

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY THE 16TH DAY OF JUNE 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/CV/BW/329/20

BETWEEN:

MRS. NSIOBODO TESSY EGO.....CLAIMANT

AND

SYLVESTER OKAFOR.....DEFENDANT

JUDGMENT

On the 13/11/20 Nsiobodo Tessy Ego instituted this action against the Defendant Sylvester Okafor Claiming the following:-

1. Declaration that the Defendant trespass into her Guest house described as 6 self-contain Bungalow with a bar and reception situate at House No.31 Goodluck Estate, Jahi, Abuja-FCT is illegal and wrongful.
2. Declaration that the Defendant's trespass into the Claimant's two (2) Bedroom Flat situate at House No.11, Goodluck Estate, Jahi, Abuja-FCT is illegal and wrongful.

3. The sum of ~~₦~~2, 000,000.00 (Five Million Naira) as damages for the distortion of the Claimant's business by the Defendant.

Note- there is disparity in the amount claimed as damages. The Plaintiff wrote ~~₦~~2 Million as figure and five million in words.

4. The sum of ~~₦~~5, 000,000.00 (Five Million Naira) as special and general damages.

5. The sum of ~~₦~~2, 000,000.00 (Two Million Naira) only as cost of this Suit.

Upon receipt of the Writ the Defendant filed a Preliminary Objection challenging the competence of the Suit and urging Court to strike out the Suit in limine on the ground that the Court lacks jurisdiction to entertain same and that it is an abuse of court process. He supported the Preliminary Objection with an Affidavit of 81 paragraphs. He attached some documents marked as Exhibit A-S (19 documents).

In the Written Address he raised a sole issue for determination which is:

“Whether the Plaintiff employment and use of Originating Process of this Suit as issued by this Court constitutes and amounts to abuse of Court process.”

He submitted that the Suit is an abuse of Court process. He submitted that Plaintiff has on record instituted a multiple action against the same defendant seeking the same relief on the same subject matter. She filed a Suit CV/680/20 at Chief Magistrate Court Life Camp. He attached copy of the Plaint.

The Defendant attached the plaint as Exhibit Q. He urged Court to look at the content of the said Plaint. That parties and Claims in the Plaint and this Suit are the same. That the issue is on trespass too. He referred to that multiplicity of the action.

1. NTUKS Vs NPA (2007) 13 NWLR (PT.1051) 392,419 @420

2. ANPP Vs HARUNA (2003) 14 NWLR (PT.841) 546@574-575

3. AMAEFULE Vs STATE (1988) 2 NWLR (PT.75)156, 188-189

That the filing of this Suit is made mala fide. That the intention of malice in filing this Suit cannot be overemphasised. He referred to paragraph 64-72 of the Affidavit in showing the intention of the Plaintiff to institute this action against the Defendant.

That the intention is to use this Suit as a fall back to obtain the same reliefs she claims in her earlier Suit-Exhibit Q in the event that the Magistrate Court finds no merit in the Suit in Exhibit Q.

Again as a 2nd bid to attempt to obtain an injunction over the Res. That even at the time she instituted this action on 13/11/20 the interlocutory motion Exhibit R and the Suit Exhibit Q are still pending in Court. That the Plaintiff is by this action trying to relegate an identical issue which has been decided against her.

That subjecting the Defendant Applicant to multiple Suit has caused him great annoyance and irritation. That such action is an abuse of Court process and

interference with administration of Justice. He referred to the case of:

DANIEL Vs FRN (2014) ALL FWLR (PT.735) 319 @351

UKACHUKWU Vs PDP (2014) ALL FWLR (PT.728) 889 SC

He urged Court to resolve the sole issue in his favour and hold that the Suit is mala fide and an abuse of Court process.

That Court is empowered to strike or dismiss a Suit once it is found to be an abuse of Court process and stop such abuse. That where that is the case the process has become incompetent and has affected the court's jurisdiction to entertain it. He referred to the case of:

LADOJA Vs AJIMOBİ (2016) 10 NWLR (PT.1519) 87 @ 128

In conclusion the Defendant/Applicant urged the Court to strike out the Suit on the ground that Court lacks the jurisdiction to entertain the Suit as the Suit is an abuse of Court Process.

Upon receipt of the Preliminary Objection the Plaintiff filed a Counter Affidavit of 5 paragraphs and a Written Address in which she raised an issue for determination which are:-

“ whether this Court can grant the prayer of the Defendant/Applicant.”

