

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/972/17

BETWEEN:

SENATOR HADI SIRIKA.....CLAIMANT

VS

1. BANI MBAKA INVESTMENT LTD

2. MOHAMMED .M. LAWAL.....DEFENDANTS

RULING

By a Notice of Preliminary Objection filed on 11/4/19 brought pursuant to Order 23 Rule 2 and Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of court, the Defendants/Applicants seeks the following reliefs;

- (1) This matter was wrongly commenced under "Undefended List, same matter having been transferred to "General Cause List" by FCT High Court NO. 6 presided over by Hon. Justice Banjoko in suit No. FCT/HC/CV/1480/14.
- (2) That Plaintiffs applied to the Chief Judge of FCT High Court for Suit No. FCT/HC/CV/1480/14 be transferred, but when the application was not granted they discontinued the matter.

Attached is the Letter of Application for transfer and Notice of Discontinuance marked as Exhibit "A" and "B" respectively.

(3) This Honourable Court lacks jurisdiction to hear this matter because condition precedent have not been satisfied by the Plaintiffs in commencing this matter.

(4) And the Omnibus relief.

The Applicant filed along a Written Address and adopts same as oral submission in support of the Preliminary Objection.

Responding, Claimant/Respondent filed a counter affidavit of 45 Paragraph deposed to by the Onome Ikwenan a Legal Practitioner in the Law Firm of Respondent's Counsel. Also filed a Written Address and adopts same as oral submission.

Upon being served, Defendants/Applicants filed their reply on point of law on 12/09/2019.

In their Written Address, Defendants/Applicants Counsel formulated 2 issues for determination namely;

(1) Whether the Claimant was right to have commenced this matter under the "Un defended List" Procedure, same matter having been transferred to the "General Cause List" by the same FCT High Court No. 6 in Suit NO. FCT/HC/CV/1480/14, if so whether this matter does not amount to abuse of court process.

- (2) Whether from the Agreement of the parties the Claimant has fulfilled the condition precedent in instituting this matter and whether the Claimant's claim discloses any reasonable cause of action against the Defendants.

On issue one submits that court cannot interfere with its earlier decision to transfer the suit filed by the Claimant under the "Undefended List" to the "General Cause List" and being a decision on the merit neither the court nor court of coordinate jurisdiction can set it aside. That it would amount to abuse of court process for Claimant to commence this suit under the "Undefended List" for the second time against the same party praying the same issue when same had been transferred to the General Cause List. Refer to the case of Adebisi Vs Adekanbi (2018) 16 NWLR (PT. 1645) 242 @ 256 Paras C – E, Oceanic Bank Int'l Plc Vs C.S.S Ltd (2012) 19 NWLR (PT. 305) 397 @ 417 Paras D – E, Omeike Vs Omeike (2013) 13 NWLR (PT. 1371) 423 @ 432 – 433 Paras H – B, A G Kwara State Vs Lawal (2018) 3 NWLR (PT. 1606) 266 @ 290 – 291 Paras E – F, Adeyemi Bero Vs Omotosho (2008) 15 NWLR (PT. 1111) 576 @ 591 B – D, Ayoade Vs Spring Bank Plc (2014) 4 NWLR (PT. 1396) 93 @ 128 B – E, Wimpay Ltd Vs Balogun (1986) 3 NWLR (PT. 28) 328 @ 366, O.S.S.IEC Vs N.C.P (2013) 9 NWLR (PT. 1360) 451 @ 466 Paras D – H and Ibhade (Nig) Ltd Vs Akwan (2015) 13 NWLR (PT. 1477) 507 @ 527 Para B – C.

On the second issue submits that for this matter to be competent, Claimant must have complied with the Agreement entered into by the parties on 6/8/2008, which specifically stated that the terms and condition of the said Agreement will be reached by the parties in future and having not held a

further meeting to reach a concrete Agreement that will govern their relationship based on the earlier Agreement. The Claimant having not fulfill this condition cannot institute this action, refer to the case of Jumbo United Co. Ltd Vs Leadway Assurance Co. Ltd (2016) 15 NWLR (PT. 1536) 439 @ 468 Paras A – C Dada Vs Sikuade (2014) 17 NWLR (PT. 1435) 72 @ 114 – 115 Paras F – A and Ajibola Vs Sogeke (2003) 9 NWLR (PT. 826) 494 @ 533 Paras F – G.

Submits further that parties are bound by the terms as agreed, therefore the terms and conditions of the Agreement must be reached by the parties before the court can assume jurisdiction, refer to the case of Nigercare Development Co. Ltd Vs A.S.W.B (2008) 9 NWLR (PT. 1093) 498 @ 527 Paras C – D, B F, Group Corp Vs B.P.E (2012) 18 NWLR (PT. 1332) 209 @ 238 – 239 Paras H-A. A.I.Int'l Ltd Vs Afribank (Nig) Plc (2013) 9 NWLR (PT. 1359) 380 @ 408 – 409 Paras G – D.

