

**THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/203/2022**

**MOTION NUMBER: FCT/HC/M/4993/2023**

**DATE: 20<sup>TH</sup> MARCH, 2024**

**BETWEEN:**

**MBAKA MINA NGOZI.....CLAIMANT/RESPONDENT**

**AND**

- 1. CHIEF EMMANUEL MBAKA**
  - 2. MINFA LIMITED**
  - 3. PLATITUM SAVINGS AND LOANS LTD**
  - 4. FEDERAL MORTGAGE BANK OF NIGERIA**
- DEFENDANTS**

**APPEARANCE:**

OluchiVivieneUche Esq for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants.  
Stanley OgarEku Esq holding brief of John Otanwa Esq for the 4<sup>th</sup>Defendant.

**RULING**

By a motion on notice with motion number: M/4993/2023 filed dated on the 16<sup>th</sup> day of February, 2023 and brought pursuant to Provisions of Order 43 Rules 1(1), Order 10 Rules 11 and Order 61 Rules 1 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 and under the

Inherent Jurisdiction of the Honourable Court. The Defendant herein prays the Court for the following Orders:

1. An Order of this Honourable Court setting aside the order of mandatory injunction made exoarte during the pendency of the 2022 Annual Judicial vacation by the Honourable Court Coram: **Honourable Justice S.B Belgore**, on the **9<sup>th</sup> day of September 2022** in **Motion No: FCT/HC/239/2022**, as this Honourable Court was misled into making the said order as a result of suppression/ concealment of mistrial facts and for being an order made without jurisdiction.
2. An Order of this Honourable Court striking out the entire proceedings and Processes filed in this suit, for constituting a serial abuse of process of this Honourable Court, same being based on similar facts already pending before various courts **prior** to the institution of this particular suit by the Claimant/ Respondent.
3. An Order of this Honourable Court striking out the entire proceedings and Processes filed in this suit, for constituting the same subject matter of litigation in a pending suit before the High Court of the Federal Capital Territory, Coram; **Honourable Justice O.A Adeniyi**, between the Claimant/ Respondent and the 1<sup>st</sup> Defendant/ Applicant in **Petition No. PET/577/2020**, between Engr, Emmanuel NdubuisiMbaka and Mrs.Ngozi Mina Mbaka
4. An Order of this Honourable Court striking out the entire proceedings and Processes filed in this suit, for constituting the same subject matter of litigation in a pending suit by one and the same Claimant/ Respondent before the Federal High Court, sitting in Abuja, Coram; **Honourable Justice D.U Okorowo**, between the Claimant/ Respondent and the 1<sup>st</sup> Defendant/ Applicant in suit NO: **FHC/ABJ/PET/13/2022**, between **MbakaNgozi and**

## **Minfa Limited, Platinum Savings and Loans Ltd and Corporate Affairs Ltd**

- 5. AND** for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this Application is predicated upon are as follows:

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1. The order exparte made by this Honourable Court; Coram **Honourable Justice S.B Belgore** against the 1<sup>st</sup>-3<sup>rd</sup> Defendants/ Applicants on the **9<sup>th</sup> day of September, 2022**, in **Motion No:M/239/2022**, during the pendency of the 2022, annual vacation was made without the requisite jurisdiction
2. This Honourable Court made the Exparte Order against the Defendants/ Applicants on the **9<sup>th</sup> day of September, 2022**, which wholly determined the rights of parties at a stage when parties had not been heard at all.
3. The Claimant/ Respondent suppressed material facts from this Honourable Court and consequently misled this Honourable Court into granting a null and void exparte Order.
4. The Claimant did not put forward to this Honourable Court any evidence of her alleged ownership or co-ownership of the property described above (which said property is solely owned by the 1<sup>st</sup> Defendant/Applicant) and thereby misled the Court into granting the exparte Order
5. This Honourable Court lacks the Jurisdiction to have entertained the motion exparte which was anchored on the same subject matter of litigation before several Courts.

6. The subject matter as presently instituted by the Claimant/ Respondent which borders on her alleged ownership/co-ownership of all that Property described as **Plot 3110, Cadastral Zone A04, Asokoro District, Abuja**, which said property is already subject of litigation in a pending suit before the High Court of the Federal Capital Territory, coram; **Honourable Justice O.A Adeniyi**, between the Claimant/ Respondent and the 1<sup>st</sup> Defendant/ Applicant in **Petition No: PET/577/2020** between Engr. Emmanuel Ndubuisi Mbaka and Mrs Ngozi Mina Mbaka.
7. The Claimant/ Respondent has also already filed a similar suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondent with same parties and same subject matter of litigation before the Federal High Court, sitting in Abuja, Coram; **Honourable Justice D.U Okorowo**, between the Claimant/ Respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Applicants in suit No: **FHC/ABJ/PET/13/2022** between Mbaka Ngozi vs Minfa Limited, Platinum Savings and Loans Limited and Corporate Affairs Limited.
8. The entire suit as presently constituted by the Claimant/ Respondent amounts to an abuse of Court process.
9. The ex parte Order made by Honourable Court was made in gross violation of the rules of this Honourable Court and in gross violation of the applicants' right to fair hearing
10. This Honourable Court was misled into making the said order as a result of gross suppression/ concealment of material facts and outright mischief by the Claimant/ Respondent
11. This Honourable Court has the inherent jurisdiction to set aside its own order ex debito justice that was made without jurisdiction; and on suppression and concealment of material facts

