IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 4TH DAY OF FEBRUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/1901/2018
MOTION NO: M/8055/2019

BETWEEN:

MARSHAL PAINTS & CHEMICALS IND. LTD ---- CLAIMANT/RESPONDENT

AND

1. FED. CAPITAL DEV. AUTHORITY ---- 1ST DEFENDANT/RESPONDENT
2. HON. MINISTER OF FED. CAPITAL TERRIROTY ---- 2ND DEFENDANT/RESPONDENT
3. HALBIZ NIGERIA LIMITED ---- 3RD DEFENDANT/APPLICANT

RULING

Before this Court is a Notice of preliminary objection dated 22/7/2019 and filed same date. It is brought pursuant to Section 6 of the 1999 Constitution (as amended), Order 43 Rule 1 and 2 and Order 15 Rule 18 of the Rules of this Court. The 3rd defendant by this preliminary objection is praying this Court for an order dismissing this suit for being an abuse of Court process.

The grounds of the objection are as captured in paragraphs a – v of the motion paper.

In support is an affidavit of 8 paragraphs and annexures marked as Exhibits A – E. **Deborah Iniye Warrie Esq** filed a written address in support of the objection which was duly adopted on the 4/11/2020. A sole issue was formulated by counsel for determination. It is;

"Whether the claimant's writ, in its totality is not an abuse of Court process."

Learned counsel submitted that the claimant in this suit is caught up with the doctrine of lis pendens and in contempt of Court having flouted an existing Court order for injunction, but still ignored all these and went ahead to erect a paint factory on the plot in dispute. He cited **Akpan vs. UBN Plc (2003) 6 NWLR (part 816) page 279, Owena Bank Nig. Ltd vs. Solnik Nig. Ltd (2003) 6 NWLR (part 816) 265.** That the claimant is very aware of the consent

judgment entered into between the claimant's progenitor and the 3rd defendant which served as final settlement of dispute between the parties. Counsel added that the claimant is part of the ongoing litigation in the Court of Appeal sitting in Abuja over the purported execution of the judgment of this Court delivered on the 15/2/2018 on the subject matter in this suit Coram Ojo, J. That the issues in the ongoing Appeal and this suit are substantially the same, the major parties in the two suits are the same, the questions for determination and the reliefs sought in both suits are virtually in pari materia.

Learned counsel therefore submitted that re-litigating an issue already decided by a Court, correctly or wrongly, is a specie of abuse of Court process. Counsel made reference to Chief Victor Umeh & anor vs. Professor Maurice Iwu & ors (2008) Vol. 41 WRN 1 at 18, Oyeyemi & ors Owoeye & anor (2017) LPELR – 41903 (SC), Ogbonmwan vs. Aghimien (2016) LPELR – 40806 (CA), Saraki vs. Kotoye (1992) 9

NWLR (part 264) 156 at 188. That the claimant instituting this action knowing fully well that it is being litigated on at the Court of Appeal, is an abuse of Court process which is never encouraged but should be discouraged to avoid needless overburdening of the already burdened judiciary. Counsel cited Ntuks vs. NPA (2007) 13 NWLR (part 1051) 392, Angwasim vs. Ojichie (2004) 18 NSCQR 356 at 367, First Bank of Nig. Ltd vs. Chief Isaac Osaro Agbara & ors (2019) CA/L/923 CA, Aruba vs. Aiyeleru (1993) 3 NWLR (part 280) 126 at 142, Nweke vs. Udobi (2001) 5 NWLR (part 706) 445 at 461 – 462, African Reinsurance Corporation vs. JDP Construction Nig. Ltd (2003) FWLR 251 at 270.

In opposition the claimant/respondent filed a 16 paragraphs counter affidavit dated 4/2/2020 and a written address filed by **Charles Jibuaku Esq** and adopted by **A.O. Okpala Esq.** Counsel formulated one issue for determination as follows:

"Whether the preliminary objection ought not to be dismissed for being a demurrer in contravention of the provision of Section 23 of the FCT High Court, 2018."

Learned counsel admitted that there was a judgment and appeal filed, but submitted that this suit is one for claim in damages for the unlawful execution levied on the res; while in the appeal, the claimant (appellant) seeks to set aside the purported execution and preserve the res pending the determination of the Appeal, hence there is no abuse of Court process. Moreso, that this suit is for monetary claim. He cited Ogoejeofo vs. Ogoejeofo (2006) 3 NWLR (part 966) 205 at 209, C.O.M Inc. vs. Cobham (2006) 15 NWLR (part 1002) 283 at 287.

