

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE**

ON THURSDAY 20th DAY OF FEBRUARY, 2020

SUIT NO: FCT/HC/CV/2005/2018

MOTION NO: FCT/HC/CV/M/9963/2018

BETWEEN:

**SALIMATA OLUMO CLAIMANT/
RESPONDENT.**

AND

- (1) WINNING CLAUSE LTD DEFENDANT/
APPLICANT.**
- (2) FEDERAL CAPITAL
DEVELOPMENT AUTHORITY DEFENDANT/
RESPONDENT.**

RULING

By a Motion On Notice filed on 29/10/2018 and predicated on Section 6(6) (A) (B) and (C) of the 1999 Constitution of Nigeria (as amended), Order 43 Rule 1 of the Rules of Court 2018 and inherent jurisdiction of the Court, the 1st Defendant/Applicant (“The Applicant”) seeks for an order of Court dismissing the substantive suit in limine for want of jurisdiction.

There are eight grounds of the objection as set out on the face of the motion paper.

The application is supported by a 12-paragraph affidavit deposed to by Lilian Nwokolo and Written Address of its Counsel. It is also supported by an 11-paragraph Further Affidavit deposed to by Dingba Chidi and a Reply on points of law.

In response, the Claimant/Respondent (“The Respondent”) filed a 7-paragraph Counter Affidavit deposed to by Yusuf Kadiri and Written Address of her Counsel.

The 2nd Defendant/Respondent did not file any process in reaction to the application.

At the hearing on 14/1/2020, Counsel for the contending parties, relying on their processes urged the Court for and against the application.

In the affidavit in support, it was averred, inter alia, on behalf of the Applicant that the Respondent initiated Suit No: FCT/HC/CV/2053/2015 against the Applicant and the 2nd Defendant/Respondent at the FCT High Court claiming declaratory and injunctive reliefs. In the suit, the Respondent and the Applicant seriously joined issue on the juristic capacity of the Applicant.

After trial, the Court found that the legal capacity of the Applicant was not established by the Respondent and accordingly the Applicant was struck out from the action along with the reliefs claimed against it. A copy of the judgment of the Court is attached as Exhibit 1.

The trial Court after striking out the name of the Applicant from the suit, nevertheless went on and determined all other issues raised in the suit and thereafter struck out the Respondent's suit.

The finding of the Court that the Respondent was not able to prove the legal capacity of the Applicant was not appealed against by the Respondent.

The Applicant filed an appeal against the said judgment of the Court. A certified True Copy of the Notice of Appeal is attached as Exhibit 2.

While the Applicant's appeal against the said judgment is pending, the Respondent filed a fresh suit involving the same parties, subject matter and cause of action as in the previous suit.

The subject matter of the previous suit is Plot No.C33 Winning Clause Estate, Kafe District Abuja. The property is the res of the suit before this Court.

The res, parties and cause of action in the present suit are same as that in the previous suit which was determined by the FCT High Court sitting in Zuba.

The juristic capacity of the Applicant has been made an issue in the Statement of claim and Statement of Defence in this suit.

Between the Respondent and the Applicant, the issue of legal personality of the Applicant has been finally determined and settled by the FCT High Court on Suit No:

FCT/HC/CV/2053/2015. The issue of the juristic personality was raised again in paragraph 2 of the Respondent's Statement of Claim and denied in paragraph 20 of the Applicant's Statement of Defence.

The Respondent cannot raise the issue of legal personality of the Applicant again same having been determined by the FCT High Court Zuba in **Suit No: FCT/HC/CV/2053/2015**. The parties herein are bound by the finding and decision of the FCT High Court Zuba in **Suit No: FCT/HC/CV/2053/2015** with regard to the juristic status of the Applicant.

As the Court does not have the jurisdiction to determine the legal personality of the Applicant for the second time, the correct course of action to follow is to strike out the application and dismiss the suit.

The suit will over reach the Applicant's appeal pending at the Court of Appeal. Proceeding with this suit will be a wild goose chase.

In her Counter Affidavit, it was averred on behalf of the Respondent that in the previous **Suit No: FCT/HC/CV/2053/2015**, the issue joined was whether the Respondent was a company incorporated or not. But in this case, the issue is not only about the incorporation of the company but whether the Applicant is a person who carries on business in the name and style of Winning Clause Nigeria Limited as to be suable under the provision of Order 13 Rule 29 of Rules of Court. The Applicant in this suit is not only sued as a company but an entity which can be sued under the provision of the said Rules. By virtue of this, the Applicant cannot be said to be one and same person.

