IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/1864/16
APPEAL NO: CVA/290/2017

BETWEEN:

MR. CHRISTIAN NWANKWO……APPELLANT

AND

HAJIYA MARYAM GIDADO IDRIS……RESPONDENT

JUDGMENT

This is an interlocutory appeal from the Ruling of His Worship **MABEL T. SEGUN BELLO** sitting at the Chief District Court II, Wuse Zone 2, Abuja delivered on the 22/08/2018.

The brief background of the facts which gave rise to the appeal is that on the 08/06/2016 the Respondent as Plaintiff filed a Plaint before the Court below against the Appellant for the recovery of Shop No. 6 Block 7, located at Wuse Market, Abuja. She also claimed arrears of rent and mense profit.

Upon being served with the Plaint, the Appellant filed a preliminary objection based on two grounds. Firstly that the suit constitute an abuse of Court process and secondly, that the Plaintiff had no title to

the demised property. The learned District Judge heard arguments on the preliminary objection and in a Bench Ruling dismissed same as lacking in merit.

The Appellant was not happy with the Ruling of the lower Court and has now appealed to this Court on two grounds vide a Notice of Appeal which was filed on the 31/08/2017. The two grounds of appeal as listed on the face of the Notice of Appeal taken without their particulars are;

(1) The learned District Judge erred in law when she held that the case of the Respondent does not amount to abuse of Court process and therefore dismissed the notice of preliminary objection.

(2) That the issue of ownership was also raised in the notice of preliminary objection and the learned trial Judge did not make any pronouncement in respect of same.

The Appellant filed his brief of argument in support of the appeal on the 22/11/2017. The Respondent did not file Respondent's brief in opposition to the appeal even though he was served.

At the hearing of the appeal before this Court on the 30/10/2018, the learned counsel to the Appellant argued his appeal and adopted his brief of argument. The learned counsel to the Respondent who

was present sought leave of the Court to argue the appeal orally. This request was turned down by the Court as counsel did not advance any reason for failing to file a written brief of argument. At the end he merely submitted some judicial authorities which in his view would help the Court in arriving at a just decision. The imperative of the two decisions supplied by the counsel is to the effect that where a party has raised more than one issue from a ground of appeal, the issues so raised would be declared incompetent and liable to be struck out.

At the end of the day this appeal was heard without the Respondent's brief of argument. However it must be stressed that the absence of the Respondent's brief of argument does not mean that the appeal would automatically succeed. The Court would consider the appeal on merit to determine the success or otherwise of same. In the brief of argument filed by the learned counsel to the Appellant, four issues were distilled for the determination of the appeal. They are:

(1) Whether the case of the Plaintiff before the trial Court is not a clear case of abuse of Court process.
(2) Whether the lower Court was right to have adjourned for hearing despite the fact that hearing has commenced before this Honourable Court in respect of the same subject matter

of the suit and therefore refused to be bound by the Order of this Honourable Court.

(3) Whether the lower Court was right not to have pronounced on the issue of ownership raised before it, and

(4) Whether the lower Court was right to have assumed jurisdiction as the issue of ownership was raised by the parties in their processes.

I have considered the two grounds of appeal filed in this appeal and the four issues raised by the learned counsel to the Appellant in his brief of argument in support of the two grounds and it would appear that issue one was distilled from the 1st ground of appeal and that issue three is predicated on the second ground of appeal. Issue two and four are clearly not based or related to any of the two grounds of appeal. Clearly there is no ground of appeal challenging the decision of the learned District Judge to continue with the hearing of the suit despite the pendency of the appeal before this Court. There is also no ground that title to the demised shop has been raised by the parties.

The law is clear that where an issue is distilled by party to an appeal and the issue does not draw, arise from or based on any ground of appeal or relate thereto such issue would be declared incompetent

and struck out together with the argument proffered in support of the issue.

