

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION),
HOLDEN AT COURT NO. 12 MAITAMA, ABUJA.**

BEFORE THEIR LORDSHIPS: HON. JUSTICE M.E ANENIH

(PRESIDING JUDGE)

HON. JUSTICE O .A. MUSA

APPEAL No. CRA/45/2015

BETWEEN:

*SUITES B1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
32, 33, 34, 35, 36, 37, 38, 39, 40, 41,
42, 43, 44, 45, 46, 47, 48, 49,
MICHIKA STREET
OFF AHMADU BELLO WAY
(SHARKIR PLAZA), A03 GARKI II*

..... APPELLANTS

AND

ABUJA ENVIRONMENTAL PROTECTION BOARD RESPONDENT

JUDGMENT

This is an Appeal against the ruling of Senior Magistrate Court of the Federal Capital Territory, Abuja delivered by his Worship *Mohammad Kutigi Jibrin*, on 23rd July, 2015 while sitting in his jurisdiction over Environmental Protection Board cases brought before him by the Respondent in respect of the Appellants Notice of Preliminary Objection dated 5th January, 2015 but filed on the 2nd February, 2015 challenging the jurisdiction of the Court to entertain the case.

The Trial Magistrate dismissed the Appellant's Notice of Preliminary objection.

Dissatisfied with the ruling of the lower Court, the Appellants filed a Notice of appeal before this Court on the 27th July, 2015. The appeal in total is predicated on two grounds of appeal which without their particulars reads as follows:-

GROUND ONE:

The learned Trial Magistrate erred in law when he held that the Magistrate Court had jurisdiction to entertain criminal summons addressed to the Appellants in respect of failure to pay waste disposal fees contrary to Section 30(4) & (5) of the AEPB act 1997 in the face of the High Court of the FCT subsisting judgment against AEPB in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd vs AEPB

GROUND TWO:

The learned Trial Magistrate erred in law when he held dismissing the Appellant's Notice of Preliminary Objection dated 5th day of January 2015 on the ground that the judgment of the High Court of the FCT in Messrs County Chambers vs AEPB delivered on 27th September, 2013 in Suit No. FCT/HC/6033/2011 being later in time and in conflict with the judgment of *justice U. A Inyang* in Suit No. FCT/HC/ABJ/CV/825/07 between the Appellant and the Respondent in this appeal

The relief sought by the Appellant for this Honourable Court is as follows:

To allow the appeal, set aside the ruling of the Court below and in particular grant an Order striking out the case against the Appellants at the Court below for want of jurisdiction having regards to the judgment of the High Court of the FCT in Suit No. FCT/HC/ABJ/CV/825/07 between the Appellants and the Respondent which judgment has not been set aside on appeal to the Court of appeal.

Pursuant to criminal summons obtained by the Respondent dated 20th November, 2014 from the Magistrate Court of the FCT, the Respondent initiated criminal proceedings against the Appellants for failure to pay waste disposal fees contrary to Section 30 (4) and (5) of the Abuja environmental protection board act, 1997.

Prior to the issuance of the summons on the Appellants by the Respondents, the Appellant had obtained judgment against the Respondent dated 29th June, 2012 from the FCT High Court in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd. Vs AEPB & 2 ors which said judgment had not been appealed against.

The Appellants by a Notice of Preliminary Objection dated the 5th January, 2015 but filed on 2nd February, 2015 challenged the jurisdiction of the Court to entertain the case before it on the ground that there is a subsisting judgment of the High Court of the FCT against the Respondent in Suit No. FCT/HC/ABJ/CV/825/07 between Shakri Plaza Tenants Nig. Ltd vs AEPB & 2 ors delivered on 29th June, 2015 which had not been set aside on appeal.

The Notice of Preliminary Objection had attached to it certified true copies of the said judgment in Suit No. FCT/HC/ABJ/CV/825/07, the certificate of judgment and the enrollment Order of the High Court garnishing the judgment debt against the Respondent marked as exhibits a, b, and c respectively.

