

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

ON THURSDAY THE 12<sup>TH</sup> DAY OF SEPTEMBER, 2024  
BEFORE THE HONOURABLE JUSTICE D. I. DIPEOLU  
JUDGE

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SUIT NO: FHC/L/CS/1428/2024

BETWEEN:

TOHIR FOLORUNSHO ISMAILA ----- PETITIONER/RESPONDENT

AND:

FBN HOLDINGS PLC ----- RESPONDENT/APPLICANT


RULING

This Ruling is in respect of two (2) applications filed by Parties in this Suit. One is a Preliminary Objection dated the 22<sup>nd</sup> of August, 2024, filed by the Respondent/Applicant, while the other application is a Motion on Notice dated the 28<sup>th</sup> of August, 2024 filed by the Petitioner/Applicant in the said application.

The jurisdiction of a Court to hear and determine a matter is, and has always been a threshold issue and the live-wire of every adjudication. See the case of **WESTERN STEEL WORKS LTD VS. IRON STEEL WORKERS UNION (1986) 2 NSCC (Vol. 17) 786 at 798, Per Oputa J. S. C. (Rtd)** of blessed memory instructively stated as follows:

*“A Court has to be competent in the sense that it has jurisdiction before it can undertake to probe and decide the rights of the Parties. But because*

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*it is regarded as a threshold issue and a lifeline for continuing and proceedings, objection to jurisdiction ought to be taken at the earlier opportunity”.*

In **SPDC v. ANARO & ORS (2015) LPELR-24750 (SC) (Pp. 63 paras. B)**, this point was reiterated Per **KEKERE-EKUN, J.S.C.** as follows:

**"The issue of jurisdiction is the lifeblood of any adjudication, It is so fundamental that it must be resolved before any other step is taken in the proceedings. Jurisdiction goes to the competence of the Court or tribunal to entertain a cause or matter. Any proceedings conducted without jurisdiction would amount to a nullity and any decision reached therein is liable to be set aside."**

In **AIGHOBAHI & ORS v. UWADIA & ORS (2022) LPELR-58207 (Pp.19-20 paras. D)**, the Court of Appeal Per **BOLA, J.C.A.** also - reemphasized the above position when the court stated as follows:

**"it is settled fundamental principle and decision that the issue of jurisdiction is the life blood of any adjudication. It is so fundamental that it must be resolved before any other step is taken in the proceedings. Any proceeding conducted without jurisdiction would amount to a nullity and any decision reached therein is liable to be set aside. See Shell Petroleum Development Company of Nig. V. Anaro (2015) 12 NWLR (Pt.1472) 122 at 185. Jurisdiction is the dignity which a Court has by power to do justice in a cause or complain brought before it is in issue. It is a threshold matter which the**

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Court must determine before taking any further step in the case, for proceeding conducted without jurisdiction remains a nullity. At a challenge to its jurisdiction, the only jurisdiction the Court can exercise is to determine whether or not it has jurisdiction in the matter. See *Brittania U. (Nig.) Ltd. V. Seplat Petroleum Development Co. Ltd* (2016)4 NWLR (Pt.1503)541 at 602.

Flowing from this background, it is established that where the issue of jurisdiction is raised against any action, the issue must first be resolved before further step is taken."

It is therefore imperative to take the Respondent/Applicant's Notice of Preliminary Objection first before delving into the Petitioner's Motion on Notice dated 28<sup>th</sup> of August, 2024.

The Respondent/Applicant is praying this Court via its Preliminary Objection for an Order striking out the Petitioner's Petition dated 9<sup>th</sup> August, 2024.

The grounds upon which the objection is brought are;

- a) The subject of the Petitioner's Petition has become extinct and is no longer a live issue.
- b) The Reliefs sought in the Petitioner's Petition before this Honourable Court have become academic.
- c) Being academic, the Petitioner's Petition is outside of the jurisdiction of this Honourable Court.

Filed in support of the objection are Affidavits, a Written Address and a Reply on Points of Law.

