

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT ZUBA

BEFORE HIS LORDSHIP:- THE HON. JUSTICE A. O. EBONG

THIS MONDAY, THE 17TH DAY OF JUNE, 2019

SUIT NO: CV/2946/2019

BETWEEN:

1. SAMUELVICTOR IHUOMA } APPLICANTS
2. EGWU EMMANUEL }

AND

1. THE INSPECTOR-GENERAL OF POLICE }
2. MR. MARK IGOCHE } RESPONDENTS
3. MR. MOHAMMED ZUBAIRU }
(Senior Magistrate 1, Mpape, Abuja)

JUDGMENT

After obtaining leave of court on the 1/2/2019, the applicants filed a motion on notice for judicial review on the 7/2/2019, seeking the following orders:

1. A declaration that in view of section 8(2) of the Administration of Criminal Justice Act 2015, it (is) ultra vires the 1st defendant/respondent to arrest, detain and/or prosecute the 1st and 2nd plaintiffs/applicants before the 2nd (sic: 3rd) defendant/respondent or any other tribunal based on any dispute that arises from the terms of written contract between the 1st plaintiff/applicant and the 2nd defendant/respondent under Exhibit A.
2. An order of prohibition restraining the defendants, their agents, servants, or any other person acting pursuant to

their instruction or order from arresting, detaining or prosecuting the plaintiff/applicants in charge No. CR/136/2018 Exhibit D or any matter arising from written agreement for sale of the Range Rover (Super Charge) Model 2014 with registration ABJ 233 PY and Chassis No. SALGS2TF9EA155600 herein pending before Senior Magistrate 1, Mpape or any other magistrate or court for that matter.

3. The sum of N40,000,000 as exemplary damages against the 1st and 2nd defendants for unlawful harassment, intimidation through criminal proceedings, and illegal witch-hunting over issue in which the 1st defendant is not statutorily empowered to interfere.

The facts of the case are set out in the supporting affidavit and are as follows. The applicants claim that the 2nd respondent had approached the 1st applicant through the 2nd applicant seeking for a loan of money on the security of his Range Rover jeep mentioned in relief 2 above. But the parties later changed their minds and agreed for an outright sale of the car to the 1st applicant at the price of N13,000,000 (Thirteen million Naira). They signed an agreement (Exhibit A) to that effect and the 1st applicant paid and took possession of the jeep, with its original particulars.

Some months later the 2nd respondent returned part of the purchase price on the ground that he was no longer selling the vehicle. The 1st applicant resisted this attempted repudiation and returned the money to the 2nd respondent who, again, paid it back into the 1st applicant's account. The applicants claim that for refusing to accept the repudiation of the sale, the 2nd respondent engaged the 1st respondent (the Inspector-General

of Police) to arrest the applicants as a ploy to forcefully retrieve the car from them. But the applicant still would not give in; rather they filed suit No. FCT/HC/CV/1975/2018, (Exhibit C) pending before this Court. While the said suit was still awaiting determination, the 1st respondent proceeded to file Charge No. CR/136/2018 (Exhibit D herein) against the applicants in an attempt to criminalise the allegation of breach of contract, and force the applicants to surrender the jeep they bought lawfully from the 2nd respondent. It is on this premise that the applicants have brought the present action seeking for the Court's intervention by way of the earlier reproduced orders.

In reaction to the suit, the 1st respondent filed a counter-affidavit and a notice of preliminary objection on the 26/2/2019. Basically the same facts are relied upon in both processes. His defence is that in February 2018, his office received a written complaint (Exhibit NPF01) from the 2nd respondent alleging criminal breach of trust, cheating and criminal misappropriation against the 1st applicant. He assigned the case for investigation, and when invited for questioning, the 1st applicant filed Suit No. FHC/ABJ/CS/210/2018, at the Federal High Court, claiming that his invitation was a violation of his fundamental rights as the transaction which led to the complaint was a civil matter. The case was heard on merit and dismissed by the Federal High Court; and there is no appeal against the judgment.