Learned counsel further submitted that demurer proceedings have been abolished and the applicant demurred having not filed Statement of Defence but a preliminary objection not being on points of law. That the

applicant ought to have collapsed his grounds of objection into his Statement of Defence in order for the Court to holistically deal with the issues once and for all. He urged the Court to dismiss the preliminary objection. He cited Rockshell Int'l Ltd vs. BQS Ltd (2009) 12 NWLR (part 1156) 640 at 651, Ebguzlem vs. Ebguzlem (2005) 4 NWLR (part 916) at 418, Federal Ministry of Health vs. CSA Ltd (2009) 9 NWLR (part 1145) 193 at 221.

The 1st and 2nd defendants though served with the application did not file any process in response to the application.

After hearing both counsel in this application and before proceeding to the merits of this application, it is pertinent to determine whether the Notice of preliminary objection amounts to a demurer as argued by learned counsel to the claimant/respondent. A demurer has been defined by the Black's Law Dictionary 8th Edition to mean a pleading stating that although the facts alleged in a

complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer.

Karibi – Whyte JSC in Mobil Oil (Nig) Plc vs. IAL 36 INC (2000) 4 SC (part 1) page 85 defines demurer as follows:

> *"A common law procedure which enables a defendant who contends that even if the allegation of facts as stated in the pleading to which objection is taken are true, yet their legal consequences are not such as to put the defendant (the demurring party) to the necessity of answering them, or proceeding further with the cause. The whole basis of a demurer is in effect to short circuit the action, and by a preliminary point of law show that the action founded on the writ and statement of claim cannot be maintained."*

By the provisions of the rules of this Court demurer has indeed been abolished as rightly stated by counsel to the plaintiff. It is noted further that the preliminary

objection is challenging the jurisdiction of this Court, and the question is whether it amounts to a demurer.

The Supreme Court in **Nigeria Deposit Insurance Corporation (NDIC) vs. Central Bank Ltd & anor (2002) 3 SCNJ 75 at 89** per **Uwaifo, JSC** had this to say:

> *"The tendency to equate demurer with objection to jurisdiction could be misleading. It is a standing principle that in demurer, the plaintiff must plead and it is upon the pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or where appropriate, no locus standi…the issue of jurisdiction is not a matter for demurer proceedings. It is much more fundamental than that and does not entirely depend as such on what the plaintiff may plead as facts to prove the reliefs he seeks."*

It is therefore misleading to equate demurer with objection to jurisdiction. Jurisdiction has variously been described as the fiat, the license, the life, blood, the stamp of authority which necessarily enures to the Court and empowers it to adjudicate. Due to the fundamental nature of the issue of jurisdiction, litigants and parties are at liberty to competently raise it even orally and for the first time by any of the parties or suo motu by the Court, and at whatever stage of the adjudication process. See Ejigbo Local Government & ors vs. Adepegba & ors (2019) LPELR – 48060 (CA), Lado & 43 ors vs. CPC & 53 ors (2011) 12 SC (part III) 113.

An objection to the jurisdiction of the Court is a threshold issue. It goes to the root of adjudication and touches on the competence of the Court to entertain the matter. Where it is raised, it has to be taken first before taking any further steps in the matter. The issue can be raised at any time, even where there are no pleadings filed.

Once raised, the Court has power to entertain it notwithstanding that the only process filed is the writ of summons. For all these principles of law see the cases of Arjay Ltd vs. A.M.S. Ltd (2003) 7 NWLR (part 820) page 577, Owners of M.V. Arabella vs. N.A.I.C. (2008) 11 NWLR (part 1097) 182, Liverpool and London Steamship Plitech and Indemnity Ass. Ltd vs. M/T Tuma (2011) LPELR – 8979 (CA), Usman vs. Baba (2005) 5 NWLR (part 977) page 775 and Microsoft Corporation vs. Franike Associates Ltd (2011) LPELR – 8987(CA).

This preliminary objection in my considered view which is challenging the jurisdiction of the Court cannot be equated to a demurer as presented by learned counsel to the plaintiff/respondent. I hold that it is proper before the Court and not an abuse of Court process.

Now to the merit of the application. What is not in dispute in this instance and to which parties are ad idem as per their respective affidavits is that there is a subsisting

judgment (Exhibit C) delivered by my learned brother Ojo J, (as he then was) on the 15/2/2018 wherein the Court declared that the 3rd defendant/applicant is the beneficial owner and holder of the certificate of occupancy over Plot 506, Cadastral Zone C16, Idu District, Abuja. The claimant/respondent herein was adjudged a trespasser and ordered to remove all the buildings and structures it had erected on the land. The claimant's progenitor was perpetually restrained from further entry or interfering with the subject matter. The claimant filed a Notice of Appeal challenging the judgment of the Court. Despite the pendency of the Appeal, execution was levied which prompted the filing of a motion at the Court of Appeal seeking for the following reliefs:

"1. An order setting aside the purported execution of the judgment of the FCT High Court Coram F. Ojo J, delivered on 15/2/2018 in suit No. FCT/HC/CV/1247/2010 – Marshal Paints & Chemical Ind.

vs. Korum Ltd & 4 ors same having been carried out by and/or at the instance of the Respondents during the pendency of this Appeal and the applicants Motion on Notice for stay of execution/injunction (Motion No. M/2966/18), devoid of any writ, warrant or other process of execution or possession issued by the lower Court.

