

**SUPREME COURT OF NIGERIA**  
FRIDAY 24TH APRIL, 2015. SC. 259/2007  
**CORAM:- J.A. FABIYI, C.B. OGUNBIYI,**  
**K.M.O. KEKERE-EKUN, J.I. OKORO, C.C. NWEZE, JJSC**

REBOLD INDUSTRIES LIMITED ..... APPELLANT  
AND  
1. MRS. OLUBUKOLA MAGREOLA ..... RESPONDENTS  
2. MISS. MOJISOLA MAGREOLA  
3. MR. BABAJIDE MAGREOLA

---

CONTRACTS - Privity of - Only parties to a contract can enforce it - Third party to a contract cannot do so - Even if the contract was made for his benefit (H1)

JURISDICTION - Contracts - Privity of - Respondents had no ground to sue appellant under the lease agreement - As absence of locus standi deprived trial court of jurisdiction to entertain the matter (H2)

**FACTS**

Before the High Court of Lagos State, plaintiffs/respondents commenced this action against defendant/appellant, seeking for the recovery of the legal fees incurred in the preparation of a Deed of Sublease. Respondents (a firm of solicitors and representatives of original deceased respondent) were engaged by Mandilas Group Limited. Respondents were briefed to prepare the aforesaid lease agreement. The agreement was made between the Mandilas Group and appellant (Rebold Industries Limited). It was agreed that appellant will bear the cost of the legal fees involved in preparing the Deed. Appellant however failed to keep to the said term with regards to the legal fees. Hence, respondents initiated the action.

In the absence of response from appellant, default judgment was given to respondents. Thereafter, appellant brought a motion filed before the court, challenging the jurisdiction of the court. The ground is that respondents lacked the locus standi to commence the action. The motion was dismissed. Dissatisfied, appellant appealed to the Court of Appeal Lagos Division. The appeal was dismissed on the ground that even though respondents were not parties to the

Deed of sublease, they still had locus standi to sue on the representation made by appellant in the agreement to pay the legal fees. Still dissatisfied, appellant has appealed to the Supreme Court.

### **ISSUE FOR DETERMINATION**

*“Whether the Lower Court was right in deciding that the Respondent has the locus standi to sue for the payment of his professional fees in respect of an agreement he prepared between Mandilas Group Limited and the Appellant to which he, (Respondent) is not a party?”*

**HELD** (Unanimously allowing the appeal per **OKORO JSC**)

*CONTRACTS - Privity of*

**1. There is certainly no doubt that Section 16(1) of the Legal Practitioners’ Act empowers a legal practitioner to sue for the recovery of his charges. Sub section 3 thereof refers to the practitioner’s “client”. As I stated earlier, was the appellant the client of the respondent? There is evidence that it was the Mandilas Group Ltd which engaged the respondent to draft the agreement.**

**The Mandilas Group Ltd appears to be the “client” of the respondent in the circumstance and all processes to recover the charges ought to have been directed to her. Why then did the respondent sue the appellant for the recovery of the charges?**

**The above quotation clearly shows that the respondent was the solicitor of Mandilas Group Ltd. The respondent, based on the above provision decided to sue the appellant for his legal fees.**

**The question is, under the present state of our jurisprudence on the doctrine of privity of contract, did the respondent possess the locus standi to sue under the agreement. And also, was the court below right to uphold the trial court’s decision that it had jurisdiction to entertain the suit as constituted?**

**I must state clearly that there is in the law of contract**

***what is referred to as privity of contract. It is always between the contracting parties who must stand or fall, benefit or lose from the provisions of their contract. That is to say, their contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit there under. Put differently, only parties to a contract or an agreement can enforce it. A person who is not a party to it cannot do so even if the contract was made for his benefit as in this case.*** (p. 1359 B)

*JURISDICTION - Contracts - Privity of*

***2. All I have tried to say above is to buttress and underscore the fact that the doctrine of privity of contract is deeply rooted in our jurisprudence as much as English Law. The respondents herein, not being a party to the sublease agreement lacked the capacity or locus standi to sue under the said agreement. There was therefore a feature in the suit which deprived the learned trial judge of the jurisdiction to entertain the matter. The feature in the said suit being that the plaintiffs (now respondents) did not possess the requisite ground to sue the appellant under the agreement.***

***The court below was, with due respect, in error to have upheld the decision of the learned trial judge not to set aside the judgment which handed down without jurisdiction. In the circumstance, this issue is hereby resolved in favour of the appellant.*** (p. 1362 G)

## NOTABLE POINTS OF INTEREST

### **OKORO JSC**

#### ***1. Appeals are based on facts and cause of action***

Every appeal or suit filed before a court of law is based and anchored on its peculiar facts and the reliefs sought are not made in vacuum but relate to and derive from the raw facts of the case.

The courts, in their task of determining the rights and obligations of parties are usually guided by the facts adduced before the court and the law applicable thereto. Before a party files a matter in court, he must possess what is called a cause of action which usually is against some person, persons or institutions. That is to say, a plain-

tiff must show by his pleadings that he has a cause of action maintainable in a court of law against the defendant. He cannot sue just anybody. It must be someone who has wronged him one way or other. You cannot sue someone who has not done you any wrong.  
(p. 1358 A)

B

## ***2. Exceptions to privity of contract***

The learned counsel for the respondent concedes that as a general rule, a contract cannot confer rights or impose obligation on persons who are strangers to it. He had referred to paragraphs 336, 339 and 342 of Halsbury's Laws of England, Vol. 9, and 4th Edition. I shall briefly examine these exceptions. Paragraph 336 relates to common Law exceptions, 339 to equitable exceptions while 442 relates to statutory exceptions. I have read the paragraphs referred to but I am unable to locate the facts of this appeal in any of the exceptions listed above. For instance, as was rightly pointed out by the learned counsel for the appellant in his reply brief, paragraph 336 of Halsbury's Laws of England (supra) is an exception which touches and relates to the case of an agency relationship between a party to the contract as the principal and a third party as an agent, whereby the principal authorizes the agent to contract on his behalf with a second party. By this paragraph, the agent, though a stranger to that contract which is between his principal and another, would nevertheless assume rights and liabilities personally where among other circumstances, the principal is undisclosed, unnamed or the agent exceeds his authority. This is not the case in the instant appeal and as such, does not apply.

