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

THIS MONDAY, THE 1ST DAY OF JULY, 2019

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

SUIT NO: CV/41/2018
BETWEEN:

IHEARINDUEME C. C. .... APPLICANT

AND

THE INCORPORATED TRUSTEES OF CHOOS
ESTATE RESIDENTS ASSOCIATION, WUMBA
ABUJA& 11 ORS .... RESPONDENTS

JUDGMENT

By this notice of application for enforcement of fundamental rights filed on the 10/4/2018, the applicant seeks against the respondents, declaratory and injunctive orders, as well as damages, as set out below.

1. A declaration that the applicant is entitled to his fundamental rights with respect to the dignity of his person, personal liberty, right to move freely and reside in any part of Nigeria, right to assemble freely and associate with other persons as well as not to have his moveable properties seized and confiscated by any person or association without recourse to the due process of the law.

2. A declaration that the arrest and detention of the applicant on the 9th day of December, 2014 by the 9th and 11th

respondents who are at all the time material to this case under the control, supervision and employment of the 7th and 8th respondents, are illegal, unwarranted, void and unconstitutional.

3. A declaration that the several actions of the 1st – 6th Respondents with the full backing and approval of the 7th – 11th Respondents in cutting off power supply to plot 219 where the Applicant resided at the C.B.N Cooperative Estate, Wumba-Abuja sometime in October, 2011, blocking and barricading the exit gate of the C.B.N Cooperative Estate, Apo-Abuja thereby stopping the Applicant from moving freely in and out of the said Estate on those occasions designated as the 1st Respondent's enforcement of service charge days as well as stopping the truck conveying his properties out of the said C.B.N Cooperative Estate to his new apartment at Wuse-Abuja and thereafter seizing same on the 10th of August, 2016 are illegal, unwarranted, void and unconstitutional.

4. An order of the honourable Court directing the 1st – 12th Respondents to release to the honourable Court's Registrar (who shall in turn release same to the Applicant) all the Applicant's properties seized and not allowed to be moved out of the C.B.N Cooperative Estate, Wumba-Abuja to his new apartment at Wuse-Abuja since the 10th day of August, 2016 unconditionally or upon such conditions as the honourable court may deem fit to make.

5. An order restraining all the Respondents, their agents, servants, security men, privies, officers, operatives, accredited agents howsoever described from further arresting, detaining, harassing, infringing upon the

Applicant's rights to move freely with his car inside and outside the said C.B.N Cooperative Estate, right to assemble freely and associate with other persons as well as further seizing his moveable properties.

6. An order awarding the sum of Five Hundred Million Naira (N500,000,000.00) damages against the 1st – 12th Respondents jointly and severally for violating the afore-said constitutionally-guaranteed human rights of the Applicant.

7. An order awarding the sum of Two Hundred Million Naira (N200,000,000.00) as exemplary and aggravated damages against all the Respondents jointly and severally for violating the already stated constitutionally-guaranteed human rights of the Applicant.

8. And for such further order(s) as the honourable Court may deem fit to make in the circumstance.

Parties filed and exchanged affidavits and written addresses as required by the Fundamental Rights (Enforcement Procedure) Rules 2009. From the facts adduced, the dispute in the case arose from efforts made by the 1st to 6th respondents to enforce the payment of service charge by the applicant, while he was a tenant at the Central Bank of Nigeria (CBN) Co-operative Estate, Apo District, Abuja, from 2011 to 2016. The applicant claims that throughout the period of his residence in the estate, the 2nd – 5th respondents who are officers and staff of the 1st respondent, repeatedly harassed him for payment of service charge imposed by them on all flats in the Estate. In October, 2011 they disconnected electricity supply to his flat, and at

several other times they prevented him from driving out of the Estate to attend to his business.

Many times when they blocked him from driving out, he would be compelled to abandon his car there to report the matter to the Police. But after inviting them, the Police would merely tell them to go and maintain the peace; they were never prosecuted for blocking a public way. On the 9/12/2014, after making one of such reports at the Apo Resettlement Estate Police Station, the 9th respondent who was the Divisional Police Officer (DPO), turned round and assaulted and detained him for three hours based on a counter report lodged against him on behalf of the 1st to 3rd respondents. He claims he sustained injuries from the attack, and was treated at a clinic.

