

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/2650/2024
DELIVERED ON THE 14/05/2025**

BETWEEN:

FIRST PLACE SUPERMARKET.....CLAIMANT

AND

- 1. FEDERAL CAPITAL TERRITORY ADMINISTRATION**
 - 2. FEDERAL HOUSING AUTHORITY**
 - 3. MISS NGOZI ABAKPORO**
- } **DEFENDANTS**

JUDGMENT

The Claimant approached this Court vide an Originating Summon dated and filed the 30/06/2024 and formulated the following questions for determination to wit;

- (1) Whether by section 241 of the Constitution of the Federal Republic of Nigeria 1991, the Claimant Solicitors letters to the 1st Defendant dated 5th February, 2024 and 21st May, 2024 respectively and firmly established principle of *Lis Pendens*, the Defendant and or their agents have the lawful authority to issue notices, seal and or demolish house 18, 3rd Avenue Gwarinpa, Abuja or in any way tamper with the said property which the Claimant occupies as lessee, the**

- subject matter of Appeal No. CA/ABJ/CV/195/2024, pending before the Court of Appeal, Abuja between the Claimant and the 3rd Defendant herein.
- (2) Whether the Notices to seal and/or demolish served on the Claimant by 1st and 2nd Defendant through the instrumentality of the 3rd Defendant in respect of House 18, 3rd Avenue, Gwarinpa, Abuja is null and void in view of the pendency of Appeal No. CA/ABJ/CV/195/2024, the subject matter of the said Notices.

The Claimant stated that pursuant to the questions above, the following reliefs are being sought:

- (1) *A Declaration that by virtue of section 241 of the Constitution of the Federal Republic of Nigeria 1999, the Claimant Solicitors letters to the 1st Defendant dated 05/01/2024 and 21/05/2024 respectively and the firmly established principle of Lis Pendens, the Defendants or their agents do not have the authority to issue notices, seal demolish and/or temper in any way with House 18, 3rd Avenue, Gwarinpa, Abuja, the subject matter of Appeal pending before the Court of Appeal, Abuja in Appeal No. CA/ABJ/CV/195/2024 between the Claimant and the 3rd Defendant herein pending the determination of the said Appeal.*
- (2) *A Declaration that Notices to seal and/or demolish or any way tamper with House 18, 3rd Avenue, Gwarinpa, Abuja, served on*

the Claimant by 1st and 2nd Defendants through the instrumentality of 3rd Defendant is null and void in view of the pendency of Appeal No. CA/ABJ/CV/195/2024 on the subject matter.

- (3) An Order of this Hon. Court restraining the Defendants, their employee, privies, agents or any other person or body under their watch/direction (Abuja Metropolitan Management Council, Department of Development Control etc.) from issuing Notices, sealing and or demolishing or in any way tampering/interfering with House 18, 3rd Avenue, Gwarinpa, Abuja, pending the determination of Appeal No. CA/ABJ/CV/195/2024 between the Claimant and the 3rd Defendant herein before the Court of Appeal in respect of the said property.*
- (4) An Order directing the Defendants to pay the Claimant the sum of ₦50,000,000 (Fifty Million Naira) only as general damages.*
- (5) The cost of this suit.*

The Claimant in support of the Originating Summons deposed to 22 paragraphs supporting affidavit wherein it was stated that the 3rd Defendant is the Landlord of the Claimant in respect of House 18, 3rd Avenue Gwarinpa, Abuja and as a result of lessor – lessee dispute between the Claimant and 3rd Defendant, a suit No. CV/1947/2020 was commenced by the Claimant against the 3rd Defendant wherein Judgment was delivered against the Claimant by Hon. Justice A. S.

Adepoju and that the said Judgment was appealed against to the Court of Appeal.

That despite the appeal, the 3rd Defendant moved the 1st Defendant to serve the Claimant with Quit Notice to vacate the said property, remove illegal structure and revert back to the original land use. And that consequent upon the Quit Notice, the Claimant's Solicitor wrote the Defendant letter informing them of Appeal yet another letter was served on the Claimant.

The Claimant annexed the following documents to the writ;

- (1) CTC of Court Judgment**
- (2) Notice of Appeal**
- (3) Quit Notice dated 16/1/2024**
- (4) Acknowledgment Copy of letter**
- (5) Another Quit Notice**
- (6) Acknowledgment copy of letter**
- (7) Notice from the Defendants and**
- (8) Brief of argument.**

All these were annexed and marked as Exhibit **A – H**.

A written address was filed wherein Counsel raised sole issue for determination to wit; whether the Originating Summons has merit and the Claimant is entitled to the reliefs sought.

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

The 1st Defendant, in reacting to the Originating Summons, filed a 10 paragraphs counter affidavit deposed to by one Saidu Wodi, a Legal Assistant in the Litigation Registry of Legal Services Secretariat of the 1st Defendant.

It is the deposition of the 1st Defendant that it is not a party suit No. **CV/1947/2020** and equally not a party to the Lease Agreement that give rise to suit No. **CV/1947/2020**.

That the Judgment was entered against the Claimant in the suit it instituted and there is no stay of execution and the Defendant cannot be compelled to stay action without Court order. And that this suit amount to abuse of Court process.

