

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE S. U. BATURE.**

**COURT CLERKS: JAMILA OMEKE & OTHERS.
COURT NO: HIGH COURT NO. 34.
CASE NO: SUIT NO. FCT/HC/CV/2942/2017.
DATE: 12TH MAY, 2020.**

BETWEEN:

MAGIC HILLS LIMITED.....PLAINTIFF

AND

MTN NIGERIA LIMITED.....DEFENDANT

RULING

By a Motion on Notice dated 28th day of May, 2018 and filed same day, the Defendant/Applicant herein prayed the Court for the following reliefs:-

1. An Order of this Honourable Court dismissing the suit for being an abuse of Court process.
2. That this Honourable Court lacks jurisdiction to adjudicate upon same.
3. And for such other Orders which this Honourable Court may deem fit to make in the circumstances.

The Application which is brought pursuant to Section 36 of the 1999 Constitution (as amended), Sections 97 and 99 of the Sheriffs and Civil Processes Act, Order 2 Rule 4, Order 43 Rule 1 of the High Court of the Federal Capital (Civil Procedure) Rules 2018, and under the inherent jurisdiction of this Court, is supported by a 4 paragraphed Affidavit deposed by one Hussein Abubakar, a Lawyer in the Firm of Beracha Solicitors, representing the Applicant herein, some annexures marked Exhibit 1 – 4, as well as a Written Address dated 28th day of May, 2018.

In opposition to this Motion on Notice, the Plaintiff/Respondent filed a Counter – Affidavit of 4 paragraphs deposed by one Stephen Ojodomo, a Litigation Clerk in the Chambers of Isaac Okpanachi & CO, Solicitors to the Plaintiff/Respondent, an annexure marked Exhibit MHLI, as well as a Written Address.

The Defendant/Applicant has also filed a further and better Affidavit in support of the preliminary objection comprising of 4 paragraphs, two annexures' marked Exhibits 1 and 2 as well as a Written Address on points of Law.

The grounds upon which this preliminary objection is based are as follows:-

- (1) That the Plaintiff/Respondent had filed suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA LIMITED, seeking the same reliefs sought in this matter, which suit was dismissed by this Honourable Court on 27th February, 2017 Coram His Lordship Justice O.A. Musa.
- (2) That the Plaintiff/Respondent by a Motion on Notice dated and filed on 17th May, 2017 applied to this Honourable Court to set aside the dismissal of suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA LIMITED, Coram His Lordship Honourable Justice O.A. Musa on 6th July 2017, dismissed the same Motion on Notice and stated that the only option available to the Plaintiff in the circumstances was to appeal
- (3) That the decision of this Honourable Court dismissing suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA LIMITED, and to also refuse to set - aside the dismissal of suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA LIMITED, are still subsisting.
- (4) That the decision of this Honourable Court delivered on 6th July, 2017, refusing to set aside the dismissal of suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA LIMITED is still subsisting.

- (5) That this Honourable Court has no Jurisdiction to adjudicate upon this matter premised on facts earlier filed by the Plaintiff/Respondent in another suit - suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA LIMITED which was previously dismissed by this Honourable Court on 27th February, 2017, Coram His Lordship Honourable Justice O.A. Musa, which Order of dismissal this Honourable Court declined to set – aside on 6th July, 2017 nor conduct proceedings which amounts to sitting on appeal over a previous decision of the High Court of the Federal Capital Territory (FCT), Abuja.
- (6) That the writ of summons does not have the mandatory endorsement required by Law. The Defendant was not given the statutory time for entering appearance.

In the Written Address filed in support of this preliminary objection, the Learned Defendant/Applicant's Counsel Ogechi Ogbonna Esq., submitted that the issue of jurisdiction is a fundamental issue. That under our Law a Court is only competent to adjudicate upon a suit where it has the requisite jurisdiction. Reliance was placed on the case of *Madukolum Vs Nkemdilim (1962) 2 SCN LR, 341*.

That it is also trite that a Court process is deemed to be an abuse of process when it is intended or has the effect of annoying another person or is vexations, brought mala fide and for improper purpose.

Reliance was placed on the cases of *Arubo Vs Aiyeleru (1993) 3 NWLR part 280 at 126*,; *African Reinsurance Corporation Vs JDP Construction Limited (2003) 13 NWLR, part 838, page 609 at 635, paragraphs F-G*; *Yakubu Vs Ajaokuta Steel Company Limited (2010) 2 NWLR, part 1177, page 167 at page 179, paragraph E*.

It is further submitted, that can this matter instituted in breach of the provisions of the then applicable Order 4 Rule 14 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004, Order 4 Rule 14, Order 2 Rule 4 of the High Court Rules, Sections 97 and 99 of the Sheriff's and Civil Processes Act, 1990 be considered a proper use of Legal process? And same was submitted by answering in the negative.

