

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY 25TH DAY OF FEBRUARY, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
MOTION NO: M/278/2021

BETWEEN:

BARR. NNAEMEKA C.I.PLAINTIFF

AND

ATTAH JOHNDEFENDANT

RULING

The applicant instituted this suit dated 14/1/2021. On the 15/1/2021 by a motion exparte praying this court for the following relief:

- (1) An order granting leave to the applicant to apply for judicial review in the terms and on the grounds set out in the Statement filed herein.*
- (2) An Order granting leave to the applicant to apply for an order of prohibition against further hearing in suit No. CV/204/19. In the case between Attah John (suing on behalf of the landlord Abiola Oluraruonke) and Barr C. I.*

- Nnaemeka at Senior District court, Kuje, Abuja before his worship Taribo.*
- (3) An order that the leave to apply for judicial review shall operate as a stay of all further hearing or proceedings in respect of suit No CV/204/19 in the case between Attah John (suing on behalf of the landlord Abiola Oluruaronke) and Barr. C. I. Nnaemeka at senior District Court Kuje, Abuja before His Worship Taribo at the district court of the FCT Abuja to which this application for judicial review relates pending the hearing and determine of the motion on notice to be filed consequent upon the grant of leave.*
- (4) For such further orders as this court may deem fit to make in the circumstance.*

In support of this application is a 32 paragraph affidavit dated and filed on the 15/1/2021 an application for an order of Certiorari, Prohibition declaration and injunction with the name and description of the applicant reliefs sought the grounds on which the said reliefs are sought, an affidavit verifying the statement and a written address.

Further attached to this application are the following documents.

Application for plaint before the district court of the FCT.

Record of proceedings and Ruling of the said court dated 13/1/2021.

Motion on Notice dated 19/6/2020.

Notice of Appeal dated 17/9/2020.

Application for transfer of this suit dated 16/9/2020.

Motion on Notice dated 17/1/2020 all marked as exhibit A-F consecutively the affidavit relied on by the applicant was deposed to by one Mayor Chinedu a litigation clerk in the law firm of the applicant. Same contained the following facts:

The applicant is a yearly tenant occupying a 2 bedroom flat in Kuje at the annual rate of N280,000.00 but was subsequently increased to N300,000.00.

That at the expiration of the applicants rent in April, 2019, Same made a part payment of N150,000.00 to the landlord with the understanding that the applicant would pay the balance for 2019-2020 tenancy year.

That in September 2019 Mr. John Attah (Plaintiff) served the defendant with 7days notice to quit followed by a 7days owner;

intention to apply to court to recover possession and subsequently filed a Plaint on 27/11/2019 against the applicant praying for possession and 2 mouths arrears of rent.

The Plaintiff closed his case after calling two witnesses without calling the landlord or tendering any letter of authority from him. That the applicant filed a Preliminary Objection challenging the jurisdiction of the court by way of motion on notice on the ground of incompetency of the suit before the court. The said Preliminary Objection was heard and ruling delivered wherein the district judge overruled the objection. That the applicant appealed against the ruling and also wrote a letter of complaint to the chief Judge of the FCT Judiciary the applicant have also filed a motion for stay of proceeding in the district court.

In his written address, counsel's issue for determination is thus:
Whether considering the facts and circumstances of the case the applicant is not entitled to the reliefs sought in this application.

Applicant unsaved this in the affirmative that by order 44 Rule 6 (a) & (b) the court is empower to grant leave to the applicants in respect of the matter before the lower court and such leave will operate as a stay to any further steps in respect of the suit before the lower court.

Applicant averred that the senior district court assumed jurisdiction even when it is clear that the suit is incompetent. The Plaintiff did not produce a letter of authority from the landlord and committed himself to the contract of which he is not privy to. The lower court failed to raise the issue of jurisdiction and overruled itself per incuriam. Applicant cited **ESABUNOR & ANOR VS. FAWEY & 2ORS (2019) LPELR 46961 SC**. Applicant submitted that the continuation of the proceedings by the lower court after being aware of the pending appeal in the High Court is an abuse of the doctrine of stare decisis and more so, when the said appeal is on jurisdiction of the court where recondite issue of law are raised. See **SULAIMAN VS. COMMISSIONER OF POLICE (2008) 8 NWLR PT 1089, 289 @ 309**. Applicant pray the court to grant his application.

