

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1300/2021

BETWEEN:

FIRST BANK OF NIGERIA LIMITED.....CLAIMANT

VS

1. M. B. VENTURES LIMITED

2. ALH. MURTALA ODUNMBAKU.....DEFENDANTS

RULING/JUDGMENT

By an Originating Summons dated 20/4/2021 but filed on 25/6/2021, the Claimant herein seeks the court of the following reliefs;

- (1) **A DECLARATION** that the Defendants are in breach of the terms and conditions of the Loan Agreement which the Defendants entered into with the Claimant on 17th January, 2011 secured with equitable mortgage in respect of landed property lying and situated at Zuba Village Layout/Gwagwalada covered by a Certificate of Occupancy (Customary) No. FCT/GAC/RLA/NG/3004.
- (2) **A DECLARATION** that the 1st Defendant is in default of payment of the loan facility of ₦4,500,000.00 granted to it.

- (3) **A DECLARATION** that the Claimant upon the default of payment by the Defendants has and can exercise its right of sale over the equitable mortgaged property covered by Certificate of Occupancy (Customary) No. FCT/GAC/RLA/NG/3004 lying and situate at Zuba Village Layout/Gwagwalada.
- (4) **A DECLARATION** that the 1st Defendant is indebted to the Claimant in the sum of ₦24,362,842.26 representing the principal and the accrued interest thereon as at 29/11/2020.
- (5) **A DECLARATION** that by virtue of the equitable mortgage between the parties herein, the Claimant has the legal and equitable right to sell and pass title in the property herein stated to a third party to recover the indebted sum.
- (6) **A DECLARATION** that the Claimant is entitled in law and equity to enter into possession of the mortgaged property covered by Certificate of Occupancy (Customary) No. FCT/GAC/RLA/NG/3004 lying and situate at Zuba Village Layout/Gwagwalada owing to the Defendant's default of repayment.
- (7) **AN ORDER** granting a foreclosure against the equitable mortgaged property covered by a Certificate of Occupancy (Customary) No. FCT/GAC/RLA/NG/3004 lying and situate at Zuba Village Layout/Gwagwalada owing to the Defendant's default of repayment after the due date.

- (8) **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendants, their privies, agents, representatives and successors in title from selling or doing anything in relation to the equitable mortgaged property cover by Certificate of Occupancy (Customary) No. FCT/GAC/RLA/NG/3004 lying and situate at Zuba Village Layout/Gwagwalada owing to the Defendant's default of repayment after the due date.
- (9) **AN ORDER** of this Honourable Court allowing the Claimant to sell mortgaged property either by public auction or private sale to recover the indebted sum from the Defendants.
- (10) Cost of this Suit assessed at ₦1,000,000.00.

In support of the Originating Summons is a 24 Paragraph affidavit deposed to by Rebecca Akintayo, a Recovery Officer of Claimant with Exhibit "FBN^{1 - 14}" attached. Filed a Written Address in support. Upon receipt of Counter-Affidavit of Defendants, filed a Further/Better Affidavit of 38 Paragraph. Also filed a Reply on points of law. Adopts the Written Address and Reply on Points of law, in urging the court to grant all the reliefs sought.

In opposition, the Defendants filed a Counter-Affidavit of 40 Paragraphs deposed to by the 2nd Defendant dated 28/10/2021 with Exhibits attached. Also filed a Written Address adopts the Address, in urging the court to grant their prayers and dismiss the Originating Summons with substantial cost.

Sequel to this application, that is the Originating Summons of Claimant, the Defendants filed Notice of Preliminary Objection vide Motion on Notice No. M/7295/2021 on 28/10/2021 challenging the jurisdiction of this court to

determine this Suit. It is therefore necessary in line with the law to determine this issue of jurisdiction before proceeding to determine the originating Summons. If it succeeds, it terminates the matter without the need to go to the merits.

Jurisdiction overtime has been described as the live wire of any judicial proceedings and once raised; the court must determine it once and for all, the failure to do so, would amount to waste of judicial time of court if it is found that indeed it has no jurisdiction to hear. See the case of Daewood Nig Ltd Vs Project Masters Nig Ltd (2010) LPELR – 4010 (CA).

To determine the issue of jurisdiction, recourse must be made to the Writ of Summons and Statement of Claim, as in the instant Suit, the reliefs sought. See Osigwe Vs PSPLS Management Consortium Ltd (2009) 3 NWLR (PT. 1128) 387 at 399 Para E.

In the Defendants/Applicant Notice of Preliminary Objection filed on 28/10/2021 prays for the following orders.

- (i) An Order of this Hon. Court dismissing this Suit for want of jurisdiction on the grounds that the Suit lacks merit is same constitutes an abuse of court's process.
- (ii) An Order of this Hon. Court directing the Claimant to return the original title documents of the 2nd Defendant property (Plot No. ZVS – 34B, Zuba Village Layout, Gwagwalada Area Council Abuja) back to the 2nd Defendant.
- (iii) Cost of ₦1,000,000.00 against the Claimant /Respondent for this

Suit.

