

**SUPREME COURT OF NIGERIA**

20TH MAY, 2005. SC. 121/2000

**CORAM:- M. L. UWAIS CJN, I. L. KUTIGI, U. A. KALGO,  
D. O. EDOZIE, G. A. OGUNTADE, JJSC**

DR. JONATHAN COOKEY ..... DEFENDANT/APPELLANT  
AND

MRS. EVANGELINE FOMBO ..... PLAINTIFF/RESPONDENT

RIVERS STATE HOUSING

AND PROPERTY ..... DEFENDANT/RESPONDENT  
DEVELOPMENT AUTHORITY

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ACTIONS - Cause of action - Motion to dismiss suit - For non disclosure of reasonable cause - Was determined rightly - Without reference to a proposed amended Statement of Claim (H1)

ACTIONS - Claims - Cause of action - Where an objection is raised - As to statement of claim - Not disclosing reasonable cause of action - That statement of claim has to be examined (H2)

APPEALS - Orders - Retrial - Where appeal court ordered a retrial - It rightly declined to rule - On the issue of whether the claim - Disclosed a reasonable cause of action (H3)

**FACTS**

Before the High Court of Rivers State, the plaintiff/respondent filed a suit against the defendants making claims for a declaration nullifying sale of the property in dispute, an order rectifying the said sale and an injunction restraining the defendant/appellant from tampering with the said property. The 2nd defendant counter claimed against the plaintiff. Thereafter, by a motion on notice, he prayed the court to dismiss the plaintiff's action for not disclosing any reasonable cause of action known to law. The motion was supported by an affidavit of 13 paragraphs, while

the plaintiff's counter affidavit in reply was made up of 4 paragraphs.

In a considered ruling, the trial court allowed the 2nd defendant's application and granted all the reliefs sought in that application. Plaintiff being dissatisfied, appealed to the Court of Appeal. The appeal was allowed and the case remitted back to the High Court of Rivers State for a retrial. Being aggrieved, 2nd defendant has now appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

*“ 1. Whether the court of Appeal was right in holding that the learned trial Judge erred to have examined the 1st respondent's proposed Amended Statement of Claim in conclusion that no reasonable cause of action was disclosed, without formally inviting the parties to first argue the motion for amendment.*

*2. Whether the Court of Appeal was right to have declined to make any determination as to whether or not the plaintiff's claim disclosed a reasonable cause of action.”*

**HELD** (Unanimously allowing the appeal in part per **KATSINA-ALU JSC**)

***Cause of action - Motion to dismiss suit***

1. The 2nd defendant's motion and the arguments thereon all relate to the Writ of Summons and the Statement of Claim and not the Proposed Amended Statement of Claim which was not yet before the court when the motion to dismiss was argued on 17/7/95. The learned trial Judge also throughout his ruling referred to the Writ of Summons and various paragraphs of the Statement of Claim only, and not to any Proposed Amended Statement of Claim. In other words plaintiffs claims were dismissed relying on the Writ of Summons and Statement of Claim only and not on any Proposed Amended Statement of Claim. I think the comment or remark made about the Proposed Amended Statement of Claim should be treated as merely gratuitous which does not affect the merit of the ruling. The remark is unnecessary. The judge had reached the conclusion before that remark. The Court of Appeal was therefore wrong in my view to say that the learned trial Judge had incorporated his views

on the motion yet to be argued and dismissed plaintiffs case. What views, if I may ask? That the Proposed Amendment also disclosed no reasonable cause of action? That was the conclusion long arrived at after closely examining various paragraphs of the plaintiffs Statement of Claim before the court and not the Proposed Amended Statement of Claim. I think the trial court was right. (p. 1211 E)

***Cause of action - Where an objection is raised***

2. It is settled law that when an objection is raised that the Statement of Claim does not disclose a reasonable cause of action, it is the Statement of Claim that has to be examined to ascertain whether or not there is a reasonable cause of action. That was what the learned trial Judge did in this case. I think he was right. (p. 1212 B)

***Where appeal court ordered a retrial***

3. The Court of Appeal is however perfectly right for declining to rule on its own whether or not the plaintiff's claim disclosed a reasonable cause of action having regard to the nature of the order for retrial it had made. To have done otherwise, would have defeated the purpose of the order for a retrial.

The appeal therefore succeeds in part. Issue (1) succeeds while issue (2) fails. For the avoidance of doubt the judgment of the Court of Appeal is set aside while the ruling of the trial High Court is restored. (p. 1212 D)

**NOTABLE POINTS OF INTEREST**

**EDOZIE JSC**

***1. Exception to the need for a court to determine all issues***

As a matter of general principle, a court should deal with and determine all the issues placed before it for determination. There are, however, some recognized exceptions, for example, where an issue is subsumed in another issue. Where, as in the present case, the court considers an order of retrial appropriate, there may be no need to pronounce on all the issues which could arise at the trial. Having decided to remit the case to the trial

court for retrial, it would have been improper for the court below to proceed to determine in advance that which it has remitted to the trial court to determine. I am, therefore, of the view that the court below was justified in declining to consider whether the trial court was right in holding that the B 1st respondent's Statement of Claim did not disclose any reasonable cause of action. (p. 1215 H)

