THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,

IN THE BWARI JUDICIAL DIVISION,

HOLDEN AT COURT NO. 11 BWARI, ABUJA.

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA

SUITNO. FCT/HC/BW/M/18/2018

BETWEEN :

STALLIONAIRE NIGERIA LIMITED - CLAIMANT/RESPONDENT

AND

1. UNION BANK OF NIGERIA PLC - DEFENDANT/RESPONDENT

2. CENTRAL BANK OF NIGERIA - DEFENDANT/APPLICANT

RULING

DELIVERED ON THE 5TH MARCH, 2021

The 2nd Defendant/Applicant brought this application, Motion No. FCT/HC/BW/M/2594/2019, under Section 251(1)(d) and (r) of the Constitution of the Federal Republic of Nigeria 1999, Section 2(1)(a) of the Public Officers Protection Act, Cap. P.41 LFN 2004, Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the Inherent Jurisdiction of the Honourable Court, praying for the following reliefs:

1. An Order declaring that this Court lacks jurisdiction and/or should not exercise any jurisdiction to entertain this suit as constituted;
2. An Order declaring that the action of the Claimant against the 2nd Defendant/Applicant is an abuse of Court Process.
3. An Order dismissing and/or striking out this suit in limine.
4. And for such further and other orders as this Honourable Court may deem fit to make in the circumstances.

In addition to grounds contained in the affidavit, the application is brought under five grounds, as follows:

1. The Claimant's suit as against the 2nd Defendant is statute-barred and in the circumstance the Court lacks jurisdiction to entertain it.
2. The Claimant's complaint of loss arising from devaluation of the Naira against foreign currencies is a matter pertaining to Foreign Exchange management by the 2nd Defendant/Applicant and the Court lacks jurisdiction to entertain same.
3. Only the Federal High Court is empowered to entertain any matter to which the Central Bank of Nigeria (CBN) (2nd Defendant) is a party and which the subject matter pertains to the Foreign Exchange.
4. The Claimant has already instituted an action against the 2nd Defendant/Applicant constituted as SUIT NO. FHC/L/CS/1260/2016- STALLIONAIRE NIGERIA LIMITED V CENTRAL BANK OF NIGERIA at the Federal High Court, Lagos on the same subject matter as that of this suit; as such this suit is a gross abuse of Court process and the Honourable Court ought to dismiss the suit as against the 2nd Defendant/Applicant.
5. The pendency of this suit and the other suit at the Federal High Court at the same time is clearly malicious and intended to harass and irritate the 2nd Defendant/Applicant.

There is also an affidavit of 7 paragraphs dated 29th January, 2019, deposed to by Frances Monago, a legal practitioner in the law firm representing the 2nd Defendant/Applicant. The operative part of the affidavit is paragraph 5, in which it was deposed as follows:

> "I have read the Originating Processes filed by the Claimant in this suit and I verily believe that the suit of the Claimant is a gross abuse of Court process against the 2nd Defendant herein and the Honourable Court has no jurisdiction to entertain the suit especially in respect of the subject matter of the suit"

The 2nd Defendant/Applicant filed a Written Address dated 29th January, 2019which was adopted by its learned counsel Chima Okereke Esq. at the hearing of the application. In a nutshell, the Applicant stated under its 'Brief Statement of Facts' that the Claimant's action arose from the devaluation of the Naira against the US Dollars the foreign currency which the Claimant used in the transaction from which the dispute arose. The said devaluation occurred due to the introduction of Flexible Foreign Exchange Management System by the 2nd Defendant/Applicant.

The Applicant however, that prior to filing this suit, the Claimant had in September 2016 sued it at the Federal High Court, Lagos in Suit No. FHC/L/CS/1260/2016-Stallionaire Nigeria Limited v Central Bank of Nigeria, on the same subject matter of loss arising from the devaluation exercise, claiming against it (the 2nd Defendant) the same sum of ₦2,203,964,063.36 covering the alleged devaluation loss which the Claimant is claiming against it in this suit.

On the issue of jurisdiction, the Applicant submitted that by Section 251(1)(d) and (r) of the Constitution of the Federal Republic of Nigeria 1999, only the Federal High Court has jurisdiction to entertain an action by or against the Central Bank of Nigeria arising from banking or foreign exchange or for an action for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal

Government or any of its agencies. They relied on MERILL GUARANTY SAVINGS & LOANS LTD & ANOR. V WORLDGATE BUILDING SOCIETY LTD (2013) 1 NWLR (PART 1336) 581 AT 607 PARAS. A – D.

It was submitted that the action by the Claimant which pertains to claims relating to loss arising from devaluation of the naira as against the dollar used in its foreign exchange transaction, was wrongly brought before this Court. It was further argued that at paragraph 3 of the Statement of Claim, the Claimant admitted that the Applicant is an agency of the Federal Government. It was therefore submitted that Section 251(1) and (r) CFRN 1999 excludes this Court from entertaining the suit to the extent that the 2nd Defendant/Applicant is a party.

