

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
7TH DAY OF MARCH, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/245/2017
MOTION NO. M/5700/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

JULIET ANGO PETITIONER/RESPONDENT

AND

MAJ. GEN. SAMUEL G. ANGO RESPONDENT/APPLICANT

RULING

The Respondent/Applicant's application dated and filed on the 18th day of May, 2022 is brought pursuant to Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of the Court. It seeks:

(1) An Order of Court striking out this suit for being an abuse of Court process.

Alternatively,

- (2) An Order adjourning the suit sine die pending the hearing and determination of the Petition/Cross-Petition in Suit No. KDH/KD/81/2019 between MR. SAMUEL ANGO vs. JULIET ANGO pending before the High Court of Justice, Kaduna.
- (3) AND for such further or other Orders as this Court may deem fit to make in the circumstances.

Learned Counsel relies on the grounds upon which the application is brought. The facts in the Affidavit are the same as the grounds upon which the application is brought.

Succinctly, the facts are:

- (1) That the Petitioner/Respondent initiated this suit in 2017 for judicial separation and on 03/10/2018 this Court, per Justice V. V. M. Venda adjourned the matter sine die pending the filing and determination of contempt proceedings initiated by the Petitioner/Respondent against the Respondent/Applicant before another Judge of this Court.

- (2) The Petitioner/Respondent failed to file the contempt proceedings. The Respondent/Applicant then filed Suit No. KDH/KAD/81/2019 in Kaduna High Court seeking for dissolution of the marriage between him and the Petitioner/Respondent.
- (3) The Petitioner/Respondent filed a Notice of Preliminary Objection dated and filed on 17/05/2019 challenging the jurisdiction of the High Court of Kaduna State to entertain the said suit on the ground that the suit before this Court which is for judicial separation relates to the same subject matter and same parties hence an abuse of Court process.
- (4) The Court held that it has jurisdiction to entertain the action because the suits are different in substance and upon the unwillingness of the Petitioner/Respondent to prosecute the present suit.
- (5) The Petitioner/Respondent filed an appeal. In a considered Judgment, the Court of Appeal dismissed

the Petitioner/Respondent's appeal for lacking in merit on the ground that the issues in both Petitions are different.

(6) The Petitioner/Respondent has filed an Answer to the Petition and a Cross-Petition wherein the Petitioner/Cross-Respondent prays for an Order of judicial separation, same relief as being sought in this Court.

(7) That the Petition and the Cross-Petition are pending.

Upon being served with this Motion, the Petitioner/Respondent filed a Reply on Points of Law and submits that this suit was filed before the suit in Kaduna.

That the suit in this Court was pending before the Respondent/Applicant instituted the Kaduna suit. That it is against the spirit and tenor of the Judgment of the Court of Appeal for the Respondent to bring this application.

That the case before this Court takes precedence over and above the matter in Kaduna. He urges the Court to discountenance the contention of the Respondent/Applicant.

Learned Counsel to the Respondent/Applicant adopted his Written Address and canvasses that it is settled law that for there to be an abuse of Court process, there must exist, a multiplicity of suits between same parties on the same subject matter and on the same issues.

The Petitioner/Respondent did not file a Counter Affidavit. The Affidavit filed in support of this application is therefore not controverted. The facts are deemed admitted.

Abuse of Court process simply means that the process of the Court has not been used *bona fide*. It is the employment of the judicial process by a party to irritate and annoy his opponent and the efficient and effective administration of justice.

Abuse of Court process is an imprecise concept as it involves circumstances and situation of infinite variety and conditions. Its one common feature however is the improper use of the judicial process by a party in litigation to harass, irritate and annoy the adversary and interfere with the administration of justice such as instituting different actions between same parties simultaneously in different Courts even though on different grounds.

The abuse consists in the intention, purpose and action of irritating the opponent. The concept applies only to proceedings that are bereft of good faith.

See *OGOEJIEFOR vs. OGOEJIEFOR* (2006) 3 NWLR (PT. 966) 205.

F.R.N vs. DMRO (2015) 6 NWLR (PT. 454) 141.

SHERIFF vs. PDP (2017) 14 NWLR (PT. 1585) 212.

It is the multiplicity of same action in same Court or even before another Court being pursued simultaneously by the Claimant. The claims, reliefs may be worded

differently but it still amounts to an abuse of process where the substance or the end result of the two or more actions is the same.