That Rules of Court are meant to be obeyed without any equivocation especially where such provisions are mandatory. Reference was made to the Court of Appeal decision in *Mako Vs Umoh (2010) 8 NWLR, part 1195, page 82 at page 107, paragraph H*.

It is submitted further, that where a statute has made a provision of how to carry out an act, same has to be complied with relying on the decision in ***Johnson Vs Mobil Producing Nigeria unlimited (2010) 7 NWLR, part 1194, page 462 at 504, paragraph B.***

Learned Counsel also urged the Court to take judicial notice of suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA COMMUNICATIONS LIMITED, including the Writ of Summons, the Statement of Claim and the subsisting decisions of this Honourable Court. All pursuant to Section 122 of the evidence Act, 2011.

It is further submitted by the Learned Counsel, that the jurisdiction of this Honourable Court does not include appellate jurisdiction to enable this Honourable court to sit on appeal over a cause founded upon facts that has been litigated and dismissed by my learned brother Honourable Justice O. A. Musa of the High Court of the Federal Capital Territory in suit NO: FCT/HC/CV/821/2014: MAGIC HILLS LTD V. MTN NIGERIA COMMUNICATIONS LIMITED, which Order of dismissal was made after issues had been joined by the parties, that same Order against which there is no appeal and that the said Order is still subsisting.

It is submitted that the claims in the afore stated dismissed suit NO: FCT/HC/CV/821/2014 are also the claims in this matter before this Honourable Court.

That the aforementioned suit was dismissed on the 27th February, 2017, which Order of dismissal was also affirmed by this Honourable Court on 6th July 2017 Coram His Lordship Honourable Justice O.A. Musa, which unequivocally held at page 10 of the Ruling delivered by this Honourable Court on 6th July 2017 that the proper step is for the Plaintiff to appeal if it was dissatisfied with the decision of this Honourable Court dismissing the claims.

It is further submitted on this premise that there is no appeal against the said decision dismissing the suit and claims of the Plaintiff made therein. That rather, the Plaintiff is seeking to relitigate the same claims before this Honourable Court.

That upon the said dismissal of suit NO: FCT/HC/CV/821/2014 on the 27th February, 2017, this Honourable Court became functus officio in respect of the claims made in that suit and cannot adjudicate upon same under any guise. Reliance was placed on the case of *MT "Delmar" Vs MT "Ane (Ex MT loste)" (2016) 13 NWLR, part 1530 page 482 at page 517 paragraph D.*

It is submitted further that it is trite under our Law that a decision of a Court on any matter over which there is no appeal subsists and all persons affected by the decisions are deemed to have accepted it particularly after the statutory period of time for appeals have

expired. And that even if there was an appeal against the dismissal of the Plaintiffs claims in suit NO: FCT/HC/CV/821/2014, the Order of dismissal still subsists until same is set – aside on appeal.

Counsel referred to the cases of ***Oleksandr Vs Lonestar Drilling Co. Ltd (2015) 9 NWLR part 1464, page 337 at 370 - 371, paragraphs A - B; Egharevba Vs Federal Republic of Nigeria (2016) 10 NWLR, part 1521 page 431 at page 448, paragraph D.***

On abuse of Court process, reliance was placed further in the following cases, ***Aruso Vs Aiyeluru (Supra); African Reinsurance Corporation Vs JDP construction Limited (Supra); Yakubu Vs. Ajaokuta Steel Company Limited (Supra).***

It is further submitted that this action is brought in bad faith to irritate and annoy the Defendant and therefore an epitome of abuse of Court process. And that where a suit constitutes an abuse of Court process, the proper Order to make under our Law is to dismiss such vexatious suit. Reliance was placed on the case of ***Arubo Vs Aiyeleris (Supra) and African Reinsurance Corporation Vs JDP Construction Limited (Supra) at page 636, paragraph D.***

Learned Counsel submits that it is trite under our Law that there must be an end to litigation. Reliance was placed on the cases of

Onyekweli Vs INEC (2009) 6 NWLR, part 1136, page 13 at page 32 paragraph F;

Ding Yadi Vs Independent National Electoral Commission (No. 2) (2010) 18 NWLR, part 1224, page 154 at 201, paragraphs B – C, page 222, paragraph F. first City Monument Bank Plc Vs Nigeria Institute of Medical Research (2009) 16 NWLR, part 1168, page 468 at page 479, paragraph H.

Counsel submits that this suit is illegal in that among others things, it is seeking to make this Honourable Court to hear a dismissed claim, in addition to being an abuse of Court process.