The previous suit was merely struck out for lack of proof of incorporation status of the Applicant and there was no judgment which determined the rights and obligations of the parties finally.

The judgment striking out the previous suit was rendered on 4/6/2018 and the Respondent filed the instant suit on 5/6/2018 while the Applicant filed his Notice of Appeal on 5/6/2018 hence the appeal cannot be said to be pending when this suit was filed.

As aforesaid, the Applicant filed a Further Affidavit deposed to by Dimgba Chidi along with a reply on point of law on 23/10/2019.

I have read and digested the averments in the Applicant's Further Affidavit. I have also painstakingly read and assimilated the submission of Counsel for the parties in their respective

Written Addresses. The crucial issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the application.

The Learned Applicant's Counsel did contend at the hearing that the Respondent's processes filed in response to the application are incompetent and should therefore be discountenanced by the Court. He contended that while the Applicant served its objection on the Respondent on 29/10/2018, the Respondent who was entitled to 7 days under the Rules of Court to respond to it filed her response on 15/10/2019 – about a year after the objection was served on her. That she did not seek and obtain extension of time before doing so. She also did not pay the default penalty in this regard as required by the Rules of Court 2018.

In his response to this contention, the Learned Respondent's Counsel submitted that if there is any fee which was not paid, that the Respondent undertakes to pay it.

I have given due consideration to the foregoing contention of the parties. By this the Learned Applicant's Counsel raised issue of Procedural Jurisdiction against the Respondent's response to the application. Issue of jurisdiction being threshold in nature, the Court shall proceed to consider it first.

Order 43 Rule 1 (1) and (3) of the Rules of Court 2018 makes provision regarding the filing of motion and response to it.

Order 43 Rules 1(1) and (3) provides:-

“(1) whereby in this Rules any application is authorized to be made to the Court, it shall be made by motion which may be supported by affidavit and shall state the rule of Court or enactment under which the application is brought.

(2) . . .

(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his Written Address and may accompany it with a Counter Affidavit.”

By the foregoing provision of the Rules of Court 2018, a Respondent on whom an Applicant has served an application, where he intends to oppose it, is under a duty to file and serve his Written Address which may be accompanied with a Counter Affidavit within 7 days after receipt of the application. The operative word used in the Rule is “shall” which connotes mandatoriness.

In this matter, a look at the records of the Court shows that the Applicant’s instant motion on notice was served on the Respondent’s Solicitors on 31/10/2018. The chambers duly acknowledged receipt of it on the said 31/10/2018. The Respondent however filed her Written Address to which she attached her counter affidavit on 15/10/2019 and served them on the Applicant’s Solicitors on the same 15/10/2019.

By this, the Respondent served her response to the Applicant's application about a year after she was served with the application. There is nothing in the records of Court showing that she sought or obtain leave of Court extending time for her to file it when she did. What this translates to is that she served her said response in violation of the provision of Order 43 Rule 1 (3) of the Rules of Court 2018.

It is worthy of note that even at the hearing of the application and after the Learned Applicant's Counsel raised this issue, the Learned Respondent's Counsel who had the opportunity, did not deem it necessary to apply to the Court, even orally, to deem the Address/Counter Affidavit as properly filed and served. All the Learned Counsel said was that the Respondent undertakes to pay any default penalty regarding the late filing of her response. By this, the Learned Counsel did not address the issue of failure of the Respondent to file her response to the application within 7 days as mandatorily required by Order 43 Rule 1 (3) of the Rules of Court. As Rules of Court are meant to be obeyed and not ignored and the Respondent herein having ignored or failed to comply with the mandatory provision of Order 43 Rule (1) of the Rules of Court, her response which was filed in defiance of the Rule is incompetent and liable to be discountenanced by the Court. It is so ordered. The Respondent thus has no response to the Applicant's Motion on Notice to be considered. Assuming but without holding that the Court can countenance the Respondent's response one issue that is all pervading in this matter and which I consider very crucial is whether or not the Respondent's instant suit constitutes an abuse of Court process in the circumstance. The definition of abuse of Court process

was very well articulated by the Supreme Court in **SARAKI V. KOTOYE (1992) 9 NWLR (Pt.264) p.156.**

The Learned Respondents Counsel relied on the case. The Apex Court stated thus on the issue.

