

The Claimant came by way of an Originating Summons for possession of mortgaged property wherein he sought for the following reliefs against the Defendant:-

1. A Declaration that by clause 5, sub-clause 5(a) – (b) and clause 6 of the Deed of Legal Mortgage dated 27th January, 2017, duly executed by the Defendant (Mortgagor) with the Claimant (Mortgagee), the Claimant is entitled to take exclusive possession of the Mortgaged property situate and known as House No. 4, Ficus Benjamina Street, Prototype Housing Estate, Abuja FCT.
2. An Order of this Honourable Court that the Defendant give the Claimant exclusive possession of the mortgaged property well

described in the schedule to the Deed of Legal Mortgage dated 27th January, 2017 situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.

Or alternatively:

3. An Order of this Honourable Court granting leave to the Claimant to take exclusive possession of the mortgaged property well described in the schedule to the Deed of Legal Mortgaged dated 27th January, 2017 situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.
4. An Order of this Honourable Court directing the Assistant Inspector General, Zone 7, Abuja, the Commissioner of Police, FCT Command, Abuja, their duties or officers to assign ten(10) armed

policemen to protect the Claimant through its Directors, agents and labourers in the course of taking possession of the Mortgaged property well described in the schedule to the Deed of Legal Mortgage dated 27th January, 2017 situate and known as House No. 4 Ficus Benjamina Street, Prototype Housing Estate, Abuja FCT.

In support of the Originating Summons is nine (9) paragraph affidavit deposed to by Habila Danladi of No. 12 S.O. Williams Crescent, Utako, Abuja.

It is the deposition of the Claimant that the Defendant applied for a facility of N10,400,000.00 (Ten Million, Four Hundred Thousand Naira) only and was granted the facility vide an offer of credit facility dated 27th January, 2017.

That the Defendant accepted the offer of credit facility vide the execution of a Memorandum of Acceptance dated 27th January, 2017.

The Claimant further deposed that the purpose of the facility was to fund the Defendant's working capital at 10% interest rate per monthly outstanding balance with a tenor of 90 days to expire on 26th April, 2017.

That as a security to guarantee the said facility, the Defendant executed a Deed of Legal Mortgage dated 27th January, 2017 with the Claimant using the Defendant's property well described in the schedule to the Deed of Legal Mortgage situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.

That the Defendant is currently indebted to the Claimant to the total sum of N389,387,807.52(Three

Hundred and Eighty – Nine Million, Three Hundred and Eighty – Seven Thousand, Eight Hundred and Seven Naira and Fifty Two Kobo) only.

The Claimant further deposed that the transaction between the parties is regulated by a Deed of Legal Mortgage dated January, 27th January, 2017 and offer of credit facility dated 27th January, 2017.

That by clause 5, sub-clause 5(a)-(b) and clause 6 of the Deed of Legal Mortgage 27th January, 2017, duly executed by the Defendant (Mortgagor) with the Claimant (Mortgagee), the Claimant is entitled to take exclusive possession of the Mortgaged property situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja – FCT, if the Defendant failed to pay the said loan.

It is further deposition of the Claimant that after the Defendant failed, refused or neglected to meet up with her credit facility repayment obligations and sequel to all demand letters written to the Defendant, the Claimant acted the condition stated in paragraph 5 of the Deed of Legal Mortgage by appointing a Receiver over the mortgaged property.

That the legal due date has passed and the Defendant has not shown any attempt to repay her loan obligations to the Claimant.

The following documents were annexed to the originating Motion.

1. The Defendant's Statement of Account accompanied by an affidavit of compliance.
2. The Offer of Credit Facility dated 27th January, 2017

3. The Deed of Legal Mortgaged dated 27th January, 2017
4. The Demand Letter dated 6th March, 2017
5. The Demand Letter dated 10th April, 2017
6. The Petition dated 19th July, 2017
7. The document appointing Mr. Chukwudi Prince Oli Esq.

In line with the procedure, the Claimant filed written address wherein two (2) issues were formulated to wit;

1. Whether having regards to clause 5, sub-clause 5(a)-(b) and clause 6 of the Deed of Legal Mortgage dated 27th January, 2017, duly executed by the Defendant (Mortgagor) with the Claimant (Mortgagee) the Claimant is entitled to

take exclusive possession of the mortgaged property situation and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.

