IN THE HIGH COURT OF EDO STATE - NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP:HON.JUSTICE J.O. OKEAYA-INNEH, (JUDGE)

DELIVERED ON WEDNESDAY THE 9TH DAY OF MARCH, 2016

SUIT NO. B/210/15

B E T W E EN

BINI-HAUSA TOMATOES COOPERATIVE SOCIETY LIMITED — CLAIMANT

A N D

1. MR. KINGSLEY SATURDAY IGIEBOR
2. MR. SAMUEL UKATUE
3. MRS. ADESUWA LASISI
4. MRS. FLORENCE OMOROGBE
5. MRS. EUNICE ONAIWU
6. MR. JOLLY ADA
7. MRS. MARGARET ABUJAI
8. MR. EKI IGIEHON
9. MR. GODWIN IMASUEN
10. MR. JUDE EBOMESE
11. MRS. ANNA OMIJIE
12. MRS. REBECCA OAKHENA
13. MR. PETER UHUKE
14. MR, SATURDAY UKATUE
15. MRS. GLADYS IGIE IGHODARO
16. MR. AFAM NWATU
17. MR. FRIDAY
18. MRS. PHILOMENA IMAFIDION
19. MR. MOSES ORORO
20. MRS. VICTORIA IKPONMWENOSA
21. MR. SUNNY AKHIGBE
22. MRS. IDOWU
23. MRS. ESTHER EJIALE

— DEFENDANTS

J U D G M E N T

This is a ruling on a Notice of Preliminary Objection filed by the Defendant/Applicantôs Counsel praying this Honourable Court for the following:-

“AN ORDER dismissing this suit for being incompetent, an abuse of court process, lack of locus standi and cause of action, which robs this court of jurisdiction to entertain it.

ANY other Orders or Orders as this Honourable Court may deem fit to make in the circumstances of this case.ò

The Grounds upon which this application is predicated are as set out below:

1. This suit constitutes an abuse of court process in duplicity of action on the same subject matter, the same issue between same parties and their privies and before the same court duplicating suit No B/ 108/2015 filed on 25/8/15 pending before this Honourable court.

2. This present suit No B/210/15 filed on 19/10/15 also pending before this honourable court was filed by the Defendants and their agents and privies in suit No B/108/15 where the present Defendants are claimants in that previous suit.

3. The matter raised in this suit No B/210/15 could and should have been raised in the earlier suit No B/108/15.

4. The subject matter in both suits is the right to trade in the market at Aduwawa, Upper Mission extension which Claimants

in suit No B/108/15 claims they are part owners of while Defendants in that suit Claim it belongs solely to them who are now promoter of Bini- Hausa Co-operative Society Ltd, Claimant in this suit.

5. This suit B/210/15 presents exactly the same issues, facts and subject matter as the previous suit No/ B/ 108/ 15, which makes this present suit an abuse of court process.

6. When at any point in time the court comes to the conclusion that a suit constitutes an abuse of court process, the appropriate order the court can make is an order of dismissal of the offensive suit.

7. The Claimant in this suit being a corporate entity, an artificial or legal person with an independent existence given life to in 2015, lack the locus standi to present this suit seeking to deny the Defendants their trading right on their market land acquired in 2013.

8. The Claimant has no interest over the market at Aduwawa, it has no equitable or legal right over it but a total stranger to the land and cannot present or prosecute this suit against the Defendants, and it is a meddlesome interloper.

9. The Claimant has no cause of action against the Defendants, it came to life in 2015 and the land on which trading activities takes place at Aduwawa the subject matter of this suit is not its own.

10. Besides this suit is incompetent as it deliberately and strangely limits the time within which the Defendants are to enter appearance, whereas under the rules of this Honourable court, a subsidiary legislation, a Claimant is under obligation to give 42 days to a Defendant within which to enter appearance and file his statement of Defence. This is a strange process that is improperly issued, which goes to the root of the originating process and liable to be set aside and because it also constitutes an abuse of court process by being one unknown to law and aimed at harassing and embarrassing the Defendants, it is liable to be dismissed also.

11. That when the Court comes to the conclusion that a suit constitutes an abuse of court process, the appropriate Order the court will make is dismissal.

12. The Court is duty bound to terminate this suit at any stage, if it comes to the conclusion that it is incompetent and an abuse of judicial process.

