

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 11TH DAY OF MAY, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2540/2021

MOTION NO. M/6730/2021

BETWEEN

1. EQUINOX REALTORS LIMITED
2. EQUINOX OIL & GAS LIMITED
3. ALHAJI MUHAMMED ASIBELUA
4. ALIYU MACCIDO
5. EQUINOX EXPLORATION LIMITED



**CLAIMANTS/
RESPONDENTS**

AND

1. GUARANTY TRUST BANK LIMITED
2. INSPECTOR GENERAL OF POLICE
3. ECONOMIC AND FINANCIAL CRIMES
COMMISSION



DEFENDANT/APPLICANT
**DEFENDANTS/
RESPONDENTS**

RULING

The claimants commenced this suit by writ of summons on 30/9/2021 seeking the 13 reliefs set out in the statement of claim filed along with the writ. On 12/10/2021, the 1st defendant/applicant filed a notice of preliminary objection with *Motion No. M/6730/2021* seeking: *[i] an order to dismiss this suit for want of*

*jurisdiction to proceed against the 1st defendant/applicant; and [ii] any other order[s] that the Court may deem fit to make in the circumstances of this case.*The grounds on which the preliminary objection is brought are:

1. There is no cause of action against the 1st defendant/applicant.
2. The intendment of the claimants/respondents in filing this suit has already been adjudicated in *Suit Number: FHC/ABJ/CS/443/2019 BETWEEN EQUINOX REALTORS LIMITED & 3 ORS. AND GUARANTY TRUST BANK PLC. & ANOR.* in Court 7 of the Federal High Court, Abuja Judicial Division.
3. The claimants/applicants *[sic]* filed this suit because of the invitation of the 3rd claimant/respondent by the 3rd defendant/respondent in respect of the investigation being conducted by the latter.
4. The claimants/respondents are using the process of the law to intimidate and harass the 1st defendant/applicant.
5. The Honourable Court lacks jurisdiction to entertain this suit.
6. The present suit before the Honourable Court constitutes an abuse of Court Process.

OfomaChukwuemeli, a litigation secretary in the law firm of Oli and partners, filed a 4-paragraph affidavit in support of the application; attached therewith are 4 exhibits. C.P. Oli Esq. filed a written address. In opposition, Samuel Oladipo, the Executive Head, Corporate Services of the 1st, 2nd&

5th claimants/respondents filed a 38-paragraph counter affidavit on 28/1/2022 with the written address of Dr. Michael N. Ngidi. On 3/2/2022, Mr. Chukwuemeli filed a 4-paragraph further affidavit along with the reply on points of law of C. P. Oli Esq.

At the hearing of the application on 17/2/2022, Charles Aniebonam Esq. adopted the 1st defendant/applicant's processes while Dr. Michael N. Ngidi adopted the claimants/respondents' processes.

In his affidavit, Ofoma Chukwuemeli stated that:

1. The 1st defendant granted credit facilities to the 1st-4th claimants. At the instance of the claimants, the 1st defendant also issued a bank guarantee to the tune of 7,500,000 US Dollars in favour of BG Exploration and Production Ltd. [BG Exploration] on behalf of the 5th claimant.
2. The 7,500,000 US Dollars became due when judgment was delivered by *Hon. Justice L. B. Lawal-Akapo* of the High Court of Lagos State on 5/7/2018 [Exhibit 1]. BG Exploration wrote to 1st defendant demanding payment of 7,500,000 US Dollars; the letter dated 5/7/2018 is Exhibit 2.
3. The claimants are indebted to the 1st defendant to the tune of 7,500,000 US Dollars different from the said credit facilities, which was the sum of N1,718,414,107.54.
4. The 1st defendant agreed to accept the sum of N900,000,000 from 1st-4th claimants as full and final settlement of the said credit facilities. The

Addendum to the Terms of Settlement between the claimants and the 1st defendant dated 13/4/2016 is Exhibit 3. By Exhibit 3, the N900,000,000 excluded the liability of 7,500,000 US Dollars arising from the bank guarantee issued by the 1st defendant in favour of BG Exploration.

