

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

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/252/19
DATE: : TUESDAY 12TH MAY, 2020

BETWEEN

**EWUZIE CHARLES IKEOKWUADIM } CLAIMANT/
} RESPONDENT**

AND

**WINNING CLAUSE LIMITED } DEFENDANT/
} APPLICANT**

RULING

This Ruling is at the instance of the Defendant/Applicant who approached this Honourable Court vide **Motion No. M/1846/19** seeking for an Order of this Honourable Court dismissing this Suit in limine for want of jurisdiction and for such further or other Orders the court may deem fit to make in the circumstances.

The grounds upon which the application was brought are as follows:-

- a. This suit is caught up by the doctrine of Res Judicata.
- b. The High Court of the FCT, a court of competent jurisdiction, in **Suit No. FCT/HC/CV/1624/2015: Ewuzie Charles Ikeokwuadim VS Winning Clause Limited & 4 ors** had determined and adjudicated on the subject matter of this suit.
- c. That decision of the FCT High Court is binding on the parties in this suit.

- d. That the parties, subject matter and cause of action in Suit No. **FCT/HC/CV/1624/2015** and the present suit are the same.
- e. There is a pending Appeal No. **CA/A/642/2017: Winning Clause Ltd VsEwuzie Charles Ikeokwuadim& 4 ors** initiated by the Defendant/Applicant against the Judgment of the FCT High Court in Suit No. **FCT/HC/CV/1624/2015** in respect of the subject matter of this suit. That appeal has not been determined.
- f. There is also another pending Appeal vide a Notice of Appeal dated 25th September, 2019: Ewuzie Charles Ikeokwuadim VS Winning Clause Limited & 4 ors initiated by the Claimant/Respondent against the Defendant/Applicant in respect of the subject matter of this Suit. That Appeal has not been determined.

- g. That until the said two Appeals are determined, this Honourable Court lacks jurisdiction to entertain this Suit.
- h. That this suit constitutes an abuse of process of court.
- i. That this Honourable Court lacks jurisdiction to entertain this suit.

In support of the Motion is an affidavit of 21 Paragraphs duly deposed to by One Chris Afunogu, a Manager in charge of construction of the Applicant.

It is the deposition of the Applicant that the Claimant had initiated Suit No. **CV/1624/15** against the Defendant and four others at the High Court of FCT claiming possession, damages for trespass, declaratory and injunctive reliefs. The processes were annexed as Exhibit '1(a)' and '1(b)' respectively.

Applicant avers that after full trial, Judgment was entered for the Claimant/Respondent vide Exhibit '2' and the Applicant filed an Appeal vide Exhibit '3'.

That despite the pendency of Appeal, the Claimant misled the Court and Writ of attachment was issued and the Judgment was executed.

It is the averment of the Applicant that, the Applicant brought a Motion to set aside the execution and refund the Sum of ₦1,000,000.00 (One Million Naira) only being the sum Claimant/Respondent realized in the course of execution of the said Judgment and upon service, the Claimant/Respondent filed a Motion urging the Court to grant him possession. The said Motion was annexed as Exhibit '4'.

That the execution was set aside and the Claimant/Respondent was ordered to pay the Applicant the Sum of ₦1,000,000.00 (One Million Naira) as money realized during the execution vide Exhibit 5 and the Claimant/Respondent appealed against the Ruling vide Exhibit '6'.

That the parties are the same and the subject matter is same.

In compliance with law a written address was filed wherein two issues were formulated for determination to wit;

- 1. Whether the Claimant/Respondent is not estopped from maintaining this Suit in view of the Judgment of the FCT High Court in Suit No. CV/1624/18 between Ewuzie Charles Ikeokwuadim VS Winning Clause Limited & 4 ors regarding the res in the Suit.***
- 2. Whether the Suit does not constitute an abuse of process in view of the pendency of Appeal No. CA/A/642/2017. Winning Clause Limited VS Ewuzie Charles Ikeokwuadim & 4 ors lodged by the Defendant/Applicant against the Judgment of the FCT High Court and another appeal lodged by the Claimant/Respondent against the Ruling of the***

FCT High Court vide a Notice of Appeal dated 25th September, 2019.

On issue 1, whether the Claimant/Respondent is not estopped from maintaining this Suit in view of the Judgment of the FCT High Court in Suit No. CV/1624/18 between Ewuzie Charles Ikeokwuadim VS Winning Clause Limited & 4 ors regarding the res in the Suit.

