

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT WUSE ZONE 2
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 28TH DAY OF JANUARY, 2022**

SUIT NO: FCT/HC/CV/2657/2020

BETWEEN:

1. D. I. GEAR LIMITED
2. MR. EMMANUEL SHOON PATRICK] ----- CLAIMANTS/RESPONDENTS

AND

1. G-PRODUCTIONS LIMITED
2. MR. UCHE UCHA] ----- DEFENDANTS/APPLICANTS

G.T. SHATAR ESQ holding the brief of ***DOUGLAS NAJIME*** for the Claimant.
TOLULOPE D. OTUBANJO for the Defendant/Applicant

RULING

The Court was asked to strike out the Claimants' suit in entirety because the subject matter is now estopped per rem judicatam vide judgement of Hon. Justice Marryann E. Anenih delivered on the 23rd of November, 2017 in suit No. FCT/HC/CV/2774/2017 between G-Productions Ltd Vs Mr. Emmanuel Shoon Patrick. Secondly that the 2nd Defendant herein is an agent of a disclosed principal, that is the 1st Defendant wherein Suit No. FCT/HC/CV/2774/2017 between G-Productions Ltd Vs Mr. Emmanuel Shoon Patrick was litigated upon and judgement delivered and lastly that the suit constitutes an abuse of the process of this Honourable Court.

There is a ten (10) paragraph affidavit in support of the application and an annexure of the Judgement of my learned brother Hon. Justice Marryann

E. Anenih. Learned counsel's written address was equally filed and therein a sole issue was formulated for determination to wit;

"Whether this Honourable Court ought not to grant the 1st Defendant's application having regard to the affidavit evidence before the court."

On the contrary, the 2nd Claimant/respondent filed a 14 paragraph counter-affidavit and a written address also formulated a sole issue to wit:

"Whether having regards to the facts and circumstances of the application, the applicant is entitled to the reliefs sought."

The issue for determination is very simple and straightforward, it is:

"Whether the instant suit constitute an abuse of the process of the court."

I have painstakingly perused the pleadings of the Claimant with the witness statement on oath and the counter-affidavit. I have equally gone through the judgement of my learned brother Anenih delivered on the 23rd day of November 2017. It is very obvious that the parties in Suit No. FCT/HC/CV/2774/2017 are the same albeit that the 2nd Defendant herein is an agent of a disclosed principal, that is the 1st defendant in Suit No. FCT/HC/CV/2774/2017 between G-Productions Ltd Vs Mr. Emmanuel Shoon Patrick, the 2nd Claimant in the instant suit before this court. On the Subject matter, the 2nd Claimant admitted in paragraph 11(i) when he averred thus:

“That though the subject matter of the earlier suit, default judgement was obtained against the parties to the transaction over the supply of LED BILL BOARD like in the present suit but the reliefs sought differ as they relate to acts and omissions of the defendants completely unrelated to the judgement they obtained by fraud and misrepresentation against me.”

Let me state straightaway that the judgement of my learned brother was not a default judgement but under the undefended list pursuant to Order 35 of the FCT High Court Civil Procedure Rules. A judgement under the undefended list procedure is a judgement on the merit and can only be set aside on appeal. It is therefore a misconception by the Claimants that the judgement could be set aside based on their frivolous allegation of fraud and misrepresentation. Furthermore in paragraph 11(iv) the 2nd Claimant also averred that ***“the Honourable Court will see ex facie my pleadings that through the primary transaction was the contract for supply of LED but the defendants went overboard in the recovery of money over a contract they had frustrated.”***

The crux of the Claimants’ action was that the defendants forcefully vide use of the police collected his title document, money, arrested and detained him that this was done without resort to the judgement that already been surreptitiously obtained against him. This fact was elaborated in paragraphs 17 – 37 of the Claimants’ pleading what became obvious from the pleading was the admission of the 2nd Claimant that he issued a dishonoured cheque to the 2nd defendant and this led to the

report to the police and subsequent investigation. Obviously the Claimant by the instant action is asking the court to interfere in the investigation carried out by the police. If the Claimants are dissatisfied with the activities of the police, particularly the allegation of harassment, intimidation and detention, the claimants have the option of enforcing their fundamental human right through the instrumentality of the law and by following the proper procedure.