Again, paragraph 339 thereof relates to a situation where a trust is created for the benefit of a third party who was not a party to an agreement containing a promise creating the said trust. In such circumstance, the said third party can enforce the promise against the promisor only if he can show the contracting promisee is a trustee for the 3rd party and that the promise was intended to create a trust and that the third party joins the promisee in the action to enforce the promise. Again, the respondent herein has failed to show why his case should fall within this exception. Finally, none of the statutory exceptions listed in paragraph 342 of Halsbury's Laws of England has anything to do with the instant case. Accordingly, the said paragraph is inapplicable in this case. (p. 1360 H)

### **REPRESENTATION**

Dr. Adewale Olawoyin, with A. Ammani (Miss), for the Appellant  
P. H. Ogbale Esq with A. A. Malik Esq, Boniface Bassey Esq., P. C.  
Ashiukeka Esq., L. A. Ikhuorlah Esq. M. O. Akinsanya Esq., C. O.  
Numonu (Miss) and M. L. Atsemuda (Miss), for the Respondents B

### **CASES REFERRED TO**

Thomas v. Olufosoye (1986) 1 NWLR (pt. 18) 669  
Tweddle v. Atkinson (1861) 1 B & S 303 C  
Dunlop Pneumatic Tyre Company Ltd. v. Selfridge (1915) AC 843  
Ikpeazu v. ACB Ltd (1965) 1 NWLR 374  
Makwe v. Nwukor (2001) FWLR (pt. 63) 1  
Union Beverages Ltd v. Pepsi Cola Int'l Ltd (1994) 3 NWLR (pt.  
330) 1 D  
Shuwa v. Chad Basin Deve. Authority (1991) 7 NWLR (pt. 205) 55  
Atolagbe v. Awuni (1997) 7 SCNJ 1  
L.S.D.P.C. v. Nigerian Land Sea Foods Ltd. (1992) 5 NWLR (pt.  
244) 653  
Owodunni v. Registered Trustee of C.C.C. (2000) 10 NWLR (pt. E  
675) 315  
Oyekanmi v NEPA (2000) LPELR -2873 (SC) 12  
UBA v. Jargaba [2007] 43 WRN 1  
Ebhotu v. PIPDC Ltd (2005) LPELR-988 (SC) 28 F  
Dunlop v. Selfridge (1915) AC 847  
Beswick v. Beswick (1968) A C 58

### **STATUTE REFERRED TO**

Legal Practitioners Act Cap 207 LFN 1990, s. 16 G

### **BOOKS REFERRED TO**

Nigerian Law of Contract 2<sup>nd</sup> Ed.  
Contract Law: A New Approach H

### **LEAD JUDGMENT BY OKORO JSC**

This is an appeal against the judgment of the Court of Appeal, sitting in Lagos, delivered on 17th November, 2007 wherein the court dismissed the appellant's appeal, primarily on the ground that the

respondent herein as plaintiff in the High Court of Lagos State, had locus standi to institute the action to enforce a contractual provision in a Deed of sublease between the appellant and Mandilas Group Limited.

B Asynopsis of the facts leading to this appeal will suffice. Some-  
times in 1995, the service of the Respondent as a firm of solicitors,  
were retained by the Mandilas Group Limited for the preparation  
and engrossment of a deed of sublease between the Mandilas Group  
Limited and Rebold Industries Limited (being the appellants herein).  
C The sublease was in respect of the property known and situate at 7A  
Creek Road, Apapa, Lagos.

It was a term of the agreement that the appellant would be  
responsible for the legal fees incurred in preparing the Deed of Lease.  
The appellant failed to make good the said terms of the agreement.

D On the 14th day of May, 1997, the Respondent took out a  
writ of summons endorsed with a statement of claim against the ap-  
pellant for the recovery of the said fees incurred in the preparation  
and engrossment of the deed.

E The appellant having failed to respond to the summons of the  
respondent, a default judgment was entered for the respondent on  
the 19th of June, 1998.

F On 26th day of November, 1998, the Appellant filed a motion  
before the Lagos State High Court challenging the jurisdiction of the  
said High Court on the ground that the respondent lacked the locus  
standi to have instituted the action in the first place. The High Court  
dismissed the motion in a ruling pronounced on the 21st day of  
February, 2000. Aggrieved by the said Ruling, the appellant filed an  
appeal at the Court of Appeal on 14th May, 2002.

G The court below in its judgment dismissed the appellant's ap-  
peal on the ground that even though the respondent was not a party  
to the Deed of sublease, he still had locus standi to sue on the repre-  
sentation made by the appellant in the agreement to pay the  
respondent's fees. Still dissatisfied with the judgment, the appellant  
H has appealed to this court. Notice of appeal which contains four  
grounds of appeal, was filed on the 17th day of September, 2007.  
Out of the four grounds of appeal, the learned counsel for the appel-  
lant, Dr. Wale Olawoyin, has distilled two issues for the determination  
of this appeal. The issues are:-

1. Whether the Respondent who was not a party to the Deed of sublease had the locus standi to enforce a clause in the sublease which was to his benefit, that is, the payment of professional fees in respect of the preparation of the Deed of sublease.

2. Whether the Respondent who was not a party to the Deed of sublease may nevertheless have locus standi to sue in contract by simply showing a sufficient interest or injury to be suffered. B

In the Respondent's brief settled by Jim A. Omoigberale Esq, of counsel, one issue has however been formulated which states thus:

*"Whether the Lower Court was right in deciding that the Respondent has the locus standi to sue for the payment of his professional fees in respect of an agreement he prepared between Mandilas Group Limited and the Appellant to which he, (Respondent) is not a party?"* C

Without much ado, it is crystal clear that the two issues distilled D by the appellant are but one issue. They both ask the same question to wit: whether the Respondent had the locus to enforce a clause in the sublease when he was not a party thereto. I shall therefore treat appellant's two issues as one which is in tandem with the respondent's lone issue. This appeal shall, in the circumstance, be determined based E on the said issue.

