

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 32</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/1731/2018</b>
<b>DATE:</b>	<b>28<sup>TH</sup> JANUARY, 2021</b>

**BETWEEN:**

**G. C NWOLISE HOLDINGS LTD .....COMPLAINANT**

**AND**

- |  |   |                   |
|--|---|-------------------|
| <ol style="list-style-type: none"> <li><b>1. MINISTER OF FEDERAL CAPITAL TERRITORY</b></li> <li><b>2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY</b></li> <li><b>3. LEVENTIS FOODS LTD</b></li> </ol> | } | <b>DEFENDANTS</b> |
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**APPEARANCE:**

Nonso Umeatuegbu Esq with Amaka Okeke Esq for the Claimant.  
Abiola Ughoche Esq for the first Defendants with Samuel M. Esq.

**RULING**

By a Notice of Preliminary Objection dated 9<sup>th</sup> day of October 2020 and filed same day. The Notice of Preliminary Objection was predicated upon two grounds to wit:

1. That this suit constitutes an abuse of Court process.
2. That this Honourable Court is functus officio in the instant suit.

Filed in support of Preliminary Objection is a written address dated 9<sup>th</sup> day of October, 2020.

In the said written address, Counsel to the Defendant/Applicant formulated a lone issue for determination alone is whether this Honourable Court has the jurisdiction to entertain and determine this suit.

In arguing the issue, counsel referred the Court to Section 6 of the 1999 Constitution and the case of **ADELEKE VS O. S.H. A. (2006) 16 NWLR (PT. 1006) 608** and submitted that this Honourable Court lacks the jurisdiction to entertain and determine this suit.

On the issue of an abuse of Court process, Counsel referred the Court to paragraph 45 of the Claimant/Respondent statement of Claim and submitted that the Claimant/Respondent is absurdly using the judicial process to the irritation and annoyance of the Defendants in a deliberate attempt to tarnish the administration of Justice. Reference was made to the cases of **SARAKI VS KATOYE (1992) 9 NWLR (PT. 264) P. 156, F. B. N PLC VS T. S. A INDUSTRIES LTD (2012) 5-7 SC (PT. 11); BARIGHA VS P.D.P & 2 ORS (2012) 12 SC (PT. V) P. 84; P. D. P VS SHERRIF & ORS (2017) LPELR- 42736; OBU VS OLUMBAMISE PRINTERS LTD (2013)LPELR-20415; NTUKS VS NPA (2007) 13 NWLR (PT. 1051) Page 392.**

Consequently, Counsel submitted that this suit as presently constituted before this Honourable Court is an abuse of Court process and urged the Court to put an end to this abuse by

dismissing the suit to enthrone the parties towards discharging the pending appeal.

On the issue that this Honourable Court is *functus officio* in respect of the subject matter of this suit Counsel referred the Court to paragraph 45 of the statement of Claim and paragraph 47 of the witness statement on Oath of the Claimant/Respondent and submitted that a Court that has determined a matter ceases to possess, further power in dealing with the case except with respect to ancillary matters. Reliance was placed on the cases of **MAKINDE VS ADEOGUN (2019) 1 NWLR (PT. 1123)575; INTRA MOTORS (NIG) PLC VS AKERILOYE (2001) 6 NWLR (PT. 708) 61.**

In that respect, Counsel submitted that this Honourable Court is *functus officio* in this suit and urged the Court to dismiss this suit without going into its merit.

In another submission Counsel stated that as long as there is no unresolved matter in the Court of Appeal concerning the same parties and subject matter as in the instant suit, this Honourable Court cannot assume adequate jurisdiction if it allows this suit to proceed. He cited in support the cases of **CHIEF OF DEFENCE STAFF VS ADHEKEGBA (2009) 13 NWLR (PT. 1130) 178 C. A. R. 18.**

Finally, Counsel urged the Court to uphold the Defendants/Applicants submissions and dismiss the Claimant/Respondent's suit with cost of one Hundred Thousand Naira (**₦100,000.00**) for the intentional and blatant abuse of Court processes.