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The learned Silk, who represents the Respondent/Applicant raised a sole issue for determination in the written address which is;

**Whether the Reliefs sought in the Petitioner's Petition dated 9<sup>th</sup> August, 2024 is academic and therefore outside the jurisdiction of this Honourable Court.**

As argument of the sole issue, the learned Silk submitted that the reliefs sought in the Petitioner's Petition have become spent and no longer hold any value or effect if granted by this Court. Therefore, the Petition has become academic and should not be entertained by this Court because it is out of the Court's jurisdiction. The primary and sole objective of the reliefs sought in the Petitioner's Petition relate solely to the Respondent's Annual General Meeting (AGM) specifically scheduled for the 22<sup>nd</sup> of August 2024. There is presently no Annual General Meeting scheduled for the 22<sup>nd</sup> of August 2024. Reliance is also placed on the records of this Court in this suit and reference was made to the Petitioner's own Counter-Affidavit sworn to on the 21<sup>st</sup> of August 2024 in which the Petitioner confirmed that there would no longer be an Annual General Meeting on the 22<sup>nd</sup> of August 2024 which means that the Petition no longer has an existing subject thereby turning the Petition into a purely theoretical exercise. Learned silk for the Applicant/Respondent referred to the Supreme Court case of **IJAODOLA VS. UNILORIN GOVERNING COUNCIL (2018) 14 NWLR (PT. 1638) 32 at 55**. The learned Silk for the Respondent/Applicant

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urged this Court to decline jurisdiction over the Petitioner's Petition herein and strike out the petition dated 9<sup>th</sup> August, 2024.

In response, the Petitioner/Respondent filed a Counter-Affidavit on the 28<sup>th</sup> of August, 2024 and dated same day. Filed along is a Written Address in support of the Counter Affidavit.

The learned silk for the Petitioner/Respondent raised a sole issue for determination in the said Written Address, which is;

***Whether or not, from the facts disclosed in this case, the Respondent/Applicant's prayer in the Motion filed 22/8/2024 ought to be granted or refused.***

As argument of the sole issue, it is submitted by learned silk for the Petitioner/Respondent that the suit before the Court is about the 12<sup>th</sup> Annual General Meeting irrespective of whether it is held on the 22<sup>nd</sup> August, 2024 or the 3<sup>rd</sup> of September, 2024 or any other date whatsoever. The case of the Petitioner/Respondent as presented in its Petition is not academic merely because the 12<sup>th</sup> Annual General Meeting has been postponed to another date. The following issues are still up for determination by this Court in this Petition;

- a) issue of non-specification of the particular place in Nigeria where the 12<sup>th</sup> Annual General Meeting of the Respondent will be held.
- b) Holding of the Respondent/Applicant's 12<sup>th</sup> Annual General Meeting virtually

- c) issue of non-service of the notice of the proposed 12<sup>th</sup> Annual General Meeting on Petitioner/Respondent by the Respondent/Applicant.
- d) issue of non-publication of notice of meeting in at least two national newspapers at least 21 days prior to the date of meeting.
- e) issue of persons not lawfully appointed as Directors of the Respondent/Applicant convening and conducting the said 12<sup>th</sup> Annual General Meeting.
- f) issue of persons not lawfully appointed as Directors presenting themselves for re-election as Directors during the Respondent's Annual General Meeting.
- g) issue of quantum of director fees payable to persons who are not lawfully appointed as Directors and the impact of the payment on dividend payable to the Petitioner as a minority shareholder.
- h) serial breaches of the Orders of this Honourable Court by the Respondent/Applicant with respect to holding of its 10<sup>th</sup> and 11<sup>th</sup> Annual General Meeting.

The issues are real issues which impact on the respondent's 12<sup>th</sup> Annual General Meeting regardless of whether postponed from 22<sup>nd</sup> August, 2024 to 3<sup>rd</sup> September, 2024 or any other day. Learned silk for the petitioner further submitted that this Petition is not about the date the 12<sup>th</sup> Annual General Meeting is eventually held, it is about the 12<sup>th</sup> Annual General Meeting itself. It is about



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whether the 12<sup>th</sup> Annual General Meeting was properly convened on the order of Board of Directors in the face of allegation that they were not lawfully appointed as directors. It is about whether persons whose directorships are being questioned are entitled to sit and plot the affairs of the 12<sup>th</sup> Annual General Meeting. The Petition also raises issues about the legality of a virtual Annual General Meeting of public quoted company, non-service of notice of Annual General Meeting on the Petitioner and other minority shareholders, non-specification of the venue of the meeting in Nigeria as well as non-publication of the notice of the 12<sup>th</sup> Annual General Meeting in at least two national newspapers at least 21 days before the date of the meeting. This Court is urged to hold that the Petition raises fundamental live issues and this Court should dismiss the Respondent/Applicant's application for being devoid of merit.

In Reply on Points of Law, the learned Silk representing the Respondent/Applicant merely re-stated the argument in his Written Address attached to the Preliminary Objection.

