

SUPREME COURT OF NIGERIA
13TH JANUARY, 2006. SC. 146/2001
CORAM:- I. L. KUTIGI, U. A. KALGO, D. MUSDAPHER,
M. MOHAMMED, W. S. N. ONNOGHEN, JJSC

MISS IFEYINWA OGOEJEFO APPELLANT
AND
DANIEL CHIEJINA OGOEJEFO RESPONDENT

EVIDENCE - Proof - Affidavits - Motions - Failure to file counter affidavit
- Will not make an application successful - Where the deemed admitted
averments - Do not support applicant's case (H1)

ACTIONS - Objection - Multiplicity - Abuse of court's process - Same
parties and issues should exist - In the two suits - As mere fact of same
subject matter - Will not sustain a preliminary objection (H2)

ACTIONS - Land matters - Abuse of court's process - Issues and nature
of disputes - In the two actions - Support lower courts' findings - Of no
multiplicity or abuse of court's process (H3)

ACTIONS - Affidavits - Abuse of court's process - Averment that suit is
in bad faith - And in collusion with plaintiffs in former suit - Though not
countered - Is not substantiated by evidence (H4)

FACTS

_____The dispute between the parties originated from a landed property known as No. 25A Old Market Road Onitsha. The property was owned by late Charles Akosa Ogoejefo, who died intestate leaving behind his close family relations and children amongst whom are the appellant and respondent in this appeal. By suit No. 0/635/98 before the Onitsha High Court, members of the larger Ogoejefo family sought a declaration that the four subfamilies of the late Enyi Ugwuagbalu Eweta Ogoejefo, the Original holder of the property in dispute were entitled to inherit the said property together with the direct children of the late Charles Akosa Ogoe-

jeifo who hitherto claimed exclusive right to the property. This matter was settled out of court and the parties' undated terms of settlement was made the judgment of the court, save that the appellant in this appeal did not agree with the terms of settlement. Upon appellant's application, the consent judgment was set aside for hearing to proceed based on pleadings.

While the 1st suit No. 0/635/98 was pending, the respondent in this appeal as plaintiff filed another suit No. 0/443/99 before the same High Court Onitsha, against the defendant/appellant. The present parties in the 2nd suit were amongst the 4 defendants in the 1st suit. Respondent inter alia, claimed family head-ship and sought to take over management of the property in dispute from the appellant. As appellant was served with the writ of summons and motion on notice, she filed a motion in the nature of a preliminary objection for an order striking out the suit for being incompetent, invalid, vexatious and abuse of the process of court. The preliminary objection was overruled and dismissed by the trial court. Appellant's appeal to the Court of Appeal was also dismissed. Still dissatisfied, she has further appealed to the Supreme Court. Appellant's main contention was that as respondent filed no counter affidavit, her deemed admitted averments were enough to sustain her preliminary objection.

ISSUE FOR DETERMINATION

Whether the learned justices of the Court of Appeal were right in holding that the unchallenged affidavit evidence of the appellant in support of her preliminary objection, did not make out a case of abuse of the process of court against the respondent.

HELD (Unanimously dismissing the appeal per **MOHAMMED JSC**)

Proof - Affidavits - Motions

1. In the case at hand, it is indeed the law as argued by the appellant that since the respondent had failed to file any counter affidavit to challenge the facts averred in the appellant's affidavit in support of the preliminary objection to the competence of the respondent's action, the unchallenged facts remained uncontroverted and therefore deemed admitted.

However, it is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving

and supporting the case of the appellant as the applicant. In other words the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant which in the instant case was that the suit No.0/443/99 filed by the respondent was incompetent, invalid, vexatious and an abuse of the process of court. (p. 101 F)

ACTIONS - Objection - Multiplicity

2. A careful examination of the facts in support of the appellant's preliminary objection shows that a case of multiplicity of actions on the same subject matter between the same parties and on the same issues, was certainly not made out by the appellant at the trial court. Consequently the court below was right in its findings on the issue.

From the uncontroverted facts contained in the appellant's affidavit, while the subject matter in the two suits No.0/635/98 and No.0/443/99 pending before the Onitsha High Court of Justice being the property known and described as No.25 A Old Market Road Onitsha is the same, the parties and the nature of the dispute or issues in the two suits are not the same.

