IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/3073/2021

DATE: : THURSDAY 11TH JULY, 2024

BETWEEN:

ENIMED GLOBAL LIMITED ……. CLAIMANT

AND

1. FIRST BANK PLC.

2. REAR ADMIRAL OBIORA……DEFENDANTS/APPLICANTS

RULING

This Ruling is at the instance of 2nd Defendant/Applicant who approached this Honourable Court vide a Motion on Notice dated 16th January, 2023, and filed on 19th January, 2023; praying this Court for **An Order striking out this suit and/or dismissing same for being incompetent and deprives the court of jurisdiction.**

The grounds upon which the application is brought are as follows:

1. By the extant provisions of the Companies and Allied Matters Act 2020, only a company acting through its directors in a general meeting can address any perceived wrong against itself.

ii. Arising from the pendency of Suit No: **FHC/PET/15/2020: *MEDANI V ENIMED & ORS*** and the pending order of the same court dated 11th August, 2020, this suit constitutes an abuse of court process and bound to be dismissed.

iii. By the terms and condition in Claimant's mandate the 1st Defendant which the 2nd Defendant is a director, there is no reasonable cause of action before this court.

The application is supported by a 21 paragraph affidavit deposed to by Rear Admiral Obiora Charles Medani, Executive Director and a Director on the board of the Claimant. It is the deposition of the 2nd Defendant/Applicant, that;

At no time did the Claimant as a company pass a resolution in its general meeting or director's meeting to initiate this action against the 1st Defendant or any related action at all.

That there was also never a meeting where such matter was discussed and as a director he is entitled to the notice of every meeting where any.

That Prior to this suit, he had initiated a pending action before the Federal High Court Abuja in Suit No: **FHC/PET/ ABJ/15/2020** to enforce his right against the other two (2) Directors of the Claimant namely: Eni Eni and Folorunso Otukoya, in respect of the oppressive and illegal conduct of the said directors in the running of the affairs of the company. Copy of the originating process and its reliefs which include winding up relief is Exhibit "M2".

That in addition to the pendency of the said suit, the Federal High Court also made an order directing the other two (2) Directors to appear before it and show cause why a freezing order sought on the accounts of the Claimant with the 1st Defendant and other financial Institutions should not be made absolute pending the determination of the substantive suit. The said order is Exhibit "M3".

That despite the pendency of the said order and the suit, the two (2) Directors as Respondents in Exhibit "M3" have continued to abuse the orders and the reliefs in the pending suit by taking steps contrary to the orders to show cause including desperate steps to dissipate the fund of the claimant without the foundational due process of the Claimant's policies and to the exclusion of the defendant without notice of meetings to the Defendant.

That arising from these desperate conducts, a motion for mandatory injunction is pending at the same Federal High Court to reverse the moneys already withdrawn and to undo the steps taken in abuse of the process of court. Copy of the said motion for mandatory injunction filed on 19th October, 2020 is Exhibit "M4".

That the current action is one of those desperate steps by the two (2) Directors in abuse of judicial process using the name of the Claimant who is also a party at the Federal High Court action.

That this suit is basically for withdrawal of moneys already attached by the Federal High Order is aimed at rendering the pending orders at the Federal High Court and the entire proceeding there nugatory, in view of the fact that the only asset the 'Claimant' has in event of winding up is the cash in the bank.

That part of the consequential reliefs before the Federal High Court in Exhibit "M2" includes an order for winding up arising from abuse of company's proceedings.

That the two (2) Directors behind the Claimant in this suit are forum shopping instead of facing the case at the Federal High Court that made orders of attachment.

That a similar action against Sterling Bank PLC as the current one at the FCT High Court Nyanya in Suit No: **FCT/CR/FT/31/2021:** ***ENIMED VS. STERLING BANK PLC*** had already been dismissed on 4th April, 2022 for being an abuse of court process in view of the pendency of Suit No: **FHC/ABJ/PET/2020** before the Federal High Court on the

same subject matter of withdrawal of fund. Certified true Copy of the ruling is hereby forwarded and the court may be persuaded.

That indeed the Directors of the 'Claimant' are having various conflicts including the court action in Exhibit "M2" resulting in conflicting instructions and counter instructions often sent to the 1st Defendant from time to time.

