IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS THURSDAY, THE 31ST DAY OF MARCH, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/1014/2018
MOTION NO: M/8237/2021

BETWEEN:

GLOBAL GROUP LIMITED ….. PLAINTIFF/RESPONDENT

AND

1. **UAC RESTAURANTS LIMITED ….DEFENDANT/APPLICANT**

2. **BANK OF INDUSTRIES LIMITED …DEFENDANT/RESPONDENT**

RULING

By a notice of preliminary objection dated 19th November, 2021 and filed on 23rd November, 2021, the 1st Defendant/Applicant seeks for the following Relief:

1. **An Order of this Honourable Court dismissing this Suit same constituting gross abuse of the process of this Honourable Court.**

The Grounds of the objection as contained on the motion paper are as follows:

1. **The plaintiff filed this suit while Suit No. CV/1817/16 between exactly the same parties in this suit was and is still pending before this Honourable Court.**

2. **The subject matter of Suit No: CV/1817/16 and this suit are the same.**

3. **Where there is a pending suit parties to same cannot initiate another suit between them on the same subject matter.**

4. **This suit having been initiated during the pendency of Suit No: CV/1817/16 amounts to improper use of processes of this Honourable Court and similarly constitute an abuse of process of this Honourable Court.**

The objection is supported by an 8 paragraphs affidavit with two annexures marked as **UACR1** and **UACR2**. **UACR1** is Certified True Copy of writ of summons and statement of claim in **Suit No. CV/1817/16 – Between Global Group Ltd V (1) UAC Restaurants Ltd and (2) Bank of Industry**. While **UACR2** is letter by claimants counsel in the said case to the 1st defendant intimating them of the pendency of the said action.

A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination, to wit:

"Whether in view of the pendency of Suit No. CV/1817/16 at the time of filing this suit and now this suit does not constitute an abuse of process of this Honourable Court."

Submissions were then made on the above issue which forms part of the Record of Court. The thrust of the address was on what constitutes abuse of process. It was contended that from the Certified True Copy of the originating process attached vide **Exhibit UACR1 (CV/1817/16)** both the plaintiff and the defendants in the present action are the same with the parties in **UACR1**. That the subject matter in both actions are the same relating to a medium term loan facility awarded to the plaintiff by 2nd defendant to enable the plaintiff operate a Mr. Biggs Quick Service Restaurant in fulfillment of a franchise agreement entered into between the plaintiff and the 1st defendant.

It was contended that while suit No. **CV/1817/16** is still pending, the plaintiff filed the present action on the same subject matter against the same opponent which in the circumstances is an abuse of process and liable to be dismissed. The cases of **Saraki V Kotoye (1992) 9 NWLR (pt.264) 156 at 188; Arubo V Aiyeleru (1993) 3 NWLR (pt.260) 126 at 142** were cited.

At the hearing, counsel to the Applicant relied on the contents of the supporting affidavit and adopted the submissions in the written address in urging the court to dismiss the present action for been an abuse of the process of court.

In response, the plaintiff/respondent filed a 7 paragraphs counter-affidavit with a very brief written address in support which did not identify or streamline any issue as arising for determination. The summary of the submissions is that while conceding that Suit No. **CV/1817/16** was indeed filed by the present claimant, that it was never **assigned** and that it was in the course of waiting for the assignment of the case that it informed 1st defendant of the said action in CV/1817/16 and that their plan to amend the said action was not achieved because of the non-assignment of the said case.

It was contended that there is no proof of the allegation by 1st defendant/applicant that the said suit **CV/1817/16** was assigned to **Justice S.E. Aladetoyinbo (now retired)**. Finally, that the extant action is the only subsisting matter against defendants as none of the defendants was served with any process in Suit No. CV/1817/16.

At the hearing, counsel to the plaintiff/respondent relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the objection.

I have carefully considered the processes filed and the submissions made on both sides of the aisle. The narrow issue which does not present a very intricate issue of law is simply whether the present action constitutes an abuse of the process of court in the light of Suit No. **CV/1817/2016**.

The case made at by Applicant is that on the facts, particularly in the light of Suit CV/1817/16, the present action constitutes an abuse of process. The claimant however argued to the contrary contending that the extant action is the only subsisting matter against defendants. What then does abuse of process connote?

