

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY THE 5TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/171/16

BETWEEN:

MRS. MARIA MAGAYAKI MAREM ----- } PLAINTIFF
AND

MRS. GRACE ISTIFANUS----- } DEFENDANT

RULING

In an Originating Summons filed on the 11/11/2016, the Plaintiff raised 3 issues for the interpretation by this Court. He also sought for 3 consequential reliefs. The Question so raised are as follows:

- 1. Whether by virtue of the Judgment of Court No.11 sitting at Apo by Oriji J. on the 25th of April 2013 on pg. 19 paragraph 2 where he stated that:**

“Flowing from the decision of the Court in respect of the Question 1 & 2, it is my respectful view and I so hold that the 1st Respondent cannot sell the Trust property without the consent of the Plaintiff. It must be borne in mind that an equitable interest has all

the characteristics of a Legal Interest except that it cannot be enforced against a Bonafide purchaser for value of the legal Estate.”

The purported sale of the Bungalow by the Plaintiff's Husband to the Defendant should not be declared null and void and whether the Plaintiff is not entitled to be in custody of the Original Letter of Allocation of her property-that is Plot 17A (old plot 605A) Bamako street wuse zone 1 dated 26th September, 2005 and Receipt of payment dated 24/10/05 and 23/2/06.

2. Whether by virtue of the said Judgment at 25th day of April, 2013 at page.22 paragraph 2 where the said Hon. Justice Oriji said:-

In Foloshade Vs. Duroshola (1961) 1 ALL NLR 87, referring to at Page 48 of the said book, the Supreme Court reiterated that where an Estate is affected by an equitable interest, a subsequent purchaser for value will not be affected by that equitable interest provided he obtained the Legal Estate, he gave the value for the property and he has no notice of the equitable interest at the time he gave the consideration. No doubt this principle is inapplicable to the present case as the 2nd Defendant did not acquire a legal interest in the property for a purchaser of an equitable interest for value without Notice of a prior equity, as in the instant case the temporal Order priorities will apply namely:

“Quid prior est tempore, potior est jure” (i.e he who is first in time is stronger in law)

Therefore, the equitable right or interest of the Plaintiff in the said property will have priority over equitable right or interest of the 2nd Defendant (being the Defendant in this suit) the plaintiff is not entitled to be in possession or custody of the original title documents of the said property is Plot 17A (old plot 605 A) Bamako street Wuse II Abuja commensurate damages paid her for the detention of same.

3. whether by virtue of the said Judgment, it is illegal for the Defendant to hold and retain the Original letter of Allocation dated 2nd September, 2005 belonging to the Plaintiff and original Receipt of first and 2nd instalments dated 24/10/05 and 23/2/06. For the said plot 17A (old plot 605A) belonging to the Plaintiff.

The said Plaintiff want the following consequential Order and Reliefs:

- 1. A Declaration that pursuant to the said Judgment, the Plaintiff is entitled to be in custody and to hold original title documents- Original Letter of Offer dated 26th day of September, 2005 and Original Ad Hoc Committee's receipts of 1st and 2nd instalment payments dated 24/10/05 and 23/10/06.**
- 2. An Order directing the Defendant to surrender and handover the original of the said title documents i.e Original Letter of Allocation, dated 26/9/2005 and the original receipts of the 1st and 2nd instalment payment dated 24/10/2005 and 23/10/2006 of the said plot 17A (old Plot No. 605A), Bamako street wuse zone 1, Abuja.**

3. N10 million as damages for the detinue of the said documents of title, the possession of which the Defendant has retained since 1st August, 2007.

The Plaintiff supported the Originating Summons with an Affidavit of 4 paragraphs and a Written address. He attached 4 documents which include the Judgment by Hon. Justice S.E.Oriji dated 25/4/13, Motion on Notice M/1777?16 filed on the 6/1/16 in the suit beteen.

**Maria Magayaki Marem-
Creditor/Applicant**

Judgment

Vs

Mr. Andrew Magayaki Marem

**Mrs. Grace Istifanus –
Debtors/Respondents**

Judgment

(Suit: CV/103/2007)

The Plaintiff Counsel also attached a letter written from the chamber of Emmanuel Toro & Co dated 1/8/07 titled.

“Notice to give up possession of Block 17A (old 605A) Bamako street wuse zone 1 Abuja. To Mrs.Grace Istifanus.”

He also attached a Reply on Points of Law filed on 25/3/16 by Counsel to the 2nd Defendant-Peter D. Kefas Esq.

Upon receipt of the Originating Summons the Defendant filed a Preliminary Objection challenging the Originating Summons. It was dated 14/6/21 and filed on the 16/6/21.

