IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS MONDAY, THE 14TH DAY OF FEBRUARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/3440/2020
MOTION NO: M/201/2021

BETWEEN:

1. GREEN SYNERGY INVESTMENT PROPERTY LIMITED
2. JAMES AONDOVAR AGBO } **…CLAIMANTS/ RESPONDENTS**

AND

1. ALHAJI NURA SAIDU
2. BALLAST AGENCY NIGERIA LIMITED } **……. DEFENDNATS**
3. ABDULARASHEED INUWA JADA
4. A.A. RANO NIGERIA LIMITED ….. DEFENDANT/APPLICANT

RULING

By a motion on notice dated 13th July, 2021 and filed on 14th July, 2021, the 4th Defendant/Applicant prays for the following Reliefs:

1. **An Order of this Honourable Court dismissing this suit for being frivolous, vexatious and an abuse of judicial process/the process of this Honourable Court.**

2. **An Order for award of General Damages of N50, 000, 000.00 (Fifty Million Naira, only) against the Claimants jointly and severally for initiating and/or briefing lawyers to initiate this suit on their behalf, swearing to false statement on oath which is calculated to mislead and/or deceive this Honourable Court, causing embarrassment,**

annoyance and irritation to the 4th Defendant/Applicant by this suit, abusing the judicial process/the process of this Honourable Court and causing the 4th defendant to further incur expenses of solicitor's fee to prosecute this case.

3. **An Order for award of costs of N2, 000,000.00 (Two Million Naira, only) against the claimants.**

4. **And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this suit.**

5. **This Honourable Court cannot sit over and/or decide upon an issue already joined by parties in previous suit and dealt upon with a note of finality by a court of competent and coordinate jurisdiction.**

6. **The Claimants' suit as presently constituted is fraudulent, frivolous, vexatious, embarrassing, an abuse of judicial process/the process of this Honourable Court and was designed to subvert the cause of justice and/or cause travesty of justice by this Honourable Court.**

In support of the application is a 46 paragraphs affidavit with 31 annexures marked as **Exhibits A-P** respectively.

A written address was filed in which three (3) issues were raised as arising for determination as follows:

"1. Whether this suit as presently constituted is not caught up by the doctrine of issue estoppel.

2. **Whether this suit as presently constituted ought not to be dismissed for being frivolous, vexatious and an abuse of the process of this Honourable Court.**

3. **Whether the 4th Defendant/Applicant is entitled to the grant of the prayers sought in this application."**

Submissions were made in the address on the above issues which forms part of the Record of Court. I will however highlight the essence of the submissions. On **issue 1**, the import of the doctrine of issue estoppel was highlighted and it was submitted that the extant action as presently constituted is caught by the doctrine. That all the issue(s) raised by the present action has been previously and conclusively decided in Suits Nos. CV/4438/13 and CV/707/19, decisions of this court and that the fact that the claimant changed the names of parties in CV/707/19 in the present action to enable them apply to set aside the consent judgment in CV/707/13 will not make the doctrine inapplicable. The cases of **Falaki & ors V Fagbuyiro & ors (2015) LPELR – 25848 (CA) and Abiola & Sons Bottling Co. Ltd V 7up Bottling Co. Ltd (2012) 15 NWLR (pt.1322) 184** were cited.

On **issue 2**, what constitutes abuse of process was defined and it was contended that the present action in the light of similar decided actions filed by claimant

and on the same facts and issues is vexatious, oppressive, constitutes an abuse of process and interferes with the due administration of justice. The cases of **First Bank of Nigeria Plc V TSA Ind. (2012) 5 SCNJ 330 at 346 – 347; Senator Amange Bariga V PDP (2012) 12 SCNJ 577** were cited.

Finally on **issue 3**, it was contended that the court should grant all the Reliefs sought by 4th defendant/applicant and dismiss the action for constituting a gross abuse of process. The 4th Defendant/Applicant also filed a very brief Reply on points of law to the effect that the counter-affidavit filed by the claimants did not challenge the material contentions in Applicants affidavit and does not constitute a valid counter-affidavit in the circumstances.

At the hearing, counsel to the 4th Defendant/Applicant relied on the contents of the supporting affidavit and adopted the contents of the addresses filed in urging the court to grant the application and dismiss the extant action.

The other defendants in the action did not file any process in opposition and infact did not oppose the application.

On the part of the Claimants/Respondents, they filed a 16 paragraphs counter-affidavit with 6 annexures marked as **Exhibits G1 – G6**. A brief written address was equally filed in compliance with the Rules of Court in which one issue was raised as arising for determination as follows:

"Whether the 4th Defendant/Applicant has placed cogent and sufficient materials before this Honourable Court in the circumstances of this application."