In response to the Preliminary Objection, Claimant/Respondent filed a reply dated 15<sup>th</sup> day of October, 2020 and filed on 16<sup>th</sup> October, 2020.

In the said written reply, Counsel to the Claimant formulated a lone issue for determination which is does this Honourable Court have the requisite jurisdiction to entertain this suit.

In arguing the issue, Counsel submitted that this Honourable Court posses the requisite jurisdiction to entertain this suit.

It is the contention of the Learned Counsel that there is no pending appeal as submitted by the defendant and submitted moreso that it is settled principle of law as to a valid appeal that an appeal is said to be entered when the Registry of the appellate Court has received the record of proceeding/appeal from the Court below. Reliance was made to the case of **VAB PETROLEUM INC. VS MORAH (2013) LPELR-19770) SC); ONNOGHEN VS FRN (2019) LPELR-47524 (CA).**

The learned Counsel stated that applicant has not placed before this Court any facts or documents that will enable this Honourable Court come to the irresistible conclusion that there is a valid appeal in respect of this suit, hence this Honourable Court cannot be expected to go one wild goose chase in resolving the reliefs sought in this application in favour of the Applicants.

By the Motion on Notice filed on 24<sup>th</sup> day of May, 2016, Court of Appeal dismissing the said Appeal for want of diligent Prosecution and failure/neglect to compile and transmit the records of Appeal in accordance with the provisions of the Court of Appeal rules. He

relied on the case of **TAIWO VS DOSUNMU & ANOR (2017) LPELR-42690 (CA)**.

In his further submission Counsel stated that this suit is not an abuse of Court process. Counsel cited in support the cases of **R-BENKAY NIGERIA LTD VS CADBURY NIGERIA LTD (2012) LPELR-7820 (SC); CENTRAL BANK OF NIGERIA VS SAIDU H. AHMED & ORS (2001) 5 SC (PT. 11)146; EDJERODE VS IKINE (2001) 12 SC (PT. 11) 125; AGWASIM VS OJICHIE (2004) 10 NWLR (PT. 882) 613 AT 624-625 (SC)**.

Therefore, the learned Counsel contended that it is not true that the referred Notice of Appeal filed is between the same parties as in this case as alleged by the applicants, who failed to depose to facts and Exhibit same to their application. Counsel referred the Court to ground two of the Notice of Preliminary Objection and submitted that the law is trite that when a matter is struck out, the options available to someone like the Claimant is either to relist the suit or re-file same. In this respect, Counsel cited the case of **AJIJOLA VS RASAKI & ORS (2019) (SC)**.

Consequently, counsel submitted that assuming without conceding the Court holds that there is a valid Appeal, the said Appeal is distinct and distinguishable from the facts of this case. That whole the Claimant's suit bothers on the land allotted to him which was renamed and re-allotted to 3<sup>rd</sup> Defendant, the Notice of Appeal filed 7 years ago sought the order of Court to dismiss the Claimant's case for lacking in merit.

Finally, Counsel urged the Court to refuse the Cost of ₦100.000 as prayed by the Applicants as they are not entitled to same and that

the Court should strike out this Application as same is gold digging and vexatious.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants filed a reply on points of law dated 11<sup>th</sup> day of November, 2020 and filed same day.

The Learned Counsel in the such reply on points of law submitted that where a Preliminary Objection is raised on ground of jurisdiction, the Court looks at the plaintiff's statement of claim since the treatment of Preliminary Objection on a points of law challenging the validity of the institution of a suit as in this case could only be determined by reference to the pleadings particularly the statement of claim. Reliance was placed on the cases of **AJOKA IZENKWE & ORS VS NNADOZIE 14 WACA 361, ELABANJO & ANOR VS DAINODU (2006) LPELR-1106(SC)**.

