**HON. ADEKOLA ASHIMIYU**

**v.**

**ALHAJI OLANREWAJU BOLAJI & ORS**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 21ST DAY OF FEBRUARY, 2020

CA/L/226/2015

**LEX (2020) - CA/L/226/2015**

**OTHER CITATIONS**

3PLR/2020/23 (CA)

(2020) LPELR-49529(CA)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LAWAL GARBA, JCA

JOSEPH SHAGBAOR IKYEGH, JCA

TIJJANI ABUBAKAR, JCA -end!

**BETWEEN**

HON. ADEKOLA ASHIMIYU - Appellant(s)

AND

1. ALHAJI OLARENWAJU BOLAJI

2. WOYITU ALAYANDE

3. HANNAH BAKARE ALAYANDE

4. ALHAJI KUDIRAT SHONIRE - Respondent(s)-end!

**ORIGINATING COURT(S)**

HIGH COURT OF LAGOS STATE, IKEJA DIVISION-end!

**REPRESENTATION**

Nkacha Chinwuba - For Appellant

AND

Dawodu with him, Z. A. Folami - for 1st Respondent

T. Muyideen - for 2nd to 4th Respondents - For Respondent-end!

**ISSUES FROM THE CAUSE(S) OF ACTION**

ETHICS – LEGAL PRACTITIONER:- Meaning of “legal practitioner” in Nigeria – How determined - Duty of diligence – Failure to sign originating processes in name registered under the Roll of Barristers and Solicitors at the Supreme Court of Nigeria - Section 2(1) and 24 of the Legal Practitioners Act – Attitude of court thereto – Legal effect

CONSTITUTIONAL LAW – JUDICIARY:- Judgment – Meaning of under Section 318 of the 1999 Constitution as a "decision" - "any determination of that Court and includes judgment, decree, order, conviction, sentence or recommendation – Distinction between an interlocutory decision/judgment and a final decision/judgment – Judicial test for determination thereto -end!

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ABUSE OF COURT/JUDICIAL PROCESS(ES): What constitutes - When a suit will be held to constitute an abuse of Court process - Legal effect of

ACTION - SIGNING OF COURT PROCESS(ES):- Validity and competency of originating processes – Processes filed in the name of a law firm – Validity of - Proper person(s) to sign an originating process

ACTION - SIGNING OF COURT PROCESS(ES):- Writ of Summons properly endorsed with name of legal practitioner and signature - Statement of Claim issued and filed with only signature of legal practitioner but without name – Where signature consistent with signature on Writ of Summons – Competency of Statement of Claim – Proper treatment

COURT - JURISDICTION:- Essence and importance of – Legal effect of a Court acting without jurisdiction over a matter

COURT - JURISDICTION:- Basis of jurisdiction of Court - Categories of – Category of jurisdiction that can be waived on the basis of the agreement, acquiescence, or consent or voluntary submission of the parties

JUDGMENT AND ORDER - SETTING ASIDE OF:- Rule that a court is deemed functus officio after delivering its final judgment/decision over a matter – Exceptions thereto - Whether a Court can set aside its final judgment given in default of appearance/defence

JUDGMENT AND ORDER - SETTING ASIDE OF:- Categories of judgment - Distinction between “judgments on the merit” and “judgment in default” – Relative ease of setting aside each category

JUDGMENT AND ORDER - SETTING ASIDE OF:- Default judgment – Where established – Non-compliance with the Rules by a party prevents a case from going through the case management conference – Proper treatment of an application to set aside judgment arising therefrom-end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant had a default judgment obtained against the Respondent and other interested parties set aside by the same trial Court on grounds that its grant constituted an abuse of court process in relation to another pending suit and that the judgment was fraudulently procured. Particularly, the trial court found that the judgment’s res was interest in land which was also being litigated in another pre-existent suit, a fact not disclosed before the trial Court – making execution of the judgment thereby obtained prejudicial to the determination of that other case on its merit. -end!

DECISION(S) APPEALED AGAINST

“With respect to the 2nd application filed on behalf of the Alayande Family dated 20/10/14, it is evident that the family is laying claim to the subject property as their family land. It is equally evident that they have denied alienation of any portion of it to the judgment creditor/respondent herein. In addition, the Alayande Family deny having sold, alienated or allocated any portion of their family land to either of the two judgment debtors in this suit. Furthermore, they have demonstrated clearly that a previous suit as in Suit No:LD/1820/2002 is still pending between the family and the judgment creditor/respondent herein with respect to the same parcel of land as shown on Exhibit MAT 1. It is therefore evident to this Court, that the application dated 20/10/14, filed by the 2nd set of applicants is predicated on the tripartite grounds that (i) the originating processes issued in this suit were never served on them, (ii) That this present action is an abuse of process in the light of the pendency of Suit No: LD/1820/2002 between the same parties seeking the same reliefs and in respect of the same subject matter, (iii) Finally that the judgment herein was obtained by fraud and or suppression of material facts.-end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“3.1 WHETHER the lower Court was right in assuming jurisdiction over the two applications the subject matter of this appeal (From Grounds 1, 3 and 6).

3.2 WHETHER the ruling of the lower Court met the standard prescribed by law. (From Grounds 2 and 3).

3.3 WHETHER the ruling of the lower Court was in consonance with the evidence before it (From Grounds 4, 5, 9 and 11).

3.4 WHETHER the lower Court was right in holding that this suit was an abuse of the process of the Court (From Grounds 7, 8 and 10).”-end!

*BY RESPONDENTS*

*1. Both sets of Respondents, 1st and 2nd – 4th* raised a Preliminary Objection with the common ground that the originating processes; writ of summons/and statement of claim, were signed in the name of a Law Firm and not by a registered legal practitioner whose name is on the Roll of the Supreme Court of Nigeria thereby rendering the suit incompetent, with the Lower Court bereft of the requisite jurisdiction to adjudicate over it[.

2. Each set of Respondents raised the following set of issues for the resolution of the appeal on merit viz:

1ST RESPONDENT:-

“Whether the lower Court was right to assume jurisdiction over the 1st Respondent’s Application and set aside the execution of the judgment on the 1st jurisdiction on the 1st Respondent”.

2ND – 4TH RESPONDENTS: -

“i. Whether the Trial Court was right to assume jurisdiction over the 2nd - 4th Respondents’ Application dated 20th October, 2014 and consequently set aside the judgment dated 26th November, 2013 and the execution thereon (GROUNDS 1, 8, 9 and 11)

ii. Whether the Trial Court was wrong for dismissing Suit No. LD/984/2012 and setting aside the Judgment dated 26th November, 2013 and execution thereon as same constitutes abuse of Court processes in the face of the existence of Suit No. LD/1820/02 (GROUNDS 2, 7, 10).”-end!

*AS ADOPTED BY COURT*

[Court adopted the 1st Respondent’s sole issue for determination of the appeal taking into consideration the parties’ relevant submissions thereon.]-end!

