

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 10

**SUIT NO: FCT/HC/CV/0822/2018
MOTION NO:M/7744/19**

BETWEEN:

- 1. IROKOOLUSEGUN**
- 2. CHIDOZIEOKORO**

(Suing by themselves and as

Representatives of the 20 Families

Occupying Plot 07 Cadastral Zone, 07-05 Kubwa District,

Annex, Phase 4, Kubwa Abuja).....**PLAINTIFFS/RESPONDENTS**

AND

- 1. TIMVIC NIGERIA LIMITED**
- 2. ROSULA NIGERIA LIMITED.....DEFENDANTS/APPLICANTS**

**3. THE CHIEF REGISTRAR/DEPUTY SHERIFF
F.C.T. HIGH COURT, ABUJA**

4. COMMISSIONER OF POLICE, F.C.T COMMAND

5. INSPECTOR GENERAL OF POLICE.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice with No. M/7744/19 dated 27/6/19 but filed on 1/7/19, brought pursuant to Order 43 Rule 1 (1) & (20) of the Rules of this Court and under the inherent jurisdiction of the Hon. Court, the Applicant seek the court of the following:-

1. An Order of this Hon. Court dismissing the entire Suit for being an abuse of court process.
2. And the Omnibus relief.

The grounds for this application are:-

1. The Defendants/Applicants sometime in 2009 file a Writ of Summons in respect of a property, subject matter of this Suit and on the 24th of September, 2010 file and subsequently Amended pursuant to the Order of the Court.
2. That same was served on all occupiers of the property in dispute as PERSONS UNKNOWN in Suit No: CV/410/09 by pasting the Originating Processes on the wall of the property pursuant to the Order of the Court on the 23rd of February, 2010.
3. That subsequent upon this Philkruz Estate Limited and Uzoukwu Philip Chibuke applied to be join and pursuant to the Order of the Hon. Court on the 19th of April, 2020 were joined as 1st and 2nd respectively in substitute for the Unknown Persons.
4. That in the cause of the matter Messrs Augustine Uzoukwu and Sons Enterprises and Messrs Philkurz W.A. Limited pursuant to further Order of the Hon. Court on the 21st of September, 2010 was made a party as 2nd and 3rd Defendants respectively in substitute for Philkruz Estate Limited and Uzoukwu Philip Chibuk.

5. That the Plaintiffs/Respondents never caused an appearance to be made or entered by them throughout the pendency of the matter in Court.
6. That all other PERSONS UNKNOWN willfully refused to file any Memorandum of Appearance either conditional or unconditional.
7. That His Lordship Hon. Justice Abubakar Idris Kutigi on the 16th day of February, 2017 delivered Judgment in favour of the Defendants/Applicants (Timvic Nigeria Ltd and Rosula Nigeria Ltd).
8. That the Judgment of His Lordship in Suit No. CV/401/2009 was with respect to the same property now being litigated in this Suit while the same Judgment still subsists.
9. That this Suit instituted by the Plaintiffs/Respondents is tantamount to asking the Hon. Court to sit on Appeal on a valid and subsisting Judgment of a Court of competent coordinate jurisdiction with respect to the same land earlier litigated.

In support of the Motion is a 12 Paragraph affidavit sworn to by Olukayode Ashaolu with 5 Exhibits annexed. Also filed a Written Address, in urging the court to grant the reliefs sought. Also filed a further affidavit dated 23/1/2020 in response to Claimant's counter-affidavit of 4 Paragraph deposed to by Timothy Aderibigbe Ojeleye with one (1) Exhibits annexed. Also filed a Reply on Points of law dated 23/1/2020.

In response to the Motion, Claimants, with leave of court, filed a counter affidavit dated 4/11/2019 of 15 Paragraphs sworn to by Emmanuel Daodu with one (1) Exhibit attached. Also filed a Written Address, adopts the said Address as their argument in the Suit.

The 3rd/4th/5th Defendants did not file any process to the Motion and were not represented at the hearing of the application.

In the Written Address of Applicants in support of the Motion, only one (1) issue was submitted for determination and that is;

“Whether this Suit ought to be deemed as an abuse of court process?”