2. Whether, in view of the circumstances of recovery of possession in Mortgages, the Claimant Mortgagee ought not to be protected by security operatives in the course or processes of taking over possession.

On issue one, learned counsel argued that it is settled law that Originating Summons procedure is used to determine questions of construction arising under a deed, will or other written instrument or for the interpretation of statutes. The procedure is used where the facts are not in dispute or where it is unlikely documentary and there is unlikely to be in

dispute as to their existence. *FAMFA OIL LTD. VS. A.G FEDERATION* (2003)18 NWLR (Pt. 852)453 at 467, *INAKOJU VS. ADELEKE* (2007)4 NWLR (Pt. 1025) 423; *ADEYELU II VS. OYEWUNMI & ORS.* (2007) 14 NWLR (Pt. 1053)1 were cited.

Counsel further argued that it is a trite principle of law that a Mortgagee can take summons to recover possession and eject a Mortgagor in possession without incurring any civil liability. *FOUR-MAIDS LTD. VS. DUDLY MARSHALL (Properties) LTD.* (1957) Ch. 317, at 320, *AWOJUGBAGBE LIGHT INDUSTRIES LTD. VS. CHINUIKE* (1995)4 NWLR (Pt. 390) 379; *BANK OF THE NORTH VS. BABATUNDE* (2002)7 NWLR (Pt. 766) 389, at 418 – 419 were cited.

Learned counsel submit further that it is a trite law that where a power of sale arises under a Mortgage created by deed, the Mortgagee is statutorily empowered to appoint a receiver and exercise his power of Conveyancing Act, 1882, ***S.O.N OKAFOR & SONS LTD. VS. NIGERIAN HOUSING DEVELOPMENT SOCIETY LTD. (1972)2 ECSCR (Pt. 1) 349; AKANO VS. FBN PLC. & ANOR (2003) LPELR – 7289 (CA); BANK OF THE NORTH LIMITED & ANOR VS. HARUNA ALIYU (1999)7 NWLR (Pt. 612) 622 at page 634 – 635*** were cited.

On issue two, learned counsel opine that the essence of Order 58 Rule (3) is to confer such necessary discretion as justice may require in the procedure of recovery of possession and that one of such circumstances where this rule is necessary in the

preservation of law and order is the course of taking over possession.

Counsel submit that in the circumstances of this case the Claimant/Mortgagee ought to be protected by security operatives in the course or processes of taking over possession and we urge your Lordship to grant the second relief being sought in the Originating Summons.

Counsel respectfully urge the court to grant all the reliefs sought by the Claimant in this suit.

Upon service, Defendant/Applicant filed notice of preliminary objection on the following grounds:-

1. That the Suit is an abuse of court process being same subject with a pending Suit No. **FCT/HC/CV/3109/2017 Between De Real Peoples Finance Limited VS.**

AdesanyaAbeniOluwafolake before Hon. Justice S.C Oriji FCT High Court 6 Apo, Abuja.

2. That the Honourable Court lacks jurisdiction to entertain the subject of this Suit sequel to the provision of Section 251 (1)(e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 567 of Companies and Allied Matters Act, 1990 Cap C20, LFN, 2004 respectively.
3. The subject of the suit is volatile and contention which cannot be determined with Originating Summons.

In support of the Preliminary Objection is 7 paragraph affidavit deposed to by AdesanyaAbenOlufolake of Plot No. 4, FicusBenjamina Street, Gaduwa Estate, Abuja.

It is the deposition of the Defendant that she was served with the Originating Summons of the Claimant on Friday the 13th of March, 2020 at about 5:00pm after the Receiver appointed by the Claimant/Respondent invaded the aforesaid address with about 10 armed Policemen and about 10 others Civilians led by a Bailiff of this Court to take possession and throw her and her family out of their house with their belongings.

The Defendant further deposed that she was shocked when the Claimant/Respondent not only filed this Suit No. **FCT/HC/CV/1036/2020 Between De Real Peoples Finance Limited VS. AdesanyaAbeniOlufolake** before this Court and the subject with Suit No. **FCT/HC/CV/3109/2017** pending for hearing before the same FCT High Court and surreptitiously got an

Exparte Order to embarrass, humiliate, discomfort and displace me and my entire family on Friday, the 13th of March, 2020.

