

SUPREME COURT OF NIGERIA
23RD MARCH, 2012. SC. 32/2005
CORAM:- **W. S. N. ONNOGHEN, I. T. MUHAMMAD, O. O.**
ADEKEYE, B. RHODES-VIVOUR,
M. U. PETER-ODILI, JJSC

ALHAJI MOHAMMED MAINA

WAZIRI

..... APPELLANT

AND

1. IBRAHIM TAHIR GUMEL

2. ISAH DARA BWARI

..... RESPONDENTS

COURT PROCESSES - Appeals - Application as interested party - 1st respondent's application does not constitute abuse of process - And Court of Appeal was right in granting same (H1)

COURTS - Appeals - Application as interested party - Exercise of discretion - Since Court of Appeal complied with 1999 Constitution s. 243(a)(b) in granting the application - Supreme Court will not interfere (H2)

APPEALS - Issues - Bordering on judgment in rem - Competence - The issues are premature - As the real question is propriety or otherwise of - Joining 1st respondent as interested party (H3)

FACTS

2nd respondent was an allottee of a landed property situate at Asokoro District, Abuja. 1st respondent's case is that sometime in the year 1993, 2nd respondent transferred all his interest in the said property to him (1st respondent) for a consideration of the sum of one million naira. 1st respondent further stated that he discovered sometime in 1996 that appellant was claiming possession of the same property. As a result, 1st respondent instructed his lawyers to institute action against appellant. Accordingly, suit no. FCT/HC/CV/460/96 was instituted at the High Court of Federal Capital Territory, Abuja. 1st respondent further stated that in the course of proceedings in the said suit, he discovered that appellant had a judgment of the court in suit no. FCT/HC/CV/34/93 vesting title to the said property in appel-

lant. He therefore instructed the firm to file an appeal against the judgment at the Court of Appeal, Abuja Division.

The appeal suffered delay due to logistics problems encountered by his lawyers. Nevertheless, 1st respondent was advised by a later law firm to file an application for extension of time to appeal as an interested party. The application was thus filed. Appellant and 2nd respondent filed counter-affidavits in opposition to the application. In his counter-affidavit, appellant deposed that 2nd respondent sold the property to him (appellant) in 1992 upon payment of initial deposit of two hundred and five thousand naira. Appellant further stated that he obtained a judgment in his favour in suit no. FCT/HC/CV/34/93 in respect of the same property. Appellant also contended that the application of 1st respondent is an abuse of court process. The court delivered its ruling granting the application. Dissatisfied, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether having regard to the fact that a Suit NO. FCT/HC/CV/460/96- IBRAHIM TAHIR GUMEL V MOHAMMED WAZIRI & ANOR had been filed by the 1st Respondent and was pending at the time the Lower Court entertained the 1st Respondent's motion for leave, the trial court was right in granting rather than dismissing the application for abuse of Court process.

2. Whether the court below was right in granting the 1st Respondent leave to appeal against an interested party when the judgment he sought leave to appeal against was a judgment in personam and strictly a judgment against the 2nd Respondent who has already complied with the said judgment.

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC)** ***Appeals - Application as interested party***

1. From the processes available to the Courts, the 1st Respondent's suit over the property at the High Court would not constitute a foreclosure to applying to the Court of Appeal as an interested party since the application had not yet been granted. It would be taking too much a chance to discard and have dismissed the suit in the High Court he had instituted when he felt his right over his property was in jeopardy and he was not in a position to guarantee the outcome of his application to be joined in the Court of Appeal when there was

already a subsisting appeal judgment of another High Court which had affected his interest in the said property and to which process he was not a party. This is not one of those instances where an invocation of forum shopping and abuse of court process would apply. Each case where there seems a glimpse of abuse of court process has to be examined on its merit since different conditions would affect the conclusion that could be reached as to whether or not an abuse exists. (p. 1486 D)

Appeals - Application as interested party

2. In answer to the question posed as to whether the Court of Appeal was right in exercising its discretion by granting the 1st Respondent herein leave to appeal as an interested party against suit. FCT/HC/CV/34/93, the answer is positive as there was more than enough from the depositions upon which that Court below came to its decision that it was necessary that 1st Respondent be allowed in to state his interests and how it would affect the outcome of the appeal. The situation is properly covered by Section 243 (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) which has the following provision:-

Section 243:

“Any right of appeal to the court of Appeal from the decisions of the Federal High Court or a High Court conferred by this constitution shall be;

1. Exercisable in the case of a civil proceeding at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter.”

As can be seen above the discretion available to the Court of Appeal was properly exercised by the honourable justices and there is no basis for the interference by this Court over that exercise.