See the case of **PERE ROBERTO NIG. LTD VS ANI (2009) 13 NWLR (PT. 1159) 522** where Mukhtar JCA stated thus:

> **"The law is well settled that issues raised for determination in an appeal must be distilled from the grounds of appeal. The third issue which would have violated the rule against proliferation of issues relates to admission of further affidavit evidence after the Appellant had argued its motion at the lower Court, it is not related to any of the two grounds of appeal and should therefore be struck out as being worthless and incompetent."**

His Lordship further emphasized:

> **"The third issue is outside the scope of the two grounds of appeal and therefore tantamount to a non-starter. Having not been premised on any grounds of appeal, the Appellant's third issue should be and is accordingly hereby struck out including the arguments canvassed therein."**

Similarly in the case of **INTERGRATED BUILDERS VS DOM ZAQ VENTURES NIG. LTD (2005) 2 NWLR (PT. 909) 97 at 112-133** where Ibiyeye JCA held thus:

> **"Issues for determination in an appeal must arise from and related to the grounds of appeal filed. Therefore any issue for determination of appeal which has no ground of appeal to support it is worthless and would be struck out. Also a ground of appeal from which an issue is not identified is deemed to have been abandoned and liable to being struck out. In the instant case issues two and three in the Appellant's brief of argument related to a variation of a written agreement by oral agreement which were not raised from any of the five grounds of appeal. They are therefore held incompetent and discountenanced. Furthermore since no issues were raised from grounds 3, 4, and 5 of the grounds of appeal, those grounds are deemed abandoned and struck out."**

See also the following cases:

1. **OSINUPEBI VS SAIBU (1982) 7SC 104;**
2. **UGO VS OBIEKWE (1989) 1 NWLR (99) 566;**

3. **ARE VS IPAYE (1986) 3 NWLR (PT. 29) 416;**
4. **UMARU VS THE STATE (1990) 3 NWLR (PT. 138) 363; and**
5. **CHUKWUOGOR VS OBUORA (1987) 3 NWLR (PT. 61) 454.**

On the basis of these principles of law, issues two and four in the Appellant's brief of argument together with the arguments proffered in support are hereby declared incompetent and worthless. If they were not struck out they would have all the same violated the rule against raising multiple issues from a ground of appeal which would have rendered such grounds of appeal incompetent. Issues two and four having been struck down for being at large the Court is now left with issue one and three.

ISSUE ONE

Whether the case of the Respondent before the trial Court is not a clear case of abuse of Court process.

Arguing this issue the learned counsel to the Appellant told the Court that this same case was litigated before Hafsat Soso and now on appeal to this Court awaiting determination. It was the contention of the learned counsel that the institution of this case while the appeal based on the same subject matter was pending amounts to an abuse of Court process. Counsel referred the Court to

pages 22, 23 and 24 of the record of appeal which contain the certificates of Judgments which were appealed against. He also called the attention of the Court to pages 30 to 39 of the record which contain the Rulings of this Court granting the application of the Appellant for joinder as a party to the appeal.

On what constitute an abuse of Court process learned counsel called in aid the case of **UMEH VS IWU (2008) 8 NWLR (PT. 1089) 225 at 228 ratio 1 and 2**. In that case the term was described as the act of instituting an action during the pendency of another suit, claiming the same relief. It was also described as improper use of the processes of the Court by filing multiple actions on the same subject matter in the same Court or even another Court simultaneously by the same Plaintiff.

Based on the facts outlined by counsel and relying on the decision of UMEH (Supra) counsel urged the Court to uphold the appeal and dismiss the case of the Plaintiff.

I have read the certificates of Judgments leading to the pending appeal before this Court and the Rulings of this Court on pages 30 to 39 of the record of appeal as well as the argument of the Appellant on this point and it is my view that the centre of the argument of the learned counsel on this point is that the case is an abuse of Court process because the subject matter of it was litigated upon

previously in the District Court in three cases and an appeal in respect thereof is pending before this Court and the Appellant is a party to the knowledge of the Respondent. That being the case there is the need to have a clear understanding of the term to be able to resolve the point.

The term "abuse of Court process" has been defined by various Courts. In **PDP & ANOR VS UMEH & ORS (2017) LPELR 42023** it was held:

> **"Abuse of Court process manifests in a variety of situations and or circumstances. There is however a common features, that is, an improper use of judicial process by a party in litigation to interfere with due administration of justice."**

A similar definition of this term was given by Karibi-Wyte JSC in the case of **OKAFOR VS A.G ANAMBRA STATE (1991) 3 NWLR (PT. 200) 659.** He stated that:

> **"An abuse of process of the Court is only possible by improper use of the process to the irritation and annoyance of the opponent and that multiplicity of actions on the same matter may constitute an abuse of the process of the Court. His Lordship added emphatically that this is so only where the action is**

between the same parties, with respect to the same subject matter."