The address or submissions equally forms part of the Record of Court and here it is contended that the Applicant has not placed cogent and sufficient materials to sustain firstly the plea of issue estoppel. The necessary elements to situate the plea of issue estoppel was highlighted and it was submitted that those elements have not been established to be present in this case. That the issue of whether the plaintiff had the locus standi to institute the subject action in CV/4438/13 in which consent judgment was entered was never an issue raised or determined in Suit No CV/707/2019 and that furthermore the parties in both cases are different and as such the question of issue estoppel cannot arise. The cases of **APC V PDP (2015) 15 NWLR (pt.1481) 1 SC 102-102; Agbaje V INEC (2016) 4 NWLR (pt.1501) 151 at 167** were cited.

On the question of abuse of process, the elements of the doctrine were again highlighted and it was contended that the applicants have not demonstrated how this action constitutes an abuse of process. That the present action is the only **pending** suit between the parties and that the issues raised have not been raised or determined in any other case and also that the parties are different. The case of **Bukoye V Adeyemo (2017) 1 NWLR (pt.1546) 173 – 179** was cited**.**

It was finally submitted that the exercise of claimants constitutional right to challenge the consent judgment on ground of want of jurisdiction cannot be regarded as an abuse of process.

At the hearing, counsel to the claimants/respondents relied on the contents of the counter-affidavit and adopted the submissions in his written address in urging the court to dismiss the application by 4th Defendant/Applicant.

I have here carefully and insightfully read and considered all the processes filed and submissions made on both sides of the aisle and the critical fundamental issue arising from the processes filed clearly has to do with whether the present action seeking a declaration that the **consent judgment** in Suit No CV/4438/13 was delivered without jurisdiction and obtained by fraud and therefore a nullity constitutes an **abuse of the process of court**.

I shall here advisedly not say much on the issues of issue estoppel and Res-judication precisely because of the pronouncements of my learned brother **Justice O.A. Adeniyi** in Suit No. CV/1707/19 which I shall highlight in some detail later on.

The point to underscore at the onset is that all the cases subject of the present complaint of abuse were before courts of coordinate jurisdiction. It would be presumptuous on my part to seek to attempt to usurp the role of the Superior Court of Appeal and make further comments on the issue(s) given full expression by my learned colleagues which may or may not agree with their pronouncements. The court must therefore be circumspect in circumstances as presented and only deal with fundamental issues arising from and having a significant bearing on the extant application.

Let me start by making some general and important remarks. Generally when a court makes an order, ruling or judgment on a particular matter or issue, it ceases to exercise further power(s) in dealing with the same matter or issue. In legal parlance, the court is said to be *functus officio* in the case with respect to

that matter or issue. Therefore, the steps to reverse or set aside the order(s) does not fall within the jurisdictional sphere of the same court but that of the Superior Court of Appeal.

On the authorities, there are however few identified situations where the court can under its inherent powers set aside its order(s) or judgment as follows:

(a) When judgment or order is obtained by fraud or deceit. Such judgment can be impeached or set aside by means of an action which may be brought without leave.

(b) When the judgment or order is a nullity and the person affected by the order is entitled ex *debito justitiae* to have it set aside.

(c) When it is obvious that the court was misled into given judgment under a mistaken belief that the parties consented to it.

(d) Where the judgment or order was given in the absence of jurisdiction.

(e) Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.

See **Abana V Obi (2005) 6 NWLR (pt.920) 183 at 203; Ojiako V Ogueze (1962) 1 SCNLR 112; (1962) 1 All NLR 58; Craig V Kanseen (1943) KB 256; Agunbiade V Okunoga (1961) All NLR 110; Edem V Akampka Local Government (2000) 4 NWLR (Pt.651) 70; Igwe V Kalu (2002) 14 NWLR (Pt.787) 435.**

The present or extant application it must be made clear is not about the substance of the present action but whether it can, *ab initio*, be even ventilated. The case made out by the Applicant is that on the **facts**, the present action constitutes an abuse of the process of court. The claimants however argued to the contrary. 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 carefully consider the contents of processes subject of the complaint or allegation of abuse to see or situate whether they are essentially aimed at achieving the same purpose. See **Agwasim V Ojichie (supra) at 624.**

I have at some length highlighted the applicable principles. The next task is to apply same to the factual scenario of the present case and in the context of the

contested assertions. In the present situation and on the materials, three cases (including the present one) calls for attention and careful judicial scrutiny.

