

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE V.V.M VENDA.**

**ON TUESDAY 14<sup>TH</sup> DAY OF MAY, 2019**

**SUIT NO FCT/HC/PET/191/18**

**BETWEEN:**

**MR. FASUBA AKINDURODOYE OLUSOLA \_\_\_\_\_ PETITIONER**

**AND**

**TEMITOPE OPARINDE FASUBA \_\_\_\_\_ RESPONDENT**

## **CONSENT JUDGMENT**

Parties – Absent

Petitioner – Present

**O.K. Akpokola** for Petitioner/Cross Respondent

**Michael Ogobuchi** for Respondent/Cross Petitioner who is in court.

**Akpokola:** Matter is for Report of Settlement. We have filed our terms.

**Michael:** That is the position. We adopt the terms we filed.

**Akpokola:** The terms of Settlement was filed on the 7/5/19

Dated 26/4/19. We rely on the inherent power of

the court to adopt the said terms of settlement  
having been duly signed by the Petitioner/Cross  
Respondent and the Respondent/Cross Petitioner.  
Their witnesses also signed. We humbly adopt  
same.

**Michael:** I align myself with the submission of the counsel to  
Petitioner and urged the court to enter judgment as  
Consent Judgment.

**Court:** The terms of settlement dated 26/4/19 and filed on the  
06/05/19 being and representing the minds of the  
parties are hereby adopted as consent judgment of the  
court.

*Singed*  
*Hon. Judge*  
*14/05/19*

**APPEARANCES**

- 1. O.K. AKOKELA ESQ** for Petitioner.
- 2. MICHAEL OGOBUCHI** for Respondent/Cross Petitioner.

### **RULING/JUDGMENT**

Upon being granted leave to go on with the case learned counsel to the 1<sup>st</sup> Respondent/Applicant informed the Court of their intention to move their motion dated and filed on the 11/05/2011 which was brought pursuant to the inherent jurisdiction of the Court as provided for by section 6 (6) of the 1999 constitution of the Federal Republic of Nigeria. Praying for the following orders:

An order of this Court dismissing the sustentative suit on the ground that this Court lacks the jurisdiction to entertain same.

And for such further orders as the Court may deem fit to make in the circumstance and the grounds upon which the application was brought were that:

There is an earlier suit on the same subject matter pending before Justice Kutigi of High Court 29 Wuse Zone 5, Abuja with motion No. M/4331/11 dated 21/03/2011 and filed on 22/03/2011.

Following this present suit to continue will amount to abuse of Court process.

Counsel further submitted that they have also filed and will rely on all the averment in their paragraphs affidavit in support of the motion on notice deposed to by one Doris Eze a litigation secretary in their firm and a certified true copy of processes filed in Justice Kutigi's Court motion number: M/4331/11 between Dr. Ikenna Ihezue Vs Inspector General Police & 3 Ors annexed and marked as exhibit 'A' that they also filed a written address and same was adopted as their oral argument in this suit.

Finally counsel urge the Court to dismiss the suit. Because the Respondent/Applicant in this suit is also the Applicant in the case before Justice Kutigi's Court while 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in this suit were also Respondent with two others. And same were the subject matter of these two suits pending before Courts of co-ordinate jurisdiction at the same time.

Counsel submit that this amounts to an abuse of Court process and referred the Court to the case of Onalaja Vs Oshinubi Cited in his written address.

Applicant/Respondent counsel did not file a counter affidavit but respond on point of law by opposing the said application and submitted that it is a ploy to delay hearing of their application which rules of Court frown at. He further submitted that the parties subject matter, and reliefs sought were not the same and referred the Court to page 12 of the annexure under the heading 1 preliminary statement where the car registration number: is JHMCM 56894-CO 35926 whereas in the application before this Court the car Reg. No. is BV 645 RSH.

Learned counsel to the Applicant/Respondent further stated that in the suit before Court 29 of the High Court of FCT. N1,000,000.00k damages was claimed against all the Respondents and Applicant in this suit who the 1<sup>st</sup> Respondent in the above mentioned case whereas the Applicant in the instant

suit is claiming N10,000,000.00 against the 1<sup>st</sup> Respondent alone. Learned counsel to the Applicant/Respondent cited the case of Ubeng Vs Usua (2006) 12 NWLR (pt 994) 244 at pg 255 Paragraph E – H Ratio 1 and urge the Court to dismiss the application because there is no evidence that the Applicant/Respondent in this suit has instituted several suits against the Respondents.