The Respondent filed a reply to Notice of Preliminary Objection and counter affidavit deposed to by *Ahmed Yahaya* filed on 5/3/2015. The Respondent filed written address in respect of the Notice of Preliminary.

The Appellants upon being served with the Respondent's counter affidavit and written address filed a further and better affidavit dated 26/3/2015 in support of the Notice of Preliminary Objection and its written address in support of the Notice of Preliminary objection.

The Trial Magistrate heard the Notice of Preliminary Objection on the 7th may, 2015 and on 23rd July, 2015 the lower Court delivered its ruling and dismissed the Appellants' Notice of Preliminary objection.

The Appellants filed their brief of argument dated 19th August, 2015 and filed same day. In the said Appellant's brief of argument, two issues for determinations were formulated as distilled from the grounds in the Appellant Notice of appeal. The issues are as follows:

1. Whether the Trial Magistrate had jurisdiction to enter the criminal case of failure to pay waste disposal fees contrary to Section 30 (4) and (5) of the AEPB act 1997 presented to it by the complainant / Respondent against the accused / Appellants in view of the subsisting judgment of the High Court of the FCT against the complainant / Respondent in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd. Vs AEPB & 2 ors delivered on 29th June, 2012.

2. Whether having regards to the circumstances of this case, the Trial Magistrate was right in his application of the principle of judicial precedent of later in time of judicial authorities prevails where there are two or more conflicting authorities despite the judgment in Suit No. FCT/HC/ABJ/CV/825/07.

Issue 1: Whether the Trial Magistrate had jurisdiction to enter the criminal case of failure to pay waste disposal fees contrary to Section 30 (4) and (5) of the AEPB act 1997 presented to it by the complainant / Respondent against the accused / Appellants in view of the subsisting judgment of the High Court of the FCT against the complainant / Respondent in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd. Vs AEPB & 2 ors delivered on 29th June, 2012.

The learned Appellant counsel in arguing the issues, submitted on issue one that;

The issue borders on whether or not the lower Court had jurisdiction to entertain the Respondent's case presented to the Court predicated upon the criminal summonses obtained from the Trial Magistrate Court against the Appellants.

He submitted that it is trite that issue of jurisdiction is the life wire of a case and where a Court is found not to possess jurisdiction to entertain a matter, the proceedings conducted thereto would all amount to a nullity.

He cited in support the cases of:

Emmuze vs V.C. University of Benin (2002) 8 NWLR (pt. 828) 378 at 395, Para C – E

Lakanmi vs Adene (2003) 10 NWLR (pt. 828) 353 at 367 Paras D – F

A – G, Oyo State vs N.L.C (2003) 8 Nwlr (pt. 821) 1 at 26 Paras G – H

Madukolu vs Nkemdilim (1962) 2 SCNLR 341

I.M.B. ltd vs P.T.F. (2006) 5 NWLR (pt. 974) 463 at 472 Paras F – H.

In another submission, counsel state that the decision of the lower Court dismissing the Appellants' Notice of Preliminary objection challenging its jurisdiction to entertain the case was wrong having regards to the fact of the judgment of the High

Court of the FCT in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd. Vs AEPB & 2 ors delivered on 29th June, 2012.

He stated that the sole ground of the Appellants Objection at the lower Court was predicated upon the subsistence of the said judgment , a certified true copy of which was attached as exhibit a in support of the Objection . Exhibits b and c attached to the affidavit in support of the Objection were the certified true copies of the certificate of the said judgment and the enrolled garnishee Order of the said Court.

He referred the Court to paragraph 5, 7, and 8 of the affidavit in support of the Notice of Preliminary objective.

He added that the reason advanced by Respondent for not appealing against the said judgment is that another Court of the FCT High Court presided over by Hon. Justice M. M. Kolo of Court 32 in suit no. FCT/HC/CV/6033/2011 delivered a judgment which was in favour of the Respondent and as such it decided not to appeal against the Appellants judgment in Suit No. FCT/HC/ABJ/CV/825/07

He submitted the above reason does not erode the fact that the judgment against the Respondent in Suit No. FCT/HC/ABJ/CV/825/07 is still subsisting.

