

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU
SUIT NO: FCT/HC/GAR/CV/99/2023
MOTION NO: FCT/HC/M/10793/2024
DELIVERED ON THE 11/03/2025**

BETWEEN:

COLVI LIMITED.....CLAIMANT/RESPONDENT

AND

HOTWIRE PARTNERS LIMITED.....DEFENDANT/APPLICANT

RULING

This Ruling is pursuant to Notice of Preliminary Objection dated the 12/07/2024 with Motion No. **M/10793/2024** filed by the Defendant/Applicant praying the Court for the following reliefs:

- (1) An Order of the Hon. Court striking out or dismissing this suit in limine for being incompetent.*
- (2) And for such further order(s) of this Honourable Court as this Honourable Court may deem fit to make in the circumstances of this case.*

The grounds upon which the application is brought is as follows:

- 1. This Suit was not commenced by due process of law**
- 2. The Claimant has not disclosed a reasonable cause of action against the Defendant.**

- 3. This Suit constitutes an abuse of Court process as there are a multiplicity of Suits instituted by the Claimant against the Defendant with the same parties, subject matter and issues for determination over the same property.**
- 4. The Claimant is no longer the Landlord of the Defendant as the sub-lease granted to the Claimant has expired, and the Defendant has entered into a valid lease with the owner and head Less or of the property.**
- 5. This case is incompetent as presently constituted and is designed to violate the Defendant's enjoyment of his property.**
- 6. It serves the best interest of justice to grant this Application**
- 7. The condition precedent for the institution of this Suit has not been fulfilled by the issuance and service of a valid statutory notice.**
- 8. The activities of the Claimant are *ultra vires* with respect to the registered objects of the Claimant and are null and void.**

In support of the Notice of Preliminary Objection is an affidavit of 17 paragraph deposed to by one George Okoye, the Manager of the Defendant/Applicant.

It is the deposition of the Defendant/Applicant that the Claimant is not the Landlord and owner of the property the subject matter of the litigation as Earl's Court Properties Limited is the Landlord and owner of the property in contention which was leased to the Defendant on four years lease commencing from the 1st day of January, 2023 to the 31st of December, 2026.

The Defendant/Applicant stated that the Earl's Court Properties Ltd had earlier entered into a five-year lease agreement with the Claimant over

the said property from 23/9/2011 to 22/9/2016 and upon the expiration of lease, Earl's Court Properties Ltd through its Counsel wrote to the Claimant terminating the tenancy. And new tenancy was entered with Earl's Court Properties Ltd by the Defendant.

That this suit is an abuse of Court process as there is similar suits with the same subject matter and parties was filed pending before Hon. Justice Obanor Enobie. And that the Claimant's Statutory Notice of Owner's Intention to apply to recover possession as well as its Writ of Summons were not signed by a legal practitioner.

The following documents were annexed to the Notice of Preliminary Objection as Exhibit 1 to 10 to wit;

- (1) A copy of Lease Agreement dated 23/09/2011**
- (2) A copy of Lease Agreement dated 23/09/2016**
- (3) Copy of Notice of non-renewal of lease dated 26/09/2022 addressed to Claimant**
- (4) Copy of Notice of non-renewal of lease dated 26/09/2022 addressed to occupant of Shop 24**
- (5) Lease Agreement dated 1/01/2023**
- (6) A letter from Earl's Court Properties to the occupant of the subject matter dated 11/01/2023**
- (7) A copy of Complaint**
- (8) A copy of Writ of Summons**
- (9) A copy of Statutory Notice**
- (10) CAC Status Report**

A written address was filed wherein a sole issue, to wit, *whether this Hon. Court ought to uphold the grounds of this Preliminary Objection and grant the reliefs therein sought* was formulated for determination.

Counsel argued the above issue succinctly in urging the Court to grant the relief sought.

Reacting to the application, the Claimant/Respondent filed a 21-paragraph counter-affidavit deposed to by Ulugh Torkuma Stephen, the Property Manager of the Claimants.

