IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
ON 29TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE

SUIT NO: FCT/HC/CV/1612/2019

BETWEEN:
IMAD BOUSTANY ……. CLAIMANT

AND

AFY EGBUCHE ……. DEFENDANT

APPEARANCES:
OPEYEMI ADEYEMI ESQ FOR THE CLAIMANT
ADETOUN AKERELE ESQ FOR THE DEFENDANT

RULING

By a notice of preliminary objection filed on 18th March 2020, the Defendant/Counterclaimant objects that the claim as per paragraph 28(1) of the statement of claim constitutes an abuse of court process and that same be dismissed for want of jurisdiction.

The objection is predicated on 3 grounds as follows:-

> ***"i. Paragraph 28(1) of the Claimant's relief was a subject/an issue determined in the judgment of this Hon. Court per his LordshipJustice D.Z. SENCHI in Suit No. FCT/HC/M/2377/19.***
>
> ***That aggrieved against the said judgement, the Claimant (then the Respondent) lodged an Appeal in the Abuja Division of the Court of Appeal.***
>
> ***That this suit particularly the claim as constituted in paragraph 28(1) is an Abuse of Court process as the issue***

therein forms part of the issues pronounced upon and which the Claimant appealed against at the Court of Appeal."

The objection was supported by a 5 paragraph affidavit of Kalu Clement Okpii, Litigation Clerk in the law office of Benjamin Solicitors Abuja, counsel to the Defendant, to which copies of the judgement of Hon. Justice D.Z. Senchi (now JCA) in Suit No FCT/HC/M/2377/19 delivered on 2nd July 2019 and Notice of Appeal filed by the Claimant (Defendant herein) on 18th September 2019 marked as Exhibits AE1 and AE2 respectively are attached.

Also filed was counsel's written address.

The Claimant fileda 5 paragraph counter affidavit deposed to by IdrisSadiq, Litigation Officer in the law firm of OPE ADEYEMI LAW PRACTICE, solicitors to the Claimant to which Certified True Copies of court processes are attached and marked as follows:-

- Certificate of Judgment – Exhibit A
- Writ of Attachment – Exhibit A1
- Originating Motion No: M/2377/19 – Exhibit B
- Further, Further and Better Affidavit deposed to by the Defendant/Counterclaimant herein on 24th April 2019 – Exhibit C and counsel's written address.

At the hearing of the objection, learned counsel on both sides adopted their respective written addresses. For the Defendant/Counterclaimant a sole issue for determination was submitted thus:-

"Whether Claimant's claim as constituted in Paragraph 28(1) of the Statement of Claim does not amount to an abuse of Court process being subject matter of which judgement has been delivered by this Hon. Court and Appeal lodged against?"

For the Claimant, the following two issues were distilled for the court's determination thus:-

"1. Whether having regard to settled rules on the procedure applicable when a party seeks to strike out a part of the other party's pleadings, the defendant's preliminary objection is competently brought.

2. In the event that issue (1) is resolved in the affirmative, whether the defendant's preliminary objection is predicated on the correct state of the law andfacts to accord it any merit."

I shall adopt the sole issue raised by the Defendant in thenotice of preliminary objection whilst incorporating the 2 issues of the Claimant.

For the Defendant, it was submitted thatSenchi J. (now JCA) in his judgment Exhibit AE1 categorically decided the issue of custody of KairaBoustany (Minor) in the 16th to 18thline, paragraph 2 of Page 28 of his judgment, Exhibit AE1. Therefore this court is robbed of jurisdiction to entertain paragraph 28(1) of the Claimant's statement of claim which is imparimateria with the orders of Senchi J. (now JCA) in Exhibit AE1.

It was further urged that the Claimant's claim amounts to an abuse of court process, the Claimant having lodged an appeal in the Court of Appeal Abuja division against the whole judgment Exhibit AE1 via Exhibit AE2 simultaneously seeking the relief in paragraph 28(1) before this same court.

The court was thus urged to uphold the preliminary objection and dismiss the Claimant's claim as constituted in paragraph 28(1) of the statement of claim.

Reliance was placed on **AJAOKUTA STEEL CO LTD V GREENBAY INVESTMENT & SECURITY LTD & ORS (2019) LPELR-46929 (SC) PAGES 31-32PARAS C-F** (on abuse of court process).