The complaint was then investigated and a criminal charge filed against the applicants, when evidence gathered disclosed a prima facie case against them. But the applicants could not be arraigned because they took repeated adjournments until the 18/2/2019 when the ex parte order of this Court was served on

the Magistrate, forcing him to stay further proceedings in the case.

According to the 1st respondent, the investigation conducted revealed that the 2nd respondent had taken a loan of N12m from the 1st applicant on the security of his Range Rover jeep, but after repaying same the 1st applicant refused to return the jeep claiming that it had been sold to him. Witnesses invited, however, confirmed in their statements that the transaction was a loan not a sale agreement. The investigation further revealed that the applicants had earlier attempted to bribe one of the said witnesses to support their claim of an outright sale of the jeep to the 1st applicant.

The 1st respondent claims that he was served the processes of this suit the same day the ex parte order was served on the 3rd respondent. He contends that the parties, the subject matter and the issues in this suit are the same, not only with the 1st applicant's earlier suit dismissed by the Federal High Court, but also with Suit No. FCT/HC/CV/1975/2018, filed by the applicants in this Court on the same subject matter. He further complains that the applicants did not disclose the existence of the Federal High Court judgment before they obtained the ex parte order served on the 3rd respondent to stop the criminal trial. He contends that this suit is an abuse of court process; and that the ex parte order granted has prevented the 1st and 3rd respondents from performing their statutory functions. Relevant exhibits supporting the above assertions are attached to the 1st respondent's affidavits, including the judgment of the Federal High Court referred to, and the statements made by witnesses to the Police on the matter.

The applicants filed a counter affidavit to the preliminary objection, as well as a further affidavit to the main suit, to controvert the facts adduced by the 1st respondent. The essence of these affidavits is to show that the various suits filed by the applicants are different from each other. They also claim therein that the investigation conducted did not disclose the existence of any crime but of a civil transaction. [I pause here to observe that the burden of proving this particular fact rests on the applicants who have asserted it. This is because the charge (Exhibit D) filed against them and the witness statements exhibited by the Police in relation to the charge, have prima facie indicated the existence of a crime or crimes on the part of the applicants.]

The 2nd and 3rd respondents did not file any papers in this case. Learned counsel to the 2nd respondent informed the Court on the date of hearing that his client was not served with the Court processes. He however conceded that the matter could proceed as he was content to rely on the submissions made on behalf of the 1st respondent.

In his preliminary objection, the 1st respondent prays the Court to dismiss this suit on grounds of res judicata, estoppel per rem judicatam and abuse of court process; he also prays for discharge of the ex parte order made on the 1/2/2019. Learned counsel, Mr. Celestine U. Odo, raised two issues for determination on the objection, as follows:

- (i) *Whether this suit is a violation of the doctrines of res judicata, estoppel per rem judicatam and/or an abuse of court process, thereby robbing the Honourable Court of jurisdiction to entertain same?*

- (ii) *Whether it is in the interest of justice for the Honourable Court to set aside its ex parte order staying the criminal proceedings against the plaintiffs/respondents?*

On issue one he submitted that jurisdiction is the bedrock anchoring any trial or proceeding, and that one of the requirements for the exercise of jurisdiction, as stated in UBA PLC v. SKY POWER EXPRESS AIRWAYS LTD (2016) 14 NWLR (Pt.1533) 359 at 366, is that the case should come before the court initiated by due process of law. He submitted that this suit was filed by abusing the process of law and in violation of the doctrine of res judicata, as the same cause of action had earlier been litigated upon by the parties and a decision reached by the Federal High Court, which the applicants herein accepted but concealed from this Court.

Learned counsel listed the conditions for the application of res judicata, and submitted that both the parties, the issues and the subject matter in the Federal High Court case are the same as in the present suit; and that those who appear to be new parties in the instant suit are but privies to the parties in the earlier case, hence this case is caught by res judicata. Reference was also made to relevant paragraphs of the 1st respondent's affidavit, Exhibit NPF 02 attached thereto, as well as other judicial authorities to strengthen the argument that the action is caught by res judicata. Counsel further submitted in the alternative that having regard to the conduct of the applicants, the instant suit is an abuse of court process. He urged the Court to dismiss or strike out the matter.