It can be seen that as to the parties in the two suits, the only connection in the two actions is that the plaintiff and the defendant in suit No.0/443/99 are also among the 4 defendants in suit No. 0/635/98. The plaintiffs in, suit No. 0/635/98 have nothing to do with suit No.0/443/99. In this regard, the contention of the respondent that the parties in the two pending suits No. 0/635/98 and 0/443/99 are not the same is indeed well founded. (p. 102 B/ 103 B)

Land matters - Abuse of court's process

3. Coming to the issues and the nature of the disputes requiring resolution by the trial court, the two suits again are entirely different. In suit No.0/443/99, the parties in this appeal as a brother and sister, are posed to fight for the control of the management and administration of the property No.25A Old Market Road Onitsha. Suit No. 0/635/98 on the other hand is merely seeking to establish the status of that property under the Onitsha Native Law and Custom as not belonging exclusively to the father of the parties in

this appeal so as to enable members of other branches of Ogoejeofe larger family to participate in the inheritance of the property. Thus, looking at the two actions from this angle as well, the two actions are poles apart and therefore not the same. With this result in the analysis of the two cases, the respondent as the plaintiff in suit No.0/443/99, cannot be accused of instituting a multiplicity of actions between the same parties on the same subject matter and on the same issues simply because suit No.0/635/98 was pending in the same Onitsha High Court in which the plaintiffs have nothing to do with his own case in which he is trying to takeover the control and management of the property from his own sister. The respondent has the right to take the steps he took in filing his action against his sister. For exercising that right, the respondent cannot be accused of any abuse of judicial process or abuse of the process of court. (p. 103 D)

Averment that suit is in bad faith

4. It is really correct that the appellant also relied heavily on the fact that the respondent not Having denied that he was prosecuting his case No.0/443/99 against the appellant in bad faith and in alleged collusion with the plaintiffs in suit No.0/635/98, the lower court should have found those acts to have amounted to abuse of the process of court. This stand of the appellant however is not supported by the record of this appeal particularly the judgment of the lower court which gave adequate consideration to the issue of the alleged collusion and came to conclusion that there was no evidence to support it.

I entirely agree with the court below that in the absence of evidence from the uncontroverted affidavit of the appellant of the existence of multiplicity of actions and the employment by the respondent of court process to irritate or cause injustice or interfere with the due administration of justice, a case of abuse of the process of court had not been made out by the appellant to justify preventing the respondent from proceeding with his action in suit No.0/443/99, against the appellant.

For the foregoing reasons this appeal has no merit and the same is hereby dismissed. (p. 104 B/G)

REPRESENTATION

A. Onwualu Esq. for the appellant

M.U. Ikem Esq. for the respondent

CASES REFERRED TO

Egbuna v. Egbuna (1989) 2 NWLR (pt.106) 773 at 777

Alagbe v. Abimbola (1978) 2 SC 39 at 40

Abimbola (1978) 2 SC 39 at 40

Amaefule v. The State (1988) 2 NWLR (pt.75) 156 at 177

Okafor v. Attorney-General Anambra State (1991) 6 NWLR, (pt.200) 639 at 681

Saraki v. Kotoye (1992) 9 NWLR (pt.264) 156 at 188-189

Nwoboshi v. The State (1998) 10 NWLR (pt.568)

Attahiru v. Bagudu (1998) 3 NWLR (pt.543) 656

Saraki v. Kotoye (1992) 9 NWLR (pt.264) 1 56 at 188-189

Doma v. Adamu (1999) 4 NWLR (pt.598) 311

Bena Plastic v. Vasilyer (1999) 10 NWLR (pt.624) 620

A-G Ondo State v. A-G Ekiti State (2001) 17 NWLR (pt.743) 706 at 771

African Reinsurance Corporation v. JDP Construction Nigeria Ltd (2003) 13 NWLR (pt.838) 609 at 635-636

Mobil Production Nigeria Unlimited v. Monokpo (2003) 18 NWLR (pt.852) 346 at 430-431

LEAD JUDGMENT BY MOHAMMED JSC

The dispute between the parties in this appeal originated from a landed property known or described as No.25A Old Market Road Onitsha. The property was held under the Mgbelekeke Kola tenancy system of Onitsha by the late Charles Akosa Ogoejeofe who died intestate leaving behind his close family relations and his children amongst whom are the appellant and the respondent in this appeal.

