

**SUPREME COURT OF NIGERIA**

26TH MAY, 2000. SC 157/1994

**CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU,  
S. U. ONU, A. I. KATSINA-ALU, O. ACHIKE, JJSC.**

ALHAJI AKINDIPE & 2 ORS. .... PLAINTIFFS/RESPONDENTS  
(For themselves and other members of the followers of  
Ghullam Ahmed Agege Mission, Agege)

AND

1. COMMISSIONER OF POLICE LAGOS STATE ..... DEFENDANTS/  
2. M. O. OBARE - (A. C. NIGERIA RESPONDENTS  
POLICE ELERE, AGEGE)  
3. MR. H. O. MABOGUNJE, D. P. O. ISOKOKO POLICE  
STATION, ELERE, AGEGE

4. ALHAJI RAIMI AKANJI YUSUF

5. ALHAJI I. R. OLADIMEJI

6. ALHAJI W. I. YUSUF

7. BRO. W. A. ABDULLAHI ..... DEFENDANTS/

8. ALHAJI M. A. ABUDU (NO. 4TH - 8TH APPELLANTS

DEFENDANTS as representing Anwar - UI Islam -  
Movement of Nigeria, Agege Mission - (parties joined  
by Order of the Court.

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**ACTIONS** - *Juristic person - Representative action - It is enough if the group or class of persons sought to be represented - Are easily identifiable and have a common purpose.*

**ACTIONS** - *Relief - Jurisdiction - Where an action is brought solely to obtain relief - Which the court has no power to grant - The Statement of claim will be struck out and the action dismissed.*

**APPEALS** - *Issues - Formulation of issues - It is not permissible to formulate more than one issue from a ground of appeal - Even though*

*several grounds of appeal can be covered by one issue for determination*

**LEGAL PERSONALITY** - Juristic person - Representative action - It is enough if the group or class of persons sought to be represented - Are easily identifiable and have a common purpose.

**LOCUS STANDI** - Trespass - Action for - Where from the statement of claim - The plaintiffs have prima facie shown that they are in exclusive possession - They have legal capacity to invoke the jurisdiction of court under section 6 (6) (b) of the 1999 Constitution.

**PLEADINGS** - Statement of claim - Reasonable cause of action - In considering whether a pleading discloses a reasonable cause of action - Only the allegations in the Writ of Summons and the statement of claim are examined.

**PLEADINGS** - Striking out - Application for pleading to be struck out - Under Order 22 Rule 4 of the High Court of Lagos Civil Procedure Rules 1972 - The rule will not apply where one has to go to extrinsic evidence to show that the pleading is bad.

**TRESPASS** - Possession - Trespass to land - Is actionable at the suit of the person in possession of the land - But once a defendant claims to be the owner of the land in dispute - Title is put in issue.

**WORDS & PHRASES** - Reasonable cause of action - What it means.

### **FACTS**

In the High Court of Lagos State, the plaintiffs who were former members of Ahmadiyya Movement-In-Islam, Agege Branch, Lagos State instituted an action for themselves and on behalf of other members of Ghullam Ahmed group for "trespass and other tortious acts committed by the defendants and their agents" against them in respect of their Mosques at No. B. 5/111, Ahmadiyya road, Agege and No. 14 Shitta

Street, Dopemu, Agege which are in their exclusive possession. The first three defendants were the original defendants. The 4th to 8th defendants representing Anwar-UI Islam-Movement of Nigeria, Agege Mission applied to the trial court to be joined as co-defendants. An order was made accordingly. Thereafter, the 4th to 8th defendants filed their statement of defence and brought an application before the learned trial judge praying for an order dismissing the action filed by the plaintiffs on the grounds: that they did not show on the writ of summons and statement of claim that they have locus standi to institute the action; and that the writ of summons, statement of claim and reply disclose no reasonable cause of action. The application was brought pursuant to Order 22 Rules 2,3, and 4 of the High Court of Lagos Civil procedure Rules, 1972 and inherent jurisdiction of the court. The affidavit in support of their application had many documents exhibited to it including the judgment of the Supreme Court in *Shodeinde & ors. v. The Registered Trustees of the Ahmaddiya Movement-in-Islam & ors*: (SC. 64/1982) delivered on 4/11/83 and reported in 1983 11 S.C. 6.