2. *Motion to amend pleadings - Suo motu raising of issue*

C I am of the view that where, as in this case, a case is fixed for delivery of judgment, and at the same time there is a motion before the court for amendment of pleadings, the court ought to deal and rule on the motion one way or the other before delivering the judgment. It is also the law that a court should not take up a point suo motu and decide the matter before it D on that point without hearing the parties. (p. 1216 G)

3. *Cause of action - Disclosure - Definition*

*The proposed amendment in the circumstance also discloses no cause of E action against the defendants particularly the 2nd defendant. It is trite law that where the Statement of Claim discloses no cause of action and if the court is satisfied that no amendment however ingenious will cure the defect, the Statement of Claim will be struck out and action dismissed. See F Dr. Irene Thomas & 5 Ors. v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 at 671.*

*Having regard to the foregoing, the Writ of Summons and State- ment of Claim disclosed no reasonable cause of action. The motion should be dismissed and it is hereby dismissed."*

G The above reasoning and conclusion cannot be faulted. A cause of action is the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim for the relief or remedy being sought. Thus, the factual situation on which the plaintiff H relied to support his claim must be recognized by law as giving rise to a substantive right capable of enforcement or being claimed against the defendant. (p. 1217 G)

**OGUNTADEJSC**

*4. Appeals - Not every error will ground a reversal*

The question now is - did the error of the trial Judge impair the conclusion he had reached that the plaintiff's Statement of Claim disclosed no reasonable cause of action? I think not. It is not every mistake made by a trial Judge in the course of the hearing of a case or in his Judgment that will lead to a reversal of the judgment or ruling. See Olubode v. Salami (1985) 2 NWLR (Pt. 7) 282. (1224 F)

**REPRESENTATIONS**

H. E. Wubara, (with him, G. G. Monsi, Esq.), for the 2nd Defendant/Appellant.

Chief N. Nwanodi, (with him, O. C. Ejims (Mrs.)), for the Plaintiff/Respondent.

1st Defendant/Respondent absent, not represented.

**CASESREFERRED TO**

Chief Dr. Irene Thomas & 5 Ors v. The Most Rev. Olufosoye (1986) 1 E NWLR (pt. 18) page 669 at pages 671 to 672

Ogbimi v. Ololo (1993) 7 NWLR (Pt. 304) 128

Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669

U.B.A. Ltd. v. Achoru (1990) 66 NWLR (Pt. 156) 254

Okafor v. Attorney-General & Commissioner for Justice (1998) 31 LRCN 3679 at 2713

Katto v. Central Bank of Nigeria (1999) 5 S.C (Pt. II) 21; (1999) 69 LRCN 1119

Ogbimi v. Ololo (1993) 7 NWLR (Pt. 304) 128

**LEAD JUDGMENT BY KATSINA-ALU JSC**

The plaintiff in paragraph 14 of her Statement of Claim which superseded the Writ of Summons, claims as follows:-

“WHEREFORE the plaintiff claims against the 1st defendant and 2nd defendant jointly and severally for -

(a) Declaration that the purported sale of property situated at No.

155 Niger Street, Port-Harcourt by the 1st defendant to the 2nd defendant is null and void.

(b) An order of court rectifying the said sale.

(c) An injunction restraining the 2nd defendant, his agents, servants  
B or privies from tampering with the said property or any part thereof.”

The defendants filed their Statements of Defence separately. The  
2nd defendant counter-claimed against the plaintiff.

Thereafter the 2nd defendant by Motion on Notice prayed the court  
C for the following reliefs.

“1. An order setting down for hearing the point of law raised by the  
2nd defendant in paragraphs 15(i) and (ii) of his Statement of Defence  
before trial;

2. An order dismissing the plaintiff’s action;

D FURTHER AND IN THE ALTERNATIVE

3. An order discharging the interim order for stay of further  
proceedings made in this case in respect of Suit No. PRT/878/92 between  
Dr. J. A. Cookey v. Mrs. Evangeline Fombo AND FURTHER TAKE  
E NOTICE that the grounds for this application are as follows:-

1. The bundle or aggregate of facts or factual situation on which  
the plaintiff relies to support her claim as stated in paragraphs 14(a), (b)  
and (c) of her Statement of Claim is the recommendations of MAJOR  
F DAVID MARK’S COMMITTEE ON THE IMPLEMENTATION OF  
ABANDONED PROPERTY as stated in paragraph 14 of the Statement of  
Claim.

2. The said recommendation remains a mere recommendation and  
nothing more. It cannot be elevated to the status of a decree, edict and/or  
G law. It is at most binding in honour and has no binding force of law.

3. The said recommendation has not created in the plaintiff any  
legally enforceable right for which she could seek to enforce by an action  
and consequently this suit does not disclose any reasonable cause of action  
H known to law.

4. The interim order for stay of further proceedings in PRT/878/  
92 was made to last for a short period. The return dated was 14/12/94 for  
hearing of the Motion on Notice. The plaintiff has since then not taken any

positive step to ensure the diligent prosecution of the Motion on Notice."