In **PDP & ANOR VS UMEH & ORS (2017) LPELR 42023** Eko JSC gave an illustration of the term as follows:

"There may be a situation where there exist multiple transactions between the same parties. Such multiple transactions between the same parties may often time give rise to multiple cause of action. Each cause of action in that situation gives rise to a distinct right of action. The exercise of such right of action in such a situation between the same parties cannot be said to be multiplicity of actions between the same parties in respect of the same cause of action to warrant a plea of "abuse of Court process." Where therefore there exist a pending suit on a cause of action different and distinct from another in a subsequent suit between the same parties, the existence or pendency of the previous suit on an entirely different cause of action between the same parties does not make or constitute the subsequent suit an abuse of Court process. Rather, what makes the subsequent suit an abuse of the process of the Court is the institution of a

> **fresh action between the same parties and on the same subject matter against the same opponent on the same issues when the previous suit has not yet been disposed of."**

See **OKAFOR VS A.G ANAMBRA STATE (Supra); MORGAN VS WEST AFRICAN AUTOMOBILE ENGINEERING CO. LTD (1971) 1 NWLR 219; OKORODUDU VS OKORODUDU (1977) 3SC 21; OYEGBOLA VS ESSO WEST AFRICA INC (1966) 1 ALL NLR 170.**

If the above decisions are synthesized the common features that must co-exist for there to be an abuse of Court process are:

(1) That the previous case and the new one were instituted by the same Plaintiff.
(2) The case must relate to the same subject matter.
(3) Involving the same cause of action; and
(4) The multiple actions were instituted against the same opponent.

Guided by the above principles the learned District Judge held in page 4 of her Ruling that:

> **"I am minded to believe that the subject matter in this suit is basically the same. The issues however are similar but not the same, the claims are the same but**

against different parties and the parties are essentially not the same."

The trial Court further held:

> **"Exhibits 1, 2, 3 attached by the Applicant succinctly reveals (sic) that the parties are not the same, as the Plaintiff in this matter is not a party to the suit at the Appellate Court. Although the Defendant in this suit is a party to the appeal at the Appellate Court, it is difficult in the face of the decision of the Supreme Court in UMEH VS IWU (2008) to conclude that the parties are the same or that this fact of itself is sufficient to ground a charge of abuse of Court process. I believe the law is clear which is that to sustain a charge of abuse of Court process, all the earlier listed preconditions must co-exist and they are mutually exclusive and conjunctive."**

I have considered the argument of learned counsel to the Appellant and the Ruling of the lower Court the ratio of which I reproduced above and I think that the trial Court was correct. A plea that a suit constitutes an abuse of Court process cannot be made and upheld unless it is established by the Applicant that the Plaintiff is guilty of:

(1) Instituting multiple cases.

(2) Against the same opponent.

(3) Involving the same subject matter; and

(4) Concerning the same cause of action.

In this case and as rightly pointed out by the lower Court the Plaintiff is not a privy to any of the three decisions of the District Court which was constituted as one appeal before this Court. The Certificates of Judgments of the District Court as contained in pages 22, 23 and 24 of the record of appeal show clearly that the Respondent is not a party to any of the suits.

That being the case it is my rightful view that the conclusion reached by the trial Court in its Ruling cannot be faulted. The pending appeal and this suit do not involve the same parties, the Plaintiff in this suit has not instituted multiple cases and therefore not guilty of abuse of Court process. On this note issue one is resolved against the Appellant and the 1st ground of appeal is dismissed.

ISSUE 2

The second issue in the brief of argument which is predicated on the 2nd ground of appeal is whether the lower Court was right not to have pronounced on the issue of ownership which was raised by parties in their processes.

On this point the learned counsel to the Appellant submitted that once the issue of ownership or title or interest in the property is raised the District Court ought to decline jurisdiction. Section 13 (2) (a) (i) (ii) of the District Law was cited and relied upon. Counsel told the Court that paragraph 7 of the application for the issuance of Plaint dated 08/06/2016 at page one (1) of the record of proceedings shows that the Respondent raised the issue of ownership and that one of the issues raised in the pending appeal before this Court was title of the shop which has been revoked.