He is urging the Court to strike out the Originating summons for disclosing no reasonable Cause of Action against the 1st Defendant-sic

(NOTE) the present action has only one Defendant- Mrs Grace Istifanus. There is no 2nd Defendant.

The Defendant also want the Court to struck out the suit for lack of jurisdiction.

The Preliminary Objection is based on the following Grounds:- that the claim has already been determined by the Court in Suit No: CV/103/2007 between Mrs. Grace Magayaki Marem Vs. Grace Istifanus & Anor in the Ruling of the Court delivered on 16/11/16.

2. That the said aforementioned suit in which the Claimant seeks for the interpretation, Declaration and Granting of consequential Orders of the Judgment of a Court of Co-ordinate Jurisdiction is now a subject of Appeal in **suit No./CA/A/1008/2018** pending at the Abuja Division of the Court of Appeal.

3. That it behoves on the Claimant/Respondent to institute this Suit before the Court of Appeal by filing a Notice of Cross-Appeal

4. That these issues are Res Judicata and should not be re-opened by way of instituting a fresh suit.

5. That this Court being a Court of Co-Ordinate Jurisdiction with the Trial Court in the said Suit CV/103/07 does not have supervisory and Appellate powers under the Constitution of FRN 1999 as amended to interpret the Judgment and or grant ancillary Orders in exercise of the authority and power of a Court of co-ordinate Jurisdiction as is being urged upon it by the Claimant/Respondent in this suit.

6. The failure of the Claimant to join Andrew Magayaki Marem, her husband who is a necessary party in this suit is fatal.

7. The Tort of detinue and damages sought by the Claimant cannot be commenced by way of Originating Summons.

8. That the institution of this present suit as it is constituted is a flagrant abuse of Court process and should be dismissed with substantial cost in favour of the Applicant.

The Defendant/Applicant filed an Affidavit of 4 paragraphs; she attached some documents in support which are Record of Proceedings at the Court of Appeal

1. Suit CA/A/1008/M/18 24/11/2020

2. Ruling in motion M/1777/16 in suit CV/103/2007 by Oriji J. dated 16/9/16.

3. Ruling in Suit CV/2362/18 per Hon. Justice V.S.Gaba dated 16/9/19

In the Written Address in support of the said Preliminary Objection the Defendant/Applicant raised 4 issues for determination which are:-

- 1. Whether this Suit as is presently constituted is not an abuse of Court process.**
- 2. Whether this Court, being a Court of co-ordinate jurisdiction can amend, interpret or alter the final Judgment of the Court 10 of FCT High Court.**
- 3. Whether the non-joinder of Mr. Andrew Magayaki Marem the plaintiff's Husband is not fatal to this Suit.**
- 4. Whether the Originating Summons is the appropriate procedure to commencing of this Suit.**

On Issue NO.1: on this suit being abuse of Court process he submitted that the present suit is an abuse of Court process. That the application filed by the Claimant/Respondent before Oriji J. upon and the argument canvassed by applicant are so fundamentally the same with the Originating Summons before this Court. That the present action by the Defendant is annoying and irritating. That Suit No. FCT/HC/CV/103/2007 as decided by Oriji J. was based on the pleadings before this Court as can be seen from Exhibit MM2 and that there is no doubt that the decision is a final Judgment which cannot be commenced by filing a fresh Suit.

That the prayers contained in the Reliefs sought by the Claimant shows that it is aimed at achieving the same purpose. He urged the Court to refuse the said application. That there is nothing to be interpreted by this Court in the said Judgment as a Court of co-

ordinate/concurrent jurisdiction cannot interpret the Judgment which is a subject of Appeal.

That the procedure adopted by the Claimant Respondent is strange and inconceivable. He urged the Court to so hold and strike out the suit. He relied on the case of:

AGWASIN VS. OJICHIE (2004) 10 NWLR (PT.882) 613 R.3

The Defendant/Applicant abandoned the 2nd issue which is

“Whether this Court being a Court of co-ordinate jurisdiction can amend interprets or alters the final Judgment of Court No. 10 of the FCT High Court.”

She raised a totally new different issue which is:

“Whether the Court can by a fresh suit or otherwise grant the Relief sought by the Claimant having been determined by a Court of competent jurisdiction.”

On the above the Defendant/Applicant submitted; that once a Court of competent jurisdiction has settled a matter in dispute between parties neither the party nor their privies may relitigate that issue under the guise of a fresh suit because the matter is Res Judicata. He relied on the case of:

COLE VS. JIBUNOH (2016) 4 NWLR (PT.1503) 521 PARA A.

HI-FLOW FARM NIG.LTD. VS UNIVERSITY OF IBADAN (1993) 4 NWLR (PT.290) 719

He submitted that the issues raised by the Claimant in this Suit has been determined by Oriji J. and that the Claimant is a party to the said suit: that matter is caught by RES JUDICATA as all the condition for Doctrine of Res Judicata in the present suit. That that makes the present case on abuse of Court process.

