

**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/ CV/965/2024
MOTION NO. FCT/HC/M/2892/2024
MOTION NO.FCT/HC/M/5100/2024
DELIVERED ON THE 12/03/2025**

BETWEEN:

MR. FRANK EMEKA.....CLAIMANT/APPLICANT/RESPONDENT

AND

VICTOR C. OFOEGBU.....DEFENDANT/RESPONDENT/OBJECTOR

(Suing Under the Name and Style of Victor Ofoegbu & Co)

CONSOLIDATED RULING

The Claimant took out a Writ of Summon and Statement of Claim dated and filed the 23/01/2024 and sought for various reliefs as contain on the face of the Writ against the Defendant. Filed alongside the Writ of Summon is a Motion on Notice brought pursuant to Order 11 Rule 1 of the Rules of this Hon. Court. In the said Motion the Claimant seeks for the following reliefs:

- (1) An Order of this Hon. Court entering summary Judgment for the Claimant/Applicant against the Defendant/Respondent as per Claimant’s Writ of Summons and Statement of Claim.*
- (2) And for such further order or orders as this Hon. Court may deem fit to make in the circumstances of this application.*

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

- (1) The claim in this suit is for liquidated money demand**
- (2) The amount claimed by the Claimant against the Defendants is ascertainable**
- (3) The Defendant is indebted to the Claimant to the tune of ₦9,400,000 (Nine Million, Four Hundred Thousand Naira) only being the sum collected by the Defendant as rent from the Claimant's tenants and the sum of ₦1,000,000.00 (One Million Naira) only being the sum collected as service charges from the Claimant's tenant.**
- (4) The Defendants has been in default of paying the outstanding sum of ₦9,400,000 being the sum collected by the Defendant as rent from the Claimant's tenant and ₦1,000,000.00 (One Million Naira) only being the sum collected as service charges from the Claimant's tenants despite repeated demands from the Claimant.**
- (5) The Claimant believes that the Defendant has no defence to the claim.**
- (6) The Claimant while filing this application also filed his originating processes, statement of claim, the exhibits, the depositions of the Claimant's witness and all other accompanying Court processes that will enable him to apply to the Court for summary Judgment procedure in accordance with the Rules of this Hon. Court.**
- (7) It is in the interest of Justice to grant this application.**

The said application is supported by a 31-paragraph affidavit deposed to by one Princewill Ndukwe Ude, a brother to the Claimant/Applicant.

It is the deposition of the Claimant/Applicant that he is the beneficial owner of plot **507**, Cadastral Zone **B10**, Dakibiyu District, Jabi Abuja which is a block of flats comprising 8 units of three bedroom flats and

all the flats were fully occupied with tenants before the Claimant purchased the property from the former owner.

That after the Claimant's solicitor took over the property, it was discovered that the Defendant collected rent amounting to **₦9.4 Million** from the tenants in the property after transferred of the property to the Claimant.

It is the deposition of the Claimant that he caused his solicitor to write to the Defendant to remit the money, but the Defendant replied that he paid the money to the former owner, but the former owner denied the said allegation.

The claimant annexed the following documents to the Motion, to wit;

- (1) **Deed of Assignment**
- (2) **Reply to the Solicitor letter**
- (3) **Solicitor Status of tenancy service charge**
- (4) **Solicitor letter**
- (5) **Reply letter**
- (6) **Defendant letter**

A written address was filed wherein the issue "*whether the Claimant has made out a good case to enable the Court grant the application*" was formulated for determination.

Learned Counsel argued the above issue succinctly in urging the Court to grant the reliefs sought. Reacting to the Motion, the Defendant filed a 24-paragraph counter affidavit duly deposed to by the Defendant himself.

It is the counter affidavit evidence of the Defendant that he was appointed to manage plot **507**, Cadastral Zone **B10**, Dakibiyu District, Jabi, Abuja by Lolo Ogechi Azubuike.

That he was not aware that the Claimant/Applicant purchased the property until April, 2023 when one Barrister O. S. Agbaeze called to inform him that the Claimant has bought the subject matter in 2022.

The Defendant stated the Claimant through his Solicitor wrote him a letter in May, 2023 demanding for **₦9,400,000** and that he replied that he has been remitting the rent to the person who appointed him. That as at the 30th March, 2023 five out of the eight Tenants had fully paid while one tenant had paid **₦1,400,000** leaving a balance of **₦400,000**.

That the Claimant's reported the matter to the AIG Zone 7 office, Wuse, Abuja and investigation revealed that he was not culpable.

A written address was filed wherein the issue "*whether the Claimant has made out a good case to enable the Court grant the application*" was formulated for determination.