Learned counsel for the appellant started his argument with the definition of Locus Standi which he states denotes the existence of a right of an individual or a group of individuals to have a court F enter upon adjudication of an issue brought before the court by proceedings instigated by the individual or group. He submits that at common law, as a general rule, a contract cannot confer rights or impose obligations on strangers to it. These cases were cited in support: Thomas v. Olufosoye (1986) 1 NWLR (Pt 18) 669, Tweddle v. G Atkinson (1861) 1 B & S 303 and Dunlop Pneumatic Tyre Company Ltd. V Selfridge (1915) AC 843.

Furthermore, he submitted that a person who is not a party to an agreement cannot enforce it even if the agreement was made by deed and for his benefit, relying on the cases of Ikpeazu V African H Continental Bank Ltd (1965) 1 NWLR 374 at 379. Makwe v. Nwukor (2001) FWLR (Pt.63) 1 at 14, Union Beverages Ltd v. Pepsi Cola Int'l Ltd (1994) 3 NWLR (Pt.330) 1.

Learned counsel submitted that the reliance by the court be-

low on the decision of Okezie, JCA in *Shuwa v. Chad Basin Development Authority* (1991) 7 NWLR (Pt 205) 55, being a decision of the Court of Appeal, cannot stand in the face of the plethora of authorities of the Supreme Court to the contrary on the issue. Referring to the case of *Drive Yourself Hire Company (London) Ltd v. Strutt* (1954) B 1 QB 250, 271 M - 275 where the revered Lord Denning, while interpreting S. 56 (1) of the English Law of Property Act 1925, suggested that the section should be read as abrogating the doctrine of privity of contract in the case of contracts in writing affecting property, the House of Lords in *Beswick V Beswick* (1967) 2 All ER 1197 C at 1203 - 4, rejected the suggestion and reaffirmed the age long doctrine of privity of contract.

On the other arm of the issue which the appellant calls “issue 2”, the learned counsel for the appellant submitted that Section 6 (6) D (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) did not prescribe the basis of locus Standi in all doctrinal contexts. He picked holes on the reliance of the Lower Court on the case of *Josiah Kayode Owodunmi V Registered Trustees of Celestial Church of Christ & Ors* (2000) 10 NWLR (Pt.675) 315 which had E restated and reaffirmed the interest/injury test as the yardstick for determining the locus standi of a complainant. He also faulted the reliance on S.16 of the Legal Practitioners Act which the Lower Court held, gave the Respondent locus standi to institute the action. Learned F counsel opined that this court in *Owodunmi’s* case (supra) clearly made a definitive pronouncement on the issue which the Lower Court failed to advert their minds. He also cited the cases of *Senator Abraham Ade Adesanya V President of the Federal Republic of Nigeria & Anor* (1981) 2 NCLR 358, *Olawoyin v. Attorney General North-* G *ern Nigeria* (1961) A11 NLR 269 and *Gamioba & Ors v. Esezil 11 & Ors* (1961) All NLR 584.

In conclusion, learned counsel submitted that a person, who is not a party to a contract or deed, does not have a justifiable cause of action in contract. He further stated that a plaintiff who has no privity H of contract with the Defendant will fail to establish a cause of action for breach of contract as he will simply not have a locus standi to sue the defendant on the contract. On S. 16 of the Legal Practitioners Act, he submitted that the court below focused on the wrong issue rather than whether the appellant at any point in time instructed the



respondent to prepare the Deed of sublease on its behalf so that a contract of service may be so founded. On the contrary, he argued, it was not in dispute that the respondent was instructed by Mandilas Group Limited to prepare the Deed. According to him, there is no nexus between the appellant and the respondent in regard to the payment of his professional fees. He then urged the court to resolve this issue against the appellant. In response, the learned counsel for the respondent concedes that as a general rule, a contract cannot confer rights or impose obligation on persons who are strangers to it. He however submits that this general principle has been watered down by many exceptions to which he referred to Halsbury's Laws of England Vol. 9, 4th Edition at paragraphs 335 - 342 for which he cited as common law exceptions in para 336, equitable exceptions in para 339 and statutory exceptions in para 342. He also relies on the case of *Chuba Ikpeazu v. ACB Ltd* (1965) NMCR 374 at 379.

It is his argument that general principles of law are not applied in the abstract but must be tied down to the peculiar and particular facts of each case in order to ascertain whether they are applicable or whether the particular case falls into one of its recognized exceptions. Learned counsel submits that the facts of this case makes an exception to the general rule; referring to the case of *Taofik Disu & 13 Ors v. Alhaja Salifat Ajilowura* (2006) 7 SCNJ 134 at 145.

Learned counsel then submitted that the authorities of *Owodunni v. Registered Trustees of Celestial Church of Christ* (supra) and *Senator Adesanya v. President of the Federal Republic of Nigeria* (supra) cited by the appellant are very relevant and apposite to the present appeal. It is his view that the issues raised by the appellant especially as to the basis of locus standi in all doctrinal contexts are not live issues necessary for the determination of the present appeal. He then urged the court to resolve this issue against the appellant.

In the reply brief filed by the appellant, learned counsel submitted that the instant appeal does not fall under any of the exceptions sought to be relied on by the respondent or any other known exception to the rule of privity of contract. He contended that none of the exceptions to the general rule was proved before the trial court or the court below. Referring to paragraphs 336, 339 and 342 of Halsbury's Laws of England relied upon by the respondent; he opined

that they do not support the case of the respondent at all. It is his further view that Ikpeazu's case relied upon by the respondent inures to the appellant rather than the respondent. He further urged the court to allow the appeal.

Every appeal or suit filed before a court of law is based and anchored on its peculiar facts and the reliefs sought are not made in vacuum but relate to and derive from the raw facts of the case.