A 22 paragraph affidavit in Support of the Notice of Preliminary Objection was also filed with 3 exhibits attached. Also attached to this application is a Written Address in which Counsel for the Defendant/Applicant formulated four (4) issues for determination to wit:

a) Whether the institution of this suit before this Honourable Court at a time when a similar suit between the same parties and their agents over the same issue and subject matter exists before same High Court 9 is an abuse of Court Process.

b) Whether this suit is not liable to be dismissed being an abuse of Judicial/Court Process.

c) Whether the Claimant has any locus standi and cause of action to present and prosecute this suit against the Defendants.

d) Whether the Originating process in this suit is competence and supported by any iota of law.

Arguing issue one above, Learned Counsel for the Defendant/Applicant submitted that a court process or judicial process of the court is said to be abused when there exists a multiplicity of suits by a party or their privies

against the same opponent and over the same subject matter and issue to the irritation and annoyance of the Defendants. When this is the case, an abuse of Court or judicial process has taken place. Counsel referred court to the case of **ABUBAKAR .V. BEBEJI OIL AND ALLIED PRODUCTS LTD** (2007) AFWLR (PT 362) 1855 AT 1902 PARA C.E. where it was held thus:-

> **"The concept of abuse of court or judicial process denotes a pervasion of the system by the use of a lawful procedure for the attainment of unlawful results. Abuse of judicial' process manifests itself largely in the multiplicity of actions on the same subject matter between the same parties. It is not the existence of the right to institute these actions that are protested against, rather it is the manner of exercise of this right and the purpose of doing same that is abhorred. The term is generally applied to a proceeding which is lacking in bona fide. It has a tinge of malice".**

Counsel submitted that the apex court also stated in **ABUBAKAR .V. BEBEJI OIL AND ALLIED PRODUCTS LTD** (2007) AFWLR (PT 362) 1855 AT 1902 PARA E.A that the circumstances in which abuse of court process can arise has been held to include the following:-

a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin that action.

b) Instituting different actions between the same parties simultaneously in different courts even though on different ground.

c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and a respondent notice.

d) Where an application for adjournment is sought by a party to an action to bring an application to the court for leave to raise issues of fact already decided by courts below.

e) Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the inconvenience and inequities involved in the aims and purposes of the action.

Counsel contended that exhibits EM1, EM2, EM3 shows the pendency of an earlier suit No B/108/15 pending between the same parties and their agents on the same subject matter and issue before the filing of

this suit and further submitted that there is no order of court striking out that suit which subsists and runs side by side with this present suit.

Counsel argued that in the light of the pendency of suit No. B/108/2015 between the Defendants and the privies, promoters of the Claimant over the same subject matter, this suit constitutes an abuse of judicial process and that all the Claimant needed to have done was to file a counter-claim in the previous suit and perhaps raise the issue they are raising now.

Counsel submitted that the issue of the competence of an action is a threshold issue which affects the jurisdiction of the court and whenever the issue of jurisdiction is raised it has to be decided first before any further steps are taken in the given action. Counsel referred court to the case of **OWNERS OF MV ARABELLA V NAIC** (2008) 11 NWLR (Pt.1097) 182 PARAGRAPHS B-C where the Supreme Court per Ogbuagu JSC held thus:

> **"it is trite law that the competence of an action is a threshold question and once raised like locus standi and/or jurisdiction of the court it must be taken first and decided before consideration of any other issues".**

Counsel further argued that when raising an issue of jurisdiction it can be raised at any time and by way of a motion on notice or notice of

preliminary objection as in this instant case given that the only processes the court need to consider is the Writ of Summons and the Statement of Claim and the affidavit in support of the Notice Preliminary Objection. Counsel placed reliance on the case of **NIKA FISHING COMPANY LTD .V. LAVINA CORPORATION (2008)16** NWLR (Pt.1114) 509 where the Supreme Court per Mohammed JSC held thus:

> **"The first relief is clearly a challenge to the jurisdiction of the trial court to hear and determine the suit as filed by the respondent against the appellant. The law in Nigeria when such a challenge to the jurisdiction of court is being considered by a trial court is well settled. When such an application or objection is raised before a trial court challenging its jurisdiction, the court could rely simply on the Writ of Summons, the Statement of Claim and affidavit in support of the application as was rightly done by the trial court and affirmed by the Court below in the present case"**

The Supreme Court went on to hold at paragraphs D-F in the same report thus:

> **"I agree with the appellant's submission that there is a difference between an objection to the jurisdiction and demurrer. I also agree with them that an objection to the jurisdiction of the court**

can be raised at any time, even when there are no pleadings filed and that a party raising such an objection need not bring the application under any rule of court and that it can be brought under the inherent jurisdiction of the court. Thus, for this reason, once the objection to the jurisdiction is raised, the court has the inherent powers to consider the application even if the only process of court that has been filed is the writ of summons and affidavit in support of any interlocutory application, as in the case in hand".