2. *An order restraining the Respondents by themselves, servants, agents or privies from further entry into the res or howsoever further tampering or interfering with the appellant's possessory rights and interest over the disputed land comprising plot 506, Cadastral Zone C16, Idu District, Abuja pending the determination of this Appeal CA/A/298/2018."*

With the above motion and the Appeal still pending, the claimant instituted this action seeking for the following reliefs:

"1. A declaration that the defendants, by their agents, servants or privies are not entitled to forcibly demolish or howsoever wrest possession from the plaintiff of the dispute property comprising plot 506, Cadastral Zone C16, Idu Industrial District, Abuja, in purported execution of the judgment of the FCT High Court in Suit NO. FCT/HC/CV/1247/2010 (Marshal Paints and Chemical Ind. Ltd vs. Korum Ltd & ors) delivered on 15/2/2018, devoid of mandatory writ of Execution, warrant of possession or other process of execution issued by the Court and despite the motion for stay of execution/injunction (motion No. M/2966/2018) and Appeal No. CA/A/298/2018 filed/served and pending inter partes in both the FCT High Court and the Court of Appeal, Abuja Division.

2. A declaration that the said demolition and purported repossession by the defendants of the plaintiff's paint factory building/premises (located on the res) as well

as disruption of its business operations thereat, without recourse to due process of law, particularly during the pendency of the aforementioned appeal and motion for stay of execution/injunction, constitutes self-help and same is unlawful, unconstitutional arbitrary, null, void and of no effect whatsoever.

3. *N360,671,161.00 (Three Hundred and Sixty Million, Six Hundred and Seventy One thousand, One Hundred and Sixty One Naira) being special damages arising from the said demolition of the plaintiff's fence/building located on the res and for disruption of the plaintiff's business.*
4. *N2 Billion Naira being aggravated/exemplary damages for the defendant's arbitrary, unlawful, unconstitutional and oppressive actions of the Respondents in demolishing the plaintiffs structures on the res and stifling its business/operations thereat, in brazen disregard for the pending lis.*

5. *An order of injunction restraining the defendants jointly and severally or through their agents, servants or privies including their development control department from further entry, use, occupation, development, acts or self-help, or interfering with the plaintiffs possession of the said property comprising Plot 506."*

The question is whether this suit as presently constituted can be adjudged to be an abuse of Court process. Abuse of Court process simply means that the process of the Court has not been used bona fide and properly. It also connotes 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) 3 NWLR (part 280) page 126, Omoleke Ogunsanya vs. Alhaji Akande (2010) LPELR - CA/I/217/08. In Ali vs. Albishir

(2008) 3 NWLR (part 1073) page 94, the Court held per **Kekere – Ekun, JCA**

> *"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 Courts process."*

See also **Minister of Works & Housing vs. Tomas (Nig) Ltd (2002) 2 NWLR (part 752) page 740.**

In **Onyeabuchi vs. INEC (2002) NWLR (part 769) 417 SC**, **Mohammed JSC,** had this to say:

> *"It's an abuse of process of the Court for the plaintiff to litigate again over an identical question which had already been decided against him."*

See **Marinho & anor vs. UBA Plc & anor (2018) LPELR – 46469 (CA).**

In law, an application or action premised on a faulty foundation is one which is nothing but a process in want of bona fide and thus constitutes an abuse of the process of Court, which to all intents and purpose was not meant to serve any useful purpose. See **Dana Airlines Ltd vs. Yusuf & ors (2017) LPELR – 43051 (CA).**

It is also expressed that an abuse of process always involves some bias, notice, some deliberateness, some desires to misuse or pervert the system. The circumstances which will give rise to abuse of Court process include where a party has adopted the system of forum shopping in the enforcement of a conceived right. It is also an abuse of Court process for an appellant to file an application at the trial Court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal when the appellant's application has the effect of overreaching the respondent's application. See **Sheriff & anor vs. PDP & ors (2017) LPELR – 41805 (CA).**

In Atuyeye vs. Ashamu (2009) All FWLR (part 4551) 1770 at 1770, the Court of Appeal stated instructively as follows:

> *"An abuse of Court process is constituted when more than one suit is instituted by a plaintiff against a defendant in respect of the same subject matter to the harassment, irritation and annoyance of the defendant and in such a manner as to interfere with the administration of justice. The proliferation of actions on the same subject matter in different Courts constitutes a strain, an interference with the determination of the subject matter which has been fragmented into little portions. An abuse of Court process does not cease to be so because the act has been categorized under the wrong head."*

Whilst the categories of abuse of process are not closed and there is an infinite variety of circumstances that

could give rise to abuse of process, the Apex Court in **R – Benkay Nig. Ltd vs. Cadbury Nig Ltd (2012) LPELR – 7820 Per Adekeye JSC,** have instructively and precisely situated or streamlined various ways that abuse of judicial process may occur; these include:

1. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue; or
2. Instituting a multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.
3. Instituting different actions between the same parties simultaneously in different Courts eventhough on different grounds; or
4. Where two similar processes are used in respect of the exercise of the same right such as a cross – appeal and a respondents notice.

