

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA.

BEFORE HON. JUSTICE J.ENOBIE OBANOR
ON MONDAY THE 22ND DAY OF NOVEMBER, 2021.

SUIT NO: FCT/HC/CV/793/2021
MOTION NO: FCT/HC/M/4668/2021

BETWEEN:

VISCOUNT MULTIPURPOSE COMPORATIVE SOCIETY ..CLAIMANT

AND

DR MOHAMMED B.W. DOGO MOHAMMED DEFENDANT

RULING

On 16/3/2021, the Claimant took out a Writ of Summons under the Undefended List Procedure against the Defendant. It claims as follows against the Defendant:-

- a. An Order of the Court against the Defendants jointly and severally to pay the sum of N64,000,000 (Sixty-four million Naira) being total money due to the Claimant from agreement entered by parties on the loan granted to the Defendant.
- b. An Order directing the Defendant to pay 20% interest per month as agreed by parties from the date of maturity 23rd of September 2015 on the principal and interest till the date of liquidation.
- c. An Order to pay 10% on the judgment sum from the date of judgment until liquidation of the judgment sum
- d. An Order directing the Defendants to pay 5 Million as cost of the suit.”

The writ is supported by 12-paragraph affidavit deposed to by Ode Amieghomwan.

Records of Court show the writ, supporting affidavit and Hearing Notice were served on the Defendant on 12th July, 2021 by substituted means.

The Defendant on the 14th July 2021 filed a Memorandum of Conditional appearance. No notice of intention to defend along with an affidavit disclosing a defence on the merit was filed by the Defendant.

The matter was heard on 15th July 2021 and adjourned for judgment on 22nd July 2021. However, on 19th July 2021 the Defendant filed a Notice of Preliminary objection wherein he seeks for the following reliefs:

1. An Order of this Honourable Court setting aside the entire proceedings of this Honourable Court dated 15th day of July 2021 on grounds of lack of Jurisdiction.
2. An ORDER of this Honourable Court setting aside any order(s) made pursuant to its proceedings dated 15th day of July 2021 on grounds of lack of Jurisdiction.
3. AN ORDER of this Honourable Court dismissing the suit of the Claimant as presently constituted against the Defendant/Applicant for being an abuse of Court process.
4. AND for such further or other Orders(s) as this Honourable Court may deem fit to make in the circumstances.”

The application is predicated on six grounds as set therein. It is supported by a 20-paragraph affidavit deposed to by Kachollom G. Peter and Written Address of his learned Counsel.

In opposition to the application, the Claimant on 4th August, 2021 filed a 24-paragraph Counter Affidavit in opposition deposed to by Ode Amieghowan along with the Written Address of its Counsel.

On 29th September 2021, the application was heard and the Court in order to save time and resources, in the exercise of its discretion reserved the matter for Ruling or Judgment today being 22nd November 2021.

For the reason that challenge to jurisdiction is a threshold issue which can be raised at any stage of a case and once raised the Court is under a duty to resolve same first, the Court shall proceed to consider the Defendant's Notice of Preliminary Objection and thereafter if necessary, consider the Claimant's substantive case.

In the affidavit in support of the Defendant/Applicant's Notice of Preliminary Objection, it was averred inter alia that the Claimant instituted this action seeking reliefs on repayment of principal sum cum interest as regards loan agreement/credit facility purportedly entered between the Claimant and the Defendant. The said repayment of loan/credit facility being the subject matter in the instant suit is being presently litigated upon in a different court hence having the validity of the purported loan agreement/credit facility contested in a court of law before Hon. Justice Belgore of the Apo Division of the FCT High Court in Suit No: CV/69/2019. The parties in the said Suit No: CV/69/2019 as well as the subject matter in the instant suit are the same. An adjourned date of 21st October 2021 is currently given as the next adjourned date in the said Suit No CV/69/2019 pending before Hon. Justice Belgore. Suit No: CV/69/2019 is first in time and seeks to cure what this instant suit is seeking to cure through the back door. Suit No: CV/69/2019 is still pending before Hon. Justice Belgore. A copy of the writ of Summons was attached as Exhibit DD1. Should this court grant the Claimant's reliefs as contained in the instant suit, same would render Suit No: CV/69/2019 nugatory and would overreach the Defendant. Since there is a question to the validity or otherwise of the loan agreement/credit facility that led to the reliefs of the claimant before a competent court of law it would be in the interest of justice to first allow it to be determined before any step can be taken. The claimant has the right to file a counter claim in the said Suit No:CV/69/2019 rather than approach this Honourable Court on the

