

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA ON THE 18<sup>TH</sup> APRIL, 2024**

**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**

**SUIT NO. FCT/HC/CV/0879/18**

**COURT CLERK: JOSEPH BALAMI ISHAKU.**

**BETWEEN:**

- |    |                                |   |           |
|----|--------------------------------|---|-----------|
| 1. | E.F. SHAW LIMITED              | } |           |
| 2. | MRS. EFFIOM BASSEY BANIGO..... |   |           |
|    |                                |   | CLAIMANTS |

**AND**

- |    |   |   |                 |
|----|---|---|-----------------|
| 1. | MINISTER OF THE FEDERAL CAPITAL TERRITORY | } |                 |
| 2. | ABUJA GEOGRAPHICAL INFORMATION SYSTEM     |   |                 |
| 3. | PATMAC GLOBAL RESOURCES LTD               |   |                 |
| 4. | MR. SAMUEL SAAMEER USOOIYOL               |   |                 |
|    |   |   | .....DEFENDANTS |

**RULING**

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants application dated 1/12/2020 but filed on the 2<sup>nd</sup> of December 2020 is for:

- (1) An Order of this Court setting aside the Concurrent Writ of Summons served on the 3<sup>rd</sup> Defendant.
- (2) An Order of Court striking out the name of the 3<sup>rd</sup>& 4<sup>th</sup> Defendants as parties to the suit.

Alternatively

- (1) An Order dismissing the suit for constituting an abuse of the Judicial Process.

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

Learned Counsel rely on the grounds for the application as contained on the face of the Motion Paper. Learned Counsel further relied upon the Affidavit filed in support of the application deposed to by Jude Agena. He deposes that on the 29/12/15, the 3<sup>rd</sup> Defendant filed Suit FCT/HC/CV/595/2015 against the present 1<sup>st</sup> Claimant. The Suit is Exhibit A1.

On the 27<sup>th</sup> day of April 2016, the present 1<sup>st</sup>& 2<sup>nd</sup> Defendants filed their Memorandum of Appearance in respect of the said Suit Exhibit A2 is a copy of the said Memorandum of Appearance. That on 30/06/16 this Court made Orders of Interlocutory Injunction against the Defendants. It is Exhibit A3. That the said Suit went to trial and at the end of trial parties were ordered to file their Final Written Addresses. That it was after parties were

ordered to file their Final Written Addresses that the present Claimant brought an application for Joinder and to arrest the Judgment. The Motion is Exhibit A4. The said Motion on Notice seeking joinder and arrest of Judgment was refused.

On 9/10/17, the present 1<sup>st</sup> Claimant filed a Motion for leave to appeal against the aforesaid Ruling. A copy of the Motion for leave is Exhibit A6. On 31/10/17, the present 1<sup>st</sup> Claimant further filed a Motion for Extension to seek leave to appeal against the Ruling.

On 14/12/17, the Court delivered Judgment in the aforesaid Suit. Exhibit A8 and A9 are copies of the Judgment and orders. That

on 16/01/18, the present 1<sup>st</sup> Claimant appealed against the judgment. The Notice of Appeal is Exhibit A10.

On 18/01/18, 1<sup>st</sup> Claimant herein filed a Motion for Stay of Execution of Judgment. It is Exhibit A11. The 3<sup>rd</sup> Defendant herein filed a Counter Affidavit and a Written Address against the said Motion for Stay. The 1<sup>st</sup> Claimant filed a Reply on point of law on 6/03/18. The said Motion for Stay of Execution is still pending. That the present 1<sup>st</sup> Claimant was adjudged to be a trespasser in respect of Plot 1022 Cadastral Zone A09 Guzape District Abuja FCT and was ordered to pay damages to the 3<sup>rd</sup> Defendant herein. Notwithstanding the above the 1<sup>st</sup> and 2<sup>nd</sup> Claimants filed a fresh Suit over the same subject matter which is the present Suit.