For the Claimant it was argued that the application of the Defendant seeking to strike out paragraph 28(1) only of the statement of claim is incompetent, as same can only be brought by way of motion on notice, not a

preliminary objection. He placed reliance on Order 15 Rule 18(1), (2), Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules 2018; and on what an application connotes; **RIRWAI & ORS V SHEKARAU & ORS (2008) LPELR-4898 (CA); A. A. ATTAHNIGERIA LTD V CONOIL PLC (2018) LPELR-44705 (CA).**

Thus he urged that the notice of preliminary objection be struck out as same even if it succeeds will not dispose of the entire suit.

It was further argued that the notice of preliminary objection suffers another incurable anomaly in that it did not contain any prayer or order sought but just an allegation that paragraph 28(1) of the Claimant's claim constitutes an abuse of court process and that same be dismissed for want of jurisdiction and the grounds which constitute the basis for the allegation, learned counsel urged the court to dismiss the notice of preliminary objection for failing to disclose a relief sought.

Reliance was placed on **OKOYE & ORS V ARUEZE (2017) LPELR -42571 (CA).**

It was also argued that should the court consider the notice of preliminary objection worthy of consideration that the judgment obtained by the Defendant in Suit No FCT/HC/M/2377/19, Exhibit AE1 of the affidavit in support of their notice of preliminary objection did not grant her custody of KairaBoustany. Learned counsel referenced the concluding part of the judgemnt wherein the learned Judge stated:-

> ***"Accordingly, prayers 1-3 on the face of the motion are hereby granted as prayed. Thus issue number 3 is hereby resolved in favour of the Applicant and the Respondent in part. <u>That is the decision of this Honourable court."</u>*** **(Emphasis his)**

He argued that the said prayers 1-3 of the motion are Orders for school fees and maintenance of KairaBoustany which the Defendant acquiesced to by her reliance on the certificate of judgment and writ of attachment (signed

by the Judge who rendered the judgment) both of which contain only 3 prayers, to levy execution against the Claimant. See Exhibit A and A1 attached to the counter affidavit.

Further, that the Defendant in paragraph 17 of Exhibit C attached to the counter affidavit deposed that her suit no FCT/HC/M/2377/19 pertains only to school fees, welfare and maintenance whilst acknowledging this present suit.

Learned counsel argued that the Defendant must be consistent in stating her case and consistent in proving it.

He further contended that if the pronouncements of the court relating to custody are worthy of consideration, they should be considered as mere declarations or expressions of views made by the court as no positive order was made by the learned Judge to give effect to the pronouncements, as could be seen from documentary exhibits before this honourable court.

Finally, learned counsel submitted that even if Senchi J. had made orders as to the custody of KairaBoustany, this court is not precluded from entertaining and/or pronouncing on the same issue of custody, placing reliance on Section 71 Matrimonial Causes Act and Sections 12(3), 13, 14(2), 15 and 69 of the Child's Rights Act, upon which the suit before Senchi J. was predicated.

Thus the court was urged to discountenance the notice of preliminary objection.

I have considered the notice of preliminary objection, all the affidavits and the written and oral submissions of learned counsel on both sides.

I shall first address the issue raised by the Claimant that the notice of preliminary objection seeking to strike out only a part of the reliefs of the Claimant is incompetent, as the application should have been by way of motion on notice.

Order 15 Rule 18(1) and (2) of the Rules of this court provide:-

> ***"18(1) The court may at any stage of the proceedings order to be struck out or amend any pleading or the endorsement of any writ in the action or anything in any pleading or the endorsement on the ground that:***
>
> ***It discloses no reasonable cause of action or defence as the case may be, or***
>
> ***...***
>
> ***...***
>
> ***It is an abuse of the process of the court***
>
> ***...***
>
> ***(2) No evidence shall be admissible on application under paragraph 1(a)."***

I have read the above provision and I do not find anything therein that stipulates the process by which such 'application' mentioned therein may be brought.

Even Order 43 of the Rules of this Court relied upon by the Claimant recognises "motions and other applications". (Emphasis mine)

Again the law is trite that an objection on the ground of abuse of court process is an objection to jurisdiction. An objection to the court's jurisdiction can be raised in any manner, even orally, at any stage of proceedings and even by the court suomotu.

