

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 1ST DAY OF DECEMBER, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/0346/2017

BETWEEN:

1. ALH. MUHAMMAD DODO ORIJI
2. OROJI INTERNATIONAL NIGERIA LIMITED



----- PLAINTIFFS

AND

UNITY BANK PLC ----- DEFENDANT

RULING

Before this Court is a Motion on Notice dated 11th June, 2018 and filed on the 3rd December, 2018. The Applicant is praying this Court for the following reliefs:

- “1. An order of this Honourable Court dismissing this suit in limine for being an abuse of Court process.
2. An order of this Honourable Court dismissing suit No. CV/0346/2017 as same is statute barred by virtue of

Section 7(1)(e) of the Limitation Act as the cause of action arose in 2002 – 2006 which is 11 years.

3. And for such further order or order(s) as the Honourable Court may deem fit to make in the circumstance.”

The Applicant has relied on three grounds in bringing this application. The grounds are as follows:

- “1. The action is statute barred by virtue of Section 7(1)(e) of the Limitation Act, Cap 522 LFN, 2004.
2. The Honourable Court has no jurisdiction to adjudicate on the suit of the Plaintiffs on the ground that same is caught by estoppel per rem judicata and issue estoppel.
3. The Plaintiff’s suit is an abuse of Court process.”

The application is supported by a 5 paragraphs affidavit deposed to by one, Ibrahim Yakubu Ibrahim, a Zonal Legal officer of the defendant. Also attached to the

application are two annexures marked as exhibit AOC 'A' and AOC 'B' respectively.

Amuwa Olasoji Olatunde Esq. Counsel representing the Applicant, also filed a written address which was duly adopted. In opposition, the Plaintiff's/Respondent's filed a 15 paragraphs counter affidavit on the 6th March, 2019. The affidavit was duly sworn to by one Peter Agu, a litigation secretary in Bunsiyam Law Firm, Chambers representing the Respondents. Further, Muktar Usman Bunza Esq. for the Plaintiff's/Respondent's filed a written address which was adopted before the Court.

On the 14th October, 2020 the application was heard and argued by the parties and it was subsequently adjourned to this day for Ruling.

In their written address, Learned Counsel for the Applicant formulated three issues for determination as follows:

- “1. Whether the Plaintiff’s claim in this suit is statute barred and liable to be dismissed or struck out by this Honourable Court as being without jurisdiction to entertain same.
2. Whether or not this suit is not grossly incompetent as it constitutes an abuse of process of this Honourable Court.
3. Whether this Honourable Court has jurisdiction to entertain this suit when same is caught up by the principle of estoppel per rem judicata or issue estoppel.”

On their part, Learned Counsel for the Plaintiff’s/Respondent’s adopted the three issues as formulated by the Applicant’s Counsel hook, line and sinker. Thus, this Court will proceed to determine this application on the said issues and where necessary reference will be made to addresses of Learned Counsel.

ISSUE ONE:

“Whether the Plaintiff’s claim in this suit is statute barred and liable to be dismissed or struck out by this Honourable Court as being without jurisdiction to entertain same.”

Generally, it has been reiterated in plethora of Judicial authorities that the manner in which to ascertain whether an action is statute barred is simple and straight forward. It is simply to examine the facts pleaded in the statement of claim to see what the cause of action is. In ascertaining whether an action is statute barred, the Court usually looks at the date when the action was instituted and the date when the cause of action arose simpliciter. See: Asuquo & Anor vs. Omole & Anor (2019) LPELR – 47867 (CA).

What constitute a cause of action? A cause of action is the operative fact or facts (the factual situation) which give rise to a right of action. In simple terms, a cause of action arises the moment a wrong is done to the claimant by the

defendant. See: Egbe vs. Adefarasin (1987)1 NWLR (Part 47) 1 at 20.

In this instance, the contention of the Applicant is that this Court lacks jurisdiction to adjudicate on this suit No: CV/0346/17 as same is statute barred. The Applicant submitted in the written address to the effect that the Plaintiff's/Respondent's ought to have sued the Applicant in September, 2011 and the failure to commence this action within 6 years from the date on which the cause of action accrued, the claims of the Respondents are statute barred. The Applicant relied and referred this Court to the provision of Section 7(1)(e) of the Limitation Act, CAP 522 LFN, (1990), Egbe vs. Adefarasin (1987)1 NWLR (Part 47) 1 at 20.