By a suit No.0/635/98 filed at the Onitsha High Court, the members of the larger Ogoejeofe family sought for an order of court for a declaration that the four sub-families of the late Enyi Ugwuagbalu Eweta Ogoejeofe, the original holder of the property in dispute, were entitled

to participate in its inheritance together with the parties in this appeal and their sisters who hitherto claimed exclusive right to the property left behind by their father. This case did not proceed to trial because the parties, made up of 9 plaintiffs members of the 4 sub-families seeking to participate in the sharing of the property and 4 defendants who are members of the family of the parties in this appeal, decided to settle out of court. The undated terms of settlement was duly executed between the parties to that case except Miss Ifeyinwa Ogoejeifo, the appellant in this appeal. All the same, the parties reported back to the Onitsha High Court which made the terms of settlement the judgment of the court as agreed by the parties except the appellant.

The appellant who apparently did not agree with the settlement between the parties in Suit No.0/635/98 and was absent in court when the consent judgment was delivered, applied to that court to set aside the judgment. Although this application was opposed by the other parties who were respondents to the application, the learned trial judge on being satisfied that the appellant was not in fact aware of the alleged settlement, promptly set aside the consent judgment thereby allowing the parties to proceed with the hearing of the case on pleadings.

However, while suit No.0/635/98 was pending at the Onitsha High Court, the respondent in this appeal as plaintiff filed another suit No.0/443/99 in the same High Court against his own sister Miss Ifeyinwa Ogoejeifo, one of the 4 defendants in the pending suit No. 0/635/98, who is now the appellant in this appeal and claimed the following reliefs against her alone in respect of the property No.25A Old Market Road Onitsha -

“1. A declaration that the plaintiff as the Head of the family of late Charles Akosa Ogoejeifo of Umudei village, Onitsha is entitled to the management and administration of the said late Charles Akosa Ogoejeifo’s landed property known as and called No.25A Old Market Road, Onitsha within jurisdiction in his capacity as the trustee of the family property in accordance with the Kola Customary Law of Mgbelekeke family of Onitsha.

2. A declaration that all the members of the Late Charles Akosa Ogoejeifo family both males and females are entitled in common to the

ownership and enjoyment of the said property under the Mgbelekeke Kola Customary Law, the property having originally derived from the Mgbelekeke family of Onitsha.

3. An order compelling the defendant to stop her management and administration of the said property and deliver possession of same to the plaintiff for the purpose of such, management/administration by the plaintiff.

4. An order for account of all monies, profits and rents since collected by the defendant from the tenants of the said landed property since the death of late Charles Akosa Ogoejeifo.

5. An order compelling the defendant to pay over to the family through the plaintiff the said monies, profits and rents found to have been so received/collected for purpose of equitable distribution to members of the family.

6. An order that fees; of Counsel engaged in this suit be paid from the estate’s account. Dated this 10th day of June, 1999.”

On being served with the writ of summons and a motion on Notice for an order to appoint the Chief Registrar of the High Court of Justice Onitsha as a Receiver/Manager to manage the property in dispute and collect rents pending the determination of the case, the appellant in this appeal as defendant in the case filed a motion on notice dated 2/7/99 which was in the nature of a preliminary objection to the proceedings. The appellant in the motion sought for an order -

“Striking out this suit for being incompetent, invalid, vexatious and abuse of the process of court”

This preliminary objection in the motion was heard on 6/7/99 and in a short ruling delivered by the learned trial judge the same day the preliminary objection was overruled and the same was dismissed. The ruling is as follows:-

“The applicant in this motion is praying the court to ‘strike out this suit for being incompetent, invalid, vexatious and an abuse of the process of the court. The applicant raised no issue on the suit being incompetent, invalid or vexatious. He submitted that it is an abuse of the process of the court in that another suit, suit No.0/635/98 is pending before this court in

which the plaintiff who was sued along with the defendant in this suit had given his consent to a consent judgment to the effect that the property in dispute was the family property of the larger Ogojeifo family. He cannot therefore be heard to, approbate and reprobate.