On issue 2, he submitted in sum that the ex parte order granted by this Court ought to be set aside as it is contrary to section

306 of the Administration of Criminal Justice Act 2015, which bars the court from entertaining an application for stay of proceedings. He further urged the Court to set aside the order because it was obtained by fraud, in that the applicants had failed to disclose to this Court the earlier judgment of the Federal High Court dismissing their suit for a similar relief which, through forum shopping, they now obtained ex parte in this Court.

Counsel to the applicants argued his response to the preliminary objection under the following three issues:

- (i) *Whether the judgment in Suit No. FHC/ABJ/CS/210/2018 constitutes estoppel per rem judicata or issue estoppel to these proceedings for judicial review of Charge No. CR/136/18 pending before the 3rd defendant/respondent?*
- (ii) *Whether in the circumstances of this case, the parties and the prayers before the court, this suit for order of judicial review by way of prohibition of Charge No. CR/136/18 pending before the 3rd defendant/respondent constitute(s) an abuse of court process because of the pendency of Suit FCT/HC/CV/1978/18 (sister case before this court).*
- (iii) *Whether in view of sections 1(3) & 6(6)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which preserves(s) the inherent powers of a High Court to exercise supervisory powers over inferior courts, section 306 of the Administration of Criminal Justice Act 2015 can limit the inherent powers of (the) High Court of the FCT in civil proceedings to stay proceedings which is under its review in accordance with the Civil Procedure Rules of the Court.*

On issue 1, he referred to the cases of ALAPO V. GBOKERE (2010) 17 WRN 1 at 11-12; OSHOBOJA V. ANIDA (2010) 5

WRN 1 at 23-24, among other decisions, on the conditions for a successful plea of res judicata, and submitted that the principle is inapplicable as the parties and the subject matter of the cases in issue herein are not the same.

On issue 2, he contended that this suit having been instituted to remedy a fresh wrong committed against them subsequent to the filing of the sister case in Suit FCT/HC/CV/1978/2018, it constitutes a legitimate exercise of their constitutional right under section 6(6)(b) of the 1999 Constitution, and hence is not an abuse of court process. He relied on the decisions in 7-UP BOTTLING CO. LTD V. ABIOLA & SONS BOTTLING CO. LTD (1996) 7 NWLR (Pt.463) 714, AFRICAN REINSURANCE CORPORATION V. JDP CONSTRUCTION NIG. LTD (2003) 13 NWLR (Pt.838) 609, etc. on the meaning of abuse of process.

Finally, on issue 3, he argued that section 306 of the ACJA and the Practice Direction made thereunder, apply only to criminal proceedings and do not affect the power of the Court under section 6(6)(a) of the Constitution to undertake judicial review of inferior courts and administrative bodies in civil proceedings. He urged the Court to dismiss the preliminary objection.

I will go by the 1st respondent's issues.

The first issue is whether the principles of res judicata and abuse of process apply in this case. Simply stated, the principle of res judicata forbids the re-litigation of matters which had already been finally determined between the same parties by a court of competent jurisdiction. This principle sets in whenever any party files a new suit on a cause of action or subject matter, and involving issue(s), which a competent court

had previously disposed of between himself and the defendant(s). The principle is founded on public policy requiring that there should be an end to litigation, and that a person should not be vexed multiple times by lawsuit over the same subject matter. See BALOGUN V. ADEJOBI (1995) LPELR-724(SC); AJIBOYE V. ISHOLA (2006) LPELR-301(SC); OSHODI V. EYIFUNMI (2000) 13 NWLR (Pt.684) 298; SANNI V. OLATEJU & ORS (2013) LPELR-21377(CA).

For the principle to apply, the following conditions must be present:

- (a) The parties must be the same;
- (b) The cause of action, subject matter or issue(s) must also be the same; and
- (c) The earlier decision must be a final decision by a court of competent jurisdiction.