See **MOHAMMED V DANTATA & ORS 2014 LPELR-23465(CA) PG 26 PARA A-B.**

In **OKORO& ANOR V NNEBOCHA (2020) LPELR -49737 (CA)** the issue was whether the court below was right when he held that the issue of abuse of court process could only be raised in the Appellant's Statement of

Defence and whether the later suit filed by the Respondent at the court below constitutes an abuse of court process.

In that case the Appellant (Defendant at the lower court) had filed a motion on notice alleging abuse of court process without filing his statement of defence and raising it as a point of law therein.

The court per Abraham Georgewill at pages 20-21paragraph E-A; page 21 paragraph B-D, pages 23-24 paragraphs C-D held thus:-

> ***"But first, was the court below right when it held that a complaint of abuse of court process must first be raised in the pleadings before it can be raised by way of an application by the party so alleging? Regrettably, on the above basis alone the court below merely brushed aside and thereby declined to considerand determine the issues arising from the complaint of abuse of court process, which was the sole relief contained in the Appellant's Motion on Notice filed on 4/9/2013"***

At page 21 paragraph B-D:-

> ***"A complaint capable of terminating a suit in-limine on ground of incompetence is, to my mind, clearly one touchingon jurisdiction of the court below and which in law could be raised by a Defendant at any stage of the proceedings and in any manner and either before or after filing a statement of defence. It is not an issue of demurrer that has been outlawed under the High Court Rules of Delta State…"***

At pages 23-24 paragraph C-D:-

> ***"It seems clear to me that the court below was gravely in error both in the manner of approach to the issue of abuse of Court process as to how and when it could be raised and also for the failure to determine such a key issue placed before it by the Appellants, on which both parties had joined issues on***

theiraffidavit evidence and in the written submissions of their counsel. I have no difficulty therefore holding that the court below erred when it, against all the known principles of law guiding consideration of issues duly submitted by parties, declined to consider and determine crucial issues of abuse of court process placed before it by the Appellants but rather unfortunately and highly regrettable merely brushed same aside on a very tenuous and erroneous ground. The court below no matter how strongly it must have felt about the position of the law it towed, ought to have exercised some form of caution by way of ex abundandicautela – for the avoidance of doubts and proceed even if briefly to consider and determine the crucial issue of abuse of court process as duly placed before it by the appellants.

The above has been the constant admonition of the apex Court to all Courts below in the hierarchy of courts to avoid brushing aside crucial issues and leaving the parties without justice! I hold therefore, that the Appellant's Motion on Notice filed on 4/9/2013 was in order and ought to have been determined on the merit by the Court below."

In summary therefore, the Court of Appeal held that the Appellants objection on the issue of abuse of court process was to be considered notwithstanding that the lower court felt the manner in which it was raised was inappropriate.

Even in A**.A. ATTAH V CONOIL** (supra) cited by counsel to the Claimant, the Court of Appeal equally considered the preliminary objection notwithstanding that it considered it "inappropriate".

In the instant case therefore, a preliminary objection even if not a proper manner to raise an objection to the jurisdiction of the court on abuse of court process in this instance will be considered by the court because the

court cannot ignore the weighty issue of abuse of court process raised therein before this court.

The Claimant's "objection" to the notice of preliminary objection is therefore overruled.

Again, it was argued by the Claimant that the notice of preliminary objection is bereft of any prayers.

On the face of the notice of preliminary objection it says:-

> ***"TAKE Notice that the Defendant herein shall at the hearing of this suit raise and rely upon the following Preliminary objection thereof, whereof Notice hereby given viz:***
>
> ***THAT THE CLAIM AS PAR PARAGRPAGH 28(1) OF THE STATEMENT OF CLAIM CONSTITUTE AN ABUSE OF COURT PROCESS AND SAME BE DISMISSED FOR WANT OF JURSIDICTION."***

I do not agree that there is no prayer contained in the notice of preliminary objection. It is clear from the above that the objective is that paragraph 28(1) of the statement of claim constitutes an abuse of court process and that same be dismissed for want of jurisdiction.

The notice of preliminary objection is therefore competent and the court shall consider same.

Finally, it was argued by the Claimant that Senchi J. did not grant custody of KairaBoustany to the Defendant in Suit No FCT/HC/M/2377/19.

I do not have the record of proceedings of what transpired before Senchi J. (now JCA) but happily, I have the certified true copy of the full judgment of his Lordship.

