

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 34
CASE NUMBER:	SUIT NO. FCT/HC/CV/2636/19
DATE:	19TH FEBRUARY, 2020

BETWEEN:

OFEM EKAPONG OFEM.....PLAINTIFF/APPLICANT

AND

NIGERIA POLICE FORCE & 9 ORS.....DEFENDANTS/RESPONDENTS

APPEARANCE

Victor Opatalo Esq for the Applicant.
Ehis Ogiata Esq for the 8th -10th Respondent

JUDGMENT

The applicant through his counsel F. Baba Isa Esq approached this Honourable Court by way of motion on Notice for the enforcement of the Applicant’s Fundamental Human Right to dignity of the Human Person, personal liberty, freedom of movement, fair hearing and the right to own property pursuant to our extent laws.

The motion was brought pursuant to order 11 Rule 1 of the fundamental Rights (Enforcement Procedure) rules, 2009, Section 34, 35, 36, 41 & 44 of the

Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and article 5, 6, 7 (i) (c) 12 (1) & 14 of the African charter on Human and peoples Rights (Enforcement & Ratification) Act, cap. T9 laws of the Federation of Nigeria, 2004.

The Plaintiff/Applicant herein prayed the court for the following reliefs:-

- (i) A Declaration that the detention of the Plaintiff/Applicant from Monday 13th May, 2019 to Friday 17th May, 2019 at the Magodo Police station Lagos and the force CID, Abuja Nigeria by the 1st-7th Defendant/Respondents at the instance of the 8th-10th Defendants/Applicants without trial constituted an infraction of the right of personal liberty, fair hearing and freedom of movement cognizable and entrenched by Sections 35 (1) (2) (3) (4) & (5) (a), 36 (5) and 41 of the constitution of the Federal Republic of Nigeria (Supra) and Articles 6, 7 (1) (C) & 12 (1) of the African charter on Human & Peoples Rights (Enforcement & Ratification) Act (Supra) and therefore unconstitutional, wrongful, illegal, null and void.
- (ii) A Declaration that the confiscation of the Plaintiff/Applicant's laptop and phone by the 1st-7th Defendants/Respondents at the instance of the 8th-10th Defendants/Respondents without an order of court constitutes an infraction of his right to own property cognizable and entrenched by Section 44 of the Constitution of the Federal Republic of Nigeria, (Supra) and Article 14 of the African Charter on Human & Peoples Rights (Enforcement & Ratification) Act (supra) and therefore unconstitutional, wrongful, illegal, null and void.
- (iii) A Declaration that the Plaintiff/Applicant falling off a chair provided by the 1st-7th Respondents and dislocating his hand on the 13th of May, and his collapsing and being rushed to the hospital on Friday, 17th May, 2019 and leading to his travelling out of the country for treatment constitutes gross infringement of the Right to the Dignity of Human Person of the Plaintiff/Applicant as entrenched and cognizable in Section 34 of the 1999 Constitution (As Amended) and Article 5 of the African Charter on Human and Peoples Rights (Enforcement & Ratification) Act (Supra) and therefore unconstitutional, wrongful and illegal.