The courts, in their task of determining the rights and obligations of parties are usually guided by the facts adduced before the court and the law applicable thereto. Before a party files a matter in court, he must possess what is called a cause of action which usually is against some person, persons or institutions. That is to say, a plaintiff must show by his pleadings that he has a cause of action maintainable in a court of law against the defendant. He cannot sue just anybody. It must be someone who has wronged him one way or other. You cannot sue someone who has not done you any wrong.

In the instant appeal, there is no doubt that the respondent prepared a deed of sublease in favour of Mandilas Group Limited and the appellant herein. Evidence also shows that it was the Mandilas Group Limited which invited the respondent to prepare the said agreement. There is nowhere in the evidence which states that the appellant herein invited the respondent to prepare the lease agreement. That being the case, why then did the respondent decide to sue the appellant when his legal fees were not paid. Was the appellant his client for which he can sue under Section 16 (1) of the Legal Practitioners' Act Cap 207 Laws of the Federation, 1990? The Section states:

*"16(1) Subject to the provisions of this Act, a Legal Practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction."*

Sub section 3 of Section 16 is also relevant and states:

*"16(3) In any case in which a legal practitioner satisfies the court, on an application made either ex parte or if the court so directs after giving the prescribed notice -*

- (a) That he has delivered a bill of charges to a client and*
- (b) That on the face of it the charges appear to be proper in the circumstances; and*
- (c) That there are circumstances indicating that the client is*

*about to do some act which would probably prevent or delay the payment to the practitioner of the charges, then, notwithstanding that the period mentioned in paragraphs (b) of subsection (2) of this section has not expired, the court may direct that the practitioner be authorized to bring and prosecute an action to recover the charges unless before judgment in the action the client gives such security for the payment of the charges as may be specified in the direction.”* B

**There is certainly no doubt that Section 16(1) of the Legal Practitioners’ Act empowers a legal practitioner to sue for the recovery of his charges. Sub section 3 thereof refers to the practitioner’s “client”. As I stated earlier, was the appellant the client of the respondent? There is evidence that it was the Mandilas Group Ltd which engaged the respondent to draft the agreement.** C

**The Mandilas Group Ltd appears to be the “client” of the respondent in the circumstance and all processes to recover the charges ought to have been directed to her. Why then did the respondent sue the appellant for the recovery of the charges?** The simple answer is that clause 2(t) of the sublease agreement provides that the appellant shall pay legal fees or charges of the Lessor’s solicitors. Let me reproduce the paragraph for ease of reference. It state: D

*“2 We, the Lessee for ourselves and our assigns and to the intent that the obligations shall continue throughout the term hereby created covenant with the Lessor as follows:* F

*(t) To pay the proper scale costs of the Lessor’s solicitors for the preparation, engrossment, stamp duty Registration and Professional fees in respect of this lease and the counterpart thereof.”*

**The above quotation clearly shows that the respondent was the solicitor of Mandilas Group Ltd. The respondent, based on the above provision decided to sue the appellant for his legal fees.** G

**The question is, under the present state of our jurisprudence on the doctrine of privity of contract, did the respondent possess the locus standi to sue under the agreement. And also, was the court below right to uphold the trial court’s decision that it had jurisdiction to entertain the suit as constituted?** H

***I must state clearly that there is in the law of contract what is referred to as privity of contract. It is always between the contracting parties who must stand or fall, benefit or lose from the provisions of their contract. That is to say, their contract cannot bind third parties nor can third parties take or***  
 B ***accept liabilities under it, nor benefit there under.*** See *Ogundare V Ogunlowo* (1997) 6 NWLR (Pt. 509) page 360, *Ikpeazu v. ACB Ltd* (1965) NMLR 374-378. ***Put differently, only parties to a contract or an agreement can enforce it. A person who is not a***  
 C ***party to it cannot do so even if the contract was made for his benefit as in this case.*** See *Kano State Oil and Ahmed Products Ltd v. Kofa Trading Company Ltd* (1996) 3 NWLR (Pt. 436) 244, *Lagos State Development Property Corporation V Nigerian Land & Sea Food Ltd* (1992) 5 NWLR (Pt 244) 653, *Union Beverages Ltd v.*  
 D *Pepsi Cola International Ltd.* (1994) 3 NWLR (pt. 330) 1 and *Chukwumah V Shell Petroleum* (1993) 4 NWLR (pt. 289) 512.

As far back as 1881, this principle of law that a stranger cannot sue upon a contract entered into between two parties, he not having furnished any consideration for it, was settled. See *Tweddle V*  
 E *Arkhinson I. B. & S* reported (1881 83) All ER Rep 369. See also *Dunlop Pneumatic Tyre Company Ltd v. Selfridge & Company Ltd* (1915) AC 847.

Even though it was the respondent herein who was engaged by *Mandilas Group Ltd* to draft this sublease agreement, he was not  
 F a party to the agreement. Not being a party to the agreement, by the well established principle of privity of contract, the respondent had no locus standi to sue under the said agreement.

That is the simple truth in this matter. Let me state for emphasis that only parties to a contract can maintain an action under the  
 G said contract. Even where a clause of the contract agreement is made for the benefit of a third party, the said third party cannot sue under the contract. See *Ebhota v. Plateau Investment & Property Development Company Ltd* (2005) 15 NWLR (Pt.948) 266, *All of the Federation v. AIC Ltd* (2000) 10 NWLR (Pt. 675) 293.  
 H

The learned counsel for the respondent concedes that as a general rule, a contract cannot confer rights or impose obligation on persons who are strangers to it. He had referred to paragraphs 336, 339 and 342 of Halsbury's Laws of England, Vol. 9, and 4th Edition.