On the meaning of the word “illegality” reference was made to the definition of the word in Black’s Law Dictionary, Eight Edition by Byron A. Garner as “An act that is not authorized by Law....”

Counsel submits that our Law neither condones illegality nor allows illegality of any sort in the administration of justice, nor allows a person to benefit from his wrong doing.

Counsel further submits, that it is trite under our Law that illegality once brought to the attention of a Court of Law (which includes this Honourable Court) supersedes every other consideration. Reliance was placed on the cases of ***Ibrahim Vs Osunde (2009) 6 NWLR,***

part 1137, page 382 at page 404, paragraphs D – E; Agip Nigeria Limited Vs Agip Petroli International and others (2010) 5 NWLR, part 1187, page 348 at page 412, paragraph E.

Finally, Learned Counsel urged the Court to uphold the arguments proffered and to dismiss this suit.

In the address in support of the Plaintiff/Respondent's Counter – Affidavit in opposition to this preliminary objection, Learned Counsel Isaac Okpanachi Esq., formulated two issues for determination as follows:-

1. Whether or not by virtue of Order 7 Rules 8 and 9 of the High Court of the Federal Capital territory (Civil Procedure) Rules 2018, and the decision per Chukwuma Eneh JSC in Nigeria Bottling Company PLC Vs Ubani (2014) all FWLR (Pt. 718) 803, there is no proper service by the Plaintiff in this suit.
2. Whether or not having regard to the entire facts and circumstances in this suit NO: FCT/HC/CV/821/2014 from the document exhibited by the Defendant/Applicant in its preliminary objection, the Honourable Court lacks jurisdiction to entertain this suit.

In arguing issue No. 1, Learned Counsel submitted that the service of the originating processes on an incorporated body does not need to be at the registered office pursuant to Order 7 Rules 8 and 9 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.

Reliance was also placed on the cases of *Nigeria Bottling Company Plc Vs Ubani (2014) all FWLR (Pt. 718) 803 at 821 - 823, para B - D; Rivers State Government Vs Specialist Konsult (Swedish Group) (2005) 2 SCNJ 34 at 47, lines 14 - 20, per Ejiwunmi JSC (as he then was); Nigeria Airways LTD Vs Ahmadu (1991) 6 NWLR (Pt. 198) 492 at 500, paragraphs B - C.*

It is submitted that the position of the superior Court cannot be more explicit that service on a corporate body at its branch office or its branch head is proper service as the Plaintiff earlier did in this case.

On issue NO. 2, it is submitted that this Honourable Court has the unfettered jurisdiction to entertain this suit going by the principles laid down in the case of *Madukolum Vs Nkemdilim* cited by the Defendant in support of this preliminary objection.

It is submitted that there has never been any adjudicatory proceedings in this suit so as to rob this Honourable Court of its jurisdiction to hear this matter.

That an action dismissed because the statement of claim discloses no reasonable cause of action is entirely different from this case and likewise an action that is statute barred or being not justifiable.

Reliance was placed in the case of ***Republic Bank Ltd Vs CBN (1998) 13 NWLR (Pt. 581) 306 at 325.***

On the principle guiding the operation of res judicata in a subsequent action, Counsel cited the cases of ***Fabunmi Vs Oyenusi (1990) 6 NWLR (Pt. 159) 728 at 742; A/C Ltd Vs Mannes Man Anlagendu & ano (1994) 3 NWLR (Pt. 334) Pg. 596 - 598, para 1; Agbomagbe Bank Vs. C. F.A. O. (1967)b 4 NWLR (Pt. 442) Pg. 254; Udo Vs Obat (1989) 1 NWLR (Pt. 95 at 77.***

Counsel submitted that the dispute between the parties has been decided to rob this Honourable Court of its jurisdiction to hear this case.

That my Learned brother in suit NO: FCT/HC/CV/821/2014, Justice O.A. Musa on the 12th of October 2016, dismissed the preliminary objection filed by the Defendant/Applicant. Then on the 23rd, November, 2016, Motion NO: M/10825/2016 filed by the

Defendant/Applicant for leave and extension of time to enter Defence and file Statement of Defence and Witness Statement on Oath was granted and the suit was adjourned to 27th February, 2017 for the Plaintiff to file and serve its reply to the Defendant's Defence and Counter claim. That that day, the Plaintiff and its Counsel were not in Court because the Counsel for the Plaintiff Barr. Chukwuocha Solomon did not have 2017 Diary and did not document the next adjourned date being that 27th February, 2017, in any place and the Court quickly dismissed the suit when pleadings have not finally been exchanged, issues were not joined and the matter was still at its infant stage.

