

SUPREME COURT OF NIGERIA
4TH MARCH, 2005 SC. 295/2001
CORAM:- S. U. ONU, U. A. KALGO, A. O. EJIWUNMI,
N. TOBI, D. O. EDOZIE, JJSC

RINCO CONSTRUCTION CO. LTD APPELLANT
AND
VEEPEE INDUSTRIES LTD. & ANOR. RESPONDENTS

ACTIONS - Cause of action - Definition - Plaintiff's legal rights and defendant's obligations - Must be set out - To disclose a reasonable cause of action (H1)

ACTIONS - Claims - Pleadings - Defensible claim - Has not been disclosed - As appellant did not claim ownership - Of the property in issue (H2)

ACTIONS - Joinder of parties - Cause of action - Reasonableness of - Failure to show liability of 1st respondent - Was good ground for striking it out as a party (H3)

FACTS

Before the High Court the plaintiff/appellant filed an action against the defendants/respondents. The appellant paid an amount of money as capital contribution to the 2nd respondent for the installation of a 300KVA electricity transformer. It also incurred some other expenses in having the transformer installed for its use at its temporary factory premises at No. 18 Idiroko Road, Sango-Otta. It averred that as it sought to transfer the transformer to its permanent factory location, the 1st respondent who is now in occupation of that its temporary premises made a claim which made the 2nd respondent to refrain from transferring the said transformer. It sought to stop 1st respondent from making such claim to the transformer, and also claimed some amount of money as special, and general damages. Appellant filed its Statement of Claim and 2nd respondent filed its Statement of defence.

But the 1st respondent filed a motion on notice before the trial court. It prayed the court for an order setting aside the appellant's writ of summons as it did not disclose any triable cause of action against the 1st respondent. The trial Judge ruled in favour of the respondent holding that it was not a necessary party to the action, that it was improperly joined. Appellant's appeal against the ruling of the Court of Appeal was dismissed. Dissatisfied, appellant has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether or not the learned Justices of the Court of Appeal were correct in holding that the Writ of Summons and Statement of Claim did not disclose a reasonable cause of action against the 1st respondent?”

HELD (Unanimously dismissing the appeal per **EJIWUNMI JSC**)

Cause of action - Definition

1. In essence with regard to the discourse of whether the appellant disclosed a reasonable cause of action by its writ of summons, it is necessary to refer to the case of Ibrahim v. Osim (1985) 3 NWLR (Pt.82) p.257 at p.267 where the Supreme Court defined the cause of action as follows:-

“A cause of action is the entire set of circumstances giving rise to an enforceable claim, it is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements:

(a) the wrongful act of the defendant which gives the plaintiff his cause of complaint and

(b) the consequent damage.”

In the same case, Ibrahim v. Osim (supra), Uwais, JSC., (as he then was), in the course of delivering his judgment, quoted with approval the dictum of Lord Pearson in Drummond-Kackson v. British Medical Association & Ors. (1970) 1 WLR 688 at 696 thus:-

“..... I think reasonable cause of action means a cause of action with some chance of success, when (as required by paragraph (2) of the rule) only the allegations in the pleadings are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the Statement of Claim should be struck out.”

He went on to hold thus in his judgment:-

“For a Statement of Claim to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and the obligations of the defendant. It must then go on to set out facts constituting infraction of plaintiff’s legal rights or failure of defendant to fulfil his obligation in such a way that if there is not proper defence, the plaintiff will succeed in the relief or remedy he seeks.” (p. 759 G)

Defensible claim - Has not been disclosed

2. The question for determination is simply whether the appellant has been able by its pleadings to establish that it has a defensible claim against any of the respondents. I have earlier reviewed the facts of this case that led to this appeal. It is unarguable that the appellant paid a certain sum of money to the 2nd respondent for the installation of the transformer on the piece of land which it was using as a factory. The claim ought to suggest that the transformer was sold to it by the 2nd respondent or it that it had since become its owner. There is nothing on the face of the claim in that regard and nothing in the affidavit filed in response to the application made by the 1st respondent in the trial court. In any event, it is not disputed that the appellant had moved away from the site where the transformer was installed and the land had in the meantime been transferred by its owner to the 1st respondent. Appellant obviously would have to show in his claim that the transaction between the appellant and the 2nd respondent vested the transformer in it. In my view, there is nothing to suggest that it had right to it on the basis of what it paid to the 2nd respondent for the installation of the transformer at that site. This case in any event was based on the affidavit presented at the trial court and nothing can be gathered therein to suggest that the 1st respondent could be made liable on the basis of the claim before the court. (p. 761 C)

ACTIONS - Joinder of parties

3. Now, having regard to what a reasonable cause of action should be, it is obviously necessary for a plaintiff in the position of the appellant to show in its claim that it was the owner of the transformer to sustain the action against the respondents. It would be remembered that this is a matter in

which the 1st respondent sought to have the claim set aside because of the failure of the appellant to show in its claim that the 1st respondent was liable to it. That application to the trial court was that which was considered and the trial court upheld the application of the 1st respondent. The
B appellant appealed against that ruling of the trial court which was upheld by the court below. I have again carefully considered the brief filed by the appellant pursuant to this appeal and I have not seen any reason why the conclusion reached by the court below could be faulted having regard to the facts and the law considered by the court below.

