

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 19TH FEBRUARY, 2020

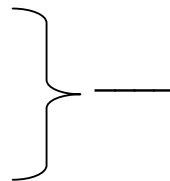
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1117/2015

BETWEEN:

1. NEW RENDEZVOUS HOTELS LTD
2. NERA HOTELS LTD
3. PATRICK NNAJI
4. EMMANUAL NNAJI



**PLAINTIFFS/
RESPONDENTS**

AND

1. ANTHONY NNAJI
2. OLIVER NNAJI
3. UZOMA NNAJI



RESPONDENTS/APPLICANTS

RULING ON PRELIMINARY OBJECTION

In this application, chequered case, the Plaintiffs are seeking for the following Claims/Reliefs:

- (1) A Declaration that the Lease Agreement entered into between the 1st and 2nd Plaintiffs in respect of 1st Plaintiff's hotel premises at Plot 21 Makeni Street, Wuse Zone 6 Abuja is valid, binding and subsisting between the 1st**

& 2nd Plaintiffs to the exclusion of the Defendants.

- (2) A Declaration that the 2nd Plaintiff is legitimately and lawfully entitled to the day to day management and Running of the hotel business of the 1st Plaintiff at the said premises (herein after called the Res).**
- (3) An Order of Injunction restraining Defendants, their servants and agents or other persons from disturbing, harassing, or in any way or any other manner whatsoever from disturbing/obstructing the 2nd Plaintiff from managing and Running the hotel business in terms of the Lease Agreement entered into between the 1st & 2nd Plaintiffs.**

Upon receipt of the Originating Process the Defendants filed a Preliminary Objection challenging the Suit praying the Court to strike out or dismiss the Suit as presently constituted same being an abuse of Court Process. Also for an Order dismissing the Suit for lack of jurisdiction as same borders on the administration and the management of the affairs of the 1st Plaintiff which is a registered company. An Order dismissing the Suit for being statute barred and Omnibus prayer.

The Defendants supported the Preliminary Objection with an Affidavit of 6 paragraphs deposed to by the 1st Defendant. They attached several documents.

In the Written Address, the Applicants raised 4 Issues for determination which are:

- (1) Whether the Suit is not an abuse of Court Process to warrant dismissal.**
- (2) Whether on a careful study of the Plaintiffs' case the subject matter is not the one exclusively preserved for the of the FHC and thus robs this Court of its jurisdiction.**
- (3) Whether the 3rd & 4th Plaintiffs are not estopped from their claims to directorship of the 1st Plaintiff having prayed the Court from Suit No.: FHC/KD/CS/51/97 for the name of the 1st Plaintiff to be struck out from the list of companies by CAC.**
- (4) Whether the action of the Plaintiffs is not statute barred.**

Answering Issue No.1 in the affirmative, the Applicants submitted that by **EXH B, C, D, E1 – E3, F1 – 2 and EXH G** attached to the Motion the parties in the 3 Suits and the present Suit are the same, the subject matter the same too. That the facts giving rise to the various causes of action in all the Suit are also the same.

That the only difference is that the present Suit is later in time and was filed on the 24th of February, 2015. The earlier Suits filed in FHC Kaduna, Imo State High

Court and FCT High Court Abuja were filed in 1997, 2013 and 2014 respectively.

That there are fundamental issues and questions before the various Courts awaiting determination and which determination would affect the outcome of this Suit. That those Issues included the bonafide and rightful owner of Plot No. 21 Makeni Street Zone 6 Wuse, Abuja, being occupied by the 1st Plaintiff and which is the subject of the present Suit. Again the 2nd being the rightful person entitled to the management and control of the 1st Plaintiff and who can enter into contract on its behalf. That the present Suit is instituted in bad faith and is calculated to frustrate, irritate and annoy the Defendants/Applicants and same is an abuse of Court Process. They relied and referred to the case of:

**Ajam V. SPDC (Nigeria) Limited
(2008) 10 NWLR (PT. 1094) 66 @ 91 (CA)**

That the Court is duty-bound to uphold its jurisdictional integrity and abate the abuse of Court Process by Plaintiffs, by dismissing the Suit in its entirety. They referred to the case of:

**Usman V. Baba
(2004) 48 WRN 47 @ 67 (CA)**

That paragraph 12 & 19 of the Statement of Claim the Plaintiffs admitted the existence of the Suit **FCT/HC/CV/1849/2014** and **FHC/KD/CS/51/97** pending at the FCT High Court Abuja and FHC Kaduna Division respectively. That facts admitted by the

Plaintiffs need no proof. They urged the Court to dismiss the Suit as it is an abuse of Court Process.