Having read through the said judgment, I cannot agree with the learned counsel for the Claimant that the court did not determine the issue of

custody of KairaBoustany or that the Respondent abandoned her claim for custody before Senchi J. (now JCA).

Permit me to quote His Lordship in extenso at pages 22-28 of his judgment as follows:-

> ***"Now it is not in dispute that KairaBoustany, born 22nd April, 2011, is a 'child' within the meaning ascribed to that term by Section 277 of the Child's Right Act 2003. It is not in dispute that the said Kaira is the female child of the Applicant and the Respondent from the union.***
>
> ***The Child's Right Act recognises some essential entitlements in favour of Kaira. By virtue of Section 2(1) of the Act, she (Kaira) is entitled to such protection and care as is necessary for her well-being, taking into account the rights and duties of her parents (parties hereto) inter alia. Under Section 14(2), she has the right to maintenance by her parents in accordance with the extent of their means.***
>
> ***Now the Applicant (the mother of Kaira) has brought the instant application against the Respondent (the father) <u>seeking for orders relating to the custody and maintencance of Kaira.</u> The provisions of Section 69 of the Child's Right Act is very relevant. It deals with the power of the Court to make orders in respect of the custody or right of access to a child. It provides as follows:-***
>
> ***69.***
>
> ***1. The Court may –***
>
> ***a. on the application of the father or mother of a child, make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent, having regard to –***
>
> ***(i) The welfare of the child and the conduct of the parent;***

and

(ii) The wishes of the mother and father of the child ;

b. Alter, vary or discharge an order made under paragraph (a) of this subsection on the application of –

(i) The father or mother of the child; or

(ii) The guardian of the child, after the death of the father or mother of the child; and

c. In every case, make such order with respect to costs as it may think just.

2. The power of the Court under subsection (1) of this section to make an order as to the custody of a child may be exercised notwithstanding that the mother of the child is at that time not residing with the father of the child.

3. Where the Court makes an order under subsection (1) of this section, giving the custody of the child to the mother, the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the Court may, having regard to the means of the father, think reasonable.

4. Where the Court makes an order under subsection (1) of this section giving custody of the child to the father, the Court may further order that the mother shall pay to the father towards the maintenance of the child such weekly or other periodical sum as the court may, having regard to the means of the mother, think reasonable.

5. Subject to this section, no order whether for custody or maintenance shall be enforceable and no liability thereunder shall accrue while the mother of the child resides with the father, and

any such order shall cease to have effect if for a period of three months after it is made, the mother of the child continues to reside with the father.

6. An order made under this section may, on the application of the father or mother of the child, be varied or discharged by a subsequent order.

From the above provision, it is abundantly clear that it is when this Court makes the order sought as to the custody of Kaira that it can then proceed to make further orders as to payment by Respondent of monies towards the maintenance of Kaira. It therefore follows that the issue of custody of Kaira must first be dealt with before the issue of her maintenance.

The Applicant seeks custody of Kaira vide the fourth prayer of her application. Counsel to the Repsondent has submitted that this relief is not grantable as the Applicant has abandoned same. I have looked through the records. I cannot however find anything in the records to indicate that the Applicant withdrew or abandoned her prayer for custody of Kaira. The relief therefore remains part of the prayers that must be considered by this Court in this application.

It is not in dispute that the parties to this case (i.eKaira's parents) were never married. It has been held that the custody of a child born out of wedlock, as in the instant case, follows that of the mother, in the absence of any person claiming custody of the child on the basis of being the natural father of the child. – see the case of ANODE V. MMEKA (2008) 10 NWLR (pt. 1094) P.1.

On factors to be considered by the Court in granting custody of children, the Supreme Court held in ODOGWU V ODOGWU (1992) NWLR (pt. 215) P. 1that if the parents are separated and the child is of tender age, it is presumed that the child will be happier with

the mother and no order will be made against this presumption unless it is abundantly clear that the contrary is the situation – e.g. proof of immorality and or her cruelty to the child.