Arguing issue 2 Counsel submitted that once the court comes to the conclusion that its process has been abused or a party has engaged the use of court process to the irritation and annoyance of the adverse party such as multiplicity of actions, the appropriate order the court makes in the circumstances is to dismiss the suit constituting the abuse. This is so because the court frowns at such behavior and takes seriously to it, such that it had to punish the offender to serve as a deterrent. Counsel referred to the case of **OKOREAFIA .V. AGWU** (2008) AFWLR (PT 445)1601 AT 1623 PARAGRAPHS C.E where the Court held thus:

"An abuse of judicial process may be occasioned when a party improperly uses a court process resulting in the annoyance and intimidation of his opponent, and interference

with the administration of justice. A typical example of an abuse of judicial process is where two similar processes are used against the same party in respect of the exercise of the same right and subject matter. The court of Appeal and in fact any court of law for that matter has an onerous duty under the provisions of section 6(6)(a) of the 1999 constitution not to treat with levity any action or proceedings before it that it considers to be an abuse of the process thereof. Thus the court has a duty to invoke its constitutional powers and dismiss the instant action in limine. "

Arguing issue 3 Counsel, submitted that the Claimant who filed this action, do not have the requisite locus standi to institute this action. Counsel submitted that it is settled that a person is said to have locus standi if he has shown sufficient interest in the action and that his civil rights and obligations, have been or are in danger of been infringed and that the onus of proof is on the party who has initiated the proceedings. Counsel relied on the cases of **OJUKWU VS OJUKWU** (2009) **ALL FWLR PART 463 PG 1243 PARAS. G-B** and **PRINCE ODUNERE .V. PRINCE EFUNUGA (1990) 12 SCNJ AT PG 1 @ 78** where it was emphasized that since locus standi is the legal capacity to institute proceedings in a court of law, it then means that Locus standi will only be

awarded to a Plaintiff who sufficiently shows that his civil rights and obligation have been or in danger of being violated or adversely violated.

Counsel further submitted that in arriving as to whether the Claimant has the locus standi which ultimately vest court with the jurisdiction to entertain the matter, the court is obliged not only to consider the right to sue as shown in the statement of claim.

It is Counselôs contention that a look at the statement of claim reveals that the Claimant in this suit is an artificial legal person which has its separate and independent corporate existence and that it has not shown any legal or equitable interest in the land being used as a market at Aduwawa. Counsel further argued that the land on which trading activities at Aduwawa is carried on and from the pleadings in the statement of Claim the land in issue in this suit was not acquired in the name of the Claimant. The promoters of the Claimant in terms of property ownership are separate and distinct from the Claimant. The alleged personal property of its promoters cannot automatically be that of the Claimant unless and except the promoter legally divest themselves of ownership right to the Claimant, which is not the case in this suit. Counsel submitted that there are no pleadings as to such divesting of ownership right and assignment to Claimant and no document suggesting such assignment of rights to the Claimant and that an artificial

and corporate body cannot make a claim, which in actual fact belongs to an individual or natural person.

Counsel further submitted that it is only those whose legal interest is affected one way or the other that has a right to sue over any subject matter that is threatened. Counsel argued that the Claimant in this suit has no interest whatsoever over the land at Aduwawa.