In a reserved ruling, after hearing arguments of counsel, the learned trial judge dismissed the application. The 4th - 8th defendants were dissatisfied with the ruling and appealed to the Court of Appeal, Lagos Division. The appeal was dismissed by a majority decision of 2 to 1. The 4th - 8th defendants have further appealed to the Supreme Court raising seven issues but only two of the issues were considered to be relevant to the appeal.

### **ISSUES FOR DETERMINATION**

(f) *Was the Court of Appeal correct when it held that the 1st group of Respondents had locus standi to institute and maintain the action?*

(g) *Did the 1st group of respondents' action disclose any reasonable cause?"*

**HELD** (Unanimously dismissing the appeal per lead judgment of OGWUEGBU JSC)

### ***Appeals - Issues***

1. It is however not permissible to formulate more than one issue from a

ground of appeal even though several grounds of appeal can be covered by one issue for determination. The Appellants have even formulated issues from particulars of error which are unrelated to the grounds of appeal. (p. 1531 E)

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***Trespass - Action***

2. It is trite law that trespass to land is actionable at the suit of the person in possession of the land. It is a violation of a possessory right and does not generally involve title to land. A person in possession can sue for trespass even if he is neither the owner of the land nor a privy to the owner. Exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong-doers except a person who can establish a better title. Once a defendant claims to be the owner of the land in dispute, title is put in issue, and to succeed, the plaintiff must show a better title than that of the defendant. See Amakor v. Obiefuna (1974) ALL N.L.R. 109. (p. 1533 D)

***E Locus Standi - Trespass***

3. From the writ of summons and statement of claim, the plaintiffs have, Prima facie shown that they are in exclusive possession of the mosques situate at the two addresses mentioned and that the defendants interfered with their possession. Since only the person in possession can sue for trespass, it cannot be argued that the plaintiffs have no legal capacity to invoke the jurisdiction of the court under section 6(6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 for the determination of the legal rights which they assert. I am in no doubt that they disclosed in their statement of claim their "standing" to institute the proceedings. See Adesanya v. President of Nigeria (1981) 2 NCLR 358, Oloriode v. Oyeibi (1984) 1 SCNLR 390 and Thomas v. Olufosoye (1986) 1 N.W.L.R. (pt. 18) 669. (p. 1533 G)

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***Actions - Juristic person***

4. The three plaintiffs on record claim the rights for themselves and in a representative capacity. It is enough if the group or class of persons

sought to be represented are easily identifiable and have a common purpose. A leaf can be borrowed from the decision of the Privy Council in the case of Adegbite & Ors. v. Chief Imam Q. B. Lawal & Ors. 12 W.A.C.A. 398 where the plaintiffs/respondents for themselves and the Muslim Community of Ijebu Ode Central Mosque sued the defendants/ B appellants on behalf of themselves and their Fellow Seceders from Muslim Community of Ijebu Ode Central Mosque. Damages were awarded in favour of plaintiffs who sued in a representative capacity. I am therefore not in any doubt that the plaintiffs are proper parties who can request the court to adjudicate on the issue of trespass disclosed in their C statement and claim. (p. 1534 E)

### ***Words & Phrases - Reasonable cause of action***

5. A reasonable cause of action means a cause of action with some reasonable chance of success when only the allegations in the pleading (statement of claim) are considered. So long as the statement of claim disclose some cause of action, or raises some question fit to be decided by a judge as in this case. The mere fact that the case is weak, and not likely E to succeed, is no ground for striking it out or dismissing it. See Wenlock v. Moloney (1965) 2 ALL E. R. 871. (p. 1535 B)

### ***Actions - Relief***

6. Where an action is brought solely to obtain relief which the court has F no power to grant, the statement of claim will be struck out and the action dismissed. (p. 1535 D)