I shall briefly examine these exceptions. Paragraph 336 relates to common Law exceptions, 339 to equitable exceptions while 442 relates to statutory exceptions. I have read the paragraphs referred to but I am unable to locate the facts of this appeal in any of the exceptions listed above. For instance, as was rightly pointed out by the learned counsel for the appellant in his reply brief, paragraph 336 of Halsbury's Laws of England (supra) is an exception which touches and relates to the case of an agency relationship between a party to the contract as the principal and a third party as an agent, whereby the principal authorizes the agent to contract on his behalf with a second party. By this paragraph, the agent, though a stranger to that contract which is between his principal and another, would nevertheless assume rights and liabilities personally where among other circumstances, the principal is undisclosed, unnamed or the agent exceeds his authority. This is not the case in the instant appeal and as such, does not apply.

Again, paragraph 339 thereof relates to a situation where a trust is created for the benefit of a third party who was not a party to an agreement containing a promise creating the said trust. In such circumstance, the said third party can enforce the promise against the promisor only if he can show the contracting promisee is a trustee for the 3rd party and that the promise was intended to create a trust and that the third party joins the promisee in the action to enforce the promise. Again, the respondent herein has failed to show why his case should fall within this exception. Finally, none of the statutory exceptions listed in paragraph 342 of Halsbury's Laws of England has anything to do with the instant case. Accordingly, the said paragraph is inapplicable in this case.

I know that in every general rule, there is always an exception. But such exception has to be properly placed before the court and must be such that will not destroy the general principle which has guided and stabilized contractual relations for a long time irrespective of how one feels about it. In the instant appeal, there is nothing to remove it from the general principle on privity of contract.

On page 212 of the record is the conclusion of the court below in its judgment. It states inter alia:

*"The point here is the unique position of the Respondent in the agreement, annexed as Exhibit A2 before the trial court. Clause*

*T therein confers not a benefit but remuneration for consideration already executed, a service already rendered. It would be difficult if the Respondent sought to enforce the agreement because his benefit lies in the fact of the enforcement. Again, the agreement has been executed and both parties have reaped the benefit of the Deed.*

*B Herein lies the distinction between this appeal and that of Ikpeazu's (supra). The Respondent has a locus standi which the trial court competently recognized and acted upon."*

With due respect to their Lordships of the Lower Court, I do not agree. Clause T is part of the agreement between Mandilas Group Ltd and the Appellant herein. The respondent is a stranger to that agreement. Clause T is made for the benefit of the respondent herein. Whether what the respondent is entitled to under the agreement is called "benefit" or "remuneration", the fact remains that he, not being a party to the agreement, cannot sue under it to claim same. The court below tried to bring in focus the views of Okezie, JCA in *Shuwa v. Chad Basin Development Authority* (1991) 7 NWLR (Pt. 205) 55 wherein it held that the decision in that case was neither obiter nor in conflict with the decision of this court in *Ikpeazu v. ACB Ltd* (supra). I think the view of his Lordship in that case was clearly obiter because his conclusion in that case did not justify that position.

It has to be noted that Okezie, JCA, may not have been the only one suggesting that a third party may be able to sue under a contract made for his benefit. In *Beswick V Beswick* (1967) 2 All ER 1197 at 1203 - 4, the House of Lords, per Lord Reid noted that:

*"In Smith V River Douglas Catchments Board, Denning, L. J, after stating his view that a third person can sue on a contract to which he is not a party referred to S 56 as a clear statutory recognition of this principle, with the consequence that Millers case was wrongly decided. I cannot agree with that. In Drive Yourself Hire Company (London) Ltd V Struft, Denning L.J. again expressed similar views about section 56"* (Emphasis mine).

***All I have tried to say above is to buttress and underscore the fact that the doctrine of privity of contract is deeply rooted in our jurisprudence as much as English Law. The respondents herein, not being a party to the sublease agreement lacked the capacity or locus standi to sue under the said agreement. There was therefore a feature in the suit which***

**deprived the learned trial judge of the jurisdiction to entertain the matter. The feature in the said suit being that the plaintiffs (now respondents) did not possess the requisite ground to sue the appellant under the agreement.** See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341.

**The court below was, with due respect, in error to have upheld the decision of the learned trial judge not to set aside the judgment which handed down without jurisdiction. In the circumstance, this issue is hereby resolved in favour of the appellant.**

Having resolved the only issue adopted for the determination of this appeal in favour of the appellant, I hold that this appeal is meritorious and is hereby allowed. The judgment of the Court of Appeal which upheld the decision of the trial court is hereby set aside. Accordingly, the judgment of the trial court is also set aside. I make no order as to costs.

---

### **FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother - John Inyang Okoro, JSC. I agree with all the reasons therein ably adumbrated to arrive at the conclusion that the appeal is meritorious and should be allowed.

I shall only chip in a few words of my own in support of the reasons clearly set out by my learned brother. I wish to rely on the facts, as stated in the lead judgment.

The crux of this appeal relates to the due application of the age old principle of privity of contract and a'fortiori, determination of locus standi. For a due consideration, I wish to reproduce the issues formulated on behalf of the parties; as same is apt.

The two issues decoded on behalf of the appellant read as follows:-

*"1. Whether the respondent who was not a party to the Deed of sublease had the locus standi to enforce a clause in the sublease which was to his benefit, that is, the payment of professional fees in respect of the preparation of the Deed of sublease.*

*2. Whether the respondent who was not a party to the Deed of sublease may nevertheless have locus standi to sue in contract by*

*simply showing a sufficient interest or injury to be suffered.”*

The sole issue couched on behalf of the respondents reads as follows:-

“Whether the Lower Court was right in deciding that the respondent has the locus standi to sue for the payment of his professional fees in respect of an agreement he prepared between Mandilas Group Limited and the Appellant to which he, (respondent) is not a party.”

Privity of contract is defined as ‘that connection or relationship which exists between two or more contracting parties’. (Black’s Law Dictionary, Sixth Edition page 1199). At common law, it is an elementary principle of law of contract that as a general rule, a contract cannot confer rights or impose obligations on strangers to it. This age old principle is known as privity of contract. There is no spec of doubt that it has evolved over the years. It appears that it has come to stay. See: Tweddle v. Atkinson (1861) 1 B & S 303 and Dunlop Pnuematic Tyre Co. Ltd. v. Selfridge (1915) AC 843 where the principle of privity of contract really got to the front burner.

