

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 13TH DAY OF JULY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/PET/047/2017

MOTION NO. M/946/2022

MOTION NO. M/947/2022

MR. WILFRED ENEYE PETITIONER/APPLICANT

AND

MRS. GENEVIEVE ENEYE RESPONDENT

RULING

Before the court are two motions which will be consolidated in this Ruling for purpose of convenience.They are M/946/2022 and M/947/2022 filed by the Petitioner and would be considered and dealt with seriatim.

M/946/2022

The first application is a motion on notice No. M/946/2022 filed on 31st January 2022. The Applicant prays for grant of four reliefs, vis:

1. *An Order of this Honourable Court striking out Suit No. PET/101/2018, dated 31 January 2018 and filed in this suit specifically for lack of jurisdiction and same constituting an abuse of this Courts process and procedures.*
2. *An Order that the Petitioner/Respondent and her Counsel Chuks J. Chinwuba Esq, individually and severally pay the Respondent/Applicant the sum of N1,000,000.00 as cost of this action.*
3. *An Order compelling the Petitioner/Respondent to sign all her signatures in this suit including that on the verifying affidavit and the affidavit in support of this suit before this Honourable*

*Court or before the Assistant Inspector General f Police (AIG)
Zone 7 Abuja.*

4. *And such further or other orders as this Honourable Court may deem fit to make in the circumstances.*

In support is a 17 paragraph Affidavit deposed to by the Applicant himself. Same is accompanied with a written address.

The Respondent reacted by filing a 7-point Counter Affidavit with accompanying written address.

The Applicant by his written address raised a sole issue for determination to wit:

“Whether or not the Petitioner/Respondent suit No. PET/101/2018, dated and filed on 31 Jan 2018 is not a gross abuse of this courts process and procedure, same not complying with the requirement of the law in bringing this action and thus further dis-imbuing and depriving this Honourable Court of the requisite jurisdiction to entertain this suit.”

The Applicant submitted that the Respondent has not complied with the requirement of the law in bringing her action which makes the suit grossly incompetent, an abuse of court process, a forgery on the part of the Respondent and her Counsel and thus deprives this Court of jurisdiction to entertain same. He argued that a petitioner is mandatorily required to verify and sign the contents of the petition. It is his contention that having failed to sign the petition herself, the Respondent’s petition has failed to satisfy the requirement of the law. He relied on the provisions of Section 117(4) and 112 of the Evidence Act 2011 as well as provisions of the Matrimonial Causes Rules. He also cited a plethora of decided case in support. He urged this Court to dismiss and strike out the Respondent’s petition and order her and her Counsel to severally pay the Petitioner N1 Million.

The Respondent formulated three issues for determination as follows:

1. *Whether in the light of the Respondent's similar deposition in support of this application as that of the depositions and prayers in Motion with number M/8836/18 which has been earlier decided upon in the consolidated Ruling of 21st September, 2020; in the light of Respondent's Appeal and application for stay of execution of the Ruling of 21st September, 2020, the Respondent is entitled to a grant of this application.*
2. *Whether in the light of the signatures in dispute being that of the Petitioner herself which she has admitted as such and signed before the Commissioner for Oaths of this Honourable Court; the Respondent has the locus to bring this application.*
3. *Whether this application is not a classic illustration of an abuse of the process of this court brought in bad faith and meant to further frustrate the progress of this petition; and for which the Petitioner is entitled to damages.*

The Respondent argued that the issue being raised by the Applicant in his instant application has already been raised by him vide Motion No. M/8836/18 and decided upon by this Court per Honourable Justice A.B. Mohammed (now of the Court of Appeal) in its Ruling of 21st September, 2020 when this Court held that the Applicant failed to prove fraud and that the signatures of the Respondent were hers. She posited that this Court is *functus officio*. The Respondent argued that the Applicant is thus estopped from raising the same issues before this same Court as this issue is also before the Court of Appeal via an appeal filed by the same Applicant. She further contended that the Applicant has brought the application as a busybody and he lacks the *locus standi* to file an application to challenge her signature as not belonging to her. She maintained that the Applicant's instant Motion with No. M/946/2022 is an abuse of court process.

I have considered this application, with all accompanying processes, the opposition thereto and written and oral addresses of counsel.

A careful scrutiny of previous proceedings and record of the court reveals that the motion No. M/8336/18 hitherto determined by Honourable Justice A.B. Mohammed is in material facts and

substance similar to the instant motion. The reliefs sought in that motion were:

- 1. An Order of this Honourable Court striking out Suit No. PET/101/2018, dated 31 January 2018 and filed on the same date by the Petitioner/Respondent and all processes filed in this suit specifically Motion No. M/2960/18 for lack of jurisdiction and same constituting an abuse of this Courts process and procedures.*
- 2. An Order that the Petitioner/Respondent and her Counsel Chuks J. Chinwuba Esq, individually and severally pay the Respondent/Applicant the sum of N1,000,000.00 as cost for this action.*
- 3. Ans such further or other orders as this Honourable Court may deem fit to make in the circumstances.*

A cursory perusal of the entirety of that application and juxtaposition of the relevant facts raised and considered in the motion at hand is a clear testimonial of the similarity between both applications.

