

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION (GENERAL CIVIL)
HOLDEN AT HIGH COURT NO. 20, LAGOS
BEFORE HONOURABLE JUSTICE S. A. ONIGBANJO (JUDGE)
TODAY THURSDAY THE 2ND DAY OF JULY, 2020

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SUIT NO. LD/3288GCM/19

BETWEEN:

CHARTERED INSTITUTE OF TAXATION OF NIGERIA - CLAIMANT/RESPONDENT

AND

INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA - DEFENDANT/APPLICANT

RULING

The Claimant by Originating Summons dated 3/5/19 brought pursuant to Order 5 Rules 4(1) & 5 (1-3) of the High Court Civil Procedure Rules Lagos State 2019, basically raised the question whether the Memorandum of Understanding and the Terms of Settlement both dated 12th February, 2015 between the Claimant and the Defendant are valid, subsisting and binding on the Claimant and the Defendant and in the event the question is answered in the affirmative thereafter prayed the Court for the following reliefs:

1. A declaration that the Memorandum of Understanding and the Terms of Settlement both dated the 12th day of February, 2015 between the Claimant and the Defendant are valid, subsisting and binding on the Claimant and the Defendant.
2. An Injunction restraining the Defendant whether by its agents, privies, assigns or otherwise howsoever called from repudiating, resiling from or acting in any manner or doing anything that is inconsistent with, contrary to or is a violation of the Memorandum of



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Understanding and Terms of Settlement both dated the 12th day of February, 2015 between the Claimant and the Defendant.

The application is supported by Affidavit with exhibits attached as well as written address of the same date.

The Defendant in responding relied on Counter-affidavit with exhibits attached as well as written address filed on 14/6/19 in response to which Reply on Points of Law was filed for the Applicant on 15/7/19.

The Defendant also filed Notice of Preliminary Objection dated 30/3/19 urging this Court to strike out or dismiss his suit for incompetence etc and to which the Applicant duly filed processes in response, argument in both applications were taken as directed by the Court for brevity.

Counsel thereafter proffered brief oral argument regarding their respective positions in both applications.

The foregoing being the case, I shall consider the Notice of Preliminary Objection ahead of the Originating Summons in view of its jurisdictional implication in the suit.

In doing so, I observe that the grounds for raising the Objection are said to be that:

- i. The parties and the reliefs sought are already a subject of a pending civil proceedings before the Federal High Court Lagos Judicial Division in Suit No. FHC/L/CS/125/19 - Institute of Chartered Accountants of Nigeria (ICAN vs. Federal Inland Revenue Service (FIRS), Chartered Institute of Taxation of Nigeria (CITN).
- ii. The reliefs sought by the Claimant are not grantable by this Honourable Court.



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- iii. This Honourable Court lacks the jurisdiction to adjudicate over the subject matter of the Claimant/Respondent's (Respondent) suit.
- iv. Respondent did not follow due process in initiating this action.
- v. The Respondent's case discloses no reasonable cause of action against the Applicant.
- vi. The Respondent's suit is academic and hypothetical.
- vii. The Respondent's suit is an abuse of court process.
- viii. The Defendant shall rely on the processes filed by parties in Suit No. FHC/L/CS/125/19- Institute of Chartered Accountants of Nigeria (ICAN vs. Federal Inland Revenue Service (FIRS), Chartered Institute of Taxation of Nigeria (CITN) in urging this Honourable Court to strike out this suit for gross abuse of court process.

The Notice of Preliminary Objection is supported by affidavit with exhibits attached as well as written address of the same date and in response to which Counter-affidavit with exhibits attached and Written Address urging the Court to dismiss the Preliminary Objection were filed for the Respondent on 18/7/19 to which Further-affidavit was filed for the Objector on 13/1/2020.