The last straw, according to him, came on the 10/8/2016, when the 1st – 6th respondents stopped the 12 respondent, a hired truck driver, from transporting his properties out of the estate to his new residence at Wuse 2, Abuja. They forced the driver to off-load the goods in the estate, and have since seized and taken custody thereof. As usual, he reported the incident to the Police but they refused to intervene, claiming that the 1st – 6th respondents were acting within their powers in the estate. The applicant says he has never been a member of the 1st respondent association; that he never contracted for or has never received any of the services for which they were seeking to extort payment from him.

The 1st – 6th respondents filed a counter-affidavit denying the applicant's allegation; so did the 7th – 11th respondents (the police) and also the 12th respondent (the hired truck driver).

In addition to their said counter-affidavits, the 1st – 6th and the 12th respondents, filed notices of preliminary objection praying the Court to dismiss this suit for abuse of court process. I will deal with this first.

The grounds for, and the arguments in support of, both objections are identical. Both complain that this suit is one and the same with an earlier suit (No. FHC/ABJ/CS/622/16) filed by the applicant at the Federal High Court against these same respondents. That the applicant abandoned the said suit, after parties had all filed processes and joined issues thereon. In striking out the matter for want of diligence, the Federal High Court set as a condition for its relisting, that the applicant must pay all outstanding costs awarded against him in the case. Rather than comply with the said order, the applicant abandoned that suit and filed the present action in this Court. Relying on SARAKI V. KOTOYE (1992) 9 NWLR (Pt.264) 156; PDP V. GODWIN (2017) ALL FWLR (Pt.890) 600 at 629G-630D, among other authorities, the respondents/objectors contend that the Federal High Court suit is still pending, and that the filing of the instant suit in the circumstance, amounts to forum shopping and is an abuse of court process. They prayed me to dismiss the action.

In his response to the objections, the applicant admits the basic facts as presented by the respondents, but explains:

(i) that he did not disobey the order of the Federal High Court but was prevented by lack of funds to pay the cost in the case, and that he hoped to settle the said cost whenever he gets the money;

(ii) that the parties to the instant suit are not exactly the same with those of the Federal High Court case;

(iii) that he filed the present case because he discovered that the Federal High Court lacks jurisdiction to entertain the earlier suit as it involved issues of contract;

(iv) that he has a right to institute this suit upon the striking out of the earlier case.

In his written address, the applicant argues that there is no abuse of process as there was no similar suit pending anywhere at the time he filed the present action; that the striking out of the earlier suit meant that the matter was dead. He submitted, relying on LAFFERI NIG. LTD V. NAL MERCAHNT BANK PLC (2015) 14 NW;R (Pt1478) 64 at 90D-G, that once a suit is struck out, the initiator has the option of either applying to relist the suit or filing a fresh suit. He further referred to the case of PDP V. GODWIN, supra, cited by the respondents, as being in support of his stand. The applicant also cited the case of JOHN SHOY INT'L LTD V. F.H.A. (2016) 14 NWLR (Pt.1533) 427 at 449, among other decisions, to the effect that the Federal High Court lacks jurisdiction to entertain matters bordering on contract. He finally urged me to dismiss both objections.

I have considered all the facts and arguments for both sides. In <u>SARAKI V. KOTOYE</u> (1992) 9 NWLR (Pt.264) 156 at 188-189, the Supreme Court explained abuse of process as follows

> *"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. <u>Its one common feature is the improper</u>*

use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognised that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues... Thus, a multiplicity of actions on the same matter between the same parties ***even where there exists a right to bring the action*** *is regarded as an abuse.* ***The abuse lies in the*** *multiplicity* ***and manner of exercise of the right, rather than the exercise of the right per se****."* (Underlining for emphasis)

Now, Exhibit "Choos Est. 02" attached to 1st – 6th respondents' affidavit in support of their preliminary objection, is a copy of the applicant's originating process in the Federal High Court case. A perusal of same shows that the reliefs sought in that case are exactly the same with those of the present suit, and the issues are the same. The parties to both suits are also essentially the same. Just as in the earlier case, the respondents in this case are the Choos Estate Residents Association, its officers and workers, the Police, and the truck driver, Mr. Emma Chuks.

