

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

ON WEDNESDAY, 8TH DAY OF JUNE, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/2406/2020

MOTION NO. M/2727/2021

BETWEEN

FRIDAY ONOJA

CLAIMANT

AND

1. E. ADEBOWALE INTERNATIONAL LTD.

2. BOSUN ADEBOWALE

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}

DEFENDANTS

RULING

The claimant instituted this suit against the defendants on 14/8/2020 vide writ of summons. On 17/3/2021, the 1st defendant/applicant filed a preliminary objection praying for: *[i] an order of Court dismissing or striking out this suit; and [ii] costs.* The grounds of the application are:

- i. The matter is an abuse of court process.
- ii. The respondent filed a similar suit with same parties and subject matter at the National Industrial Court which he abandoned and it was struck out with cost.

- iii. He also filed a direct criminal complaint against the applicant on the same subject matter which has also been struck out.
- iv. The subject matter of this suit relates to labour law and therefore should be filed at the National Industrial Court.
- v. The suit does not disclose sufficient details and or particulars so as to confer jurisdiction on this Honourable Court to hear this matter.
- vi. The suit discloses no reasonable cause of action.

The 2nd defendant filed a 12-paragraph affidavit in support of the preliminary objection; attached therewith are Exhibits 1 & 2. IkehukwuOdanwuEsq. filed a written address. In opposition, the claimant/respondent filed a 17-paragraph counter affidavit on 25/6/2021 together with the written address of V. S. LabesaEsq. At the hearing of the application on 27/4/2022, the counsel for the parties adopted their respective processes.

In the affidavit in support of the preliminary objection, 2nd defendant/applicant stated as follows:

1. The respondent instituted a similar suit with the same parties and same subject matter on 3/3/2017 at the National Industrial Court. The applicant joined issues with the respondent and served him with all the necessary papers. The respondent abandoned the suit and it was struck out on 18/7/2018 with cost of N50,000; a copy of the Order is Exhibit 1.

2. The respondent also filed a direct criminal complaint against the applicant at Grade 1 Area Court, Karmo, Abuja on the same subject matter which was referred to Life Camp Police station for investigation.
3. The Nigeria Police investigated the matter and wrote back to the court on their findings. The Police exonerated the applicant; a copy of the Police Investigation Report is Exhibit 2.
4. The respondent who has boasted to the applicant that he will make him [2nd defendant] spend his money on lawyers is merely forum shopping and trying to extort money from the applicant.
5. The suit is intended to annoy and irritate the applicant and to waste the time of the Court.

In the counter affidavit, the claimant/respondent stated that:

1. He had a contract with the defendant sometime in 2013 and had issues of payment. He contacted a lawyer to pursue payment of the contract sum and the lawyer instituted an action at the National Industrial Court.
2. After further consultation with other people, he [the claimant] was advised that the matter is not an industrial dispute and was wrongly instituted at the National Industrial Court. He instructed his lawyer to withdraw the matter.
3. He did not know that the lawyer never withdrew the matter until his attention was drawn to that fact by the defendants' processes.

4. Not knowing what to do to enable him recover the contract sum, he felt he has been cheated. So, he proceeded to Karmo Area Court thinking he will get justice there; but the court referred him to Life Camp Police station for further investigation of the case.
5. The Police said he could not succeed in a case of cheating and advised that they cannot prosecute the matter.
6. After he filed the matter at Karmo Area Court and before the court wrote to the same Police station for investigation on 8/5/2017, the 2nd defendant went to Life Camp Police station on 7/5/2017 and reported that he [the claimant] stole his generator. The Police arrested, detained and charged him to Grade 1 Area Court Kado in *Case No. CR/130/2017*. He was further detained at Keffi Correctional Centre for 10 days.
7. He was granted bail by the Kado Area Court. As he has no money to hire a private lawyer to defend him at the Kado Grade 1 Area Court and also to pursue his legitimate claims, he went to Legal Aid Council for legal assistance. Legal Aid Council through one of their counsel, V. S. Labesa Esq., represented him in court and he was discharged.
8. While the case was pending at Kado Area Court, Legal Aid Council wrote to the defendants for the payment of the contract sum but there was no response.

9. He never boasted that the defendants will be made to spend their money and the suit is not aimed at irritating or intimidating the defendants.

From the grounds of the preliminary objection and the submissions of both learned counsel, I am of the view that there are three issues for determination, which are:

1. Whether this Court has jurisdiction to entertain the subject matter of this suit.
2. Whether this suit is an abuse of court process.
3. Whether this suit has disclosed a reasonable cause of action against the defendants.

ISSUE 1

Whether this Court has jurisdiction to entertain the subject matter of this suit.

