IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

MOTION NO. FCT/HC/M/4327/2021

DATE: ……/2024

B E T W E E N

1. MR. DAVIDSON UGOABULUNE
2. DAVO STEEL NIG. LTD. } **PLAINTIFFS/RESPONDENTS**

AND

FIDELITY BANK PLC } **DEFENDANT/APPLICANT**

R U L I N G

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Defendant/Applicant, Fidelity Bank Plc. vide Motion Number **M/4327/2021** pray this Court for this sole relief to wit:

> ***"An Order of this Honourable Court dismissing this suit to wit: Suit No.: CV/2916/2020 Between Mr. Davidson Ugoabulune&Davo Steel Nigeria Limited***

vs. Fidelity Bank Plc for lack of jurisdiction and as an abuse of Court process"

This application is premised on 7 grounds to wit:

1. The Plaintiffs' action as constituted is a gross abuse of judicial process in that the Plaintiffs/Respondents had instituted several suits on the same subject matter which are still pending before different Courts before instituting the instant case in this Court.

2. The Plaintiffs/Respondents vide Originating Summons filed on 17th day of January, 2020 initiated Suit No. FCT/HC/BW/CV/70/2020 Between **MR. DAVID UGOBULUNE & DAVO STEEL NIGERIA LIMITED Vs. THE BRANCH MANAGER FIDELITY BANK PLC, FIDELITY BANK PLC & COMMISSIONER OF POLICE FCT**at the High Court of FCT Bwari Judicial Division of this Honourable Court claiming that the Applicant restricted their accounts without a Court Order and as such violated their rights to own and enjoy immovable property which said suit is still pending before the Bwari Division of this Honourable Court till date.

3. Upon receipt of the suit referred to above, the Applicant responded by countering the originating summons on the premise that there was indeed a Court order and same was annexed as evidence before that Court.

4. The Plaintiffs/Respondents having seen that the Applicant acted pursuant to an order of Court in restricting their accounts, abandoned their claim and proceeded to the Magistrate Court via a Motion on Notice dated 22nd day of June, 2020 and filed 26th day of June, 2020, with Motion No. M/24/2020 Between **MR. DAVID UGOBULUNE & DAVO STEEL NIGERIA LIMITED Vs. FIDELITY BANK PLC & COMMISSIONER OF POLICE FCT** seeking to set aside the order of Court made Ex-parte since the 10th day of December, 2019 by the Chief Magistrate Court, Wuse Zone which the Applicant relied upon to restrict the Plaintiffs/Respondents' Account.

5. Again, the Plaintiffs/Respondents by Writ of Summons in Suit No. CV/2916/2020 instituted this suit between **MR. DAVID UGOBULUNE & DAVO STEEL NIGERIA LIMITED Vs. FIDELITY BANK PLC** (same parties) at the High Court of Justice FCT, Abuja Division during the pendency of the previous actions thereby abusing the processes of this Honourable Court.

6. This Honourable Court is divested of jurisdiction over the same subject matter between the same parties that were previously instituted in different Courts and the suit as presently constituted amount to a flagrant disregard and abuse of Court process.

7. The interest of Justice demands that the entirety of this suit be dismissed as abuse of judicial processes and cost be awarded to the

Applicant in the sum of ₦100,000.00 (One Hundred Thousand Naira) only.

It is dated the 5th day of July, 2021 but filed on the 8th day of July, 2021. It is brought pursuant to Order 43 Rule 1 of the Rules of this Court. It is supported by a 14 paragraphs affidavit deposed to by one AdachukwuKehindeEzeofor. Attached to this affidavit are 3 Exhibits and a written address.

Mr. Peter of Counsel to the Defendant/Applicant adopted his written address as his argument in support of the application. He placed reliance on the deposition contained in the affidavit in support as he finally urged me to grant his application by dismissing this suit.

On the other hand, the Counsel to the Claimant/Respondent submitted that he has filed a 19 paragraphs counter-affidavit and relied on the contents of the counter-affidavit as he urged the Court while adopting his written address as his oral arguments to reject this application as it is brought in violation of Order 23 Rule 2 of the Rules of this Court which has abolished Demurrer.