Parties on both sides have highlighted what the phrase means by reference to several authorities of our Superior Courts. There is really no dispute as to what the concept entails. Let me also add that, as with most legal concepts, abuse of process is a term which is not capable of precise definition and may be more easily recognised than defined. But it is a term generally applied to a proceeding which is wanting in *bona fides* and is frivolous, vexatious or

oppressive. It means the abuse of legal procedure or the improper use or misuse of the legal process (to vex or oppress the adverse party). See **Amaefule V. The State (1988)2 N.W.L.R (pt.75)156 at 177 (**per Oputa, JSC); **Arubo V. Aiyeleru (1993)3 N.W.L.R (pt.280)126 at 142.** The court has the duty under its inherent jurisdiction to ensure that the machinery of justice is duly lubricated and that it is not abused. In **Saraki V. Kotoye (1992)9 N.W.L.R (pt.264)156 at 188 E-G** the Supreme Court (per Karibi-Whyte, JSC) opined that:

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See Okorodudu V. Okorodudu (1977)3 SC 21; Oyagbola V. Esso West African Inc (1966)1 AII NLR 170. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se."

See also the cases of **Akinnole V. Vice Chancellor University of Ilorin (2004)35 WRN 79; Agwasim V. Ojichie (2004)10 N.W.L.R (pt.882)613 at 624-625; Kolawole V. A.G. of Oyo State (2006)3 N.W.L.R (pt.966)50 at 76; Usman V Baba (2004)48 WRN 47.**

Whilst the categories of abuse of process are not closed and there is an infinite variety of circumstances that could give rise to abuse of process, the Apex Court in **R-Benkay Nig Ltd V. Cadbury Nig Ltd (2012) LPELR 7820** Per Adekeye J.S.C have instructively and precisely situated or streamlined various ways that abuse of judicial process may occur; these include:

1. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue; or

2. Instituting a multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

3. Instituting different actions between the same parties simultaneously in different courts even though on different grounds; or

4. Where two similar processes are used in respect of the exercise of the same right such as a cross-appeal and a respondents notice.

5. 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 the lower court.

6. Where there is no law supporting a court process or where it is premised on frivolity or recklessness.

7. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

8. It is an abuse of process for an appellant to file an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent in the Court of Appeal, when the appellant's application has the effect of overreaching the respondent's application.

9. Where two actions are commenced, the second asking for a relief which may have been obtained in the first, the second action is prima facie vexatious and an abuse of process.

See also **Agwasim V. Ojichie (supra) at 622-623**

Now the law is settled that in the determination of whether there has been an abuse of process, the court will consider the content of the first process vis-à-vis the second one to see whether they are aimed at achieving the same purpose. See **Aguasim V. Ojichie (supra) at 624.**

I have above and at some length highlighted the applicable principles situating abuse of process; the next step is to apply same to the factual scenario in the extant situation. Fortunately and on the facts, there are common grounds.

There is no dispute with respect to the filing of Suit No. **CV/1817/16** and of course the extant action, **CV/1014/18**. A perusal of the certified processes, to wit; the writ of summons and statement of claim in **CV/1817/16** attached as **UACR1** to the present objection shows clearly that the parties are the same parties with those in the extant action before me in **CV/1014/18**.

The subject matter of the earlier action in **CV/1817/16** borders or revolves around a franchise of Mr. Biggs offered by 1st defendant to plaintiff which culminated in plaintiff approaching 2nd defendant for a medium loan facility which was approved. Issues were essentially raised on the disbursements of this facility, its ambit and parameters and generally adherence to the agreements reached by parties. This then provided the basis for the reliefs sought in the said case.

Now in the extant action before me in **CV/1014/18**, a careful examination of the originating process show that it is a case anchored on the same subject matter as in Suit **CV/1817/16** and raises substantially the same issues. It is true that the remit of the reliefs before me may have been increased or expanded but there is no doubt that the substance of the **two suits** are anchored on the application and parameters of the franchise agreement between plaintiff and 1st defendant and the application of the facility offered to plaintiff by 2nd defendant. There is no doubt that the substance or end result of the two cases are substantially the same notwithstanding the recalibration of the reliefs and the expansion or increase in the number of reliefs in the case before my court.

What is **interesting in this case** is that the **claimant/respondent** has not denied or impugned the filing of both actions and that they are essentially targeted at the same end result. I prefer to give full expression to the contents of their **counter-affidavit** on the issue thus:

"6.1. Though Suit No: CV/1817/16 was taken out by the Claimant, the Claimant was not aware of the assignment of same to any Judge for adjudication thereon despite all entreaties made to ensure same.

