

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS THURSDAY, THE 1ST DAY OF JULY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/821/19

MOTION NO: M/4969/20

BETWEEN:

MR. ATTAH AKPOWO PAUL.....CLAIMANT/RESPONDENT

AND

SARAH HOMES (NIG) LIMITED.....DEFENDANT/OBJECTOR

RULING

By a notice of preliminary dated 4th February, 2020 and filed same date at the Court's Registry, the Defendant/Applicant contends that the court lacks the jurisdiction to entertain the instant suit and that the action be dismissed.

The grounds of the objection as contained on the face of the application are as follows:

- 1. That the sum of N3,500,000(Three Million, Five Hundred Thousand Naira) sought to be recovered by the Plaintiff/Respondent was the foundation of the issue of ownership of Plot No.67 Cadastral Zone C05, Kafe District, Abuja and such has finally been determined by this court, coram: Hon. Justice A.B. Mohammed, in Suit No: FCT/HC/CV/1700/13 between MR. ATTAH AKPOWO PAUL V. SAHARA HOMES (NIG) LIMITED and judgment delivered on the 3rd of May, 2016.**
- 2. That the sum of N3,500,000(Three Million, Five Hundred Thousand Naira) sought to be recovered by the Plaintiff/Respondent was what gave rise to whether a binding contract existed between the parties and same has also been determined by this Honourable Court, coram Hon. Justice A.B.**

Mohammed, in Suit No: FCT/HC/CV/1700/13 between MR. ATTAH AKPOWO PAUL V. SAHARA HOMES (NIG) LIMITED.

- 3. That all issues surrounding the payment of the sum of N3,500,000(Three Million, Five Hundred Thousand Naira) sought to be recovered by the Plaintiff/Respondent has been settled by this Honourable Court, coram Hon. Justice A.B. Mohammed, in Suit No: FCT/HC/CV/1700/13 between MR. ATTAH AKPOWO PAUL V. SAHARA HOMES (NIG) LIMITED.**
- 4. Consequent on the above, this Honourable Court is functus officio of the subject matter of this action.**
- 5. The Plaintiff is bound by the aforesaid Judgment of this noble court.**

In support of the application is a 4 paragraphs affidavit with one annexure attached and marked as **Exhibit A**. A written address was filed in compliance with the Rules of Court in which (1) one issue was raised as arising for determination thus:

“Having regard to the facts and circumstances of this case, particularly in the light of the Judgment of this Honourable Court, coram: Hon. Justice A.B. Mohammed, in Suit No: FCT/HC/CV/1700/13 between MR. ATTAH AKPOWO PAUL V. SAHARA HOMES (NIG) LIMITED, whether the Defendant/Objector is entitled to the Reliefs sought.”

The substance of the submissions on the above issue which forms part of the Record of Court is simply to the effect that there a subsisting Judgment of this court in **Suit No: CV/1700/13** which pronounced on the issues raised by the extant action and accordingly that this court is *functus officio* and cannot be called upon again to exercise jurisdiction to reopen, entertain and determine the same question (s) or issue(s) already determined by a court of coordinate jurisdiction and which was affirmed on Appeal vide **Exhibit A**. I shall refer to aspects of the submissions as I consider necessary in the course of the Ruling.

At the hearing, learned counsel to the Applicant relied on the contents of the affidavit and adopted the submissions in the written address in urging the court to decline jurisdiction and dismiss the action.

In opposition, the Plaintiff/Respondent filed a 16 paragraphs counter-affidavit with 3 annexures marked as **Exhibits A1-A3**. A written address was filed in

compliance with the Rules of Court in which two issues were raised as arising for determination to wit:

- 1. Whether the Defendant/Objector has the *locus standi* to file this preliminary objection having failed to comply with the Rules of this Honourable Court since the originating processes were served on them.**
- 2. Whether the issue that was determined in Suit No: FCT/HC/CV/1700/13 between Mr. Akpowo Attah Paul V. Sahara Homes (Nig) Ltd is the same with the present issue before this Honourable Court.**

On the Record, issue (1) relating to the complaint of the Applicant filling their conditional appearance out of time clearly has now been overtaken by events as the appearance of Defendant was regularized by order of court on 11th January, 2021 based on the application of the Defendant and on payment of due penalties as envisioned under the Rules. Let it be noted that the Plaintiff/Respondent did not raise any opposition to the application for extension of time to regularize the appearance of Defendant. Issue 1 is therefore no longer germane and will be discountenanced.

