

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,

HOLDEN AT APO, ABUJA.

ON TUESDAY, THE 14TH DAY OF DECEMBER 2021

BEFORE HIS LORDSHIP:

HON. JUSTICE FRANCES ERHUVWU MESSIRI.

(JUDGE.)

SUIT NO. FCT/ HC/CV/3078/2021.

MOTION NO: M/3752/2021.

BETWEEN

RINGARDAS NIGERIA LIMITED-----CLAIMANT/RESPONDENT

AND

RIC ROCK CONSTRUCTION NIG. LTD----DEFENDANT/APPLICANT

[RULING.]

The Claimant/Respondent approached this honourable court vide a writ of summons dated and filed on the 4/11/2020 praying for the following reliefs:

a. A declaration that the contract of supply of Bitumen, between the Claimant and the Defendant is valid and enforceable.

b. The total sum of ~~N~~81,250,429.00 (Eighty-One Million, Two Hundred and Fifty Thousand, Four Hundred and Twenty-Nine Naira) only, being the balance payment owed the Claimant for the supply of 309.9 Metric Tons (MT) (309,900kg) of bitumen 60/70 between January and February, 2017

c. The sum of ₦5,000,000.00 (Five Million Naira) as general damages; and

d. Cost of this suit.

Consequent upon the aforesaid writ of summons, the Defendant/Applicant, with leave of this honourable court first sought and obtained, entered conditional appearance, and has now filed a preliminary objection, dated 2/4/2021 and filed on the 23//6/2021. It is praying this honourable court to strike out the suit for lacking in merit and to award punitive cost of one million naira (₦1,000,000.00.) against the claimant /Respondent.

The grounds for the objection are :

1. That the Court lacks jurisdiction to entertain this suit.
2. That the suit constitutes an abuse of court process.
3. That the Claimant's action constitutes forum shopping;
4. That the Claimant is yet to obey the Order of the High Court of Plateau State.

In support of the preliminary objection is a 17-paragraph affidavit deposed to by one Barl Martins on the 23/6/2021. Annexed thereto are three exhibits marked as exhibits A, B and C respectively

The Crux of the Defendant /Applicant's case is that it's registered office is in Jos, Plateau state as disclosed in exhibit A and B, and that the Defendant/Applicant carries on its business thereat, further, that the Claimant/Respondent entered into the transaction that gave rise to the dispute in this suit in Jos, Plateau state.

He asserts that the Claimant/Respondent had instituted identical suit against the Defendant/Applicant before the High Court of Plateau State with Suit Number PLD/J185/2019 under the undefended list procedure. That the Defendant/Applicant in the Jos, Plateau State case, through their counsel {the deceased A. G. Columbus}, challenged the competence of the suit *vide* a Notice of Preliminary Objection.

He continued that , on the day fixed for the hearing of the Notice of Preliminary Objection, the Claimant/Respondent was absent, the Court struck out the suit for want of diligent prosecution with a cost of ₦10,000.00 (Ten Thousand Naira) only awarded against the Claimant/Respondent. That the Court further ordered that the Claimant/Respondent must pay the cost before any further step can be taken.

The Defendant /Applicant expressed surprised when the Defendant/Applicant was served with the Claimant/Respondent's Writ of Summons commencing the present action and containing the same claims and the same parties as the previous action struck out by the Plateau State High Court. He therefore contends that since the Claimant/Respondent knew what was expected, considering the history of the case that it would be in the interest of justice for this Honourable Court to decline Jurisdiction and strike out this suit.

Learned Counsel for the Defendant/Applicant F.O. German Esq. Filed a written address on the dated 2/4/2021, wherein he distilled four issues for resolution by this honourable court. to wit:

1. Whether or not this Honourable Court has the territorial jurisdiction to determine this suit?
2. Whether or not the suit itself does not constitute an abuse of court process?
3. Whether or not the filing of this suit before this Honourable Court amounts to forum shopping?
4. Whether or not the Claimant/Respondent can file this suit having not complied with the Orders of the High Court of Plateau State.

On Issue 1, learned Counsel relied on the definition of territorial jurisdiction by the Supreme Court in the case of **DARIYE V. FRN (2015) LPELR-24398** as a geographical area within which the authority of the Court might be exercised and outside which the Court had no power to act. Applying this definition to the instant case, Learned Counsel contends that since the cause of action arose in Jos, Plateau

State and the Defendant/Applicant's head office is in Jos Plateau State and it carries on business in, Jos Plateau State, the appropriate Court vested with jurisdiction is the High Court of Plateau State.

he urged Court to resolve the issue in favour of the Defendant/Applicant. Learned Counsel for the Defendant/ Applicant cited and relied on :**U.B.A. PLC & ORS V. ADEMOLA (2008) LPELR-5066 (CA); IDEMUDIA V. IGBINEDION UNIVERSITY, OKADA (2015) LPELR-24514; AND NIGER ALUMINIUM MANUFACTURING CO. LTD V. UNION BANK (2015) LPELR-26010 (CA). amongst others.**

On Issue 2, Learned Counsel for the Defendant /Applicant relied on the dictum of Uwa, JCA in the case **ARUBO V. AIYELERI (1993) 3 NWLR (PT. 280) 126**where, abuse of Court process was defined as the *mala fide* and improper use of the judicial process, often to the irritation and annoyance of the other party and the efficient and effective administration of justice. He submits that the court of appeal in the case OF **OBU V. J. O. OLUMBAMISE PRINTERS LTD (2003) LPELR-20415 (CA)**.stated that the institution of multiplicity of suits against the same opponent in respect of the same subject matter and the same issue constitutes abuse of court process and adds that abuse of court process also includes were a party hunts for a favourable Court to hear their suit.

In urging the Court to discourage such unhealthy practices, Learned Counsel for the Defendant/Applicant contends that the proper step the Court should take where an abuse of Court process is shown will be to dismiss the suit. He cited the case of **EXPO LTD V. PAFAB ENTERPRISES LTD (1999) 2 NWLR (PT. 951) 449**and therefore urge this Honourable Court to dismiss the suit.

On Issue 3, Learned Counsel for the Defendant /Applicant submitted that the action of the Claimant/Respondent equated to forum shopping. Defining forum shopping as a practice whereby a party sought for the most favourable territorial jurisdiction or Court in which to file their action, Learned Counsel asserted that the practice was inimical to the interest of justice.

On the last Issue, Learned Counsel for the Defendant/Applicant contends that disobedience of Court Order was a heinous offence which, if left unpunished, would undermine the very foundation of the judicial system and bring the administration of justice to disrepute. He brought to the attention of this Court the fact that the Claimant/Respondent was yet to comply with the Order of the High Court of Plateau State which ordered it to pay the cost of ₦10,000.00 before taking any further step with respect of the suit against the Defendant/Applicant. Learned Counsel stated that it is an established position of the law that any party who was in disobedience of a Court Order should not be heard by the Court.

Relying on **ODU V. JOLAOSO & ORS (2002) LPELR-6008 AND NGERE & ANOR V. OKURUKET & ORS (2014) LPELR-22883 (SC)**, Learned Counsel for the Defendant/Applicant therefore urge this Honourable Court to dismiss the suit of the Claimant/Respondent.

Responding to the Notice of Preliminary Objection, Learned Counsel for Claimant/Respondent, after obtaining the leave of this Honourable Court for extension of time within which to file its Counter Affidavit, filed a 3-paragraph Counter-Affidavit deposed to by one John Oduh on the 1/11/2021. Annexed thereto are two exhibits marked as Exhibits A1 and A2 accompanied with a written address settled by Learned Counsel for the Claimant/Applicant P.A. Ameh, Esq. Claimant/Respondent denied the averments in Defendant/Applicants' affidavit and asserts that though the head office of the Defendant/Applicant was in Jos, Plateau State, it also carries on business in Abuja at No. 20 Justice Sowemimo Street, Asokoro, Abuja.

That all the transactions leading to this suit were contracted through electronic mail correspondences. He stated that while it is true that the Claimant/Respondent had instituted an action with Suit Number PLD/J185/2019 under the undefended list procedure before the High Court of Plateau State, the Claimant believes the issues would be conclusively addressed if the suit was heard and determined under

the general cause list and, in furtherance of this belief, sent a Counsel to withdraw the said suit.