Subsequently, the grounds for the Preliminary Objection were adopted as issues for determination.

On Issue one, Learned Counsel submit that the punishment for abuse of judicial process is dismissal of the abused process. It is rooted in public policy which is expressed in the latin maxim *memo debetbisvexari pro una et eademcausa* – meaning no one shall be subjected to defend the same cause twice. *ARUBO VS AIYELERO (1993)3 NWLR (Pt. 280) page 126 @ pp. 142, paragraph C; 146 paragraphs; OGOEJOFO VS OGOEJOFO (2002) 12 NWLR (Pt. 780) Page 185, paragraphs A- C were cited.*

On Issue two, learned counsel submit that the Claimant/Respondent in this suit is a corporate entity registered with the Corporate Affairs Commission. Thus, the subject of this suit can only competently be exclusively handled by the Federal High Court. Section 251(i)(d) and section 567(1) of Companies and Allied matters Act, 1990 Cap. C20, LFN, 2004 were cited.

On Issue three, learned counsel argued that the subject matter of the suit is about the determination and calculation of the first interest to pay on the Ten Million Naira (10,000,000.00) loan given to the Defendant/Applicant.

The computation and calculation are contentious, cannot be handled vide originating summons. Order 2 Rules 3 of the High Court of Federal Capital

Territory (Civil Procedure) Rules, 2018; *OGUEBIE VS P.D.D (2016) 4 NWLR (Pt. 1503) 446 at 485 paragraphs C – D were cited.*

In the event that the Preliminary Objection is overruled, Defendant/Applicant also filed counter affidavit in opposition to the Originating Summons which was duly deposed to by AdesanyaAbeniOlutolake.

It is the deposition of the Defendant that nowhere in the offer of credit facility was it stated that she was to repay the loan after a month and that 90 days to repay the loan was stated. Therefore the demand letter dated 6th March, 2017 was premature as the loan tenor had not yet elapsed.

That contrary to paragraph 5(k), she is not indebted to the Claimant to the sum of N389,387,807.52

claimed because the interest claimed on the loan by the Claimant is misleading, erroneous, excessive, oppressive, unlawful and invalid.

That the purported witness to the mortgage, one AdebolaFawehinmi is an official of the Claimant and unknown to her and cannot stand as her witness and that the mortgage document was not stamped at the Corporate Affairs Commission or registered before the land registry as mandated by law before the Claimant filed Suit **No. FCT/CV/3109/2017** and before she paid of the loan on the 19th October, 2018 through Bank draft but the Claimant rejected and refused to collect the Bank Draft.

The Defendant formulated 3 issues for determination in his written address in support of the counter affidavit:-

1. Whether or not the Originating Summons of the Claimant is competent before this Honourable Court to bestow upon it the jurisdiction to entertain this suit in light of the obvious abuse of Suit No. **FCT/CV/3109/2017** between De Real Peoples Finance Limited Vs. AdesanyaAbeniOlufolake before Hon. Justice S.COriji of FCT High Court 6, Apo then, now High Court no. 2, Maitama, Abuja, by the presence Suit.
2. Whether or not a Deed of Legal Mortgage could be said to have been created by the Claimant and the Defendant from the facts and documents before the Court
3. Whether or not the interest in the sum of N389,387,807.52 (Three Hundred and Eighty

Nine Million, Three Hundred and Eighty Seven Thousand, Eight Hundred and Seven Naira, Fifty Two Kobo) being claimed by the Claimant from the N10 Million loan advanced to the Defendant on 27th January, 2017 is not misleading, onerous, excessive, oppressive, unlawful and invalid in the circumstances, considering the fact that the principal sum has since been paid fully on the 22nd March, 2019.

On issue one, learned counsel submit that filing of this suit by the Claimant amount to multiplicity of actions and is an abuse of the judicial process of the Court. *OGOEJOFO VS. OGOEJOFO (2002) 12 NWLR Pt. 780 P. 185, Paras A-C; AG. Of LAGOS STATE VS. A.G OF THE FEDERATION & ORS (2014) LPELR – 22701, P. 89, Paras A – E;*

*ARUBO VS. ARYELERO (1993)3 NWLR (Pt. 280)
P. 126 @ Pp. 142, Para C.* were cited.

