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/124/2019**
DATE	**:**	**THURSDAY 5TH NOVEMBER, 2020**

BETWEEN

BINA CONSULT AND INTEGRATED SERVICES LIMITED — **CLAIMANT/ APPLICANT**

AND

1. THE ATTORNEY GENERAL OF ZAMFARA STATE
2. ZAMFARA STATE GOVERNMENT
3. SECRETARY TO THE ZAMFARA STATE GOVERNMENT

— **DEFENDANTS/ RESPONDENTS**

RULING

This Ruling is at the instance of the Defendants/Applicants who approached this Honourable Court for the following:-

1. An Order of this Honourable Court, vacating or setting aside the Order of Mandatory Injunction granted by this Honourable Court to the Claimant/Respondent on the 21st of September, 2020, in Motion No. M/9604/2020, coram, Hon. Justice Yusuf Halilu, as same was granted without jurisdiction.

AND / OR ALTERNATIVE

a. An Order of this Honourable Court staying the execution of its ruling and Orders dated 21st September, 2020 (wherein it made an Order for

restorative possession of the property in dispute, pending the hearing and determination of the substantive suit; and another interim Order for "Interim punitive damages in the sum of **N48,200,000.00 (Forty Eight Million, Two Hundred Thousand Naira)** only, and immediate payment of the said sum before the Defendants/Respondents are allowed to take any major steps in the proceedings"), pending the hearing and determination of the Applicants' motion, the notice of preliminary objection dated 2nd January, 2020, and/or the substantive suit itself filed by the Claimant/Respondent on the 24th of October, 2019.

b. And for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 16 paragraphs duly deposed to by Suleiman Ahmed a state counsel in the office of the 1st Defendant.

It is the deposition of the Applicant that a preliminary objection challenging the jurisdiction of this Honourable Court is still pending vide Exhibit "2A", and that ordinarily the preliminary objection was to be taken but due to shot down of the court because of Covid 19 virus the Defendant was unable to travel to Abuja.

Applicantaver further that they got a call on the 29th September, 2020 from the office of the address for service within jurisdiction that an Order of this Honourable Court had been served on them vide Exhibit "2B", and that upon enquires, it was discovered that a Motion on Notice dated

9th September, 2020 had been filed and served by the Claimant on the local address of service and same was taken when it was not riped for hearing on the 17th September, 2020.

That this court ought to have determined the issue of jurisdiction first before taken any further step in the matter and that the Order of this Honourable Court made on the 21st September, 2020 is a nullity.

Written address was filed pursuant to Rules and Procedure wherein the following issues were formulated for determination to wit;

i. Whether from the entire facts and circumstance of this case this Honourable Court ought to have heard and/or to have first determined any other application pending before it when a Notice of Preliminary Objection challenging its

jurisdiction was still pending before it and had not been heard or determined one way or the other.

ii. Whether this Honourable Court possesses the requisite jurisdiction to set aside its own Order made on 21st September, 2020, for amounting to a nullity an Order made without jurisdiction.

iii. Whether the Defendants/Applicants constitutionally guaranteed Right to fair hearing was infringed upon by this Honourable Court by its Act of Hearing and determining the Claimant's Motion on Notice filed 9th September, 2020, without Notice and at the back of the Applicants.

On issue one, afore formulated,Learned Senior counsel, Ozekhome, SAN, contended that

jurisdiction goes to the root of the competence of a court to adjudicate upon any matter and the issue of jurisdiction can be raised at any stage of the proceedings. ***NONYE VS ANYCHE (2005) 2 NWLR (Pt. 910) page 623 at 655 paragraphs G-H,*** was cited in support of the preposition.

Counsel argued that hearing of motion No M/9604/2020 on the 17th September, 2020 and the Ruling delivered thereon on the 21st September, 2020 by this Honourable Court while the Defendants' preliminary objection challenging in limine the jurisdiction of this court was pending is an error. ***ATTORNEY GENERAL OF THE FEDERATION VS GUARDIAN NEWSPAPERS LTD (2001) LPELR 8030 CA,*** was relied upon on this leg of argument.

On issue two,Ozekhome, SAN, argued that this Honourable Court has the requisite powers and jurisdiction to set aside its Order where the circumstances permit, or in deserving cases. ***STANBIC IBTC BANK PLC. VS LGC LTD (2020) 2 NWLR (Pt. 1707) 1 at 17.***

Counsel maintained that this Honourable Court whose jurisdiction is being challenged and is yet to determine same, lacks the jurisdiction to hear and determine any other application, except to determine whether it has jurisdiction to hear this action.