On Issue No. 2, the Defendants answered the question in the affirmative. They submitted that **S.251 (1) (e) 1999 CFRN**, all matters arising from the operation of the CAMA are within the jurisdiction of the FHC. That by **paragraph 6, 7, 8, 10 & 19** of the Statement of Claim borders on the directorship, management and control of the 1st Plaintiff's company registered in Nigeria. That that brings the Plaintiffs' claim within the exclusive jurisdiction of the FHC. Also that the present case has not been commenced by due procedure of law and therefore has woefully failed to properly invoke the jurisdiction of the Court. They cited the case of:

**Madukolu V. Nkemdilim
(1962) 2 SCNLR 341**

That the subject matter is outside the jurisdiction of the Court.

On Issue No.3, the Applicants answering in the affirmative, submitted that by their **EXH E1 – Writ of Summons and Statement of Claim of the 3rd & 4th Plaintiffs** in Suit FHC/KD/CS/51/97 the 3rd & 4th Plaintiff by paragraph 24 (6) ii of the Statement of Claims urged the 8th Defendant in that Suit (CAC) to strike out the name of the 7th Defendant, (the 1st Plaintiff) from the list of companies in Nigeria. That the same 3rd & 4th Plaintiffs cannot claim to be directors of the 1st Plaintiff and benefit there from. That they are therefore estopped from claiming directorship of the 1st

Plaintiff. They referred to **S. 169 Evidence Act 2011** and also the following cases:

Wilson V. Oshin

(1994) 9 NWLR (PT. 366) 90

A-G Rivers State V. A-G Akwa Ibom

(2011) 8 NWLR (PT. 1248)

Bwacha V. Ikenya

(2011) 3 NWLR (PT. 1235) 616

They urged Court to resolve the Issue No.3 in Applicants' favour.

On Issue No.4 they submitted also answering in the affirmative that in **paragraph 8** of Plaintiffs' Statement of Claim that the Res as property of Rendezvous Group Hotel was assigned to the 1st Plaintiff. They submitted that by their **EXH H**, the title document, the said property are in the name of Late Eze L.O. Nnaji since 1983 when it was acquired to the knowledge of the 3rd & 4th Plaintiffs challenging the title to the said property is now Statute Barred. They referred to the provision of **S. 15 (2) Statute of Limitation Act** which prescribe 12 years as a time within which any contract for sale of land must be challenged. They urged the Court to so hold and grant their Preliminary Objection by dismissing the Suit as an abuse of Court Process and holding that Court lacks jurisdiction to entertain same and award substantive cost against the Plaintiff.

Upon receipt of the Preliminary Objection the Plaintiffs filed a Counter Affidavit of 6 paragraphs. They attached 4 Exhibits.

In the Written Address they raised 3 Issues for determination which are:

- (1) Whether the Suit constitutes abuse of Court Process.**
- (2) Whether the Court lacks jurisdiction to entertain the subject matter**
- (3) Whether the Suit is Statute Barred.**

On Issue No.1, they submitted that for the Suit to be an abuse of Court Process the Court should examine the Processes in the previous Suit and present process to determine if the parties are the same and whether the issues called for determination are same, whether it is brought in good faith to irritate and annoy before Court can hold that it is an abuse or not. They relied on the case of:

Saraki V. Kutoye

(1991) 6 NWLR (PT. 264) 15 @ 175

That in these cases the parties are not the same and the Reliefs are not same with the present case. That in Suit **FHC/KD/51/97** the 2nd Defendant is not a party and that Mrs. Paulina Nnaji the 3rd Plaintiff in that Suit is not a party to the present Suit, while 1, 2, 5 & 8 Defendants who are parties in the previous Suit are not parties to the present Suit. That it cannot be contended that the parties are therefore not the same.

That a careful perusal of the Reliefs sought and the nature of the Claim in the said Suit **FHC/KD/51/97** shows the Suit is about directorship, ownership and control of Rendezvous Group Hotel and New Rendezvous Hotels Limited which are matters connected under the CAMA and fall within FCT are that cause of action in the Suit accrued prior to 1997 when that Suit was commenced.

That the Relief sought relates to a lease agreement which is contractual between 1st & 2nd Plaintiffs. That Court is called upon in this case to determine if the 2nd Plaintiff has a binding and subsisting contract by way of a Lease Agreement from the 1st Plaintiff such as to enjoy possession and peaceful management of the Hotel business of the 1st Plaintiff at the Res.

That the present Lease Agreement is not same as the previous Lease Agreement which has just expired. That the present Lease Agreement is not part of the Issues before the FHC in Kaduna as shown in the letter of the Defendants' Counsel to Lander Brothers Nigeria Limited – EXH 4A, dated 14/1/15 in which the Defendants' Counsel contended that the Lease Agreement which has just expired was created while FHC/KD/51/97 was pending and had nothing to do with the Suit. They referred to **EXH 4** attached to the Counter Affidavit of the Plaintiffs.

