

Action to Recover Solicitor's Fees - Locus Standi and Privity Hurdle: The case of Rebold Industries Limited v. Mrs. Olubukola Magreola & 2 Ors reviewed

- ***Introduction***

Under Nigerian law, one who practices a profession and renders his professional services to another at his request is entitled to receive remuneration or professional fees from the beneficiary of such services unless he voluntarily waives the payment¹. In the case of a legal practitioner, one of the options open to recover fees or costs due to him in his professional capacity is a right of action in court to recover such fees². By section 16 (2) of the Legal Practitioner's Act³, the conditions precedent to bringing an action to recover legal practitioner's fees in court are;

- a. a bill for the charges containing particulars of the principal items included in the bill and signed by the legal practitioner or in the case of a firm by one of the partners or in the name of a firm has been served on the client personally or left for him at his last known address as known to the practitioner or sent by post to the address.
- b. A period of one month beginning from the date of delivery of the bill has expired⁴

It also has to be borne in mind that in instituting an action, before a court of competent jurisdiction there must be a cause of action against a person or an institution which is actionable. A cause of action is the fact or combination of facts which gives rise to a right to sue and it consists of two main elements- the wrongful right of the Defendant which gives Plaintiff his cause of complaint and the consequent damage or the fact on the part of the defendant which gives the Plaintiff his cause of complaint.⁵

Another indispensable prerequisite is the *locus standi* which denotes legal capacity to institute proceedings in a court of law and is used interchangeably with terms like "standing" or "title to sue" which is the right of a party to appear and be heard on the

¹ *Owena v Adedeji (2000) 15 NWLR (Pt 666) 609 @ 619F*

² Other options are the Common Law right to lien to retain property already in the legal practitioner's possession until he shall have been paid fees/costs or the right to direct that the property recovered stands as security for his costs of recovery. See *Sagoe v Queen ((1963) 3 N.S.C.C. 233 at 236*

³ Cap L 11 Laws of the Federation of Nigeria 2004

⁴ See *Oyekanmi v NEPA (2000) 15 NWLR (Pt 690) 414 @ 432A; Owena Bank (Nig) Plc v Adedeji (2000) 7 NWLR (Pt 666) 609 @ 619 A-F*

⁵ *Savage v. Uwaechia (1972) 1 All NLR (Part 1) 25; Egbue v. Araka (1988) 2 NWLR, 598; Kusada v. Sokoto N.A (1968) 1 All NLR 377 at 381.*

question before on the question before any court of tribunal⁶. An objection as to lack of *locus standi* where successfully raised affects the competence and jurisdiction of the court, and the court is obliged to strike out such action without going into the merits of the case.

The case for review examines the importance of the doctrines of *locus standi* and privity of contract in an action for recovery of legal practitioner's fees particularly where the legal practitioner renders services in circumstances where the obligation to pay his fees has been passed by the client who engaged the legal practitioner's services to another person.

- *The Facts:*

Sometime in 1995, the services of the Respondent as a firm of solicitors, was retained by the Mandilas Group Limited for the preparation and engrossment of a deed of sublease between Mandilas Group Limited and Rebold Industries Limited-the Appellant in this case (Rebold). 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 Rebold would be responsible for the legal fees incurred in preparing the Deed of Lease. Rebold failed to make good the said terms of the agreement. On the 14th day of May, 1997, the Respondent – firm of solicitors took out a writ of summons endorsed with a statement of claim against Rebold for the recovery of the said fees incurred in the preparation and engrossment of the deed. Rebold failed to respond to the summons of the respondent firm of solicitors, and a default judgment was entered for the respondent firm of solicitors on the 19th of June, 1998.

On 26th day of November, 1998, Rebold filed a motion before the Lagos State High Court challenging the jurisdiction of the said High Court on the ground that the respondent firm of solicitors 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, Rebold filed an appeal at the Court of Appeal on 14th May, 2002.

At the Court of Appeal, Rebold urged the court to set aside the ruling of the trial court. The Court of Appeal in its judgment dismissed the Rebold's appeal on the ground that even though the respondent firm of solicitors was not a party to the Deed of sublease, the solicitors still had *locus standi* to sue on the representation made by Rebold in the agreement to pay the respondent's firm's fees. Still dissatisfied with the judgment, Rebold appealed to the Supreme Court.

