IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON FRIDAY 23RD SEPTEMBER 2022
BEFORE HIS LORDSHIP:HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 8 MAITAMA – ABUJA

SUIT NO: FCT/HC/CV/279/2018
MOTION NO: M/4476/2020

BETWEEN:

ABDULLAHI MUKTAR MUHAMMED… … … … … …CLAIMANT

AND

1. ALH. USMAN A. AMBURSA
2. LEADERSHIP GROUP LIMITED

} DEFENDANTS

RULING

The Claimant instituted the instant defamation action against the Defendants *vide* *Writ of Summons and Statement of Claim* filed on 21/11/2018.

Upon being served with the originating processes in the suit, the 1st Defendant filed his *Statement of Defence* to the

action on 28/03/2019, denying the totality of the claims and allegations of the Claimant.

The 2nd Defendant, without filling a defence,rather filed the instant notice of preliminary objection on 21/01/2020, by which she sought the following reliefs.

1. ***An order dismissing the Claimant's suit in limine having been caught by the doctrine of Res Judicata in re-litigating the issues already decided in Suit No. FCT/HC/CV/2337/2015.***
2. ***A declaration that this Honourable Court lacks the jurisdiction to hear this suit.***
3. ***An order of this Honourable Court dismissing the suit.***

The objection is further predicated on grounds set out as follows:

1. ***The action is incompetent having being caught by the doctrine of Res judicata.***

2. ***That the subject matter in this present suit has been litigated upon and judgment delivered in Suit No. FCT/HC/CV/2337/2015 between the same parties.***

3. ***The present action is an abuse of Court process.***

4. ***And that the Court lacks jurisdiction to hear and determine the suit.***

In support of the objection, the 2nd Defendant filed an Affidavit of *5 paragraphs*, to which a Court process was attached as exhibit. Learned counsel also filed, alongside, a written address of legal submissions in support of the objection.

In response, the Claimant filed a Counter Affidavit on 27/01/2020, to which a Court process was also annexed as an exhibit. Learned Claimant's counsel further filed a written address in further opposition of the application.

On his part, learned counsel for the 1st Defendant indicated that he has no opposition to the objection.

I had proceeded to consider this objection and the totality of arguments canvassed in turn by the respective learned counsel. The issue to be resolved is straightforward – whether or not the present action is caught by the doctrine of res judicata and is therefore an abuse of Court process?

Learned counsel for the 2nd Defendant/Applicant had argued thatthe suit as presently constituted is caught by the doctrine of estoppel per rem judicatam and the Applicant has demonstrated that all the necessary conditions in upholding such plea are present in the instant case, in that the parties in both suits are the same and the judgment upon which it is based is valid, subsisting and final; that the subject of litigation in both cases is the same and that the suit was decided by a Court of competent jurisdiction. Learned counsel relied on the authorities of*Ogbodu Vs. Ugwuegbu [2003] 20 NWLR (Pt. 1827) 189; Yoye Vs. Olubode [1974] 1 All NLR (Pt. 2)*.

In his arguments, learned Claimant's counselsubmitted that the previous suit referred to by the Applicant's learned counsel was not determined on the merit, but was struck out on ground of non-joinder of the 2nd Defendant. Learned counsel further submitted that when a Court lacks jurisdiction and strikes out a suit, such a case can be re-litigated. He relied on *Micro-lion Int. Ltd. Vs. Gadzama[2014] 3 NWLR Pt. 1394 P. 213.*

Learned counsel urged the Court to dismiss the objection.

Now, the principle of estoppel per rem judicatamis usually adopted by a Defendant as a sword and not by a Claimant as a shield. Its application, as it was from time immemorial, is re-echoed by the Court of Appeal, in *Okon&Ors. Vs. Enyiefem [2022] LPELR-57937(CA)*, where it was held, per**Shuaib, JCA**, as follows:

> ***"For a plea of estoppel per rem judicatam to succeed the party relying on it must establish that: (a) the parties or their privies are the same, that is to say the parties involved in both the previous and present suits are the***

same (b) the claim or the issue in dispute in both the previous and present suits are the same (c) the res that is to say the subject matter of the litigation in the two cases are the same; (d) the decision relied upon to support the plea of estoppel per rem judicatam must be valid, subsisting and final (e) the Court that gave the previous decision relied upon to support the plea of estoppel per rem judicatam must be a Court of competent jurisdiction. And unless the above conditions are met, the plea of estoppel per rem judicata cannot be established. See IBENYE V AGWU (1998) 9 - 10 SC 57 at 27, AFOLABI V GOV. OF OSUN STATE (2003) 13 NWLR (prt.836) 119, ODUTOLA V ODERINDE (2004) 12 NWLR (prt.888) 574 and GARBA V TSOIDA (2020)5 NWLR (Prt.1716) 1 at 25. From foregoing decisions, the Supreme Court was very emphatic that these conditions must be satisfied conjunctively and the failure of any one of them is fatal to the plea of estoppel per rem judicatam."

See also *Yusuf vs Adegoke & Anor [2007] 11 NWLR (Pt. 1045) at 361; Oke vs Atoloye (No 2) [1986] 1 NWLR*

(Pt. 15) 241; Yanaty Petrochemical Ltd vs EFCC[2017]LPELR- 43473 SC.