(p. 1486 H)

APPEALS - Issues - Bordering on judgment in rem

3. The angle taken by the appellant in this Issue 2 is that the judgment and order of the trial High Court decreed specific performance of the contract of sale of land between the 2nd Respondent and the appellant thereby rendering it a judgment “in rem” wherewith an-

other person or party can be given accommodation as an interested party on appeal. The position of the 1st Respondent to the view of the Appellant is that the matter of judgment in personam or in rem did not flow from. My humble take on the arguments above is that those are issues which are premature and to be handled when the merits of the appeal are considered and not at this stage which narrow question is whether or not the 1st Respondent should be allowed in to state his case with reference to his own interest in the disputed property. Another way of saying what I stated above is that what is to be considered at this stage and within the context of the application is whether the applicant has a grievance that needs be showcased and at the hearing of the appeal. That once the applicant and in this instance the 1st Respondent has shown he had that locus standi, everything else has to wait for the enlarged gathering at the hearing on the merit of the appeal. The condition that is to enable the 1st Respondent to be let into the full discourse is existing and that is all that matters now. (p. 1488 F)

REPRESENTATION

- E. A Aremo, Esq with Messrs Kunle Kolawole and Adeola Adewara, for Appellant
 O. Jolaawo, Esq for with Messrs B. Aduloju and A. Okubote, for 1st respondent
 Samuel Zibiri, Esq with Messrs Fiema Sonny Idase and Ikechukwu Kanu, for 2nd respondent

CASES REFERRED TO

- Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156
 Oyegbola v. Esso West Africa Inc. (1966) 11 All NLR 170
 Okoromadu v. Okoromadu (1977) 3 SC 21
 Mohammed v. Hussani (1998) 14 NWLR (Pt. 583) 108
 Okafor v. A.G. Anambra State (1991) 5 NWLR (Pt. 200) 659
 CBN v. Ahmed (2001) 11 NWLR (Pt. 724) 369
 Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423
 Kalu v Odili (1992) 5 NWLR (pt. 240) 130
 Adeleke v. Oyo State House of Assembly (2006) 10 NWLR 50
 FHA v. Kalejaiye (2010) 19 NWLR (Pt. 1226) 147
 Ike v. Atoloye (1986) 1 NWLR (Pt. 15) 241

Sosan v. Ademuyiwa (1986) 3 NWLR (Pt. 27) 241

Akinwunmi v. Sadiq (1997) 8 NWLR (Pt. 516) 277

Osuji v. Ekedoha (2009) 16 NWLR (Pt. 1160) 81

Fawehinmi v. Akilu (1987) NSCC 1265

STATUTE REFERRED TO

Constitution of Federation Republic of Nigeria 1999 (as amended), ss. 233, 243(a)(b)

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal against the Ruling of the Court of Appeal, Abuja Division in Appeal/Motion NO. CA/A/77/2001 delivered on Monday, the 30th day of June 2003 wherein the Court of Appeal granted the 1st Respondent extension of time to appeal as an interested party against the decision of the High Court of the Federal Capital Territory, Abuja delivered on 26th September 1994 and 31st October, 1994. The appellant being dissatisfied with the said Ruling of the Court below lodged an appeal against it on 18th May, 2006.

Facts briefly stated are that on 20th January 1993 the 2nd Respondent, as the allottee of the property situated at Asokoro District and measuring 2251.81 square metres and covered by Certificate of occupancy No. MFCT/ABU/FCT/272 dated 17th December 1993 transferred all his interest therein to him (the 1st Respondent) for a consideration of N1,000,000.00 (One million naira). A receipt which the 1st Respondent claimed the 2nd Respondent issued to him was attached as Exhibit ITG 1, no deed of assignment was shown by the 1st Respondent in spite of the allegation in paragraph 5 (a) of the supporting affidavit that the 2nd Respondent “*transferred all his rights and interest in the said property to him.*”

The 1st Respondent further stated that he discovered sometime in 1996 that someone else, i.e. the Appellant herein, was claiming possession of the property and was making obvious efforts to develop the property and instructed his counsel, the firm of A.A. Umar & Co. to institute an action against the Appellant and the said firm filed suit No. FCT/HC/CV/460/96. 1st Respondent further stated that it was in the course of proceedings in the suit he discovered that the Appellant had a Judgment of the trial court in suit No. FCT/HC/CV/34/93 vesting title to the property in question in the Appellant.

He said he instructed A.A. Umar & Co to appeal against the judgment of the Lower Court. The date the instruction was given was not demonstrated by the Respondent. Four years (4) later, sometime in May 2000, the 1st Respondent said his Lawyers complained of Logistic problems and ceased representing him. He said he therefore engaged the firm of Messrs Sunny Wonrenwu & Associates in September 2000 to take up his matters, but that in January 2001, the new firm declined further representation in view of a community Land matter its principal Counsel was involved in his Home town and returned the case files to him. According to the 1st Respondent, he therefore briefed the firm of Messrs Rickey Tarfa & Co to take up his representation in February 2001 and later after studying the file, said nothing had been done to protect his interest and advised him to file an application for extension of time to appeal as an interested party, The Deponent of the Affidavit in support concluded by stating that the delay in bringing the application was not out of disrespect for the court below.

The 1st and 2nd Further Affidavits earlier referred to were filed by Sunny Worenwu Esq and Nasiru A. Umar & Co explaining their roles in the matter. These further affidavits were based on the advice of the Court below on 30th January 2002. The Appellant filed on the 20th May 2002, a counter - affidavit in opposition to the application. Therein it was deposed that the 2nd Respondent sold the property to the Appellant on 28th October 1992 upon the payment of an initial deposit of N205,000.00 but because the 2nd Respondent refused to collect the balance on ground that he needed to first seek and obtain the consent of the Minister of the Federal Capital Territory (FCT) and since no such consent had been obtained he was no longer completing the sale, the Appellant sued the 2nd Respondent for specific performance of the contract of sale via suit NO. FCT/HC/CV/34/93. It was further deposed that throughout the proceedings there was no mention of the 1st Respondent herein or any interest held by him. After the trial Court's Judgment, the 2nd Respondent collected the balance of the sale. Relevant copies of documents conveying the 2nd Respondent's rights and interests in the property to the Appellant were annexed to the Counter - affidavit.