Learned Counsel submitted that the Claimant has not made out a case worth this Hon. Court entering Judgment in his favour and therefore same should be dismissed.

On the part of the Defendant, Notice of Preliminary Objection was filed with Motion No. **M/5100/2024**. The Defendant/Applicant on the said Notice of Preliminary Objection sought for an order of Court dismissing the suit of the Claimant for the Court lacking the jurisdiction to entertain same.

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

- (1) There is no privity of contract between the Claimant and the Defendant/Objector.**
- (2) There is no reasonable cause of action disclosed in this suit.**

- (3) The Defendant/Objector had long remitted the rent collected with respect to the property to the person that appointed him long before his notification of change of ownership by the Claimant.**
- (4) That the suit is gross abuse of Court process founded on recklessness and negligence.**

The said Notice of Preliminary Objection is supported by a 26-paragraph affidavit deposed to by the Defendant himself. A perusal of the affidavit in support of the application will reveal that it is the same in content with the counter affidavit against the Claimant's motion. I shall therefore avoid repetition, but shall make reference to it at the appropriate time.

Learned Counsel filed a written address wherein two issues were formulated for determination to wit;

- (1) Whether there is any privity of contract between the Claimant/Respondent and the Defendant/Objector to cloth this Court with jurisdiction.**
- (2) Whether the action of the Claimant/Respondent is not an abuse of Court process.**

Learned Counsel argued the above issues citing relevant cases in urging the Court to dismiss the suit.

The Claimant upon service, filed a counter affidavit of 29 paragraphs deposed to by Princewill Ndukwe Ude, brother to the Claimant.

It is the deposition of the Claimant/Respondent that the Defendant having admitted becoming aware of the purchase of the property in April, 2023, sending money to the former owner on 18/04/2023 is wrong.

That the Defendant reply on 23/05/2023 does not contain details of people and particulars of the person he allegedly remitted the rent to. That the Claimant is entitled to the rent in the property he legally purchased.

Learned Counsel adopted the issue formulated by the Defendant/Objector and argued same in urging the Court to dismiss this application.

The Defendant/Applicant filed a further affidavit wherein Court was urged to grant this application.

On the part of Court, I have considered the application filed by both the Claimant and Defendant as reviewed in this Ruling. I shall first of all deal with the application filed by the Defendant/Applicant same been jurisdictional in nature.

It has been stated overtime, that the issue of jurisdiction is very fundamental to the entertainment and determination of any given suit filed before the Court. The fundamental of jurisdiction has been recognized to mean that where a Court has no jurisdiction to determine a case, the proceedings become *ab initio* nullity, no matter how well conducted and decided. **NWAJUBA VS. TINUBU & ORS. (2023) LPELR 60125 (CA).**

The objection of the Defendant/Objector are anchored on 3 grounds, to wit;

- (1) No privity of contract between the parties**
- (2) There is no reasonable cause of action**
- (3) That the suit is gross abuse of Court process**

I shall therefore, consider the issue one after the others to ascertain whether this Hon. Court has jurisdiction to entertain the suit.

On the 1st ground, whether there is privity of contract between the parties, indeed, it is only where there exists a contract between parties that it can be enforced. **MR. PETNICO (NIG) LTD & ORS. VS. MIDEA SYSTEMS LTD & ORS. (2015) LPELR 25844 (CA).**

In law, privity of contract is always between the contracting parties who must stand, or fall, benefit or lose from the provisions of their contract. Their contract cannot bind third parties nor can third parties take or accept liabilities under it nor benefit there under. **PRINCE ALABI VS. SHITTU OGUNLOWO & ORS. (1997) 6 NWLR (PT. 5091).**

It is the contention of the Defendant/Objector that the Claimant was not the one that appointed him and therefore, he does not owe him any obligation to remit the rents collected with respect to the property.

It is not in doubt that the Defendant/Objector was never appointed to manage the property by the Claimant as the Defendant was appointed by Lolo Ogechi Azubuiké in 2017. The Defendant annexed Exhibit **VCO1** to that effect.

However, the Claimant/Respondent on its part, annexed Exhibit 'A' which is a formal Notification of change of ownership in respect of Plot **507**, Cadastral Zone **B10**, the subject matter. The Defendant/Objector in response to the letter, stated that, it had long remitted the rent collected with respect to the property to the person that appointed him long before the Exhibit 'A' was sent to them.

It is trite that the Courts are not allowed to delve into the substantive suit at the preliminary stage of any case. **AGWU & ORS. VS. JULIUS (NIG) PLC (2019) 11 NWLR (PT. 1682) AT 165.**

In this case, the contention of the Defendant that he had long remitted the rent collected with respect to the property to the person that appointed him long before the notification of change of ownership by the Claimant forms part of the issues in the substantive case as the Claimant's claim before the Court is that all the monies collected as rent by the Defendant after the purchase of the property from the former owner has not been remitted to him.