On the issue of limitation, the Applicant contended that the suit is statute-barred as against the 2nd Defendant in that by Section 2 of the Public Officers Protection Act provides that any legal proceedings against the Applicant must be commenced within three months of the accrual of the cause of action. It relied on OBIEFUNA V OKOYE (1961) 1 ALL NLR 357; IBRAHIM V JSC (1998) 14 NWLR (PART 584) 1 AT 35 E and F. R. I. N. V GOLD (2007) 11 NWLR (PART 1044) 1.

It was submitted that the cause of action arose in 2016 while the writ of summons was issued on 13th December, 2018, about two years six months since the cause of action, which rendered the action against the 2nd Defendant statute-barred. Thus, the Claimant has no more right of action. OSUN STATE GOVT. V DALAMI (NIG) LTD (2007) 9 NWLR (PART 1038) 66 AT 82, OWNERS OF MV ARABELLA V NAIC (2008) 11 NWLR (PART 1097) 182 AT 210; EGBE V ADEFARASIN (1985) 1 NWLR (PART 3) 549, OBIEFUNA V OKOYE (SUPRA) were cited.

On abuse of judicial process, it was contended that the suit is an abuse of process against the 2nd Defendant and ought to be dismissed. A substantial part of the cause of action arose as a result of the application of the devaluation of the Naira to pre-valuation transactions which resulted in a loss in the banking relationship between the Claimant and the 1st Defendant. It was an alleged attempt by the 1st Defendant to shift the liability for the said devaluation loss on the Claimant (among other things) that resulted in this suit.

The Applicant then contended that the Claimant had instituted an action against it at the Federal High Court, Suit No. FHC/L/CS/1260-Stallionaire Nigeria Ltd v Central Bank of Nigeria. In that suit the Claimant is challenging the propriety of the alleged retroactive application of the devaluation to pre-devaluation transactions and claiming damages covering the devaluation loss resulting from the said retroactive application. It was submitted that the matter before this Honourable Court and Suit No. FHC/L/CS/1260 pending at the Federal High Court is the same and the reliefs sought by the Claimant in both suits are basically the same. It was argued that the Claimant admitted that these suits are interwoven and inseparable.

The Applicant pointed out reliefs (iii) and (iv) [(c) and (d)] in the present suit, and submitted that the Claimant is of the view that the success of the suit in the Federal High Court will achieve their aim in the present case. Reliance was placed on UMEH V IWU (SUPRA). The Applicant referred to paragraph 57(d) of the Statement of Claim and drew comparison between the reliefs sought in Suit No. FHC/L/CS/1260 and the reliefs sought in this case and said that the end result is the same, even if worded differently.

Thus, if the action at the Federal High Court succeeds, the aim in the present suit would have been achieved.

It was further submitted that the Applicant has no part to play in the extant suit save a repetition of its defence at the Federal High Court and the Court can effectually determine the suit without the need for the presence of the 2nd Defendant. Thus, the case is unnecessary, overreaching and a waste of time of the Court. Reliance was placed on ABUBAKAR V B.O.& A. P. LTD (2007) 18 NWLR (PART 1066) 319 AT 378 H–E, USMAN V BABA (2005) 5 NWLR (PART 917) 113 and ONYEABUCHI V INEC, ABUJA & ORS. (2002) 8 NWLR (PART 769) 417 AT 441 – 442 F -A. The Applicant then urged me to dismiss the suit as an abuse of process.

In opposing the application, the Claimant filed a Counter-Affidavit of 10 paragraphs dated 12th March, 2019 deposed to by Hauwa Ibrahim-Hadejia a legal practitioner in the Claimant's counsel's law firm. The Claimant denied that the suit constitutes an abuse of process as the suit pending at the Federal High Court, Lagos is different from this suit as the parties, facts, and subject-matters are totally different. While the earlier suit complains about the retroactive application of post-floating inter-bank market rate to the Claimant's pre-devaluation transactions, the present suit is a banker-customer dispute between the Claimant and the 1st Defendant.

Further, the 2nd Defendant is the only Defendant in the suit at the Federal High Court, while the 2nd Defendant is a nominal party in this suit, against the 1st Defendant, the 'proper' party. Also, that the facts pleaded, reliefs sought, and documents pleaded particularly the 1st Defendant's letters dated 8th October, 2018 and 21st November, 2018 and the Claimant's letter dated 13th November, 2018 disclose a banker-customer dispute and not

Foreign Exchange. The suit is therefore not an abuse of process or an action outside the jurisdiction of the Court. See paragraphs 4, 5, 6 7 and 8 of the Counter-Affidavit.

