

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABAKALIKI JUDICIAL DIVISION**  
**HOLDEN AT ABAKALIKI**  
**ON THURSDAY THE 12<sup>TH</sup> DAY OF NOVEMBER, 2015**  
**BEFORE HIS LORDSHIP**  
**HON JUSTICE M.A. ONYETENU**  
**JUDGE**

SUIT NO. FHC/AI/CS/22/2013

**BETWEEN**

**COMRADE CHINEDU OGAH NWEKE - - - PLAINTIFF**

**AND**

- 1. GBUJAS BUREAU DE CHANGE LIMITED**
- 2. CHIEF NDUKWO NDUKWO OGBUJA**
- 3. MRS. NNENNE NDUKWO OGBUJA**
- 4. UCHE NDUKWO OGBUJA**
- 5. OGBUJA NDUKWO OGBUJA**
- 6. NDUKWO NDUKWO OGBUJA JNR.**
- 7. GBUJAS INTERPRIZ NIG. LTD.**
- 8. THE COMMISSIONER OF POLICE,  
EBONYI STATE**

**DEFENDANTS**

**RULING**

This Ruling is with respect to Notice of Preliminary Objection filed by the

1<sup>st</sup> to 7<sup>th</sup> Defendants praying this court for:

1. An Order of court dismissing or striking out the suit of the Plaintiff/Respondent dated 15/5/2013 and filed on 4/5/13 for being incompetent and an abuse of court process.
2. An Order of court setting aside the entire suit as the Honourable Court lacks jurisdiction to entertain the suit.

The Notice of Preliminary Objection is supported by a 12 paragraph affidavit which the 1<sup>st</sup> to 7<sup>th</sup> Defendants relied on.

In his written address Counsel to the 1<sup>st</sup> to 7<sup>th</sup> Defendants gave a sole issue for determination to wit:

Whether this court can assume jurisdiction over dispute and determine same for alleged breach of contract that was executed at 39/55 Chime Avenue New Haven Enugu in the face of a pending suit instituted by the same plaintiff suit No. FHC/EN/CS/273/2011 on same subject matter and same parties.

Counsel submitted that for a court to assume jurisdiction, the following conditions must be present:

Proper parties must be before the court.

The subject matter must falls within the jurisdiction of the court.

The court must be properly composed as to members and qualifications.

The suit is commenced by due process of law and upon fulfillment of any condition precedent to assumption of jurisdiction referring to

**MADUKOLU vs NKEMDILIM** 1962 SCNLR 341;

**SKEN CONSULT vs UKEY** 1981 ISC 6.

Counsel further submitted that rules of court are meant to be obeyed and that the **Federal High Court (Civil Procedure) Rules 2009 Order 2 Rule 1 (4)** states that all suits for specific performance or upon the breach of any contract shall be determined in the judicial division of the court which the contract is supposed to have been performed or in which the Defendant resides or carries on substantial part of its business. That in this case the Defendants that executed the said contract are living in Enugu and their substantial business is being carried out in Enugu.

Secondly Counsel urged this court to dismiss this suit for being incompetent, vexatious and an abuse of court process citing **MINISTER OF WORKS vs THOMAS NIG LTD** 2002 2 NWLR pt 752 at 788.

On the meaning of abuse of court process, Counsel also cited the case of

**OKAFOR vs A.G. ANAMBRA STATE** 1991 6 NWLR pt 200 p659;

**MORGAN vs WEST AFRICAN AUTOMOBILE ENGINEERING CO LTD** 1971 1 NWLR 219.

Counsel submitted that in the present case the Plaintiff is same with the Plaintiff in Suit No. FHC/EN/CS/273/2011 at Enugu and the subject matter is the same as well as the Defendant and hence it is an abuse of court process.

He urged this court to dismiss this suit with cost.

The Plaintiff filed an 18 Paragraph Counter Affidavit in which he stated amongst others that the suit FHC/EN/CS/273/11 has now been withdrawn. He also stated that paragraph 16 of the statement of claim shows that the contract in question was executed in Abakaliki.

In his written address, Counsel to the Plaintiff stated that on the issue of jurisdiction, it is the statement of claim that the court considers citing **B.F.D. (NIS) LTD vs U.T.B. TRUSTEES LTD** 2010 2 NWLR pt 1179 612 and that the statement of claim shows that the dispute between the parties is a simple contract entered into in Abakaliki and that the suit pending in Federal High Court Enugu has been withdrawn.

The 1<sup>st</sup> to 7<sup>th</sup> Defendants filed a further affidavit in which they referred to the written statement of Oath of the Plaintiff.