That, the Counsel for the Claimant/Respondent could not arrive in the Court on time owing to traffic, that on arrival at the Court, the suit had been struck out, he asserts that the Claimant/Respondent is not aware that a cost of ₦10,000.00 was awarded against the Claimant/Respondent who is not averse to paying same if proved before this Honourable Court, so that the jurisdiction of this Honourable Court would not be undermined by the issue of non-payment of cost.

In his written address in support of the Counter-Affidavit, Learned Counsel for the Claimant/Respondent formulated two issues which he described as preliminary issue and main issue.

On the preliminary issue which is whether the Defendant/Applicant's Notice of Preliminary Objection is not a demurrer prohibited by the Rules of this Honourable Court, Learned Counsel submits that the practice as established by the Court was to take preliminary issues along with the substantive matter to avoid waste of judicial time.

Citing Order 23 Rule 1 of the Rules of this Court and the cases **OF MOBIL OIL (NIG.) PLC V. I.A.L. 36 INC (2000) FWLR (PT. 10) 1632 PER IGUHIJSCANDELABANJO V. DAWODU (2006) ALL FWLR (PT. 328) 604 at 607 – 609**, Learned Counsel for the Claimant /Respondent noted that the Defendant/Applicant was served with the originating processes in this suit on the 11th of March, 2021 and pointed out that the Defendant/Applicant, who was already out of time to enter appearance, chose rather to file a Notice of Preliminary Objection on the 23rd of June, 2021 instead of filing its statement of defence.

Learned Counsel for the Claimant/Respondent, contends that the failure of the Defendant/Applicant to file its statement of defence amounted to a demurrer and urge this Court to so hold.

On the main issue formulated By Learned Counsel to wit, "Whether the Honourable Court has the jurisdiction to hear and determine this

matter". Learned Counsel submitted that in accordance with the provisions of Order 3, Rule 3, of the Rules of this Court, this Honourable Court was vested with jurisdiction because the Defendant/Applicant carried on business at No. 20 Justice Sowemimo Street, Asokoro, Abuja, an address that is within the jurisdiction of this Honourable Court.

Responding to the contention of the Defendant/Applicant that the present suit is an abuse of Court process and amounts to forum shopping, Learned Counsel for the Claimant/ Respondent conceded that though the suit instituted in the High Court of Plateau State was struck out, the same suit could be re-instituted either in the same judicial division or in any other judicial division having jurisdiction over the matter. He urged this honourable Court to dismiss the Notice of Preliminary Objection.

Learned Counsel for the Defendant/Applicant, in response to the Claimant/Respondent's Counter-Affidavit deposed to a 17-paragraph Further and Better Affidavit on the 22nd of November, 2021. The deponent is one Bari Martins wherein the Defendant /Applicant maintained that the address of the Defendant/Applicant and the place the cause of action arose between the parties is Jos, Plateau State.

Responding specifically to paragraph 3(d) of the Claimant/Respondent's Counter-Affidavit, the Learned Counsel for the Defendant /Applicant maintains that the photographs annexed as exhibit A1 and A2 could have been taken anywhere as there was no address in both exhibits, he Challenged paragraph 3(e) of the Counter-Affidavit, and states that the transaction took place in Jos, Plateau State which explains why the Claimant/Respondent filed the original suit in the High Court of Plateau State. He maintained that Counsel for the Claimant/Respondent should have made inquiries as to what transpired in Court, on the day the Claimant/Respondent's suit was struck out, if he was diligent in prosecuting the suit. He insists that the Claimant/Respondent was yet to comply with the Order of the High Court of Plateau State which is exhibited in **Exhibit**

Cannexed to the affidavit in support of the Notice of Preliminary Objection.

In conclusion, Learned Counsel stated that the Notice of Preliminary Objection of the Defendant/Applicant was not a demurrer and therefore urge this Honourable Court to decline jurisdiction.