On the other hand, the Plaintiffs/Respondents submitted to the effect that this suit is anchored or borders on the fraudulent deductions of money from their accounts by the Defendant/Applicant. The Respondents further submitted that their case clearly falls outside the purview of

Section 7(1)(e) of the statute of Limitation Act, 1990, because the case is not for recovery of money, rather it was based on the fraudulent debits which accrued over their accounts. Further, the Respondents contended that fraud is an exception to the application of Limitation Act and no length of time is a bar to relief in the case of fraud especially in the absence of laches on the part of the party defrauded.

The Respondents finally submitted that they were never aware of the deductions until 2016 when they caused a forensic audit to be carried out on their accounts. Counsel referred to the cases of Arowolo vs. Fabiyi 000 (2002) FWLR (Part 95) at 314, Inyang vs. Registered Trustees of the First Gospel Church (2006) All FWLR (Part 314) at 292.

Having said that, the law is clear that where the issue of whether an action is statute barred has been raised, the starting point is to determine when the cause of action accrued. This is because time begins to run when the cause

of action accrues. See: Adimora vs. Ajufu (1988)3 NWLR (Part 80) 1, Akinyemi vs. Lawal (2013) LPELR – 22326 (CA).

Furthermore, it is not easy in most cases to identify the exact time, for the reason that its determination depends on the surrounding and at times peculiar circumstances of every particular case. See: Fadare vs. A.G. Oyo State (1982)4 SC 1.

Now, from the affidavit evidence before this Court and the pleadings filed by the parties in the suit, it is clear that the facts that led to the present suit are based on the alleged illegal and fraudulent debits and excessive charge carried out over the Plaintiff's accounts by the Defendant/Applicant as contended by the Plaintiff's/Respondent's.

Thus, as rightly submitted by the Plaintiffs/Respondents Counsel fraud is an exception to application of Limitation Act and no length of time is a bar to relief in the case of fraud especially in the absence of

laches on the part of the party defrauded. See: Arowolo vs. Ifabiyi (2002) FWLR (Part 95) at 314, Paras. A – H, rightly cited by the Respondent’s Counsel.

Similarly, deducing from the pleadings of the parties, the facts or combination of facts which gave the Plaintiffs/Respondents the right to sue clearly manifested themselves in 2016 when the Plaintiffs caused for a forensic audit to be carried out on their accounts. The cause of action in my opinion did not arise in 2011 as contended by the Defendant/Applicant. The action is not statute barred. The Plaintiff’s/Respondent’s have a right of action and I therefore resolve this issue in favour of the Plaintiff’s/Respondent’s.

ISSUE TWO:

“Whether or not this suit is not grossly incompetent as it constitutes an abuse of process of this Honourable Court.”

Abuse of Court process simply means that the process of the Court has not been used bona fide and properly. It also connotes the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. See Arubo vs. Aiyeleri (1993) 3 NWLR (part 280) page 126, Omoleke Ogunsanya vs. Alhaji Akande (2010) LPELR - CA/I/217/08. In Ali vs. Albishir (2008) 3 NWLR (part 1073) page 94, the Court held per Kekere - Ekun, JCA (as she then was)

“Filing two suits between the same parties on the same subject matter and where the end result of both suits was the same, eventhough the reliefs in the two suits were worded differently, would constitute abuse of Courts process.”

See also Minister of Works & Housing vs. Tomas (Nig) Ltd (2002) 2 NWLR (part 752) page 740.

The law is that to sustain a charge of abuse of Court process, there must co - exist inter alia:

- (a) A multiplicity of suits;
- (b) Between the same opponents;
- (c) On the same subject matter; and
- (d) On the same issues.

All these pre - conditions are mutually inclusive as they are conjunctive. See Ume vs. Iwu (2008) 8 NWLR (part 1089) page 225 at 243 - 244.