DECISION OF COURT OF APPEAL

1. The preliminary objection to the competency of the suit is misconceived, without merit and is dismissed. The Record of Appeal before the Court shows that both Writ of Summons and Statement of Claim dated and filed before the Lower Court which were the originating/initiating processes used to commence the Appellant’s Suit from which appeal emanated, were duly signed by a legal practitioner in accordance with the provisions of Sections 2(1) and 24 of the Legal Practitioners Act and so valid and competent in law for the purpose of invoking the requisite jurisdiction of the Lower Court over the suit.

2. The Lower Court was right to have granted the Respondents’ applications and to have set aside the default judgment of 26th November, 2013 since the suit in which it was delivered was an abuse of its process and the judgment fraudulently obtained by suppression of the fact of the existence of an earlier pending suit between the parties, on the same subject matter and material issues of dispute.

3. The community and harmonious effect of the provisions of both Order 20, Rule 12 and Order 30, Rule 4(2) is that the Lower Court is vested with the requisite procedural jurisdiction to set aside a final default judgment or judgment default of appearance/defence on any of the stipulated grounds or upon such terms as it may deem fit in the circumstances of a case.-end!

**MAIN JUDGMENT**

**MOHAMMED LAWAL GARBA, J.C.A. (Delivering the Leading Judgment):**

The High Court of Lagos State, Ikeja (Lower Court) entered judgement under Order 20 of its Rules of Civil Procedure, 2012 (2002) Rules) on the 26th November, 2013 in Suit No. LD/984/12 in favour of the Appellant, which was executed.

Subsequently, the Respondents; who were not parties to the suit, filed separate applications before the Lower Court and sought similar reliefs of:

“1. For an order joining the applicants.

2. For leave extending time within which the Applicant may apply for leave to set aside the execution.

3. An order granting leave to the Applicant to apply to set aside the execution.

4. An order setting aside the execution.”

On the 10th February, 2015 the Lower Court granted the reliefs sought by the Respondents and dismissed the Appellant’s suit. Being aggrieved by that decision, the Appellant, vide the Notice of Appeal of 23rd February, 2015 brought this appeal against same on eleven (11) grounds.

Four (4) issues were distilled from the grounds and submitted to the Court for determination in the Appellant’s brief filed on the 27th May 2019, pursuant to the Order by the Court.

Issues are: -

“3.1 WHETHER the lower Court was right in assuming jurisdiction over the two applications the subject matter of this appeal (From Grounds 1, 3 and 6).

3.2 WHETHER the ruling of the lower Court met the standard prescribed by law. (From Grounds 2 and 3).

3.3 WHETHER the ruling of the lower Court was in consonance with the evidence before it (From Grounds 4, 5, 9 and 11).

3.4 WHETHER the lower Court was right in holding that this suit was an abuse of the process of the Court (From Grounds 7, 8 and 10).”

The 1st Respondent filed a brief on the 20th June, 2017 in which a preliminary objection was raised and argued.

On their part, the 2nd-4th Respondents filed their brief on 28th November, 2016 which was deemed on the 22nd May, 2019 as well as a Notice of Preliminary Objection on the 17th January, 2017.

In addition to their objection, the Respondents raised issues which are said to call for decision by the Court in their respective briefs. The 1st Respondent’s sole issue is as follows: -

“Whether the lower Court was right to assume jurisdiction over the 1st Respondent’s Application and set aside the execution of the judgment on the 1st jurisdiction on the 1st Respondent”.

The 2nd - 4th Respondents’ Issues are: -

“i. Whether the Trial Court was right to assume jurisdiction over the 2nd - 4th Respondents’ Application dated 20th October, 2014 and consequently set aside the judgement dated 26th November, 2013 and the execution thereon (GROUNDS 1, 8, 9 and 11)

ii. Whether the Trial Court was wrong for dismissing Suit No. LD/984/2012 and setting aside the Judgement dated 26th November, 2013 and execution thereon as same constitutes abuse of Court processes in the face of the existence of Suit No. LD/1820/02 (GROUNDS 2, 7, 10).”

The Appellant in response and answer to the objection and other arguments in the Respondents’ briefs, filed an Additional Respondents’ brief on 27th May, 2019.

Looking at the common complaints presented in the grounds of the appeal, the 1st Respondent’s sole issue appears to be the crucial and germane issue for the proper determination of the appeal and on the authority of Tarzoor v. Ioraer (2016) 3 NWLR (Pt. 1500) 463 @ 506; Okafor v. Abumofuani (2016) 12 NWLR (Pt. 1525) 117;Gov., Ekiti State v. Olubunmo (2017) 3 NWLR (Pt. 1551) 1 @ 23 and Sha v. Kwan (2000) 8 NWLR (Pt. 670) 685 @ 700, I intend to decide the appeal on the basis of that issue, taking into consideration the parties’ relevant submissions thereon.

However, in line with the prudent judicial practice, I would deal with and determine the preliminary objection to the competence of the appeal raised and canvassed by the Respondents, since it goes to and questions the Court’s jurisdiction to adjudicate over the appeal. The objection raised by the two (2) sets of Respondents; i.e., the 1st and 2nd - 4th Respondents, is premised on the same ground of the competence of the originating process filed in the Lower Court to commence the Appellant’s suit(s). The common ground of the objection is that the originating processes; writ of summons/and statement of claim, were signed in the name of a Law Firm and not by a registered legal practitioner whose name is on the Roll of the Supreme Court of Nigeria. That the suit was incompetent and the Lower Court lacked the requisite jurisdiction to adjudicate over it.

1st Respondent’s Submissions:

Citing Okorocha v. UBA Plc (2011) 1 NWLR (Pt. 1228) 348 @ 377 on the process to be considered by a Court in the determination of jurisdiction, Jev v. Iyortyom (2014) 14 NWLR (Pt. 1428) 575 @ 611 on the effect of lack of jurisdiction as well as Sections 2(1) and 24 of the Legal Practitioners Act, 2004 (LPA) and Order 6, Rule 2(3) of the Lower Court’s Rules, 2012, it is submitted that only Legal Practitioners provided for in Sections 2(1) and 24 of Legal Practitioners Act can validly sign any process to be filed in a Court of law in Nigeria and that any such process signed in the name of a Law Firm, is incurably bad and incompetent. Among other cases, the very famous case on the point; Okafor v. Nweke (2007) 10 NWLR (Pt. 1043) 52 along with FBN, Plc v. Maiwada (2013) 5 NWLR (Pt. 1348) 444 @ 499, are relied on for the submission and the Court is urged to uphold the objection and dismiss the appeal.

2nd -4th Respondents’ Submissions:

Substantially, the submissions are to the same effect as those made in the 1st Respondent’s brief on the objection and after reference to the case of Alawiye v. Ogunsanya (2013) 5 NWLR (Pt. 1348) 570, among others, on when a Court is said to be competent and the fundamental nature of jurisdiction in judicial proceedings, it is submitted that the Appellant’s case was not initiated by the due process of the law since the initiating processes were not signed in accordance with the requirement of the law, thereby robbing the Lower Court of the requisite jurisdiction to adjudicate over it. Order 6, Rule 2(3) of the Lower Court Rules, 2012 was cited and it is maintained that the initiating processes in the Appellant’s suit before the Lower Court were not signed by a legal practitioner known to law and so incompetent. The Court is urged to strike out the appeal.