Let me say it in passing that in Drive Yourself Hire Co. (London) Ltd. v. Strutt (1954) 1 Q.B. 250. Denning, L. J. tried to get round the principle of privity of contract by seeking to have a lee-way to water it down. But in Beswick v. Beswick (1976) 2 ALL ER 1197 at 1203-4 the House of Lords did not support same as Lord Reid noted that:-

“In *Smith v. River Douglas Catchments Board*, Denning L. J. after stating his view that a third person can sue on a contract to which he is not a party referred to S.56 (of the English Law of Property Act, 1925) as a clear statutory recognition of this principle, with the consequence that *Millers case* was wrongly decided. I cannot agree with that. In *Drive Yourself Hire Co. (London) Ltd. v. Strutt Denning, L. J.* again expressed similar views about S.56.”

It is now beyond argument that the principle of privity of contract is part of our corpus juris. In the case of Chuba Ikpeazu v. African Continental Bank (1965) NMLR 374 at 379 this court, per Ademola, CJN of blessed memory, maintained that generally, a contract cannot be enforced by a person who is not a party to same even if made for his benefit. This is in tune with the principle evolved over the years. In *Owodunni v. Registered Trustees CCC Worldwide* (2000)



10 NWLR (Pt.675) 315, Ogundare, JSC, of blessed memory, had the same frame of mind in respect of the principle of privity of contract. Also in *Makwe v. Nwukor* (2001) FWLR (Pt.63) 1 at 14, this court stated as follows:-

*“The fact that a Person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue or be sued on the contract”.* B

The same opinion was held by this court in *Union Beverages Ltd. v. Pepsi Cola Int. Ltd* (1994) 3 NMLR (Pt.330) 1 at 16. A plaintiff who has no privity of contract with the defendant will fail to establish a cause of action for breach of contract as he will simply not have a locus standi to sue the defendant on the contract. C

The Court of Appeal tried to rely on the provision of Section 16 of the Legal Practitioners Act, Cap L11 Laws of the Federation of Nigeria, 2004. Sub-section 3(a) mandates that he (the Legal Practitioner) deliver a bill of charges to a client. The cold fact on record is that the respondent was instructed by Mandilas Group Limited to prepare the Deed; and not the appellant. In short, there was no privity of contract between the appellant and the respondent who, in effect, lacked the requisite locus standi to sue in the first place. E

I cannot surmise why the court below decided to rely on the decision of that court in *Shuwa v. Chad Basin Development Authority* (1991) 7 NWLR (Pt. 205) 55 and tried to brush aside the clearly demonstrated stand of this court with respect to the principle of privity of contract. Let me say it quietly that the doctrine of judicial precedent otherwise referred to as stare decisis is well rooted in our jurisprudence. It ought to be strictly followed by all Lower Courts. There is sense in it to avoid confusion. See *Royal Exchange Assurance Nig. Ltd v. Aswam Textiles Ind. Ltd.* (1991) 2 NWLR (Pt. 176) 639 at 672. F It is not proper to refuse to follow the decision of a superior court. A Lower Court should tow the line. See: *Atolagbe v. Awuni & Ors.* (1997) 7 SCNJ 1 at pages 20, 24 and 35. G

For the above reasons and the fuller ones set out in the lead judgment which I respectfully adopt, I too feel that the appeal is meritorious and should be allowed. I order accordingly and endorse all consequential orders contained in the lead judgment; that relating to costs inclusive. H

**OGUNBIYI JSC**

I read in draft the lead judgment just delivered by my learned brother Okoro, JSC. I agree that the appeal has merit and should be allowed while the judgment of the Lower Court upholding that of the trial court should be set aside.

The claim was set out to recover the legal fees incurred in the preparation of a Deed of Lease by the respondent in favour of the appellant. The respondent took out a writ of summons to which the appellant failed to respond and a default judgment was entered against the appellant on 19th June, 1998.

At the Court of Appeal, the appellant sought to set aside the judgment by the trial court and also to strike out the suit by the respondent on the following grounds:-

(1) That the respondent not being a party to the agreement cannot enforce same.

(2) That the decision in *Shuwa v. Chad Basin Development Authority* (1991) 7 NWLR (Pt. 205) 55 relied upon by the trial court was obiter and by the principle of *stare decisis*, cannot stand in the face of the Supreme Court decision in *Ikpeazu v. African Continental Bank Limited* (1965) 1 NMLR 374.

The court below in a considered judgment dismissed the appellant's appeal on the ground that even though the respondent was not a party to the Deed of Sublease, he still had *locus standi* to sue on the representation made by the appellant in the agreement to pay the Respondent's fees.

The appellant was unhappy with the judgment of the Court of Appeal and has now further appealed to this court.

Two issues were formulated on behalf of the appellant while the respondent raised only one issue which has comprehensively subsumed the appellant's two issues. The only lone relevant issue is in my view that of the respondent which is as follows:-

Whether the Lower Court was right in deciding that the Respondent has the *locus standi* to sue for the payment of his professional fees in respect of an agreement he prepared between Mandilas Group Limited and the Appellant to which he, (Respondent) is not a party?

The respondents herein are a representative of the original

respondent, now deceased. On the face of the lone issue supra, the status of the respondent calls for determination for purpose of deciding whether or not he can claim the benefit of the professional fees against the appellant. The contractual agreement did not include the respondent who primarily was a stranger to the initial agreement. The issue for determination is whether or not the respondent has the *locus standi* to institute the action as he did. B

The general principle of law is trite and well settled that only parties to an agreement or a contract can enforce same; thus, a person who is not a party thereto cannot sue even if the contract was entered into for his benefit. See *Ikpeazu v. A.C.B. Ltd.* (1965) NMLR 374; *L.S.D.P.C. v. Nigerian Land Sea Foods Ltd.* (1992) 5 NWLR (Pt.244) 653; *Union Beverages Ltd. V. Pepsi Cola International Ltd.* (1994) 3 NWLR (Pt. 330) 1 and also *K.S.O. & Allied Prod. Ltd. v. Kofa Trad. Co. Ltd.* 1966 3 NWLR (Pt. 436) p.244 at 263. C D