### ***Pleadings - Statement of claim***

7. In considering whether a pleading discloses a reasonable cause of action only the allegations in the writ of summons and the statement of claim are examined. When the court is urged to strike out or dismiss an action for which there is no reasonable cause, it means that no reasonable cause H is disclosed upon the face of the pleadings Only the Writ of Summons and the statement of claim are considered. See Attorney-General of Duchy of Lancaster v. L & N. W. Railway Co. (1892) 3 Ch. 274 at 273.(p.1536AG)

***Pleadings - Striking out***

8. Rule 4 of Order 22 will not apply where one has to go to extrinsic evidence to show that the pleading is bad. In these proceedings it is manifest that the judge has to go to extrinsic evidence to come to the conclusion that the statement of claim does not disclose reasonable cause of action. Nothing stopped the Appellants from making their application on any or all the grounds set out in rule 4, namely, that that action discloses no reasonable cause, and in addition, that the action is frivolous or vexatious or an abuse of the procedure of the court. The court has an inherent jurisdiction to prevent abuse of its procedure by frivolous or vexatious proceedings. If the Appellants had specified this prayer in the order sought, it would have been competent for the courts below to consider their contention that the plaintiffs are seeking to bring an action on an issue already decided by this court in SC. 64/1982 (*supra*). Based on the statement of claim and the prayers specified in the Appellants' application, the action could not have been struck out and dismissed. To do that will amount to driving the plaintiffs from the judgment seat unless it is established that the case is unarguable or the cause of action is certain to fail. See Nagle v. Feilden & Ors. (1966) 1 ALL E.R. 689. (p. 1537 A)

**REPRESENTATION**

B. R. Fashola for the Appellants  
S. O. Olatubosun for the Plaintiffs/Respondents

**CASES REFERRED TO**

Amakor v. Obiefuna (1974) ALL N.L.R. 109  
Adesanya v. President of Nigeria (1981) 2 NCLR 358  
Oloriode v. Oyebi (1984) 1 SCNLR 390  
Thomas v. Olufosoye (1986) 1 N.W.L.R. (pt. 18) 669  
Adegbite v. Chief Imam Q. B. Lawal 12 W.A.C.A. 398  
Wenlock v. Moloney (1965) 2 ALL E. R. 871  
Attorney-General of Duchy of Lancaster v. L & N. W. Railway Co. (1892) 3 Ch. 274 at 273  
Nagle v. Feilden (1966) 1 ALL E.R. 689

**STATUTE & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999, S. 6 (6) (b)  
High Court of Lagos Civil Procedure Rules, 1972, Order. 22 rr. 2, 3, and 4

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**LEAD JUDGMENT BY OGWUEGBU JSC**

In the High Court of Lagos State, the plaintiffs claimed from the defendants as follows:

*"the sum of N10,000.00 being general damages suffered by the plaintiffs and their members when the defendants, through their agents and/or servants on the 8th February, 1987 and on subsequent days, without any lawful authority or consent of the plaintiffs broke into the plaintiffs' Mosques at No. B5/111, Ahmaddiya Road, Agege (A Lis PENDENS IN SUIT NOS. M.137/84 and CA/L/247/86), and dispersed the plaintiffs and their members with tear gas and baton (sic) during worship and barricade (sic) the entrance with contingents of armed policemen to prevent the plaintiffs and their members from using the said Mosques whereof the plaintiffs claim further the following Orders:*

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1. An Order that the action of the Defendants is a contempt of the Court proceedings in Suit Nos. M/137/84 and CA/L/247/86.

2. An Order that the Defendants do forthwith remove Police contingents posted at the said Mosques or any of the Mosques belonging to the plaintiffs.

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3. An injunction restraining the Defendants, their agents and/or servants from ever interfering in the private disputes over the ownership of the Mosques (i) at No. B5/111, Ahmaddiya Road, Agege, and (ii) No. 41, Shitta Street, Dopemu, Agege, Lagos State."