Filed in support of the application is a 6 paragraph Affidavit deposed to by one UsmanSalihu, a litigation Secretary in the Law Firm of Mike Ozekhome's Chambers, Counsel to the 1<sup>st</sup>-3<sup>rd</sup> Defendants/ Applicants in this suit. Also in compliance with the Rules of Court the Defendant/ Applicant filed a Written Address filed the 16<sup>th</sup> day of February, 2023.

In the said Written Address Counsel to the Defendant Formulated 3 Issues for determination to wit: -

- a) Whether arising from and taking into consideration the entire facts and circumstances of the case, the 1<sup>st</sup>-3<sup>rd</sup> Defendants/ Applicants are entitled to grant of the reliefs sought in this Application.***
- b) Whether this Honourable Court possesses the requisite jurisdiction to set aside its order made on 9<sup>th</sup> September 2022 for being a nullity and an order made without Jurisdiction***
- c) Whether the 1<sup>st</sup>-3<sup>rd</sup> Defendants/Applicants Constitutionally guaranteed Right to Fair Hearing was infringed by this Honourable Court by the Hearing and Determination of the Claimant/ Respondent Motion exparte on the 9<sup>th</sup> September 2022.***

**Issue One:**

The learned Counsel to the Applicant began by pointing to the fact that the Defendants in this suit possess very compelling reasons to urge this Honourable Court to set aside its decision as it had the inherent power to do so where the requisite grounds for discharging same exist and the circumstances call for such a dismissal. Learned Counsel here relied on the authority of ***UTB LTD & ORS vs. DOLMETSCH PHARMACY (NIG) LTD (2007) LPELR-3413(SC); GALLAHER LTD & ANOR vs. B.A.T (NIG) LTD & ORS (2014) LPELR-24333(CA)***

Learned Counsel further argued that the grounds upon which an order made *ex parte* can be discharged are in exhaustive going by the authority in decided cases.

Counsel to the Defendants/Applicants continued his address by arguing that there was abuse of Court process in that there were multiple actions instituted on the same subject matter as there were various suits pending before several Courts on the similar facts. Counsel cited the case of ***ABUBAKAR vs. BEBEJI OIL & ALLIED PRODUCT LTD & ORS, (2007)LPELR-55(SC).*** LEARNED Counsel to the Defendants/Applicants also further opined that this suit was an abuse of Court process in that there were suits of the same issues in dispute currently pending before Honourable Justice O.A Adeniyi and Honourable Justice E.O Okorowo and that these pending suits had the same parties and were asking for virtually the same reliefs. As such Counsel argue that this suit was initiated as a way of frustrating and distracting the Defendants.

The Learned Counsel also opined that the subject matter in the above pending suits before Honourable Justice O.A Adeniyi and Honourable Justice E.O Okorowo are one and the same and to that effect they constituted an abuse of Court process and learned Counsel relied on the case of ***All Progressive Congress Alliance vs. Fidelity Bank Plc (2021) LPELR-55721(CA); All Progressive Grand Alliance vs. Fidelity Bank Pls (2021) LPELR-55721(CA).***

The Learned Counsel to the Applicants also argued that the Claimant/Respondent in this suit has failed to disclose to the Court that she had voluntarily relinquished her shares in the Company of 2<sup>nd</sup> Defendant as a result of this the learned Counsel argued that the Claimant had no Locus standi to initiate this matter. Learned Counsel relied on the case of ***URS REICHE vs, NIGERIA BANK FOR COMMERCE AND INDUSTRY (2016) LPELR-40051(SC)*** to further buttress his argument.

The Learned Applicant Counsel also pointed to the fact that there are elements a Party claiming ownership of Land must prove in order to

succeed in such a claim before a Court of law. Also this conditions apply even in a situation where a party alleges co-ownership of a property. Applicants here refereed the Court to the case of **CHIBUZOR & ANOR vs CHIBUZOR (2018) LPELR-46305(CA)(PP 27-29 PARA**

Learned Applicants Counsel also further submitted on this point that a party claiming ownership of a property must show proof of title as to the acquisition of said property.