I start with the present action: **Suit No. CV/3440/2020** filed on 16th December, 2020 involving:

1. GREEN SYNERGY INVESTMENT PROPERTY LIMITED
2. JAMES AONDOVAR AGBO } **…CLAIMANTS/ RESPONDENTS**

AND

1. ALHAJI NURA SAIDU
2. BALLAST AGENCY NIGERIA LIMITED } **……. DEFENDNATS**
3. ABDULARASHEED INUWA JADA
4. A.A. RANO NIGERIA LIMITED ….. DEFENDANT/APPLICANT

The reliefs as already highlighted seeks a declaration that the **consent judgment** in suit No. CV/4438/13 was delivered without jurisdiction and obtained by fraud and therefore a nullity and that same be set aside.

Now on the materials filed on both sides vide **Exhibits E1/G5**, the **consent judgment** was entered for the parties by my late brother, Honourable Justice Valentine Ashi (of blessed memory) as far back as 12th November, 2014. I will shortly highlight some of the terms of the consent judgment but let us situate first what the Reliefs and cause of action in the said action were and the parties involved.

By **Exhibit B** attached to the extant application, the writ of summons dated 1st August, 2013, the initial parties involved were:

ALHAJI NURA SAIDU ……. PLAINTIFF

AND

1. GREEN SYNERGY INVESTMENT & PROPERTY LTD
2. JAMES AONDORA AGBO
3. ALHAJI INUWA JADA } **……..DEFENDANTS**
4. BALLAST AGENCY NIGERIA LTD
5. ABDULRASHEED INUWA JADA

It is not in dispute that the present 4th Defendant/Applicant applied to be joined in the suit and they were joined as 6th defendant. It is obvious that all the parties subject of Suit **CV/4438/13** are present in the extant action except for one Alhaji Inuwa Suleiman Jada.

The reliefs sought in the case are as follows:

"1. A Declaration of court that Plot 3744, Cadastral Zone E05, Aviation Village Abuja measuring about 4.15 hectares was granted to the 1st Defendant by the FCT Minister but sold to the Plaintiff by the 1st Defendant and its directing minds including the 2nd Defendant.

2. A Declaration of court the 3rd and 4th Defendant's claim to title in Plot 3744, Cadastral Zone E05, Aviation Village, FCT, Abuja is wrongfully, illegal and has no legal basis.

3. An Order of specific performance ordering the 1st and 2nd Defendants to collect the balance of N35, 000, 000.00 (Thirty Five Million Naira) only from the Plaintiff to complete the purchase price by the Plaintiff for the purchase of Plot 3744, Cadastral Zone E05, Aviation Village, FCT, Abuja from the 1st and 2nd Defendants.

4. An Order of Court nullifying any sale, assignment and or transfer the 1st and 2nd Defendants may have entered with the 3rd and 4th Defendants or anybody, howsoever known, in respect of Plot 3744, Cadastral Zone E05, Aviation Village, FCT, Abuja.

5. An Order of Court directing the 3rd and 4th Defendants to, forthwith, hand over the original Letter of Offer in respect of Plot 3744, Aviation Village, Abuja in their possession to the plaintiff.

6. Any Order of Court perpetually restraining the Defendants or any person howsoever known from laying claim to the statutory holding in Plot 3744, Cadastral Zone E05, Aviation Village, FCT, Abuja and from trespassing further into the aforementioned landed property.

7. An Order of Court directing the FCT Minister to, after two weeks of the failure or neglect and or refusal of the Defendants to hand over the original Letter of Offer of Statutory Right of Occupancy to the Plaintiff

to issue a Certified True copy of same to the Plaintiff for the Plaintiff to publish same in two National Dailies circulating within the jurisdiction of the court together with the judgment of this Court.

8. **An Order of court directing FCT Minister whether by himself or through his agencies known as the Abuja Geographic Information System (AGIS), the Abuja Metropolitan Management Agency (AMMA), the Federal Capital Development Authority (FCDA) and the Federal Capital Territory Administration to recognize the Plaintiff as the Assignee from the 1st and 2nd Defendants of Plot 3744, Cadastral Zone E05, Aviation Village FCT, Abuja and to give consent to the assignment of Plot 3744 Aviation Village to the Plaintiff and register the Power of Attorney granted by the 1st defendant to the plaintiff in the name of Ahmed Azzaki.**

9. **An Order of Court awarding compensation of N50, 000, 000.00 (Fifty Million Naira) only against the 5th Defendant for physically assaulting the Plaintiff for no just cause on the active instigation of his father the 3rd Defendant.**

10. **An Order of Court perpetually restraining the 5th Defendant from further intimidating, threatening and assaulting the plaintiff at the active instigation of the 3rd Defendant or anybody else.**

11. **Cost of this suit jointly and or severally against the Defendants."**

I have deliberately stated the reliefs in some detail but the import of these reliefs are clear. The fundamental basis of the dispute on which parties joined issues as precisely streamlined on the pleadings has to do with **ownership** of **Plot 3744** Cadastral Zone E05, Aviation Village, Abuja.

On the materials, parties in the case agreed to settle the matter out of court and terms of settlement vide **Exhibit D** was filed and executed by all parties and their counsel which was then entered as consent judgment by my Respected late brother, Justice Ashi.

Some fundamental terms of the consent judgment are as contained in paragraphs 4 and 7 thus:

"4. That this agreement forecloses and fully extinguishes all of the 1st and 2nd Defendant's and the plaintiffs and the 3rd and 4th Defendants' ownership rights over the plot and interest in the plot and title to the plot and any privilege or benefit or right connected thereto or arising there from and vest same exclusively in the 6th Defendant and her lawful agents and assigns.

7. The Plaintiff and 3rd and 4th Defendants hereby irrevocably appoint the 1st and 2nd Defendants to execute a Deed of Assignment assigning all their interests, title, estate and liens in the plot to the 6th Defendant."

The consent judgment categorically therefore affirmed the ownership of **Plot 3744** in the present **4th Defendant/Applicant**.

This then leads us to the last case subject of the complaint of abuse filed before my Respected learned brother **Honourable Justice O.A. Adeniyi**. The present claimants would appear to have some reservations with the **consent judgment** and filed a new action in Suit No. **CV/1707/19** vide **Exhibit M1** attached to the extant application. The 1st claimant, 4th defendant and 6th defendant (through Alhaji A.A. Rano and Rano Oil & Gas Ltd and I will shortly explain) who were subject of the **consent judgment** are parties in **Suit CV/707/19**. The reliefs sought are as follows:

"i. A Declaration of the Honourable Court that the Claimant is the legal and lawful allottee of the plot of land known as Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja measuring approximately 4.15 hectares.

ii. An Order of the Honourable Court directing the 2nd defendant to pay to the claimant the total sum of N585, 000, 000.00 (Five Hundred and Eighty Five Million Naira) only being the remaining balance of the purchase price of the Plot of Land belonging to the Claimant known as Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja measuring approximately 4.15 hectares.

iii. An Order for the payment of 10 per cent interest on the judgment sum until the final liquidation of the entire judgment sum.

iv. An Order for the payment of the sum of N20, 000, 000.00 (Twenty Million Naira) only being the legal charges incurred by the Claimant as

a result of the briefing and retaining the law firm of Umar & Alofe to prosecute this case against the Defendants.

v. Cost of this action.

OR IN THE ALTERNATIVE:

i. A Declaration of the Honourable Court that the Claimant is the legal and lawful allottee of the plot of land known as Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja, measuring approximately 4.15 hectares.

ii. An Order of court directing the claimant to refund to the 2nd Defendant the sum of N15, 000,000.00 (Fifteen Million Naira) only being the sum of money the 2nd Defendant paid to the claimant as part-payment for the purchase price of Plot 3744 within Cadastral Zone E05 Aviation, Abuja measuring approximately 4.15 hectares.

iii. An Order of the Honourable Court directing the 2nd Defendant to deliver and or return to the Claimant the original of offer of Statutory Right of Occupancy belonging to the Claimant in relation of Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja measuring approximately 4.15 hectares within New File Number MISC 109087 dated 31:05:2011.

iv. A Declaration of the court that the purported development or construction of a property on Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja measuring approximately 4.15 hectares by the 2nd and 3rd Defendants or by their servants, agents or privies or whosoever called amounted to trespass.

v. A Declaration that the claimant is the owner of Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja measuring approximately 4.15 hectares and the structures thereon being developed on the land belongs to the Claimant based on the principle of law, namely, *"Quicquid plantatur solo, solo cedit"* and that the 2nd and 3rd Defendants

their servants, agents or privies and or any person in occupation of the plot of land the subject matter of this suit is a trespasser.

vi. **An Order of perpetual injunction restraining the 2nd and 3rd Defendants, their servants, agents and or privies from further entering and or carrying on any further construction or development works on Plot 3744 within Cadastral Zone E05 Aviation Village, Abuja measuring approximately 4.15 hectares.**

vii. **An Order for the payment of the sum of N20, 000, 000.00 (Twenty Million Naira) only being the legal charges incurred by the claimant as a result of the briefing and retaining the law firm of Umar & Alofe to prosecute this case against the Defendants.**

viii. **Cost of this action. "**

The above reliefs are again very clear. The 2nd claimant (James Aondover Agbo), in the case before me and the Chief Executive Officer and Managing Director of **1st claimant** on the record and who was party to the **consent judgment** in CV/4438/2013 may have not been mentioned in the Suit CV/1707/19 but the company, 1st claimant was clearly a party. The case again fundamentally centered on ownership of **Plot 3744** which claimant in the case (Green Synergy Investment & Property Ltd) claims to be the owner. All other ancillary reliefs claimed in the said action are predicated on ownership of this plot.