All of the above are what is before the Court for determination with regard to the preliminary objection filed by the Respondent/Applicant.

After carefully reading through the Preliminary Objection, the Counter-Affidavit to the objection and the written submissions by senior counsel, I only have a sole issue to determine therefrom, which is;

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Whether this Court has the jurisdiction to entertain  
this suit as it is presently constituted.

It is agreed in several literatures, laws and have been upheld by legal scholars that jurisdiction is the garment, instrument and the very foundation that holds the structure of every lawsuit. Without this very foundation, no matter how strong a case is presented, and/or the degree of expertise and resources committed to it, it will collapse.

In order to determine whether this Court has the foundation that will hold the structure of this suit, the reliefs sought by the Petitioner herein has to be probed. The reliefs sought by the Petitioner are as follows;

- 1) **A DECLARATION** that the Petitioner and/other Respondent's Minority Shareholders are entitled to be served Statutory Notice of Respondent's 12<sup>th</sup> Annual General Meeting scheduled for 22<sup>nd</sup> august, 2024 personally/electronically or by post, 21 days prior to the holding of the Meeting.
- 2) **A DECLARATION** that the Respondent's Notice of 12<sup>th</sup> Annual General Meeting dated 30<sup>th</sup> July, 2024 is null and void for non-compliance with mandatory provisions of Companies and Allied Matters Act and same not having been issued by the authority of a duly constituted Board of Directors of the Respondent.

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- 3) **A DECLARATION** that the 12<sup>th</sup> Annual General Meeting of the Respondent purportedly scheduled to be held virtually on 22<sup>nd</sup> August, 2024 at 10a.m is illegal, null and void same not having been authorized by Law and/the Respondent's Article of Association.
- 4) **A DECLARATION** that it is unlawful for the Annual General Meeting of the Respondent to be convened and/piloted by persons not appointed/ratified at lawfully convened Annual General Meeting of the Respondent.
- 5) **A DECLARATION** that the proposed special business of capital raise is designed to overreach, oppress or unfairly prejudice the Petitioner.
- 6) **AN ORDER** setting aside/annulling the Notice of Respondent's Annual General Meeting scheduled for 22<sup>nd</sup> August, 2024.
- 7) **AN ORDER** of Injunction restraining the Respondent, its Director, servants and all persons acting on its behalf from holding/conducting the 12<sup>th</sup> Annual General Meeting of the Respondent scheduled for 22<sup>nd</sup> August, 2024 via virtual medium or howsoever.
- 8) **AN ORDER** of Injunction restraining the Respondent, its agents, servants, privies and/or assigns from taking any steps to pass any special and/or general resolutions at its Annual General Meeting slated for 22<sup>nd</sup> August, 2024.

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The above reliefs sought by the Petitioner is predicated on the following paragraphs of the Petitioners Petition.

**Paragraph 10:** The Petitioner avers that the Respondent has concluded plans to hold a virtual Annual General Meeting at a non-disclosed venue at 10.00a.m on 22<sup>nd</sup> August, 2024.

**Paragraph 11:** The Respondent recently issued a Notice of 12<sup>th</sup> Annual General Meeting (AGM) which was proposed to be held virtually on Thursday 22<sup>nd</sup> day of August 2024 at 10a.m or so soon thereafter. A copy of the said Notice dated 30<sup>th</sup> July, 2024 shall be relied upon by the Petitioner.

**Paragraph 12:** The attention of the Petitioner was on 8<sup>th</sup> August, 2024 at about 12 noon called to the above referenced notice of Annual General Meeting which was published on the Respondents website: [//www.Fbnholdings.com](http://www.Fbnholdings.com).

a) The said notice will be relied on by the Petitioner at the hearing of the Petition.

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Paragraph 15: The Petitioner states that the Respondent failed to serve him notice of its proposed Annual General Meeting of 22<sup>nd</sup> August 2024 as prescribed by law.

Paragraph 17: Due to Respondent's failure to give and publish the notice of the Annual General Meeting, the Petitioner and other numerous shareholders, of the Respondent, who are entitled to attend the Annual General Meeting, will be denied the opportunities of attending, being heard and voting during the proposed 22<sup>nd</sup> August, 2024 Annual General Meeting of the Respondent.