Furthermore, the Learned Applicants Counsel also argues that there is suppression/ concealment of facts by the Claimant in this suit owing to the fact that the Claimant went ahead to institute another action in this Honourable Court regardless of the fact that there were already in existence two pending matters possessing the same subject matter as this one before several Courts. an action which the Applicants/ Defendants Counsel argued was room enough for the setting aside of any such trial. Learned Counsel cited the cases of **MOHAMMED vs THE STATE (1991) LPELR-1901(SC) (PP 26-27 PARAS F); MOHAMMED & ANOR vs. GWARZO & (ORS)(2017)LPELR(2012) LPELR-7820**

Learned Applicants Counsel also further argued that the actions of the Respondent of instituting action severally before various courts was done with malicious intent and also constituted a form of forum shopping with the Claimant/Respondent shopping around for a favourable decisions by way of instituting action before various Judges. Learned Counsel to the Applicants/ Defendants cited the case of **CHINDO Vs ISAH 2011 4 NWLR (PT. 1236) 27 @ 37 PARAS C-E** and **ABUBAKAR BEBEJI OIL AND ALLIED PRODUCT LTD &ors, (2007) LPELR-55(SC)** amongst others.

In his closing arguments on issue one, learned Counsel opined that with recourse to the brief history of this suit as shown by the supporting Affidavit of the 1<sup>st</sup>-3<sup>rd</sup> Defendants to the motion it is clear that the Claimant misled the Court into granting her Application and did so through displaying a false sense of urgency.

Finally Learned Applicants Counsel urged the court to hold in that the motion granted ex parte was done in grave error and to set same aside on the grounds as argued above.

### **Issue Two:**

Counsel to the Applicants began his address by arguing that going by the existing laws this Court has the requisite Jurisdiction and power to set aside its Judgment where it deems such an action as necessary as was established by the Supreme Court in **STANBIC IBTC BANK PLC Vs. L.G.C LTD (2020) 2 NWLR (PT 1707) 1 @ 17** also the Court of Appeal case of **JOE-DEB VENTURES LTD & ANOR Vs. NDIC & ANOR (2014) LPELR-23083(CA)** which stipulates conditions under which a Court can set aside its own judgment.

Learned Counsel to the Applicant/ Defendants also humbly submitted that the Defendants in this suit who were affected by the order of this Honourable Court made 9<sup>th</sup>September, 2022 were entitled to ex debito justified (by an obligation of justice) to apply to have said other set aside. To further support this point Learned Counsel cited the case of **BELLO & ANOR Vs DAMISA & ORS (2016) LPELR-40347(CA)**

Finally, on this issue, Learned Counsel opined that any judicial pronouncement made in this suit would as a result of the above points be a nullity having been made without jurisdiction and must be set aside as such the Defendants humbly applied that the order made on the 9<sup>th</sup>September, 2020 should be set aside as it was made without jurisdiction.

### **Issue Three**

With respect to issue three, Learned Counsel to the Defendants/ Applicants that the said Court order made on the 9<sup>th</sup> of September, 2022 completely defined the 1<sup>st</sup>-3<sup>rd</sup> Defendants/Applicants of the right of Hearing. To this effect he relied on various authorities which include: **HADROCK CONSTRUCTION ENGINEERING CO & ANOR Vs STATE OF LAGOS & ORS (2018) LPELR-46538(CA); CHIEF GANI FAWEHINMI Vs.**



***NIGERIAN BAR ASSOCIATION & 4 ORS (NO. 1)(S.C. 229/1986) [1989] NGSC 36 (14 APRIL 1989).***

The learned Defendants/ Applicants Counsel opined that the action of the Claimant of bulldozing this Honourable Court into the hearing and determination of her motion *ex parte* in her favour without proof of any sort and the granting same in her favour to the effect of restraining all Defendants from interfering with the property in dispute, without hearing the other party (defendants) constituted a breach of the Defendants Right to Fair Hearing. ***AGBA & ORS Vs. JUBU (2019) LPELR-47189(CA)*** were cited along with various other authorities in support of argument by Learned Counsel.