That it is part of the terms and conditions forming part of the account opening mandate of the Claimant with the 1st Defendant not to honour withdrawal instructions whenever the directors of the Claimant are in dispute. Particularly, the clause under 'Conflict/ Conflicting instructions states emphatically thus:

> ***"Where there is, to the knowledge or belief of the bank that there is a disagreement or dispute between the Members/ Directors/Officers of a customer or between the signatories of an account or in the event of contradicting instructions (whether written or oral) by any such persons, the bank may, in its discretion and notwithstanding the existing mandate on such account, freeze or otherwise restrict the activities on the accounts) in any manner it deems fit until the bank believes that the disagreement/dispute has been***

resolved as may be evidenced by a court order or by a jointly written instruction/confirmation from such members/directors/Officers/signatories of the account as the bank may desire."

Copy of the 1st Defendant bank's 'terms and condition' with the Claimant referred to is Exhibit "M5".

That 1st Defendant's reaction to the conflicting instructions of the Directors and its decision to activate and comply with 'terms and condition' of the mandate and stop withdrawal instructions was communicated to all including 2nd Defendant. Copy of one of such letters from 1st Defendant is Exhibit "M6".

That arising from the state of affairs, he believes that no reasonable cause of action has been made out in this suit by the "Claimant".

In line with procedure, written address was filed wherein three (3) issues were formulated for determination to-wit;

1. ***Whether considering the provisions of Sections 17 and 341 of the Companies and Allied Matters Act, 2020, the condition precedent for the commencement of this***

action was met, and if not whether the suit is competent.

2. ***Whether considering the pendency of Suit No: FHC/PET/15/2020 on the order to show cause in the said suit before the Federal High Court Abuja, this suit amounts to an abuse of court process and bound to be dismissed.***

3. ***Whether considering the terms and conditions of the Claimant's account opening mandate with the 1st Defendant which the 2nd Defendant is some Director vis-à-vis the various conflicts among the Directors, a reasonable cause of action has been made out in this suit.***

On issue one, learned counsel cited Section 87(1) and Section 341 of the Companies and Allied Matters Act, 2020.

It is the submission of learned counsel, as can be gleaned from the above provisions, a company act through its Directors including commencing an action in the name of a company. It is not just as a matter of course. An action in the name of the company is prima facie an act of the company which means it is rebuttable. Such action must be shown to have been authorized

by the directors in a general meeting. The provision has sufficient judicial interpretations.

Learned counsel submits, that in the instant case, Defendant has shown in paragraphs 5 - 7 of his supporting affidavit that he is a director of the Claimant Company; that this action is not an act of the company having not been authorized in any meeting of such directors. Where a meeting is held fo resolutions to be made, notices are mandatory, without which such a meeting and its outcome would amount to nullity. See **Section 292(1)(3) of the CAMA, 2020.**

Learned counsel contends, that this suit is not an act of the Claimant acting through the decision of it alter ego, the action was not commenced upon the fulfilment of the relevant condition precedent. It is incompetent and bound to be struck out.

On issue two, learned counsel submits, that so long as Suit No: **FHC/ABJ/PET/15/2020** is pending inclusive of the relief for winding up, Claimant's suit before this court seeking to deplete the only asset of the same company is only to render the pending suit helpless and present the court with a faith accompli. This must not be allowed to happen. The Claimant Company has no other asset than the cash at the bank. In event of success in the

relief for winding up, there would be no assets to gather, thus rendering the outcome nugatory. It is a classic abuse of court process and this court has a duty to halt same.

As aforestated, the order to show cause was made by the Federal High Court pursuant to Order 26 Rules 11-15 of the said court. It is a special provision with separate legal consequences from other interim orders.

By Order 26 rule 15 of the said rules, the court may either discharge such order or make it absolute in the cause of the proceedings. As it stands, the said order has neither been discharged nor made absolute. It is therefore alive and pending.

In the same vein, 'Claimant' is aware of the pendency of suit no: FHC/PET/15/2020, interim motions and orders, it cannot be permitted to foist a fait accompli on the court.

On issue three, learned counsel contends, that in this issue is that in view of the terms of contract between the 'Claimant' and the 1st Defendant, which terms among others forbids the 1st Defendant from honoring withdrawal instructions once the directors of the 'Claimant' are in dispute, Claimant's suit before this court in the circumstance would disclose no reasonable cause of action.