The Applicant did not challenge the deposition in Respondent's counter affidavit that the issues raised in the instant application have been determined by Hon. Justice A.B. Mohammed and that the current Applicant has filed a pending Appeal against the Ruling together with an application for stay.

The record before this court also bears out the veracity of Respondent's said assertions. At page 2 to 10 of the consolidated Ruling (particularly at page 10) his lordship took a stand on issues raised in the application as follows:

“In the instant case, the depositions of the Respondent/Applicant alleging forgery of the Petitioner/Respondent's signature has been denied by the Petitioner herself in her Counter Affidavit stating clearly that the Petition and all other documents referred to by the Respondent/Applicant were her own. The Respondent/Applicant had merely sought that the Court should compare the signatures

made by the Petitioner on documents she had filed. This clearly falls short for proof of an allegation as serious as forgery beyond reasonable doubt as required by law. I therefore have no hesitation in discountenancing this ground of the application. It is hereby discountenanced.”

His lordship then concluded thus at page 11:

“For all the reasons aforementioned therefore, I resolve the sole issue for determination in this application against the Respondent/Applicant and dismiss this application for lack of merit.”

Essentially and from all indications of this application, what the Applicant is calling upon this court to do in the circumstance is to reconsider this application and issues that have already been determined by a court of coordinate and concurrent jurisdiction. This becomes even more daunting when the Applicant himself has filed an Appeal and stay of Execution against the same Ruling.

Doing that by this court would amount to sitting on Appeal over the Ruling of this Court and usurping the functions of the Court of Appeal before which the Appeal is pending. This is prohibited in law as a Court cannot interfere with or sit on Appeal over its own decision or that of a court of concurrent or co-ordinate jurisdiction.

In my humble view therefore, this Court is *functus officio* with regard to this application and ought to refrain from reviewing same. See

**ALI KANTOMA V. SAMARI SARKIN (MAGACI) WUTA
(2022) LPELR-57060(CA) PP. 15-16 PARAS. C-C**

**FRANK COLE V. JIBUNOH & ORS (2016) LPELR-40662(SC)
PG. 17-18 PARA. A**

**UNITED GEOPHYSICAL NIG. LTD V. FIDELIS OSIOBE &
ORS (2014) LPELR-2459 PG. 13 PARAS. F-E**

and

CUSTOMARY COURT OF APPEAL BENUE STATE V. ABURA TSEGBA & ANOR (2017) LPELR-44027 PG. 16-17 PARA D-B

The third prayer in this application is not one of the prayers in M/8336/18, however the substance of that prayer borders on same allegation of forgery of signature. Thus, the Applicant is estopped from raising the same issue for adjudication in this application. See

THE MILITARY ADMINISTRATOR OF BENUE STATE & ORS V. O.P. ULEGEDE, ESQ & ANOR (2001) LPELR-3184 (SC) PG. 32-33 PARAS G-B PER KARIBI-WHYTE JSC

COLONEL MOHAMMED SAMBO DASUKI (RTD) V. FRN (2018) LPELR – 43969 PG. 41-42 PARA D

LAWAL V. DAWODU & ANOR (1972) LPELR-1761 (SC) PG. 19-20 PARA E-D

and

APC V. PDP & ORS (2015) LPELR-24587 PG. 116 PARAS B-D per Rhodes-Vivour JSC.

Honourable Justice A. B. Mohammed of this Court (as he then was) had considered same issues raised herein, pronounced on them and has dismissed the said similar application No. M/8336/19 by the Applicant.

Suffice to say that this application is an abuse of court process, incompetent and hereby accordingly struck out.

M/947/2022

The second application is a motion on notice No. M/947/2022 filed on 31st January 2022. The Applicant prays for the grant of four reliefs, vis:

1. *An Order further directing the Respondent/Respondent to spend the 1st and 2nd weekends every month only, with their daughter, the only child of the parties' marriage.*
2. *An Order directing the Respondent/Respondent to disclose her authentic, genuine address of her residence of abode/living, where she takes and lives with their only daughter.*
3. *An Order that the Respondent/Respondent comes and picks the child directly from the Petitioner/Applicant, while the Petitioner/Applicant picks her up directly from the Respondent/Respondent pursuant to order 2 above.*
4. *And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this application.*

In support is a 12 paragraph Affidavit deposed to by the Applicant himself. Same is accompanied by a written address.

The Respondent reacted by filing a 7-point Counter Affidavit deposed to by Ikwegbue Ekene with accompanying written address.

The Applicant's written address raised a sole issue for determination to wit:

“Whether this Honourable Court has the power to grant/vary an order/ruling made by it.”