In his written address, Mr. Peter submitted one issue for determination to wit:

> ***"Whether this suit constitutes abuse of the processes of this Honourable Court and if yes whether this Honourable Court can grant the relief sought in this application"***

He submitted that abuse of the process of Court may occur when a party improperly uses judicial process to the harassment, irritation and annoyance of his opponent, and to interfere with the administration of justice. A clear example is where two similar processes are used against the same party in respect of the exercise of the same right and subject matter. He cited the case of**N.I.C. VS. F.C.I. CO. LTD. (2007) 2 N.W.L.R. (PART 1019) 610.**

Defining the concept of abuse of Court process, he says generally it means that a party in a litigation takes a most irregular, unusual and precipitated action in the judicial process for the sake of an action, quasi action with the aim of wasting valuable litigation time. It is an action which could be one or more too many. It is an action, which could be avoided. He cited the case of **MANSON VS. HALLIBURTON ENERGY SERVICES LTD. (2007) 2 N.W.L.R. (PART 1018) 2.**

In the instant case, according to him the Plaintiff's action is a gross abuse of judicial process in that the claim of the Plaintiff to wit: operation of its bank account domiciled with the Applicant is already a subject of litigation in Suit No. FCT/HC/BW/CV/90/2020 as well as Motion No. 24/2020 between same sets of litigants and same subject matter. That being the case, the present action is a gross abuse of Court Process. In the case pending in Bwari and the Magistrate Court, the Plaintiffs in this case are also Plaintiffs in those two cases and all the Defendants on records are the Defendants in those cases which bother on the Plaintiffs' accounts domiciled with the Applicant. How then can the Plaintiff drag the Applicant before a Court sitting in Bwari, Wuse and now before this Court on account of the same subject matter? He submits that the Plaintiffs are

not permitted to drag the Applicant before all the Courts in the land to ventilate their perceived grievances as such could only amount to abuse of Court process.

Having shown that this suit is an abuse of judicial process, he submits further that this Honourable Court can grant the reliefs sought by the Applicant pursuant to Order 15 Rule 18(1)(d) which states that:

> ***"The Court may at any stage of the proceedings order to be struck out or amended any pleading or endorsement of any writ in the action or anything in any pleading or in the endorsement, on the ground that:***
>
> ***(d) It is an abuse of Court Process"***

He submitted that from all indication and from the fact before the Court, the Respondents are clearly in abuse of the process of Court, having initiated a suit in the High Court sitting in Bwari and the Magistrate Court sitting in Wuse both essentially touching on the main issue before this Honourable Court and it has not been shown to have been adjudicated upon or discontinued by the Respondents.

The law is trite that abuse of Court Process occurs where a Claimant institutes multiple actions on the same subject matter between or against the same parties on the same issues during the pendency of another same suit. In **R-BENKAY NIGERIA LTD. v. CADBURY NIGERIA LTD. (2012) L.P.E.L.R. – 7820 (SC)** 22- the Supreme Court held thus:

> ***"The employment of judicial process is only regarded generally as an abuse of when a party improperly uses the issue of judicial process to irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of action on the same subject matter against the same opponent on the same issue.***
>
> ***From the pronouncement of this Court reproduced above, to constitute abuse of Court's process, the multiplicity of suits must have been instituted by one person against his opponent on the same set of facts"***

Flowing from the Exhibits annexed, the law, facts and the circumstances of this case, he submits that the case before the court constitute gross abuse of judicial processes and he urged me to so hold.

On the other hand, Mr. Karl Ibeobi of Counsel to the Plaintiff/Respondent submitted two issues for determination. They are;

1. Is the Defendant's application competent and meritorious before the Court?

2. Can the Honourable Court in exercise of her discretion pursuant to Order 43(1) of her rules, act in disregard of Order 23(1) or any mandatory provisions of the rules of Court?
   He started his arguments by reproducing the provision of Order 15 (2) which says:

> "***A Defendant <u>shall</u> file his statement of Defence, set off or counter claim if any not later than 21 days after service on him of the originating process and accompanying documents …so as to allow the Court deliver a final Judgment in the same proceedings, a set off must be specifically pleaded"***

And by the provisions of **Order 23(1)** of Court's Rules in firm language it says *"No demurrer shall be allowed"* in place of demurrer was as prominently captioned in the side note of the said order, as proceedings in lieu of demurrer, which specifically stipulates the steps under **Order 23(2)(1)** to be taken in every action that any Defendant has an issue of law to raise that it is for such a Defendant to firstly file his Statement of Defence; before raising any such issue in law.

