

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI

THIS WEDNESDAY THE 6TH DAY OF APRIL, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/772/2014

BETWEEN:

KAKA KYARI MUSTAPHA PLAINTIFF

AND

- | | | |
|--|---|-----------------------|
| 1. JAMES ODEH | } | ... DEFENDANTS |
| 2. THE HON. MINISTER FEDERAL
CAPITAL TERRITORY | | |
| 3. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY | | |
| 4. THE DIRECTORATE OF LANDS, ABUJA
INFORMATION GEOGRAPHIC SYSTEMS | | |
| 5. FIRST BANK OF NIGERIA LTD | | |

RULING

This Ruling is predicated on an issue raised by court with respect to whether this court can properly proceed to hear and determine the extant action in view of the decision of this court per Affen J. (now JCA) in **Suit No. FCT/HC/CV/1205/13.**

Let's however start by giving some background facts.

In the Amended Statement of Claim filed on 9th February, 2016, the plaintiff claims against the defendants the following Reliefs:

- 1. A Declaration that the plaintiff is the lawful holder of title to all that parcel or piece of land known as Plot 685 lying and situate at Cadastral Zone B03 in Wuye District Abuja covered by Certificate of Occupancy**

No. 1202w-14c95-3afer-51f3u-10 on File No. 11101 measuring 820.59 sq. meters Registered as No. 17608 at page 17608 in volume 88 in the Land registry Office at Abuja.

- 2. A Declaration that the purported Power of Attorney purportedly donated by the plaintiff to the 1st Defendant in respect of old Certificate of Occupancy No. FCT/ABU/BO.947 or new Certificate of Occupancy No. 1202w-14c95-3afer51f3u-10 and purportedly registered with the 3rd and 4th Defendants as No. 50 at page 50 volume 57 PA at the land registry Office, Abuja is unlawful, illegal, null and void having been done without the permission, consent and concurrence of the plaintiff and based on misrepresentation, deceit and falsehood.**
- 3. A Declaration that the purported mortgage transaction involving the aforesaid Plot 685 Cadastral Zone B03, Wuye, Abuja covered by Certificate No. 1202w-14c95-51f3u-10 between the 1st and 5th Defendants is illegal, null and void, unlawful and of no effect whatsoever.**
- 4. An Order court setting aside the Power of Attorney registered as No. FC 50 at page 50 volume 57 PA at the Land Registry Office, Abuja purportedly donated by the plaintiff to the 1st Defendant over all that property covered by old Certificate of Occupancy No. FCT/ABU/BO.949/BO.947 in respect of Plot 685 Cadastral Zone B3 or new certificate of Occupancy No. 1202w-14c95-3afer1f3u-10 in respect of Plot 685 Cadastral Zone B03, Wuye, Abuja.**
- 5. An Order of court setting aside the purported mortgage of Plot 685 Cadastral Zone B03 covered by Certificate of Occupancy No. 1202w-14c95-3afer51f3u-10, Wuye, Abuja Subject matter of this suit in dispute between the 1st and 5th Defendants.**
- 6. An Order of perpetual injunction restraining the 1st and 5th Defendants either by themselves or their heirs, agents,, Assigns, legal representatives and others however called claiming through them or for them from further trespassing upon the said land or doing anything inimical to the plaintiff's right, title or interest over all that piece or parcel of land known as Plot No. 685 in Cadastral Zone BO3 in Wuye District Abuja covered by new Certificate of Occupancy No. 1202w-**

14c95-3afer51f3u-10 registered as No. 17608 at page 17608 in volume 88 in the Land Registry Office at Abuja.

7. The sum of N50, 000, 000.00 Fifty Million Naira only for trespass and continuing trespass against the 1st and 5th Defendants.
8. Special Damages of N2, 030, 000 against the 1st Defendant.

