

# IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

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Suit No: NIC/44/2008

**Petitioner:** Mr. Olujogun YusufLawal Claimant

And

**Respondent:** Beton Bau Nigeria Limited Respondent

Date Delivered: 2010-07-20

**Judge(s):** Hon Justice B.B Kanyip Presiding Judge, Hon. Justice V.N Okobi Judge, Hon Justice O. A Obaseki-Osagh

## **Rulings Delivered**

BEFORE THEIR LORDSHIPS

Hon. Justice B. B. Kanyip Presiding Judge

Hon. Justice V. N. Okobi Judge

Hon. Justice O. A. Obaseki-Osaghae Judge

DATE: July 20. 2010 SUIT NO. NIC/44/2008

BETWEEN

Mr. Olujogun YusufLawal Claimant

AND

Beton Bau Nigeria Limited Respondent

REPRESENTATION

Emmanuel Sukore and with him Esther Adekanye (Miss) for the claimant

P. E. Tagbo and with him J. I. Nwodo, for the respondent

RULING

This is a notice of preliminary objection by the respondent dated 20th October 2009 and filed on the 9th November 2009. It is brought pursuant to section 6(6)(a) and (b) of the 1999 Constitution. The ground of the objection is that the National Joint Industrial Council (NJIC) Agreement which the claimant is relying upon to ground his claim expressly excludes executives which the claimant is one from the terms of the agreement under 'Article 1 — Recognition' and that this is reinforced by section 3(3) and (4) of the Trade Unions Act.

The claimant had filed a complaint against the respondent seeking the following reliefs:

1. The sum of N8,889,750.00 being the amount due to the claimant as acting allowance from July 2001 — October 2003.
2. The sum of N360,000.00 being the amount due to the claimant as rent for the years 2001, 2002, and 2003.
3. The sum of N280,000 being the amount due to the claimant as off-pay roll salary payment covering January 2001 till April 2003.
4. The sum of N821,852.24 being the amount due to the claimant as leave allowance covering 1999 till 2003.
5. Special damages by way of interest on each of the aforesaid amount (1, 2, 3 and 4) at the rate of 20% per annum from 4/11/2004 till date of breach of contract, and personal loss and deprivation of the financial entitlements.
6. The sum of N5,000,000.00 as general damages for breach of contract, personal and/or economic issues.
7. A declaration that the claimant as a creditor is entitled to exercise a lien and retain possession over the RAV 4 vehicle in his custody, until the defendants fully liquidate his entitlements.
8. A perpetual injunction restraining the defendants, their agents and privies from seizing, removing, dispossessing the said RAV 4 from the claimant until his entire financial claims and benefits are fully liquidated or in the manner directed by the Court.

Accompanying the statement of facts is the list of documents to be relied on and the list of witness to be called at the trial. The respondent entered conditional appearance and by this preliminary objection is praying for an order dismissing the claimant's suit on the ground that this court is deprived of jurisdiction to entertain this action by the claimant's lack of locus standi. The parties filed written addresses. The respondent's written address is dated 25th November 2009 and filed on the same day. The claimant's reply address is dated 9th February, 2010 and filed on the same day. The respondent did not file any reply on points of law. Both parties formally adopted their written addresses.

The respondent in its written address began by stating that the claimant has brought this action against it relying on the National Joint Industrial Council (NJIC) agreement on terms and conditions of service for senior staff in the building and civil engineering industry in Nigeria dated the 28th September 1988 which is a collective agreement between the Construction and Civil Engineering Employers Association of Nigeria and the Construction and Civil Engineering Senior Staff Association. That the claimant's claim is that based on the NJIC agreement, he is entitled to some amount of money due to him from the respondent by way of outstanding allowances while in acting capacity as the Financial Controller. The respondent further stated that the claimant was employed as its Chief Accountant on 17 May 1997 which is an executive position in the company and was promoted to the position of acting Financial Controller with effect from the 1st July 2001. That the claimant relying on that promotion and what was purportedly paid the substantive Financial Controller, is relying on Article 8 of the NJIC agreement to make claims against the respondent.

The respondent then posed the following question: whether the claimant who was employed as the Chief Accountant of the respondent, an executive position is entitled to the provisions in the NJIC agreement. The respondent reproduced Article 1 of the NJIC agreement under the sub-head "RECOGNITION" as follows:

The Employers Association recognises the Senior Staff Association as representing senior employees except executives on all matters affecting salaries, hours of work, leave aid all other matters which may be agreed upon from time to time.

