

IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE OZORO JUDICIAL DIVISION
HOLDEN AT OZORO
BEFORE HIS LORDSHIP HONOURABLE JUSTICE E.O. ODEBALA (JUDGE)
ON MONDAY THE 12TH DAY OF MAY 2025

MRS. JUSTINE OWIRORO UKPEVO - - -

SUIT NO: HCZ/44/2021

AND

CLAIMANT/RESPONDENT

1. MR. PROSPER ODION - - -

1ST DEFENDANT/RESPONDENT

2. MR. UKPEVO EFE HARRISON - - -

2ND DEFENDANT/APPLICANT

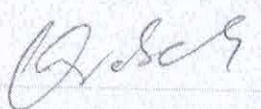
ENROLMENT OF ORDER

Upon the 2nd Defendant/Applicant's preliminary objection filed unto court to wit:

1. An Order of the Honourable Court striking out this suit HCZ/44/2021 as it amounts to an abuse of court process and multiplicity of action, Judgment having been delivered on the subject matter between the Claimant and the 2nd Defendant by a court of coordinate jurisdiction in PHC/3312/MC/2020.
2. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances.

COMING UP FOR HEARING AND DETERMINATION before His Lordship, Hon. Justice E.O. Odebala (Judge) on Monday the 12th day of May, 2025. Case called. Parties are absent. E.C. Asakpoku Esq humbly appears for the 1st Defendant. V.U. Uzochukwu Esq humbly appears for 2nd Defendant/Applicant.

AND THE COURT having heard the counsel argue the application, ORDERED AS FOLLOWS:



E.O. Odebala
Judge

In sum, it is my dispassionate view, that Suit No.: HCZ/44/2021 is an abuse of court process and as such, it is accordingly dismissed.

Cost follow event. Cost of N200,000.00 (Two Hundred Thousand Naira only) is awarded in favour of the 2nd Defendant/Applicant against the Claimant/Respondent.

ISSUED AT THE HIGH COURT OF JUSTICE, OZORO under the Hand of the presiding Judge and the seal of this Court, this 12th day of May, 2025.

HIGH COURT OF JUSTICE
OZORO
CERTIFIED TRUE COPY
REGISTRAR
SIR R. IGHOVOJAH
ASSISTANT DIRECTOR

HIGH COURT OF JUSTICE
DELTA STATE
NIGERIA
DATE _____
OZORO



IGHOVOJAH REUBEN
Assistant Director of Court

CTC ——— N500
paid via RRR
No 1112-5587-9420
21/5/2025

IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE OZORO JUDICIAL DIVISION
HOLDEN AT OZORO
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ON MONDAY THE 12TH DAY OF MAY 2025

SUIT NO: HCZ/44/2021

MRS. JUSTINE OWIRORO UKPEVO	-	-	-	CLAIMANT/RESPONDENT
AND				
1. MR. PROSPER ODION	-	-	-	1 ST DEFENDANT/RESPONDENT
2. MR. UKPEVO EFE HARRISON	-	-	-	2 ND DEFENDANT/APPLICANT

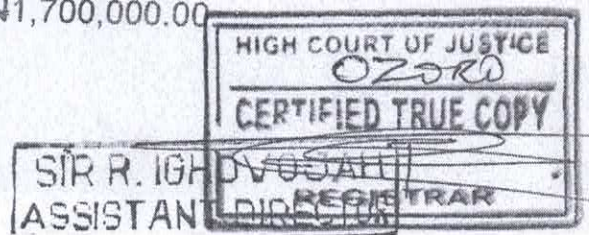
RULING

By a Notice of Preliminary Objection dated and filed on the 6th of December 2024, the 2nd Defendant/Applicant shall be heard through his counsel praying this Honourable Court for the following orders:

1. An Order of the Honourable Court striking out this Suit HCZ/44/2021 as it amounts to an abuse of court process and multiplicity of action, Judgment having been delivered on the subject matter between the Claimant and the 2nd Defendant by a court of co-ordinate jurisdiction in PHC/3312/MC/2020.
2. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this Notice of Preliminary Objection is brought are as follows:

1. That the Claimant on the 23/10/2020 filed a divorce petition against the 2nd Defendant, her husband in PHC/3312/MC/2020 seeking for reliefs including family properties.
2. That the 2nd Defendant did also cross-petitioned by an answer and cross petition filed on the 10/12/2020 and by relief 4 (f and g) sought for reliefs on the subject matter before this court.
3. That during the hearing and while PHC/3312/MC/2020 was pending, the Petitioner now the Claimant file this Suit HCZ/44/2021 before this Honourable Court on same subject matter.
4. That on the 13/08/2024, the learned trial Judge in PHC/3312/2024 delivered her Judgment and held in paragraph 3 of her Judgment Order that:
"It is also ordered that from the proceeds of the sale of the Ozoro land, being ₦3,400,00.00 the sum of ₦1,700,000.00 (half) be given to the Petitioner, or the said amount be added to her share from the proceed of the sale of the properties in paragraph (2) above".
5. That even more than 90 days has elapse since the Judgment and the Claimant having not filed any appeal, the 2nd Defendant complied with the Judgment Order and had paid over to the Claimant the sum of ₦1,700,000.00



6. That the suit HCZ/44/2021 now before this Honourable Court was filed during the pendency of the earlier Suit – PHC/3312/MC/2020, and if the court proceed to hear, determine and give any judgment it will amount to this court sitting on Appeal on a decision of a court of coordinate jurisdiction.
7. That even the Judgment sum with respect to the subject matter has been performed and that the sum paid to the Claimant.
8. That the Claimant is fully aware and participated in PHC/3312/MC/2020 and knows that her filing of this Suit HCZ/44/2021 is an abuse of court process and same should be dismissed by this Honourable Court.

The application is supported with an affidavit of eighteen (18) paragraphs deposed to by the 2nd Defendant/Applicant herein. Attached to the affidavit are 5 annexures; they are marked as Exhibit Efe 1 – a copy of Answer and cross petition, Exhibit Efe 2 – a copy of the Claimant's then the petitioners PW1 further witness deposition on oath together with her Answer to the 1st Respondent cross petition, Exhibit Efe 3 and 4 – a copy of the Judgment and Judgment Order Nisi delivered by the learned trial Judge in PHC/3312/MC/2020; and Exhibit Efe 5 – Receipts of payment of N1,700,000.00 to the Claimant in compliance with the Judgment Order. The 2nd Defendant/Applicant also filed a written address alongside this application.

In opposition to this application the Claimant/Respondent filed a 4 paragraphs counter affidavit deposed to by the Claimant/Respondent herein on the 07/04/2025. Attached to the counter affidavit are two (2) annexures marked as Exhibit "A" – the Notice of Appeal and Exhibit "B" – Motion for stay of execution in respect of Suit No.: PHC/3312/MC/2020.

At the hearing of this application on the 9th of April 2025, the learned counsel for the 2nd Defendant/Applicant and the Claimant/Respondent adopted their respective written addresses in compliance with the Rules of Court. I will consider the submissions of learned counsel representing the parties in the course of this ruling.

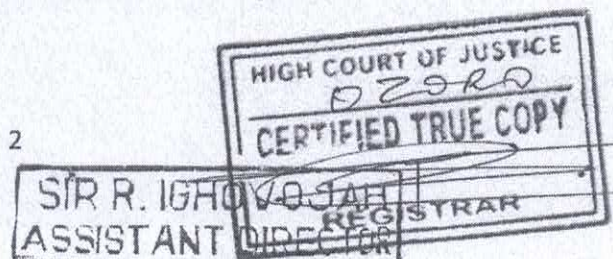
The 2nd Defendant/Applicant formulated 2 issues in his written address for consideration and determination. The issues are:

- (1) Whether the Claimant's Suit HCZ/44/2021 is not an abuse of the process of this court taking into consideration the pendency of a similar Suit No. PHC/3312/MC/2020 over same subject matter "Ozoro land" and Judgment delivered by the trial court on the 13/08/2024 and same already executed.
- (2) Whether further hearing, determination and any judgment by this Honourable Court in HCZ/44/2021 over "Ozoro Land" will not amount to the court sitting on appeal over Exhibit Efe 3, the decision/judgment of a court of coordinate jurisdiction in PHC/3312/MC/2020.