It is the counter-affidavit evidence of the Claimant that the suit was instituted by due process of law and facts stated therein sufficiently disclosed a cause of action as the issue in contention is not the ownership of the property but the tenancy agreement between the parties. That the tenancy agreement between the Defendant/Applicant and the owner of the property during the pendency of the tenancy between the Claimant and the Defendant is within the knowledge of the Defendant.

It is further the evidence of the Claimant that this Court has decided on the issue of instituting this suit by due process of law on the 18/4/2023. That the Defendant/Applicant is a conglomerate of 3 Companies to wit Hotwire Partners Limited standing on its own, Hotwire Partner which operates Moscow underground Nightclub and Hotwire Properties which operates an eatery and they all entered into separate tenancy agreement with the Claimant with different agreement, different rent considerations and different shop numbers. And that the Claimant/Respondent instituted separate suit against the Companies in their personal capacities and according to their personal tenancy agreement. That the name and

signature of the person who signed the Statutory Notices and the Originating Processes is Michael A. N. Mbanefo and not Ojele Chambers.

A written address was filed wherein learned Counsel argued that this application should be dismissed.

The Defendant/Applicant has filed a further affidavit wherein it stated that the Claimant/Respondent has not disclosed any reasonable cause of action against the Defendant/Applicant as the Claimant admitted that it is not the owner and no longer the Landlord of the property in issue in this case. And that this suit is an abuse of Court processes.

I have gone through the application under consideration filed by the Defendant/Applicant and the reaction of the Claimant/Respondent and the various arguments canvassed by parties.

I shall be brief but succinctly in consideration the application in the interest of justice. The grouse of the applicant's application has to do with the following grounds.

- (1) That this suit amount to abuse of Court process
- (2) That the statutory Notice by the Claimant is incompetent and by extension this suit is incompetent
- (3) That this suit does not disclose a reasonable cause of action against the Defendant

I shall therefore consider the above grounds to see whether this Court has jurisdiction to hear and determine this action as constituted.

I shall start by considering whether this suit amount to an abuse of Court process to warrant same to be struck out.

What then constitute an abuse of Court process? It is the law that multiplicity of action on the same subject matter between the same parties will constitute an abuse, where this happens, the Court has a duty to interfere to stop such an abuse of its process. The apex Court held that multiplicity of actions on the same matter between the same parties even when there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than the exercise in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of justice such as instituting different actions between the same parties simultaneously in different Courts even though on different grounds. This is so because the Defendant could have conveniently and appropriately, in exercise of his right of action against the plaintiff instituted in the same action a counter-claim and validly seeks his relief against the adversary, otherwise, the Court will take the subsequent action to be meant to annoy, irritate and harass the opponent and it will constitute an abuse of process of Court in which the Court is entitle to interfere to stop. See **OYENIYI & ANOR VS. OLANIYAN & ORS. (2024) LPELR 62270 (CA)**.

On whether the suit before me constitute an abuse of Court process it is pertinent to look at the relief sought here, the parties and the subject matter.

The applicant avers that the Claimant filed suit No. CV/82/2023 Between Colvi Limited Vs. Hotwire Partners Limited at the District Court of the FCT and also the Claimant is maintaining suit No.

CV/98/2023 Between Colvi Limited Vs. Hotwire Partners Limited & Anor pending before Hon. Justice J. Enobie Obanor.

I have seen the suit pending before my learned brother Hon. Justice J. Enobie Obanor with suit No. **CV/98/2023** Between Colvi Limited and (1) Hotwire Partners Limited (2) Earl's Court Properties Ltd

The relief sought in the case are as follows:

- (1) An Order giving the Claimant possession of shop No. 11-13 (Hotwire Partners Limited) situate at Plot 35, Adetokunbo Ademola Crescent, Wuse II, Abuja.
- (2) An Order that the 1st Defendant pays the sum of N27,397.00 (Twenty-Seven Thousand, Three Hundred and Ninety-Seven Naira) only to the Claimant per day being mesne profit for the use and occupation of the Claimant's demised premises situate at plot **35**, Adetokunbo Ademola Crescent, Wuse II, Abuja from 31/08/2022 until possession is delivered to the Claimant.
- (3) Interest at **10%** per annum from the day of judgment until the final liquidation of the Judgment sum.
- (4) **₦3,000,000** (Three Million Naira) only against the 1st Defendant being the Solicitor fees and cost of instituting and prosecuting this suit.

