction, but the point should be made that it is in recognition of the above principle of law that the Rules permits



the raising of issue of jurisdiction within twenty one days after service of the originating summons on a defendant. That is to say, that the Rules recognises the right of a defendant to raise issue of jurisdiction at the early stage or at the beginning of the matter after service of the originating summons but within twenty one days.

Now, if the objection to jurisdiction is not raised within twenty one days after service of the originating process, the defendant is not precluded from raising it altogether, as he can take the objection at the conclusion of the trial. That means at the stage before Judgment in the matter. I am therefore of the humble view that the provisions of order 29 is in tandem with the principle that "issue of jurisdiction can be raised at any stage of the proceedings".



Furthermore, Rules of Court are made for orderly conduct of proceedings as they are not made just for the fun of it. In this regard, parties are required, as a matter of necessity to comply with Rules of Court in every proceeding. To jettison the application of Rules of Court at the whims of one or all the parties would only lead to chaos in the conduct of any

proceeding. In the case of OWNERS OF MV "ARABELLA" VS NAIC, Supra at page 205 paragraphs G – H, the Supreme Court stated thus:

"It is now firmly settled that rules of Court are not mere rules, but they per take of the nature of subsidiary legislation by virtue of section 18 (1) of the Interpretation Act and therefore, have the force of law".

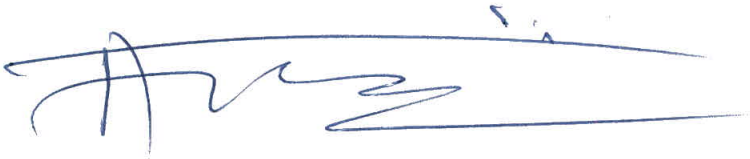
Similarly, in the case of AKAMBI & ORS VS ALAO & ANOR, Supra, at page 118, it was held thus:

"It is also settled that when there is non-compliance with the rules of Court, the Court should not remain passive and helpless. There must be a sanction; otherwise, the purpose of enacting the Rules will be defeated"



It is for the above reasons that I come to the inevitable conclusion that, having filed their Notice of preliminary objection dated 26/6/15 outside the twenty one days stipulated in order 29 rule 4 of the Federal High Court Rules, 2009, the defendants' said objection can only taken at the conclusion of the trial in this suit.

In consequence of the above, the defendants' Notice of preliminary objection dated and filed on 26/6/15 will be taken at the conclusion of trial in this suit.

A handwritten signature in blue ink, appearing to be 'A. R. Mohammed', written over a horizontal line.

**HON. JUSTICE A. R. MOHAMMED  
JUDGE  
25/2/2016**

**APPEARANCES**

**Dele Adesina SAN with C. U. Onyenucheya – Uko (Mrs.) and Chidimma Ezego (Miss) for the Plaintiff.**

**I. Obi-Okoye Esq., for the Defendants.**