On issue 2, the substance of the submissions which equally form part of the Record of Court is that the extant case is different from that decided in Suit No: FCT/HC/CV/1700/13 and as such, the court has the requisite jurisdiction to entertain the present action. That while the latter case dealt in substance with title to land which failed because the Plaintiff in the case failed to establish its root of title, the present case is dealing with recovery of debt for money had and received for a transaction which failed. I shall equally refer to aspects of these submissions as I consider necessary in the course of this Ruling.

At the hearing, counsel to the Plaintiff/Respondent relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to assume jurisdiction and determine the matter in the interest of justice.

I have carefully considered the processes filed and the submissions of learned counsel on both sides of the aisle. The issues raised by parties are in substance the same even if framed differently, which the court will adopt but with some modification. The issue that really arises from the objection is whether this court has the requisite jurisdiction to hear and determine the present action in view of the decision of this court in Suit No: FCT/HC/CV/1700/13 by my respected learned brother, Justice A.B. Mohammed (now JCA).

The issue appear on the surface fairly straightforward and not presenting a very difficult issue of law, but stripped of that veneer or cover, it is a matter or issue that has given me some difficulties and therefore the matter must be treated with utmost circumspection particularly in the context of the parallels in the facts of both cases even if different reliefs were formulated.

Let me start by making some prefatory remarks. It is stating the obvious that firstly, jurisdiction is very important and indispensable in the administration of justice. It is fundamental as the validity or otherwise of any proceedings turns on its existence or non-existence. See **Uti V Onoyiwe (1991) 1 SCNJ 25 at 49.**

Secondly, the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595; The Supreme Court** instructively stated as follows:

“A court is competent to adjudicate when:

- a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and**
- b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.**
- c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.**

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication”.

For the jurisdiction of the court to crystallize into hearing a matter, the three ingredients above must co-exist conjunctively.

In resolving the question earlier raised, it is important to situate some important background facts that will provide both factual and legal basis to resolve the extant dispute.

Now it is common ground vide **Exhibit A3** attached to the counter-affidavit of Plaintiff/Respondent, that Judgment was delivered by this court in Suit **No:**

FCT/HC/CV/1700/13: Mr. Attah Akpowo Paul V. Sahara Homes (Nig) Ltd on 3rd May, 2016 Coram: Hon. Justice A.B. Mohammed.

It is immediately obvious that the parties in this action are clearly the same parties in the extant action before me.

In CV/1700/13 decided by my learned brother, the Plaintiff claims against the Defendant as follows:

- “
- a) **A declaration that the Plaintiff is the rightful owner of Plot No. 67, Cadastral Zone C05, Kafe District, Abuja.**
 - b) **A declaration that the Defendant breached the terms of agreement with respect to the Plaintiff’s land, i.e., Plot No. 67, Cadastral Zone C05, Kafe District, Abuja, by not providing the necessary environment in which the Plaintiff can develop his land.**
 - c) **An order of perpetual injunction restraining the Defendants whether by themselves, their agent, servants and privies, from interfering, awarding or re-awarding the Plaintiff’s land, i.e., Plot No. 67, Cadastral Zone C05, Kafe District, Abuja to another person.**
 - d) **A mandatory order of court directing specific performance against the Defendant in terms of her obligation under the agreement.**
 - e) **Exemplary damages of Five Million (5,000,000).**
 - f) **Litigation cost of Two Million Seven Hundred and Fifty Thousand Naira (N2,750,000.00)**

OR IN THE ALTERNATIVE:

- a. **Current Market Value of the property at N20,000,000.00.**
- b. **Damages.....N5,000,000**
- c. **Cost of LitigationN2,750,000.00.”**

After a full trial on the merits, the learned Judge in his Judgment dated 3rd May, 2016 found against the Plaintiff and dismissed the above claims. By **Exhibit A**, attached to the affidavit of Applicant, the above decision was affirmed by the

superior **Court of Appeal** on 13th December, 2017 wherein the appeal of Plaintiff was dismissed in its entirety.