Particulars of Special Damages

i. Expenses incurred in transiting to/fro Abuja between 2011 – February, 2014.	550,000
ii. Hotel expenses incurred in Abuja since 2011, 2012 and 2013	
Until institution of action in 2014	640, 000
iii. Cost incurred in valuation of property	<u>840, 000</u>
	<u>N2,030,000</u>

9. The plaintiff also claim General Damages of N50 Million against the 1st Defendant.
10. The plaintiff also claims costs of this suit.

The defendants were all served and they filed their defences respectively.

The 1st Defendant filed his statement of defence and set up a counter-claim on 27th November, 2014. The 2nd – 4th defendants filed their statement of defence dated 20th May, 2019. The 5th defendants’ statement of defence was filed on 2nd August, 2019.

The Plaintiff filed Replies to the above streamlined processes. The case from the Record was assigned to **Honourable Justice S. Garba** (now retired and former Chief Judge High Court FCT). In a letter dated 15th December, 2016 to the then Honourable the Chief Judge High Court FCT, the learned jurist expressed reservations in hearing the case in the following terms:

“Suit No. FCT/HC/CV/772/14 was assigned to my Court by your lordship: in the process I observed that my lord Hon. Justice P.O. Affen in Suit No

FCT/HC/CV/1205/13 has given judgment in favour of the 5th Defendant before me.

It is my considered view that presiding over this matter will amount to sitting on appeal on the decision of my learned brother (Affen J.).

In the light of the above, interest of justice and avoidance of contradictory or conflicting order from the same Court, it is my considered view that this suit be re-assign to my lord Hon. Justice P. O. Affen who is seized of the facts of the first case (FCT/HC/CV/1205/13) for trial.”

On receipt of this letter, the Honourable, the Chief Judge then reassigned the matter to this court without it would appear addressing the concerns raised by the learned respected Retired Jurist.

On the assignment of the case to my court, I equally raised the same concerns and parties agreed that steps would be taken to ensure that the concerns raised are treated by the Honourable, the Chief Judge FCT.

In view of the length of time it was taking and the matter was dragging, I then raised the question to wit: Whether this court has jurisdiction to entertain this matter given the valid and subsisting judgment in Suit No. **FCT/HC/CV/1205/2013 Between First Bank Ltd V. Al-Ojobi integrated Resources Ltd & Mr. James Odeh** delivered by Honourable Justice Peter Affen on 30th June, 2015 and parties were ordered to file their addresses on the issue.

The address of claimant is dated 29th November, 2021 and filed on 30th November, 2021 and forms part of the Record of Court. I will only highlight the essence of the submissions made by claimant. The address commenced by comparing the Reliefs sought in both actions and it was submitted that the claims in **CV/1205/2013** are purely a determination of a legal mortgage and has nothing to do with the issue of ownership or title to the said property. That the case in **CV/1205/13** was not to determine the issue of the ownership of the title in respect of Certificate of Occupancy No. 1202w-14c95-3afer1f3u-10 neither was such issue pronounced on.

It was further submitted that it is the present case that raises the issue of ownership or title and not the question of legal mortgage which the earlier case

dealt with. It was contended that the case decided in **CV/1205/13** cannot be said to be estoppel per rem judicata either by parties, issues or action.

The claimant also submitted that it was not party to nor aware of the proceeding in **CV/1205/13** and cannot therefore be bound by the Judgment since it was not party to the said case. The claimant finally contends that the court has the requisite jurisdiction to entertain the present action.

The address of the 1st defendant was filed on 13th December, 2021. In the address, three (3) issues were raised as arising for determination to wit:

- i. Whether having regards to the Writ of Summons and the Statement of Claim in the instant suit, there is a valid Claim before this Honourable Court to trigger the court's jurisdiction.**
- ii. Having regards to the circumstances of this case, whether there is anything inherent in the Claims before the Court to prevent the court from continuing to exercise jurisdiction.**
- iii. Whether the jurisdiction of this Honourable Court is fettered by the Judgment of the High Court of FCT in suit No: FCT/HC/CV/1205/2013 between First Bank of Nigeria Ltd V. Al-Ojobi Integrated Resources Limited and James Odeh.**

The address/submissions equally forms part of the Record of Court. I will highlight the essence of the submissions. On **issue 1**, it was submitted that jurisdiction is determined by the plaintiffs claim and that in this case from the averments in the statement of claim, the case of claimant revolves around ownership of plot 685 and that a determination of this issue of ownership will not be impacted in anyway by the decision in **CV/1205/13**.

