

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 2<sup>ND</sup> DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 9

SUIT NO: CV/3171/2019

**BETWEEN:**

HOME SECURITIES LTD. ----- PLAINTIFF

**AND**

NZUBE INDUSTRIES LTD. ----- DEFENDANT

**RULING**

The Applicant filed a Notice of Preliminary Objection challenging the jurisdiction of this Court on the 20<sup>th</sup> December, 2019. The grounds of the objection are as follows:

*“1. The Claimant’s suit is caught up with the doctrine of res judicata.*

*2. The Claimant is estopped from re-litigating on the same issue and cause of action.*

*3. The instant suit is an abuse of Court process.”*

The Preliminary Objection is supported with a 6 paragraphs affidavit sworn to by Rose Saidu, a Counsel in the Law Firm of Felix Dumebi & Co. Counsel to the Defendant/Applicant. Attached to the application also is one document i.e. a copy of the judgment of the FCT High Court marked as exhibit “HCJ.”

Rose Saidu Esq. for the Applicant filed a written address which was duly adopted by Esume Felix Dumebi Esq. Learned Counsel raised a sole issue for determination as follows: *“Whether this suit is maintainable and such that can be adjudicated upon by this Honourable Court.”*

Counsel submitted that the Plaintiff’s suit is caught up by the doctrine of res judicata in that it is the same with the earlier suits No: FCT/HC/CV/499/2009 and

FCT/HC/CV/2022/2014 which were finally decided upon by Courts of competent jurisdiction.

Counsel further submitted that by exhibit 'HCJ' attached to the affidavit in support of the Notice of preliminary objection, the Defendant/Applicant has been able to show that the parties, subject matter, cause of action and reliefs sought in suit No: FCT/HC/CV/499/2009 and FCT/HC/CV/2022/2014 are the same with the instant suit and that all the issues have been previously and finally decided on by Court of competent jurisdiction.

Counsel submitted therefore that the Plaintiff's instant suit is an abuse of Court process and urged this Court to so hold. Counsel cited and referred this Court to the following cases:

1. Dr. Abdulfattah Olabode Jimoh vs. Oba Samson Aleshinloye II & Ors. (2014)15 NWLR (Part 1430) page 277 at 314.

2. Daniel Tayar Trans. Ent. Nig. Co. Ltd. vs. Alhaji Liadi Busari & Ors. (2011)8 NWLR (Part 1249) page 387 at 410.
3. Dakolo vs. Dakolo (2011)46 NSCQR 699.
4. Paper sack Nig. Ltd. vs. Alhaji J.A. Odotola & Anor (2011)10 NWLR (Part 1255) page 244 at 251.

In opposition to the Notice of Preliminary Objection, the Plaintiff/Respondent filed a 10 paragraphs Counter affidavit which was deposed to by Ejiro Gbetsere, a Counsel in the Law Office of Ntima Chambers, Counsel representing the Plaintiff/Respondent. Attached to the Counter - affidavit are documents marked as exhibits 1 - 8 respectively.

Ifeanyi Uma Ntima Esq. Counsel to the Plaintiff/Respondent filed a written address which was adopted by Mr. Ejiro Gbetsere Esq. Learned Counsel formulated three issues for determination as follows:

*“1. Whether any or all the prayers sought by the Plaintiff before this Court under the (4) heads of claim noted as paragraphs 15a,b,c and d as shown on the face of the Plaintiff Writ of Summons have been subject to litigation in the past wherein Judgment was entered in favour of any of the parties currently before the Court?*

*2. Whether the prayers of the Plaintiff in his Statement of Claim have been caught up by the doctrine of res judicata?*

*3. Whether this suit is an abuse of Court process?”*

On the first issue, Learned Counsel reproduced the prayers of the Plaintiff as contained in paragraph 15 of the Statement of Claim and submitted that the prayers were made as a result of facts contained in the statement of Claim, particularly paragraphs 1 - 14 therein.