Learned Counsel submit that in **Suit No. CV/1624/15** the Claimant/Respondent sought for the following:-

- a. A Declaration that the demand for further payment of the sum of Thirteen Million Naira (₦13,000,000.00) or any other amount whatsoever as land charges by the 1st Defendant is in contravention of the Consent Judgment delivered in **FCT/HC/CV/3913/2012**.
- b. A Declaration that the forceful takeover of the Plaintiff's house known as Block A46 within Plot 67,

Cadastral Zone C05, Kafe District, Abuja, FCT by the 1st Defendant is unlawful.

- c. An Order of perpetual injunction restraining the Defendants by themselves or through any of their agents, privies, licensees, employees or whomsoever however so called or described from interfering with the ownership and/or possessory rights of the Plaintiff over Block A46 located within Plot 67, Cadastral Zone C05, Kafe District, Abuja, FCT.
- d. The sum of Twenty Million Naira (~~₦~~20,000,000.00) only as damages for trespass.

And that Judgment was entered in favour of the Plaintiff against the Defendant as follows:-

1. That the demand for further payment of the sum of ~~₦~~13,000,000.00 or any other amount whatsoever as land charges by the 1st Defendant is in contravention of the consent Judgment delivered in **Suit No. FCT/HC/CV/3912/2012.**

2. That the forceful takeover of the Plaintiff's building known as Block A46 within Plot 67, Cadastral Zone C05, Kafe District, Abuja FCT by the 1st Defendant is unlawful.
3. The Defendants by themselves or through any of their agents, privies, licensees, employees or whomsoever however so called or described are restrained from interfering with the ownership and/or possessory right of the Plaintiff over Block A46 located within Plot 67, Cadastral Zone C05, Kafe District, Abuja FCT.
4. N1,700.00 (Seven Hundred Thousand Naira) as cost.
5. I award One Million Naira as damages for trespass against the 1st Defendant.

It is the submission of the Learned Counsel that **Appeal No. CA/A/642/2017** is pending in the Court of Appeal and the Claimant again filed this Suit and that same amount to abuse of court process. Counsel cited and relied

on Section 169 & 173 of the Evidence Act, 2011 and the case of *AGBAJE VS I.N.E.C (2016)4 NWLR (Pt. 1501) 151.*

On issue 2, *whether the Suit does not constitute an abuse of process in view of the pendency of Appeal No. CA/A/642/2017. Winning Clause Limited VS Ewuzie Charles Ikeokwuadim & 4 ors lodged by the Defendant/Applicant against the Judgment of the FCT High Court and another appeal lodged by the Claimant/Respondent against the Ruling of the FCT High Court vide a Notice of Appeal dated 25th September, 2019.*

Learned Counsel submit that the Defendant/Applicant has a pending Appeal and if the Appeal is determine it will affect the fate of this Suit in this Court and this Suit would amount to abuse of court process. *NYAH VS NOAH (2007)4 NWLR (Pt. 1024)320.*

Upon service, the Claimant/Respondent filed a Counter Affidavit of 6 Paragraph deposed to by UcheOsuji a Litigation Secretary in the Law Firm of the Claimant/Respondent.

It is the affidavit of the Claimant that **CV/1624/2015** and the appeals emanating from the said Suit are not same as the parties in the present Suit as exhibited in Exhibit '1(a) & b' and Exhibit '3' respectively are not the same.

That the subject matter is not the same as in this Suit and that the present Suit is between just the two parties listed above and the subject matter is for use and occupation of the Claimant's house from 1st March, 2014 till possession is given up.

That what the Court decided in **Suit No. CV/1624/15** was essentially to determine that the Claimant had ownership of the Plot known as Block A46, Plot 67, Cadastral Zone C05, Kafe District, Abuja, FCT and restrained the Defendant from trespass. And that the matter came by

way of Originating Summons for interpretation of the Consent Judgment in **Suit No. CV/3913/2012** as it affects the rights of the Claimant over the property in issue.

Learned Counsel filed a written address and formulated a lone issue for determination to wit; *whether or not the present Suit is ResJudicata and constitutes an abuse of court process.*

Arguing on the above, Learned Counsel submit that for a plea of ResJudicata to succeed the following must be fulfilled.

