

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/3228/20

DATE: : MONDAY 21ST JUNE, 2021

BETWEEN

**DUE DONS NIGERIA LTD } CLAIMANT
/RESPONDENT**

AND

**THE REGISTERED TRUSTEES } DEFENDANT
OF POLICE HOUSING ESTATE /APPLICANT
OWNERS & RESIDENTS
ASSOCIATION**

RULING

This Ruling is at the instance of the Defendant/ Applicant who approached this Honourable Court for the following:-

1. An Order of this Honourable Court dismissing this suit in limine.
2. An Order of this Honourable Court setting aside the interim injunction granted against the Defendant.

The ground upon which the application was brought was filed and an affidavit of 28 paragraphs was equally duly deposed to by one Eidenajo Ekeoba.

It is the deposition of the Applicant that it is a registered incorporated Trustee with Corporate Affairs Commission vide Exhibit "A" and that

sometime in the year 2020, the Defendant instructed the law firm of Kwo Chambers to institute and file an action against the Plaintiff and its Managing Director over the management and control of the Kurudu Police Housing Estate. The writ of summons and statement of claim is annexed as Exhibit “B” and proof of service of the process on the Plaintiff/Respondent is equally annexed as Exhibit “C”.

Applicant avers that 7 days after the service of the writ of summons and statement of claim on the Plaintiff, the Plaintiff filed this present suit and fraudulently obtained interim injunction on the 11th February, 2021.

That this court was misled by counsel to the Plaintiff by not disclosing to this court of existence and

pendency of suit No. CV/2812/2020 before Hon. Justice Banjoko of Court 5 FCT.

It is the averment of the Applicant that Plaintiff/Respondent and the Defendant/Applicant in this present suit are parties to the said suit making the present suit incompetent being an abuse of court process.

That the subject matter of this suit and the suit before court 5 and the reliefs sought are the same and therefore the suit be dismissed in the interest of justice.

Written address was filed in compliance with the Rules of this court whereof two issues were formulated, to wit:-

- a. Whether this suit is an abuse of the process of the court.

b. Whether or not this Honourable Court can set aside interim injunction fraudulently obtained against the Defendant.

On issue 1, whether this suit is an abuse of the process of the court, learned counsel for the Defendant/Applicant contended that abuse of judicial process generally is applied to proceedings wanted in bonafide, frivolous, vexatious and oppressive. It is also an improper use or multiplicity of actions on the same subject matter. That from the facts deposed to in the affidavit, it is obvious that this present suit is an abuse of court process. Counsel cited and relied on ***UMEH VS IWU (2008) 8 NWLR (Pt. 1089) page 225 and S.P & ASSOCIATES LTD VS MARCH RICH & COMPANY A.G (2003) FWLR (Pt. 177) 922 at 936.***

Counsel argued further that a cursory look at the originating process in the suit pending before Hon. Justice Banjoko of Court 5 and the instant suit before this court clearly would show that the claims and the reliefs are same, and that what the law seek to prevent is the multiplicity of actions. Counsel relied on *KOTOYE VS SARAKI (1992) 9 NWLR (Pt. 264) page 156 at 188 – 189*. Counsel on this score urged the court to resolve issue 1 on its favour.

On issue two, whether or not this Honourable Court can set aside interim injunction fraudulently obtained against the Defendant, learned counsel contended that the Registered Trustees of Police Housing Estate Owners & Resident Association is the same as Kurudu Police Housing Estate Owners & Resident Association and that the difference in name if any is a misnomer. Counsel relied on

APGA VS UBAH (2019) 15 NWLR (Pt. 1694) page 25 at page 37 – 38.

Court was urged to hold that the Plaintiff's suit is an abuse of court process and same be dismissed.

Upon service, the Plaintiff/Respondent filed a counter affidavit of 21 paragraph deposed to by one ChijiokeOkpe, a counsel in the law firm of the Plaintiff/Respondent.