Appellant’s Submissions:

In the Reply brief, it submitted for the Appellant that the objection by the Respondents is misconceived even though the position of the law in the cases cited in support thereof is incontrovertible, but inapplicable to the Appellant’s case. Citing pages 43 and 44 of the Record of Appeal, it is contended that the Writ of Summons was signed by Toba Olofinjana and conceded that the Statement of Claim at pages 45-47 of the Record of Appeal was, on the surface, not signed, but actually signed by the same Olofinjana; a legal practitioner as borne out at pages 39-42 of the 2nd Additional Record of Appeal received in the Court on the 13th January, 2017.

The Court is urged to discountenance the objection by the Respondents and determine the appeal on the merit.

Resolution:

The Learned Counsel for the Appellant is right when he said that the state or position of the law on the incompetence or invalidity of an originating or initiating processes filed in a Court of law, signed in the name of a Law Firm, is incontrovertible because it has been firmly established by the judicial authorities cited by the Learned Counsel for the Respondent in support of their objection, and more. See SLB Consortium Ltd v. NNPC (2011) 9 NWLR (Pt. 1252) 317; Abbas v. Tera (2013) 12 NWLR (Pt. 1338) 284; Nwaigwe v. Okere (2008) 5 SCNJ, 256; Braithwaite v. Skye Bank Plc (2013) 5 NWLR (Pt. 1346) 1; MTN Nig. COMM. Ltd v. C. C. Inv. Ltd (2015) 7 NWLR (Pt. 1459) 437. By way of a restatement, the law is that for a judicial process or any process to be filed in a Court of law for and on behalf of a party in a case to be valid and competent, it must be signed by an identified legal practitioner (in person) whose name is on the Roll of Barristers and Solicitors at the Supreme Court of Nigeria and who is entitled to practice as a Barrister and Solicitor as prescribed in the provisions of Section 2(1) and 24 of the Legal Practitioners Act. The law is also that a registered Law Firm, office or practice of Legal Practitioners does not constitute and is not an identified legal practitioner whose name is on the Roll and entitled, as a person, to practice as a Barrister or solicitor under the provisions of Section 2(1) and 24 of the Legal Practitioners Act and so does not possess the competence to sign a judicial/Court processes for and on behalf of a party to a case before a Court of law in Nigeria. In consequence whereof, any Court processes signed in the name of a Law Firm, Office or Practice for and on behalf of a party in a case before a Court is incurably incompetent and bad such that any subsequent proceedings based or predicated thereon would be vitiated, rendered null, void and of no legal effect by the incompetence of the process. For an initiating or originating judicial or Court process, its incompetence and invalidity would render all subsequent steps taken and/or proceedings conducted on the basis thereof , null, void and of no legal effect, ab initio, since there would be no foundation in law, upon which they could stand. By the popular saying of that Legal colossus and Judicial legendary; Lord Denning, MR, in the famous case of Mcfoy v. UAC (1962) AC, 152 @ 160 that “you cannot place something on nothing and expect it to stand.”

In order to determine an objection that an initiating or originating process filed in a Court to commence a suit or matter for and on behalf of a party, was not signed as required by the law, by a legal practitioner known to the law, the Court will look at and carefully consider the process in question, physically since it will speak for itself.

The initial originating process filed by the Appellant before the Lower Court is at pages 1-2 of the Record of Appeal and glaringly, no name of a legal practitioner is set out thereon as the Counsel for the claimant who signed it. All that appears at page two (2) of the process; Summons For Possession dated 20th September 2011, filed under the provisions of Order 53, Rule 3 of the Lower Court’s Rules, 2012, is as follows: -

“Funmi Ade-Jombo & Co

Counsel for the claimant

Imole Chambers

11, Abeokuta Expressway

Dopemu Agege Lagos State.”

A signature was inscribed on top or above the Law Firm of Funmi Ade-Jombo & Co., as Counsel for the Claimant. In the course of trial, the Lower Court on the 5th June, 2012 converted the summons for possession, to a writ of summons and ordered the claimant (Appellant) to file the writ and pleadings accordingly. Pursuant to that order, the Appellant filed a writ of summons and statement of claim both dated the 27th June, 2012 in Suit No. LD/984/2012, and these processes became the initiating processes used to commence the Appellant’s case against the Respondents before the Lower Court and on the basis of which the matter/case proceeded to trial. The Writ of Summons and Statement of Claim issued and filed pursuant to the order of the Lower Court were brought under Order 3, Rule 3 of the Rules of that Court and are at pages 43-44 and 45-46 respectively of the Record of Appeal. Patently, the writ of summons was signed at the signature column on page 44, by Toba Olofinjana, Esq., Claimant’s legal practitioners, of Toba Olofinjana’s Chambers. There is therefore an identified and identifiable name specifically set out on the writ of summons as the person and the legal practitioner who appended his signature thereon as the Appellant’s Counsel. The writ of summon was not signed in the name of the Law Firm of Toba Olofinjana’s Chambers as erroneously or wrongly claimed by the Respondents’ Learned Counsel.

On the Statement of Claim, although the Statement of Claim at pages 45-46 of the initial Record of Appeal, appears not to have a signature of the same Legal Practitioner who signed the Writ of Summons, and whose name appears thereon, the same Statement of Claim contained at pages 39 - 40 of the Further Additional Record of Appeal received in the Court on 13th January, 2017 and deemed on 8th June, 2018, contained and has a signature at page 40, which without any difficulty, can be observed to be substantially the same as the one on the Writ of Summons, even at a glance. None of the Respondents has challenged this Record of Appeal and so it is presumed to be correct and binding on the parties and the Court in the determination of the appeal. See Ekpemupolo v. Edremoda (2009) 8 NWLR (Pt. 1142) 166; Madueke v. Madueke (2012) 4 NWLR (Pt. 1289) 77;Adegbuyi v. A.P.C. (2015) 2 NWLR (1442) 1; Brittania-U Nig. Ltd. v. Seplat Pet. Dev. Co. Ltd (2016) 4 NWLR (Pt. 1503) 541.

In the result, contrary to the arguments of the Learned Counsel for the Respondents, the Record of Appeal before the Court shows that both Writ of Summons and Statement of Claim dated and filed on the 27th June, 2012 before the Lower Court which were the originating/initiating processes used to commence the Appellant’s Suit No. LD/984/2012 from which appeal emanated, were duly signed by a legal practitioner in accordance with the provisions of Sections 2(1) and 24 of the Legal Practitioners Act and so valid and competent in law for the purpose of invoking the requisite jurisdiction of the Lower Court over the suit.

The objection by the Respondents, I agree with the Learned Counsel for the Appellant, is misconceived, without merit and is dismissed.

