

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

DELIVERED ON THURSDAY THE 28TH DAY OF MAY, 2020.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI

SUIT NO: CV/3072/2019

MOTION NO: M/5243/2020

BETWEEN

MISS GIFT EDE -----APPLICANT/RESPONDENT

AND

MR. DAVID OGBLI OWULO-----RESPONDENT/APPLICANT

RULING

The Applicant commenced this suit vide originating summons filed 2nd October, 2019. Upon being served with the originating processes on 14/11/2019, the Respondent filed a Notice of Preliminary Objection on 13/01/2020, whereby he prayed the Court to strike out this suit for lack of jurisdiction on the ground that the subject matter of this suit is a subject of a pending Appeal before the Customary Court of Appeal. In support of the objection, the Respondent filed an affidavit of 13 paragraphs; annexed four (4) documents marked Exhibit 1-4 and a written address of his learned counsel's legal arguments. The annexure attached are as follows;

1. Amended statement of plaint filed in the Customary Court of the FCT marked Exhibit 1.
2. Defendant's statement of Defence/Counter Claim marked Exhibit 2.
3. Ruling of the Customary Court of FCT holding at Galadimawa marked Exhibit 3.
4. Notice of Appeal filed in the Customary Court of Appeal marked Exhibit 4.

The crux of his objection is that the Respondent/Applicant has earlier sued the Applicant/Respondent amongst others for the custody of a baby boy named Owulo Prosper Ogbu at the FCT Customary Court Galadimawa, which declined jurisdiction. Then the Respondent/Applicant appealed the decision to the FCT Customary Court of Appeal, which said Appeal is still pending. Hence the Respondent/Applicant is raising an objection to the hearing of this suit on the ground that it amounts to an abuse of Court process. The Respondent/Applicant raised a sole issue for determination to wit;

“Whether the Applicant/Respondent’s suit against the Respondent/Applicant before this Honourable Court in respect of the same subject matter that is already a subject of Appeal before the FCT Customary Court of Appeal between the same parties does not constitute an abuse of court process?”

Learned Counsel submitted that it is well-established principle of law that multiplicity or duplication of action between the same parties and in respect of the same subject matter in the same or different courts constitute an abuse of court process, citing the decision of the **Supreme Court in UMEH V. IWU (2008) 8 NWLR (PT. 1089) Pg. 225 at 288.** Counsel further submitted that whenever an abuse of court process is established, the proper order the court should make is to strike out the suit that is later in time. He relied on Court of Appeal decision in **ETTE V. EDOHO (2009) 8 NWLR (Pt. 1151) Pg 601 at 605.** He therefore, urged the Court to strike out this suit.

In opposition, the Applicant/Respondent also filed a counter affidavit of 11 paragraphs on 23/01/2020, supported by written submissions of his learned counsel and an annexure marked Exhibit A. The annexure attached is titled “COUNTER AFFIDAVIT OF THE

RESPONDENT/DEFENDANT OPPOSING THE APPLICANT'S MOTION ON NOTICE DATED 2ND MAY, 2019" marked Exhibit 1.

The Applicant/Respondent stated that the application for the custody of Prosper at the Magistrate Court Zone 6 and at the Customary Court Galadimawa were denied on grounds of jurisdiction and both court in their ruling held parties should go to the Family Court for issue of custody and welfare of Prosper who was born to both the Applicant/Respondent and Respondent/Applicant out of wedlock. The Respondent/Applicant raised three (3) issues for determination to wit;

1. "Whether the subject matter of this suit being the custody, welfare and interest of a child born out of wedlock falls under the exclusive jurisdiction of the family court and not customary court".
2. "Whether in the face of strong evidence of the Respondent trying to overreach the Applicant to the direct annoyance of the Court, despite both court ruling (Exhibit B and E) that parties should proceed to the family Court is not tantamount to the Respondent/Applicant abusing court process when there is no iota of law supporting his notice of appeal".
3. "Whether notice of appeal at the Customary Court of Appeal which does not border on any custom and tradition can automatically oust the exclusive jurisdiction of this Honourable Court in hearing a matter that has to do with the interest, custody and welfare of a child born out of wedlock".

On the first issue, learned counsel submitted that it is only the family court that has jurisdiction to hear the substantive Application to the exclusion of all other court and that the reliefs of the Applicant/Respondent falls within the jurisdiction conferred exclusively on the family court. He cited the following authorities;

1. **Sections 149 and 162 (1) of the Child Rights Act, 2003.**

2. **Integrated Timber ltd v. UBN 26 NSCQR Pt. 2 Pg. 737**

3. **Tukur v. The Governor of Gongola State (1989) 4 NWLR (Pt. 112) Pg 517 at 549.**

On the second issue, counsel submitted that abuse of Court process is not just a multiplicity of action; intention of parties instituting any action must be critically looked at. He cited **Umeh v. Iwu (2008) 34 NSCQR** and **NTUKSN V. NPA (2007) 31 NSCQR pg. 430.**

