IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
BEFORE
HIS LORDSHIP HON. JUSTICE M. E. ANENIH
AND
HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU

ON THE 29TH DAY OF JUNE, 2021

APPEAL NO: CVA/548/2020
SUIT NO: CV/FCT/6028/2018

BETWEEN:
ADEYANJU ADEDEJI ---APPELLANT
AND
MIKE ENENCHE --RESPONDENT

AJAYI JAIYE SAMUEL *for the Appellant.*
Appellant in Court.
A.G. ENABOSI *for the Respondent.*
Respondent not in Court, Counsel apologized for his absence

JUDGEMENT

Delivered by HON. JUSTICE A. S. ADEPOJU

The instant appeal was filed against the ruling of **Her Worship Abhiranyam Linda Ibegu**, of the **District Court Dutse**, delivered on the **5th June 2020**, striking out the appellant's suit for being an abuse of Court process. The said ruling was sequel to a preliminary objection filed by the respondent against the appellants claim. Dissatisfied with the ruling, the appellant filed a notice of appeal dated 26th June 2020 and filed on 30th June 2020 as contained in pages 86-89 of the record of appeal.

The appellant in the Notice of Appeal filed three grounds. Ground one alleged error in law on the part of the lower court when he held that the existence of a criminal action will be a bar to a subsequent institution of a civil suit against the same party. Ground two alleges error of law on the part of the lower court when he dismissed the appellant's response to the defendant/respondent preliminary objection without properly considering the content while the third and the last ground alleges that the entire ruling/judgement is against the weight of evidence.

The appellant in his adopted brief of argument dated 31st October, 2020 formulated two issues for determination by this court to wit:

(I) Whether the decision of the lower court was correct having regard to the evidence before it as distilled from ground one of the Notice of Appeal.

(II) Whether the decision of the lower court was correct having failed to evaluate evidence before it. (Distilled from ground 1 and 2 of the notice of appeal).

In the respondent's brief of argument dated 17th day of November, 2020, the issues for determination were not clearly laid out by the Counsel. However his arguments and submissions in the brief of argument, an issue that could be distilled for determination is; whether the appellant's claim before the district court constitutes an

abuse of court process. We therefore conveniently adopt the issues formulated by the appellant as they are more precise and encompassing than that formulated by the respondent. Before resolving the issues, it is pertinent to give an eye-bird view of the facts leading to the appeal.

The appellant was said to have purchased a landed property at Plot 575, Chikakore, Byazin Layout, Kubwa from the respondent at the sum of **₦2,450,000 (Two Million Four Hundred and Fifty Thousand Naira)** and further spent an additional sum of **₦1,846,700 (One Million Eight Hundred and Forty Six Thousand Seven Hundred Naira)** on the property when the Development Control came and marked the plot as access road. He became apprehensive and demanded for a refund of his money from the respondent. On the 14th May 2018, he filed a direct criminal complaint against the respondent at the Chief Magistrate court 3, Kubwa for the offence of criminal breach of trust. And while the respondent was standing trial before the Chief Magistrate Court, the appellant went to file a plaint against the respondent at the District Court 5, Dutse for a refund of his money. The respondent raised a preliminary objection to the civil suit at the District Court, arguing that the appellant action before the court constitutes an abuse of court process. The respondent's

objection was upheld, and the appellant's action was struck out by the District Court.

Before his argument on the issues formulated for determination, the Learned Counsel to the appellant **Ajayi Jaiye Samuel** contended at paragraph 2.2 of the brief of argument that the respondent while filing the preliminary objection at the trial court never assessed, paid for, attached and served any exhibit or any evidential material on the appellant. That the appellant never saw the purported Exhibit AA1 and AA2 mentioned or referred to in the respondent's process until the day the trial judge delivered her ruling/judgement against the appellant on the basis of the said exhibits notwithstanding the forceful objection of the appellant on the improper document before the court. He further argued that ***"the appellant is yet to know how the purported exhibits in reference that were never mentioned in the respondent affidavit and written address as same that was never assessed, paid for nor served on the appellant found its way to the record of the court to warrant the ruling/judgement of the trial court."*** He stated in paragraph 2.3 of his brief that ***"The court not unmindful of their improper process, the desperation, connivance and despite the forceful protest by the appellant counsel in court on foul play of the officers of court after hearing***

the parties entered judgement in favour of the respondent on the 15th day of June, 2020."