Learned Counsel also further argued that the pronouncement of this Honourable Court by way of *ex parte* Application had completely determined the subject matter of this suit at interlocutory stage and in hopes of further establishing his argument, cited the case of ***CIL RISK & ASSET MANAGEMENT LTD Vs. EKITI STATE GOVERNMENT & ORS (2020) LPELR-49565(SC); INTERNATIONAL TOBACCO COMPANY PLC Vs. BRITISH AMERICAN TOBACCO NIGERIA LIMKITED & ANOR (2013) LPELR-20949(CA)***

In his closing arguments the Learned Counsel to the Defendants/ Applicants stipulated firstly, that the order gotten by the Claimant/ Respondent in this suit was one gotten *mala fide* and manifestly so taking into account the nature and manner of the Claimants' act of obtaining an *ex parte* order from this Court on the same property that is already the subject matter of litigation before several other Courts. Learned Counsel referred this Honourable Court to the case of ***SEED MICRO-FINANCE BANK PLC & ANOR Vs. OGUNSINA & ORS (2016) LPELR-41346(CA)***

Secondly, he argued that going by the nature of the order the Defendants should have been notified and allowed an opportunity to address the Court and protect its interest. This is especially in a situation where the interest

of another party would be affected as in this case where the 1<sup>st</sup> Defendant's property used to secure a loan from the 4<sup>th</sup> Defendant who has been restricted access to the said property and security. Counsel further opined that the provisions of Section 36 (1) of the Constitution of Federal Republic of Nigeria 1999 (As Amended) on the Right to fair hearing needed to have been taken into consideration and the Defendants put on notice. Learned Defendants' cited the case of ***OKE & ANOR Vs. UBA PLC & ANOR (2015) LPELR-24827(CA)***

Finally, learned Counsel argued that the life span of an ex parte order as provided for by the Rules of this Honourable Court by virtue of ***Order 43, Rule 3 of the Federal Capital Territory High Court (Civil Procedure) Rules 2018*** is no more than 7 days and where made without any specified date is shall elapse within 7 days, this point was further supported by the pronouncement of the Court of Appeal in ***IBRU vs. IKEJA HOTELS PLC (2017) LPELR(CA)***.

In Conclusion the Learned Defendants Counsel urged this Honourable Court on the grounds and reasons as listed above to vacate, set aside the entire proceedings and processes filed in the suit or in the alternative vacate the interim ex parte Order of mandatory injunction granted on the 9<sup>th</sup> of September 2022

On the other hand, in opposing the Application, the Claimant/ Respondent filed a counter Affidavit of Six (6) Paragraphs deposed to by one Julius Oibe, a litigation Secretary in the law Office of Babajide Koku & Co. (Counsel to the Claimant/ Respondent in this suit). Equally filed in support of the Counter Affidavit is a written address dated the 24<sup>th</sup> day of April, 2023.

In the said written address Claimant/ Respondent adopted the issues formulated by the Defendants/Applicants in their Application to wit: -

***a) Whether arising from and taking into consideration the entire facts and circumstances of the case, the 1<sup>st</sup>-3<sup>d</sup> Defendants/ Applicants are entitled to a grant of the reliefs sought in this Application.***

***b) Whether this Honourable Court possesses the requisite jurisdiction to set aside its order made on 9<sup>th</sup> September 2022 for being a nullity and an order made without Jurisdiction***

***c) Whether the 1<sup>st</sup>-3<sup>rd</sup> Defendants/Applicants Constitutional guaranteed Right to Fair Hearing was infringed by this Honourable Court by the Hearing and Determination of the Claimant/ Respondent Motion exparte on the 9<sup>th</sup> September 2022.***

### **Issue One**

Learned Counsel to the Claimant/ Respondent argued that the setting aside of an Order only becomes necessary where there are grounds for doing so but the Order which the Applicant have brought before this Honourable Court has already abated and as such there is nothing before the Court

with respect to the abuse of Court process the Learned Claimants Counsel was of the opinion that the suits which the 1<sup>st</sup> – 3<sup>rd</sup> Defendants have argued constitute abuse are not, as the first suit wa a divorce petition filed by the 1<sup>st</sup> Defendant in this suit in Divorce Petition **PET/577/2020** at the FCT High Court Coram: Honourable Justice O.A Adeniyi and the Claimant herein was the Respondent/ Cross petitioner in said petition. Also, the second petition pursuant to the Companies and Allied Matters Act at the Federal High Court was challenging the removal of the Claimant herein as a Director and Shareholder. Counsel to the Claimant/ Respondent further stated that this point was admitted by the Applicant in paragraph V of their supporting Affidavit to this Application. Counsel also mentioned that facts not denied are deemed admitted and urged this Court to so hold. Counsel cited the case of ***THEOPHILUSEZIAKU Vs. DEBORAH EZIAKU (2018) LPELR-46373(CA)***

The learned Counsel to the Claimant/ Respondent continued his address by alluding to the facts that contrary to the Applicants submissions all material

facts were put before the Court when applying for the exparte order inclusive of the existence of a petition before the Federal High Court.