Upon a careful consideration of this Notice of Preliminary Objection, the grounds for bringing same and argument of counsel vis-à-vis processes filed by parties in the entire suit, I find merit in the Notice of Preliminary Objection and shall summarily dismiss this suit for being an abuse of court process in the circumstances between parties as disclosed by the affidavit evidence before the Court.



DEPT. OF JUSTICE
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I have no doubt that this must be so notwithstanding the rather voluminous processes filed by parties because it is clear to me from copies of processes filed and exchanged between these same parties in Suit No. FHC/L/CS/125/19 that the validity or otherwise of Memorandum of Understanding and the Terms of Settlement both dated 12/2/15 and between these same parties being the main issue between the parties in this suit as raised by the Claimant herein also forms part of the questions raised for resolution of the Federal High Court in the said suit, as is implied in my view from question (viii) and relief No. 6 prayed for by the Plaintiff in the Originating Summons dated 28/1/19 filed in the said suit, as is implied 29/1/19 before the filing of this suit on 3/5/19 and in which suit argument has been taken by my Brother Liman J of the Federal High Court, Lagos Division and presently awaiting the decision of the Federal High Court in that suit.

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From the foregoing scenario therefore it is clear to me that to raise questions relating to the validity or otherwise of the same agreement between parties dated 12/2/15 and to pray this Court for declaratory and injunctive reliefs regarding the said agreement and parties thereto amounts to abusing the process of Court in the circumstances of the case between these parties when the possibility of conflicting decisions, pronouncements and or directives on those issues by the Federal High Court and this Court with the attendant confusion to parties and embarrassment to the judiciary cannot be ruled out with any iota of certainty in the circumstances.

Finally, in coming to the above conclusion, much reliance is placed on the contemporary position of our case law on the issue of the concept of abuse of court process which is now trite having been stated and restated by our appellate Courts in various decisions on of which is the Supreme Court decision in the case of **DINGYADI & ANOR V INEC & 2 ORS 2010 4-7 SUPREME COURT REPORT PART 1 PAGE 76**, as follows "an abuse of court process has been defined in **CBN V. AHMED per Ogundare, JSC, quoting Karibi-Whyte JSC**, as (the concept of abuse of judicial process) is imprecise. It involves circumstances and situations of infinite variety and



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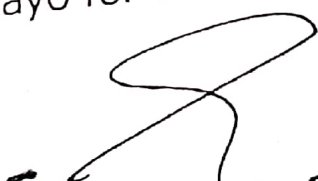
conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice."

It is for the foregoing reason that I find the filing of this suit on 3/5/19 during the pendency of Suit No. FHC/L/CS/125/19 before the Federal High Court, Lagos Division an abuse of Court process in the circumstances between parties and shall order this suit struck out.

Consequently, this suit is ordered **struck out** in-limine for incompetence having amounted to abuse of Court process in the circumstances between parties.

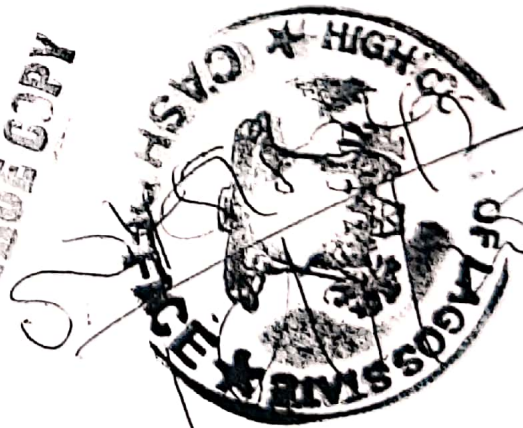
R. A. Fasogbon with V. N. Eze and O. Olaseyi for the Claimant.

S. Adebayo for the Defendant.


HON. JUSTICE S. A. ONIGBANJO,
JUDGE,
2/7/2020.

SEJORO, S. A. S. (M/IC)
Chief Executive Officer (C/D)
High Court Of Lagos State
16/7/2020

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