

**THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON WEDNESDAY 10<sup>th</sup> DAY OF NOVEMBER, 2021**

**SUIT NO: FCT/HC/CV/2323/2020**

**MOTION NO: FCT/HC/M/606/2021**

**BETWEEN:**

- (1) SHEPHERDS SHIELDS PROPERTIES  
AND DEVELOPMENT LTD } ... CLAIMANTS.  
(2) GLORY DYNAMICS LIMITED }

AND

- (1) FEDERAL CAPITAL TERRITORY  
AUTHORITY } ... DEFENDANTS.  
(2) THE HON. MINISTER, FCT }  
(3) SHEPHERDS SHIELDS LIMITED }

**RULING**

By a Notice of Preliminary Objection dated 25<sup>th</sup> January 2021, the 3<sup>rd</sup> Defendant/Applicant prays for the following reliefs:-

- (1) An Order of this Court dismissing this suit for want of jurisdiction.

- (2) And for such further Order(s) as the Court may deem fit in the circumstance of this case.

The grounds upon which the application was brought are:-

- (a) That all the reliefs sought by the Claimants/Respondents in this action centers on and stem from the execution of a judgment order of Mandamus over Plot No.405, Cadastral Zone B06, Mabushi, Abuja, which was delivered by judge of the High Court of the Federal Capital Territory being a Court of coordinate jurisdiction.
- (b) That the said judgment order of mandamus is already subject of two appeals: Appeal No. **CA/A/349/2018** and Appeal No. **CA/A/984/2019**, pending before the Court of Appeal at the instances of the Claimants/Respondent.
- (c) That this action is an invitation to this Honourable Court to not just sit on Appeal over a judgment of a Court of coordinate jurisdiction but also over a judgment which is subject of Appeal.
- (d) Consequently, that this Honourable Court lacks jurisdiction to entertain the instant action.

In support of the application is an 8 paragraph affidavit with 6 annexure marked as Exhibits C1, C2, C3, D, E1 & E2 respectively. A Written Address was filed in compliance with the Rules of this Court in which a sole issue was raised as arising for determination, to wit:-

Whether or not this Honourable Court has jurisdiction to entertain this action.

The Learned Objector's Counsel argued the issue succinctly in urging the Court to grant the reliefs sought. I shall in the course of this ruling refer to specific submissions where necessary. The Applicant also filed a further affidavit of 7 paragraphs with 3 annexures marked as Exhibits B, C & F respectively with a reply on point of law in response to the Counter Affidavit and Written Address of the Claimants/Respondents.

At the hearing of the application the Learned Objectors Counsel relied on the paragraphs of both affidavits and adopted the written submissions and urged the Court to dismiss the present action as it constitute an abuse of Court process.

It is pertinent to note at this point that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant did not file any opposition to this application even though duly served.

However, the Claimants/Respondents filed a Counter Affidavit of 24 paragraphs in opposition to the Preliminary Objection along with 9 annexures marked as Exhibits A, A1, B1, B2, C, D1, D2, D3 & D4 respectively. A Written Address was also filed in compliances with Rules of Court in which 3 issues was formulated for the determination of the Court, to wit:-

- (1) Whether the current suit filed before this Court constitute abuse of Court process having regards to the peculiar circumstance of this case.
- (2) Whether the Claimants claim discloses any cause of action against the Defendants or placed before the Court any material facts to enable the Court assume jurisdiction over the subject matter.
- (3) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were right notwithstanding the pending Notice of Appeal challenging the Order of mandamus and the various correspondences to still proceed to release the

Certificate of Occupancy to the 3<sup>rd</sup> Respondent having regard to the entire circumstances of this case.

Submissions were equally canvassed in respect of these 3 issues which forms part of the record to this Court. I shall where necessary in the course of this Ruling make reference to specific submissions.

I have carefully considered the processes filed by parties and the submissions canvassed by Counsel in their addresses. From all, I find that fundamental issue, for the due determination of this application is whether this present action constitutes an abuse of the process of Court? Other issues raised are at best complimentary to this issue. Being a threshold issue, I shall commence with the consideration of the issue of abuse of the process of Court.

The question that there comes to mind is, what does abuse of Court process mean. As alluded by both Counsel, the meaning and scope of Abuse of Court process is imprecise, it often depends on the circumstance of the case at hand.