In its Written Address dated 12th March, 2019, adopted by its learned Counsel, C. O. P. Emeka Esq. the Claimant stated under 'Relevant Facts' that it commenced this suit against the 1st Defendant based on a dispute arising from a facility of US$30 Million availed the Claimant to fund petroleum imports. The 2nd Defendant was joined as a nominal party to be bound by the decision of the Honourable Court on 'the devaluation gap exposure' on its loan account with the 1st Defendant and based on the 2nd Defendant's prudential guidelines which the 1st Defendant failed to follow in the management of the Claimant's account.

The Claimant identified three issues out of the Applicant's application under consideration as follows:

(i.) Whether the cause of action is 'Foreign Exchange' or 'Administrative Decision' of the 2nd Defendant under Section 251(1)(d) & (r) of the Constitution as to confer jurisdiction on the Federal High Court?

(ii.) Whether the cause of action is statute-barred by virtue of the Public Officers Protection Act as a purported challenge to the 2nd Defendant's 'devaluation policy'?

(iii.) Whether the suit constitutes an abuse of court process by reason of multiplicity of suits?

It contended that contrary to what it called a misconception by the Applicant evident at paragraph 14, page 9 of its Written Address, the Claim is on banker-customer dispute between the Claimant and the 1st Defendant. It referred to paragraphs 49 and 50 of the Statement of Claim,

where it pleaded that while its loan reconciliation schedule showed that it has a credit balance of ₦206,926,561.95, the 1st Defendant alleged that it has an outstanding debt of ₦6,289,666,800.70.

It further argued that at paragraphs 22 - 28 of its Statement of Claim, it merely showed how its devaluation loss ought to be factored in, in the reconciliation of its accounts with the 1st Defendant. It stated that there is no complaint against devaluation or foreign exchange policies, and that this Court has neither been invited to review nor impugn CBN's policies. It further stated that the Applicant cannot severe any paragraph of the Statement of Claim to create its cause of action, as the law is that pleadings are considered as a whole and not in isolation. It relied on AZUBUOGU V ORANEZI (2017) LPELR-42669 @ 19-20 F – D and BAKAN V ARABO (2015) LPELR-40857 @ PAGE 28 E.

It was further argued that it is the Claimant's claim that determines jurisdiction. Also, that the suit being a banker-customer dispute that both the Federal High Court and State High Court has concurrent jurisdiction to try it. Reference was made to ADEYEMI V OPEYORI (1976) 9-10 SC 3. NDIC V OKEM ENTERPRISE LTD (2004) 10 NWLR (PART 680) 107 AT 197 H -A and PROVISO TO SECTION 251(1)(D) CFRN.

It maintained that the claim is not on foreign exchange or a challenge of CBN's devaluation and that mere mention of these terms does not mean the case is on them; and that to determine jurisdiction the Court should examine the claim and the accompanying documents. It relied on See A. G. ANAMBRA V AGF (2007) 12 NWLR (PART 1047) 4 AT 72 F – G, and maintained that there is no complaint in the suit on foreign exchange or any documents attached on foreign exchange.

It disagreed with the Applicant's submission at paragraph 21, page 11 of its Written Address that the CBN being a federal agency can only be sued in the Federal High Court. It contended that exercise of jurisdiction by the Federal High Court is a conjunctive factor comprising parties and subject-matter. It cited NURTW V RTEAN (2012) 7 NWLR (PART 1307) 170 AT 197 F-H. It argues that the cause of action in this case is on banker-customer relationship between the Claimant and 1st Defendant; a subject-matter for the State High Court. It argued that notwithstanding that the Applicant is a federal agency, it can be sued in the State High Court whenever the subject-matter falls within the jurisdiction of the State High Court.

It further contends that the suit does not challenge any administrative or executive decision of the Applicant as to come within the provision of Section 251(1)(r) CFRN 1999, and that by the Applicant's admission, such challenge has already been submitted to the appropriate Court, the Federal High Court. Also, that the Applicant misconceived its suit under this head when the Applicant stated at paragraph 19, page 10 of its Written Address that action 'pertains to claims relating to loss arising from devaluation of the naira as against the dollars used in its foreign exchange'.

It further argued that the devaluation policy and the attendant losses are not the subject-matters of this suit. It only pleaded devaluation loss to show the status of its account with the 1st Defendant, when the loss is factored in, in the reconciliation. It pleaded that it had filed an action against the Applicant at the Federal High Court on its decision to apply FOREX rates retroactively, and it has not repeated the case in the present suit, and that it further pleaded that the sum of ₦2,203,964,063.36 calculated as the loss ought to be used to liquidate the devaluation loss on its loan account. It referred to paragraph 57(d) of the Statement of Claim.