C In the result, it is my respectful view that this appeal lacks merit. Accordingly, it is dismissed in its entirety. (p. 761 H)

NOTABLE POINTS OF INTEREST

KALGO JSC

D *1. Concurrent finding of no privity of contract cannot be faulted*

The central issue for determination in the appeal is whether the writ of summons and the Statement of Claim of the appellant at the trial disclosed any cause of action against the 1st respondent. The trial court and the
E Court of Appeal have found, after careful examination of the said writ of summons and the Statement of Claim that there was no privity of contract between the appellant and the 1st respondent and that the appellant did not plead any wrongful act of the 1st respondent which gave him any
F cause of complaint or any consequential damage or injury. Having regard to the facts and circumstances of this case disclosed in the record so far, it is my respectful view that the findings of the two lower courts, cannot be faulted. (p. 762 H)

EDOZIE JSC

G *2. 1st respondent was not shown to be detaining the transformer in issue*

It is manifest that the basis of the plaintiff/appellant's action against the 1st and 2nd defendants/respondents is the fact that he contributed a substantial sum of money for the installation by the 2nd defendant/respondent of a transformer on the temporary premises of the plaintiff/appellant which has
H now been acquired by the 1st defendant/respondent who by alleged false representation is preventing the removal of the transformer for installation

in the permanent site of the plaintiff/appellant. It was not alleged that the plaintiff/appellant has acquired ownership in the said transformer, nor that the 1st defendant/respondent was in custody thereof and was unjustifiably detaining same to ground an action in tort of detainee, nor did the whole transaction disclose any contractual relationship between the plaintiff/ B
appellant and the 1st defendant/respondent such as could give rise to a cause of action against the latter.

Clearly, the appellant's suit did not disclose any reasonable cause of action against the 1st respondent. (p. 763 F)

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REPRESENTATION

O. T. Akinbiyi, Esq., (with him, O. H. Oyajinmi and I. O. Popoola), for the Appellant.

F. O. Ezekwueche, for the 2nd Respondent.

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CASES REFERRED TO

Ibrahim v. Osim (1985) 3 NWLR (Pt.82) p.257 at p.267

Drummond-Kackson v. British Medical Association & Ors. (1970) 1 E
WLR 688 at 696

Akilu v. Fawehinmi No.2 (1989) 3 S.C. (Pt.II)1; (1989) 2 NWLR (Pt.
102) 122

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

Nosiru Bello & Ors. v. A-G Oyo State (1986) 5 NWLR (Pt.45) 828

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LEAD JUDGMENT BY EJIWUNMI JSC

By this appeal, the appellant is seeking to have this court reverse the judgment of the court below. Before that court, the appellant had appealed G
unsuccessfully against the ruling of the trial court which had held that the 1st respondent was improperly joined in the claim of the appellant for an order commanding the 1st respondent and their agents to withdraw any representation they might have made to the 2nd respondent, that the 1st H
respondent has any claims to the 300 KVA Transformer presently situated at Plot No. 18, Idiroko Road, Sango-Otta and a further order perpetually restraining the 1st respondent, their agents, privies and assigns from ever

making any such claim to any person or authority whatsoever. Appellant further claimed the sum of N269,500.00 as special damages and the sum of N200,000.00 as general damages. The appellant, in addition to the writ of summons, also filed a 22 - paragraph Statement of Claim, which was served on the respondents.

In response, a Statement of Defence was filed on behalf of the 2nd respondent. The 1st respondent did not however file a Statement of Defence. Rather than filing a Statement of Defence, the 1st respondent brought a motion on notice wherein it prayed the court to make an order setting aside the appellant's specially endorsed writ of summons as it did not disclose any triable cause of action against the 1st respondent. The learned trial Judge after due consideration of the submission made to him by the learned counsel for the parties, delivered a ruling and upheld the contention of the 1st respondent. The learned trial Judge in effect held that the 1st respondent was not a necessary party to the action as it was improperly joined in the action. As the appellant was not satisfied with that ruling of the trial court, he appealed to the court below. From the decision of that court, the appellant has further appealed to this court.

