

LITIGATION NOTES

JUDICIAL DECISION ALERT – 14th April 2021

NATIONAL INDUSTRIAL COURT RULES THAT IT HAS JURISDICTION TO HEAR CLAIMS INVOLVING A LAW FIRM'S ALLEGED BREACH OF A DISPUTES SETTLEMENT AGREEMENT, RELATED TORTIOUS ACTS AND NON-PAYMENT OF TRANSACTION TAXES

A. INTRODUCTION

During a virtual proceeding on Wednesday, 14 April 2021 in **Suit No: NICN/LA/180/2020** **Ikemefuna**

Stephen Nwoye v. Aluko & Oyebode pending at the National Industrial Court of Nigeria, Lagos Judicial Division, the National Industrial Court determined and ruled on two Preliminary Objections filed by the Defendant and a Motion on Notice filed by the Claimant. The Defendant's First Preliminary Objection to the litigation sought the ruling of the Court on amongst other legal issues (i) whether the Honourable Court has subject matter jurisdiction in respect of the instant suit? (ii) Whether the Claimant has *locus standi* to institute the claims? (iii) Whether the instant suit constitutes an abuse of court process and should therefore be dismissed? The Defendant's Second Preliminary Objection to the litigation sought the Court's ruling on the single issue of whether the instant action was rightly commenced by the Claimant *vide* an Originating Summons? The Claimant on his part filed an application challenging the appearance entered by the Defendant's Counsel on behalf of the Defendant and its Partners to defend the court case, contrary to the provisions of the extant rules of court that require partners of a firm to individually enter appearance to defend the claims.

The National Industrial Court of Nigeria in its decision, dismissed the Defendant's Preliminary Objection dated 13 October 2020 holding that (i) it has subject matter jurisdiction in respect of the instant suit (ii) the Claimant has the *locus standi* to institute the claim; and (iii) the instant suit and other litigations commenced by the Claimant does not and cannot be said to constitute an abuse of the processes of court, as the Claimant is entitled to seek legal redress as permitted and recognised by law. Further, the Court in refused to grant the relief(s) sought by the Defendant in the Motion on Notice dated 13



October 2020. The Court ruled that it will not strike out the Claimant's claims because it was instituted *vide* an Originating Summons, instead given the provisions of the extant rules of the court, the Claimant is hereby directed to convert the Originating Summons to a Complaint and parties are to file and exchange pleadings for trial to be conducted in the case. In another ruling, the Court also dismissed the Claimant's application challenging the appearance entered by the Defendant's Counsel on behalf of the Defendant and its Partners to defend the court case on the ground that the said appearance is a substantial compliance with the extant Rules of Court and that it will not dwell on technicalities, rather it will administer substantive justice to the parties.

There was no order as to costs on all three applications decided by the Court.

B. SUMMARY OF RELEVANT FACTS

In early 2019, the Claimant instituted legal and disciplinary proceedings against the Defendant based on claims of his forced resignation from the firm because of his refusal to breach the provisions of the Nigerian Legal Practitioners Act and Rules of Professional Conduct on seniority at the bar and order of precedence, battery by a partner of the Defendant, defamation (libel) of his character by another partner, torts of fraudulent misrepresentation and deceit, and the Defendant's breach of a 2013 Financial Support Agreement for US\$50,000 entered on its behalf by its erstwhile Managing Partner/Chairman Mr. Oluwagbemiga A. Oyeboode (alias Gbenga Oyeboode) with the Claimant and New York University.

After months of litigating in Nigerian courts and before professional disciplinary authorities in Nigeria and in the United States of America, the Defendant approached the Claimant for an amicable settlement of the disputes and the parties entered into a Disputes Settlement Agreement (**DSA**) dated 19th August 2019, by which all pending litigations, professional, regulatory and law enforcement investigations were discontinued and settled by the parties. Pursuant to the DSA, the Defendant paid the net sum of US\$100,000 ('the Tuition Fee') free of all deductions, charges, levies, or rates whatsoever, to the Claimant through a parties' appointed escrow agent for the settlement of all accounts owed to NYU.

In early 2020, as a result of enquiries by the Lagos State Internal Revenue Services (**LIRS**) into his tax filings, the Claimant through a letter to then Chairman (Mr. Oluwagbemiga A. Oyeboode copied to other partners (signatories) of the DSA) of the Defendant, requested for amongst others the receipts of payment of Capital Gains Tax and stamp duty by the Defendant on the DSA settlement amount. When the Defendant refused to oblige him with the taxes' payment receipts, the Claimant began the process for dispute resolution as

agreed by the parties under Clause 17 of the DSA. When the Defendant also refused to accept the Claimant's propositions for parties discussion and amicable settlement, including a Lagos State Multi-Door Courthouse (LMDC) mediation as contained in the DSA, the Claimant on 29 June 2020, commenced this lawsuit by way of an Originating Summons against the Defendant seeking amongst other reliefs a declaration that the Defendant breached the DSA, an order of specific performance directing the Defendant to pay the CGT, stamp duty and any other applicable tax, general damages and cost of litigation.