See OSHODI V. EYIFUNMI, supra.

Learned counsel for the applicants has conceded that the third condition listed above is satisfied in this case; but he argues that the other two conditions are not met, hence the principle is inapplicable. This calls for an examination of the parties and subject matter/issues in the relevant cases, that is to say, Suit No. FHC/ABJ/CS/210/2018, decided by the Federal High Court on the 2/5/2018, and the instant case. I will also consider Suit No. CV/1978/18, filed in this Court on the 1/6/2018 and still pending, in view of the 1st respondent's further plea of abuse of court process in relation to the three cases.

- (i) **Suit No. FHC/ABJ/CS/210/2018**: the parties and the claims therein were as follows:

Parties: Samuel Victor Ihuoma Applicant
 AND
 1. Inspector-General of Police
 2. Inspector John Ahile
 3. Igoche Mark } ... Respondents

Claim(s): 1. An order of perpetual injunction restraining the respondents jointly and severally whether by themselves their agents, privies, servants, howsoever called from further unlawful harassment and or intimidation or threat or disturbance or arrest or detention of the applicant in any manner whatsoever on any set of facts related to the 3rd respondent's complaint.
 2. Omnibus prayer.

(ii) **Suit No. CV/1978/18**: the parties and the claims sought are these:

Parties: 1. Samuel Victor Ihuoma
 2. Wyatt Johnson Nig. Ltd
 3. Egwu Emmanuel } Claimants
 AND
 1. The Nigeria Police Force
 2. The Inspector-General of Police
 3. Commissioner of Police
 (IGP Monitoring Unit)
 4. Mr. Igoche Mark } ... Defendants

Claims: 1. A declaration that the relationship between the claimant and ... the 4th defendant is that of buyer and seller relationship and it is outside the powers of the 1st, 2nd and 3rd defendants to interfere in the resolution of controversies arising out of the vehicle sales agreement dated 19th day of December 2017 between the 1st claimant and the 4th defendant.

2. An order of court restraining the defendants, their agents, privies servants or any other person acting on their behalf from arresting, further arresting, detaining or in any other way threaten (sic) the claimants and from disturbing the 1st claimant's quiet enjoyment of peaceful possession and ownership of the Range Rover (Super Charge) model 2014 black jeep with registration number ABJ 233 PY and Chassis number SALGS2TF9EA155600 he purchased from the 4th defendant.

3. The sum of N20,000,000 (Twenty million Naira) as general damages for unlawful arrest, harassment, threat on account of the claimant's legitimate contractual relationship with the 4th defendant which is clearly outside the statutory powers of the 1st, 2nd and 3rd defendants.

4. The sum of N20,000,000 (Twenty million Naira) as general damages against the 4th defendant for reporting contractual relationship with the 4th defendant which is clearly outside the statutory powers of the 1st, 2nd and 3rd defendants instead of submitting his dispute to the High Court of the Federal Capital Territory, Abuja.

5. The cost of this action as may be assessed by this Honourable Court.

(iii) **The present suit (CV/2946/2019)** has the following parties and claims:

Parties:

- | | | |
|------------------------------------|---|------------------|
| 1. Samuel Victor Ihuoma | } | Claimants |
| 2. Egwu Emmanuel | | |
| AND | | |
| 1. The Nigeria Police Force | } | Defendants |
| 2. Mr. Igoche Mark | | |
| 3. Mr. Mohammed Zubairu | | |
| (Senior Magistrate1, Mpape, Abuja) | | |