I now revert to the identified issue which requires decision in the appeal.

Appellant’s Submissions:

It is submitted on Issue One (1) that the Lower Court has no jurisdiction to entertain the two (2) applications by the Respondents to set aside the judgment delivered in favour of the Appellant since it was a final judgement on the merit. Relying on Cardoso v. Daniel (1986) 2 NWLR (Pt. 20) 1 @ 45; Okokhue v. Obadan (1989) 5 NWLR (Pt. 120) 185 @ 204 and page 102 of Earl Jowett’s Law Dictionary, 2nd Edition, for the definition of a judgement on the merit, it is argued that once a Court delivers judgement in a suit before it, it becomes functus officio, as defined in 8th Edition of Black’s Law Dictionary adopted in Nwoko v. Azekwo (2002) 12 NWLR, page 151. Learned Counsel maintains that once a Court gives a judgement in a matter, it cannot re-open it and substitute a different decision or review or vary the judgement, except to correct accidental slips or clerical errors in order to give effect to its intention or meaning, placing reliance on Oladosu v. Olaojoyetan (2012) 1 NWLR, page 285; Obiora v. C. O. P. (1990) 7 NWLR (Pt. 161) 222 @ 232 and Onwuchekwa v. CCB Nig. Ltd (1999) 5 NWLR (Pt. 603) 409 @ 415. In addition, it is the contention of Counsel that since the Respondents were not parties to the Appellant’s case and were not joined by the Lower Court, it lacked the jurisdiction to entertain their applications to set aside the judgment delivered in the case as their joinder was a condition precedent to its jurisdiction over the Respondents, citing Madukolu v. Nkemdilim (1962) 1 ALL NLR, 587; Unipress Ltd v. Akintoyi (1992) 8 NWLR (Pt. 262) 737 @ 747 and Abubakar v. Nasamu (No.1) (2012) 17 NWLR, page 407, among other cases in support of the argument.

The Court is urged to set aside the Ruling by the Lower Court for want of jurisdiction on the part of Court to entertain the Respondents’ applications.

On Issues 2 and 3, it is submitted that since there were two (2) separate applications by the Respondents, the Lower Court ought to have delivered a separate Ruling in respect of each and has no jurisdiction to deliver a single Ruling in the two (2) applications even though were consolidated. Counsel said the purpose of consolidation is only for convenience and that it does not affect the individual character and identities of the maters consolidated, on the authority of Enigwe v. Akaigwe (1992) 2 NWLR (Pt. 225) 505 @ 535.

It is also the argument of learned Counsel for the Appellant that the Lower Court in the Ruling appealed against, referred to the deposition of Adetoki, Esq., which was not in the affidavit evidence before it and an issue not canvassed by any of the parties. According to him, relying on, inter alia, Ogiamien v. Ogiamien (1967) NMLR, 245, Adeosun v. Babalola (1972) 7 NSCC, 401 @ 405 and Olubode v. Oyesina (1977) 11 NSCC, 286 @ 291, the Ruling was perverse and should not be allowed, to stand as it has occasioned a miscarriage of justice since without reference and admission of the said deposition, the decision would have been otherwise. Several other cases on the qualities of a good judgment were referred to and it is further argued that the Lower Court did not draw correct inference from Exhibit E and failed to pronounce on all the issues before it. Olowolagba v. Bakare (1998) 3 NWLR (Pt. 543) 528 @ 534 and Ukpai v.Okoro (1983) 2 SCNLR, 380 are referred to and the reliefs sought in the applications before which were said not to have been pronounced upon in the Ruling, are stated. Then the authority of Attorney General of the Federation v. Ijewere (1995) 8 NWLR (Pt. 415) 618 @ 625 and Anatogu v. Iweka (1995) 8 NWLR (Pt. 415) 547, were referred to on the conditions and constituent of fraud which can lead to setting aside a judgment of a Court and the consequence thereof.

On Issue 4, it is submitted that the issues and parties in the Appellant’s case and the Suit No. LD/1820/2002 were not the same even though the matter is the same, and reference was made to page 1 and 299, 45-46 of the Record of Appeal as well as Pages 49-69 and 75 of the Additional Record of Appeal. Arubo v. Aiyeleru (1993) 3 NWLR (Pt. 280) 126 @ 142 and 146, Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 @ 188-9, among other cases, were cited on the principle of abuse of Court process and consequence thereof and it is argued that the parties are not the same since the Appellant was sued as Defendant in Suit No. LD/1820/2002 while in suit before the Lower Court, he was the claimant, relying on the statement in Ekpuk v. Okon (2002) 5 NWLR (Pt. 780) 445 and Okafor v. Attorney General, Anambra State (1991) 6 NWLR (Pt. 200) 659 @ 681. It is submitted that the Lower Court erred in holding that the Appellant’s case is an abuse of Court process in relation to Suit No. LD/1820/2002.

The Court is urged, in conclusion, to allow the appeal and set aside the Ruling of the Lower Court.

1st Respondent’s Submission:

The submissions are that the decision of the Lower Court which the 1st Respondent applied to set aside, was entered in default of pleadings under Order 20 of the 2012 Rules and that Rule 12 of Order 20 as well as Order 30, Rule 4(2) of the Rules confer a discretion on the Lower Court to set aside such a judgment. The cases of Maduike v. Tetelis Nigeria Limited (2015) LPELR (no page provided), Elias v. Ecobank LER (sic) (2016) CA/L/873/2014 AND Olatunji v. Owena Bank (2002) 15 NWLR (Pt. 790) 272 @ 290 were cited on the power of the Lower Court under Order 20, Rule (2012) of its Rules, to set aside its decision made in the absence of jurisdiction and to set aside execution carried out on the basis of such decision, for being wrongful. Akinyemi v. Soyanwo (2006) 13 NWLR (Pt. 998) 496 @ 511 was also referred to and it is said that the Lower Court has the jurisdiction to entertain and decide “the matter” one way or the other.

In conclusion, the Court is urged to dismiss the appeal in its entirety and uphold the decision by the Lower Court.

2nd - 4th Respondent Submissions:

The submissions on issue 1 are the same with those of the 1st Respondent reviewed above and it is further submitted, on the authority of FBN, Plc v. Akpan (2012) 2 NWLR (Pt. 1283) 138 @ 144, that a Court of record has the power to set aside its order or judgment made in the absence of a party on application by the affected party, until it pronounces a judgment on the merit or by consent of the parties. N.U.R.T.W. v. R.T.E.A.N (2012) 10 NWLR (Pt. 1307) 170 @ 187 and Green v. Green (1987) 3 NWLR (Pt. 160) 480 are referred on the judgment of a Court given in the absence of a necessary or desirable party and it is submitted that the 2nd - 4th respondents showed by Affidavit evidence before the Lower Court that they were not made parties to the Appellant’s case and were not aware of the suit until when execution of the judgment there in was levied on their property, the subject matter of the Suit No. LD/1820/2002 between them and the Appellant. According to learned counsel, there was material suppression and gross misrepresentation of facts as to the existence of Suit No. LD/1820/2002 by the Appellant on the Suit No. LD/984/2012, citing page 464 of the Record of Appeal and Tomtec Nigeria Limited v. F.H.A. (2009) 12 SC (Pt. 3) 162 @ 190-1, among other cases. It is then submitted that the Lower Court was right to have assumed jurisdiction over the application and was right to set aside the judgment obtained by fraud and misrepresentation of facts on the authority of Ibrahim v. Ojonye (2012) 3 NWLR (Pt. 1206) (no page provided) but is 108.

