

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 05<sup>TH</sup> DAY OF APRIL, 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/2062/2019**

**MOTION NO.: FCT/HC/M/552/2022**

**BETWEEN:**

1. ALIBRO TRANSPORT SERVICES LIMITED
2. AIR VICE MARSHAL EMMANUEL ROBERTS EJEH (RTD)      CLAIMANTS

**AND**

1. ACCESS BANK PLC      DEFENDANT/APPLICANT  
(Formerly Diamond Bank Plc)
2. CHIEF REGISTRAR, HIGH COURT OF FCT, ABUJA      DEFENDANT

**RULING**

This Ruling is on the Notice of Preliminary Objection which the 1<sup>st</sup> Defendant brought against the suit of the Claimants, challenging same for being an abuse of court process.

By a Notice of Preliminary Objection with Motion Number FCT/HC/M/552/2022 dated and filed on the 27<sup>th</sup> of October, 2022 the 1<sup>st</sup> Defendant/Applicant brought this application praying this Court to strike out and/or dismiss the present for lack of jurisdiction and/or incompetence. The

application is founded on seven grounds which I have taken the pains to itemize below: -

- i. *This Court as presently constituted, lacks the jurisdiction to entertain the Claimants' suit as same had already been determined by this Court as presided by Hon. Justice Asmau Akanbi-Yusuf in Suit No. CV/2489/2018 on 21/03/2019.*
- ii. *This Court cannot review its decision or sit on appeal over its decision considering the provisions of sections 240 and 241 and 255(1) of the Constitution as amended.*
- iii. *The instant suit constitutes an abuse of court process and/or forum shopping which is outlawed.*
- iv. *The subject matter in this suit relates to the indebtedness of the Claimants to the 1<sup>st</sup> Defendant which was secured by a legal mortgage and same formed the basis of the decision in suit no. CV/2489/18 Access Bank plc vs. AlibroTransport Services Ltd and AVM Emmanuel Roberts Ejeh (RTd) as presided by Hon. Justice Asmau Akanbi-Yusuf.*
- v. *The 1<sup>st</sup> Defendant has not levied execution on the moveable assets/properties of the Judgment Debtors which is a pre-condition to levying execution on the immovable assets comprised in the Deed of Legal Mortgage securing the 1<sup>st</sup> Defendant.*

- vi. *The Claimants are presently contesting the decision of this Court, per Asmau Akanbi-Yusuf at the Court of Appeal Abuja in Appeal Number CA/A/928/2019 wherein briefs of argument have all been filed and exchanged by the Claimants and the 1<sup>st</sup> Defendant.*
- vii. *The Claimants have not settled the cost as ordered by this Honourable Court as presided by Hon. Justice Asmau Akanbi-Yusuf given in the breach of Order 56 Rule 9(2) of the High Court Civil Procedure Rules, 2018 and want to invoke the jurisdiction of Court to make judicial awards in their favour.*

A 4-paragraph affidavit and a written address accompany the Notice of Preliminary Objection. Attached to the affidavit are three exhibits. One is the Certificate of Judgment which contains the particulars of the Judgment delivered by this Court *coram* Asmau Akanbi-Yusuf, J. on the 21<sup>st</sup> of March, 2019 between Diamond Bank Plc (now, Access Bank) as the Claimant and Alibro Transport Services Ltd and Air Vice Marshal Emmanuel Roberts Ekeh (Rtd) as the Defendants. The second exhibit is the Ruling of this Court delivered on the 27<sup>th</sup> of May, 2019 by this Court *coram* Akanbi-Yusuf, J. The last exhibit is a letter written by Counsel for the 1<sup>st</sup> Defendant/Applicant in response to a letter from the Claimants.

Upon being served with the Notice of Preliminary Objection, the Claimants, on the 05<sup>th</sup> of December, 2022, filed their Counter-Affidavit in opposition to the 1<sup>st</sup> Defendant's Notice of Preliminary Objection.