The counsel to the respondent argued that this provision expressly excludes the claimant from the contemplation of the NJIC agreement and, therefore, deprives him of locus standi to institute and/or maintain this action. He argued further that if the employers association does not recognize the senior staff association as representing executives, then the senior staff association cannot enter into an agreement on behalf of executives. That in both positions as Chief Accountant and Acting Financial Controller, the claimant is out of the purview and contemplation of the NJIC agreement. Counsel then referred to sections 3(3) and (4) of the Trade Unions Act in support of this contention and submitted that the Chief Accountant of an organization has the status, authority, powers, duties and accountability that inhere in a person exercising executive authority and, therefore, the claimant is expressly excluded from the contemplation of the NJIC agreement by Article 1 and is deprived of the locus standi to maintain this action. He cited the case of *Fawehinmi v. Federal Republic of Nigeria* [2007] 14 NWLR (Pt. 1054) 275 at 329 paragraph D — F for the definition of locus standi and *Umar v. White Gold Ginnery Nig Ltd* [2007] 7 NWLR (Pt 1032) page 117 at 151 paragraph A — B per Aboki J.C.A: Locus standi touches on the question of jurisdiction of court, in that if a plaintiff or an applicant does not have locus or the required standing to institute an action, the court cannot properly assume jurisdiction to entertain the matter. The locus standi of a plaintiff is a condition precedent before the court can proceed to hearing a matter on merit.

The respondent's counsel finally submitted that this court is deprived of jurisdiction to entertain this matter by the claimant's lack of locus standi to institute same and urged the court to dismiss the claimant's action against the respondent.

The claimant in his reply address began with a brief statement of the facts. He stated that he was employed on the 17th May 1997 by 1st respondent as its Chief Accountant which position by the existing organizational structure falls into the category of senior staff. That he was never part of the decision making organization of the respondent or a signatory to the respondent's account, neither was he given benefits accruable to the management staff. That his line of reporting was to the Financial Controller of the respondent who is a management staff. He stated that in the course of his employment he was promoted to the position of acting Financial Controller. That under Article 8 of the NHC collective agreement containing the applicable conditions of service regulating his employment as a senior staff, he is entitled to a minimum of 50% of the difference between his salary as Chief Accountant and that of the position to which he was

acting.

The claimant stated that his claims against the respondent are in connection with salary arrears and wages in lieu of annual leave. That he resigned from the respondent's company with effect from 3rd November 2003 and that till date his terminal benefits have not been paid to him.

The claimants counsel then framed two issues for determination as follows:

1. Whether the claimant has locus standi to have his complaints heard and determined by this court.
2. 'Whether section 3(3) and (4) of the Trade Unions Act Cap. 437 Laws of the Federation of Nigeria the claimant excludes, a senior staff from having his complaint heard before this court'.

Learned counsel to the claimant submitted that locus standi denotes the legal capacity to institute proceedings in a court of law and that applied to this instant case, the claimant has locus standi to institute this suit citing *Owodunni v. Registered Trustees of Celestial Church of Christ* [2000] 10 NVTLR (Pt 675) 315 at 320 — 321. He argued that in dealing with the question of locus standi the court has to carefully scrutinize the claimant's statement of facts with a view to ascertaining whether or not it has disclosed his interest and how such interest has arisen in the subject matter of the action. That in circumstances where the averment in the statement of facts discloses the interest of the claimant which have been or are in danger of being violated, invaded or adversely affected by the act of the 1st respondent, the complaint of the claimant would be deemed to have shown sufficient interest to give him the locus standi, re-litigate over the subject matter in issue. He referred to *Olawoyin v. Attorney General* [1961] ANLR 269 at 173 paragraph 20 where, according to him, it was stated that:

'...the fundamental aspect of locus standi is that it focuses on the part seeking to set his complaint before the High Court and not on the issues he wishes to have adjudicated" (emphasis supplied) therefore the question whether or not the claimant has locus standi to initiate this suit will be determined from all the averments in the originating application'.

Counsel referred the court to paragraphs 1,4, 5, 6, 7, 8, 9, 10, 11, 20, 21, 23, 24, 29, 30, 31, 32 and 33 of the statement of facts dated 8th August 2008 and argued that it discloses the contractual rights and obligations that existed between the claimant and the respondent. That there exists a master servant relationship between the claimant and respondent which is governed by the contract of service as stated in the collective agreement of the National Joint Industrial Council (NJIC) on terms and conditions of service for senior staff in the Building and Civil Engineering Industry in Nigeria dated 28/9/8 8; and part of the complaint of the claimant is the failure of the respondent to pay entitlements due to him. He cited *Nigeria Airways v. Gbajumo* [1992] 5 NWLR (Pt. 244) 735 Ratio 8 and submitted that the claimant should not be shut out at this stage without being heard at all because this court has jurisdiction to entertain this matter by virtue of section 7(1) of the National Industrial Court Act 2006 and the claimant has the locus standi to institute this action.