Submits that where an action is not commenced by due process of law the entire proceedings of the court would be declared null and void and if the Claimant want this court to assume jurisdiction over the matter, Claimant must agree on the terms and condition of their Agreement, the breach of which will confer the court with requisite jurisdiction to hear and determine the matter, refer to the case of Zakari Vs Nigerian Army (2015) 17 NWLR (PT. 1487) 77 @ 98 Paras B – E Mamman Vs Bwacha (2017) 1 NWLR (PT. 1547) 425 484 – 485 Paras D – A.

Submits further that parties are enjoined to freely enter into contract based on their own terms and condition and court cannot make a contract for the

parties refer to case of Afrotech Tech Service (Nig) Ltd Vs MIA& Sons Ltd (2000) 15 NWLR (PT. 692) 730 @ 788 Paras D – E. And that for there to be an enforceable action between the parties there must be a binding contract before the court, invites court to consider Claimant’s Exhibit “SH 51” which is an inconclusive Agreement and therefore not enforceable in law. Refer to Dosumu Vs N.N.P.C (2014) 6 NWLR (PT. 1403) 282 @ 316 Paras A – C.

Submits finally that court can only assume jurisdiction if there is breach of the terms and condition that governs the relationship of the parties in their Agreement on 6/8/2008, since they have not reached any terms and conditions as agreed in Exhibit “SH 51”, where either of the parties defaulted this court therefore lacks jurisdiction to hear and determine this matter.

Urge court to hold that the Claimant’s claim having not disclosed any reasonable cause of action against the Defendant, court should strike out the action for want of jurisdiction.

In their Written Address, Claimant/Respondent’s Counsel in the same vein formulated two issues for determination that is;

- (1) Whether the act of the Defendants attaching Exhibits to the Notice of Preliminary Objection without pleading them in a counter-affidavit is not an abuse of court process.
- (2) Whether facts admitted by the Defendants require further proof.

On issue one, submits that Defendants/Applicants raised issue of jurisdiction which is an issue in law. And attaching Exhibits based on facts without an affidavit pleading them is not sufficient, that the issues of facts expressed in there documents goes to no issue, that facts are pleaded and documents tendered in support of the facts. Refer to Oghone Vs Oghoyone (2010) 3 NWLR (PT.1182), therefore court cannot be compelled to rely on Applicant's Exhibits "A" and "B".

Submits further that when a Claimant. files a Notice of Discontinuances of a Suit such cannot be taken to mean dismissal of the suit, which can ground estoppels for the Defendant/Applicant; only an order of dismissal of a suit operates as estoppels perem judicata refer to the case of Ejiofor Vs Onyekwe (1972) 7 NSCC 724 @ 730 and also Paragraphs 9 -10 of their counter-affidavit and submits that Defendants cannot approbate and reprobate at the same time.

On issue two, submits that the implication of Section 123 of the Evidence Act is that where a fact is admitted, such admitted facts requires no further proof, that based on the admission of the Defendant in Paragraph 8,9,11,14,27 and 39 of their affidavit deposed to by the 2nd Defendant as Exhibit "AA" is binding on the Defendants. Thus the ground relied on for their Preliminary Objection must fail and should be struck out for not only lacking in merit but false. Having admitted the existence of a simple contract in Paragraph 39 of the Exhibit "AA" Defendant cannot turn around to deny same as they are bound by their admission which require no further proof. Refer to the case of Blezan Exclusive Guest House Ltd Vs Union Homes savings & Loans Ltd (2011) 7NWLR (PT. 1240) 246 @ 285.

Therefore the argument of the Defendant that there was no cause of action or Agreement between the parties fails and the case of Dosunmu Vs NNPC (2014) 6 NWLR (PT.1403) relied upon by the Defendants cannot avail them.

Submits further that court has the inherent jurisdiction to protect itself from abuse, refer to Josiah Vs Cornelius Ltd Vs Ezenwa (1996) 4 NWLR (PT. 443) 391 @ 408 this Notice of Preliminary Objection is an abuse of court process. That in the determination of whether there exists a reasonable cause of action, the court is confined to the reliefs sought in the Claimant's Writ of Summons and refers court to Paragraph 15 of Claimant's Counter-affidavit.

Submits finally that court has the powers to grant the relief of the Claimant refer to Afribank (Nig) Plc Vs Akwara (2006) 5 NWLR (PT. 974) 619 @ 653. Urge court to strike out the Preliminary Objection.

In their reply on point of law Defendants/Applicants re-affirms their contention against the case of the Claimant urge court to dismiss it been an abuse of court process.

Having carefully considered the submission of Counsel for and against the Notice of Preliminary Objection as well the judicial authorities cited the court finds that the issue which calls for determination are;

- (1) Whether this suit constitutes an abuse of court process.
- (2) Whether this court have jurisdiction to hear the case of the Claimant.

