

The 3rd and 4th defendants have raised an issue as to the validity of the counter affidavit of the claimant. Counsel therein argued that the information contained in the counter affidavit did not come from the personal knowledge of the deponent. Counsel relied on section 115 of the Evidence Act as well as the case of Ngbenwelu Vs. Olumba (2017) ALL FWLR (Pt.884) 1598.

He further argued that the counter affidavit contains legal argument and conclusion which also offends section 115 (2) of the Evidence Act. He cited the case of Osayomi Vs. Governor of Ekiti State (2014) ALL FWLR (Pt.751) 1573. He urged the court to discontinue the counter affidavit.

I have carefully read the counter affidavit of the claimant at paragraph 5 of the deponent clearly stated that the source of his information was from his principal Mr. Umar Dukku. He further stated in the several paragraphs thereafter the information related to him by his said principal. I have no doubt that this comply with section 115 of the Evidence Act which clearly provide that a deponent in an affidavit shall set forth explicitly the name of the informant, reasonable particulars of the informant, the time, place and circumstance under which he receive any information he depose to which he derive or received from another person.

In similar vein, I have look at paragraphs 13, 14, 17 and 19 of the counter affidavit of the claimant and I have failed to see any legal argument or conclusion therein. To my understanding the facts contained in the said paragraphs are statement of facts which have not been denied in a further and better affidavit by the 3rd and 4th defendants. The issue raised by the 3rd and 4th defendants on the state of the affidavit of the claimant in countering the preliminary objection is not meritorious and I refused to discountenance the said counter affidavit of the claimant.

The main thrust of the objection of the 3rd and 4th defendants is that the claimant's claim or suit is an abuse of court process in that the claimant's claim constitute an invitation and is annoying to the defendants. The said defendants stated that prior to this suit, the claimant had filed two different suit namely suite No. FCT/HC/CV/171/2014 and FCT/HC/CV/2156/2015 against them all claiming title over plot No. 668 Cadastral Zone B08, Jahi District, Abuja.

They also stated that the subject matter in the present suit is the same as that in the earlier mentioned suit, just as all the parties in all the suit are the same. The issue in the eye of the storm in this application is whether there is disclose an abuse of the use of court process in the filing of the applicant's claim before this court.

An abuse of court process may lie in both a proper or improper use of the Judicial process in litigations. 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 effectual administration of justice. It also consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of Justice such as instituting different actions between the same parties simultaneously in different courts, even though on different grounds, where two similar processes are used in respect of the exercise of the same right for example a cross-appeal and a respondent's appeal.

Also, an application for an adjournment by party to an action to bring an application to court foe leave to raise issues of fact already decided by courts below is an abuse of the process Saraki Vs. Kotoye (1992) 9 NWLR (Pt.264) 156; Doma Vs. Addamu (1999) 4 NWLR (Pt.598) 311; Bena Plastic

Vs. Vasilyer (1999) 10 NWLR (Pt.624) 620; A.G. Ondo State Vs. A.G. Ekiti State (2001) 17 NWLR (Pt.743) 706; African Reinsurance Corp Vs. JDP Construction Nig. Ltd (2003) 13 NWLR (Pt.838) 609.

In all to determine whether an abuse of court will have to look at the entire processes filed by the claimant, as well as the facts in the affidavit supporting the Preliminary Objection. If it can be distil from the case of the claimant any scintilla or iota of facts tending to show the improper use of the court process, then an abuse of court process will have occurred.

In the instant case the 3rd and 4th defendants have alluded to facts that the claimant has in 2015 filed suit No. FCT/HC/CV/2156/2015 claiming the same land in dispute in this case against them which suit was struck out for want of diligent prosecution. The same defendants had annexed exhibit ML2 to support this assertion. In similar vein, the defendants had alluded to the facts that claimant had filled suit No. FCT/HC/CV/171/2014 against them still claiming the same land in issue.

The said suit was discontinue. In prove of this facts, the defendants annexed exhibit ML1 which is the enrolled Order. I will turn my attention to the said exhibits in determining this issue, this is because lodged in deepest or innermost belly of this exhibits is the key to unlock this nutty question of the abuse of court process in this case. In exhibit ML1, the parties as disclosed are:

LABARAN M. AHMED ----- PLAINTIFF

AND

1. MINISTER OF THE FEDERAL CAPITAL TERRITORY ABUJA

2. SAMBO ILLIYASU ----- DEFENDANTS

From the said Exhibit, the suit was disconfirmed on 27th day of October, 2016. It must be noted that the name of the claimant in this case is not

contained in the said exhibit. It follows that he was not a party to the suit. Also, the name of the 3rd defendant and the 4th defendants are missing from this suit. Tried as I have with a fine legal comb I have failed to combed out the subject matter in dispute between the parties in the said suit.

In exhibit M.L. 2, the parties thereto are the current claimant as follows:

Between:

LABARAN M. AHMED & 1 OR ----- PLAINTIFFS

AND

ALHAJI UMAR G. TELLE & 4 ORS ----- RESPONDENTS

Who are the four other defendants in the suit? This is not disclose in the exhibits. Just as the subject matter in dispute cannot also be gleaned from the said exhibit of course this suit was struck out by the court on 23rd of may, 2016. In essence both suits No: FCT/HC/CV/2156/2015 and FCT/HC/CV/171/2014 are not pending before any court. The court is a master of record; it has no room to speculate.

It can only deal with facts and document place before it. It is not allowed to go into a voyage of discovery or to carry out an investigation of a case. A party who seeks the intervention of the court to be granted in his favour must bring before the court all relevant documents to its case for the court to consider.

The 3rd and 4th defendants owed it a duty to place before this court the writ and statement of claim in suit No: FCT/HC/CV/2156/2015 and FCT/HC/CV/171/2014 this would have enable the court to study the facts and claims in those cases and compare same with those in the instant case with a view to discovery if an abuse of the court process have occurred.

At any rate there was no previous suit before any court claiming the same subject matter in this suit before the filing of the instant suit by the claimant. For there to be a multiplicity of suit, it must be shown that there is pending before the court more than one suit between the same parties claiming the subject matter. In the instant suit that is not the case.

I am of the view that 3rd and 4th defendants have not placed sufficient material before this court to sustain the allegation of an abuse of court process it alleged in its preliminary objection. In the light of this, I hold that the preliminary objection is a waste of the precious time of the court which would have been employed in thrashing the real issue in litigation between the parties.

I shall dismiss the Preliminary Objection of the 3rd and 4th defendants and same is hereby dismissed. I only need to add that this matter is deserving to be given an accelerated hearing. The same is hereby set down for an accelerated hearing.

APPEARANCE

P. H. Malum Esq. for the claimant.

Hadiza U. A Atta Esq. for the 3rd and 4th defendants.

The 1st and 2nd defendant not represented.

Sign
Hon. Judge
05/02/2021