On this, Counsel placed reliance on the cases of ***OSINACHI Vs ORJI (19993) 3 NWLR (Pt. 284) 734 at 736 - 745; OSINACHI Vs ORJI (Supra); UDO Vs. OBAT (Supra) Pg 59 at 61, 62 and 63; UNIVERSITY OF LAGOS Vs AIGORO (1985) 1 ALL NLR (Pt. 1) 58 at 69; SOLEYE Vs. SONIBARE (2002) FWLR (Pt. 95) 221 at 234, paragraphs 2 & 4 (CA).***

Learned Counsel further submits, that before a Court dismisses a case, notwithstanding what the Rules of Court say, there must be a formal hearing, otherwise any Order of dismissal for want of diligent prosecution shall be treated as a mere striking out, with liberty to

the affected party to apply for it to be set aside. That the mere use of the word dismissal does not make the Order a final Order that can only be set aside on appeal. That the affected party has right to apply that the matter be re – listed or to file a fresh matter. Reliance was placed on the cases of ***Oremere Vs Abighe (1973) 8 NSCC 497, O. B. M. C. Limited Vs M. B. A. Limited (2005) ALL FWLR (Pt. 261) 221 at 232 paragraphs F – G; Ukachukwu Vs N.Y.S.C. (2006) ALL FWLR (Pt. 308) 1272 at 1284, paragraph G, Ntukidem Vs Oko (1986) 5 NWLR (Pt. 45) 909 at 913; Ogar Vs James (2001) FWLR (Pt.67) 930, paragraph 2 ; page 948, paragraphs A-H.***

It is further submitted by the learned Counsel, that Hon. Justice O. A. Musa did not include a prohibition against further action in the Order of dismissal made at in limine without final determination of the matter on its merit.

Counsel further submits that a dismissal Order not made on the merits amounts to an order of striking out to all intents and purpose. That, all that has been argued above shows striking out simpliciter and dismissal which is based on hearing on the merits as in the instant case, is considered in law a mere striking out. That where a matter is struck – out, the Plaintiff has the liberty to relist, or bring a fresh filing. Reliance was placed on the case of ***ALOR VS NGENE (2007) ALL FWLR (Pt. 362) 1836 at 1848; WATERLINE***

NIGERIA LIMITED Vs FAWA SERVICES LIMITED (2003) FWLR (Pt. 163) 95 paragraph D – H, page 96 paragraph A – D.

Counsel submitted that this suit is not an abuse of Court process. Relying on the cases of ***NTUKS Vs NPA (2007) ALL FWLR (Pt. 387) 809 (SC) MAJEKODUNMI Vs ALLs LTD (2005) ALL FWLR (Pt. 254) 933 (CA); ADELEKE Vs OYO STATE HOUSE OF ASSEMBLY (2006) ALL FWLR (Pt. 319) 862 (CA).***

Finally, Counsel urged the Court to consider that the suit is not an abuse of Court process, that the Court has the jurisdiction to entertain same and to dismiss the Defendant/Applicant's preliminary objection with punitive cost for wasting the precious time of this Honourable Court.

In the Defendant/Applicant's reply address in support of its further and Better Affidavit in support of the preliminary objection, it is submitted that by the provisions of the 2004 Rules of this Court which were still in force when this action was filed in 2017, the Plaintiff was bound to observe the provisions of the Rules of Court in force at the time. That it is trite that the applicable Rules of Court must be obeyed.

It is submitted in response to the arguments canvassed by the Plaintiff/Respondent when citing the decision in Republic Bank Limited Vs CBN (Supra) being a Court of appeal decision and not a

Supreme Court decision as alluded by the Plaintiff/Respondent and does not apply to facts and circumstances of this suit. That unlike in the case cited by the Plaintiff, this suit with NO: FCT/HC/CV/821/2014, the parties had filed and exchanged pleadings before the suit was dismissed in line with the operative Rules of this Honourable Court, i.e Order 35 Rule 4 of the 2004 Rules of this Honourable Court, then in operation.

Reliance was placed on the case of ***UDO Vs STATE (2016) 12 NWLR (Pt. 1525) page 1, at 25, paragraphs A- B.***

On the issue of Res judicata, Learned Defendant/Applicant's Counsel submitted that the argument proffered by the Plaintiff/Respondent is in applicable to this matter. That it is trite Law that a decision of a Court is valid and subsisting until same is set aside by a Higher Court competent to do so.