Counsel submitted that the facts as to ownership of plot 80 was not completely traversed by the Defendant/Applicant who shyly admitted the Plaintiff's right as over load over the said plot 80 in paragraphs 3,5 and 11 of the Statement of defence. Counsel also submitted that a combined reading of the said paragraphs 3,5 and 11 of the Statement of defence shows there is indeed a separate plot different from plot 6, and that plot known as plot 80 is not the plot the Defendant/Applicant obtained judgment over and that, the plot 80 was purportedly allocated to the plaintiff by the Federal Capital Development Authority (FCDA).

Counsel further submitted that this is the first time the Plaintiff is approaching any Court of law for redress over the ownership of plot No:80 which was allocated to her by FCDA. That from the facts deposed to by the Defendant/Applicant in the supporting affidavit the Defendant is relying on the Judgment of this Court in both

suits FCT/HC/CV/499/2009 and FCT/HC/CV/2022/2014 as the basis for the grounds of their objection.

He submitted that the two issues referred to have nothing to do with the Plaintiff on his property (plot No. 80). The Plaintiff was not a party in those suits and Notice was not issued to him or his privies, agents or servant's in any guise. Counsel finally submitted that the contention of the Defendant/Applicant, that the matters have been litigated in the past is misconceived and misleading and urged this Court to find in favour of the Plaintiff/Respondent.

On the second issue, Counsel submitted that the prayers of the Plaintiff as shown in the Statement of Claim have not been caught up by the doctrine of res judicata. Counsel submitted that before a case can be said to have been caught up by the doctrine of res judicata, there are certain conditions that must be fulfilled by a party raising

the plea. Counsel then went on to enumerate the conditions to be fulfilled by a successful Applicant for the Plea of res judicata Vis-à-vis the case of the Defendant/Applicant and the Plaintiff/Respondent.

Counsel finally submitted that from the facts of this case, it is obvious that this current suit has not been caught up by the doctrine of res judicata because, the parties are not the same, the facts in issue and subject matter of litigation are not the same, and there is no valid and final judgment over plot No:80 which constitute the crux of the Plaintiff's claim. He then urged the Court to find this issue in favour of the Claimant/Respondent.

On the last issue, Learned Counsel submitted that abuse of Court process happens when a party re-litigates a matter that has already been determined by a Court of competent jurisdiction. Counsel submitted further that the Defendant/Applicant erred in paragraph 4(d) of her affidavit

in support of the Notice of Preliminary Objection in assuming that the Plaintiff was privy to all her previous litigations over plot No.6. Counsel finally submitted that, since the Plaintiff is not disputing ownership of plot No.6 with the Defendant, there cannot be any abuse of Court process as the judgment before the previous Court borders on the ownership of plot No.6 and not plot 80. Counsel urged this Court to find in favour of the Plaintiff that this suit is not an abuse of Court process and dismiss the objection of the Applicant.

Upon proper perusal of the affidavit evidence of the parties and written address filed by the respective Counsel, the only issue for determination in my view is *“whether from the circumstances of this case, the Preliminary Objection raised by the Defendant/Applicant has merit and is grantable.”*

As stated earlier, the Applicant has relied on three grounds while raising the instant objection. For clarity, the grounds are the here under reproduced once again:

1. The claimant's suit is caught up with the doctrine of res judicata.
2. The claimant estopped from re-litigating on the same issue and cause of action.
3. The instant suit is an abuse of Court process.

I will therefor proceed and determine this application based on the above issues. However, for convenience, I will start with the last from the list i.e. abuse of Court process.

Generally, abuse of Court process connote that the process of the Court has not been used bona fide and properly. It also means the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. See: Arubo vs. Aiyeleri (1993)<sup>3</sup>

NWLR (Part 280) page 126, Omoleke Ogunsanya vs. Alhaji Akande (2010) LPELR (CA).