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The first three defendants were the original defendants in the suit. The 4th to 8th defendants applied to the trial court to be joined as co-defendants. An order was made accordingly. Therefore, the 4th - 8th defendants brought an application before Onalaja, J. (as he then was) praying the court for an Order dismissing the action filed by the plaintiffs in that:

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*"(i) The plaintiffs have not shown on the Writ of summons, state-*

ment of claim etc that they have *Locus standi* to institute this action.

(ii) *The Writ of summons, statement of claim and reply disclose no reasonable cause of action."*

In a reserved ruling, after hearing arguments of counsel, the learned trial judge dismissed the application. The 4th - 8th defendants were dissatisfied with the ruling and appealed to the Court of Appeal, Lagos Division. The appeal was dismissed by Ayoola and Kalgo, JJ.C.A. (as they then were) Uwaifo, J.C.A. (as he then was) dissented. The 4th - 8th defendants have further appealed to this court. I will hereinafter refer to them as "Appellants", the plaintiffs as 1st set of Respondent and the first three plaintiffs as the 2nd set of Respondents.

From the seven grounds of appeal filed, the Appellants formulated the following issues for our determination:

"(a) *whether the action of the 1st group of Respondents is an attempt to re-open or to raise issues (or some of them) that have been decided against the said Respondents by this Honourable court in Suit No. SC.64/1982 between Y. P. O. Shodeinde v. The Registered Trustees of the Ahmaddiya Movement-in-Islam?*

(b) *If the answer to 'a' is in the affirmative, does the action not constitute an abuse of process?*

(c) *Whether having regard to the materials placed before the High Court which also formed part of the Record before the Court of Appeal, those courts were obliged to investigate (within the confines of the materials before them), whether or not their processes were being abused?*

(d) *Should the 1st group of Respondents not have brought separate actions, since they were claiming special damages?*

(e) *Was the Court of Appeal correct in holding that the claim of the 1st group of Respondents was for trespass simpliciter and not an action for title?*

(f) *Was the Court of Appeal correct when it held that the 1st group of Respondents had locus standi to institute and maintain the action?*

(g) *Did the 1st group of respondents' action disclose any reason-*



able cause?"

The live issue canvassed in the High Court and the Court of Appeal by the Appellants and the 1st set of Respondents based on the application brought by the Appellants was for an order dismissing in limine the action brought by the 1st set of Respondents on the grounds that:

*"(i) The plaintiffs have not shown on the Writ of summons, statement of claim etc that they have locus standi to institute this action.*

*(ii) The Writ of summons, statement of claim and reply disclose no reasonable cause of action."*

The two lower courts held that the 1st set of Respondents have locus standi to institute the action and that the Writ of summons and the statement of claim disclose reasonable cause of action. The court below was quick to point out in its judgment that the learned trial judge gave a wrong reason in coming to the right conclusion that the plaintiffs have locus standi to institute the action and I agree with it.

Issues (a), (b) and (c) formulated by the Appellants were not canvassed in the courts below. Issue (a) is not covered by any of the seven grounds of appeal filed with the leave of this court. Issues (b) and (c) can be considered as arising from ground 5 of the grounds of appeal. **It is however not permissible to formulate more than one issue from a ground of appeal even though several grounds of appeal can be covered by one issue for determination. The Appellants have even formulated issues from particulars of error which are unrelated to the grounds of appeal.** The 1st set of Respondents have not fared better. The issues for determination formulated in their brief of argument is a far cry from the principles guiding formulation of issues.

Both parties spent a lot of energy and time in their brief on the effect of the judgment of this court in Suit No. SC. 64/19... P. O. Shodeinde & Ors. v. Registered Trustees of the Ahmaddiya Movement in Islam delivered on 4-11-83 and reported in 1983) 11 S.C. 6 on the present proceedings. The Appellants in their brief claimed that this court gave them leave to raise ground nine of their imaginary ground of appeal as a fresh issue not argued in the courts below. Only seven grounds of appeal were filed

following the leave granted by this court. There is no ground eight let alone ground nine from which issue (a) can be formulated. However, the question of abuse of process was clearly raised in ground five and Issue (c) relates to it. Under Issue (c) it will be legitimate to make a passing remark on Suit No. SC. 64/1982.