On the other part, the Claimant/Respondent formulated a sole issue for determination to wit:

"Whether the parties and reliefs sought in the two cases (Suit No PHC/3312/MC/2020 and the present case HC/44/2021 are the same)".

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In arguing this application, learned counsel for the 2nd Defendant/Applicant submit that an abuse of court process consists in the intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and also interfere with the administration of justice such as instituting different action between the same parties simultaneously in different court even though on different grounds or where two similar processes are used in respect of the exercises of the same right. Counsel refers to the case of **OGOEJEFO V. OGOEJEFO (2006) 3 NWLR (Pt 966) pg 205 SC.**

The apex court in the case of **LADOJA V. AJIMOBİ & ORS (2016) LPELR-40658 (SC)** cited the case of **ASHELY AGWASIM & ANOR V. DAVID OJICHIE & ANOR (2004) LPELR-250 (SC)** at pages 622-623 of the report, the court listed some instances where an abuse of court process can occur as follows: It may occur in various ways such as:

- (a) instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue; or
- (b) instituting a multiplicity of actions on the same subject matter between the same parties;
- (c) instituting different actions between the same parties simultaneously in different courts even though on different grounds;
- (d) where two similar processes are used in respect of the exercise of the same right.

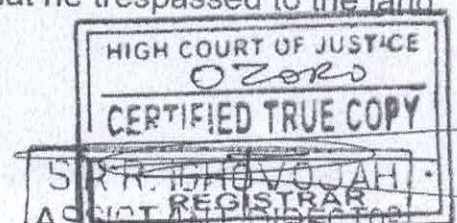
On the other part, the learned counsel for the Claimant/Respondent submit that the reliefs and the parties in Suit No. PHC/3312/MC/2020 and HCZ/44/2021 are not the same.

The Claimant/Respondent counsel posit as follows:

- (1) When the Claimant commenced this action in 2021, she only sued the 1st Defendant, Mr. Prosper Odion, she did not sue the 2nd Defendant. The 2nd Defendant "forced" himself into the case as a result of an application for joinder which he filed and the court granted it on 1st June, 2021, he cannot therefore contend at this stage that the case be struck out on account of abuse of court process which he induced on himself.
- (2) Suit No. PHC/3312/MC/2020 at the Rivers State High Court is not final judgment because the Claimant has filed a notice of appeal against the judgment and also a stay of execution.
- (3) That the judgment in Suit No.: PHC/3312/MC/2020 does not specifically and precisely answer the reliefs in the Claimant's case before this Honourable Court.

The Claimant/Respondent urges on court to dismiss the application with substantial cost.

It is apparent from the processes before me, that while Suit No.: PHC/3312/MC/2020 was still pending before the Rivers State High Court, the Claimant filed this Suit No.: HCZ/44/2021 on the 19/11/2021 seeking for similar reliefs and for declaration of title over same parcel of land against one Mr. Prosper Odion that he trespassed to the land.



The 2nd Defendant was made a party in this suit by an application of joinder which was granted on the 01/06/2022.

It is also quite clear that before the filing of Suit No.: HCZ/44/2021, the Claimant/Respondent was fully aware that the subject matter is a relief sought by the 2nd Defendant/Applicant in his cross petition particularly Relief (f) before the Rivers State High Court but instead filed this suit against the 1st Defendant in order to obtain a declaratory over that the land was jointly owned.

The judgment of the Rivers State High Court in Suit No.: PHC/3312/MC/2020 particularly Order 3 of the aforesaid judgment state thus:

"It is also ordered that from the proceeds of the sale of the Ozoro land, being N3,400,000.00 the sum of N1,700,000.00 (half) be given to the Petitioner, or the amount be added to her share from the proceeds of the sale of the properties in paragraph (2) above".