Learned Counsel for the Defendant/Applicant formulated two issues for determination in the written address in support of the Reply. Issue one, is “whether or not this Honourable Court has the territorial jurisdiction to determine this suit”, Learned Counsel maintained that this Honourable Court has no jurisdiction – substantive or territorial – to hear and determine the suit of the Claimant/Respondent considering that the cause of action arose in Jos, Plateau State and that the head office of the Defendant/Applicant is in Jos, Plateau State. He emphasised the fact that jurisdiction was germane to the competence of a Court and that same enabled the Court to exercise its powers over persons residing or carrying on business within the geographical sphere in the territorial jurisdiction of the Court. He maintains that nothing in **Exhibits A1 and A2** attached to the Claimant/Respondent’s Counter-Affidavit tied the Defendant/Applicant to the address or, indeed, disclosed the said address claimed by the Claimant/Respondent to be the address of the Defendant/Applicant within the jurisdiction of this Court.

In support of his argument on this issue, Counsel cited and relied on the case of **UTIH & ORS V. ONOYIVWE & ORS (1991) LPELR-3436 (SC); IDEMUDIA V. IGBINEDION UNIVERSITY, OKADA (2015) LPELR-24514; DARIYE V. FRN (2015) LPELR-24398; among others**

On Issue Two, to wit, “Whether or not the Notice of Preliminary Objection contesting the jurisdiction of this Court is a demurrer”, learned Counsel distinguished between a demurrer proceeding and one challenging the jurisdiction of the Court. Learned Counsel submits, that the question of jurisdiction was never a matter of demurrer proceedings as the former is fundamental and not related to the facts pleaded by the Claimant/Respondent to prove their

claim. He maintained that the Defendant/Applicant challenging jurisdiction need not plead that fact.

He contended further that any party in disobedience of an Order of a Court should not be heard by the Court in subsequent proceedings.

Learned Counsel explained that the only instances where a party who is in disobedience of a Court Order could be heard by the Court is when such party seeks to appeal against the Order of Court in which he was in contempt, or when he seeks to challenge the Order on the grounds of jurisdiction; or when the Order ought not to be sustained because there were procedural irregularities in the process of making the Order.

In urging this Court to resolve this second issue in favour of the Defendant/Applicant, Learned Counsel cited and relied in the case of **DR TOSIN AJAYI V. PRINCESS (MRS) PLAJUMOKE ADEBIYI & ORS (2012) LPELR-7811 (SC)**; among others. Learned Counsel therefore urge this Honourable Court to discountenance the Counter-Affidavit of the Claimant/Respondent and dismiss this suit in its entirety.

At the hearing of this application on the 25/11/2021 Learned Counsels for both parties adopted their respective written addresses, same is hereby adopted into this ruling.

Now, let me quickly state here that the Apex court in the case of **NTUKS V. NPA(2007).LPELR (SC)** had this to say : "It is elementary law that where a party raises an objection on jurisdiction, the court must take the objection first" Per TOBI, J.S.C (Pp. 28 paras. A) however, the court seeing that a substantive case will not require calling of oral evidence may in its wisdom exercise its discretion in taking the objection and such substantive suit

The grounds and issues formulated for determination and argued by Learned Counsels for both Defendant/Applicant and Claimant/Respondent in my view can be adequately take and resolved together and all issues and grounds are same though framed differently.

Now issue 1. one, is that this honourable court lacks the territorial jurisdiction to entertain this suit. The rules of this honourable court 2018 comes to fore in tackling this issue.

Order 3 rule 4 of the rules of this honourable court, 2018 provides that :

All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides or carries on business.

sub rule :

(1). All other suits may be commenced and determined in the judicial division in which the defendant resides or carries on business.

(2). Where there are several defendants who reside or carry-on business in different judicial divisions, the suit may be commenced in any one of those judicial divisions subject to any order or direction the court may make or give as to the most convenient venue for trial of the suit.

The Learned Counsel for the Defendant/Applicant disclosed in its supporting affidavit that the cause of action herein arose in Jos, Plateau State, where the Defendant/Applicant has its registered office. exhibit A and B are attached thereto to prove this contention. On his part Learned Counsel for the Claimant/Respondent contends that the defendant has its head office in Jos but carries on business in Abuja at no 20 justice sowemimo street Asokoro, and attached exhibits A1 and A2 to prove same and further that the cause of action herein arose via electronic mail correspondences.

