

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**(APPEAL DIVISION)**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**

**On Wednesday 28<sup>th</sup> day of February, 2024**

**BEFORE THEIR LORDSHIPS:**

**HON. JUSTICE Y. HALILU                    -                    PRESIDING**  
**HON. JUSTICE E. ENENCHE               -                    MEMBER**

**APPEAL NO.:CRA/28/2023**

**SUIT NO.: CR/DUT/167/2021**

**BETWEEN:**

**ABRAHAM ADAKOLE JOSEPH ..... APPELLANT**

**AND**

**COMMISSIONER OF POLICE..... RESPONDENT**

# **JUDGMENT**

Defendant/Appellant being dissatisfied with the decision of the Chief Magistrate Court of the Federal Capital Territory sitting in Dutse, contained in the Ruling of Hon. A. IIELLA dated the 10<sup>th</sup> of July, 2023 with Case No. **CR/DUT/167/2021**. This Appeal is brought upon the following grounds:-

1. The learned Trial Judge erred in law when he assumed jurisdiction in a case that he clearly lacks the jurisdiction to entertain, same being an abuse of Court Process.

## **PARTICULARS OF ERROR**

1. The Defendant/Appellant got a judgment at the FCT High Court restraining the Respondent from arresting nor detaining the Defendant/Appellant with all the condition precedent attached thereto by the Honourable Court.
2. That the Respondent, in defiance of the ruling of the Honourable High Court arrested the Defendant/Appellant and arraigned him.
3. That the Defendant/Appellant filed a Preliminary Objection against his arraignment, on grounds that it constitute an

abuse of Court process however his objection was dismissed, hence this appeal.

**THE APPELLANT SOUGHT FOR THE FOLLOWING RELIEFS:-**

1. An Order setting aside the decision of the Chief Magistrate Court of the Federal Capital Territory sitting in Dutse, containing in the Ruling of Hon. A. IIELLA dated the 10<sup>th</sup> of July, 2023 and allowing the Appeal.

Upon compilation of records and successful entering of Appeal, the Appellant filed their brief of argument in line with procedure.

Respondent did not file any brief.

The Appellant's brief of argument which was dated the 2<sup>nd</sup> of November, 2023 was filed on the same date at the Appeal Registry.

In the said Appellant's brief, lone issue was formulated for determination to-wit;

***"Whether or not the Trial Court has the jurisdiction to entertain the case, as same constitutes an abuse of Court Process."***

It is the contention of learned counsel, that abuse of court process is imprecise, it involves circumstances and situation of infinite variety and conditions It is deducible from the elastic nature of abuse of court process that there is no hard and fast rule in determining the absence or presence of court process in any case of ***DONALD VS. SALEH (2015) 2 NWLR (Pt. 1444) 529 @568 Para G-H*** that;

***"There is no hard and fast rule in determining the abuse or presence of abuse of Court Process in any action. Rather, the court is enjoined to examine each case, predication on its facts and circumstance in order to ascertain if it exhibits an abuse of court process."***

Learned counsel argued, that it is the law that 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 vexations and an abuse of court process. ***LOKPOBIRI VS. OGOLA (2016) 3 NWLR (Pt. 1499) 328@367-368 para E-B.***

It is the submission of learned counsel that, a perusal of the First Information Report (Marked as page "1" in the Records of

Appeal) reveals that the Appellant is alleged to have committed the following offences, Criminal Conspiracy, False Personation, Criminal Trespass, Using as genuine a Forged Document, Criminal Misappropriation and Cheating contrary to Section 97, 179, 348, 366, 308, 321 of the Penal Code Law.

Learned counsel contend that, in the instant case, a perusal of the judgment delivered by the FCT High Court on the 11<sup>th</sup> of December, 2020 encapsulates all the issues raised in the First Information Report, to wit, Criminal Conspiracy, False Personation, Criminal Misappropriation and Cheating. Whereas, the Hon. Justice K. N. OGBONNAYA of the FCT, High Court in suit No. FCT/HC/CV/173/19 held that the issue in this matter is purely contractual and as such, a civil matter that is devoid of police intervention. The court staled;

***"It is the law that police has no statutory right to meddle into contractual agreement made by people. The provisions of S.4 Police Act does not give them that right. Issues of contractual, civil and commercial nature are treated by the courts and not by the police"***

Learned counsel further argued, that the questions or allegations against the Appellant in the First Information Report are already answered by the High Court. Whereas, the High Court had stated unequivocally that there is no element of forgery. It will be a grave abuse of court process for the Trial Court to decide on this same said issue.

Learned counsel also submits, that flowing from the above, every material allegation against the Appellant, on forgery or using as genuine a forged document, false personation and criminal conspiracy has been succinctly answered by His Lordship K. N. Ogbonnaya.

Learned counsel conclude by urging this Honorable Court to grant the reliefs sought and allow the Appeal, in that;

- a. Trial judge erred in law, by assuming jurisdiction in a matter it clearly lacked the jurisdiction to entertain.
- b. The case as presently constituted is an abuse of court process
- c. The Court should find in favour of the Appellant in this Appeal and hold that the Trial Court lacks jurisdiction.

**COURT:-**

I have seen the Notice of Appeal, Appellant's brief argument filed by the Appellant.

It is instructive to note that both Notice of Appeal, Appellant's brief of argument were served on the Respondent i.e Commissioner of Police.

It is equally necessary to mention that Respondent who was duly served the requisite Appellate failed and or ignored to respond to the Appellant's brief of argument as contained in the Notice of Appeal, satisfied that available opportunity was afforded the Respondent to join issues with the Appellant, we now proceed to consider the fulcrum and merit of the Appeal before us.