As it concerns locus standi and the arguments of the Applicants that the Respondent herein had no right to the institute action, Counsel pointed to the existence of exceptions to that general rule and relied on ***HERITAGE BANK LTD Vs. BENTHWORTH FIN (NIG) LTD (2018) 9 NWLR (PT 1625) 420 @ PG 424*** with the intention of showing that the Respondent herein had the right to be protected from mischief arising from the rule of privity of Contract and also to prevent a miscarriage of justice. Furthermore, Counsel to the Respondent argued that the actions of the 1<sup>st</sup> Defendant who wrote through the 3<sup>rd</sup> Defendant to substitute the Fidelity bank guarantee with the title documents of the property in dispute while still married to the Respondent and before the initiation of divorce proceedings in 2020. This particular fact the learned Counsel was of the opinion that it suggested bad faith.

The Learned Respondent Counsel also argued that the submission of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants wherein they claimed that the Respondent had failed to show co-ownership of the property in dispute was invalid as the Claimant in her affidavit in support of the writ averred that the said property was bought with proceeds from the dividends paid to both the Claimant and the 1<sup>st</sup> Defendant and as such giving her the right to sue in this matter.

The Respondent also submitted that she had made all material evidence clear before the Court and that the Honourable Court made its decision while aware and informed of all necessary information and that the argument that the claimant was forum shopping does not arise. The Respondent cited the case of ***ELIAS Vs. ECO BANK PLC (NIG) (2019) 4 NWLR (PT. 1663) 381***. Also, the Learned Counsel to the Claimant/ Respondent, on what amounts to forum shopping cited the case of ***MAILANTARKI Vs TONGO (2018) 6 NWLR (PT. 1614) 69*** and relied on the pronouncements of the Supreme Court contained and humbly

submitted that none of the instances listed in the Supreme Court case were contained in the suit before this Honourable Court

**Issue Two:**

Learned Counsel to the Claimant/ Respondent submitted that Jurisdiction is an issue of paramount significance and before a Court may be properly possessed of the Jurisdiction to hear any matter the conditions as earmarked in the landmark case of ***MADEKOLU Vs NKEDILIM (1962) 2 All NLR P.581.*** flowing from the above the Learned Counsel was of the opinion that the Honourable Court possessed the Jurisdiction to entertain the matter and as a result of which delivered the ex parte order made the 9<sup>th</sup> day of September 2022 and that there was no fraud nor misrepresentation and the Defendants also have failed to show the Court what damage they suffered as a result of the alleged misrepresentation or fraud.

Also on the submission of the Defendants/Applicants concerning the argument that the ex parte order granted on the 9<sup>th</sup> day of September 2022 was a nullity and ought to be set aside, the Learned Claimant/ Respondent Counsel argued that the Applicants have not shown how they were affected by the said ex parte order and as such that argument ought to be set aside

Additionally, learned Respondent Counsel while citing the case of ***REUBEN I. EZEBILO & ANOR Vs. MADAM NWUNAKU CHINWUBA (1997) 7 NWLR PT 511*** and also ***OKECHUKWU Vs OKECHUKWU 1998 3 NWLR*** submitted that the an interim injunction by nature is a temporary injunction and the interim Order granted by the Honourable Court was for the purpose of preventing the Defendants from further harassing, interfering with the Claimant pending the hearing and determination of the motion on notice as such no rights were determined as to constitute a miscarriage of justice and urged this Honourable Court to hold so.

In his closing argument Learned Respondents' counsel submitted that in the granting of an interim Order, at this point there is uncertainty and the

Court is concerned with mitigating the risk of injustice that may befall the plaintiff during the period that such uncertainty will be resolved. In further support of his argument learned Counsel referred the Court to the case of **AMADI OPARA Vs. GODFREY IHEJIRIKA & 2 ORS (1990) 6 NWLR PT.156; OBEYA MEMORIAL SPECIALIST HOSPITAL Vs. AG FEDERATION (1987) 3 NWLR (PT 60) 325 @ 328 [PG. 299, PARAS C-D].**

In Conclusion, learned Counsel urged the Court to refuse the Application to set aside the Order as the order has been spent and therefore there was nothing to be set aside.

The Defendant/ Applicant filed a further Affidavit in opposition to the Claimants Counter Affidavit along with a reply on points of Law to the Claimant/ Respondents written Address. In the said reply, Counsel to the Applicants argued that contrary to submissions of the Respondent that a valid Court Order once abated becomes a nullity, the law an order remains binding and effective until set aside- **PDP & ANOR Vs. ASADU & ORS (2016) LPELR-41007(SC); DR. STEPHEN ADI ODEY Vs. CHIEF JOHN ALAGA & ORS (2021) LPELR-53408(SC);** and also **ISONGUYO Vs. EYO & ANOR (2016) LPELR-41206(CA)**

Learned Counsel also submitted that the Respondent Counsel had erred in his interpretation of Order 43 Rules 3 of the Rules of this Honourable Court with regards to the lifespan of an ex parte order been over by virtue of the expiration of 7 days. Learned Applicant Counsel argued that a valid Court order to that effect was necessary to set aside such an ex parte Order and further submitted that per **NWUDE Vs. CHAIRMAN EFCC (2005) All FWLR (PT 27) 740** the Court of Appeal laid down factors that when established would empower a Court to do so.

