

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. 22
CASE NUMBER : SUIT NO: CV/855/19
DATE : WEDNESDAY 16TH SEPTEMBER, 2020

BETWEEN

1. INTER PRODUCTS LINK LTD } CLAIMANTS/RESPONDENTS
2. ALH. SHUAIBU MUHAMMD BELLO }

AND

1. JAIZ BANK PLC. } DEFENDANT/APPLICANT
2. N.A DANGIRI, SAN } DEENDANT/RESPONDENT
(Trading under the name & style
of Nasir Abdu Dangiri, SAN & Co.) }

RULING

This Ruling is at the instance of Defendants/Applicants who approached this Honourable court seeking the following reliefs;

1. An Order that this Honourable Court lacks the competence and jurisdiction to hear and entertain Claimant's suit or this suit as the Federal High Court Kano is already seized of this matter in suit No. **FHC/RN/CS/123/2019 BETWEEN JAIZ BANK PLC. (on behalf of Nasir Abdu Dangiri, SAN) VS INTER PRODUCTS LINKS LTD & ALHAJI SHUAIBU BELLO** wherein the Receiver/Manager appointed by Jaiz Bank Plc. Was directed by the said court to take over the mortgaged properties which are also the common subject matter of this suit, sale same with a view to paying its creditor (Jaiz Bank Plc.).

2. An Order dismissing this suit for being frivolous, vexations and abuse of judicial processes of this Honourable Court.
3. And for such further or other Order as this Honourable Court may deem fit to make in the circumstance of this Honourable Court.

The grounds upon which the application are made are as follows:-

- a. That the Federal High Court Kano has on 4th day of July, 2019 delivered a Ruling in **SUIT NO. FHC/KN/CS/123/2019 BETWEEN JAIZ BANK PLC (ON BEHALF OF NASIR ABDU DANGIRI, SAN VS INTER PPRODUCTS LINK LIMITED & ALHAJI SHUAIBU BELLO** empowering the 2nd Defendant who has been appointed as Receiver/Manager by the 1st Defendant to take over the two landed properties covered by **Kano State Certificates of Occupancy Nos. MLKN/0060 and**

KNML/02365 that have been mortgaged by the claimants in favour of the 1st Respondent, and which the claimants want this Honourable Court to make order setting aside the two Tripartite Deed of Legal Mortgages and Release same to the claimants.

- b. This Honourable Court cannot sit on Appeal over the decision of Federal High Court Kano in Suit No. **FHC/KN/CS/123/2019** mentioned in paragraph above as this Honourable Court and Federal High Court have concurrent jurisdiction under the Constitution of Federal Republic of Nigeria (1999) as Amended.
- c. Where the High Court of a State or Federal Capital Territory is prayed to make an Order that is diametrically or in conflict with a subsisting order of a Federal High Court, in the context of the same subject matter and where equally identical or seeming identical prayers are sought, it should refuse it to

entertain it and advise parties to approach a Court with a wider jurisdiction. See *N.I.M.B. LTD VS U.B.N LTD (2004) 12 NWLR (Pt. 888) 599 at 618.*

- d. The subject matter of this suit and some of the reliefs sought in the main suit as contained in the writ of summons and the motion for Interlocutory Injunction are two landed properties covered by Kano State Certificates of Occupancy Nos. **KNML/02363** located at **No. 26 Aliyu Wada Street, Of Suleiman Crescent, Nassarawa G.R.A Kano, Kano State** and **MLKN/00609** located at **Plot No. 10, F1, F2 Road, Off Katsina Road, Kano, Kano State** outside the jurisdiction of this Honourable Court. And two separate Legal mortgages were created by the claimants over the said two properties in favour of the 1st Defendant/Applicant. The two separate Tripartite Deedwere duly registered at the Land Registry Kano and not Abuja, Federal Capital

Territory. The two landed properties are common subject matter in this suit and **Suit No. FHC/KN/CS/123/2019.**

- e. This Honourable Court lacks jurisdiction and competence to hear and determine matters relating to appointment, powers and duties of a Receiver/Manager appointed by a Mortgagee like the 1st Defendant over the mortgaged assets of the claimants provided as security for the **N415,000,000.00 (Four Hundred and Fifteen Million Naira) MURABAHA FINANCE FACILITY** which is the common subject matter of this suit and **Suit No. FHC/KN/CS/123/2019** mentioned in paragraph above.
- f. The jurisdiction of this Honourable Court is determined by sections 255 (1) and 257 (1) of Constitution of Federal Republic of Nigeria 1999 (as Amended).