It is the deposition of the Respondent that the Defendant's case pending before Hon. Justice Banjoko has three (3) parties to the suit to wit, Kurudu Police Housing Estate owners and Resident Association as Plaintiff Vs Due Dons Nigeria Limited and Chief Donald Okoli as Defendants.

It is further the deposition of Respondent that the Registered Trustees of Police Housing Estate owners and Residents Association is not the same as

Kurudu Police Housing Estate Owners and Residents, Association.

That the Defendant's claim in the suit pending before Hon. Justice Banjoko was hinged on the expiry of contract between the Nigeria Police Force and the Claimant for the construction and maintenance of the Nigerian Police Housing Estate, Kurudu, whereas the Crux of the Claimant's case in the instant suit is hinged on the Tort of interference with the execution of the Claimant contract.

It is further the deposition of Claimant/Respondent that the parties are not same and that this suit was brought in accordance with the Rules of this court.

In line with law, a written address was filed wherein counsel addresses the issues raised by the Applicant as thus;

- i. Are the parties in suit No. CV/2812/2020 and the instant suit CV/3225/2020, same as for the instant suit to constitute and abuse of court process?

Counsel maintained that Multiplicity of actions on the same matter between same parties may constitute an abuse of court process. This is so only where the action is between the same parties with respect to the same subject matter. Learned counsel maintained that the parties in both suits are not the same to amount to abuse of court process. The case of ***CHIEF VICTOR UMEH VS PROF. MAURICE IWU & 3ORS (2008) 2 – 3 SC (Pt. 1) 135 at 153*** was cited by counsel, in urging the court to so hold.

2. On whether the subject matter of this suit is the same with suit FCT/HC/CV/2812/2020. Counsel

argued that above suit anchored on the expiration or otherwise of the contract dated 10th May, 2010 between the Nigerian Police Force and the Plaintiff herein, while the subject of the instant case is based on Tort of Interference with the execution of contract between the Nigerian Police Force and the Plaintiff herein and the inducement of breach of contract between the Plaintiff herein and the subscribers of the Nigerian Police Housing Estate. Learned counsel urge the court to resolve issue 2 in its favour.

3. On whether the interim Order granted by this Honourable Court on the 11th Day of February, 2021 in favour of the Plaintiff was obtained by fraud?

Counsel contended that Plaintiff lawfully applied for the interim Order and same was lawfully granted and therefore the contention of the Applicant is misplaced.

4. On whether this suit is competent and whether this Honourable Court has jurisdiction to grant the interim order and to hear and determine this suit on the merit, learned counsel also argued that the present suit is competent as the parties in both suit are not the same, so also the reliefs.

Court was finally urged to dismiss this application.

Court:-

An abuse of court process, which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to

circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of *N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (Pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A)*.

When then does abuse of court process arise?

Supreme Court of Nigeria, *per Ogbuagu JSC* in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D*** - *E* stated thus;

“There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to include the following;-

- 1. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.*

2. *Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*
3. *Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent’s notice.*
4. *Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.*
5. *Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.*

To resolve this matter, the court has formulated only one issue for determination, viz;- “*whether suit No FCT/HC/CV/3225/2020 filed before High Court amounts to an abuse of court process.*”

As I stated earlier, the rationale of the law in abuse of court process is that there must be an end to litigation, and a litigant must not be made to suffer the same rigour/Jeopardy for the same purpose twice.

I must also hasten to note that it is indeed the claim of the Plaintiff that determines the jurisdiction of a court, as stated in *OGUNBADEJO VS ADEBOWALE (2008) All FWLR (pt. 405)1707 at 1717, paragraphs C-D (C-A)*,

I however must state that, there are other determining factors that certainly must be

considered. It therefore follows that where, for example, a case of abuse of process of court is established, the court even though seized of the jurisdiction to try a matter, must decline same.