In the case of MR BENJAMIN FOLORUNSHO ALABI V. MRS EUNICE IFEWUNMI ALABI (2007) LPELR-8203 (CA) the Court of Appeal held as follows:-

Although misconduct on the part of the party to the suit is not the paramount consideration, where parties have made equally laudable arrangement for the welfare of the child and its upbringing, misconduct may tilt the balance in favour of the other party. Also where there are persistent acts of misconduct and moral depravity by one of the party this may be evidence of unsuitability of that party to be entrusted with the custody of the child see LAFUN V. LAFUN (1967) NMLR 401, Where it was held that owing to the moral degeneracy of the respondent (mother) it would not be in the best interest of the child for the respondent to have access to the child who was in her formative years and could easily be negatively influenced.

Thus certain relevant criteria must be considered in the determination of the welfare of the child as in this case and they include:-

1. ***The degree of familiarity of the child with each of the parents (parties);***
2. ***The amount of affection by the child for each of the parent and vice versa;***
3. ***The respective incomes of the parties;***
4. ***Education of the child;***
5. ***The fact that one of the parties now lives with a third oarty as either man or woman; and***

6. ***The fact that in the case of children of tender ages custody should normally be awarded to the mother unless other considerations make it undesirable etc.***

Now, by virtue of Section 69(1)(a)(i) and (ii) of the Child's Right Act, in considering the issue of custody of Kaira, the Court is expected to have regards to her welfare, the conduct of the Applicant as well as the wishes of both the Applicant and the Respondent.

It is not in dispute that since her birth, Kaira has been living with the Applicant who has been living apart from the Respondent. Kaira has thus been living apart from the Respondent from her birth. The implication is that Kaira is more familiar with the Applicant than the Respondent who usually visits.

Neither of the parties hereto showed proof of their respective income. They merely averred generally as to their means.

I have considered that Kaira was born on 22nd April 2011. She was still 7 years of age as at date of filing the instant application. She is therefore of tender years. The law automatically presumes that she will be happier in the custody of her mother, the Applicant herein.

There have been allegations by the Respondent as to the Applicants' morality and treatment of Kaira. These allegations the Applicant denied. Likewise, the Applicant made allegations against the Respondent in respect of his indecent behaviour towards Kaira, his dependence on drugs and his treatment of Kaira which allegations the Respondent vehemently denied. I have considered the collection of photographs placed before this Court as Exhibits AFK1 to AFK5 to the Applicant's 'Further Further and Better Affidavit' showing the parties and Kaira from her birth till recently (2018). A picture, they say, is worth a thousand words (maybe even ten thousand). The photographs in case, Exhibits AFK1 to AFK5, say

a lot. They show a very happy family. The allegations contained in parties' affidavits as to each other's improper behaviour is an attempt to disparage the other simply to score a point over the other before this Court. They have no substance in view of the documentary evidence before this Court.

Furthermore, the mere fact that the Applicant is a single mother does not make her morally bankrupt as to be unable to provide the necessary moral upbringing required for Kaira.

Thus, based on history of the birth of Kairaand the documentary evidence showing a happy union between the Applicant and the Respondent, I hold the view that it is in the best interest of Kaira that she be left in the custody of her mother the Applicant until she attains the age of 18 years and I sold (sic).In addition to other relevant considerations, the presumption of law that Kaira would be happier with the Applicant (her mother) has not been successfully rebutted. The Respondent has not really stated what his plans are and what he intends to do with a female child of tender years if custody is denied the Applicant. All he seems to have shown is an intention to ship her off to boarding school (in Lebanon) and the obvious implication of which is to severe the child from the love, affection and nurture of her immediate family (which a child of her age requires in these her sensitive and formative years). I therefore reiterate that the best interest of Kaira is to be left in the custody of the Applicant.

The Respondent has however complained that he is being denied access to Kaira his daughter. He is unable to show her love and parenting as a father and is unable to teach her his language. The Applicant for her part alleges that he has access to Kaira.

The fact still remains that the Respondent is Kaira's father irrespective of whatever grievance or dispute the parties might

have against each other. This is undisputed in this case. The Respondent, his Lebanese culture and language are as much part of Kaira's identity as are the Applicant, her Nigerian culture and language. It would be an unpardonable wrong to Kaira to deny her either part of her identity without just cause. It is therefore in Kaira's best interest that this Court ought to make an order granting the Respondent access to Kaira. Accordingly, it is hereby ordered that the Respondent have unfettered access to Kaira either in the Applicant's residence, school or wherever Kaira is. Further, both the Respondent and the Applicant to ensure that the identity of Kaira as a Lebanese and as a Nigeria is not compromised in her upbringing.