B *The consent judgment in question has been set aside by this court. In 0/635/98, the plaintiff here was sued as a defendant. The suits are actually not so related as to constitute an abuse of the process of the court. Most of the issues raised in the applicant's affidavit cannot be properly raised at this stage of the hearing. The application is therefore*
C *misconceived. It is hereby dismissed."*

Aggrieved by this decision of the trial court, the appellant appealed to the Court of Appeal which in a unanimous decision dismissed the appeal after agreeing with the trial court that the defendant/appellant had failed to show that the respondent's suit No.0/443/99 filed against the
D appellant constituted an abuse of the process of court. The judgment of the Court of Appeal was delivered on 17/1/2001. Still not satisfied, the appellant then decided to appeal to this court. Briefs of argument were duly filed and served and the same were duly adopted and relied upon by
E the learned counsel on behalf of the parties respectively at the hearing of the appeal on 7/10/2005. As agreed by the parties, the only issue arising for determination in this appeal is whether the learned justices of the Court of Appeal were right in holding that the unchallenged affidavit evidence
F of the appellant in support of her preliminary objection, did not make out a case of abuse of the process of court against the respondent.

In support of this issue, the appellant maintained that her case at the court below was principally based on her contention that the respondent's case against her was an abuse of the process of court because the
G respondent was prosecuting the case in bad faith and in collusion with the plaintiffs in the other case No.0/635/98. The reason given by the appellant in support of this stand was because the respondent's stand in the earlier case on the subject matter of the two suits, is in conflict with his stand in the case he was prosecuting alone against the appellant. Learned counsel to the appellant explained in his oral submission and in the appellant's brief of
H argument that the court below having agreed that the evidence adduced by

the appellant in her affidavit in support, of the preliminary objection was unchallenged, the fact that the respondent's case was being prosecuted in bad faith and in collusion with the plaintiffs suit No.0/635/98, would have been upheld to sustain the preliminary objection. The cases of Egbuna v. Egbuna (1989) 2 NWLR (pt.106) 773 at 777; Alagbe v. Abimbola
B (1978) 2 SC 39 at 40; Amaefule v. The State (1988) 2 NWLR (pt.75) 156 at 177; Okafor v. Attorney-General Anambra State (1991) 6 NWLR, (pt.200) 639 at 681 and Saraki v. Kotoye (1992) 9 NWLR (pt.264) 156 at 188-189, were cited and relied upon. It was further pointed out that the respondent who had earlier agreed in suit No: 0/635/98 that the property
C No.25A Old Market Road Onitsha was not his father's personal property by signing the terms of settlement and falsely asserting that the appellant had approved the terms of settlement, only to suddenly turn round and sue the appellant alone claiming that the same property in dispute was
D his father's personal property, could not have been acting in good faith. Learned counsel therefore urged this court to allow the appeal.

For the respondent, it was argued that in the light of the facts before the trial court and the court below, it can not be said that the respondent
E had been guilty of any abuse of the process of the court such as to render the suit No.0/443/99 incompetent. Learned counsel observed that at the time the appellant raised her preliminary objection against the filing of the respondent's suit, although suit No.0/635/98 on the same property in
F dispute was still pending at the High Court, it was not commenced by the respondent nor was it between the same parties; that to that extent, it was difficult to see what irritation or injustice the appellant would have suffered consequent upon the commencement of the respondent's suit against her. Calling in aid the cases of Nwoboshi v. The State (1998) 10 NWLR
G (pt.568) and Attahiru v. Bagudu (1998) 3 NWLR (pt.543) 656, learned counsel to the respondent pointed out that in the absence of evidence of multiplicity of actions and the employment of court process to irritate or cause injustice, the case of abuse of the process of court had not been made
H out by the appellant and therefore urged this court to dismiss the appeal.