- (iv) And for such further order(s) as the Hon. Court might deem fit to make in the circumstances.

The grounds for the objection are:-

- (1) The Suit constitutes an abuse of court's process because the Claimant herein has already made the claims herein in a previous Suit (AN INTERPLEADER CLAIM) before the **High Court of the FCT** in Suit No. FCT/HC/CV/213.2011 via **Motion No. M/4880/2018.**
- (2) This Suit lacks merit.

In support of the Notice of Preliminary is a 6 Paragraph affidavit deposed to by Azani Sharon with two (2) Exhibits attached. Filed a Written Address, adopts the Address, in urging the court to dismiss the Suit for being an abuse of Court process. Also filed a Reply on points of law dated 26/1/2022 in support of the Notice of Preliminary Objection, adopts the Reply in urging the court to discountenance the position of Claimant.

In opposition to the Notice of Preliminary Objection, the Claimant filed a Counter-Affidavit of 17 Paragraph on 22/12/2021 with leave of court. Also filed a Reply on points of law in support of Counter-Affidavit, adopts same, in urging the court to dismiss the Notice of Preliminary Objection with substantial cost.

In the Written Address of Defendants/Applicants Dikeocha Faith Esq of Counsel for Defendant/Applicants, formulated three (3) issues for determination;

- (1) Whether the Claimant can validly commence an action on the matter when he has already commenced a similar action on the same matter before.
- (2) Whether commencing an action against the same party on the same issue before another judge is competent.
- (3) Whether the case as it stands has merit.

On the issue No. 1, submitted that the Claimant herein cannot validly commence an action against 1st Defendant or 2nd Defendant because he has already commenced same in a previous Suit and cited the case of Agwasim Vs Ojichie (2004) 18 NSCR. That a cursory look at the purported Statement of Account printed by Claimant annexed to their Summons, the recorded indebtedness on the Account for that date is ₦11,081,486.35k. That when Claimant filed the Suit on 17/4/2018, the claim made is for Order of Court to release sum of ₦11, 081 to Claimant being the balance of indebtedness. That the Motion paper was replete with error but all parties involved, except the Deputy Sherriff of the High Court, had an idea of the claim being sought by Claimant. That the intention was ₦11.081 Million not ₦11,081. That Claimant having realized the anomalies made in the claim in 2018, waited for a while to change tactics and return via a brand new Suit with heavier claims and new counsel.

On Issue No. 2, referred the court to Jadesimi Vs Okotie-Eboh (1986) 1 NWLR PT 16, 264 on situations that may give rise to abuse of court process.

On Issue No. 3, submitted this case lacks merit and cannot stand. That its settled law where the court comes to conclusion that there is an abuse of court

process, the proper order to make is that of dismissal of the offending process which amount to an abuse. Refer to African Reinsurance Incorporation Vs JDP Construction (Nig) Ltd) 2003 13 NWLR (PT. 838), 609, Ogbonmwan Vs Aghimien (2016) LPELR – 40806 (CA) and Ziklagsis Networks Ltd Vs Adebisi & 2 Ors (2017) LPELR- 92899 (CA).

In the Claimant/Respondent's Reply on point of law to the Written Address of Defendants/Applicants, Dr. J.A. Akubo of Counsel for Defendants/Applicants, formulated a lone issue for determination;

"Whether by Exhibit 2 and 3 but marked "N" and "O" attached to the supporting affidavit of the Objectors in support of the Preliminary Objection, this Suit constitutes an abuse of court process".

And submitted that the present Suit of Claimant does not amount to abuse of court process. He cited several judicial authorities; Lokpobiri Vs Ogola (2016) 3 NWLR PT 1499, 328; Integrated Realty Ltd Vs Odofin (2018) 3 NWLR PT. 1606, 301 Nwosu Vs PDP (2018) 14 NWLR PT 1640, 532, CPC Vs Onibugadu (2013) 18 NWLR PT 1385, 66. Submitted that its crystal clear looking at Exhibit "N" that same is Motion on Notice with M/4880/2018 and parties represented therein are not same as in the present Suit. Also that a Motion is not one of the ways of originating court proceedings. That Exhibit "N" is an application and not post-judgment Motion filed pursuant to Suit NO. FCT/HC/CV/213/2011 and therefore not a Suit. Further that Exhibit "O" ex facie shows it's a letter not a Suit. That the letter also makes reference to same Suit No. FCT/HC/CV/213/2011 as in the Motion in issue, referred to Bayero Vs FMBN Plc (1998) 2 NWLR PT 538, 509, Ogoegbu Vs Iheanacho

(2001) 4 NWLR PT 703, 219 and Order 2 of Rules of Court. Submitted that there is only one Suit presently filed against Defendants/Applicants by Claimant/Respondent as both the Exhibits "N" and "O" cannot be said to constitute Suits properly so called. That assuming without conceding that Exhibit "N" and "O" are Suits, the parties and subject matter are not the same with the instant Suit.