That Court of co-ordinate Jurisdiction does not have a supervisory or appellate powers under the constitution to seat on Appeal to review an Order in exercise of the authority and power of a Court of co-ordinate jurisdiction as is being urged upon it by the Claimant/Respondent in the present suit. He referred and relied on the cases of:

JIBUNOH VS. COLE SUPRA

EKEOMA VS. NCC (2009) 4 NWLR (PT.131) 289

That in the case before this Court, the motion which was earlier dismissed by Hon. Justice S.C Oriji was surreptitiously converted to an Originating Summons in order to seek the same reliefs which was earlier struck out by the trial Court.

On Issue NO.3: on whether the non-joinder of Mr. Andrew Magayaki Marem who is a necessary party is not fatal to the present Suit, he submitted that the non-joinder of Andrew Marem is fatal as the said Mr.Andrew is a necessary party in this case.

That Claimant had disclosed in her Affidavit in support that there was a transaction between Mr.Andrew Mayaki Marem and the Plaintiff which led to Mr. Marem, the Husband of the Plaintiff to hand over the Title document of the property to the Defendant which led to Mr. Marem,

the husband of the Plaintiff to handover the Title document of the said property to the Defendant in this Suit.

That the Plaintiff had deliberately refused to join the said Mr. Andrew her husband even when she knew or ought to know that it is very necessary to do so. She referred and relied on the cases of:

COTECNA INT. LTD VS CHURCHGATE (2010) 8 NWLR (PT.1225) 346

BUHARI VS. INEC (2008) 4 NWLR (PT.1078) 546

On Issue NO.4: whether Originating summons is the appropriate proceedings of commencing this Suit, the Defendant/Applicant submitted that using Originating Summons to commence the present suit is inappropriate in that it is fundamentally flawed and defective as the reliefs sought by the Claimant is not only to interpret the judgment of Court of co-ordinate jurisdiction but also a subtle attempt at seeking additional Reliefs which are generally contentious in nature. He relied on the cases of :

NIG. BREWERIES VS. LSIRB (2002) 5 NWLR (PT.759) 1

GOVT. OF RIVERS STATE VS. NJC (2014) ALL FWLR (PT.757) 677 PARA B-C.

That the Question postulated by Claimant/Respondent for determination are different from issues formulated by the Claimant for determination by this Court. She further submitted that while the question are centred on the Tort of Detinue and damages, which discloses the lack of

nexus between the said questions and the issues for Determination. She referred and placed credence on the cases of:

AIR LIQUID NIG. LTD PLC VS. NNAM (2011) 9 NWLR (PT.1251) 61.

SCOA NIG. LTD VS. J.A.KEHINDE & SONS LTD (2004) 8 NWLR (PT.874) 87.

AMUSA VS. OBIDEYI (2001) 6 NWLR (PT.710) 647

He further submitted that if the Court is minded to interpret the said Judgment of Oriji J, in favour of the Claimant, that it is the submission of the Defendant/Applicant that the Plaintiff/Respondent has failed to fulfil the conditions precedent in filing this Suit by serving a demand letter on the Defendant. They urged the Court to hold that an action on detinue cannot be commenced by way of Originating Summons in view of the contentious nature of this case. In conclusion she urged the Court to strike out the suit for being incompetent.

The Plaintiff/Respondent file Counter of 5 paragraph and a reply challenging the Preliminary Objection she filed also filed a reply to the said Preliminary Objection. In the Reply and Counter the Counsel adopted and responded to the 4 issues formulated by the Respondent/Applicant in reply to the 1st & 2nd issue- whether the suit is an abuse of Court process and whether this Court as a Court of co-ordinate Jurisdiction can amend, interpret or alter final Judgment of Oriji J, the Plaintiff submitted thus.

That the relief sought in the present suit is different from that sought and decided in the Judgment of Oriji J, in Exhibit mm2.

That in the present suit the Claimant is seeking that they are entitled to be in custody and hold the original title document with letter of offer dated 26/9/2005, original committee receipt of 1st & 2nd instalment payments date 24/2/2005 & 23/2/2006 of the Res: 17A Bamako street wuse zone 1 Abuja.

That Plaintiff is also seeking for an order directing the Defendant to surrender and handover the said original document to the Plaintiff and N10 Million as damages for Detinue of the said documents, the possession of which the Defendant has retained since 1/8/2007.