Paragraph 20: The Petitioner will contend that the notice of the Proposed Annual General Meeting of the Respondent fixed for 22<sup>nd</sup> August, 2024 referenced above is null and void and of no effect due to Respondent's failure to serve the Petitioner and other shareholders of the Respondent with the Notice of the Proposed Annual

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General Meeting as prescribed by law.

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The Respondent/Applicant contends in its Written Submissions and Affidavit that there is no Annual General Meeting of the Respondent scheduled to hold on the 22<sup>nd</sup> of August 2024. That the 12<sup>th</sup> Annual General Meeting (AGM) of the Respondent rescheduled to hold on the 3<sup>rd</sup> of September has been cancelled and that the notice of Cancellation of the 12<sup>th</sup> Annual General Meeting has been posted on the Nigerian Exchange (NGX) Portal on 26<sup>th</sup> August, 2024 and published in the Punch Newspaper and Leadership Newspaper of 27<sup>th</sup> August, 2024. The said copies of the publication on the NGX Portal, Punch newspaper and Leadership Newspaper and letter of cancellation of the meeting are exhibited as PO1, PO2, PO3 and PO4 respectively.

In paragraphs 2, F and I of the Petitioner/Respondent's Counter-Affidavit, it is deposed therein that the Respondent/Applicant had scheduled its 12<sup>th</sup> Annual General Meeting (AGM) to the 22<sup>nd</sup> August, 2024 vide its notice dated 30<sup>th</sup> July, 2024 signed by Adewale Arogundade, that the said 12<sup>th</sup> Annual General Meeting is the res of the Petition before this Court irrespective of the date it is conducted and that the postponement of the 12<sup>th</sup> Annual General Meeting from August, 2024 to 3<sup>rd</sup> September 2024 does not render the Petition academic. The Petitioner/Respondent had approached this Court to prevent the holding of the 12<sup>th</sup> Annual General Meeting earlier fixed for 22<sup>nd</sup> of August, 2024 and my brother judge Honourable Justice Akintayo Aluko granted interim

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orders on the 13<sup>th</sup> of August, 2024 restraining the Respondent/Applicant from holding the 12<sup>th</sup> Annual General Meeting on 22<sup>nd</sup> of August, 2024. My brother Judge also made another Order on the 22<sup>nd</sup> of August, 2024 further restraining the Respondent/Applicant from holding the said 12<sup>th</sup> Annual General Meeting on a rescheduled day of 3/9/2024 pending the determination and resolution of the pending applications.

The Respondent/Applicant in compliance with the orders of the Court cancelled the said 12<sup>th</sup> Annual General Meeting. The procedure for calling for the said 12<sup>th</sup> Annual General Meeting or the non-compliance with extant laws for calling for the 12<sup>th</sup> Annual General Meeting is the crux of the Petition before the Court. The said 12<sup>th</sup> Annual General Meeting has been cancelled therefore the reliefs sought by the Petitioner has become otiose. No wrong has manifested that requires a remedy. There is nothing to determine anymore based on the reliefs and orders sought by the Petitioner. The event hasn't occurred and publications have been made to the whole world that the 12<sup>th</sup> Annual General Meeting has been cancelled. As it is, this Suit is just a fishing expedition crying to be fed with a cause of action.

For the purpose of litigation, a cause of action entails the fact or combination of facts which gives rise to a right to sue and it consist of two elements;

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a) The wrongful act of the Defendant which gives the Plaintiff

this cause of complaint and

b) The resultant/consequent damage.

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It is thus constituted by the aggregate or bundle of facts which the law will recognize as giving the Plaintiff a substantive right to make a claim for remedy or relief against the Defendant. The existence of a cause of action is an indispensable prerequisite. See the case of **ONUOKUSI VS. T.T.C.M.Z.C. (2011) 6 NWLR (PT. 1243) 341 AND ESUWOYE VS. BOSERE (2017) 1 NWLR (PT. 1546) 256 at 269.**

In the instant suit, the Learned Silk for the Respondent has vehemently maintained that the Petition before this Court has out-lived its usefulness and as such has become academic, which I agree with. A suit is academic where it is merely theoretical, makes empty sound and of no practical utilization value to the Plaintiff even if judgment is given in his favour. A suit becomes academic when the questions placed before the Court for determination are no longer live issues in the subject matter of the suit because it is spent and the successful party cannot obtain any right or benefit. See the cases of **PLATEAU STATE VS. ATTORNEY-GENERAL OF THE FEDERATION (2006) 137 LRCN 1400, 1478 and IJAODOLA VS. UNIVERSITY OF ILORIN GOVERNING OCUNCIL (2018) 14 NWLR (PT. 1638) 32, 45.**

In light of all of the foregoing, I hold that this suit is academic and this Court doesn't have the liberty to embark on an academic discovery. This Court now lacks the jurisdiction to entertain this suit as it is currently constituted.

