

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/1952/2020

DATE: : TUESDAY 21ST JUNE, 2022

BETWEEN:

RIVERDALE FINANCIAL SERVICES LIMITED. } PLAINTIFF

AND

**1.BAUCHI STATE GOVERNMENT DEFENDANTS
2.THE ATTORNEY GENERAL
& COMMISSIONER OF JUSTICE,
BAUCHI STATE } DEFENDANTS**

RULING

The 1st and 2nd Defendants/Applicants approached this court vide Notice Preliminary Objection praying for the following:-

1. An Order of this Honourable Court dismissing the Plaintiff's suit (suit No. FCT/HC/1952/2020) for abuse of the processes of this Court.

The grounds upon which the application is brought are.

- a. That Plaintiff is filing multiple action over the same subject matter against the Defendants.
- b. The Plaintiff had initiated a similar suit (suit No. FCT/HC/CV/2165/2017) sometime in

2017 against the present Defendants over the same subject matter.

c. After three (3) whole years in court the Plaintiff discontinued suit No. FCT/HC/CV/2165/2017 against the Defendants on the 11th February, 2020 after pleadings have been filed and issues joined by parties.

d. Suit No. FCT/HC/CV/2165/2017 has the same subject matter and issues which the present action of the Plaintiff before this Honourable Court.

10 paragraph affidavit was filed along with the application deposed to by Hawa Salami a legal

practitioner in the law firm of YakubuMaikasuwa& Co.

It is the deposition of the Applicant that the Plaintiff instituted the present action (Suit No. FCT/HC/CV/1952/2020) on the 24th June, 2020 vide a Writ of Summons dated 22nd June, 2020.

That the Plaintiff had instituted a similar case against the present Defendants in 2017 in Suit No. FCT/HC/CV/2165/2017 before this same Court, the Federal Capital Territory High Court, Abuja presided over by Hon. Justice D.Z. Senchi.

That pleadings had been filed and exchanged by parties in Suit No. FCT/HC/CV/2165/2017 and the matter fixed for hearing, issue having been joined.

That after three whole years in court the Plaintiff/Respondent applied vide a motion to strike out the names of the Defendants in Suit No. FCT/HC/CV/2165/2017. The enrolled order of Hon. Justice D.Z Senchi of the Federal Capital Territory High Court, Abuja in suit No FCT/HC/CV/2165/2017 is annexed herein and marked as Exhibit BSG.I.

That the Plaintiff/Respondent's present case before this Honourable Court has the same facts, issues and subject matter as in Suit No. FCT/HC/CV/2165/2017 wherein the names of the Defendants were struck at the instance of the Plaintiff/Respondent by Hon. Justice D.Z Senchi.

That the reliefs sought against the present Defendants in this suit are the same reliefs the

Plaintiff sought for in Suit No. FCT/HC/CV/2165/2017.

That the Plaintiff is forum shopping and using the present action to harass and irritate the Defendants.

That no cogent reason(s) was proffered for the removal of the Defendants name and the discontinuance of Suit No. FCT/HC/CV/2165/2017 by the Plaintiff after pleadings were filed and exchanged and issues joined by parties.

That Hon. Justice D.Z Senchi struck out the names of the Defendants from Suit No. FCT/HC/CV/2165/2017 on the 11th February, 2020 based on the Plaintiff's motion filed on

15th November, 2019 and the present suit was filed on the 24th June, 2020 by the Plaintiff.

In line with the law, counsel to the Defendants/Applicants filed a written address wherein a sole issue was formulated for determination to wit:-

Whether the Plaintiff's action does not constitute abuse of the processes of this Honourable Court.

Counsel contended that the Plaintiff has instituted multiple actions on the same subject matter, against the same opponent on the same issue (5), in two separate courts, using different court processes in the exercise of the same right and seeking substantially the same reliefs. A careful

perusal of the reliefs sought by the Plaintiff on the face of the writ of summons dated 22nd June, and filed on 24th June, 2020 will show that the reliefs contained on the said writ of summons are substantially the same reliefs, Plaintiff sought in suit No. FCT/HC/CV/2165/2017 before Hon. Justice D.Z Senchi of the Federal Capital Territory High Court, Abuja.