same subject matter. This court lacks the jurisdiction to hear and determine a suit when there is already a suit between same parties and same subject matter pending elsewhere. The claimant was aware of the pendency of Suit No: CV/69/2019 thus even entered appearance. Service of the originating processes on the Defendant/Applicant was bad and defective and this court has the power to set aside the proceedings of this court dated 15th July 2021 and any order made therein. It is in the interest of justice to set aside this Honourable court's proceedings dated 15th July 2021. The Defendant will be prejudiced by the refusal of this application.

In its counter affidavit in opposition it was avered by the deponent that the Defendant has failed to file a notice of intention to defend this suit. The Defendant has no defence to this suit. That he knew as a fact that the Claimant has not been served any writ by the Defendant/Applicant. This was their first time of seeing the suit of the Defendant/Applicant purportedly filed in 2019. There is no proof of service on the Claimant/Respondent in respect of the alleged suit filed by the Defendant/Applicant. This current suit filed this year cannot constitute an abuse of Court Process because it was instituted to recover the loan granted to the Defendant and interest accrued thereon. The evidence of the loan agreement and disbursement of said loan and confirmation of signature of the Defendant by Zenith bank to the Defendant were attached as exhibits V1, 2, 3, 4, 5, 6, and 7. As part of the Defendant's ploy to frustrate the Claimant's recovery of the loan and interest, the Defendant through false allegation had the officials of the Claimant's bank arrested. The said officials of the Claimant's bank were later vindicated after Police investigation and the Defendant was subsequently instructed to repay the loan and interest. From the statement of claim on the alleged writ annexed to the Defendant's motion, it is obvious that the suit filed is different from this suit. The parties are not the same and the claims are not the same. It is not the claimant in this case that instituted the purported suit. The claimant's right to sue is guaranteed by statute and Constitution and the Defendant/Applicant cannot prevent or oust the Claimant from approaching the Court to recover his loan. This court has jurisdiction over this suit. The affidavit of service before this court

shows that service of the Claimant's originating process was properly effected on the Defendant/Applicant by pasting at his gate. The affidavit of service was attached as Exhibit V8. The deposition in the affidavit of the Defendant coming from a lawyer about non service is untrue as there is already affidavit of the substituted service before the court. The reliefs of the Claimant is for money had and received and not the subject matter of any other suit before the High Court and it would be in the interest of justice to discountenance the Defendant/Applicant's affidavit and grant all the reliefs sought by the Claimant in the Originating process.

As aforesaid, Counsel for the parties filed and exchanged Written Addresses in support of their respective contentions. The Court has given due consideration to the averments in the affidavits of the parties. The cardinal issue that calls for determination is whether or not by the evidence adduced and extant state of the law the Claimant/Respondent's instant suit before this court constitutes an abuse of court process and whether the proper order to make upon finding so is to dismiss same.

In **CENTRAL BANK OF NIGERIA V. AHMED (2011) (PT 724) P 369**, the Supreme Court took time to explain the concept of abuse of court process. It held thus:-

"The concept of abuse of judicial process is imprecise; it involves circumstances and situation of infinite variety and conditions. Its one common feature is the improper use of judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice.

This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. Thus the

multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than in the exercise of the right per se. The abuse consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interferes with the administration of justice such as instituting different actions between the same parties simultaneously in different courts even though on different grounds...”

The foregoing Supreme Court pronouncement above encapsulates the different and various ways an abuse of court process can arise in the course of litigation. The essential features are:

- (1) Pendency of two or more suits against same parties over same subject matter in same or different courts at the same time.
- (2) Institution of different actions between same parties simultaneously in different courts on different grounds.
- (3) Employment of the judicial process to the irritation and annoyance of the adversary to the detriment of efficient and effective administration of justice.