It is the law that the question of cause of action goes to jurisdiction.

That being so, same can be raised at any stage. ***BESSOY LTD VS. HONEY LEGON NIG LTD (2008) LPELR - 8329*** was cited.

Learned counsel submits, that the law is also trite that it is only the existence of a good and valid reliefs sought that can donate a reasonable cause of action to a party***: UZOUKWU VS. EZEONU 11 (1991) NWLR PT. 200 P. 708 AT 784 F-G*** was cited.

Learned counsel argued, that the foregoing facts and material before this court including pending and concluded court proceeding would show without any grain of doubt that the 'Directors' in the body of the 'Claimant are in real dispute affecting the soul of the company. See paragraphs 6-11, 15 of the affidavit as well as Exhibits "M2", "M3", "M4" and "M6". The 1st Defendant cannot obey one instruction against the other. As stated above, parties are bound by the terms of their contract and not even the court can interfere with such clear terms. ***NIKA FISHING CO. LTD V LAVINA CORPORATION (2008) ALL FWLR (PT.437) P.1 AT 25 A-B (SC)*** was cited.

It is the averment of learned counsel, that the refusal to honour the alleged payment instruction, subject matter of this suit was therefore consistent with the terms and conditions of contract of parties in the circumstance. Approaching various courts including this court to compel the 1st Defendant to honour 'Claimant' withdrawal instruction is contrary to the terms of the contract of parties which the court cannot re-write. It is an invitation beyond the powers of the court. This court is urged to decline same and find that no reasonable cause of action has been made out and dismiss the entire action.

In addendum, the order of this court made on 10th May, 2022 to join Rear Admiral Obiora Medani' (Rtd.) is bound to be obeyed, they have shown in paragraphs 1-3 of the supporting affidavit that 'Claimant' failed to join the said party as ordered. The 2nd Defendant on record is not the proper name that was ordered and would not amount to proper party which failure goes to jurisdiction: ***BAKARE VS. AJOSE - ADEOGUN (2014) ALL FWLR PT. 737 P. 611 AT 643 D-E.***

Learned Counsel concludes, that notwithstanding, whether the 2nd Defendant is court ordered proper party or not would not affect the issues argued above. But where the court rules on said issues

differently from the foregoing arguments which is not conceded, then "Claimant" is bound to obey the order of court and join the party as ordered.

On their part, Claimant/Respondent filed 25 paragraph affidavit in opposition to the 2nd Defendant's Motion on Notice dated 16th January, 2023, deposed to by Olufemi Olutimehim, company secretary of the Claimant.

It is the deposition of the Claimant, that by an Order of this Honourable Court dated the 10th day of May, 2022, the 2nd Defendant was joined as a party to this Suit.

That the Claimant completely complied with the order of this Honourable Court and joined the second Defendant in this suit wherein the 2nd Defendant has been very well described in his name baring a slight typo error which does not in any way confuse the 2nd Defendant that reference was being made to him.

That there is no misapprehension in the mind of the 2nd Defendant as to whether the amended process refers to him as on the face of the amended FORM 1, it is clearly written to the Defendants: 1st Defendant, First Bank Plc. Plot 430, 1st Avenue, Gwarimpa, Abuja-FCT. Then 2nd Defendant; REAR ADMIRAL OBIORA CHARLES MEDANI. No. 23 Rafinkwara Close, Abuja C/O

E Nelson-lyoho Associates, C/O Ayo Ogundele & Co. Suite 7 (1st Floor), Hiltop Plaza, No. 13 Gwani Street, Off IBB Way, Wuse Zone 4, Abuja.

That the Claimant has properly described the 2nd Defendant and the 2nd Defendant is not in any form of confusion that the proper reference is made to him.

That the Claimant followed due process in initiating this suit to protect its interest and enforce the 1st Defendant's contractual obligation to it which is the subject-matter of this suit, including but not limited to a Board Resolution. The Claimant Board's Resolution to sue dated the 21st day of October, 2021 is hereby attached and marked as Exhibit "A".

That where the 2nd Defendant wishes to contest any procedure taken in line with the above resolution, same would be under the Companies Proceedings Rules which exclusive jurisdiction is vested in the Federal High Court and not this Honourable Court.