Now let me quickly underscore the point that generally when a court completes a case by hearing parties on the grievance submitted for resolution, and delivers its judgment, it ceases to exercise further powers in dealing with the matter except of course to ancillary post judgment issues or matters such as stay of execution, garnishee proceedings, instalmental payment etc. In legal parlance, the court is said to be *functus officio* in the case. Therefore the steps to reverse the judgment does not fall within the jurisdiction of the court but that of the Superior Court of Appeal. See **Onyemobi V. President Onitsa Customary Court (1993) 3 NWLR (pt.381) 50; Edem V Akamkpa Local Govt. (2000) 4 NWLR (pt.651) 70 and Abana V Obi (2005) 6 NWLR (pt.920) 183.**

The present Plaintiff in that case chose to exercise his right of appeal which failed. This then led Plaintiff to file the present action. The challenge here which is daunting as contented by Applicant is that this Judgment in CV/1700/13 by a court of competent jurisdiction (and affirmed by the Court of Appeal) has settled by its decision, the matters in dispute and none of the parties or privies, may religate the issue again by bringing a fresh action under whatever guise as the Plaintiff seek to do in the present action. The Plaintiff contends that the present course of action taken by them is within the bounds of propriety as the actions are different.

Let me now situate the import of the extant action vis-à-vis, the earlier case filed to see whether they are aimed at achieving the same purpose. I had earlier streamlined the reliefs sought in CV/1700/13. Now in the extant action before me, the Plaintiff seeks for the following Reliefs against the Defendant as follows:

- “a. The Liquidated sum of N3,500,000.00(Three Million, Five Hundred Thousand Naira Only) being the amount paid to the Defendant.**
- b. The cost N300,000.00 (Three Hundred Thousand Naira) only as cost of litigation.”**

To fully understand the foundational premise or basis of the reliefs in the two cases, it appears to me necessary to situate the basic or primary foundational facts on which the reliefs are predicated and this is where the pleadings or statement of claim of Plaintiff in both cases comes in handy. The statement of claim is critical here because it situates the subject matter of any action and the facts in issue. Indeed the statement of claim constitutes facts upon which a Plaintiff is to establish his case. A statement of claim must therefore not only contain facts, which are

necessary to establish a cause of action but must also contain the Relief or remedy claimed. Thus a statement of claim upon examination, will disclose whether the relief claimed is within the jurisdiction of the court in which the action is instituted. See **Salami V. Chairman, L.E.D. B (1989)5 N.W.L.R (pt.123)539 SC**

I shall at same length quote the relevant streamlined averments in the **statement of claim** filed in both actions. As stated already, the parties in the two cases are the same.

In the present action in **CV/821/19**, the Plaintiff pleaded in his statement of claim as follows:

- “ 1. The Claimant is Mr. Attah Akpowo Paul, whose address is Flat 4, Block B9, Aso Estate, Airport Road, Lugbe, Abuja.**
- 2. The Claimant is an Engineer at Globalcoms Limited.**
- 3. That sometimes around April, 2010, the Claimant obtained and filled an application form from the Defendant and consequently paid the sum of Ten Thousand Naira Only (N10,000.00) for the said application form for the allocation and purchase of 4 bedroom detached duplex (Block D14) at Saraha City Estate Plot No.55, Cadastral Zone C05 Kafe District, Abuja. The application form and official receipt issued by the Defendant are hereby pleaded. Notice is hereby given to the Defendant to produce the original of the application form at trial.**
- 4. That sometime around 2010 and sequel to the application payment made by the Claimant to the Defendant, the Claimant further paid the sum of Three Million, Five Hundred Thousand Naira Only (N3,500,000.00) to the Defendant as initial payment for the allocation and purchase of the 4 bedroom detached duplex (Block D14) at Saraha City Estate Plot No.55, Cadastral Zone C05 Kafe District, Abuja. The official receipt issued by the Defendant is hereby pleaded.**
- 5. That sometime around April 2010, the Claimant paid the sum of Two Hundred and Sixty Thousand (N260,000.00) to the Defendant for Excavation and setting out and the Defendant by the LETTER OF ALLOCATION dated 13th April 2010 and another letter dated 13th April, 2010 and titled “AUTHORITY TO PROCEED TO SITE FOR 4 BEDROOM DETACHED DUPLEX (BLOCK D14) AT OUR ESTATE**

SARAHA HOMES ANNEX, PLOT NO. 55 CADASTRAL ZONE C05 KAFE DISTRICT, ABUJA were issued on the Claimant. The receipt of the payment for excavation, letter of allocation and the letter to proceed to site are all hereby pleaded.