It conceded that cases cited by the 2nd Defendant are good law, but however submitted that they are inapplicable, as law must be related to the facts. It cited ADEGOKE MOTORS V ADESANYA (1989) 3 NWLR (PART 109) 250 AT 265-266 H-A in support. It maintained that it joined the Applicant as a nominal party to be bound by the Honourable Court's decision on the application of the devaluation loss gap and to enable it have its say on the allegation of breach of its prudential guidelines by the 1st Defendant which is in issue in this case, and that the joinder is also to ensure that the Applicant is bound by any order on its prudential guidelines.

On limitation, the Claimant submitted that the Applicant also misconceived that the cause of action is statute-barred when it stated at paragraph 30 page 12 that the cause of action arose in June 2016. The Claimant argued that the Applicant did not show any paragraph of the pleading (Statement of Claim) showing that the cause of action arose in 2016, as well as it misconceived that the suit complains of devaluation policy. It maintained that the devaluation loss pleaded at paragraphs 22 – 28 of the Claim is to show its impact on the Claimant's loan account with the 1st Defendant. It relied on paragraphs 49 and 50 of the Statement of Claim.

The Claimant further stated that the summary of its claim is that its account with the 1st Defendant is in credit by a totality of the facts pleaded. It cited BAKAN V ARABO (SUPRA) AT P. 28 E. It maintained that the cause of action is a banker-customer dispute which accrued on 21st November, 2018 when the 1st Defendant rejected its position on its account. Thus, the action is not caught by limitation. It relied on UNIVERSITY OF JOS V IKEGWUOHA (2013) 9 NWLR (PART 1360) 478 AT 494–495 H–A and AG

ADAMAWA V AG FED (2014) 14 NWLR (PART 1428) 515. It submitted that the Public Officers Protection Act and all the authorities cited by the 2nd Defendant are irrelevant and inapplicable to the instant case.

Finally, it challenged the submission at paragraph 26, page 10 of the Applicant's Address as a misconception. Therein the Claimant states that it seems the Applicant contends that any legal proceedings against it must be brought within three months under the POPA. Claimant contends that Section 2(2) POPA covers only suits in which the official act or omission of a public officer is challenged. The present suit challenges the acts of the 1st Defendant (UBN Plc) while the Applicant (CBN) is merelya nominal party. The Applicant further states that the devaluation policy upon which CBN calculates the limitation is not challenged in this suit, and that the alleged limitation to be operational, the validity of the devaluation policy must be directly in issue in this case.

On the issue of abuse of judicial process, the Claimant submitted that the Applicant also misconceives that the suit constitutes an abuse of Court process. It concedes that abuse of court process arises where two suits are instituted against same parties over the same subject-matter. It relied on SOCIETY BIC S.A V CHARZIN INDUSTRIES LIMITED (2014) 4 NWLR (PART 1398) 497 AT 547. It submitted that the parties, the facts, the subject-matter and the reliefs of the instant suit, and different from that of SUIT NO. FHC/L/CS/1260/2016*,* and thus the suit is not an abuse. It cited SOCIETY BIC S.A. V CHARZIN IND. LTD (SUPRA) AT 548 D

It contended that while the subject matter in this case is a banker-customer dispute between the Claimant and the 1st Defendant with CBN as a nominal party; the subject-matter of SUIT NO. FHC/L/CS/1260 is CBN's

wrongful retroactive application of post-floating Inter-bank market rates to pre-devaluation transactions, with only the CBN as party. Also, that mere mention of devaluation loss does not make the instant suit an abuse. It further argued that a set of facts can lead to various causes of action against the same defendant and this would not constitute abuse, as long as the cause of action is distinct. It cited an example with the case of OHAKIM V AGBASO (2010) 19 NWLR (PART 1226) 172, where it said different suits were filed by the same Respondent against the same Appellant.

Finally, that it did not pray the Court to order the 2nd Defendant to pay it the devaluation loss of ₦2,203,964,065.36 in this suit, as that is a prayer before the Federal High Court. Rather, it seeks relief that the sum ought to be channeled to its account to form part of the reconciliation. Accordingly, it becomes apposite and prudential for the Applicant to be joined as a nominal party in order to be bound by the outcome of the suit. It relies on GREEN V GREEN (1987) 3 NWLR (PART 61) 408 @ 493 D–H, and ultimately contended that all the authorities cited by the Applicant on abuse are inapplicable. It urged me to dismiss the application.

The Applicant was not done. Upon being served with the Counter-Affidavit and Written Address, it fired back with a Further-Affidavit of 13 paragraphs dated 30th April, 2019 deposed to by Ezekiel Ameh, a legal practitioner in the Applicant's counsel's law firm. This is accompanied by a Reply on points of law dated 30th April, 2019 settled by Chima Okereke Esq, Applicant's learned counsel, who adopted same at the hearing of this application.