6.2. That the 1st Defendant/Applicant was never served a proper copy. It was clearly stated in the Applicant's Exhibit UACR 2 that "we have attached a copy of the statement of claim in advance pending proper service."

6.3. It was the assumed non-assignment that precipitated the non-service of the proper Writ of Summons in Suit No: CV/1817/16 on the Defendant, even when the Claimant had informed the Defendants on the filing of CV/1817/16.

6.4. It was in the course of waiting for the assignment of Suit No: CV/1817/16 that the plaintiff took steps to inform the Defendants about CV/1817/16.

6.5. The intention of the Plaintiff to amend the Statement of claim in Suit No: CV/1817/16 was not achieved as result of the non-assignment of CV/1817/16.

6.6. No appearance was made in Suit No: CV/1817/16 and the Defendants have neither been prejudiced nor vexed or maligned and embarrassed.

6.7. The delay in taking out Suit No: CV/1014/18 upon the non-assignment of Suit No: CV/1817/16 was squarely on the misunderstanding between the Claimant and his Counsel with regards to the non-assignment.

6.8. Upon the assertion made in the paragraphs 5 (e) (at page 5) of Applicant's affidavit in support of the Preliminary objection that Suit No: CV/1817/16 was assigned to Honourable Justice S.E. Aladetoyinbo (now retired), he made enquiries at the office of Chief Judge and the office responsible for the assignment of cases.

6.9. The enquiries were not positive. There is no record to show that the Suit No: CV/1817/16 was assigned, let alone assigned to Honourable Justice S.E. Aladetoyinbo.

6.10. The certified copy of the Writ attached to para. 5 (page 3) of the Applicant's affidavit of support was purportedly certified by Bitrus Kurdiya, a Commissioner of Oath in the High Court of the Federal Capital Territory.

6.11. He is aware that it is not the duty of Commissioner of Oath to certify Court processes.

6.12. He knows for sure that the Bitrus Kurdiya was never a Registrar in Justice S.E. Aladetoyinbo's Court.

6.13. That this extant suit no: CV/1014/18 is the only subsisting and proper matter against the Defendants."

Let us subject the above averments to further scrutiny.

Now by the averment in **paragraphs 6.1** the claimant/respondent acknowledged it filed Suit No. **CV/1817/16** which clearly involves the same parties as in the extant suit and with respect to the same subject matter and by **Exhibit UACR2** attached to the objection, it even intimated present applicant of the filing of the said suit and sent an advance copy of the statement of claim.

The **Respondent** may have in **paragraph 6.3** stated that the case they filed was not **assigned** but there is absolutely nothing put forward to support or situate such non-assignment.

Indeed the claimant is not even categorical with respect to the issue of non assignment of the case after it was filed. In **paragraph 6.1** above, they stated that the case was not assigned. In **paragraph 6.3**, the non assignment was based on "assumption" without a clear basis for that assumption. To further make the case of the Claimant/Respondent unclear on this issue, despite the alleged non assignment, they however wrote to the 1st defendant intimating them of the fact of the case they filed and sent them advanced copies of the originating process they filed. Indeed in **Exhibit UACR2** forwarding the process, they also stated that they will intimate 1st defendant of "any further amendments to the suit pending."

It is really difficult to accept that the claimant will undertake these steps for a matter purportedly not assigned. Most importantly, this ambivalent posture on the issue of assignment has served to undermine the credibility of the assertion of non-assignment.

The court takes judicial notice of the fact that, notwithstanding the volume of cases filed in the FCT, all cases after been properly processed and fees paid are assigned to courts by the Honourable, the Chief Judge of the FCT. If on the rare occasions, if any at all, there is a case of non-assignment of any case, a complaint at the Registry, Litigation Department will lead to the assignment of such a case. In this case, even if it is assumed that the case was not even assigned, there is nothing to indicate what steps, if any, that was taken by claimants counsel to have the case assigned. If enquiries were made, how were they made and by whom and who was the enquiry addressed to? The issue of

assignment of cases are largely administrative matters which is largely never subject of any controversy or dispute.

It is a serious allegation to complain about non-assignment of a case filed by a litigant who must have paid the requisite prescribed fees. It is worse where there is no scintilla of evidence to support the complaint of non-assignment or evidence delineated showing steps taken to ensure assignment. It is not a matter for speculation.

Indeed it smacks of indifference and that is been charitable, for a counsel to file a matter in court and then takes no discernable steps to ensure that it is assigned, and that is even where there is such non assignment..

