

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/1864/10
DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN

**SENATOR JONATHAN ZWINGINA } CLAIMANT/
RESPONDENT**

AND

1. ACCESS BANK PLC. } DEFENDANTS/APPLICANTS
2. ALHAJI ABBA DABO }

RULING

This is a consolidated Ruling base on the two Application filed by the Defendants/Applicants.

The 1st Defendant/Applicant in its Motion No. **M/4493/2020** approached this Honourable Court for an Order dismissing this Suit for lack of jurisdiction, this being an abuse of court process and for such further Orders as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the application was brought and an affidavit of 6 paragraph was duly deposed to by NnaemekaNweke was annexed to the application.

In its affidavit in support, the Applicant avers that sometimes in 2007 the Claimant approached the 1st Defendant for financial assistance to enable him venture into the capital market business and N60,000,000 (Sixty Million Naira) only was granted to the Claimant.

Applicant avers that part of the agreement of the parties was that the ownership and lien on the shares was also collateral on the Legal Mortgage of the properties at Plot 466, 21 Road, 1st Avenue, Gwarimpa II Estate, Abuja and Block B54, Plot 405 Cadastral Zone B01, National Assembly Quarters, Gudu District, Apo, Abuja.

That the Claimant defaulted in payment and a move to recover same saw the Claimant filed Suit No. **CV/355/09** between **SENATOR (PROF) ZWINGINA VS DIAMOND BANK PLC** and that at the time the above Suit was filed, 1st Defendant has already taken step to sell the property.

That a Judgment was delivered by Honourable Justice Jude O. Okeke on the 26th March, 2010, wherein the court held that the facility expired on the 8th of September, 2009.

The Applicant avers that the court have delivered Judgment already in this matter and the present suit is an abuse of court processes.

In line with law and procedure, a written address was filed wherein a sole issue was formulated for determination to wit;

Whether this Suit as presently constituted amounts to an abuse of court process.

Arguing on the above, learned counsel submit that the issue of jurisdiction is very fundamental as it goes to the competence of the Court or Tribunal. And that where there is a feature in a case that rob the Court of jurisdiction, court must decline jurisdiction forthwith.

MADUKOLU VS NKEMDILIM (1962)2 SC NWLR 341.

Learned Counsel contended further that where a suit is an abuse of Court process, that itself a sufficient feature to

rob the court of jurisdiction. *NDIC VS UBN PLC. (2018)12 NWLR (Pt. 1473) at Pp 304.*

On Motion No. **M/1562/19**, the 2nd Defendant/Applicant sought for an Order dismissing this Suit on the ground that it is an abuse of the process of this Honourable Court and this Honourable Court lacks jurisdiction to entertain the same.

In support of the Application is a 5 paragraph affidavit duly deposed to by one Joseph Martin Ipuole, a Counsel in the Law Firm of the Applicant that the Claimant on September 6, 2007 and applied and was granted loan of N60,000,000 (Sixty Million Naira) to finance the purchase of shares vide exhibit 'A' and that a Deed of Legal Mortgage was executed vide Exhibit 'B'.

That the Defendant exercise it right under the Mortgage agreement and sold the property vide Exhibit 'C' and that the Claimant dissatisfied with the sale of his property filed Suit No. CV/355/09 between *SENATOR (PROF)*

J.S. ZWINGINA VS DIAMOND BANK PLC. Vide Exhibit ‘D’ and that Judgment was delivered vide Exhibit ‘G’.

The Applicant in line with law and procedure filed a written address wherein Learned Counsel formulated the following issues for determination.

- i. ***Whether this Honourable Court has the jurisdiction to adjudicate again over this matter after same has already been decided by a Court of competent jurisdiction.***
- ii. ***Whether the suppression/concealment of material facts in his pleadings relating to the filing and determination of a similar suit between the same parties in Suit No. FCT/HC/CV355/09, amounts to the non-disclosure of material facts.***
- iii. ***Whether this Suit as presently constituted is an abuse of the process of this Honourable Court.***

- iv. *Whether the sale of propriety of the Plaintiff's mortgage property was in issue in Suit No. FCT/HC/CV/355/09.*
- v. *Whether the parties are same as in the previous Suit.*
- vi. *Whether the subject matter of the present Suit is the same as the previous one.*
- vii. *Whether issues in the present and previous Suit are the same for the purpose of a plea of res judicata.*

On issue one, *whether this Honourable Court has the jurisdiction to adjudicate again over this matter after same has already been decided by a Court of competent jurisdiction.* Learned Counsel submit that where a court of competent jurisdiction has settled a matter by final decision, the parties cannot re-litigate same again. *OSUNNDE VS AJAMOGUN (1992)6 NWLR (Pt. 246)156 at 183.*

On issue two, *whether the suppression/concealment of material facts in his pleadings relating to the filling and determination of a similar suit between the same parties in Suit No. FCT/HC/CV355/09, amounts to the non-disclosure of material facts.*

Counsel submit that the Claimant has suppressed material facts in this case as the statement of claim did not inform this Honourable Court of the previous Court Judgment on the matter and therefore court should strikeout this Suit.

On issue three, *whether this Suit as presently constituted is an abuse of the process of this Honourable Court.*

Learned Counsel submit that abuse of Court Process is when a party improperly uses judicial process to the harassment, irritation and annoyance of his opponent and to interfere with administration of justice. ***JOKOLO VS GOVERNOR OF KEBBI STATE (2009)1 NWLR (Pt. 1152) 394 (CA).***

Counsel contended further that once a Court is satisfied that the proceedings before it is an abuse of its process, the proper order to make is a dismissal of the action.