Reliance was placed on the cases of ***Oleksar Vs Lonestar Drilling Co. Ltd (Supra) page 337, 370 - 371, paragraphs A - B; Egharevba Vs Federal Republic of Nigeria (supra) page 431 at 448, paragraph D.***

On the effect of an Order of dismissal, Counsel submitted that same is to preclude any further litigation of the dismissed cause under any guise by the Honourable Court which dismissed the suit. Reliance

was placed on the case of *Ume V Nigeria Renowned Trading Co Ltd (1997) 8 NWLR, part 516 at 344, 354, paragraph D; Chitra Knitting and Weaving Manufacturing Company Limited Vs Akingbade (2016) 14 NWLR, Pt 1533, page 487 at 508 - 9, paragraphs H - A; Re - Diamond Bank (2002) 17 NWLR (Pt. 795) Page 120 at 134, paragraph H.*

Learned Counsel urged the Court to take judicial notice of all its records, and submitted that the record of the Court is binding upon the Court and the litigants, until set aside. Reliance was placed on the case of *Sapo Vs Summonu (2010) 11 NWLR, part 1205, page 374 at 395, paragraph C; Okene jiminor Vs Cibakeji; Nigeria State Government (2008) 13 NWLR, part 1103, page 111 at 145, paragraph H*; As well as Section 122 of the Evidence Act 20011, Exhibits 1 and 2 in support of the preliminary objection; Section 259 of the 1999 Constitution; Order 23 Rule 3 (1) of the High Court of the Federal Capital territory Abuja (Civil Procedure) Rules, 2004.

Counsel also referred to the case of *Osinachi Vs Orji (1993) 3 NWLR (Pt. 284) 736 - 745*, relied upon by the Plaintiff and argued that it does not support the case of the Plaintiff/Respondent since it is inapplicable in this case. Same arguments were proffered in relation to the cases of *Udo Vs Obat (Supra); Ntukidem Vs Oko*

(Supra); Ogar Vs James (Supra): all cited by the Plaintiff/Respondent.

Counsel submitted that our Law does not allow a party to approbate and reprobate. Reliance was placed on the case of ***Suberu Vs State (2010) 8 NWLR (Pt1197) page 586 at 612 and 613 paragraph G; Central Bank of Nigeria Vs Aribo (2018) 4 NWLR, part 1608, page 130 at 168, paragraph B.***

On the contention that there was no prohibition Order in the decision dismissing suit NO: FCT/HC/CV/821/2014, Counsel submitted that such argument is untenable in view of the provisions of Order 35 Rule 5 of the High Court of the Federal Capital Territory Rules 2004, which allowed the Plaintiff Six (6) days to apply to this Honourable Court to set - aside the dismissal of the suit.

That from the Court's record, the Plaintiff filed an application to set -aside the dismissal of suit NO: FCT/HC/CV/821/2014, which application failed and was dismissed and this Honourable Court whilst dismissing the Motion to relist the dismissed suit on 6th July 2017, stated that the option available to the Plaintiff was to appeal. That the aforesaid decision is still subsisting and has not been set - aside.

On the argument of the Plaintiff/Respondent that a dismissal not made on the merits is considered in Law to be a striking out and the decision used by Plaintiff/Respondent in support of same i.e. Alor Vs Ngene (Supra), Counsel argued that same does not support the case of the Plaintiff, because the Plaintiff/Respondent failed to conduct his case after the parties had filed and exchanged pleadings in the matter.

It is argued further that upon the said dismissal, this Honourable Court becomes functus officio: Reliance was placed on the case of ***MT “Delmar” Vs MT “ane (Ex MT leste)” (Supra).***

Counsel submitted further that it is trite under our Law that a decision of a Court on any matter over which there is no appeal subsists and all persons affected by the decisions are deemed to have accepted it particularly after the statutory period of time for appeals have expired. Reliance was placed on the cases of ***Oleksandr Vs Lonestar Drilling Co. Ltd (Supra); Egharevba Vs Federal Republic of Nigeria (Supra).***

Counsel finally urged this Honourable Court to uphold the arguments herein before set out and to dismiss this suit.

Now, I have carefully considered this Notice of preliminary objection, the reliefs sought, the Supporting Affidavit, the Exhibits attached as well as the written address filed in support of same.

I've equally given due consideration to the Counter – Affidavit filed in opposition to the Notice of preliminary objection, the Exhibit attached as well as the Written Address filed in support of same.

In the same vein, I've also considered the Defendant/Applicant's Further and Better Affidavit in support of the preliminary objection, the Exhibit attached as well as the reply address on points of Law.

Having done that, it is my humble view that the issue for determination is whether this Honorable Court has jurisdiction to entertain the present suit?

It must be stated from the onset that the issue of jurisdiction is so fundamental since it is described as the lifeblood of any adjudication. Therefore, where same is lacking it would no doubt render any proceedings, no matter how well conducted, liable to be set aside for being a nullity.