CITEC INTERNATIONAL ESTATE LTD & ORS VS FRANCIS & ORS (2014) LPELR 223114 SC.

On issue three, learnedsenior counsel, Ozekhome, SAN, further argued that natural justice demand that a party must be heard before the case against him is

determined. And that Orders 43 Rules 1 (3) holds that where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, and that the Order made by this Honourable Court on the 21st September, 2020 have completely determined this suit at an interlocutory stage wherein parties are yet to be heard. ***GROUP DONONE & ANOR VS VOLTIC (NIG) LTD 2008 LPELR 1341 (SC).***

Learned counsel on the whole urged the court to grant his application by setting aside the Order made, same being a nullity.

Upon service, the Respondent filed a counter affidavit of 10 paragraph duly deposed to by one Otori O. Adeshina a counsel in the law firm of the Claimant/Respondent.

It is the averment of the Respondent that the Rules of this court provide for two (2) clear days between the service of Motions on Notice and the day of hearing.

That the motion and the hearing Notice was served on the 10th September, 2020 with return date clearly endorsed on the motion. The motion is annexed as Exhibit "A".

A written address was filed wherein learned counsel treated the issues canvassed by the Defendants/Applicants wherein counsel summarized the position of the Defendants/Applicants into two;

1. The Honourable Court lacked jurisdiction to entertain the motion for mandatory injunction and damages on grounds that there was a

pending motion challenging the jurisdiction of the court which ought to be resolved first.

2. The motion for mandatory injunction was not ripe for hearing when it was heard on the 17th September, 2020 having been served on the Defendants/Applicants on the 10th September, 2020.

On issue No. 1, F.R Onoja, of counsel, argued that there was no application challenging the jurisdiction of the court that was pending at any time in the course of this litigation and that what was pending is just Motion on Notice praying the Court not to exercise the jurisdiction to hear the matter and that an application asking the court to stay proceedings pending arbitration is not a challenge to the jurisdiction of court ***LIGNES AERIENNES***

CONGOLAISES VS AIR ATLANTIC NIG. LTD (2005) LEPLR 5808 (CA).

Learned counsel, Onoja further argued that Arbitration clause does not oust the jurisdiction of a court. ***OBEMBE VS WEMABOD ESTATE (1977) LPELR (2161).***

On issue two, learned counsel contended that this court had jurisdiction to entertain the Motion on Notice at the time it did and granted the reliefs sought, Applicants having been served the Motion on Notice but who elected to sit on the fence.

On issue 3, counsel insists that the Motion on Notice contained a return date endorsed on its face and that Order 43 Rule 6 of the Rule provides for at least 2 clear days between the service of Motion on Notice

and the day for hearing and same was complied with.

Counsel argued further that the Applicants were not denied their constitutional right to be heard. ***GOVT. IMO STATE VS E.F NETWORK (NIG.) LTD (2019) 9 NWLR (Pt. 1676) page 112.***

F.R Onoja on the whole, urged the Court to dismiss the application of the Applicants.

Defendants/Applicants filed a further affidavit of 5 paragraphs wherein they stated that they had 7 days within which to respond to the Motion on Notice and that Order 43 Rule 6 of the Rules of this Honourable Court is not invoked when a party is acting within the allocated clear 7 days.

That it will be in the interest of justice to grant this application.

COURT:I have considered the affidavit in support of the application, further and better affidavit with the legal arguments of the Defendants/Applicants ably moved by learned SAN, Ozekhome, on one hand, the counter affidavit and written address of Claimant/Respondent, ably adopted by F.R Onoja of counsel both for the Plaintiff and Defendants respectively.

From the said arguments of parties, Issues clearly have been narrowed to the provision of Order 43 Rule 1 (3) and Order 43 Rule 6 of the Civil Procedure Rules of this Court 2018 which deals with time allowed for motions for the records, the said Orders are hereby reproduced for understanding:-

Order 43 Rules 1 (3)

> "***where the other party intends to oppose the application, he shall within seven days of the service on his of such application, file his written address and may accompany it with a counter affidavit."***

Order 43 Rule 6

> ***Unless the court grants special leave to the contrary, there must be at least 2 clear days between service of Motion on Notice and the day for hearing.***

It is not in doubt that Defendants/Applicants filed a Notice of preliminary objection which was served on the Claimants.

The said Preliminary Objection for the records which was dated the 8th November, 2019 was filed on 12th November, 2019 and served on the Claimants on 6th January, 2020.