- (iv) An order directing the 1st-7th Defendants/Respondents to render a written and unqualified apology to the Plaintiff/Applicant for the brazen abuse of the Plaintiff/Applicant's Rights to Dignity of Human Person, Personal Liberty, Freedom of Movement, fair hearing and right to own property cognizable and entrenched by Sections 34, 35, 36, and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended & altered) and articles 5, 6, 7, (1) (c), 12 (1) & 14 of the African Charter on Human & peoples rights (Enforcement & Ratification) Act, Cap. T9, Laws of the Federation of Nigeria, 2004.
- (v) An order directing the 1st – 7th Defendants/Respondents to release to the Plaintiff/Applicant his Macbook Air 2016 Silver Colour Laptop and a Samsung Galaxy Note 9 Blue Colour Phone that are in their custody.
- (vi) An order restraining the 1st – 7th Defendants/Respondents and their agents from harassing, threatening and further arresting or detaining the Plaintiff/Applicant.
- (vii) General damages of the sum of Fifty (₦50,000,000.00) Million Naira each against the 8th – 10th Defendants/Respondents for instigating the brazen violation of the Fundamental Human Rights of the Plaintiff/Applicant to the right to Dignity of Human Person, Personal Liberty, fair hearing, Freedom of movement and Right to own Property cognizable and guaranteed by Section 34, 35, 36 (5), 41 and 44 of the Constitution of the Federal Republic of Nigeria, (Supra); Articles 5, 6, 7, (1) (c), 12 (1) & 14 of the African Charter on Human & People Rights (Enforcement and Ratification) Act (Supra).
- (viii) General/exemplary damages against the 1st – 7th Defendants/Respondents jointly and severally in the sum of ₦100 Million (One Hundred Million) for the flagrant infraction of the Fundamental Human rights of the Plaintiff/Applicant to the Right of Dignity of Human Person, Personal Liberty, fair Hearing, Freedom of Movement and Right to own Property cognizable and guaranteed by Sections 34, 35, 36 (5), 41 and 44 of the Constitution of Federal Republic of Nigeria, (Supra); Articles 5, 6, 7 (1) (c), 12 (1) & 14 of the African

Charter on Human & Peoples Rights (Enforcement & Ratification) Act (Supra).

- (ix) An order of Perpetual injunction restraining the Defendants/Respondents by themselves including their servants, officers, agents and cohorts under any guise from further violating the Fundamental Human Rights of the Plaintiff/Applicant to Dignity of Human Person, personal liberty, fair hearing, freedom of movement and right to own property cognizable and guaranteed by Sections 34, 35, 36, (5), 41 and 44 of the Constitution of the Federal Republic of Nigeria, (Supra); Articles 5, 6, 7, (1) (c), 12 (1) & 14 of the African Charter on Human & Peoples Rights (Enforcement & Ratification) Act (Supra).

In support of the Application is 4 paragraphed affidavit deposed to by one F. Baba Isa, Applicant's Lawyer. Attached to the Affidavit are annexures marked as Exhibits FB1-1 FB1-2 respectively.

In line with the Rules and procedure, statement in support of the application and grounds for the application were equally filed. Also filed in support is a written address dated 10th day July, 2019.

In the said written address learned counsel for the Applicant, F. Baba Isa Esq formulated four issues for determination as contained in the written address and argued them serially.

It was the learned counsel submission on issue one that the detention of the Plaintiff/Applicant from Monday 13th May, 2019 to Friday 17th May, 2019 at the Magodo police station Lagos and the Force CID, Abuja Nigeria by the 1st – 7th Defendants at the instance of the 8th – 10th Defendants/Respondents without trial constitutes an infraction of the Right To Personal Liberty For Hearing and freedom of Movement cognizable and entrenched by Sections 35 (1) (2) (3) (4) & (5) (a); 36 (5) and 41 of the Constitution of the Federal Republic of Nigeria, Articles 6, 7, (1) (c) of the African Charter on Human & Peoples Rights (Enforcement & Ratification) Act and therefore unconstitutional, wrongful, illegal, null and void.

In another submission, counsel stated that the Constitution has explicitly prescribed the circumstances under which the Respondents in exercise of the powers vested on them by the police Act, 2004, can arrest any Criminal suspect and or deprive him of his right to freedom, and liberty. Counsel referred the court to Section 35 (1) (a) (b) (c) (d) (e) & (f) of the Constitutional further submitted that in the instant case, none of the circumstances prescribed by the said Section 35 referred to are present. That the Plaintiff/Applicant went to the police station on his own accord to honour an invitation is definitely not sufficient grounds contemplated or permitted by the constitution to deny the plaintiff/Applicant his right to personal liberty. Reference was placed on the cases of DOMINIC PETER EKANEM VS ASSISTANT INSPECTOR GENERAL OF POLICE (ZONE 6) (2008) 5 NWLR (PT. 1079) 97; JOSEPA ODOGU VS ATTORNEY-GENERAL OF LAGOS STATE (1996) 6NWLR (PT. 456) 508; DOKUBO-ASARI VS FEDERAL REPUBLIC OF NIGERIA (2006) 11 NWLR (PT. 99)324.