The Applicant submitted that the order/ruling sought to be varied was made by a sister court of the same co-ordinate jurisdiction, namely the High Court of the FCT sitting at Gudu. He contended that an order made competently within jurisdiction cannot be varied except on appeal. The Applicant however posited that the essence of this application is to avoid unnecessary bickering or stop parties from hiding under any cloak to frustrate the ruling of Court whilst claiming innocence. He cited Section 6(6)(a) & (b) of the 1999 Constitution of the Federal Republic of Nigeria as well as the cases of UNITY BANK PLC V. DAVID (2021) LPELR 54923(CA), ADIGUN V. AG OYO STATE (1987) 4 SC P. 271. He also relied on Order XIV Part 6 Rule 26(3) of the Matrimonial Causes Rules and concluded his submissions by urging this Court to resolve the application in his favour.

The Respondent formulated three issues for determination as follows:

- 1. Whether in the light of the Petitioner's similar deposition in support of this application as that earlier decided upon; Petitioner's Appeal and application for stay of execution of the Ruling of 21st September, 2020, the Petitioner is entitled to a grant of this application.*
- 2. Whether in the light of the unchallenged evidence that the Petitioner lacks the capacity to take care of their daughter; this application is not liable to be dismissed in the interest of their daughter.*
- 3. Whether this application is not a classic illustration of an abuse of the process of this Court brought in bad faith and meant to further frustrate the progress of this petition; and for which the Cross-Petitioner is entitled to damages.*

The Respondent argued that the Applicant is estopped from raising the same facts before this same Court which has already formed an opinion on the same facts and issues in similar applications. She posited that a party is not allowed to approbate and reprobate at the same time on the same matter. She argued that this application should fail as it is an established fact that the Applicant failed to take proper care of their daughter. Relying on the case of AFRICAN REINSURANCE CORPORATION V. JDP CONSTRUCTION (NIG.) LTD (2003) 23 WRN 1 AT 20, the Respondent contended that in view of the numerous applications filed by the Applicant, his instant application has been brought in bad faith and his antics has caused the Respondent untold emotional trauma and needless expenses. The Respondent finally urged this Court to refuse this application and award punitive cost of N3 Million against the Petitioner/Applicant.

I have considered this application, with all accompanying processes, the opposition thereto and written and oral addresses of counsel.

A careful scrutiny of previous proceedings and record of the Court reveals that the motion No. M/2455/19 hitherto determined by

Honourable Justice A.B. Mohammed is in material facts and substance similar to the instant motion. The reliefs sought in that motion were:

- 1. An order of interim injunction of this Honourable Court restraining the Petitioner jointly or severally whether acting by himself or through agents, staffs, privies, servants, employees or otherwise from denial of the Respondent/Applicant the right to have access to her Child, pending the determination of the petition.*
- 2. An order of this Honourable Court formally granting access to include having her on weekends and holidays by the Respondent/Applicant pending the determination of this petition.*
- 3. And such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances.*

A cursory perusal of the entirety of that application and juxtaposition of the relevant facts raised and considered in the motion at hand is a clear testimonial of the similarity in content between both applications. There is however a distinguishing factor which is to the effect that the instant application seeks a variation of the Ruling in motion No. M/2455/19.

The Applicant did not challenge the deposition in Respondent's affidavit that the issues raised in the instant application is subject of Appeal arising from the decision of Honourable Justice A.B. Mohammed. Record reveals an Appeal filed by the current Applicant against the Ruling together with an application for stay. The record before this court also bears out the veracity of said Respondent's assertions. See

**FRANK COLE V. JIBUNOH & ORS (2016) LPELR-40662(SC)
PG. 17 – 18 PARA. A**

**UNITED GEOPHYSICAL NIG. LTD V. FIDELIS OSIOBE &
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The application at hand borders on the very fabric of the Ruling in said previous application of the Respondent which was granted by his lordship at page 25 as follows:

“The Respondent/Applicant shall have access to the child of the marriage and the child shall spend the weekend with the Respondent/Applicant twice a month, to be determined by the parties, pending the final determination of this suit.”

The Applicant was apparently aggrieved by this Ruling and proceeded to exercise his right of Appeal. There is nothing presented before this Court to indicate that the said Appeal has been determined. With due respect to the Applicant he is not at liberty, in the circumstance to ask this Court to vary a previous Ruling upon which he has filed an appeal that is still pending. This Court and the parties have to defer to the Court of Appeal and await the outcome of the Appeal.

Suffice to say that this Court can neither vary nor review the decision of Honourable Justice A.B. Mohammed in Motion No. M/2455/2019 which is already subject of Appeal and application for stay at the instance of same Applicant herein who is aggrieved by the Ruling.

Consequently, this application is found to be an abuse of Court process and hereby accordingly struck out.

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Honourable Justice M. E. Anenih

APPEARANCES:

Petitioner/Applicant appears for self.

E.A. Iyede (Mrs) appears with C.N. Maduka (Ms) for the Cross-Petitioner/Respondent.