For the purpose of clarity the claim of the claimants as set out on the statement of claim are:

1. A declaration that the contract between the Claimants and the Defendants is void ab initio and liable to be set aside same having been frustrated by the conduct of the Defendants against the Claimant in respect of their agreement.
2. A declaration that by the interference of the Defendants, the Claimants lost their parent Contract with Composite Brand Exposure Limited.
3. A declaration that the Cheques issued by the 2nd Claimant were not DUD Cheques as same were issued or presented under misrepresentation and or duress.
4. A declaration that the Police acting through DSP John Onyima or any of their officers, agents or privies are not a money recovery agency.
5. An Order of the Honourable Court setting aside the Contract for the rent of the Defendant's LED Screens (16 panels) entered into by the

claimants and the defendants on the 12th day of March 2017 on the grounds of frustration on the part of the defendants.

6. An Order of the Honourable Court directing the defendants to forthwith deliver up the 2nd claimant's irrevocable power of attorney in favour of the 2nd claimant donated by Musa Shehu and title documents in favour of Shehu Musa known and described as Plot No. 2643A-2645A measuring about 3000m² in Traders Layout III, Gwagwalada Area Council which was handed over by the 2nd claimant to the 2nd defendant following the directive at the Utako Police Station.
7. An Order of the Honourable Court directing the defendants to refund to the claimant the sum of **N1,250,000.00 (One Million Two Hundred and Fifty Thousand Naira only)** which sums were paid by the 2nd claimant to the agents or privies of the defendants (for the benefits of the defendants) under duress pursuant to the unlawful and illegal directive of DSP John Onyima serving at Inspector General of Police Intelligence Response Team.
8. An Order of the Honourable Court directing the Defendants to pay to the claimants herein the sum of **N4,180,000.00 (Four Million, One Hundred and Eighty Thousand Naira Only)** being the profit or share of the Claimants if the contract with Composite Brand Exposure Limited was not frustrated.
9. An Order of Perpetual injunction retraining the defendants their privies, agents and or successors-in-title or howsoever called from

further intimidating harassing or threatening the claimants especially the 2nd claimant.

10. The cost of prosecuting this suit at **N2,000,000.00 (Two Million Naira only)**.

11. **30%** compound interest per annum on the judgement sum from the date of the judgement of this court until judgement sum is completely liquidated.

The contention surrounding the contract between the claimants and the defendants have been heard and pronounced on in the judgement of Hon. Justice Maryann E. Annenih delivered on 23rd November, 2017 in suit No. FCT/HC/CV/2774/2017 between G-Productions Ltd Vs Mr. Emmanuel Shoon Patrick. The claimants have not appealed the said judgement. They are thereby estopped from making it a subject for determination before this court.

The Supreme Court in the case of **HONDA PLACE LTD V GLOBE MOTOR HOLDING LTD (2005) LPELR 3180 SC** held on the condition for a successful plea of estopal per rem judicata thus:

“It is judicially recognised in a long line of cases that for a plea of estopal per rem judicata to succeed, the party relying on it must establish the following requirements or pre-conditions namely; (1) That the parties or their privies are the same in both the previous and present proceedings. (2) That the claim or issue in dispute in both actions are the same. (3) That the res or subject-matter of litigation in the two cases is the same. (4) That the decision relied upon to support the plea of

estopal per rem judicata must be valid subsisting and trial, and (5) That the court that gave the previous judgement relied on sustain the plea must be a court of competent jurisdiction. It needs to be emphasised that unless all the above constitutes elements or requirements of the doctrine are fully established, the plea of estopal per rem judicata cannot be sustained. See OKE V ATOLOYE (1985) 2 NWLR PT. 9 578, TOYE V OLUBODE & ORS (1974) 1 ANLR (PT. 2) 118 @ 122; (1974) IOSC 209, SAMUEL FADURA & ANOR V FESTUS GBADEBO & ANOR (1978) 3 SC 219, ADONE V IKEDUBA (2001) 14 NWLR (PT. 733) 385 @ 417.” PER EDOGIE JSC.