Again that in the said Judgment the question distilled by the Court at page 12 of Exhibit mm2 are whether the Plaintiff in that case has established that an implied or resulting trust was created in her favour in respect of the Res in issue. Whether there is in existence joint ownership between Plaintiff and 1st Defendant in respect of the Res. That if a question 1 & 2 are answered in the affirmative whether by Doctrine of resulting Trust, the Trustee can deal with the trust property contrary to the interest of the buyer without her consent. That the questions the Plaintiff is asking for Court to interpret is different from the above as contained in the face of the Originating Summons, is totally different from those listed above. That the Trial Court declined to answer the question when the Plaintiff presented same to the Court on the ground that the Trial Court was functus officio. That the Court did not decide on the Plaintiff's prayer but

declined Jurisdiction. He referred to Exhibit B attached to the Preliminary Objection. That the trial Judge did not look into the merit of or demerits of the application for consequential Orders. That he never required into it at all.

Again that all the 5 conditions on Res Judicata which the Defendant identified and listed in paragraph 4.4 page 14 of her Written Address in support of the Preliminary Objection did not apply to this case and that plea of Res Judicata cannot therefore be sustained and is not applicable in this case. That the parties are not the same. The subject matter not the same; claims are not the same. Most importantly that the Judgment Exhibit mm2 did not determine the issues now raised neither did the Ruling in the motion for consequential order the same. He referred and placed credence on the case of:

MICRO-LION INT'L NIG.LTD VS GADZAMA (2014) 3 NWLR (PT.1394) 213 @ 230

That the claims made before the trial Court in Exhibit mm2, the parties and issues raised before the Court are clearly different from the issues in the present suit. He urged Court to resolve the issues 1& 2 in favour of the Claimant.

On the argument of the Defendant that Plaintiff is by this action asking this Court to sit on appeal against the Judgment of Oriji J, the Plaintiff submitted thus:

That the submission by Defendant is not true. That by paragraph 4:3 of the Defendants Address in support of the Preliminary Objection. That all of the issues raised now are not and has not been decided in the earlier

Judgment. That what the Court decided in the judgment was that the Claimant owned the flat in dispute on the Ratio of 97 $\frac{1}{20}$ % to 2 $\frac{1}{2}$ % in favour of Mr. Andrew Magayaki Marem. That the said Andrew cannot sell the flat without the consent of the Claimant. But meantime the said Andrew had handed over the title documents of the said flat to the Defendant in this case. That it is not fair and just for the said Defendant to hold unto the Document of Title of a property in which she has no legal or equitable right. That the Plaintiff has not in any way asked this Court to review, sit on appeal; or examine that Judgment in anyway. He referred and relied on the case of:

EKEOWA VS. NCC (2009) 4 NWLR (PT.1131) 289.

The Plaintiff further replied that the motion for consequential order was never heard or determined as the Court declined Jurisdiction on ground of functus officio. He urged Court to resolve the issues 1 & 2 in favour of the Plaintiff.

In reply to the Defendant's on ISSUE NO.3- on non-joinder of Mr.Andrew Magayaki Marem being fatal to this Suit, the Plaintiff/Respondent replied referring to paragraph 3 (p) of Affidavit in support of the Originating Summons that the said documents of title and Receipt of Instalment payment 1 & 2 are still in the custody of the Defendant as the Plaintiff's husband had handed them over to the said Defendant- Grace Istifanus. Again that the said Grace has not denied that fact. That the main issue/kernel of the Plaintiff case in this Originating Summons is the return of the said title document to Plaintiff by the Defendant who is in custody of them.

That this Court cannot make an order for Mr. Andrew to return the Document as he is not in custody of them. Hence the said Andrew was not joined because he is not a necessary party in this case. That he is not in custody of the said documents and no valid order to return the document can be made against him. He urge the Court to so hold and decide the issue No. 3 in Plaintiff favour. He relied on the case of:

GREEN VS GREEN (1987)3 NWLR(P.T.61) 480 @ 493

On Issue NO.4, On Originating Summons not being the appropriate proceeding to commence this case, the Plaintiff/Respondent replied that the submission of the Defendant/Applicant is not correct. That by **ORD 2 R 3(1) FCT High Court Rules 2018** is very clear in this circumstance in that Plaintiff/Respondent want this Court to interpret what it says about the right claimed by Plaintiff in this Suit that its duty of Court to consider Judgments of Court cited before it to see whether it agree or disagree with an issue or claim raised by a party. That every Court is eminently qualified to look at a Judgment of Co-ordinate Courts or even inferior Courts to see if or whether it agrees with it or not. That Originating Summons procedure is only inappropriate where the facts relied on by the parties in their various affidavits are disputed. He relied on the case of:

ATAGO VS NWUCHE (2013) 3 NWLR (PT.134) 337 @ 355

That Defendant has not exhibited her Counter to show any conflict in the facts relied on in this Suit. That the crux of the Plaintiff's case in this Suit is that those

documents in the custody of the Defendant is not right and that there is no justification for a party, the Defendant to retain custody of title documents of apply in which she has no right.