Importantly, the Appellant further deposed that it is not true that the 2nd Respondent sold the property to the 1st Respondent

and that there is no record of any such sale in the records of the Land Registry of the F.C.T. and that in any event the Appellant's interest on the land was prior in time over and above that of any other person including the 1st Respondent herein. The Appellant in the said Counter - Affidavit also deposed that he had been in possession of the property since 1992 and has carried out extensive development thereon. B Most importantly, and in showing the abuse of Court process inherent in the 1st Respondent's application at the lower Court, the Appellant at paragraph 17 of his counter-Affidavit deposed as following:

"That the Applicant/Interested party instituted at the Federal C Capital Territory High court Abuja wherein his claim to the land will be decided one way or other. A copy of the writ of summons and the amended statement of claim are hereby annexed as Exhibit 'D'."

Lastly, the Appellant dismissed the depositions in the First and D Second Further Affidavits filed by Sunny Wonrenwu, Esq. and Nasiru A. Aliyu, Esq. as being entirely false and a bundle of afterthought. The 1st Respondent's Reply to this counter-Affidavit is reproduced at pages 59- 60 of the Record.

The 2nd Respondent also filed a Counter-Affidavit to the 1st E Respondent's application. Therein the 2nd Respondent deposed that the 1st Respondent herein did not take any step to appeal against the trial court's Judgment since becoming aware of it and was only applying for leave to do so after eight (8) years. He also urged the F Court below to refuse the application. See page 45 of the Record.

On 7th April, 2003, the Court below entertained the 1st Respondent's motion and reserved Ruling in the matter. See page 61 of the Record. On 30th June 2003, that Court delivered its ruling on the application. In the said Ruling delivered by His Lordship, the G Honourable Justice G.A. OGUNTADE, JCA (AS HE THEN WAS), WITH WHOM THEIR Lordships, Z.A. BUKACHUWA and A.G. ODUYEMI, JCA agreed, the Court below granted the 1st Respondent's application in the following terms:

"Accordingly, leave is granted to the applicant to appeal as an H interested person against the judgments of Lower court given on 26/7/94 and 31/10/94, time within which to seek the leave to appeal is extended till today 30/6/09; and time to appeal is extended by 14 days from today." The Ruling is at pages 62-69 of the Record.

The Appellant herein is dissatisfied with the Ruling and to that extent filed an appeal against the same, with the leave of court, on 18th May 2006. On the 23rd January 2012, date of hearing, learned counsel for the Appellant adopted the Brief of Argument settled by S. T. Ologunorisa Esq filed on 10/9/08 and deemed filed on 26/6/09. He also adopted the Appellant's Reply Brief of 19/1/12. In the Appellant's Brief were distilled two issues for determination being:-

1. Whether having regard to the fact that a Suit NO. FCT/HC/CV/460/96- IBRAHIM TAHIR GUMEL V MOHAMMED WAZIRI & ANOR had been filed by the 1st Respondent and was pending at the time the Lower Court entertained the 1st Respondent's motion for leave, the trial court was right in granting rather than dismissing the application for abuse of Court process.

2. Whether the court below was right in granting the 1st Respondent leave to appeal against an interested party when the judgment he sought leave to appeal against was a judgment in personam and strictly a judgment against the 2nd Respondent who has already complied with the said judgment.

The 1st Respondent's Brief settled by O. O. Jolaawo Esq, filed on 18/11/11 and deemed filed on the 23/1/12. In it was raised what learned counsel termed 'Preliminary Points' and said the Court should strike out ground 3 and the issue formulated therefrom on the basis that the said ground did not relate to the decision or judgment of the Lower Court delivered on 30th June 2003. That a careful reading of the said ground 3 would reveal that the Appellants grouse is centred on the allegation that the judgment of the trial Court delivered on 26th September, 1994 is a judgment in personam and not in-rem. He cited *Manhattan Inv. Ltd v Co-operative Development Bank Plc* (2009) All FWLR (pt.483) 1381 at 1404- 1405 paras F- C. Learned counsel for the 1st Respondent however stated that if the Court did not agree with the submission on the preliminary point then they would utilize two issues for determination which are as follows:-

1. Whether or not having regard to the circumstance of this appeal, the 1st Respondent therein (as applicant at the Lower Court) is in law an interested party entitled to obtain the leave of Court to appeal against the judgment of the trial Court in suit No. FCT/HC/CV/34/93.

2. Whether or not having regard to the circumstance of this

appeal the 1st Respondent herein (as applicant at the Lower Court) is in law an interested party entitled to obtain the leave of Court to appeal against the judgment of the trial court in suit No. FCT/HC/CV/34/93.

