

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

**BEFORE HIS LORDSHIP: HON. JUSTICE BABARGIDA HASSAN**

**SUIT NO: CV/2364/2021**

**BETWEEN:**

**MR. OLUWASEYI AKINLADE.....CLAIMANT**

**AND**

**1. ROM-FLEX NETWORK LTD }.....DEFENDANTS  
2. BILAAD REALTY NIG. LTD }**

**RULING**

The 2<sup>nd</sup> defendant/applicant (Bilaad Realty Nig. Ltd) filed this Notice of preliminary objection with No. M/345/2023 and seek for the following orders:

1. An order of this Honourable Court striking out the name of the 2<sup>nd</sup> defendant to the counter claim (BILAAD REALTY NIG. LTD) for want of jurisdiction.
2. And for such further order(s) as this court may deem fit and just to make in the circumstances.

The grounds upon which this application is filed are contained in pages 1 and 2 of the application together with the particulars thereto. It is supported by fifteen paragraphed affidavit and attached to it are some documents marked as EXH. 1 to 5 and it is also accompanied by a written address of counsel.

The counter claimant filed a nineteen paragraphed counter affidavit in opposition to the application and attached to it are some documents marked as TIM 1 and TIM 2 and is also accompanied by a written address of counsel.

It is in the affidavit in support that on the 29<sup>th</sup> November, 2021, the 3<sup>rd</sup> defendant to the counter claim commenced an action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the counter claim and the counter claimant before this court and on the 9<sup>th</sup> day of

December, 2021, the 2<sup>nd</sup> defendant to the counter claim filed a notice of preliminary objection and sought to strike out its name from the suit, and the court in its ruling of 29<sup>th</sup> September, 2022 upheld the objection and struck out the name of the 2<sup>nd</sup> defendant to the counter claim, and no appeal was filed against the ruling of this court and the 3<sup>rd</sup> defendant/counter claimant proceeded and filed amended counter claim dated the 1<sup>st</sup> February, 2023 and the counter claim bothers on same parties and the same subject matter already decided by this court in the ruling.

It is stated that the facts contained in amended counter claim, the purported transaction in the suit is solely between the counter claimant, and are Olusoga Oladayo Bamidele and the 1<sup>st</sup> defendant to the counter claim. That from the length and breadth of the amended counter claim dated the 1<sup>st</sup> February, 2023, there is no cause of action against the 2<sup>nd</sup> defendant/counter claimant, and therefore the counter claimant's action as presently constituted is an abuse of court process and therefore the court lacks jurisdiction to entertain same.

In his written address, the counsel to the 2<sup>nd</sup> defendant to the counter claim/applicant raised three issues for determination, to wit:

- 1. Whether this Honourable Court lacks the jurisdiction to hear and determine this suit by virtue of the ruling delivered by this Honourable Court: Coram: His Lordship Hon. Justice Babargida Hassan on 29<sup>th</sup> September, 2022 between the same parties and the same subject matter?**
- 2. Whether this Honourable court lacks the jurisdiction to entertain this counter claim as the counter claimant has failed to disclose a reasonable cause of action against the 2<sup>nd</sup> defendant to the counter claim/applicant?**
- 3. Whether this Honourable Court lacks the jurisdiction to entertain this amended counter claim dated the 1<sup>st</sup>**

**February, 2023 as same is frivolous, vexatious and a flagrant abuse of court process to the annoyance and irritation of the 2<sup>nd</sup> defendant to the counter claim/applicant?**

The counsel submitted that the law is that a plea of res judicata is jurisdictional issue by which a court of law is being asked not to assume, and he referred to the case of **Igbeke V. Okadigbo (2014) All FWLR (pt 710) p. 1317** to the effect that a party cannot bring an action on an issue which has been completely determined as it is an abuse of court process, and that the parties cannot be allowed to relitigate, and that if the court makes a mistake, its decision is binding until it is corrected on appeal, and he cited the case is **Dauda V. A.G. Lagos State (2011) 13 NWLR (pt 1265) p. 447, paras. C-G**. He also relied on the case of **Ugo V. Ugo (2017) All FWLR (pt 902) p. 919, paras. C-H** to the effect that the doctrine of res judicatam one rates only against the parties but also against the jurisdiction of the court itself as robs the court of its jurisdiction to entertain the same action on the same issues previously determined. The counsel further buttressed his argument with the case of **Osigbemeh V. Egbagbe (2014) All FWLR (pt 744) p. 83, paras. A-E**.