On whether the parties and the subject matter of this Suit are the same with the previous Suit, Learned Counsel answer the question in affirmative and refers the Court to Exhibits tender in urging the court to strike out this Suit.

Upon service, the Claimant filed a counter affidavit of 8 paragraph in opposing the 1st Defendant Motion.

It is the deposition of the Respondent as distilled from the affidavit of Abraham Olajide that the Claimant has never applied for a loan facility or any facility wherein the terms and conditions of the grant was reduced into an offer letter.

That there was never an agreement by the parties that ownership and lien in the shares was also collateral on the Legal Mortgage of the properties at Plot 466, 21 Road,

1st Avenue Gwarimpa II Estate, Abuja and Block 54, Plot 405 Cadastral Zone B01, National Assembly Quarters, Gudu District Apo, Abuja.

Suit No. **CV/355/09** sought for the interpretation of the letter of demand written by the 1st Defendant to the Claimant on the September, 2009.

The Claimant avers that Suit No. **CV/355/09** did not decide on the propriety or otherwise of the sale of the property in question.

That the same application before this Honourable Court is seeking to nullify the purported sale of the property in question.

Applicant avers that same application was made and Ruling delivered vide Exhibit 'A'.

In support of the application is a written address wherein, a sole issue to wit; *whether this Suit as constituted*

amounts to an abuse of court process thereby robs this Honourable Court jurisdiction to entertain same.

Arguing on the above, learned counsel submit that the issues raised by the Claimant/Respondent in the present Suit No. CV/1864/10 are issues before the jurisdiction of this Honourable Court and the said claim as clearly stated on the statement of claims before the court have not be determined by any competent court of law.

Learned Counsel submit further that the Suit is constituted before this Honourable Court is not an abuse of court process, the Suit No. **CV/3555/09** determined by Hon. Justice Jude Okeke, there was never a sale of the property or the exercise of sale of the property to the 2nd Defendant by the 1st Defendant.

Counsel contended that the issue of sale was not addressed as it was not part of the reliefs sought by the Claimant and only came to the attention of the Court via a reply on point of law by the Claimant's Counsel.

ADESOJI VS FUTA (2017)9 NWLR (Pt. 1570) Page 208 at Page 221, Para. C – D.

On motion by the 2nd Defendant, the Claimant filed a counter affidavit of 7 paragraph deposed to by One Victor Ngbede, a Litigation Officer in the Law Firm of the Claimant/Respondent.

It is worth mention here that the content of the affidavit and the written address is same as earlier stated in the previous motion. Therefore, no need of repeating same here.

On the part of court, after a careful review of the twoMotions filed by the Defendants/Applicants and the reply put forward by the Plaintiff/Respondent, The issue, ***whether this Honourable Court has jurisdiction to entertain this suit was formulated for determination.*** I shall therefore, be brief on this issue in the interest of all and posterity.

A court is generally competent to adjudicate over a matter only when the condition precedent for its having jurisdiction are fulfilled. A court will be competent when;

1. It is properly constituted as regards numbers and qualifications of its members on the bench and no member is disqualified for one reason or the other.
2. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevent the court from exercising its jurisdiction.
3. The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competent is fatal, for the proceedings are nullity however well conducted and decided. ***MINISTER OF WORKS & HOUSING VS SHITTA (2008) ALL FWLR (Pt. 401) at 847 at 863 – 864.***

Abuse of court process has no precise definition. It 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. ***N.I.C VS F.C.I CO. LTD (2007) 2 NWLR (Pt. 1019) 610 at 630 – 632 Paragraph F- H.***

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 paragraph C-D.***

However I must state here 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.

From the fact before this Honourable court, the Plaintiff/Respondent instituted an action against the Defendants/Applicants in Suit No. **CV/355/09** before this Honourable court presided over by my Learned Brother Hon. Justice Jude Okeke. And also the present Suit No. **CV/1864/10**.

It is instructive to observe here that the subject matter and the parties in both suit are the same. But the relief sought are certainly not the same.

Parties in the suit before my brother Hon. Justice Jude Okeke filed and exchanged pleadings and a judgment delivered on the 26th of March, 2009.

The Claimant again filed this present suit before my learned brother Hon. Justice FolasadeOjo J.

It is instructive to note that similar question on abuse of process was filed before my learned brother FolasadeOjo J. (as he then was) and a ruling delivered on same on the 13th day of July, 2011 wherein my learned brother in page 8 of the ruling held as thus;

“From all of the foregoing I am of the view that the Defendants have failed to establish that the principle of res judicata applies to the present suit and I so hold. The Preliminary Objection of the 1st and 2nd Defendants to this suit fail and same is according dismissed.”

This suit was transferred to my court and similar application is now brought before me.

It is my ruling that, since my learned brother had already ruled that the present suit is not an abuse of court process,

I shall not sit on an appeal in my brother ruling this court being a court of co-ordinate jurisdiction cannot deviate from it.

Accordingly, the only option left for the present Defendants is to appeal to a court of higher jurisdiction, which is the Court of Appeal against the decision of my learned brother, Hon. Justice FolasadeOjo J. (as he then was).

Having not appealed against the decision, certainly, this present application becomes an abuse of court process.

Consequently, both applications been abuse of court process, areliable to be dismissed..they are accordingly dismissed.

***Justice Y. Halilu
Hon. Judge
12th March, 2020***

APPEARANCES

R. OKOTIE-EBOH with B. TARFA and N.C. EGBEZOR
– for the Claimant.

KENNETH N. with CHARLES U. – for the 2nd
Defendant.

1st Defendant not in court and not represented.