On issue two, learned counsel argued that from the facts and documents before the Court, the agreement entered into by the parties to this Suit amounts to an equitable mortgage and not a Legal Mortgage. Similarly, the mortgage agreement in the instant suit was signed only by the Defendant and no one else at the time she received the loan from the Claimant. That the Defendant's husband was to sign as a witness to the mortgage agreement but was denied the opportunity of doing so by the Claimant who at the time claimed they wanted to perfect the document but never did.

Learned counsel submitted respectively **on issue three**, that the 10% compound interest on

outstanding balance to be serviced on a monthly basis on the N10,000,000.00 (Ten Million Naira) loan given to the Defendant by the Claimant contravenes the provisions of the Money Lenders Act, the Central Bank of Nigeria Revised Guidelines for Finance Companies in Nigeria and the Central Bank of Nigeria Monetary Policy.

Section 61(1) of the Banks and Financial Institutions Act Cap B3 Vol. 2, Laws of the Federation of Nigeria 2004, was cited.

Counsel therefore urge the court to dismiss the Originating Summons of the Claimant as an abuse of judicial process and vexatious, gold-digging matter brought in bad faith.

Upon service, Claimant/Respondent filed a counter affidavit of 11 paragraphs deposed to by HabilaDanladi.

It is the deposition of Claimant/Respondent that the Defendant/Applicant requested for N10,400,000.00 (Ten Million Four Hundred Thousand Naira) and wrote a letter instructing the Claimant/Applicant to transfer the sum of N10,000,000.00 (Ten Million Naira) to safe forte account in GTBank, while cash of N400,000.00 (Four Hundred Thousand Naira) be given to her personally and her instruction was carried out.

That in response to paragraph 4(6) the Suit filed by the Claimant was Suit No. **FCT/HC/CV/3109/2017** which is totally different from this Suit as could be gleaned from the reliefs sought therein and the

reliefs sought in this present suit was discontinued on the 11th day of February, 2020, and that parties in Suit No. **FCT/HC/CV/3109/2017**, which had since been discontinued, are totally different from the parties in this Suit as could be gleaned from the processes filed.

Five issues were formulated as written argument in support of the affidavit.

On issue one, which is an abuse of court process, learned counsel submit that the Courts have held that the basic primary test for determining if a suit is an abuse of the process of the Court is by examining if the parties, subject matter and reliefs are the same.

ADENIYI VS. FRN. (2012)1 NWLR (Pt. 284) was cited.

Counsel further submit that the reliefs claimed in the two Suits are different. More instructive is that the statement of claim in Suit No. **FCT/HC/CV/3109/2017** had since the 11th day of February, 2020 being withdrawn and struck out by my learned brother Hon. Justice Sylvanus C. Oriji.

On issue two, whether the Court lack jurisdiction, learned counsel aver that they have not approached the court for any matter arising from the operation of the Companies and Allied Matters Act or regulating the operation of the Companies Incorporated under the Companies and Allied Matter Act. Thus;

1. The Defendant in this Suit is not a company but a human being
2. The duties and powers of a receiver is not the issue in contention

3. A company can competently institute an action in the FCT High Court for the purpose of interpreting and enforcing the contents of a written document.

Order 58 Rule(1) (a)-(e) of the Federal Capital Territory (Civil Procedure) Rule (2018) was cited.

On issue three, on fair hearing counsel submit that the law is clear on Mortgages. Once there is a Legal Mortgage, the Mortgagee becomes the legal owner of the Mortgaged property until the mortgage is liquidated by the Mortgagor. *FOUR-MAIDS LTD. VS. DUDLY MARSHALL (Properties) LTD. (1957) CH. 317 at 320.*

Learned counsel argued **on issue four**, that the Court did not delve into the substantive issues while determining the Exparte application. And that there

is no way the Court could be said to have delved into substantive issues at interlocutory stage as alleged by the Defendant. *ADETONA VS. ZENITH BANK INTERNATIONAL BANK PLC. (2011)18 NWLR (Pt. 1279)627* cited and relied on by the Defendant is not helpful in this regard.

On issue five, counsel submit that there is no basis for the Court to set aside its Exparte Order made on 24th February, 2020. They further argued that the Exparte Order was obtained pursuant to Exparte proceeding which is strictly between the Claimant and the Court. The Defendant is not a party to the proceeding and this cannot even raise the issue of non-service of the Exparte Processes.