Counsel referred court to the case of case of **UNOKA V. AGILI (2008) ALL FWLR PART 423 PG 1349 @ P.1364. PARA H** where it was held thus:

> **"A person who makes a claim which in actual fact belongs to someone else has no locus standi before the Court".**

Counsel submitted that the Claimant lacks the right to question the Defendants trading activities on the market at Aduwawa that has been in existence since 2013 and that the Claimant on its own has no cause of action against the Defendants in any sense whatsoever since no dispute exists between Claimant and Defendants. There is no pleading or evidence that it has any such grant from anyone or that it owns land at Aduwawa. Counsel submitted further that the Claimant is not the proper party to request adjudication in this suit. Counsel referred court to the

case of **MOZIE V. MBAMALU [2006] ALL FLWR PART 341 PG 1200@ 1230, PARAS. G-H** where it was held thus:

> **"When a party's standing to sue is in issue in a case, the question is whether the person whose standing is in issue is a proper party to request an adjudication of a particular issue and not whether the issue itself is justifiable"**

On Issue 4, Counsel submitted that this suit is incompetent as the Claimant failed to comply with Order 3 Rules 3 and 5 of the High Court (Civil Procedure) Rules of Edo State 2012, which provides thus:

> **"All civil proceedings commenced by writ of summons shall be accompanied by:**
>
> a. **Statement of claim**
> b. **List of witnesses to be called at the trial**
> c. **Written statement on oath of the witnesses provided the identity of the witness may be concealed by the use of alphabet;**
> d. **List of non documentary exhibits; and**

e. Copies and list of every document to be relied on at the trial provided that litigation survey plan need not be filed at the commencement of the suit".

Order 3 rule 5 provide thus:

> **"Except in summons to be served out of Nigeria shall be as in Form 1 with such modifications or variation as circumstance may require"**

Counsel argued that this Honourable Court cannot competently exercise Jurisdiction in the suit, as the writ is defective and incompetent and liable to be set aside for being defective and incompetent.

It is Counselõs further submission that this court has statutory and inherent jurisdictions to set aside writs and other originating processes and relied on the case of **NWABUEZE V. OBI-OKOYE (1988) 4 NWLR 64.**

Counsel argued that this suit was brought deliberately and strangely to harass the Defendants, limit the time within which the Defendants are to enter appearance from 42 days to 8 days and that it is a strange process that is improperly issued and not supported by any iota of law.

It is Counselõs further contention that this Honourable Court is duty bound to dismiss this suit, being an abuse of court process and that this

court does not have the power to establish or vest a Claimant who does not have a locus standi with one.

Counsel finally submitted that this preliminary objection eminently deserves to succeed and urged court to grant this application and dismiss this suit with punitive cost against the Claimant.

Learned Counsel for the Claimant/Respondent filed a 10 paragraph affidavit and a Written Address in opposition to this application wherein 3 issues for determination were formulated to wit:-

1. Whether the Notice of Preliminary Objection is competent and cognizable by this Honourable Court under the extant Rules of this Honourable court.
2. Whether the Claimant/Respondentôs action constitutes abuse of the process of this Honourable Court.
3. Whether the Claimant/Respondent possesses the requisite locus standi to institute this action.

Arguing issue 1 above, Counsel submitted that the Defendants/Applicantsô Notice of Preliminary Objection is totally misconceived, premature, archaic and incompetent. Counsel further submitted that Order 22 Rule 1 of the High Court of Edo State (Civil Procedure) Rules 2012 has peremptorily abolished demurer.

It is Counselôs further contention that under Order 22 of the High Court of Edo State (Civil Procedure) Rules, 2012, no party is allowed to take the type of preemptive step Defendants/Applicants have erroneously taken in these proceedings by way of Preliminary Objection. Counsel argued any party who feels that he has substantial points of law that can substantially dispose of the Claimantôs case now raise those issues or points of law in his pleadings. The party will apply to the Court for the said points of law raised in his pleadings to be set down for hearing and determination before the commencement of trial. Counsel placed reliance for this proposition on the case of **SOLOMON OJO OLUWOLE .V. MODUPE MARGARET (2011) 44 W.R.N. PAGE 147 PARTICULARLY AT PAGES 165-166** where Order 24 of the Ondo State High Court (Civil Procedure) Rules, which is in pari material with Order 22 of the Edo State High Court (Civil Procedure) Riles 2012 was instructively interpreted by the Court of Appeal per TSAMMANI, J.C.A as follows:-

> **Order 24 Rule 1 has in clear terms abolished demurrer and replaced same with the procedure as encapsulated in Rules 2, 3 and 4 thereof. It is not only in Ekiti State where the Ondo State High Court Rules applies that has abolished demurrer proceedings, but most jurisdictions in Nigeria has therefore been replaced by Rules of court which permit a defendant to include in his pleadings, a provision wherein a**

point of law is raised, which will have the effect of putting to an end the proceedings. See Ebere .v. Anyanwu (2006) 14 NWLR (Pt. 1000) 490 at 504 paragraphs D -F and Rockshell Int'l Ltd. v. BOS Ltd. (supra) 670 paragraph C…"