Learned Counsel for the Defendant/Applicant contends that the exhibit A1 and A2 could have been taken anywhere, but did not deny receiving the originating processes herein in the address disclosed in the Claimants /Respondent's Counter Affidavit within Jurisdiction.

From the processes before this Honourable Court, it is not in issue that the head office of the Defendant/Applicant is at Jos plateau state, what is in issue is where the cause of action herein arose.

Now a calm look at exhibit B, annexed to the affidavit in support of this application discloses a letter of demand dated the 11th day of December, 2017 written by the Claimant/Respondent and addressed to the Defendant/Applicant and the address on the letter of demand is 53, Murtala Mohammed way, Jos Plateau State. Juxtaposing this piece of evidence with the fact that Claimant/Respondent instituted its initial proceedings before the Plateau State High Court points to the logical conclusion that the cause of action indeed arose in Jos, plateau state, I so hold.

Ground /Issue two is that this suit constitutes an abuse of Court process, the Defendant/Applicant contends that the Claimant/Respondent having filed the same action with suit no. PLD/J185/2019 against the same defendant before the high court of plateau state, same constitutes abuse of court process, he relied on exhibit C for this assertion.

The Claimant /Applicant on his part contends that he sent a lawyer to withdraw suit No PLD/J185/2019, but same had been stuck out before his lawyer got to court due to traffic and that he is not aware of the ₦10,000 (ten-thousand-naira cost awarded against the Claimant Respondent).

Abuse of process is defined in the Black's law dictionary Ninth edition at page 11 as the improper and tortious use of legitimately issued court process, to obtain a result that is either unlawful or beyond process scope.

In considering what constitutes abuse of Court process, the Supreme Court in the case of **CBN V. AHMED (2001) 11 NWLR (PT. 724) PAGE 369 AT 372 HELD THUS:**

"Abuse of process of the Court is a term generally applied to a proceeding which is wanting in bona-fides and is frivolous, vexatious

or oppressive..... Abuse of process can also mean abuse of legal procedure or improper use of legal process. The issue of abuse of Court process is an issue of jurisdiction and like all issues pertaining to want of jurisdiction, it can be raised at any time even for the first time at the Supreme Court. It can also be raised suo motu by the Court and even orally by a party seeking to claim benefits from it."Now hear the court of appeal in the case of **LOKPOBIRI V OGOLA (2016) 3 NWLR PT. (1499) 329 AT 367 - 368 PARAS E - B.**" **PER PEMU ,J.C.A (PP. 17-18 PARAS. F)**

"Abuse of Court's process is a concept which is imprecise. But a common feature of it is improper use of judicial process by a party in litigation to interfere with the due administration of justice. It includes instituting a multiplication of actions on the same subject matter against the same opponents on the same issues; 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 respondents' notice; 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 constitutes an abuse of Court process. See **SARAKI V KOTOYE (1992) 9 NWLR (PT. 264) 156.** The supreme court Per BAGE ,J.S.C in the case of **MAILANTARKI V. TONGO & ORS (2017)LPELR - 42467(SC).**(Pp. 32-33 paras. F) stated that :

"Forum shopping occurs when a party attempts to have his action tried in a particular Court or jurisdiction where he feels he will receive the most favourable decision or verdict.

The Appellant having instituted his action at the High Court of Federal Capital Territory Abuja, a Court which was not in the jurisdiction where the cause of action arose is said to have shopped the forum. This without doubt amounted to abuse of judicial process."

I am of the opinion that this issue, if well considered will put the Preliminary objection to rest. Now, the pertinent question at this point is ; what is the consequence of a case that is struck out by a Court?