Learned counsel urge the Court to dismiss the Defendant/Applicant's Motion on Notice with

substantial cost as same is frivolous, vexatious and a waste of the Court's judicial time.

Upon service, the Defendant/Applicant filed a further affidavit in support of Preliminary Objection. Wherein the Originating process of the Claimant/Respondent filed on the 29th April, 2020 in Suit No. **FCT/HC/CV/3109/2017**, the certified true copy of the monetary policy of the Central Bank of Nigeria which fixed 9% interest per annum were attached.

That upon the default of the Defendant to liquidate the mortgage debt, the Claimant decided to exercise his inherent power of sale in the mortgage property and thereafter sold the mortgaged property for the sum of N50,000,000.00 (Fifty Million Naira) which was paid into the Defendant's loan account on 4th

May, 2020 as clearly shown in the underlined portion in Exhibit 'D1'.

COURT:-

It is instructive to note that this suit was instituted by Originating Summons. The very nature of Originating Summons is to make things simple for hearing. It is available to any person claiming interest under a deed, will or other written instrument whereby he will apply by Originating Summons for the determination of any question of consideration arising under the instrument for declaration of his interest.

It is a procedure where evidence in the main is by way of documents and there is no serious dispute as to their existence in the dealings of the parties to the Suit. In such a situation, there is no serious dispute

as to facts but what the Plaintiff is claiming the declaration of his rights.

If there is serious dispute as to facts, then a normal writ must be taken out and not originating summons.

Above was stated by *BELGORE JSC* as he then was in the case of *FAMFA OIL LTD. VS. AG. FEDERATION (2002)18 NWLR (Pt. 852) 453*.

I have read carefully the affidavits in support against the preliminary objection on the one hand and the affidavit and counter affidavit in support/oppositions to the originating summons.

I have also gone through the respective legal arguments in support/against the said preliminary objection and originating summons which were both taken together in obedience to produce.

I shall attempt to determine the grouse of Defendant/Applicant as contained in the preliminary objection which shall give the next direction. ***AG of DELTA STATE VS. ASIN & ORS (2010) LPELR 9078 (CA).***

The kernel of Defendant/Applicant's preliminary objection is that the suit before this court is an abuse of judicial process as it is the same with suit No. **FCT/HC/CV/3109/2017 Between De Real People Finance Limited VS AdesanyaAbenOluwafolake** Before Hon. Justice S.C. Oriji of Court 6 then now court 2, and that this court lack jurisdiction to entertain the subject matter of this Suit pursuant to the Section 251(1) (e) of Constitution of FRN (1999).

An abuse of court process, which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of *N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A).*

When then does abuse of court process arise?

Supreme Court of Nigeria, *per Ogbuagu JSC* in the case of *ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D - E* stated thus;

“There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to includethe following;-

a. Instituting a multiplicity of actions on the same subject matter against the same

opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.

- b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds*
- c. Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent’s notice.*
- d. 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 courts below.*
- e. Where there is no iota of law supporting a court process or where it is premised on*

frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.”

To resolve this matter, the court has formulated one issue for determination, viz;- *“whether suit No FCT/HC/CV/1036/20 filed before High Court is an abuse of court process.”*

As I stated in the preceding part of this ruling, the rationale of the law in abuse of court process is that there must be an end to litigation since a litigant must not be made to suffer the same rigour/Jeopardy for the same purpose twice.

Abuse of court process generally contemplates multiplicity of suits between the same parties in regard to the same issue.

The misuse of court's process which includes acts which otherwise interfere with the course of justice is also abuse of process. See ***OKOROCHA VS PDD & ORS (2014) LPELR – 22058 (CA)***.

Put differently, the improper and tortuous use of a legitimately issued court process to obtain a result that is either awful or beyond the process' scope, is abuse of court process.

I shall take off from the point of looking at the reliefs sought in both courts.

The following are the claims before this court and that of my brother, Hon. Justice Oriji, as follows:-

1. A Declaration that by clause 5, sub-clause 5(a) – (b) and clause 6 of the Deed of Legal Mortgage dated 27th January, 2017, duly executed by the Defendant (Mortgagor) with the Claimant

(Mortgagee), the Claimant is entitled to take exclusive possession of the Mortgaged property situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.