The claim of the Plaintiff/Respondent before this Court are for the following:-

1. A Declaration that the Claimant, by virtue of the contract it entered into with the Nigerian Police Force to develop, built and manage the Nigerian Police Housing Estate in Kurudu, Abuja in all its ramifications, has the right to develop, build and manage the Nigerian Police Force Housing Estate to the exclusion of every other person including the Defendant herein, its members, agents and/or privies.

2. A Declaration that the Claimant has the sole and exclusive legal right to build and manage the Nigerian Police Housing Estate, Kurudu in accordance with the terms and conditions of the contract the Claimant entered into with the Nigerian Police Force.
3. A Declaration that the Claimant has the sole and exclusive legal right to provide infrastructural facilities, security, post – sale maintenance and management services in the said Police Housing Estate in accordance with the provisions of the contract the Claimant entered into with the Nigerian Police.
4. A Declaration that the Claimant has the sole and exclusive right to collect from the subscribers to the estate, infrastructure Levies for the provision

of infrastructural facilities in the Nigerian Police Estate, Kurudu, in accordance with the terms and conditions of the contract the Claimant entered into with the Nigeria Police Force and the subscribers to the estate.

5. A Declaration that the Defendant has no right, power and/or authority whatsoever to interfere with the Claimant's performance of its contractual obligations with the Nigerian Police for the building, sales, provision of infrastructural facilities, management and after sales maintenance of all the necessary facilities and services in the estate.
6. A Declaration that the Defendant has no right whatsoever to interfere with the Claimant's right to collect Infrastructure Levies from the

Subscribers or the Claimant's provision of infrastructural facilities in the Nigerian Police Housing Estate, Kurudu, Abuja.

7. A Declaration that the Defendant's interference with the Claimant's execution of the contract it lawfully entered into with the Nigerian Police Force is illegal and unlawful and is a tortuous act.
8. A Declaration that the Defendant's interference and/or inducement of the Subscribers to the Police Housing Estate, Kurudu not to pay the Infrastructural Development levy to the Claimant is illegal and unlawful.
9. An Order of Perpetual Injunction restraining the Defendant, its officials and/or members, privies, agents and/or associates from interfering with

the Claimant's performance of the contract it lawfully entered into with the Nigerian Police Force.

10. An Order of Perpetual Injunction restraining the Defendant, its officials and/or members, agents, privies and/or associates from further inducing the Subscribers to the Police Housing Estate, Kurudu, not to pay their Infrastructural Levy to the Claimant or from interfering with the Subscribers' payment of the Infrastructural Levy to the Claimant in any way whatsoever.
11. An Order of this Honourable Court compelling the Defendant to pay to the Claimant the sum of N107,750,000.00 (One Hundred and Seven Million Seven Hundred and Fifty Thousand Naira) only being special Damages suffered by

the Claimant as a result of the Defendant's inducement of the Subscribers to the Police Housing Estate, Kurudu not to pay their Infrastructure Levies to the Claimant at all or as at when due.

12. An Order of this Honourable Court compelling the Defendant to pay the sum of N50,000,000.00 (Fifty Million Naira) as general damages for interfering not only with the Claimant's performance of the contract it lawfully entered into with the Nigerian Police Force but also the Defendant's inducement of the Subscribers to the Estate not to pay Infrastructure Levies to the Claimant.

13. And for such further or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

Whereas the claim of the Applicant in suit No. CV/2812/2020 before my learned brother Hon. Justice Banjokoare as follows:-

- a. An Order of this Honourable Court declaring that whatever management agreement the Defendant had with the Nigerian Police Force has expired on the 12th of November, 2012 after 30 months with effect from 10th May, 2020 after the execution of the agreement between the Defendant and the Nigerian Police.
- b. An Order of this Honourable Court declaring that the said expired agreement between the Defendant and the Nigerian Police Force is no

longer binding on the Plaintiff since the Plaintiff as the new owner of the estate was not a party to the agreement between the Defendant and the Nigerian Police Force.