On issue 2, it is contended that the Lower Court was right to have held that the Appellant’s suit was an abuse of Court process in view of the Suit No. LD/1820/2002 and the cases of Dapialong v. Dariye (2007) 8 NWLR (Pt. 1036) 234 @ 322 and Umeh v. Iwu (2008) 2 - 3 SC (Pt. 1) 135 @ 152 inter alia, are cited on what constitutes an abuse of Court process and consequence thereof.

The Court is urged to hold that the appeal is lacking in merit and to dismiss same with substantial costs in favour of the 2nd - 4th Respondents.

Resolution:

For being elementary now in our judicial jurisprudence, the crucial and fundamental nature as well as the consequence or effect of a defect or absence of jurisdiction of a Court to adjudicate over a matter or case on any cognizable ground, needs only be acknowledge and restated, briefly for the purpose of record. Being the life blood of judicial proceedings, defect in or lack of jurisdiction on the part of a Court to adjudicate over a matter or case, will necessarily deprive the Court of the judicial power and authority to conduct valid proceedings, make binding findings or orders and reach decisions capable of being enforced in a case. Situations, circumstances in which and the factors that must exist to enable a Court to assume and exercise the requisite jurisdiction to entertain and adjudicate over a matter or case are also now common knowledge in the Courts of record in Nigeria from the time of Madukolu v. Nkemdilim (supra) and do not need repetition all the time.

Ordinarily, the jurisdiction of Courts of law to adjudicate over matters or cases that may be brought before them, is vested or conferred on them, by the statutes or Laws by which they were established or created, be it the Constitution or the statutes or laws enacted pursuant to the provisions of the Constitution. Such jurisdiction vested or conferred on the Courts by the statutes or Laws, can only be expounded but not expanded or extended by the Courts. See Governor, Kwara State v. Gafar (1997) 7 NWLR (Pt. 511) 51, Okulate v. Awosanya (2000) 1 SC, 107, Messrs NV Scheep v. The MV' S. Araz (2000) 12 SC (Pt. 1) 164, Abbas v. C.O.P. (1998) 12 NWLR (Pt. 577) 308, Oyakhire v. Umar (1998) 3 NWLR (Pt. 542) 438, Offion v. Director of Prisons (1999) 14 NWLR (Pt. 638) 330, Sanyaolu v. INEC (1999) 10 (Pt. 612) 600.

In this regard, it is important to note that there are two (2) categories of jurisdiction as far as the Courts of law are concerned. The first category is jurisdiction as a matter of substantive law conferred on or vested in a Court by substantive legislations, including the Constitution, which, as stated above, is specifically provided for by the relevant statutes or law. This category of jurisdiction cannot be altered, expanded or extended either by acquiescence or consent of the parties/litigants, or by the Courts. Once a statute/law says that a Court lacks jurisdiction to adjudicate over a matter or case, then the parties cannot by agreement or submission or acquiescence confer valid jurisdiction on that Court to entertain and adjudicate over the matter. On its part, a Court lacks the legal and judicial competence to vest itself with requisite jurisdiction to adjudicate over such a matter or case. Onyema v. Oputa (1987) 6 NSCNJ, 176, Olaniyi v. Aroyehun (1991) 5 NWLR (Pt. 194) 652, Dateme v. Duke (2006) ALL FWLR (Pt. 313) 159, Oloruntoba Oju v. Abdul-Raheem (2009) 6 MJSC (Pt. 1) 1, Nyame v. FRN (2010) 7 NWLR (Pt. 1193) 344.

The second category of jurisdiction as a matter of procedural law is that which deals with the mode, procedure or manner in which the substantive jurisdiction of a Court may be exercised. Here, a party may and can waive a matter of procedural law and the Court may in such a situation, proceed with the exercise of its substantive jurisdiction over a matter/case on the basis of the agreement, acquiescence, or consent or voluntary submission of the parties in respect of the procedural requirement. See Ndayako v. Dantoro (2004) 13 NWLR (pt. 889) 187, Etim v. Obot (2010) 12 NWLR (Pt. 1207) 108.

The complaint of the Appellant under his issue 1 appears to fall into the category of procedural jurisdiction as his grouse, is that the Lower Court lacks the jurisdiction to entertain the applications by the Respondents to set aside its final judgment which was delivered on the merit.

Generally and procedurally, once a Court of law pronounces or delivers a final decision/judgment in a matter/case, whether on the merit or otherwise, it becomes functus officio in the matter/case, having exercised its jurisdiction fully, and would lack the requisite judicial competence or jurisdiction to re-open, for the purpose of re-hearing or review of the case or decision/judgment pronounced/delivered by it. In other words, a Court cannot subsequently sit on appeal over its final decision/judgment once entered pronounced/delivered in a case. Akibu v. Race Auto Supply Company Limited (2000) 14 NWLR (Pt. 686) 190, Mark v. Eke (2004) 5 NWLR (Pt. 865) 54, Abah v. Jabusco Nigeria Limited (2008) 3 NWLR (Pt. 1075) 526, Skymit Motors Limited v. UBA, Plc (2012) 10 NWLR (Pt. 1309) 49, Stirling Engr. Nig. Ltd v. Yahaya (2005) 11 NWLR (Pt. 135) 181.

However, another established general position of the procedural law, is that Courts of record possess and have the inherent jurisdiction to re-consider and set aside their final orders/decisions/judgments in identified situation or appropriate circumstances.

These include when: -

(a) The order/decision/judgment was obtained by fraud or deceit in the Court by the one or more of the parties;

(b) The order/decision/judgment is a nullity;

(c) The Court was obviously misled into making the order/decision or giving the judgment under a mistaken belief that the parties consented to it;

(d) The order/decision/judgment was made/taken/given without or in, the absence of the requisite jurisdiction;

(e) The proceedings that produced the order/decision/judgment were such as to deprive it of the character of a legitimate adjudication.

See Alao v. ACB (2000) 9 NWLR (Pt. 672) 570, Dickson v. Okoi (2003) 16 NWLR (Pt. 846) 397, Ejorkele v. Nwafor (2008) 15 NWLR (Pt. 1110) 418, Alawiye v. Ogunsanya (2013) 5 NWLR (Pt. 1348) 570, Tomtec Nigeria Limited v. FHA (2009) 18 NWLR (Pt. 1173) 538, Bounwe v. REC, Delta State (2006) 1 NWLR (Pt. 961) 286.