The counsel argued that the parties in that action and the parties to the counter claim are one and the same, the property, being the subject of the dispute is the same and he urged the court to hold so. It is further argued that the 2<sup>nd</sup> defendant to the counter claim filed its notice of preliminary objection and this was opposed by the 3<sup>rd</sup> defendant to the counter claim and the counter claimant. It is also the argument of the counsel to the 2<sup>nd</sup> defendant to the counter claim that the court ruled that the interest in the property, the subject of the dispute is rested on the 1<sup>st</sup> defendant to the counter claim, and that the 1<sup>st</sup> defendant to the claim is the party with the rights to sell the property, by virtue of the Joint Venture Agreement between the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant to the counter claim and the court struck out the name of the 2<sup>nd</sup> defendant from the suit.

The counsel argued that the main suit and the counter claim are parallel and the ruling resolves all the grievances posited by the parties, that is to say, the 3<sup>rd</sup> defendant to the counter claim as the claimant in the main suit and the counter claimant against the 2<sup>nd</sup> defendant to the counter claim. It is argued that the ruling of this court is not appealed, and therefore it is subsisting and operated as res judicata to bar all parties in this suit from instituting a suit against the 2<sup>nd</sup> defendant to the counter claim on the same case of action. The counsel relied on the cases of **Ezewani V. Onwordi & Ors; and Olaniyi V. Olayioye (2014) All FWLR (pt 745) p. 410** and urged this court to decline jurisdiction.

On the issue No. 2, the counsel submitted that a cause of action is the entire set of facts or circumstances giving rise to an enforceable claim, and he cited the case of **Sulgrave Holdings Ltd V. F.G.N. (2012) 17 NWLR (pt 1329) pp. 333-334, paras. H-B**. He also cited the cases of **Nweke V. Onizik, twka (2017) 18 NWLR (pt 1598) p. 475, paras. F-G, and Cookey V. Fombo & Anor. (2005) LPELR – 895 pp. 19-19, paras C-D** to the effect that where the statement of claim discloses the cause of action and if the court is satisfied that no amendment however ingenious will cure the defect, the statement of claim will be struck out and action dismissed. The counsel submitted that the grouse of the counter claimant's claim as stated in its amended counter claim dated the 1<sup>st</sup> February, 2023 is hinged on the purported own delivery of Rigby 4-bedroom duplex with Boys Quarter Block D4, No. 7, Teal Lane, Bora Bora Island by the 2<sup>nd</sup> defendant to the counter claim, and as stated in paragraphs 14-15 of the affidavit in support of this application that no allegation of facts was made out against the 2<sup>nd</sup> defendant to the counter claim and the facts averred by the counter claimant in paragraphs 7, 9, 10, 11, 13, 14, 15 and 16 of the amended statement of claim have been effectively resolved by this court in its ruling of 29<sup>th</sup> September, 2022, and the court cannot revisit its ruling and based upon the ruling there is no contractual relationship between the counter claimant and the 2<sup>nd</sup> defendant to the counter claim, and he referred the court to paragraphs 4, 6,

7, 8 and 9 of the Amended Counter Claim and he submitted that the parties to the transaction are the counter claimant, one Olusoga Oludayo Bamidele and the 1<sup>st</sup> and 3<sup>rd</sup> defendants to the counter claim, and urged the court to so hold.

On the issue No. 3, the counsel submitted that the process of the court has not been used bonafide and properly as this is to the annoyance of the opponent and to the effective administration of justice and he cited the case of **F.G. P. Ltd V. Duru (2017) 14 NWLR (pt 1586) pp. 513-515, paras. F-C** to the effect that the counter claims is against the multiplicity of actions on the same subject matter against the same opponent on the same issue and is an abuse of judicial process. The counsel argued further that the circumstances which would give rise to an abuse of judicial process includes instituting multiplicity of actions on the same subject matter against the same opponent on the same issue and where there is no law supporting a court process or where it is predicated on frivolity or recklessness.

The counsel relied on the cases of **Oyeyemi V. Owoeye (2017) 12 NWLR (pt 1580) p. 397, paras. G**; and **Maikyo V. Itodo (2007) All FWLR (pt 363) p. 78, paras. B-F** and asked the court to decline jurisdiction.

By the counter claimant's counter affidavit, it is stated that initially the suit was between the claimant/3<sup>rd</sup> defendant to the counter claim and the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the counter claim, but he was joined as a party. That there was a preliminary objection to which the parties opposed except that the counter claimant did not challenge the said ruling of the court, and the counter claim is a separate and distinct action from the case of the claimant. That the counter claim does not constitute an abuse of court process, and that it was stated in the pleadings of the counter claim that the 2<sup>nd</sup> defendant to the counter claim/applicant issued him with an application and allocation papers to the property subject of litigation, and that the 2<sup>nd</sup> defendant to the counter claim was under an obligation to hand

over possession and issue an allocation letters in its name as evidenced by EXH. Tim I (a) and (b).