Be that as it may, I will briefly consider the Motion on Notice filed by the Petitioner on the 28<sup>th</sup> of August, 2024 praying this Court for an Order striking out all the [unclear] processes so far filed by the

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


~~Respondent, on the grounds that~~ the Respondent was served with the Originating Processes issued out of the Court and other processes on 15<sup>th</sup> of August, 2024 and that the Respondent is obliged by the Rules of this Court to file its Memorandum of Appearance to this suit along with other processes. The Respondent without filing the mandatory Memorandum of Appearance filed processes in this suit.

In response, the Respondent filed a Counter-Affidavit dated the 4<sup>th</sup> of September, 2024 and it is contained in the said Counter-Affidavit that the Respondent after being served with the Petition, Interim Injunction and Motion on Notice for Interlocutory Injunction on 15<sup>th</sup> August, 2024 filed a Memorandum of Conditional Appearance on 27<sup>th</sup> August, 2024 and served the Memorandum of Conditional Appearance on the Petitioner on 28<sup>th</sup> of August, 2024.

Order 7 Rule 1 of the Federal High Court (Civil Procedure) Rules 2019 provides;

**1-(1) A defendant served with an Originating Process shall within (30) days file in the Registry, along with the processes mentioned in Order 13 Rule 2(1) of these Rules, the original and copy of a duly completed and signed Memorandum of Appearance as specified in Form 11 of Appendix 6 to these Rules with such modifications or variations as circumstances may require.**

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I have read through the Affidavit of Service filed by one Tiamiyu Tunde a litigation officer of the Respondent and the endorsement copy of the Memorandum of Appearance served on the Petitioner. It is crystal clear that the Respondent filed its Memorandum of Conditional Appearance on the 27<sup>th</sup> of August, 2024 and served the Petitioner on the 28<sup>th</sup> of August, 2024, which is within the 30 days allowed by this Court to file a Memorandum of Appearance as provided in Oder 7, Rule 1 of the Federal High Court (Civil Procedure) Rules 2019.

However, the Respondents had filed other processes earlier before the filing of the Memorandum of Appearance. One of the processes filed earlier before the Memorandum of Appearance is the Preliminary Objection which I had earlier considered. The said objection was filed on the 22<sup>nd</sup> of August, 2024.

The learned Silk representing the Petitioner argued that it is mandatory for the Rules of Court to be complied with. That the Respondent ought to have filed along with his Memorandum of Appearance other processes which it was willing to file. However, this Court has consistently held to the effect that as a general rule, non-compliance with rules of Court is an irregularity. Non-compliance cannot be a ground of nullity unless such non-compliance amount to denial of justice, it must always be remembered that rules of court are rules of procedure made for the convenience and orderly hearing of case. The practice and procedure of this Court are designed with the ultimate goals of attaining a just, efficient and speedy dispensation of justice. This

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Court may therefore disregard any technical irregularity in the ~~rules that does not~~ and is not likely to result in a miscarriage of justice. The reason being that this court is a Court of law and justice. See the cases of **COLITO (NIG) LTD VS. HON. JUSTICE TITI DIABU (2010) 2 NWLR (PT. 1178)** and **JOSIAH OLUWOLE FRANCIS VS. CITEC INTERNATIONAL ESTATE LTD (2010) NWLR (PT. 1219)** at Pg. 252, Paras 14.

The non-filing of other processes along with the Memorandum of Appearance by the Respondent is a mere-irregularity. The Petitioner has not or will not suffer any miscarriage of justice by the failure of the Respondent to file along with the Memorandum of Appearance, other processes it has filed in this suit.

I therefore refuse the reliefs sought by the Petitioner urging this Court to strike out the processes filed by the Respondent in this suit. I still reiterate my earlier decision that this Court lack the jurisdiction to continue to entertain this suit as it is presently constituted.

This is the Ruling of the Court.

  
**HON. JUSTICE D. I. DIPEOLU**  
JUDGE  
12/9/2024




Appearances:

For The Petitioner/Respondent:  
MRS. OLAYEMI BADEWOLE, SAN  
O. AKINDURO Esq.

For the Respondent/Applicant:  
BABAJIDE KOKU, SAN  
T. IPAYE Esq.

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