- a. There must be an adjudication of the issues joined by the parties.
- b. The parties or their privies as the case may be must be the same in the present case as in the previous one.
- c. The issue and the subject matter must be the same in the previous case as in the present Suit
- d. The adjudication on the previous case must have been by a court of competent jurisdiction.

e. The previous decision must have finally decided the issue between the parties, that is the right of the parties must have been finally determined. ***COLE VS JIBUNOH (2016)4 NWLR (Pt. 1503) Page 499 at 531.***

Counsel submit further that the parties in **Suit No. CV/1624/15** are 6 in number whereas the parties in the present Suit are only two and that the subject matter is not the same.

Court was urged to dismiss this application in the interest of justice.

The Defendant/Applicant replied on points of law upon been served with the Counter Affidavit of the Claimant/Respondent.

It is the reply of the Respondent that the subject matter is the same and the relief are also same contrary to the argument of Claimant/Respondent.

Court was urged to so hold and strike out this Suit for Abuse of Court Process.

Court:-An 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 instituting multiplicity of action on the 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 paragraphs F – H, B - E (C A).*

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) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D - E** stated thus;

There is abuse of process of court where the process of the court has not been use bona-fide 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 exist 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 processes 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 purposes of the action.*

To resolve this matter, the court has formulated only one issue for determination, viz;-“*whether suit No FCT/HC/CV/252/19 filed before High Court amounts to an abuse of court process.*”

As I stated earlier, the rationale of the law in abuse of court process is that there must be an end to litigation, and

a litigant must not be made to suffer the same rigour/Jeopardy for the same purpose twice.

I must also hasten to note that it is indeed the claim of the Plaintiff that determines the jurisdiction of a court, as stated in *OGUNBADEJO VS ADEBOWALE (2008) All FWLR (pt. 405)1707 at 1717, paragraphs C-D (C-A)*.

I however must state that, there are other determining factors that certainly must be considered. It therefore follows that where, for example, a case of abuse of process of court is established, the court even though seized of the jurisdiction to try a matter, must decline same.

The claim of the Plaintiff/Respondent before this Court are for the following:-

- a. The sum of ₦17,500,000.00 (Seventeen Million Five Hundred Thousand Naira) only being the total sum for the use and occupation of the Claimant's property

for five (5) years from 1st March, 2014 to 1st March, 2019.

- b. The sum of ₦9,500.00 (Nine Thousand Five Hundred Naira) daily as mense profit from 2nd March, 2019 till possession is given up.
- c. Possession for person use.
- d. 10% interest on the Judgment sum until same is fully liquidated.
- e. Cost of this Suit.

Whereas the claim of the Plaintiff before my learned brother's court which has been decided was as follows:-

1. A Declaration that the demand for further payment of the sum of ₦13,000,000.00 (Thirteen Million Naira) only or any other amount whatsoever as Land Charges by the 1st Defendant is in contravention of the consent Judgment delivered in Suit No.

FCT/HC/CV/3913/2012.

2. A Declaration that the forceful takeover of the Plaintiff's building known as Block A46 within Plot 67, Cadastral Zone C05, Kafe District, Abuja FCT by the 1st Defendant is unlawful.
3. An Order of perpetual injunction restraining the Defendants by themselves or through any of their agents, privies, licensees, employees or whatsoever however so called or described from interfering with the ownership and/or possession possessory rights of the Plaintiff over Block A46 located within Plot 67, Cadastral Zone C05, Kafe District, Abuja FCT.
4. The sum of Twenty Million Naira (20,000,000.00) only as damages for trespass.
5. Cost of this Suit.

The parties before me are Ewuzie Charles Ikeokwuadim VS Winning Clause Limited. Whereas the parties before my brother which was decided

areEwuzieCharles IkeokwuadimAND1. Winning Clause Limited 2. SaharahHomes Nigeria Limited 3. ProformWest Africa Limited 4. Alh. KabiruHaruna 5. The Hon. Minister of FCT.

It's clear from above revelation that the issues, claims and parties in both Suitsare not thesame.

On that score, the argument of learned counsel for the Defendant/Applicant cannot be sustained on the premise of abuse of court process or Res – judicata.

Lacken in merit and substance, Motion No. **M/1846/19** is herebydismissed.

Justice Y. Halilu
Hon. Judge
12th May, 2020

APPEARANCES

CHRISTOPHER A., am of Defendant representing Defendant.

CHIDI NWANKWO – for the Defendant/Applicant.

PLAINTIFF/RESPONDENT not in court.