First, Claimant/Respondent Counsel raised objection to Defendants/Applicants counsel attaching Exhibit to their Written Address. Exhibits are attached in proof of facts and are therefore evidence themselves, I agree with the submission of Respondent's Counsel that facts are pleaded and Exhibit tendered in proof of the facts pleaded. It is trite that no matter how brilliant the Address of Counsel is same cannot be taken as evidence in proof of facts. See the case of Baba Ahmed Vs Adamu (2009) All FWLR (PT. 473) therefore the court hereby refuse to regard the suit Exhibits "A" and "B" attached to Applicant's Written Address as evidence I so hold.

On the issue of whether this case constitute an abuse of court process; what may constitute an abuse of court process has been hold in a Plethora of cases. In Atuyeye Vs Ashamu (2009) All FWLR (PT. 455) 1770 @ 1729 Paras C – E the court held;

"An abuse of court process is constituted when more than one suit is instituted by a Plaintiff against a Defendant in respect of the same subject matter to the harassment, irritation and annoyance of the Defendant and in such a manner as to interfere with the administration of justice"

In the instant case, the grouse of the Applicant is that this matter having been instituted by the Claimant against the Defendant/Applicant praying for the same orders is an abuse of court process moreso when the same matter had been heard by another court of the FCT in suit NO. FCT/HC/CV/1480/14 on the 10/11/2014. On the other hand the Claimant/Respondent admitted filing the suit against the

Defendants/Applicant in Suit No. FCT/HC/CV/1480/14, in their counter affidavit against the Preliminary Objection of the Defendants, but claims that an order striking out a suit based on the application of the Claimant cannot by any stretch of imagination be taken to mean an order of dismissal; therefore this case cannot be an abuse of the process of court.

I have taken a look at the competing claims of the parties and applying the definition of abuse of court process and stated above, this suit in my view does not fall within the meaning of what amounts to abuse of court process. I am convinced by the admission of the parties that the Suit No:FCT/HC/CV/1480/14 was discontinued, and can therefore not be said to be a matter pending in court for this suit to constitute a multiplicity of suits. I so hold.

On the second issue, that is whether court have jurisdiction to hear the suit of the Claimant. Jurisdiction have been held to be the threshold and live wire of any suit and were court lacks jurisdiction, a decision no matter how well considered will come to naught see the case of Investors Int'l (London) Ltd Vs F.B.N Plc (2008) All FWLR (PT. 405) 1770 @ 1779 Paras B – C. In the determination on whether or not the court have jurisdiction, the court have been called upon to consider the nature of claim before the court. See P.C.H.S Co. Ltd Vs Migfo (Nig) Ltd (2012) All FWLR (PT. 642) 1615.

In the instant case the ground upon which Applicant objects to the Suit of the Claimant is that the Claimant have not complied with the condition that will confer this court the requisite power to entertain this suit since they

have not revealed any terms and condition as agreed in Exhibit "SH 51" of the Claimant. On the other hand Claimant/Respondent contends that having admitted owing the Claimant in Exhibits "AA" particularly Paragraph 39 of same, the Preliminary Objection of the Defendant/Applicant must fail.

In resolving this issue, the court must consider its record and the court is empowered to do, see the case of Agbareh Vs Mimra (2008) All FWLR (PT. 409) 559 @ 564 Ratio 7.

I have taken a considered look at the Writ of Summons of the Claimant, wherein he claims the outstanding sum of \$150,000.00 (One Hundred and Fifty Thousand US Dollars) owed by the Defendant to the Claimant for the purpose of transacting bureau de change business. I have also taken a look at the Exhibit "SH 51" relied upon by the Defendant/Applicant for objecting to the jurisdiction of court. The said Exhibit "SH 51" an Agreement between Mohammed M. Lawal and Hadi Sirika dated 6/8/08.

"I Muhammed M. Lawal have received the sum of \$300,000.00 (Three Hundred Thousand Dollars only) from Hadi Sirika for the purpose of transacting bureau de change business on terms and conditions to be agreed upon later or in due course"

The question is, should the failure of the parties to reach terms and conditions in due course, rob court of jurisdiction where the claims is for the sum received by Mohammed M. Lawal? Having taken a considered look at the claim of the Claimant/Respondent as well as the Exhibit "SH 51", I am of the firm view that even though the parties to the Agreement failed to reach any terms and condition, there is nothing stopping the party who

advanced the sum contained in the Agreement from moving a demand of the sum as there is no condition in stipulating that he cannot demand for the payment of the sum until terms and conditions are reached. Therefore not reaching terms and conditions as stated in the Agreement cannot rob this court of jurisdiction to hear the suit, where the claim bothers on money had and received I so hold.

From all of these and having found that the suit of the Claimant cannot be termed an abuse of the process of court having also found that there is nothing which robs court of jurisdiction to hear suit of the Claimant/Respondent this court therefore holds that the grounds as objection to the suit lacks merit and is hereby refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

13/11/2019

APPEARANCE:

O.H OKENE - FOR THE CLAIMANT/RESPONDENT

M.I TOLA WITH HIM EMMANUEL EDU AND AMINA AHMADU FOR THE DEFENDANT/APPLICANT