As a logical corollary, it follows that the contention by Claimant/Respondent cannot be **right or correct** that Suit No. **CV/1014/18** is the only subsisting matter against defendants. To the clear extent that Suit No. **CV/1817/16** has not been struck out or dismissed, it remains a live action and earlier in time. The Claimant/Respondent has argued that the originating process in CV/1817/16 was not officially served on defendants, but that without more, does not derogate from its **factual and legal existence**. The sending of filed advanced copies to 1st defendant underscores its **existence**. Let me equally say that even if they had not informed 1st defendant of the existence of the case, that does not in any way alter the fact of the filing of the case.

The bottom line is that Suit **CV/1817/16** between the same parties remains extant. The claimant for reasons that are not clear simply chose or elected to abandon Suit No. **CV/1817/16** and filed a new suit. The limited options in the circumstances was for the claimant to take discernable steps and liaise with the Litigation Department of the FCT High Court to ensure or see that the matter is assigned by the Honourable, the Chief Judge, that is if it has not even been assigned. They may then elect or chose to amend the claim or withdraw it and then it would be struck out. Only then will there be basis to file a **new** or **fresh** action involving the same parties and on the same subject matter as done in the extant case.

There is however no room to have two (2) cases pending and targeted at the same objective. As earlier stated, and at the risk of sounding prolix, however Suits **CV/1817/16** and **CV/1014/18** are viewed or considered, it does not change or alter the real character or substance of the two cases which derive root or foundation from the same source.

The negative consequences of filing of these two cases is the real possibility of courts of coordinate jurisdiction working at cross-purposes and possibly giving conflicting decisions on the same subject matter and issues arising from the cases and bringing the system of Justice Administration into disrepute. No litigant has the right under extant laws and Rules to pursue simultaneously two actions or process which will have the same effect in the two courts at the same time with a view of obtaining victory in one of the processes or in all the two. See **Agwasim V Ojichie (supra).**

The issue is not about the rightness of the grievance submitted for resolution or adjudication; that is beside the point. The manner claimant has sought to exercise or ventilate the protection of its rights by filing the **two** pending actions cannot be right or correct. Such actions without any doubt impacts negatively on the proper, effective and efficient administration of justice.

The court's obviously remain ready to listen and ventilate genuine causes of action or grievances. This delicate responsibility cannot be discharged efficiently in an atmosphere where different cases having in essence the same effect are filed in courts of same jurisdiction in a contrived situation to either knock their heads or in the process create confusion or make a mockery of the judicial process and or the proper administration of justice. The fact that the cases are fragmented into little portions with subtle changes to give the cases some semblance of propriety or normality does not in any way detract from the true and common essence of the two cases. The court must overtly be circumspect in situations such as presented by this case.

On the whole, the conclusion I have come to is that the present action filed in this court is clearly aimed at achieving generally the same purpose as the case vide Suit **CV/1817/16** pending in the FCT High Court, a court of competent and co-ordinate jurisdiction. This court as stated earlier has the inherent jurisdiction to prevent abuse of process by frivolous or vexatious proceedings. Having found that this action constitutes an abuse of process, it would amount also to a further abuse of process to continue with the hearing of the substantive action and to make any order or further orders. In law, where the court finds and holds that a suit constitutes an abuse of process, the appropriate order to make is that of dismissal. See **Atuyeye V. Ashamu (supra) 1780; Akpunonu V. Bakaert Overseas (1995)5 N.W.L.R (pt.393)42.**

In **Arubo V. Aiyeleri (supra)126,** the Apex Court stated as follows:

"Inherent jurisdiction or power is a necessary adjunct of the powers conferred by the Rules and is invoked by a court of law to ensure that the machinery of justice is duly applied and properly lubricated and not abused. One most important head of such inherent powers is abuse of process, which simply means that the process of the court must be used bona-fide and properly and must not be abused. Once a court is satisfied that any proceeding before it is an abuse of process, it has the power and duty to dismiss it."

In the final analysis, the objection has considerable merit and it is accordingly granted. The substantive action in the circumstances will be and is hereby dismissed as constituting an abuse of the process of court.

Hon. Justice A. I. Kutigi

Appearances:

1. **Taiwo Onifade, Esq., with Success Onuorah for the Plaintiff/Respondent.**

2. **Vembe Terrence Terfa, Esq., for the 1st Defendant/Applicant, with Hila Ngutswen, Esq..**

3. **A.M.A. Adejumobi, Esq., for the 2nd Defendant/Respondent.**