

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU'AZU
SUIT NO. FCT/HC/CV/606/2021
ON THE 18TH OCTOBER, 2021**

BETWEEN:

1. **NANLIN LIMITED**
2. **NNAMDI ILOANYA** - **COMPLAINANTS**

AND

1. **RUFAI HANGA**
2. **CHIEF MIKE NWADIOGBU**
3. **BARR. OBINNA .N. UGWUMGBOR** - **DEFENDANTS**

Appearance:

S.M. Oluebube for the Claimants/Respondents
B.A. Oyefeso for the 1st Defendant
Counsel for the 2nd & 3rd Defendants absent.

RULING

By a Preliminary Objection the 1st Defendant challenges the Jurisdiction of this Honourable Court and seeks for the following Orders.

1. An Order striking out the entire suit (CV/606/2021) Writ of Summons and other originating processes in suit CV/606/2021 for want of Jurisdiction and abuse of Court process.
2. Omnibus prayer.

The preliminary objection is brought upon 7 grounds, to wit:

1. That the instant suit is incompetent being an abuse of Court process and this Court has no Jurisdiction to entertain same.
2. That at the time this suit was filed, there was another suit in the FCT High Court 22 with the same parties, issues and claims with suit No CV/1160/2021.
3. That in the above suit which was later struck out, the Claimants have an outstanding cost of N15, 000 (Fifteen Thousand Naira only).
4. That the Defendants have been served with 2 processes on 21/06/2021; NANLIN LIMITED & 1 OR V RUFAL HANGA with suit No. CV/607/2021 and NANLIN LIMITED & 1 OR V RUFAL HANGA & 2 ORS with suit No. CV/606/2021.
5. That these suits have same subject matter which flows from the Landlord and tenant relationship between the parties.
6. That this suit CV/606/2021 was filed during the pendency of NANLIN LIMITED & 1 OR V RUFAL HANGA & 2 ORS with suit No. CV/1160/2020 and NANLIN LIMITED &

1 OR V RUFAL HANGA & 2 ORS with suit No. CV/607/2021.

7. That the instant suit is brought in bad faith and in vexations, frivolous and an abuse of the process of the Court.

In the Affidavit in support of the preliminary objection deposed to by the objector himself. He averred that:

He is the 1st Defendant in this suit and was informed by his Counsel B.A. Oyefeso that all Defendants were served with 2 processes on the 21/06/2021 of NANLIN LIMITED & 1 OR V RUFAL HANGA & 2 ORS suit No. CV/607/2021 and suit No. CV/606/2021 Respectively and dated 01/03/2021.

That while the pendency of the suit NANLIN LIMITED & 1 OR V RUFAL HANGA & 2 ORS SUIT NO. CV/1160/2020 before High Court 22 having same parties, subject matter and claims which was later struck out, whose subject matter flows from Landlord and tenant relationship and termination of the relationship.

That this suit is vexations and abuse of process and that this application is exceedingly necessary so as not to waste the time of this Court.

The 1st Defendant's Counsel in support of his preliminary objection submitted a written address in support formulating 2 issues for determination to Wit:

1. ***Whether or not this suit is an abuse of the process of this Honourable Court.***
2. ***Whether or not this Court is robed with the Jurisdiction to entertain this suit.***

The Learned Counsel argued the issues succinctly in urging the Court to grant the application.

In opposing the preliminary objection, the claimant filed a 16 paragraph affidavit deposed to by the Claimant/Respondent himself. He averred that the facts in the preliminary objection are not only untrue by are misleading.

That he filed the suit against the Defendants at the High Court of Justice with suit No. CV/1160/2020 assigned to Court 22, that the Defendants were invasive after serving the processes in the 1st Defendant as a result his Counsel discovered that the period of 6 months have been exceed. That he gave his permission to his Counsel to withdrawn the suit which his Counsel did and same was eventually struck out. That his Counsel further informed him of the need to file

another suit on that same day hence the new suit came into being.

That after reading both suits with suit No. CV/606/2021 and CV/1160/2020 respectively it was clear that they were different, though arose from same transaction between Claimant and Defendants. However, the cause of action, parties and reliefs sought are different.

That the cause of action in CV/606/2021 is trespass and possessory rights of Claimant while the cause of action in CV/607/2021 is enforcement of the termination and compensatory clause of the agreement between parties.

That this application is brought in bad faith in order to stop the Court from hearing the suit on its merit. That it will be in the interest of Justice to dismiss the preliminary objection.

The Counsel to the Claimants/Respondents in support of support of his Counter Affidavit submitted a written address and formulated a sole issue for determination to wit:

“Whether this present suit constitute an abuse of Court process thereby depriving this Honourable Court of Jurisdiction to hear this suit on merit”.

Learned Counsel argued the issue succinctly in urging the Court to dismiss the preliminary objection.

I have carefully read and considered the Preliminary objection of the Defendants/Applicants and Affidavits and written address on the one part and the Counter Affidavit and written address of the Claimant on the other part.