With respect to issue one for determination **Mr. Ajayi Jaiye Samuel** submitted that from the totality of the appellant's response to the preliminary objection as to no proper evidence of exhibits or evidential documents, the lower court was not right to have failed to evaluate the documents before it so as to discover the mischief of the respondent on her claim of abuse of court process. And that the trial court also failed to avert her mind to the current position of the law that the existence of criminal action is not a bar to the subsequent institution of a suit against the same party. He relied on the authority of **ONAN V MADUICA ENTERPRISES NIG. LTD (2007) 13 WRN PG 176 @ 186.**

He submitted that the question as to whether filing another suit before another court on same subject matter translates to abuse of court process has been resolved in favour of the appellant in the case of **PDP V UMEH (2017) AFWLR PT 888, 209-405 PER AUGIE JSC.** Where it was said;

"The law does not say that once a party files another suit before another court on the same subject matter there is abuse of court process. A subject matter may give rise to different rights. In other

words, different suits can emanate from same subject matter with different rights and reliefs."

He argued that the appellant has different claims and reliefs against the respondent as evident in paragraph 5 and 6 of the plaint at page 2 of the record which the trial court failed to consider before her ruling/judgement as contained in pages 83 to 84 of the record of appeal and urged the court to so hold. The appellant's counsel also stated that the demand of the appellant was not for a liquidated money demand as it requires or subject to proof via trial and evidence to enable the trial court appreciate whether it will amount to abuse of court process or not.

On what constitutes an abuse of court process, the learned counsel further argued that the abuse of court process lies in the improper use of judicial process in litigation. And that the employment of judicial process is only regarded as an abuse when a party uses judicial process to the irritation and annoyance of the opponent. That certainly a man who is aggrieved should have nothing to do with a criminal matter before instituting a civil action. That criminal matter is the concern of the state so to say while the civil matter is the concern of the aggrieved individual. He relied on the case of **EKERETE V UBA (2005) 9 NWLR (PT. 930) 401** where it was said:

"That as noted by the court in these cases, it is not part of Nigerian law that a complainant who runs to the police to report a case does not have the right to further institute civil proceedings either simultaneously or subsequently even where the criminal charge and civil wrong have arisen from the same cause of action." – **Per Oho. JCA (PG 9-14, PARAS C-A)**

That the position of the respondent and that of the trial court has been put to rest in **OKAFOR V MADUBUKO (2000) 1 NWLR (PT.641) 473, OKONKWO V OBUNSELI (1998) 7 NWLR (PT. 558) 502.** That the case cited in the ruling of the trial court at page 84 of the record of appeal based on purported annexure which were improperly filed and never assessed, paid for nor served has no nexus with the instant case; he urged the court to hold that the facts of the case are very different and not applicable. And that besides, there was no reference to exhibits in the respondent's process nor any exhibit of evidence or proof of evidence of the existence of criminal action served on the claimant/appellant during the pendency of the preliminary objection before the ruling/judgement of the trial court.

On issue two, the Learned Counsel for the appellant argued that the trial judge erred in law and misdirected himself when in considering whether the purported proof of evidence filed disclosed a prima facie case against the appellant on the annexure that were not

proper part of the court process. That the purported annexure Exhibit AA2 and AA3 at page 83-84 of the record of appeal cannot be said to have been regularly filed. That the duty is on the trial court to consider documents properly filed before it. He referred to the case of **UDOFIA V C. A. C (1992) 5 NWLR (PT.242) 437 @ 445** where the court held:

"***It has to be noted that it is not the duty of any court of law to look at any document which found itself improperly into a case file for the court to look and consider in its case file, that document must have been regularly filed."***

He argued that if the trial court had taken its time to properly evaluate the process filed by the parties, it would have found that;

1. That the respondent did not mention any annexure in the preliminary objection or any other process not properly filed with the purported Exhibit AA2 and AA3.
2. That the authorities cited were erroneously cited to misinform and misdirect the court.
3. That the purported Exhibit AA2 and AA3 were improper as same were never assessed, paid for nor served on the appellant as evident in the response of the appellant to the preliminary objection by the respondent.

He therefore urged the court to allow the appeal and set aside the ruling/judgement of the trial court and return the case to the trial court for trial on the merit.