I wholly concur with the submission of the 2nd Defendant/Applicant counsel that the argument of the Claimant that this suit was initially brought against the 1st Defendant on grounds that the instant Suit is not on same parties will not prevail in her favour.

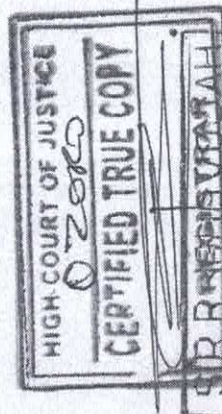
In **EGWASIM V. OJICHIE (2004) 10 NWLR (PT 882) 613 at 621 per Niki Tobi JSC** state as follows:

"a litigant has no right to pursue paripassu two separate process which will have the effect in two courts at the same time, with a view to obtaining victory in one of the process or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps."

This Suit No.: HCZ/44/2021 was filed during the pendency of Suit No.: PHC/3312/MC/2020, and if this Honourable Court proceed to hear, determine and give any judgment it will amount to this court sitting on Appeal on a decision of a court of coordinate jurisdiction which the law forbids.

Thus it is the law that that this Honourable Court cannot sit on the ruling/judgment of court of coordinate jurisdiction. In **VICTORIA SARKI V. DANIEL SARKI & ORS LPELR (2021) CA** where eth court held thus:

"... The law remains settled that a court cannot sit on the ruling/judgment of a court of co-ordinate jurisdiction. The court rely on the case of SEAMARINE INTERNATIONAL LIMITED & ORS V. AYETORO BAY AGENCY & ORS (2015) LPELR 24785 (CA) where it was held: "...Exhibit A emanated from the Ondo State High Court and such an instrument touching on the rights and obligations of the Respondents cannot be subjected to interpretation by a court of coordinate jurisdiction. See N.I.M.B LTD V. UBN NIG. LTD (2004) 12 NWLR (PT 888) 599 SC, where the Supreme Court per Pats-Acholonu JSC aptly observed



that "The theory of justice to which we adhere, rest a priori on the premise that there must be certainly and parties to the legal duel should be in a position to know where they stand at a certain time. A system of law where judges of the same degree i.e. of coordinate jurisdiction make contradictory and inconsistent orders in respect of the same subject matter involving the same parties i.e. each relying on his whims, caprices, prejudices and sometimes a vaulting ego, makes nonsense and mockery of the law. The beauty or what I might describe as the romance of the law is that just as stare deasis exercises, a restraining influence on our courts, so too do discipline in the courts in dutifully adhering to normative order by which courts of coordinate jurisdiction do not sit on appeals on each other, attracts respect of the law".

Unarguably, the cross petition in Suit No.: PHC/3312/MC/2020 and the claim before this court in Suit No.: HCZ/44/2021 per relief 1 of the Claimant/Respondent aims to produce same result and that since Suit No.: PHC/3312/MC/2020 is earlier in time, HCZ/44/2021 being filed later in time is an abuse of court process. See **ASHLEY AGWASIM & ANOR V. DAVID OJICHIE & ANOR (2004) LPELR-256 (SC)** and **P.D.P V. SHERIFF (2017) 67 SC (pt 10) 105 @ 142 line 5.**

In sum, it is my dispassionate view, that Suit No.: HCZ/44/2021 is an abuse of court process and as such, it is accordingly dismissed.

Cost follow event. Cost of **₦200,000.00 (Two Hundred Thousand Naira only)** is awarded in favour of the 2nd Defendant/Applicant against the Claimant/Respondent.



[Handwritten signature]

Hon. Justice E.O. Odebala
Judge
12/05/2025

Counsel:

V.U. Uzochukwu Esq.
(2nd Defendant/Applicant's Counsel)

J.O. Agbamu Esq.
(Claimant/Respondent's Counsel)

CTC ——— ~~ASD~~

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