- g. The case of *DALHATU VS TURAKI (2003) 15 NWLR (Pt. 843) 310* is authority on the proposition that this Honourable Court lacks the jurisdiction to hear and determine reliefs **Nos. 30 (a) and (C)** contained in the statement of claim and the relief sought in the motion for Interlocutory Injunction as the two landed properties are located in Kano, Kano State Nigeria outside Federal Capital Territory, Abuja.
- h. This Honourable Court has no extra – Territorial or Geographical jurisdiction over Mortgaged properties of the Claimants located in Kano, Kano State that are provided as security for the **N415 MILLION MURABAHA LINE FACILITY** obtained by the claimants from the 1st Respondent.
- i. A Receiver/Manager has since been appointed by the 1st Defendant and Receiver/Manager has since obtained an order to take over the two mortgaged

properties sell same in order to pay the 1st Defendant the loan obtained by the claimants.

- j. The Appointment of a Receiver/Manager, by a mortgagee like the 1st Defendant/Applicant pursuant to powers contained in clauses 6 of the Tripartite Deed of Legal Mortgages in question and powers and duties of the Receiver/Manager are determined by Section 388 – 400 of Companies and Allied Matters Act.
- k. The Court referred to in section 610 of Companies and Allied Matters Act (CAMA) is the Federal High Court and not this Honourable court.
- l. The parties in the present suit and suit No. **FHC/KN/CS/123/2019** are the same.

In support of the application is an affidavit of 6 paragraph deposed to by one Nyamve Basil, a litigation secretary in the law firm of the Applicant.

It is the deposition of the Applicant that the Federal High Court Kano has on 4th day of July, 2019 delivered a considered ruling in suit No. **FHC/KN/CS/123/2019** between the parties herein and empowered the 2nd Defendant who has been appointed as Receiver/Manager by the 1st Defendant to takeover the two landed properties covered by Kano State Certificates of occupancy No. **MLKN/00609 and KNML/02365**. The Enrolled Order is annexed as Exhibit “BN1.”

Applicants aver that this Honourable court lacks the jurisdiction and power to grant some of the main reliefs sought by the Claimants in this case as they relate to the two landed properties covered by Kano State certificates of occupancy No. **MLKN/00609/KNML/02365** located in Kano, Kano State outside the FCT.

That the court lacks the competence and jurisdiction to restrain a Receiver/Manager appointed by a mortgagee like the 1st Defendant pursuant to powers contained in

clause 6 of the two separate Tripartite legal mortgages executed by the claimants in favour of the 1st Defendant provided as security for the N415 Million loan and which the claimants want this court to set aside.

It is further the affidavit of the Applicant that the Respondent has deposited the money the amount as contained in Exhibit “BN1” to the Registry of this Honourable Court. And that the Claimants have misled this Honourable Court in granting interim order in its favour on the two legal mortgages which are duly registered with Kano State outside the jurisdiction of this Honourable Court.

The Applicant filed a written address wherein a sole issue for determination is distilled for determination to wit; whether this Honourable Court has jurisdiction to hear and determine claimants suit and the reliefs sought therein that are common to the subject matter in suit No. **FHC/KN/CS/123/2019** between the same parties where

the Federal High Court has issued an Order to take over the mortgaged properties and sale same with a view to repaying the debt of the claimants to the 1st Defendant.

Arguing on the sole issue, learned counsel submit that jurisdiction of this Honourable Court is provided for under section 257(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) and that order 3 Rule 1 of the Rules of this Honourable Court provides that all suit related to land or any mortgage or charge on land or any interest in land, or any inquiry or damage to land and actions relating to personal property determine or seized for any cause may be commenced and determined in the judicial division in which the land is situated, or the detained or seized or took place.