It is stated that the counter claimant has established a reasonable cause of action against the 2<sup>nd</sup> defendant to the counter claim and this court has requisite jurisdiction to entertain this matter and that the 2<sup>nd</sup> defendant is a necessary party to the just and equitable determination of this suit.

It is stated that as a result of the Joint Venture Agreement a new company Trustcon (Nig.) Ltd was incorporated and the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the counter claim were made as directors in the said company, and that in the above agreement, it is stated that the said company shall execute a Power of Attorney and a Deed of Assignment in respect of the property in favour of the SPU and the legal interest transferred to the SPU immediately upon

execution of the agreement, and that the 1<sup>st</sup> defendant so hold 50% was allocated to the 2<sup>nd</sup> defendant to the counter claim and even after completing the project, the 2<sup>nd</sup> defendant to the counter claim/applicant is still re-justible for allocating same to interested members of the public.

In his written address, the counsel to the counter claimant/respondent adopted the issues already formulated by the counsel to the 2<sup>nd</sup> defendant to the counter claim/applicant, and on issue No. I, the counsel submitted that the doctrine of res judicata applies to where the court disposes once and for all of the matters decided so they cannot be raised for re-litigation between the same parties, and he cited the case of **Agu V. Ikewibe (1991) 3 NWLR (pt 180) 385**, and to him, the ruling of the court on the 29<sup>th</sup> September, 2022 did not terminate the suit before the court as the trial had not commenced and there was a counter claim against the defendants to the counter claim which is distinct action from the main suit, and he cited the case of **NTUS V. NPA (2007) LPELR – 2016 (SC)** to the effect that res-judicatam means a matter adjudged; a thing or matter settled by judgment and that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and that constitute an absolute bar to a subsequent action involving

the claim, demand or cause of action. The counsel argued that the ruling of the court on the 29<sup>th</sup> September, 2022 is not final and is not in respect of the counter claim of the 3<sup>rd</sup> defendant/counter claimant.

The counsel also contended that a counter claim is separate and distinct action, and he cited the case of **Dala Air Services V. Sudan Airways (2005) 3 NWLR (pt 918) 349**.

The counsel cited also the cases of **Air Via Ltd V. Oriental Airlines Ltd (2004) LPELR – 272 (SC)**; and **Oroja & Ors V. Adeniyi &**

**Ors (2017) LPELR – 41985 (SC)** all to the effect that the counter claim is distinct from the main claim.

The counsel quoted a portion of the ruling of the court at page 15 which he argued supported their argument and therefore urged the court to so hold.

On the issue Nos. 2 & 3, the counsel submitted that a cause of action arises on the date of the occurrence or neglect complained of and put on the consequence or result of any of them, and the cause of action given the court the jurisdiction to entertain a matter, and he relied on Encyclopedia of Legal Authorities by Emmanuel Egburuonu 2008 Basic Rights Publications Ltd.

The counsel also cited the case of **Ojukwu V. Yar'adua & 4 Ors (2009) 4 NMLR at p. 207** as to the definition of cause of action. He submitted further that in determining whether a cause of action exist, the court has to look at the counter claim of the counter claimant and he cited the case of **Anozia V. A.G. Lagos State & Ors (2022) LPELR-58534 (SC)** and submitted that in paragraphs 10, 11 & 13 of the counter claim it was expressly averred that the forms were given to the counter claimant by the 2<sup>nd</sup> defendant to the counter claim to fill and submit same, after which a welcome letter and allocation letter was issued to him with a grant of putting him in possession of the house, subject matter of this

suit on or before 30<sup>th</sup> August, 2021 and that when possession was not given as promised the said letter was responded to by the 2<sup>nd</sup> defendant to the counter claim, and to the counsel, those averment constitute cause of action to proceed in this suit against the 2<sup>nd</sup> defendant to the counter claim as they personally issued allocation letters (EXH. TAM I (b)) and failed on its promised. He submitted further that those averments disclose the rights or interest of the counter claimant and the rights or interest is in



danger of being violated, and he urged the court to hold that the 2<sup>nd</sup> defendant is a necessary party in this proceedings.