On **issue 2**, the necessary elements of when a court is competent as stated in the case of **Madukolu V Nkemdilim (1961) NSCC (vol.2) 374 at 379** was highlighted and it was contended that the extant case has met all these requirements to allow the court exercise jurisdiction and that there is no feature that robs the court of jurisdiction. That the extant case is for declaration of title over which the court has the requisite jurisdiction.

Finally on issue 3, it was submitted that a judgment cannot bind person(s) who are not parties in the said action. That in **CV/1205/13**, the claimant was not

joined to the action and as such the decision is not binding on him. It was contended in the alternative that even if the decision was binding on claimant, that the issues determined in the said action are different from the issues in the present action. That the power of sale following foreclosure was the issue in **CV/1205/13** while the question of title is what is in issue in this case. That the claimant in this case has denied ever donating to the 1st defendant the power of attorney which formed the basis of the decision in **CV/1205/13** and that until that issue is resolved, the propriety or otherwise of 5th defendant's power of sale hangs in the balance.

That if the court declares the claimant as the owner of the property in issue, then an action can lie against both 1st and 5th defendants to set aside the judgment in **CV/1205/13** on grounds of misrepresentation notwithstanding that the said judgment is now subject of appeal by 1st defendant.

It was finally contended that this court has the requisite jurisdiction to determine the present case.

The 2nd – 4th defendants did not file any address on the issue raised by Court.

On the part of 5th defendant, the address was filed on 10th December, 2021. Submissions were equally canvassed on the issue raised which forms part of the Record of court. I will here highlight the essence of the submissions made.

It was submitted that in determining whether, a court has jurisdiction, the court must carefully consider the plaintiffs claims. That a perusal of the amended writ of summons and amended statement of claim both dated 27th January, 2016 would reveal that there are 10 claims/reliefs on the said aforementioned processes. That these 10 claims/reliefs are inextricably linked to or has to do with the Res or mortgaged property (i.e. Plot 685, Cadastral Zone B03, Wuye District, Abuja in File No BO.11101 and covered by Certificate of Occupancy No: 1202w-14c95-3afer-51f3u-10 registered as No. 17608 at page 17608 in volume 88 in the Land Registry office, FCT, Abuja) upon which there is already a final, valid and subsisting judgment of a court of concurrent jurisdiction and which judgment has already determined what should happen to the said Res or mortgaged property.

It was further submitted that the said Res or mortgaged property (i.e. Plot 685, Cadastral Zone B03, Wuye District, Abuja in File No BO.11101 and covered by

Certificate of Occupancy No: 1202w-14c95-3afer-51f3u-10 registered as No. 17608 at page 17608 in volume 88 in the Land Registry office, FCT, Abuja) which the final, valid and subsisting judgment of the first court of concurrent jurisdiction already ordered to be sold immediately, in order to liquidate the 1st defendant and his company's (i.e. Al-ojobi Integrated Resources Limited) indebtedness to the 5th defendant, is the **same Res** in this present suit which the claimant by the entirety of his claims wants this honourable court to make pronouncements on that will asphyxiate and conflict with the judgment of Honourable Justice P.O. Affen (now JCA).