Again **6th defendant** who by the consent judgment was declared to be owner of the disputed plot may have not been mentioned but the claimant from the reliefs in the case chose to sue 2nd and 3rd defendants as owners of the disputed plot and those carrying out development on it. These entities sued in this case were not direct parties to the consent judgment but the claimant knowing the facts nonetheless still chose to sue them for reasons that will soon become clear.

In the case, the 2nd and 3rd defendants sought for an order dismissing the case for abuse of process and on grounds as streamlined on the motion paper vide **Exhibit M2** attached to the present application. The learned trial judge, Justice A.O. Adeniyi, vide **Exhibit N** acceded to the request of Applicants. I will shortly and at length refer to aspects of the instructive Ruling particularly with respect to whether it has no nexus with the extant action as argued by the

present claimants in the case before me. The Ruling, **Exhibit N** it must be stated speaks for itself and no subtraction, additions or interpolations can be made by anyone to suit a particular purpose. See **Section 132 of the Evidence Act**.

Let me quickly do some recap flowing from the analysis so far for ease of understanding before comparing the present action with the earlier preceding actions.

Firstly, it is not in doubt that the **first action** vide Exhibit CV/4438/13 before Honourable Justice Valentine Ashi was clearly with respect to ownership of **Plot 3744**, Cadastral Zone E05, Aviation Village, FCT – Abuja. The **consent judgment** entered unequivocally centered around this plot. The 4th defendant/Applicant and the claimants in the present action were key players in the said action.

Secondly, it is equally not a matter for dispute that the second action vide **CV/1707/19** before Honourable Justice O.A. Adeniyi also unequivocally related to the ownership of the same **Plot 3744**. The claimants in this case were infact the claimant in CV/1707/19. The 4th defendant in this case may have not been expressly mentioned but the learned trial judge in his **Ruling** at page 26 of **Exhibit N** described the actions of the claimant suing the alter ego of 4th defendant who was sixth defendant in the action belief Honourable Justice Valentine Ashi as **"mischievous antics"**. Indeed in his Ruling he stated that **"rather than the claimant suing the party to whom she agreed to transfer her propriety interest, over plot 3744 in the previous suit, that is A.A. Rano Nigeria Ltd, which was the 6th defendant in the present suit, the claimant chose to drag into the present suit, a sister company, Rano Oil and Gas Nigeria Ltd, with whom she had no dealings whatsoever in so far as the plot in dispute is concerned."**

The learned judge then found that the parties and the issues in the earlier case are the same or substantially the same with that before him and ultimately dismissed the action for this and so many reasons encapsulated in his Ruling. It therefore logically follows by parity of reasoning that if the learned trial judge in **CV/707/19** has found that the parties and issues in the action before him are the same with the parties and issues in the earlier Suit No. **CV/4438/13**, then it cannot be argued with any conviction that the parties in the present action

before me in **CV/3440/20** which seeks to set aside the consent judgment in **CV/4438/13** are different from that in **CV/707/19**.

Put another away, the parties and issues subject of the present action are substantially the same with parties in CV/4438/13 which Honourable Justice O.A. Adeniyi found to be substantially the same parties and issues raised in Suit CV/707/19 before him. As stated earlier, there is no appeal against this decision of Honourable Justice O.A. Adeniyi and neither has it been shown to have been set aside. It is thus a binding decision.

It is to be underscored again, that the **claimants** who were active participants at every point of these cases did not at any time prior to the present action challenge the consent judgment on appeal or file any action to set it aside on any ground.

After about a period of **6 years**, rather than appeal or challenge the consent judgment, they (claimants) chose or elected to file a **new action** before Honourable Justice O.A. Adeniyi in **CV/707/19** claiming ownership of the same **plot 3744** over which there is an existing consent judgment and against the same or substantially the same parties.

With the **failure of the action**, they then now filed the present action seeking to set aside the consent judgment entered in 2014 in suit No. CV/4438/13 on grounds already highlighted.

There is again on the materials no doubt that the focal point or issue in dispute in this case relates clearly to ownership of the same **Plot 3744** which is the same **subject matter** in the suits before Honourable Justice Valentine Ashi (CV/4438/13) and Honourable Justice O.A. Adeniyi (CV/707/19) and involving substantially the same parties. The claimant has argued that the extant case is different from that before Justice O.A. Adeniyi in CV/707/19 but a careful reading of the decision of my learned brother vis-à-vis the present grievance reveals a determination of critical aspects of the claimants case on which their case is anchored.