Learned Applicant Counsel further mentioned that the submissions of the Respondent contain misrepresentations and that the Respondent has not put before this Honourable Court evidence that is credible enough to warrant the refusal of this Application before this Court

Counsel also stated that from the above, it is clear that the order made on the 9<sup>th</sup> day of September, 2022 was done without jurisdiction and therefore void and of no effect whatsoever and further referred this Honourable Court to the case of ***PEOPLES DEMOCRATIC PARTY & ORS Vs BARR. SOPULUCHUKWU E. EZEONWUKA & ANOR (2017) LPELR-42563(SC)***. Also, Learned Applicant Counsel further opined that the said order ought to be set aside by this Honourable Court and referred the Court to the case of ***CADBURY NIGERIA PLC & ORS Vs. FEDERAL REPUBLIC OF NIGERIA (2004) LPELR-5422(CA)***

Finally, learned Applicant Counsel submitted that the Respondent has failed in discharging their responsibility of showing reasons why this Honourable Court should reject the Application brought by the Defendants/ Applicants. Learned Applicant Counsel urged the Court to disregard the arguments of the Respondents and to grant the entire reliefs of the 1<sup>st</sup>-3<sup>rd</sup> Defendants as prayed.

Now, I have carefully perused the Notice of Preliminary Objection, the grounds upon which the Preliminary Objection was brought, the reliefs sought, the Supporting Affidavit and also the Written Address therein. I have also, equally gone through the Counter Affidavit in opposition and the Written Address filed alongside the Counter Affidavit. I have also carefully reviewed the Defendant's reply on points of law filed in response to the Claimants' Counter Affidavit. Now, In determining this Application, I shall formulate the following issue for determination:

***"whether the Applicant has sufficiently established his case enough to have his reliefs granted and this suit struck out for reasons as contained on the face of this Application"***

As can be extracted from the Affidavit, written Address and the preliminary objection challenging the Jurisdiction of this Honourable Court in this suit made by the Defendant/ Applicant, the gravamen of the Application is that this Honourable Court lacks the requisite Jurisdiction to hear and determine

this suit the reason being on grounds as contained on the face of the Objection paper.

In order to effectively address this objection, I shall began begin by making reference to the nature of an interim order made exparte as that forms a massive portion of the basis for the arguments canvassed for and against this Application.

By virtue of Order **43 Rules 3 (2) and (3)** of this Honourable Courts Rules an exparte Application shall have a life span of 7 days and renewal for another 7 days where the Application for extension is made during the subsistence of the first 7 days and shall have a life span of not more than 14 days. Order 43 particularly provides

Order 43 Rules (2) Sub Rule (3) reads:

***"An order of injunction made upon an application ex-parte shall abate after 7 days."***

Order 43 Rules (2) Sub Rule (2) reads:

***The Court may upon application extend the effective period of an order made ex-parte if he is satisfied that the motion on notice has been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding 7 days from the day the extension is granted***

It is evident that an Order made exparte is made to be a temporary one and such an Order is made with the intention of preventing such irreparable harm as may be suffered by the Applicant in the interest of justice and with knowledge of the uncertainty that exists in such situations.

As can be seen from the actions of the Honourable Court in refusing Prayer 4 which prayed for a departure from the provisions of Order 43 Rules (3) subrule (2) above as sought by the Applicant the wisdom therein lies in the



fact that this order was not intended to be an immutable or timeless Order but rather an interim injunction, one who's life span would elapse in accordance with existing principles and law as *exparte* Orders are not meant to be made *ad infinitum*.

The Court of Appeal in ***TANKO VS MODI(2019) 8 NWLR(Pt 1675) 387*** on the nature of *exparte* Order held as follows: -

***"Anexparte Order is an equitable remedy which is meant to last for a very short time. By their very nature, injunctions granted on exparte applications can only be properly interim in nature. They are made without notice to the other side, to keep matters in status quo to a named date, or until the respondent can be put on notice"***

This goes to show that the very nature of an *ex-parte* order is temporary and such, an Order made *exparte* cannot be held or made to decide the rights and obligations of the parties to which it affects in a final manner or nature. The rights and interests have not been addressed or defined so it would be too far reaching/rather inaccurate to hold that the rights of parties were at an interim stage determined. The purpose of said order was to preserve the *Res* in the instant suit as such it was an order so granted in the interest of justice and with the aim of ensuring that a fair and just determination is reached in this matter.