The learned counsel contended that the Plaintiff/Applicant ought to have been charged to court from Monday, 13th May, 2019 to Friday 17th May, 2019. If the 1st – 7th Defendant/Respondents for any reason felt the Plaintiff/Applicant had committed any offence and not to lock up the Plaintiff/Applicant for 5 days with Persons suspected of committing heinous Crimes like Murder and Armed Robbery.

As such counsel submitted that the failure of the 1st -7th Respondents to charge or arraign the Applicant but continue harassment and intimidation is an infraction of the right of presumption of innocence enshrined in Section 36 (5) of the Constitution.

Consequently, counsel submitted that the arrest and detention of the Applicant in the circumstances such as this is unjustifiable and therefore illegal and amounts to a violation of the Applicant's right to personal liberty as cognizable by Section 35 (1) of the Constitution.

In his further contention, counsel stated that assuming without conceding that the Applicant was arrested on the ground of reasonable suspicion by the 1st -7th Respondents of having committed an offence, counsel submitted that it is not

justifiable and within the purport of the provisions of Section 35 (3) of the Constitution for the 1st -7th Respondents to have kept the Applicant in detention for 5 days (Monday, 13 May, 2019 to Friday 17th May 2019) and thereafter without charging him to a court competent jurisdiction

In further submission, counsel stated that the law is that, where the Police or the executive arbitrarily detains a citizen in circumstances outside the purview of the Constitution or any other written law, then that is derogatory to the due process of law. In support counsel cited the cases of SAIDU VS THE STATE (1982) 4 SC AT 89 and IYERE VS DURU (1986) 5 NWLR (PT. 44) at page 675.

Again, counsel submitted that the freedom of movement of the Applicant was restricted and restrained for several days (from Monday 13th May, 2019 to Friday 17th May, 2019) on account of his detention or incarceration by the 1st -17th Respondents for no reason whatsoever. Counsel referred the court to Section 41 (1) & (2) of the Constitution and Articles 12 (1) of the African Charter on Human and Peoples Right (Enforcement and Ratification) Act (Supra) as well as the cases of FEDERAL MINISTER OF INTERNAL AFFAIRS VS SHUGABA ABDULRAHAMAN DARMA (CA) (1982) 1 FNLR 200; OLISA AGBAKOBA VS THE DIRECTOR STATE SECURITY SERVICES AND THE ATTORNEY-GENERAL OF THE FEDERATION (1994) 6 NWLR (PT. 351) page 475; OGBONNA VS OGBONNA (2014) LPELR-22308 CA; ANOGWIE & ORS VS ODOM & ORS (2016) LPELR-40214 (CA).

Consequently, counsel urged the court to resolve issue one in favour of the Applicant.

On issue two, counsel submitted that the police have no legal power or authority to have seized the Plaintiff/Applicant's phone and Laptop without any order of court to that effect. In support counsel relied on the cases of FLOUR MILL OF NIGERIA LIMITED VS TAJUDEEN OGUNBAYO (2014) LPELR-24264 (CA); COP VS IBRAHIM (2016) LPELR-41319 (CA). Also counsel referred the court to Section 44 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 (AS Amended).

Counsel submitted finally on issues two that for the 1st -7th Defendants/Respondents to seize the Plaintiff/Respondent's phone and Laptop

without an order of a court of competent jurisdiction, they plundered the Plaintiff/Applicant rights to fair hearing and to own property as contained and anointed by the Constitution of the Federal Republic of Nigeria.