More so, considering that the issue of jurisdiction being so fundamental, it is important that it should be determined first by the Court before taking any further steps in the proceedings.

Likewise, it is trite Law that the issue of jurisdiction can be raised at any stage by a party or the Court suo moto even on appeal.

On this premise, I refer to the case of ***LUFTHANSA Vs ODIESE (2006) 7 NWLR (Pt. 978) 34 at 72, Paragraphs D – G, where the Court held thus:-***

“It is now elementary that the issue of jurisdiction being the threshold in judicial adjudication is so fundamental that it can be raised at any stage of proceedings of an action before all the Courts. Furthermore, once it is raised, it is required by expediency to be determined first, because any proceedings or steps taken in the absence of jurisdiction are null and void as initio no matter how well conducted.”

I also refer to the cases of ***MADUKOU Vs NKEMiDILIM (1962) 2 SCNLR, 341; NDAYAKO Vs DANTORO (2004) 13 NWLR (Pt. 889) 187.***

It is also well settled, that in determine whether or not a Court has jurisdiction, the Court is usually guided by the claim before it in considering whether or not it has jurisdiction.

In this respect please see the case of ***F.M.B.N. Vs UMADIELE (2004) 10 NWLR (PT. 882) 626 at 652, paragraphs A - E, where it was held thus:-***

“.....In order to determine whether or not a Court has jurisdiction, it must consider the claims of the Plaintiff because the jurisdiction of any Court to entertain a matter depends on the claims before it. It is the claim of the Plaintiff which determines the jurisdiction of Court.....”

See also the cases of ***APENA Vs N.V.P.P.P (2003) 5 NWLR (PT. 228) 426; USMAN Vs BABA (2005) 5 NWLR (PT. 917) 113 AT 134, Paragraph A - B.***

The Defendant/Applicant in the Written Address in support of the preliminary objection has invited the Court to take judicial notice of its records.

In doing so, this Honourable Court has looked critically at the Plaintiff's claim as endorsed on the writ of summons and statement of claim.

The Plaintiff's claim as endorsed on the writ of summons filed on 27 – 09 – 2017 is as follows:-

- a. A declaration that the Plaintiff is the rightful allottee of Park NO. 2427 and 1961 (2066) A02, Unity Park, Mabushi Abuja, FCT.
- b. A declaration that the erection of the Defendant's Mast on the hill top of the Plaintiff park amounts to illegal trespass.
- c. An Order for payment of ₦200,000,000.00 (Two Hundred Million Naira) only as compensation for illegal trespass from 2007 till the Mast is removed and interests of 20% on the judgment sum from date of judgment until the entire sum is liquidated.
- d. An Order directing the Defendant to remove its illegal Mast mounted on the Plaintiff's park forthwith.
- e. An Order of perpetual injunction restraining the Defendant from re-entering the Park or re-erecting the said Mast.
- f. Cost of this action in the sum of ₦1,000,000.00 (One Million Naira) only.

However, in the Affidavit in support of the Defendant/Applicant's preliminary objection, particularly paragraph 3e, 3f, 3g, 3h, 3i, 3j, 3k, 3l, and 3m, it is averred as follows:-

“That this suit - suit NO. FCT/HC/CV/2942/2017: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED, filed by the Plaintiff

before this Honourable Court, is incompetent and is an abuse of Court process of this Honourable Court by the Plaintiff, that this Honourable Court lacks jurisdiction on the grounds that the Plaintiff had prior to now filed suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA LIMITED seeking for:"

- i. A declaration that the Plaintiff is the rightful allottee of park NO. 2427 an 1961 (2066) A02, Unity Park, Mabushi, Abuja, F.C.T.**
- ii. A declaration that the erection of the Defendant's Mast on the hilltop of the Plaintiff's Park amounts to illegal trespass.**
- iii. An Order for payment of ₦200,000,000.00 (Two Hundred Million Naira only) compensation for the illegal trespass from 2007 till the Mast is removed and interest of 20% on the judgment sum from date of judgment until the entire sum is liquidated.**
- iv. An order directing the Defendant to remove its illegal Mast mounted on the Plaintiff's Park forthwith.**
- v. An Order of perpetual injunction restraining the Defendant from re - entering the Park or re - erecting the said Mast.**

- vi. **Cost of this action in the sum of ₦1,000,000.00 (One Million Naira)only.**

Attached as Exhibit 2 is the writ of summons and statement of claim of suit NO. FCT/HC/CV/821/2014 filed by the Plaintiff and shall rely as same at the trial.

The above stated suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED, filed by the Plaintiff was struck out on 25th March, 2015 for lack of diligent prosecution but was gracefully relisted on 30th March, 2015 by the Learned trial Court presided over by His Lordship Honourable Justice O.A. Musa then of F.C.T. High Court NO. 19.

The Defendant joined issues with the Plaintiff in suit NO. FCT/HC/CV/821/2014 by filing its statement of Defence and Counter – claim. The matter was set – down for trial and was adjourned by the Honourable Court to 27th February, 2017, for hearing.

On 27th February, 2017, both the Plaintiff and his Counsel failed to attend proceedings in the matter on the trial date and no reason was given for their absence

and suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED, was dismissed by this Honourable Court pursuant to the mandatory provisions of Order 35 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004 upon the application of the Defendant. Attached as Exhibit 3 the Defendant pleads the Ruling of this Honourable Court delivered on 27th February, 2017 by His Lordship Honourable Justice O.A. Musa dismissing suit No FCT/HC/CV/821/2014.

After suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED was dismissed, the Plaintiff by a Motion on Notice dated and filed on 17th May, 2017 applied to this Honourable Court to set - aside the dismissal of suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED.

This Motion on Notice to set - aside the dismissal of suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED was heard by this Honourable Court on 6th July, 2017 to dismiss the same Motion on Notice. This Honourable Court cannot

sit on appeal over its previous decision and that the only option to the Plaintiff in the circumstance was to appeal against the dismissal of suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED by this Honourable Court. Attached as Exhibit 4 is the Ruling of this Honourable Court on 6th July, 2017.

The Plaintiff did not file any appeal against the decision of this Honourable Court delivered on 27th February, 2017 to dismiss suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED, nor the decision of this Honourable court on 6th July, 2017 to dismiss the Motion on Notice filed by the Plaintiff on the 17th May, 2017, seeking this Honourable Court to set - aside the order dismissing suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED.

The decisions of this Honourable Court on 27th February, 2017 to dismiss suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED, and on 6th July, 2017 to refuse the Plaintiff's application to set - aside

the dismissal of suit NO. FCT/HC/CV/821/2014: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED are still subsisting.

“This Honourable Court lacks jurisdiction to adjudicate upon this suit”.

Now, in the Plaintiff/Applicant’s Counter – Affidavit, particularly paragraph 3h, 3k it is averred among other things that the said suit NO. FCT/HC/CV/821/2014 was dismissed, and the Motion for setting aside the order dismissing suit NO. FCT/HC/CV/821/2014.

However, it is averred in paragraph 3r, that this Honourable Court is not sitting on appeal over suit No: FCT/HC/CV/821/2014 and that this Honourable Court has the jurisdiction to hear suit NO: FCT/HC/CV/2942/2017 being a fresh suit filed by the Plaintiff.

In paragraph 3v it is averred thus:-

“That there has never been any adjudicatory proceeding in this suit NO: FCT/HC/CV/2942/17 so as to rob this Honourable Court its jurisdiction to hear this matter on merit.”

First of all, having looked at the present suit with NO: FCT/HC/CV/2942/17 as well as suit NO: FCT/HC/CV/821/2014 attached as Exhibit 2 to this preliminary objection I have observed that the parties are the same.

Likewise the claims as endorsed in the Plaintiff's writ of summons and statement of claim in suit NO: FCT/HC/CV/2942/2017 and the claims of the Plaintiff as endorsed on suit NO: FCT/HC/CV/821/2014 are exactly the same.

It is the contention of the Learned Counsel to the Defendant/Applicant in his address that since suit NO: FCT/HC/CV/821/2014 has already been dismissed, and the parties and issues are the same, this Court lacks jurisdiction to entertain same as it among other things constitutes an abuse of Court process. Now, one may pose to ask the question as to what constitutes an abuse of Court process.

In the case of DREDGING INT'L SERVICES LTD Vs AB SEA OILSLTD (2019) LPELR - 49179 (A), per JOMBO - OFO, J.C.A, at pages 12 - 14, paragraphs C - A, the Court held thus:-

"On what therefore constitutes an abuse of Court process? The Law is settled that what constitutes an abuse of Court process is the multiplicity of suits or

proceedings by the parties in respect of the same subject matter and issues whether in the same Court or different Courts.....

An abuse of Court process is the institution of multiplicity of actions on the same subject matter against the same opponent on the same issue.....”

In the instant suit the Plaintiff/Respondent has not denied that the parties, issues and claims in suit NO: FCT/HC/CV/821/2014 and this present suit with No: FCT/HC/CV/821/2017 are the same.

Likewise, the Plaintiff/Respondent has not denied, but rather has admitted that suit NO: FCT/HC/CV/821/2014 between the same parties on the same subject matter and claims, was dismissed by my Learned brother Hon. Justice O.A. Musa and his Lordship also refused an application to set – aside the Order of dismissal of the said suit.