- Claims:
1. A declaration that by virtue of section 8(2) of the Administration of Criminal Justice Act 2015, it (is) ultra vires the 1st defendant/respondent to arrest, detain and/or prosecute the 1st and 2nd plaintiffs/applicants before the 2nd (read: 3rd) defendant/respondent or any other tribunal based on any dispute that arises from the terms of written contract between the 1st plaintiff/applicant and the 2nd defendant/respondent under Exhibit A.
 2. An order of prohibition restraining the defendants their agents, servants or any other person acting pursuant to their instruction or order from arresting, detaining or prosecuting the plaintiffs/applicants in Charge No. CR/136/2018 Exhibit D or any matter arising from written agreement for sale of the Range Rover (Super Charge) model 2014 with registration number ABJ 233 PY and Chassis number SALGS2TF9EA155600 herein pending before Senior Magistrate 1 Mpape or any other magistrate or court for that matter.
 3. The sum of N40,000,000 as exemplary damages against the 1st and 2nd defendants for unlawful harassment, intimidation through criminal proceedings and illegal witch-hunting over issue in which the 1st defendant is not statutorily empowered to interfere.

(I have underlined certain portions of the claims in the three suits which I believe indicate the true basis for the filing of each of the actions, and are relevant to determination of this objection.)

Now, in determining whether the parties in these actions are the same, it is important to note that the principle of res judicata does not bind only the actual parties named on record; it extends to their servants, agents and privies: AJIBOYE V.

ISHOLA, supra, at page 14A-G. A fresh suit instituted on the same subject matter by any person(s) within these categories, is caught by the principle. Also worthy of note is that the mere inclusion of other persons in a new suit would not hinder the application of the principle, if the presence of the extra parties is simply cosmetic, while the substance of the dispute is between the parties to the earlier decision now invoked as res judicata. His Lordship, Niki Tobi JSC, elucidated on this point in ABUBAKAR V. B.O.& A.P. LTD (2007) 18 NWLR (Pt.1066) 319 at 373-4, thus:

“In considering the application or applicability of the principle or doctrine (of res judicata), the Court should remind itself of the tricks the parties, at times, play to beat its application. This is the only way to meet such parties full length rather than half-length. This arises when a party, at times, includes nominal or docile parties and he will be quick in telling the Court, for example, that the previous matter had three defendants as opposed to the current one which has four defendants. The inclusion of the fourth defendant could be a charade or farce. There are also instances when the party includes an additional relief or reliefs, which are inactive, as functioning only as appendage or peripheral to the main issue or issues to the extent it does not add anything substantial to the main issue or issues. There are times when parties play with words to present a camouflage that the issues are different when in reality they are not. The trial Judge, in the use of the eyes of an eagle, will be able to remove the chaff from the grain and decide whether the principle of res judicata is applicable or inapplicable.”

Similarly, in determining whether the subject matter or issues are the same, it needs to be borne in mind that two main species of res judicata are involved here, namely, cause of action estoppel and issue estoppel. The objection in this case covers both aspects of the doctrine. The rule bars a party, first,

from re-litigating the same cause of action or issues upon which a final decision had previously been pronounced in an earlier suit; and secondly, it precludes the re-opening of questions or issues which could have been raised for decision in such earlier suit but were not. See HENDERSON V. HENDERSON (1843) 67 E.R. 313 at 319; DZUNGWE V. GBISHE & ANOR (1985) LPELR-978(SC). The pronouncement in ABUBAKAR V. B.O.& A.P. LTD, supra, quoted above also provides some wisdom on how to ascertain whether the subject matter or issues in the old case and the new case are the same.

Now, from the underlined portions of the claims in the three cases filed by the applicants, it is easy to see that all the three cases are founded upon the same complaint, to wit, that the transaction or dispute between the 1st applicant and the 2nd respondent herein is based on contract and therefore the Police have no authority to interfere in it. Thus, the single fundamental issue running through the three cases is whether it is competent of the Police to exercise their powers of investigation, arrest, detention and or prosecution against the applicant(s) when the transaction or dispute between the 1st applicant and the 2nd respondent herein is based on contract? This is further confirmed not only by the contents of the applicants' affidavits in support of the three suits, but also by the questions for determination posed in the cases.