The depositions essentially deny the depositions in the Counter-Affidavit to the effect that Suit No. FHC/L/CS/1260, Stallionaire Nigeria Limited V Central Bank of Nigeria and the instant suit are founded on the same facts and reliefs as against the Applicant especially on devaluation of the Naira by the Applicant, and that the suit is not banker-customer dispute as alleged. The Applicant denies that the suit is different and that it is not about foreign exchange devaluation loss caused by the Applicant. See generally paragraphs 5–10 of the Further-Affidavit.

On points of law, the Applicant maintained at paragraphs 3–12 of its Reply that the present suit is not banker-customer as the Claimant disputes the Applicant devaluation of the Naira in June 2016. It argues that parties are bound by the pleadings and relied on ABUBAKAR V JOSEPH (2008) 13 NWLR (PART 1104) 307 and other cases. It argues that the cases cited by the Claimant at paragraphs 4.1-4.8 of its Written Address are inapplicable to the Claimant's position but support the Applicant's Preliminary Objection. It argued that the decision of the Supreme Court in NDIC V OKEM (SUPRA) and NURTW V RTEAN (SUPRA) are both unhelpful to the Claimant and inapplicable to its cause as cases must be decided on their peculiar facts. It relied on ADEGOKE MOTORS V ADESANYA (SUPRA).

Replying on point of law on the issue limitation, the Applicant restated that parties are bound by their pleadings and so the Claimant cannot escape its pleadings. The Applicant relied on F. R. I. N. V GOLD (2007) 11 NWLR (PART 1004) 1 to contend that the suit is statute-barred since it is claiming a devaluation loss of June 2016.

On the issue of abuse, the Applicant replied that the cases of SOCIETY BIC SA V CHARZIB IND LTD (SUPRA) and OHAKIM V AGBASO are inapplicable having been decided on dissimilar facts from this case. In SOCIETY BIC SA

v CHARZIN the two suits in issue were filed separately by two opposing parties against each other, while in OHAKIMV AGBASO the cause of action arose from two separate incidents that took place on separate dates. It was finally submitted that to use a decision in a later case, the facts must be the same or similar. FAWHINMI V NIGERIAN BAR ASSOCIATION NO. 2 (1989) 2 NWLR (PART 105) was cited.

I have carefully considered the affidavit evidence and the written submissions of counsel including the oral submissions proffered in adumbration. I accept the three points of law raised at paragraph 3.00 of the Claimant's Written Address as representing the grounds of Preliminary Objection. Therefore, the issues for determination in this application which I believe their resolution will do justice to the 2nd Defendant's preliminary objection are as follows:

(i.) Whether the cause of action in this suit is 'Foreign Exchange' or 'Executive or Administrative Action or Decision' of the 2nd Defendant under Section 251(1)(d) & (r) of the Constitution as to confer jurisdiction on the Federal High Court?

(ii.) Whether the cause of action is statute-barred by virtue of the Public Officers Protection Act as a challenge to the 2nd Defendant's devaluation policy?

(iii.) Whether the suit constitutes an abuse of court process by reason of multiplicity of suits?

It also worthy to note that each of the issues hit on the jurisdiction of this Court to entertain the case as it concerns the 2nd Defendant. Being fundamental issues of jurisdiction, it is not only expedient that they are resolved in limine as we have already embarked on doing, but it is also the law that it is the claim before me that I am admonished to scrutinize to

determine the issues. See ADEYEMI V OPEYORI (1976) 9-10 SC 3; JEV V IYORTOM (2014) 14 NWLR (PART 1428) 575; ADETONA & ORS. V IGELE GENERAL ENT. LTD (2011) 7 NWLR (PART 1247) 535; ODUKO V GOVT., EBONYI STATE (2009) 9 NWLR (PART 1147) 439.

ISSUE NO. 1

Is the cause of action before this Court a claim(s) against the 2nd Defendant/Applicant arising from "foreign exchange' or 'executive or administrative action or decision' of the 2nd Defendant under Section 251(1)(d) & (r) of the Constitution as to confer jurisdiction over the suit on the Federal High Court?

The Applicant vehemently contends that a scrutiny of the pleadings and the claim in this case would show that the case falls within the ambit of Section 251(1)(d) and (r) CFRN 1999 and therefore not maintainable against it in this Court. On its part the Claimant with equal vehemence contends that while it might have mentioned foreign exchange several times, its case is that of banker-customer dispute against the 1st Defendant, Union Bank of Nigeria Plc, and not on foreign exchange; and that it merely sued the Applicant as a nominal party.

I have set out each party's arguments in considerable details in the preceding part of this Ruling. There would be no need to do so again without being verbose.

I have carefully reviewed the pleadings and paid attention to the claims set out at paragraph 57 which I am invited to grant. I am not persuaded that any of the claims challenges any decision of the Central Bank of Nigeria on foreign exchange or devaluation of the Naira. In its statement of facts in Part B of its Written Address, the Applicant stated that the Claimant's

action arose from the devaluation of the Naira against the US Dollars the foreign currency which the Claimant used in the transaction from which the dispute arose. The said devaluation occurred due to the introduction of Flexible Foreign Exchange Management System by the 2nd Defendant/Applicant in the course of performing its statutory function.