It is equally not in doubt that it was after the Claimants served Defendants/Applicants with the Original Process, Interim Injunction and a Motion on Notice for Interlocutory Injunction that Defendants then filed the said preliminary objection which is still pending.

The said Order of Interim Injunction was made on the 31st October, 2019 and same was served on the Defendants on the 1st November, 2019.

It is also most instructive to note that it was during the pendency of the Interim Order that the said

Preliminary Objection was filed and later served on the Claimant/Respondent.

There is no gain saying that the essence of an injunctive Order, be it Interim or Interlocutory, is to preserve the "Res" (subject matter of litigation) from being tampered with during the pendency of the action.

It is needless saying that the Order of this Court was made and served on the Defendants, but disrespected and ridiculed by the Defendants which gave birth to the restorative Order of Mandatory Injunction and punitive cost.

Now, faced with the revealing affidavits and respective endorsement on the processes before the court, where does the court start from.

In one breath, learned SAN, Ozekhome is of the legal view that having challenged the jurisdiction of this Court, every other matter or step ought to stop pending the determination of the said Preliminary Objection on jurisdiction filed by the Defendants.

Poser … when was the said Preliminary Objection filed?

This question has been copiously answered in the preceding part of this ruling.

The Preliminary Objection in question was filed upon receipt of the Originating Process, Interim Order of Injunction and Motion on Notice for Interlocutory Injunction.

It is instructive to state that Defendants who knew well enough of the pendency of this suit in court

implore self help by ejecting the Claimant and all guests from the subject matter of litigation.

It is the restorative Order this court made against the Defendants to revert to status quo that the distinguished SAN, Ozekhome, seeks to have set aside for the reasons alluded to in the affidavit and written address under consideration.

I make bold to say that the said Preliminary Objection was only filed after receipt of the Interim Order of this court amongst other processes.

Needless to say that the Interim Order which was disobeyed by the Defendants was served on the Defendants before the said Preliminary Objection.

The Order of this court made on the 21st September, 2020 therefore was not, is not and could not have

been a nullity as erroneously argued by learned SAN, Ozekhome.

On the issue of computation of days relating to Order 43 Rule 1 (3) and Order 43 Rule 6 of the Rules of this Court, I wish to state that there is a difference between an Originating Motion and a Motion on Notice.Whereas Originating Motion is one of the ways by which an action is commenced, Motion on Notice is an interlocutory proceedings which is filed during the pendency of an action seeking for interlocutory reliefs i.e injunction.

The application for mandatory injunction moved by F.R Onoja of counsel for the Claimant was an application filed to compel Defendants to revert to status quo after the Order of this court which was

made during the pendency of this matter was dragged on its head and ridiculed.

The proper law to apply here is Order 43 Rule 6 of the Rules of this Court and not Order 43 Rule 1(3) of the Rules of this Court 2018 as erroneously argued by the distinguished SAN, Ozekhome, for the Defendants/Applicants.

In the event that I'm wrong, a position I strongly doubt, the argument of Ozekhome, SAN, that they were entitled to 7 days pursuant to Order 43 Rule 1(3) of this court and were not afforded the said days cannot hold water. This is so because the motion for mandatory injunction by my computation was heard timeously after Defendants failed to join issues with theClaimant/Respondent. Supposing without conceding that Defendants/Applicants were never

served any Order of Interim Injunction at all, would it be legally and morally alright for parties to resort to self help?

Order 4 Rule 9 of the Rules of this Court envisages situation of self helpand provides for maintenance of status quo.

The said Order 4 has this to say;..

> "***Every originating process shall contain an endorsement by the Registrar that parties maintain status quo until otherwise ordered by the Court.***"

Be it known to all and sundry that Orders of court made, until set aside, remain Orders of court.

Disobedience of Court Order is a matter to beviewed seriously.. It is tantamount to contempt of court. It

must be remembered that the principles enshrined in the law of contempt are there to uphold and ensure the effective administration of justice. They are the means by which the law vindicates the public interest in the due administration of justice.

I find the argument of learned and distinguished SAN, Ozekhome who applies to set aside the Mandatory Injunctive Order of this Court most preposterous and laughable in view of the position learned silk occupies in the history of those who have contributed to the growth of the legal profession in Nigeria and beyond.

The court at all time, must and should be the architect of its own integrity.

The court must not therefore allow the use of judicial process to undermine the respect for law and order and the integrity of the courts.