Before the issues raised in this appeal are considered, I deem it profitable to relate howbeit briefly, the facts that formed the basis of the appeal. The appellant sometime in 1985, paid the sum of N11,925.00 to the 2nd respondent as capital contribution for a 300 KVA electricity transformer which was installed in its name by the 2nd respondent at the appellant's temporary factory premises at No. 18, Idiroko Road, Sango-Otta. Apart from the capital contribution paid, the appellant allegedly incurred several other expenses amounting to about N25,000.00 as cost of materials, etc., for the installation of the transformer. After the transformer was so installed, the appellant in 1987 wanted to have it moved to its permanent site. According to the appellant, it is claimed that it was when the arrangement for the movement of the transformer was in progress that the 1st respondent started making representations to the 2nd respondent that it had become the owner of the transformer and that it should not therefore be moved for the benefit of the appellant at its new factory site. It is part of the case of the appellant that the 1st respondent made the false claim

of ownership of the transformer because the temporary premises (land and buildings only) where the appellant was operating had just then been assigned to the 1st respondent by the owner, Alhaji Oludegun, a director in the appellant's company. The 1st respondent then fraudulently laid claim to the transformer as part of the land assigned to it. B

In my humble view, I am clearly of the view that the only issue that deserves any consideration in this appeal is:

"Whether or not the learned Justices of the Court of Appeal were correct in holding that the Writ of Summons and Statement of Claim did not disclose a reasonable cause of action against the 1st respondent?" C

On this issue, counsel for the appellant has argued in the appellant's brief that the court below was wrong to have upheld the judgment of the trial court, that the Writ of Summons filed by the appellant did not disclose a reasonable cause of action against the 1st respondent. It must be noted that the 1st respondent did not file any brief pursuant to this appeal. D Having regard to what I will say later, I really did not see any reason why the 1st respondent should have bothered to file any brief. Further, in the brief filed by the 2nd respondent, the learned counsel for the 2nd respondent E has argued that the court below was right to have held that the appellant by its claim did not disclose a reasonable cause of action against the 1st respondent. The learned counsel for the parties referred to several cases in support of their positions in this appeal. I will consider the authorities, F as they deem relevant to the issues raised in the appeal.

In essence with regard to the discourse of whether the appellant disclosed a reasonable cause of action by its writ of summons, it is necessary to refer to the case of Ibrahim v. Osim (1985) 3 NWLR (Pt.82) p.257 at p.267 where the Supreme Court defined the cause of action as follows:- G

"A cause of action is the entire set of circumstances giving rise to an enforceable claim, it is in effect the fact or combination of facts which give rise to a right to sue and it consists of two elements: H

- (a) the wrongful act of the defendant which gives the plaintiff his cause of complaint and*
- (b) the consequent damage."*

In the same case, Ibrahim v. Osim (supra), Uwais, JSC., (as he then was), in the course of delivering his judgment, quoted with approval the dictum of Lord Pearson in Drummond-Kackson v. British Medical Association & Ors. (1970) 1 WLR 688 at 696 thus:-

B “.....*I think reasonable cause of action means a cause of action with some chance of success, when (as required by paragraph (2) of the rule) only the allegations in the pleadings are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the Statement of Claim should be struck out.*”

C He went on to hold thus in his judgment:-

D “*For a Statement of Claim to disclose a reasonable cause of action, it must set out the legal rights of the plaintiff and the obligations of the defendant. It must then go on to set out facts constituting infraction of plaintiff’s legal rights or failure of defendant to fulfil his obligation in such a way that if there is not proper defence, the plaintiff will succeed in the relief or remedy he seeks.*”

E It is also pertinent to refer to the case of Ogbimi v. Ololo (1993) 7 NWLR (Pt.304) 128 where the court followed and applied the definition ascribed to cause of action in the case of Nosiru Bello & Ors. v. A-G Oyo State (1986) 5 NWLR (Pt.45) 828 thus:-

F “*In Nosiru Bello & Ors. v. A-G Oyo State (supra) a cause of action was defined as the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought.*

G *Thus the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to substantive right capable of being claimed or enforced against the defendant. In other words, the factual situation relied upon must constitute the essential ingredients of an enforceable right. Concisely stated, any fact relied upon by the plaintiff resulting from the act of the defendant which gives rise to a justifiable complaint is a cause of action.*”

H See also Akilu v. Fawehinmi No.2 (1989) 3 S.C. (Pt.II)1; (1989) 2 NWLR (Pt. 102) 122 where the Supreme Court defined a cause of action to mean:-

“Every fact which is material to be proved to entitle the plaintiff to succeed, or all those things necessary to give a right to relief in law or equity.”