The Applicant stated that the Claimant alleged that prior to the said devaluation the Applicant had invited all banks to submit outstanding foreign exchange requests to enable them clear outstanding requests before the devaluation, but the 1st Defendant failed to comply with this invitation on behalf of the Claimants before the deadline and the new exchange rate of the Naira to the dollar after the devaluation, was applied to the pre-devaluation transactions of the Claimant.

The Applicant further stated that the Claimant alleged that as a result of the retroactive application of the devaluation rate to its pre-devaluation transactions a loss (devaluation loss) was incurred in the banker/customer relation between the Claimant and the 1st Defendant and that the Claimant ought not to bear the said devaluation loss since it resulted from the negligence of the 1st Defendant.

Further, it was in the course of trying to close up the devaluation loss that the banker/customer relationship between the 1st Defendant and the Claimant degenerated into dispute leading to the allegation by the Claimant that the 1st Defendant failed to comply with CBN directives and regulatory guideline for prudent bank practice, breach of fiduciary duty and the use of the 3rdDefendant to harass the Claimant's director. See generally pages 7 and 8 of the Applicant's Written Address.

One thing that can be deducted from the foregoing statements by the Applicant itself is that although the story behind this action is steeped in what the 1st Defendant did or failed to do with the Applicant, as a regulator, the substratum of the claim remains against the 1st Defendant and not against the Applicant. The claim blames the 1st Defendant and not the Applicant. I therefore have no hesitation in holding that suit is not a claim against the Applicant arising from Foreign Exchange. It is also for a declaration or injunction on the validity of any executive or administrative action or decision of the 2nd Defendant/Applicant. I so hold.

It is not contestable that the Central Bank of Nigeria reverberates throughout the pleadings and even in some of the reliefs before me. However, I have carefully weighed the aggregate facts that gave vent to the claims endorsed on the writ, and found that the claim is against the 1st Defendant. I also found that the cause of action is a banker-customer relationship from a disputed loan between the Claimant and the 1st Defendant. I so hold.

However, the 2nd Defendant/Applicant became enmeshed in what ordinarily it should not have been part of, when the Statement of Claim mentioned it in the background story in two areas:

1. Alleged breach of its prudential guidelines by the 1st Defendant in relation to the loan that brought the Claimant and the 1st Defendant to Court, which breach affected the loan; and
2. Alleged loss suffered by the Claimant from outcome of devaluation of the Naira, which the Claimant said is the subject-matter of a different suit between it and the 2nd Defendant, which loss affected the loan account.

Now, in consideration of the grounds of this application, I had to pay careful attention to the 11 reliefs sought in this case, to pick out those reliefs involving the 2nd Defendant/Applicant. The aim is to find out whether from the nature of those reliefs they fall under Section 251(1)(d) and (r) CFRN 1999, and ipso facto, outside the jurisdiction of this Court. The claims reliefs are as follows:

(c) A declaration that that the Claimant is not indebted to the 1st Defendant by virtue of the total inflows into the loan accounts based on independent audit report and by virtue of the devaluation loss of ₦2,203,964,063.36 which the Claimant is claiming against the 2nd Defendant in a separate suit.

(d) A declaration that the sum of ~~₦~~2,203,964,063.36 which the Claimant is claiming against the 2nd Defendant in (sic)is the fund to be channeled to liquidate the FOREX devaluation loss on the Claimant's accounts with the 1st Defendant.

(h) Mandatory injunction directing the 1st Defendant to forthwith pay to the Claimant the sum of ~~₦~~155, 991, 468 being the duplicated management fees and accrued interests thereon in line with the regulatory guidelines of the 2nd Defendant.

(j) Mandatory injunction directing the 1st and 2nd Defendants, whether by themselves or their agents, to remove the Claimant's account with the 1st Defendant on the credit reporting system from 'Non-performing' status, whether with the Credit Risk Management System (CRMS) under the 2nd Defendant, or any other credit verification report system, the facilities thereon not being non-performing, and the Claimant having discharged its obligations on the account.

(Underlining are mine for emphasis)

Relief (c) seeks a declaration against the 1st Defendant based on alleged inflows into its account and devaluation loss which it alleges it is claiming against the 2nd Defendant but another suit.

Relief (d) claims that there is a devaluation loss on the Claimant's account with the 1st Defendant which the Claimant wants the Court to declare that what it claims in the said other suit is what should be channeled into liquidating the alleged loss, against the 1st Defendant.

Relief (h) claims the sum N155,991,468 against the 1st Defendant as alleged duplicated management fees and accrued interest alleged to be in line with the 2nd Defendant's regulatory guidelines. Relief (j) wants the 1st and 2nd Defendants to be directed to remove the Claimant's account with the 1st Defendant on the credit reporting system from 'Non-performing' status, whether with the CRMS under the 2nd Defendant or under any other reporting system since the Claimant has allegedly discharged its obligations on the account.