On issue three, counsel referred the court to the grounds upon which the application was predicated and the supporting affidavit and stated that the Plaintiff/Applicant fell off a chair provided by the 1st – 7th respondents and dislocated his hand on the 13th of May, 2019 and collapsed and was rushed to the hospital on Friday, 17th May, 2019 and this led to his travelling out of the country for treatment. Counsel relied on Section 34 (1) of the Constitution of Nigeria 1999 (As Amended).

Therefore, counsel further submitted that the Plaintiff falling off a chair provided by the 1st -7th Respondents and dislocating his hand on the 13th of May, 2019, and his collapsing and being rushed to the hospital on Friday. 17th May, 2019 and Laptop to his travelling out of the country for treatment amounts to subjecting the Plaintiff/Applicant to torture or to inhuman or degrading treatment, thus infringing on the Plaintiff/Applicant's fundamental Human Right protected by Section 34 of the Constitution. Reference was made to Article 5 of the African Charter on Human and Peoples Rights.

On issue four, counsel submitted that the Applicant is entitled to General/Exemplary Damages that is Commensurate with gross violation of his Fundamental Rights guaranteed him by the Constitution & the African Charter on Human & Peoples Rights (Enforcement & Ratification) Act.

Again, counsel submitted that it is well settled that general damages which is a consequences of the wrong done to the Applicant by the Respondent can be awarded in an action for the enforcement of a right guaranteed under Chapter iv of the Constitution and the African Charter on Human Peoples Right (Ratification & Enforcement) Act.

Similarly, counsel submitted that Exemplary Damages are usually awarded where the conduct of the Defendant (especially by government or it agencies) is

unconscionable unjustifiable blatant and condemnable and has resulted in great suffering of the Applicant.

As such, it was the learned counsel's contention that the arrest detention, constant harassment and threat of arrest of the Applicant in the circumstances of this case is unjustifiable and done with reckless abandon and without the slightest respect for the Applicants Fundamental Human Rights. Reference was made to the cases of MINISTER OF INTERNAL AFFAIRS VS DARMAN (1982) 3 NWLR 915 AT 928; ANOGWIE & ORS VS ODOM & ORS (2016) LPELR-40214 (CA).

Finally, counsel urged the court to resolve this issue in favour of the Applicant and invite the court to grant the reliefs sought by the Applicant.

In opposing the application 8th to 10th Respondents filed a 7 paragraphed counter Affidavit deposed to by one Mr. Solomon Igu. Annexed to the counter affidavit are annexures marked as Exhibit U1 to U4 respectively. Also filed in opposition is a written address dated 5th day of December, 2019.

Let me first of all consider the notice of preliminary objection filed by 8th to 10th Respondents to the Applicant's motion on notice for the enforcement of his Fundamental Human Rights.

By a notice of preliminary objection dated 5th day of December, 2019, 8th to 10th Respondents/Applicants raised an objection to the jurisdiction of this Honourable Court to entertain the said application.

The grounds upon which the preliminary objection was predicated are contained therein.

Filed in support of the Notice of preliminary objection is a 14 paragraphed affidavit deposed to by one Mr. Solomon Igun. Also filed is a further affidavit of 8 paragraphs with an annexure attached therewith. The said further affidavit was deposed to by one Onyenuforo Chimamkpan Ihouma, a staff of Communication Trends Limited the 9th Respondent in this Suit.

In the said written address, learned counsel to the 8th -10th Respondents formulated three issues for determination and argued them accordingly.

On issue one which is whether the service of the originating motion on the 8th – 10 Respondents is proper in law, counsel contended that the originating process in this application were not properly served on the 8th – 10 Respondents according to law and therefore ought to be set aside. Reference was made to the case of ONI VS CADBURY NIG. PLC (2016) 9 NWLR (PT. 1516) 80 at 107 paragraphs B-9.