That the issue of Trespass to land is at the exclusive jurisdiction of the High Court. Hence they instituted this Suit in this Court. That this action is based on due

diligence and in compliance with the provision of the **Land Use Act S.39 & 40 LUA**. That concept of abuse of Court process connotes a perverse of legal system by use of procedure to achieve unlawful result. He referred to the case of:

ARUBO Vs AIYELERU (1993) 3 NWLR (PT.280) 126

E.I.O OJUMO Vs MOMOH ADALEMO & ORS(2010) LPELR-9012 CA

R-BENKAY NIG LTD Vs CADBURY (2012) LPELR-7820 (SC)

That jurisdiction is determined by the claim of the Plaintiff. That it is not the same issue and relief sought at the Magistrate Court. That the Magistrate Court has no Jurisdiction to grant declaratory relief on the subject matter of the Suit. That in the Magistrate Court the Plaintiff is urging Court to order the Defendant to vacate the property while in the present case she is urging Court to declare the Defendant as a trespasser on the property. That the claims are not the same. He referred to the case of:

EKENNIA Vs NKPAKARA & ORS (1997) LPELR-1078 SC

That the Defendant's claim of the process being an abuse of the Court process is frivolous and unfounded as the Magistrate Court does not have jurisdiction to entertain issues of trespass on land which is based on title or interest on land. He referred to the case of:

HABU Vs ISA (2012) LPELR-15189 CA

He submitted that the present Suit is not same as Exhibit Q and therefore does not constitute an abuse of Court process as erroneously stated by the Defendant. He urged the Court to dismiss the Preliminary Objection.

COURT:

Once there is a pending Suit on the same party the same subject matter and seeking the same relief or similar relief, it is said to be multiplicity of action. Where that is the case it is very likely to be an abuse of Court process; more so where the claims are the same and the Plaintiff has used the same facts and evidence to support the multiple Suit. Beside, where the Plaintiff fails to withdraw any of those already pending case(s) and goes on to institute another case on the same subject matter against same party or asking for the grant of the same relief. It is a gross abuse of Court Process. No Court allows itself to be abused or “raped” by such multiplicity of action. Filing and maintaining such suit at the same time is an abuse of Court process.

In this case going by the glaring fact that the Plaintiff had instituted an action against the Defendant over the same subject matter in a Magistrate Court and had turned around to institute the present Suit against the same Defendant over the same subject matter claiming the same relief, it is without mixing words an abuse of Court process.

There is no how the Magistrate Court can deal with the issue of vacating the premises without the Plaintiff showing that she is the owner of the Res. She must have presented documents to establish her ownership of the

Res. The question of having to claim ownership in this Court based on her allegation of the act of trespass by the Defendant is only semantics. If actually that is the case why did she not withdraw the case at the Magistrate Court if the Magistrate does not have jurisdiction as she claimed. The only reason is that she want to still hang on the Magistrate Court and then try out her luck in this Court. This Court of course cannot be used as a tool for Plaintiff to try out her luck. The action by the Plaintiff is an abuse of the process of this Court. If actually the Magistrate Court has no jurisdiction the Magistrate should not have ordered for the hearing rather than grant the prayer which the Plaintiff sought in the Magistrate Court.

In the record of proceeding, particularly the proceeding of 12/10/20, the Plaintiff moved the motion for interlocutory application. The 2nd prayer was on trespass by the Defendant on the Res. The Magistrate Court did not grant the application. The Court rather adjourned the matter for Hearing when the Plaintiff said that she was not ready to open her case on the same day. The Magistrate had stated that granting the injunction will tantamount to deciding the case before the parties are given chance to be heard. The Magistrate stated:-

“...if the issue of trespass is decided at this stage there is nothing left to be decided in the substantive suit.

Thus I hereby defer considering and determination of this application at the end of this case after evidence of the parties would have been taken.”

There is no evidence to show that the Plaintiff withdrew the case or that the Magistrate decline jurisdiction.

Exhibit Q shows the reliefs sought and the names of the parties and the subject matter. They are all the same with the present case. The Plaintiff is forum-shopping by bringing this present suit before this Court and she knows that. This Suit is an abuse of the process of this Court. This Court has no jurisdiction to entertain it because of the pending Suit at the Magistrate Court which is still subsisting. The Plaintiff should first conclude with her Suit at the Magistrate Court before coming to this Court. So this Court holds.

This Court will not waste it judicial time to consider what amounts to an abuse of Court process as both parties especially the Defendant has exhaustively shown so in his Written Address.

The Suit is a gross abuse of the process of Court. This Court condemns it.

The Preliminary Objection is meritorious and it is therefore upheld. This Court hereby **DISMISS** this Suit for being an abuse of Court process.

This is the Ruling/Judgment of the Court.

Delivered today the _____ day of _____ 2021 by me.

**K.N.OGBONNAYA
HON. JUDGE**