Since relief (j) appears to be the only claim that seeks an order against the 2nd Defendant, I had to further fine-comb the pleadings to see what the complaint against the 2nd Defendant is all about in pursuance of relief (j). At paragraph 52 of the Statement of Claim, the Claimant pleaded that:

> "the 1st Defendant threatened to report the alleged indebtedness to the 3rd (sic) Defendant so that it can be barred from taking loans. In order to complicate the issues and compound the Claimant's woes the Bank reported the account as non-performing on the Credit Risk Management System (CRMS) and thereby gave the Claimant a negative image and wrongfully destroyed its financial credibility."

In an apparent effort to clarify the joinder of the 2nd Defendant/Applicant, it was pleaded at paragraph 6 of the Statement of Claim that:

> "The 2nd Defendant is sued as a nominal party due to the said FOREX devaluation loss aspect of the suit, complaints of breach of its guidelines by the 1st Defendant and the introduction of alleged non-performance of the loan by the 1st Defendant leading to complaints on the 2nd Defendant's credit reporting system"

While I would not pre-empt at this stage whether the two paragraphs of the Statement of Claim are sufficient to support the grant of the relief in paragraph 57 (j), it is obvious that the compliant and the claim in relief (j) are against the 1st Defendant who is alleged to have reported the Claimant's account as 'non-performing' and which led "to complaints on the 2nd Defendant's credit reporting system" all in the course of their banker-customer relationship. It was not anywhere alleged that the 2nd Defendant took any action in this regard against the Claimant.

I am therefore convinced that none of the reliefs in paragraph 57 (c), (d), (h) and (j) of the Statement of Claim arises from any action against the 2nd Defendant or falls under Section 251(1)(d) or (r) CFRN 1999 as to be a claim in foreign exchange or executive or administrative action or decision of the 2nd Defendant. The law is clear that when the issue of jurisdiction is raised, it is the 'claim' or 'reliefs' that the Court examines to determine the issue. See TUKUR V GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (PART 117) 517 AT 547 D–E; 551 C.

By 'claim' the law does not mean every story told in the pleadings, but the operative complaints which the Claimant presents to the Court for redress. A pleading may contain all manner of stories including even criminal

'charges' within a civil suit. The duty of the Court is to identify, isolate and resolveissues for determination that fall from the claim or relief and not the entire gamut of stories narrated. I am trying to say that a Court determines claims from main facts in issue and not story-lines. I am persuaded that this case does not present any issue for determination against the 2nd Defendant, especially one arising from Section 251(1)(d) &(r) CFRN 1999.

The Federal High Court or any of its agencies may be a party in a matter before a State High Court. They are not forbidden from being brought as parties before a State High Court. However, where they are parties before a State High Court in respect of a subject-matter that falls under Section 251()1) (a) – (s) CFRN 1999, the State High Court is not the appropriate forum for such. See NURTW V RTEAN (2012) 7 NWLR (PART 1307) 170 AT 197 F – H.

I therefore hold that the cause of action before this Court is not a claim against the 2nd Defendant/Applicant arising from "foreign exchange' or an 'executive or administrative action or decision' of the 2nd Defendant under Section 251(1)(d) & (r) CFRN 1999. Even of banking is considered, the banking issue in this case is one of normal banker-customer relationship between the Claimant and 1st Defendant. It is therefore not a claim under the exclusive jurisdiction of the Federal High Court.

Let me add that the situation presented by this case is not strange to the law of parties. A Claimant may join any person as a party to his suit, provided that such person is a necessary party in whose absence nothing can be done; or a proper party joined for a good reason; or a desirable party who will be affected by or be bound by the result. See GREEN V GREEN (1987) 3 NWLR (PART 61) 408 AT 493 D-H. See also G.M. ENT.

LTD V C.R. INVESTMENT LTD (2011) 14 NWLR (PART 1266) 125 AT 145-146 H-B.

ISSUE NO. 2

Is the cause of action statute-barred by virtue of the Public Officers Protection Act as a purported challenge to the 2nd Defendant's 'devaluation policy'? With my foregoing decision in Issue No. 1, this question is no longer a complicated one. The 2nd Defendant/Applicant has contended that the action taken against it which it alleges falls under section 251(1) (d) and (r) CFRN 1999 was caught by limitation, the cause of action having allegedly arisen in June 2016 while the suit was filed on 13th December, 2018. I have held that the cause of action in this suit is a dispute arising from a banker-customer loan transaction between the Claimant and 1st Defendant. The Applicant has only a passive interest in the suit.

The cause action being that of banker-customer between the necessary parties (the Claimant and the 1st Defendant), it is not caught by the three months limitation period under the Public Officers Protection Act. It is not statute-barred. I so hold.