The question of who is a necessary party was answered in the case of **Bwacha Ikenya (2011) All FWLR (pt 572) p. 1676**. He further cited the case of **Iho V. Wombo (2011) All FWLR (pt 591) p. 1570** to the effect that a necessary party is he who without which the suit cannot completely determined. The counsel alluded that the Joint Venture Agreement empowered the 2<sup>nd</sup> defendant to the counter claim to take certain steps including allocation of all apartments on the property subject matter of this suit, and therefore to him, this factor constitute a reason why the 2<sup>nd</sup> defendant to the counter claim is a necessary party to this proceedings. The counsel referred to pages 18 and 19 of the ruling of the court and submitted that the position of the court is not the position of the counter claimant both in his counter claim and the amended counter claim.

The counsel submitted that the counter claim is meritorious and urged the court to discountenance the submission of the 2<sup>nd</sup> defendant to the counter claim as the counter claim does not constitute abuse of court process and he cited the case of **Nwosu V. PDP (2011) 11 NWLR (pt 724) 639**, and he urged the court to hold that the 2<sup>nd</sup>

defendant to the counter claim is a necessary party to this suit.

In his reply affidavit, the 2<sup>nd</sup> defendant to the counter claim stated that paragraphs 7 & 8 of the counter affidavit of the counter claimant is false and misleading as the Amended Counter Claim dated the 1<sup>st</sup> February, 2023 consists of same parties and applies to same subject matter. That on the 18<sup>th</sup> June, 2021, the 2<sup>nd</sup> defendant to the counter claim/applicant received a letter dated 17<sup>th</sup> June, 2021 from the 1<sup>st</sup> defendant to the counter claim to treat the counter claimant as the new owner of the property subject

matter of this suit, and it was based upon that instruction the 2<sup>nd</sup> defendant to the counter claim issued an application form, welcome letter of allocation to the counter claimant/respondent, but there is no contractual relationship between the 2<sup>nd</sup> defendant to the counter-claim and the counter claimant with regards to the purchase of the property of this suit and that the 2<sup>nd</sup> defendant to the counter claim via a letter dated the 27<sup>th</sup> September, 2021 further explained to the counter claimant that it lacks the legal authority to hand over the subject property to the counter claimant or any other third party except for those directed to it by the 1<sup>st</sup> defendant.

It is stated that the 2<sup>nd</sup> defendant to the counter claim is neither a director nor a shareholder in Trustcon Nig. Ltd and that the 2<sup>nd</sup> defendant is a distinct and separate entity from the Trustcon Nig. Ltd.

In the accompanying written address, the counsel to the 2<sup>nd</sup> defendant to the counter claim submitted that the what determines whether a decision of the court is final or interlocutory is dependent upon the order being made, and he cited the case of **Igoin & Ors V. Ajoko (2021) LPELR – 58334 (SC)**; and **Iwueke Silmo Broadcasting Corporation**

**(2005) LPELR – 1567 (SC)**, and the counsel submitted that the ruling of this court dated the 29<sup>th</sup> September, 2022 is final, to the counsel, because the court finally determined the interest of the 2<sup>nd</sup> defendant to the counter claim to the property being the subject matter of this suit and found that the interest on the property is vested on the 1<sup>st</sup> defendant and the 1<sup>st</sup> defendant is a party with the right to sell the property, and the court struck out the name of the 2<sup>nd</sup> defendant to the counter claim from the suit, and therefore, he argued that giving the nature of the of this ruling, the rights of the 2<sup>nd</sup> defendant to the counter claim with respect to the property have been fully and finally resolved by this court in its ruling of 29<sup>th</sup> September, 2022.

The counsel submitted further that the court having determined that the 2<sup>nd</sup> defendant to the counter claim has no interest in the disputed property. It is therefore improper for the counter claimant to thereafter bring an action questioning the obligations of the 2<sup>nd</sup> defendant to the counter claim.

The counsel relying on the case of **Carlen (Nig.) Ltd V. University of Jos & NWLR (1994) LPELR – 832 (SC)** and submitted that what determines proper party to a suit is the subject matter of the action, and he argued further that the cause of action of the counter claimant is the alleged failure of the 1<sup>st</sup> defendant to honour its contractual obligation to the counter claimant in handing over possession of the subject matter property to the counter claimant as provided in the Deed of Assignment and Power of Attorney executed between the counter claimant and the 1<sup>st</sup> defendant, and that the 2<sup>nd</sup> defendant to the counter claim is not party to the contract upon which the counter claimant's cause of action is grounded. The counsel cited the case of **Rebold Industries V. Magreola &**

**Ors. (2015) LPELR – 2461(SC).** The counsel submitted that the exhibits TIM I and 2 relied upon by the counter claimant do not result in creating an obligation where none previously existed.

