

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/4041/19

DATE: :TUESDAY 30THMARCH, 2021

BETWEEN

UYO E. VICTOR APPLICANT

AND

**N.U.C STAFF MULTIPURPOSE } RESPONDENT
COROPERATIVE SOCIETY LTD. }**

JUDGMENT

The Applicant vide originating Motion approached this Honourable Court and pray for the following:-

1. An Order invalidating the special general meeting of the Respondent purportedly convened and held on the 16th October, 2006 and 1st November, 2016 respectively by Officers elect.
2. An Order invalidating the authority and powers delegated to the officers elect of the Respondent, by the trustees of the Respondent, it having lapsed by operation of law. All action of the Officers elect, after 2nd February, 2006 became null and void.

3. An Order directing the trustees of the Respondent as recorded in Section 6.4 of the minutes of the inaugural general meeting of the Respondent held on the 18th, 23rd, 29th and 30th November, 1999, shall assume responsibility for the affairs of the Respondent forthwith, and for a further period of two (2) years with effect from the date of the 3rd AGM of the Respondent.
4. And any other Order(s) as the Court may seem fit to make in the circumstances of this case.

In support of the Originating Motion is an affidavit of 22 paragraph duly deposed to by the Applicant himself.

The case of the Applicant as distilled from the affidavit in support of the Originating Motion is that he is a pioneer member of the Respondent with

membership No. 1 as well as the treasurer and one of its registered trustees and that the Respondent is a Cooperative Society, Registered by the Chief Registrar of Cooperative Societies, FCT (CRCS, FCT) under Section 7 of the Cooperative Societies Act LFN 1990 with Certificate No. 4548 dated 8th December, 1999, issued to the registered trustees of the Respondent as their instrument of office. The said instrument of office has been in the possession of the treasurer from inception till date. The copy is attached and marked as Exhibit 'A'.

That upon the close of the first year of operation on the 31st December, 2002, the Respondent books of account was subjected to the process of internal audit, by the internal audit advisory committee. Thereafter its report was presented for the consideration and approval of the Management

Committee of the Respondent and thereafter the office of the CRSC, FCT was formally invited in writing to conduct its statutory external audit.

The first AGM to approve the report of the operation of the Respondent and its audited account was convened and held on the 27th March, 2002, thus enabling the annual returns of the Respondent for the year 2002 to be filed shortly thereafter according to law at the office of the CRCS, FCT. The copy of the minutes of the first AGM is annexed as Exhibit 'B'.

Applicant avers that there were general issues involving the Management of the Respondent which made the society to invite the CRCS, FCT to look into the Management and account of the Respondent and following the Motion No. 1 of 5th February, 2007, sponsored by the treasurer during the course

of carrying out his statutory audit exercise of the Respondent books of account and operation for the period January, 2002 – December, 2005, vide his decision recorded on page 32 of Exhibit ‘D’, acceded to the treasurer’s plea that the purported unlawful Special General Meeting (SGM) of the Respondent convened by the Officers elect and held on the 16th October, 2006 as well as the illegal Annual General Meeting (AGM) of the Respondent, also convened by the Officers elect and held on 1st November, 2006, were done without lawful authority, hence the resolution passed therein are null, void and of no effect.

That after the CRCS, FCT, cleared him of all allegations made against him, he filed a Motion at the Federal High Court to enforce the decision of the CRCS, FCT in **Suit No. FHC/ABJ/M/471/**

2007dated 27th July, 2007 vide Exhibit ‘E’ and the National Universities Commission, who should be seen to act as an unbiased umpire, filed their process also at the Federal High Court for an Order of certiorari to quash the decision of the CRCS, FCT. The process **FHC/ABJ/CS/546/2007**vide Exhibit ‘F’.

Applicant stated that the matter was transferred to National Industrial Court and final Judgment was delivered on the 11th December, 2018 and issued Order to enforce the first two (2) reliefs sought while declining jurisdiction to the amend reliefs of Nos. 4, 5 and 6 stating that they do not fall within the jurisdiction of the National Industrial Court. The Ruling/Judgment is attached and marked as Exhibit ‘I’.

In line with law, a written address was filed wherein sole issue to wit; whether this court can grant the prayers of the Applicant was formulated for determination.

On the above issue, learned counsel submit that court is empowered to grant this application as the office of the Registrar which carried out the decision has the power to do so.