Counsel further submitted that the position of the law is that a judgment of a Court of competent jurisdiction which is not appealed against remains valid and subsisting until set aside either by the same Court or on appeal.

He cited the cases of Fasade vs Babalola (2003) 11 NWLR (pt. 830) 26 at 43 Para D, Salaudeen vs Oladele (2003) 3 NWLR (pt. 806) 29 at 44 Para F.

He said the learned Trial Magistrate therefore had no reason whatsoever to refuse and he submitted he was in grave error when the Appellants Notice of Preliminary objective was dismissed in the face of exhibits a, b, and c.

He contended that the summonses which were issued on the Appellants in respect of the criminal case before the Trial Magistrate and which this appeal borders on, he submitted with the greatest respect is in respect of failure to pay waste disposal fees . The said summonses were issued to individual Tenants of shakier Plaza in

disobedience of the judgment of the High Court in Suit No. FCT/HC/CV/825/2007.

Again, Counsel submitted that the lower Court had no jurisdiction whatsoever to entertain the subject matter contained on the summonses issued on the Appellants, same having been determined by a Court of competent jurisdiction.

He further submitted that the learned Trial Magistrate was in error when he dismissed the Appellant's Notice of Preliminary Objection because the judgment in Suit No. FCT/HC/CV/825/2007 between Shakir Plaza Tenants Nig. Ltd vs AEPB & 2 ors were binding upon the Appellant, the Respondent and the two other parties to that judgment. The parties to this suit and in particular the Respondent did not have any choice in the matter except to obey the said judgment which is to the effect that the Respondent cannot issue on the Appellants separate bills for waste disposal fees.

He cited the cases of A.G FED. vs ANPP (2003) 18 NWLR (pt 851) 182 at 211 Paras B – D, Sun Insurance Plc vs Adegoro ye (2003) 11 NWLR (Pt. 831) 389 at 396 Paras B – C.

Consequently, counsel submitted that the decision of the lower Court dismissing the Appellants' Notice of Preliminary Objection was wrong and not well thought out by the Trial Magistrate since that said judgment in Suit No. FCT/HC/ABJ/CV/825/07 was binding on the Appellants and the Respondent. The Respondent and the lower Court for that matter therefore had no legal basis to issue separate bills on waste disposal fees to the Appellants based upon the said judgment. The Respondent having confirmed knowledge of the judgment had a duty to inform the Court about the pendency of the judgment and the lower Court would not have lent itself to issue summons in respect of which a subsisting judgment had delivered.

He urged the Court to hold that the learned Trial Magistrate had no jurisdiction to entertain the criminal case in mc/CR/AEPB/2014 having regards to the judgment of the FCT High Court in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd vs AEPB & 2 ors which is still subsisting and valid until set aside by the Court of appeal.

Issue 2: Whether having regards to the circumstances of this case, the Trial Magistrate was right in his application of the principle of judicial precedent of later in time of judicial authorities prevails where there are two or more conflicting authorities despite the judgment in Suit No. FCT/HC/ABJ/CV/825/07.

The learned appellants' counsel stated on this issue that the principle of law which the lower Trial Magistrate applied was the principle of judicial precedent which a lower Court is to apply in respect of judicial precedent which a lower Court is to apply in respect of a case before it where the Trial Court is confronted with two conflicting decisions of a superior Court cited to it for its application to the dispute which he is called upon to resolve.

Counsel cited the cases of FBN Plc vs Ladgroup Ltd (2004) 14 NWLR (pt. 893) 443 at 463 Paras D – F, Alh. I.Y. Ent. Ltd. Vs Omolaboje (2006) 3 NWLR (966) 195 at 203 Para B.

As such, counsel submitted that the said principle can only hold water in case where the parties before a lower Court are not bound by any form of decision of a Higher Court otherwise, the principle would be inapplicable.

Furthermore, he stated that the Appellants are not parties to the so called latter decisions in the cases which the lower Court relied upon which said decisions have no binding force or authority on the Appellants.