Arguing issue 2, Counsel submitted that the Defendants/Applicants have misconstrued and misapprehended the principles of abuse of Court process and submitted further that abuse of Court or judicial process occurs when a Claimant files multiplicity of actions against the same Defendant on the same subject matter simultaneously. Counsel called in aid, the case of **EMMANUEL AMOMA OKORODUDU & ANOR. VS. ERASTUS M. OKOROMADU (1977) 3 S.C. PAGE 21 ESPECIALLY AT PAGES 30 – 32.**

Counsel further argued that from the elucidation of the concept and principles of abuse of Court process from the above authorities, the Claimant/Respondent's action does not in way constitute abuse of the process of this Honourable Court and urged court to so hold and resolve this issue in favour of the Claimant/Respondent and against the Defendant/Applicant.

Arguing issue 3, Counsel submitted that Claimant/Respondent has the requisite locus standi to institute this action and further submitted that some original members of the Osarumen Tomatoes Traders Association

who eventually purchased the parcel of land on which the present Tomatoes Market at Aduwawa is now located and who have decided to promote the formation and registration of the Claimant/Respondent as a Cooperative Society Limited, went further to float the Cooperative Society Limited by transferring their assets and properties like their various parcels of land to the new Company as this is perfectly in tandem with the former partners in a partnership subsequently promoting and floating a company. Counsel referred court to the learned authors of the book **"COMPANY LAW AND PRACTICE IN NIGERIA" DR. OLAKUNJE OROJO PAGE 75** where the author opined as follows:-

ñ1. Meaning of floatation

By floatation of a Company is meant the ñtaking off of the Companyò The formal incorporation of a Company ends with its registration. Thereafter, although it is entitled to commence business immediately, unless it has taken over a going concern, it has to take necessary steps to obtain working capital for a takeoff. This stage involves some capitalization of the Company. The amount of capital required whether in cash or kind will depend on the nature of the Company, the amount paid up and the nature of its business.

2. Taking over existing business

> Sometimes, a Company is formed to take over an existing business and in such a case, a good part of the capital to float the Company would probably be available from the existing business depending on the state of its finances.
>
> In practice, where a business is taken over by the new Company, the capital of the Company is subscribed by the transfer of the assets of the existing business to the Company in return for shares and/or debentures which represent the valuation of the business.
>
> This is a very useful and common method of floating a small Company, but it may also be used where a Company takes over another.ò

Counsel submitted that consequent upon the floatation the Bini-Hausa Tomatoes Society Limited by a select member of both the Hausa group and Bini group of traders as pleaded who alone signed the Registration Form and passed their total interest in the land they collectively bought from Dr. Ogbemudia, as assets of the new body, **S. 14 (1) (2) OF THE COMPANIES AND ALLIED MATTERS ACT** set aside those decisions of the common law which created a hiatus between the contracts entered into by promoters on behalf of intended new Companies. Counsel

submitted further that in this case there is no contrary evidence or even pleading that the same members who purchased the land, who applied for the approval, who each applied for and signed the Registration Form of the Claimant had any contrary intention. Counsel stated that upon registration the Claimant took over the benefits and burden of the members which they surrendered to all the appropriate authorities as the property of the new entity consequently, the members drop out of the scene and their collective principal ï the Bini-Hausa Tomatoes Cooperative Societies Limited step in as the true owner.

Counsel finally submitted that in the light of the foregoing facts and law, this court should hold that the Claimant/Respondent possesses the requisite locus standi to institute this action as the current owner of the said Market and resolve this issue against the Applicants.

I have carefully considered this application and the written submissions of both Counsel. I now turn to the issues for determination as formulated by the Defendant/Applicantôs Counsel.

Defendants/Applicants Counsel issue one and two and Claimant/Respondent Counselôs issue two are basically the same. The questions this court has been invited to answer and resolve in the aforementioned issues will be taken together as one. The bone of

contention is whether this suit filed by the Claimant/Respondent amounts to an abuse of court process having regard to the pendency of Suit No. B/108/2015 which the Defendants/Applicants claim relates to the same subject matter. In resolving the issues and providing an answer, it is pertinent to appreciate what it means for the process of a court to be abused.