Counsel cited and relied on Section 44 of the Cooperative Societies Act Cap 488 LFN 1990 to state that the Registrar has exclusive jurisdiction to settle any and all disputes between and among members of any Cooperative Societies

Upon service, the Respondent filed a Notice of Preliminary Objection and counter affidavit to the Originating Motion.

The grounds upon which the Notice of Preliminary Objection is predicated is as follows:-

1. That this Honourable Court lacks jurisdiction to determine the said application.
2. That the application is an abuse of the process of this Honourable Court.

In support of the application is an affidavit of 10 paragraph duly deposed to by One Aaron ZamaniKanjang, a Staff of the Respondent.

It is the deposition of the Respondent that the Applicant filed **Suit No. NICN/ABJ/117/2015** between the Applicant and the Respondent which suit was heard and determined.

That in the said **Suit No. NICN/ABJ/117/2015**, the Applicant reliefs 4, 5 & 6 are the same with the

present reliefs 1, 2 and 3 sought against the Respondent. Copies of the Applicant Motion in Suit No. **NICN/ABJ/117/2015** and the ruling were annexed as Exhibits ‘AZ1 & AZ2’ respectively.

In line with law and procedure, a written address was filed wherein two issues were distilled for determination to wit;

- 1. Whether this Honourable Court has jurisdiction to entertain this application, having been litigated upon and a well-considered Judgment delivered.*
- 2. Whether having regard to the circumstances of this case, this Applicant’s application does not constitute an abuse of court process; and if answered in the affirmative whether this court*

ought not to dismiss this application in its entirety.

On issue one, *whether this Honourable Court has jurisdiction to entertain this application, having been litigated upon and a well-considered Judgment delivered.*

Learned counsel argued that jurisdiction is the very basis on which any tribunal tries a case. It is the life line of all trial and a trial without jurisdiction is a nullity. Counsel cited and relief on *PETRO JESSICA INTERPRISES LIMITED VS. LEVENTIS TECHNICAL CO. LTD. (1992) 5 NWLR (Pt. 244) 675.*

Counsel also contended that this Court lacks jurisdiction to entertain this Suit, because there are features in this case which prevents the Court from

exercising its jurisdiction i.e the reliefs sought at the last proceedings as contained in Exhibit ‘AZ1’ and that which is contained in Exhibit ‘AZ2’ are same, and therefore, the court is functus officio in respect of this matter as same was conclusively been litigated upon and a final Judgment delivered with findings of fact made in respect of the said reliefs. Counsel cited and relied on ***DIKWA VS MODU (1993)3 NWLR (Pt. 280) 170.***

On issue two, *whether having regard to the circumstances of this case, this Applicant’s application does not constitute an abuse of court process; and if answered in the affirmative whether this court ought not to dismiss this application in its entirety.*

Counsel submit that an abuse of court process may lie in both proper and improper use of judicial process in litigation. The manner in which an abuse of court process manifests itself depends on the peculiar facts of a given matter. It is an abuse of court process for the Respondent to file this matter on the same facts as that which has already heard and determined.

Counsel cited *INTERGRATED REALITY LTD. VS ODOFIN (2018) 3 NWLR (Pt. 1606) Pp. 325.*

Counsel finally urge the court to strike out this suit.

Respondent filed counter affidavit of 41 paragraphs duly deposed to by Aaron ZamaniKanjang.

It is the affidavit of the Respondent that Applicant was removed as Treasurer, following numerous complaints received from members of the

Respondent and when it was discovered, in 2006, that N3,500,000.00 (Three Million Five Hundred Thousand Naira), was unaccounted for and a resolution was taken suspending the Applicant, and to set up a six-man investigative panel, which panel had the following terms of reference:

- a. To engage a Certified Chattered Accountant to prepare and audit the accounts of the cooperative from the year 2002 to 2005.
- b. Liaise with external auditors and cooperative executive to ensure that all books and records are accessible and information provided by members of the Cooperative.
- c. Examine the issues raised in the Special General Meeting of 1st February, 2006 and report to members on the following:

- i. The N3 Million loan to Mr. Akinjinjiola
- ii. The FGN House Loan to Staff and interest thereon;
- iii. Investigate any other irregular transactions and make appropriate recommendations.
- iv. Present the report to the Management Committee and cause an Annual General Meeting where the auditors and the panel will present a report to members of the Cooperative.