That in all the principle of Res Judicata does not apply in this case because the claims has never been considered or determined by a Court of competent jurisdiction. Again that Mr. Andrew Magayaki Marem is not a necessary party in this suit. And that Originating Summons is the most appropriate procedure to use in determining the claim Reliefs and questions raised in this Suit. He urged Court to dismiss the Preliminary Objection with substantial Cost.

He had also categorically stated in the Written Address in support of the Counter that the Judgment of 25/4/13 did not decide on the question of entitlement of the Plaintiff to the title document and that in the motion seeking consequential order the Court decline jurisdiction on ground of functus officio. That in the Ruling of 16/9/16 Oriji J, stated that the Order sought by the Plaintiff therein are not part of the claims in the suit before him. And that there is no abuse of Court process by any description at all. That if the Court is mindful of holding that Originating Summons is not the appropriate procedure, it can order for pleadings to be filed and exchange for full blown trial to be undertaken. He referred to the book by.

“Civil Procedure in Nigeria” by Sabastine Tar Hon 1st Edition Vol 1 page 169 paragraph 3.

He urged Court to dismiss the Preliminary Objection for lacking in merit. In the Defendant's reply to issues of Law arising from Counter by the Plaintiff she stated thus on whether a Court can interpret Judgment of a Court of coordinate jurisdiction. The Defendant/Applicant replied that in paragraph 11.4 the learned Counsel for the Defendant submitted that Oriji J, declined to consider the motion on the ground that the Court was functus officio. He submitted relying on the decision of the Court in the case of where it was held:

MT DELMAR VS MT ANE (EX MT LESTE) (2016) 13 NWLR (PT.1503) 482

That once a Court has given decision on a matter it becomes functus officio and is precluded from reviewing or varying the form of judgment or order. That by virtue of **S. 255 1999 CFRN** the High Court of FCT is one and has one Jurisdiction. He relied on the case of:

UKPAI VS. OKORO (1983) 2 SCNLR 380

OGIGIE VS OBIYAN (1997) 10 NWLR (PT.524) 179 @183 PARA D-G

That if the Court assumes Jurisdiction in this case it tantamount to sitting on Appeal on the said Judgment. He urged the Court to so hold and decline Jurisdiction and uphold the Preliminary Objection.

COURT:

In the Judgment of Oriji J, he granted the prayers of the Plaintiff in that case – in the said Reliefs/prayers there was no issue of compensation or payment of Damages

sought by the Plaintiff. My learned brother Oriji J, realising that the Court is not a Santa Claus who give gifts where it is not sorted for did not award any damages or make any pronouncement as to the ownership or otherwise of the Res- Plot No 17A Bamako street.

Dissatisfied with the outcome of the decision, the Judgment debtors/Defendant/Applicant went to Court of Appeal to challenge the Judgment. That matter is still pending. But in between the time the Judgment was delivered on 25/4/13 and today the Court had refused to grant 2 motions all of which has the same prayers/reliefs with this present case. The singular reason being that the Court, as far as the issue therein are concerned has become funtus officio and that the consequential order sought to be granted were not in synchronization with the Claims in the Suit.

Still dissatisfied the Judgment /Creditor /Plaintiff /Respondent filed the present suit seeking for this Court to interpret as it were (given that the matter is an Originating Summons) the aspect of the judgment going by the quoted portion in the said Originating Summons. The same learned Counsel for the Respondent has naturally wanted and sought for what I call 1 & 2 consequential orders and prayer for payment of damages of N10 Million for detinue of the said document of title still in the custody of the Defendant who was the 2nd Defendant in the Judgment delivered by Oriji in Suit No: FCT/HC/CV/103/2007 delivered on the 25th day of April, 2013.

From the totality of the issues in both the Preliminary Objection and Counter Affidavit and Reply to issues that

arose from the Counter Affidavit of the Plaintiff/Respondent what can be distilled therefrom are whether or otherwise this Court has jurisdiction to entertain the present Suit.

Again whether the issues thereto are already determined by the Court before.

And whether this Court can actually determine these issues thereto or not and grant or refuse to grant the consequential Order as sought.

This Court has set out verbatim the questions set out by the plaintiff in the Originating Summons. It has also set out verbatim the prayer of the Applicant in the Preliminary Objection as well as the ground upon which the said Preliminary Objection is predicated. There is no point repeating same here. The Court adopts same as if they are set out here seriatim.

