

SUPREME COURT OF NIGERIA

4TH FEBRUARY, 2000. SC. 107/1994

**CORAM:- A. G. KARIBI-WHYTE, E. O. OGWUEGBU,
A. I. KATSINA-ALU, U. A. KALGO, S. O. UWAIFO, JJSC**

1. THE REGISTERED TRUSTEES OF THE
LIVING CHRIST MISSION APPELLANTS
2. L. O. DIKE & 2 ORS.
AND
DR. OSITA ADUBA & ANOR. RESPONDENTS

***ACTIONS** - Abuse of Court process - By filing action in another court between same parties on same subject matter - During the pendency of a prior action - The court where more issues are raised - Where jurisdiction is not in doubt - Is more convenient.*

***ACTIONS** - Appeals - Stay of proceedings - Made by the Court of Appeal - In respect of the subsequent High Court action - Was wrong - As the action was not tainted with mala fides.*

***ACTIONS** - Issues - raised in subsequent High Court Action - During the pendency of a magistrate's Court action - The High Court issues being more and in view their nature - The more convenient court is the High Court.*

***ACTIONS** - Pendency of two similar actions in separate courts - Though the later action raises more issues - Ulterior motive aimed at abusing court process - Must be ruled out in determining the more convenient court.*

FACTS

The respondents filed a claim in suit No. MO/660/92 against the appellants as their tenants before the Magistrate's Court Onitsha. They sued for possession and mesne profit. The appellants subsequently took

out a writ of summons against the respondents before the High Court Onitsha, in respect their said tenancy. They sought some declaratory reliefs against the respondents towards establishing that they are special tenants who cannot be summarily ejected. They also claimed the sum of N900,000.00 being general and special damages. On being served with the writ, the respondents filed an application at the High Court to have the suit struck out as an abuse of court process in view of the pending Magistrate's Court Suit between the same parties.

The learned trial Judge found that some of the claims in the High Court Suit did not fall within the jurisdiction of the Magistrate's Court and then refused to strike out the case. The respondents' appeal to the Court of Appeal was allowed by ordering a stay of the High Court proceedings. Being dissatisfied, the appellants have now appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in reversing the order of Ononiba J. in which he dismissed the defendants/respondents' application to strike out Suit No. 0/390/92 as abuse of court process?"

2. Whether the Court of Appeal was right in applying the decision in the case of Theophilus Nnama and 4 ors v. George Nwanebe and 4 ors (1991) 2 NWLR (pt. 172) 181 to the instant case and in ordering a stay of suit No. 0/390/92 pending the determination of Suit No. MO/660/92?"

HELD (Unanimously allowing the appeal per lead judgment of **UWAIFO JSC**)

Abuse of court process

1. It appears to me that in applying the principle in Nnama v. Nwanebe (supra) much circumspection is required so as to ensure first, that there is no real ploy to simply deny the court in which an action in respect of the same subject-matter was earlier filed its jurisdiction to entertain it and secondly, that where more issues in a matter are raised in one court than in another court, a more convenient court should be allowed to resolve those issues in the interest of justice, more so if the power of one of the

courts to entertain one or more of the issues is in doubt. (p. 199 H)

Pendency of two similar actions

2. Where a later action raises more issues in a matter than those in an earlier action in the same matter between the same parties, both in separate courts, in order to fairly resolve which of the two courts of concurrent jurisdiction (not co-ordinate courts) should be allowed to proceed with the matter, it should not appear that the more numerous issues were not raised genuinely. They should not be seen to be raised with the intention to abuse court process or to make the action vexatious. There ought not to be found to exist mala fides in bringing the later action; that is to say, the motive behind the process by which those issues were raised must not be seen to be ulterior so as to amount to improper use or perversion of process. (p. 200 B)

Issues - Raised in subsequent high court action

3. I have shown that the action taken in the High Court between the same parties raises apparently more issues than that brought in the Magistrates' Court. Although that of the High Court was later in time, it would appear more convenient to have the proceedings in respect of the matter decided in the High Court, particularly because of the nature of some of the reliefs sought in the High Court case. It follows that the refusal of the learned trial judge to strike out the action before him was proper. The lower court's order to stay proceedings pending the determination of the action in the Magistrates' Court was made in error and cannot be allowed to stand. (p. 200 E)

Actions - Appeals - Stay of proceedings

4. My view is that once it has been shown that the institution of that action was not tainted with mala fides as I have tried to show above, the conclusion must be reached that the lower court should not have made that order. It ought simply to have affirmed the trial court's decision not to strike out the action. It would then have been left to any of the parties to take other steps to ensure that the matters in contention are tried in the

more convenient court by way of transferring the case in one court to the other court. (p. 201 A)