The 1<sup>st</sup> Defendant/Applicant in its written address formulated a sole issue for determination, namely, "*Whether the Claimants' suit does not constitute an abuse of Court process?*" On their part, the Claimants, in their written address, framed an identical issue, *videlicet*, "*Whether the instant suit instituted by the Claimants before this Honourable Court amounts to an abuse of Court process?*" Parties through their respective Counsel adopted and argued their respective positions on the 6<sup>th</sup> of December, 2022. This Court thereupon adjourned the application for Ruling.

It is important to highlight the factual background to this suit, and, by extension, this Notice of Preliminary Objection. The 1<sup>st</sup> Claimant herein took out a loan facility of ₦25,000,000.00 (Twenty-Five Million Naira) only from the 1<sup>st</sup> Defendant herein some time in 2010. As a security for the loan, the 2<sup>nd</sup> Claimant, being the beneficial owner of the property properly described as Plot No. 471 Gwarinpa District, Cadastral Zone C02 and the alter-ego of the 1<sup>st</sup> Claimant, executed a Third Party Legal Mortgage in favour of the 1<sup>st</sup> Defendant. See **Exhibit A** attached to the Amended Originating Summons.

Somehow, the 1<sup>st</sup> Claimant defaulted in repaying the loan and the interest and the principal accumulated to the aggregate sum of ₦98,103,795.75 (Ninety-Eight Million, One Hundred and Three Thousand, Seven Hundred and Ninety-Five Naira, Seventy-Five Kobo).

In order to recover this debt, the 1<sup>st</sup> Defendant instituted a suit under the Undefended List Procedure against the Claimants in this Court. On the 21<sup>st</sup> of March, 2019, this Court *coram* Akanbi-Yusuf, J. delivered Judgment in favour of the 1<sup>st</sup> Defendant herein. See **Exhibit A** attached to the affidavit in support of the Notice of Preliminary Objection. Dissatisfied with the Judgment of this Court *coram* Akanbi-Yusuf, J., the Claimants filed an appeal against the Judgment and an application for stay of execution of the said Judgment. See paragraphs 4(iii) and (iv) of the affidavit in support of the Notice of Preliminary Objection, paragraphs 4(v) of the Counter-Affidavit to the Originating Summons.

While this appeal and the motion for stay of execution was pending before the Court of Appeal, the Claimants filed a Motion before the trial Court on the 16<sup>th</sup> of April, 2019 with Motion Number M/5375/19 seeking the following reliefs: *“(1) An Order inviting the Honourable Court to determine the following issues in the light of its Judgment delivered [on] the 21<sup>st</sup>, March, 2019:- (i) the effect*

*of the Deed of the Third Party Legal Mortgage dated 28<sup>th</sup> July, 2010 executed by the parties (the Applicant/Defendants) in connection with the said debt particularly paragraphs 2 and 8 of the Deed of Legal Mortgage; (2) And for such Order or further Orders as this Honourable Court may deem fit to make in the circumstances.”* The reliefs and grounds for the application are contained in the pages 7 and 8 of the body of the Ruling which is **Exhibit B** attached to the affidavit in support of the Notice of Preliminary Objection. Ground 5 is particularly revealing. It states thus: *“That the Honourable Court did not make a pronouncement on the Deed of Legal Mortgage marked as Exhibit B attached to the Respondent/Judgment Creditor’s undefended list suit.”*

The 1<sup>st</sup> Defendant herein filed a Notice of Preliminary Objection challenging the application. In a considered Ruling, the Court *coram* Akanbi-Yusuf, J. dismissed the Notice of Preliminary Objection as an impediment to the right of the Claimants herein to be heard. My learned brother, after a meticulous review of the circumstances of that application, dismissed the application. My learned brother, at page 10 of the Ruling noted that: ***“it is not in doubt this Court delivered its Judgment [on] the 21<sup>st</sup> March, 2019 in respect to an undefended suit filed by the Judgment Creditor/Respondent and***

*judgment was entered in the favour (sic) of the Respondent. The Judgment Debtors/Applicants has (sic) now applied that I determine the effect of the Deed of the Third Party Legal Mortgage dated 28<sup>th</sup>, July, 2010 executed by the parties. How is that possible? The depositions alone in the (sic) paragraphs 3 – 13 of the supporting affidavit have made it impossible for the Court to consider the application. Para (sic) 7 of the supporting affidavit states: ‘That the Judgment Debtor/Applicants has (sic) appealed against the Judgment and filed for a Motion to stay execution.’ The question I ask here, if the Judgment Debtors/Applicants has (sic) appealed against the Judgment delivered by me, the 21<sup>st</sup> March, 2019 why then invite this Court to determine an issue that has already been concluded or performed?’*