- *The arguments and Issues before the Supreme Court*

At the Supreme Court, the main issue for determination was whether the Respondent-firm had the *locus* to enforce a clause in the sublease when the firm of solicitors was not a party to the sublease. (Rebold as the Appellant at the Supreme Court) argued that the Respondent-firm lacks the *locus standi* to bring the action for fees because as a general rule at Common Law, a contract cannot confer rights or impose obligation on strangers to it. Rebold further

⁶ Senator Abraham Adesanya v. President of the Federal Republic of Nigeria and Another (1981) 5 SC 112 at 28-129

argued that the Court of Appeal erred and should have found that there was no privity of contract with the Respondent-firm to attract any payment obligations for its fees. Rebold stated further that the provision of S. 16 of the Legal Practitioners Act which the Court of Appeal relied heavily could not have given the Respondent-firm the *locus* to institute the suit as the provision only gives right to the Legal Practitioner to sue "his client".

In response, the Respondent-firm of solicitors conceded that as a general rule, a contract cannot confer rights or impose obligation on persons who are strangers to it, but however argued that the general principle has been watered down by many exceptions citing Halsbury's Law of England as confirming the common law exceptions, equitable exceptions and statutory exceptions. The firm of solicitors submitted 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. He further urged the court to resolve the issue against Rebold.

Rebold in its reply brief argued that the instant appeal does not fall under any of the exceptions that the Respondents sought to rely on especially the case of *Chuba Ikpeazu v. ACB Ltd.*⁷ Where the court held that a contract cannot be enforced by a person who is not a party to the contract even if same was made for his benefit. Rebold argued that the case did not support the case of the Respondent-firm but instead supported that of the Rebold.

- *Decision of the Supreme Court*

The Supreme Court in a unanimous decision allowed Rebold's appeal. The apex court agreed with Rebold and set aside the decisions of both the Court of Appeal and the trial court. The Supreme Court held that a plaintiff must show from his pleadings that he has a cause of action maintainable in a court of law against the defendant. As such the court stated that "He (a plaintiff) cannot sue anybody. It must be someone who has wronged him one way or other. You cannot sue someone who has not done you any wrong." The Supreme Court further stated that the fact that the Respondent-firm of solicitors prepared a deed of sublease in favour of Mandilas Group Limited and Rebold, still did not earn the firm of solicitors the right to sue in respect of that Deed because the firm is not a party to the Deed of Sublease. Further, the Court stated that Section 16 (3) of the Legal Practitioners Act will not avail the Respondent firm because the Act encourages the legal practitioner to recover fees from his client. There is glaring evidence that it was Mandilas Group Ltd which engaged the Respondent-firm to draft the agreement and not Rebold and that all processes to recover the charges ought to have been directed to Mandilas Group Ltd.

Further, the Court upheld the principle of privity of contract to the effect that it is only the contracting parties who can benefit or suffer liability in respect of the provisions of a contract. The contract cannot bind third parties nor can third parties take or accept liabilities under it, nor benefit thereunder. As a result, only parties to a contract can maintain an action under the said contract. Even where a clause of the contract agreement is made for the benefit of a third party, the said party cannot sue under the contract. The court further examined the exceptions raised by the Respondent-firm of the suit and held that there are always exceptions to a general rule but such exceptions have to be properly placed before

⁷ *Chuba Ikpeazu v. ACB Ltd.* (1965) NMCR 374 at 379

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. The exceptions of agency relationship, trusteeship and statutory exceptions has nothing to do with the Appeal.

The court held that the doctrine of privity of contract is deeply rooted in our jurisprudence as much as English Law and therefore, the Respondent's firm not being a party to the sublease agreement, it lacked the capacity or the *locus standi* to sue under the said agreement. This was therefore an important feature in the suit which deprived the learned trial judge of the jurisdiction to entertain the matter in the first place. The court then set aside the judgment of both the court of appeal and the trial court.

- *Comment*

This decision has confirmed the position of the law that a person who is not privy to a contract cannot benefit from that contract even if the contract is made for his benefit and loses *locus* to institute an action to enjoy benefits in respect of that contract. The doctrine of privity of contract has been clearly extended to legal practitioners whose clients pass the obligation of remuneration to third parties and as such, a legal practitioner cannot sue the third party because the Legal Practitioners Act only creates a cause of action in favour of a legal practitioner against his client only.

Therefore, it is advised that a legal practitioner who intends to recover his fees from a person other than his client should either enter a separate contract with the party responsible for his fees.

Citation:

The case reviewed is reported as **Rebold Industries Limited v. Mrs. Olubukola Magreola & ORS: Citation- (2015) LPELR- 24612 (SC).**

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