The motion was supported by an affidavit of 13 paragraphs. The plaintiff filed a counter-affidavit of 4 paragraphs only. The application was argued and ruling reserved. In a considered Ruling the learned trial Judge allowed the 2nd defendant's application and granted all the reliefs sought by the applicant in the motion. B

Dissatisfied with the Ruling of the High Court, the plaintiff appealed to the Court of Appeal holden at Port-Harcourt. In a unanimous judgment, the Court of Appeal allowed the appeal set aside the Ruling of the High Court and remitted the case back to the High Court of Rivers State for retrial by another judge. C

Aggrieved by the decision of the Court of Appeal, the 2nd defendant has now appealed to this court. In obedience to the Rules of court, the parties filed and exchanged briefs of argument which were adopted by counsel at the hearing on 22/2/2005. D

In the amended appellant's brief the following two issues were submitted for determination in this appeal:-

*" 1. Whether the court of Appeal was right in holding that the learned trial Judge erred to have examined the 1st respondent's proposed Amended Statement of Claim in conclusion that no reasonable cause of action was disclosed, without formally inviting the parties to first argue the motion for amendment. F*

*2. Whether the Court of Appeal was right to have declined to make any determination as to whether or not the plaintiff's claim disclosed a reasonable cause of action."*

The two issues will be taken together. The starting point will be to find out the reasons given by the trial court in dismissing plaintiff's suit. G

"After setting out the plaintiff's claims on page 52 of the record, the Ruling continued thus-

*"What are the facts pleaded in support of these claims? They are to be found in paragraphs 10 and 14 of the plaintiff's Statement of Claim filed on 23/9/92 already stated above. By the said paragraphs plaintiff in instituting the action placed reliance on the recommendation of the Major David Mark's Implementation Committee on Abandoned Property which H*

amongst others gave an inhabitant of a property right of preference or priority to purchase a property where he or she has stayed longer in the property sought to be purchased.

B It could be seen from the above that plaintiff's action is predicated on paragraphs 10 and 14 of the Statement of Claim. The recommendation of Major David Mark's Committee on Implementation of Abandoned Property averred to in paragraphs 10 and 14 of the Statement of Claim cannot be said to have created any enforceable legal right. They are mere  
C recommendations which cannot be elevated to a decree. Edict or Law enforceable by the plaintiff. They cannot give rise to a cause of action as they are not binding on the 1st defendant as to whom it could exercise its right of sale of the property in question.

D It is pertinent to observe that nowhere in the Writ of Summons or Statement of Claim is the plaintiff saying that her right as a tenant has been infringed by the sale to the 2nd defendant. In view of the foregoing, the aggregate of the facts relied upon by the plaintiff in the Statement of Claim cannot entitle her to obtain from the court any remedy against the  
E defendants. Having regard to the foregoing the Writ of Summons and Statement of Claims disclose no reasonable cause of action. The action should be dismissed and it is hereby dismissed."

F It should have been clear by now that the learned trial Judge in his ruling relied on the plaintiff's Writ of Summons and the Statement of Claim filed on 23/9/92 (see pages 1-8 of the record) and not the proposed Amended Statement of Claim. The record however, shows that the plaintiff filed a motion for leave to amend her Statement of Claim on 8/1/96. This motion was never argued or moved up to the date the learned trial  
G Judge delivered the ruling herein on 20/3/96. But in the ruling on page 54 the court observed as follows:-

"the Proposed Amendment in the circumstance also discloses no cause of action against the defendants particularly the 2nd defendant. It  
H is trite law that where the Statement of Claim discloses no cause of action and if the court is satisfied that no amendment, however ingenious, will cure the defect the Statement of Claim will be struck out and the action dismissed. See Chief Dr. Irene Thomas & 5 Ors v. The Most Rev.



*Olufosoye (1986) 1 NWLR (pt. 18) page 669 at pages 671 to 672 paragraph G to B."*

The trial court by commenting or remarking as it did above gave the impression that the Proposed Amended Statement of Claim was part of the Motion, and the Court of Appeal was of the view that the learned trial Judge incorporated his views on a motion to amend the Statement of Claim yet to be argued in his ruling and thereby dismissed plaintiff's claim. In addition, the Court of Appeal said the learned trial Judge ought to have taken the motion for amendment first, before proceeding to dismiss the suit and without hearing the parties on the merit of the amendment sought. The Court of Appeal as noted above relied solely on this issue of fair hearing when it allowed the appeal and sent the case back for retrial by another judge giving rise to this appeal. And because of this order, the Court of Appeal said it was not in a position itself to decide at that stage whether or not the plaintiffs claims disclose a reasonable cause of action.