ISSUE NO. 3

Whether the suit constitutes an abuse of court process by reason of multiplicity of suits?

The 2nd Defendant/Applicant contended that there is a pending suit instituted by the Claimant in the Federal High Court, Suit No. FHC/L/CS/1260/2016-Stallionaire Nigeria Limited V Central Bank of Nigeria. It contends that the present suit therefore engenders a multiplicity of actions against it.

The issue arose during hearing whether in the absence of the said pending suit the allegation that this suit is an abuse is competent. I think this is a fundamental issue. For abuse of Court process to arise, there must be two similar suits between the same parties on the same issues. See UMEH V IWU (2008) 8 NWLR (PART 1089) 225. Can I come to a fair decision on the issue of abuse of process on multiplicity of actions without comparing the parties, subject-matter and issues in the previous suit with those of the instant suit, especially given the state of affidavit evidence?

The Applicant alleged that the pending suit is an abuse of process. See paragraphs 5 Affidavit in support. The Claimant denied this, stating that the facts and the reliefs are different. See paragraphs 4, 6, 7 and 8 of the Counter-Affidavit. The Claimant charged back that the two suits are the same and that at least reliefs (c) and (d) are similar to reliefs sought in the other suit. See paragraphs 8, 9 and 10 of the Further-Affidavit. In all these, none of the two contending forces before me deemed it fit to exhibit the Statement of Claim to make it possible to scrutinize their allegations and counter-allegations of abuse of process.

In law, the burden is on the Applicant who alleged that this suit constitutes an abuse of process as a result of an existing suit, to prove not only that such suit exists but that indeed the parties, subject-matter and issues are the same. The failure to exhibit relevant documents in proof of the allegation is fatal. See NIG AGIP EXPLORATION LTD V. FIRS & ORS (2016) LPELR-40333(CA) AT 12 F -A. It is not possible to decide this type of abuse without comparing the parties, the subject-matter and issues raised in the pending suit with the instant suit. The Court is not a magician to conjure up evidence. It was therefore not proved that this suit is an abuse of judicial process by the existence of Suit No. FHC/L/CS/1260/2016.

Even if I treat the facts in the Statement of Claim as an admission of the existence of the suit, I will still not reach a decision favourable to the unsubstantiated allegation of abuse. It was pleaded at paragraph 26 that "the Claimant adopted a twin-approach to cushion the devaluation effect. It commenced legal proceedings against the CBN in the Federal High Court in SUIT NO. FHC/L/CS/1260/2016 STALLIONAIRE NIGERIA LIMITED V CENTRAL BANK OF NIGERIA to challenge the retroactive application of the pre-devaluation transactions…."(Underlining mine). See also paragraph 27, and 57(c) and (d) of the Statement of Claim.

Thus, while the Plaintiff pleaded the suit at the Federal High Court, it stated that the suit is to challenge retroactive application of pre-valuation transactions. I am of the view that the instant suit is not challenging retroactive application of pre-valuation transactions but rather presents a loan dispute. Reliefs (c) and (d) seek determination against the 1st Defendant (not the 2nd Defendant) that the anticipated proceeds of ₦2,203,964,063.36 from the other suit be channeled towards repaying its disputed loan.

In my view, this is not the 2nd Defendant's problem. It is ensuring that the said sum is not awarded against it in the alleged suit at the Federal High Court that should bother the 2nd Defendant, if indeed the reliefs are against it as alleged by both parties. This is because even if the Claimant is able to prove before me that the said sum ought to be channeled toward the loan, and the Claimant ends up not being able to prove entitlement to the sum, it would have achieved a pyrrhic victory in this suit. On the flip side, even if the Claimant succeeds against the 2nd Defendant in the alleged claim before the Federal High Court, it is irrelevant for the success of reliefs (c)

and (d) in this suit. It will still need to prove entitlement to reliefs (c) and (d) in this suit irrespective of the outcome of its claim against the 2nd Defendant in the other suit referred to by parties. I am trying to say that the force of the claims in this case is against the 1st Defendant and not against the 2nd Defendant.

Not finding sufficient evidence to prove that this suit is an abuse of process, and for other reasons I gave above, I am compelled to also resolve this third issue in favour of the Claimant. On the whole, the Notice of Preliminary Objection 29th January 2019 fails.

I accordingly dismiss same and hold that the Court has jurisdiction over the suit as constituted. For the avoidance of doubt, my decision is that the subject-matter of this suit is within the jurisdiction of this Court. The suit is not statute-barred and is not an abuse of process of Court.

I make no order as to costs.

APPEARANCE

B. E. Ecoma Esq. for the plaintiff.
Amina Ibrahim Esq. for the 1st defendant Union Bank.
2nd defendant is not in court.

Sign
Hon. Judge
05/05/2021