Having dealth (sic) with the issue of custody of Kaira and having 0granted custody to the Applicant, her mother, the next question is whether the Applicant is entitled to payment of monies by the Respondent (the father of Kaira) towards the maintenance of Kairawhile in the Applicant's custody. In considering this, the Court is expected to have regard to the means of the Respondent. See Section 69(3) of the Child's Right Act." (Emphasis mine)

His LordshipSenchiJ. himself stated clearly and categorically at page 24 of his judgment that he did not find anything before him to suggest the abandonment of the claim of custody. Indeed the last paragraph of the excerpt from the judgment quoted supra at page 28 thereof explains that having dealt with the issue of custody, the court then proceeded to the issue of maintenance of KairaBoustany all of which reliefs 1-3 of that originating motion pertain to.

And having resolved the issue of maintenance, the learned Judge concluded his judgement at page 30 of the judgement.

The law is trite that where there is a disparity or inconsistency between a certificate of judgment and the judgment of the court, the judgment of the

court signed by the Judge supersedes, as the certificate of judgment is only an extract from the judgment.

On the argument that the Defendant did not seek to enforce the order of custody because it was not made by Senchi J. (now JCA).

In **OKOYA & ORS V SANTILLI & ORS (1990) LPELR -2504 (SC)**the court per AgbajeJSC at page 26 paragraph B noted that:-

> ***"……this court has said, as per the lead judgment of Obaseki JSC in GOVERNMENT OF GONGOLA STATE V TUKUR (supra) in which the other Justices in the appeal concurred as follows:***
>
> ***"It should be noted that many judgments and orders do not require to be enforced as the judgment and order itself is all that the party obtaining it requires. See Para 565 Vol. 26 Halsbury Laws of England 4th Edition, page 288. The judgment of the Court of Appeal in question is one such judgment."***

Now, notwithstanding that the authority cited supra is on declaratory judgment, I think it applies in the circumstances of this application.

The Applicant herein did not need to execute the Order of Senchi J. as to custody as she already had physical custody of KairaBoustany even before the judgment was delivered.

The judgment of Senchi J. has not been set aside on appeal, nor has his order on custody been appealed against. It is therefore binding on the parties and on this court as well.

It will be wrong therefore for the learned counsel to the Claimant to argue in paragraph 4.31 of his written address that the pronouncement of the court on custody are mere declarations or expression of views as no positive Order was made by the learned trial Judge to give effect to the pronouncement.

On whether a court can vary order of custody already made, there is no doubt in my mind that Sections 70-72of the Matrimonial Causes Act refers to parties of a marriage. They therefore do not apply to the parties herein as they are not and were never in a marriage.

Under Section 69 of the Child's Right Act, the court has power to alter, vary or discharge its order made as to the custody of a child, but that is on application of the father or guardian of the child wherein either parent of the child is deceased.

As for Section 69 of the Child's Right Act referred to, it is abundantly clear from the writ of summons and statement of claim that the Claimant does not seek to"alter, vary or discharge" an order made by Senchi J. in Application No. M/2377/19 pursuant to Section 69(1), as his prayers are not so worded. And going by the earlier argument of counsel to the Defendant, the "application" referred to in Section 69(1) (b) will be by way of 'motion on notice' not writ of summons.

Therefore if brought by writ would be incompetent.

In any event, how can the Claimant now be seeking to vary, alter or discharge an order he says was never made? It is clear that he filed this suit to seek custody of KairaBoustanysimpliciter – a fresh prayer – not as a variation or alteration or discharge of anearlier order.

Finally on this point the Claimant has filed an appeal against the Judgment of Senchi J. seeking to set aside the entire judgement of Senchi J. in Suit No M/2377/19.

It is therefore an abuse of court process to have filed the appeal and at the same time filed this suit seeking the prayers as constituted in paragraph 28(1) thereof, thereby seeking to achieve the same purpose with two different court processes simultaneously.

Assuming but not conceding that this suit is to vary the orders of Senchi J. it remains an abuse of court process in view of the said pending appeal of the Claimant.

In view of my findings above the notice of preliminary objection is sustained.

Paragraph 28(1) of the Claimant's claim constitutes an abuse of court process.

It is hereby dismissed.

Hon. Judge