- 6. That consequent upon the aforementioned letters, the Claimant proceeded to site to commence construction but to his dismay, the plot of land allocated to him (i.e (Block D14)Saraha Homes Annex, Plot No.55 Cadastral Zone C 05 Kafe District, Abuja) was encumbered and this was brought to the notice of the Defendant, who pleaded with the Claimant and subsequently reallocated another plot to the Claimant through a letter of allocation dated 7th May, 2010 titled RE: ALLOCATION FOR THE PURCHASE OF 4 BEDROOM DETACHED DUPLEX (BLOCK A147) at our Saraha City Estate, Plot No.67 Cadastral Zone C05 Kafe District, Abuja. The said letter is hereby pleaded.**
- 7. That consequent upon the re-allocation to the Claimant of the new plot, it was soon discovered by the Claimant that the new plot was equally encumbered and the Claimant was unable to make any construction on the said plot. And the Defendant pleaded for time to clear the encumbrance and relocate the indigenes on the land.**
- 8. That the Claimant waited patiently for more than 3 years but the Defendant failed to deliver an un-encumbered plot to the Claimant and which resulted in an action for declaration to title to land and/or specific performance with Suit No: FCT/HC/CV/1700/13 and Appeal No: CA/A/588/2016 have pleaded a copy of the writ of summons filed 23rd December, 2013 and the Notice of Appeal filed 27th July 2016 and a certificate of record compilation entered 24th October, 2016.**
- 9. That Judgment was against the Claimant claims for title to land in FCT/HC/CV/1700/13 by a Judgment dated 3rd May, 2016 and also by a Judgment of the Court of Appeal delivered on 13th December, 2017. The copies of Judgment of the courts are hereby pleaded.**
- 10. That the Claimant further instructed the firm of Olasupo Ashaolu SAN & Co to institute the present action through a letter of instruction. We have also pleaded the said letter of instruction.”**

In the earlier suit NO: CV/1700/13, the same Plaintiff pleaded in the statement of claim as follows:

- “1. The Claimant is Mr. Attah Akpowo Paul, whose address is Flat 4, Block B9, Aso Estate, Airport Road, Lugbe, Abuja.**
- 2. The Claimant is an Engineer at Globalcoms Limited.**
- 3. That sometimes around April 2010, the Plaintiff obtained and filled an application form from the Defendant and consequently paid the sum of Ten Thousand Naira (10,000) for the said application form for the allocation for the purchase of 4 bedroom detached duplex (Block A147) at Saraha City Estate. The application form and the official receipt issued by the Defendant are hereby pleaded. Notice is hereby given to the Defendant to produce the original of the application form at trial.**
- 4. That sometimes around April 2010, the Plaintiff paid the sum of Three Million, Five Hundred Thousand Naira (N3,500,000.00) to the Defendant as initial payment for the allocation for the purchase of 4 bedroom detached duplex (Block A147) at Saraha City Estate. The official receipt issued by the Defendant is hereby pleaded.**
- 5. That sometimes around April, 2010, the Plaintiff paid the sum of Two Hundred and Sixty Thousand Naira (N260,000) to the Defendant for Excavation and setting out and a letter dated 13th April, 2010 with reference number SRH/SEL/DPL/D14 and titled “AUTHORITY TO PROCEED TO SITE FOR 4-BEDROOM DETACHED DUPLEX (BLOCK D14) AT OUR ESTATE SARAHA HOMES ANNEX, PLOT NO. 55 CADASTRAL ZONE C05 KAFE DISTRICT, ABUJA.” The said letter and adjoining documents is hereby pleaded.**
- 6. That upon the payment of all the required fees and charges, the Defendant allocated Plot No.55 Cadastral Zone C05, Kafe District, Abuja to the Plaintiff through a letter dated 13th April, 2010. The said letter was headed “RE: ALLOCATION FOR THE PURCHASE OF 4-BEDROOM DETACHED DUPLEX (BLOCK D140 AT OUR ESTATE, SARAHA HOMES ANNEX, PLOT NO.55, CADASTRAL ZONE C05 KAFE DISTRICT, ABUJA.” and is hereby pleaded.**

