

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/3110/2019
DATE: : THURSDAY 7TH MAY, 2020

BETWEEN:

1. PIUS ACHILIKE
2. ENGR. GOODNEWS GOODMAN AGBI } **CLAIMANTS**

AND

1. HON. JUSTICE MWADA BALAMI (RTD)
2. CHIEF JOHN OGWU
3. DEPUTY SHERIFF, HIGH COURT
OF JUSTICE, ABUJA. } **DEFENDANTS**

RULING

This Ruling is at the instance of the 1st and 2nd Defendants/Applicant who approached this Honourable Court vide a notice of preliminary objection challenging the competence of this suit on the ground that this suit is an abuse of Court process.

In support of the application is an affidavit of 17 paragraph deposed to by Hon. Justice MwadaBalami, the 1st Claimant in this suit.

It is the deposition of the Applicant that on the 5th day of November, 2010 this court sitting as court No. 10, per Hon. Justice A.M Talba(as he then was) delivered it judgment in suit **No. FCT/HC/CV/736/2004**, in favour of the Claimant who were Defendants/Counter – Claimant in the said suit. And appeal was immediately filed vide Exhibit “A”. And pursuant to

the said appeal so filed, this court per Hon. Justice Y. Halilu granted an application for stay of execution vide Exhibit “B”.

It is the deposition of the Applicant that 1st and 2nd Claimant’s counsel have been participating in the appeal proceedings, before the court of Appeal. A copy of the proceedings is annexed as Exhibit “C”, and despite being aware of the pendency of Appeal and the Order for stay of execution, counsel fraudulently applied for enforcement of the judgment of this court vide Exhibit “D1” and “D2” respectively.

Applicants aver further that following the issuance of the writ of execution, an execution was levied on the property, the subject matter of litigation.

That by applying for and obtaining the writ and execution and levying execution on the property known as plot E27, Old Karu Village extension, FCT,

Abuja, the Claimants/Respondents were in grave disregard of the order of this Honourable Court, and that it will be in the interest of justice to grant this application.

In line with law and procedure, written address was filed wherein, a sole issue was formulated for determination to wit; whether this suit is not an abuse of court process and therefore incompetent.

Arguing on the afore – formulated issued, learned counsel submitted that the law is trite that an abuse of court process means that such court process has not been used bonafide and properly as is frivolous, vexatious or oppressive. ***AKINWALE VSAKINWALE (2011) ALL FWLR (Pt. 577) 797 & 806 – 807 (SC).***

Counsel submit further that, the law is trite that a court order must be obeyed, even though same were irregular and until same is overturned a party against whom it is

made is obligated to obey such order. ***AWWAL IBRAHIM VS COL. CLETUS EMEIN & ORS (1996) 2 NWLR (Pt. 430) 322.***

Counsel contended further that, this action filed by the 1st and 2nd Claimant is a bold faced/brazen disregard of the order of this court delivered on the 31st day of December, 2013 and therefore amount to an abuse of court process.

Upon service, Claimants/Respondents filed a 6 paragraph counter affidavit duly deposed to by Pius Achilike, the 1st Claimant in this suit.

It is the deposition of the claimant that this suit as presently constituted by the Claimant and Defendant, is not in any other court except this court, that there is nothing before this Honourable court as there are no grounds to this objection on the face of the preliminary objection.

That it will be in the interest of justice to dismiss this application.

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

- a. Whether an abuse of court process has occurred by the Claimant making demand for the enforcement of his right.
- b. Whether by merely obtaining a notice of appeal and stay of execution. A Judgment Creditor can be deprived of the fruit of his labour in a judgment that is in his/her favour.

Learned counsel argued both issues aforesaid together and contended that a successful litigant cannot be deprived of the fruit of his labour and that from record, this matter started in 2004 and judgment was delivered in 2009 after five long years and the Defendant were

still in quite occupation and enjoyment of the property depriving the Plaintiff the fruit of his labour.

ALAWIYE VS OGUN SANYA (2013) WRN Page 38.

Counsel further argued that from the contents of the claim of the Claimants/Respondents in this suit, the court is clothed with enormous jurisdiction to hear and determine this matter on its merit.

Court was urged to dismiss the application for want of merit.

Court:- I have read and abraised myself with the arguments of both counsel on abuse of process of court which has no precise definition, and 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 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 re-echoed 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/3110/2019 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 clothed with the jurisdiction to try a matter, must decline same.

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

- i. A declaration by the Honourable Court that the execution levied on plot E27 Karu Village extension FCT Abuja in respect of suit No.

FCT/HC/CV/736/2004, the subject matter of this suit is valid, legal and proper in law.