Let me situate the very **foundation** of the present action in the statement of claim vide paragraphs 18, 19 – 22 including the particulars of fraud thus:

"18. The Claimants avers that the purported Terms of Settlement dated and filed on the 2nd day of October in Suit No. FCT/HC/CV/4438/13 was allegedly signed by the 1st and 2nd Claimants and an unnamed

counsel purportedly signed Terms of Settlement as counsel to the Claimants. The Claimants will at the trial of this suit found and rely on the Terms of Settlement dated the 2nd day of October, 2014.

19. The Claimants states further that the Terms of Settlement was a fraudulent misrepresentation made by the Plaintiff and the 3rd, 4th, 5th and 6th Defendants in the suit to this Honourable Court.

PARTICULARS OF FRAUD:

i. That the Claimants in this suit who were sued as the 1st and 2nd Defendants in Suit No. FCT/HC/CV/4438/13 were not ay any material time served with the Writ of Summons in Suit No. FCT/HC/CV/4438/13.

ii. That the Claimants were not at any material time aware of the pendency of the action in Suit No. FCT/HC/CV/4438/13 against them.

iii. That the Claimants were never involved or participated in any settlement out of court moves that led to the Terms of Settlement dated the 2nd day of October, 2014.

iv. That the Claimants did not at any material signed or executed the said Terms of Settlement and that the signatures in the Terms of Settlement purporting to be the signatures of the 2nd Defendant in Suit No. FCT/HC/CV/4438/13, the 2nd Claimant were forged.

v. That the Claimants did not at any material time instructed or engaged the service of any Legal Practitioner to act as their defence counsel in the suit and that the Claimants did not at any material time instructed any Legal Practitioner known as Steven T. Mandeun who purportedly appeared as the counsel to the Claimants in the suit on the 12th day of November, 2014. The Claimants shall at the trial of this suit found and rely on the record of proceedings in Suit No. FCT/HC/CV/4438/13.

20. The Claimants further avers that the said Terms of Settlement was allegedly adopted as Terms of Settlements before this Honourable Court which His Lordship Honourable Justice Valentine B. Ashi (of blessed memory) entered as consent judgment on the 12th day of November, 2014. The claimants will at the trial of this suit found and

rely on the Consent Judgment of this Honourable Court delivered on the 12th day of November, 2014.

21. The Claimants states that the record of proceedings of this Honourable Court of the 12th day of November, 2014 stated that the parties in Suit No. FCT/HC/CV/4438/13 were present in Court on that faithful day and that the said record of proceedings did not specifically state the names and representatives of the parties that were present in Court on the 12th day of November, 2014. The Claimants shall at the trial of this suit found and rely on the record of proceedings of this Honourable Court in the said suit.

22. The claimant avers that the consent judgment was delivered without jurisdiction and that the action was incompetent on the ground that the plaintiff in Suit No. FCT/HC/CV/4438/13 predicated his cause of action on an undated Deed of Assignment sworn to before the Commissioner of Oaths on the 20th day of February, 2012 and undated Irrevocable Power of Attorney which were allegedly executed between the 1st Claimant and one Ahmed Azzaki in respect of Plot 3744, Cadastral Zone E05, within Aviation Village, Abuja measuring approximately 4.15 hectares. The Claimants shall at the hearing of this suit found and rely on the said Deed of Assignment and Irrevocable Power of Attorney."

The above situates the principal complaints of Claimant/Respondent in the extant case before me.

Unfortunately for the claimants, there has been pronouncements on critical aspects of the present cause of action or grievance as stated above. I will here give full expression to what my learned brother, Honourable Justice O.A. Adeniyi in CV/707/19 said with respect to aspects of the case in relation to the pleadings in **paragraphs 18-22** provided above. He stated at **page 31** thus:

"It is beyond question, from the processes produced by the Applicants in support of the present application, that the Claimant herein together with the deponent of the Counter Affidavit to the present application, were veritable parties to the consent judgment in the previous suit and that the Claimant herein in fact collected the sum of N15, 000, 000.00 from the 2nd Defendant herein, representing A.A. Rano Limited, the 6th Defendant in the previous

suit, as agreed to by parties in the suit in order for her to assign her proprietary interest in Plot 3744, which she did."

He added at pages 33-36 thus:

"I have noted the bated attempts made by the Claimant to rubbish the proceedings in the previous suit by denying knowledge of the action; by also denying signing any agreement and terms of settlement and by denying briefing counsel to represent her in the previous suit. All of these unfortunate denials were contained in the Counter Affidavit deposed to by James Aondover Agbo, the Claimant's Managing Director. He deposed specifically in paragraph 33 of the Counter Affidavit that all the signatories on the Deed of Assignment and Irrevocable Power of Attorney and other documents attached to the Applicant's Affidavit in support of the motion on notice as Exhibits A, B, C, D, E, F, G, H, I, J, K, L and M are not the signatories of any of the directors or principal officers of the Claimant/Respondent.