7. That consequent to the above stated letter, the Plaintiff moved to immediately commence construction on the above stated plot of land allocated to him.
8. That to his dismay, the plot of land was encumbered and the Defendant pleaded with the Plaintiff and consequently allocated another land to the Plaintiff through a letter dated 7th May, 2010, titled “RE: ALLOCATION FOR THE PURCHASE OF 4-BEDROOM DETACHED DUPLEX (BLOCK A147) AT OUR SARAHA CITY ESTATE, PLOT NO.67 CADASTRAL ZONE C05 KAFE DISTRICT ABUJA, and same is hereby pleaded.
9. That from the date of the said re-allocation, the Plaintiff has tried severally to develop the said plot of land by erecting the pre agreed house to no avail.
10. That the said re-allocated plot of land too was encumbered and the Defendant pleaded with the Plaintiff to exercise a little patience to allow them relocate the indigenes away from the plot land which the Plaintiff agreed to in good faith, because he was led to believe that the said relocation will be immediate.
11. That the Defendant kept given flimsy excuses and promising the Plaintiff that the indigenes on the said plot of land will be relocated and the Plaintiff kept believing her in good faith.
12. That the Plaintiff has waited patiently for more than three (3) years with the Defendant with regards to the above property.
13. That when the Plaintiff saw that the Defendant was not dealing with him in good faith with regards to the said plot of land, he instructed his lawyers, Messers Olasup Ashaolu, SAN & Co., to write a LETTER OF COMPLAINT to the Defendant and same was written and marked as received by the Defendant on 12th November 2013. The said letter is hereby pleaded and notice is hereby given to the Defendant to produce the original at trial.”

I have above reproduced the averments in the **two** cases and the basis for the reliefs sought and the parallels are patently obvious. There is no doubt here that the narrative or statement of facts which situates the reliefs in both cases are in

substance the same. The **Reliefs** sought may be different but I am in no doubt that they arise from the same transaction or series of transactions and the specific reliefs sought in this case, could easily have been raised in the earlier determined suit by my Respected learned brother. Let me further interrogate the processes in both cases.

In the two actions, the very **foundation** clearly is predicted or rooted on the alleged application by Plaintiff to purchase a 4 bedroom detached duplex at Sahara Estate and he initially paid the sum of N3,500,000 for the property and also paid fees for excavation and setting out. That upon payment of the requisite fees and charges, the Defendant allocated Plot No.55 Cadastral Zone C0S, Kafe District Abuja and he moved immediately to site to commence development only to find that the said plot was encumbered. The Defendant then allocated another plot to Plaintiff at Block A147 at Sahara City Estate, Plot No 67 Cadastral Zone C05 Kafe District Abuja. This plot too on the processes was encumbered and when the Defendant was not forthcoming with respect to the land allocation, plaintiff then instituted **CV/1700/13** and claimed the Reliefs already highlighted and his case failed at both the trial and Appeal Court.

Now it is on the basis of the same facts or subject matter that the present action was filed but the Plaintiff has now changed or altered the reliefs sought. The issue which I had earlier confessed had given me anxious moments and considerable difficulties is whether the present simple claim of refund of **₦3,500,000** can be divorced from the earlier decided action by my learned brother. If the facts and subject matter in both cases are the same, and indeed they are and the res or subject matter has been adjudicated over by a competent court, can a different claim arising from this same sets of facts be religated?

The consecrated principles which have informed matters of this nature is that it is in the interest of all that there must be an end to litigation and that no one should be troubled twice for one and the same cause. Parties and counsel are thus enjoined to avoid filing cases in bits and pieces. The extant relief for **₦3,500.000** sought in this case is inextricably tied to the questions of allocation, sale and ownership of Block A147 at Sahara City Estate which were all facts presented and pronouncements made in the decision in **CV/1700/13**.