It is the law and the constitution also provides and the Court has made myriad of pronouncements that no Court can sit on Appeal on the decision of a Court of co-ordinate Jurisdiction. Again it is not within the power of any Court to interpret or review the decision or order of another Court of co-ordinate jurisdiction. Such interpretation and review is left for the Court of Appeal & Supreme Court as the case may be. That's the decision of the Courts in the following cases:

HYDROWORK LTD VS. RIMI LOCAL GOVT. AREA (2002) 1 NWLR (PT.749) @588 PARA A-B (CA)

NDIC VS. SAVANAH BANK OF NIGERIA (2003) 1 NWLR (PT.801) 403-404 PARA E-A

**DR. M.F PETERS & ANOR VS. SAMSON ASHAMU
(1995) NWLR (PT.388) 206 @403 PARA B-E**

Particularly at p. 222 where the revered Judicial Guru-Late Achulonu JSC of blessed memory eloquently stated.

“....To maintain discipline the Court must preface respect the decision of the Court of equal jurisdiction in the subject matter involving the same parties”

It was also reiterated in the case where it was held thus:

“Once a Court has given a decision on an issue or matter placed before it for adjudication it becomes functus officio and it is precluded from reviewing and varying the form of the Judgment or Order...”

See also the case of:

FRN VS. OGBULAFOR (2012) LPELR 7947

**NIGERIA ARMY VS IYELA (2008) 16 NWLR (PT.118)
115**

In all these cases the Court of co-ordinate jurisdiction is not allowed to (1) reverse, review (2) vary or alter the decision of another Court in the same hierarchy. That is forbidden judicially. But no Court is forbidden to affirming questions arising from the Judgment of a Court of co-ordinate Jurisdiction. See the case of:

DANLADI VS ALI MODU SHERIFF & 1 OR

The Judgment of this Court delivered on 17/8/15. See also the case of:

EMEKA OGUEBEGO VS PDP & ORS

There is a very judicial thin line between affirmation of what a Court had stated in its decision and the review, vary and alteration. Oftentimes these words are mistakenly interwoven. The Court has to do a close judicial forensic examination in order to distinguish the difference in such situation.

In the Judgment of the Court it was clear as distilled by my learned brother, Oriji J. that plaintiff has established that there was resulting trust in her favour in respect of the Res. She had also established that there was joint ownership between her and the 1st Defendant in that case. She had equally invariably established that she has a superior equitable right or interest in the property, the Res. That equitable right or interest has priority over the equitable right of the 2nd Defendant in that case who is the only defendant in this Suit.

A closer look at the decision of my revered learned brother, Oriji J, in suit HC/CV/103/07, in a nutshell shows just like the plaintiff had sought that.

1. The 1st Defendant who is not a party in the present suit is estopped from selling the property-17A Bamako Street Wuse zone 1, being a family property.

That the said property cannot be sold without consent of the Plaintiff who is also the Plaintiff in this present case. And that the 1st Defendant himself, his agents, servants and privies are restrained from selling or attempting to sell the property without the consent of the said Plaintiff who is also the Plaintiff in this case.

From the above summary of the orders of the Court on that case it is very clear that the wordings of the Court

are clear. The implication of the wordings of the Court are equally very clear too. To both the very learned and less learned and dumbest of all men and women. Put differently and for clarity the 1st Defendant no right and is estopped from selling the Res. Any sale without consent of the Plaintiff in that case is wrong, as the sale must be with consent of the Plaintiff to be valid.

The 1st Defendant in that case is prohibited from selling without plaintiffs consent. So are his privies agents and servants. the Court will leave this here for now.

In this Preliminary Objection the challenge is on fact that there is no disclosure of a reasonable cause of action against the 1st Defendant. Meanwhile there is only one Defendant. There is no 2nd Defendant. That Defendant is Mrs. Grace Istifanus. Another point is that the Court has no jurisdiction to entertain the suit.

Without going into the academic of defining and analysing the meaning of the terms used by the parties in this suit as to meaning of cause of action Estoppel, necessary party, jurisdiction, competency of the action etc as same have been exhaustively discussed by both parties in their respective submission earlier in this Ruling, can it be said that this Court given the 3 question raised, the consequential order sought vis a vis the parties in the suit together with the decision of the Court in FCT/HC/CV/103/07, that this Court lacks jurisdiction to entertain the present suit? There is no reasonable action against the “1st Defendant? That this matter caught up by estoppel res judicata in that the issue has already been determined by the Court in HC/CV/103/07? Will this Court be embarking on review

of the judgment in HC/CV/103/07 if it delves into this case given the question raised by the Plaintiff therein? Is Mr. Magayaki a necessary party who must be joined in this suit? And will he be affected mostly adversely if he is not joined? And will this Court not be able to determine the questions raised in this case unless and until he is joined? Is his non-joinder fatal to this case? Is this case wrongly commenced by Originating Summons given the 3 question raised by the Plaintiff herein? Can or cannot the tort of detinue and damages sought by Plaintiff be or be not commenced by way of Originating summons? Is commencing this action by Originating Summons irregular and does it make the suit incompetent?