But then, in as much as the duty of this Court is not to conduct investigation of the claims of the Claimant herein, it is very significant to state that a mere cursory examination of the signature of the said James Aondover Agbo, deponent of the Counter Affidavit deposed to on 18th November, 2019, to oppose the instant application, bears compelling and striking similarity with the signatories of "James A. Agbo" as it appears in the documents attached to the originating processes in the previous suit, Exhibit A; the signature of the Director of Green Synergy Investment and Property Limited as it appears on the Agreement, Exhibit B, executed on 08/10/2013; as it also appears on the column for the 1st Defendant on the Terms of Settlement, Exhibit C, as indeed all the other documents, including hand written documents purportedly signed by the deponent and attached as Exhibits to the Affidavit in support.

By the provision of S. 101(1) of the Evidence Act, a Court is empowered to suo motu, take the initiative of making necessary comparisons of signatures in documentary exhibits before it before coming to a reasonable conclusion in the matter. See Agu Vs. Duru (2017) LPELR – 43184 (CA).

I therefore entertain no doubts in my mind that indeed the said James Aondover Agbo, lied on oath against documentary evidence, when he deposed in his Counter Affidavit to oppose the instant application that the Claimant was not aware of the pendency of the previous suit and that she did not participate in the amicable settlement that culminated in the consent

judgment handed down by the Court on 12/11/2014; and that the signatures in the Deed of Assignment and other documents exhibits by the Applicant ascribed to him did not belong to him or that of any of the principal officers of the Claimant. I so hold."

Finally at pages **38-40**, he equally forthrightly stated:

"In drawing the curtains on this ruling, I consider it very expedient to refer the deponent of the Counter Affidavit filed on 18th November, 2019, to oppose the present application, James Aondover Agbo, to the Commissioner of Police FCT, for investigation and possible prosecution.

This is as relates to certain depositions in his Counter Affidavit in these proceedings, which this Court consider as constituting an offence of grave penal consequence by the provision of s. 158 of the Penal Code Act, particularly in the light of documentary evidence annexed to the Affidavit in support of the present application and the Reply Affidavit to the Claimant's Counter Affidavit. In this regard, I make specific reference to the depositions in paragraphs 4, 7, 10, 11, 12, 13, 15, 16, 17, 18, 22, 23, 30, 31, 33 and 37 of the Counter Affidavit. The investigation shall also cover the deponent's weighty deposition that the Claimant did not brief any lawyer to represent her in the proceedings in the previous case, whereas Court proceedings exhibited by the Applicants to their Further Affidavit of 05/12/2019, revealed that one Steven T. Mandeun, Esq. represented the 1st and 2nd Defendants (that is the Claimant and the deponent in the present case), on 12/11/2014, the date the Terms of Settlement were adopted in the previous case; and that both the deponent and the said counsel were shown to have jointly signed documents with respect to the subject matter, as annexed to the Rely Affidavit to the Counter Affidavit."

I have deliberately and in extenso allowed the decision of my noble lord in Suit CV/1707/19 to speak for itself. The **Ruling** is a striking and damning riposte to the **complaints** or **grounds** on which this action is based. My lord in CV/707/19 has effectively made clear pronouncements on the present complaints disguised as a new cause of action. I need not say more. The bottom line here is that however the 3 cases are defined, they are targeted at the same objective of ownership of the disputed **plot 3774**. Indeed, however the cases are considered, it does not in my view change or alter the real character or

substance of the three cases which arose from the same subject matter and involving substantially the same parties.

The bottom line is that this court is certainly not a Court of Appeal and cannot be seen to make any pronouncement on the same issues on which there has been clear definitive pronouncements by a Court of coordinate and competent jurisdiction.

The present case unfortunately suffers from accusation of improper use of the judicial process at different levels to the irritation of the adversaries in this case and the efficient and effective administration of justice.

After the initial or first case vide **CV/4438/13** which culminated in the consent judgment before Honourable Justice Valentine Ashi, the claimants could have **appealed** or sought to set aside the consent judgment on the same grounds presented now in the extant case. They did not. They chose to file a fresh case in **CV/707/19** before **Honourable Justice O.A. Adeniyi** on the same subject matter and the same parties. The **present case before me and the reliefs sought** are clearly reliefs which could have been obtained in the case before Honourable Justice O.A. Adeniyi. On the authorities, the action before me is prima facie vexatious and an abuse of process. See **R-Benkay Nig. Ltd V. Cadbury Nig. Ltd (supra)**.