It was submitted that the honourable court who tried Suit No: **FCT/HC/CV/772/2014 - First Bank of Nigeria Limited V. Al-Ojobi Integrated Resources Limited and James Odeh** having considered the power of attorney in reliefs 2 and 4 of the amended statement of claim, being one of the exhibits attached to the originating summons (dated 22nd November, 2013) in the said suit (i.e. Suit No: FCT/HC/CV/772/2014) came to the conclusion that the res or mortgaged property be sold immediately so as to liquidate the 1st defendant and Al-Ojobi Integrated Resources Limited's indebtedness to the 5th defendant. That the claimant asking this honourable court to set the said Power of Attorney aside or declare same as a nullity is a deliberate attempt by the claimant to cause this honourable court to reverse, vary, alter or to give a conflicting judgment which will strike violently at the final, valid and subsisting judgment of the first court of concurrent jurisdiction, which is not allowed in our legal jurisprudence. The case of **S.P.D.C (Nig.) Ltd Vs Edamkue (2009) All FWLR part 489 pg. 407 at pe. 431 para. A-D** was cited.

It was contended that the reliefs sought in the present case if granted will conflict in all respects with the decision in **CV/1205/13** by a court of coordinate jurisdiction and tantamount to sitting on appeal over the said decision.

On the contention that the claimant was not a party in **CV/1205/2013**, the 5th defendant contends that the present claimant was in privity with one of the defendants, i.e. the 1st defendant in Suit **CV/1205/2013** and that the privity is established by the Power of Attorney dated 24th May, 2006 signed between the claimant and the 1st defendant and pleaded in the 5th defendant's defence in this suit. That accordingly, the claimant is clearly estopped by the Power of Attorney from relitigating the cause and issues raised in **CV/1205/2013** by filing a fresh action on the same matter.

It was finally submitted that the 1st defendant has even filed an appeal against the judgment in **CV/1205/13** in appeal No. **CA/A/65/2019** and that in the circumstances the Court of Appeal is now seized of the entire proceedings and that this court lacks even the jurisdiction to entertain this action.

At the hearing, counsel to the claimant and the 5th defendant each adopted the submissions in the written address in urging the court to assume jurisdiction and on the other side of the aisle to decline jurisdiction to entertain the case.

I have carefully considered the submissions of learned counsel on both sides of the aisle and the issue which has been thrust up by the rather voluminous submissions of learned counsel does not in my opinion present a very intricate issue of law. The various issues raised can be condensed into a straight forward issue of whether this court has the requisite jurisdiction to hear and determine the present action in view of the decision of a court of coordinate jurisdiction in suit No **FCT/HC/CV/1205/2013**.

Let me start by making some prefatory remarks. It is stating the obvious that firstly, jurisdiction is very important and indispensable in the administration of justice. It is fundamental as the validity or otherwise of any proceedings turns on its existence or non-existence. See **Uti V Onoyiwe (1991) 1 SCNJ 25 at 49**.

Secondly and as rightly alluded to by all counsel in this case, the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595**; **The Supreme Court** instructively stated as follows:

“A court is competent to adjudicate when:

- a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and**
- b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.**

c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication”.

For the jurisdiction of the court to crystallize into hearing a matter, the three ingredients above must co-exist conjunctively.

In resolving the question raised, particularly in the context of the judgment in Suit CV/1205/2013, it will be critical to compare and situate the cause of action as made out in the two cases and then determine whether there is any feature which would prevent the court from exercising its jurisdiction particularly in the light of the valid and pending decision in CV/1205/13 which is equally now subject of an appeal.

I had earlier at the beginning stated the claims of the claimant. For purposes of ease of understanding, let me repeat the claims thus:

- 1. A Declaration that the plaintiff is the lawful holder of title to all that parcel or piece of land known as Plot 685 lying and situate at Cadastral Zone B03 in Wuye District Abuja covered by Certificate of Occupancy No. 1202w-14c95-3afer-51f3u-10 on File No. 11101 measuring 820.59 sq. meters Registered as No. 17608 at page 17608 in volume 88 in the Land registry Office at Abuja.**
- 2. A Declaration that the purported Power of Attorney purportedly donated by the plaintiff to the 1st Defendant in respect of old Certificate of Occupancy No. FCT/ABU/BO.947 or new Certificate of Occupancy No. 1202w-14c95-3afer51f3u-10 and purportedly registered with the 3rd and 4th Defendants as No. 50 at page 50 volume 57 PA at the land registry Office, Abuja is unlawful, illegal, null and void having been done without the permission, consent and concurrence of the plaintiff and based on misrepresentation, deceit and falsehood.**
- 3. A Declaration that the purported mortgage transaction involving the aforesaid Plot 685 Cadastral Zone B03, Wuye, Abuja covered by**

Certificate No. 1202w-14c95-51f3u-10 between the 1st and 5th Defendants is illegal, null and void, unlawful and of no effect whatsoever.