There is no doubt that the plaintiff filed a motion in court for leave to amend her Statement Of Claim on 8/1/96. That motion was never argued or moved up to 20/3/96 when the ruling herein was delivered. The 2nd defendant's motion to dismiss the plaintiffs claims had been argued by his counsel on 17/7/95. So for all intents and purposes the proposed Amended Statement of Claim remains a proposal only and of no legal consequences. **The 2nd defendant's motion and the arguments thereon all relate to the Writ of Summons and the Statement of Claim and not the Proposed Amended Statement of Claim which was not yet before the court when the motion to dismiss was argued on 17/7/95. The learned trial Judge also throughout his ruling referred to the Writ of Summons and various paragraphs of the Statement of Claim only, and not to any Proposed Amended Statement of Claim. In other words plaintiffs claims were dismissed relying on the Writ of Summons and Statement of Claim only and not on any Proposed Amended Statement of Claim. I think the comment or remark made about the Proposed Amended Statement of Claim should be treated as merely gratuitous which does not affect the merit of the ruling. The remark is unnecessary. The judge had reached the**

conclusion before that remark. The Court of Appeal was therefore wrong in my view to say that the learned trial Judge had incorporated his views on the motion yet to be argued and dismissed plaintiffs case. What views, if I may ask? That the Proposed Amendment also disclosed no reasonable cause of action? That was the conclusion long arrived at after closely examining various paragraphs of the plaintiffs Statement of Claim before the court and not the Proposed Amended Statement of Claim. I think the trial court was right.

It is settled law that when an objection is raised that the Statement of Claim does not disclose a reasonable cause of action, it is the Statement of Claim that has to be examined to ascertain whether or not there is a reasonable cause of action. That was what the learned trial Judge did in this case. I think he was right (see for example *Ogbimi v. Ololo* (1993) 7 NWLR (Pt. 304) 128; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669).

The Court of Appeal is however perfectly right for declining to rule on its own whether or not the plaintiff's claim disclosed a reasonable cause of action having regard to the nature of the order for retrial it had made. To have done otherwise, would have defeated the purpose of the order for a retrial.

The appeal therefore succeeds in part. Issue (1) succeeds while issue (2) fails. For the avoidance of doubt the judgment of the Court of Appeal is set aside while the ruling of the trial High Court is restored.

Plaintiffs claims before the High Court stand dismissed.

The 2nd defendant/appellant is awarded costs of N10,000.00 against the plaintiff/respondent only.

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#### UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother, Kutigi, JSC., and I quite agree with it.

I too hereby allow the appeal. I set aside the decision of the Court of Appeal and restore the decision of the High Court which dismissed the

plaintiff's claims.

I also award N10,000.00 costs, in this appeal, in favour of the defendant/appellant, against the plaintiff/respondent.

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**KALGO JSC**

I have read in draft the judgment of my learned brother, Kutigi, JSC., just delivered. I entirely agree with his reasoning and conclusions which I adopt as mine. I have nothing useful to add. I therefore allow the appeal set aside the decision of the Court of Appeal and dismiss the plaintiffs/respondent's action in the trial court. I abide by the order of costs in the leading judgment.

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**EDOZIE JSC**

The 1st respondent, herein, Mrs. Evangeline Fombo was the plaintiff in the High Court of Rivers State holden at Port Harcourt in Suit No. FHC/615/92 wherein she claimed against the 2nd respondent and appellant herein as 1st and 2nd defendants respectively, reliefs formulated in paragraph 14 of her Statement of Claim, as follows:-

“Wherefore, the plaintiff claims against the 1st defendant and 2nd defendant jointly and severally for:-

(a) Declaration that the purported sale of property situate at No. 155 Niger Street, Port-Harcourt by the 1st defendant to the 2nd defendant is null and void.

(b) An order of court rectifying the said sale.

(c) An injunction restraining the 2nd defendant, his agents, servants or privies from tampering with the said property or any part thereof (sic).”

In the Statement of Claim aforesaid, she alleged that since 1970, she had been a tenant at No. 155, Niger Street, Port-Harcourt (hereinafter referred to as the property in dispute) which property was, in 1973, acquired as an abandoned property by the Rivers State Government and entrusted to the management of the 2nd respondent. In 1986, she applied to the 2nd respondent to buy the property in dispute pursuant to the

recommendation of the Major David Mark's Implementation Committee on Abandoned Property to the effect that in the event of the sale of such property, the occupant should be given preference. In 1991, when she called at the office of the 2nd respondent to enquire about her application, B she was surprised to discover that the 2nd respondent has sold it to the appellant hence she commenced the present proceedings against them.

In its Statement of Defence, the 2nd respondent confirmed that the property in dispute was sold to the appellant and that it was not bound by the recommendation of the Implementation Committee on Abandoned C Property. The appellant filed a Statement of Defence and counterclaim wherein he also confirmed that the property in dispute was sold to him in consequence of which he terminated the 1st respondent's tenancy thereof and was claiming a declaration of statutory right of occupancy and mesne D profits in respect of the property. In paragraph 15 of the aforesaid Statement of Defence and counter-claim, the appellant raised a preliminary point of law contending that the 1st respondent's suit said not disclose any reasonable cause of action, in that, the recommendation of the David E Mark's Implementation Committee on which she relied did not confer on her any right enforceable at law.