It is against this factual backdrop that this present suit and application materialized. The issue for determination, therefore, which I have distilled from the submissions of Counsel is this: “**Whether the suit of the Claimants as presently constituted does not amount to an abuse of Court process?**” having presented the factual background to this application, the launching pad for the resolution of this issue becomes a judicial explication of what constitute an abuse of process of Court.

It must be noted that what constitute an abuse of Court process can take different forms and shades. In other words, the province of abuse of court process is not closed. Generally, it has to be noted that the term “abuse of court process” does not have a rigid, fixed and immutable definition. The expression encompasses a range of activities that are ultimately defeating of the ends of justice. In ***C.P.C. v. Ombugadu (2013) 18 NWLR (Pt. 1385) 66 S.C. at 125, paras B – D***, the Court of Appeal held that ***“The legal concept of the abuse of judicial process or the abuse of the proceedings of the court is very wide. It is of infinite variety and the categories cannot be closed.”*** See ***Aroyame v. Gov., Edo State (2023) 1 NWLR (Pt. 1866) 54 S.C. at 571, paras D – E; Nwoboshi v. State (1998) 10 NWLR (Pt. 568) 131 C.A. at 170, paras E – F; Jonpal Ltd. v. Afribank (Nig.) Ltd. (2003) 8 NWLR (Pt. 822) 290 C.A. at 304, paras. B-F***. The Supreme Court, in the case of ***Buhari v. Adebayo (2022) 13 NWLR (Pt. 1848) 533 S.C. at 610-611, paras. G-G*** cited with approval the case of ***Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 188 – 189***, where the apex Court per Karibi-Whyte, JSC held that

***“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and***



***conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with due administration of justice. It is recognised that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse consists in the intention, purpose, and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration of justice such as instituting different actions between the same parties simultaneously in different courts, even though on different grounds...”***

In *Adamu v. Nigerian Airforce (2022) 5 NWLR (Pt. 1822) 159 S.C.* for instance, the Supreme Court had reason to consider what constitute an abuse of court process. In the concurring Judgment of Eko, JSC, the Supreme Court held *at 185, paras A - C* that

***“A process of court filed which has no backing of the law is regarded as an abuse of court process. Abuse of process includes where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies, inter alia, in the inconvenience the other party has been put and/or made to defend the process adjudged recklessly incompetent.”***

The question that remains to be answered is whether the present suit of the Claimants constitutes an abuse of Court process. The 1<sup>st</sup> Defendant strongly espouses the view that the present suit is an abuse of Court process. Its contention is that the subject of the present suit has been litigated upon and is currently the subject of a pending appeal at the Court of Appeal. It has drawn the attention of the Court to the reliefs sought herein and the reliefs sought in the motion which this Court *coram* Akanbi-Yusuf, J. dismissed. The Claimants, on the other hand, vehemently think otherwise. They assert that the case which was decided by this Court *coram* Akanbi-Yusuf, J. bordered

on the recovery of the sum of ~~N~~98,103,795.75K (Ninety-Eight Million, One Hundred and Three Thousand, Seven Hundred and Ninety-Five Naira, Seventy-Five Kobo) while the suit before this Court relates to the construction of the Deed of Third Party Legal Mortgage.

I have held up the facts of this suit to the lens of the authorities I have cited above. I have also reflected on the judicial authorities cited by Counsel on both sides of this litigious divide. I have already reproduced the questions the Claimants have formulated for determination in the Amended Originating Summons and the reliefs they seek upon a positive determination of the questions. It is immediately obvious that the Originating Summons seeks a judicial pronouncement on the Deed of Third Party Legal Mortgage attached thereto as **Exhibit A**. This document was attached to the suit of the 1<sup>st</sup> Defendant under the Undefended List as **Exhibit B**. The suit was determined by the Court against the Claimants herein. The Claimants herein have lodged an appeal against the said Judgment and have also filed a Motion for stay of execution at the same Court of Appeal.