It is also important to further note that the doctrine has been given statutory recognition under **s. 173** of the **Evidence Act, 2011**. The purpose of this principle is to bring an end to litigation.

As submitted by the Applicant's learned counsel, one of the requirements to be fulfilled in order to sustain a plea of estoppel per rem judicatam is that, the previous suit must have been determined on its merit. What this means is that, for a judgment in a previous suit to act as estoppel per rem judicatam in a subsequent suit, not only must the parties, issues and subject matter of both suits be the same, the rights of parties must have been determined by a final judgment of a Court of competent jurisdiction. *See Okunrijeje&anor Vs. Ajikobi[2018]LPELR-44850 (CA);Lawal Vs.Zago&ors[2014]LPELR-24058 CA;EzealaorsVs.Ugah&ors[2019]LPELR-46904 (CA).*

The contention of the Claimant/Respondent, on the other hand, is that the previous suit was not determined on the merit but struck out due to non-joinder.

Now, the judgment relied upon by the Applicant for his plea of res judicata proceeded from *Suit No. FCT/HC/CV/2337/2015*. The suit involved the present Claimant as the Claimant in that suit and the present 1st Defendant as the sole Defendant in the suit. The subject-matter in that suit, as it is in the present suit,relates to a claim of libel.The only difference is that the present 2nd Defendant was not joined as party in the previous suit.

Judgment of the Court was rendered on 28/05/2018, *per***D. Z. Senchi, J** (now **JCA**). For ease of reference I reproduce the conclusion of the Court in the judgment as follows:

> ***"In the instant case, the failure of the Claimant to make the publisher of Exhibit 4 as a party in this suit is fatal to the case of the Claimant. In other words, failure of the Claimant to join the Publisher of the Leadership Newspaper***

as a necessary party in this suit invariably affects the competency of the suit of Claimant and robs this Court of jurisdiction to entertain and adjudicate on the claims of the Claimant.

Having said the above, it becomes a voyage in futility to now proceed to evaluate the facts and evidence adduced by the Claimant and the Defendant in this suit as to whether the Claimant has proved the ingredients or not. Accordingly, therefore, the suit being incompetent for the above reasons adduced, it is hereby struck out."

Now, on the basis of the judgment under reference, could it be said, considering the guiding principles, that the previous suit constituted res judicata to the present suit? It is not in question that parties in the previous suit and the present suit are the same, save for the inclusion of the 2nd Defendant in the present suit. It is also not in contention that the subject-matter in the two actions are the same. The Claimant's claim for libel in the previous case is based on the same sets of facts for his similar claim for libel against the Defendants in the present case. The decision

of the Court in the previous case was final, valid and subsisting. There is no evidence before me that the judgment has been appealed against. It is also not a matter for contest that the Court that delivered the previous judgment was a Court of competent jurisdiction to so determine the action.

It seems to me that the Claimant was carried away by the final conclusion of the Court in the previous case, striking out his case, leading him to the misconception that he could refile the same. The Claimant failed to bear in mind that the Court's decision in that case resulted from a full trial in which parties called evidence and filed final addresses. The trial Court, in the judgment, indeed evaluated a portion of the evidence led on record by making pronouncements on the credibility of documents tendered as **Exhibits 4** and **5** and invariably expunged **Exhibit 5** from the records, as being wrongly admitted. To allow the Claimant to repair his case as he had attempted to do in the present case and re-present evidence

already pronounced upon in the former case, clearly amounts to re-litigating the case. I so hold.

My further view is that the only remedy available to the Claimant is to appeal the decision of the Court in the former case if he is not satisfied with the conclusions of the Court; rather than filing a fresh suit on the same sets of facts. As between him and the present defendants, the instant suit cannot be re-litigated again. It is dead and buried for now. Only the appellate Court can resurrect the action, if it is sustained that the trial Court came to wrong conclusions in the case.

As correctly submitted by the 2nd Defendant's learned counsel, the fact that the present 2nd Defendant was not joined as party in the previous action would not defeat the application of the doctrine to the instant case. As was held by the Supreme Court in *Ekennia Vs. Nkpakara [1997] 5 SCNJ 70*, parties to an action include ***"not only those named on the records of proceedings…but all those who had the opportunity to attend and protect their interest***

in the action." This implies that the Claimant had the opportunity to have joined the 2nd Defendant in the previous action but failed to do so. He cannot now take a fresh action against a party that successfully defeated him in a previous action on the same claim. See also *Abiola & Sons B Co. Ltd. Vs. 7 UP Bottling Co. Ltd. [2012] 15 NWLR (Pt. 1322) 184(SC).*

In the final analysis, I agree entirely with the contentions of learned counsel for the 2nd Defendant/Objector that the present action is caught by the doctrine of res judicata and as such constitutes an abuse of Court process. Without any further ado, I hereby uphold the objection and the suit is hereby accordingly dismissed. I make no orders as to costs.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
23/09/2022

Legal representation:

B. A. Wali, Esq. – *for the Claimant*

A. Ogbontolu, Esq. (with **M. Bola-Matanmi (Miss)**) – *for the 1st Defendant*

Fortunate Modebe (Miss) – *for the 2nd Defendant*