It is further the counter affidavit of the Respondent that the Applicant also, in collusion with internal and external elements defrauded and caused the Respondent a loss of N19,516,438.73 (Nineteen Million, Five Hundred and Sixteen Thousand, Four Hundred and Thirty Eight Naira, Seventy Three

Kobo) and that the Applicant used the pseudo name 'Warri' to disguise his real identity in the said Lord Vicem Company Limited, being the first Director/Shareholder of the company, with which the Applicant misappropriated funds running into Millions of Naira, for a period of about seven years, while the illegality perpetrated by the Applicant was downplayed by the Chief Registrar. Evidence of the said misappropriations is attached as Exhibit 'AK 2'.

That before the Special General Meeting of 1st February, 2006, the President of the Respondent formally requested for the authorization of the Chief Registrar of Cooperative FCT (hereinafter referred to as the 'Chief Registrar) for authority to audit account of the Cooperative but the Chief Registrar only allowed and recognized the statutory meeting of the Respondent after the Chief Registrar was

assured of the payment of one percent (1%) and that the Chief Registrar refused the payment of the said one percent (1%) officially to his office, but requested that the sum be paid in his personal name. Attached and marked as Exhibit 'AK 3' is the photocopy of the cheque written in the personal name of the Chief Registrar in the sum of N171,689.54 and the certified true copy of the process of payment marked Exhibit 'AK4'.

Respondent avers that the Chief Registrar subsequently constituted a Cooperative Audit and Investigative Committee, and never brought the attention of the Respondent to the constitution of the said committee, until after the expiration of the time limit given by the Committee for response and that the Respondent was never given any opportunity to react to the counter allegations raised by the

Applicant against the Respondent, at the Audit Investigation Committee set up by the Chief Registrar, before the decision of the Chief Registrar made on the 27th of June, 2007.

That the activities of the Respondent are also regulated by its Bye-Laws, a copy of which is attached herewith and marked Exhibit 'AK 11'.

In line with law, a written address was filed wherein three issues were formulated for determination to wit;

- 1. Whether this Honourable Court can invalidate a meeting that was duly convened and held by the Respondent.***
- 2. Whether the Registrar has power to invalidate the powers delegated to the duly elected Officers of the Respondent in a proceeding that***

came before it in a way other than by election petition as provided under Section 41 of the N.U.C Multipurpose Society Bye-Laws.

3. Whether the decision of the Chief Registrar of FCT, as obtained by Applicant, can be enforced by this Honourable Court.

On issue one, whether this Honourable Court can invalidate a meeting that was duly convened and held by the Respondent.

Learned counsel argued that the Cooperative Societies Act made provision for the resolution of dispute by the Director which is totally different from an allegation of crime. That misapplication and misappropriation of funds can amount to a felony, a crime punishable by a prison sentence.

Counsel submit further that the issue of misapplication and misappropriation of fund being criminal in nature are outside the jurisdiction of the Chief Registrar or of an arbitral panel set up by him. Counsel cited ***K.S.U.D.B VS FANS LIMITED (1986) 5 NWLR (Pt. 39) 74.***

It is the submission of counsel that the Cooperative Societies Act made Provision for rules guiding the Association, the Act also allow the Association to make Bye-Laws that will regulates its activities including meetings, membership, object and area of operation.

On issue two, ***whether the Registrar has power to invalidate the powers delegated to the duly elected Officers of the Respondent in a proceeding that came before it in a way other than by election***

petition as provided under Section 41 of the N.U.C Multipurpose Society Bye-Laws;

Learned Counsel contended that the Respondent Association has the powers to appoint, suspend or remove any Officer of the Society vide Section 20 of the N.U.C Multipurpose Cooperative Society Bye-Laws.

On issue three, *whether the decision of the Chief Registrar of FCT, as obtained by Applicant, can be enforced by this Honourable Court;*

It is the submission of the Respondent that the Chief Registrar was driven by financial gain while handling the affairs of the Respondent. And that any person tainted by likelihood of bias should not take part in the decision making process.

Counsel relied on *WOMILOJU VS ANIBIRE (2010) ALL FWLR (Pt. 529) 1021*.

Applicant upon service filed a counter affidavit of 10 paragraph to the Notice of Preliminary Objection. And also reply affidavit to the Originating Motion.

In its counter affidavit to the Preliminary Objection, that the National Industrial Court of Nigeria gave a ruling in a matter the Applicant filed on the 11th December, 2018 and stated clearly that it has jurisdiction over the issues of interdiction and payment of emolument, but declined jurisdiction on the issue that is connected with the Co-operative Society and struck out reliefs connected therein.

A written address is filed wherein the issue *“whether the application is an abuse of court process or not is formulated for determination”*.