Having substantially reproduced the entire position of the applicant aforesaid. Order 44 Rule 4 provides “An Application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application” the subject of this application is the ruling of the District judge which was delivered on 15/9/20. This suit was filed on the 15/1/20 4 months after the ruling. No application is before the court for extension of time as stated in Order 49 Rule 4 FCT Civil Proceeding Rules (2018) as provided. It is my firm belief that the applicant is pursuing his case in two courts

namely this court and the High Court sitting on appeal. On the same subject matter, seeking substantially the same reliefs and the parties substantially the same.

The law strictly frowns against such practices of a party taking out multiple actions in deferent court (or even the same court) over the same subject matter, concerning the same parties, thereby exposing the administration of Justice to Jeopardy and peril of confusion and conflicts in its decision which can and will expose the courts to indignity, Scandal and “Odium” Per Mbaba JCA (pp23-34, paragraphs B-E). In **ASHALT UNITY CONSTRUCTION LTD VS. ONWUKA AND ORS (2018) LPELR 46253 (CA)**. On abuse of court process or of judicial process. See **OGBOUSE VS. UDUAGHAN & ORS (2019) LPELR 20805. SEE AND IGBEKE VS. OKADIGBO (2013) LPELR 20664 SC. IN AKUBO VS. ALYELERU (1993) 3 WNLR (PT 280) 125**, the Supreme Court held that once a court is satisfied that the proceedings before it amounts to an abuse of process it has the right in fact, the duty to invoke its coercive power, to punished the party which is in abuse of its process. Quite upon that power is exercised by the dismissal of the action which constitutes the abuse. See **DINGYADI VS. INEC (2010) LPELR 952 (SC)**.

From the applicants process filed same constitute abuse of court process. Some of the feature of abuse of court process include but not exhaustively:

- (1) *Filing of multiplicity of actions on the same subject matter against the same opponents on the same issue or numerous actions on the same matter between the same parties even where there is in existence a right to commence the action.*
- (2) *Institute different actions between the same parties simultaneously, in different courts even though on different grounds.*
- (3) *Where two or more similar process are used in respect of the exercise of the same right for instance, a cross appeal and a Respondents notice.*
- (4) *Where two actions are instituted in court the second one asking for relief which may however be obtained in the 1st, the second action is PRIMA FACIA Vexacious and an abuse of court process. See **OKOROCHA VS. PDP (2014) 7 NWLR (PT 406) 213. SARAKI VS. KEIOYE (1992) 9 NWLR (PT 264) 156.***

It should also be noted that the applicants affidavit in support of the motion exparte before this court dated the 15/1/21 and deposed to

by one Mayor Chinidu is Contrary to section 115 (2) Evidence Act 2011 which states:

*An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion. See **NIG L.N.G. VS. AFRICAN DEVELOPMENT INSURANCE COMPANY LTD (1995) 8 NWLR (PT 416 677 @ 698** which adjudicated upon section 86 & 87 of the evidence Act E 14 LFN 2004 which is Impari material with section 115(1) and section 115 (2) Evidence Act. The Supreme Court held in **BAMAIYI VS. STATE (2001) 8 NWLR (PT 715 SC PER UWAIS PER JSC HELD:** that such extraneous matter or paragraphs in affidavit ought to be strike out.*

From the surrounding circumstance more particularly the entire process filed and the affidavit in support of the application there is nothing but a clear abuse of court/judicial process. The applicant has filed two cases at two separate courts on the same subject matter seeking the same reliefs and the same parties I am fully aware of the constitutional right of appeal to a party aggrieve by a court decision. The aggrieve parties does not have the right to abuse the court process when exercising such right. The entire process is nothing but forum shopping which is another form of abuse. Forum shopping is define as the practice of litigants having their case heard

in courts to most likely provides a favourable judgment taking into consideration the community reading of the entire process filed and also now non compliance with Provision of order 44 rule of the FCT rules 2018 as the abuse of the court process and judicial process made not me to grant the application. Rules of court are meant to be obeyed. Although they are not masters nevertheless, they help the court in arriving at justice decision. They are not made for cosmetics purpose the apex court of the land has delved on the issue of compliance with rules of court in different jurisdiction. The applicant having filed an appeal same has no right to file another application before any court especially high court. This is because such process would amount to abuse of entire process of adjudication.

I have no doubt in my mind that this application from the onset is an abuse consequently the application is hereby dismissed see Dingyadi (supra).

Signed
Hon. Judge
25/2/2021