



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



**SUIT NO: FCT/HC/CV/3209/17
MOTION NO. FCT/HC/M/5951/2018**

BETWEEN:

PREMIUM HEALTH LIMITEDPLAINTIFF

AND

- 1. NATIONAL HEALTH INSURANCE SCHEME.)
- 2. HON. MINISTER OF HEALTH) .DEFENDANTS
- 3. HON. ATTORNEY-GENERAL OF THE FEDERATION)

RULING

The Plaintiff/Respondent filed the instant action on 18th October, 2017 against the Defendants jointly and severally. The primary declaratory relief sought therein is as captured hereunder:

“A declaration that the failure or refusal of the 1st Defendant and by extension, the 2nd and 3rd Defendants to comply with the Consent Judgment dated 9th May, 2016, in Suit No: FCT/HC/CV/423/15 is illegal, unlawful, and has resulted in or amounts to a breach of 1st Defendants’ legal and contractual duties

to the Plaintiff and the Plaintiff has consequently suffered substantial loss of business, income, profits, goodwill as well as prospective financial losses, enumerated in prayers 2,3,4,5,6 and 7 below.”

Six different heads of consequential reliefs were listed on the Writ of Summons. However, the 1st Defendant/Applicant is disputing the jurisdiction of the Court vide a Motion on Notice filed on 11th May, 2018. The reliefs set out on the face of the preliminary objection are:

- 1. An Order dismissing the Suit for being an abuse of Court process or being statute barred; or**
- 2. An Order striking out this Suit for want of competence or jurisdiction; or**
- 3. An Order striking out the name of the 2nd and 3rd Defendants from this Suit; and**
- 4. Such Further or Other Order(s) as this Honourable Court may deem fit to make in the circumstances.**

On the face of the application, six grounds were listed in support. There is also an affidavit of 23 paragraphs deposed to by one Hamdalat O. Saka, a Legal Practitioner in the Firm representing the 1st Defendant/Applicant. Photocopies of certain documents were duly annexed and marked as exhibits A to D. Mr. M.I. Abubakar of

counsel to the Applicant filed 28-pages written address in support of the application.

In opposing this preliminary objection, the Plaintiff/Respondent filed a Counter Affidavit of 4-paragraphs deposed to by one Godfrey Omoha, a Litigation Assistant at Tokunbo Kayode Law Practice (TKLP) of Counsel to the Plaintiff/Respondent. Mr. Olatunji Salawu, Esq also filed a written address in support of the Counter Affidavit, to which the 1st Defendant/Applicant filed a further affidavit of 8-paragraphs and additional exhibits marked as exhibits A, C and D.

I have read the voluminous processes filed by parties in respect of this application, and it would appear to me that this is a very straightforward application. The critical question which would agitate the mind of the Court is whether this suit is not misconceived, having regard to the nature of relief sought by the Claimant in Suit No: FCT/HC/CV/423/2015: between the Plaintiff/Respondent and the 1st Defendant/Applicant.

Now the first ground in support of the preliminary objection alleges that:

“This Suit constitutes an abuse of the processes of this Honourable Court and the Plaintiff is estopped from filing same by virtue of the Judgment of the Court (coram Valentine Ashi J.), and pending contempt proceedings in

Suit No: FCT/HC/CV/423/2015: between the Plaintiff and the 1st Defendant.”

To facilitate ease of understanding, the question then is what is abuse of Court process? In the case of **ALLANAH & 2 ORS V. KPOLOKWU & 2 ORS (2016) LPELR-40724 SC** His Lordship **Sanusi, JSC** has this to say:

“To my mind, some of the features of abuse of Court process include the under mentioned features, even though they are by no means exhaustive. These features are:

- (i) Filing of multiplicity of actions on the same subject matter against the same opponents on the same issues or numerous actions on the same matter between the same parties even where there is in existence, a right to commence the action.**
- (ii) Instituting different actions between the same parties simultaneously in different Courts even though on different grounds.**
- (iii) Where two or more similar processes are used in respect of the exercise of the**

same right, for instance, a cross appeal and a respondent's notice.

(iv) Where two actions are instituted in Court, the second one asking for relief which may however be obtained in the first, the second action is, prima facie vexatious and an abuse of Court process."