Arguing on the above issue, counsel submit that this suit is not an abuse of court process as the National Industrial Court of Nigeria only determined the issues which according to it, it has jurisdiction over particularly with regards to the provision of Section 254(c)1 of the 1999 Constitution as amended.

Counsel submit that the Preliminary Objection is brought under no law or rules of this court moreso that the Registrar of the Co-operative Society has done that which the law permit it to do.

The Applicant equally filed reply affidavit of 19 paragraph to the counter affidavit. It is the reply affidavit of the Applicant that all Cooperative Societies in the FCT are guided by both the Nigeria Cooperative Society Act Cap 98 LFN 2004 and the Cooperative Societies Acts Cap 488 LFN 1990.

That no valid AGM of the Respondent can be held in the absence of the audit note issued by the Registrar.

Applicant avers that he is still the employee of the National Universities Commission and a Member of the Respondent. And that the issue of N3.5 Million and others raised in the counter affidavit are not issue before the court.

That the Economic and Financial Crimes Commission (EFCC) had arrested the Applicant at the then premises of the Federal High Court Maitama and had him detained in its facilities in Wuse and in the course of investigation, a written statement were obtained the Applicant and retired Chief Registrar of Cooperative Society.

And after conclusion of investigation, the EFCC dropped charges against the Applicant.

Court:-

I have gone through the respective cases of the parties before me which are all affidavit based in view of the mode of the action was commenced.

However before delving into the substantive suit, I shall attempt to look at the Preliminary Objection filed challenging the present suit since same touches on the jurisdictional competence of the court.

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 (as he then was)* 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 include the 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 only one issue for determination, viz;- “*whether suit No FCT/HC/CV/4041/19 filed before this Court amounts to an abuse of court process.*”

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

I must also hasten to note that it is indeed the claim of the Plaintiff that determines the jurisdiction of a court, as stated in *OGUNBADEJO VS ADEBOWALE (2008) All FWLR (Pt. 405)1707 at 1717, paragraphs C-D (C-A)*,

I however must state that, there are other determining factors that certainly must be

considered. It therefore follows that where, for example, a case of abuse of process of court is established, the court even though seized of the jurisdiction to try a matter, must decline same.

The claim of the Claimant before this Court are for the following:-

1. An Order invalidating the special general meeting of the Respondent purportedly convened and held on the 16th October, 2006 and 1st November, 2016 respectively by Officers elect.
2. An Order invalidating the authority and powers delegated to the officers elect of the Respondent, by the trustees of the Respondent, it having lapsed by operation of law. All action of the

Officers elect, after 2nd February, 2006 became null and void.

3. An Order directing the trustees of the Respondent as recorded in Section 6.4 of the minutes of the inaugural general meeting of the Respondent held on the 18th, 23rd, 29th and 30th November, 1999, shall assume responsibility for the affairs of the Respondent forthwith, and for a further period of two (2) years with effect from the date of the 3rd AGM of the Respondent.
4. And any other Order(s) as the Court may seem fit to make in the circumstances of this case.

Whereas the claim of the Claimant before my learned brother court at the National Industrial Court which has been decided are as follows:-

“1. An Order directing the Defendants to implement the decisions of the Chief Registrar of Cooperative Societies, FCT. To wit;

a. The undeserved Interdiction to which the Treasurer (the Claimant) – has been subjected to, with effect from 6th November, 2006, be formally withdrawn with immediate effect.

b. All the emoluments due to the Treasurer (the Claimant) which the Commission has withheld from him for the entire period of the Interdiction, be released to him forthwith.

c. The event of the formal withdrawal of the Interdiction, be accorded the same publicity as the event of the Interdiction.

- d. An Order invalidating the Special General Meeting and Annual General Meeting of the 2nd Defendant, purportedly convened and held on the 16th October, 2006 and November, 2006, respectively by the Officers Elect of the 2nd Defendant.*
- e. An Order invalidating the authority and powers, delegated to the Officers Elect of the 2nd Defendant, by the Trustees of the 2nd Defendant, it having lapsed by operation of Law. All actions after 2nd February, 2006, became Null and Void.*
- f. An Order directing the Trustees of the 2nd Defendant as recorded in Section 6.4 of the Minutes of the Inaugural General Meeting held on the 18th, 23rd, 29th and*

30th November, 1999, shall assume responsibility for the affairs of the 2nd Defendant forthwith and for a further period of two years with effect from the date of the 3rd Annual General Meeting of the 2nd Defendant.”

It is worthy of note that reliefs 4, 5 and 6 claimed by the Claimant before the National Industrial Court of Nigeria is same with relief sought before me in this present case.