5. In Exhibit 3, it was agreed that claimants' property at 3 Colorado Close, Ministers Hill, Maitama, Abuja would be sold and a portion of the proceeds applied to liquidate their indebtedness of N900,000,000 to the 1st defendant.
6. The claimants later appealed to the 1st defendant for the release of the original Certificate of Occupancy of the said property which was used to secure one of the credit facilities in the sum of 5,500,000 US Dollars.
7. The claimants stated that they required the said Certificate of Occupancy to process the re-issuance of another Certificate of Occupancy from AGIS to cover a larger grant of property comprising the original plot and the adjoining plot.
8. The 1st defendant released the Certificate of Occupancy to the claimants upon a mutual understanding that the document will be returned to the 1st defendant immediately after the re-issuance.
9. The 3rd& 4th claimants colluded and fraudulently charged the said Certificate of Occupancy in favour of Aso Savings and Loans Plc. which enabled them to secure another facility from Aso Savings and Loans

Plc. This led the 1st defendant to petition them to the Police [2nd defendant].

10. The 1st-4th claimants filed an action at the Federal High Court, Abuja with *Suit No. FHC/ABJ/CS/443/2019: Equinox Realtors Ltd. & Ors. v. Guaranty Trust Bank Plc. & Anor.* for the enforcement of their fundamental rights based on their invitation by the Police.

11. On 4/5/2020, the Federal High Court held that the 1st defendant did not violate the fundamental rights of the 1st-4th claimants and dismissed the action; the Judgment of *Hon. Justice Ijeoma L. Ojukwu* dated 4/5/2020 is Exhibit 4.

12. The claimants have refused to honour their repayment obligation in respect of the bank guarantee issued by the 1st defendant in favour of BG Exploration at their instance and request.

13. The 1st defendant further petitioned the 3rd defendant [EFCC] on the aforesaid fraudulent conduct of the claimants. Immediately after the invitation by the 3rd defendant, the claimants filed this action.

14. The claimants are using the process of the court and the law to harass and intimidate the 1st defendant into agreeing to forego their aforesaid indebtedness to the 1st defendant.

15. The intendment of the claimants is to use this suit to stop the investigation activities being carried out by the 2nd & 3rd defendants.

What the claimants intend to achieve with this suit is already *res judicata*.

In the counter affidavit, Samuel Oladipo stated as follows:

1. The loan facilities were granted to the claimants and the same have been fully and finally settled. The bank guarantee for 7,500,000 US Dollars was issued to the 5th defendant as a going concern with legal capacity to sue and be sued and not to the claimants as a loan facility.
2. The litigation between 5th claimant and BG Exploration is still subsisting via Supreme Court *Appeal No. SC/CV/985/2020*. The claimants are not indebted to the tune of 7,500,000 US Dollars by way of loan facility granted to the 5th defendant which does not maintain an account with the 1st defendant.
3. The issue of the claimants' alleged indebtedness to the tune of 7,500,000 US Dollars is not the business of the Police or EFCC. The 1st defendant is at liberty to file a civil suit against the claimants since 2009 when the bank guarantee was issued on behalf of the 5th claimant.
4. After the agreed sum of N900,000,000 from the proceeds of sale of the mortgaged property at 3 Colorado Close, Ministers Hill, Maitama, Abuja, there was nothing like approaching 1st defendant to retrieve Certificate of Occupancy of the property that is in the custody of a third party which is *abona fide* purchaser for value.

5. The suit at the Federal High Court for enforcement of fundamental rights was between different parties and the proceedings had no bearing on the present case with different principal reliefs.
6. The 1st defendant's allegation that the claimants have refused to honour their repayment obligation regarding the bank guarantee is false and the same would be determined by the Court in consideration of claimants' reliefs 6 & 7.
7. The alleged fraudulent conduct by the claimants is false. By paragraph 3[u] of its affidavit, the 1st defendant has admitted that it breached paragraph 7 on page 5 of the agreement of the parties dated 13/4/2016 after receiving the agreed sum of N900,000,000.
8. Parties made an irrevocable undertaking not to take further actions against themselves and their privies; but the 1st defendant breached this irrevocable undertaking. This action was filed to enforce a breach of the said agreement dated 13/4/2016.