The respondent's counsel **Anenin G. Enabosi Esq** on the other hand argued in his brief that the Direct Criminal Complaint dated 14th May 2018 filed by the appellant at the Chief Magistrate Court and plaint filed at the District Court by the appellant had similar relief for recovery of money alleged to have been paid by the appellant and this he argued constituted an abuse of court process. His argument was; ***"Assuming without conceding the court grant the appellant claim under the criminal matter at court 3 magistrate court and the respondent is asked by the court to pay and he paid, and the appellant against the respondent at the District court, Dutse still succeed, and the respondent is asked to pay will that not amount to double jeopardy on the side of the respondent?"*** He relied on the authorities of **DINGIYADI V INEC (2010) 44 NSQR 301 @ 340, SARAKI V KOTOYE (1992) 11-12 SCNJ 2 or (1992) @ PG 155, IKINNE V EDJERODE (2001) 12 SC (PT.94).** He submitted that an abuse of court process would occur in any of the following situations:

a. Where the parties, subject matter, and issue in a previous and later suit are the same.

b. Where different action are filed in different or the same court simultaneously in respect of the same right and subject matter.
c. Where a party litigates again on the same issue which has already been litigated upon between him and the same person by facts on which a decision has already been reached and
d. Where the proceedings is wanting in bonafide and frivolous vexations, oppressive or amounts to abuse of legal procedure or improper legal process.

Other cases referred to by the respondent are; **UBN LTD V EDAMKUE (2004) 4 NWLR (PT.863) 211, UKACHUKWU V UBA (2005) 18 NWLR (PT. 956) 1, JIMOH V STRACO LTD (1998) 7 NWLR (PT. 558) 523.** He urged the court to strike out the appeal for lacking in merit.

RESOLUTION OF ISSUE I

We have calmly considered the ruling of the District Court appealed against, the ground of appeal and the submission of counsel to the parties in their brief of arguments. An abuse of court process have been defined in legion of cases to include institution of multiple actions between the same parties at the same time in the same or different courts seeking for the same reliefs. See **UBA PLC V DANA MOTORS LTD (2018) LPELR 44101 (CA)** where the court of appeal held;

"Now the term abuse of court process is often seen as synonymous with multiplying of suits but though that in a way is correct position of the law yet abuse of court process is much more than mere multiplicity of suits. In other words multiplicity of suit is not the only way by which abuse of court process could be consolidated. Simply put and for lack of a precise or concise definition of the term 'abuse of court process' denotes improper use, the process of court to achieve unlawful ends or the employment of the judicial process to the annoyance or irritation or injury of the person of another and it can safely pass as a doctrine of law without precise or concise definition." See **OKAFOR & ORS V A. G. COMMISSIONER FOR JUSTICE & ORS (1991) LPELR 2414 SC, BENDEL FEED FLOURMILL LTD V N. I. M. B (1999) LPELR 10160 CA.**

See also **N. I. M. B LTD V UBN LTD & ORS (2004) LPELR 2003 SC** where the Supreme Court held;

"It is an abuse of process of court to institute multiplicity of actions between the same parties over the same subject-matter in different courts. See HARRIMAN v HARRIMAN (1989) 5 NWLR (PT. 119) PG 6. Filing an application in court of coordinate jurisdiction seeking a relief which the other court has given in respect of the same subject matter is also an abuse of the process of court. If the two actions are commenced, the second asking for relief which may have been

obtained in the first, the second action is prima facie vexatious and an abuse of the process of court. See WILLIAMS V HUNT (1905) IKB512." – Per Mohammed JSC.

The law is trite that the institution of a criminal action is not a bar to a civil action in respect of the same or similar subject-matter. It is very elementary to state that a criminal action is between the state and the accused person while the civil action is that of the aggrieved party. See **AHMED V DANPASS (2014) LPELR 24620 CA, ABAVER V ALAGA (2018) LPELR 46566 CA, IBE V IBHAZEI (2016) LPELR 41556 CA.**

We have examined Exhibits AA2 and AA3 relied on by the District Court Judge in his ruling. Exhibit AA2 is titled Complaint of Criminal Breach of Trust against one Mr. Mike Enenche while Exhibit AA3 is titled Investigation on Complaint of Direct Criminal Complaint of Criminal Breach of Trust Against one Mike Enenche. The arguments of the respondent's counsel that the same reliefs are being sought in both the criminal and civil action filed by the appellant is greatly misconceived. The misconception stemmed from the last paragraph of the Criminal Complaint (Exhibit AA2) wherein the complainant stated; ***"Sir, my plea to this Honourable Court, is to help me to secure justice and recover my money as all efforts made by me have proved abortive."*** See page 75 of the record of appeal. The

respondent failed to avert her mind to the criminal allegations of selling fake plot to the complainant by the respondent which may earn the respondent a conviction if proved beyond reasonable doubt. The appellant cannot be said to be in control of what happens to the criminal action at the end of the day and does not need to wait for the outcome before instituting the civil action to recover her money. Furthermore, the ingredient required in proof of the offence of criminal breach of trust is different from that in civil action which is simply on balance of probabilities.