It is for this reason that the court must be prepared to wield its proverbial "big stick" if only that is the way it can stamp its authority in a regime of a zero tolerance for the disregard and disrespect for court Orders.

It is indeed for thesame reason that this court made an Order for mandatory injunction with punitive damages against the Defendants when Defendants brazenly disobeyed the Order of this Court.

Defendants who are still in abuse of the Orders of this Court, have again disobediently filed the instant application for an Order vacating or setting aside the

said Order. This is most preposterous and unbelievable.

Kuje Isa Affiku, staff of this court, in company of lawyers from the chambers of the Claimant and Defendants counsel visited the "Res" and an affidavit was filed which stated that the "Res" has been taken over by the Defendants using self help.

The decision of the Court of Appeal, Per Aba – Aji JCA (as he then was) now JSC in the case of ***IWUSI & ORS VS GOVERNOR IMO STATE (2014) LPELR 2282*** is apt on the attitude of court when self help is implored.

The court summed up its mind in the following words:-

> ***"Before delving into the matter, let me say without any hesitation agree with the Learned***

Senior Counsel to the Appellants, Chief M.I.A Ahamba, SAN, that it is trite law that once parties have submitted their disputes to the court for determination, none of the parties is allowed to do any act or omission that would over – reach the interest of the other pending the determination of the suit, and if any of the parties does anything to the contrary, the court has the inherent power to set aside such act which tends to ridicule the court. Therefore, where a party is aware of a pending court process, and whether the court has not given a specific injunctive Order, parties are bound to maintain status quo pending the determination of the court process. They should on no account resort to self-help. See GOVERNMENT OF LAGOS STATE VS

OJUKWU (Supra). OBEYA MEMORIAL HOSPITAL VS A.G FEDERATION (Supra) and EZEGBU VS F.A.T.B. (Supra). In other words, it is not permissible for one of the parties to take any step during the pendency of the suit which may have the effect of foisting upon the court a situation of complete helplessness or which may give the impression that the court is being used as a mere subterfuge, to tie the hands of one party while the other party helps himself extra-judicially. Both parties are expected to await the result of the litigation and the appropriate Order of Court before acting further. Once the court is seized of the matter, no party has the right to take the matter into his own hands. It is a reprehensible conduct for any party to an

action or appeal pending in court to proceed to take the law into his hands, without any specific Order of the Court and to do any act which would pre-empt the result of the action. The courts frown against such a conduct and would always invoke their disciplinary powers to restore the status quo. See ABIODUN VS C.J. KWARA STATE (2007) 18 NWLR (Pt. 1065) 109 at 139 Paragraphs C – F; 140 – 141 paragraphs A-B; REGISTERED TRUSTEES, APOSTOLIC CHURCH VS OLOWOLENI (1990) 6 NWLR (Pt. 158) 514. In the instant case, the act of disrespect for judicial process was brought to the notice of the trial court via a motion to set aside the said recognition accorded the 5th Respondent by the 1st Respondent but the trial court declined to set

aside the said recognition on the ground that it had no jurisdiction." "Per ABBA AJI, J.C.A (Pp. 32 – 34, Paragraphs F.C)"

The Orders of this Court were competently made and they must be obeyed.

Nigeria is not a Banana Republic nor are we under military dictatorship where respect for the Rule of Law is secondary.

I find the application of Defendants most irritating and bizarre realizing the fact that they are still in disobedience of the Orders of this Court.

The Orders were not black market Orders. They remain in effect and binding on the Defendants.

Application of Defendants which was ably moved by the distinguished learned SAN, Ozekhome, being

one that is most irritating and annoying is liable to be dismissed. But before making an Order for dismissal, I'lllike to state that the distinguished SAN, Ozekhome amongst a few others have put their lives on the line to ensure the triumph of the Rule of law even under the dark days of military regime.

It is therefore not just their duty but I dare say it is their responsibility to guide and guard the integrity of the institution of the judiciary and the Bar jealously.

It is for above reason that I was left in a state of awe when the said application under consideration was filed by the distinguished SAN, Ozekhome.

I am certain, learned silk who came into this matter after the Order was made, was not properly briefed on the conduct of the Defendants/Applicants.

A stitch in time saves nine.

Accordingly, the said application under consideration, lacken in merit, substance is refused and dismissed.

Justice Y. Halilu
Hon. Judge
5th November, 2020

APPEARANCE

F. R ONOJA with A.O OTORI and D.A MAXWELL – for the Claimant/Respondent.

OLUCHI UCHE with A.O OBANDE – for the Defendants/Applicants.