This question was answered by apex court Court in the case of **PANALPINA WORLD TRANSPORT NIGERIA LTD VS. J.B. OLADEEN INTERNATIONAL & ORS (2010)19 NWLR (PT.1226) 1 @ 20 PER ADEKEYE, JSC THUS:**

“When a matter is struck out, it is still alive and kept in the Court's general cause list and that - "when an order is made in respect of an application not heard on the merit, it amounts to striking out simpliciter. Even where an Order of dismissal is made following a hearing which is not based on the merit, such Order is still considered in law a mere striking out. When a matter is struck out in the circumstances, there is liberty to relist. The simple explanation is that while the matter is disconnected from that date, it is still alive and kept in the Court's general cause list and can be brought back to the hearing cause list... In such a case; the Plaintiff still has another opportunity to reopen the action after rectifying the deficiency that resulted in the striking out of the action. This is applicable even where the Court has not included in the Order of striking out, that the Plaintiff has an option to relist. The matter struck out has not left the cause list - as it is still a pending case or pending cause. The same procedure applies even when a matter has been decided many years ago. **ALOR VS. NGENE (2007) ALL FWLR (PT.362) PP1836; (2007) 17 NWLR (PT.1062)163: WATERLINE NIGERIA LIMITED VS. FAWA SERVICES LIMITED (2003) FWLR (PT.163) P.88". SEE ALSO THE SUPREME COURT CASE OF ABEY VS. ALEX (1999)14 NWLR (PT. 637)148 AT 162**”

From the above highlights, it is clear that a suit struck out remains pending in the general cause list, such that same can be reopened for further proceedings to be taken therein when and only when, such suit is relisted by the Plaintiff’

Now, This honourable court notes that, Exhibit C ordered that the cost of ten thousand naira is to be paid before any further step is taken. Learned Counsel for the Claimant/Respondent contends that he sent a lawyer to withdraw the suit in Jos, he acknowledged that the said suit was struck out but feigns ignorance of the order to pay ten thousand naira before taking any further step. One wonders if same depicts diligence on the part of the Claimant/Applicant.

I hold the firm view that the suit No PLD/J185/2019 or will only be relisted upon compliance with exhibit C which is a valid court order unless proven otherwise, there is nothing showing that the Claimant/Applicant complied with the exhibit C. that being the case it is trite that

"every person against, or in respect of whom an order is made by a Court of competent jurisdiction is duty bound to obey same unless and until the order is discharged or set aside on appeal. See **MOBIL OIL NIGERIA LIMITED V. ASSAN (1995) 8 NWLR (Pt. 412) 129** @ p. 143, paras C - D; p. 148 paras F- G."

In the light of all said in this judgment I hold that suit Number PLD /J185/2019 having the same parties and the same claim as suit number FCT/HC/CV/3078/2020 constitute an abuse of court process and further that the Claimant/Respondent's action in filing suit No. FCT/HC/CV/3078/2020 with the same parties over the same subject matter which is pending at the high court of plateau state constitutes forum shopping.

The apex Courts have always frowned at forum shopping by litigants, where a matter is pending before another Court, It translates to abuse of Court process, which is not merely an irregularity that could be pardoned or overlooked but constitutes a fundamental defect, the effect of which would lead to a dismissal of the process that is abusive.

In the case of **ARUBO VS. AIYELERU (1993) 3 NWLR (PT. 280) Page 125**, the Supreme Court held that once a Court is satisfied that the proceeding before it amounts to an abuse of process, it has the right

or duty to invoke its powers to punish the party which is in abuse of its process and the resultant effect therein is a dismissal of the action which constitutes the abuse.

- That the cause of action in the suit arose in Jos Plateau state.
- That suit number PLD /J185/2019 has the same Parties and the same claim as Suit Number FCT/HC/CV/3078/2020, thereby constituting abuse of court process and further the Claimant/Respondent's action Amounts forum shopping.
- The claimant/Respondent is yet to comply with the order of court as disclosed in exhibit C.

Consequent upon the findings made above, I hereby hold that the Defendant/Applicant's preliminary objection is not a demurrer, I hold further that this honourable court lacks the requisite jurisdiction to entertain this suit same still pending before the high court of plateau state.

The preliminary objection therefore succeeds and is hereby upheld the SUIT NO. FCT/ HC/CV/3752/2021 is accordingly dismissed.

JUSTICE F. E. MESSIRI.
[JUDGE.]

Appearances.