Can the foregoing provision of the Rules be relied upon to move a Court who by same Rules, recognizes applications meant for each situation in practice and trials before it to over step her bound? Especially when as was done in the present application that the Applicant avoids and evades

the particular Rule and application meant for her pursuant to Order 23(2)(1) will it not be a deliberate act and possibly mischievous that certainly must go without its consequences. In the scenario her action in this application, Defendant has tried to short circuit this suit by challenging it inlimine not minding the Rules of this Court; a practice which the Supreme Court condemned in very strong terms in the case of **EGE SHIPPING TRADING INDUSTRY INCO. & ORS. VS. TIGRIS INTERNATIONAL CORPORATION (1999) 4 N.W.L.R. (PART 637) 70** when it held: per Karibi Whyte JSC

> *"Once there is jurisdiction in the Court to adjudicate on a claim, a Defendant/Applicant can only determine the case in limine by application under the Rules of Court"*

The Court of Appeal while deciding on how to raise preliminary point of law in a similar circumstance, where an Applicant like we have it in the present application were through a Motion filed without any statement of defence before Court in a jurisdiction which Rule of has equivalent provisions that are *ipsimaverba* without Order 23(1) held in the case of **IDACHABA v. ILONA & ANOR. (2007) 6 N.W.L.R. (PART 1030) 277 @ 298.**

> ***"Order 24 Rule 1 of the Kogi State High Court (Civil Procedure) Rules 1991 states that no demurrer shall be allowed, while Order 24 Rule 2 of the Rules so that any party is entitled to raise by his pleading any point of law and that any***

point of law raised must be disposed of by the Judge at any time before the trial. Thus a Defendant wishing to challenge the competence of a suit by a preliminary objection on a point of law in it. In the instant case the 1st Respondent did not file a statement of defence in response to the statement of claim filed by the Appellant at the trial Court. The 1st Respondent raised the objection by a Motion on Notice instead of including it in the statement of defence. The 1st Respondent therefore did not bring the application through the proper procedure"

The combined effect of **Order 15(2) and 23(2)** of the Rules of this Court is that a Defendant sued, is under duty to file a statement of defence in a cause for which he was issued with the process of Court having claims against such party; before raising issue of law. The Defendant having chosen the abolished path called demurrer to raise her issue and in failing to file any statement of defence, has no competent application before the Court that is worth of any judicial time.

He argued further that the firm position of the Rules of the Court abolishing demurrer and approving proceedings in lieu of demurrer has since been judicially approved by the Apex Court as the only means of raising issue of law. Hence, in the case **PAUL CARDOSO VS.JOHN BANKOLE DANIEL 2 (N.W.L.R.) (PART 20).**It was held thus;

> *"A point of law could be raised after both the Statement of Claim and the Defence had beenfiled, such application may lead to dismissal but where the application fails, the action will proceed to trial since issues have been joined on the pleading"* see also the case of**YUSUF v. EGBE (1987) 2 N.W.L.R. (PART 56) 341.**

In the case of **KWARA HOTELS LIMITED VS. ISHOLA (2002) 1 N.W.L.R. (PART 135) 759** it was held per Onnoghen JCA (as he then was) at page 774 when deciding on the legal effect of filing a Notice of Preliminary Objection, brought as demurrer without filing a Statement of Defence held thus:

> ***"I have gone through the Statement of Defence and it is obvious that the Appellant never raised the objection by way of point of law in his defence as required by the Rules of Court reproduced supra; to that extent it is my view that the Notice of Preliminary Objection of the Appellant in so far as it purports to be a demurrer which has been abolished; is incompetent before the lower Court since it was not raised in the statement of defence"***

He submits that this Court as a superior Court of Record is bound by her Rules, a party that frolics and chooses not to make herself amenable to the provisions of the rules of Court; should be made to face the consequences. From the plethora of cases including the few cited here and the Rules of this Court is clearly established on the procedure for a party who thinks that he has a point of law to raise in a cause; which he wants the Court to find upon. In the instance of the Defendant/Applicant not following the set down procedure, her application is incompetent even unlawful for not being permitted by law and liable to be dismissed with cost.