REPRESENTATION

- B Dr. J. I. J. Otuka with Miss Juliet Achebe for the appellants
Nnamdi Ibegbu Esq. for the respondent

CASES REFERRED TO

- C Nnama v. Nwanebe (1991) 2 NWLR (pt. 172) 181
Thames Launches Ltd v. Corporation of the Trinity House of Deptford Strond (1961) 1 All E. R. 26 at 32

RULES REFERRED TO

- D High Court Rules of Anambra State 1988 O.19 r. 5

LEAD JUDGMENT BY UWAIFO JSC

- E The respondents filed a claim in Suit No. MO/660/92 on 8 September, 1992 against the appellants as tenants at the Magistrates' Court. A yearly tenancy of N2,400.00 a year in respect of a flat and out-houses at No. 42 Mba Road, Inland Town, Onitsha had become a subject of dispute. The respondents sued for two reliefs, namely, (1) possession
F and (2) mesne profits of N200.00 month from January 1, 1992 until possession was delivered up. Apparently, the tenancy had been determined by notice to quit which expired on 31 May, 1992.

- G The appellants proceeded to take out a writ of summons in Suit No. 0/390/92 on 2 October, 1992 at the Onitsha High Court against the respondents in respect of the said tenancy. The reliefs which I find pertinent to reproduce in full owing to their crucial relevance to this appeal were stated as follows:

- H *"1. Declaration that the plaintiffs having been permitted by their late landlord Mr. Osita Aduba to erect additional one room to a flat on the ground floor, a two-bed room out house at, and high walls right-round, No. 42 Mba Road, Inland Town Onitsha which plaintiffs occupy as special tenants and Caretakers which fact was confirmed and acknowl-*

edged in writing by a letter to the plaintiffs dated 10th November 1987 executed by the said late Mr. Osita Aduba cannot be summarily ejected by the defendants.

2. Declaration that the defendants' claim for possession in respect of the premises occupied by the plaintiffs including the structures erected by the plaintiffs at No. 42 Mba Road, Inland Town, Onitsha in Suit No. MO/660/92. B

1. Dr. Osita Aduba

2. Mrs. Patrician Aduba (The Administrator and Administratrix of the Estate of Mr. Osita Aduba) Vs. C

1. L. O. Dike

2. E. A. Onyia

3. D. O. Nwosu (for themselves and on behalf of the LIVING CHRIST MISSION ONITSHA) is incompetent, illegal, ultra vires - and constitutes an interference with contractual relations between late Mr. Osita Aduba and the LIVING CHRIST MISSION D

3. N900,000.00 (nine hundred thousand naira) being special and general damages for trespass in that in August 1992 the 1st defendant by himself and his agents broke down the security fence wall of the plaintiffs at the said 42 Mba Road, Onitsha and disturbed the quiet enjoyment of the plaintiffs occupation of the premises let to them by late Mr. Osita Aduba. E

4. Injunction restraining the defendants, particularly the 1st defendant from any further interference with the plaintiffs occupation and enjoyment of the premises which the plaintiffs occupy at No. 42 Mba Road, Onitsha aforesaid. F

5. An order of Court transferring Suit No. MO/660/92 from the Magistrates Court Onitsha to the High Court for a just determination of the issues raised in this suit." G

On being served with the writ, the respondents filed an application at the High Court for an order to strike out the suit on the grounds H that "it is an abuse of court process having been instituted during the pendency of suit No. MO/660/92, Dr. Osita Aduba & anor. v. L. O. Dike & ors which is an action between the same parties, on the same issues

and first in time." The respondents relied on Nnama v. Nwanebe (1991) 2 NWLR (pt. 172) 181, a decision of the Court of Appeal. The application was heard by Ononiba J. who, on 2 December, 1992, refused it. First, he felt that he would need pleadings to be filed and exchanged. But
 B he later went beyond that to hold that the Magistrates' Court had no powers to make a declaratory judgment as sought in reliefs 1 and 2. Further, he held with a definite resolution that the claim for N900,000.00 damages was clearly above the jurisdiction of the Magistrates' Court. In
 C other words, the exchange of pleadings was no longer really part of his consideration. In view of what later transpired in respect of the two suits, I do not consider it necessary to comment on the merits of the reasons given by the learned trial judge for refusing the application.

At that stage, going by that decision, what it amounted to was
 D that the said suit No. 0/390/92 remained on the cause list of the High Court. The respondents filed an appeal against that decision. That was on 9 December, 1992. But before then, on 16 November, 1992, the appellants brought an application before the Chief Judge of Anambra
 E State praying for an order to transfer suit No. Mo/660/92 from the Magistrates' Court to the High Court presided over by Ononiba J. for hearing and determination on the merits. The order of transfer was accordingly made on 13 January, 1993 by virtue of Order 19 r. 5 of the High Court
 F Rules 1988 of Anambra State.