My task in resolving the only issue for determination in this appeal is first to ascertain what constitutes an abuse of the process of court and

secondly to determine within the confine of the evidence adduced by the appellant in the affidavit in support of her preliminary objection, whether or not a case of abuse of the process of court had been made out to justify the striking out of the respondent's suit against the appellant. The questions of what actually constitutes and what does not constitute an abuse of the process of court have been considered and answered by this court in several of its decisions. One of the leading cases on this subject in which Karibi-Whyte JSC reviewed several earlier decisions of this court is the case of Saraki v. Kotoye (1992) 9 NWLR (pt.264) 1 56 at 188-189 where he said-

"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite varieties and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice.

It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigations. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the 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 issues. See Okorodudu v. Okoromadu (1977) 3 SC.2I; Oyegbola v. Esso West African Inc. (1966) 1 All NLR 170. 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)6. Similarly so held was where two similar processes were used in respect of the exercise of the same right. Namely a cross-appeal, and a respondent's Notice. See Anyaduba v. N.R.T. Co. Ltd. (1990) 1 NWLR (pt.

127) 397; Jadesimi v. Okotie-Eboh (1986) 1 NWLR (pt.16) 278. This court has also held as an abuse of the process, an application for adjournment by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below - See Alade v. Alemuloke (1988) 1 NWLR (pt.69) 207."

In Okafor v. A-G Anambra Slate (1991) 6 NWLR (pt.200) 659 at 681 Karibi-Whyte JSC again said on the same subject -

"It is the law that multiplicity of actions on the same -matter may constitute an abuse of the process of court. ' But this is so only where the action is between the same parties with respect to the same subject matter."

Other cases defining what amounts to an abuse of the process of court or judicial process include Doma v. Adamu (1999) 4 NWLR (pt.598) 311; Bena Plastic v. Vasilyer (1999) 10 NWLR (pt.624) 620; A-G Ondo State v. A-G Ekiti State (2001) 17 NWLR (pt.743) 706 at 771 and African D Reinsurance Corporation v. JDP Construction Nigeria Ltd (2003) 13 NWLR (pt.838) 609 at 635-636. However this court recently in Mobil Production Nigeria Unlimited v. Monokpo (2003) 18 NWLR (pt.852) 346 at 430-431, held that filing of two motions which do not necessarily seek the same or similar reliefs, though in the same case between the same parties would not amount to an abuse of the process of the court.

In the case at hand, it is indeed the law as argued by the appellant that since the respondent had failed to file any counter affidavit to challenge the facts averred in the appellant's affidavit in support of the preliminary objection to the competence of the respondent's action, the unchallenged facts remained uncontroverted and therefore deemed admitted. See Egbuna v. Egbuna (1989) 2 NWLR (pt.106) 773 at 777 and Alagbe v. Abimbola (1978) 2 SC 39 at 40.

However, it is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the appellant as the applicant. In other words the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant which in the instant case was that the suit No.0/443/99 filed by the respondent was incompetent, invalid, vexatious and an abuse of the process of court.

A careful examination of the facts in support of the appellant's preliminary objection shows that a case of multiplicity of actions on the same subject matter between the same parties and on the same issues, was certainly not made out by the appellant at the trial court.

Consequently the court below was right in its findings on the issue.

From the uncontroverted facts contained in the appellant's affidavit, while the subject matter in the two suits No.0/635/98 and No.0/443/99 pending before the Onitsha High Court of Justice being the property known and described as No.25 A Old Market Road Onitsha is the same, the parties and the nature of the dispute or issues in the two suits are not the same. The parties in suit No. 0/635/98 as shown in the 'Terms of settlement Exhibit 'A' to the affidavit in support of the motion were

"1. Ifeanyi Ogojeifo

2. Eddy Ogojeifo

3. Patric Bosa Ogojeifo

4. John Onyebuchi Ogojeifo

5. Nemkiti Ogojeifo

6. Chugbo

Ogojeifo

7. Onochie Ogojeifo

8. Donmay Chukwuemeka Ogojeifo

9. Carl Chukwuka Ogojeifo"

as the plaintiffs, while the defendants were the parties in the present appeal and their two sisters. In other words the defendants in that suit were

"1. Daniel Chiejina Ogojeifo

2. Mrs. Florence Adebisi

3. Sister Mary Magaret Ogojeifo

4. Miss Ifeyinwa Ogojeifo."

In the second case suit No.0/443/99 on the other hand, the only parties are the appellant and the respondent in the present appeal who are the plaintiff and the defendant respectively. The parties in that case as shown on the Writ of Summons are -

"Daniel Chiejina Ogojeifo (suing as the Head of the family of late Charles Akosa Ogojeifo of Umuda Village, Onitsha)" as the plaintiff while the defendant is Miss Ifenyiwa Ogojeifo. **It can be seen that as to the parties in the two suits, the only connection in the two actions is that the plaintiff and the defendant in suit No.0/443/99 are also among the 4 defendants in suit No. 0/635/98. The plaintiffs in, suit No. 0/635/98 have nothing to do with suit No.0/443/99. In this regard, the contention of the respondent that the parties in the two pending suits No. 0/635/98 and 0/443/99 are not the same is indeed well founded.**

Coming to the issues and the nature of the disputes requiring resolution by the trial court, the two suits again are entirely different. In suit No.0/443/99, the parties in this appeal as a brother and sister, are posed to fight for the control of the management and administration of the property No.25A Old Market Road Onitsha. Suit No. 0/635/98 on the other hand is merely seeking to establish the status of that property under the Onitsha Native Law and Custom as not belonging exclusively to the father of the parties in this appeal so as to enable members of other branches of Ogojeifo larger family to participate in the inheritance of the property. Thus, looking at the two actions from this angle as well, the two actions are poles apart and therefore not the same. With this result in the analysis of the two cases, the respondent as the plaintiff in suit No.0/443/99, cannot be accused of instituting a multiplicity of actions between the same parties on the same subject matter and on the same issues simply because suit No.0/635/98 was pending in the same Onitsha High Court in which the plaintiffs have nothing to do with his own case in which he is trying to takeover the control and management of the property from his own sister. The respondent has the right to take the steps he took in filing his action against his sister. For exercising that right, the respondent cannot be accused of any abuse of judicial process or abuse of the process of court.

The appellant in her argument has blamed the court below of not having addressed the real issue presented to it in the appeal before it by relying only on the failure of the appellant to prove multiplicity of actions in dismissing her appeal. **It is really correct that the appellant also**

relied heavily on the fact that the respondent not Having denied that he was prosecuting his case No.0/443/99 against the appellant in bad faith and in alleged collusion with the plaintiffs in suit No.0/635/98, the lower court should have found those acts to have amounted to abuse of the process of court. This stand of the appellant however is not supported by the record of this appeal particularly the judgment of the lower court which gave adequate consideration to the issue of the alleged collusion and came to conclusion that there was no evidence to support it. Part of this judgment at pages 98-99 of the record is quite clear. It reads:-

“Even if suit 0/635/98 had persisted, the trial court was right for holding that it was not commenced by the respondent nor was it between the same parties. What irritation or injustice appellant suffered consequent upon the commencement of suit, No.0/443/99 by the respondent was not in evidence. The lower court’s view that abuse of its process had not been constituted by the foregoing can hardly be faulted.

I share its conclusion that on the facts before it absence of evidence of multiplicity of actions and the employment of its process to irritate or cause injustice can not be ignored. The respondent cannot be lawfully shut out from the court in his bid to enforce a right, that had been threatened.”

I entirely agree with the court below that in the absence of evidence from the uncontroverted affidavit of the appellant of the existence of multiplicity of actions and the employment by the respondent of court process to irritate or cause injustice or interfere with the due administration of justice, a case of abuse of the process of court had not been made out by the appellant to justify preventing the respondent from proceeding with his action in suit No.0/443/99, against the appellant.

For the foregoing reasons this appeal has no merit and the same is hereby dismissed.

There shall be N10,000.00 costs in favour of the respondent.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Mohammed, JSC. I agree with his reasoning and conclusions. This is certainly, not a case of abuse of judicial process. In my view both the trial High Court and the Court of Appeal were right to have so found. The appeal clearly lacks merit. It is hereby dismissed with costs as assessed.

KALGO JSC

I have had the opportunity of reading in advance the judgment just delivered by my learned brother Mohammed JSC in this appeal. I entirely agree with the reasoning and conclusions reached therein which I fully adopt as mine.