See also: **ENYIBROL FOODS PROCESSING COMPANY LTD V. NIGERIA DEPOSIT INSURANCE CORPORATION (2007) 9 NWLR (PT 1039) P216** where the Supreme Court pointed out that “Both suits or matters must coexist apart from other requirements such as the parties and subject matter must be the same for one to legally talk of abuse of process of court”. See also: **PLATEAU STATE V. A-G OF FEDERATION (2006) 3 NWLR (PT 967) at 346 at 393; CAMA INTERNATIONAL V. CPN LTD (2006) 13 WRN p56 at 85; CHIEF REGISTRAR HIGH COURT OF LAGOS STATE V. VAMOS NAVIGATION (1976) ISC P33 at 4041; BANK OF THE NORTH V. ABIOLA (2007) 1 NWLR (PT 1014) P23.**

In this matter, the Defendant/Applicant's Contention is that the subject matter in the instant suit is being litigated upon in an earlier case before Hon. Justice Belgore of the FCT High Court in Suit No: CV/69/2019 filed on 18th October 2019 in which the Claimant and the Defendant are parties. The subject matter of the suit was the validity of the loan agreement between the Defendant and the Claimant. A copy of the originating processes was attached as Exhibit DD1. While the suit was still pending before Hon. Justice Belgore of FCT High Court, the Claimant filed the instant suit in this Court on the 19th of July 2021. That the filing of the suit before this court has resulted to a multiplicity of action between the same parties over the same subject matter which constitutes an abuse of process of court. The suit in this court being later in time is an abuse of process of the court and the court should make an order dismissing it. The Claimant/Respondent's contention is that it was not aware of the pendency of the said suit as same was not served on it and having not been served the said writ is deemed dead. It further contended that the alleged suit is different from the instant suit as the parties and the claims are not same

I have examined the processes filed in the said Suit No. **FCT/HC/CV/69/2019** said to be pending before Hon. Justice Belgore of this Court attached to the Defendant/Applicant's affidavit as Exhibit DD1 and I am satisfied the suit is one instituted by the Defendant herein against the Claimant herein and another respectively. I am also satisfied the suit have to do with validity or otherwise of the loan agreement between the Defendant and the Claimant. I have also examined the instant Suit No: **FCT/HC/CV/793/2021** and I am also satisfied that it is one instituted by the Claimant herein against the Defendant herein seeking the enforcement of the said loan agreement referred to in Suit No; **FCT/HC/CV/69/2019** pending before Hon Justice Belgore by way of repayment of loan cum payment of accrued interest thereon. By the above, it obvious that both Suits are on the same subject matter of loan agreement. It is equally confirmed upon examination of both processes that while the Defendant/Applicant's suit: **CV/69/2019** was filed on **18/10/2019** and there is nothing before the court without speculation to show it has been terminated or determined, the Claimant's instant suit:

CV/793/2021 was filed on **16/3/2021** and same is still pending in this court.

In the light of the foregoing findings, it is apparent there is in existence between the Claimant and the defendant herein two suits which dwell on the same subject matter. This does not make for an efficient and effective administration of justice.

Besides, the Defendant/Applicant's suit having been initiated earlier in time i.e. on 18/10/2019, the Claimant's filing the instant suit later in time i.e. on 16/3/2021 on the same subject matter certainly is to the irritation of the Defendant.

The suit filed in this court in the circumstances constitutes an abuse of process of court and same cannot be allowed to stand.

The court having found the suit in this court constitutes an abuse of process of court, the next question becomes what order the court can make in consequence. The learned Defendant/Applicant's counsel did urge the court to make an order dismissing the suit.

In **DUMEZ NIG. PLC V. UBA PLC (2006) 14 NWLR (PT 1000) P 515**, the Court of Appeal, per Rhodes-Vivour JCA (Now JSC) held thus with regard to the issue

“Once a court is satisfied that any proceeding before it is an abuse of process, it has the power, indeed the duty to either stay, strike out or dismiss it to invoke its coercive powers to punish the party which is in abuse of its process.”

Being thus guided and having as aforesaid found that the substantive suit in this court constitutes an abuse of process of court, the suit is hereby struck out.

I make no order as to costs.

**SIGNED
HON. JUDGE
22/11/2021.**

LEGAL REPRESENTATIONS

- (1) Adekunle Oladipo Otitopu Ph.D. for the Claimant/Respondent.
- (2) A.T. Aboki Esq for the Defendant/Applicant.