

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT APO, ABUJA**

**ON THURSDAY, 17<sup>TH</sup> JUNE, 2021**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/3204/2019**

**BETWEEN**

**FIRST BANK OF NIGERIA LIMITED            ---    CLAIMANT/RESPONDENT**

**AND**

**ABUBAKAR SULEIMAN MOZUM            ---    DEFENDANT/APPLICANT**

**RULING**

In paragraph 28 of the statement of claim filed on 14/10/2019 along with the writ of summons, the claimant seeks 12 reliefs against the defendants, which include:

1. The sum of N9,230,769.36k being the balance of the principal and the accrued interest [as at 16<sup>th</sup> July, 2019] on the said Personal Home Loan facility granted to the defendant by the claimant in 2009.
2. 9% agreed interest per annum on the said 2009 Personal Home Loan facility from 17<sup>th</sup> July, 2019 till the date of delivery of judgment in this matter.

3. The sum of N4,738,989.56k being the balance of the principal and the accrued interest [as at 16<sup>th</sup> July, 2019] on the said Home Loan facility granted to the defendant by the claimant in 2012.
4. 9% agreed interest per annum on the said 2012 Home Loan facility from 17<sup>th</sup> July, 2019 till the date of delivery of judgment in this matter.
5. An order of this Honourable Court authorizing the claimant to take immediate possession of the said property of the defendant lying, situate and known as **3-Bedroom Semi-Detached Duplex at House No. 14, 612 Road, off 6<sup>th</sup> Avenue, Team 6A**, Gwarinpa, Abuja, which property was purchased by the fund of the said Personal Home Loan facility, and to sell same to realize both the said sum of N9,230,769.36k and the 9% agreed interest per annum on the Personal Home Loan facility from 17<sup>th</sup> July, 2019 till the date of delivery of judgment in this matter.
6. An order of this Honourable Court authorizing the claimant to take immediate possession of the said property of the defendant lying, situate and known as **3-Bedroom Semi-Detached Duplex at Plot 14, Phase 3 Residential Layout, Gwagwalada**, Abuja, which property was purchased by the fund of the said Home Loan facility, and to sell same to realize both the said sum of N4,738,989.56k and the 9% agreed interest per annum on the said Home Loan facility from 17<sup>th</sup> July, 2019 till the date of delivery of judgment in this matter.

On 20/2/2020, the defendant filed a memorandum of conditional appearance, statement of defence and notice of preliminary objection; these processes were deemed as properly filed and served by Order of the Court made on 2/3/2021.

This Ruling is on the preliminary objection by which the defendant contends that this Honourable Court lacks jurisdiction to hear and determine this suit as presently constituted and the same should be dismissed "*in limine*".

The grounds upon which the preliminary objection is brought are:

1. That this case has earlier been adjudicated upon in Suit No. NICN/ABJ/189/2017 between same parties, same facts and same reliefs before a competent Court of law.
2. That judgment has since been entered in Suit No. NICN/ABJ/189/2017 between the claimant and the defendant way back to 17<sup>th</sup> day of May, 2019 at the National Industrial Court of Nigeria.
3. That the suit as presently constituted is "*Res Judicata as well as Issue Estoppel*".
4. That the suit as presently constituted is an abuse of court process.
5. That this Honourable Court lacks the jurisdiction to entertain the suit as presently constituted in the extant suit.

In support of the application, the defendant/applicant filed a 7-paragraph affidavit; attached therewith are Exhibits FBN 1-FBN 6. Efekemaraye G. Daniel Esq. filed a written address with the application. In opposition, AbdullahiBulama, Recovery Officer [North Axis] of the claimant, deposed to a 26-paragraph counter affidavit on 21/9/2020 along with the written address of AniRemigius Esq. At the hearing of the preliminary objection on 2/3/2021, the counsel for the parties adopted their respective processes.