The contention of the Defendant/Applicant on this issue is that this suit as presently constituted is grossly incompetent as it constitutes an abuse of the hallowed process of Court and liable to be dismissed. The Applicant further contended that a determination of the present reliefs claimed in this suit by the Plaintiff's will undoubtedly lead to a determination of the issue already decided by the High Court of Sokoto State.

It is trite that whether or not a suit constitutes an abuse of Court process is a matter of fact, which must be established by credible evidence. See N.I.W.A. vs. S.T.B. Plc (2008) 2 NWLR (part 1072) page 483 at 500. One cannot determine whether there is an abuse of Court process without looking at the facts allegedly constituting the abuse. Both must go hand in glove. See Umeh vs. Iwu & ors (2008) 8 NWLR (part 1089) page 225 at 247 – 248.

From the affidavit evidence of the Applicant in the instance case, there is no sufficient evidence that the action filed by the Plaintiffs/Respondents before this Court is against the same parties, in respect of the same subject matter and seeking for the same reliefs with the suit determined in Sokoto State High Court. In fact, the Applicant who has the burden of establishing this fact, only exhibited two documents before this Court, i.e. a photocopy of a certified true copy of a judgment delivered

in Sokoto State High Court and a photocopy of a Notice of Appeal filed before the Court of Appeal, Sokoto division.

I have closely examined these documents and I could not see the reliefs and claims before the Sokoto State High Court to enable me compare with the claims presently before this Court.

Thus, I hold the view that the suit before the Court is competent and the plaintiffs have not abused the process of this Court and I must therefore resolve this issue against the Defendant/Applicant.

ISSUE THREE:

“Whether this Honourable Court has jurisdiction to entertain this suit when same is caught up by the principle of estoppel per rem judicata or issue estoppel.”

The Defendant/Applicant submitted on this issue that this present suit is caught by Estoppel per rem judicata and

as such ought to be dismissed in entirety. Counsel cited and referred to the cases of Makun vs. Fed. University of Technology Minna & Ors. (2011)6 SCNJ page 296 at 320, Agbogunleri vs. John Depo & Ors. (2008) All FWLR (Part 408) page 240 SC.

The Plaintiff's/Respondent's on the other hand submitted that the instant suit is properly constituted and is not caught by the principle of estoppel per rem judicata. This is because, this instant suit has never been determined by any competent Court. Counsel further submitted that the principle of estoppel only applies where the subject matter in the present suit and the previous suit are the same, the parties are the same, issues are the same and decision reached in the previous suit was given by a competent Court. Counsel referred to the cases of Opawoye vs. Tunbi (2004) All FWLR (Part 234) at 1858, Odumosu vs. Oluwole (2004) FWLR (Part 191) at 1654, Adone vs. Ikebudu (2001) FWLR (Part 72) at 1893.

Without much ado, the law has long been settled that for a plea of estoppel per rem judicata to succeed, the party relying on it must establish the following requirements or pre - conditions, namely:

1. That the parties or their privies are the same in both the previous and present proceedings.
2. That the claim or issue in dispute in both actions is the same.
3. That the res or the subject matter of the litigation in the two cases is the same.
4. That the decision relied upon to support the plea of estoppel per rem judicata is valid subsisting and final.
5. That the Court that gave the previous Judgment relied upon to sustain the plea is a Court of competent jurisdiction.

See: The Honda Place Ltd. vs. Globe Motors Holdings Nig. Ltd. (2005) LPELR - 3180 (SC), Adone vs. Ikebudu (2001)14 NWLR (Part 733) 385 at 417.

I have earlier resolved that the Defendant/Applicant failed to establish the fact that the earlier matter determined by the Sokoto State High Court was on all fours/identical with the instant suit. Thus, the conditions enumerated above for a Plea of estoppel to succeed are missing in the instant case which automatically takes the matter out of the realm or principle of estoppel per rem judicata. The only logical thing to do at this point is to refuse this application. Thus, the application with motion No: M/1656/2018 is hereby struck out.

Signed
Honourable Judge

Appearances:

Muktar Usman Bunza – for the plaintiff's/respondent's

Henry Imahigbe – for the defendant/applicant