“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite varieties and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice.”

It is recognized that the abuse of process may lie in both a proper and improper use of the judicial process in litigation. But the employment of judicial process is only regarded as an abuse where the party improperly uses the issue of judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same issues. The multiplicity of action on the same subjectmatter between the same parties even where exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of exercise of the right rather than the exercise of right per se.

By the foregoing guides laid by the Supreme Court on the dynamics of abuse of Court process, it is apparent that though a party may have a right to exercise in litigation, the way and manner, he goes about it where it amounts to an improper use of the judicial process, may constitute an abuse of Court process.

Where it also interferes with the due or proper administration of justice that will constitute an abuse of Court process.

In this matter, whilst it may be well taken that referring or describing the Applicant in the instant suit as “a person who carries an estate development business in the name and style of Winning Clause Limited within jurisdiction of this Honourable Court.” That the party sued as 1st Defendant (ie the Applicant) is not one same, (in the eyes of the law), as that sued as 1st Defendant in **Suit No: FCT/HC/CV/2053/2015** determined by the FCT High Court sitting in Zuba, Abuja. The Court is satisfied upon perusal of the Applicant’s Further Affidavit that as at the time the respondent’s Solicitors were served with the Applicant’s Notice of Appeal against the Court’s judgment in **Suit No: FCT/HC/CV/2053/2015** that the Respondent had not filed the instant suit. This finding is premised on the fact that if indeed the Respondent had filed the suit, the Learned Respondent’s Counsel who disclaimed service of the Notice of Appeal on the law firm on the said 5/6/2018 would have mentioned same in his said Disclaimer (ie Exhibit A attached to the Applicant’s Further Affidavit). He only disclaimed the service and made out that the law firm no longer represented the Respondent. It does appear to the Court that the said Respondent’s Solicitors after disclaiming receipt of the Notice of Appeal on the said 5/6/2018 and denying being the Respondent’s Counsel rushed to the FCT High Court and filed the instant suit wherein the Applicant was described in the same terms as in **Suit No: FCT/HC/CV/2053/2015** determined earlier by the FCT High Court in Zuba. However, on anticipating the instant objection, the Respondent amended the description of the Applicant vide the order of the Court made on 24/10/2019. The

result of all these is that notwithstanding the amendment of description of the Applicant in this suit the Respondent's instant suit and the Applicant's instant appeal to the Court of Appeal are pending before the two Court's simultaneously. As an appeal involves a re-trial by the Appellate Court hence it is a continuation of the suit, tried by the trial Court, the scenario that now emerges is that save for description of the capacity on which the Applicant has been sued in the instant suit, the suit in this Court and that in the Court of Appeal centre on the same subject matter and issue which are (1) Plot C33 Winning Clause Estate, Abuja and (2) declaratory orders sought in relation to it. The instant suit, for the sake of proper administration of justice cannot co-exist with the Applicant's Appeal currently pending in the Court of Appeal. Although ordinarily the Respondent may have a right to file a suit after its **Suit No: FCT/HC/CV/2053/2015** was struck out by the Court which heard it, filing it simultaneously or after the Applicant has filed an appeal against the said Court's judgment amounts to an improper use of judicial process. That step cannot be allowed to stand in the interest of proper administration of justice.

This Court delivered a Ruling in a similar application in **Suit No: FCT/HC/CV/20502/2018:- MOHAMMED OLUMO V. WINNING CLAUSE LTD** on 13/1/2020 where similar issues as the ones here were canvassed. The Court adopts the reasoning in that Ruling which struck out the Respondent's suit.

By reasons of all I have said above, I resolve the sole issue raised above against the Respondent in favour of the Applicant. In consequence and having found that the Respondent's instant suit constitutes an abuse of Court process, the suit is struck out

with cost assessed and fixed at ₦50,000.00 against the Respondent.

**SGND.
HON. JUDGE
20/2/2020.**

LEGAL REPRESENTATIONS

- (1) Chidi Nwankwo Esq for the 1st Defendant/Applicant.
- (2) M. I. Hanabi Esq for the Claimant/Respondent.
- (3) No legal representation for the 2nd Defendant/Respondent.