Thus, where by the grant of one relief or claim in favour of the Claimant the aim of the Claimant would have been achieved, it will amount to an abuse of Court process if same question is placed before the same or another Court.

Therefore where two Courts are faced with substantially with the same question, it is always desirable to be sure that the question is litigated before only one of the Courts.

The substantive suit before this Court was filed on the 12th day of May, 2017. It is a Matrimonial Cause praying for a decree of judicial separation, custody of the only child and awarding the joint property in favour of the Petitioner.

Exhibits ANGO 1 & 2 are the Ruling and Proceedings of this Court, per *Hon. Justice V. V. M. Venda* adjourning the Petition SINE DIE pending the hearing of the contempt proceedings. It is delivered on 03/10/2018.

Exhibit ANGO 3 is a Petition filed in the High Court of Justice, Kaduna State on the 15/01/2019. It seeks for a decree of dissolution of marriage between the Petitioner and the Respondent (Respondent and Petitioner in this Court) on the ground that the marriage has broken down irretrievably.

It is clear that the suit before this Court is the first in time, the Court of Appeal settled that issue in its Ruling upon the Petitioner's Preliminary Objection delivered on 17/07/2019.

The Petitioner was dissatisfied, hence appealed against the Ruling of the High Court of Justice which held that the issues in the two cases are different.

Exhibit ANGO 5 is the Judgment of the Court of Appeal upholding the decision of the High Court of Justice, Kaduna State. It is dated 24/11/2021.

Exhibit ANGO 6 is the process of the Petitioner in this Court. She filed an Answer to the Petition for dissolution of marriage in Kaduna High Court after the appeal failed in the Court of Appeal. It is dated 22/03/2022.

The Petitioner herein further filed a Cross-Petition in Kaduna seeking the same reliefs as she is seeking in this Petition before this Court.

The Respondent/Applicant was served with the processes. He is aware of the Judgment of the Court of Appeal which states that the issues in the suit in Kaduna State and the issues in this Court are different.

One would have expected the Respondent/Applicant to file this application in the High Court of Kaduna State

praying the Court to strike out the Cross-Petition for being an abuse of Court process, but rather prefers to come to this Court to apply to strike out the Petition that was first in time.

The Petitioner/Respondent also knowing fully well that she has a Petition in this Court for judicial separation filed an Answer and took further step to file a Cross-Petition claiming the same relief as in this Court.

The Petitioner/Respondent played into the hand of the Respondent/Applicant. Nevertheless, the suit in Kaduna State High Court is now for dissolution of the marriage and judicial separation. The suit in this Court is for judicial separation *simpliciter*.

The Kaduna State High Court is seized of the two issues while this Court is seized of only one aspect. Any decision of this Court on the issue pending in this case will affect the case in High Court of Kaduna State.

The question of judicial separation in this Court is the same in Kaduna State High Court. The Petitioner voluntarily filed the Cross-Petition there despite her Petition for judicial separation in this Court.

The Petitioner/Respondent decided to put her eggs in two different baskets. The law is that where the grant of one relief in favour of the Petitioner in this case will satisfy the Petitioner's claim, it will be an abuse to put the same issue before another Court as in this case.

Abuse of Court process is of infinite varieties. This no doubt is another variety. It is the duty of Court not to allow its processes to be abused or tossed to and fro. The Court is not a pool betting corner neither is it a rolling stone. It is not a place for permutation neither is it a place for matrimonial politicking.

The Petitioner having decided to move her Petition to the High Court of Kaduna State by way of Cross-Petition without diligently prosecuting her Petition before this

Court, it is only wise that this Court washes itself clean of the matter.

The abuse is not in the decision or predicated on the Judgment of the Court of Appeal but instituting different actions between same parties simultaneously in different Courts as in this case.

Either this process or the Cross-Petition could amount to an abuse. They were instituted simultaneously by the Petitioner/Respondent.

I hold that this Petition in this Court is an abuse of Court process whether filed earlier or now. It is accordingly struck out.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
07/03/2023

Parties absent.

Divine Davies, Esq. for the Petitioner.

A. D. Zubairu, Esq. with Victor Orih, Esq. for the
Respondent.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
07/03/2023