In the further affidavit of the 1st defendant, ChukwuemelieOfoma stated that:

1. The claimants did not place anything before the Court in support of their depositions in paragraphs 11 & 12 of the counter affidavit [i.e. that the litigation between the 5th claimant and BG Exploration is still subsisting via Supreme Court *Appeal No. SC/CV/985/2020*].

2. From the paragraphs of the counter affidavit, it is clear that there is no cause of action against the 1st defendant in this suit which merely reported what it perceived as a fraudulent conduct of the claimants to the EFCC.

Issues for Determination:

Learned counsel for 1st defendant/applicant formulated these two issues for determination:

1. Whether there is a cause of action against the 1st defendant/applicant.
2. Whether the present suit before this Court is an abuse of court process considering that the intendment of the claimants/respondents in filing this suit has already been adjudicated upon.

On the other hand, learned counsel for the claimants/respondents also posed two issues for determination. These are:

1. Whether this Honourable Court has the jurisdiction to determine this suit commenced by writ of summons against the 1st defendant/applicant for breach of Agreement dated 13th April 2016.
2. Whether the present suit before this Honourable Court is an abuse of the court process regarding the principal reliefs.

From the grounds of the preliminary objection and the submissions of both learned counsel, the Court is of the view that there are two issues for resolution in this application. These are:

1. Whether the claimants' suit has disclosed a reasonable cause of action against the 1st defendant.
2. Whether this suit as presently constituted is an abuse of court process.

ISSUE 1

Whether the claimants' suit has disclosed a reasonable cause of action against the 1st defendant.

Submissions of Learned Counsel for the 1st Defendant/Applicant:

C. P. Oli Esq. referred to **JVC P.P. [UK] Ltd. v. Famuyide [2011] 4 NWLR [Pt. 1238] 572, Rinco Construction Co. Ltd. v. Veepee Industries Ltd. [2005] 5 NWLR [Pt. 929] 85** and other cases for the meaning of a cause of action or a reasonable cause of action. He posited that a cause of action is the wrongful act of the defendant for which the claimant seeks relief in court. He submitted that there is no cause of action against the 1st defendant because the claimants have not established any wrongdoing on the part of the 1st defendant that will give rise to a legal remedy against it. Counsel urged the Court *“to read between the lines with regards to the Statement of Claim. All the paragraphs of the said Statement of Claim are non sequitur, incongruent and did not disclose any infraction of the 1st Defendant/Applicant against them.”*

Learned counsel for the 1st defendant further submitted that this action was intended to prevent and delay the investigation activities of the 2nd& 3rd defendants. It is clear that the claimants want to use this suit to delay or evade their repayment obligations to 1st defendant. He cited the case of **Dr.Cookey v. Evangeline Fombo& Anor. [2005] 6 SCM 79** to support the principle that where a suit discloses no cause of action, it is to be dismissed by the court. Mr. C. P. Oli urged the Court to dismiss the suit since no cause of action has been disclosed against the 1st defendant.

In the 1st defendant's reply on points of law, C. P. Oli Esq. emphasized that a cause of action consists of the wrongful act of the defendant which gives the plaintiff his cause of action and the consequent damage. It was submitted that there was no wrong done by the 1st defendant to the claimants; and assuming there was a wrongdoing by the 1st defendant, there was no damage to the claimants that arose from the wrongdoing of the 1st defendant.

Submissions of Learned Counsel for the Claimants/Respondents:

Dr. Michael N. Ngidi referred to **Rinco Construction Co. Ltd. v. Veepee Industries Ltd. [supra]** for the meaning of cause of action. He posited that in determining the claimants' cause of action, the Court is to have recourse to the originating processes and the reliefs. From the statement of claim, the 1st defendant acknowledged receipt of N900,000,000 as full and final settlement of claimants' indebtedness to it. By the Agreement dated 13/4/2016, the

claimants and the 1st defendant made an irrevocable undertaking that no further action should be taken against each other regarding the claimants' said indebtedness that was fully and finally settled. He referred to paragraph 4 at page 4 and paragraph 7 at page 5 of the Settlement Agreement dated 13/4/2016.