There are numerous authorities on what constitutes abuse of court process. One of the prominent ones is **SARAKI .V. KOTOYE (1992) 9 NWLR (PT 254) 156 at 188-189** where the Supreme Court per Karibi Whyte JSC set out the guiding principles as follows:-

> **"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. It's one common feature is improper use of Judicial process by a party in litigation to interfere with the due administration of Justice".**
>
> **It is recognized that the abuse of process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is regarded generally as an abuse when a party improperly uses the issue of judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue. See; OKORODUDU .V.**

OKOROMADU (1997) 3 SC 27; OYEGBOLA .V. ESSO WEST AFRICA INC. (1996) 1 ALL NLR 170, (1966) 2 SCNLR 35. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse.

The abuse lies in the multiplicity and manner of the exercise of the right; rather than the exercise of the right, per se.
The abuse consists in the intention, purpose, and aim of the person exercising the right to harass, irritate and annoy the adversary, and interfere with the administration of justice; such as instituting different actions between the same parties simultaneously in different courts, even though on different grounds. See; Harriman v. Harriman (1989) 5 NWLR (PT.119) see also NDIC .V. UBN PLC. & ANOR (2015) LPELR-24316(CA)

The term abuse of court process was also defined by the Supreme Court in **DINGYADI .VS. INEC (2001) 44 NSCQR 301 at 340** as follows:-

"**The term "abuse of court process" connotes simply the misuse of court process and it includes acts which otherwise interfere with the course of justice. Clearly the acts includes where without reasonable ground, a party institutes frivolous, vexations and oppressive actions and also by instituting multiplicity of actions or**

is on a frolic act of forum shopping, i.e. seeking for a favourable court to entertain a matter....." See also **IKINE VS EDJERODE (2001) 12 SC (PT 11) 9; CBN V. AHMED (2001) 5 SC (PT 11) 146; ODE Vs BALOGUN (1999) 10 NWLR (PT 622) 214; AMAEFUNA V. THE STATE (1988) 2 NWLR (PT.775) 156**.

Defendants/Applicants in their grounds for this application have alleged that this suit constitutes an abuse of court process in duplicity of action on the same subject matter, the same issue between same parties and their privies and before the same court duplicating Suit No. B/108/2015.

In determining whether or not there is an abuse of court process the first port of call must be to look at the facts allegedly constituting the abuse.

To determine whether an abuse of the process of court has occurred, the court will consider the content of the process filed in the first suit and compare them with those filed in the second one in order to ascertain whether they are aimed at achieving the same purpose. See **AGWASIM .V. OJOCHIE (2004) 10 NWLR (Pt 882) 613**. In other word, what the Court is required to do when faced with an issue of multiple actions constituting an abuse of process is to look at the processes filed in the

two actions and see whether they are between the same parties on the same subject matter and on same or very similar issues.

A look at the originating processes in the contending suits, that is B/108/2015 and B/210/2015 would show that both are substantially seeking same relief which is the right to trade, collect and manage the revenue accruing to the traders in the market place.

The Claim in Reliefs (B), (E) and (F) in Suit No. B/108/2015 and the Claim in Reliefs (ii) (iii) and (v) in Suit No. B/210/2015 is a pointer in that regard. Same are better reproduced hereunder.

Relief (B) in Suit No. B/108/2015

> ñB. **A DECLARATION** that the Claimants as stakeholders in the Tomatoes Traders Association in the group name of Osarume Progressive Union with whose financial contributions from the revenue generated in the market place at Aduwawa by Upper Mission Extension was jointly purchased, are entitled to continue to trade in the premises without any let or hindrance whatsoever.
>
> E. **AN ORDER** directing the Defendants to render accounts for all revenues so far collected from traders in the group name of Osarume Progressive Union for all trading activities in the market from 2010 till June, 2015

F. **AN ORDER OF PERPETUAL INJU**CTION restraining the Defendants and their agents, assigns, successors, servants or privies from disturbing in any manner whatsoever the operation of the Claimants as traders in the Tomatoes Market at Aduwawa by Upper Mission extension n the group name of Etin Osasere Tomatoes Dealers Association.ò

Relief (ii) (iii) and (v) in Suit No. B/210/2015

ñ(ii) A Declaration that the aforesaid member of the Society having acquired the land and paid the said acquisition sum from the previous owner and having further applied to and complied with all the procedure, formalities for obtaining the appropriate approval to use the said land as a market privately owned by the Claimant, no other person or group of persons is entitled to or do any business in the said market, location or site without prior permission and approval of the Claimant.

