

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/560/2013

DATE: : WEDNESDAY 13TH APRIL, 2022

BETWEEN

1. GAGARIN MADAKI

(Suing for himself and as Beneficiary of the estate of late Yahanna Anteyan Madaki)

2.HON. MUHAMMAD SANI IBRAHIM

**PLAINTIFFS/
RESPONDENTS**

AND

1. MR. AYODELE DAVID ADESUA DEFENDANTS/

2. DISTINCT GROUP LTD. RESPONDENTS

3. DISTINCT SHELTER LIMITED

4. HON. JARIMON S. (JERRY) MANWE

5. HON. MINISTER OF FCTA.

6. FED. CAP. DEV. AUTHORITY (FCDA)

RULING

Hon. Jarimon S. (Jerry) Manwe – one of the Defendants/Applicants in the suit of the Plaintiffs/Respondents i.e Suit No. CV/560/13 challenged the jurisdiction of this court to determine the said claim on grounds of abuse of court process.

Applicant, who filed an affidavit of 9 paragraphs, equally filed written address of 6 pages wherein the court was urged to dismiss the suit for being an abuse of court process.

It is the deposition of the Applicant that 3rd Defendant in suit No. CV/560/2013 instituted Suit No. CV/57/2013 on the 19th September, 2013 against the 2nd Plaintiff in this suit on the same

subject matter i.e plot 401 Cadastral Zone B04, Jabi District, FCT – Abuja (now No. 22 Etang O. Obuli Crescent Jabi, Abuja).

It is the deposition of Applicant that the instant Suit No. CV/560/2013 was filed to abuse the process, and that the 2nd Plaintiff is aware of the pendency of Suit CV/57/13 filed on the 19th September, 2013 but decided to file this on the 20th March, 2015.

It is further the deposition of Applicant that the frontloaded document in both suits are the same, and that this court should dismiss the instant suit for being an abuse of process.

On his part, Respondent filed counter affidavit of 5 paragraphs wherein he denied the pendency of the said suit which was earlier in time.

It is his deposition that even though it was not served on his, same was long struck – out and had not been relisted.

It is further his deposition that the parties in the suit are not the same, and that the said suit CV/57/2013 was not filed by the Plaintiff but by the 3rd Defendant and that the reliefs are not the same.

Applicant filed an 11 paragraphs further and better affidavit to the counter affidavit and reply.

It is the further deposition of Applicant that by Exhibit “M2” i.e record of proceedings of my

brother's court Dodo, J now retired, the suit is still pending.

Learned counsel drew the attention of this court to the decisions in *ALH. HARUNA KASSIM VS. HERMANN EBEST (TRADING AS CASH STORES) (1996) (VOL. 1) NSCC* on the effect of a court order and contends that suit No. CV/57/2013 is still pending.

On its part, Respondent relied on the authority of *ABUBAKAR VS. BEBEJI OIL AND ALLIED PRODUCTS LTD. & ORS (2007) LPELR – 55 (SC) Page 1 at 62 – 63.*

On the fact that both process must have been filed by same party and on the same subject for there to be an abuse.

I have seen Exhibit “2” i.e record of proceedings of Hon. Justice Dodo, now retired, of the 25th May, 2015.

The following was written on the said date:-

“This is a 2013 case earlier struck – out for the Plaintiff’s consistent failure to appear to prosecute this matter; I have listened to the application being moved by learned counsel for the Applicant moreso, I have seen that the courtstruck – out this case for the last 11 months. If one may ask, what new issues were discovered which necessitated this application almost forgo Hen? This court shall study the application alongside all the prayers filed and pronounce a justifiable opinion. Matter adjourned to 18th June, 2015 accordingly.”

I pause here to ask the following questions:-

1. Was there any ruling?
2. What did the court say in its decision if any?
3. Is the ruling still being availed?

Clearly, the said Dodo, J is long retired from the bench of this court. If ruling has not been delivered in this matter upon the application being heard, it suggest that the said ruling is still lingering in one of the courts and before one of the Judges of this court.

Respondent who annexed Exhibit “M2” is under an obligation to explain and or answer all the afore – paused – questions.

Clearly, Exhibit “M2” relied upon by Respondents amount to admission against interest pursuant to Section 22 of the Evidence Act 2011.

See also the case of *ONYENGE VS EBERE (2004) 13 NWLR (Pt. 899) 20*.

An abuse of court process which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to.

Also constituting multiplicity of action on the same subject matter against the same opponent on

the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of *N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A)*.

When then does abuse of court process arise?

Supreme Court of Nigeria, *per Ogbuagu JSC* in the case of *ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraphs D - E* stated thus;

“There is abuse of process of court where the process of the court has not been use bona-fide and properly, the circumstances in which abuse of process can arise has said to include the following;-

- a. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.*
- b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*

- c. Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent’s notice.*
- d. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.*
- e. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.*

Point to note is that, it is indeed the claim of the Plaintiff that determines the jurisdiction of a court, as stated in ***OGUNBADEJO VS ADEBOWALE (2008) All FWLR (Pt. 405)1707 at 1717, paragraphs C-D (C-A),***

I however must state that, there are other determining factors that certainly must be considered. Where, for example, a case of abuse of process of court is established, the court even though seized of the jurisdiction to try a matter, must decline same.

As stated by Supreme Court in the case of ***ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD &ORS (SUPRA)***, instituting different actions between the same parties simultaneously in different courts even though on

different grounds, amounts to abuse of court process.

Eventhough, the earlier suit No. CV/04/560/13 was struck – out, application to relist has been heard and awaiting ruling. This is the conundrum.

The present suit No. CV/04/560/2013 filed whilst awaiting ruling in suit **No. CV/57/2013** is clearly an abuse of process.

The authority of ***PDP VS LAWAL & ORS (2012) LPELR – 7972 (CA)***, is instructive on the proper order to make.

The said suit **No. CV/04/560/2013** constituting abuse shall be dismissed. It is so dismissed.

Justice Y. Halilu
Hon. Judge
13th April, 2022