That it is clear that the cause of action in the present Suit rose out of the fresh lease granted to the 2nd Plaintiff upon the extraction of the previous lease held by Chief J.C. Njoku on behalf of Lander Brothers

Nigeria Limited and that this transaction occurred about 16/2/15 while the previous expired on the 15/2/15.

That from the various correspondences emanating from the Defendants' Counsel, their written Complaints to the Police, it is clear that the present dispute relates to the management, lease and the surrender of the previous lease and these matter is based on contractual relationship.

That Defendants resorted to self help to recover the premises without recourse to the provisions of Recovery of Premises Act and the Issue of Recovery of premises is a matter within the competence of this Suit.

On the Suit No.: **FCT/HC/CV/1849/14** they submitted that none of the 3 Defendants in that case is either a party to **FHC/KD/51/97** or a party to the present Suit. That none of the parties in **CV/1849/14** is a party in this Suit.

That it can be seen from the Defendants' letter to Lander Brothers to surrender the premises upon expiration of the lease stating that it is without prejudice to the Suit **FCT/HC/CV/1849/14**. So the same Defendants/Applicants cannot therefore complain that an action based on the surrender and renewal of the lease infringes upon the said Suit No.: **FCT/HC/CV/1849/14**

That the Defendants had filed a Counter Claim where they recognized that a new cause of action has emanated which is independent of the earlier Suit by

virtue of the said handover/surrender of the premises to 1st Plaintiff through 3rd & 4th Plaintiffs and grant of the fresh lease cannot therefore contend the same facts which created a right of action for them against the same Plaintiffs.

That the case pending before Imo State High Court is a probate and Administrative matter which relates to the WILL of Late Eze L.O. Nnaji. That it has nothing to do with the present case which borders on contract between 1st & 2nd Plaintiffs. He referred to Order 48 old FCT High Court Rule 2004. That the WILL is not yet proven and that it does not affect the right and power of 1st Plaintiff to enter into contract with the 2nd Plaintiff. That the parties and issues are not same as to be considered an abuse of Court Process.

On Issue No.2 on jurisdiction, the Plaintiff Counsel submitted that it is the Writ of Summon and Statement of Claim that determines the nature and character of the claim and not the way it is concluded. They referred to the case of:

**Global Transport V. Free Enterprises
(2001) 2 SCNJ 244**

**WAEC V. Adeyanju
(2008) 4 SC 1**

That the claim of the Plaintiff determines the jurisdiction of the Court and not the Statement of Defence filed by Defendant. They referred to the case of:

Adeyemi V. Opeyoni

(1976) 9 – 10 SC 31

Oladipo V. NSCB

(2009) 12 NWLR (PT. 1156) 563 @ 590

That the present Suit is based on Lease Agreement to run the hotel of the 1st Plaintiff for an agreed consideration. It is not about management or control of the affairs of the 1st Plaintiff but right to possession of the hotel premises of the 1st Plaintiff and to operate at an agreed consideration or rent. That the 1st lease which was granted for 6 years expired on 15/2/15. That it is the renewal and or the grant of fresh lease that is the subject matter of this present Suit.

That there are sufficient materials to show that 2nd Plaintiff has been managing the hotel business for 1st Plaintiff since 2010 and is in possession and has secured a fresh lease. That the Defendants are resisting and challenging the renewal of the lease or grant of fresh lease which is the subject matter of this present Suit.

The fact that Defendants are not in support of the renewal of the lease does not rob Court of the jurisdiction to determine whether the lease is valid or not. That if Court finds at the end of the day that the lease was not properly entered into, it can dismiss the Suit and invalidated the lease agreement negotiated by the 3rd & 4th Plaintiffs on behalf of the 1st Plaintiff.

On Issue No.3 whether Suit is Statute Barred, the Plaintiff submitted that the cause of action arose in 2015 and there is no claim to land or title to the

property before this Court. That it is therefore wrong for the Defendants to contend that the action is statute barred on basis of the date of title to the landed property which is not part of the Relief before this Court. Moreover, that the 3rd & 4th Plaintiffs have no claim before this Court but they are mere nominal Plaintiffs who are only seeking reliefs for the protection of the interest of 1st & 2nd Plaintiffs. They urged Court to hold that the Suit is competent and not an abuse of Court Process. They urged the Court to hold that it has jurisdiction to entertain the Suit and that cause of action is well founded. They urged Court to dismiss the Preliminary Objection with substantial cost as it is misleading and frivolous.

The Defendants/Applicants filed a Further Affidavit of 8 paragraphs. They attached several documents. The main issue in the Further Affidavit is that the 3rd & 4th Plaintiffs have no right over the property to enter into contractual agreement with the 2nd Defendant on the property. That the handover agreement and renewal by 3rd & 4th Plaintiffs lease were all forged as the Defendants were already issued with the handover note by Lander Brothers.