(iii) Perpetual injunction restraining the Defendants by themselves, agents, servants, privies howsoever designated from trespassing on the said land, or entering the said land to do any business of whatever nature without the prior written consent of the Claimant, and further not to canvass for customers, buy sell or do any business of the Claimantôs business within a reasonable distance from the Claimantôs said location at the Bini-Hausa Tomatoes

Cooperative Society Ltd., Upper Mission Extension/Aduwawa in Ikpoba Okha Local Government Council, Benin City.

(v) An Order on 1st, 2nd, & 10th, 4th, 5th, 6th, 7th, 8th and 11th Defendants to pay the market dues as per paragraph 11 of the Statement of Claim and any other market dues collected by them or due from them in accordance with the chargeable dues of the market from the date of issuance of this Writ till judgment.ò

The above averments in the contending Claims, that is in B/108/2015 and B/210/2015 as I have earlier stated leans to the inevitable conclusion that the Reliefs in one is same as the other. This would appear to show that the issues in one is the same as the other.

Now having concluded that the subject matter and issues in B/108/2015 and B/210/2015 are substantially the same, can it be said that the subject matter therein is between same parties? Again, it is only by scouring through the processes in both suits that this question will be answered. After painstakingly going through the processes in both contending suits, I find that the Claimants in B/108/2015 are substantially the Defendants in B/210/2015. To be precise they are the 1st to 5th Defendants in B/210/2015. Are the Claimants/Respondents in this application same as the Defendants in B/108/2015? It is not so clear. To clear the fog, it is pertinent to consider who they are. They are a corporate entity brought

about by law. As in all corporate entities, they have arms and limbs. They have promoters, privies and forebears. In Exhibit ñAò attached to Claimant/Respondentôs Counter Affidavit to this application, all the Defendants in B/108/2015 are listed at the promoters of the Claimant/Respondent in this suit. Does that make them privies of Claimant/Respondent. I think so. A privy is a person whose title is derived from and who claims through a party. See **MAYA .V. OSHUNTOKUN (2001) 11 NWLR (PT. 723) 62 AT 67 RATIO 9** for the proposition that parties name in a writ include privies.

The above findings lead to the inevitable conclusion that Suit No. B/108/2015 and Suit No. B/210/2015 is between same parties, on same subject matter flowing from same reliefs and I make no hesitation by resolving Defendant/Applicant Counselôs issues one and two and Claimant/Applicant Counselôs issue two in favour of the Defendant/Applicantô Counsel by saying that Suit No. B/210/2015 amounts to an abuse of the process of this honourable court. The claim(s) relief(s) may be worded differently, but it still amounts to an abuse of process where the substance or the end result of the two or more actions is the same. See **CHIEF VICTOR UMEH & ANOR V. PROFESSOR MAURICE IWU & ORS. (2008) LPELR-3363(SC)** per Muhammad, J.S.C.

I must now touch on Claimant/Respondent Counsel's issue one which queries whether the Notice of Preliminary Objection is competent and cognizable by this Honourable Court under the extant Rule of this Court.

Claimant/Respondent Counsel's contention is that under Order 22 of the Rules of this court, no party is allowed to take the type of pre-emptive step which the Defendant/Applicants have erroneously taken in these proceedings by their notice of preliminary objection. Counsel is simply saying that demurer is no longer allowed by the rules of this Court.

A demurrer is a known and well accepted common law procedure which enables a defendant who contends that even if the allegations of facts as stated in the pleadings to which objection is taken is true, yet their legal consequences are not such as to put the defendant (demurring party) to the necessity of answering them or proceeding further with the cause. In **FABUNMI V. COMMISSIONER OF POLICE, OSUN STATE & ORS. (2011) LPELR-8776(CA)** Iyizoba (JCA) while quoting with approval the position held by Uwaifo J.S.S (as he then was) stated thus:-

> **"The tendency to equate demurrer with objection to jurisdiction could be misleading. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action, or where appropriate,**

no locus standi. The issue of jurisdiction is not a matter for demurer proceedings. It is much more fundamental than that and does not entirely depend as such on what the plaintiff may plead as facts to prove the reliefs he seeks. What it involves is what will enable the plaintiff to seek a hearing in court over his grievance, and get it resolved because he is able to show that the court is empowered to entertain the subject matter. It does not always follow that he must plead first in order to raise issue of jurisdiction". In the circumstance therefore, where jurisdiction is the root of the matter and the claim can be dismissed for lack of jurisdiction simpliciter, it will serve no useful purpose to file a defence notwithstanding the rules of court….."