The issues as couched by the Appellant seem of simpler language and easier to understand and shall be used in the discourse hereunder. B

ISSUE 1:

Whether having regard to the fact that a Suit No. FCT/HC/CV/460/96 - IBRAHIM TAHIR GUMEL V MOHAMMED WAZIRI & ANOR had been filed by the 1st Respondent and was pending at the time the Lower court entertained the 1st Respondent's motion for leave the trial court was right in granting rather than dismissing the application for abuse of Court's process. C

Arguing, learned counsel for the Appellant submitted that the issue above was distilled from grounds 1 and 2 of the Notice of Appeal and that at paragraph 17 of the appellant's counter-Affidavit to the 1st Respondent's Motion at the court below the Appellant's deponent deposed as follows:-

"That the Applicant/Interested party instituted at the Federal capital Territory High court Abuja wherein his claim to the land will be decided one way or the other. A copy of the writ of summons and the amended statement of claim are hereby annexed as Exhibit "D". E

That a look at the said Exhibit "D" which can be found at pages 52 - 55 of the Record reveals that:- F

1. The suit in question is suit No. FCT/HC/CV/460/96 i.e. the same suit the 1st Respondent admitted in paragraph 5(i) and (1) of the affidavit in support of his application in the court below and is between the same parties essentially. G

2. The reliefs set out in paragraph 14 of the Amended Statement of Claim at pages 54 - 55 of the Record seek a declaration that the 1st Respondent is owner of the property in question and a perpetual injunction restraining the Appellant herein and his Developer from entering the said property. H

3. The reliefs claimed in suit No. FCT/HC/CV/460/96 are aimed at achieving the same purpose as the 1st Respondent's application for leave to appeal as an interested party.

For the Appellant was further stated that 1st Respondent had

filed a Further Affidavit on 22nd May 2002 wherein he deposed that the claim before the court in suit FCT/HC/CV/467/96 is separate and distinct from the issues involved in the application for leave to appeal as an interested person. That in another Further Affidavit filed by the 1st Respondent on 7th October 2002 i.e. after four months, the 1st Respondent said suit No. FCT/HC/CV/460/96 is no longer extant in that it was on 9th July dismissed but failed to produce or attach a copy of the order dismissing the suit as alleged or the proceedings wherein it was dismissed. Learned counsel for the Appellant said what the 1st Respondent put forward was not enough to debunk the fact of the pendency of the suit. He cited *Shuweyaba v UBA Plc (1997) 4 NWLR (pt 500) 481 at 495.*

Mr. Ologunorisa, of counsel for the Appellant contended that the application for leave to appeal against the judgment of the trial court as an interested party constituted an abuse of Court process in that it sought to achieve the same purpose as the Suit NO. FCT/HC/CV/460/96 which was pending at the time. That clearly the 1st Respondent was forum shopping and harassing the Appellant. He referred to paragraph 5 (1) of the supporting Affidavit of the application. That if the 1st Respondent had succeeded in his Suit No. FCT/HC/CV/460/96, he would have abandoned the appeal option. Learned counsel said the law is settled that situations such as this where a party engages in filing multiple actions or processes aimed at achieving the same purpose and thereby annoys or harasses his opponent constitutes abuse of court process. He cited numerous judicial authorities, including *Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156; Oyegbola v. Esso West Africa Inc. (1966) 11 All NLR 170; Okoromadu v. Okoromadu (1977) 3 SC 21; Mohammed v Hussani (1998) 14 NWLR (Pt. 583) 108 at 160; Okafor v A.G. Anambra State (1991) 5 NWLR (Pt. 200) 659; CBN v Ahmed (2001) 11 NWLR (Pt. 724) 369 at 390.* That the court below ought to have dismissed the 1st Respondent's application and was wrong to have not only entertained it but granted it.

In response, Mr. Jolaawo learned counsel for the 1st Respondent submitted that it was the constitutional right of the 1st Respondent to appeal as an interested party where the decision he is seeking leave to appeal against affects his interest as in this case and as can evidence. He referred to Section 243 (a) and (b) of the constitution

of the Federation Republic of Nigeria 1999 (as amended). That the affidavits deposed to by the 1st Respondent at the Lower court establishing the interest of 1st Respondent in the said property were not countered by the Appellants and so those averments remaining unchallenged are deemed admitted. He cited *Inakoju v Adeleke* (2007) 4 NWLR (pt. 1025) 423; *Badejo v Federal Minister of Education* (1996) 8 NWLR (pt.464) 15; *Owena Bank (Nig.) Plc v. Nigerian Stock Exchange Ltd, In Re Securities and Exchange Commission* (1997) 8 NWLR (pt. 515).

For the 1st Respondent was canvassed that the judgment by the trial court per Gummi J had affected the title and/or position of the 1st respondent to warrant the Lower court to positively consider the application for leave to appeal against the said decision as an interested party. That the decision of the court of Appeal was an exercise of discretion judicially and judiciously made. He cited *Adeleke v Oyo State House of Assembly* (2006) 10 NWLR page 50; *FHA v Kalejaiye* (2010) 19 NWLR (pt.1226) 147 at 169. He also referred to the reliefs sought in the trial Court and that in the Court of Appeal showing that they are two separate and distinct suits with different parties and different reliefs. That the conclusion by Appellant of an abuse of process was wrong.

A brief summary of the matter in dispute before this court is that the respondent who was applicant in the Court of Appeal to be joined as a party to the proceedings in a matter to which judgment had been given on 26/9/94 by Gummi J (as he then was). His prayers to be interested party are as quoted below, viz:-

"1. Extension of time for the applicant/interested party with which to apply for leave to appeal as an interested party against the decision of the High court of the Federal Capital Territory, Abuja per the Honourable Justice L. A. Gummi J. delivered on 26th September, 1994 and 31st October, 1994.