The grounds of the Appeal are as produced in the body of this Judgment.

The reliefs sought are as contained in the preceding part of this Judgment, i.e an Order setting aside the decision of the Magistrate Court of the Federal Capital Territory (FCT) sitting in Dutse, containing in the ruling of Hon. A. Ilella dated the 10<sup>th</sup> July, 2023, and allowing the Appeal.

Appellant in its brief of argument formulated a lone issue for determination to-wit;-

**"Whether or not the Trial Court has the jurisdiction to entertain the case, as same constitutes an abuse of Court Process."**

Arguing on the lone issue, learned counsel for the Appellant contended that the issue as contained in the First Information Report (FIR) had been duly adjudicated upon by the FCT High Court Coram Ogbonnaya, J. in a Judgment delivered on the 11<sup>th</sup> December, 2020 hence the First Information Report (FIR) filed by the Respondent at the Magistrate's Court amounts to an Abuse of Court Process hence robs the Trial Magistrate Court of the jurisdiction to entertain the First Information Report (FIR).

It is the argument of learned counsel for the Appellant that the issues contained in the First Information Report (FIR) were all considered by the Trial Hon. Judge (Ogbonnaya, J.) who held that the issues in the matter before him were purely civil matters relating to Land and that the Respondent in the matter should desist from harassing the 1<sup>st</sup> and 2<sup>nd</sup> Appellants concerning the matter in dispute. The Trial Judge further prohibited the said Respondent from arresting and detaining them on the same land issue.

Above pronouncement is contained at pages 60 – 61 of the Records of Appeal.

On the strength of the pronouncement of the FCT High Court, learned counsel now challenges the jurisdiction of the Trial Magistrate on grounds of Abuse of Court Process.

It is important to state from the onset, that the position of the law on a Judgment or Ruling not appealed... the presumption is that there is complaint about the finding and that the parties are satisfied therewith.

See ***AKWADWO VS. NITEL (2012) LPELR 14359 (CA)***.

The rationale of an Appeal is that it is usually against the correctness of the Judgment below and a challenge of its correctness on grounds of law, mixed law and fact, or facts simpliciter, as the case may be.

It is on record as contained at pages 33 – 76 of the Records of Appeal that Preliminary Objection was raised as to the competence of the Trial Magistrate to entertain the First Information Report (FIR) on the strength of the decision of the FCT High Court, Coram Ogbonnaya, J. in Suit No. FCT/HCV/CV/173/2019.

It is on record that Preliminary Objection of the Appellant/Defendant was heard and dismissed by the Trial Magistrate, Hon. Ilella, necessitating this instant Appeal and Judgment.

Chapter VII of the Constitution of the Federal Republic of Nigeria (FRN) 1999 as amended houses and judicature. Standing on top is the Supreme Court of Nigeria (Section 230), Court of Appeal (Section 237), and FCT High Court (Section 255) of the Constitution of Federal Republic of Nigeria 1999 as amended.

Any ruling\judgment not satisfied with, is liable to be appealed against to the Court of Appeal and Supreme Court where necessary.

The moment Appeal against a Judgment is not filed, it presupposes that the parties are satisfied with the Judgment and no such other matter touching on the issue(s) dealt with can be raised in another Court as any such attempt shall be viewed as an Abuse of Court Process.

What then is an Abuse of Court Process in law!

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 (CA).***

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) LPELR (SC) (110/2011) Page 6263 Paragraphs 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.”***

It is not in doubt that there is a subsisting Judgment of the FCT High Court which prevented the said Respondents therein with the Respondent as the 2<sup>nd</sup> Defendant from harassing the Plaintiffs therein with the Defendant therein as the 1<sup>st</sup> Plaintiff.

The Trial Judge also prohibited the Respondents from arresting and/or detaining the Applicant based on the said land.

The said Judgment was not appealed against by the Respondents.

Now that the 2<sup>nd</sup> Respondent/Judgment Debtor has decided to file yet another First Information Report (FIR) against the 1<sup>st</sup> Applicant/Judgment Creditor, and faced with the Appeal centered on Abuse of Court Process, shall the Court ignore or shy away from the arguments moreso that the Respondent have refused to join issues!

The First Information Report (FIR) filed by the Complainant in **CR/DUT/CR/167/2021** is the mother of all Abuse.

Jurisdiction is the key to a Court of law.

Without the competence jurisdictionally speaking to determine a matter, any such legendary display of intelligence, no matter how

well done, shall be a nullity, as you cannot put something on nothing and expect it to stand.

See ***MACFOY VS. UAC LTD. (1961)3 ALL ER 1169; and  
MADUKOLU VS. NKEMDILIM (1962)2 SCNLR 341***

Faced with the Judgment of the FCT and now the First Information Report (FIR), there is no doubt the First Information Report (FIR) is indeed an Abuse of the Process of this Court. The Trial Magistrate on the whole could not have had the jurisdiction to determine the First Information Report (FIR).

We agree with the Defendant's counsel that the Court lacked jurisdiction. The Ruling of the Trial Magistrate dismissing the Preliminary Objection of the Defendant's counsel is **hereby set-aside.**

The Preliminary Objection which is founded on law and so supported by law is **hereby sustained.** The said First Information Report (FIR) being an Abuse of Court Process is **hereby dismissed.**

The case of ***NWOSU VS. PDP & ORS (2018) LPELR 44386 (CA)*** is instructive on this point.

---

***Hon. Justice Y. Halilu  
Enenche  
(Presiding Judge)  
28<sup>th</sup> February, 2024***

---

***Hon. Justice E.  
  
(Hon. Judge)  
28<sup>th</sup> February, 2024***