

**IN THE SMALL CLAIMS COURT OF RIVERS STATE, NIGERIA
IN THE RUMUODOMAYA MAGISTERIAL DISTRICT
HOLDEN AT RUMUODOMAYA**

**BEFORE HIS WORSHIP B.H. ABE (MRS) SITTING AT THE CHIEF
MAGISTRATE COURT 1, RUMUODOMAYA, ON MONDAY THE 22ND DAY
OF JULY, 2024**

RMC/SCC/17/2023

BETWEEN

EMEKA NWADISIA - **CLAIMANT**

VS.

JOHN ANIH - **DEFENDANT**

Claimant in Court, defendant absent

H.O. Anih for the defendant

Matter for Ruling

RULING

Facts

The defendant filed a motion on notice pursuant to O4 rules 1 and 2 of the rules of Court, 2007, praying this Court;

1. To dismiss the claimant's suit in its entirety.
2. For such further orders as this Honourable Court may deem fit to make in the circumstance, adopted by the defence, Helen Anih, Esq. on the 26th June, 2024.

Grounds of the application

1. That the subject matter of this suit has been litigated upon in suit No. RMC/SCC/12/2023, therefore this suit is res judicata.
2. By virtue of the principle of estoppel, the claimant is estopped from relitigating on the subject matter of the suit.
3. That the Court lacks jurisdiction to entertain this suit in the circumstance.

The Motion on notice is dated 27th May, 2024, attached is an affidavit of 17 paragraphs deposed to by John Anih, the defendant, wherein the deponent averred as follows;

That the subject matter of this suit is small claims of the sum of N715,000.00 (Seven Hundred and Fifteen Thousand Naira) only.

That on the 3rd day of August 2023, the Claimant filed a summons for small claim of the sum of N365,800.00 (Three Hundred and Sixty-Five Thousand, Eight Hundred Naira) only, before this Honourable Court in Suit No. RMC/SC/12/2023.

That the Defendant upon receipt of the summons, appeared before this Honourable Court for defence and was represented by counsel, R. E. Akporido Uwanogho (Mrs.).

That prior to the filing- of the claim by the Claimant, the Defendant was arrested by the Claimant and taken to Special Area Command Rumuokoro on the complaint that the Defendant was indebted to the Claimant to the tune of N266,000.00 (Two Hundred and Sixty-Six Thousand Naira) only.

That at the Special Area Command, Rumuokoro, the Defendant agreed on the repayment pattern to the Claimant, which was by instalments.

That the IPO who handled the matter, gave the defendant a POS Account No. 2033203003 with Account Name: EKE Promise domiciled in First Bank Nigeria, which the Defendant should pay into.

That on the 9th of December, 2022, the Defendant through his wife's Account No. 3045520577 domiciled with First Bank paid the sum of One Hundred Thousand Naira to the account number provided by the IPO for payment with charges of One Thousand Naira only. The receipt is hereby attached and will be relied upon.

That after the payment of the sum of N100,000.00 (One Hundred Thousand Naira) only, to the above stated account, the Claimant acknowledged the receipt of payment.

The WhatsApp Communication between the Defendant and the Investigating Police Officer is hereby pleaded and will be relied upon at the trial.

That on the 3rd of February 2023, the sum of N50,000.00 (Fifty Thousand Naira only) was paid from the Defendant's UBA Account No: 2079741961 to Eke Promise with Account No. 2033203003 domiciled in First Bank of Nigeria. The receipt is hereby attached and will be relied upon during the trial.

That the Claimant also confirmed the receipt of payment through the IPO to Eke Promise with Account No. 2033203003 also domiciled in First Bank.

That on the 3rd day of August 2023, the Claimant issued a summons to the Defendant claiming the sum of N365,800.00 (Three Hundred and Sixty-Five Thousand, Eight Hundred Naira) only, being the money he invested into the Forex business introduced to him by the Defendant.

That the matter was brought before this Honourable Court and heard by His Worship, Chief Magistrate B. H. ABE. (Mrs.) Esq. and was concluded after the final payment of the (One Hundred and Thirty Thousand, Eight Hundred Naira) only being balance payment of the sum of N365,000.00 (Three Hundred and Sixty-Five Thousand Naira) only. The record of proceeding is hereby attached and marked as Exhibit A.

Attached are the record of proceedings in suit No. RMC/SCC/12/2023 for which this Court has given judgment in this case.

Attached also is a written address, with the issue for determination, being; whether the Court has jurisdiction to entertain this suit?

It is elementary and basic principle of law that jurisdiction is fundamental to any decision or adjudication. It is also the law that a man cannot be twice vexed. This is expressed in the principle of *Res Judicata* or *issue estoppel*.

The issue of estoppel if properly raised sweeps away the jurisdiction of the court to re-hear that particular issue. See the case-of MAYA vs. OSHUNTOKUN (2001) FWLR (PT 81)1777 @ 1783.where the Court of Appeal stated that; The rule is that once one or more of such issues have been distinctively raised in a cause of action and appropriately resolved or determined between the same parties in a court of competent jurisdiction, as a general rule neither party nor his servant, agent or privy is allowed to reopen or re-litigate that or those decided issues all over again in another suit between the same parties or their agents or privies on the same issues.