2. Leave to appeal by the applicant/interested party against the decision in (1) above as an interested party.

3. Extension of time for the applicant/interested party to appeal against the decision cited in (1) above.

4. An order deeming the notice and grounds of appeal already filed as having been duly and properly filed and served.

5. An order consolidating the two appeals to be heard together

on the same record of .appeal to be transmitted and or compiled.

6. Such further and other orders (sic) as the Court may deem fit to make in the circumstances of the application and or appeal. ”

That application was supported by an affidavit, another affidavit, a second further affidavit. The 1st Respondent to that application had deposed a counter affidavit while the 2nd Respondent filed a counter affidavit. The applicant thereafter filed a further affidavit to the 1st Respondent’s counter affidavit and another further affidavit and Reply to 1st respondent’s counter affidavit.

It seems to me that it would be needful to recast the contents of the supporting affidavit for a clearer view and that would be as follows particularly paragraphs 3 - 5 thereof:-

“3. That the 2nd Respondent is the beneficiary/allottee of the property covered by certificate of occupancy No. MFCT/ABU/FCT/D 272 dated 17th December, 1993.

4. That the property situated in Asokoro District measures 2251.81 square meters.

5. That I have been informed by Ibrahim Tahir Gumi the Applicant, interested party and I verily believe him as follows:-

a. that on the offer by the Federal capital Development Authority of the said property to the 2nd Respondent, the said 2nd Respondent transferred all his rights and interests in the said Property to him (the Appellant/Interested party) for a consideration of N1,000,000.00 (One million naira) on 20th January, 1992.

b. that a receipt/acknowledgement was issued in his favour for the said sum by the 2nd Respondent. A copy of the said receipt/ acknowledgement is attached hereto and marked as Exhibit ITG 1.

c. that upon his discharge of his obligations to the 2nd Respondent. The applicant/interested part took charge and facilitated the issuance of the certificate of occupancy in respect of the property by direct payment of all statutory and official fees payable on the property until the- original certificate of occupancy was issued.

d. that the certificate of occupancy No. MFCT/ABU/FCT/272 dated December, 1993 has since been with him. A copy of the said certificate of occupancy is attached hereto and marked Exhibit ITG 2

e. that sometime in 1996 he took steps and initiatives towards developing the site and gave instructions to his architect to that effect.

f. that when the architect went to the site, he discovered signs

someone else was claiming possession of the land and promptly informed the applicant/interested party.

g. that the applicant/interested party went to the site, and discovered that the 1st Respondent was making obvious efforts to develop the property.

h. that the interested party then decided to instituted an action for trespass in respect of the encroachment and instructed his solicitors Messrs A.A. Umar & Co. of 17 Gyadi-Gyadi - Zaria Road to that effect.

i. that suit No. FCT/HC/CV/460/96 between Ibrahim Tahir Gumel v Mohammed Waziri & ors was thus instituted.

j. that in the course of proceedings in the said suit and in opposition to the applicant/interested party's application for interlocutory injunction, the 1st Defendant therein filed a counter affidavit dated 4th February, 1998 alleging the existence of a Judgment and order by the Honourable Justice H.L. Gumi on 26th September, 1994 and 31st October, 1994 respectively vesting the right in the property in the 1st Respondent, He subsequently obtained a certified True copy of the said judgment.

k. That he, the applicant/interested party had already acquired an equitable interest in the property before the claim by the said 1st Defendant.

l. that upon being informed of the new development he instructed his aid counsel in suit No. FCT/HC/CV/460/96 to take necessary steps to protect his interest in the property by appealing against the said judgment and other as well as pursuing suit No. FCT/HC/CV/460/96 to its logical conclusion.

m. that having thus informed counsel he went about his normal business in the belief that the said counsel as before was proceeding as instructed."

Evidently from the averments above the applicant had shown that the property he was interested in was situate at Asokoro district and had been sold by the 2nd Respondent (in Court below) to the applicant on 20/1/93. That the applicant had been unaware of the sale of the same property by the 2nd respondent to the 1st respondent and a dispute had arisen between the 1st and 2nd Respondents in court below which was the subject matter of the suit No. FCT/ABU/CV/34/93. That at the time of the said transaction between those

disputants, the applicant now respondent had acquired an equitable interest in the same property hence the necessity to be part of the ventilation of view points at the Court of Appeal.

The appellants attack to this application in the Court below, subject of this appeal is that the 1st Respondent herein had filed an action in suit No. FCT/HC/CV/460/96 which was still pending while applying for this indulgence to be allowed into the appeal as an interested party in the suit earlier filed as FCT/HC/CV/34/93. That this translated to an abuse of court process thereby debarring 1st Respondent being granted the indulgence he sought in the application. The response of the 1st respondent to this attack based on abuse of court process is that the circumstances upon which a court would protect its integrity and jealously guard its powers are not in existence, the parties and issues in the two suits being separate and distinct.