That it was when Defendants sought for actual possession of the property that Chief Njoku connived with the 3rd & 4th and created a new lease and fabricated documents of handover to 3rd & 4th Plaintiffs. They urged Court to dismiss the Suit as it is statute barred.

COURT:

It has been held in plethora of cases in all the hierarchy of Court that the claims of the Plaintiffs gives the Court its jurisdiction. Once the claims are predicated on what the Court can determine, it is said that the Court has jurisdiction to entertain the Suit. This is a mantra charted in all our Court daily. There is no point listing authorities on that.

In this case the Court is called upon to determine whether or not the simple agreement between the 1st & 2nd Plaintiffs is binding, valid and still subsisting between the 1st & 2nd Defendants. It is the view of this Court that it has jurisdiction to entertain same. See the case of:

Emeka V. Okadigbo Supra.

Again the Court is called upon to determine whether 2nd Plaintiff is entitled to the day to day management of the hotel business. It is also the considered view of this Court to state that it has jurisdiction to determine that also. The case is started by due procedure permitted by law and Court is made up of qualified personnel and subject of the subject is within jurisdiction of this Court. This Court has right to determine issues between company and person. **Madukolu V. Nkemdilim Supra.**

This Court also has the power after the determination of the issues in dispute, to make consequential order according to its finding. At this stage, in this case, the

Court is not called upon to decide the merit of the case and analyze the Exhibits.

This matter is also not an abuse of Court Process. Going by the fact in the Affidavit in support of the Preliminary Objection this matter is not about who the directors of 1st Plaintiff is. This case is only on a simple contract and determination of the subsisting agreement between 1st & 2nd Plaintiffs and nothing more. If there are other cases pending all over the federation, the claims in this Suit is very clear. Again this Court has the power to try all civil cases. It also has a co-ordinate jurisdiction with the Federal High Court same as listed in the some extant provision of the Constitution S. 251 (1) 1999 CFRN.

The case is not an abuse of Court Process because among all the pending cases scattered all over the Federation, there is none of those cases that has the same claims as the present case. This Court has power to determine issues that are predicated on admin and management of a company. The case is not statute barred. Besides, there is no Judgment on any of the cases pending in the various Courts in Nigeria that had made any pronouncement on issues raised in this case.

For a case to be statute barred there are fundamental principles that must be present. Those principles include the date when the cause of action accrued, the date of the commencement of the action as indicated in the Writ. The period of time prescribed to bring the action which must be ascertained from the statute in question. Time starts to count from the date the cause

of action arose. In this case, this Suit is not statute barred. The Lease Agreement started or was entered into on 16th of February, 2015. This Suit was filed on the 18th February, 2015. It is therefore not statute barred. See:

Ajayi V. Adebisi
(2012) 11 NWLR (PT. 113) 137

Shell Petroleum V. Farah
(1995) 3 NWLR (PT. 382) 148

The Suit is not an abuse of Court Process. There is no multiple Suit in this case, on the same subject matter between exactly the same parties. Yes there are several cases involving the parties scattered all over the Country but none of them has exactly the same parties as this. Moreover the subject matter in this Suit and others are not the same. To constitute an abuse of Court Process, it must be that a party has instituted multiple actions on same subject against same opponent on the same issue. See:

Nya V. Noah
(2007) 4 NWLR (PT. 1024) 320

N.I.W.A V. S.T.B.C PLC
(2008) 2 NWLR (PT. 1072) 483

Umeh V. Iwu
(2008) 8 NWLR (PT. 1089) 225

To constitute an abuse it must be such that there must be an intention, purpose and aim of the person exercising the right to harass, irritate, abuse and annoy

the adversary and interfere with the administration of justice such as multiplicity of action in the same Court, the same subject and against the same party.

On this see also the cases of:

NJC V. Agumagu

(2015) 11 NWLR (PT. 1111)

TSA Ind. Limited V. FBN PLC (WOT)

(2012) 14 NWLR (PT. 1320) 326

From the analysis above it is evidently clear that the present Suit is not in any way statute barred. It is equally not an abuse of Court Process in any form. It is equally clear that given the claims of the Plaintiffs, the Constitution of panel, the subject matter of the Suit and the fact that it was instituted following the due procedure as permitted by law, this Court has the requisite jurisdiction territory-wise and subject matter-wise to entertain this Suit, as the subject matter is located within the jurisdiction of this Court.

This Court therefore holds that the Preliminary Objection filed by the Defendants in this Suit is unmeritorious and it is therefore DISMISSED.

This is the Ruling of this Court.

Delivered today the ____ day of _____ 2021 by me.

K.N. OGBONNAYA
HON. JUDGE