On the features of abuse of Court process, the Supreme Court held on **ALLANAH & ORS V. KPOLOKWU & ORS (2016) LPELR-40724 (SC)** that:-

“The common features of abuse of process of Court centres on improper use of judicial process by a party in Litigation aimed or targeting on interference with due administration of justice. To my mind, some of the features of abuse of Court process include the under mentioned features, even though they are 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, for instance, a cross appeal and a Respondent's notice. (iv) Where two actions are instituted in Court the 2<sup>nd</sup> one asking for relief which may however be obtained in the first, the second action is, prime facie vexatious and an abuse of Court process.

See also **OKOROCHA V. PDP (2014) 7 NWLR (Pt.4406) 213.**  
**SARAKI V. KOTOYE (1992) 9 NWLR (Pt.264) 156 at 188 E-G.**

Having being so guided as to what may constitute abuse of the process of Court the question that follows is whether the present action is an abuse of the process of Court.

To resolve this question, it is pertinent at this point to refer to facts in the affidavits to clearly situate the position held by parties on the issue at hand.

In the affidavit in support of the Preliminary Objection, the following facts are relevant. It was averred.

That the 1<sup>st</sup> Claimant/Respondent herein had earlier instituted an action in this Honourable Court against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants over the parcel of land that is the subject matter of this suit in Suit No: **CV/2959/2012** and in the said suit, the 1<sup>st</sup> Claimant/Respondent claimed to be entitled to the Right of Occupancy and the Certificate of Occupancy that was issued to the 3<sup>rd</sup> Defendant/Applicant. The 3<sup>rd</sup> Defendant/Applicant applied to be joined in Suit No: **CV/2959/2012** and was subsequently joined as the 3<sup>rd</sup> Defendant in that suit.

It averred that upon a Notice of Preliminary Objection filed by the 3<sup>rd</sup> Defendant/Applicant, the Honourable Court, per Hon. Justice Y. V. M Venda, declined jurisdiction and struck out the matter on the 17<sup>th</sup> day of

June 2016. Thereafter, the Claimants/Respondents again instituted an action in this Honourable Court against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents over the parcel of land which is the subject matter of this suit in Suit No: **HC/CV/2044/2016** seeking the following reliefs.

- a. Declaration that the Plaintiff is entitled to be issued the Certificate of Occupancy over the property known as plot No.405 Cadastral Zone B06, Mabushi, Abuja with file No **MISC 88990** at the Lands Registry, Federal Capital Territory, Abuja.
- b. An Order of the Honourable Court compelling the Defendants to issue and release to the Plaintiff or his Attorney the Certificate of Occupancy of the property known as Plot No. 405 Cadastral Zone B06, Mabushi, Abuja.
- c. An Order of perpetual injunction restraining the Defendants from reallocating or alienating the property known as Plot No. 405 Cadastral Zone B06, Mabushi Abuja to any other person.

That again, the 3<sup>rd</sup> Defendant/Applicant to joined as a party to the suit being a necessary party and was subsequently joined as the 3<sup>rd</sup> Defendant on the 24<sup>th</sup> of February 2017 and upon a Notice of Preliminary Objection, dated the 24<sup>th</sup> of March 2017 filed by the 3<sup>rd</sup> Defendant/Applicant the Honourable Court per Honourable Justice Abubakar Idris Kutigi dismissed the action as constituting an abuse of Court process on the 16<sup>th</sup> of April, 2018. A copy of the entire Record of Proceedings in Suit No: **HC/CV/2044/2016** is hereby attached and marked as Exhibit “A”.

Being dissatisfied with the Ruling of Honourable Justice Abubakar Idris Kutigi above the Claimant/Respondent filed an Appeal with Appeal No: **CA/A/984/2019** which is pending before the Court of Appeal.

It was also averred that the 3<sup>rd</sup> Defendant/Applicant herein applied for an order of mandamus to compel the 2<sup>nd</sup> Defendant/Respondent herein to release the already signed Certificate of Occupancy to the 3<sup>rd</sup> Defendant/Applicant in view of the fact that a Certificate of Occupancy had already been granted in the name of the 3<sup>rd</sup> defendant/Applicant and same was granted by Honorable Justice Valentine B. Ashi of the High Court of the Federal Capital territory on the 7<sup>th</sup> of October, 2016 in Suit No: **FCT/HC/M/8796/2016**. A copy of the Judgment Order of Mandamus is hereby attached and marked as Exhibit “B”.

Vide a Motion on Notice with Motion No: **M/553/2016** dated the 9<sup>th</sup> day of November 2016, the Claimant/Respondent applied to set aside the said order of Mandamus and the said Motion on Notice with Motion No: **M/553/2016** was struck out by Hon. Justice Valentine B. Ashi in his ruling dated the 30<sup>th</sup> of March 2017. Being dissatisfied with the decision of Hon. Justice Valentine B. Ashi, the 1<sup>st</sup> Claimant/Respondent filed an appeal with Appeal No: **CA/A/349/2018** against the Judgment Order of Mandamus and said appeal is still pending before the Court of Appeal. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents have already fully obeyed the Order of mandamus made against them by the Court.

That he knows that this Honourable Court lacks the jurisdiction to entertain this matter as there are two (2) pending appeals before the Appellate Court on this subject matter. Copies of the Notice of Appeal and their respective applications to the Court of Appeal for Certified True Copies of the said processes are hereby attached and marked as Exhibits C1, C2, C3, D, E1 and E2 respectively.

It was finally averred that this current suit is akin to inviting the High Court of the Federal Capital Territory to sit on appeal over its own

judgment and it is in the interest of justice for this objection to be upheld and this action dismissed accordingly.

In response to the 3<sup>rd</sup> Defendant's Notice of Preliminary Objection, Claimants filed a Counter Affidavit wherein it was averred as follows.

That in a specific response to paragraph 4, I, ii, iii and iv of the affidavit of **EBUNOLUWA CHIGOZIE YOLOYE** Esq, the Claimants/ Respondents in Suit No: **CV/2044/2016** and the Motion with Motion No: **M/8637/2016** for Interlocutory Injunction was first in time before the Applicant's motion for Order of Mandamus was filed and obtained before the Court by the 3<sup>rd</sup> Respondent the Writ of Summons dated 23<sup>rd</sup> June 2016 and Motion for Interlocutory Injunction are hereby attached and marked as Exhibit A & A1 respectively.

That the Claimants/Respondents suit and Motion described above were pending before this Honourable Court in Suit No: **FCT/HC/CV/8796/2016** before the Order of Mandamus dated 7<sup>th</sup> October, 2016 was granted but the Court declined jurisdiction for inexplicable reason which warranted the Claimants to file the Notice of Appeal challenging the refusal to set aside the Order of Mandamus and the Court's Ruling dated the 16<sup>th</sup> day of April, 2017. The Notice of Appeal challenging the Ruling dated 16<sup>th</sup> April, 2017 are hereby attached and marked as Exhibit B1 & B2 respectively.

In contradiction to paragraph 4v of the said affidavit, it was averred, that the 3<sup>rd</sup> Respondent's application which obtained the said order of Mandamus was totally built on falsehood, misrepresentation of facts without the Claimants Respondent being made a party and given fair hearing before the said application was granted. And that as a matter of the 3<sup>rd</sup> Respondent at all material time knew that the Claimants/Respondents had interest in the said subject matter having paid for the Certificate of Occupancy fees which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents issues receipt thereof. And that the reliefs sought in Suit No: **FCT/HC/CV/8796/2016** before the Court was to compel the 1<sup>st</sup> and



2<sup>nd</sup> Defendants to issue the Certificate of Occupancy to the Claimants having paid the requisite fee for the Certificate of Occupancy.

That contrary to paragraph 4vii of the said affidavit, the Notice of Appeal filed against the Ruling of Honourable Justice Abubakar Kutigi before the Court of Appeal is predicated upon the dismissal of the Plaintiffs case. And in specific response to paragraph 4ix of the affidavit of Ebunoluwa Chigozie Yoloje, Esq, the 3<sup>rd</sup> Defendant stylishly misrepresented facts and refused to put the Claimants/Respondents on notice before obtaining the Order of Mandamus.

It was also stated that the 3<sup>rd</sup> Defendant at all material times knew that the Claimants/Respondents paid the fees for the Certificate of Occupancy which facts was not disclosed to the Court. And that all the original receipt of payment for the Certificate of Occupancy with respect to the plot in dispute is with the CEO of the second Claimant MR EBERE ENYI and contrary to paragraph of the said affidavit, the Order of Mandamus was obtained by the 3<sup>rd</sup> Defendant who concealed the true facts the circumstances surrounding the Plot in dispute from the Court.

And that the order was obtained upon misrepresentation of facts presented to the Court which prompted the Claimants/Respondents to apply to the Court to set it aside.