Counsel cited and relied on *DALHATU VS TURAKI (2003) 15 NWLR (Pt. 843) 310 at 338 – 340.*

It is further submission of the learned counsel that the court of Appeal has interpreted provision similar to Order

3 Rule 1 (supra) in ***ZUNTU VS ZUNTU (2001) LPELR 6967 (CA) at page 6-10*** that all suits relating to land must be filed in the state where the land is situated and that in the present case, Kano State.

Learned counsel contended further that since the Federal High Court Kano has issued Exhibit “BN1” directing the Receiver/Manager to take over the mortgaged assets which the claimant wants this Honourable Court to determine, then this Honourable Court should be caution and be bound by the Supreme Court decision in ***NIMB LTD VS UBN LTD (2004) 12 NWLR (Pt. 888) 599 at paragraph 620*** where the court held that, “*where counsel for different parties to a matter either due to over zealousness to comply with the dictates of their client or cause sheer nuisance by the nature of proceedings they foist on the courts which are likely to bring them to ridicule, it behooves on the court particularly the latter one to which the proceedings in the same subject matter*

were entertained in the first court to exercise utmost caution. In this connection it should school itself on the probability and naughtiness of abuse of process of the court which some counsel sometime in their eagerness to pursue their case lose sight of the possible consequence of causing disaffection that leads to ridicule and opprobrium of the courts.”

Learned counsel submit finally that, the present action is clearly an abuse of court process and liable to be dismissed. *DINGYADI VS INEC 2010) LPELR 40142 SC* was cited and relied upon.

Upon service, the Claimants/Respondents filed a counter affidavit of 10 paragraph deposed to by one Khaliat Bello, an Administrative Secretary in the Law Firm of the Respondents.

From the counter affidavit of the Respondent the following can be distilled.

That similar application was filed on the 23rd August, 2019 challenging the jurisdiction of this Honourable Court to entertain the Claimant' suit on the same grounds as thus:-

- a. That the subject matter of this suit and some of the reliefs sought in the main suit and the interlocutory injunctions are two landed properties covered by Kano State Certificates of Occupancy Nos. KNML/02363 located at No. 26 Aliyu Wada Street, Off Suleiman, GRA Kano, Kano State and MLKN/0060 located at Plot No. 10, F1, F2 Road, OFF Katsina Road, Kano, Kano State outside the jurisdiction of this Honourable Court. And two separate legal mortgages were created by the Claimants over the said two properties in favour of the 1st Defendant/Applicant. The two separate Tripartite Deed were/are duly registered at the land

Registry Kano and not Federal Capital territory, Abuja of Legal Mortgages.

- b. This Honourable Court lacks jurisdiction to hear and determine matters relating to appointment, powers and duties of a receiver/manager appointed by a Mortgagee like the 1st Defendant over the mortgaged assets of the Claimants provided as security for the N415,000,000.00 (Four Hundred and Fifteen Million Naira) Murabaha Finance Facility. The two separate Tripartite Legal Mortgages were created by the Claimants in favour of the 1st Defendant/Applicant.
- c. The case of *DALHATU VS TURAKI (2003) 15 NWLR (Pt. 843) 310* is authority for the proposition that this Honourable Court lacks the jurisdiction to hear and determine reliefs Nos. 30(a) and (c) contained in the statement of claim and the reliefs sought in the motion for Interlocutory Injunction as

the two landed properties are located in Kano, Kano State Nigeria outside Federal Capital Territory, Abuja.

- d. This Honourable Court has no extra – territorial jurisdiction over mortgaged properties of the Claimants located in Kano, Kano State that are provided as security for the N415Million Murabaha Line Facility obtained by the Claimants from the 1st Respondent.
- e. A receiver/Manager has since been appointed who has since obtained an order to take over the two mortgaged properties.

That issues were joined and a considered ruling was delivered vide Exhibit “C” and the 1st Defendant aggrieved by the Ruling of this Honourable Court filed an Appeal vide Exhibit “D”.