Is the suit itself an abuse of Court process which ought to be dismissed with substantial cost?

Not answering these barrages of questions seriatim it is my very humble view that, that entertaining this suit is not an abuse of Court process.

2. Commencing this suit by way of Originating Summons is a proper procedure given the nature of the questions asked to be interpreted. The case is about interpreting the question. It is not about review of the judgment or varying the judgment. And answering those question is not sitting on Appeal on the judgment of Oriji J, in FCT/HC/CV/103/07. Commencing this suit by Originating Summons is very regular and competent procedure. See extent provision of Ord.2 FCT High Court Rules on method of commencement of an action. Once an action is on question the best way to commence the action is by Originating Summons; to that extent the Plaintiff is right in doing so in this case. He asked the

Court those questions. This Court has jurisdiction to answer the questions. Answering the question is a different thing from affirming the question or giving the Plaintiff the answer he wants. To the extent of answering question this Court has the jurisdiction to do so. Until the Court analysis the question and comes up with its view, the Court has a right to answer such question. The answer given by Court can and will come later not now at this Preliminary Objection.

Again this Court can determine the question asked without any input and presence of Mr. Andrew Magayaki. So not having his name as a Defendant or party in this case will not and cannot make the suit incompetent. His presence is not necessary for Court to determine the question as raised in this case. This is so because the question is not whether or not there was a valid sale of the Res or validity of the sale. The issue of sale or otherwise was not discussed extensively by the Court at Apo. The Court made pronouncement on that. This Court touch or reopen that as the Court had in its judgment stated that the said Mr. Andrew cannot sell the Res without consent of the Plaintiff. It is important state and quote from the judgment on the stand of the Court on the issue of sale or otherwise of the property in that case. The Court stated thus:

“....the Claim of the Plaintiff do not touch or concern the sale of the property to the 2nd Defendant (who is the only defendant in this case) see page 20 of the said Judgment para.1.”

From the above it is very clear that the claim of the Plaintiff in FCT/HC/CV/103/07 did not touch on the

sale of the Res to the 2nd Defendant therein who is the Defendant in this case. That is why this Court holds, among other things, that answering the question or entertaining this suit is not sitting on appeal on the case and it is not reviewing the judgment. It is not also varying the said judgment. The judgment never discussed the issue of sale of the property to 2nd defendant as the Claim of the Plaintiff therein never touched on sale of the Res to the 2nd Defendant in that case. The decision as to Plaintiff's claim was that 1st Defendant cannot sell without Plaintiff's consent. His agents, privies and servants as well as the 1st Defendant himself were restrained from selling. 1st Defendant was also estopped from selling.

The question in this case is on validity of the purported sale and on custody of the original Letter of Allocation and title document of the Res. The Court in the HC/CV/103/07 did not deal on those issues too. The Court did not also determine, deliberate or made any decision on the legality or otherwise of the Defendant holding and retaining the original documents of title of allocation and receipt of 1st & 2nd instalment payments. So the Court delving into same question will not be an interpretation of the judgment as the defendant is portraying in this Preliminary Objection. The Court did not deliberate on such issues. That is why this Court hold that answering those questions is not interpreting, varying or reviewing the said judgment. This Court has the jurisdiction to do so. The fact that the said judgment was mentioned and part of it quoted does not prohibit this Court or any other Court of co-ordinate jurisdiction

from answering question that may arise by virtue of the case/judgment.

It is imperative to state that as of now the Court is not answering the question. The Court is only deciding on its powers to entertain the case.

It is glaringly clear that the parties in this suit are not same with the parties in FCT/HC/CV/103/2007. In the CV/103/07 there are 2 Defendants and a Plaintiff. In the present suit there are only a Plaintiff and a Defendant. The only resemble is that the only Defendant is the 2nd Defendant in the CV/103/07.

Again the issues in dispute and the claim in the present suit HC/CV/103/07 are not the same. Here in this suit, it is on answering question raised. In the other HC/CV/103/07. It never was on sell of the property to 2nd Defendant the only Defendant in this Suit. The prayers and Claim/reliefs are different. Again in this case there are consequential orders which depends on the question. In the CV/103/07, it was on declaration and injunction. That is why this Court holds that the present case is **NOT AN ABUSE OF COURT PROCESS**. The claims are distinct from the claims in HC/CV/103/07.

It is important to further reiterate that not in all cases where the names of parties are same that it will be viewed as abuse of Court process. The issues must be same. Again a look at the motion attached, those were struck out and withdrawn as it were the Court refused to entertain same.

Those motions were not entertained. Motion M/1008 was withdrawn. It can therefore not be said to have been

determined. it was struck out leaving the Applicant with right to re-file or reinstitute the case if she wishes to do so.