What was the nature of the judgment delivered by the Lower Court on 26th November, 2013 which it set aside in the Ruling appealed against?

As a foundation, a judgment in relation to a Court of law is defined in Section 318 of the 1999 Constitution (as amended) in terms of a “decision” which is said to include:-

“any determination of that Court and includes judgment, decree, order, conviction, sentence or recommendation.”

By this definition, a judgment includes or means a decision or order made by a Court in the course of or at the conclusion or end of its proceedings in a matter or case which determines the rights and obligations of the parties in the matter or case. In this regard, a judgment or decision of a Court of law may broadly be classified into: -

(a) An interlocutory decision/judgment and

(b) A final decision/judgment.

In Ebokam v. Ekwenibe & Son Trading Company Limited (1999) 7 SC (Pt. 1) 39, (1999) 10 NWLR (Pt. 622) 242, Kalgo, JSC explained the distinction between these classes of a decision/judgment of a Court when he said: -

“It is well established by a myriad of decided cases both in England and in this Country that there are two (2) distinct tests to be applied in deciding whether a decision of a Court is interlocutory or final. The two classical authorities upon which these tests are formulated are Bozson v. Altrincham U.D.C. (1903) 1 KB 547 and Salaman v. Warner (1891) 1 QB 734. In the Bozson’s case, at page 548 Lord Alverstone CJ said: -

“It seems to me that the real test for determining this question ought to be this: - does the judgment or order as made, finally dispose of the rights of the parties? If it does, then I think it ought to treated as a final order: but if it does not, it is then in my opinion, an interlocutory order.”

I entirely agree with these prepositions and what I gather from them is that where decision under consideration clearly and wholly disposes of all the rights of the parties in the case, that decision is final. But where the decision only disposes of an issue or issues in a case, leaving the parties to go back to claim other rights in the Court, then that decision is interlocutory. And in order to determine whether the decision is final or interlocutory, the decision must relate to the subject matter in dispute between the parties and not the function of the Court making the order.”

See also Aqua Limited v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622, Akinsanya v. UBA Limited (1986) 4 NWLR (Pt. 35 273, Omonuwa v. Oshodin (1985) 2 NWLR (Pt. 10) 924, Falola v. UBA, Plc (2005) 2 NWLR (Pt. 924) 405, Mohammed v. Olawunmi (1990) 2 NWLR (Pt. 133) 458, Assam v. Okposin (2000) 10 NWLR (Pt. 676) 659, Universal Trust Bank, Plc v. Odofin (2001) 8 NWLR (Pt. 715) 296, Igunbor v. Afolabi (2001) 11 NWLR (Pt. 723) 148, Ogolo v. Ogolo (2006) 5 NWLR (Pt. 972) 163.

In addition to the broad classes of a judgment, a final judgment/decision of a Court may be one on the merit or a judgment/decision given in default of either appearance or of defence; otherwise known as a default judgment. In simple terms, a judgment on the merit is a decision given/delivered by a Court after taking evidence from the parties on all material issues of fact in dispute in a case, hearing the parties on the relevant laws and determining their rights and obligations based on the sustainability on both the facts and in law.

On its part, a default judgment/decision is one given by a Court when a party, usually the defendant in a case, fails or refuses to take steps provided for by the Rules of a Court to either enter a formal appearance to indicate his intention to defend the case and/or to omit, fail or refuse to file a defence in the case as prescribed by the rules of the Court. In the case of N.U.B. Limited v. Samba Pet. Co. Ltd. (2006) 12 NWLR (Pt. 992) 98 a judgment on the merits and in default were described as follows:-

“A judgment given after a normal trial, that is to say after evidence is taken, and submissions are made on issues of facts and the law arising from the evidence, is a judgment on the merits.

On the other hand, default judgment may arise from default of appearance or defence such judgments are not judgments on the merits since it was obtained by failure of the defendant to follow certain rules of procedure.”

Oputa, JSC, in Cardoso v. Daniel (1986) 2 NWLR (Pt. 20) 1 @45, defined a judgment on the merit as follows: -

“A judgment is said to be on the merits when it is based on the legal rights of the parties as distinguished from mere matters of practice, procedure, jurisdiction or form. A judgment on the merits is therefore a judgment that determines, on an issue of law or of facts, which party is right.”

Then, in U.T.C. v. Pamotei (2002) FWLR (Pt. 129) 1557 @ 1609, Karibi-Whyte, Jsc, explained a default judgment thus:-

“The word default which qualifies the noun “judgment” seems to me to mean a judgment obtained by a plaintiff in reliance on some omission on the part of the defendant in respect of something which he is directed to do by the rules. The word is used very widely to signify situations where a person has omitted to do what he is required to do having regard to the law governing his actions.”

See also Bello v. INEC (2010) 8 NWLR (Pt. 1196) 342, Oyegun v. Nzeribe (2010) 7 NWLR (Pt. 1194) 577, Gambo v. Ikechukwu (2011) 17 NWLR (Pt. 1277) 561, Ogundoyin v. Adeyemi (2001) 7 SCNJ, 187, Group Captain Ibok v. Etubom Honesty II (2006) 6 NWLR (Pt. 1029) 55.

As shown earlier, generally, a Court would lack the vires or judicial power to set aside its final judgment delivered on the merits save in the situations or circumstances, enumerated, among others. However, a default judgment, though may be final, may be and can be set aside by a Court as may be stipulated by its Rules of practice since it is one given on ground of failure to comply with the requirements of the Rules governing the action.

Now, the judgment of the Lower Court delivered on the 26th November, 2013 (which appears at page 461-467 of the Record of Appeal) commenced as follows: -

“This suit was first initiated by an originating summons filed pursuant to the special procedure for recovery of property as enshrined in Order of the 2012 HCLCPR. However pursuant to an order of Court made on 5th June 2012, the summons was converted to a writ and parties ordered to file frontloaded pleadings. Thus, on 27/06/12 the claimant filed a frontloaded statement of claim. The processes were duly served on the defendants as evidence by the bailiffs’ affidavit of service placed before me. The defendants however elected not to respond in any manner to the Court processes. Pursuant to the claimants’ application, the suit was set down for a hearing on 22/01/13, as an undefended claim.”

In the course of the judgment, the Lower Court stated at page 462 of the Record of Appeal that: -

“On said date learned counsel for the claimant S. O. Ogun, Esq. adopted his final address filed on 28/06/13 and was granted leave to make oral submissions in further elucidation of same.”

Then at page 463 of the Record of Appeal the Lower Court said that:-

“After a careful consideration of the one-sided pleadings and evidence led, I am persuaded that the sole issue for determination is whether the claimant has proved his case to entitle him to the reliefs sought.”

From these portions of the judgement of the 26th November, 2013, it is beyond argument that the judgement was given “after a careful consideration of the one-sided pleadings and evidence led” by the Lower Court in the case before it “in view of the defendants” non-compliance with Order 17, Rule 1 of the 2012 HCLCPR and on the ground that ….