And submit this Suit is an attempt by Claimants to interfere with administration of justice and to deprive Defendants the fruits of their labour in Judgment delivered by My Learned brother Justice Idris Kutigi in Suit No: CV/410/2009 which Claimants failed to enter appearance throughout the pendency of the Suit and also failing to disclose their interest. That there is abuse of court process when a party improperly employ judicial process to the irritation and annoyance of his opponent and the efficient and effectual administration of justice, and commend the court to *Saraki Vs Kotoye* (1992) 9 NWLR PT 254 156 at 188 – 189. On the effect and treatment of abuse of court process, refer the court to *Ukachukwu Vs PDP* (2014) 4 NWLR PT. 1396 81 at Para G – H. Urge the court to dismiss this Suit as it amounts to praying the court to sit on Appeal of the Judgment of another court of coordinate jurisdiction.

In the Written Address of Claimants settled by Victor GiwaEsq; Claimants counsel, only one (1) issue was also submitted for determination by the court and that is;

“Whether or not this matter as presently constituted is an abuse of court process”.

Answered the sole issue in the negative and submit that Applicants has submitted to the jurisdiction of court and consequently filed and served Claimants Amended Statement of Defence and will not be heard afterwards complaining that court has no jurisdiction, refer to *MurfinVsAshbridge&Martins* (1941) 1 AER, 231. Submits what Applicants were denied administratively, they have brought judicially to waste judicial time of court. That the issue before court is on wrongful execution of the Judgment of Justice IdrisKutigi on Plot 07, Cadastral Zone 07 – 05 Kubwa District Annex instead of Plot 7 as the Judgment contemplates. That in determining whether there is an abuse of court process, the court will consider the content of the first process in relation to the second and see whether they are aimed at achieving same purpose and refer to *AwofesoVsOyenuga* (1996) 7 NWLR PT. 460, 360, *AgwasinVsOjichie* (2004) 10 NWLR PT. 882, 613.

Having carefully considered the submission of counsel in this application, the judicial authorities cited as well as the Exhibits annexed, the court finds that only one (1) issue calls for determination and that is;

“Whether or not the Applicants has made out a case to warrant the grant of the relief sought”.

Abuse of court process simply means that the process has not been used bonifide and properly. It also means the use of judicial process by a party to the irritation and annoyance of his opponent and interference with the administration of justice. See the case of PDP&OrsVsOgundipe (2018) LPELR – 43887 (CA).

The categories of situation that gave rise to abuse of court process are not closed. In otherwords, the list is not exhaustive as it depends on the circumstances of each case. See UmehVsIwu (2008) 8 NWLR PT 1089, 225 at 229. One way by which abuse of court process occurs is where there are multiplicity of Suit between same parties on same subject matter and on same issues. Also to institute an action during thependency of another Suit claiming same relief is an abuse of court process. See UmehVsIwu (Supra) at 228 – 229. However, it is law that the filing of two Suits on the same subject matter with different reliefs does not amount to abuse of court process as same subject matter and issues may give rise to different Suits, different rights and reliefs. See the case of Christian Outreach Ministers IncVsCobham (2006) 15 NWLR PT 1002 283 at 305 – 307. See also OgoejefoVsOgoejefo (2006) 3 NWLR PT 966 205 at 212, Plateau State Vs A.G., Federation (2006) 3 NWLR PT 967 346 at 368.

To determine whether a matter before the court is an abuse of court process and therefore divest the court of jurisdiction, the court is enjoined to look at the Writ of Summons and Statement of Claim. See Governor of Lagos State VsLafiagi (2005) 5 NWLR PT 917 139 at 151.

In this instant case, the court having carefully perused the processes filed by the parties, in particular the Exhibit 5 annexed to the Motion of Applicants in relation to the Writ of Summons and Statement of Claim and the annexed Exhibits is of the firm view that this Suit CV/0822/18 as presently constituted is clearly not an abuse of court process. Granted that this instant Suit is of same subject matter and same issues with the earlier Suit CV/410/19, it does not amount to an abuse of court process as same subject matter and same issues may give rise to different Suits, reliefs and rights. See Christian Outreach Ministries Vs Cobham (Supra) Ogoejefo Vs Ogoejefo (Supra), Plateau State Vs A.G., Federation (Supra). I find that the components of the two Suits are different. The reliefs are different and the parties also different.

From all of these, it is the finding of court that this application by the Applicants is misconceived, frivolous and lacking in merit and is hereby dismissed in its entirety.

I award the cost of ₦20,000.00 (Twenty Thousand Naira) only as cost against Applicants in favour of Claimants/Respondents to be paid before the next adjourned date.

HON. JUSTICE O.C. AGBAZA

Judge

7/1/2021

G.I. UBA – FOR CLAIMANTS/RESPONDENTS.

E.J. ETEMIRE – FOR 1ST/2ND DEFENDANTS/APPLICANTS

NO REPRESENTATION FOR 3RD/4TH/5TH DEFENDANTS