Now, the order made on 9<sup>th</sup> September 2022, is non-existent on several grounds one of which is the fact that this suit is starting *Denovo* before this honourable Court as a result of which the slates are clean and this suit is to be tried afresh it is not in any way a continuation. Another reason is the fact that the *exparte* Order granted by its mere nature ceases to exist after a set period of time as contained in the rules and this particular fact is in accordance with the pronouncements of the Court of Appeal in ***TANKO VS MODI(Supra)*** where the Court held thus: -

***"Once an exparte Order is properly made, it is always provisional and for a limited period and does not decide the***

***civil rights of the parties involved in the litigation. In the instant case exhibit "NUT11", an ex parte Order TankoVsModi(2019) 8 NWLR (Pt 1675) 387 obtained on 23<sup>d</sup> may 2008 did not have life in it about five years later when on 11<sup>th</sup> May 2008 when the 1<sup>st</sup>-4<sup>th</sup> respondents' originating summons was argued at the trial Court and therefore was an invalid document for which no Court ought to act or rely on in arriving at its decision"***

Going by the above decision, it is my humble belief that in such a situation where an Order made ex parte has enjoyed the duration of its life and which has now elapsed and has clearly come to an end, it is not a valid document that the Court should dwell upon or should base any decision or pronouncement upon. It is also necessary to make such an ex parte order that is made without hearing the other party or putting them on notice to have a short life span as it goes to affect the Constitutionally enshrined right to fair hearing of individuals in Section 36(1) Constitution of the Federal Republic of Nigeria 1999 (as amended) and this would result in a strained judicial process where matters would end up going to appeal for violation of an Appellant's Constitutional Right to Fair Hearing. I so hold

Furthermore, as it concerns Abuse of Court/ Judicial Process, the Supreme Court in ***ADEGBANKE Vs OJELABI (2023) 4 NWLR (PT 1875) 481*** defined Abuse of Court process as: -

***"Abuse of process of Court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. Where a party duplicates a Court process, the more current one, which results in the duplication is regarded as an abuse of the Court's process. Abuse of process can also mean Abuse of legal process. An abuse of process always involves some form of bias, malice, some deliberateness, some desire to misuse or divert the system. There is said to be an abuse of the process of the Court when a party improperly uses the issue of the judicial***

***process of the Court to the irritation and annoyance of his opponent, such as instituting a multiplicity of actions on the same subject matter, against the same opponent..."***

***SEE ALSO: SARAHI Vs. KOTOYE (1992) 9 NWLR (Pt 264) 156 @ 158***

Here it is evident that Abuse of Judicial or Court process involves an act done with malice or malicious intent and a desire to pervert the mechanism of the administration of the law. The effect of a case of Abuse of Judicial Process is that it would lead to the dismissal of the entire process, on this point see ***NWOSU Vs. PDP (2018) 14 NWLR (PT. 1640) 532.***

The common feature of Abuse of a Court process as severally shown in judicial authorities is the improper use of Court procedure, the existence of multiple suits between the same parties and also the existence of various suits before various Courts as was held by the Court of Appeal in ***CAPITAL OIL & GAS IND LIMITED Vs. OTERI HOLDINGS LTD (2021) 1 NWLR (PT. 1758) 483*** where the Court held as follows: -

***"For there to be an abuse of process on account of multiplicity of actions, the parties, the subject matter and the issues must be the same in the suits. However, different suits can arise from the same subject matter but with different rights, causes of action and reliefs. Such suits cannot be described as being in abuse of judicial process. In the instant case, the parties may be virtually the same, the subject matter but the issues are not the same. Therefore it cannot be said that there was an abuse of process in filing the separate suits at the different courts"***

***SEE ALSO: AJAOKUTA STEEL COMPANY Vs. GREENBAY INVESTMENT & SECURITIES LIMITED & ORS (2019) LEGALPEDIA (SC) 11661 also at (2019) LLJR-SC.***

In ***RITTERBUSCH Vs. HOLT 789 SW 2D 491***, the Court held that a claim for the Abuse of Court process must be shown to have in its elements: -

- 1) The present Defendant made an illegal, improper, perverted use of process, a use neither warranted or authorised by the process;***
- 2) The Defendant had an illegal purpose in exercising such illegal, perverted or improper use of process; and***
- 3) Damage resulted***

As earlier discussed, It is well known that the reasoning behind the grant of an application for an exparte order after careful review is the preservation of the Subject matter. The Claimant in this case had instituted this action in hopes of preserving the subject matter pending the final determination of the suit. Moreover, at the point where a Court grants an order exparte, there is presumption of uncertainty as to elements concerning the nature of the interest of the applicant and the subject matter of the Application. This is why a temporary Order is given to maintain status quo.

In the instant case the actions of the Claimant which were brought hoping to preserve the res in this case cannot be considered as one that was done maliciously and as a result of this does not constitute an abuse of Court/ Judicial process.