Drawing from the party's issues for the determination of the Court, the following issue, to wit:

“Whether this action is an abuse of Court process”

Is formulated for the determination of the Court.

The contention of the objector as canvassed by Learned objectors Counsel is that this suit CV/606/2021 is an abuse of Court process as it was filed while suit No. CV/1160/2020 with same parties, issues and claims was pending before FCT HIGH COURT 22. The Learned Counsel further contends that the Defendant was served two processes on the 21/06/2021 i.e. NANLIN LTD & 1 OR V RUFAl HANGA with suit No. CV/607/2021 and NANLIN LTD & 1 OR V RUFAl HANGA & 2 ORS with suit No CV/606/2021.

Learned Counsel submitted that since this suit CV/606/2021 was filed while CV/607/2021 and CV/1160/2020 with same parties, issues and claims were pending it amounts to abuse of Court process and is liable to be struck out as it robe the Court of requisite Jurisdiction to hear and entertain it.

Learned Counsel pleaded reliance on the decisions in DANNET – OWOO & ANOR V EFFIONG (2020) LPELR – 50079 (CA) UMEIT V IWU (2008) 8 NWLR (pt. 1089) page 225 SARAKI V KOTOYE (1992) 9 NWLR pt. 264, page 156 at 188 – 189 & MADU KOLY V NKEMDILIM (1962) 2 SCNLR 341.

In response, it is the submission of the Learned Claimants' Counsel that suit No. CV/1160/2020 WAS WITHDRAWN AND STRUCK OUT ON THE 1ST OF March, 2021. And even though CV/606/2021 was filed on the same date it does not amount to an abuse of Court process as CV/1160/2020 has ceased to exist. Learned Counsel further submitted that suits No. CV/606/2021 and CV/607/2021 are different in forms of parties and the claim thereby not been an abuse of Court processes.

At this point, it is important to understand what abuse of Court process is, given that, as alluded to by both Counsel, it is imprecise.

The Supreme Court in ALLANAH & ORS V KPOLOKWU & ORS (2016) LPELR – 40724 (SC per SANUSI, JSC held that

“The common feature of abuse of the process of Court centres on improper use of the Judicial process by a party in litigation aimed

or targeting on interferences with due administration of Justice. To my mind, some of the features of abuse of Court process include the under mentioned features, even though by no means exhaustive. These features are:

- i. Filing of multiplicity of actions on the same subject matter against the same opponents on the same issues or numerous actions on the same matter between the same parties even where there is in existence, a right to commence the action.**
- ii. Instituting different actions between the same parties simultaneously in different Courts even though on different grounds**
- iii. Where two or more similar, processes are used in respect of the exercise of the same right, from**
- iv. Where two actions are instituted in Court the second one asking for relief which may however be obtained in the 1st, the 2nd action is prima facie vexations and an abuse of Court process.**

Having been so guided, I want to say that I hold the view that suit No. CV/1160/2020 was not pending when suit No. 606/2021 was filed even though action of the Claimant seems dubious to say the least and amounts to forum shopping, as reason given for the withdrawal of the matter become untenable by the institution of this matter almost instantaneously, I so hold.

This brings us to the question of suit No. CV/606/2021 and CV/607/2021. Whereas I agree with the Learned Counsel to the Claimant that the principal reliefs in both suits are different, by seeking different declaration and parties not being exactly the same, the subject matter is the same and flows from the same Landlord and tenant relationship.

It is apparent that the two suits filed simultaneously are crafted to subvert the system, in that suit No. CV/606/2021 seeks a declaration that, there exists a subsisting tenancy agreement until 31st December, 2023 over plot 1132 Festus Okotie Eboh Crescent, Utako, Abuja, while Suit No. CV/607/2021 seek a declaration that the 1st Defendant in suit No. CV/606/2021 has terminated the lease/tenancy relationship via a notice to quit and that Claimant is entitled to compensation under the termination clause.

Effectively, the end result of the 2 suits is to determine the issues and grant declaratory or injunctive reliefs to the Claimant regarding the property in question.

I must agree with the objectors Counsel that if the two suit are allowed to simultaneous go ahead, there are potentials for conflicting decisions of two Courts of the FCT High Court over the same subject matter and thereby undermine the efficient and effective administration of Justice. This must not be allowed. There is indeed likelihood of conflicting decisions at the end of trial.

Accordingly, in line with the authority in ALLANAH (Supra) I find that suit No. CV/606/2021 amounts to abuse of Court process in relation to suit No. CV/607/2021 and therefore resolve the sole issue in the affirmative.

In line with the above finding the Preliminary objection succeeds as this suit is hereby struck out.

Signed
Hon. Judge
18/10/2021.

Oyifeso: - We thank the Court for the Ruling. We seek cost of N50, 000 & N15, 000. 00 earlier awarded. He should have paid.

Oluebube: - We are grateful but we are not concluding to cost. We shall pay the cost of N15, 000. 00 earlier awarded.

Court: - I will not award further cost. The cost awarded by Court 22 shall be paid.

Signed
Hon. Judge
18/10/2021.