From the processes available to the Courts, the 1st Respondent's suit over the property at the High Court would not constitute a foreclosure to applying to the Court of Appeal as an interested party since the application had not yet been granted. It would be taking too much a chance to discard and have dismissed the suit in the High Court he had instituted when he felt his right over his property was in jeopardy and he was not in a position to guarantee the outcome of his application to be joined in the Court of Appeal when there was already a subsisting appeal judgment of another High Court which had affected his interest in the said property and to which process he was not a party. This is not one of those instances where an invocation of forum shopping and abuse of court process would apply. Each case where there seems a glimpse of abuse of court process has to be examined on its merit since different conditions would affect the conclusion that could be reached as to whether or not an abuse exists. I rely on Saraki v Kotoye (1992) 9 NWLR (Pt.264) 156 - 169 - 171.

In answer to the question posed as to whether the Court of Appeal was right in exercising its discretion by granting the 1st Respondent herein leave to appeal as an interested party against suit. FCT/HC/CV/34/93, the answer is positive as there was more than enough from the depositions upon which that

Court below came to its decision that it was necessary that 1st Respondent be allowed in to state his interests and how it would affect the outcome of the appeal. The situation is properly covered by Section 243 (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) which has the following provision:- B

Section 243:

“Any right of appeal to the court of Appeal from the decisions of the Federal High Court or a High Court conferred by this constitution shall be; C

1. Exercisable in the case of a civil proceeding at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter.”

See Owena bank (Nig.) Plc v. Nigerian Stock Exchange Ltd In D
Re: Securities and Exchange Commission (1997) 8 NWLR (pt.515);
Adeleke v. Oyo State House of Assembly (2006) 10 NWLR. **As can be seen above the discretion available to the Court of Appeal was properly exercised by the honourable justices and there is no basis for the interference by this Court over that exercise.** E
I rely on FHA v. Kalejaiye (2010) 19 NWLR (Pt.1226) P.47 at 169.

ISSUE 2:

Whether the Court below was right in granting the 1st Respondent leave to appeal as an interested party when the judgment he sought leave to appeal against was a judgment in personam and strictly a judgment against the 2nd Respondent who has already complied with the said judgment. F

Learned counsel for the Appellant contended that the judgment and order are the decisions the 1st Respondent sought leave to appeal against as an interested party and which the court below granted him leave to so appeal. That the nature of the judgment of the trial court is a judgment in personam in that it merely compelled the 2nd Respondent to make good his promise to sell the land in dispute to the Appellant. Stated differently that the judgment and order only decreed the specific performance of the contract of sale of land between the 2nd Respondent and the Appellant, which judgment and order only bound the 2nd Respondent and the Appellants H

i.e. Parties to the suit and so was not a judgment in rem. He referred to *Ike v Atoloye* (1986) 1 NWLR (Pt. 15) 241 at 258; *Sosan v. Ademuyiwa* (1986) 3 NWLR (pt.27) 241 at 51; *Akinwunmi v. Sadiq* (1997) 8 NWLR (Pt.516) 277 at 288 - 289. Mr. Jolaawo of counsel for the 1st Respondent said in the likely event that this court holds that their application was not filed in an abuse of process of the Lower Court, the 1st Respondent is entitled to the reliefs sought. He invited the court to consider all the processes filed in the matter. That the issues which have arisen outside the ground of appeal of the appellant warrant a striking out of the appeal by this court. He cited *Osuji v Ekedoha* (2009) 16 NWLR (Pt 1160) 81 at 100 - 107. For the 1st Respondent was further canvassed that in an application of this nature, the main burden of the applicant is to show that he has the locus standi to do so. That taking all the materials in view that the 1st Respondent was clearly an aggrieved person to whose right of ownership of the land known as Plot No. 1536, Asokoro, Abuja is affected by the judgment of the trial court in FCT/HC/CV/34/93 which he sought to appeal against and he ought not to be shut out. He cited the cases of: *Fawehinmi v Akilu* (1987) NSCC 1265 at 1289; *Kalu v Odili* (1992) 5 NWLR (pt. 240) 130; *Societe Generale Bank Ltd v. Utus Torung Benefade Afekoro & Ors* (1991) 11 NWLR (Pt. 628) 521; *Mobil Producing (Nig.) Unlimited v Monokpo* (2003) 18 NWLR (Pt.85) 346; *Dairo v Gbadamosi in Re: Afolabi* (1987) 4 NWLR (pt.63) 18. He concluded by saying that the meaning of judgment crosses beyond mere declaration of status or condition of property but also on right and disposition of persons in relation to same. He referred to *Sosan v Ademuyiwa* (1996) 3 NWLR (pt. 27) 24.

The angle taken by the appellant in this Issue 2 is that the judgment and order of the trial High Court decreed specific performance of the contract of sale of land between the 2nd Respondent and the appellant thereby rendering it a judgment "in rem" wherewith another person or party can be given accommodation as an interested party on appeal. The position of the 1st Respondent to the view of the Appellant is that the matter of judgment in personam or in rem did not flow from. My humble take on the arguments above is that those are issues which are premature and to be handled when the merits of the appeal are considered and not at this stage which