The defendants however elected not to respond in any manner to the Court processes.

To put it briefly, the judgment of 26th November, 2013 was a judgement given or delivered on ground of failure or default by the Respondents in the case to comply with the provisions of the Lower Courts Rules requiring them to have entered appearance and filed a defence to the action against them. Undoubtedly, the judgment qualifies as a default judgment defined and illustrated in the authorities referred to above on the point. I should perhaps point out that the fact that the plaintiff in the case filed pleadings and called evidence which were considered by the Lower Court in the judgment did change its character as a default judgment given on the one sided pleadings and evidence on the ground that the Defendants failed, omitted or even refused to comply with or abide by the rules of procedure of the Lower Court. The judgment clearly lacks the vital components of a judgment on the merits which finally determined the rights and obligations of the parties on the basis of facts presented in their respective pleadings and the evidence adduced by them in support of their respective cases to bring out the merits to be decided by the Lower Court. In these premises, the learned counsel for the Appellant is not correct in describing the Lower Court’s judgment of 26th November, 2013 as a final judgment on the merit, when as demonstrated, it is one given in default of appearance/and/or defence by the Respondents.

Order 30, Rules (2) and 4(2) of the 2012 Rules of the Lower Court provide for situations where a Defendant to a case fails to appear when a cause is called for hearing and for a judgment obtained in default of appearance by a party. They are as follows: -

“2. When a cause is called for hearing if the claimant appears and the Defendant does not appear, the Claimant may prove his claim, so far as the burden of proof lies upon him.

4(2) Any Judgment obtained where any party does not appear at the trial may be set aside by the Judge upon such terms as he may deem fit.”

Order 25 provides for Case Management Conference and Scheduling and in Rules (5) (b) and (7) says: -

“5(b) in the case of a Defendant, enter Judgment against him where appropriate.

(7) Any Judgment given under Rule 5 or Rule 6(2) above may be set aside upon an application made within seven (7) days of the judgment or such other period as the Judge or ADR Judge may allow.

The application shall be accompanied by an undertaking to participate effectively in the Case Management Conference or ADR, as the case may be.”

It may be recalled that the Lower Court has stated in the judgment of 26th November, 2013 that due to the non-compliance with the Rules by the Respondents, the case did not go through the case management conference.

The above provisions of Orders 25, Rules 5(b) 7 as well as 30, Rules 2 and 4(2), clearly empower the Lower Court with the judicial discretion to set aside a judgment entered or given in default of appearance or defence by a party, as it may deem fit on the peculiar facts and circumstances of a case. Being a judicial discretion the law requires that it be exercised judicially and judiciously by the Lower Court in all cases.

In the case of Mark v. Eke (2004) 1 SC (Pt. II) 1, it was stated that: -

“There is indeed, inherent power for a Court to set aside its judgment entered into in a default of taking any procedural step such as in default of appearance, generally called a default judgment.”

See also Williams v. Hope Rising Vol. Funds Society (1982) 1-2 SC, 145, Jonason Triangles Limited v. C.M. Partners Limited (1999) 1 NWLR (Pt. 588, Delta State Government v. Okon (2002) 2 NWLR (Pt. 752) 665, Nasco Town, Plc v. Nwabueze (2014) LPELR-22526 (CA), Ogolo v. Ogolo (2006) 5 NWLR (Pt. 972) 173, Oduola v. Coker (1981) 5 SC Reprint) 120.

Order 20, Rule 12 of the 2012 Rules of the Lower Court then provides for the conditions/or situations in which a final judgment by default or default judgment entered by that Court may be set aside. The provisions are thus: -

“Any judgment by default whether under this Order or under any Order of these rules shall be final and remain valid and may only be set aside upon application to the Judge on grounds of fraud, non-service or lack of jurisdiction upon terms as the Court may deem fit.”

These provisions are in clear, straight forward and simple terms that a default judgment or judgment by default entered by the Lower Court under the Rules shall be final, remain valid and may only be set aside on any of the following grounds:-

(a) Fraud or,

(b) Non-service or,

(c) Lack of jurisdiction.

It would appear that the provisions confer or vest in the Lower Court the judicial discretion to set aside a final default judgment or judgment by default only on any one of grounds stipulated therein and no more. However, as shown earlier, Order 30 Rule 4(2), which are later and subsequent to the provisions, vests in the Lower Court the discretion to set aside such a judgment upon such terms to be determined by it as it may deem fit in the circumstances of a case.

The community and harmonious effect of the provisions of both Order 20, Rule 12 and Order 30, Rule 4(2) is that the Lower Court is vested with the requisite procedural jurisdiction to set aside a final default judgment or judgment default of appearance/defence on any of the stipulated grounds or upon such terms as it may deem fit in the circumstances of a case.

In the Ruling appealed against the Lower Court inter alia, found and held at page 487 - 9 of the Record of Appeal as follows: -

“With respect to the 2nd application filed on behalf of the Alayande Family dated 20/10/14, it is evident that the family is laying claim to the subject property as their family land. It is equally evident that they have denied alienation of any portion of it to the judgment creditor/respondent herein. In addition, the Alayande Family deny having sold, alienated or allocated any portion of their family land to either of the two judgment debtors in this suit. Furthermore, they have demonstrated clearly that a previous suit as in Suit No:LD/1820/2002 is still pending between the family and the judgment creditor/respondent herein with respect to the same parcel of land as shown on Exhibit MAT 1. It is therefore evident to this Court, that the application dated 20/10/14, filed by the 2nd set of applicants is predicated on the tripartite grounds that (i) the originating processes issued in this suit were never served on them, (ii) That this present action is an abuse of process in the light of the pendency of Suit No: LD/1820/2002 between the same parties seeking the same reliefs and in respect of the same subject matter, (iii) Finally that the judgment herein was obtained by fraud and or suppression of material facts.