By a Motion on Notice supported by an affidavit, the appellant prayed the trial court to set down for hearing the preliminary point of law F raised in paragraph 15 of the Statement of Defence and counter-claim and to dismiss the 1st respondent's claim in limine on the ground that it did not disclose any reasonable cause of action. The 1st respondent reached with a counter affidavit in opposition to the motion.

The motion was heard on various dates between 18/7/95 and 14/ G 3/96 when it was fixed for ruling. Before the date of ruling, the 1st respondent on 8/1/96 filed an application to amend her Statement of Claim in terms of a Proposed Amended Statement of Claim annexed to the affidavit in support of the application. In a considered ruling delivered on H 20/3/96, the learned trial Judge, held that both the 1st respondent's Statement of Claim and the Proposed Amended Statement of Claim still predicated on the recommendation of Major David Mark's Implementation Committee on Abandoned Property did not disclose any reasonable

cause of action. Consequently, the 1st respondent's suit was dismissed. Against that ruling, the 1st respondent lodged an appeal to the Court of Appeal, Port-Harcourt Division which court allowed the appeal and remitted the case to the trial court for trial by another judge other than the one who tried it. Dissatisfied by that judgment, the appellant has lodged the instant appeal distilling therefrom the following two issues for determination-

“ 1. Whether the court of Appeal was right in holding that the learned trial Judge erred to have examined the 1st respondent's proposed Amended Statement of Claim in conclusion that no reasonable cause of action was disclosed, without formally inviting the parties to first argue the motion for amendment. C

2. Whether the Court of Appeal was right to have declined to make any determination as to whether or not the plaintiff's claim disclosed a reasonable cause of action.” D

I propose to start in the reverse order by treating issues No. 2 first. One of the two issues formulated for determination in the appeal before the Court of Appeal was:- E

“Whether the learned trial Judge was right to have held that the appellant's Statement of Claim disclosed no reasonable cause of action?”

In reacting to that, the Court of Appeal at pages 121 and 122 of the record stated - F

“.....I want to make it clear that it is not for me to decide whether or not the trial Judge was right in dismissing the appellant's (1st respondent's) claim as disclosing no cause of action; that question should be left to a later date if and when necessary..... G

.....the appeal is allowed and the case is remitted to the judge of the High Court of Rivers State to be assigned for retrial to another judge other than Okor, J.

In the above excerpt, the Court of Appeal declined to decide the H issue whether the learned trial Judge was right to have held that the appellant's (1st respondent's) Statement of Claim disclosed no reasonable cause of action. As a matter of general principle, a court should deal with

and determine all the issues placed before it for determination. There are, however, some recognized exceptions, for example, where an issue is subsumed in another issue, see *Obi Nwanze Okonji & 24 Ors. v. Njokanma & Ors.* (1991) 2 NWLR (Pt. 202) 131 at 146; *Balogun v. Labiran* (1988) 3 NWLR (Pt. 80) 66 at 80.

Where, as in the present case, the court considers an order of retrial appropriate, there may be no need to pronounce on all the issues which could arise at the trial. See *Brawal Shipping (Nigeria) Ltd. v. Onwadike Co. Ltd. & Anor* (2000) 6 S.C. (Pt. II) 133; (2000) SC 10 SCNJ 508 at 512. Having decided to remit the case to the trial court for retrial, it would have been improper for the court below to proceed to determine in advance that which it has remitted to the trial court to determine. I am, therefore, of the view that the court below was justified in declining to consider whether the trial court was right in holding that the 1st respondent's Statement of Claim did not disclose any reasonable cause of action.

But the crucial issue is, whether the order of retrial was proper in the circumstances of the case. This brings me to the first issue for determination which at the risk of repetition is whether the Court of Appeal was right in holding that the learned trial Judge erred to have examined the 1st respondent's proposed Amended Statement of Claim in concluding that no reasonable cause of action was disclosed without formally inviting the parties to first argue the motion for amendment.

In arriving at the decision to remit the case for retrial, the court below reasoned, firstly, that the motion for Amendment of the Statement of Claim was not moved and argued and, secondly, that the trial court raised suo motu the question whether the Proposed Amended Statement of Claim disclosed any reasonable cause of action and proceeded to decide same without inviting counsel to address it on the issue so raised suo motu. These remarks are well taken. I am of the view that where, as in this case, a case is fixed for delivery of judgment, and at the same time there is a motion before the court for amendment of pleadings, the court ought to deal and rule on the motion one way or the other before delivering the judgment. It is also the law that a court should not take up a point suo motu and decide the matter before it on that point without hearing the parties: see

U.B.A. Ltd. v. Achoru (1990) 66 NWLR (Pt. 156) 254; Okafor v. Attorney-General & Commissioner for Justice (1998) 31 LRCN 3679 at 2713; Katto v. Central Bank of Nigeria (1999) 5 S.C (Pt. II) 21; (1999) 69 LRCN 1119.

No doubt, the learned trial Judge was in error to have raised suo B  
motu the question as to whether the Proposed Amended Statement of  
Claim disclosed a reasonable cause of action and deciding the issue without  
address of counsel moreso, when the application for amendment had not  
been moved. But it is not every error committed by a trial court that will  
lead to a reversal of its judgment by an appellate court. An error that can C  
warrant the reversal of the judgment of the trial court must have  
substantially affected the decision vide Olubode v. Salami (1985) 2 NWLR  
(Pt. 7) 282.

