

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 28TH DAY OF JUNE, 2016
BEFORE THE HON. JUSTICE A. R. MOHAMMED
JUDGE

SUIT NO: FHC/ABJ/CS/876/2013

BETWEEN:

1. ASSET MANAGEMENT CORPORATION OF NIGERIA ---- CLAIMANT

AND

1. BILBAY & COMPANY LTD 2. ALHAJI LABARAN NUHU 3. BALA NUHU 4. ALHAJI BABA ADAMU 5. ABDULRAHMAN LABARAN 6. ALHAJI BELLO NUHU 7. YINUSA LABARAN	}	DEFENDANTS
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RULING

By a Notice of preliminary objection dated 12/2/15 and filed on 18/2/15, the defendants seek for:

An order of Court to dismiss this suit in limine on the grounds that the Court lacks jurisdiction to hear and determine the suit.



The grounds upon which the objection is brought were given as follows:

1. That this suit is a gross abuse of Court process.

Particulars:-

(a) That the Kano State High Court of Justice in suit No. K/431/2007 between Unity Bank Plc Vs. Bilbay and Company Limited entered part judgment against the Defendant/Applicant for the sum of N10,000,000.00(TEN MILLION NAIRA) only against the Defendant on the 6th day of July 2007 and transferred the disputed balance on interest to the general cost list for hearing as evidence by the annexure "B 1" to the supporting affidavit.

(b) That the suit is still pending between the parties when the Claimant bought over the debt of Unity Bank Plc, which in turn inherited the assets and liabilities of Unity Bank Plc; and the respondent cannot re-litigate the same issue/subject matter before another Court.

2. That the processes served on the Defendant/Applicant are grossly defective.

Particulars:



(a) That the claimant's suit is grossly incompetent as the processes served on the Defendant were not endorsed as required by the extant rules on service of processes.

The preliminary objection is supported by a 5 paragraph affidavit filed on 18/2/15 and deposed to by Gloria N. Nyam, a legal practitioner in the law firm of solicitors to the Defendants. Attached to the affidavit in support of the

preliminary objection is an exhibit marked BC1. There is also a written address in support of the application.

The Plaintiff reacted to the objection with a counter affidavit filed on 3/3/15 and sworn to by David Mando Esq. Attached to the Plaintiff's counter affidavit are two exhibits marked B1 and B2 respectively. There is also written address in support of the Plaintiff's counter affidavit.

I have read the affidavit in support of the Notice of preliminary objection, the exhibit attached and the written address. I have also read the counter affidavit, the two exhibits attached and the written address.

The case of the Defendants as constituted in the objection is simple and straight forward.



- a. That there is a suit at the High Court of Kano State before Justice N. S. Umar of Court 6 in which Judgment was entered before the Respondents indebtedness was bought over by the present Applicant.

- b. That the suit at High Court of Kano State is between UNITY BANK PLC VS BILBAY AND COMPANY (The 1st Defendant in this suit) with suit No: K/431/2007.

- c. That consent Judgment of N10 Million was awarded to the claimants in suit No: K/431/2007 and the matter transferred to the general cause list for hearing on the claim for accumulated interest on the loan.
- d. That Unity Bank and Bilbay (1st Defendant were making effort to settle the suit out of Court while the suit is still pending.
- e. That the suit is still pending before the High Court of Kano State and a counsel by name Abubakar Sani is still appearing for Unity Bank.
- f. That the said debt sought to be recovered in this suit is part of the asset and liabilities acquired from unity Bank Plc.



See paragraphs 4 (a) – (i) of the affidavit in support of the Notice of preliminary objection.

In the Plaintiff's counter affidavit, it was essentially deposed as follows:

- a. That Abubakar Sani who represented Bank of the North Ltd (now Unity Bank Plc) has discontinued suit No: K/431/07 immediately after unity bank sold the loan to AMCON.
- b. That Abubakar Sani does not represent Unity Bank Plc in suit No: K/431/07 in Kano or anywhere else in Nigeria.

- c. That AMCON purchased 1st Defendant's non-performing Loan from Unity Bank Plc.
- d. That in 2013, the 1st Defendant represented by the 2nd Defendant contacted AMCON in it's Abuja office to negotiate for the repayment of the loan.
- e. That the 1st Defendant Solicitor Ishaku T. Haliru also contacted AMCON in its Abuja Office to negotiate for the waiver of interest.
- f. That Unity Bank was forced to sell the loan as bad and non-performing to AMCON.
- g. That the Defendants and their counsel have recently made proposal to AMCON. Attached as exhibits B1 and B2 are the said proposals.
- h. That on 6/12/07, the Court entered consent Judgment against BilBay & Company Ltd only in favour of Unity Bank.



See paragraphs 5 (a) (b), 7 (a) (d) (e) and 8 of the Plaintiff's counter affidavit.


From the state of the affidavits of the parties, it is clear that at one time, there was a case at High Court of Kano State between Unity Bank Plc and BilBay and Company Ltd. The Plaintiff has admitted in paragraph 8 of its counter affidavit that on 6/12/07, the Court entered consent Judgment against BilBay & Company Ltd in favour of Unity Bank.

Now, while the Defendants have contended that the suit before High Court of Kano is still pending, the Plaintiff had contended that the suit before High Court of Kano had been discontinued by the solicitor representing Unity Bank. A careful look of exhibit BC1 attached to the Defendants affidavit in Support of the objection (that is, the record of proceedings of High Court Kano) would show that no judgment was entered for any sum as pleaded by the Defendants. The proceedings only stopped at settlement stage in 2009.

Furthermore, the Plaintiff who deposed in their counter affidavit that the suit before High Court of Kano had been discontinued, could not attach the proceedings showing the discontinuance of the case. In this situation, this Court is unable to decide whether or not the case at the High Court of Kano is still pending or same had been withdrawn.

With the above uncertainty, the Court would defer ruling on the Defendants Notice of Preliminary objection until evidence is called to ascertain whether the suit No: K/413/07 is pending or same had been withdrawn.

Ruling on the Defendants' Notice of preliminary objection dated and filed on 12/2/15 would be delivered at the conclusion of evidence in this suit.

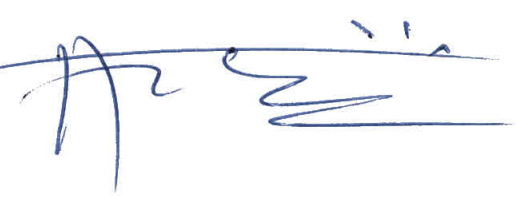
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HON. JUSTICE A. R. MOHAMMED
JUDGE
28/6/2016

APPEARANCES:

S. E. Adino Esq., with K. I. Mando Esq for the Claimant.

E. U. Anene Esq for the Defendants/Applicants.

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