The learned counsel further stated that it is a condition precedent that originating process such as the originating motion in this application must be properly served on all parties before the court could assume jurisdiction to entertain this suit and where service is yet to be effected or properly effected accordingly to law, the court would lack the jurisdiction to entertain the suit. Counsel referred the court to order 4 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

In another submission, counsel stated that upon being registered as a legal entity a company possessed a juristic personality which differentiates it from its share-holders and Directors and can sue or be sued submitted, that 8th -10th Respondents are separate personalities and there is no agency relationship among them.

The learned counsel referred the court to paragraph 10 of the supporting affidavit to the Notice of preliminary objection and contended that a proper service on the 9th and 10th Respondents will mean being served separately and directly in line with the Rules applicable herein, except where there is an order of substituted service.

Consequently, counsel contended that the applicant neither sought nor did the court grant an order for substituted service in this case and therefore the only service that could be proper in law herein is service effected directly on each of the 8th – 9th Respondent which the applicant had not done in this case. Reliance was placed on the case of DIKE VS KAYKAY CONSTRUCTIONS LTD (2009) 14 NWLR (PT. 1584) 1 at paragraph B-C.

In this regard, counsel submitted that the service effected on the 8th – 10th Respondents having not complied with the procedure provided under the rules applicable herein, renders the service deficient and this robs the court of jurisdiction to adjudicate over this matter.

Consequently, counsel urged the court to so hold and strike out this suit in its entirety.

On issue two which is whether this suit does not constitute an abuse of court process having regard to suit No. CV/122/2019 earlier filed by the applicant also against the 8th – 10th Respondents, learned counsel stated that it is stated in the affidavit in support of this preliminary objection that the applicant herein has a subsisting suit pending against the 8th – 10th Respondents among other defendants which suit also seeks the enforcement of the fundamental Rights of the Applicant among other reliefs.

The leaned counsel submitted that is a well known principle of law that multiplicity of actions against the same party and seeking the same relief is an abuse of court process. In support, counsel cited the cases of UMEAKUANA VS UMEAKUANA (2019) 14 NWLR (PT. 169091 at 83-84, paragraphs H-C; SHERIFF VS P.DP (2017) 14 NWLR (PT. 1585) 212 at 288-289 paragraphs F-D.

In another submission, counsel stated that as far as this present suit is concerned and as it affects the 8th – 10th Respondents the applicant is using the process of the court with the intention of harassing, irritating and annoying the 8th -10th Respondents and urged the court to resist.

In that regard, counsel urged the court to strike out this suit in its entirety particularly as it affects the 8th -10th Respondents for being an abuse. Reference was made to the case of OGBEBOR VS I. N. E.C (2018) 6 NWLR (PT. 1614) 1 at 21-22, paragraphs E- B.

On issue three, which is whether if the above issue one is answered in the negative, this Honourable Court has the jurisdiction to entertain this suit least against the 8th – 10th Respondents, Counsel stated that if the court finds in their favour the two issues for determination above, the court will lack the jurisdiction

to entertain the entirety of this suit and without the necessary jurisdiction the court cannot sit over this matter as any proceedings conducted without the requisite jurisdiction no matter how well conducted amounts to a nullity and a waste of judicial time. Reference was made to the cases of ACHONU CS OKUWOBI (2017) 14 NWLR (PT. 1584) 142 at 171, paragraphs B; ONI VS CADBURY NIG. PLC (Supra).

On the whole, counsel submitted that since this suit is a clear abuse of judicial process and also since the service of originating processes on the 8th – 10 Respondents is not proper in law same having not been effected in accordance with the established principle of law, the court lacks the requisite jurisdiction or proper authority to adjudicate over this matter.

Finally, counsel urged the court to strike out the entire suit for being incompetent same having not been initiated by due process of law.