Abuse of process in a term generally applied to a proceeding, which is wanting in bona fide, is frivolous, vexatious or oppressive. It is usually involves some bias, malice, or some deliberateness and some desire to misuse or pervert the system of administration of justice. It can certainly manifest in many ways and I do not think that the category of what amounts to abuse of process is closed. For instance the use of a civil action to initiate an attack on a criminal Court decision (for any other decision) amounts to an abuse of process. Ogbuagu, JSC in ABUBAKAR VS. AP. LTD (2007) 18 NWLR [Pt. 1066] @ 319 esp. @ 62 paras A denotes a perversion of the system by the use of a lawful procedure for the attainment of unlawful results ... it is a term generally applied to a proceeding which is lacking in bonfides. It has a tinge of malice. A situation of abuse of the process of Court most often arises when a party improperly or maliciously initiates another Court process when a similar one exists. By the second process, the party is involved in perversion not only of the process but also of justice. The abuse consists in the intention, purpose and aim of the person exercising the right using the judicial process to harass, irritate and annoy the adversary, and is designed to interfere with smooth administration of justice. A Court of law has the legal duty and responsibility to reject a process, which is an abuse. Finally, it is beyond controversy that it is an abuse of the Court process for different action between the same parties to be filed in different or even the same Court simultaneously. See: OLUTINRIN vs. AGAKA (1998) 6 NWLR [Pt. 554] @ 366; U.B.A. PLC VS. MODE NIGERIA LIMITED (1999) 12 NWLR [PT. 680] @ 16 and SARAKI vs. KOTOYE (1992) 9 NWLR [Pt. 264] @ 156. In the instant case this Court is satisfied by virtue of Exhibit MAT 1 that a previous suit as in Suit No: LD/1820/2002 is pending between the 2nd set of applicants and the judgment creditor/respondent herein. In fact the judgment creditor/respondent is the counter-claimant in the said suit filed suit by the Alaynade Family. It is equally manifest that the subject property in the previous action as in Suit: LD/1820/2002 is the same as the subject matter in this suit. Furthermore, the claims and counterclaims in the previous suit relate to who has a better title, which is the same issue as in this present suit. I am persuaded that the 2nd set of applicants have shown unequivocally the existence of multiple actions on the same subject matter, seeking the same reliefs involving the same parties is before the same Court. In the light of this “trinity of parties, subject matter and reliefs sought” I am satisfied that this latter action as in Suit No: LD/984/2012 which culminated in a judgment dated 26/11/13 is an abuse of process and I so hold. This has been a fraudulent proceeding and is liable to be set-aside in its entirety. The ultimate sanction is therefore applied and the entirety of the claims in Suit No. LD/984/2012 be and is hereby dismissed for being an abuse of process. The judgment in this suit entered in favour of the claimant/judgment creditor on 26/11/13 be and is hereby set aside for being fraudulently procured. Finally, the execution purportedly levied on 02/04/14 having been anchored on a fraudulent judgment be and is hereby set-aside in its entirety.”

The grounds on which the Lower Court set aside the judgment of 26th November, 2013 in the above passage are that: -

(i) The Appellant’s Suit No. LD/984/2012 in respect of which the judgement was given, was an abuse of its process in relation to the pending Suit No. LD/1820/2002 and

(ii) That the judgment was fraudulently procured.

Learned Counsel has argued that the parties in the two (2) suits are not the same because the Appellant was sued as a defendant in Suit No. LD/1820/2002 while he is the claimant in the Suit No. LD/984/2012. By this statement, Counsel has expressly conceded that the Appellant is a party in the two suits, which primarily, were indisputably filed in respect of claims on the Alayande Family land by both parties against each other.

It is not a requirement of the law that parties to multiple suits must be either plaintiffs/claimants or defendants in all the suits for an abuse of Court process to arise in the subsequent suits. The recognized and established position is that the parties in the multiple suits be the same in whatsoever capacity they may be in the different suits. Furthermore, addition or subtraction from the parties in multiple suits does not necessarily make the parties different so long as the same parties in the suits remain parties along with the addition of new or other parties or non-inclusion of other parties in the different suits. In the present appeal, the fact that the Appellant was claimant in Suit No. LD/984/2012 and a defendant in Suit No. LD/1820/2002 did not make parties different in the two (2) suits since he admittedly is a party to both suits along with the some other parties thereto, for the purpose of the principle of abuse of Court process on ground of multiplicity of suits.

The Appellant’s Suit No. LD/984/2012 was against the member(s) of the different branches of the Alayande Family while the Suit No. LD/1820/2002 was instituted by a member of one of branches of that family against the Appellant and members of other branches of the family. So the subject matter of the two (2) suits was the Alayande Family land in respect of which claims were made by the parties in the two (2) suits. In these premises, the parties as well as the subject matter in the two (2) suits are the same. The reliefs claimed in the suits are substantially the same in the sense that ownership of or the right thereto over parcels or portions of the Alayande Family land were the principal and material issues joined by the parties. The issues to be determined by the Lower Court in the two (2) suits were therefore the same.

The Lower Court has adequately considered the principle of abuse of a Court’s process as settled by the judicial authorities referred to in the portion of the Ruling set out above. Among the cases in which the principle, which is said to be imprecise and capable of manifesting itself in a variety of infinite ways, was expounded are the famous Okafor v. Attorney General, Anambra State (1991) 6 NWLR (Pt. 200) 659, The Vessel “SAINT ROLAND” v. Osinloye (1997) 4 NWLR (452) 387, FRN v. Abiola (1997) 12 NWLR (Pt. 448) 444, NV Scheep v. MV”S” ARAZ” (2001) FWLR (Pt. 134) 543, Jonpal v. Afribank (2003) 8 NWLR (Pt. 822) 290, N.I.M.B v. UBN, Plc (2004) 12 NWLR (Pt. 888) 599.

Looking at the parties and the pleadings in both the Appellants’ Suit No. LD/984/2012 AND THE Suit No. LD/1820/2002, the Lower Court is quite right in law, and I completely agree with it, that the parties, the subject matter and the material issues in dispute between the parties in the suits are the same to make the Appellant’s Suit No. LD/984/2012 an abuse of the earlier pending Suit No. LD.1820/2002 in which the Appellant made counter claims on ownership or right of title to portions or parcels of the Alayande family land against some members of the family. For the Appellant to have instituted the subsequent suit without notice to and joining the members of the family directly, was patently, fraudulent and aimed at achieving, by finagle, what he set out to claim in the counter claim against the same members in the Suit No. LD/1820/2002. The Appellant improperly used and employed the process of the Lower Court in the subsequent suit to pervert the cause of justice, making the suit deliberately vexatious and oppressive.

For the aforenamed reasons, the Lower Court was right to have granted the Respondents’ applications and to have set aside the default judgment of 26th November, 2013 since the suit in which it was delivered was an abuse of its process and the judgment fraudulently obtained by suppression of the fact of the existence of an earlier pending suit between the parties, on the same subject matter and material issues of dispute.

I endorse that decision by the Lower Court which is completely based and predicated on the Affidavit evidence placed before it by the Respondents.

In the final result, there is no merit in this appeal and it is hereby dismissed in its entirety.

The Ruling by the Lower Court delivered on the 10th February, 2015 in the Suit No. LD/984/2012 is hereby affirmed.

There shall be costs of Five Hundred Thousand Naira (N500,000.00) for the prosecution of the appeal in favour of the Respondents to be paid by the Appellant.

**JOSEPH SHAGBAOR IKYEGH, J.C.A.:**

I read in draft the exhaustive judgment prepared by my learned brother, Mohammed Lawal Garba, J.C.A., (Hon., PJ) and I agree with the resolution of the issues and the conclusion reached therein and abide by the consequential order(s) contained therein.

**TIJJANI ABUBAKAR, J.C.A.:**

My Lord and learned brother Garba JCA, granted me the privilege of reading before now the leading Judgment prepared and rendered by him in this appeal.

The reasoning and conclusion in the leading Judgment are accord with my own, I therefore endorse all and adopt the Judgment as my own. I have nothing extra to add.-end!