Learned counsel for the claimants argued that the 1st defendant, in bad faith and contrary to the Agreement, took fresh actions on 6/9/2021 to instigate the 3rd defendant against the claimants. Therefore, the claimants are invoking the jurisdiction of the Court to determine *inter alia* whether the 1st defendant breached the said Agreement dated 13/4/2016. He concluded that the claimants have a reasonable cause of action against the 1st defendant.

Decision of the Court:

In **Chevron Nig. Ltd. v. Lonestar Drilling Nig. Ltd. [2007] 16 NWLR [Pt. 1059] 168**, a cause of action was defined as the entire set of circumstances giving rise to an enforceable claim. It is in effect the fact [or combination of facts] which gives rise to a right to sue and it consists of two elements namely: [i] the wrongful act of the defendant which gives the plaintiff his cause of complaint; and [ii] the consequent damage. In determining whether a suit has disclosed a reasonable cause of action, the Court needs only to examine the averments in the statement of claim. See **Otubu v. Omotayo [1995] 6 NWLR [Pt. 400] 247** and **Ibe & Anor. v. Bonum [Nig.] Ltd. [2019] LPELR-46452 [CA]**.

In the statement of claim, the claimants referred to a loan facility granted by the 1st defendant to the 1st-4th claimants. The said loan facility was restructured to an agreed sum of N900,000,000 which was paid through a Settlement Agreement dated 13/4/2016. The 1st defendant acknowledged the said sum as full and final settlement of the 1st-4th claimants' indebtedness. The payment of N900,000,000 was made through the sale of the 3rd claimant's mortgaged property at 3 Colorado Crescent, Ministers Hill, Maitama, Abuja used to secure the restructured loan facility. At paragraph 7 at page 5 of the said Settlement Agreement, the parties made an irrevocable undertaking that they shall not take any action[s] against each other regarding the restructured loan facility which was fully paid.

It was further averred that the 1st defendant's exposure to the 5th claimant in the sum of 7,500,000 US Dollars under a bank guarantee issued by the 1st defendant in favour of BG Exploration is not a loan facility indebtedness according to paragraph 4 at page 4 of the said Agreement. The 1st defendant issued the bank guarantee on behalf of the 5th claimant when the 5th claimant does not have any bank account with the 1st defendant and in the absence of a corresponding funded bank account or cashback.

In paragraphs 10, 15, 16, 19 & 20 of the statement of claim, the claimants averred that in 2019, the 1st defendant wrote petitions to the Police against them contrary to paragraph 7 at page 5 of the said Agreement. In September 2021, 1st defendant also wrote a petition to the 3rd defendant against the

claimants. As a result of the petition, 3rd& 4th claimants were invited/arrested, detained, tried and discharged.

In paragraph 22 thereof, the claimants averred that all actions taken by the 1st defendant after the execution of the Agreement dated 13/4/2016 is a violation of the Agreement. In paragraph 25, it was averred that as a result of the said actions taken by the 1st defendant, the claimants have lost financial resources in response to same including loss of goodwill and business opportunities.

The 13 reliefs sought by the claimants include:

- i. A declaration that all actions taken by the 1st defendant to instigate the 2nd& 3rd defendants against 3rd& 4th claimants contrary to paragraph 7 on page 5 of the Agreement dated 13/4/2016 is a breach of the said Agreement.
- ii. A declaration that the claimants are not indebted to the 1st defendant regarding loan facility because the 1st defendant has acknowledged the receipt of the sum of N900,000,000 as full and final settlement of the claimants' indebtedness.
- iii. A declaration that it is unlawful/incongruous/bad banking practice for the 1st defendant to issue a bank guarantee in the sum of 7,500,000 US Dollars at the instance of the 5th claimant who does not have any bank account with it and in the absence of a corresponding funded bank account or cashback.