The learned trial Judge in concluding that the Proposed Amended D  
Statement of Claim disclosed no reasonable cause of action, at p. 54 of the  
record reasoned as follows:-

*"It must be noted that the counsel for the 2nd defendant/applicant E  
had moved his motion and was adjourned for reply by plaintiff's counsel  
before the filing of the motion for amendment. This notwithstanding, the  
facts or the aggregate of the facts contained in the proposed amendment  
sought if granted cannot sustain by action against the defendants.*

*By paragraphs 12 and 16 of the proposed amendment dated 5/1/96 F  
and referred to as Exhibit BN2 of the affidavit in support of the motion  
for amendment the plaintiff still relied on the Major Mark's Committee  
of the Implementation of Abandoned Property.*

*Furthermore, by the proper consideration of the remaining para- G  
graphs, the proper person or authority to complain is not the plaintiff but  
the State Government which has not done so and had not been made a party  
or co-plaintiff in the suit.*

*The proposed amendment in the circumstance also discloses no H  
cause of action against the defendants particularly the 2nd defendant. It  
is trite law that where the Statement of Claim discloses no cause of action  
and if the court is satisfied that no amendment however ingenious will cure  
the defect, the Statement of Claim will be struck out and action dismissed.*

*See Dr. Irene Thomas & 5 Ors. v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 at 671.*

*Having regard to the foregoing, the Writ of Summons and Statement of Claim disclosed no reasonable cause of action. The motion should be dismissed and it is hereby dismissed."*

The above reasoning and conclusion cannot be faulted. A cause of action is the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim for the relief or remedy being sought. Thus, the factual situation on which the plaintiff relied to support his claim must be recognized by law as giving rise to a substantive right capable of enforcement or being claimed against the defendant: see *Ogbimi v. Ololo* (1993) 7 NWLR (Pt. 304) 128. From the 1st respondent's Statement of Claim as well as the Proposed Amended Statement of Claim, the bundle or aggregate of facts or factual situation on which the 1st respondent relies to support her claim is that the transfer of the property in dispute to the appellant by the 2nd respondent was not proper not being in accordance with the recommendations of the Major David Mark's Committee on the Implementation of Abandoned Property, in that, it disregarded her right of preference to purchase the property in dispute. The recommendation of the Implementation Committee on which the 1st respondent heavily relied is merely advisory and has no binding effect on the 2nd respondent and as such it cannot ground a cause of action. Notwithstanding, the error committed by the learned trial Judge in not hearing the motion for amendment and in raising suo motu the question about the Proposed Amendment Statement of Claim not disclosing a reasonable cause of action, in resolving that issue without an address by counsel, his decision is unimpeachable. The court below, with respect, was in grave error to have remitted the case to the trial court for retrial. It is a fruitless exercise that could cause unnecessary delay and expense.

For the foregoing reasons and in addition to the more elaborate reasons set out in the lead judgment of my learned brother, Kutigi, JSC, I also allow the appeal and dismiss the plaintiff's/1st respondent's suit. I abide by the order as to costs.



## OGUNTADEJSC

At the High Court of Rivers State, the 1st respondent as plaintiff claimed against the appellant and the 2nd respondent as the defendants the following reliefs:

(a) Declaration that the purported sale of property situate at No. 155 Niger Street, Port-Harcourt by the 1st defendant to the 2nd defendant is null and void.

(b) An order of court rectifying the said sale.

(c) An injunction restraining the 2nd defendant, his agents, servants or privies from tampering with the said property or any part hereof (sic)."

The parties filed and exchanged pleadings. The 1st respondent in paragraph 10 of her Statement of Claim pleaded the course of the right which she sought to assert by her claims thus:

"10. The plaintiff shall at the trial contend that having stayed in the said property for over 15 years, she decided to buy the property following the recommendation of the Major David Mark (as he then was) Implementation Committee on Abandoned Property which amongst others gave an inhabitant of a property right of preferences of priority to purchase a property where he or she has stayed longer in the property sought to be purchased. The plaintiff shall at the trial of this suit rely upon the recommendations of the said Committee."

The appellant who was the 2nd defendant before the trial court in paragraphs 8, 9 and 15(i) & (ii) of the Statement of Defence averred thus:

"8. The 2nd defendant denies paragraphs 10 and 14 of the Statement of Claim and will put the plaintiff to the strictest proof of the averments therein contained."

9. In further answer thereto the 2nd defendant avers that he is not aware of the said recommendations of the Major David Mark's committee on the Implementation on Abandoned Property and further says that the said recommendations (if any) is (sic) at most a mere guide to the Rivers State Government which said recommendations are subject to amendments, modifications and outright non-compliance as the said government is not strictly bound by it."