That on 15/06/20, 1<sup>st</sup> Claimant withdraw the Notice of Appeal it filed on 16/01/18. Exhibit A17 is a copy of the Record of Proceeding. On 27/08/20, 1<sup>st</sup> Claimant filed a Motion for leave to appeal against the said Judgment. It is Exhibit A18. That on the earlier Suit 1<sup>st</sup> Claimant was the unknown person who had been adjudged a trespasser in respect of the Plot 1022 Cadastral Zone A09 Guzape District. That Claimant is pursuing the appeal and this present Suit simultaneously.

That on 17/04/18 this Court granted the Claimant's application for leave to issue and serve a Concurrent Writ of Summons on the 3<sup>rd</sup> Defendant whose address for service was outside the jurisdiction of this Court. That the said Concurrent Writ was

issued on 16/01/19 which was not served on the 3<sup>rd</sup> Defendant till it expired. That on 18/05/20, the Claimant applied by way of Motion Exparte to renew the Writ and the application was granted. The said Concurrent Writ is Exhibit A20.

That no renewed Concurrent Writ of Summons has been served on the 3<sup>rd</sup> Defendant rather it was the old Concurrent Writ of Summons that was served on the 3<sup>rd</sup> Defendant through its Counsel it is Exhibit A23. That the Concurrent Writ of Summons served on the 3<sup>rd</sup> Defendant was issued on the 16/01/19 and has been in force for more than 9 months. It was not addressed by the Chief Registrar. That 1<sup>st</sup> Claimant hid the facts of the earlier Case from this Court.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Counsel rely on their Counter Affidavit deposed to by Chidi Onyeacholam in opposition to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Motion. All he deposed to in the Counter Affidavit is that the land belongs to the 1<sup>st</sup> Claimant. The Claimant's Counsel was not in Court to move and or adopt its Counter Affidavit nevertheless the Court will consider the Counter Affidavit. It is sworn to by Onyore Onyele Olelewe on the 31/03/21. She stated that the Claimant was offered a Statutory Right of Occupancy on the 7/10/10 at Plot 1022 Cadastral Zone A09 Guzape District Abuja FCT. That by a letter dated 26/08/14, the 1<sup>st</sup> Claimant accepted the offer. That 1<sup>st</sup> Claimant made various payments for the issuance of Certificate of Occupancy in respect of the Plot and 1<sup>st</sup> & 2<sup>nd</sup> Defendants issued receipt of payment in



favour of 1<sup>st</sup> Defendant. There is a search Report confirming the ownership of the plot in issue.

That one of 1<sup>st</sup> Claimant's Director received a call from one Kazim Imam a Counsel in the Legal Firm of 1<sup>st</sup>& 2<sup>nd</sup> Defendants that there is a pending Suit in respect of Plot 1022 Guzape the subject matter of this Suit. That Claimant quickly briefed their Counsel who filed a Motion to be joined in the suit. That 3<sup>rd</sup>& 3<sup>rd</sup> Defendants vehemently opposed the Claimant being joined. The Court delivered a Ruling refusing to join the Claimant as parties to the suit. The Court went ahead to deliver Judgment. That the present Suit has no connection with the matter pending at the Court of Appeal. That 3<sup>rd</sup>& 4<sup>th</sup> Defendants intention is to frustrate this matter not to be heard on the merit. The Claimants were

never a party in the other Suit. That the Concurrent Writ served on the 3<sup>rd</sup> Defendant is valid. That the other Court did not make any Interlocutory Injunction against 1<sup>st</sup>& 2<sup>nd</sup> Claimants.

That processes filed by the 1<sup>st</sup>& 2<sup>nd</sup> Claimants to be made party was refused. The appeal was struck out because 1<sup>st</sup> and 2<sup>nd</sup> Claimants were not parties to the Suit at the Lower Court. That the Motion for leave to appeal as an interested party is still pending at the Court of Appeal. The present Claimant not having been made a party cannot be adjudged a trespasser.

That the renewed Concurrent Writ of Summons has been served on the 3<sup>rd</sup> Defendant. The 3<sup>rd</sup> Defendant's Counsel had the written authority of 3<sup>rd</sup> Defendant to receive the renewed Writ.

The Concurrent Writ served on the Defendant did not expire but renewed. That it is in the Interest of justice to dismiss the application.