- iv. Orders for perpetual injunction.
- v. Orders for payment of damages.

From the averments in the statement of claim and the reliefs, the Court is of the considered opinion that the claimants have stated facts to show the alleged wrongful act of the 1st defendant which gave them their cause of complaint and the consequent damage they suffered. In other words, the claimants have pleaded facts which gave rise to a right to sue.

As rightly submitted by Dr. Michael N. Ngidi, the claimants brought this action for the Court to determine whether the actions of the 1st defendant complained of i.e. the petitions to the 2nd& 3rd defendants against the claimants constitute a breach or violation of the Settlement Agreement dated 13/4/2016 particularly paragraph 7 at page 5. The law is that a reasonable cause of action exists if the suit raises any issue fit for judicial determination. It does not matter that the case is weak or is not likely to succeed. See **Attorney-General of the Federation v. Attorney-General of Abia State &Ors. [2001] 11 NWLR [Pt. 725] 689.**

The decision of the Court on Issue 1 is that the claimants have disclosed a reasonable cause of action against the 1st defendant. Issue 1 is hereby resolved against the 1st defendant.

ISSUE 2

Whether this suit as presently constituted is an abuse of court process.

Submissions of Learned Counsel for the 1st Defendant/Applicant:

C. P. Oli Esq. stated that it is trite law that the scope of abuse of court process is wide and every case should be examined on its merit to determine whether there is an abuse of court process. He referred to the case of **Waziri v. Gumel [2012] WRN 1**. It was submitted that the present suit is meant to interfere with the administration of justice and to intimidate the 1st defendant as the subject matter has been adjudicated in the Federal High Court. Thus, it falls within the ambit of the factors that constitute abuse of court process. Counsel referred to **Tailor v. Balogun [2013] 10 WRN 137** where it was held that the abuse consists in the intention, purpose and aim of the person exercising the right [of issue of judicial process] to harass, intimidate and annoy the adversary and interfere with the administration of justice.

Mr. C. P. Oli further submitted that it is clear from the affidavit in support of the preliminary objection that the intention of the claimants in filing this suit is to delay the investigation activities of the 2nd& 3rd defendants. The Federal High Court in *Suit No. FHC/ABJ/CS/443/2019* had held that there is nothing precluding the 1st defendant from reporting a criminal conduct to any law enforcement agency and that the agency has a duty to investigate the report. Therefore, the claimants brought this suit within the ambit of *res judicata*.

Learned counsel for the 1st defendant/objector referred to the case of Ntuks v. NPA [2007] LPELR-2076 [SC] to support the principle that where a court of competent jurisdiction has settled, by a final decision, the matters in dispute between the parties, none of the parties or their privies may re-litigate the issue again by bringing a fresh action. The matter is said to be *res judicata*. He urged the Court to hold that this suit is an abuse of court process.

Submissions of Learned Counsel for the Claimants/Respondents:

The standpoint of Dr. Michael N. Ngidi is that this suit is not an abuse of court process because there is no other pending suit between the parties herein where the claimants are seeking a determination for breach or violation of the said Agreement dated 13/4/2016 and the subject matter of this suit has not been adjudicated upon by any court. He stated that *Suit No. FHC/ABJ/CS/443/2019* was an application for the enforcement of fundamental rights as guaranteed by the 1999 Constitution [as amended].

The claimants' counsel also submitted that the 1st defendant's arguments on plea of *res judicata* and abuse of court process are not tenable because: [i] the parties in the present suit are different from the parties in the suit at the Federal High Court; [ii] the reliefs in the present suit are different from the reliefs in the suit at the Federal High Court; and [iii] the actions taken by 1st defendant in breach of the Agreement dated 13/4/2016 which necessitated the present suit occurred on 6/9/2021 after the determination of the suit at the Federal High Court on 4/5/2020. Dr. Ngidi referred to lines 20-23 at page 24

and lines 4-8 at page 26 of the Judgment of the Federal High Court [Coram: *Hon. Justice Ijeoma L. Ojukwu*] to support his submission that this suit is not *res judicata* as the issues in this case were not decided by the Federal High Court.