On the contention that, there is no pending appeal in respect of suit **No. FCT/HC/CV/32/08**, counsel in his reply referred the Court to paragraphs 42, 43, 44 and 45 of the Claimant/Respondents statement of Claim and paragraphs 44, 45 and 47 of its witness statement on Oath and submitted that parties are bound by their pleadings. He cited the case of **SPDC VS ABEDI & ORS (1974) LPELR-3044 (SC)**.

Consequently, Counsel urged the Court to hold in favour of the Defendants/Applicants.

In his further reply, Counsel stated by submitting that an Appeal is pending as soon as Notice of Appeal is filed in the Court of trial or in any other place designated for that purpose by the Rules of Courts that transmission of record of Appeal does not signify pending of

Appeal and the matter of when an Appeal is said to be pending must not be confused with when an Appeal is said to have been entered. Reliance was placed on the case of **QUADRI VS STATE OF LAGOS (2013) LPELR-21471 (CA)**.

To this extent Counsel submitted that there is a pending Appeal on suit **NO. FCT/HC/CV/32/08 (G. C. NWOLISE HOLDINGS LTD VS MINISTER OF FCT & 2 ORS)** and urged the Court to so hold.

On the submission that this suit is not an abuse of Court process, Counsel in his reply on points of law stated that a matter including the same parties and the same Claims cannot be raised contemporaneously in two or more Courts and that, until the pending Appeal is settled the Claimant/Respondent's Suit does not deserve the audience of this Honourable Court. Reliance was placed on the case of **RE-BENKAY NIGERIA LIMITED VS CADBURY NIGERIA LIMITED (2012) LPELR-7820**.

As such, Counsel urged the Court to hold in favour of the Defendant/Applicants.

Finally, Counsel urged the Court to discountenance in its entirety the arguments and submissions of the learned to the Claimant/Respondent and dismiss the Claimant/Respondent's suit with cost of one Hundred Thousand Naira (**₦100,000.00**).

I have gone through the Notice of Preliminary Objection filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants together with the written address in support. I have studied the Claimant/Respondent's response to the Preliminary Objection and the Defendants/Applicant's reply on points of law.

In my opinion, it is important to begin by saying that although this Preliminary Objection challenging the jurisdiction of this Honourable Court to hear and determine this suit was predicated upon two grounds, I will limit myself to only ground one together with its particulars which I believe is the most important ground in determining this preliminary objection one way or the other.

Having said this, then the issue for determination in my humble view is whether this suit as presently constituted amounts to an abuse of Court process.

It is contention of the Defendant/Applicants stated both in the notice of the Preliminary Objection and the written address that an Appeal is pending before the Court of Appeal on the subject matter of this suit against the decision of this Court in suit Number **FCT/HC/CV/32/08** between **G. C NWOLISE HOLDINGS LTD VS MINISTER OF FCT & 2 ORS** and the parties and subject, matter are therefore the same with the present suit.

Before I proceed, it is germane to know what an abuse of Court process means. An abuse of Court process simply means that the process of the Court has not been used bona fide and properly. In this respect, see the case of **FRN VS NWOSU (2016) NWLR (PT. 1541)226 at 293-294**. Paragraphs C-A where the Supreme Court held thus:-

*“.....Abuse of Court process one needs to note appears endlessly defined in our law reports and related sources. It remains, basically the multiplicity of proceedings between the same parties and in respect of same or similar subject matter taken out by one party with the intention of over*



***reading or annoying the other party. Its occurrence is not restricted to improper use of the judicial process in litigation. It occurs even when there is proper use of the Court Processes. Generally, however, abuse of Court process lies in the employment of the judicial process to the annoyance and irritation of not only its opponent but against efficient and effective administration of Justice.”***

See also the cases of **SARAKI VS KOTOYE (1992) LPELR-3016 (SC); OKORODUDU VS OKORO-MADU (1977) 3 SC 21.**