In his affidavit in support of the application, the defendant stated that:

1. He was a staff of the claimant. He was a principal manager of the claimant when he voluntarily retired on 25/1/2016 after 29 years of service. Following his retirement, he was entitled to payment of gratuity in addition to some other payments stated in the claimant's Handbook.
2. After his retirement, claimant started disturbing him for the payment of outstanding balance of the loans he took while he was in service even when the claimant was yet to pay his gratuity and other entitlements.
3. He filed Suit No. NICN/ABJ/189/2017 against the claimant; his Statement of Facts is Exhibit FBN 1. The claimant [as defendant] filed its statement of defence claiming same reliefs in the present suit in paragraphs 15, 17[p], [q], [r] & [s] and 18. The statement of defence is Exhibit FBN 2.

4. Both parties called evidence in Suit No. NICN/ABJ/189/2017 and judgment was entered in his favour on 17/5/2019 by *Hon. Justice SanusiKado*; the judgment is Exhibit FBN 3.
5. The claimant [as defendant] filed a notice of appeal in the matter and the appeal had been entered with Appeal No. CA/A/1095/2019. The notice of appeal is Exhibit FBN 5.
6. He is aware that once a court of law has adjudicated on a matter bothering on same facts and parties, same matter cannot be taken before another court for further adjudication as in this case save on appeal. This Honourable Court lacks the jurisdiction to entertain this suit for the reason of "*Res Judicata and Issue Estoppel.*"

In the counter affidavit, AbdullahiBulama stated that:

1. The defendant was a staff of the claimant and disengaged from the employ of the claimant in January, 2016.
2. As at the time the defendant filed the suit at the National Industrial Court, the defendant washeavily indebted to the claimant on the loan facilities he took to purchase his choice houses in Abuja.
3. The claimant only defended the said suit at the National Industrial Court, pointing out the outstanding amounts of the loan facilities in rebuttal of the numerous monetary claims made by the defendant [as claimant]. The claimant did not counter claim against the defendant in

that suit as it knew that the National Industrial Court does not have jurisdiction to determine matters bothering on loans, interests and/or loan recovery.

4. The issues and/or subject matter determined by the National Industrial Court in the said suit are issues of contract of employment and industrial relationship, which are different from the issues and subject matter in this case.
5. As there is no judgment or decision that has finally determined the issues or claims in this suit, the principles of *res judicata* and/or *issue estoppel* have no place in this suit.

Learned counsel for the defendant/applicant posed one issue for the Court's determination, to wit:

Whether this Court can sit and hear a matter already concluded and decided by a competent court of law between same parties for same reliefs.

On the other hand, the learned counsel for the claimant/respondent also formulated one issue for determination, which is:

Whether the defendant/applicant has satisfied the conditions required by law for the principles of *Res Judicata* and/or *Issue Estoppel Per Rem Judicatam* to apply in this suit against the claimant/respondent.

From the grounds of the preliminary objection and the submissions of both learned counsel, the Court is of the opinion that there are two issues for determination. The first is whether the principle of *res judicata* is applicable to this case; while the second is whether this suit is an abuse of court process. The two issues will be taken together as they are related.

Learned counsel for the defendant/objector referred to **Makun v. Federal University of Technology Minna [2011] 6-7 SC [Pt. V] 32** for the meaning of *res judicata*. He submitted that the entire process as presently constituted falls under the doctrine of *res judicata* and everything about it is a gross abuse of court process. Efekemaraye G. Daniel Esq. posited that the decision of a court of competent jurisdiction not appealed against, or which if appealed against is not set aside, exists for ever between the parties. He relied on **Chukwueke v. Okoronkwo [1999] 1 NWLR [Pt. 587] 413** and other cases; and sections 173 and 174 of the Evidence Act, 2011 to support the principle that judgment of a competent court is binding on parties and their privies until set aside.