- 4. An Order court setting aside the Power of Attorney registered as No. FC 50 at page 50 volume 57 PA at the Land Registry Office, Abuja purportedly donated by the plaintiff to the 1st Defendant over all that property covered by old Certificate of Occupancy No. FCT/ABU/BO.949/BO.947 in respect of Plot 685 Cadastral Zone B3 or new certificate of Occupancy No. 1202w-14c95-3afer1f3u-10 in respect of Plot 685 Cadastral Zone B03, Wuye, Abuja.**
- 5. An Order of court setting aside the purported mortgage of Plot 685 Cadastral Zone B03 covered by Certificate of Occupancy No. 1202w-14c95-3afer51f3u-10, Wuye, Abuja Subject matter of this suit in dispute between the 1st and 5th Defendants.**
- 6. An Order of perpetual injunction restraining the 1st and 5th Defendants either by themselves or their heirs, agents,, Assigns, legal representatives and others however called claiming through them or for them from further trespassing upon the said land or doing anything inimical to the plaintiff's right, title or interest over all that piece or parcel of land known as Plot No. 685 in Cadastral Zone BO3 in Wuye District Abuja covered by new Certificate of Occupancy No. 1202w-14c95-3afer51f3u-10 registered as No. 17608 at page 17608 in volume 88 in the Land Registry Office at Abuja.**
- 7. The sum of N50, 000, 000.00 Fifty Million Naira only for trespass and continuing trespass against the 1st and 5th Defendants.**
- 8. Special Damages of N2, 030, 000 against the 1st Defendant.**

Particulars of Special Damages

- iv. Expenses incurred in transiting to/fro Abuja between
2011 – February, 2014. 550,000**
- v. Hotel expenses incurred in Abuja since 2011, 2012 and 2013**

	Until institution of action in 2014	640, 000
vi.	Cost incurred in valuation of property	<u>840, 000</u>
		<u>N2,030,000</u>

9. The plaintiff also claim General Damages of N50 Million against the 1st Defendant.

10. The plaintiff also claims costs of this suit.

Now in the statement of defence filed by the 5th defendant, which forms part of the Record and the court is at liberty to look at or peruse, there is a Judgment in respect of an originating summons attached in Suit No. **HC/CV/1205/2013 Between First Bank of Nig. Ltd AND (1) Al-Ojobi Integrated Resources Ltd (2) Mr. James Odeh** delivered by **Hon. Justice Peter O. Affen (now JCA) on 29th October, 2015.**

In the said decision, the **plaintiff** (First Bank of Nigeria Ltd and 5th Defendant in the extant case) sought for the determination of the question of **whether it is entitled to an order of sale of all that property covered by Certificate of Occupancy No. 1202w-14c95-3afer-51f3u-10 registered as 17608 at page 17608 in Volume 88 in the Land Registry Office at FCT Abuja described as Plot 685, Cadastral Zone B05, Wuye District, Abuja in File No. BO11101 (hereinafter “mortgaged property”), the Defendants having defaulted in the repayment of and/or having failed to liquidate and/or settle their indebtedness to the Plaintiff [who is] their secured creditor and/or mortgagee of the said mortgaged property?** Upon the resolution of the above question, the Plaintiff claims against the Defendants as follows:

- 1. A declaration that the Defendants, debtors and mortgagor respectively, have defaulted in the repayment, settlement and/or liquidation of the credit facility, to wit: secured overdraft loan (plus accrued interest thereon) granted the 1st Defendant by the Plaintiff, a secured creditor and mortgagee of the 2nd Defendant’s mortgaged property securing the said credit facility (plus accrued interest thereon).**
- 2. An order of this Honourable Court that the Plaintiff a secured creditor and mortgagee of the Defendants respectively, sell by private**

treaty and/or public auction the property covered by Certificate of Occupancy No. 1202w-14c95-3afer-51f3u-10 registered as No. 17608 at Page 17608 in Volume 88 in the Land Registry Office at FCT Abuja, described as Plot 685 Cadastral Zone B03 , Wuye District, Federal Capital Territory of Abuja in File No. BO. 11101 (herein called ‘mortgaged property’) mortgaged by the 2nd Defendant to the Plaintiff to secure the outstanding credit facility, to wit: secured overdraft loan (plus accrued interest thereon) obtained by the 1st Defendant from the plaintiff.

The defendants in this case are **(1) AL-OJOBI INTERGRATED RESOURCES LIMITED AND (2) MR JAMES ODEH** (who is now 1st defendant in the present case).

In his judgment dated 29th October, 2015, Honourable Justice Peter O. Affen (Now JCA) held at pages 12-13 of the judgment thus:

“In the light of Exhibit C09 and the uncontroverted and unchallenged depositions in the supporting affidavit, I cannot but resolve the sole question posed in the originating summons in the affirmative, and find and hold and declare that the Defendants have defaulted in liquidating the overdraft facility (and accrued interest thereon) granted by the Plaintiff to the 1st Defendant and secured by an equitable mortgage over the 2nd Defendant’s property situate at and described as Plot 685 Cadastral Zone B03, Wuye District, Federal Capital Territory of Abuja in File No. BO. 11101 which is covered by Certificate of Occupancy No. 1202w-14c95-3afer-51f3u-10 registered as No. 17608 at Page 17608 in Volume 88 at the Land Registry Office, FCT, Abuja.

I equally record an order for the immediate sale of Plot 685 Cadastral Zone B03, Wuye District, Federal Capital Territory, Abuja in File No. BO. 11101 which is covered by Certificate of Occupancy No. 1202w-14c95-3afer-51f3u-10 registered as No. 17608 at Page 17608 in Volume 88 at the Land Registry Officer, FCT, Abuja by private treaty or public auction and the proceeds applied towards liquidating the principal loan amount and accrued interest thereon outstanding and due from the Defendants to the Plaintiff on the N40M secured overdraft facility granted by the Plaintiff to the 1st Defendant in January 2012. Any balance from the proceeds of sale

after liquidation of the debt owed to the Plaintiff and deduction of the expenses/costs of sale shall be paid over to the 2nd Defendant.”

I have carefully and deliberately and at some length situated the decision of my learned brother Justice Peter Affen above. The decision and the facts situating the decision must be juxtaposed with the cause of action in the present case to determine whether they are aimed at achieving the same purpose. If they are, it will be difficult legally for this court to assume jurisdiction and determine the same matter or consider issues over which there has been clear pronouncements by a court of coordinate jurisdiction. It is equally to be noted that by the addresses filed by the claimant and 1st defendant, the point has been made that the 1st defendant in the present action has filed an **appeal** against the said decision which is now pending at the Superior Court of Appeal. This appeal also introduces a different dynamic to the present action requiring the court to act with utmost circumspection.

Now in the suit before this court, particularly from the reliefs sought which I had highlighted above, the fundamental thrust is the declaration sought by claimant that he is the lawful holder of title to all that parcel of land known as Plot 685 lying at Cadastral Zone B03 in Wuye District covered by Certificate of Occupancy No.1202 on file No. 11101 measuring 820.59 sq meters hereinafter called the **disputed plot**. The claimant also sought a declaration that the purported power of attorney donated by the plaintiff to the 1st defendant in respect of the disputed plot and purportedly registered with 3rd and 4th defendants is unlawful, null and void. There are then the reliefs seeking to set aside the Power of Attorney, Order of Injunction, Special and General Damages.