- c. An Order of this Honourable Court mandating and directing the Defendant to immediately handover the remaining and all the affairs of the estate to the Plaintiff since the agreement between the Defendant and the Nigerian Police Force was not renewed neither was a new contract entered into between the Plaintiff and the Defendant.
- d. An Order of this Honourable Court mandating and directing the Defendant to render account to the Plaintiff of all financial transaction, collections and the balance of infrastructure levy

collected by the Defendant after the expiration of the agreement with the Nigerian Police Force on the 10th November, 2012.

- e. An Order of Perpetual Injunction restraining the Defendants and their privies from further interference in the management and control of the estate.
- f. The sum of N50,000,000.00 only being the cost of this action.
- g. And any further Order(s) this Honourable Court may deem fit to make in the circumstance.

The parties before me are **DUE DONS NIGERIA LIMITED VS THE REGISTERED TRUSTEES OF POLICE HOUSING ESTATE OWNERS & RESIDENT ASSOCIATION.**

Whereas the parties before my learned brother are as follows:-

Kurudu Police Housing Estate Owners and Residents, Association and

1. Due Dons Nigeria Limited.
2. Chief Donald Okoli.

The Applicant annexed Exhibit “A” which is certificate of incorporation of the Applicant which is Kurudu Police Housing Estate Owners & Residents Association.

It is instructive to note that abuse of court process is targeted at ensuring duplication of action geared toward wasting precious judicial time is not allowed.

Abuse of judicial process means that a party in litigation takes a most irregular, unusual and

precipitate action in the judicial process for the sake of action via litigation merely to waste valuable litigation time. It is an action which is one or more too many, an action which could be avoided by the party without doing any harm to the matter in dispute.

The process of court is used merely to overreach the adversary to the direct annoyance of the court; the process of the court is initiated with malice or in some premeditated or organized vendetta, aimed at frustrating either the quick disposal of the matter or the abatement of the matter for no good cause.

I have seen Exhibits “A”, “B”, “C” and “D” respectively which Defendant/Applicant mentioned, exhibited in support of the application in view.

The aforementioned exhibits are certificate of incorporation of Kurudu Police Housing Estate owners and Residents Association, writ of summons in suit CV/2812/2020 dated 5th October, 2020, proof of service dated 13th November, 2020.

I have equally seen Exhibit “D” i.e. cause list of court 5 Jabi, presided by my brother Hon. Justice A.A.I Banjoko showing that suit FCT/HC/CV/2812/2020 came up on the 18th July, 2021 and was adjourned to the 10th March, 2021.

The said suit has the name of **KURUDU POLICE HOUSING ESTATE VS DUE DONS NIGERA LTD & 1OR**. Documents remain the most reliable form of evidence in view of the fact that it is more permanent in form unlike viva voce evidence. The human mouth lies easily.

I have perused the exhibits annexed to the application filed by Defendant/Applicant and have abbraised myself with the averments contained in the affidavits in support of the application and the counter affidavit and the respective legal argument.

I am not left in doubt that the present action before this court being attacked as it were, having been filed after the earlier suit before my brother as per Exhibit “B”, regardless of the pillar to post argument of Defendant/Respondent is an abuse of court process.

Plaintiff/Respondent could have easily sought for the same reliefs in their Defence before my brother.

The decision to file yet another action against the same Defendant which clearly is the umbrella body, is certainly most unnecessary and annoying.

The argument of Plaintiff's counsel against the objection of Defendant/Applicant is most unfounded.

Consequently, the said suit **No. CV/3228/20** for reason afore – advanced is hereby struck – out.

Justice Y. Halilu
Hon. Judge
21st June, 2021

APPEARANCE

Michael Ugwuanyi – for the Claimant/Respondent

Frank Ikpe – for the Defendant/Applicant.