The law is that at the interlocutory stage, no court, whether trial or appellate, is allowed to delve into the substantive matter pending and decide it. See **A. G. KWARA STATE VS. LAWAL (2017) 70 NSCQR 444.**

From the above authority, I shall therefore refrain to go into the issue of privity of contract at this stage, hence same is also the issue at the substantive case. I therefore resolve issue No. one in favour of the Claimant/Respondent.

I shall consider issue No. two, whether there is a reasonable cause of action disclosed by this suit. A cause of action has been defined as the fact or combination of facts which give rise to a right to sue. See **WURO BOGGA NIG. LTD & ANOR VS. MINISTER OF FCT & ORS. (2009) LPELR 20032 (CA).**

To determine whether the Claimant has a cause of action against the Defendant, the only process that the Court will consider is the Claimant's statement of claim and not the defence of the Defendant. See

DAIRO VS. U.B.N PLC (2007) ALL FWLR (PT. 392) 1846 AT 1905 – 1906.

In the instant case, the Claimant avers that sometime in November 2023, he purchased plot **507**, Cadastral Zone **B10**, Dikibiyu District, Jabi Abuja from one Hon. Ude Okochukwu, and that after all rights in the property has been transferred to the Claimant, the Defendant collected rents from the tenants residing in the property and it is that rent that was collected that the Claimant is asking the Defendant to give him in this case. Though the Defendant has denied the said allegation vehemently, on whether the Claimant's case has merit or not is the matter of substantive case. I shall therefore again resolve this issue in favour of the Claimant.

On issue No. 3, whether the action of the Claimant/Respondent is not an abuse of Court process.

Abuse of Court process is the improper use of judicial process to interfere with the due administration of Justice. Multiplicity of actions on the same subject matter against the same opponent on the same issue is one of the instances of Abuse of Court process. See **R. BANKEY NIG. LTD VS. CADBURY NIG. LTD (2022) LPELR 7820 (SC)**.

It is trite that an abuse of Court process will only occur when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent such as instituting a multiplicity of actions on the same issues, parties and subject matter. See **STABILINI VISIONI NIG. LTD VS. SUNDERTON VENTURES LTD (2011) ALL FWLR (PT. 602) 1735 AT 1781**.

From the facts of this case, it is my ruling that same does not amount to abuse of Court process. I so hold. On the whole, the notice of

preliminary objection with motion No. **M/5100/2024** lacking in merit is hereby dismissed.

Having dismissed the Notice of Preliminary Objection, I shall now turn to motion No. **M/2892/2024** filed by the Claimant Applicant seeking for the Court to enter summary judgment for the Claimant against the Defendant as per Claimant's Writ of Summons.

I must observe here that, the purpose of the procedure of summary Judgment is to enable the Plaintiff or Claimant obtain summary Judgment without trial, where his case, is patently clear and unassailable. See **NKWU MARKET COMMUNITY BANK (NIG.) LTD VS. OBI (2010) LPELR 2051 (SC)**.

The summary Judgment procedure is adopted when it is perceived that the Defendant could not possibly have any defence to the claim. A suit is maintainable under this procedure if it relates to a claim for a debt or liquidated money demand. See **BENDEL CONSTRUCTION CO. LTD VS. ANGLO DEV. CO. NIG. LTD (1972) ALL NLR (PT. 1) 153**.

The power of the Court to grant the application under consideration is provided under Order 11 Rule 1 of the Rules of this Hon. Court for avoidance of doubt, the Rules provides as follows:

“Where a Claimant believes that there is no defence to his claim, he shall file with his originating process, the statement of claim the exhibits, the depositions of his witness and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in support of the application.”

The summary Judgment procedure which is similar to the undefended list procedure is designed to enable a party obtain Judgment especially in

liquidated money demand cases, without the need for a full trial where the other party cannot satisfy the Court that it should be allowed to defend the action. See **THOR LTD VS. FCMB LTD (2005) LPELR 3242 (SC)**.

I have seen and carefully read the defense of the Defendant in this case. The Defendant having denied completely with the assertion of the Claimant. Certainly, this suit cannot be resolve via order 11 of the Rules of this Court. I shall therefore do the needful by dismissing this application. Consequently motion No. **M/2892/2024** is hereby dismissed.

SIGNED:
HON.JUDGE
12/03/2025

APPEARANCE:

*Benson Ibezim, Esq, for the Defendant/Respondent/Objector
Claimant/Applicant/Respondent not in Court and not represented*