narrow question is whether or not the 1st Respondent should be allowed in to state his case with reference to his own interest in the disputed property. Another way of saying what I stated above is that what is to be considered at this stage and within the context of the application is whether the applicant has a grievance that needs be showcased and at the hearing of the appeal. That once the applicant and in this instance the 1st Respondent has shown he had that locus standi, everything else has to wait for the enlarged gathering at the hearing on the merit of the appeal. The condition that is to enable the 1st Respondent to be let into the full discourse is existing and that is all that matters now. See *Fawehinmi v Akilu* (1987) NSCC 1265 at 1289; *Chief Onwuka Kalu v Chief Victor Odili & 4 Ors* (1992) 5 NWLR (Pt. 240) 130 at 171; *Societe General Bank Nigeria Ltd v. Utus Torung - Benefade Afekoro & Ors* (1991) 11 NWLR (Pt.628) D 521; *Mobil Oil Producing Unlimited v. Monokpo* (2003) 18 NWLR (Pt.85) 346 at 452; *Dairo v Gbadamosi In Re: Afolabi* (1987) 4 NWLR (Pt 63) 18.

There being nothing upon which the decision of the Court below granted the Applicant/1st Respondent leave to appeal as an interested party can be upset, this issue is resolved in favour of the 1st Respondent. Appeal is dismissed and I affirm the decision and orders of the Court of Appeal. Costs of N50, 000.00 to the 1st respondent to be paid by the appellant.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother PETER-ODILI, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

My learned brother has dealt exhaustively with the issue for determination thereby leaving me with nothing useful to add.

I therefore dismiss the appeal and abide by the consequential orders made in the said lead judgment including the order as to costs Appeal dismissed.

MUHAMMAD JSC

I read in advance the judgment of my learned brother, Odili, JSC, just delivered. I agree with the reasoning and conclusions reached. I adopt same as mine. I, too, dismiss the appeal as it lacks merit. I adopt all consequential orders made in the lead judgment.

B

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother M. Peter-Odili, JSC.

C

The brief background facts of the Suit No. FCT/HC/CV/34/93 now on appeal to the Court of Appeal are that 2nd Respondent Isa Dara Butari was the allottee of the property in Asokoro District of Abuja measuring 2251.81 square meters and covered by Certificate of Occupancy No. MFCT/ABU/FCT dated 1993. He transferred his interest in the land to the 1st Respondent Ibrahim Tahir Gumel for a sum of N1,000,000.00 (One Million Naira). The 2nd Respondent issued a receipt to the 1st Respondent with which he facilitated the process of issuance of the original Certificate of Occupancy on the 17th of December, 1993 having paid all the statutory and official fees to the proper authorities. The 2nd Respondent had sold the same property to the appellant Alhaji Mohammed Maina Waziri, That sale became subject of dispute between the Appellant and 2nd Respondent in the Suit No. FCT/HC/CV/34/93 before the Federal High Court, Federal Capital Territory Abuja. There was competing claims between the Appellant and the 1st Respondent over this plot of land. The judgment of the FCT High court had vested the right in the property in the Appellant. The learned trial Judge ordered the defendant now the 2nd Respondent to receive the balance of N395,000.00 outstanding from the sum N750,000.00 purchase price of the land covered by Right of Occupancy No. MFCT/IA/91/FCT/272 and to sign all relevant documents necessary for the completion of the sale transaction. At that point in time the 1st Respondent had acquired an equitable interest in the property. There was an appeal against the judgment in Suit No. FCT/HC/CV/34/93 and the 1st Respondent took steps through his counsel to seek leave to appeal as an interested party. The judgment of the trial court was delivered on 26/9/96 and the order of the same court in respect of the disputed land was

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delivered on the 31st of October, 1996.

The 1st Respondent filed his application to be joined as an interested party in the appeal CA/A/22/2001 on the 8th of March 2001. The 1st Respondent filed an affidavit in support of the application. It was apparent to the court below that the 1st Respondent did not have information about the suit No. FCT/HC/CV/34/93 at the time the Appellant and 2nd Respondent were litigating over the same property. The lower court granted leave to the 1st Respondent to appeal as an interested person against the judgment and order of the lower court given on 26/7/94 and 31/10/94 respectively. Section 243 (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria as amended stipulates that:- Section 243

“Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be

(a) Exercisable in the case of a civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or High Court or the Court of Appeal at the instance of any other person having an interest in the matter.”

Section 233 (b) of the Constitution of the Federal Republic of Nigeria 1999 provides that:-

“Any right of appeal to the Supreme Court from the decisions of the Court of Appeal conferred by this section shall be exercisable in the case of civil proceedings at the instance of a party thereto or with the leave of the Court of Appeal or Supreme Court at the instance of any other person having an interest in the matter.”

The grounds of appeal and issues raised by the 1st Respondent in the lower court at pages 30 - 34 of the Record of appeal confirm that the 1st Respondent has a right to appeal as an interested person. The Ruling of the lower court which granted leave to the 1st Respondent to appeal against the decision of the trial court as an interested party is an exercise of discretion based on the deposition contained in the affidavits. Judicial discretion is a term applied to the discretionary action of a Judge or court bounded by the Rules and Principles of Law not giving effect to the will or private opinion and not to humour. It is a discretion exercised judicially and judiciously. A judicial discretion is based upon facts and circumstances presented to the court from which it must draw a conclusion governed by law,

justice and common sense.