Decision of the Court:

Abuse of court process is a term generally applied to a proceeding that is wanting in *bonafides* and is frivolous, vexatious or oppressive. The employment of judicial process is generally regarded as an abuse when a party improperly uses the issue of judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. Abuse of court process may arise in various instances. It may arise in instituting multiplicity of actions on the same subject matter against the same opponent on the same issues. See the cases of **Arubo v. Aiyeleru[1993] 3 NWLR [Pt. 280] 126** and **C.B.N. v. Ahmed [2001] 11 NWLR [Pt. 724] 369.**

Now, the first ground for the submission that this suit constitutes an abuse of court process is that the intention of the claimants in filing this suit is to delay the investigation activities of the 2nd& 3rd defendants. With due respect, I do not agree with the submission of C. P. Oli Esq. As I did say, the main issue for the Court to determine in this suit is whether the actions of the 1st defendant complained of i.e. the petitions to the 2nd& 3rd defendants against the claimants constitute a breach or violation of the Settlement Agreement dated 13/4/2016 particularly paragraph 7 at page 5.

The second ground for the submission that this suit is an abuse of court process is that this suit is *res judicata* in view of the decision of the Federal High Court in *Suit No. FHC/ABJ/CS/443/2019*. I agree with Dr. Michael N. Ngidi that the parties and the reliefs in that suit are not the same as the parties and reliefs in the present suit. Also, the subject matter of that suit which was the enforcement of the fundamental rights of the applicants therein is not the same as the subject matter in the instant suit, which is whether the 1st defendant breached the said Settlement Agreement dated 13/4/2016 particularly paragraph 7 at page 5 when it petitioned the claimants to the 2nd & 3rd defendants.

It is clear from the Judgment in *Suit No. FHC/ABJ/CS/443/2019* that the Federal High Court did not determine the issues in the present case. At page 24 of the Judgment, My Lord, *Hon. Justice Ijeoma L. Ojukwu* held:

“... Of much moment is the fact that this court has a duty to restrict itself to the fundamental right issues raised in this case and not the merit or otherwise of the loan transaction between the parties. The attempt by the parties especially the applicants to lure the court into pronouncing on the loan transaction is resisted.”

At page 26, His Lordship continued:

“It appears from the claims and facts presented by both parties that they have not yet resolved the matters encapsulated in their earlier transactions, those

issues are extraneous in this case and should be presented before a court of competent jurisdiction. ...”

In **Kambaza v. Hakimi & Anor. [2019] LPELR-48139 [CA]**, it was restated that for the principle of *res judicata* to apply in any proceedings, the party relying on the plea must establish that:

- a) there is a judicial decision and the court that delivered the decision had jurisdiction over the parties and the subject matter;*
- b) the claim or issue in dispute in the proceedings are the same;*
- c) the decision upon which it is based is valid, subsisting, final and on the merits;*
- d) the decision must determine the same question as that raised in the later litigation; and*
- e) the parties to the later litigation were either parties to the earlier litigation or their privies, or the earlier decision was in rem.*

It was also held that failure to establish any of the listed conditions in the new suit renders the plea of *res judicata* inapplicable. See also **Bassey v. Ekanem [2001] 1 NWLR [Pt. 694] 360.**

Clearly, the above factors for a successful plea of *res judicata* are not present in this case; therefore, the plea of *res judicata* is not applicable. From all that I have said, the Court resolves Issue 2 against the 1st defendant and holds that this suit is not an abuse of court process and is not *res judicata*.

Conclusion:

The preliminary objection with *Motion No. M/6730/2021* filed on 12/10/2021 lacks merit. It is hereby dismissed. I award cost of N50,000.00 to the claimants/ respondents payable by the 1st defendant/applicant.

HON. JUSTICE S. C. ORJI
[JUDGE]

Appearance of Counsel:

1. John Iyafokhai with E. I. ImoukhuedeEsq. for the claimants; holding the brief of Dr. Michael N. Ngidi.
2. Reginald I. NwaliEsq. for the 1st defendant.