The Court of Appeal in its judgment on 24 February, 1994 determined the appeal on the refusal of Ononiba J. to strike out suit No. 0/390/92. It allowed the appeal and ordered a stay of proceedings of that suit pending the determination of suit No. MO/660/92 in the Magistrates'
 G Court. The appellants now contest that judgment on two issues, namely:

- "1. *Whether the Court of Appeal was right in reversing the order of Ononiba J. in which he dismissed the defendants/respondents' application to strike out Suit No. 0/390/92 as abuse of court process?*
- H 2. *Whether the Court of Appeal was right in applying the decision in the case of Theophilus Nnama and 4 ors v. George Nwanebe and 4 ors (1991) 2 NWLR (pt. 172) 181 to the instant case and in ordering a stay of suit No. 0/390/92 pending the determination of Suit No. MO/660/*

92?"

The argument of the appellants in respect of issue 1 is that there is no element of mala fides in the action taken in the High Court. Learned counsel contended that the appellants did not bring their action for an ulterior purpose but made a regular and legitimate use of process to obtain reliefs in the High Court which were not fully available in the Magistrates' Court. Reference was made at least to the claim for N900,000.00 which they submit the Magistrates' Court could not award. It was further argued that the Magistrates' Court could not give a declaratory judgment.

Learned counsel for the respondents has argued on the other hand that the declaratory reliefs sought were in substance to show that the appellants could not be ejected from the premises as if they were mere tenants. As regards the claim for N900,000.00, he contended in his brief of argument on behalf of the respondents that: "The fact that the present appellants added a relief for N900,000.00 with the greatest respect, is merely a ploy to frustrate the Magistrates' Court case from going on and is purely based on Mala fide. The Magistrate Court can determine the suit in the High Court by way of counter claim but limit its aware to N20,000.00."

I like to start from the latter contention in respect of the claim for N900,000.00. The obvious weakness in the respondents' contention about the claim for N900,000.00 is that what the appellants would be entitled to even when the evidence might support to the contrary a far larger amount, must be limited to N20,000.00 which the Magistrates' Court has jurisdiction to award. I do not think that is a tenable argument particularly as the claim is for special and general damages. It might be a different situation if pleading had been filed by the appellants and it was seen that the special damages were insubstantial compared to N20,000.00. Further, in regard to the general damages claimed, it ought to appear on the pleadings that such head or heads of damages that could conceivably be related to that large quantum of damages are not indicated. From those circumstances, it might be open to infer mala fides to the appellants that their purpose in bringing their action in the High Court was to pre-

vent the respondents from legitimately pursuing their claim in the Magistrates' Court.

In regard to the said declaratory reliefs 1 and 2, it must be observed that they suggest that an additional room to the flat in question, a two-bedroom out-house and high wall fence round the property were erected by the appellants with the concurrence of the respondents. A letter to that effect by the respondents is mentioned. When one connects these facts to the claim for N900,000.00 special and general damages in which it was alleged that the respondents "broke down the security fence wall", it would appear that the appellants may have been *bona fide* in seeking to justify that claim for N900,000.00 by having their suit decided in the appropriate forum where the relevant facts may more properly be stated and issues joined on the pleadings. Besides, it seems to me that the matter had gone beyond a mere landlord and tenant relationship from the point of view of the appellants. They allege a superimposition of a contractual commitment by which they were permitted to incur expenses to improve the property. This they say was upon terms which have made them special tenants. It would appear, going by these considerations, the appellants cannot be justifiably denied the opportunity to have such rather complex facts tried on pleadings. And this can be done only in the High Court.

I do not think the lower court gave sufficient consideration to its earlier decision in Nnama v. Nwanebe (1991) 2 NWLR (pt. 172) 181. In that case, the High Court assumed erroneously that the Magistrates' Court had no jurisdiction over the subject-matter which was title to land. It was on that basis he ordered a stay of proceedings in the Magistrates' Court case, also in an erroneous procedure, while he was to have gone on with the case before him. In addition, one of the authorities relied on in that case makes it plain that when the issues in a matter raised in one court are more numerous than what is raised in another court, it would be better to have the court where the number of issues are raised to decide the matter. As Buckley, J. put it in that case of Thames Launches Ltd v. Corporation of the Trinity House of Deptford Strond (1961) 1 All E. R. 26 at 32:

"I understand the principle to be that if there are two courts which are faced with substantially the same question, it is desirable to be sure that that question is debated in only one of those courts, if by that means justice can be done I can see that there would be a fair matter of argument if there were two proceedings going on in court 'A' and court 'B', the proceedings in court 'A' relating to a number of questions, only one of which was raised in the proceedings in court 'B', and was the only question raised in that court. That would be a very strong argument for saying that the convenient course would be to allow that question to be dealt with in the proceedings in court 'A' which would dispose of the matter raised in the proceedings in court 'B', whereas if the reverse course were taken the same would not apply."