Whereas the suit before me is between Colvi Limited and Hotwire Partners Limited, the reliefs sought in the present suit is as follows:

- (1) An order giving the Claimant possession of shop No. 3 basement, (Moscow underground lounge) situate at Plot **35**, Adetokumbo Ademola Crescent, Wuse II, Abuja.
- (2) An Order that the Defendant pays the sum of **₦6,236,981** (Six Million, Two Hundred and Thirty Thousand Nine Hundred and Eighty-One Naira) only being the outstanding 10% increase of 4 years rent and value added tax from 1st September, 2019 to the 31st August, 2023 to the Claimant forthwith.
- (3) An Order that the Defendant pay the sum of **₦38,898.85** to the Claimant daily being the mesne profit for the use and occupation of the Claimant demised premises situate at plot **35** Adetokunbo Ademola Crescent Wuse II, Abuja from 01/09/2022 until possession is delivered to the Claimant.
- (4) An Order of this Hon. Court restraining the Defendant its agents, legal representative, privies, officers and whatsoever called from further obstructing/preventing other tenants and customer from making use of the back and front corner area of the demised promised.
- (5) Interest at **10%** per annum from the duty of Judgment until the final liquidation of the Judgment sum.
- (6) **₦5,000,000** against the Defendant being cost of instituting and prosecuting this action.

It is the contention of the Claimant that the Defendants/Applicant is a conglomerate of 3 Companies to wit, Hotwire Partners Limited standing on its own, Hotwire Partners which operates Moscow underground Night Club and Hotwire Partners which operates an eatery known as Chow by Moscow and they all entered separate tenancy agreement with the Claimant/Respondent with different tenancy agreement, different

rent consideration and different shop numbers; different expiration dates and rent consideration which they have all defaulted in paying.

A perusal of the writ before me and that of my learned brother will clearly show that the relief sought are all with respect to different shop numbers and the amount claimed are equally different with different tenancy agreement.

It is my ruling therefore that this suit can stand independent of the suit before my learned brother and therefore, does not constituted an abuse of Court process. I so hold.

Having held thus, I shall consider the next ground, i.e. whether this suit discloses reasonable cause of action against the Defendant/Applicant.

It is instructive to state here that the Defendant Applicant earlier brought a Motion and sought for the following reliefs to wit;

- (1) *The suit of the Plaintiff is incompetent because it does not in any way disclose any relationship with the lessor/owner of the premises being the subject matter of this suit.*
- (2) *The Plaintiff does not have locus standi*
- (3) *The Hon. Court lacks jurisdiction to entertain this case as presently constituted*
- (4) *It is in the interest of justice to uphold the Preliminary Objection.*

This Hon. Court after taking argument from both the Defendant and the Claimant's Counsel delivered its Ruling on the 09/05/2023 wherein the Notice of Preliminary Objection was dismissed.

The Defendant/Applicant apart from the issue of abuse of Court process which I have already dealt with, reproduced same issues that was determined already in the Notice of Preliminary Objection.

The law is that once a Court has determined the rights of the parties in a ruling, it has become *functus officio* with regard to that matter and lacks the jurisdiction to reopen same and make any other pronouncement in the same matter. The only exceptions are the correction of clerical errors or accidental slips. See ***POLARIS BANK LTD & ORS. VS. AMINU & ORS. (2024) LPELR 62299 (CA)***.

It is my ruling that, the only option left for the Defendant/Applicant with respect to the issues that were already determined is to go on Appeal and not to bring it back again.

On the whole this Notice of Preliminary of Objection lacks merit and it is hereby dismissed.

**SIGNED:
HON. JUDGE
11/03/2025.**

APPEARANCE:

*C. A. Ukaforo, Esq, with D. C. Alozie, Esq, for the Claimant
Defendant not in Court and not represented.*