The 1st set of Respondents (plaintiffs) instituted the action "For and on behalf of themselves and other members of the Followers of Ghullam Ahmed Agege Mission, Agege." To determine whether or not the plaintiffs have locus standi to institute the action, the nature of the claim and the cause of action must be ascertained and paragraphs (1) to (8) of the amended statement of claim appear to me relevant and they read:-

*"1. The Plaintiffs who are all resident in Lagos State were former members of Ahmaddiya-Movement-In-Islam Agege Branch Lagos State.*

*2. The Plaintiffs were authorized by other members of the followers of GHULLAM AHMED, Agege Mission, Agege to institute this action for and on behalf of themselves, and other members of the followers of the GHULLAM AHMED, Agege Mission, Agege, against the defendants as a result of the trespass and other tortious acts committed by the Defendants, their agents and or servants, against the plaintiffs and the other members of the followers of GHULLAM AHMED, Agege Mission, Agege, Lagos State.*

*3. The Plaintiffs and their members are in exclusive possession of the mosques at No. 35/111, Ahmadiyya Road, Agege and No. 41 Shitta Street, Dopemu Agege.*

*4. The Defendants, their agents and or servants without any lawful authority or justification broke into these mosques on several occasions to disquiet and disturb their gathering and with tear gas and baton (sic) drove the plaintiffs and their members out of the said mosques and barricade (sic) the premises to prevent the plaintiffs and their members from the use of their Mosques.*

*5. The Defendants were informed both orally and in writing by series of letters dated 5/2/87, 14/7/87 & 27/7/87 that the Plaintiff religious organization and Anwar-UL-Movement in-Islam are already in court over the ownership of these properties - especially the one at No.*

35/111 Ahmadiyya Road, Agege and that the defendants have no right to intervene when there is no court Order restraining the Plaintiffs and their members from the use of the said Mosques but the Defendants persisted in their illegal action.

8. *The plaintiffs organization, that is, followers of Ghullam Ahmed is not a proscribed society in Nigeria and have right to worship freely anywhere, any place in Nigeria in accordance with their belief as a group, without molestation.*" B

In the above paragraphs the 1st set of Respondents described themselves as "former members of Ahmadiyya Movement-In-Islam, Agege Branch, Lagos State". They instituted the action for themselves and on behalf of other members of Ghullam Ahmed group for "trespass and other tortious acts committed by the defendants and their agents" against them in respect of their mosques at No. B.5/111, Ahmadiyya Road, Agege and No. 14 Shitta Street, Dopemu, Agege which are in their exclusive possession. C D

**It is trite law that trespass to land is actionable at the suit of the person in possession of the land. It is a violation of a possessory right and does not generally involve title to land. A person in possession can sue for trespass even if he is neither the owner of the land nor a privy to the owner. Exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong-doers except a person who can establish a better title. Once a defendant claims to be the owner of the land in dispute, title is put in issue, and to succeed, the plaintiff must show a better title than that of the defendant. See Amakor v. Obiefuna (1974) ALL N.L.R. 109.** E F G

From the writ of summons and statement of claim, the plaintiffs have, Prima facie shown that they are in exclusive possession of the mosques situate at the two addresses mentioned and that the defendants interfered with their possession. Since only the person in possession can sue for trespass, it cannot be argued that the plaintiffs have no legal capacity to invoke the jurisdiction of the court under section 6(6) (b) of the Constitution of the Federal Republic of Nige- H

ria, 1999 for the determination of the legal rights which they assert. I am in no doubt that they disclosed in their statement of claim their "standing" to institute the proceedings. See Adesanya v. President of Nigeria (1981) 2 NCLR 358, Oloriode v. Oyebi (1984) 1 SCNLR 390 and Thomas v. Olufosoye (1986) 1 N.W.L.R. (pt. 18) 669.

