

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY, THE 4TH DAY OF MARCH, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2700/19

MOTION: GWD/M/208/19

BETWEEN:

**JIBRIN USMAN (SUING THROUGH HIS LAWFUL ATTORNEY } ...PLAINTIFF/
HOSPIR INTERNATIONAL NIGERIA LTD } RESPONDENT**

AND

DR. HAMID SULEIMAN OZOHU.....DEFENDANT/APPLICANT

RULING

By a notice of preliminary objection dated 30th October, 2019, the Defendant/Applicant seeks for the following reliefs:

- 1. An order striking out the substantive suit i.e Suit No. CV/2700/19 for being barred by the principle of Estoppel.**
- 2. A declaration that this suit is an abuse of Court process.**
- 3. An order striking out the suit for being wholly incompetent, vexatious and frivolous.**
- 4. The sum of Five Hundred Thousand Naira (N500,000.00) being cost of the action.**
- 5. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.**

The Grounds of the application as contained on the motion paper are as follows:

- 1. By virtue of Section 169 of the Evidence Act 2011, the deponent of the only Witness Statement on Oath in support of the suit, one Charles Agwu Iyanya is estopped from stating that the purported Plaintiff in this case, one Jibrin Usman is the beneficial owner of Plot 357, Gwagwalada Expansion Layout, Abuja having stated otherwise on several occasions including in documents filed in court;**
- 2. Disparate and contradictory evidence by the aforesaid deponent, being the only available evidence, on the status and/or interest of the purported Plaintiff/Respondent in this case, one Jibrin Usman in relation to the aforesaid Plot 357 means that the Plaintiff/Respondent cannot establish a right of action.**

In support of the application is a twenty three (23) paragraphs affidavit with four(4) annexures marked as **Exhibits A1, A2, B and C** respectively. A written address was filed in compliance with the rules in which two issues were raised as arising for determination as follows:

- (a) Whether, given previous statements made by one Charles Agwu Iyanya who deposed to the sole Witness Statement on Oath in support of the Plaintiff/Respondent's suit Affidavit and describes himself as the alter ego of one Hospir International Ltd to the effect severally that he (the aforesaid Mr. Iyanya), on the one hand and Hospir International Nigeria Ltd on the other hand are the owners of Plot 357, the said Mr. Iyanya is not estopped from making depositions in the aforesaid Witness Statement on Oath to the effect that the purported Plaintiff/Respondent, Usman Jibrin is the beneficial owner of the said Plot 357?**
- (b) Whether the Plaintiff/Respondent can ground a claim on such contradictory statements by his witness and having irrevocably transferred his rights and powers through a purported Power of Attorney dated 14th February, 2008, the said Usman Jibrin can maintain any right of action against the Defendant.**

Submissions were then canvassed in respect of the above issues which forms part of the records of court.

In opposition, the Plaintiff/Respondent filed a six (6) paragraphs counter-affidavit with two(2) annexures marked as **Exhibits Hospir 1 and Hospir 2**. A written address was filed in which one issue was raised as arising for determination to wit:

“Whether considering the circumstances of the case, estoppel is applicable thereto herein?”

Submissions were equally canvassed in respect of the above issue which equally forms part of the records of the court.

At the hearing, counsel on either side of the aisle relied on the processes filed and adopted the submissions in their written addresses in urging the court to grant the objection and strike out the case and on the other hand to dismiss the preliminary objection as lacking in merit,.

I have here carefully considered the entire processes filed by the parties including the written addresses to which I may refer to in the course of this Ruling where necessary. The entire objection is situated on the principle of estoppel and the contention that the extant action constitutes an abuse of process. The witness deposition attached to the claim of Plaintiff/Respondent but yet to be adopted since hearing is yet to commence provides the basis or fulcrum of the positions advanced by Applicant. Are these contentions legally availing? This is what I will now consider shortly but as a prefatory remark, let me start by saying that a careful reading of the processes and submissions made on both sides of the divide, but in particular, the side of the Applicant, shows a complete misapprehension of the nature and legal import of a witness deposition which is filed along with the originating processes but yet to be adopted in the trial proper. This grave error of appreciation has led to the making of submissions on substantive issues and facts on which the court is yet to hear evidence on. Parties appear to have proceeded on the basis that the case has been heard and concluded and therefore took liberties to make extensive submissions on the substantive and contested assertions of the case.

The point to perhaps situate at the onset is that parties are still yet to even properly settle pleadings. The Defendant has so far not filed a **statement of defence** and so

as stated earlier, hearing of the substantive action is yet to commence. It will therefore be re-miss on the part of the court to start an enquiry and make findings at the interlocutory stage of matters for the substantive trial. Counsel on either side may enjoy the luxury to delve into substantive issues at this point but a court of law qua justice has no jurisdiction to make such an inquiry. That will be clearly prejudicial and wrong.

