

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE:-1st June, 2022

FCT/ CV/2778/2021

BETWEEN

OKPECHUKWU CHIDOZIE KELVIN- -----

CLAIMANT

AND

**1. EMMANUEL C. NNAKWE
2. EMMANUEL ODOGWU
3. UKPORO HUMPHREY ABUCHI** }

DEFENDANTS

RULING

This ruling is in respect of a Notice of Preliminary Objection filed by the Defendants on January 24th, 2022, praying this Honourable Court for an Order dismissing this Suit as this Honourable Court lacks Jurisdiction to entertain same. The second prayer is the omnibus prayer. The Notice of Preliminary Objection is supported by a 15 paragraphed Affidavit, 4 exhibits and a Written Address.

In response to the Notice of Preliminary Objection of the Defendants, the Claimant filed a 15 paragraphed Counter-affidavit with one exhibit and a Written Address on February 7th, 2022.

The crux of the Defendants application is that this Honourable Court lacks jurisdiction to adjudicate over this instant Suit as the

Subject Matter of the Suit is pending before a Magistrate Court. The Defendants in a bid to prove why this Honourable Court lacks jurisdiction went ahead to attach the following exhibits to wit:-

- a. A copy of the Plaintiff in Suit No. CV/90/2020 pending before the Magistrates Court
- b. A copy of the Statement of Defence
- c. A copy of the Order of Court
- d. A copy of the Civil Summons

The Claimant however is of the view that this Honourable Court is clothed with the requisite jurisdiction to adjudicate over the extant Suit and has supplied various authorities in a bid to establish this fact.

After going through the Defendants Notice of Preliminary Objection and the Claimants Counter Affidavit, in a bid to do Justice, I will raise and address a sole issue which to my mind will ensure justice to wit- "***WHETHER THE INSTANT SUIT CONSTITUTES AN ABUSE OF COURT PROCESS SUCH AS TO ROB THIS HONOURABLE COURT OF JURISDICTION TO ENTERTAIN SAME VIS-À-VIS THE ACTION IN SUIT No.CV/90/2020 PENDING BEFORE THE MAGISTRATE COURT***"

Quite notably, there are a plethora of Court decisions that provides for what will constitute an abuse of Court Process. In the case of ***NGIGE & 1 OR V. HON. NELSON ACHUKWU & 2 ORS (2004) 8 NWLR (PT. 875) PG 356 @ 361-362 PARAGRAPHS G-A***, the Court held thus:-

"In deciding on this preliminary objection, what has to be determined is what amounts to an abuse of Court process. Before applying

*the principle, this Court must ensure that the parties are the same, issues and subject matter are the same. See **OKORODUDU V. OKORODUDU (1977) 3 SC 21 AND KOTOYE V. SARAKI (1992) 9 NWLR (Pt. 264) 156 @ 188-189.** In the present matter, we observed that in the proceedings herein, Senior Counsel to the objection concedes that the parties are not the same as the 1st Respondent in the application before this Court is not a party in that proceeding”*

From the foregoing, it can be discovered that for a matter to constitute an abuse of Court process vis-à-vis another matter, the following ingredients must be present:-

- a. The Parties must be the same.
- b. The subject matter must be the same.
- c. The issues must be the same.

Making use of the yardstick outlined above to x-ray this extant Suit with the Suit pending before the Magistrate Court, it is immediately discernable that the parties in both Suits are not the same. A further look at both Originating processes reveal that the subject matter in Suit No. CV/90/2020 pending before the Magistrate Court bothers on Breach of Contract while the subject matter of this instant Suit bothers on the Declaration of title to land.

It is also notable and as highlighted by the Claimant that the Magistrate Court is not clothed with the requisite jurisdiction to entertain an action such as this brought by the Claimant for a

declaration of title to land as this sort of action is within the exclusive jurisdiction of the High Courts. ***See Section 39 Land Use Act, Laws of the Federation (2004).***

On the issue of jurisdiction of this Honourable Court to entertain this matter, in the case of ***MADUKOLU & ORS V. NKEMDILIM (1962) ALL NLR 581; (1962) 2 SCNLR 341 AT 587-590***, the Supreme Court held thus:-

"Put briefly, a Court is competent when- a) It is properly constituted as regards members and qualification 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 in the case which prevents the Court from exercising its jurisdiction; and C) The case comes before the Court initiated by due process of law, and upon fulfillment of any conditioned precedent to the exercise of jurisdiction. These three conditions stated above must co-exist before the Court can be said to be vested or clothed with proper competence and jurisdiction."

Therefore, flowing from the above, I am of the informed view that this Honourable Court is clothed and vested with the jurisdiction required to entertain this instant Suit as the instant Suit does not constitute an abuse of Court process. I therefore hold that the Claimant is within his constitutionally guaranteed rights to seek redress for wrongs in a Court of competent jurisdiction. This Preliminary Objection is dismissed accordingly.

However it becomes imperative for the preliminary objection filed by the Defendant⁰ touches on jurisdiction.

The question of jurisdiction of a Court is a radical and crucial question of competence because if a Court has no jurisdiction to hear and determined a case, the proceedings are and remain abinitio no matter how conducted and brilliantly decided they might be became a defect in competence is not intrinsic but extrinsic to the process of adjudication. Jurisdiction of a Court is determined by the Plaintiff's claim as endorsed in the writ of summons and statement of claim even where a Federal Government Agency is involved see **TRADE BANK PLC VS BENILUX NIG LTD (2003) 9 NWLR (PT825) 416. ONURAH VS KEPE LTD (2005)6 NWLR (PT921) 393** from the above position of the law it is the Claimant claim that determine the jurisdiction of this Court as can be seen from the writ of summons dated the 22nd October, 2021. Same is in respect of issue of title which atomically gives this Court the jurisdiction to try this case on its merit. It is worthy of note that jurisdiction is fundamental and its determined by the pleadings filed by the Claimant and the claim he seeks. It is thus a question of law and once raised at any time it should be resolved quickly. It is so important that it can be raised at any time and even in the Supreme Court for the 1st time. If the High Court has no jurisdiction to hear the claim, no matter how conducted the entire proceedings is a nullity see **UDU VS KROMS THOMPSON ORG NIG LTD (2001) 15 NWLR (PT 736)**. So from the statement of claim of the Claimant I have critically looked at the same paragraph by paragraph I am completely of the view that this Court has the jurisdiction to hear and determine this case on its merit jurisdiction is defined broadly as the limits imposed on the power of a validly

constituted Court to hear and determines issues between persons seeking to avail themselves of its process by reference to the subject of the issue or to the person between whom the issue are founded or to the kind of relief sought see ***GOLDMARK NIGERIA LTD VS IBAFON CO LTD SUIT NO SC 421/2001. ALSO CITED IN (2012) 10 NWLR (PT. 291).*** Finally based on the reason stated above I hereby dismiss the preliminary objection for lacking in merit.

**HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE**