

SUPREME COURT OF NIGERIA

23RD APRIL, 2004. SC. 246/2000

CORAM:- U. MOHAMMED, A. I. KATSINA-ALU, A. O.

EJIWUNMI, D. MUSDAHER, I.C. PATS-ACHOLONU, JJSC

NIGERIA INTERCONTINENTAL

MERCHANT BANK LIMITED APPELLANT
AND

1. UNION BANK OF NIGERIA LIMITED

2. WEST AFRICAN MARINE RESPONDENTS
PRODUCTS LTD.

3. TRIANA LIMITED

COURTS - Orders - Procedural law - Jurisdiction - Court of coordinate jurisdiction - Should not make orders - That would expose the court to ridicule (H1)

COURTS - Coordinate jurisdiction - Appeal - Conflicting order - Made by Federal High Court - That neutralized prior order of Lagos High court - Is like sitting on appeal over that prior order - And courts should not be at war with each other (H2)

COURTS - Orders - Constitutional law - Parties - Order of Federal High Court - That conflicts with prior State High Court Order - Shows lack of caution - As we operate one constitution - And the parties cannot obey the respective orders (H3)

COURTS - Actions - Abuse of court process - Legal practitioners may lose sight of it - But the court should be cautious (H4)

COURTS - Jurisdiction - Orders - Competence of Federal High Court over a matter - Where State High Court has assumed jurisdiction - Federal High Court was wrong in taking up the matter - And making a contrary order therein (H5)

APPEALS - Error of appellate court - Court of Appeal was in error - In failing to find fault with Federal High Court's action in this case (H6)

FACTS

The plaintiff/appellant filed an action against the 2nd respondent before the Lagos High Court. Appellant sought to recover over N100 million or frozen fish imported with an overdraft facility granted by the appellant Bank. On 31st July, 1998, sequel to appellant's ex parte application, the Lagos High Court granted leave to it to take possession and sell the entire stock of fish in question.

However, on 10th August, 1998, after the order above was made, 1st respondent filed an action before the Federal High Court which gave rise to this appeal. This new suit is in respect of the same fish. 1st respondent filed a motion to restrain the appellant from further disposing or selling the fish. It filed a motion for stay of execution before the Lagos High Court which was still pending at the time of the case it now filed before the Federal High Court. The attention of the federal court was drawn to the existing order of the state court. Notwithstanding, it made an order that was in conflict with the prior order of the Lagos High Court. Appellant's appeal to the Court of Appeal was dismissed. It has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Was it right for the Court of Appeal to have held that the Federal High Court had jurisdiction to entertain the 1st respondent's motion for interlocutory injunction dated 18/8/98 in view of the fact that the appellant had drawn the Federal High Court's attention to the existence and subsistence of an earlier order made on 31/7/98 by the Lagos High Court in suit NO: LD/21/77/98 which said order granted unconditional leave to the appellant to possess, remove and sell the same stock of fish that was in issue before the Federal High Court in the aforesaid motion for interlocutory injunction.

2. Did the filing of the 1st respondent's aforesaid motion for interlocutory injunction at the Federal High Court constitute an abuse of court process or not in view of the other two similar court processes

which had been filed by the 1st respondent, and which said similar processes were pending before the Lagos High Court as well as the Court of appeal at the same time?

HELD (Unanimously allowing the appeal per lead judgment of **PATSA-ACHOLONU, JSC**)

Orders - Procedural law - Jurisdiction

1. It is I believe inelegant and a matter that would go against the grain of our procedural law for courts of co-ordinate jurisdiction instead of endeavouring to shore up the jurisdiction of each other engage in a form of unsavoury competition. They ought necessarily to avoid a situation where the court by its being less cautious exposes itself by the nature of the order it makes to ridicule and the majesty and aura of its pronouncements are either compromised or treated with ignominy as a non-issue by the confused parties and I dare say by the common citizenry. (p. 966 A)

Coordinate jurisdiction - Appeal

2. It cannot be doubted that the order of the Federal High Court has the ungainly effect of neutralizing the effectiveness and the dimension of the order hitherto made by the Lagos State High Court. I fail to see how the decision or order of Okeke, J. was a mere preservative order as espoused by the Court of Appeal when it really asphyxiated the former orders. Where a Federal court is prayed to make an order that is diametrical in conflict with a subsisting order of a State High Court in the context of the same subject matter and where equally identical or seeming identical prayers are sought, it should, in my view refuse to entertain it and may advise that the parties transfer the matter first filed or instituted in the State High Court to its own court particularly in an area where it may even possess wider jurisdiction than the State High Court due to the subject matter. To commence to make orders that strike violently at the heart of the order of the State High Court of well known co-ordinate jurisdiction is to lend a helping hand in causing confusion in our courts by purporting unwittingly to appear to sit on appeal to the decision of a

State High Court.

I fail to see the exceptional circumstance that would warrant a court to naively appear to sit on appeal on a ruling of a court of the same co-ordinate jurisdiction. The Institution of the two courts is not meant B that they should be perpetually at war but to stand shoulder to shoulder in order to realize the intention and wisdom of the eminent men – Jurists, Political Scientists and other people of great learning and intelligence – who gave us the Constitution. (pp. 966 C & 967 H)

C ***Orders - Constitutional law - Parties***

3. Indeed the damning situation does not portend astuteness and exercise of caution on the part of the Federal High Court, which by its stance had made an order that did violence to the order of the Lagos State High D Court. It is essential to state that in Nigeria we operate only one Constitution and regardless of the argument of the 1st respondent that in some instances the Federal High Court can treat a State High Court as a Foreign Court, the Federal High Court by the nature of the powers conferred E on it by the Constitution still operates in the same hierarchy duly recognized by the Constitution. The parties cannot conveniently obey the respective orders made by the two courts at the same time as that would amount to doing the impossible. (p. 967 D)

F ***Actions - Abuse of court process***

4. Where counsel for different parties to a matter either due to over-zealousness to comply with the dictates of their client or cause sheer nuisance by the nature of proceedings they foist on the courts which are G likely to bring them to ridicule, it behoves the courts particularly the latter one to which the proceedings in the same subject matter were entertained in the first court, to exercise utmost caution. In this connection it should school itself on the probability and naughtiness of abuse of process of the court which some counsel sometimes in their eagerness to H pursue their case lose sight of the possible consequence of causing disaffection that leads to ridicule and opprobrium of the courts. (p. 968 B)

Orders - Competence of Federal High Court over a matter

5. It is my view that it will amount to a travesty of justice where the Federal High Court although no doubt has the competence to adjudicate on a matter that squarely falls within its jurisdiction but for some reason a State High Court has already assumed jurisdiction on certain aspects of the case which had the potential to lead to abuse of the process of the court for the Federal High court to intrude unobtrusively on the matter. In that case caution is thrown to the wind by the assumption of jurisdiction by the Federal High Court or for that matter any other court. That order made by the federal High Court ought not to have been made after its attention was drawn to the extant order of the Lagos High Court. (p. 970 D)

APPEALS - Error of appellate court

6. It is my view that the Court of Appeal was obviously in error when it saw nothing wrong in the act of the Federal High Court even if the Lagos High Court had wrongly assumed jurisdiction in that case. In the circumstances, I allow the appeal and set aside the judgment of the court below. (p. 970 H)

NOTABLE POINTS OF INTEREST

PATS-ACHOLONU JSC

1. Counsel to ensure accurate references in cases cited in a mater

I find it most irritating and utterly inexcusable that a good percentage of cases cited by the appellants' counsel have wrong references. This tends to rob the appellants brief of the beauty, sequence and elegance that should adorn it. Its staccato form tends to depict some measure of carelessness on the part of the counsel and I dare say causes irritability. Counsel must try to cross check the references to ease the work of the court. (p. 970 F)

MOHAMMED JSC

2. Filing multiplicity of action - Is abuse of court process

From the facts of this case the order made by the High Court of Lagos

State was still pending when the Union Bank went to the Federal High Court and obtained from Okeke J. an order of interlocutory injunction in respect of the same frozen fish. The proper step which the Union Bank had taken in seeking for stay of the order of the Lagos State High Court would have determined the dispute in a proper way. Before the determination of the application for stay of the order of the Lagos High Court the Bank again went to the Court of Appeal and applied for a similar order. All this amounts to multiplicity of actions. 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 N.W.L.R. (pt. 119) 6. (p. 972 C)

3. *When application filed at another court - Will amount to abuse of court process*

Filing an application in a court of co-ordinate 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 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] 1 K.B. 512. (p. 972 F)

REPRESENTATION

Ayo Ajayi and Abidemi Oladigbolu for the appellant
Adebayo Adenipekun for the 1st respondent
F.C. Eze for the 3rd respondent

CASES REFERRED TO

Aladegbemi v. Fasaumade [1985] 3 N.W.L.R. (pt. 81) 129, 146 at 155
I.B.W.A. v. Kennedy transport Nig. Ltd. [1993] 7 N.W.L.R. (pt. 304) 238 at 250 – 251
H Nnaji v. Aneke [1996] 2 N.W.L.R. (430) 269 at 276
Union Bank of Africa v. Onagoruwa [1996] 3 N.W.L.R. (pt. 439) 700 at 709
Hart v. T.S.K.J. Nig. Ltd. (1998)12 N.W.L.R. (pt. 578) p. 372

UBA v Coker [1996] 4 N.C.L.C. (pt. 4) P.717 at 729

7Up Bottling Co. Ltd. [1996] 7 N.W.L.R. (pt. 463) 714 at 744

Klifco Ltd. v. Holzaian A – G [1996] 3 N.W.L.R. (pt. 436) 276

I.C.C. Ltd. v. Granville & Sons Ltd. (1996) 8 N.W.L.R. (pt. 465) P 187

Peters v. Ashamu [1995] 4 N.W.L.R. (pt. 388) P. 206

B

LEAD JUDGMENT BY PATS-ACHOLONU JSC

The appellant had instituted an action against the West African Marine Products Ltd. the 2nd respondent at the Lagos High Court for the recovery of a sum of N101,598,144.08 or realize the security which constituted of assorted frozen fish imported with an overdraft facility granted by appellant's bank. The fish was stored in the cold room belonging to the defendant 2nd respondent. On the 31 July, 1998, the Lagos High court granted leave to the appellant sequel to its exparte application, to take possession of remove and sell the entire stock of fish stored in the room of the 2nd respondent. It further made orders restraining the 2nd respondent, its agents and others from disturbing or preventing the appellant from taking possession and disposing of the entire stock and in any way from interfering or intermeddling with the appellant's possession or sale of the entire frozen fish...

However on the 10th August, 1998 after the order above was made, the 1st respondent in this appeal filed an action in the Federal High Court which incidentally gave rise to this present appeal against the appellant in this case in respect of the same fish for which an earlier order had been obtained in the Lagos High Court. Interestingly on the 19th August, 1998, the 1st respondent applied for a motion to restrain the appellant, West African Marine Products Ltd. and Triana Ltd. who happen to be the defendants in the suit FH/C/L/Cs/869/98 from tampering, disposing or further selling the total quantity of fish of assorted kinds in 86000 cartons presently stored at cold room/warehouse of Arsa fish foods (Nigeria Ltd.), an order directing the Deputy sheriff to secure the carton of the fish which is the subject matter of the suit, and an injunctive order restraining the defendants by themselves and their agents and

privies from disturbing, harassing intimidating and interfering with the duties of the Receiver Manager. It is desirable and necessary in the context of this matter to set down some averments made by the 1st respondent in respect of the application before the Federal High Court when the

B suit was instituted viz;

1. That prior to the grant of the loan and overdraft facility the 2nd defendant had executed in favour of the plaintiff the Deed of Debenture dated 18/04/96 and a supplemental mortgage debenture dated 22/2/97, copies of the deeds are hereby attached as Exhibits 'B' and 'C' respectively.

2. That the plaintiff pursuant to the deed of Debenture formally demanded that the 2nd defendant's indebtedness be paid within thirty days. Copy of the notice of demand is hereby attached as Exhibit 'D'

D 3. That the 2nd defendant rather than honouring the letter of demand above secretly and contrary to Exhibits 'C' and 'D' executed another agreement in favour of the 1st defendant. A copy of the letter is attached herewith and marked Exhibit 'DDD'

E 4. That the 1st defendant purporting to be acting pursuant to the Deed agreement and also a Lagos High Court order of Hon. Justice P.O. Atilade forced open the 3rd defendant warehouse and carted away the assorted fish financed by the plaintiff through the 2nd defendant.

F 5. That the fish has been found to be kept at ARSA FISH FOODS NIGERIA LIMITED, OLD OJO RAOD, LAGOS

G 6. That as a result of the failure of the 2nd defendant to honour the letter of demand – Exhibit 'D' – and this breach of the debenture the plaintiff in exercise of its power under the deed of Debenture appointed a Receiver/Manager to take over the assets of the 2nd defendant. Attached herewith as Exhibit 'E' is the letter of appointment of the Receiver.

7. That the appointment of the Receiver was communicated to the 2nd defendant by the plaintiff, also attached as Exhibit 'F' is the said letter.

H The appellant (as the 1st defendant) in that motion made profuse averments in respect of its own interests in that case in its counter affidavit. I hereby set down below some pertinent portions of that deposition.

(a) That contrary to paragraphs 3(c) and 5 of the plaintiff's

affidavit no other party

except the 1st defendant has any interest or rights in the fish lying in the 2nd defendant's cold room along Apapa/Oshodi, expressway, Ijeshatedo, hence they were not entitled to be heard on the 1st defendant's motion ex parte dated 30/7/98.

(b) That contrary to paragraphs 3(d) and (e) of the plaintiff's affidavit in support, the fish imported by the 2nd defendant with the N127.5 million overdraft facility granted by the 1st defendant and over which the 1st defendant has an exclusive lien is 3,500 metric tones of assorted sardinella, mackerel, horse mackerel and African mixed fish and not just 30,000 cartons of sardinella fish as wrongly averred by the plaintiff.

(c) That by the 1st defendant's letter of offer to the 2nd defendant dated 10/4/96, an overdraft facility of N127,500,000.00 was offered to 2nd defendant for the importation of 3,500 metric tones of assorted frozen fish and the 2nd defendant accepted the 1st defendant's offer by signing the acceptance column of the said letter.

(d) That the 2nd defendant's acceptance of the 1st defendant's offer of N127,500,000.00 overdraft facility was further authorized, approved and ratified by the 2nd defendant's board of directors at its board meeting held on 18/4/96.

(e) That as security for the said overdraft facility, the 2nd defendant executed a Tripartite Warehousing Agreement dated 7/5/96 in favour of the 1st defendant in respect of all the 3,500 metric tones of assorted frozen fish imported with the said facility and stored in the 2nd defendant's cold room at Ijeshatedo.

(f) That therefore, contrary to the averment in paragraph 3(e) of the plaintiff's affidavit in support, the relevant Tripartite Warehousing Agreement executed between the 1st, 2nd and 3rd defendant is the one dated 7/5/96 and not that dated 11/11/97 which was wrongly exhibited by the plaintiff.

(g) That the aforementioned overdraft facility of N127,500,000.00 has been fully advanced to the 2nd defendant who has fully drawn down on the facility and the 2nd defendant has utilized the facility to import

assorted types of frozen fish into Nigeria which was stored in the 2nd defendant's aforesaid cold room.

B It is therefore evident that two courts of different jurisdictions had before them a common subject matter for which each party had applied for some orders which by their very nature would come into conflict with each other and could create a situation that would lead to juridical confrontational stance by which the courts might in all probability (as indeed they did) make contrary and conflicting opposing orders.

C The order made by the Federal High Court seized of the proceedings inter-alia runs thus:

That the defendants by themselves, their servants, agent and/or privies howsoever called are restrained from disturbing, harassing, intimidating, or in any other manner whatsoever interfering with the performance of the duties of the receiver/Manager of the 2nd defendant pending the hearing and determination of the Motion on notice.

Although as I readily observed, the federal High Court presided over by Justice Okeke, J. declined to make an order granting interlocutory injunction, it is evident that the orders it made more or less achieved the same purpose. Inevitably the two courts found themselves in a quagmire of being on a collision course. Piqued no doubt by the orders made by the federal High Court, the appellant appealed to the court of appeal. The appeal was dismissed. Not satisfied, it appealed to this court and from the grounds of appeal it distilled 2 issues for determination and they are as follows: -

G 1. Was it right for the Court of Appeal to have held that the Federal High Court had jurisdiction to entertain the 1st respondent's motion for interlocutory injunction dated 18/8/98 in view of the fact that the appellant had drawn the Federal High Court's attention to the existence and subsistence of an earlier order made on 31/7/98 by the Lagos High Court in suit NO: LD/21/77/98 which said order granted unconditional leave to H the appellant to possess, remove and sell the same stock of fish that was in issue before the Federal High Court in the aforesaid motion for interlocutory injunction?

2. Did the filing of the 1st respondent's aforesaid motion for inter-

locutory injunction at the Federal High Court constitute an abuse of court process or not in view of the other two similar court processes which had been filed by the 1st respondent, and which said similar processes were pending before the Lagos High Court as well as the Court of appeal at the same time?

The 1st respondent, the Union Bank formulated only one (1) issue for determination, which is: B

Was the Court of appeal right when it held that the Federal High Court has the jurisdiction to entertain the 1st respondent's motion on notice for injunction and preservative orders pending the determination of the substantive suit and that the said 1st respondent's motion does not constitute abuse of the process of court notwithstanding the subsisting order of the Lagos High court made on 31/7/98 in suit No. LD/2177/98? C

As a matter of fact the issue framed by the 1st respondent in this case is the same as the issues formulated by the appellant and the determination shall follow that set up accordingly. D

The learned counsel for the appellant submitted that the ruling or judgment of any decision of the Lagos State High Court shall always be presumed to be correct until it is set aside by an appellate court. Counsel reasoned that the Federal High Court should have jealously guarded the orders of the Lagos State High Court as though they were its own. For this submission he cited the following cases *Aladegbemi v. Fasaumade* [1985] 3 N.W.L.R. (pt. 81) 129, 146 at 155, *I.B.W.A. v. Kennedy transport Nig. Ltd.* [1993] 7 N.W.L.R. (pt. 304) 238 at 250 – 251, *Nnaji v. Aneke* [1996] 2 N.W.L.R. (430) 269 at 276 and *Union Bank of Africa v. Onagoruwa* [1996] 3 N.W.L.R. (pt. 439) 700 at 709. It is the submission of the learned counsel for the appellant that the resultant effect of the orders by the Federal High court amounted to making an order of stay and indirectly constituting a restrain order on top of what the Lagos High Court had done. The learned counsel referred this court to the intendment of the two orders, that of the Lagos High Court more or less meaning 'go and sell fish unconditionally' and the Federal High Court saying "*don't sell or if you sell, don't apply the proceeds to defray the debt as ordered by the Lagos High Court*". E
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With the divergent and conflicting orders of the courts in respect of the same subject matter it must be understood that essentially the purpose of the Lagos High Court order was to enable the appellant to sell the fish and recover its money while that of the Federal High Court is to
B overrule and frustrate the orders so made.

The 1st respondent replicando in its brief advanced an argument by its counsel that while a court has the duty of not only exercising a jurisdiction over a subject matter brought before it for adjudication, it is equally
C invested with the power to preserve the Res. The learned counsel for the 1st respondent then cited Kigo Nig. Ltd. v. Holman Bros (Nig.) [1980] 5-7 S.C.P.60 at 71 and also Hart v. T.S.K.J. Nig. Ltd. (1998)12 N.W.L.R. (pt. 578) p. 372. In the former case, two (2) cases from Canada and England were mentioned to strengthen this observation; Andler v. Duke
D [1932] 3 D.L.R. 210 and Zamora [1916] A.C. 77

The learned counsel for the 1st respondent in citing the case of UBA v Coker [1996] 4 N.C.L.C. (pt. 4) P.717 at 729 also mentioned three American cases namely Baltimore & Co. v. Halchak (DC P.9) Supp.
E 224, James v. Grand Trunk Western Ry Co. 358 US 915 3 L. Ed. 239, and Collins v. Collins 219 S.C. 1 where it was held that where a court relying in the exercise of its untrammelled equitable powers enjoins the prosecution of an action in another jurisdiction it does not attempt to
F control the foreign tribunal. In confirmation of this submission, the 1st respondent's counsel cited Philip v. Macriga a Wash, 201 f 20945 75, A.L.R. 2d 522??. (I am of the view that this citation is wrong) and also the case of Rleinshehmidt v. Rleinshehmidt 343 1 LL App. 539 both
G cases reportedly affirming the view that where the exercise of such equitable powers may lead to conflict of jurisdiction caution dictates that such powers should be exercised very sparingly and reluctantly except under very grave circumstances. In its judgment the Court of appeal held thus per Aderemi J.C.A., relying in the case of 7Up Bottling Co. Ltd.
H [1996] 7 N.W.L.R. (pt. 463) 714 at 744:

"I hold myself bound by the dictum of Opene J.C.A. and therefore come to the irresistible conclusion that the action/of the 1st respondent (Union Bank of Nigeria Plc.) as constituted can be entertained by no

court other than the Federal High Court. See Odunje v. Nigeria Airways Ltd. [1987] 2 N.W.L.R. (pt. 55) 126. The question then to ask is whether the order of the court below (federal High Court) given on 14/9/98 would amount to an exercise of appellate jurisdiction over High Court of Lagos State vis-à-vis its order of 31/7/98? As I have pointed out, the Union Bank was not a party to suit No. LD/2177/98 before the High Court of Lagos State. Its (Union Bank) own action based on the materials before the court is one that only the Federal High Court can entertain it. Again a careful reading of the order of Okeke. J. sitting at the Federal High court in Lagos on 14th September, 1998 leaves me in no doubt that it gave due recognition and respect to the ruling of the High Court of Lagos given by Atilade J. It has not overruled reviewed nor amended the ruling of Atilade. J. given on 31/7/98. It is my view that the ruling of Okeke J. is an exercise of the preservative jurisdiction of that court. The commodities or the Res in the suit are a perishable lot. By making that order, the court below was exercising its statutory power to preserve the Res as conferred on it by Order 20 Rule 2 of the Federal high Court (Civil Procedure Rules) 1976. Indeed, the court below was conscious of the fact that it had no supervisory or appellate power to exercise on the State High Court when it said inter-alia in its ruling and I quote”.

“While this court will not pretend to exercise appellate jurisdiction which it does not have over the Lagos High Court, it will not shy away from the exercise of jurisdiction conferred on it by statute.”

I have read the case of Klifco Ltd. v. Holzaian A – G [1996] 3 N.W.L.R. (pt. 436) 276, U.B.N. v. Onagoruwa [1996] 3 N.W.L.R. (pt. 439) 700 and I.C.C. Ltd.v. Granville & Sons Ltd. (1996) 8 N.W.L.R. (pt. 465) P 187 cited by the appellant’s counsel in support of its submissions and I regret to say that they do not have any bearing on the issues raised in this appeal, they are not relevant.

Now there is no doubt that the two courts in this case of co-ordinate jurisdiction became seised of the same subject matter in which it must be made absolutely clear, made orders which from whatever or however any one may look and try to synthesise or analyze them, were pitted against each other. In that case the protagonists, id est, the legal

combatants would inevitable be put in the quandary as to which order would prevail or be obeyed.

It is I believe inelegant and a matter that would go against the grain of our procedural law for courts of co-ordinate jurisdiction instead of endeavouring to shore up the jurisdiction of each other engage in a form of unsavoury competition. They ought necessarily to avoid a situation where the court by its being less cautious exposes itself by the nature of the order it makes to ridicule and the majesty and aura of its pronouncements are either compromised or treated with ignominy as a non-issue by the confused parties and I dare say by the common citizenry.

It cannot be doubted that the order of the Federal High Court has the ungainly effect of neutralizing the effectiveness and the dimension of the order hitherto made by the Lagos State High Court. I fail to see how the decision or order of Okeke, J. was a mere preservative order as espoused by the Court of Appeal when it really asphyxiated the former orders. Where a Federal court is prayed to make an order that is diametrical in conflict with a subsisting order of a State High Court in the context of the same subject matter and where equally identical or seeming identical prayers are sought, it should, in my view refuse to entertain it and may advise that the parties transfer the matter first filed or instituted in the State High Court to its own court particularly in an area where it may even possess wider jurisdiction than the State High Court due to the subject matter. To commence to make orders that strike violently at the heart of the order of the State High Court of well known co-ordinate jurisdiction is to lend a helping hand in causing confusion in our courts by purporting unwittingly to appear to sit on appeal to the decision of a State High Court.

The 1st respondent had assiduously canvassed that the “*imperative necessity for the preservation of one’s Res in the substantive suit before the Federal high Court constitutes the requisite grave reason and special circumstance for the exercise of the trial courts equitable jurisdiction so as to prevent injustice to the 1st respondent*”.

This argument on the surface appears attractive but it over looks the empirical elements that would be attendant to the proposition. They are-

(a) The conflicting orders given by the Federal High Court have the potential to render the appellant and others liable for committal for contempt in not obeying the order of the Federal High Court. B

(b) The order for the Preservation of the Res as at the time it was made the subject matter might have been disposed of pursuant to the orders of the Lagos State High Court in which case. The order of the Federal High Court would have been an empty order, which satisfied no one. C

(c) The hallowed and over orchestrated idea of injustice to the 1st respondent fails to consider the probable injustice to the appellant who it must be stated was the first to obtain equity.

Indeed the damning situation does not portend astuteness D
and exercise of caution on the part of the Federal High Court, which by its stance had made an order that did violence to the order of the Lagos State High Court. It is essential to state that in Nigeria we operate only one Constitution and regardless of the argument of E
the 1st respondent that in some instances the Federal High Court can treat a State High Court as a Foreign Court, the Federal High Court by the nature of the powers conferred on it by the Constitu-
tion still operates in the same hierarchy duly recognized by the F
Constitution. The parties cannot conveniently obey the respective orders made by the two courts at the same time as that would amount to doing the impossible. In the Canadian case of Canadian Metal Co. Ltd. v. Canadian Broadcasting company (No. 2) 1975 4s DLR. 3d 641 at 66g O’Leary J., quipped as follows: G

“If the remedies that the courts grant to correct wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands, loss of respect for the courts quickly result in the destruction of our society.” H

I fail to see the exceptional circumstance that would warrant a court to naively appear to sit on appeal on a ruling of a court of the same co-ordinate jurisdiction. The Institution of the two courts

is not meant that they should be perpetually at war but to stand shoulder to shoulder in order to realize the intention and wisdom of the eminent men – Jurists, Political Scientists and other people of great learning and intelligence – who gave us the Constitution.

B Where counsel for different parties to a matter either due to over-zealousness to comply with the dictates of their client or cause sheer nuisance by the nature of proceedings they foist on the courts which are likely to bring them to ridicule, it behoves the courts particularly the latter one to which the proceedings in the same subject matter were entertained in the first court, to exercise utmost caution. In this connection it should school itself on the probability and naughtiness of abuse of process of the court which some counsel sometimes in their eagerness to pursue their case lose sight of the possible consequence of causing disaffection that leads to ridicule and opprobrium of the courts.

In the case of *Peters v. Ashamu* [1995] 4 N.W.L.R. (pt. 388) P. 206, the applicants were by an order on ex parte application appointed administrators of the Estate of late Chief E.O. Ashamu by the Ibadan High Court. Prior to that date, the 1st respondent Samson Ashamu had been restrained by the same Ibadan High Court from intermeddling with the estate or obstructing the applicants from the Management of the estate. The respondents thereupon (as if in a fit for tit for tat) instituted an action in the Lagos High Court in respect of the same subject matter and sought an interim injunction restraining the applicants from performing their functions as administrators. The applicants raised a preliminary objection to the competence of the suit claiming that the Lagos State High Court lacked the jurisdiction to hear the matter which was already determined at Ibadan. The applicants were overruled and they appealed to the Court of Appeal and equally applied for a stay. In that case *Uwaifo, J.C.A.*, (as he then was) said in the lead ruling: at p. 219-220:

H *“In a situation like this, it is enough to refer to only two of the principles taken into consideration in an application for stay of proceedings. One is that it is shown that the action cannot possibly succeed, or that for some reasons it ought not to be allowed to go on: see Akilu v.*

Fawehinmi (No. 2) [1989] 2 N.W.L.R. (pt. 102) 122 at 165. The other is that the action is shown to be frivolous, vexatious or an abuse of the process of the court: see Okorodudu v. Okoromadu [1977] 3 S.C. 21 at 32 – 33; Jadesinmi v. Okotie-Eboh [1986] 1 N.W.L.R. (pt. 16) 264 at 278; Akilu v. Fawehinmi (No. 2) (ibid).

B

In regard to the first one, I think it may be said that until it is properly resolved whether the order of the Oyo state High Court has force or not over the properties of late Chief Ashamu in Lagos, so long as the order subsists, there is reason why the Lagos State High Court cannot be allowed to go on with the case in disregard of such order. As respects the other principle, the same line of argument will hold that the subsistence of the Oyo State High Court order will make the present action in the Lagos State High Court look vexatious or an abuse of the process of the court. It seems to me also to follow that the Oyo State High Court order having put the Administrators in charge, it will be legitimate to argue that it will be contradictory for the Lagos High Court to make an order restraining them from “*taking possession of, dealing with, interfering in any manner whatsoever with or otherwise managing or administering the properties or assets of the Estate of Chief E.O. Ashamu*” within the jurisdiction of the High Court of Lagos. I think there are important issues to be resolved on appeal.

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In my contributing ruling in that same case, I said at p. 221.

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The issue that stands out most poignantly in this case is whether the Hon. Justice Rose Omotosho of the Lagos High Court can competently make the order she made in the face of the subsisting order by Oyo State High Court Judge in the same subject matter and proceeded to say that the order of the court in Oyo has no territorial effect in Lagos State.

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The nature of our Constitution has shown that all appeals will end in the Apex Court i.e., the Supreme Court after passing through the crucible of the Court of Appeal (which is one but subdivided into divisions for convenience of Administration). From the stand point of the operability of our legal system, ought the learned trial court ignore the order of Oyo State High Court even if made in error of law involving wrong assumption of jurisdiction

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The theory of justice to which we adhere rests a priori on the premise that there must be certainty and parties to the legal duel should be in a position to know where they stand at a certain time. A system of law where judges of the same degree i.e., of co-ordinate jurisdiction make
 B contradictory and inconsistent orders in respect of the same subject matter involving the same parties i.e., each relying on his whims, caprices, prejudices and sometimes a vaunting ego, makes nonsense and mockery of the law. The beauty or what I might describe as the romance of law is
 C that just as stare decisis exercises a restraining influence on our courts, so too do discipline in the courts in dutifully adhering to normative order by which courts of co-ordinate jurisdiction do not sit on appeals on each other, attracts respect for the law.

The above opinion applies with equal force in this case.

D It is my view that it will amount to a travesty of justice where the Federal High Court although no doubt has the competence to adjudicate on a matter that squarely falls within its jurisdiction but for some reason a State High Court has already assumed jurisdiction
 E **tion on certain aspects of the case which had the potential to lead to abuse of the process of the court for the Federal High court to intrude unobtrusively on the matter. In that case caution is thrown to the wind by the assumption of jurisdiction by the Federal High Court or for that matter any other court. That order made by the**
 F **federal High Court ought not to have been made after its attention was drawn to the extant order of the Lagos High Court.**

I find it most irritating and utterly inexcusable that a good percentage of cases cited by the appellants' counsel have wrong references.
 G This tends to rob the appellants brief of the beauty, sequence and elegance that should adorn it. Its staccato form tends to depict some measure of carelessness on the part of the counsel and I dare say causes irritability. Counsel must try to cross check the references to ease the
 H work of the court.

It is my view that the Court of Appeal was obviously in error when it saw nothing wrong in the act of the Federal High Court even if the Lagos High Court had wrongly assumed jurisdiction in

that case. In the circumstances, I allow the appeal and set aside the judgment of the court below. I award costs of N10,000.00 to the respondent in this court and N5,000.00 in the court below.

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MOHAMMED JSC

I will also allow this appeal for the reasons ably advanced by my learned brother, Pats-Acholonu, J.S.C. His lordship has permitted me to read his judgment in draft before now.

C

The second issue identified by the appellant is whether the filing of the motion by the 1st respondent for interlocutory injunction at the Federal High Court constituted an abuse of court process. Without any hesitation I answer the question in the affirmative. As soon as the Union Bank became aware of the decision of the Lagos High Court it filed a motion D on notice on the 6th of August, 1998 in that court and prayed for the following reliefs: -

1. Staying the execution or further execution of the enrolled order of the Honourable Court dated the 31st day of July, 1998 pending the resolution in the federal High Court of the issue relating to the party entitled to the sale of the warehouse assorted fish with TRIANA LIMITED between the plaintiff hereto and the interested party. E

2. Forthwith restraining the plaintiff hereto from selling further F the assorted fish not being of the same strain imported by the interested party through the defendant hereto and stored at the cold room of Triana Limited situated along Apapa Oshodi Expressway, Ijeshatedo, Lagos until the resolution by the federal High Court of the issues of who as between the plaintiff hereto and the interested party, is entitled to the sale of G the said assorted fish.

3. In the alternative, an order directing the plaintiff to render an account of all the fish sold pursuant to the said order of court to this honourable court and further directing the said plaintiff to pay the sums H realized from such sale into an interest yielding account in a neutral bank.

On the 19th of August, the Union Bank filed a Notice of discontinuance of the motion reproduced above and proceeded to argue the action,

which it filed in the federal High Court concerning the same frozen fish. It is abundantly clear that the Union Bank had notice of the decision of the Lagos high Court over the same frozen fish. Instead of going ahead with the motion seeking stay of the order made by the Lagos High Court, B the Union Bank went to a court of co-ordinate jurisdiction and applied for an injunction restraining the defendants/respondents from tampering, selling or disposing of the disputed 86,000 cartons of frozen fish. The order would amount to making a decision, which would stand parallel C with the order made by the Lagos High Court over the same subject matter. The Federal High Court, per Okeke J. did make the order sought and it is quite clear that it had the effect of reversing or overruling the subsisting order made earlier by the Lagos high Court.

From the facts of this case the order made by the High Court of D Lagos State was still pending when the Union Bank went to the Federal High Court and obtained from Okeke J. an order of interlocutory injunction in respect of the same frozen fish. The proper step which the Union Bank had taken in seeking for stay of the order of the Lagos State High E Court would have determined the dispute in a proper way. Before the determination of the application for stay of the order of the Lagos High Court the Bank again went to the Court of Appeal and applied for a similar order. All this amounts to multiplicity of actions. It is an abuse of F 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 N.W.L.R. (pt. 119) 6. Filing an application in a court of co-ordinate 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 G court. If 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] 1 K.B. 512.

H For these reasons and fuller reasons in the judgment of my learned brother, Pats-Acholonu, J.S.C., this appeal is allowed. I set aside the judgment of the Court of appeal and the orders made by the federal High court in the ruling delivered on 14th September, 1998. I abide by all the

consequential orders made in the lead judgment.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Pats-Acholonu, J.S.C. in this appeal. I agree with it. For the reasons which he has given. I too, allow the appeal and set aside the judgment of the court below. I also abide by the order for costs.

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EJIWUNMI JSC

I have had the privilege of reading before now the judgment just delivered by my learned brother, Acholonu, J.S.C. For the reasons given in the said judgment, I also allow the appeal and set aside the judgment of the court below. From the narration of the undisputed facts in the leading judgment, it is manifest that by the events that happened that led to the orders made by the Federal High Court, there can be no doubt that the unfortunate consequence of the orders so made is that the parties are still stuck with the dispute occasioned thereby.

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Where a court was clearly aware that another court of coordinate jurisdiction is seised of a case with the same parties and the same subject matter before it as found in this appeal, it is an abuse of process for that court to continue with the hearing of the case and proceed to make orders as was done in this case. It is my humble view that in the instant case, the court is not only to blame, but the legal practitioner who instituted the actions that had brought about this unfortunate situation. I think it is desirable that our legal practitioners should counsel themselves not to institute such actions and persist in pursuing such proceedings that would result in the granting of conflicting orders by courts of co-ordinate jurisdiction as had occurred in this case.

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As I have said above, this appeal is allowed by me and I also award costs as stated in the leading judgment.

MUSDAPHER JSC

I have read in advance the draft of the judgment of my lord Acholonu, J.S.C. just delivered and I entirely agree with the reasonings
B and the conclusion arrived at. For the same reasons lucidly set out in the aforesaid judgment, which I respectfully adopt as mine, I accordingly allow the appeal and set aside the judgment of the court below including the order of costs. In its place, the order made by the federal High Court on the 18/8/1998, is annulled and the application accordingly dismissed.
C The appellant herein is entitled to costs both at the lower court and this court assessed at N5,000.00 and N10,000.00 respectively.

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