An appellate court will not interfere with a proper exercise of discretion of a lower court. A judgment or order of a court based on the discretion of the learned judge can only be interfered with on the grounds that:-

- B 1. The discretion was not exercised in accordance with law.
2. That the decision of the lower court is perverse
3. Where the lower court acted under a misapprehension of the law.
- C 4. Where the lower court acted under a misapprehension of the facts.
5. Where the lower court omitted to take into account matters that are relevant.
6. Where the discretion is exercised on wrong or inadequate D materials.
7. Where it is in the interest of Justice to interfere to prevent miscarriage of justice.

None of the foregoing factors is applicable to the exercise of discretion of the lower court while granting the 1st Respondent the E requisite leave to appeal against the judgment of the trial court as an interested party. *Acme Builders Ltd vs. K.S.W.B. (1999) 2 NWLR pt. 500 pg. 288; Chigbu vs. Tonimas (Nig.) Ltd. (1999) 3 NWLR, Pt. 593, pg. 115; Ngwu vs. Onuigbo (1999) 13 NWLR, Pt. 636, pg. 512; University of Lagos vs. Olaniyan (1985) 1 NWLR, Pt. 1, pg. 156; In Re Alase (2002) 10 NWLR, pt. 776, Pg. 953; Oduba vs. Hontmangracht (1997) NWLR, Pt. 508, pg. 185; Biocon Agro Chemicals vs. Kudu Holding (2000) 13 SC, pt. 1, pg.139.* This Court in the F circumstance declines to interfere with a discretion judiciously and G judicially exercised based on the peculiar facts and circumstances of the case on appeal.

With fuller reasons given by my lord in her lead judgment, I also dismiss the appeal for lacking in merit. The Ruling of the lower court is affirmed white the appeal is to remitted back to the lower H court for hearing on the merit. I adopt any other consequential order made in the lead judgment as mine.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment of my learned brother, Peter-Odili, JSC. I agree with it and for the reasons given, I also would dismiss the appeal.

The issue in this appeal is whether the Court of Appeal was right to grant leave to the 1st respondent to appeal as an interested party. B

Briefly the facts are these. A plot of land in Asokoro, Abuja, measuring 2251.81 square meters and covered by Certificate of Occupancy No. MFCT/ABU/FCT dated 17th December 1993 was owned by the 2nd respondent. He sold the plot to the 1st respondent and the appellant at different times. Competing claims to the plot arose between both purchasers. Suit No. FCT/HC/CV/34/93 was taken out by the appellant against the 2nd respondent (the seller), and in that suit title to the property was vested in the appellant. The 2nd respondent appealed. It was only then that the 1st respondent became aware that title to the property he also bought from the 2nd respondent was vested by the court in the appellant. The 2nd respondent's appeal is CA/A/77/M/2007. The 1st respondent quickly filed an application in the court of Appeal to be allowed in as an interested party. His prayer in part was for: Extension of time for the appellant/interested party within which to apply for leave to appeal as an interested party against the High Court of the Federal Capital Territory, Abuja per Hon. Justice L.A. Gummi delivered on 26th September, 1994 and 31st October, 2011. The Court of Appeal granted the 1st respondent leave to appeal as an interested party. This appeal is against that Ruling. An interested party is one whose presence in a suit is needed before the real controversy between the parties is settled. Section 243 (a) and (b) of the Constitution states that: C D E F G

"any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this constitution shall be: (b) exercisable in the case of a civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other Person having an interest in the matter." H

The 1st - respondent purchased the land in question, and since the issue of title to the land is still unresolved by the courts he has an interest in the matter. He thus has a right of appeal. The power of the

Court of Appeal to grant leave to the 1st respondent to appeal as an interested party is discretionary, and all discretionary powers must be exercised with correct and convincing reason. Once this is done an appeal court is always loath to interfere with the way a judge exercises his discretion. On the other hand an appeal court would be compelled to interfere where the discretion was wrongly exercised, or found to have been tainted with some illegality or irregularity, or arbitrarily exercised. See *University of Lagos v. Aigoro* 1985 1 NWLR Pt.1 P.143; *Demurren v. Asuni* 1977 3 SC p.91; *Enekebe v. Enekebe* 1964 1 All NLR P.102; *President Ibadan province v. Lagunju* 1954 14 WACA P.552. An applicant seeking leave of court to appeal as an interested party must make a detailed deposition in his affidavit in support of the application to show:

- (a) his interest in the matter-
- (b) why he was not a party in the trial court.
- (c) good reasons for delay in filing the application.

Affidavit evidence before the court of Appeal explained all of the above. The application before the court of Appeal was brought because there were competing interests on the land in question. It is the duty of courts at all times to ensure a fair determination of the issues between the parties and in that regard the purpose of granting leave for a party to be joined as an interested party on appeal is to enable justice to be done between the parties. Where the appellant and the 2nd respondent are contesting ownership of a plot of land in court and the 1st respondent, who lays claim to the same plot becomes aware of the suit between the appellant and the 2nd respondent only on appeal, a court would readily allow the 1st respondent in as interested party on appeal. This is an order given entirely at the discretion of the court in the interest of justice. In effect to ensure that justice is done between the parties. The order of the Court of Appeal given the 1st respondent a hearing as an interested party is necessary to enable the court settle the real controversy between the parties. That is, the question of ownership of the plot in question.

For this and the fuller reasoning in the leading judgment, I dismiss this appeal and make the order which my learned brother, Peter-Odili, JSC proposes.