Then he proceeded further at page 33 to say:

"..... no man should be allowed to institute proceedings in any court if the circumstances are such that to do so would really be vexatious. In my judgment, it is vexatious if somebody institutes proceedings to obtain relief in respect of a particular subject-matter where exactly the same issue is raised by his opponent in proceedings already instituted in another court in which he is not the plaintiff but the defendant. The following will illustrate what I mean. Supposing a question of construction were to arise on a will in respect of which the High Court and the Palatine Court had concurrent jurisdiction. If one party affected by that question started proceedings in the High Court making another party a defendant, in my opinion it would be grossly vexatious for that defendant subsequently to start proceedings in the Palatine Court raising precisely the same question."

The essential elements in Nnama v Nwanebe (supra) which escaped the attention of the lower court in the present case are (1) that the same questions were raised in the Magistrates' Court case as were raised in the later suit in the High Court; (2) that both courts had concurrent jurisdiction in respect thereof and nothing therein was outside the power of the Magistrates' Court; and (3) that the High Court proceeded to order a stay of proceedings of the Magistrates' Court case when it lacked the jurisdiction to do so. **It appears to me that in applying the principle in**

Nnama v. Nwanebe (supra) much circumspection is required so as to ensure first, that there is no real ploy to simply deny the court in which an action in respect of the same subject-matter was earlier filed its jurisdiction to entertain it and secondly, that where more issues in a matter are raised in one court than in another court, a more convenient court should be allowed to resolve those issues in the interest of justice, more so if the power of one of the courts to entertain one or more of the issues is in doubt.

Where a later action raises more issues in a matter than those in an earlier action in the same matter between the same parties, both in separate courts, in order to fairly resolve which of the two courts of concurrent jurisdiction (not co-ordinate courts) should be allowed to proceed with the matter, it should not appear that the more numerous issues were not raised genuinely. They should not be seen to be raised with the intention to abuse court process or to make the action vexatious. There ought not to be found to exist mala fides in bringing the later action; that is to say, the motive behind the process by which those issues were raised must not be seen to be ulterior so as to amount to improper use or perversion of process.

I have shown that the action taken in the High Court between the same parties raises apparently more issues than that brought in the Magistrates' Court. Although that of the High Court was later in time, it would appear more convenient to have the proceedings in respect of the matter decided in the High Court, particularly because of the nature of some of the reliefs sought in the High Court case. It follows that the refusal of the learned trial judge to strike out the action before him was proper. The lower court's order to stay proceedings pending the determination of the action in the Magistrates' Court was made in error and cannot be allowed to stand.

This brings me to issue 2 which is a complaint against the stay of proceedings order. The argument of learned counsel for the appellants is that the decision in Nnama v. Nwanebe (supra) was wrongly

applied and that in any event the respondents did not ask for such an order but that the action be struck out. The respondents' counsel's contention is that the order of stay was proper because the High Court action was brought Mala fide. **My view is that once it has been shown that the institution of that action was not tainted with mala fides as I have tried to show above, the conclusion must be reached that the lower court should not have made that order. It ought simply to have affirmed the trial court's decision not to strike out the action. It would then have been left to any of the parties to take other steps to ensure that the matters in contention are tried in the more convenient court by way of transferring the case in one court to the other court.** That appears to have been what was eventually done which gave rise to another appeal simultaneously heard by this court concerning these matters.

I therefore allow this appeal and set aside the order of stay of proceedings made by the lower court together with the order for costs. I award N10,000.00 costs to the appellants.

KARIBI-WHYTE JSC

I have read the judgment of my learned brother Uwaifo, JSC in this appeal. I agree entirely with the reasoning and conclusion therein that this appeal be allowed. I also will and hereby allow the appeal. I award N10,000 as costs to the appellants.

OGWUEGBU JSC

I have had a preview of the judgment just delivered by my learned brother Uwaifo, J.S.C. with which I am in agreement; and for the reasons therein stated I would allow this appeal and endorse the orders in the said judgment.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Uwaifo, JSC. I agree with it and for the reasons given by him, I would allow the appeal with N10,000.00 costs to the appellants.

KALGO JSC

I have had a preview of the judgment just delivered by my learned brother Uwaifo, JSC with which I entirely agree. I adopt his reasoning therein as mine. I hold the view that there is merit in the appeal and I accordingly allow it and set aside the decision of the Court of Appeal. I abide by the consequential orders made in the lead judgment including the orders as to costs.

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