The claimant's counsel stated that this action was initially filed before the Lagos High Court and was struck out on the objection raised by the respondent's counsel that it is the National Industrial Court that has the jurisdiction to interpret the NJIC collective agreement. That now that the parties are before this court, the respondent says the claimant has no locus standi. He submitted that this court has a duty to do substantial justice and that the merit of the matter can only be determined by it proceeding to trial where the issues will be resolved one way or the other.

On issue 2, the claimant's counsel reproduced the provisions of section 3(3) and (4) of the Trade Unions Act LFN 1990. He stated that the side notes or explanatory notes in the said section stated as follows: "Application for registration of trade union" That it is trite law that the primary function of the Court is to search for the intention of the legislature in the interpretation of a statute and, therefore, the Court must consider the statute as a whole. Counsel submitted that the clear intention of section 3(3) of the Trade Unions Act relates to holding office in a trade union and the proviso is to the effect that it is permitted to hold such office by a projection of management staff in circumstances where the holding of such office will not lead to conflict of loyalties to either the union or to the management staff. He argued that section 3(3) does not bar the claimant from instituting an action for the interpretation of the collective agreement of the NJIC. That Article 1 of the said agreement entitled "Recognition" recognizes the senior staff of which the claimant is one, and that the issue of whether the claimant is a projection of management staff is a matter for trial.

The claimant's counsel also submitted that the proviso to the principal section 3(3) of the Trade Unions Act does not

prevent a management staff from holding office in a trade union in the absence of any conflict. That the clear and unambiguous intention of the legislature with regards to section 3(3) is not to deny a claimant of locus standi in seeking an interpretation of his rights and interest in a collective agreement but is aimed at preventing a projection of a management staff from holding office in a trade union.

Regarding section 3(4) of the Trade Unions Act, he submitted that the arguments canvassed by the respondent's counsel is shallow and cannot deprive the claimant of locus standi to institute and maintain this action. That the word "if" used in section 3(3) and (4) implies that it is not mandatory that a management staff which the claimant is not be excluded from holding office in a trade union.

He submitted also that the submissions by the 1st respondent's counsel and the cases cited are not applicable to the peculiar facts and circumstances as pleaded in the instant suit and that statutes should not be interpreted to defeat fair hearing in a suit, citing *Adesanoye v. Adewale* [2006] 14 NWLR (Pt. 1000) 242. Finally, the claimant's counsel urged the court to strike out the 1st respondent's objection with substantial costs as it is unmeritorious and brought in bad faith.

As indicated above, the respondent did not reply on points of law. The sole issue for determination is whether the claimant has locus standi to have his complaints heard and determined by this court. Locus standi is the legal capacity to institute proceedings in a court of law, the right of a party to appear and be heard on the question before a court.

See *Abraham Adesanya v. President of the Federal Republic of Nig & anor* [1981] NCLR 385. In deciding whether the claimant has locus standi to sue the respondent, in this case, it is necessary to examine the statement of facts as this alone will determine the claimant's locus standi. See *Lahan v Lajojetan* [1972] 6 SC 190 and *Ojimba v. Ojimba* [1996] 4 NWLR (Pt. 440) 32 at 39.

A careful look at the statement of facts particularly paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 has clearly shown that the claimant was employed by the respondent as Chief Accountant and subsequently acted as Financial Controller before he disengaged from the services of the respondent. It is clear from the pleadings that the claimant's claim is in connection with salary arrears, wages, acting allowance and his terminal benefits. From the statement of facts, filed, the claimant has established that there exists a cause of action vested in him. The averments in the statement of facts disclose that the claimant's legal rights and interests have been adversely affected and infringed on.

The issue whether the claimant is a senior staff covered by Article 1 of the National Joint Industrial Council agreement on terms and conditions of service for senior staff in the Building and Civil Engineering Industry or he is in an executive position and so not covered by the said NRC agreement is a question of fact which can only be determined at the hearing of the substantive matter and not at this preliminary stage. The issue whether the claimant can benefit from the NRC agreement is one that can only be raised as defence. It does not go to the jurisdiction of this court because evidence must be lead as to whether the claimant is a senior staff or an executive staff in order to determine whether on the construction of the agreement in question the claimant is covered or not. We, therefore, find that the claimant has the locus standi to institute this action in this court against the respondent. The preliminary objection of the respondent fails and is hereby dismissed.

The matter shall proceed to hearing. We make no order as to cost.

Ruling is entered accordingly.

Hon Justice B.B Kanyip Presiding Judge,

Hon. Justice V.N Okobi Judge,

Hon Justice O. A Obaseki-Osaghae Judge