On the third issue, counsel submitted that it is unjust for Respondent/Applicant to use a frivolous and reckless notice of Appeal to bar the family court from hearing a matter it was specially created for and that it is an affront to justice for the Respondent/Applicant to use unlawful lawsuit to rob the family court of its exclusive jurisdiction, the Respondent/Applicant should be cautioned. He relied in the cases of **Alor & 2 ors v. Abba & 1or (2017) LPELR-43441 (CA)**, **Kwajaffa v. Bank of the North (2004) 18 NSCQR VOLUM 18 Pt. 2 at 547** and section 162 (1) of the **Child Rights Act, 2003**. He urged the court to dismiss the Respondent/Applicant objection and proceed to hear the substantive Application.

In **SARAKI v KOTOYE [1992] 9 NWLR (PT. 264) 156 at 188 E - G**, the Supreme Court (per Karibi-Whyte, JSC) opined that:

“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety 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 the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the 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 subject matter against the same opponent on the same issues. See OKORODUDU v. OKOROMADU (1977) 3 SC 21; OYAGBOLA v. ESSO WEST AFRICA INC. (1966) 1 All NLR 170. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right per se.”

I have averted my mind to the basis or essential elements that would constitute abuse of Court process as concisely and precisely stated in **Ogojefo V. Ogojefo (2006) 3 NWLR (Pt. 966)205 SC**, to wit:

- a. There must be, at least, two matters filed in two different Courts.*
- b. The said different suits are instituted with the goal of pursuing the same rights (even though on different grounds).*
- c. The subject matter and or the questions for determination in the two suits must be substantially the same.*
- d. Frivolous and scandalous use of a lawful Court process to the irritation and embarrassment of another party.*

Where a defendant successfully proves the above conditions, the court has little or no discretion in the matter, for then it will be crystal clear that the judicial process has been abused. The abuse is manifested by the re-litigation of already decided issues and the course open to the court is to dismiss the subsequent suit. See **ARUBO v AIYELERU (1993) 3 NWLR (Pt. 280) 126 at 146** and **GEORGE ONYEABUCHI v INEC & 4 ORS (2002) 8 NWLR (Pt. 769) 417**. In determining whether there is abuse of court process, the court looks at the originating processes in the two

actions to ascertain whether the two actions are between the same parties and in respect of the same subject matter or issue. Fortunately, the Amended Statement of Plaintiff, Defendant Statement of Defence/Counter Claim and Ruling of the Customary Court of FCT in Suit No. FCT/CC/GAL/CV/13/19 are annexed to the affidavit in support of preliminary objection as Exhibits 1, 2 and 3.

The claims and parties at the trial Customary Court as contained in Exhibits 1 attached to the Motion on Notice is hereunder reproduced as follows;

BETWEEN

DAVID OGBU OWULO -----PLAINTIFF/APPELLANT

AND

GIFT EDE -----DEFENDANT/RESPONDENT

1. A DECLARATION that the Plaintiff, Ogbu David Owulo is the father of Prosper Owulo;
2. A DECLARATION that the insistence by the Defendant that the Plaintiff is not entitled to the child, Prosper Owulo because the Plaintiff did not pay her Bride Price is repugnant to natural justice, equity and good conscience;
3. A DECLARATION that the condition given to the Plaintiff by the Defendant to pay the sum of Five Hundred Thousand Naira in order to be given the child is unlawful, void and of no effect;
4. AN ORDER of this Honourable Court granting custody of Prosper Owulo to the father Ogbu David Owulo.
5. AN ORDER of this Honourable Court mandating the Defendant to return to the Plaintiff, all the Plaintiff's household items including 1 Fridge, 1 Plasma Television, 1 Mattress, Plates, Customers' clothes worth over Three Hundred Thousand Naira (N300, 000.00).

6. AN ORDER OF INJUNCTION restraining the Defendant, her agents, servants, privies, assigns or representatives in whatever name or style they may be known and called from taking Prosper Owulo to the Defendant's father or any other person or place on the ground that the Plaintiff is not the father.
7. AN ORDER OF INJUNCTION restraining the Defendant, her agents, servants, privies, assigns or representatives in whatever name or style they may be known and called from taking Prosper Owulo to the Defendant's father or any other person or place without the prior knowledge, consent and approval of the Plaintiff.
8. AND ANY FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstances of this suit.

Also the parties and reliefs sought in the Originating Summons before this Honourable Court is here reproduce below;

BETWEEN

MISS GIFT EDE ----- APPLICANT

AND

MR. DAVID OGBU OWULO ----- RESPONDENT

The reliefs sought are;

- i. A declaration that the Respondent's action of secretly taking away Master Prosper, who is a year and three months old, to an unknown place without the consent or knowledge of the Applicant is tantamount to child abduction and inimical to the wellbeing of the said Master Prosper as envisaged by the Child's Right Act, 2003 and public policy.
- ii. A declaration that the Respondent's action of secretly taking away Master Prosper, to an unknown place at the tender age of a year and three months old from the custody of the mother and thereby

depriving him the needed maternal love, protection and care of his mother (the Applicant) is an infringement on Master Prosper's right as guaranteed under sections 2, 11 and 14 of the Child's Right Act 2003.