See also the following cases:

- 1. OKORODUDU V. OKORODUDU (1977) 3 S.C 21;**
- 2. SARAHI V. KOTOYE (1992) 9 NWLR (PT.204) 156;**
- 3. OGOEJIOFOR V. OGOEJIOFOR (2006) 3 NWLR (PT.996) 206; and**
- 4. OKOROCHA V. PDP (2014) 7 NWLR (PT.4406) 213.**

Now the gist of this ground of objection is that the present suit seeks similar reliefs sought in Suit No: FCT/HC/CV/423/15 which culminated in a Consent Judgment between parties. To drive this point home, the 1st Defendant/Applicant has annexed the Writ in the earlier Suit which was attached as exhibits 'A'. The three heads of declaratory reliefs sought in the earlier suit are as follows:

- 1. A declaration that the Defendant is obliged to comply strictly with the National Health Insurance Scheme Act Cap N.42 Laws of the Federation of Nigeria (2004) (NHIS**

Act) as well as the Operational Guidelines of the Defendant applicable to Health Maintenance Organization (HMOs).

2. Declaration that the purported suspension of the Plaintiff by the Defendant as a Health Maintenance Organization (HMO) is wrongful, unlawful and contrary to due process, the NHIS Act and the Operational Guidelines of the Defendant.

3. A declaration that the Plaintiff remains a duly registered and accredited Health Maintenance Organization (HMO).

At the end of the day, parties in the previous action settled their dispute amicably and in consequence, filed Terms of Settlement which was adopted as Consent Judgment before **Ashi J.** (of blessed memory) on 9th May, 2016.

Paragraphs 4 and 5 of the Terms of Settlement as adopted by the Court as Consent Judgment read as follows:

4. “That upon meeting the above Terms of Settlement in paragraphs 1-3 above, the Defendant (National Health Insurance Scheme) shall reinstate the Plaintiff (Premium Health Limited) as a Health Maintenance Organization (HMO) with the scheme.”

5. "That the Defendant shall restore to the Plaintiff all enrollees previously assigned to the Plaintiff before its temporary suspension dated 9th day of October, 2015."

The Plaintiff/Respondent has accused the 1st Defendant/Applicant of non-compliance with the above terms of the Consent Judgment, and thereby commenced contempt proceedings against the 1st Defendant. A copy of the proceeding was annexed to the preliminary objection. The ground of the contempt proceedings in the annexed process is reproduced below:

"PARTICULARS OF DISOBEDIENCE"

1. "Failure to comply with the Terms 4 and 5 of the said Judgment Order to wit:

(a). "That upon meeting the above Terms of Settlement in paragraphs 1-3 above, the Defendant (National Health Insurance Scheme) shall reinstate the Plaintiff (Premium Health Limited) as a Health Maintenance Organization (HMO) with the scheme."

(b). "That the Defendant shall restore to the Plaintiff all enrollees previously assigned to the Plaintiff before its temporary suspension dated 9th day of October, 2015."

It was during the pendency of the contempt proceedings that the Plaintiff/Respondent presented the instant action. For the avoidance of doubt, the contempt proceeding was dated and filed on 30th May, 2017 while this action was filed on 18th October, 2017. And at the risk of repetition, the principal claim in the instant Suit is for:

“A declaration that the failure or refusal of the 1st Defendant and by extension the 2nd and 3rd Defendants to comply with the Consent Judgment dated 9th May, 2016, in Suit No: FCT/HC/CV/423/15 is illegal, unlawful, and has resulted in or amounts to a breach of 1st Defendants’ legal and contractual duties to the Plaintiff and the Plaintiff has consequently suffered substantial loss of business, income, profits, goodwill as well as prospective financial losses, enumerated in prayers 2,3,4,5,6 and 7 below.”

Taking into account the claims in the previous Suit and the Terms of the Consent Judgment coupled with the pending Contempt Proceedings, I have no difficulty in holding that the reliefs sought in the instant action and the Terms of the Consent Judgment are substantially the same. It is also clear that the parties are also substantially the same. What the Plaintiff is seeking in the instant action is compliance with the Consent Judgment delivered in Suit

No: FCT/HC/CV/423/15 on 9th May, 2016. It is also not in doubt that the contempt proceedings dated and filed on 30th May, 2017 is founded on non-compliance with the Consent Judgment in dispute.

I must say that the Rules of estoppel on the one hand would effectively prevent the Plaintiff/Respondent from pursuing the instant action, having obtained Judgment in a similar action against the 1st Defendant/Applicant. On the other hand, it would amount to an abuse of process of Court for the Plaintiff/Respondent to pursue this action for compliance in the face of the pending contempt proceedings against the 1st Defendant/Applicant.

At the end of the day, I must hold as I should that this present action is an abuse of Court process on the ground that there is already a pending Judgment on the same subject matter between parties, which is a subject matter of a pending contempt proceedings. This suit is therefore incompetent and accordingly struck out for want of jurisdiction.

SIGNED
HON. JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
30/09/2020