On the other hand, the Plaintiff/Applicant filed a written address on points of law in reply to the 8th – 10th Defendants/Respondents preliminary Objection. The said reply is dated 17th day of January, 2020 and filed on 20th day of January, 2020 wherein, the learned counsel to the Applicant formulated a lone issue for determination which is whether the Defendants submission has merit in law.

I have carefully perused the Notice of preliminary objection the grounds upon which same was based, the supporting affidavit and the further affidavit together with the annexure attached therewith. I have equally gone through the written address in support of the preliminary objection.

Similarly, I have gone through the written reply on points of law filed by the Applicant in opposition to the Notice of preliminary objection. Therefore in my humble view, the issue for determination is whether this application/suit filed by the Applicant for the enforcement of his Fundamental Human Rights is an abuse of court process.

It is important to note at the onset that the gamut of this preliminary objection is that the 8th – 10 Respondents were not properly served with the originating

processes of this suit and that the Applicant herein had earlier filed a suit to enforce his fundamental Rights still pending in another court.

Having pointed out this and before I dwell more on the issue for determination let me briefly talk on the issue of service of court process on the 8th – 10th respondents.

I believe it is settled law that service of court processes on a party is fundamental to the trial of the case because it is the service that confers jurisdiction on the court seized of the matter.

Also the essence of service of court process is among other things to notify a party of a pending suit against him. In other hands, it is for a party to be in the know of a pending suit against him in order to put up representation to defend himself. In this respect, see the case of ADAMU VS AKUKALA (2005) 11 NWLR (PT. 936) 263 AT 280 paragraphs A-C where it was held thus:-

“It is now settled that for a court of law to have jurisdiction over a matter service of process must be effected or else the court will be devoid of jurisdiction to entertain it.”

See also the case of IDIATA VS EJEKO (2015) 11 NWLR (PT. 936) 349 at 364, paragraph B- D where it was held that:-

“Now the issue of service. It is not in doubt that service of court processes, where service is required, is the final step that ignites the jurisdiction of the court to hear and determine matters competently and properly placed before it. Want of service where service is required completely and effectively robs the court of jurisdiction to entertain the matter unless the party to be served waves service and submits to the court’s jurisdiction. Failure to effect proper service where service is required is a fundamental right that affects the validity of subsequent proceedings”.

See also the case of NTEKIM VS ORON LOCAL GOVT (2010) 16 NWLR (P.T) 1219) 209.

In the instant case therefore, it was deposed in the supporting affidavit to the preliminary objection particularly at paragraph 10 thus:-

“That I know as a fact that only one copy of the originating process in this suit and a copy of the hearing notice that were dropped at CTL House 19 Aminu Kano Crescent Wuse II, Abuja the office of the 9th Respondents herein”.

Also the Applicant’s counsel in his reply on points of law to the preliminary objection urged the court to take judicial notice of the records of proceedings of the last adjourned date. That the records of this court will show that on the said date the Applicant had a motion Ex-parte for substituted service to serve 8th and 10th Defendants via substituted means, however, the Applicant counsel had to withdraw the said motion ex-parte after a counsel had entered appearance for the 8th and 10th Defendants.

I have indeed taken judicial notice of the record of this court particularly that of 18-11-2019 where the Applicant’s counsel One Kuzayat Y. Magaji Esq informed the court that the matter is coming up for the first time. The counsel further informed the court that parties have all been served. Also, one Ehis Ogiate Esq announced appearance for the 8th to 10 Defendants which made the applicants withdraw their pending motion Ex-parte for substituted service on the 8th to 10th Defendants and the said Motion with Motion No. M/8296/19 was accordingly struck out.

From the proceedings of the said 18-11-2019, I am of the considered opinion that the 8th to 10th Respondents have waived service and submitted to the jurisdiction of the court. After all, the essence of service as pointed out earlier is to enable a party know about a pending suit against him and to enter appearance to put up a defence. I so hold.