That the Appellant exhibited exhibit 1 to the preliminary objection to show that the right of the Respondent over the said shop was revoked effective from 1st of January, 2006. It was the contention of the Appellant that parties having raised the issue of title in their processes the suit has ceased to be a claim for recovery of premises and has become a dispute over title to the shop for which the trial Court ought to have declined jurisdiction.

I agree with learned counsel to the Appellant that a Court of law is duty bound to consider and pronounce on all issues canvassed before it. See **ADAH VS NYSC (2004) 13 NWLR (PT. 891) 639**. There are several authorities on this point. However a failure to pronounce on all the issues canvassed would only be fatal if it has

occasioned a miscarriage of justice. See **OWURU & ANOR VS ADIGWU & ANOR (2018) LPELR 42763**.

The question that would arise then is whether the question of title was raised by the parties in the proceedings before the trial Court. paragraph 7 of the Plaint issued by the Respondent as Plaintiff at the trial Court states:

> "7) **After receipt of the Plaintiff's property manager's letter of 14th April, 2014 Defendant vide his solicitor's letter dated 23rd April, 2014 abandoned his appeal for rent review to N1,200,000.00 (One Million, Two Hundred Thousand Naira) and came up with a long time resolved story of ownership of the shop in order to frustrate the rent reviewed demanded by the Plaintiff's property managers."**

To me the above averment does not amount to raising an issue of title. The issue of ownership referred to by the Plaintiff must be construed to mean the argument set up by the Appellant that exhibit 1 on page 4 of the records has revoked the title of the Respondent over the disputed property and transferred ownership to Abuja Market Management Limited. There is no time the Appellant as a party to this suit has raised a point that he is the owner of the disputed shop. He merely denied the title of the Respondent as

landlord and set up title to the disputed property on a non party to this suit.

It is therefore my view based on the foregoing that the Appellant has not properly set up or raised adverse title to the title of the Respondent and the trial Court was right to have ignored it. Aside from this, it has not been demonstrated that the failure to pronounce on the point in whichever way has occasioned a miscarriage of justice. The main plank of the Appellant's preliminary objection was that the suit filed by the Respondent was an abuse of Court process which the trial Court Ruled upon and dismissed. Learned counsel to the Appellant has woefully misunderstood the purport or implication of Section 13 (2) (a) (i) (ii) of the District Court Law leading to a misapplication of same to the facts of this case. For the Section to apply the Defendant must set up his own title to the property in dispute. It does not apply where as in this case the Defendant is asserting the title of a third party who is a stranger to the action.

Now what the Defendant has merely asserted is that because of exhibit 1 which is a document purportedly written by Abuja Market Management in 2006, the title in the property is no longer in the Respondent. First and foremost the document was not addressed to the Respondent. Secondly nobody has ever sued the Respondent for

the rent so far collected from the Appellant in respect of the property and finally the document is not signed. It is a worthless document. What the Defendant has done is to set up a disclaimer which in law is considered as a reprehensible conduct.

The Evidence Act is very clear on the point that tenants are estopped from disputing the title of their landlord during the continuance of the tenancy. I refer to Section 170 of the Evidence Act, 2011 which provides as follows:

> **"No tenant of immovable property or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession of it shall be permitted to deny that such person had a title to such possession at the time when such licence was given."**

Thus in **IRROAGHARO VS EFFOM ADU (2009) 11 NWLR (PT. 1153) 584** the CA stated the position thus:

> **"It is true that in law it is absolutely wrong and morally reprehensible as well as a grave infraction for a tenant to deny the title of his landlord, in law**

such misguided action attracts the severest of action amounting to forfeiture of tenancy."

See **OLALE VS EKWELENDU (1989) 4 NWLR (PT. 115) 326 SC.**

In rounding up I must emphasize that the Appellant did not raise the issue of his title to the demised property before the trial Court and the failure of that Court to pronounce on the point is not fatal to her Ruling. On this account issue 3 is also resolved against the Appellant leading to a dismissal of the second ground of appeal.

To me this appeal is thoroughly lacking in merit as it is misconceived. It is also a waste of time and I hereby dismiss it.

Signed
Hon. Justice H.B. Yusuf
(Presiding Judge)
11/05/2020