That by virtue of his position as the Secretary of the Claimant and the Company's Compliance Officer, he knows as a fact that questions of compliance with corporate governance of the internal affairs of a company is solely within the exclusive

jurisdiction of the Federal High Court and governed by the Companies Proceedings Rules.

That he is aware of the pending suit before the Abuja Division of the Federal High Court with suit No. **FHC/ABJ/PET/15/2020** which reliefs sought were for an alleged infringement of the right of the 2nd Defendant as minority shareholder, the position which is now strongly maintained in this Court.

That the Claimant and other parties to this suit had filed their responses countering the allegations of fact against them and that he is privy to the true state of affairs of the Claimant by virtue of his position as its secretary.

That by virtue of his position as Secretary to the Company, he has attended all proceedings in respect of the pending suit and is conversant with all the processes served on the Claimant who is the Respondent in the suit pending before the Federal High Court and also aware of the Court's Order Flaunted by the 2nd Defendant as contained in Paragraph 9 of the affidavit in support of the Preliminary Objection.

That it is not true that the Federal High Court ordered the freezing of the Bank Accounts of the Claimant in the custody of the Defendant or in any other financial institution.

That by virtue of his position and schedule of duties is conversant with the content of the purported Order of Court served on the Claimant. The order being brandished states expressly that the ex-parte order sought by the 2nd Defendant in this suit was refused and rather the Claimant should be put on notice before the Federal High Court can hear the said motion ex-parte.

That being a party to the proceedings at the Federal High Court in the said Suit No: **FHC/ABJ/PET/15/ 2020** on the 21st day of July 2022, the Honourable Court reiterated that it never granted the purported Order to freeze the Bank Accounts of the Claimant and that its order to show cause does not amount to an Order to freeze the said accounts.

That the Claimant Reliefs is for the enforcement of the contractual obligations owed it by the 1st Defendant arising from a banker/ customer relationship.

That he knows the suit at the Federal High Court is sui generis and solely within the exclusive jurisdiction of the Federal High Court and does not have any bearing on the right and reliefs sought in this suit.

That the 2nd Defendant/Applicant's main goal is to frustrate the smooth operations of the Claimant by collaborating with the 1st

Defendant and other financial institutions to starve the Claimant of funds to conduct its day-to-day operations.

That there was never a time the board of directors of the Claimant sent conflicting instructions to the 1st Defendants as the said instructions are duly executed by his humble self in his capacity as the Secretary or channeled through him.

That none of the Defendants in this suit have filed any defence to their suit and the time frame for filing defence has elapsed.

That the procedure adopted by the 2nd Defendant is a demurrer which has long been abolished by the Rules of this Honourable Court.

That it would be in the interest of justice for the Honourable Court to dismiss Objection as being frivolous.

In line with procedure, written address was filed wherein three (3) issues were formulated for determination to-wit;

1. ***Whether Application brought by Counsel to the 2nd Defendant without first filing a Statement of Defence is competent in the light of Order 23 Rule (1) of the High Court of the Federal Capital Territory (Civil Procedure), Rules, 2018.***

2. ***Whether the Court is allowed to look at facts beyond the Writ of Summons and Statement of Claimant in determining jurisdiction at the preliminary stage.***

3. ***Whether the pendency of Suit No. FHC/ABJ/PET/15/ 2020 brought pursuant to reliefs under the Companies and Allied Matters Act and within the exclusive jurisdiction of the Federal High Court make this suit an abuse of court process?***

On issue one, learned counsel submits, that the 2nd Defendant in this present application sought to introduce facts to justify the 1st Defendant's breach of its contractual obligations to the Claimant as alleged in the writ of summons and statement of claim, and in doing so, is urging the court to hold that there was no justifiable cause of action against the Defendants. The 2nd Defendant/ Applicant in the affidavit in support of his application sought to make reference to certain facts which if taken into consideration would absolve the 1st Defendant of any liability.

Learned counsel further submits, that this application is a clear case of demurer. An application would be deemed a demurer where it alleged that if the facts as contained in the writ and statement of claim are true. The 2nd Defendant in admitting the

facts in the statement of claim, is seeking to rely on same to allege that the defendants are not liable. This is a violation of the provisions of Order 23 of the Rules of this Honourable Court and this court is urged to so hold and dismiss same accordingly.