The only issue raised by the appellant in his brief was whether suit No. 0/443/99 instituted by the respondent in the trial court after the consent judgment in the earlier suit No. 0/635/98 was set aside, was an abuse of process of court. This issue was painstakingly considered in the leading judgment and I entirely agree with the finding and conclusion that the suit No. 0443/99 did not constitute an abuse of court process in the circumstances of this case. I have nothing useful to add. I therefore find no merit in the appeal which I hereby dismiss with costs as assessed in the leading judgment and I abide by the consequential orders made therein.

MUSDAPHER JSC

I have had the honour to read before now, the judgment of my Lord Mohammed, JSC just delivered with which I entirely agree. His Lordship has exhaustively and comprehensively dealt with the issues submitted to this Court for the determination of the appeal. I, with respect, adopt the reasoning as mine accordingly find this appeal lacking in merit and I dismiss it. I abide by the order for costs contained in the aforesaid judgment.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my

learned brother Mohammed JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

Both parties and the trial and lower courts agree that at the time of presentation of the application that resulted in the appeal, the earlier suit No. 0/635/98 had not been disposed of before the institution of suit No. 0/443/99 which appellant complains is in abuse of court process. The trial and lower courts however, held that there was no abuse of process by the respondents in view of the fact that the parties in the two suits and issues involved therein are different and I hold the view that they are right in so holding.

Learned counsel for the appellant has, however, argued in effect, that the respondent is presenting the present action in bad faith and in collusion with plaintiffs in suit No. 0/635/98 regarding the property at No. 25A Old Market Road, Onitsha and that this constitutes an abuse of process. I have gone through the record and have found no evidence of bad faith or collusion by the respondent.

I do not see how conflicting claims in respect of a property by different parties in different suits, as in the instant case, can be said to constitute an abuse of court process. If at the trial it is established that the respondent has presented conflicting claims in respect of the said property the trial judge will surely deal with the situation as appropriately provided for by the law; it does not, in my view, constitute an abuse of process of the court.

It should be noted that both the trial and lower courts found that there is no abuse of process of the court in the instant case. Their findings constitute what is called concurrent findings of facts. The attitude of the Supreme Court to such concurrent findings of facts is that it will not interfere with such findings where the findings are reasonably justified and supported by evidence and where no special circumstances why the Supreme Court should interfere with the findings is shown by the substantial error apparent on the record of proceedings, such as miscarriage of justice or violation of some principles of law or procedure.

However, where the findings are shown to be perverse or patently erroneous or where, for example, conclusions from accepted credible evidence adduced before it and a miscarriage will result if they are allowed to

remain, the Supreme Court has a duty to interfere. In the instant case, I hold the view that the appellant has failed woefully to bring the appeal within any of the circumstances that would have necessitated the intervention of this court. That being the case, this court cannot interfere with the concurrent findings of facts made by the High Court and the Court of Appeal in the instant appeal - see *Amadi v. NNPC* (2000) 10 NWLR (pt.674) 76; *M.D.P.D.T. v. Okonkwo* (2001) 11 NWLR (pt.711) 206; *Amadi v. Orisakwe* (2005) 7 NWLR (pt. 924) 385; *Balogun v. Agboola* (1974) 10 S.C III; *Lokoyi v. Olojo* (1983) 2 SCNLR 127; *Chinwendu v. Mbamali* (1980) 3 - S.C 31; *Ibhafidon v. Igbinosun* (2001) 8 NWLR (pt.716) 653; *Dibiamaka v. Osakwe* (1989) 3 NWLR (pt. 107) 101; *Odonigi v. Oyeleke* (2001) 6 NWLR (pt. 708) 12.

The respondent, just like any other person, ought to be encouraged to use the judicial process to ventilate his grievances; both real and imagined against any party subject to the decision of the court of law. This appeal is really very worthless and has succeeded only in delaying the hearing of the substantive action before the trial court, which includes a claim for account of monies collected by appellant as rents from tenants of the property at No.25A Old Market Road, Onitsha which is alleged to be family property.

In conclusion I too dismiss the appeal for being without merit and abide by all consequential orders contained in the lead judgment of Mohammed, JSC including the order as to costs.

Appeal dismissed.