- iii. An order of this Honourable Court directing and compelling the Respondent to return forthwith possession and custody of Master Prosper to the Applicant for him to have most needed maternal protection and care.
- iv. An order of this Honourable Court directing the Respondent to make monthly contribution of N100,000.00 (One Hundred Thousand Naira) monthly for general maintenance and upkeep of Master Prosper from now until he completes higher degree programme in the university.
- v. An order of perpetual injunction restraining the Respondent and all the members of the Owulo family from interfering with the physical care and custody of Master Prosper with the Applicant until he attains the age of majority.
- vi. An order of this Honourable Court directing Respondent to pay to the Applicant the sum of N50,000.00 being the cost of this action.
- vii. And such other further orders as this Court may deem fit to make in the circumstances of this case and pursuant to the Rules of this court in its special jurisdiction.

I have given a careful and insightful consideration to the Amended Statement of Plaintiff in Suit No. FCT/CC/GAL/CV/13/19, as well as compared same with the Originating Summons in the present action. The parties in both suits are the same.

As can be gleaned from the foregoing, even a perfunctory examination of the reliefs sought in both suits will reveal that relief (4) in Suit No. FCT/CC/GAL/CV/13/19 are the same as reliefs (iii) and (v) in the present suit, just as all the other reliefs in both suits are aimed at achieving the same purpose. It has been held that filing two suits between the same parties on the same subject matter and where the end result of both suits was the same, even though the reliefs in the two suits were worded differently, would constitute abuse of court process. See **ALI v ALBISHIR [2007] LPELR-8319 (CA)** and **MINISTER FOR WORKS & HOUSING v TOMAS (2002) 2 NWLR (Pt. 752) 740**. It has also been held that if two actions are commenced with the second action seeking reliefs which may have been obtained in the first, then the second action is prima facie vexatious and an abuse of the process of court. See **OTAMEH V. ADESANYA & CO (2016) LPELR-41135 (CA)**. Exhibit 4 annexed to the affidavit in support of preliminary objection is a notice of appeal dated 11/9/19 and filed 19/9/19 lodged by the Respondent/Applicant against the Applicant/Respondent. The Applicant/Respondent's reaction to the Respondent/Applicant's contention that there is a pending appeal against the ruling of the Customary Court of FCT Galadimawa in Suit No. FCT/CC/GAL/CV/13/19 is that the appeal has not been entered and has been abandoned for over four (4) months. There is nothing placed before this Honourable Court to show that the appeal has been struck out for want of diligent prosecution. It goes without saying that an appeal is a continuation of the original action before the trial court see **OSUJI v EKEOCHA [2009] LPELR-2816 (SC)**.and it is certainly not open to a party to simultaneously pursue an appeal and maintain a fresh action on the same subject matter against the same opponent without being guilty of the charge of abuse of court process, more so, as the customary Court of appeal and the High Court are of concurrent jurisdiction.

It is therefore obvious that the Respondent/Applicant's contention that this suit constitutes an abuse of court process is well founded. It has been held that where the court comes to the conclusion that its process has been abused, the course open to the court is to dismiss the subsequent suit. The Court of Appeal **PHB PLC V. OKEFE (2014) LPELR-22659 (CA)** has this to say an appropriate order to make where a suit or process constitutes an abuse of Court process is as follows;

*"The law is settled beyond per adventure that, when the charge of abuse of process is established, the only course open to the Court is to make an order of dismissal of the action/appeal. The Apex Court had the following to say on this point thus: "It is settled law that generally abuse of process contemplates multiplicity of suits between the same parties in regard to the same subject- matter and on the same issues. The bottom line of these authorities in regard to abuse is that to institute an action during the pendency of another suit claiming the same relief is an abuse of Court process and the only course open to the Court is to put an end to the suit. It does not matter whether the suit is on appeal, the subsequent action would constitute an abuse of process"(The underlining is supplied by me for emphasis). Further in the case of: *African Re. Corp. v. J.D.P. Const. (Nig.) Ltd. (2003) 13 NWLR (Pt. 838) p.609*, the Apex Court made the following sharp statement that: "Where the Court comes to the conclusion that its process is abused, the proper order is that of dismissal of the process."*

The preliminary objection therefore succeeds on the ground of abuse of process.

Accordingly, I will and do hereby record an order dismissing this Suit No. FCT/HC/CV/3072/2019 for abuse of court process.

Parties: Parties are absent.

Appearances: J. O. Owulo, Esq., for the Respondent/Applicant.
Applicant/Respondent not represented.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
28TH MAY, 2020