In the record of appeal at page 2 thereof the appellant claim from the defendant as contained in the plaint is for:

a. The sum of **₦500,000.00 (Five Hundred Thousand Naira)** being general damages for breach of contract.
b. The sum of **₦200,000.00 (Two Hundred Thousand Naira)** being cost of the action.
c. The sum of **₦100,000.00 (One Hundred Thousand Naira)** being the cost of legal fees.
d. 30% on the judgment sum from the date of judgement till same is liquidated.

It is very apparent that the claim of the plaintiff in the above paragraph of the plaint is different from the relief in the direct-criminal complaint by the appellant at the Chief Magistrate Court.

We are therefore of the firm view that the civil action instituted by the appellant at the district court is not an abuse of the process of court. Accordingly issue I is resolved in favour of the appellant.

RESOLUTION OF ISSUE II

The appellant's counsel contended that Exhibit AA2 and AA3, the complaint to the police and the Direct criminal complaint to the chief magistrate court relied on by the District Court Judge in her ruling as giving rise to the same right with the suit before her were never mentioned nor attached to affidavit in support of the preliminary objection of the respondent. See page 77-78 of the record of appeal where the appellant's counsel posited;

"The Court must be guided in the instance case as there is no evidence or material fact placed by the defendant/applicant before the honourable court. Your lordship oral or extra judicial evidence is inadmissible to supplement record of proceeding in a court. And we urge the court to so hold."

The District judge in her ruling merely referred to the submission of the appellant's counsel as could be gleaned from page 84 of the record of appeal where she stated;

"Counsel for the Claimant/respondent argued that the two matters are never the same that one is criminal while the other is civil. That

the defendant/applicant did not attach any evidential document to support their claim and cannot be acted upon by the court. Counsel urged the court to discountenance the objection of the defendant/applicant."

The trial District judge did not properly evaluate or consider the issues raised by the learned counsel in his submission. There was therefore no finding as to whether the documents were properly before the court or not. It is imperative that relevant issues raised by the parties or their counsel in their written address must be properly evaluated and specific findings made by the court before coming to a decision. The appellant's counsel having made an issue out of the documentary evidence before the court, it behoves on the trial court to consider the issue and resolve it one way or the other.

On what evaluation of evidence entails, the Court of Appeal in the case of **ILORI V TELLA & ANOR (2006) LPELR 5754 CA** Held;

"Evaluation of evidence entails the assessment of evidence so as to give value or quality to it; it involves a reasoned belief of the evidence of one of the contending parties and disbelief of the other or a reasonable preference of one reason to the other. There must be on record how the court arrived at its conclusion preferring one piece of evidence to the other. See OYEKOLA V AJIBADE (2004) 17 NWLR (PT. 902) 356 AND IDAKWO V NIGERIAN ARMY (2004) 2

NWLR (PT. 857) 249." See the case of **SANUSI & ORS V OBATUNWA & ANOR (2006) LPELR 11863 CA**.

Furthermore, assuming that the Exhibits AA2 and AA3 were properly filed at the lower court, they do not constitute the existence of a criminal action against the respondent. The filing of direct criminal complaint at the Magistrate Court is a first step in the initiation of criminal action against the person reported under the provision of Section 89 (5) of Administration of Criminal Justice Act. Such reports are referred to the police for investigation before an accused person is arraigned under a First Information Report where the complaint discloses an offence against the accused person. The provision of Section 89 (5) of the Administration of Criminal Justice Act 2015 states that ***"All complaints made to the court directly under this Section may first be referred to the Police for investigation before any action is taken by the Court."***

In the action before the Magistrate Court there was no proof of the existence of a First Information Report preferred against the respondent. We therefore agree with the appellant's Counsel that there was no proof of the existence of a criminal action vide the filing of a First Information Report against the respondent at the Chief Magistrate Court. We also hold that there was no proper evaluation of the said Exhibits AA2 and AA3 and the facts raised by the

appellant in response to the preliminary objection. The decision of the Trial Judge is against the weight of evidence contained in the affidavit.

On the issue of non-filing of the said Exhibits AA2 and AA3, it is not indicated on the face of the preliminary objection that the Exhibits were assessed and paid for. Obviously, the documents surreptitiously found their way into the record of the lower court. They are improper before the trial court and cannot be referred to or relied upon by the trial judge as was done in her ruling.

Consequently, we resolve issue II in favour of the appellant. On the whole the appeal succeeds. The ruling/judgement of the trial court is hereby set aside and the case is remitted to the Director Magistrate for re-assignment to another District Judge for trial.

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HON JUSTICE M. E. ANENIH	**HON JUSTICE A. S. ADEPOJU**
Presiding Judge	**Hon. Judge**
29/6/2021	**29/6/2021**