5. 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 the lower Court.
6. Where there is no law supporting a Court process or where it is premised on frivolity or recklessness.
7. Where a party has adopted the system of forum shopping in the enforcement of a concerted right.
8. It is an abuse of process for an appellant to file an application that the trial Court in respect of a matter which is already subject of an earlier application by the respondent in the Court of Appeal, when the appellants application has the effect of overreaching the respondents application.
9. 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 vexatious and an abuse of process.

See also Agwasim vs. Ojichie (2004) 10 NWLR (part 882) 613 at 622 – 623.

Now, the law is settled that in the determination whether there has been an abuse of process, the Court will consider the content of the first process vis – a – vis the second one to see whether they are aimed at achieving the same purpose. Let us now properly situate the facts.

In this instance, the claimant Marshal Paints & Chemical Ltd instituted suit No. CV/1247/10 between;

Marshal Paints & Chemical Ltd – Plaintiff

and

1. Korum Ltd
2. Abdul Shuaibu
3. FCDA
4. Hon. Minister FCT
5. Halbiz Nig. Ltd

} Defendants

The Court Coram Ojo, J (as she then was) entered judgment in favour of Halbiz Nig. Ltd. The Court declared Halbiz as

the beneficial owner of the subject matter in this instance, and declared the claimant, Marshal Paint & Chemical Ltd as trespasser and therein ordered to remove all its properties and structures from the plot. An Appeal was thus filed by the claimant (Marshal Paint & Chemical Ltd) while a motion for stay of execution and injunction was filed at the lower Court. Before the motion was taken at the Lower Court, the Appeal was entered at the Court of Appeal. However before the Appeal could be heard, the Respondent's entered the premises in dispute and demolished the paint factory/fence. Halbiz Nig. Ltd (3rd defendant in this suit) also filed a preliminary objection to the claimants motion to set aside the execution. Issues have been joined between the claimant (Marshal Paint & Chemical Ltd) and Halbiz Nig. Ltd (3rd defendant).

What is obvious is that there is a pending appeal against the entire decision at the Court of Appeal. There is also an application before the Court of Appeal in respect of

the execution of the judgment. One will not cease to wonder why the claimant will not diligently pursue the appeal and the application to set aside the execution levied. It is of no moment for learned counsel to the claimant to submit that this suit is one claiming for damages, while the appeal seeks to set aside the purported execution. All the reliefs are with respect to the same subject matter already decided by a Court of competent jurisdiction. Asking for the reliefs before the Court in fragments, and trying to pursue them differently is an act which is considered an abuse of Court process.

In the eyes of the law, a process initiated in abuse of the process of Court is one devoid of any competence or life and thus ought to be terminated by the Court, even in limine if so called upon by the party being put through the unenviable task of defending such a process steeped in such mala fide and in abuse of the process of Court. Where the Court comes to the conclusion that its process is

abused, the proper order is that of dismissal of the process. See African Reinsurance Corp. vs. JDP Construction (Nig) Ltd (2003) 13 NWLR (part 838) 609.

No matter how meritorious the case of a party may be once it is found to be an abuse of the court processes, that is the end of the matter. It becomes closed chapter and the end of the road for such matter instituted in abuse of the process of Court. See Dingyadi & anor vs. INEC & ors (2011) LPELR – 950 (SC), Honeywell Flour Mills Plc vs. Ecobank (2019) LPELR – 47503 (CA).

The Supreme Court in Onyeabuchi vs. INEC (supra) held that where proceedings which were viable when instituted have by reason of subsequent events become inescapably destined to fail, they may be dismissed as being abuse of Court's process. The power of the Court to stay or dismiss proceedings which are abuse of its process derives from the inherent jurisdiction of the Court. The exercise of the power is discretionary.

In the circumstance, this Court has no hesitation in dismissing this suit. Thus suit No. CV/1901/2018 is accordingly dismissed.

Signed
Honourable Judge

Appearances:

A.O. Okpala Esq with him Charles Jibuaku Esq – for the Claimant/Respondent

Deborah I. Warrie Esq – for the 3rd Defendant/Applicant

1st and 2nd Defendant absent and not represented