A written address was filed wherein two issues were formulated for determination to wit;

- (1) Whether this Originating Summons constitutes an abuse of Court process**
- (2) Whether the Claimant is entitled to the reliefs sought.**

Learned Counsel argued that the present suit of the Claimant amount to an abuse of Court process and therefore, same should be dismissed.

On the part of the 2nd Defendant, a counter affidavit of 13 paragraphs was filed deposed to by Uchechukwu Nduagu, the Executive Officer Legal to the 2nd Defendant.

It is the counter affidavit of the 2nd Defendant that the affidavit of the Claimant is riddled with falsehood, prevarication and intended to mislead the Honourable Court as the 2nd Defendant is not a party to suit No. **CV/1947/2020** or Appeal No. **CA/ABJ/CV/195/2024**.

That this suit as constituted does not disclose a reasonable cause of action against the 2nd Defendant as the suit is an abuse of Court process.

A written address was filed, wherein the issue “*whether the Claimant has made out a case to be entitled to the relief sought*” was formulated for determination.

Learned Counsel argued the above issue citing relevant case law in urging the Court to dismiss this suit in the interest of justice.

On the part of Court, the matter basically, is seeking to restrain the Defendants from dealing with the subject matter of the Judgment of my lord Hon. Justice A. S. Adepaju of FCT High Court 13, Gwagwalada in suit No. **CV/1947/2020** against the 3rd Defendant and appeal No. **CA/ABJ/CV/195/2024** which is pending in the Court of Appeal.

The Claimant stated that it notified the Defendants of the pendency of an appeal in respect of the said property, accompanying the letter with Notice of Appeal and motion for stay and urging the Defendants to stay all actions pending the outcome of the appeal. The acknowledged copy of the said letter filed on the 05/02/2024 was annexed as **Exhibit ‘D’**.

Reacting to the case of the Claimant, both the 1st and 2nd Defendants argued that the case of the Claimant amount to abuse of Court process and it equally a forum shopping. I shall therefore, consider the issue of abuse of Court process raised by the Defendant first before delving into the substantive matter if need be, same has to do with the jurisdictional competence of this Court to adjudicate on the suit before it.

The law is well settled that it is the Plaintiff claim that determines jurisdiction. The question of jurisdiction is very fundamental and cannot therefore be undermined in any proceedings as it is its bedrock. When raised, no matter the stage of the proceedings, the issue of jurisdiction has to be determined before proceeding any further in the hearing. **ABAGBARIAHA VS. TORUEMI & ANOR (2012) LPELR 15575 (SC).**

It is the contention of both learned Counsel for the 1st and 2nd Defendant that the present suit amount to abuse of Court process. I shall therefore, resolve the issue of the abuse of Court process shortly.

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 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 para F – H.**

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 62 63 para D** stated as thus; “There is abuse of process of Court where the process of the Court has not been used *bonafide* 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 exists 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 process 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 purpose of the action.

To resolve this matter, the Court has formulated only one issue for determination viz, whether suit No. **FCT/HC/CV/2650/2024** filed before this Court amounts to an abuse of Court process?

It is instructive to state here that the facts given rise to the instant suit and the suit decided by my learned brother in suit No. **CV/1947/2020** and the Appeal No. **CA/ABJ/CV/2020** has to do with tenancy issue in house 18, 3rd Avenue, Gwarinpa, Abuja which the Claimant leased from the 3rd Defendant.

The Claimant herein took out a writ of summon in suit No. **CV/1947/2020** against the 3rd Defendant and Judgment was entered against it by my learned brother Hon. Justice A. S. Adepaju. Dissatisfied with the Judgment, the Claimant filed an Appeal with Appeal No. **CA/ABJ/CV/2023** in Abuja Judicial Division of the Court of Appeal.

Also, in evidence is motion No. **M/13529/2023** filed by the Claimant seeking for an order of my learned brother Hon. Justice A. S. Adepaju to stay the execution of the Judgment delivered on the 17/10/2023 pending the determination of the Appeal already filed against the said Judgment at the Court of Appeal.

It is worthy to state here that the said motion is still pending and equally the Appeal is still pending.

The Claimant now filed this action seeking to stop the Defendants from tampering with the subject matter on the grounds that same is against the principle of *lis pendens*.

From the above, it is obvious that the subject matter which give rise to this suit and that which is pending in Court of Appeal is the same. More importantly, the relief sought by motion No. **M/13527/2023** pending before my learned brother is the same.

The question is, would the Claimant still file this action if my learned brother granted motion No. **M/13527/2023**? Certainly No!

An abuse of process remains an abuse no matter how well clothed and costumed. I refuse to be cajoled. Accordingly, suit No. **CV/2650/2024** is hereby dismissed for being an abuse of Court process.

SIGNED:
HON. JUDGE
14/05/2024.

APPEARANCE:

Onyeka Osigwe, Esq, with F. P. Tarka, Esq, for the Claimant

V. N. Jiya, Esq, for the 1st Defendant

Douglas Najime, Esq, with Verun Joy, Esq, for the 2nd Defendant