When these **Reliefs** above are juxtaposed with the **pronouncements** of Justice Peter Affem earlier highlighted predicated on the Reliefs sought, no magnifying glass is required to show or situate that the reliefs sought presently are inextricably linked to the Res or disputed plot on which clear and positive pronouncements were made by a court of competent and coordinate jurisdiction.

The case and decision in **CV/1205/13** may have been framed as one involving a mortgage property, but the property the case dealt with and over which there are positive pronouncements by a court of coordinate jurisdiction in favour of 5th defendant in this case is the property known as **Plot 685 Cadastral Zone B03, Wuye District**. It is equally obvious that the Reliefs the present claimant seeks

in the present case is in respect of the same property known as **Plot 685 Cadastral Zone B03, Wuye District**. The subject matter or Res in both actions are therefore the **same**.

So that while superficially, it may be argued as claimant has done that the present case is one of title simpliciter, it will however be erroneous to frame this discourse that way, because, it loses sight of the potency of the orders in **CV/1205/2013** which **impacts** whatever decision that may be reached in this case, one way or the other.

Let me elucidate further. In the judgment in **CV/1205/2013**, the court ordered that the said disputed plot be **sold** to liquidate the indebtedness of 1st defendant and his company to the 5th defendant (claimant in the case). It is this same property that the claimant now wants a declaration that he is the owner.

What is interesting, is that in reaching its decision in **CV/1205/13**, the learned trial judge considered, the extant power of attorney (now sought to be set aside in the extant case) which was attached to the originating summons as valid in coming to the conclusion that the disputed plot or mortgaged property be sold immediately to liquidate the indebtedness of defendants to 5th defendant in the case.

It is obvious that if this court were to attempt to for example determine the present dispute, it would essentially be sitting as a Court of Appeal over a decision of a court of coordinate jurisdiction?

Let me make the position clearer. If the court were to determine or make an inquiry into the validity of the power of attorney again, it is essentially been called upon to make a fresh or new determination which may or may not agree with the findings of Affen J. in CV/1205/2013 who found the power of attorney valid and accordingly made the order for sale. In the decision of the court on the power of attorney, the learned jurist stated thus:

“The undisputed facts in these proceedings reveal that the 2nd Defendant (who is the alter ego of the 1st Defendant) deposited the original title documents of his property with the Plaintiff as collateral for the N40M facility advanced by the Plaintiff to the 1st Defendant sometime in January 2012. Although the certificate of occupancy dated 12/3/10 (which is Exhibit C03 in these proceedings) is in the name of one *Kaka Kyari Mustapha*, it is

noteworthy that there is in evidence an irrevocable power of attorney (Exhibit C03^A) donated by the said *Kaka Kyari Mustapha* in favour of the 2nd Defendant (Mr. James Odeh) for valuable consideration wherein the 2nd Defendant is *inter alia* empowered under Clause 1.4 thereof to “*mortgage, charge, sell, lease, let, or howsoever part with possession of the property or any structure or development thereon, and exercise in respect of the same the right to collect, distrain for, enforce payment and recover the rents and profits on the same.*” The law is well settled that the deposit of title deeds with a bank as security for a loan creates an equitable mortgage as against a legal mortgage which is created by deed transferring the legal estate to the mortgagee. See *Yaro V Arewa Construction Limited (2007) 17 NWLR (Pt.1063) 333.*”

The contention therefore that the present claimant was not a party or privy to the said action in **CV/1205/2013** will appear to be undermined by the above finding of the learned trial judge. I leave it at that and say no more.