Further more learned counsel to the Applicant/Respondent adopted the argument of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents counsel where they assert that the parties, subject matter and the reliefs sought in the two different suits before the two different Courts pending at the same time were not the same. He submitted that the authorities relied upon by the 1<sup>st</sup> Respondent do not apply in this suit and referred the Court to the case of Ette Vs Edoho (2009) 8 NWLR (pt 114) 601 at 603 Ratio 3.

Again learned counsel to the Applicant/Respondent argued that the Court can hear his application that day even as the 1<sup>st</sup> Respondent/Applicant which ought to have file a counter affidavit by that time is yet to do same. Also referred the Court to order 8 rule 4 of the Fundamental Human Right Enforcement procedure rules and the case of Abia State University Vs Chima Anya Ibe (1996) 1 NWLR (pt 439) 646 at 660.

Finally, learned counsel urged the Court to dismiss the preliminary objection of the 1<sup>st</sup> Respondent/Applicant and grant their reliefs as contained in the Applicant motion on notice dated 24/03/11 and filed the same date.

Going through the processes filed by all the parties and their oral submission on point of law, it is trite principle of law that once as issue of jurisdiction is raised that the Court should first decide on it first. This is because if at the end, it is found out that Court acted without jurisdiction all the proceedings shall be rendered null and void see the case of Madukolu Vs Nkemdilim (1962) 2 SCNLR R 341 and Arowolo Vs Adsina (2011) 2 NWLR (pt 1231) 315. It is on that strength that the issue of jurisdiction as raised by the 1<sup>st</sup> Respondent shall be considered first.

We have earlier on stated the prayer of the 1<sup>st</sup> Respondent/Applicant in his motion to dismiss suit for lack of jurisdiction on the ground that the suit is an abuse of judicial process that there is a similar suit between the parties pending before Justice Kutigi's Court in High Court 29.

This been the contention of the 1<sup>st</sup> Respondent/Applicant, thus the term abuse of Judicial process has been Judicially defined to mean that the process of the Court has not been used bonafide and properly. It also connotes the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent and the efficient and effective administration of Justice see the case of Umeh Vs Iwu (2008) 8 NWLR (pt 1089) 225. In order to sustain a charge of abuse of process there must Co-exhibit inter alia

- (a) A multiplicity of suits
- (b) Between the same opponents,
- (c) On the same subject matter, and
- (d) On the same issues.

It is against this backdrop of these laid down condition that there arises the need to glance through the aforesaid suits No: M/4611/11: Miss Chika Ogu Vs Dr. Ikenna Ihezvo & 2 Ors and suit No: M/4331/11 Dr. Ikenna Ihezvo Vs I.G.P & 3 Ors. It is obvious from the faces of the two suit that the parties are not the same as a result both parties are entitled to initiate and air their grievance at the law Courts as when there is a right, there must be a remedy.

On the question of the same subject matter in both aforesaid suits. The instance suit No: M/4611/11 has been instituted for a relief against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to release her car Honda Accord with registration number Abuja BV 645 RSH which was detained upon the instigation by the 1<sup>st</sup> Respondent and Ten Million Naira (10,000,000.00) against the 1<sup>st</sup> Respondent as exemplary damages for the unwarranted and malicious infringement of the Applicant's Fundamental Rights. Whereas suit No: M/4331/11 on the other

hand is a declaration against the Inspector General of Police and 3 Ors that the continuous detention of the Applicant's vehicle, a red 2004 Honda Accord with Vehicle identification number JHMCM 56894 CO35926 by the Respondents is illegal, unconstitutional, oppressive and a gross violation of the Applicant's Fundamental Rights as guaranteed by section 44 (1) of the constitution of the FRN 1999; an order releasing the said Applicant's vehicle being detained by the Respondents, and an order awarding the sum of One Million Naira (N1,000,000.00) only against the Respondents jointly and severally being general damages for the violation of the Applicant's Fundamental Rights.