And that as a matter of fact, the Court refused the Claimants/Respondents application to set aside the Order of Mandamus which prompted the Claimants/Respondents to challenge the said Ruling of the Court. And in specific response paragraph 4xii of the said affidavit the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents notwithstanding the pending of the various appeals still went ahead to release the Certificate of Occupancy paid by the Claimants/Respondents to 3<sup>rd</sup> Defendant/Applicant.

That the present suit is predicated upon 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Defendants letter of 6<sup>th</sup> February, 2020 but served on 23/6/2020 which is to the effect that they will comply with the Order of Mandamus granted by the Court in Suit No: **FCT/HC/CV/M/8796** in respect of the dispute. A copy of the letter dated 6<sup>th</sup> February, 2020 is hereby attached and marked as Exhibit C and that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents notwithstanding the pending appeals and the doctrine of LIS PENDENSE released the Certificate of Occupancy to the 3<sup>rd</sup> Respondents.

It was also averred that the Claimants/Respondents at different interval wrote to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent through its Solicitors Integrity Chambers vide the letter dated 10<sup>th</sup> of April, 2017 letter dated 10/11/2016. AU MUSTAPHA & CO dated 29<sup>th</sup> June, 2020 and the letter dated 3<sup>rd</sup> December, 2019 but still went ahead to release the Certificate of Occupancy. The letter dated 10<sup>th</sup> April 2017, the letter 29/06/2021 and the letter dated 3<sup>rd</sup> December are hereby attached and marked as Exhibit D1-D4 respectively and that the current suit is completely different from the previous action. And what the Claimant is seeking this Court to set aside is the purported cancellation of the Right of Occupancy and cancellation of the registration of the power of attorney.

It was finally averred that contrary to paragraph 5 of the said affidavit the court is vested with the jurisdiction to entertain this matter having regards to the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and also contrary to paragraphs 6 and 7 of the said affidavit the 3<sup>rd</sup> Applicant's Notice of Preliminary Objection is baseless, frivolous and vexatious and same should be dismissed with heavy cost.

And that it will be in the interest of justice to refuse the application and hear the matter on the merit.

Before I look critically in the facts in both affidavit it is important to consider what the Claimants/Respondents relief are in this action and have a measure of what it would amount to if the Claimant succeeds.

The claims of the Claimant/Respondent as endorsed on the Writ are as follows:-

- (1) A Declaration that the purported cancellation of the Right of Occupancy **MISC 88990** in respect of Plot 405 within Cadastral Zone B06 Mabushi Abuja, dated 10/5/2007 is null and void.
- (2) A Declaration that the purported cancellation of the Registration of Power of Attorney in favour of the 2<sup>nd</sup> Claimant hitherto executed or registered as FC 122 at page 122 in Vol.65 PA dated 13<sup>th</sup> December 2010 is null and void.
- (3) An Order of Court directing the Defendants to restore the said Right of Occupancy No. MISC 88990 dated 10<sup>th</sup> May, 2007 in respect of Plot 405 within Cadastral Zone B06 Mabushi, District, Abuja forthwith.
- (4) An Order of Court directing the Defendants to restore the registration of the power of Attorney hitherto executed or registered in the Land registry as FC 122 at page 122 in Vol. 65 PA dated 13<sup>th</sup> December 2010.
- (5) General damage of the sum of ₦50,000,000.00.

It is the contention of the Objector that reliefs in this suit will amount to a reversal of the Judgment Order of Mandamus delivered by Hon. Justice Valentine B. Ashi of the FCT High Court on 7<sup>th</sup> of October 2016. In Suit No: **FCT/HC/M/8796/2016** in favour of the 3<sup>rd</sup>

Defendant/Applicant over Plot 405 Zone B06 Mabushi District Abuja  
the said judgment order is as reproduced thus:-

“Judgment Order”

By virtue of a Motion on Notice filed in this Court on the 1<sup>st</sup> of September, 2016, praying for determination of the following:-

- (1) An Order of Mandamus against the Hon. Minister of FCT compelling him to release the already signed Right of Occupancy and the Certificate of Occupancy in respect to Plot 405 Zone B06, Mabushi, Abuja to the Applicant.