In addition, on the materials before me, after the decision of my lord Honourable Justice O.A. Adeniyi in dismissing suit **CV/707/19**, the claimants again filed another action vide Exhibit O with suit No. **CV/577/19** on 11th December, 2019 involving the same parties and seeking the same **Reliefs** sought as in the extant case. The case by the exercise of powers of the **Honourable, the Chief Judge of the FCT** was again assigned to Honourable Justice O.A. Adeniyi who heard the earlier action in Suit **CV/707/19**.

The claimants by **notice of discontinuance dated 15th December, 2020** vide **Exhibit P** for reason that are not apparent, discontinued the action and then filed the present action the following day on 16th December, 2020. The claimants in their counter-affidavit did not in any manner challenge or impugn the averments relating to the filing of this action and the steps taken to discontinue same. In law, an adversary has a duty to controvert facts in an affidavit otherwise they are regarded as established. See **Long John V Blakk (1998) 6 NWLR (pt.553) 524 at 547 H.**

What this discontinued **case**, (CV/577/19) in addition to the other cases dealt with show is a consistent and deliberate adoption by claimants of a system of forum shopping in the enforcement of a conceived Right. This in law situates an abuse of process. See **R-Benkay Nig. Ltd V Cadbury Nig. Ltd (supra).** The filing of these multiple sets of cases at different times on the same subject matter and between the same parties is in law regarded as an abuse even if there exist a right to bring the action(s). The abuse lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right *perse*. See **Saraki V Kotoye (supra).**

I am in no doubt, as I have, I hope, demonstrated above that the **filing of cases** in courts of coordinate jurisdiction and all targeted at the same objective amounts to an improper use of the judicial process as cases of this nature have the tendency to make courts work at cross-purposes or engage in purely futile and idle exercises especially where there are already pronouncements on similar issues raised in the new action and this impacts negatively on the effective and efficient administration of justice.

The pronouncements of Honourable Justice A.O. Adeniyi in **CV/707/19** vis-à-vis the **issues raised in the extant action** reveals the relationship or connection between the two cases so that any pronouncement by this court on those issues will clearly be one of doubtful validity. Even if it was valid, the implication will be that there are two pronouncements from two courts of coordinate jurisdiction and where the pronouncements conflict, the friction and confusion this will then generate can only be imagined. The issue is therefore not about who owns the subject matter of dispute and the validity of the consent judgment validating ownership of 4th defendant/applicant of this disputed plot 3774; that is beside the point. The manner claimants have sought to exercise or ventilate the protection of their rights over these matters in last 7 years in different courts of coordinate jurisdiction appear to me lacking in bona-fide, utterly vexatious, oppressive and calculated at not only harassing or irritating the adversary but also interfering with the proper administration of justice.

The courts 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 all the cases claimants filed on the same subject matter. The court must overtly be circumspect in situations such as presented by this case.

Before rounding up, I must call on counsel to the claimants to show more circumspection when they file cases of this nature particularly in the light of the clear facts of this case and the other related cases filed by him. Counsel qua advocate may have been retained by claimants or his clients but the conduct of any case from the preparation and filing of processes and presentation of the case is solely a matter within the general authority of the counsel, without limitation. As the person with the legally discerning mind, the facts of the case, the law and the ultimate cause of truth and justice must strictly guide the conduct of counsel in any case. Counsel must at all times resist the convenient temptation and urging by litigants and whatever the motivation, to allow himself to be used in the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. As the authorities posit, the abuse of process may lie in both a proper or improper use of the judicial process in litigation. This distinction, counsel must bear at all times even if I concede it is not often appreciated by all. A lawyer must have a sence of obligation to the system of proper administration of justice to avoid the risk of running up against the edges of the law on behalf of their client. I say no more.

I note that the Applicant has claimed General Damages of N50, 000, 000 (Fifty Million Naira) for the filing of the extant action. I am not sure general damages and the huge amount claimed has legal validity in the circumstances. What the Applicant can fairly be indemnified for are expenses to which it has been necessarily put in the proceedings as well as compensated for their time and effort in coming to court which can be accommodated under the claim for cost of action. Nothing has really been put forward to however sustain the award of general damages and in the quantum claimed. It is thus not availing.

Guided however by the provision of Order 56 Rule 1 (3) of the Rules of FCT High Court Rules of Court, particularly the entire circumstances of this case, I award costs assessed in the sum of **N200, 000 (Two Hundred Thousand Naira)** only against Claimants in favour of 4th Defendant/Applicant which is a reasonable recompense in the circumstances.