In views of the above the subject matter in issue in suit No: M/4611/11 is the releasing of 2004 Honda Accord car with registration number Abuja BV 645 RSH to the Applicant and the particulars were exhibited as per exhibits 'G', 'A', 'J' 'K' in the Applicant's paragraph 32 of her affidavit in support of the motion and N10,000,000.00k exemplary damages. While on the other hand the subject matter in issue in suit No: M/4331/11 is a recovered stolen car from the suspects (Names Unknown) and N1,000,000.00 general damages. It is difficult here to state that both suits were the same to sustain charge of abuse of Court process in addition base on the careful perusal/appraisal of the two suits, the contending issues in both suits are not the same.

It is therefore in the interest of Justice that the application for dismissal of the instant suit is hereby refused since there is no prove to show any abuse of Court process by the 1<sup>st</sup> Respondent/Applicant.

#### **SUBSTATIVE CASE**

The Applicant in this suit brought an application dated 24/03/2011 and filed the same day to enforce her Fundamental Human Rights against the Respondents pursuant to sections 44, 46 (1) and (2) of the 1999 constitution of the Federal Republic of Nigeria (as Amended) and order 2, Rules 1,2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 seeking the following reliefs:

A declaration that the seizure and or detention of the Applicant's Honda Accord car with registration number Abuja, BV 645 RSH since October,

29<sup>th</sup> 2010 by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on a false allegation and instigation of the 1<sup>st</sup> Respondent is unlawful unwarranted and contrary to section 44 of the constitution of the Federal Republic of Nigeria.

An order directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to release the said Honda Accord car with registration number Abuja, BV 645 RSH to the Applicant forth with without my conditions whatsoever.

Ten Million Naira (10,000,000.00k) against the 1<sup>st</sup> Respondent as exemplary damages for the unwarranted and malicious infringement of the applicant's Fundamental Rights.

And for such further order or orders as this Honourable Court may deem fit to make in the circumstance.

The Applicant also filed and relied on her statement of fact which was brought pursuant to order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, 38 paragraphs in support of the motion on notice deposited to by the Applicant she relied on all the averment and the attached exhibits thereto and marked as follows:-

- (i) A copy of the invitation card to the traditional wedding ceremony between the 1<sup>st</sup> Respondent and her sister. Marked Exhibit A.
- (ii) Two pictures of the traditional wedding ceremony between the 1<sup>st</sup> Respondent and her sister. Marked Exhibits B and B1.
- (iii) A copy of the Applicant's statement of account from United Bank for Africa Plc Domiciliary Account Number 049013000472 showing two transfers of \$4,500 to Salome Chizoba Ogu. Marked Exhibit C.
- (iv) Teller showing deposit of the sum of N140,000 into Zimus Resources Limited account with intercontinental Bank Plc. Marked Exhibit D.
- (v) Teller showing deposit of the sum of N130,000 into Zimus Resources Limited account with Intercontinental Bank Plc. E.
- (vi) A copy of the Applicants statement of account from United Bank for Africa Plc Account Number 049002001874 showing transfer of N47,200 to Callistus Onyenaobi. Marked Exhibit F.



- (vii) Shipping documents given to the Applicant by Fano Shipping Agencies Limited covering the two 2004 Honda Accord vehicles and two other vehicles. Marked Exhibit G.
- (viii) Copies of Vehicle License and proof of Ownership Certificate for Honda Accord with registration number BG 16 GWA. Marked jointly as Exhibit H.
- (ix) Copies of registration papers for Honda Accord with registration number BV 645 RSH (the subject matter of this suit). Marked jointly as Exhibit J.
- (x) Picture showing the 1<sup>st</sup> Respondent and his wife standing in front of the Honda Accord with registration number BV 645 RSH at the family house of the Applicant in Aboh Mbaise, Imo State in April 2010. Marked Exhibit K.

Finally a written address in support of the Applicant's application was equally filed by learned counsel to the Applicant. Formulating one issue for determination **'whether the Respondents have violated the Fundamental Right of the Applicant to own and keep movable property so as to warrant a grant of the reliefs sought by the Applicant'**.