BAMBE DE ORS. VS. ADERINOLA & ORS. (1977) LPELR-732(SC) PP. 8 PARAS;

DAWODU V. AJOSE (2011) All FWLR Pt. 580, p. 344 Para D- G were cited.

Learned counsel contends, that what the 2nd Defendant has done in this instance is simply asking this Honourable Court to stay proceedings until the questions he has raised in his motion on notice is first answered. This practice has been abolished. What the Rules of this Honourable Court provide for is as provided under Order 23 Rule 2(1) referenced above.

On issue two, learned counsel submits, that competence of a suit or put differently, whether a court has the jurisdiction to entertain a suit or not is determined by either looking at the Constitution or Statute or law that creates that particular Court and at the statement of claim of the claimant. That this Court is guided by several rules that aid it in determining the issue of jurisdiction. For instance, where a defendant wishes to raise the

issue of jurisdiction at the preliminary stage, he must do so only on points of law. Where there are facts to be referred to, same should strictly be within those pleaded in the writ and statement of claim of the Plaintiff. A Defendant cannot bring an application challenging jurisdiction at the preliminary stage on the basis of extraneous facts not before the Court.

WHOHEREM VS. EMEREUWA (2004) 13 NWLR (Pt. 890) 398 (2004) ALL FWLR Pt. 221) was cited.

Learned counsel contends, that what the 2nd Defendant has done in this instance is that he filed a motion on notice supported with an affidavit and urged this Honourable Court to consider the facts contained in the supporting affidavit to determine whether this suit is competent or not. This is completely strange as it is contrary to the law as decided by even the Supreme Court.

Learned counsel further contends, that this court is urged to discountenance the application as being incompetent and also discountenance all the extraneous facts sought to be relied on as the same is offensive and only calculated to waste the time of this Honourable Court. It is only the facts contained in the statement of claim that can be considered at this point and not any other fact or set of facts.

On issue three, learned counsel submits, that there is no multiplicity of suit between the Claimant and the 1st Defendant who was the only person sued by the Claimant until the 2nd Defendant applied to be joined of his own free will. However, the issues in this suit and suit no: **FHC/ABJ/PET/15/2020,** are completely different. While the matter before the Federal High Court bothers on internal and corporate affairs of the company by a minority shareholder, this present suit is a suit by a customer against its banker who has breached the contractual relationship between them.

Learned counsel contends, that the issue of whether there was a board resolution duly passed before this suit was instituted, we submit that such is not relevant as such question is strictly reserved for the Federal High Court to determine the Companies Proceedings Rules made for the purpose to determining questions under the Companies and Allied Matters Act.

Under Section 251(1)(e) of the 1999 Constitution as Amended (2011), the Constitution which is the grundnorm exclusively vests the Federal High Court with the jurisdiction to entertain and determine any issues arising from the operation of the Companies

and Allied Matters Act, this includes sections 87(1) and 341 of the Act referred to by the 2nd Defendant.

It is trite law that for a court to assume jurisdiction to entertain a matter, all the features of the case or application before it must be within its jurisdiction. ***MADUKOLU V. NKEMDILIM (1962) 2 SCNLR 341*** was cited.

In conclusion, learned counsel submits that the application is incompetent same having violated the Rules of this Honourable Court and the principle governing Application of this nature and this Honourable Court is urged to resolve all the issues raised in favour of the Claimant/Respondent and strike out the causeless, frivolous, academic and vexatious application with substantial cost as same is a clear waste of the judicious time of the Honourable Court.

Claimant/Respondent filed 9 paragraph further and better affidavit in opposition to the 2nd Defendant's Motion on Notice dated 16th January, 2024 but filed 19th January, 2023, deposed to by Olufemi Olutimehin, Company Secretary of the Claimant.

It is the deposition of the Claimant, that the 2nd Defendant/ Applicant in Paragraph 9,10,11,12 and 13 of the Affidavit in support of his application alleged the existence of a subsisting

Order of the Federal High Court restraining the Claimant from dealing with its accounts domiciled in the 1st Defendant.

That it is on the basis of such an alleged order that the Applicant is inviting this Honourable Court to decline jurisdiction to hear the suit as contained in ground "(ii)" sought in the Application.

That in Paragraph 15 and 16 of his earlier Counter Affidavit of the 15th day of February 2023 he informed the court that no such order exists in relation to the accounts of the Claimant.

