

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/1013/2020**

**BETWEEN:**

**GOODRAND NIGERIA LIMITED.....CLAIMANT**

**VS**

**1. COLONEL SHAKIRU EGUNJOBI**

**2. MISA ADAMU.....DEFENDANTS**

**RULING**

By a Motion on Notice dated 16/12/2020 and filed same day with Motion No. M/13089/2020, brought pursuant to Order 43 Rule 1 and 2 of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, the Claimant/Applicant prays the court the following reliefs;

- (1) An Order of this Honourable Court striking out the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Further and Better Counter-Affidavit together with its Written Address filed on the 9<sup>th</sup> November, 2020 as same is contrary to the Provisions of the law.
- (2) And the Omnibus Relief.

In support of the application is a Seven (7) Paragraphs affidavit deposed to by Adaobi Agu a Counsel in the Law firm of Claimant/Applicant Counsel and also a Written Address and adopts same as oral argument in urging the court to grant the relief.

Responding, 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents filed a Written Address in opposition to the application filed 16/2/202 and adopts same as their oral argument in urging the court to dismiss the application.

In their Written Address, Applicant's counsel formulated a sole issue for determination that is;

“Whether the Further and Better Counter-Affidavit filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents together with its Written Address on the 9<sup>th</sup> November, 2020 in response to the Claimant/Applicant's Further and Better Affidavit filed on 18<sup>th</sup> June 2020 is not contrary to the Provisions of the law and also an abuse of court process and thus warrant striking same out”

Submits Order 43 (1), (1) – (4) of this Rules of court does not provide or permit for the filing of a Counter-Affidavit to further affidavit. Refer to Onyeka Vs Ogbonna (2013) 11 NWLR @ 489 Para B – E and that there ought to be an end to litigation. Refer to the Lalin Maxim Inle res rapublicate ut tes finis litium and the case of Eze & Anors Vs Okwermuo & Ors (2010) LPELR – 4025 (CA).

Submits further that the Rules of court recognize only three stages where affidavit can be used in a contentious matter namely affidavit in support of

Motion, Counter-Affidavit in opposition to Motion on Notice and the Reply affidavit. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant Further and better Affidavit is strange to law and jurisprudence and constitutes an abuse of court process. Refer to *Arubo Vs Aiyeleri* (1993) 3 NWLR (PT.2800 126 @ 142 and 146.

Submits lastly that where the law provides for the particular mode of doing a thing that method must be followed and no other method will be allowed. Refer to *Mato Vs Hember* (2018) 5 NWLR (PT. 1612) @ 295 Para E – F. Urge court to hold that 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondents Further and Better Affidavit together with the Written Address filed on 9/11/2020 is unknown to law and a nullity.

In the same vein, 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents counsel formulated a sole issue for determination in their Written Address that is;

“Whether it is appropriate to grant the Applicant’s application”.

Submits that this application amounts to denying the 1<sup>st</sup> and 2<sup>nd</sup> Defendants their right to fair hearing as provided in Section 36 (1) of the 1999 Constitution (As Amended). Each side of a case is entitled to know what case is made out against it as well as being given an opportunity to respond. Refer to the case of *Ejike Vs Nwakwoala & Ors* (1984) 12 SC 301 @ 3412 and *Mobil Production (Nig) Unltd Vs Monokno* (2004) ALL FWLR (PT. 1295) 575. Submits that the absence of Rules of procedure does not entitle any judge or arbiter to ignore the right of fair hearing to any party before him. Refer to the case of *Olaye Vs Chairman Medical and Dental Practitioners Investigation Panel* (1997) 5 NWLR (PT.586) 562 565 and Order 36 Rules 3 of the Rules of Court.