- ii. An Order of the Honourable Court directing the Defendants to approach the court of appeal for any perceived wrong in respect of the execution levied on plot E27 Karu Village extension FCT Abuja in respect of suit No. **FCT/HC/CV/376/2004**, the subject matter of this suit.
- iii. Order of Perpetual Injunction restraining the 3rd Defendant from cancelling in any manner whatsoever execution levied by the FCT, High Court in respect of suit No. **FCT/HC/CV/736/2004** the subject matter of this suit.
- iv. Order of Perpetual Injunction restraining the 3rd Defendant from reinstating the 1st and

2nd Defendants into the premises of plot E27 Karu Village extension, FCT Abuja the subject.

- v. An Order of the Honourable Court directing the 1st and 2nd Defendants to pay the damages of N100,000,000.00 (One Hundred Million Naira) to the claimants for depriving the claimant the use and enjoyment of plot E27 Karu Village extension from 2001 to 9th day of May, 2019.
- v. The sum of N5,000,000.00 (Five Million Naira) being the cost of this action.

In an attempt to unravel the misery surrounding the present application, the reliefs in Exhibit “A” annexed to the preliminary objection and the present suit are jointly considered by way of comparison..a cursory look at the reliefs as contained in Exhibit “A” would reveal that the said matter is alive at the Court of Appeal wherein there is an existing order for stay of

execution of judgment as shown in the annexed Exhibit “B”.

It is also in evidence that the Court of Appeal vide Exhibit “E” granted an extension for the Appellant to regularise its process.

The question that becomes necessary to be asked is as follows:-

Was the Order for stay of execution made by this court vacated?

What is the position of the law on the execution of a judgment when there is an application for stay of execution of such a judgment or ruling?

There are plethora of decided cases by the superior courts wherein the applicable principles of law has been initiated. For instance in *VASWANI TRADING CO. VS SAVALAKH (1972) 1 ALL NLR (Pt. 77)*, Supreme

Court frowned at the action of carrying out the execution of a Judgment when there was a pending application for stay of execution known to the trial court and the parties. In ***JULIUS BERGER NIG.PLC. VS T.R COMM. BANK (2007) 1 NWLR (Pt. 1016) Page 540 at 549 the Supreme Court held*** that the failure of the official of the trial court to withhold the execution of the writ of attachment with the knowledge of the pending motion at the court of Appeal was culpable. The court went further to state that once a notice of Appeal is filed and served on the other party and on the lower court, the other party and the lower court are prohibited from tempering with the Res.

It is instructive to state here that, in the present case, an Order for Stay of execution was duly sought and obtained, but in disobedience to the said order, execution was levied.

Indeed, one of the most fundamental principles upon which the existence of modern society is predicated is the concept of the Rule “of law.” This concept postulates that the regular law is absolutely supreme and that all classes of person are equally subject to the ordinary law courts. One of the principles that derives from the concept is that a judgment and order of a court of competent jurisdiction remains valid and binding unless and until it is set aside. It is an established principle that it is a plain and an ungratified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. This is so even in case where the person affected by the order believes it to be irregular or even void. So long as the order exists, it must be obeyed hook line and sinker by all parties. ***APC & ORS VS KARFI & ORS (2015) LPELR 41857 (CA).***

What is the desire of claimant in this situation?

Why did claimant file the present action during pendency of an existing Appeal and an order for stay of execution in a similar matter?

Could there be any better way of using court process to irritate and annoy an adverse party than this?

A juxtapose of the listed parties in the present suit No. **FCT/HC/CV/3110/2019** and those in Exhibit “A” annexed to the preliminary objection would show that the parties are the same, so are the sought reliefs.

Why did claimants levy execution when they knew and still know there is an order of court for stay of execution?

Orders of Court are meant to be obeyed if the authority and the administration of the court are not to be brought into disrepute, scorn or disrespect.

Disobedience of orders of court is an issue that has been frontally frowned at by the court of Appeal and Supreme Court.. I rely on the authorities of ***OLOWOLE & ANOR VS ALUKO (2014) LPELR 24235 (CA), OJUKWU VS MILAD LAGOS STATE (1986) 1 NWLR (Pt. 18) page 621.***

Why did claimants file this present action?

In utter disobedience to the existing order for stay of execution, Judgment Creditor/Respondent in the matter at the court appeal proceeded to levy execution.

This to my mind is the peak of procedural rascality, disobedience which is most contemptuous.

The legal argument in support of the preliminary objection ably moved by learned counsel for the Defendant/Applicant has the support of laid down judicial pronouncements.

Learned counsel for the Defendant's argument clearly dwarfed that of the Claimants.

Preliminary Objection succeeds, accordingly the present **Suit No. FCT/HC/CV/3110/2019** which has been held to be an abuse of judicial process is hereby struck – out.

Signed
Hon. Judge
7th May, 2020

APPEARANCES

JAMES AGU – for the Claimant/Respondent holding the brief of IKECHUKWU. O

D.A AKATUGBA – for the 1st and 2nd Defendants