I am bound by the decision of the Supreme Court in **SOLANKE .V. SOMEFUN (1974) 1 SC P.184** where it held per Sowemimo JSC (as he then was, of blessed memory) thus:-

"Rules of court are meant to be complied with and therefore, any part or counsel seeking the discretionary power of a judge to be exercised in his favour must bring his case within the provisions of the Rules on which he purported to make his application. If counsel fails to discharge their duties in that respect, it is but fair and right that a court should refuse to exercise its discretionary power"

I must emphasize that rules of Court are meant to be obeyed and followed because they regulate matters in court and

make for the smooth administration of justice. The import of Order 25 rules 1 & 2 of the Federal High Court (Civil Procedure) Rules 2000 envisages that an objection of any kind in law can only be taken by any party after the party objecting has filed his pleadings and made the issue which the objection is to be anchored part of the pleadings. There is no doubt that demurrer proceedings had been abolished in the Federal High Courts and any party seeking to raise any preliminary objection must follow the rules governing the Court which the objection is to be raised. I had earlier stated that rules of court are meant to be obeyed. However, the Supreme Court has cautioned against following the rules of court sheepishly and that at all times, the interest of justice is paramount. In **OLOHA .V. AHERGA (1988) 3 NWLR (PT 84) AT 508,** Oputa JSC said:-

"All Rules of Court are made in aid of justice. That being so, the interest of justice will have to be given paramouncy over any Rule compliance with which will lead to outright injustice. The issue of jurisdiction when raised by a party must be determined".

In the instant case, the Learned trial judge held that since demurrer has been abolished, the issue of jurisdiction cannot be raised by way of demurrer, but should be raised as a point of law in the defendant's pleadings. Order 25 Rules 1 & 2 of the Federal High Court (Civil Procedure) Rules 2000 cannot be read in isolation. It is trite that it is the plaintiffôs claim that determines the jurisdiction of a court. See **TUKUR .V. GOVERNOR OF GONGOLA STATE (1989) 4 NWLR (PT 117)**

517. Therefore, where it becomes apparent on the face of the Writ or Statement of Claim that the Court has no jurisdiction to entertain the claim, I think it should be brought to the notice of the court at the earliest opportunity irrespective of the method used to notify the court since jurisdiction is the lifeline for commencing and continuing proceedings. In the observance of rules of court, I am of the view that where an objection has to do with jurisdiction simpliciter, it can be raised whether or not the defendant had filed pleadings. Where however the matter before the court is complicated as to where it will require facts and investigation, then the court may order that pleadings should be filed and the issue raised therein. See **Shell Petroleum Development & 5 ors v. Nwawka (2001) 10 NWLR (pt.720)64**.

I need to say at this stage that the issue of jurisdiction and demurrer are different. The reason is that the issue of jurisdiction can be raised at any time whether it was pleaded or not. It can be raised by the Court suo motu and even on appeal. So, the issue of jurisdiction stands out being a threshold issue.ò

Having held that this Suit NO. B/210/2015 amounts to an abuse of the processes of this court and from all I have been saying, I think is quite apparent that there will be no need to examine the other issues raised in this application as it will amount to an academic exercise. My humble view is that the reliefs sought by the Respondent in Suit No. B/210/2015 should have been claimed by way of a counter-claim in Suit No. B/108/2015 and conveniently tried together.

Suit No./B/210/2015 being an abuse of Court process effectively divests this Court of jurisdiction to entertain the action.

In the circumstance, Suit B/210/2015 is hereby dismissed. There shall be no other as to cost.

HON. JUSTICE J.O. OKEAYA-INNEH
JUDGE
9TH MARCH, 2016

COUNSEL:-

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(2) A. P. A. OGEFERE ESQ., FORTHE CLAIMANT