*“15. The 2nd defendant will at the trial raise and rely on legal and equitable defence open to it and in particular will contend as follows:*

*(i) The said recommendations of the Major David Mark Implementation Committee on Abandoned Property (if any) is (sic) at most binding in honour and lacks (sic) the requisite coercive and binding force of law. It has not created in the plaintiff and/or in any other person whatsoever any legally enforceable right for which she could seek to enforce and/or protect by an action.*

*(ii) This suit does not disclose any reasonable cause of action known to law.”*

The 2nd defendant later brought an application praying the court to set the suit down for hearing on the points raised in paragraph 15(i) & (ii) above and for an order dismissing plaintiff’s suit. The 2nd defendant’s counsel moved the application on 18/7/95. It was then adjourned to 30-10-95 for the reply of plaintiff’s counsel. On 8-1-96, plaintiff’s counsel filed an application to amend the Statement of Claim. A proposed ‘Amended Statement of Claim’ was exhibited on the affidavit in support of the application. Plaintiff’s counsel finally made a reply to 2nd defendant’s argument on 8/1/96. Arguments were concluded on the motion on 18/1/96. Ruling was fixed for 14-3-96. The important point to note here is that the plaintiff’s motion to amend his Statement of Claim was not taken before the trial court reserved the ruling on 2nd defendant’s application for 14/3/96.

The trial Judge in his ruling on 20/3/96 at pages 53-54 of the record said:

*“It could be seen from the above that plaintiff’s action is predicated on paragraphs 10 and 14 of the Statement of Claim. The recommendations of Major David Mark’s Committee on Implementation of Abandoned Property averred to in paragraphs 10 to 14 of the Statement of Claim cannot be said to have created any enforcement legal right. They are mere recommendations which cannot be elevated to a Decree, Edict or Law enforceable by the plaintiff. They cannot give rise to a cause of action as they are not binding on the 1st defendant as to whom it could exercise its right of sale of the property in question.*

It is pertinent to observe that nowhere in the Writ of Summons or Statement of Claim is the plaintiff saying that her right as a tenant had been infringed by the sale to the 2nd defendant.

The word “recommendation” is defined in Black’s Law Dictionary 5th Edition as inter alia ‘as an action which is advisory in nature rather than one having any binding effect’

In the circumstance the recommendations of Major Mark’s committee relied upon by the plaintiff cannot create any legal enforceable right or cause of action.

In view of the foregoing, the aggregate of the facts relied upon by the plaintiff in the Statement of Claim cannot entitle her to obtain from the court any remedy against the defendants.”

One would have thought that the above conclusions from the trial court’s ruling sufficiently disposed of the 2nd defendant’s application. But the trial court went further to consider the proposed amendment in the Statement of Claim, which had not been let into the proceedings. At page 54, the trial Judge.....

‘The proposed amendment in the circumstance also discloses no cause of action against the defendants particularly the 2nd defendant. It is trite law that where the Statement of Claim discloses no cause of action and if the court is satisfied that no amendment, however ingenious, will cure the defect, the Statement of Claim will be struck out and the action dismissed. See Chief Dr. Irene Thomas & 5 Ors. v. The Most Rev. Olufosoye (1986) 1 NWLR (Pt. 18) page 669 at pages 671-672 paragraphs G to B.

Having regard to the foregoing the Writ of Summons and Statement of Claim disclose no reasonable cause of action. The action should be dismissed and it is hereby dismissed.”

The plaintiff brought an appeal against the ruling of the trial court before the Court of Appeal sitting at Port Harcourt (hereinafter referred to as the court below). The court below in its judgment on 8/12/99 allowed the appeal. It remitted the case to the High Court of Rivers State for a rehearing before another judge. In its judgment, the court below said at p. 121 - 122 of the record.

“From the record the appellant filed a motion for leave to amend the Statement of Claim on the 5th January, this motion was not argued before the learned trial Judge took a look at the proposed Statement of Claim and incorporated his views in his ruling of the 20th of March, 1996, dismissing the appellant’s action. With the greatest respect to the learned trial Judge, he went into grave error in doing what he did. He had no business examining a motion which had not taken at all and using his private impression which was never brought to the attention of the parties to demolish the appellant’s claim. Even if it was true that the proposed Statement of Claim did not disclose any cause of action, the trial Judge was still bound to afford both parties an opportunity to address him on that issue before he could arrive at his final decision. The question of locus standi was a very serious issue also and should not have been used to dismiss the claim behind him.

In my view, a court faced with the situation confronting the lower court should defer its decision or the dismissal of the claim until it has disposed of the motion for amendment of the Statement of Claim, no matter how frivolous it may appear to be so that it will be seen that the court is not in a hurry to dismiss the matter in limine without affording all the parties an opportunity to put their cards on the table.

For the sake of emphasis, I want make it clear that it is not for me to decide whether or not the trial Judge was right in dismissing the appellant’s claim as disclosing no cause of action that question should be left to a later date if and when necessary. What I am concerned with in this appeal is the manner in which the exercise was done. I am satisfied that the trial Judge in failing to afford the appellant an opportunity to canvass the issues raised suo motu in his ruling committed grave procedural error and the ruling of the lower court cannot be allowed to stand.”