This Court is fully empowered and equipped to control its proceeding just as the Rule permits it to strike out any suit, that on the face of it as may be found to be incompetent before it or that has been revealed through pleadings as unmaintainable; as an abuse or upon cogent reason demonstrated and established on the issues joined before it. See **Order 23(3) High Court Civil Procedure Rules** which has put it this way:

> ***"A Court or Judge may order any pleadings to be struck out on the ground that it discloses no reasonable cause of action or answer and where a pleading is shown to be frivolous or vexatious the Court or Judge may order the action to be stayed or dismissed or Judgment to be entered accordingly"*** (underline supplied).

What is the purport of the above provision of this Order, does it envisage a party who has not filed any pleadings before the Court, to

approach such Court as was done in the present application to pray that a suit be dismissed without obliging or offering the Court; a clear and comprehensive understanding and view of the cause from issues joined? The rule here directs the Court to take its findings and conclusions from pleadings before determining and wielding of her big stick of striking out, dismissal or otherwise on any case not worth going into to trial. This power is never activated by mere prayer on a Motion Paper and affidavit of spurious contentions in support of such motion, which of course are no defence on merit to the suit.

Finally, he urged me on grounds of law to dismiss this application with cost and allow justice to take its course.

I have considered both arguments and I will like to adopt the sole issue submitted for resolution by the Applicant's learned counsel.I think the germane question now is? Is there abuse of Court Process in this case?

It is the arguments of the Plaintiff/Respondent that **Order 15(2) provides:**

> ***"The simple difference between the now abolished demurrer proceedings and proceedings is lieu of demurrer is that in the former, the Defendant need not file statement of defence but in the latter, a statement of defence is a sine qua non for an Applicant wishing to raise preliminary issues for trial".***

In the case of **SARAKI VS. KOTOYE (1992) 9 N.W.L.R. (PART 264) 156** where the Supreme Court stated:

> *"…That the employment of the Judicial process to the irritation and annoyance of the opponent and the efficient and effective administration of justice and that such will arise in instituting a multiplicity of action on the same subject matter against the same opponent, on the same issues…"*

It could be deduced from the decision of the Supreme Court that for there to be an abuse of Court process, some indices must co-exist, they are;

(1) Multiplicity of action

(2) same subject matter

(3) same opponents

(4) same issues.

What do we have in the instant case? The parties in Suit No. FCT/HC/BW/CV/70/2020 is between MR. DAVID UGOBULUNE & DAVO STEEL NIG. LTD. VS.THE BRANCH MANAGER FIDELITY BANK PLC, FIDELITY BANK PLC & COMMISSIONER OF POLICE FCT.

Can we say in all seriousness that the above case is one and the same in terms of parties involved with this particular case whose

parties is between MR. DAVID UGOBULUNE & DAVO STEEL NIG. LTD. VS. FIDELITY BANK PLC ? I do not think so. The Supreme Court in the Kotoye's case (supra) held thus:

> "***The Black's Law Dictionary 9th Edition defines party as "one by or against whom a lawsuit is brought; a party to the lawsuit." The Respondent is not a party in FHC/ABJ/CS/835/2020, period. There is no multiplicity of actions on the same matter between the same parties. Thus, there cannot be said to be an abuse of process, vide SARAKI V KOTOYE (supra)."***

Therefore, before this concept of abuse of court process can avail the Applicant in this case, he must cross the four hurdles stated above. And it is crystal clear now that, the case before the Bwari High Court has three defendants while the instant case presents only one defendant. How can the parties be the same? As for the one in Magistrate court, I believed the Respondent that nothing is pending before the Magistrate Court since the initial Order that led to the frozen of the Plaintiffs/Respondents' account had since been discharged by the same Magistrate.

For the above reasons, I agree with the submission of the learned counsel to the Plaintiff/Respondent that there is no abuse of court process in this case as constituted.

Therefore, this application lacks merit and it is hereby struck out for incompetency. The Applicants are hereby ordered to file their statement of defence in this matter.

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S. B. Belgore
(Judge) - - 2024