Therefore, He submitted that the appropriate principle of law which the Trial lower Court ought to have applied in this case but which it failed to do was the principle of estoppel per res judicata.

He referred the Court to the cases of;

Anwoyi vs Shodeke (2006) 13 NWLR (pt. 996) 34 at 45 Paras B – D ,

Anwoyi vs Shodeke (supra) at Page 50 Paras A – C,

Adowe vs Ikebudu (2001) 14 NWLR (pt. 733) 385,

Olanibi vs Ohara (2006) 10 NWLR (pt. 988) 297 at 314,

Eze vs Nwaubani (2003) 7 NWLR (pt. 818) 50.

He submitted more so that considering the fact that the Respondent not having challenged the judgment of the High Court in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd vs AEPB & 2 ors and which decision is in respect of the same subject matter (i.e. the refusal to pay waste disposal fees), in respect of the same parties and which the Respondent subsequently by the summonses of 20th November, 2014 sought to re – litigate by the said summonses at the Magistrate Court of the FCT , the said Magistrate Court lacks jurisdiction to entertain same by virtue of the said judgment of the High Court.

In another submission, counsel stated that the conduct of the Trial Magistrate in holding that it possessed jurisdiction to entertain the matter is tantamount to wanting to sit on appeal over the judgment of the FCT High Court in Suit No. FCT/HC/CV/825/2007 and he urged the Court not to allow this to happen.

Consequently, he urged the Court to allow this appeal and strike out the case at the Trial Court for want of jurisdiction to entertain same.

At the hearing of this appeal, learned counsel for the Appellant adopted the submissions in his written address and urged the Court to allow the appeal and strike out the case pending at the Magistrate Court. The Respondent on their part despite service of the record of appeal, brief of argument and other processes did not file a Respondent's brief.

We shall nevertheless proceed on the basis of the provision of Order 43 Rule 13 to determine the merits and justice of the appeal on the basis of the Appellant's brief and the records of proceedings. We have on our part read meticulously the records of appeal and the brief of argument filed by the learned counsel and we are of the considered opinion to adopt the first issue of determination formulated by the Appellants counsel in resolving this appeal. The issue reads thus:-

Whether the Trial Magistrate had jurisdiction to enter the criminal case of failure to pay waste disposal fees contrary to Section 30 (4) and (5) of the AEPB act 1997 presented to it by the complainant / Respondent against the accused / Appellants in view of the subsisting judgment of the High Court of the FCT against the complainant / Respondent in Suit No. FCT/HC/ABJ/CV/825/07 between Shakir Plaza Tenants Nig. Ltd. Vs AEPB & 2 ors delivered on 29th June, 2012.

We shall start by saying that the concept of jurisdiction is very fundamental, that, it should be determined first by the Court before starting any proceedings. This is because, where the Court proceeds without jurisdiction, all proceedings however well conducted amount to a nullity.

It is equally trite law that, the issue of jurisdiction can be raised at any stage, by a party or the Court and even on appeal in the Supreme Court. In support of this, I refer to the case of *Lufthansa vs Odiese* (2006) 7 NWLR (pt. 978) 34 at 72 Paras D – G, where it was held thus:

“It is now elementary that, the issue of jurisdiction being the threshold in judicial adjudication is so fundamental that, it can be raised at any stage of proceedings of an action before all the Court.

Furthermore, once it is raised, it is required by expediency to be treated or determined first, because any proceedings or steps taken in the absence of jurisdiction are null and void abinitio no matter how well conducted”

See also the case of *Madukolu vs Nkemdilum* (1062) 2 SCNLR, *Ndayako vs Dantoro* (2004) 13 NWLR (pt. 889) 187.

We have observed that the Appellant’s contention and the sole ground of their objection at the lower Court as shown in the record of appeal was predicated upon the subsistence of the judgment of the high Court of the FCT in Suit No. **FCT/HC/ABJ/CV/825/07** between *Shakir Plaza Tenant’s Nig Ltd vs AEPB & 2 Ors* delivered on 29th June, 2012.

The Appellant’s counsel submitted that the said judgment was not appeal against by the Respondent and as such it remains valid and subsisting until set aside either by the same Court or on appeal.