That in affirming the correctness of their position as earlier deposed to in their counter-affidavit, the Federal High Court, per Hon. Justice Emeka Nwite, in the said matter, with Suit No: ***FHC/ABJ/PET/15/2020 BETWEEN: REAR ADMIRAL OBIORA CHARLES MEDANI VS. ENI I. ENI***, held that there was not in existence of any order of the Federal High Court restraining the claimant from using its funds in its account with the first Defendant or any other bank. This was aptly captured in page 19 of its Ruling on the 6th day of July 2023. The Certified True Copy (CTC) of the Ruling of the Court in Suit No: ***FHC/ABJ/PET/ 15/2020 BETWEEN REAR ADMIRAL OBIORA CHARLES MEDANI VS. ENI I. ENI*** is hereby attached and marked as Exhibit "A1".

That it will be in the interest of justice for the Honourable Court to dismiss the 2nd Defendant/Applicant's motion as being frivolous.

COURT:-

I have read and assimilated the application in view with all legal arguments put forward by counsel for the 2nd Defendant/Applicant and Claimant/ Respondent.

To resolve this matter, this court has formulated only one issue for determination, viz;-

> ***"Whether Suit No FCT/HC//3073/2021 filed before the High Court in FCT amounts to an abuse of court process."***

Abuse of court process, which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of ***N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A).***

When then does abuse of court process arise?

Supreme Court of Nigeria***, per Ogbuagu JSC*** in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D - E*** stated thus;

"There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to include the following;-

a. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.

b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

c. Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent's notice.

d. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.

e. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.

Evidence has been led before this court, to prove that 2nd Defendant/Applicant initiated a pending action before the Federal High Court Abuja in Suit No: **FHC/PET/ ABJ/15/2020** to enforce his right against the other two (2) Directors of the Claimant namely: Eni Eni and Folorunso Otukoya, in respect of

the oppressive and illegal conduct of the said directors in the running of the affairs of the company.

In addition to the pendency of the said suit, the Federal High Court also made an order directing the other two (2) Directors to appear before it and show cause why a freezing order sought on the accounts of the Claimant with the 1st Defendant and other financial Institutions should not be made absolute pending the determination of the substantive suit.

That despite the pendency of the said order and the suit, the two (2) Directors as Respondents in Exhibit "M3" have continued to abuse the orders and the reliefs in the pending suit by taking steps contrary to the orders to show cause including desperate steps to dissipate the fund of the claimant without the foundational due process of the Claimant's policies and to the exclusion of the defendant without notice of meetings to the Defendant.

It is pertinent to note, that the claims on the face of Writ of Summons and its applications before this court, and the contents of the Petition before the Federal High Court… the disputes are intertwined and bordering on the same issue.

Certainly speaking, there is no difference between the substances of both suits. Both suits, apparently, are gravitating towards the same issue. **Suit No: FHC/ABJ/PET/15/2020** is pending inclusive of the relief for winding up, Claimant's suit before this court is seeking to deplete the only asset of the same company.

Therefore evidently... an abuse of court processes.

An abuse of process remains an abuse no matter how well clothed and costumed.. I refuse to be cajoled to see it for anything more than an exercise in futility.

I have considered the argument on the fact that the counter affidavit was filed out of time and without leave of this Court. Claimant/Respondent admitted to filing out of time…and proceeded to inform the court that they have paid penalty for the dates that they failed to file.

However, I agree with Obiti, Esq., for the 2nd Defendant/ Applicant that failure to seek leave is fatal.

On the authority of ***ABIA STATE TRANSPORT CORPORATION VS. QUORUM CONSORTIUM LTD. (2002) LPELR 10491 (CA),*** leave to file is part of the Rules of this Court which has been disobeyed.

For above reason, the said counter affidavit and further and better affidavit, so called filed, albeit without leave are hereby struck-out.

In the absence of any counter affidavit, the said application is now one way. I agree with 2nd Defendant/ Applicant's counsel that this application be granted. It is hereby granted.

Accordingly, I decline to assume jurisdiction to entertain the present Suit No. **FCT/HC/CV/3073/2021**. Consequently, same is hereby struck-out.

Justice Y. Halilu
Hon. Judge
11th July, 2024