

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 8TH DAY OF OCTOBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/0310/17

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

1. HON. FAROUK ADAMU ALIYU

2. ALH. SULE LAMIDO

(Suing for himself and on behalf of:

3. YASMIN FAROUK ALIYU

4. HAUWA FAROUK ALIYU

5. SURRAYA LAMIDO

} ...CLAIMANTS

AND

1. SMILE COMMUNICATION (NIGERIA) LTD.....DEFENDANT

RULING

The Defendant's Notice of Objection to this Suit is M/9527/19 dated 10th of October 2019.

It is brought pursuant to Order 2 Rules 1, 2(1) and 2, 5(1) and 2(b) and 25 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018 and under the inherent jurisdiction of the Court for the following Orders:

1. An Order Dismissing this Suit for being a gross abuse of Court process same having been commenced by two simultaneous Originating Processes dated 30th November 2017 and 30th January 2018 respectively.
2. And for such Order or Further Orders as the Court may deem fit to make in the circumstance.

The grounds for the application are contained on the face of the Motion paper.

Learned Counsel to the Defendant/Applicant also rely on the 15 paragraph Affidavit filed in support of the Objection.

Succinctly the content of the Affidavit is to the effect that:

1. The Claimant filed this Suit on 30/11/17 which was served on the Defendant in its Abuja Office. The CTC of the said Writ of Summons is Exhibit SCL1.

2. The Defendant thereafter engaged the service of a legal Practitioner to enter appearance to defend the Suit. The Memorandum of Appearance is Exhibit SCL2.
3. That upon the receipt of Exhibit SCL2 the Claimant sought and obtained leave to serve the Defendant in Lagos State, the same Exhibit SCL1 which they had earlier served on the Defendant in Abuja for which appearance had already been entered.
4. That instead of the Claimant serving Exhibit SCL1 pursuant to Exhibit SCL3, they filed another Writ of Summons on 30/01/18 with the same parties, facts, reliefs as those contained in Exhibit SCL 1 and serve same on the Defendant in Lagos. The CTC of the 2nd Writ of Summons issued on 30/01/18 is Exhibit SCL4.
5. That Exhibit SCL4 has the same Suit No. and receipt payment as Exhibit SCL1 despite the fact that the two Writs of Summons were filed on different dates.

6. That an Originating Process is numbered in the year it was filed.
7. That Exhibits SCL1 and SCL4 are two Originating Processes in this Suit before this Court.
8. That Exhibit SCL1 and SCL4 are not concurrent Writs and was not so marked.
9. That the Defendant had entered appearance to Exhibit SCL1 before he was served with Exhibit SCL4.

The Claimant/Respondent's Counsel relied on the Counter Affidavit of the Claimant/Respondent deposed to on the 18/12/19.

He deposes that:

1. The Claimant prepared and presented the Writ of Summons to the Registry of this Court for assessment of the fees payable and upon assessment duly paid the fees as assessed.

2. That the Junior Counsel who was detailed to undertake that task inadvertently submitted the Writ to the Registrar of the Court who issued same without leave of Court and served same on the Defendant's address in its Abuja Office.
3. That the Principal Counsel realized the error, duly sought and obtained leave of the Court to do so.

That upon the Order as in Exhibit SCL3 and the filing of its Writ of Summons as in Exhibit SCL, the Claimant intend to apply orally to withdraw Exhibit SCL1 but have not made the application because hearing of the case has not commenced.

That marking of processes for service outside jurisdiction as required by Order 2 Rule 4 and Order 6 Rule 9 of the rules of Court is the duty of the Registrar of Court.

That Exhibit SCL1 and SCL4 are one and the same Originating Process.

That Exhibit SCL1 is by the rule of Court invalid and Exhibit SCL4 is the only valid and subsisting Writ.

The Defendant has not disclosed any prejudice suffered by the non marking of Exhibit SCL4 with the word '*concurrent Writ*'.

That the Defendant's application is brought in bad faith.

The Defendant's contention is that nothing can be more reprehensible than a litigant who practices deception.

That the conduct of the Claimant/Respondent is improper, wrongful and or mischievous use of the process of Court not only to the irritation and annoyance of the Defendant but is aimed at undermining and compromising the efficient and effective administration of justice.

That the filing of a second Originating Process in this Suit when there is in existence a competent, valid and effective Originating process which has been served on the Defendant to which an appearance has been

entered amounts to improper or wrongful use of the process of Court.

He urges the Court to hold that the Claimant's action is an abuse of Court process.

The Claimants' contention on the other hand is that the objection lacks merit.

That it is a mere shadow chasing.

That the submission that the Claimants have abused the process of the Court to the Defendant 's annoyance and irritation is unfounded and thus totally lacking in merit.

I have considered the Written Addresses of Counsel for and in opposition to the Notice of Objection.

The Defendant/Applicant's objection is founded on abuse of Court process by the Claimant having filed two simultaneous Originating Processes dated 30/11/17 and 30th January 2018 respectively.

The concept of abuse of judicial process is imprecise. It however involves circumstances and situation of

infinite variety and conditions. But a common feature of it is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice.

USESE VS SIKI (2007) 8 NWLR (PT.1037) 452.

Abuse of Court process consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with administration of justice such as instituting different actions between the same parties simultaneously in different Courts even though on different grounds, where two similar processes are used in respect of the exercise of the same right.

See ***OGOEJEOFOR VS. OGOEJEOFOR 2006 3 NWLR (PT.966) 205.***

The circumstance that will give rise to abuse of Court process include:

- a. Instituting a multiplicity of actions on the same subject matter against same opponent on same issues or a multiplicity of

actions on the same matter between the same parties even where exist a right to begin the action.

- b. Instituting different actions between the same parties simultaneously in different Court even though on different grounds.
- c. Where two similar processes are used in respect of the exercise of same right i.e. cross appeal and a Respondent's Notice.
- d. Where an application for adjournment is sought by a party to an action to bring an application to Court for leave to raise issues of fact already decided by a lower Court.
- e. Where there is no law supporting a Court process or where it is premised on frivolity or recklessness.

See ***OPEKUN VS. SADIQ (2003) 5 NWLR (PT841) 475.***

ANPP VS. HARUNA (2003) 14 NWLR (PT.841] 546.

Before this Court are two Writs of Summons one dated and filed on 30/11/17 while the other is assessed and dated 17/01/18 but filed on 30/01/18.

The Suit Number on both Writ of Summons bear CV/0310/17.

The parties, cause of action and reliefs are the same.

The two Writ of Summons are not the same as they bear different dates.

The 1st Writ of Summons is still pending. The Claimant failed, refused or neglected to withdraw same ostensibly waiting for an auspicious time when hearing is to commence before applying for a withdrawal of the said Writ.

The 2nd Writ of Summons was filed when the 1st Writ of Summons was still and is still pending.

The law is trite that where two similar processes are used in respect of the exercise of the same right, the 2nd process becomes an abuse of Court process.

To commence two concurrent actions in the same Court asking for the same relief is an abuse of Court process because it is oppressive and vexatious.

See ***KABO AIR LTD VS. INCO BEV. LTD (2003) 6 NWLR (PT.816) 323.***

MORGAN VS. WEST AFRICAN AUTOMOBILE & ENG. CO. LTD (1971) 1 NWLR (219).

In the circumstance of this case, the filing of the 2nd Writ of Summons dated 17/01/18 but filed on 30/01/18 is an abuse of Court process and I so hold.

It is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

8/10/20.