At pages 6 and 7 of its judgment in Exhibit NPF 02, the Federal High Court found as follows:

"In the instant case, the applicant has sought the judicial intervention of this Court to restrain the respondents perpetually from unlawful harassment and or intimidation based on the complaint of the 3rd respondent... Granted that the Police do not

have the competence to investigate civil matters or breach of contractual obligations but the complaint against the applicant is not civil in nature, it bothers (sic) on suspicion of crime. It behoves the applicant to state his side of the story to the police as custodians of law and order rather than seeking a judicial covering to escape investigation. The law is that the court cannot be used as an ivory tower to shield (a) citizen from investigation... The procedure prescribed by the law where a complaint has been made has not been violated, the 3rd respondent laid a complaint to the police bordering on allegation of crime, it is within his civic duty as a citizen to do so. The applicant is seeking for the intervention of the Court to restrain the police from performing their statutory duties, this Court cannot lend itself to that entreaty”

The case was dismissed for lack of merit. The 1st applicant herein, who was the sole applicant at the Federal High Court, did not appeal against the said judgment. He instead changed venue and commenced two new suits in quick succession before this Court based on the very same subject matter. He attempted to modify the parties and the questions for determination in the new cases, but the basic facts of the suits are essentially the same and, as can be seen from the underlined portions of the claims in the cases which I earlier reproduced, the same fundamental issue still runs through all the lawsuits.

Suit No. CV/1978/2018 was instituted against a number of Police parties as well as the 2nd respondent herein, whom the 1st applicant had sued as the 3rd respondent at the Federal High Court, and whose complaint to the Police is at the root of all the lawsuits. On the side of the applicants, the 1st applicant added one Wyatt Johnson Nigeria Ltd, as the 2nd claimant, and one Egwu Emmanuel, as the 3rd claimant. Wyatt Johnson Nigeria Ltd is said to be the 1st applicant's company. But the

relevance of the company in the suit is not disclosed in the supporting affidavit or anywhere in the entire suit. The 3rd claimant, on the other hand, claimed in the affidavit in support of that suit which he personally deposed to, that he introduced the 1st claimant to the 4th defendant/complainant, and also acted as witness to the transaction between them. But neither the questions for determination nor the reliefs sought in the suit, relate to the said 2nd and 3rd claimants. Clearly therefore, both claimants were added to make the suit look different. The effective parties in the case remain the 1st claimant, the complainant and the Police.

The present suit is the third action filed by the 1st applicant on the same subject matter. The composition of the parties is more or less the same as in the second suit analysed in the preceding paragraph. The only difference is in the reduction of the Police parties from three to one, while a Senior Magistrate has been added as the 3rd respondent. Again, and very significantly, there is no conduct of the Senior Magistrate that has been called to question in this case. The applicant's only complaint is that a criminal charge was filed before him against them. It is not their case that the charge is beyond his jurisdiction or that he has otherwise misconducted himself in relation to the matter. By all considerations therefore, the Magistrate has been joined just to add colour and effect to the suit. The applicant's real grievance, as is evident in the processes of the suit, is with the Police and the 2nd respondent/complainant. The purported 2nd claimant (i.e. Egwu Emmanuel) is equally identified in this suit as an agent to the 1st claimant, and the linkman between him and the 2nd respondent/complainant. The true parties in this case are consequently the 1st applicant, the Police and the 2nd respondent/complainant.

Following from this analysis, and the authority of ABUBAKAR V. B.O.& A.P. LTD, quoted supra, I am of the view that stripped of all colorations added in the latter cases, this suit and that earlier decided by the Federal High Court have similar identities in terms of the actual parties, the subject matter and the underlying issue for determination by the Court. Res judicata thus applies to this suit. In reality, both Courts have been called upon to decide the same basic question between the same persons, and arising from the same transaction, even though the cases have been camouflaged to appear different from each other. On a critical analysis, and shorn of all pretensions, both suits are challenging the conduct of the same persons, on the same ground, and at the instance of the same protagonist.