I have given insightful consideration to the affidavit evidence, the respective submission of both counsel, the judicial authorities cited for and against the grant of the instant application and find that only one (1) issue calls for determination and that is;

"Whether or not this instant Suit filed by the Claimant/Respondent constitutes an abuse of the process of court"

The term "Abuse of court process means that the process of court has not been used bonafide and properly. It also means the use of judicial process by a party to the irritation and annoyance of his opponent and interference with the administration of justice. See Chief E.O.I. Ojumo & Ors Vs Momodu Adelemo & Ors (2010) LPELR-9012 (CA).

The categories of situation that give rise to abuse of court process are imprecise and are not closed; the list is in exhaustive as it depends on the circumstances of each case. See Umeh Vs Iwu (2008) 8 NWLR PT 1089, 225. One of the ways by which abuse of court process occurs is where there are multiplicity of Suits between parties on same subject matter and on same issues. It also occurs where two similar processes are used in respect of the same right. The processes need not be the same, however, they must be in

respect of the exercise of the same right. See *Eleburuike Vs Tawa* (2010) LPELR – 4098 (CA).

To determine whether an abuse of the process of court has occurred, the court will consider the content of the process filed in the first suit and compare them with those filed in the second one in order to ascertain whether they are aimed at achieving the same purpose. See *Agwasim Vs Ojichie* (Supra). See also *Olaiye Vs Cooker* (2014) LPELR – 22643 (CA).

In the instant case, it is the case of Defendant/Applicant, in the main, that the Suit of Claimant/Respondent amounts to an abuse of process of court and therefore robs the court of jurisdiction because Claimant/Respondent has earlier in a previous Suit before the High Court in Suit No. FCT/HC/CV/213/2011 via Motion No. M/4880/2018 already made the claims and annexed the Exhibit "N" and "O" attached to his supporting affidavit to Notice of Preliminary Objection. Claimant/Respondent, on the other hand, contends that the instant Suit does not amount to an abuse of court process of court. That a look at the Exhibit "N" and "O" reveals that the subject matter and issues are not the same as in the instant Suit. Further that Claimant/Respondent has only filed one Suit as Exhibit "N" and "O" cannot be regarded as a Suit in the strict sense of it.

I have carefully perused the said Exhibit "N" and "O" of Defendant/Applicant annexed to the supporting affidavit to Notice of Preliminary which are processes filed in the previous Suit in Suit No: FCT/HC/Cv?213/2011 via Motion No. M/4880/2018. I have also compared the content of the same to the content filed in this instant Suit and I am of the firm view that this instant Suit of Claimant/Respondent amounts to a gross abuse of process of court. Both Suits

are aimed at achieving same purpose. Granted that the parties in this instant Suit are not the same as those in the previous Suit, that is the Exhibits "N" and "O", the subject matter and issues are same.

On the issue by Claimant/Respondent that a Motion is not one way of originating court proceedings. This contention by Claimant/Respondent is not tenable. Court proceedings may be initiated by way of an application to court which may be by Motion. No doubt, this contention of Claimant/Respondent is in respect of the Exhibit "N" of Defendant/Applicant which is a Motion filed by the Claimant/Respondent in an interpleader Summons and which under the Rules is to be made by an application which may be by Motion. See Order 48 Rule 2 of the Rules of Court. In any event Order 5 of the Rules of Court treats such cases as irregularity which does not nullify the proceedings.

On the contention that the Exhibit "N" and "O" cannot be regarded or said to constitute a Suit properly so called. This contention by Claimant/Respondent is also not tenable. I say so because a Suit has been held to include a Motion as in the instant as seen in the Exhibit "N" of Defendants/Applicants. See the case of ACB Plc Vs Ugorji (2002) FWLR PT 93, 1893 at 1987. See also Blacks Law Dictionary Eighth Edition page 1475 where the term "Suit" is defined as any proceeding by a party or parties against another in a court of law.

From all of these, the issue distilled for determination in this Notice of Preliminary Objection is answered in the affirmative and in favour of the Defendants/Applicants. And having found and resolved the issue for determination in favour of Defendants/Applicants, I hold that the Preliminary Objection of the Defendants/Applicants is meritorious and should succeed.

Consequently, it would be of no moment to proceed to deal with the Originating Summons of Claimant/Respondent. It is hereby dismissed.

On the relief ii of Defendant/Applicant, an Order of this Hon. Court directing the Claimant to return the original title document of the 2nd Defendant's property (Plot No. ZVS 343, Zuba Village Layout, Gwagwalada Area Council, Abuja) back to the 2nd Defendant. This relief cannot be granted at this stage. I say so because having found that the instant Suit, by Claimant/Respondent amount to abuse of the process of court because the facts, issues and subject matter are same with the previous Suit No. FCT/HC/CV/213.2011 before the High Court of the FCT, it will be subjudice to grant the order. It is on this basis that I refuse this relief of Defendants/Applicants.

On the relief iii for cost, I made no orders as to cost. Parties should bear their cost.

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
23/9/2022

APPEARANCE:

DR. J.A. AKUBO ESQ - FOR CLAIMANT

FAITH DIKEOCHA ESQ - FOR 1ST/2ND DEFENDANTS