Again what the Plaintiff wanted in the motion as consequential order was not in line and did not arise from the Reliefs sought in the motion. The Court has stated in the Ruling thus:

“... from the forgoing, I am of the considered view that the orders sought by the applicant are not consequential orders as they do not flow directly and naturally from the decision of the Court made on the issues in the litigation.”

The Court went further to reiterate thus;

“in other words, the Orders sought in the motion on notice are not incidental to the Reliefs Claimed in this Suit”.

It is on the above reasoning that the Court dismissed the motion. Not because it was an abuse of Court process. In this case the question are different and the consequential order flows and is incidental to the question raised.

Please note that the court has not delved into the question and has not determined its merit or otherwise at this point since the question raised in this case have not been raised or determined before any Court.

More so, where in the main Judgment the issue of sale of the property to the present Defendant who was the 2nd Defendant in the said Judgment, was never raised or determined thereon, this case is therefore not caught up by Estoppel as the Defendant has alarmingly raised in

this Preliminary Objection. This Court therefore holds that this suit is not caught up by Estoppel.

There is a reasonable action against the Defendant in this case, because going by the submissions of all the parties in the Judgment it is not in doubt that the Defendant-Grace Istifanus, is at the centre of the debacle in the issue pertaining to the Res as it relates to sale which was not determined in the said Judgment.

Again, the issue of holding and withholding of the said document of title was not also determined by the Court in that case. These issues are not strange to the Defendant. But they were never determined in the Judgment. So answering the questions raised in the present case on those issue is not and cannot be held to be an abuse of Court process or sitting on appeal, reviewing or varying the decision of the Court. Suing the Defendant is not multiplicity of action. There is therefore a reasonable cause of action against the Defendant-Grace Istifanus in this case. This matter is not caught up by Res Judicata. Court is not estopped from entertaining the suit as the questions has not been raised and determined by the Court in HC/CV/103/07.

I had search the length and breath of the Judgment and the Rulings attached to this Preliminary Objection, I did not see where the Court made mention of issue of retinue of the documents of title and any other document pertaining to the Res and custody of the said documents- Receipt of instalment payments and documents of Allocation. I have not also seen anything on damages claimed. These issues are raised fresh in this particular case. When it was raised in the Ruling M/1008/16, the

Court rejected it because it was not consequential in the light of the Judgment as the Court put it.

“it did not flow directly and naturally from the decision made on the issue in litigation and the decision of the Court in the Judgment.”

It is the law and has been held in plethora of case and decision of the Court that consequential orders must be incidental to prayers/reliefs sought in the suit. Even though that the Court has a right to make consequential order such order must be related to the reliefs Claimed. That’s the decision of the Court in the case of:

**UNITED CEMENT VS DANGOTE IND. LTD & 2 ORS
(2006) 6 NWLR (PT. 980) 616**

AMAECHE VS INEC (2008) 5 NWLR (PT.1080) 227

In page 7 of Ruling on motion M/1777/16, the Court stated that the:

“...in her statement of claim the applicant –(Plaintiff) did not seek a declaration that the property belonged to her, and the Court did not make an Order that the property belongs to her.

Also the Applicant did not claim any relief with respect to the sale of the property by the 1st Defendant to the 2nd Defendant.”

Even in the Judgment the Court stated, cited in page 7 of the M/1777/16 thus:

“However from the reliefs of the plaintiff it would appear that there is no relief with respect to sale of property to the 2nd Defendant. For example, there is

no relief by the plaintiff for Court to declare invalid the sale of the property by 1st Defendant to the 2nd Defendant (the present Defendant in this Suit- Emphasis mine)

From the above it is clear that this case is competent; the Court has Jurisdiction to entertain same; the principle or doctrine of Res Judicata does not apply here; there is a reasonable cause of action against the Defendant the issues herein has not been determined; it is not an abuse of Court process, it does not seek interpretation of, or the review or varying of the Judgment. Again the question raised to be answered has never been determined and are not the subject of the Court of Appeal. This Court will therefore not be sitting on an appeal against the said Judgment by entertaining the suit. The presence of Mr. Andrew Magayaki is not necessary.

The tort of detinue was never raised before and can be determined or commence by way of Originating Summons. Most importantly, this Court has a right where the circumstance permit, to Order that parties file pleadings if it feels that any aspect or all the nature of the issues can be determined by filing of pleading and call of evidence. The action is commenced by regular and competent procedure. So this Court humbly holds that this matter is not an abuse of Court process and this Court cannot dismiss the Suit.

The court will instead and hereby dismisses the Preliminary Objection for lacking in merit.

This is the Ruling of this Court.

**Delivered it todayday of
.....2021 by me.**

.....

K.N.OGBONNAYA

HON.JUDGE