It is the submission by the respondent's counsel that although the general principle of law precludes benefit in favour of a stranger to a contract, the application should not be in the abstract but must be tied down to the peculiar and particular facts of each case for purpose of ascertaining whether the specific case falls into one of the recognized exceptions to this general principle. The counsel sought reliance on Section 16 of the Legal Practitioners Act Cap. 207, Laws of the Federation, 1990. E

Section 16(1) of the Legal Practitioners Act which the respondent relies upon as an exception to the general rule gives the green light to a legal practitioner to recover his charges by instituting an action in court. The same section, counsel submits had watered down the general rule relating privity of contract. The reproduction of the section would best be fully understood if the two subsections (1) and (3) are taken together. F G

*"16(1) Subject to the provisions of this Act, a Legal Practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.*

*(3) in any case in which a legal practitioner satisfies the court on an application made either ex parte or if the court so directs after giving the prescribed notice -*

*(a) That he has delivered a bill of charges to a client and*

*(b) That on the face of it the charges appear to be proper in*

*the circumstances; and*

(c) *That there are circumstances indicating that the client is about to do some act which would probably prevent or delay the payment to the practitioner of the charges, then, notwithstanding that the period mentioned in paragraph (b) of subsection (2) of this section has not expired, the court may direct that the practitioner be authorized to bring and prosecute an action to recover the charges unless before judgment in the action the client gives such security for the payment of the charges as may be specified in the direction.*”

From the foregoing reproduction, while subsection 1 gives a legal practitioner the right to recover his charges, the provision that a client gives security as specified in subsection (3) operates as a caveat restricting the open door policy in subsection (1). In other words, the question of a client relationship does not exist between the appellant and the respondent in the case before us.

Of further relevance is clause (t) the sublease agreement which makes the appellant liable for the payment of legal fees of the Lessor’s solicitors; the benefit of the clause cannot also avail the respondent, who is a stranger in relation to the appellant. This is notwithstanding the fact that the clause in the Deed of sublease was in fact made for the benefit of the respondent. Again the case of *Chuba Ikpeazu v. African Continental Bank Ltd.* Supra relied upon by the respondent’s counsel is very much in support of the appellant’s case. The authority serves a leading principle that a stranger to a contract cannot enforce the said contract even if it is made for his benefit; he does not, in other words, have the right to sue there on.

I seek to state also that the position of privity of contract rule in cases of contracts under seal is more stringent as it was pronounced with emphasis at page 379 of *Ikpeasu’s* case supra and said:-

*“The position is stronger with regard to contracts under seal. Unless a person is named as a party to the deed, he cannot maintain upon it.”*

The subject matter herein being a deed of sublease therefore fits perfectly well into the foregoing pronouncement. As rightly submitted by the learned counsel for the appellant, while the learned trial judge and the Court of Appeal were occupied with the right of the Respondent to recover his professional fees, they totally ignored the more significant issue of the party against whom the said right is

exercisable, which is Mandilas Group Limited and not the appellant therein.

The Lower Court in the circumstance was in great error when it veered off from the established principle of privity of contract which had consistently been restated through judicial pronouncements to a level of an institution. The respondent in this appeal lacked the locus B standi to institute the action and consequently, the Lower Court, also the trial court were bereft of any jurisdiction.

I agree with my learned brother Okoro, JSC that the appeal should succeed while the judgment of the Lower Court in affirming that of the trial court is hereby set aside. I also abide by the order C made in the lead judgment as to costs.

---

**KEKERE-EKUN JSC**

I have had the benefit of reading in draft the well considered judgment of my learned brother, Okoro, JSC just delivered, with which I am in full agreement. D

As can be gleaned from the record and the briefs of argument of the parties, the original respondent OLADIPO MAGREOLA (now E deceased) was the solicitor to MANDILAS GROUP Ltd. His services were retained for the preparation and engrossment of a Deed of sublease between Mandilas Group Ltd and the appellant herein. It was a term of the agreement that the appellant would be responsible F for the legal fees incurred in preparing the Deed.

The respondent sought to enforce the payment of his legal fees by instituting an action before the trial High Court against the present appellant. A default judgment was entered against the appellant on 19/6/1998. By a motion on notice filed on 26/11/1998, the G appellant sought an order setting aside the judgment and an order striking out the suit for want of jurisdiction.

On the issue of jurisdiction, the appellant contended that the respondent, not being a party to the agreement between it and Mandilas Group, had no locus standi to sue on it. In other words, H that there was no privity of contract between the appellant and the respondent.

The court held that the respondent had the right to sue on a contract made for his benefit even though not a party to it. It refused

to set aside its decision. The Court of Appeal affirmed the decision and dismissed the appeal.

The appellant is still aggrieved and has therefore further appealed to this court.

I am of the view that the sole issue distilled by the respondent  
B is sufficient to dispose of the appeal, to wit:

“Whether the Lower Court was right in deciding that the respondent has the locus standi to sue for the payment of his professional fees in respect of an agreement he prepared between Mandilas  
C Group Limited and the appellant to which he, (Respondent) is not a party?”

It is not in dispute that the respondent was not a party to the contract between the appellant and Mandilas Group Ltd. In other words there was no privity of contract between the respondent and  
D the appellant. Privity of contract is a common law doctrine. The law is that generally only a party to a contract can enforce it. A person who is not a party to it cannot enforce it even if the contract is made for his benefit and purports to give him the right to sue upon it, as he has not furnished consideration for it, see: Dunlop Pneumatic Tyre Co.  
E Ltd. Vs Selfridge & Co. Ltd. (1915) AC 847; Tweedle Vs Atkinson I. B. & S. 393 (1881-83) All ER 369; L.S.D.P.C. v. N.L. & S. F. Ltd. (1992) 5 NWLR (Pt.244) 653 @ 669 - 670 F - A. It was held in: Ikpeazu Vs African Continental Bank Ltd. (1965) N.M.L.R. 374 that  
F the general position is even stronger with regard to contracts under seal.