The submission of learned counsel for the defendants is that the claims of the claimant bother on monies owed to him while he was allegedly in the employment of the defendants. Therefore, the proper court to file this suit is the National Industrial Court. He argued that this Court lacks jurisdiction to entertain this suit as presently constituted. It is the law that once a court lacks jurisdiction to entertain a matter, the proceedings are void no matter how well they were conducted. He referred to the cases of **Madukolu v.**

Nkemdilim [1962] 2 SCNLR 341 and Onyenucheya v. Military Admin., Imo State [1997] 1 NWLR [Pt. 482 429] in support.

On the other hand, the standpoint of learned counsel for the claimant is that this Court has jurisdiction to entertain this suit; this is because what is before the Court is purely the enforcement of a contract by conduct. The 2nd defendant in Kado Area Court admitted that the claimant painted his two gas tanks and performed other jobs for him. He argued that this matter is not an industrial dispute but *“a simple contract dispute not bordering on employer employee dispute.”* He referred to Onwudiwe v. F.R.N. [2006] All FWLR [Pt. 319] 774 to support the view that in the determination of the jurisdiction of a court to entertain a matter, the enabling law vesting jurisdiction has to be taken in the light of the relief sought; and where the relief sought comes within the jurisdiction of the court as adumbrated by the facts, the court must assume jurisdiction.

Now, it is trite law that in order to determine the competence or jurisdiction of a court to entertain a suit, the court can only examine the averments in the statement of claim where the suit is commenced by writ of summons as in the instant case. See Arowolo v. Olowookere [2011] 18 NWLR [Pt. 1278] 280 and Ibe & Anor. v. Bonum [Nig.] Ltd. [2019] LPELR-46452 [CA]. In other words, the claimant's case is usually the court's guide in determining whether it has jurisdiction to entertain the suit. See the case of Inakoju v. Adeleke [2007] 4 NWLR [Pt. 1025] 423.

It is therefore necessary to refer to the statement of claim filed on 14/8/2020 in order to determine whether the Court has jurisdiction to entertain this case.

Some of the claimant's averments in his statement of claim are:

1. He is a panel beater. The 2nd defendant is the owner of the 1st defendant. He was in an empty land around Life Camp doing his panel beating work. In 2013, the 2nd defendant informed him that he was the owner of the land which he [the claimant] was working on. The 2nd defendant asked him to take care of his plot at Femi Killa Street, Life Camp, Abuja.
2. Later, the 2nd defendant acquired a licence to construct the 1st defendant's gas plant. During the construction, he [the claimant] was the one that sourced for labourers like masons, iron benders, etc.
3. After the construction work, he was engaged to paint the two gas tanks, gas post, fence, compressor room and other places, which he did. He charged the 2nd defendant the sum of N1,500,000 for each of the gas tanks and N5,000,000 for the other parts of the premises.
4. When he demanded for the payment for his services including the painting, the 2nd defendant asked him to wait until he comes back from Germany as he was travelling.
5. In 2016, he lodged a complaint at the Police station for the non-payment of the contract sum. The 2nd defendant was invited and he went to the

Police with a friend [called Tunde Anitoso] who requested the Police to allow him mediate and settle the matter.

6. The matter was not settled. In March 2017, he engaged a lawyer who advised him to take the matter to the National Industrial Court, Abuja but he later realised that the matter was not an industrial dispute.
7. The matter at the National Industrial Court was withdrawn. In May 2017, he sued the 2nd defendant in Area Court Karmofo for criminal breach of trust in *Case No. CR/520/2017*. The 2nd defendant was served with the criminal summons on 8/5/2017. The court referred them to Life Camp Police station for investigation.
8. The 2nd defendant quickly lodged a complaint against him again for the alleged theft of his generator far back in 2014. He was arrested and arraigned at the Area Court Kado. He was detained in Keffi Prison for 10 days. The case was heard and judgment was given in his favour.
9. The report to Life Camp Police station and the trial were predicated on malice on the part of the 2nd defendant and it was a ploy to scare him [the claimant] from pursuing his entitlements.

The claims of the claimant are: [i] a declaration that the defendants are liable for breach of contract between them and the claimant; [ii] an order for the payment of the sum of N5,000,000.00 to the claimant for breach of contract; [iii] payment of N4,000,000.00 for malicious prosecution; and [iv] general damages of N3,000,000.00.

The argument of the defendants' counsel is that the National Industrial Court is the court that has jurisdiction to entertain the claimant's suit and not this Court. The jurisdiction of the National Industrial Court is spelt out in section 254C [1]-[5] of the Constitution of the Federal Republic of Nigeria 1999 [as amended]. I have carefully read these provisions and there is nothing therein to suggest that the claims of the claimant - which are predicated on breach of contract of payment for work done and for malicious prosecution - are within the jurisdiction of the National Industrial Court.