Applicant on 16/12/11 in which he stated that the discussions on the sale of the 1<sup>st</sup> Plaintiff was concluded at Enugu and the 4<sup>th</sup> to 9<sup>th</sup> Defendants were paid thereafter on 5/6/11.



The further affidavit also averred that the document purporting to establish withdrawal of suit No FHC/EN/CS/273/2011 is not certified.

In his reply on point of law Defendant Counsel submitted that the purported filing of notice of withdrawal after this application gives the Plaintiff undue advantage and this is a further abuse of the process of court citing

**STABILINI VISION NIG LTD vs S.V. LTD** 2011 8 NWLR pt 1249 at 259;

**A.G. ANAMBRA vs UBA** 2005 15 NWLR (Pt 947) 44.

The Plaintiff then filed a Further and Better Counter Affidavit of 13 paragraphs. In that Further Affidavit they averred that parties in the present suit are not the same with parties in suit No FHC/EN/CS/273/2011.

They also averred that they instituted suit no HAB/53/11 in the High Court of Ebonyi which contains the same reliefs as the present one and is against the same parties and the Defendants challenged the jurisdiction of the High Court of Ebonyi State to determine the suit and the State High Court held that the contract was entered into in Abakaliki Ebonyi State and that it is the Federal High Court that has jurisdiction.

The Plaintiff further averred that the pleadings and depositions in suit no FHC/En/273/2011 does not represent his instructions to his Counsel and in any event that that suit has been struck out as per Exhibit A, a copy of the Order striking out the said suit. The 8<sup>th</sup> Defendant did not file any process.

I have carefully considered the Notice of Preliminary Objection raised by the 2<sup>nd</sup> to 7<sup>th</sup> Defendants in this suit. I have also considered the reply of the Plaintiff as well as addresses of all Counsel in this matter.

The sole issue for determination by this court in my humble view is whether this court has jurisdiction to hear and determine this case.

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The Defendant's Preliminary Objections are two folds.

First that this suit is an abuse of court process as it is same with Suit No FHC/EN/CS/273/2011 filed at the Federal High Court Enugu all the parties being the same, and subject matter the same.

Secondly that the contract the subject matter of this suit was entered into at Enugu and not Abakaliki hence by **Order 2 Rule 1 (4) of the Federal High Court (Civil Procedure) Rules 2009**, it is the place where the contract was executed that the action should be filed.

AP

On the 1<sup>st</sup> issue the Plaintiff have replied that the parties in this suit are not the same as the parties in the suit filed at Federal High Court Enugu.

I have studied Exhibit A the certified true copy of Order made by the Federal High Court Enugu and it is clear to me from that order the parties in that suit FHC/En/CS/273/2011 are not the same as the parties in this suit. Even the Defendants on Exhibit FAI the sworn statement of Oath of the Plaintiff shows clearly that the parties on that process are not the same with the parties in this case. So that there is no multiplicity of suits and thus no abuse of court process. The cases of

**MINISTER OF WORKS vs THOMAS NIG LTD (Supra);**

**OKAFOR vs. A.G. ANAMBRA STATE (Supra);**

**MORGAN vs WEST AFRICA'S AUTOMOBILE ENGINEERING CO. LTD (Supra)** is therefore not applicable.

On the 2<sup>nd</sup> issue that the contract was executed in Enugu and not Abakaliki. Let me make it clear that in considering the issue of jurisdiction that the court consider is the Writ of Summons and Statement of Claim filed by the Plaintiff in this suit.

See **ONUORAH vs KRPC LTD** 2005 6 NWLR pt 921 at 393 CSC

In the present case, I agree with the Plaintiff Counsel that their paragraph 16 show that the parties signed the agreement in Abakaliki.

It is that statement of claim this court will consider not the statement on Oath of Plaintiff in FHC/EN/CS/273/2011. That statement on Oath can at best be used to impeach the credibility of evidence of Plaintiff Witness but not the decision as to whether this court has jurisdiction or not. The statement for claim in that case is not even exhibited.

I will not consider on the Ruling of the High Court of Ebonyi State in suit No HAB/53/2011 as that Ruling has not been exhibited by the Plaintiff.

Suffice it to say that I am satisfied based on the above reasons that this court does have jurisdiction to hear and determine this suit and so hold the preliminary objection filed by the 2<sup>nd</sup> to 7<sup>th</sup> Defendants is hereby dismissed.

**M. A. ONYETENU**  
**JUDGE**  
**12/11/15**

Plaintiff present.

All Respondents absent.

2<sup>nd</sup> Defendant represents the 1<sup>st</sup> Defendant and he is present.

Mazi. M. N. Igbo for the Plaintiff.

C. U. Abubu for the 1<sup>st</sup> to 7<sup>th</sup> Defendants.

B. G. Emenike for the 8<sup>th</sup> Defendant.