As I noted earlier in my precis of the facts of this case, the Claimants, in the application they brought before this Court *coram* Akanbi-Yusuf, J. inviting the Court to pronounce on the effect of the Deed of Third Party Legal Mortgage

dated the 28<sup>th</sup> of July, 2010 had cited as one of their grounds the fact that the “Honourable Court did not make a pronouncement on the Deed of Legal Mortgage marked as Exhibit B attached to the Respondent/Judgment Creditor’s undefended list suit.” My learned brother heard the application and dismissed it. My learned brother was pungent when he held at page 9 of the Ruling that **“the general law is that the court has no power under any application in the action to alter or vary a Judgment or Order after delivery except it is necessary to correct errors, clerical mistake or any accidental slip or omission.”** I agree with him. Once a Court delivers its judgment on the matter before it, it becomes *functus officio*. The only business it has with the decided matter is to hear post-judgment applications which can give effect to its judgment. It lacks the jurisdiction to sit on appeal over its decision to retry issues it has dispensed with in the judgment. See ***G.T.B. Plc v. Innoson (Nig.) Ltd. (2022) 6 NWLR (Pt. 1825) 35 S.C. at 55-57, paras. F-F.*** In the case of ***Dingyadi v. I.N.E.C. (2011) 10 NWLR (Pt. 1255) 347 S.C. at 408-409, paras. F-A,*** the apex Court held, while explaining the limits within which a Court may review its Judgment under the slip rule in the following pellucid words:

***“The circumstances under which a court can interfere with its decision by reviewing or correcting any apparent error(s) in it is by way of an appeal. However, this is subject to the inherent power of the court exercisable under the principle of “slip rule” to correct accidental slips or mistakes/omissions. Thus, it has defined the narrow compass of a court's operational limit within the principle of slip rule albeit in regard to reviewing or correcting of its decision. The inherent power of a court under the slip rule has to be construed strictly. It entails correcting any clerical error, mistake or some error arising from any accidental slip or omission or to vary the judgment or order so as to give effect to the intention of the court. The scope of the principle of slip rule does not allow a court such as the Supreme Court to reconsider its decision all over again. Nor is it used as a cause for staging a second thought on the matter. The nature of the review contemplated in the instant application did not come within the ambit of the principle of slip rule.”***

It is my considered view, and I so hold, that the determination of the contents of **Exhibit A**, that is, the Deed of Third Party Legal Mortgage is most

appropriate as a ground for appeal. The Claimants have complained that this Court *coram* Akanbi-Yusuf, J. failed to make a pronouncement on the document which was an exhibit before him. Such failure amounts to improper evaluation of evidence.

This species of complaint is most suited for appellate determination. As the Supreme Court succinctly held in ***Amaran v. Education Trust Fund (2023) 1 NWLR (Pt. 1866) 541 S.C. at 546, paras B – C, “An appeal against a judgment is to show that the judgment is not correct in some respect.”***

The oversight complained of in this suit does not fall within the category of inadvertence that can be corrected by way of an application for a Court to review its judgment under the slip rule. It cannot, certainly, be a subject of another round of litigation. In ***Edem v. Ishie (2023) 2 NWLR (Pt. 1869) 507 S.C. at 528-529, paras. H-E***, the Supreme Court per Tijani Abubakar, JSC delivering the leading judgment, held that ***“It is a cardinal principle of public policy that the court should not encourage the re-litigation of an issue that has been decided by a competent court between the same parties in respect of the same matter, or cause or an issue in the course of previous proceedings.”*** Abdu Aboki, JSC was unsparing in his concurring judgment seen ***at pages 537-538, paras. F-C*** when he noted that