That the interest of justice will best be served if the instant motion is dismissed.

In line with law and procedure, a written address was filed wherein three issues were formulated for determination to wit;

- i. Whether in view of the ruling of this Honourable Court delivered on the 12 of September, 2019 the court has not become functus officio with respect to the issue of the jurisdiction to entertain the instant application.
- ii. Whether in view o the ruling of this Honourable Court delivered on the 12th ofSeptember, 2019 and the 1st Defendant's notice of Appeal filed on the 24th of September, 2019 appealing the aforesaid ruling, the instant application is not a gross abuse of court process liable to be dismissed with punitive cost against the 1st Defendant.

iii. Whether the instant application is properly before this Honourable Court.

On issue one, Whether in view of the ruling of this Honourable Court delivered on the 12 of September, 2019 the court has not become functus officio with respect to the issue of the jurisdiction to entertain the instant application.

Learned counsel submit that once a court has arrived at a decision on a particular point on which issues have been joined by parties in litigation, the court has becomes functus officio with respect to that issue and cannot consider it again. *F.B.N PLC. VS T.S.A INDUSTRIES LTD (2010) 15 NWLR (Pt. 1216).*

Counsel contended that by virtue of ruling delivered on the 12th of September, 2020, this court has becomes functus officio. *NIGERIAN ARMY VS IYELA (2008) 18 NWLR (Pt. 1118) Page 115.*

On issue two, Whether in view of the ruling of this Honourable Court delivered on the 12th of September, 2019 and the 1st Defendant's Notice of Appeal filed on the 24th of September, 2019 appealing the aforesaid ruling, the instant application is not a gross abuse of court process liable to be dismissed with punitive cost against the 1st Defendant.

Counsel submit that the 1st Defendant has appealed the ruling of this Honourable Court holding that it has jurisdiction to entertain this suit despite having appealed the said ruling which appeal is pending at the Appellate court has again brought the instant application challenging the jurisdiction of this court to entertain the instant suit and this is abuse of court processes. ***R – BANKEY NIG. LTD VS CADBURY NIG.LTD (2012) 9 NWLR (Pt. 1306) page 596.***

Court was finally urged to dismiss the application.

Upon service, the 1st Defendant filed a reply affidavit of 6 paragraph duly deposed to by one Nyamve Basil a litigation secretary in the law firm of Applicant.

It is the deposition of the Applicant that apart from filing Notice of Appeal no further step was taking in respect of the appeal and that the appeal does not operate as stay of execution.

That the proceeding of this Honourable Court is fresh and therefore the court has jurisdiction to entertain the application.

A written address was file wherein the issue whether the motion on notice filed by the 1st Defendant/Applicant is an abuse of judicial process in view of the fact that this Honourable Court is hearing the case De Novo.

Learned counsel submit that this matter is starting DeNovo and therefore, this Honourable Court has the

inherent jurisdiction. ***BIRI VS MAIRUWA (1996)8 NWLR (Pt. 467) 425 at Page 430 Paragraphs A-B.***

Learned counsel submit further that, this Honourable court has jurisdiction to entertain the present application and even dismiss the entire suit. ***DAIRO VS UBN PLC. (2007) LPELR 913 (SC) at Page 61-62 Paragraph A-B.***

On the part of court, after a careful review of the Motions 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 this present action against the Defendants/Applicants before this Honourable court presided over by my Learned Brother Hon. Justice Muawiyah Baba Idris wherein similar application was made before him and a considered ruling was delivered vide Exhibit "C".

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 the Court of Appeal against the decision of my learned brother, Hon. Justice Muawiyah Baba Idris which the Applicant rightly did by Exhibit “D”.

Having appealed against the decision, certainly, this present application becomes an abuse of court process.

Consequently, application been abuse of court process, liable to be dismissed. Same is accordingly dismissed.

Justice Y. Halilu
Hon. Judge
16th September, 2020

APPEARANCE

A.M Adoyi with Martha O. – for the Claimant/Respondent.

Fatima Shuaibu – for the 1st Defendant/Applicant.

L.S Yaro with A.B Mohammed – for the 2nd Defendant.