Counsel affirm the lone issue formulated by him and referred the Court to provisions of section 44 (1) of the constitution of the Federal Republic of Nigeria which provides that 'No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquire compulsorily in any party of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:

- (a) Requires the prompt payment of compensation therefor; and
- (b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria.

Learned counsel to the Applicant/Respondent contend that the Applicant has put before the Court evidence to enable the Court hold that the Honda Accord

car with registration number BV 645 RSH belongs to the Applicant and she is entitled to a protection of her right to own same. Even though they were not unmindful of the limitation placed by the provisions of section 44(2)(k) of the constitution which provides as follows:

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law –

(k) relating to the temporary taking possession of property for the purpose of any examination, investigation or enquiry;

Counsel further urge the Court to hold that the continued seizure and or detention of the Honda Accord car the subject matter of this suit since October 29, 2010 without charging anybody to Court for any offence or releasing the car to the Applicant by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is unreasonable and can no longer qualify as **‘temporary taking possession of a property for the purpose of any examination, investigation or enquiry’**. Counsel referred the Court to the case of Nawa Vs A.G. Cross River State (2008) ALL FWLR (pt 401) pg 807 at 840 where it was held that it is the duty of Court to safe guard the Rights and liberties of individual and to protect him from any abuse or misuse of power.

Learned counsel to the Applicant also submitted that the Applicant has made out a case against the 1<sup>st</sup> Respondent through the averment in her affidavit and the documents attached as exhibits for the violation of her right to own and keep movable property by the Respondents and urge the Court to grant all the reliefs sought particularly the relief of Ten Million Naira (N10,000,000.00k) exemplary damages against the 1<sup>st</sup> Respondent. On this counsel referred the Court to the cases of Odogu Vs A.G. Federation & Ors (2000) 2 HRLRA 82 and Jimoh Vs A.G. Federation (1998) 1 HRLRA 513.

Learned counsel to the Applicant/Respondent moved his motion in terms of the motion paper on the 12/05/2011 and further relied on the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent Counter Affidavit especially paragraph 5(iii) and 5(vii) and urge the Court to grant their reliefs as prayed because all their facts and the attached exhibits were unchallenged by the Respondents.

Learned counsel to the 1<sup>st</sup> Respondent/Applicant submitted that they do not file any Counter Affidavit to enable them contradict the Applicant/Respondents position but choose to reply on point of law.

Counsel then referred the Court to Exhibit 'G' where at the 2<sup>nd</sup> page the name of the 1<sup>st</sup> Respondent/Applicant appears at the column of Exporter /Importer. Counsel then submitted that the 1<sup>st</sup> Respondent is the owner of the said vehicle and has not transferred his ownership to the Applicant/Respondent even from the attached exhibits to the motion.

By way of response to the 3<sup>rd</sup> relief ie N10,000,00k exemplary damages sought by the Applicant/Respondent against 1<sup>st</sup> Respondent, counsel further submit that the 1<sup>st</sup> Respondent/Applicant did not violate her Fundamental Human Rights but rather contest the vehicle's ownership with her and that if the Court so hold, it wasn't with malice because there were several letters from him to the police to investigate his stolen car. Counsel urge the Court to be guided by principle of fair play in its ruling.

In another breath learned counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent also informed the Court that they opposed the 1<sup>st</sup> relief sought by the Applicant/Respondent against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent and in view of their opposition they filed and relied on 8 paragraphs Counter Affidavit deposed to by on Jonah Wutu police officer and litigation clerk in the legal department of the Force C.I.D. Abuja. In further opposition to the said relief one, counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent having filed also adopted his written address where it contended that up till that day, 1<sup>st</sup> Respondent is still contesting the ownership of the said vehicle with the Applicant/Respondent and that their action was not actuated by malafide but promise to handover the car to the true owner when a Court of competent jurisdiction ordered same.

Finally counsel urge the Court to dismiss relief one sought by the Applicant/Respondent against 2<sup>nd</sup> and 3<sup>rd</sup> Respondent but conceded to the 2<sup>nd</sup> relief and stated that the 3<sup>rd</sup> relief do not affect them.





































