***“A party is estopped from re-litigating a matter which had been a subject of litigation between the same parties. Where a competent court has determined an issue and entered judgment thereon, neither of the parties to the proceedings may relitigate that issue by formulating a fresh claim, since, in the circumstance, the matter is said to be res judicata.”***He added that ***“It would have smacked of judicial irresponsibility, rascality, impertinence and insubordination”*** for a Court who is aware that the subject matter of the suit before it has been determined in an earlier suit to sit on the relitigated suit. It is even so when an appeal has been filed against the said Judgment by the party seeking a second bite at the cherry. In the same ***Edem v. Ishie (2023) 2 NWLR (Pt. 1869) 507 S.C. at 534, paras. A-B***, the Court held that ***“The filing of a fresh suit before the trial court while an appeal is pending before the Supreme Court on an issue that had a significant bearing on the subject matter of that suit is a gross abuse of the court's process. There must be an end to litigation.”***

Learned Counsel for the Claimants has tried valiantly to convince this Court that the present suit does not amount to an abuse of Court process. He has insisted in paragraph 3.3 of his written address in opposition to the Notice of Preliminary Objection that what is before this Court ***“is an invitation of the***

***Court to interpret the Deed of Third Party Legal Mortgage executed between the 1<sup>st</sup> Defendant and the Claimants...***” He has cited the case of ***Christian Outreach Ministries Inc &Ors v. Cobham& Anor (2005) CA*** and ***Fasakin Foods (Nig.) Co. Ltd v. Shosanya (2003) 17 NWLR (Pt. 849) 237*** to fortify his argument. I discountenance the first case because the citation is incomplete. Counsel cannot send this Court on a voyage of discovery. The second case cited is inapplicable to the instant case because the document sought to be interpreted in this case was before my learned brother Akanbi-Yusuf, J, though it was not acted upon. The Claimants stated this fact in their application before him which he dismissed. I have stated it at several points in the course of this Ruling.

Of curious interest in the Claimants’ desperation to foist this suit on this Court is the fact that they have joined the Chief Registrar of this Court as a Defendant herein so that they can contend that the parties in this suit and the previous suit are not the same. It was of no concern to them that the facts as deposed to in the affidavit in support of the Originating Summons did not disclose any cause of action against the Chief Registrar of this Court. This Court frowns at this desperate deployment of legal chicanery by the



Claimants. This Court, as a watchman at the castle of justice, is ever vigilant and cannot be hoodwinked into slumber by circuitous legalisms.

I have no hesitation, therefore, in arriving at the ineluctable conclusion that the present suit of the Claimants constitutes an abuse of the process of this Court. This is more so as the case of ***Agwasin v. Ojiche (2004) 10 NWLR (Pt. 882) 613*** cited by Counsel for the Claimants enabled me to that effect. Having scrutinized the depositions before me and all the exhibits thereto, I find and hold that this suit is an abuse of court process.

As to the consequence that must attend a suit which constitute an abuse of court process, the Court has held in ***Nwosu v. P.D.P.(2018) 14 NWLR (Pt. 1640) 532 S.C. at 546, paras. D-F*** that

***“An abuse of court process constitutes a fundamental defect, the effect of which will lead to a dismissal of the process, which is abusive. In other words, once the court is satisfied that a proceeding before it amounts to an abuse of court process, it has the right to invoke its coercive powers to punish the party in abuse of its process, and quite often, that power is exercised by a dismissal of the action, which constitutes the abuse. The court reserves the prerogative and the inherent jurisdiction***

***to protect itself from an abuse of its process and any case which is an abuse must go under the hammer so as to halt the drift created by the abuse.”***

See also the case of *Idris v. Agumagu (2015) 13 NWLR (Pt. 1477) 441 C.A. t 480 – 481, paras F – A* where the Court held that ***“While an action enmeshed in an abuse of court process is penalised by an order of dismissal, an order striking out is visited on one infested with incompetence.”***

It is for this reason, therefore, that I hold that the suit of the Claimants must suffer the fate that is reserved for suits that constitute abuse of the process of the Court. The suit of the Claimant with Suit Number FCT/HC/CV/2062/2019 is liable to be dismissed. It is accordingly dismissed. A cost of ₦100,000.00 (One Hundred Thousand Naira) is hereby awarded against the Claimants and in favour of the 1<sup>st</sup> Defendant.

This is the Ruling of this Honorable Court delivered today, the 5<sup>th</sup> of April, 2023.

**HON. JUSTICE A. H. MUSA  
JUDGE  
05/04/2023**