After initial hesitation to submit to the judicial process, the Defendant through its Counsel entered a conditional appearance for its then eighteen (18) partners (now 16 partners). The Defendant also filed two Preliminary Objections - (i) Notice of Preliminary Objection dated 13th October 2020 seeking an order of court striking out of the claim on the grounds that the Honourable Court lacks subject matter jurisdiction, and that the Claimant lacks the *locus standi* to make the claims presented therein. (ii) Motion on Notice dated 13th October 2020 seeking an order of court striking out the lawsuit on the ground that the proper mode of commencement for the action is by way of a writ of summons given that the facts of the case are clearly contentious and in dispute. The Claimant on his part filed a Motion on Notice dated 27th October 2020 seeking an order setting aside the conditional appearance dated 13 October 2020 purportedly entered by Oyewole Omisade, Esq. on behalf of the Defendant - Aluko & Oyebode and its partners for not being the proper mode of appearance for partners of a firm as provided by the extant rules of this Honourable Court.

C. THE SYNOPSIS OF THE COURT'S RULINGS

The National Industrial Court of Nigeria delivered three rulings on the three applications argued by the parties during the proceedings of Tuesday 26 January 2021.

a) On the Defendant's Notice of Preliminary Objection dated 13 October 2020, the Court in dismissing the application, held that the basis of the Claimant's claim is the alleged breach of the DSA. Contrary to the Defendant's argument, the Claimant is not trying to recover taxes due to the LIRS, instead the Claimant's claims are amongst others that the Defendant breached the DSA by not fully performing its obligations and that the Court should direct the Defendant to pay the Capital Gains Tax or any other applicable tax on the settlement consideration (Tuition Fee) to the relevant tax authority. Further that the Court has subject matter jurisdiction to determine the breach of contract claims and tortious claims on the basis of Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration Act) and *MHWUN v. Dr. Alfred Ehigiebga* (2018) LPELR - 44972 (CA). Further that nothing in law or practice states that where a single set of facts support civil, criminal proceedings and regulatory actions or simply put, allows for a multifaceted procedure or processes of addressing legal issues or disputes, then all processes or procedures cannot be commenced at once or run parallel to each other. A

party who exercises such legal rights of obtaining justice cannot be held to have abused the processes of court.

- b) On the Defendant's Motion on Notice dated 13 October 2020, the Court declined to strike out the litigation on the ground that the Claimant commenced the lawsuit by way of an Originating Summons. The Court however confirmed that based on the supporting Affidavit filed by the Defendant and the Counter-affidavit filed by the Claimant, there appears to be contentious and dispute facts in the action before the Court. Further Order 3 rule 17(2) of the National Industrial Court of Nigeria (Civil Procedure) Rules 2017 states that when in the opinion of the Court, a suit commenced by Originating Summons raised substantial issues and dispute of facts, the Court shall not strike out the matter, but may order its conversion to a complaint and direct the parties to file and exchange pleadings for the conduct of trial in the case. The Court then proceeded to direct the Claimant to convert the Originating Summons dated 6 July 2020 to a Complaint and that parties should file and exchange pleadings, so that trial will be conducted.
- c) On the Claimant's Motion on Notice dated 27 October 2020 seeking an order setting aside the conditional appearance dated 13 October 2020 purportedly entered by Oyewole Omisade, Esq. on behalf of the Defendant – Aluko & Oyebode and its partners for not being the proper mode of appearance for partners of a firm as provided by the extant rules of this Honourable Court, the Court in dismissing the said application, held that the Defendant substantially complied with the extant rules of Court by entering conditional appearance through its counsel as recognised by the Rules. That the Court will not dwell on the technicalities that the partners of the Defendant did not individually sign a memorandum of appearance and file same in court to evince their decision to defend the claims against the Defendant rather the Court is committed to administering substantive justice between the parties especially when a condition appearance and other court processes was filed and served on the Claimant by the Defendant's Counsel.

D. COMMENT

The rulings of the Court on the three applications filed by the parties are welcomed, as they lend further judicial *imprimatur* and credence to recent constitutional amendments and case-laws jurisprudential development in Nigeria. Notable points from the three rulings delivered by the Court are:

1. The subject matter jurisdiction of the National Industrial Court of Nigerian is now constitutionally settled by Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. Importantly, the the use of the terms “matters incidental thereto or connected therewith” by the legislature means that the Court can

entertain employment disputes and torts arising from, connected to or incidental to such an employment relationship.

2. A party to an employment agreement or any contract arising from an employment relationship has the legal standing (*locus standi*) to seek the enforcement of the contract or full performance of the obligations contractually agreed.
3. Nothing in law or practice states that where a single set of facts support civil, criminal proceedings and regulatory actions or simply put, allows for a multifaceted procedure or processes of addressing legal issues or disputes, then all processes or procedures cannot be commenced at once or run parallel to each other. A party who exercises such legal rights of obtaining justice cannot be held to have abused the processes of court.
4. The Court will not grant a relief not recognised or permitted by its extant rules. However, when it is given discretionary powers by the use of the operative word 'may' the Court is entitled to construe same as mandatory and direct a party or the parties to take necessary step(s) stated in the rules of court, in this case convert an Originating Summons to a Complaint, file and exchange pleadings for the conduct of trial of the case.
5. The Court will not dwell on technicalities, where there is substantial compliance with the provisions of its extant rules, instead the Court will be committed to administer substantive justice to the parties.

Note: The Certified True Copy (CTC) of the three (3) rulings delivered by the Court will be made available, when it is obtained after the national industrial action commenced by the Judicial Staff Union of Nigeria (JUSUN) has been called off.