We have gone through the judgment delivered by our brother *Hon. Justice U. A Inyang* between *Shakir Plaza Tenants Nig. Ltd vs AEPB & 2 Ors* and the judgment in effect is that the respondent cannot issue on the Appellants separate bills for waste disposal fees. We have also found out that there is nothing showing in the record of the appeal that the said judgment was either set aside or appeal against. In that regard, it is settled law that judgment of a Court of competent jurisdiction is valid until set aside and only the parties are bound by it. In this

respect, we referred to the case of *Agbongunleri vs Depo* (2008) 3 NWLR (pt. 1074) 217 at 246, Para H where the Supreme Court held thus:-

“Even though learned counsel for the Appellant has argued that an appeal against that decision still pends, it does not change the finality status of the judgment for the purpose of the principles of estoppels per rem judicata, the judgment has been given by a competent Court of record in the exercise of its original jurisdiction. It remains binding on all concerned and can and does command obedience until set aside.”

See also *Ojo vs INEC* (2008) 13 NWLR (pt. 1105) 577.

Having said these, we have equally gone through the two other judgment in the record of appeal i.e. the one delivered by *Hon. Justice M. M Kolo* of High Court No. 32 in Suit No. FCT/HC/6033/2011 between Messrs Country Chambers vs AEPB on 27/09/2013 and the other one delivered by Hon. Justice A.A.I Banjoko of FCT High Court in Suit No. FCT/HC/5586/2011 between *O.S Ephraim – Oluwanuga* (Trading under the name and style of O.S Ephraim – Oluwanuga & Co.) and AEPB on 12/02/2013, the two judgments with the one relied upon by the Appellants for their preliminary objection at Magistrate Court i.e. the one delivered by *Hon. Justice U.A Inyang* between Shakir Plaza Tenants Nig. Ltd vs AEPB & 2 ors delivered on 29th June, 2012 in Suit No. **FCT/HC/ABJ/CV/825/07**, have common denomination. In other words, having studied the three judgments carefully, we have found out that they relate to the same subject matter i.e. yardstick for bailing individual against collective bailing in a tenement.

More so, from the record of appeal, the judgment relied upon by the Appellant was delivered on 29th June, 2012 while the other two were delivered on 27/09/2013 and 12/02/2013 respectively. Having pointed out these, it is settled law that where there are two or more conflicting decision on the same subject matter of the Court of coordinate jurisdiction, the Court is bound by the latest one. We have no doubt that authorities are legion on this, As such, we call in aid the decision in *Alao vs V.C Unilorin* (2008) 1 NWLR (pt. 1069) 421 at 450, Paras F – G. where Court of appeal has this to say thus:

“I am also, not unmindful of the decision of the Supreme Court in the case of *Adigun vs Ayinde* (supra) at page 533. There, the Court, in interpreting

section 2(a) of the public officers (protection) law, caps. 111, laws of Niger State held that it applied without exception to “any action”. However, with due respect and deference to this decision, the law is that, where there are conflicting judgment of Courts of equal jurisdiction, the Rule is that the decision later in time prevails.”

See also *F.G.N vs Zebra Energy Ltd* (2002) 18 NWLR (pt. 798) 162. *Amkpedem vs Udo* (2000) 9 NWLR (pt. 673) 631.

Consequently, since the three judgments referred above emanated from high Court i.e. Court of co-ordinate jurisdiction , we are of the considered opinion that the later in time being the one delivered by our brother *Hon. Justice M.M Kolo* of high Court No. 32 in suit no. **FCT/HC/6033/2011** between Messers country Chambers vs AEPB prevails.

In the light of the above, we agreed with the reasoning of trial Magistrate in his ruling and we do not intend to fought same, as such, we hold very strongly that the trial Magistrate has jurisdiction to entertain the case as presented to him by the complainant / Respondent. In that regard, we resolved the sole issue for determination in this appeal against the Appellant and in favour of the Respondent.

The result is that we uphold the ruling of the trial Magistrate and dismissed this appeal in its entirety for lack of merit.