It is perhaps important to underscore the principle that it is wrong in law to dispose off at the interlocutory level matters that clearly are for the substantive case. A court of law should not put itself in a difficult situation of unwittingly deciding the very same matter which is yet to be dealt with in the substantive case before it at the interlocutory stage. See **S.C.C. (Nig.) Ltd V Our line Ltd (1995) 5 N.W.L.R (pt.395) 364 at 372**. Let us perhaps at the risk of prolixity, again situate the basis of the objection as contained on the grounds of the application as follows:

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- 1. By virtue of Section 169 of the Evidence Act 2011, the deponent of the only Witness Statement on Oath in support of the suit, one Charles Agwu Iyanya is estopped from stating that the purported Plaintiff in this case, one Jibrin Usman is the beneficial owner of Plot 357, Gwagwalada Expansion Layout, Abuja having stated otherwise on several occasions including in documents filed in court;**
 - 2. Disparate and contradictory evidence by the aforesaid deponent, being the only available evidence, on the status and/or interest of the purported Plaintiff/Respondent in this case, one Jibrin Usman in relation to the aforesaid Plot 357 means that the Plaintiff/Respondent cannot establish a right of action.”**

The above is self evident and or self explanatory. The entire basis of the objection is again made clearer by the averments in paragraphs 5-21 of the affidavit in support of the Preliminary Objection and predicated on the contents of the witness deposition of one **Charles Agwu Iyanya** which is said to form part of the Records of the extant action. It was stated that the deponent of the said deposition made or gave “**disparate and contradictory evidence**” which cannot support or establish a right of action of the Plaintiff.

Now as stated earlier, **hearing** is yet to commence in this case. The Rules of Court may have provided for the filing of witness depositions but until hearing commences and a witness adopts this deposition in the witness box, the said deposition on its own has no utilitarian or probative value. Indeed a party may even elect or choose to call new or additional witness(es); file fresh depositions and abandon the earlier deposition filed. Until the deposition is adopted by the witness thereby making it evidence to be used at trial, it cannot in law be made use of. Where a witness adopts it, it then leaves the witness open to the fire of cross-examination from the adversary and of course to re-examination where the party calling him feels it is necessary.

Let me perhaps make the point clearer with respect to the trial process. When a case is heard, parties on both sides have to present their witnesses in the box, lead them in evidence where invariably the witness statement on oath is used or adopted as part of his evidence, documents (if any) are tendered through this witness(es), arguments on admissibility may be taken, and in most cases oral evidence in expatiation is invariably given. The adversary then has the very crucial opportunity to show that the evidence given by the opposing party should be disregarded or disbelieved and this he must demonstrate by cross-examination that the evidence lacks credibility and should not be believed. **Section 223 of the Evidence Act** permits a party cross-examining to elicit from the witness evidence which is favourable to the party cross-examining or which tends to disprove or contradict the case for the party who produced the witness. The Act specifically provides among other things that questions may be asked which tend to test the accuracy, veracity or credibility of the witness or to discover who the witness is and what is his position in life or to shake the credit of the witness by injuring his character. The ball then reverts back to the party who may re-examine his witness(es) if he so desires to clear any ambiguities that may have arisen during cross-examination. Through all these, the court does its duty by observing the demeanour of the witnesses, the credibility of the evidence and its accuracy thereof and at the end evaluates all the evidence, and then exercises the right to believe or disbelieve witnesses and then finally arrive at specific findings on the issues arising from the pleadings and evidence as presented to court for resolution.

All these processes must be scrupulously adhered to before a decision is reached one way or the other.

The court is yet to go through any of the above streamlined processes. In the circumstances, it is really difficult to situate the factual or legal basis for submissions made on a deposition that is yet to be “**owned**” or adopted by the person who made it. Indeed even if it is adopted, until the case is fully heard to the end and both sides have fully presented their grievances including the case made in rebuttal, there is absolutely no way that the court can properly carry out any evaluation and arrive at or reach any conclusion(s). The submissions on estoppel and abuse of process predicated substantially on the witness deposition of one **Charles Agwu Inyanya** which is yet to be adopted appears to me overtly premature and misconceived. There are clearly no materials before me to sustain the complaint of estoppel or abuse of process of court and that is fatal. As a logical corollary, this application appears compromised, *ab-initio*. The preliminary objection completely lacks merit and is accordingly dismissed.

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Hon. Justice. A.I. Kutigi

Appearances:

- 1. Adewale E. Odoleye Esq., for the Plaintiff/Respondent.**
- 2. Abdulaleem Haruna, Esq., for the Defendant/Applicant.**