And taking into account the grounds upon which the reliefs are sought namely:-

- “(1) The Applicant is the rightful person in law allocated Plot 405, Zone B06, Mabushi District, Abuja is a fact which has been confirmed by various investigation power is set up by the 2<sup>nd</sup> Respondent prior to execution of the Certificate of Occupancy.
- (2) That the 1<sup>st</sup> Respondent after series of the investigative reports and in the exercise of his power under the Land Use Act and Section 3 of the FCT Act and satisfied himself that all conditions thereto have been met and had signed the Certificate of Occupancy in the name and in favour of the Applicant.
- (3) That the fact mentioned in (2) above has equally been confirmed by a Court of competent jurisdiction when the High Court of the FCT

upheld the Preliminary Objection raised by the Applicant herein in Suit No: **CV/2959/2012** wherein the Applicant and the Respondent herein was made Defendants in an action instituted.

- (4) That the Investigative Committee called the “Ministerial Committee on Falsification/Forgery of Land Titles within FCT” which had not and concluded in March 2011 that the Applicant is the rightful owner of Plot 405, Zone B06, Mabushi District, Abuja with File No. **MSC88990**.
- (5) That the Applicant has paid all the official fees (more than ~~₦~~40,000,000.00) to the Respondents incidental to foregoing and dispatch of the Certificate of Occupancy of the land in issue.
- (6) That the Respondents have no reasonable ground whatsoever recognized in law for the withholding of the said Certificate of Occupancy.

It is hereby ordered as follows:

- (1) The hon. Minister of the FCT is hereby ordered to forthwith release to the Applicant a Certificate of Occupancy already signed in its name and in its favour concerning Plot No. 405, Zone B06, Mabushi District, Abuja.

Given under the hand of the Honourable Judge and the seal of this Honourable Court this 7<sup>th</sup> day of October 2016.”

It is clear to me that from a community reading of all the averments, and Order of Mandamus that the Judgment Order of Mandamus of this Court

in Suit No. **FCT/HC/CV/M/8796/2016** in respect of Plot No.405 B06, Mabushi District, Abuja is the basis for the alleged infractions this suit by the reliefs sought, aims to address.

By Exhibit C2 (amended Notice of Appeal) the Claimant/Respondent has already taken steps to obtain Order of the Court of Appeal, selling aside the said Judgment Order.

I have to agree with the Learned Objectors Counsel that the cancellation of the Right of Occupancy over the property in question dated 10<sup>th</sup> May 2007 and the cancellation of the Power of Attorney in respect of the property dated 13<sup>th</sup> December 2010 were actions taken pursuant to and/or in compliance with the Judgment Order of Mandamus in Suit No. **FCT/HC/CV/M/8796/2016** in favour of the 3<sup>rd</sup> Defendant.

It is clear to me and I dare say to parties that there is an existing decision of this Court compelling the Minister to release the Certificate of Occupancy over the property to the 3<sup>rd</sup> Defendant/Objector. This fact has not been disputed. The decision is binding on all until it is set aside by a Superior Court, not this Court. It is on record that the Claimants and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant have sought to set aside the decision without success.

All these, issues are in no doubt that the subject matter of this suit is already before the Court of Appeal and by virtue of this, this Court no longer has jurisdiction to adjudicate on the validity of the action of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant on the cancellation of the Right of Occupancy and power of Attorney over the property in question in the light of the existing Order of Mandamus against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

It is a matter that has been decided by a Court of coordinate jurisdiction. And the law is trite that a Court cannot set aside the decision of a Court of coordinate jurisdiction. See: - **ADESIGBIM & ORS V. MILITARY GOVERNOR OF LAGOS STATE & ANOR (2017) LPELR-41006 (SC)**.

In view of the forgoing findings I hold that this action constitute an abuse of Court process as defined in ALLANAH's case supra and must not be allowed to proceed.

The application has considerable merit and it is hereby granted.

Accordingly, Suit No: **CV/2323/2020** is hereby dismissed for being an abuse of the process of Court.

This is the Ruling of the Court.

**SIGNED  
HON. JUDGE  
10/11/2021.**

O. B. A. Olufon – We are grateful.  
Igeh - We are grateful.

**SIGNED  
HON. JUDGE  
10/11/2021.**

**LEGAL REPRESENTATION**

- (1) A. O. Igeh Esq, with Onuh Daniel Esq and H. E. Maikano, Esq for the Claimant.
- (2) O. B. A. Olufon, Esq with S. C. Andrew, Diете-Koki, Esq for the 3<sup>rd</sup> Defendant.
- (3) No legal Representation for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