It is the respondent’s contention that the facts and circumstances of this case represent one of the exceptions to the general rule on privity of contract. It is contended that not only did the appellant give  
G an undertaking under the Deed to be responsible for the fees incurred in its preparation and engrossing, it had already enjoyed the service rendered. He argued that the issue in contention is whether the respondent had the locus standi to sue to recover his professional fees as disclosed by his statement of claim and as provided for in  
H Section 16 of the Legal Practitioners Act (LPA), Cap.20 Laws of the Federation of Nigeria (LFN) 1990. Learned Senior counsel for the appellant on the other hand disagreed with the opinion of the court below, which employed the interest/injury test and held that Section 16 of the LPA confers locus standi on the respondent.

Section 16 of the LPA provides thus:

*“16 (1) Subject to the provisions of this Act, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.”*

In clause “(t)” of the Deed of sublease at page 20 of the record, the appellant, as lessee agreed “to pay the proper scale costs of the Lessor’s solicitors for the preparation, engrossment, stamp duty, registration and professional fees in respect of this lease and the counter-part thereof.” There are copious references to the legal practitioner’s “client” throughout Section 16 of the LPA. The implication is that the provision governs the relationship between a legal practitioner and his client. It must be emphasised that the respondent’s right to recover his professional fees for services rendered is not in doubt nor is it in dispute. The question is whether he can rely on an agreement made between two parties, to which he is a stranger, as the basis for his claim. In my humble view the question must be answered in the negative. It seems to me that the purport of clause “(t)” is that on completion of the assignment, the lessor’s solicitor (i.e. the respondent in this case) would present his bill of charges to his client, Mandilas Group Ltd., which would in turn present the bill to the appellant herein for settlement as per the terms of the contract. In the event of a default, it is Mandilas Group Ltd. that would have the locus standi to institute an action against the appellant for breach of contract. In the case of: *Owodunni Vs Registered Trustee of C.C.C. (2000) 10 NWLR (Pt. 675) 315 @ 339 D*, His Lordship, Ogundare, JSC (of blessed memory) gave an insight into the dichotomy between “locus standi” and “cause of action”. He stated thus:

*“The position appears to be that in private law the question of locus standi is merged in the issue of cause of action. For instance, a plaintiff who has no privity of contract with the defendant will fail to establish a cause of action for breach of contract as he will simply not have a locus standi to sue the defendant on the contract.”*

Applying the above principle to the facts of the instant appeal, the mere fact that the respondent has an interest in recovering his fees from his client cannot clothe him with the necessary locus standi to sue on a contract to which he was not a party.

It is for these and the fuller reasons articulately adumbrated in the lead judgment that I also find this appeal to be meritorious. It is

hereby allowed. I abide by the consequential orders contained in the lead judgment including the order for costs.

---

**NWEZE JSC**

B My noble Lord, Okoro, JSC, obliged me with the draft of the leading judgment just delivered now. I agree that this appeal is meritorious and should be allowed.

C There can be no gainsaying the fact that, pursuant to Section 16 (1) of the Legal Practitioners' Act, Cap 207, Laws of the Federation, 1990, [applicable at the material time], a legal practitioner who satisfies the Trinitarian preconditions, now endorsed in Case Law, could commence an action to recover his fees upon a bill of charges. First, he must prepare a bill of charges or a bill for the charges which D should duly particularize the principal items of his claim; second, he must serve his client with the bill; and third, he must allow a period of one month to elapse from the date the bill was served, *Oyekanmi v NEPA* (2000) LPELR -2873 (SC) 12, C-E.

E However, the facts of the instant case do not fit into this scenario. The action contemplated under the above Act must be in relation to a Legal Practitioner's client within the meaning of the word in sub-section 3 thereof. That was not the case between the parties at the Lower Court. As demonstrated in the leading judgment the F Mandilas Group Ltd retained the services of the respondents' firm for the preparation and engrossment of a deed of sublease between it and the appellants in this appeal, *Rebold Industries Ltd*, in respect of the property known as 7A Creek Road, Apapa, Lagos. Under the said agreement, the appellant was to be responsible for the legal fees G for the preparation of the Deed of Lease. When the appellant failed to meet its obligation under the contract, the respondents commenced an action against it [appellant] for the recovery of the said fees.

H That was wrong. In general terms, only parties to a contract can enforce it, *L.S.D.P.C. v. N.L & S.F. Ltd.* [1992] 5 NWLR (Pt.244) 653, 658. This is the implication of the doctrine of privity of contracts, an ancient doctrine which operates to safeguard the sanctity of contracts, *UBA and Anor v. Jargaba* [2007] 43 WRN 1, 19, *Ebhota and Ors v. PIPDC Ltd* (2005) LPELR-988 (SC) 28. By the operation of this doctrine, a person who is not a party to a contract cannot



enforce it even if it was made for his benefit and purports to give him the right to sue upon it, *Ikpeazu v. ACB* (1965) NMLR 374; *L.S.D.P.C. and Ors v. NLSF Ltd and Ors* [1994] 3 NWLR (Pt.330) 1. This must be so for nothing like a *jus quaesitum tertio* can arise by way of contracts, *Dunlop v. Selfridge* (1915) AC 847; *Beswick v. Beswick* (1968) A C 58; I. E. Sagay, *Nigerian Law of Contract* (Second Edition) (Ibadan: Spectrum Books Ltd, 2001) (Reprint) 489; V. N. Okpara, *Contract Law: A New Approach* (Enugu: Fourth Dimension Publishing Co. Ltd, 2013) *passim*. B

In the instant appeal, like the leading judgment has shown, the Mandilas Group Ltd engaged the respondent to draft the sublease agreement. However, he was not a party to the agreement. As such, going by the above privity rule, he could not sue under the said agreement. It is for these, and the more detailed, reasons in the leading judgment that I, too, shall allow this appeal. Appeal allowed. I D abide by the consequential orders in the leading judgment. C

E

F

G

H