Now, coming to the issue for determination.

Let me begin by stating what an abuse of court process means. It was held in the case of *AJUWA VS S. P. D. C (NIG) LTD (2008) 10 NWLR (PT. 1094) 64 at 91*, paragraph D-E.

“It is well settled and our law reports are replete with decided cases of the Supreme Court and this court on what amounts to an abuse of court process. An abuse of court process is said to exist when a party deliberately and improperly uses, employs or initiates court process or multiplicity of the judicial process to the frustration, irritation and annoyance of his opponent such as instituting a multiplicity of actions on the same subject matter between the same parties or their privies on the same issues.....”.

In the same vein, it was held in the case of OKOREAFFIA VS AGWU (2008) 12 NWLR (PT. 1100) 105 at 189 paragraphs C-D that:-

“.....It is trite, that an abuse of judicial process may be occasioned when a party improperly uses a court process resulting in the annoyance and intimidation of his opponent, and interference with the administration of justice. A typical example of an abuse of judicial process is where two similar processes are used against the same party in respect of the exercise of the same right and subject matter.....”.

See also the cases of OWONIKOKO VS AROWOSAYE (1997) 10 NWLR (PT. 523) 61 at 76; OKAFOR VS A. G. ANAMBRA STATE (1991) 6 NWLR (PT. 200) 659. And SARAKI VS KOTOYE (1992) 9 NWLR (PT. 264) 156.

Having stated what constitutes an abuse of court process, I will now evaluate the affidavit evidence before the court.

The 8th – 10th Respondents deposed in their supporting affidavit to the preliminary objection particularly at paragraph 12 thus:-

“That I know that the Applicant had earlier filed a similar suit against the 8th to 10th Respondents which is still pending in this Honourable Court. A copy of the originating process in the said suit is exhibit A.”

Moreso, the 8th – 10th Respondents filed a further affidavit wherein it was deposed at paragraph 7 (a) & (b) Thus:-

“7 (a) That the said Exhibited process/document was inadvertently omitted while the motion was being filed”.

“7 (b) That the process/document referred to and marked Exhibit A is necessary for the preliminary objection hence this further affidavit”.

On the other hand, the learned counsel to the applicant submitted in his reply on points of law that the facts of the two suits are markedly different and that all the parties in the two suit are not the same.

I have taken judicial notice of the facts and the surrounding circumstances of this instant case before me and I equally studied carefully the annexure marked as Exhibit A in the supporting affidavit to preliminary objection which was annexed to the further affidavit, it is my humble but firm view that the two suits, i.e the present one before me with suit No. CV/2636/2019 borders on the same subject matter and the same parties. Irrespective of the fact that parties in the instant suit before me are more in number.

In addition, a perusal of the two suits carefully will also show that the main relief in the two suits is for the enforcement of the fundamental Human Rights of the applicant and the circumstances that led to the two suits are one and the same.

In the circumstances therefore, it is my considered opinion that the instant case before me is indeed an abuse of court process. I so hold.

In the light of the abuse, I refer to the case of UNIFAM IND. LTD VS OCEANIC BANK INT’L (NIG) LTD (2005) 3 NWLR (PT. 911) 83 at 102, paragraphs A-B where it was held that:-

“.....Where the court comes to the conclusion that its process is abused, the proper order is that of dismissal of the process.....”.

From the foregoing, I, without much ado resolve the issue for determination in favour of the 8th – 10th Respondents against the applicant and hold very strongly that the present suit filed by the applicant with suit No. CV/2636/2019 is an abuse of court process.

In view of the above and in conclusion, the preliminary objection is hereby sustained and this suit with suit No CV/2636/2019 be and is hereby dismissed in its entirety. I make no order as to cost.

Signed

Hon. Justice Samirah Umar Bature

19/02/2020

Counsel to Applicant: Thank you my Lord.

Counsel to 8th – 10th Respondents: We are very grateful my Lord.