Submits further that it is in keeping within the law that where facts in respect of anything deposed in a Counter-Affidavit or Further Counter-Affidavit are not met or addressed by the other party in a Further and Better Affidavit is deemed unchallenged that their Further Counter-affidavit and Written Address in response to the Further and Better Affidavit of the Claimant was filed. Refer to Isa (RTD) Vs Abacha & Ors (2011) LPELR 19745 (CA), Ondo State Vs A.G Ekiti State (2011) 17 NWLR (PT. 748) 706 @ 749 – 750, First bank of Nigeria Plc Vs Adarake & Sons Ltd (2009) 15 NWLR (PT.42) 606 @ 414 – 415. Also submits that where a party deposed to certain facts in an affidavit, his adversary who wishes to dispute the facts so stated has a duty to swear to an affidavit to the contrary otherwise the fact deposed shall be regarded as duty established, the Further and better Affidavit dated 18/6/2020 introduced new facts which necessitated a Reply in the form of a Further Affidavit as prescribed by Order 36 of the Rules of Court. Submits finally that the this Motion is an abuse of court process urge court to hold that their further Counter-Affidavit and Written Address dated 9/11/2020 was duly filed in accordance with the principles of law and in line with Rules of Court and to strike out same will amount to denying the Defendants their right to a fair hearing of the application in which respect it was filed.

Having carefully considered the submission of both counsel for and against the grant of this application, the affidavit evidence as well as the judicial authorities cited, I find that only One (1) issue call for determination, that is;

“Whether the Applicant has made out a ground to warrant the relief sought”

Claimant/Applicant wants the court to strike out the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents’ Further and Better Counter-Affidavit filed on 9/11/2020 on the ground that it is contrary to the Provisions of the law and therefore constitutes an abuse of court process.

The concept of abuse of court process have been held to be imprecise in a Plethoral of authorities. Se Ugeese Vs Siki (2007) 8 NWLR (PT.1037) 452 @ 407 Para D. See also Saraki Vs Kotoye (1992) 9 NWLR (PT.264) 156 in the case of Opekan vs Sadiq (2003) ALL FWLR (PT.150) 1654 @ 1661 Para C – E, the Court stated five circumstances that may give rise to an abuse of court process they are;

- (a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- (b) Instituting different action between the same parties simultaneously in different courts even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right for example a Cross Appeal and a Respondent’s Notice.

- (d) Where an application for adjournment is sought by a party to an action to being an application to court for leave to raise issues of fact already decided by court below;
- (e) Where there is no lota of law supporting a court process or where it is premised on frivolity or recklessness.

See also Saraki Vs Kotoye (1992) 9 NWLR (PT.246) 156 @ 1661 Paras C – E.

In the instant case, Claimant/Applicant claims that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's Further and Better Counter-Affidavit as mentioned earlier is contrary to known laws and Rules of court, whereas the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents contends that the contentious Further and better Counter-Affidavit was filed in response to the Further and Better Affidavit filed by the Claimant on 18/6/2020 wherein new issues were raised by the Claimant. Granted that the Rules of Court recognize three different types of affidavit to be utilized during trial especially interlocutory application as; affidavit in support of Motion, Counter-Affidavit and a Reply affidavit to the Counter-Affidavit, granted also that the Rules may not recognize a Further and Better Counter-Affidavit. It is trite that a party is at liberty to rebut, challenged or controvert depositions in any affidavit or else that party would be deemed to have accepted the depositions in the affidavit served on him, see the case of Ezechukwu Vs Nwuka (2006) 2 NWLR (PT. 963) 151 @ 204 – 205 Para H – A where the court held that;

“Averments in an affidavit or Counter-affidavit, which are not controverted in either a Counter-Affidavit or in a Further Affidavit are deemed admitted as true and correct”.

See also Agbaje Vs Ibru, see Foods Ltd (1972) SSC.SO and Olagbe Vs Abimbola (1978) 2 SXC 39.

From the above authorities, it is within the right of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents to challenge the averment contained in the Further and Better Affidavit of the Claimant/Applicant filed on 18/6/2020 moreso as they perceived that the said affidavit raised new issues, irrespective of the nomenclature of the affidavit. Therefore, the ground for praying this court to strike out the Further and Better Counter-Affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant cannot stand in the light of the right of fair hearing. I so hold.

Accordingly having failed to establish a ground for the relief as prayed, this court is of firm view that the Claimant/Applicant is underserving of the said relief and it is hereby refuse.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

23/6/2022

**APPEARANCE**

UZIZI OBEUWOU ESQ FOR THE CLAIMANT/APPLICANT

HANIF WALY ESQ FOR THE 1<sup>ST</sup>/2<sup>ND</sup> DEFENDANTS/RESPONDENTS.