It is true that in **CV/1700/13**, the Plaintiff prayed in Reliefs a and b for declaration of title over Plot No: 67 Cadastral Zone C05, Kafe District Abuja and a declaration that the Defendant breached the terms of the agreement with respect to the Plaintiff's land at Plot 67 by not providing the necessary environment in which the Plaintiff can develop his land.

In the said case, the Plaintiff may have referred to a different **plot 67** instead of **Block A167**, but it is difficult to situate how any pronouncement can be made on these reliefs without the consideration of the sum of ₦3,500,000 featuring prominently as an important pivot to situate the validity of the Reliefs. For the Plaintiff to justify the alleged breach of the terms of the agreement, he has to show he has fulfilled his own part of the agreement which includes the payment of the consideration. The same reasoning holds true for Relief (d) seeking for a mandatory order of specific performance against Defendant in terms of her obligation under the agreement. Again for specific performance to enure, the party must show fulfillment of his own side of the bargain. It is therefore clear as crystal that the case determined in CV/1700/13 involved the application of the sum of ₦3,500,000 consideration paid and this also forms a critical element in the present case.

There is no doubt that the facts averred and the issues raised in the decided case in CV/1700/13 are still the same posers raised in the extant case even if the Reliefs have decidedly been altered to give it some paint or gloss of propriety. The reframing of the reliefs did not however in any manner derogate from the similarity, tenor and character of the facts and subject matter presented in both cases as highlighted in the pleadings which I had earlier reproduced.

In the Judgment of my learned brother in **CV/1700/13**, he stated thus:

“In the instant case where the Plaintiff has failed to establish by credible evidence his title to Plot 67, Cadastral Zone C05, Kafe District, Abuja or even a binding contract with respect to Block A147 in the estate of the Defendant situate at Plot 67, Cadastral Zone C05, Kafe District, Abuja, I must resolve and hereby so resolve the sole issue for determination in this case in the negative and hold that the Plaintiff has not established his case as to be entitled to the reliefs he seeks in this suit. The Plaintiff is therefore not entitled to the declaratory reliefs stated in (a) and (b) of the Statement of Claim. As for the other reliefs contained in (c) –(f) of the claim, they are dependent on the success of the declaratory reliefs and since the Plaintiff is not entitled to the declaration he seeks, he is also not entitled to those other reliefs.

Consequent upon the above, I hereby dismiss the Plaintiff’s suit for lack of merit.”

The above decision is clear and unambiguous. The decision donates two unimpeachable facts:

- 1. Failure of Plaintiff to prove title over Plot 67 Cadastral Zone C05 Kafe District or**
- 2. Failure of Plaintiff to prove a binding contract with respect to Block 147 in the estate of Defendant situate at Plot 67, Cadastral Zone C05, Kafe District Abuja.**

In the circumstances, the contention that the present action is simply for money had and received and distinct from the issues resolved in **CV/1700/13** clearly will not fly. As the pleadings in both cases show, the consideration or payment made by Plaintiff which he claims in this case forms a fundamental element of both cases.

The pronouncement made in **CV/1700/13** clearly and certainly involved a consideration of the payment(s) made by Plaintiff before the decision in the said case was reached. I am in no doubt that these payments sought to be recovered now in this case formed a principal plank of what gave rise or life to the related questions of ownership of Plot 67 and whether a binding contract existed between parties with respect to Block A147 situate at Plot 67 and the court decided there was no credible evidence to situate such ownership or binding contract between the parties. As stated earlier, this decision was affirmed by the superior **Court of Appeal**.

It is obvious as I have sought to demonstrate that it will be difficult for the court to determine the extant action without again wittingly or unwittingly going into issues of the relationship of parties with respect to ownership of Plot 67 and the agreement parties had over the sale of Block 147 situate at Plot 67. These are matters on which there has been pronouncements made already by a court of coordinate jurisdiction and affirmed on appeal. Even without the decision of the superior Court of Appeal, it will be overtly presumptuous on the part of my court to again make another inquiry over a matter decided by a sister court and make findings which may or may not agree with the decision in **CV/1700/13**. The jurisdictional sphere of this court does not extend to such exercises. The seal of approval by the Court of Appeal of the decision in **CV/1700/13** makes the task of Plaintiff herculean.