Now, the question is what the appellant tried to prove or set out to prove in this matter at the trial court. In spite of the copious references made in his brief to various authorities including the authorities to which I have referred to above namely, Ibrahim v. Osim (supra) he did not in my view address the question raised in this appeal. **The question for determination is simply whether the appellant has been able by its pleadings to establish that it has a defensible claim against any of the respondents. I have earlier reviewed the facts of this case that led to this appeal. It is unarguable that the appellant paid a certain sum of money to the 2nd respondent for the installation of the transformer on the piece of land which it was using as a factory. The claim ought to suggest that the transformer was sold to it by the 2nd respondent or that it had since become its owner. There is nothing on the face of the claim in that regard and nothing in the affidavit filed in response to the application made by the 1st respondent in the trial court. In any event, it is not disputed that the appellant had moved away from the site where the transformer was installed and the land had in the meantime been transferred by its owner to the 1st respondent. Appellant obviously would have to show in his claim that the transaction between the appellant and the 2nd respondent vested the transformer in it. In my view, there is nothing to suggest that it had right to it on the basis of what it paid to the 2nd respondent for the installation of the transformer at that site. This case in any event was based on the affidavit presented at the trial court and nothing can be gathered therein to suggest that the 1st respondent could be made liable on the basis of the claim before the court.**

Now, having regard to what a reasonable cause of action should be, it is obviously necessary for a plaintiff in the position of the appellant to show in its claim that it was the owner of the transformer to sustain the action against the respondents. It would be remembered that this is a matter in which the 1st respondent sought to have the

claim set aside because of the failure of the appellant to show in its claim that the 1st respondent was liable to it. That application to the trial court was that which was considered and the trial court upheld the application of the 1st respondent. The appellant appealed against that ruling of the trial court which was upheld by the court below. I have again carefully considered the brief filed by the appellant pursuant to this appeal and I have not seen any reason why the conclusion reached by the court below could be faulted having regard to the facts and the law considered by the court below.

In the result, it is my respectful view that this appeal lacks merit. Accordingly, it is dismissed in its entirety. The orders made by the court below are hereby affirmed with costs in the sum of N10,000.00 in favour of the 2nd respondent.

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ONU JSC

Having been privileged to read before now the judgment just delivered by my learned brother, Ejiwunmi, JSC., I agree with him that the appeal lacks merit and so ought to fail.

I abide by the consequential orders inclusive of costs therein contained.

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KALGO JSC

I have read before now the judgment of my learned brother, Ejiwunmi, JSC., just delivered in this appeal. I entirely agree with his reasoning and conclusions reached therein and find no merit in the appeal.

The central issue for determination in the appeal is whether the writ of summons and the Statement of Claim of the appellant at the trial disclosed any cause of action against the 1st respondent. The trial court and the Court of Appeal have found, after careful examination of the said writ of summons and the Statement of Claim that there was no privity of contract between the appellant and the 1st respondent and that the appel-

lant did not plead any wrongful act of the 1st respondent which gave him any cause of complaint or any consequential damage or injury. Having regard to the facts and circumstances of this case disclosed in the record so far, it is my respectful view that the findings of the two lower courts, cannot be faulted. I entirely agree with them, and find no reason at all to interfere with such findings. Accordingly, I find no merit in this appeal and with the more detailed reasons given in the leading judgment of my learned brother, Ejiwunmi, JSC, I dismiss this appeal with N10,000.00 costs in favour of the 2nd respondent.

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TOBI JSC

Also agreed with the lead judgment.

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EDOZIE JSC

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The background facts culminating in the present appeal have been admirably set out in the leading judgment just delivered by my learned brother, Ejiwunmi, JSC. It is manifest that the basis of the plaintiff/appellant's action against the 1st and 2nd defendants/respondents is the fact that he contributed a substantial sum of money for the installation by the 2nd defendant/respondent of a transformer on the temporary premises of the plaintiff/appellant which has now been acquired by the 1st defendant/respondent who by alleged false representation is preventing the removal of the transformer for installation in the permanent site of the plaintiff/appellant. It was not alleged that the plaintiff/appellant has acquired ownership in the said transformer, nor that the 1st defendant/respondent was in custody thereof and was unjustifiably detaining same to ground an action in tort of detainee, nor did the whole transaction disclose any contractual relationship between the plaintiff/appellant and the 1st defendant/respondent such as could give rise to a cause of action against the latter.

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Clearly, the appellant's suit did not disclose any reasonable cause of action against the 1st respondent. The appeal is abysmally groundless.

For the fuller reasons articulated in the leading judgment of my learned brother, Ejiwunmi, JSC., which I adopt as mine, I, also, dismiss the appeal with costs as assessed by him.

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