The rule is however clear that once one or more issues have been distinctly raised in a cause of action and appropriately resolved or determined between same parties, including their privies, in a court of competent jurisdiction, then as a general rule, neither party nor his servant, agent or privy is allowed to re-open or relitigate that or those decided issues all over again under any guise in another case between the same parties or their agents or privies on the same issues. See *Maya V Oshuntokun (2011) FWLR (pt.81) 177 at 183.*

Furthermore, if there is an existing and binding **order for sale of a property** by a court of coordinate and competent jurisdiction and that decision is now subject of appeal and it has not been set aside, then it appears to me largely presumptuous to call upon another court of coordinate jurisdiction to declare another person owner of this **same** property already subject of an order of the same court which made positive pronouncement for sale of the property. As stated earlier, this decision is now subject of a pending appeal. Will a decision by this court on title or ownership not even seek to undermine whatever decision the Court of Appeal may reach on appeal? If this court were to find for example that claimant owns the disputed plot and the court of appeal then affirms the order for sale and in effect affirming the validity of the power of attorney between present claimant and 1st defendant, which of the decisions will parties now be bound by? The confusion this will create can only be imagined.

This present case essentially and however it is viewed, is a call by claimant to torpedo or set aside the decision of my learned brother, a task this court lacks completely the jurisdictional powers to undertake. To grant Reliefs 1, 2, 3 and 4 for example is to effectively stop the sale of the mortgaged property as ordered and or overturning completely the decision in **CV/1203/13** and in the process creating an avoidable impasse in the administration of justice. Indeed, this case appears to be a deliberate subterfuge calculated to as it were undermine the judgment in **CV/1205/13**. This court must resist the temptation to make orders that may strike violently at the heart of the orders made in **CV/1205/13** and in the process lend a helping hand in creating unnecessary confusion. As I have demonstrated, I cannot see my way through how whatever orders that may be made in this case will not conflict with the orders in **CV/1205/13** particularly in the context of the **subject matter common** to both suits. A determination of the extant matter will no doubt necessarily involve a resolution of some or all the questions upon which a decision has already been reached by a competent court having regard to the subject matter. Despite the attempt by claimant, it is really difficult to separate or indeed distinguish the key fundamental issues determined in the earlier case and the issues which forms the bedrock or backbone of the extant case. I cannot really see my way through how the subtle and not so subtle changes in the extant action changes the essential character or remit of the complaint in Suit **CV/1205/13** and the extant case before me.

As I have sought to demonstrate, the present action is clearly an attempt to relitigate the issues in which my learned brother in **CV/1205/2013** has already heard and determined and given the fullest of expressions. This case really as I see it is simply an attempt to revisit issues or matters previously decided by a court of competent jurisdiction, albeit, under a different contrived guise.

If the claimant is dissatisfied with the said decision, it has a plenitude of steps or options to properly explore and challenge the decision at the Superior Court of Appeal. The 1st defendant on the Record has already done so. If this court were to be lured into making pronouncements on the reliefs sought in the present action, there is really no doubt that the court will be unwittingly sitting as a Court of Appeal and making pronouncement which may or may not agree with the pronouncement of my learned brother from a court of coordinate jurisdiction and in the process creating confusion or at best making a mockery or parody of the courts, the judicial process and/or the administration of justice.

The courts remain a veritable conduit for resolution of grievances and or disputes. This delicate responsibility cannot be discharged efficiently in an atmosphere where the jurisdiction of courts of coordinate jurisdiction are invoked in a contrived situation to knock their heads through proliferation of cases by the same parties or their privies on the same subject matter which has been fragmented into little portions to give the case some semblance of normality and or propriety. The court must overtly be circumspect in situations such as presented by the extant case.

There really must be an end to litigation. If the process were otherwise then cases will never end. The conclusion I have therefore reached is that neither the claimant nor his servants, agents or privies can be allowed to reopen or relitigate the precisely defined issues determined by **Honourable Justice Peter Affen in suit No. CV/1205/2013** all over again in another action between the same parties or their agents or privies on essentially the same subject matter.

As stated earlier, the court is only competent to adjudicate where the subject matter is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction. The valid and binding decision of a court of coordinate jurisdiction in **CV/1205/13**, has clearly served to create a valid legal barrier preventing this court from assuming jurisdiction to entertain the present action. Accordingly the proper order to make is to strike out this action for want of jurisdiction. It is hereby struck out.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. O. Igelamba with Moses Achile for the Claimant.*
- 2. Karina Williams for the 5th Defendant.*