In Ali vs. Albishir (2008)3 NWLR (Part 1073) page 94, the Court held Per Kekere – Ekun, JCA (as she then was) that:

*“Filing two suits between the same parties on the same subject matter and where the end result of both suits was the same, eventhough the reliefs in the two suits were worded differently, would constitute abuse of Court process.”*

See also Minister of Works & Housing vs. Tomas (Nig.) Ltd. (2002)2 NWRL (Part 752) page 740. The law is that to sustain a charge of abuse of Court process, there must co-exist inter alia:

- a. A multiplicity of suits,
- b. Between the same opponents,
- c. On the same subject matter, and
- d. On the same issues.

All these Pre-conditions are mutually inclusive as they are conjunctive. See: Ume vs. Iwu (2008)8 NWLR (Part 1089) page 225 at 243 - 244.

The contention of the Defendant/Applicant in this instance is that judgments were duly given in favour of the Defendant/Applicant in suit No: FCT/HC/CV/499/2009 and FCT/HC/CV/2022/2014 over plot No.6 Cadastral Zone C. 09 Lokogoma District, Abuja which include House Number A169, A170,A171,A172 and A173, the subject matter in the instant suit. That the subject matter in the instant case is already covered and subsumed in the afore-said judgments entered in favour of the Defendant/Applicant and cannot be re-litigated. The Defendant/Applicant attached the copies of the two judgment and marked same as exhibit 'HCJ.'

Now, the law is trite that whether or not a suit constitutes an abuse of Court process is a matter of fact,

which must be established by credible evidence. See: N.I.W.A. vs. S.T.B. Plc. (2008)2 NWLR (Part 1072) page 483 at 500. One cannot determine whether there is an abuse of Court process without looking at the facts allegedly constituting the abuse. Both must go hand in glove. See: **Ume vs. Iwu & Ors (Supra).**

Taking all the above highlighted principles into consideration, I have carefully examined the averments of the Defendant/Applicant and the only document exhibited by the Applicant i.e exhibit 'HCJ.' From the face of exhibit HCJ, the name of the Plaintiff/Respondent was not stated and thus, the Plaintiff/Respondent was never a party in the previous suits as alleged by the Defendant/Applicant. Relying only on the strength of exhibit 'HCJ' I cannot hold that the instant suit constitutes an abuse of Court process.

Secondly, on the issue of res judicata. The law has long been settled that for a plea of estoppel Per rem judicata to

succeed, the party relying on it must establish the following requirements or pre-conditions, namely:

1. That the parties or their privies are the same in both the previous and present proceedings,
2. That the claim or issue in dispute in both actions is the same.
3. That the res or the subject matter of the litigation in the two cases is the same.
4. That the decision relied upon to support the plea of estoppel Per rem judicata is valid, subsisting and final.
5. That the Court that gave the previous judgment relied upon to sustain the plea is a Court of competent jurisdiction.

See: The Honda Place Ltd. vs. Globe Motors Holdings Nig. Ltd. (2005) LPELR – 3180 (CA), Adone vs. Ikebudu (2001)14 NWLR (Part 733) 385 at 417.

As stated earlier, the name of the Defendant/Respondent in the instant case is missing in the previous judgment relied on by the Defendant/Applicant.

Furthermore, the Defendant/Applicant contended that the subject matter of the instant suit is the same with the res disposed in the previous cases. However, upon careful examination of the processes filed by the parties, it is clear that the subject matter in the previous suit is plot No.6 measuring 20 (Twenty) Hectares on one hand, in this instance, the plot in dispute is No.80 of 2–99 Hectares all at Lokogoma, FCT Abuja. Thus, the reference/reliance on estoppel per rem judicata cannot avail the applicant.

Finally, from all the available evidence presented before this Court, the contention of the Defendant/Applicant that the Claimant/Respondent be estopped from re-litigating on the same issue and cause of action has not been properly established. This is because

the conditions required for a plea of estoppel rem-judicata to succeed, are missing in the instant case.

On the whole, this application has no merit and same is hereby dismissed.

**Signed**  
**Honourable Judge**

**Appearances:**

E.D. Gbetsere Esq – for the plaintiff

F.D. Esume – for the defendant