2. An Order of this Honourable Court that the Defendant give the Claimant exclusive possession of the mortgaged property well described in the schedule to the Deed of Legal Mortgage dated 27th January, 2017 situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.
3. An Order of this Honourable Court granting leave to the Claimant to take exclusive possession of the mortgaged property well described in the schedule to the Deed of Legal

Mortgaged dated 27th January, 2017 situate and known as House No. 4, FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.

4. An Order of this Honourable Court directing the Assistant Inspector General, Zone 7, Abuja, the Commissioner of Police, FCT Command, Abuja, their duties or officers to assign ten(10) armed policemen to protect the Claimant through its Directors, agents and labourers in the course of taking possession of the Mortgaged property well described in the schedule to the Deed of Legal Mortgage dated 27th January, 2017 situate and known as House No. 4 FicusBenjamina Street, Prototype Housing Estate, Abuja FCT.

On the other hand, the reliefs claimed before Hon. Justice Oriji of this Court are as follows:-

- a. A Declaration that the failure of Defendants to offset the credit facility of the Claimant which stood at N43,137,800.09 (Forty Three Million, One Hundred and Thirty Seven Thousand, Eight Hundred Naira and Nine Kobo) as at 27th March, 2018 constitutes a breach of contract.
- b. An Order directing the Defendants jointly and severally to pay to the Claimant the sum of N43,137,550.09 (Forty Three Million, One Hundred and Thirty Seven Thousand, Five Hundred and Fifty Naira and Nine Kobo) as at 27th March, 2018.
- c. An Order directing the Defendants jointly and severally to pay to the Claimant interest at the commercially agreed rate of 10% per month

from 27th April, 2018 until the Judgment is fully and finally liquidated.

- d. An Order granting leave to the Claimant to exercise her right of sale of over House 4, FicusBenjamina Street, Prototype Housing Estate, Gaduwa, Abujawith Certificate of Occupancy No. 009895 so as to recover the Judgment sum awarded by this Honourable Court.

Permit to observe that the reliefs sought in both suits before both courts are all centered on the same subject matter which I have already reproduced in the preceding part of this judgment.

It is the argument of Claimant/Respondent that it had terminated and or discontinued the matter before my brother's court leaving only the counter claim of

the Defendant/Counter Claimant who is Defendant/Applicant seeking to have the suit of the Claimant/Respondent dismissed for being an abuse of judicial processes before this court.

From the averments before me, especially the argument of Claimant/Respondent, the counter claim before Hon. Justice Oriji is centered on interest. I wish to observe that the entire of Claimant's action is on the issue of lack of payment of Mortgaged Facility. It is therefore most important to resolve the issue of interest before taking any further step with respect to the matter of the Mortgage. Filing different matters in different court on the same subject is tantamount to forum shopping which is an abuse of judicial process.

This is exactly what Supreme Court stated in ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (Supra)***. In the following words:-

“Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.”

It is my ruling that Defendant’s Counter Claim even though distinct claim standing on its own was borne out of the claims of Claimant/Respondent who later withdrew their claim after filing the present action.

What more.. Claimant/Respondent had filed defence to the said counter claim thereby joining issues. The thought of filing multiple actions on the same

subject matter is what is referred to as abuse of court process amongst other factors.

I am in total agreement with the Defendant/Applicant that the suit filed before this court amounts to an abuse of judicial process. I so hold.

The argument of Claimant/Respondent that it withdrew the earlier suit before my brother cannot help – out because there is counter claim of the Defendant/Applicant before my brother's court which Claimant/Respondent admittedly stated in its defence to the objection of the Defendant/Applicant before this court.

The claim of the Defendant/Counter Claimant before my brother is predicated on the same subject matter

before me, be it interest claim or capital as erroneously canvassed by counsel for the Claimant.

Accordingly, the suit of Claimant/Respondent i.e **FCT/HC/CV/1036/2020** is hereby and accordingly struck – out for being an abuse of judicial process.

Consequently, the ex-parte Order earlier granted in favour of Claimant/Respondent is hereby set aside.

Justice Y. Halilu
Hon. Judge
23rd September, 2021

APPEARANCES

A.M Aliyu Esq. – for the Claimant/Respondent.

**O.I Ojo Esq. with E.A Adesemo – for the
Defendant/Applicant.**