The 2nd defendant before the trial court has brought this appeal before this court. In the appellant’s brief filed on his behalf, the issues for determination in the appeal were identified as the following:

“1. Whether the Court of Appeal was right in holding that the learned trial Judge erred to have examined the 1st respondent’s proposed Amended Statement of Claim in concluding that no reasonable cause of

*action was disclosed, without formally inviting the parties to first argue the motion for amendment.*

2. *Whether the Court of Appeal was right to have declined to make any determination as to whether or not the plaintiff's claim disclosed a reasonable cause of action.*"

I intend in this judgment to consider together the two issues for determination. I set out earlier in this judgment paragraph 10 of the plaintiff's Statement of Claim. The plaintiff in that paragraph hinged the reliefs which she sought from the trial court on some recommendations which were said to have been made by a Major David Mark Implementation Committee. It was not pleaded if the Rivers State Government subsequent to the said report or recommendations of the Implementation Committee enacted an Edict or Law incorporating the said recommendations. It was not pleaded that a white paper was published by the Rivers State Government formally accepting the said David Mark Recommendations. Without a law or a White Paper by the Rivers State Government, such recommendations could not confer on the plaintiff a right to the ownership of the property in dispute. It could not also confer any legal right which plaintiff could successfully pursue by a court action. The result is that even if the averments in plaintiff's Statement of Claim were taken as admitted by the defendants, plaintiff's suit would still fail. In *Chief Dr. Irene Thomas & Ors. v. The Most Reverend T. O. Olufosoye* (1986) All NLR 261 at 273, this court observed:

*"What then, does the phrase 'No reasonable cause of action' mean? There is some difficulty in giving a precise meaning to this term. In point of law, every cause of action is a reasonable one (see Lord Pearson in Drummond-Jackson v. British Medical Association (1970) 1 WLR 688; (1970) 1 All ER 1904 CA defined 'a reasonable cause of action' as meaning a cause of action with some chance of success when only the allegations in the pleading are considered. The practice is clear.; So long as the Statement of Claim or the particulars disclose some cause of action or raise some question fit to be decided by a judge or jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out (Moore v. Lawson 31 TLR 418 CA; Wenlock v. Moloney (1965) 1 WLR*

*1238; (1965) 1 All ER 821 CA). Where the Statement of Claim discloses no cause of action and if the court is satisfied that no amendment, however ingenious, will cure the defect, the Statement of Claim will be struck out and the action dismissed. Where no question as to the civil rights and obligations of the plaintiff is raised in the Statement of Claim for determination, the Statement of Claim will be struck out and the action dismissed.”*

See also *Ogbimi v. Ololo* (1993) 7 NWLR (Pt. 304) 128 at 134-135.

The trial court was therefore right in its ruling that the plaintiff’s Statement of Claim disclosed no reasonable cause of action against the defendants. Regrettably however, the trial court having come to that conclusion went on to embellish it by straying into a consideration of the contents of a “proposed Amended Statement of Claim” which *stricto sensu* had not become a process fit to be considered as part of the pleadings since the application to bring it in had not been considered or granted. It was perhaps a case of over-kill. The right approach was for the trial Judge to have first considered the application to amend the Statement of Claim, and granted it if he was so disposed, before considering the contents of the ‘proposed Amended Statement of Claim’ could only be properly considered on the question whether or not the Statement of Claim disclosed a reasonable cause of action after the prayer to amend has been granted. There is therefore, no doubt that the trial court was in error to have made reference to the “Proposed Amended Statement of Claim” in its ruling without hearing the parties first. See *U.B.A. Ltd. v. Achoru* (1990) 6 NWLR (Pt. 156) 254.

The question now is - did the error of the trial Judge impair the conclusion he had reached that the plaintiff’s Statement of Claim disclosed no reasonable cause of action? I think not. It is not every mistake made by a trial Judge in the course of the hearing of a case or in his Judgment that will lead to a reversal of the judgment or ruling. See *Olubode v. Salami* (1985) 2 NWLR (Pt. 7) 282.

It needs be said here that, if anything, the mistake of the trial Judge in considering the contents of the ‘Proposed Amended Statement of Claim’ was in fact an added advantage to the plaintiff. That advantage

could only have operated only to the detriment of defendants who did not have the opportunity to contend that even the contents of the “Proposed Amended Statement of Claim” could still not sustain plaintiff’s suit. I think with respect to the court below, that it viewed the matter too narrowly. Admittedly, the trial court made a mistake in looking at the “Proposed B Amended Statement of Claim” when the same had not been let into the proceedings, but if the court below had gone further to see who of the parties derived an undeserved advantage by the error of the trial court, it would have seen that the plaintiff did. It would also have come to the C conclusion that even with that undeserved advantage, the plaintiff’s suit still disclosed no reasonable cause of action.

On the conclusion arrived at by the court below to send the case back to the trial court for rehearing, it obviously could not have decided the question whether or not plaintiff’s suit disclosed a reasonable cause of D action in view of its mistaken approach which I discussed.

I therefore agree with the lead judgment by my learned brother, Kutigi, JSC., I would also allow the appeal and subscribe to the order on costs as in the lead judgment. E

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