It was the contention of the Appellants that the 1st set of Respondents are not, as constituted, a juristic entity which is recognized under the Land (Perpetual Secession) Act Cap. 98, Laws of the Federation of Nigeria, 1958 which was repealed by section 695 of the Companies and Allied Matters Act, Cap 59, Laws of the Federation of Nigeria, 1990 and that the existence of a body called "Followers of Ghullam Ahmed" is not one capable of being judicially noticed. It is true that the Land (Perpetual Succession) Act Cap. 98 (1958) has been repealed by the Companies and Allied Matters Act, 1990. Its provisions were substantially re-enacted in Part C of the Companies and Allied Matters Act, 1990 but the Appellants' claim is based on actual possession and freedom to worship without interference in the two mosques which they claim to be in their exclusive possession. **The three plaintiffs on record claim the rights for themselves and in a representative capacity. It is enough if the group or class of persons sought to be represented are easily identifiable and have a common purpose. A leaf can be borrowed from the decision of the Privy Council in the case of Adegbite & Ors. v. Chief Imam Q. B. Lawal & Ors. 12 W.A.C.A. 398 where the plaintiffs/respondents for themselves and the Muslim Community of Ijebu Ode Central Mosque sued the defendants/appellants on behalf of themselves and their Fellow Seceders from Muslim Community of Ijebu Ode Central Mosque. Damages were awarded in favour of plaintiffs who sued in a representative capacity. I am therefore not in any doubt that the plaintiffs are proper parties who can request the court to adjudicate on the issue of trespass disclosed in their statement and claim.**

The next question is whether the plaintiffs' claim discloses reasonable cause of action. I had stated earlier in this judgment that the application was for an order dismissing the action of the 1st set of Respondents

(plaintiffs) on the grounds that they did not show on the writ of summons and statement of claim that they have locus standi to institute the action and that the writ of summons, statement of claim and reply disclose no reasonable cause of action. The application was brought pursuant to Order 22 Rules 2, 3 and 4 of the High Court of Lagos Civil Procedure Rules, 1972 and the inherent jurisdiction of the court. B

**A reasonable cause of action means a cause of action with some reasonable chance of success when only the allegations in the pleading (statement of claim) are considered. So long as the statement of claim disclose some cause of action, or raises some question fit to be decided by a judge as in this case. The mere fact that the case is weak, and not likely to succeed, is no ground for striking it out or dismissing it. See Wenlock v. Moloney (1965) 2 ALL E. R. 871.** C

**Where an action is brought solely to obtain relief which the court has no power to grant, the statement of claim will be struck out and the action dismissed.** D

Rules 2, 3 and 4 of Order 22 read:

*"(2) Any party shall be entitled to raise by his pleading and point of law and unless the Court or a Judge in Chambers otherwise orders any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.*

*(3) If in the opinion of the court or a Judge in chambers the decision of such point of law substantially disposes of the whole action; or of any distinct cause of action, ground of defence, set off, counter claim or reply therein the court or Judge may thereupon dismiss the action or make such other order therein as may be just.* F

*(4) The Court or a Judge in Chambers may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any such case or in the case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge in chambers may order the action to be stayed or dismissed or judgment to be entered accordingly as may be just."* G H

We are concerned with rule 4 of Order 22 at this stage. There are two limbs of rule 4:

(i) Where the pleading discloses no reasonable cause of action or answer, and

(ii) where the action or defence is shown by the pleadings to be frivolous or vexatious.