Let me state that I was impressed by the submissions that the complaints in **CV/1700/13** by Plaintiff may have failed but this does not detract from the fact that the Plaintiff paid money to Defendant in respect of the block or flat in question. The grievance of Plaintiff is simply that he has not gotten the flat or his money. This then raises the question as to whether justice has been ultimately served if the Plaintiff in real terms has been denied the opportunity to ventilate the grievance as

to whether he is entitled to a refund even if the earlier action failed. That was where I had considerable difficulties as I tried to resolve this objection and reconciling my understating of the law and justice. The flip side however is if cases rooted in the same subject matter are filed in bits or under different guises, then there will be no end to litigation. My reservations notwithstanding, it would however appear and that is what tilts the scale in this situation are the findings in suit CV/1700/13 that no binding contract over Block A167 or ownership of Plot 67 was creditably established by Plaintiff. The payments Plaintiff seek to recover now does not have an independent life or existence but forms part of the issues above.

The Judgment in **CV/1700/13** has therefore made pronouncements on issues common to both cases and none of the parties or privies, may religate those issues by bringing a fresh action. Unfortunately, this extant case appears undermined. The parties without any shadow of doubt are the same. The foundational premise of both cases or subject matter of dispute in both cases are the same and relates to ownership of Plot 67 and whether there was a binding contract between parties relating to Block 147 on the said Plot 67.

The payment or consideration sought to be recovered now forms a key component of the case decided and the extant pending case. It is really difficult to separate or indeed distinguish the key issues determined in the earlier case and the issues which form the bedrock or backbone of this case. Unfortunately, I cannot see my way through how the subtle changes to the reliefs sought in the extant case changes the character or remit of the complaint in both actions.

As I have sought to demonstrate above in some detail, the present action is clearly an attempt to religate the issues in which my learned brother in **CV/1700/2013** has already heard and determined and given the fullest of expressions. This case appears to be simply an attempt to revisit issues or matters previously decided by a court of competent jurisdiction.

At the risk or prolixity and on the facts and materials in this case, there is no doubt that there has been a determination by a competent court involving the same parties and with respect to the same issues and in relation to the same subject matter. If the plaintiff is dissatisfied with the decision, it has a plenitude of steps to properly explore and challenge the decision at the Superior Court of Appeal. This right as stated earlier, the Plaintiff exercised but which failed. If this court were to be lured into making pronouncements on the reliefs sought in the present action, there is really no doubt that the court will be unwittingly sitting as a Court of Appeal and making pronouncement which may or may not agree with the pronouncement of

my learned brother from a court of coordinate jurisdiction and affirmed by the Court of Appeal and in the process creating confusion or at best making a mockery or parody of the courts, the judicial process and/or the administration of justice.

The courts remain a veritable conduit for resolution of grievances and or disputes. This delicate responsibility cannot be discharged efficiently in an atmosphere where the jurisdiction of courts of coordinate jurisdiction are invoked in a contrived situation to knock their heads through proliferation of cases by the same parties on the same subject matter which has been fragmented into little portions to give the case some semblance of normality and or propriety. The court must overtly be circumspect in situations such as presented by the extant case.

There really must be an end to litigation. If the process were otherwise, then cases will never end. The conclusion I have therefore reached is that neither the plaintiff nor his servants, agents or privies can be allowed to reopen or relitigate the precisely defined issues determined by **Honourable Justice A.B. Mohammed, in suit No. CV/1700/2013** all over again in another action between the same parties or their agents or privies on the same issues. This court accordingly declines jurisdiction to revisit the issues so decided.

In the final analysis, the objection raised by defendant on want of jurisdiction clearly has considerable merit. Accordingly the proper order to make is to strike out this action for want of jurisdiction. It is hereby so struck out.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Christopher O. Richard, Esq., for the Plaintiff/Respondent**
- 2. Sir. O.J Onyeme, Esq., for the Defendant/Applicant**