Learned counsel for the objector further argued that the decision of the National Industrial Court in *Suit No. NICN/ABJ/189/2017* finally determined the rights of the parties since 17/5/2019 until the Court of Appeal says otherwise. He referred to **Ayuya v. Yonrin [2011] All FWLR [Pt. 583] 1842, Udo v. Obot [1989] 1 NWLR [Pt. 95] 591** and other cases for the conditions for the application of *res judicata*. He urged the Court to dismiss

this suit for the reasons that same is *res judicata* and gross abuse of court process.

For his part, learned counsel for the claimant/respondent relied on **Comrade Oyinlola Adesoji & Ors. v. Federal University of Technology, Akura & Ors. [2017] 9 NWLR [Pt. 1570] 208, Okukuje v. Akwido [2001] 3 NWLR [Pt. 700] 261** and other cases for the conditions for a successful plea of *res judicata* and/or *estoppel per rem judicatam*. He argued that the defendant has failed to establish the essential ingredients for the application of *res judicata* to this case as the issues, subject matter and the claims in *Suit No. NICN/ABJ/189/2017* and the present suit are completely different.

Ani Remigius Esq. emphasized that the issue, subject matter and claims before the National Industrial Court are on the contract of employment and industrial relationship between the parties. On the other hand, the issue, subject matter and claims in this suit are on the outstanding indebtedness of the defendant on the Home Loan Facilities granted to him by the claimant and the possession and sale of the properties purchased with the said loan facilities to off-set the indebtedness. He referred to pages 28-29 of the judgment in *Suit No. NICN/ABJ/189/2017* and submitted that the National Industrial Court did not determine the issue of the said loans and the interest as to warrant the applicability of *res judicata*. Learned counsel for the claimant also submitted that this suit is not an abuse of court process. He urged the Court to dismiss the preliminary objection.



The Latin words “*Res Judicata*”, means “*a thing adjudicated*”. *Res judicata* is defined at page 1312 of the Seventh Edition of Black’s Law Dictionary as: “*An issue that has been definitively settled by judicial decision. ... The three essential elements are [1] an earlier decision on the issue, [2] a final judgment on the merits, and [3] the involvement of the same parties, or parties in privity with the original parties.*” *Res judicata* is aimed at bringing an end to litigation. It is to ensure that no one is proceeded against the second time if it is proved that the present action is for the same cause which has been decided by a court of competent jurisdiction. See the case of **Makun v. Federal University of Technology, Minna [supra]**.

In **Kambaza v. Hakimi & Anor. [2019] LPELR-48139 [CA]**, it was restated that for the principle of *res judicata* to apply in any proceedings, the party relying on the plea must establish that:

- a) *there is a judicial decision and the court that delivered the decision had jurisdiction over the parties and the subject matter;*
- b) *the claim or issue in dispute in the proceedings are the same;*
- c) *the decision upon which it is based is valid, subsisting, final and on the merits;*
- d) *the decision must determine the same question as that raised in the later litigation; and*
- e) *the parties to the later litigation were either parties to the earlier litigation or their privies, or the earlier decision was in rem.*

It was also held that once these conditions are satisfied, the previous decision estoppes the party from making any claim contrary to the previous one. On the other hand, failure to establish any of the listed conditions in the new suit renders the plea of *res judicata* inapplicable. See also **Bassey Ekanem [2001] 1 NWLR [Pt. 694] 360.**

I have earlier stated some of the claims of the claimant in this case, which are based on the defendant's alleged indebtedness arising from the Home Loan facilities granted to him by the claimant.

Now, let me refer to the claims, issues and subject matter in *Suit No. NICN/ABJ/189/2017* in order to determine whether the claims in the instant case are *res judicata* or have already been decided by the National Industrial Court. In paragraph 28 of his statement of claim in the National Industrial Court *Suit No. NICN/ABJ/189/2017* [i.e. Exhibit FBN 1], the defendant [as claimant therein] made declaratory and monetary claims against the claimant [as defendant therein] arising from his employment. The defendant also sought some other claims, which include reliefs [g] & [j]. Reliefs [g] & [j] read:

[g] *An injunctive order of this Honourable Court restraining the defendant from further harassing, intimidating, writing, threatening and visiting the plaintiff at home or wherever by external Solicitors, staff of the defendant or any person[s] engaged by the defendant as debts recovery agents or whosoever by whatsoever name called while the defendant is*

*still holding on to the claimant's entitlements until the matter is finally disposed of and all entitlements paid.*

[j] *An order of this Honourable Court directing the defendant to reverse all interest it purportedly charged on the alleged claimant's balance of loan as claimant's entitlement naturally erases the said loan.*

As stated in paragraph 2[e] of the affidavit in support of the preliminary objection, the claimant herein in paragraphs 15 and 17[p], [q], [r] & [s] of its statement of defence in *Suit No. NICN/ABJ/189/2017* [i.e. Exhibit FBN 2], averred that the defendant [as claimant] is indebted to it; that the debt arose from two Home Loan facilities he obtained in April 2009 and on 22/10/2012; and that it [i.e. the claimant] engaged A. O. Katege Chambers to recover the said loans.

In the judgment in *Suit No. NICN/ABJ/189/2017* [i.e. Exhibit FBN 3], My Lord, Hon. Justice Sanusi Kado, J. adopted the two issues formulated by the defence counsel in that case. The first issue was: "*Whether this Honourable Court has jurisdiction to adjudicate and grant reliefs d, g, i and j sought by the claimant.*" The Court held:

*"... I have earlier reproduced the claims of the claimant in this judgment. In the light of the provision of section 254C of the Constitution as amended and the four reliefs being objected to it will be difficult to see how it can be successfully argued that this court can assume jurisdiction on reliefs that*

*borders on insurance claims, recovery of debt or interest rate. It is clear that the claimant's case before the court apart from being on severance or terminal benefits it also contained reliefs on insurance, debt recovery and interest rate. The claims on insurance, debt recovery and interest rate, having not been within the purview of section 254C of the Constitution as amended which conferred on this court jurisdiction, are not properly brought before this court. I am fortified in this position by the decision of the Supreme Court in the case of LEWIS V. UBA 2016 1 SC PT 1 9, where it was held that contract of employment and personal loans between employee and employer are two distinct contracts having distinct subject matters and their duration not coexistent ... Therefore this court lacks jurisdiction to entertain the reliefs being objected to by the defendant and I so hold."*

From the foregoing, it is clear, at least to me, that the issues and subject matter in *Suit No. NICN/ABJ/189/2017* are not the same as the issues and subject matter in the case before me. For emphasis, the claimant's claims in the instant suit were not determined by the National Industrial Court in the judgment relied upon by the objector. I need to point out that there is no appeal against the above quoted decision. Therefore, I am in agreement with Ani Remigius Esq. that defendant/objector failed to establish the conditions for the doctrine of *res judicata* to apply in this case. I so hold.

The objector also argued that this suit is an abuse of court process. Abuse of court process is a term generally applied to a proceeding that is wanting in

*bonafides* and is frivolous, vexatious or oppressive. It occurs when a party improperly uses the issue of judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. Abuse of court process may arise in instituting multiplicity of actions on the same subject matter against the same opponent on the same issues. See the case of C.B.N. v. Ahmed [2001] 11 NWLR [Pt. 724] 369.

In the case of Umeh v. Iwu [2008] 8 NWLR [Pt. 1089] 225, it was restated that to sustain a charge of abuse of court process, there must co-exist a multiplicity of suits between the same opponents, on the same subject matter and on the same issues. As I said earlier, the issues and subject matter in *Suit No. NICN/ABJ/189/2017* and the issues and subject matter in the present case are not the same. Therefore, this suit is not an abuse of court process.

In conclusion, the decision of the Court is that the preliminary objection lacks merit. It is dismissed. I award cost of N50,000.00 to the claimant/respondent payable by the defendant/applicant.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. RemigiusAni Esq. for the claimant/respondent.
2. Ekpo Philip Ekpo Esq. for the defendant/applicant.