The counsel submitted that the 1<sup>st</sup> defendant remains the title holder to the property of this suit and paragraph 25 of the Joint Venture Agreement empowers the 2<sup>nd</sup> defendant to the counter claim to issue the necessary title documents for the 14 units of 5 Bedroom detached triplex consisting of Maid quarters and the 27 units of 4-bedroom terrace triplex consisting of Maid quarters of the projects and the property, subject matter of the dispute, does not fall within those houses and he urged the court to grant this application.

This, the claimant/3<sup>rd</sup> defendant to the counter claim filed this suit on the 17<sup>th</sup> September, 2021 via a writ of summons, and the 3<sup>rd</sup> defendant/counter claimant sought to be joined in this suit via a motion dated the 11<sup>th</sup> October, 2021 and the application was granted, and therefore become the 3<sup>rd</sup> defendant, and on the 20<sup>th</sup> day of November, the claimant filed an amended writ of summons included the name of the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant filed a Notice of Preliminary Objection on the 9<sup>th</sup> December, 2021 and sought to its name to be struck out and ruling was delivered on the 29<sup>th</sup> September, 2020 and in compliance with the ruling, and in an application to further amend the writ, the claimant/3<sup>rd</sup> defendant to the counter claim filed a motion dated the 14<sup>th</sup> day of November, 2022 and the name of the 2<sup>nd</sup> defendant was removed, and the amended writ of summons was filed dated the 6<sup>th</sup> day of February, 2023 and prior to that, the present 2<sup>nd</sup> defendant/counter claimant filed a motion dated the 31<sup>st</sup> January, 2023 and sought to amend his counter claim, and he brought back the name of the 2<sup>nd</sup> defendant (Bilaad Realty Nig. Ltd) into the list of the defendants to the counter claim, the name having being struck out of the suit, while in the reliefs sought by the counter claimant in his motion dated the 31<sup>st</sup> day of January, 2023 with No. M/4126/2023 did not include relisting the already struck out name of the previous 2<sup>nd</sup>

defendant. Again, the 2<sup>nd</sup> defendant/counter claimant filed his amended statement of defence dated the 6<sup>th</sup> day of February, 2023, and did not include already struck out name of the previous 3<sup>rd</sup> defendant (Bilaad Realty Nig. Ltd) in the list of the defendants.

Now, the already struck out 2<sup>nd</sup> defendant whose name was included into the list of the defendants in the motion dated the 31<sup>st</sup> day of January, 2023 filed this Notice of Preliminary Objection dated the 31<sup>st</sup> day of March, 2023 and sought for his name to be struck out again for want of jurisdiction.

It can be gleaned from the above scenario that the 2<sup>nd</sup> defendant/counter claimant caused this Preliminary Objection to be filed when he included the name of the previous 2<sup>nd</sup> defendant that was struck out without any application to seek for the leave of this court to relist the name, and to my mind this lead to a miscarriage of justice. See the case of **Zaribe V. State (2003) FWLR (pt 187) p. 763 at 782, paras. B – D**. This is a misdirection on the part of the counter claimant which the court in its proceedings has to abase. See the case of **Borno State Independent Electoral Commission V. Kachalla (2005) All FWLR (pt 275) p. 518 (CA)**.

So, the motion filed by the 2<sup>nd</sup> defendant/counter claimant dated the 31<sup>st</sup> January, 2023 including the name of the already struck out name of the previous 2<sup>nd</sup> defendant (Bilaad Realty Nig. Ltd) without the leave of this court is incompetent. See the case of **APC V. Asekomhe (2020) All FWLR (pt 1060) p. 197 at 226, para. A**.

Thus, the 2<sup>nd</sup> defendant/counter claimant should have first obtained the leave of this court to bring back the previous 2<sup>nd</sup> defendant into the suit before putting it into the list of the defendant by an application on notice, and this was not done, and to this, I so hold.

The ruling of the court dated the 29<sup>th</sup> September, 2022 still subsists and it binds the present 2<sup>nd</sup> defendant/counter claimant, and in the ruling the name of the 2<sup>nd</sup> defendant was struck out, and therefore, the contention of the 2<sup>nd</sup> defendant/counter claimant is hereby discountenanced, and the objection is sustained until certain steps are taken, and to this, I so hold.

Appearances:

Raphael Ogunle Esq appeared for the claimant.

A.E. Sani Esq appeared for the 3<sup>rd</sup> defendant.

Mubarak Bala Ibrahim Es appeared for the 2<sup>nd</sup> defendant/counter claim.

CT: Meanwhile, the matter is adjourned to 7<sup>th</sup> and 8<sup>th</sup> May, 2024 for hearing.

Hon. Judge

Signed

12/2/2024