See YANATY PETROLEUM LTD V EFCC (2017) LPELR 43473 SC PER OKORO JSC; OFUNNE & ORS V OKOYE & ORS (1966) LPELR 25364 SC; SYNAX V THE RIGH REV. S. I. KALE, BISHOP OF LAGOS & ORS (1969) LPELR 25442 SC PER MADARIKAN JSC.

I hold and affirm that all the conditions precedent to a successful plea of estoppel rem judicata is available as a defence by the defendants. I further hold that the instant suit is an abuse of process of the court by the claimants. In the previous suit before my learned brother, the court observed that the defendants Mr. Emmanuel Shoon Patrick, the 2nd Claimant before my court filed no counter-affidavit or any court process. The court opined thus:

“Having carefully gone through the depositions of the plaintiff, I am of the view that the defendant having failed to challenge the depositions

of the plaintiff, this court in this instance would therefore be right to accept the evidence presented by the plaintiff.”

The Claimants had the opportunity of defending the suit before my learned brother but failed to do so. They preferred coming before my court to file their defence, thus constituting nuisance and clogging the docket of this court. An abuse of court process is multi-faceted. It has been described in myriad of cases to include filing of similar actions in same or different courts to irritate or annoy the other party. See **C. P. C. & ANOR V OMBUGADU & ANOR (2013) LPELR 21007 SC** where the Supreme Court stated thus:

“The legal conception of the abuse of the judicial process or the abuse of the proceedings of the court is very wide. It is of infinite variety and it does not appear that the category can be closed.”

See **LOKPOBIRI V OGOLA & ORS (2015) LPELR 4083 SC** where the Supreme Court Per **Ariwooola JSC** held:

“What then constitutes abuse of court process? It is the laws that multiplicity of actions on the same subject matter between the same parties will constitute an abuse. Where this happens, the court has a duty to interfere to stop such abuse of its process. See ROBERT OKAFOR & ORS V ATTORNEY GENERAL & COMMISSIONER OF JUSTICE ANAMBRA & ORS (1991) 6 NWLR (PT. 200) 659 1991 2 SCNJ 1345 1991 7 SC (PT. 111) 138. In F. M. SARAHI & ANOR V A. B. KOTOYE 1992 11/12 SCNJ 26, this court held that the multiplicity of actions on same matter between

the same parties even where that exists a right to bring an action is regarded as an abuse. The abuse has in the multiplicity and manner of exercise of the right rather than the exercise of the right perse."

The court went further to hold as follows:

"The abuse consists of the intention and purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of justice; such as instituting different action between the same parties simultaneously in different courts even though on different grounds." – Per Karibe Whyte JSC.

His Lordship Ariwola JSC went further to hold:

"For instance an action subsequently instituted by an opposing party as defendant in an earlier action on the same subject-matter between the same parties will definitely constitute an abuse court process. The reason being that the defendant could have currently and appointedly in the exercise of his right of action against the plaintiff, institute on the same action, a counter-claim and validly seek his relief against his adversary. Otherwise the court will take the subsequent action to be meant to annoy and irritate and harass the opponent and it will constitute an abuse of process of court in which the court is entitled to interfeer to stop. It is trite law that abuse of judicial process is the improper use of the judicial process by a party in litigation. See ASHLEY AGUASIM & ANOR V DAVID OJIBLIE & ANOR (2004) 9 – 12 SCM (PT. 2) 1 OKORODIEH V OKORO MADU (1977) SC 21."

It is also pertinent to note that the judgement of my learned brother has been registered as a foreign judgement at the Nasarawa State High Court for due execution. It is apparent that the instant claim by the claimant is a ploy to frustrate the said judgement. This court cannot be used as a shield by the claimants to effectuate their intentions. The plaintiff's action constitutes a gross abuse of the process of the court. I hold that the action is incompetent and it is hereby dismissed.

SIGN

HON. JUDGE
28/1/2022