Counsel urged the court to dismiss the Plaintiff's present suit against the Defendants for abuse of court process.

On its part, Claimant filed counter affidavit of 13 paragraph deposed to by one Dorcas Daniel a litigation secretary in the law firm of Messrs Greenfields in opposition to the preliminary objection.

It is the deposition that the true position of fact is that at the moment except suit No. CV/1952/2020 there is no other suit presently filed against Bauchi State Government by the within named Claimant.

That there was previously filed suit against the Defendants suit No. **FCT/HC/CV/2165/2017** which was discontinued against the Defendant on the 11th February, 2020.

That the reason(s) for discontinuance were copiously stated on the face of the application and his Lordship D.Z Senchi in his well – considered ruling discontinued the suit against the Defendants.

That he knows suit No. **FCT/HC/CV/2165/2017** which was struck out on 11th February, 2020 was a

class action which was commenced against several Defendants and that meaningful progress could not be made in the case hence the discontinuance and filing of the present suit against the Defendants.

That he knows that the present suit No. FCT/HC/CV/1752/2020 filed against the Defendants is the only suit presently pending against the Defendants filed by the Claimant in any court in Nigeria or anywhere else.

Claimant/Respondent filed a written address wherein a sole issue was raised for determination to wit:-

“Whether or not the suit of the Claimant amounts to an abuse of court process.”

Learned counsel submit respectfully that from the averments of the Defendants and by their own showing, there is only one suit presently filed against the Defendants by the Claimant as the previous one filed had been discontinued on 11th February, 2020. Thus, the present suit is competent, valid and not amounting to an abuse of court process and counsel urged the court to so hold.

Counsel further argued that the effect of Notice of Discontinuance is that when filed appropriately it ends the suit and the court is entitled to formerly strike out the suit from the cause list.

EMEGHARA VS. HEALTH MANAGEMENT BOARD, IMO STATE (1987) 2 NWLR (Pt. 56) 330 was cited.

Counsel submits that the Rules of court has made it abundantly clear, that a matter once discontinued can be re-litigated and a notice of discontinuance does not act as a bar to further re – litigation. Order 24 Rules (2) of the FCT High Court Civil Procedure Rules 2018 was cited.

Counsel urged the Court, to discountenance the Defendants’ Notice of Preliminary Objection and dismiss same with substantial cost.

COURT:-

I have considered both the case of the Defendants/Applicants and that of the Claimant/Respondent, vide their respective evidence, I shall be brief but succinct in resolving the issues as canvassed by the Applicants. My take

off point is to look at the meaning of what amount to an abuse of court process.

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 paragraph 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.*

To resolve this matter, the court has formulated only one issue for determination, viz;- ***“whether suit No FCT/HC/CV/1952/2020 filed before this court amounts to an abuse of court process.”***

As I stated earlier, the rationale of the law in abuse of court process is that there must be an end to litigation, and a litigant must not be made to suffer the same rigour/Jeopardy for the same purpose twice.

I must also hasten to note 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. It therefore follows that 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.

It is the evidence of the Claimant/Respondent that the true position of fact is that at the moment except Suit No. **FCT/HC/CV/1952/2020** which amount to this very suit, there is no other suit presently filed against Bauchi State Government by the within named Claimant.

That suit No. **FCT/HC/CV/2165/2017** was struck out on 11th February, 2020 before suit No. **FCT/HC/CV/1952/2020** was filed in June, 2020.

Permit me to state here that a matter once discontinued can be re-litigated. It is evidenced that suit No. **FCT/HC/CV/2165/2017** filed

against the Defendants/Applicants had been discontinued on 11th February, 2020.

See Order 24 of the Rules of this Court.

I have no difficulty to agree the with the submission of learned counsel to the Claimant/Respondent that suit No. **FCT/HC/CV/1952/2020** is competent and valid.

Accordingly, Motion No. **M/817/2021** is hereby and accordingly dismissed.

Above is the ruling of this court.

Justice Y. Halilu
Hon. Judge
21st June, 2022

APPEARANCES

Suleiman M., Esq. – for the Plaintiff.

V. I. Miduavor, Esq., holding the brief of L.J.

Ashaku, Esq. – for the Defendants.