As rightly argued by the claimant's counsel, there was no employer-employee relationship between the defendants and claimant. In **Board of Management of FMC, Makurdi v. Kwembe [2015] LPELR-40486 [CA]**, the Court of Appeal held that the provisions of section 254C [1][a] of the 1999 Constitution [as amended] and section 7 [1][a][i] of the National Industrial Court Act, 2006, the statute which established the National Industrial Court, vest exclusive jurisdiction in the National Industrial Court in civil causes/matters relating to or connected with employer and employee relationships.

As I said before, the claimant's suit is for payment for the services he rendered to the defendants as an independent worker or an independent contractor [not as their employee]; and for malicious prosecution. Therefore, I hold that this Court has jurisdiction to entertain the subject matter of this suit.

ISSUE 2

Whether this suit is an abuse of court process.

Ikechukwu OdanwuEsq., learned counsel for the defendants stated that abuse of court process simply means a process that is frivolous, vexatious, oppressive or lacking in *bona fides*. An example of such is re-litigation of issues previously settled, compromised or decided in a matter. It was submitted that this suit is an abuse of court process as the claimant has filed the process in two different courts on the same subject matter with the same parties in this suit. A careful review of the facts in support of this case will show that the suit is *"a concocted attempt to paint the Applicant black and abuse the judicial process. The Exhibits attached to application goes to prove that the Respondent is hobnobbing from one court to the other denting the reputation of the Applicant over monies he did not owe to him."* Mr. Ikechukwu Odanwu urged the Court to strike out or dismiss the suit.

On the other hand, V. S. LabesaEsq., learned counsel for the claimant, stated that the essence of this preliminary objection is that the suit is an abuse of court process as the claimant had initiated two actions in different courts and all were struck out. He submitted that from the facts stated in the defendants' affidavit and the exhibits attached and the counter affidavit of the claimant, the defendants have not satisfied the requirements of the law for the grant of the application.

The term “*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 filing/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.

The submission of counsel for the defendants that this suit is an abuse of court process is based on the suit filed by the claimant at the National Industrial Court and the direct criminal complaint filed by the claimant against the 2nd defendant at Grade 1 Area Court, Karmo, Abuja.

It is not in dispute that claimant’s suit against the defendants at the National Industrial Court was struck out. Exhibit 1 attached to the affidavit in support of the preliminary objection - which is the enrolled Court Order in *Suit No. NICN/ABJ/95/2017* - shows that the suit was struck out. There is no other case pending in any court between the claimant and the defendants on the subject matter or claims in this suit to warrant or support the argument of the defence counsel that this suit is an abuse of court process.

Ikechukwu OdanwuEsq. posited that an example of abuse of court process is the re-litigation of issues previously settled, compromised or decided in a suit. Now, there is nothing to suggest that the issues or claims in the instant suit had been settled, compromised or decided in a previous matter. Assuming the issues in this case had been decided in a previous matter, this suit would have been *res judicata*. For the sake of emphasis and avoidance of doubt, one of the essential ingredients or factors for a successful plea of *res judicata* is that the decision upon which it is based is valid, subsisting, final and on the merits. See the cases of Kambaza v. Hakimi & Anor. [2019] LPELR-48139 [CA] and Bassey v. Ekanem [2001] 1 NWLR [Pt. 694] 360.

The decision of the Court is that since there is no pending suit in any court between the claimant and the defendants on the subject matter or claims in this suit and the issues in this suit have not been decided on the merits by any court, this suit is not an abuse of court process.

ISSUE 3

Whether this suit has disclosed a reasonable cause of action against the defendants.

Ikechukwu OdanwuEsq., learned counsel for the defendants, stated that the term “*cause of action*” denotes every fact which it would be necessary for the claimant to prove to support his right to judgement of the court. Cause of action is also defined as the existence of a factual situation, the existence of

which entitles one person to obtain from the court a remedy against another person. He referred to Fadare v. A. G. of Oyo State [1982] 4 SC 1. He submitted that this suit has not disclosed any cause of action against the defendants.

For his part, Mr. V. S. Labesa, learned counsel for the claimant, urged the Court to discountenance the application, assume jurisdiction and determine the case as the facts disclose a cause of action.

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 claimant 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].

I have already set out some of the averments in the statement of claim. From the said averments, it is clear to me that the claimant has pleaded the alleged wrongful act of the defendants which gave him his cause of complaint and the consequent damage which he suffered. Therefore, I hold that the

claimant's suit has disclosed a reasonable cause of action against the defendants.

Conclusion:

From all that I have said, the preliminary objection lacks merit. It is dismissed. I award cost of N50,000 to the claimant/respondent payable by 1stdefendant/applicant.

**HON. JUSTICE S. C. ORIJI
[JUDGE]**

Appearance of Counsel:

F. Folashade Akin-Adewale Esq.; holding the brief of V. S. LabesaEsq.