**B In considering whether a pleading discloses a reasonable cause of action only the allegations in the writ of summons and the statement of claim are examined.** The appellants brought their application on two grounds, namely, that the plaintiffs have no locus standi to institute the action and that the writ of summons, the statement of claim and reply disclose no reasonable cause of action. The courts below considered his application on the two premises. The question of the action being frivolous or vexatious or an abuse of process was not before the two courts. This ground is being urged for the first time in this court following the leave **C** granted to the Appellants to raise and argue it. **D**

It should be borne in mind that an application for any pleading to be struck out under this rule is made at a very early stage of the action where there is only the statement of claim without any other pleadings **E** and without any evidence at all. In this case, the Appellants filed their statement of defence and exhibited many documents to the affidavit in support of their application which included the judgment of this court in the case of Shodeinde & Ors. v. The Registered Trustees of the Ahmadiyya Movement In-Islam & Ors: SC.64/1982 delivered on 4-11-83 and reported in (1983) 11 S.C. 6. **F**

The courts below were right in ignoring the statement of defence and the exhibits annexed to the affidavit in support of the Appellants' application as they were unnecessary in the consideration of the application before them having regard to the orders sought. They were also right in declining to consider the question whether or not the plaintiffs' action was an abuse of process or whether it was frivolous or vexatious because there was no prayer to that effect. **G** **When the court is urged to strike out or dismiss an action for which there is no reasonable cause, it means that no reasonable cause is disclosed upon the face of the pleadings Only the Writ of Summons and the statement of claim are considered. See Attorney-General of Duchy** **H**

Akindipe v. C.O.P (2000) 5 KLR Ogwuegbu JSC 1537  
of Lancaster v. L & N. W. Railway Co. (1892) 3 Ch. 274 at 273. Rule  
4 of Order 22 will not apply where one has to go to extrinsic evi-  
dence to show that the pleading is bad.

In these proceedings it is manifest that the judge has to go to  
extrinsic evidence to come to the conclusion that the statement of  
claim does not disclose reasonable cause of action. B

Nothing stopped the Appellants from making their applica-  
tion on any or all the grounds set out in rule 4, namely, that that  
action discloses no reasonable cause, and in addition, that the action  
is frivolous or vexatious or an abuse of the procedure of the court. C  
The court has an inherent jurisdiction to prevent abuse of its proce-  
dure by frivolous or vexatious proceedings. If the Appellants had  
specified this prayer in the order sought, it would have been compe-  
tent for the courts below to consider their contention that the plain-  
tiffs are seeking to bring an action on an issue already decided by this  
court in SC. 64/1982 (supra). D

Based on the statement of claim and the prayers specified  
in the Appellants' application, the action could not have been struck  
out and dismissed. To do that will amount to driving the plaintiffs  
from the judgment seat unless it is established that the case is  
unarguable or the cause of action is certain to fail. See Nagle v.  
Feilden & Ors. (1966) 1 ALL E.R. 689. E

On a careful perusal of the materials put forward by the Appel-  
lants in the course of their application, there is no doubt that the 1st set of  
Respondents (plaintiffs) will be facing an uphill task at the trial. However,  
I am of the clear view that a reasonable cause of action is disclosed in the  
statement of claim and the case should go to trial. I therefore dismiss the  
appeal and affirm the decision of the court below. Parties are to bear their  
own costs. F  
G

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BELGORE JSC H

I agree with the judgment of my brother, Ogwuegbu JSC. I agree  
that a reasonable cause of action was disclosed and Court of Appeal was

right to so hold. I therefore find no merit in this appeal and I dismiss it. I make no order as to costs.

**B** **ONU JSC**

I have been privileged to read in draft the judgment of my learned brother Ogwuegbu, JSC just delivered. I agree with his reasoning and conclusion that the appeal be and is hereby dismissed as lacking in substance.

**C** I adopt the same as mine and have nothing further to add thereto.

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**KATSINA-ALU JSC**

**D** I have had the advantage of reading in draft the judgment of my learned brother Ogwuegbu, JSC in this appeal. I entirely agree with it. There is nothing that I can usefully add.

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**E** **ACHIKE JSC**

I have had the privilege of reading, before now, the judgment just delivered by my learned brother, ogwuegbu, JSC I am in agreement with his reasoning and conclusions and I do not think that I have anything useful to add to the said judgment save to say that I, too, would abide by the same decision and consequential orders in respect thereto.

**G**

**H**