Viewed from this standpoint, it becomes crystal clear why the “applicants” never hinted of the existence of the subsisting Federal High Court decision in all the papers filed in this Court. They knew it would work against them, and show that their resort to this Court was an act of forum-shopping. It is obvious from all the facts presented, that by coming to this Court following the negative verdict from the Federal High Court, the applicants were searching for a “better” finding on the same question arising from the same transaction between the same parties. That is an abuse of judicial process. Not long ago, the Court of Appeal decried such conduct in ELEBURUIKE V. TAWA (2010) LPELR-4098(CA) at page 57, thus:

“It is sad that abuse of court process has become so rampant that instead of dissatisfied parties going on appeal in respect of a judgment, they would rather proceed to file new suits in other jurisdictions. This practice must be discouraged.”

None of the lawsuits in this Court should have been filed in view of the subsisting judgment of the Federal High Court on the same subject matter. The Federal High Court held distinctly that the complaint made to the Police by Mr. Igoche Mark was criminal in nature, that the said Igoche Mark had a civic duty to lay such complaint to the police; and that the Police, on their part, were competent to look into the said complaint. That was a firm basis for the subsequent actions of the Police in investigating, arresting and finally charging the applicants before the Senior Magistrate, the 3rd respondent herein. The suits filed in this Court cannot alter the above footing upon which the Police and Mr. Igoche Mark, the 1st and 2nd respondents herein have acted, which has been duly endorsed by the judgment of the Federal High Court, a judgment which respectfully I am in full agreement with. The appropriate thing for the “applicants” to have done was to submit to police investigation and thereafter defend themselves in the charge preferred against them before the Senior Magistrate. The law does not permit them to file multiple lawsuits all questioning the basis of Police intervention in the matter, which had already been sanctioned by the Federal High Court in a final decision. It is an abuse of court process for them to do so.

I resolve issue 1 against the applicants, and hold that the principles of res judicata and abuse of process apply to this suit.

That should put an end to this proceeding. But before signing off, let me say briefly with regard to the 1st respondent’s issue 2 (the applicant’s issue 3), that in my humble view, section 306 of the ACJA and the Practice Direction canvassed, have not taken away the power of the High Court to grant relief by way of

mandamus, prohibition, certiorari, or any other appropriate remedy, either in the enforcement of fundamental rights or for the purpose of judicial review. The power of the High Court in this regard is constitutional, and it would require a constitutional amendment to cut it down.

Judicial review is a mechanism constitutionally entrusted to the superior courts for the purpose of upholding the rule of law and, among other things, to restrain the abuse or misuse of power by public authorities and Government officials. It is indispensable in the Nigerian environment; for, as acknowledged by the Court of Appeal in OGUERI V. THE STATE (2001) 2 ACLR 96 at 103 (see also OFUANI V. C.O.P. (2017) LPELR-42652(CA) at 17F-18B), we live in a country where there is so much inter-ethnic animosity and hatred, and it is easy for an enemy to make a false allegation of crime against a person in order to put him out of circulation. Without the power of judicial review, a citizen who has been framed with trumped-up charges would be condemned to go through the full-length of criminal trial for no just cause. And even if acquitted at the end of the day, the damage already done is irreparable. The exercise of this Court's powers in the instant case has been strictly in keeping with my duty in an action for judicial review.

To that extent, therefore, the contention that the ex parte order granted by this Court was without jurisdiction or a nullity, is misconceived. But I agree with the 1st respondent that the said order was procured improperly by the applicants, by deliberate non-disclosure of the subsisting judgment of the Federal High Court, which would have made a world of difference to my view of the case. The said ex parte order is hereby set aside.

On the whole, the preliminary objection succeeds. The merits of this suit, if any, cannot be considered in the circumstance. This suit is hereby dismissed for abuse of court process.

(SGD)

HON. JUSTICE A. O. EBONG
(17/06/2019)

Legal Representations:

- (1) ADEMOLA OYEDOKUN, ESQ. for the Applicants.
- (2) CELESTINE U. ODO, ESQ., for the 1st Respondent/Objector.
- (3) JOHN O. IDIKA, ESQ., for the 2nd and 3rd Respondents.