This Court is not unmindful of the submissions of Counsel to the Plaintiff/Respondent, as well as averments in the Counter – Affidavit to this preliminary objection which attributes the reason for the said dismissal to fault of Counsel, as well as the argument that the matter ought not to have been dismissed but struck out by Hon. Justice O. A. Musa.

However, it is also not denied by the Plaintiff/Respondent that despite the said Order of dismissal, no appeal was filed by the Plaintiff in that regard.

Indeed in the said Ruling of Hon. Justice O.A. Musa, Exhibited as Exhibit 4, attached to this preliminary objection His Lordship states in the following portion of the Ruling as follows:-

“.....By the wordings of Order 35 Rule 4, the word “shall” is used so therefore, it is mandatory. I am in agreement with the Learned Defendant/Respondent Counsel that the discretion of a Court once validly exercised cannot be reversed. To ask a Court to do so is to ask it to sit on appeal over its own decision. The proper action expected of the Plaintiff/Applicant is to go on appeal if he so wishes having not been satisfied with the decision of this Honourable Court”.

Therefore, in the light of the above, it is my considered opinion that asking this Honourable Court to sit on this matter on the same issue between the same parties suit NO: FCT/HC/CV/821/2017 having been dismissed, would amount to asking this Court to relitigate the same issues and therefore an abuse of Court process. I so hold.

On this premise, I humbly refer to the case of DREDGING INT'L SERVICE (NIG.) LTD Vs AB SEA OILS LTD (Supra); where the Court said: and the case of SILHOVTTE - TRAVELS & TOURS LTD Vs LEADERS & CO LTD PUBLISHERS OF THIS DAY NEWSPAPER (2017) LPELR _ 42982 (CA), per OHO, J.C.A, PP 23 -27, paragraphs A - B, where it was held thus:-

“Usually, the category of what amounts to an abuse of process is not closed. An abuse can manifest in a variety of ways one of which is the multiplicity of actions between the same parties on same issue, seeking the same Relief. A Court of Law frowns at such multiplicity of actions for the following reasons; (1) This may result in the ridicule of the judicial system (2) This issue of ridicule may stem from the fact that there may be the possibility of conflicting judgments and orders emanating from multiple actions. (3) It amounts to a waste of judicial resources.....”

Likewise, it must be stated here that in the instant case, both decisions of my Learned brother Justice O.A. Musa delivered on 27th February, 2018 and on 6th July 2018 in suit No.FCT/HC/CV/821/2014 are still subsisting and have not been set aside since no appeal was filed against both decision.

On this I refer to the case of OLEKSANDR & ORS. Vs LONESTAR DRILLING CO. LTD & ANOR. (2015) LPEL 24614 (SC) also cited by the Learned Defendant/Applicant Counsel, per KEKERE Vs EKUN J.S.C. at page 139, paragraphs A – C, where His Lordship held.

“It is settled Law that a decision of a Court of competent Jurisdiction not appealed against remains valid, subsisting and binding between the parties and is presumed to be acceptable to them.”

See also the cases of IYOHO Vs EFFIONG (2007 11 NWLR (Pt. 1044) 31, S. P. D.C. NIGERIA LTD Vs X. M. FERERAL LTD & ANOR (2006) 16 NWLR (Pt. 1004) 189, ADEJOBI & ANOR Vs THE STATE (2011) 12 NWLR (Pt. 1261) 347.

Therefore where a Court finds that a process before it constitutes an abuse of Court as in the instant case, the proper order to make is that of dismissal. In this respect, I refer to the case of -

RE:NIMASA (2019) LPELR – 48872 (CA), per George Will, J.C.A, PP 52. 58, paragraphs C – B, where the Court held:

“Where the Court comes to the conclusion that its process is abused, the proper Order is that of dismissal of the process.....”

Therefore on the whole, I find that this Honourable Court lacks the jurisdiction to entertain the present suit.

Consequently the issue for determination is hereby resolved in favour of the Defendant/Applicant against the Plaintiff/Respondent. I so hold.

The preliminary objection is meritorious and same is hereby sustained.

In view of the above, this suit with suit NO: FCT/HC/CV/2942/17: MAGIC HILLS LIMITED Vs MTN NIGERIA COMMUNICATIONS LIMITED be and is hereby dismissed.

Signed
Hon. Justice S. U. Bature
(Presiding Judge)
12/05/2020.

Respondent’s Counsel: Even though the Ruling is against us, we wish to thank my Lord for this well considered Ruling.

Applicant's Counsel: We thank my Lord for this well considered judgment.

Signed
Hon. Justice S. U. Bature
(Presiding Judge)
12/05/2020.