I have read the Affidavit Evidence and considered the Written Addresses of Counsel and the 3<sup>rd</sup>& 4<sup>th</sup> Defendants'Reply on point of law. Leave was granted by this Court per Late Justice C. U. Ndukwe J. to the Claimant to issue and serve Concurrent Writ of Summons on the 3<sup>rd</sup> Defendant on the 17/04/18. The Concurrent Writ of Summons is dated 16<sup>th</sup> January, 2019. From the records, it was served on 2/11/2020. The Concurrent Writ of Summons is not endorsed as required by Section 96(2) of the Sheriffs and Civil Process Act.

By Order 2 Rules 5(2) of the Rules of Court, an Originating process shall not be altered. The date on the Concurrent Writ of Summons was altered. The High Court of the FCT (Civil Procedures) Rules came into effect on the 15<sup>th</sup> of February, 2018. The Concurrent Writ herein was filed on the 16/01/19. The writ herein ought to have been served within three months from the date of issuance or if renewed, within three calendar months from the date of the last renewal. See form 2 of the Writ to be used where a Defendant is out of jurisdiction. There is no evidence to suggest that the writ was served outside jurisdiction either before or after the Writ was renewed. The effect is that the Concurrent Writ expired.

I have equally gone through the bundle of documents and Court processes in the earlier Suit. The Claimant's herein are not parties in the other Suit. The earlier Suit was instituted by the 3<sup>rd</sup> Defendant against the Minister of the 1<sup>st</sup>& 2<sup>nd</sup> Defendants and a person unknown.

The Suit was in respect of the Statutory Right of Occupancy over all the parcel of land situate and known as Plot 1022 Cadastral Zone A09 Guzape District, Abuja. The Claimants herein are said to be the unknown persons. They sought to be joined in the Suit after about two years of the institution of the action, when the matter was already slated for Judgment. Judgment was entered in favour of the 3<sup>rd</sup> Defendant in respect of the said parcel of land.

The Defendant brought an application to join the Suit and attempted to arrest the Judgment but it was refused. The Claimants herein being dissatisfied sought leave to appeal against the ruling of the Court. They also appealed against the Judgment.

Simultaneously, they filed this action against the Minister of the FCT, AGIS & 3<sup>rd</sup> Defendant seeking a declaration of title to the same land upon which Judgment had been entered in favour of the 3<sup>rd</sup> Defendant. The 4<sup>th</sup> Defendant is an agent of the 3<sup>rd</sup> Defendant by the Writ of Summons and Statement of Claim. Joining him in this Suit is ploy to evade the law. The 2<sup>nd</sup> Claimant is a Director of the 1<sup>st</sup> Claimant. The purported offer

letter is in the name of the 1<sup>st</sup> Claimant. It is also unnecessary to join the 2<sup>nd</sup> Claimant.

In totality the Suit herein is the same as the Suit earlier filed except that the Claimant was not joined but Sued an unknown person. The parties in the earlier Suit are the same as parties in this Suit. The subject matter is the same. The issue is also the same.

In any case, the Claimants have appealed both the Ruling and Judgment. It is better and more orderly for the Claimant to pursue the appeal than to commence a new action such as this. Abuse of Court process it has been held is of infinite varieties. It is an abuse of Court process to appeal against a decision giving

Judgment to your adversary and at the same time instituting a fresh Suit claiming the same land in issue.

The issue in the Court of Appeal and in this Court are the same. It is in respect of the same land. Once the Claimants herein succeeds on appeal they become parties and the Court can send the case back for retrial.

In totality:

(1) The Suit is an abuse of Courtprocess.

(2) The Writ of Summons served on the 3<sup>rd</sup> and 4<sup>th</sup>

Defendants had become staled before it was served.

It is an abuse of Court process if a person with full knowledge of the pendency in Court of a Suit over a property he claims to be



his does nothing but merely looks on only to commence another proceeding in Court over the same issue and asking the Court to make another pronouncement on the subject matter upon which a pronouncement had earlier been made.

See *UDEOROH VS. NWAKONOB* (2003) 4 NWLR (PT. 811) page 643.

Consequently this Suit is an abuse of Court Process. It is bereft of foundation and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE, ACIArb (UK), FICMC

(HON. JUDGE)

18/04/24