At this juncture, I have gone through the originating Processes filed by the Claimant/Respondent particularly paragraphs 42, 43, 44 and 45 of its statement of claim which for ease of reference, I will reproduce here under. It reads thus:-

***Paragraph 42 reads thus:-***

***“At the conclusion of trial the claimant’s suit no. FCT/HC/CV/32/08-G.C. NWOLISE HOLDINGLTD V. MINISTER OF FCT & 2 ORS, was on 14/11/13 (November 14, 2013) struck out by the court on the ground that the writ of summon was not issued in the manner prescribed by the Rules of this Honourable court.”***

***Paragraph 43 reads thus:-***

***“The 3<sup>rd</sup> Defendant appealed against the decision of Honourable Justice U. P. Kekemeke delivered on November 14, 2013 by contending that the court erred in failing to decide the merits of the plaintiff’s case by dismissing same after it upheld their Preliminary Objection”***

**Paragraph 44 reads thus:-**

***“The 3<sup>rd</sup> Defendant’s main contention in the appeal was that having heard all the evidence on merit of the case, the court ought to have decided the case on its merit in case an appellate court decides that the striking out of the suit was erroneous.”***

**Paragraph 45 reads thus:-**

***“On 25/11/2013 (November 25, 2013), Claimant instituted another action in suit No. FCT/HC/CV/227/13-G. C. NWOLISE HOLDING LTD VS. MINISTER OF FCT & 2 ORS, but the suit was struck out by the court on 10/06/14 on the objection of the 3<sup>rd</sup> Defendant so as to await the decision of the court of Appeal in respect of the 3<sup>rd</sup> Defendant’s appeal against the decision in suit No. FCT/HC/CV/32/08 -G. C. NWOLISE HOLDING LTD VS. MINISTER OF FCT & 2 ORS”***

In addition, paragraphs 44, 45 and 47 of the Claimant/Respondent’s witness statement on Oath which are in pari materia with paragraph 42, 43 and 45 quoted above, points to the fact that there is an appeal pending on the same subject matter and parties to this suit. I so hold.

As such, it is trite law that an Appeal is a continuation of a matter until it is disposed off.

It should be noted that the submission of the Learned Counsel to the Claimant in his written reply on when an Appeal is said to be pending and when same is said to have been entered is of no moment because

the bottom line here is there is a valid Appeal pending as admitted by the Claimant in their pleadings?

Therefore, it is settled law that admitted facts need no further proof and it is equally the law that parties are bound by their pleadings. See the case of **SPDC VS ABEDI & ORS (1974) LPELR-3044 (SC)**.

To this end, it is my considered opinion in view of the foregoing that this present suit filed by the Claimant is an abuse of Court process. I so hold.

In the circumstances therefore, I hereby resolve the issue for determination in favour of the Defendant/Applicants against the Claimant/Respondent and hold very strongly that this Preliminary Objection is meritorious and is hereby upheld. In that respect, this Honourable Court lacks the requisite Jurisdiction to hear and determine this suit.

On that note, I refer to the case of **LOKPOBIRI VS OGOLA (2016) 3 NWLR (PT. 1499) 328 at 388** paragraphs E-F where the Supreme Court held that:-

***“.....That Court below was therefore right in holding that the Appellant’s suit constitutes an abuse of Court process. The law is clear as having been held that the appropriate Order the Court is expected to make having come to the conclusion that its process has been abused is to dismiss the process which constitutes abuse.”***

See also the case of **JAOKUTA STEEL CO. LTD VS G. I & S LTD (2019) 8 NWLR (PT. 1674) 213**.

In conclusion, this suit with suit **NO. FCT/HC/CV/1731/2020** be and is hereby dismissed in its entirety for the reason given above. I make no order as to cost.

Signed

***Hon. Justice Samirah Umar Bature***

28-01-2021