By virtue of section 251 (e) of the Constitution of the federal republic of Nigeria the matter with suit no FHC/ABJ/PET/13/2022 as contained in the suit before the Federal High Court is a matter which falls within the exclusive jurisdiction of the Federal High Court. This point has been captured by the Supreme Court in ***OBASANJO VS YUSUF (2004) 9 NWLR (P 213) PARAS C-D*** where the Supreme Court on the Jurisdiction of the Federal High Court to entertain causes and matters arising from the operation of the Companies and Allied Matters Act or any other enactment regulating the operation of Companies under the Act held as follows: -

***"Section 251(e) of the Constitution of the Federal Republic of Nigeria 1999, vests original jurisdiction in the Federal High Court in causes and matters causes and matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act"***

**SEE ALSO: *MOFUTAU AJAYI Vs. SECURITIES AND EXCHANGE COMMISSION (2023) LPELR-59729;***

Applying this to the instance case with respect to the multiple suits the Applicant's have argued constitute abuse of Court process, I am of the humble view that the institution

of the suit challenging the removal of the Claimant as a Director is not an abuse of process since it is an issue that cannot be properly instituted before this Court, taking into consideration the Federal High Court has the Exclusive jurisdiction to hear and determine matters or causes arising from the operation of the CAMA or any other enactment regulating the operation of Companies under the Act as shown above.

Now as it concerns the other suit which is a petition under matrimonial Causes with suit No. FCT/PET/577/2020, Learned Defendant Counsel's claim of abuse of Court process also fails, this is because divorce proceedings are considered sui generis because they are not governed by the rules and guided by the general rules of practice but rather by the provisions of the Matrimonial Causes Act as well as rules uniquely enacted in order to regulate them and guide proceedings concerning them. To this effect Section 1 of Matrimonial Causes Act CAPM7, LFN 2004 provides as follows: -

***"After the commencement of this Act, a matrimonial causes shall not be instituted otherwise than under this Act"***

Before I proceed, I would also like to address the Claim of violation of the Fundamental right to Fair hearing of the Applicants as contained in their arguments. The issue of Right to fair Hearing is an extensively addressed principle with a plethora of pronouncement behind it, this principle is so significant that it is enshrined in Chapter four of the Constitution specifically in Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides as follows

***"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such manners to secure its independence and impartiality"***

This provision consists the constitutional protection of the Rights of an individual, the Supreme Court on what Constitutes fair hearing in ***L.G.C LTD Vs STANBIC IBTC BANK PLC (NO. 2)*** held as follows: -

***"A fair hearing must be a hearing that does contravene the principles of Natural Justice. A fair hearing must involve a fair trial and a fair trial consists of the whole hearing. The***

***rights to fair hearing does not stop with the parties being present in Court. It is a right to be heard at every material stage of the proceedings (2022) 14 NWLR (PT. 1851) 551”***

That is to say the test for fair Hearing is a fair trial and that is examined through the eyes or impression of a reasonable person who witnessed the trial and if such a person from his observation would be of the opinion that justice has not only been done but has been seen to be done. As was held by the Supreme Court in ***EZENWAJI Vs. U.N.N (2017) 18 NWLR (PT 1598) 485, See Also:EKPENETU Vs OFEGOBI (2012) 15 NWLR (PT 1323) 276; EFFIOM Vs. SHATE (1995) 1 NWLR (PT. 373) 507.*** Simply put the test for fair hearing is objective.

The concept of fair hearing is one that is so largely and widely addressed that I need not dwell on it. In the instant case the contention of the Applicants is that their rights have been determined by an interim Order without granting them the rights to be heard. As can be seen in Order 43 rule 3 above of this Honourable Courts Rules of proceeding as well as the case of ***TANKO VS MODI(Supra)***, an ex parte order is by its nature of a short life span and does not decide the rights and obligations of parties at an interim stage the main intent behind such applications as earlier discussed is to prevent the occasion of in justice or mischief on the Applicant and allow for the proper determination of parties Rights and obligations at trial.

This reason would be attributed to the refusal of Prayer 4 of the Interim Order that was granted on the 9<sup>th</sup> day of September 2022 as earlier discussed which I humbly submit the Learned Applicant Counsel may have overlooked as his address tackled this point to a fair degree. As such the Right to Fair hearing of the Applicants cannot be said to have been breached. I so hold

Now, In view of the above, the sole issue for determination is hereby resolved in favour of the Claimant/ Respondent against the Defendants/ Applicants and I hold as follows: -

- 1) Parties are hereby ordered to maintain status Quo in the interest justice and to give room for the just and fair determination of this suit at trial after parties have been heard.

Signed

***HON. JUSTICE SAMIRAH UMAR BATURE.***

***20/3/2024***