My brother in deciding on reliefs 3 – 4 & 5 held in pages 16 and 17 of his Judgment as thus;

“While I can position the Claimant’s reliefs 1, 2 & 7 within 254C 1(k) (i)(ii) with regard to the issue of interdiction I find that the Claimants reliefs 4, 5 & 6 aggregate to the internal

wrangling of the 2nd Defendant. I agree with the Defendant Counsel and I find that with regards to the reliefs 4, 5 & 6 these reliefs by the very nature of their existence do not fall within the ambit of this court.

In that regard relief 3 cannot be considered by this Court for falling outside the Court's jurisdiction and are therefore struck out.

In the event that the superior Courts do not agree with my position this is how I would have resolved this issue.

Reliefs 4, 5 and 6 repeated below:-

An Order invalidating the Special General Meeting and AGM of the 2nd Respondent purportedly convened on the 16th October, 2006

and 1st November, 2006 respectively by the so called Officers elect.

An Order invalidating the authority and powers, delegated to the Officers elect of the society by the Trustees of the Society having lapse by operation of law. All action after 2nd February, 2006 became Null and Void.

An Order directing the Trustees of the Society (i.e 2nd Respondent) as recorded in Section 6.4 of the minutes of the Inaugural General Meeting held on the 18th, 23rd and 30th November, 1999, shall assume Respondent forthwith. And for a further period of two years with effect from the date of the 3rd AGM of the Society.

All relate to the activities and outcome of the 2nd Defendant. The gravamen of the Claimants case is to obtain an Order of the Court to enforce the directives of the Registrar of the Cooperatives. Which report exonerate him of all wrong doing. Reliefs 4, 5 and 6 are all tailored to the same effect.

Now there is nothing before the court to the effect that the 2nd Defendant's activities ceased after 1999 or 2006 to make the executory Orders sought in these reliefs still relevant. The Claimant has not shown the court how the invalidation of a General Meeting held in 2006 would be of any import or significance so as to make the Court make a pronouncement validating this reliefs in 2018. I had asked

parties to address the court as to whether there were still live issues in this suit.

With particular reference to these reliefs, I agree with the Respondent that time is not static, the court has not been shown any rationale to give life or invalidate in fact take any step in respect to activities and pronouncements made 12 years ago.

Furthermore the report of the Registrar I find considering not only the serious allegations and evidence presented by the Respondents especially the forensic report indicating the Claimant had made insertions in the said report. Thereby making the Claimant a judge in his own cause invalidate the said report and make it unreliable for legal purposes. The law

is that when clear specific evidence of an issue the Respondent is required to refute the evidence or allegation with an equally strong piece of evidence in rebuttal not a mere denial the Claimant had not sufficiently rebutted the connotation given to the evidence of the Respondent. The law is a general traverse to the effect that the Defendant denies certain paragraphs of the Statement of Claim without making specific response to those paragraphs does not constitute sufficient denial and have been held to amount to admission. See DIKWA VS. MODU (1993) 3 NWLR (Pt. 280) 170 AND SANUSI VS. MAKINDE (1994) 5 NWLR (Pt. 343) 214.

As well as the lapse of time I find that the only concern that may survive have some lingering

legal vires would be in respect to any perceived injury to the Claimant reputation which I find has been adequately addressed in his relief 3. I shall come back to this relief later.

I find that the Registrars report is unenforceable due to the above observances and hence this Court cannot give vent to the Claimant's claims as relate to them.

Reliefs 4, 5 and 6 therefore fail.”

For all intents and purposes, this court has no jurisdiction to try same. The parties before me and my learned brother which was decided and the judgment annexed quoted above, are the same.

As stated by Supreme Court in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD &ORS (SUPRA)***, Instituting

different actions between the same parties simultaneously in different courts even though on different grounds, as in this case, amounts to abuse of court process, and I so hold.

I am in agreement with the argument of Defendant/Applicant on abuse of court process by the Applicant/Respondent who has again filed the present suit. *UMEH VS IWU (2008) 8 NWLR (Pt. 1089)225. At 243 -244 paragraph C- A.*

Accordingly, said suit *No FCT/HC/CV/4041/19* is hereby and accordingly struck out, same having being an abuse of the process of court.

Above is the ruling of this court.

Justice Y. Halilu
Hon. Judge
30th March, 2021

APPEARANCES

Yakubu Philemon with Dorcas M.– for the Respondent.

Uyo E. Victor – (Applicant) in court.