Only the National Security and Civil Defence Corps which was the 12th respondent in the earlier case, is missing in the present case. But this is understandable as it is clear that the Corps had no role at all in the matter; there was no complaint made against it nor was any relief sought against it, in the suit. Its inclusion or exclusion, thus, has no effect on the actual party

composition of both cases. See ABUBAKAR V. B.O. & A.P. LTD (2007) 18 NWLR (Pt.1066) 319 at 373-374. To all intents and purposes therefore this matter is one and the same with that before the Federal High Court.

The applicant has contended that he did not pay the costs awarded by the Federal High Court because he did not have the money to do so. [The papers before the Court indeed establish that he never paid the said costs as at the time he filed the instant suit, and even up till the time the respondents filed their objections under consideration.] Applicant further contends that upon the striking out of his first case, he had an option either to have it relisted or to file a new case; and he chose the latter option. He also contends that it was proper for him to change the venue for the case as he discovered the Federal High Court has no jurisdiction over matter.

Now, a matter struck out is not dead as argued by the applicant; it is, in law, still a pending cause: see PANALPINA WORLD TRANSPORT (NIG) LTD V. J. B. OLANDEEN INT'L & ORS, (2010) LPELR-2902)(SC) at 23A – 24B. In KASSIM V. EGERT (1966) 4 NSCC 44 at 45, the Supreme Court re-stated the law as to when it can be said that a cause is pending in court, thus:

> *"A cause is said to be pending in a court of justice when any proceeding can be taken in it. That is the test. If you can take any proceeding it is pending."*

Thus, to the extent that proceedings (e.g., motion to relist the suit) can still be taken in the case before the Federal High Court, the suit remains a pending cause in that Court.

I agree with the applicant's submission that a party whose case is struck out has the option to either apply and have it relisted

or to file another case. But the circumstance of the exercise of that right is what has been called to question in these objections. Did he exercise it legitimately or in abuse of the judicial process? As shown in the above-quoted passage from SARAKI V. KOTOYE, supra, "*even where there exists a right to bring (an) action*", there may be an abuse of process due to the manner of the exercise of such right.

It is obvious to me from the facts of these objections that the applicant filed his case in this Court as a way of avoiding compliance with the order of the Federal High Court. He did so because, as he has himself admitted, he did not have the money to pay the relevant costs. And he never paid it at all material times to these objections. That made his resort to this Court an act of forum shopping, and thus an abuse of judicial process. See OGBONMWAN V. AGHIMIEN (2016) LPELR-40806(CA) at 22 A-B. His contention that he discovered the Federal High Court lacks jurisdiction over the case is untenable, as his claim was for enforcement of his fundamental rights, and judicial precedent is to the effect that both the Federal High Court and the State High Court (including this Court) have concurrent jurisdiction in matters of enforcement of fundamental rights: see GRACE JACK V. UNIVERSITY OF AGRICULTURE, MAKURDI (2004) 1 SC (Pt.2) 100.

But assuming he was correct in his assessment of the jurisdiction of the Federal High Court in relation to his said suit, I am of the view that it was still improper for him to come forum-shopping in this Court as he has done. Section 22 of the Federal High Court Act empowers that Court to transfer cases wrongly filed before it to the appropriate court. This is fully acknowledged by the applicant in his written address. A legitimate approach to the matter would have been for the

applicant to urge the Federal High Court to exercise its powers under section 22 and transfer the suit to the appropriate court. It smacked of sharp practice for the applicant to simply abandon that case and jump to this Court without complying with the order standing against him therein. Despite that the applicant was fully aware of this, he deliberately chose to file a new suit in this Court to circumvent the subsisting order of the Court against him and thereby render same impotent. This is therefore a case of an intentional, calculated and flagrant abuse of judicial process by the applicant who, incidentally, is a legal practitioner.

Abuse of judicial process attracts an order of dismissal of the offending proceedings. In DOGARI V. WAZIRI (2016) LPELR-40320(CA) at 30F-31B, it was held that no matter how meritorious the case of a party may be, once it is found to be an abuse of court process, that is the end of the matter.

Having found that this suit constitutes an abuse of the judicial process, its merits cannot be looked into. The case is hereby dismissed for abuse of court process.

(SGD)

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HON. JUSTICE A. O. EBONG
(1/7/2019)

Legal Representations:

(1) Applicant appears in person
(2) A. P. APEH, ESQ., with M. C. Attah, Esq, for the 1st – 6th Respondents.
(3) CHINYERE MONEME, ESQ., for the 7th – 11th Respondents.
(4) ALOYSIUS EZENWA, ESQ, for the 12th Respondent.