The conditions for the application of RES JUDICATA must co-exist for a defendant to succeed if he raises the issue of estoppel against a suit filed by the claimant was given in the case of NIC VS FIC CO LTD (2007) 2 NWLR (PT.1019) 610 where the court declined jurisdiction to revisit an issue previously decided by a court of competent jurisdiction.

In the instant case, a kind perusal of Exhibit A has shown that parties have settled as was seen in the last paragraph where the Court said that parties having amicably resolved the monetary issues in suit No: RMC/SCC/12/2023,

which led to the filing of the suit, the case is hereby struck out. The striking out of the suit is tantamount to dismissal.

We therefore humbly submit that the court lacks jurisdiction to entertain this suit as this matter is caught by the rule of RESJUDICATA and the principle of estoppel. We urge Your Worship to dismiss this suit in its entirety.

The claimant in response filed a counter affidavit in opposition dated 7th June, 2024, the deponent, the claimant averred as follows;

That I agree with paragraph 3 of the defendant's affidavit in its entirety that the subject matter of this suit is small claims of the sum of Seven Hundred and Fifteen Thousand Naira Only (N715,000.00).

I deny paragraph 4, but state that rather, on the 5th of July 2023, I filed a claim of Three Hundred and Forty-Six Thousand Naira Only (N346,000.00) which was consequent upon a demand notice which emanated from this honorable court dated 5th June, 2023.

Paragraph 6 is false and a total misrepresentation. The defendant was never arrested or harassed by the police. Rather, on the 30th of August, 2022, when the defendant defied every approach implored to get him pay the debt owed me, a report was made in the Special Area Division of Rivers Police Command, Rumuodomanya to invite the defendant so as to avert any physical confrontation.

The defendant was invited through a phone call and he chose on when he was to visit the police station, and that took some days before he turned up. So, nobody ever arrested the defendant. The amount demanded at the police station was Four Hundred and Eighty-One Thousand Naira Only (N481,000.00) where he pleaded to pay Two Hundred and Sixty-Six Naira Only (N266,000.00) in four installments before he would then come up with modalities on how to pay the balance of Two Hundred and Fifteen Thousand Naira Only (N215,000.00).

Paragraph 7 is true, the defendant agreed to pay by installments but he reneged in his promise and failed to pay as and when due. In the four installments he agreed to pay the first part of the money, he paid only twice and asked the Police Investigating Officer (IPO) to stop calling him again saying that it is not her duty to demand debt. The IPO then advised me to approach the court for my matter.

Paragraph 10 is false. I received only Ninety Thousand Naira (N90,000.00) on the 12th of December, 2022 as the first installment payment.

On 3rd of February, 2023, I received Forty-Five Thousand Naira Only (N45,000.00) through my first bank account, 3093221703. I attach the statement of account as exhibit 1.

Paragraph 14 is false; the summons was issued. on the 5th of July,2023, and I never indulged in any form of forex business with anybody. The money in question was Three Hundred and Forty-Six Thousand Naira Only (N346,000.00) which was the left-over amount at the police station. I sent a demand notice to the defendant dated 5th of June, 2023. On getting to the court, accruals were made in respect of cost of litigation and damages hence, the later amount of N715,000.00.

It is true that the matter was brought before this Honorable court her lordship, Chief Magistrate B. ABE (Mrs.), but it was discontinued from the court as the matter was struck out on agreement by the parties to settle out of court. Going by the Court proceedings of 11th September, 2023, it can be recalled that her lordship observed the discrepancy in the amount under contention, she noted that the demand was Three Hundred and Forty-Six Thousand Naira (N346.000.00) while One Hundred and Thirty Thousand Eight Hundred Naira Only (N130,800.00) have been paid other incidental costs where yet to be included.

It is not true that the parties agreed to have concluded settlement. I vehemently objected to the defendant counsel's presentation that the parties have settled after the payment One Hundred and Thirty Thousand Eight Naira Only (N130,800.00). I further informed the court that it was only the part of the money demanded that has been paid, excluding the damages and the cost of litigation which are in the sum of Three Hundred Thousand Naira Only (N300,000.00) and Two Hundred Thousand Naira Only (N200,000.00) respectively.

The defendant's counsel, Barr. R.E. Akporido-Uwanogho (Mrs.), was talking with me right from the first day we met in the court on 17th July, 2023 till the 13th of September, 2023 trying to convince me into settling with the defendant amicably. When she came up with same proposal, I insisted on an independent arbitrator, but on the court still inquiring from me if I would not concede to her request, I decided to yield to it since she had sympathized with me on my health condition coupled with the fact that the defendant and I were old family friends with strong ties.

She made a promise in the Court that she will resolve the rest of the wrangling issues if the case is closed, I then obliged. Since 13th of September, 2023 we left the court, we have never met or discussed on that matter as she promised. My further attempt to reach the defendant's counsel which proved herculean task and necessitated the WhatsApp extract attached as exhibit 2. Thus, there has not been any judgment agreed upon and it is completely inconclusive leading to the review of this matter in RMC/SCC/17/2024.

Further to paragraph 15 above, I state that the case was struck out to enable the parties conclude settlement, but the defendant's counsel and defendant failed to settle the matter after the case was struck out on 13th September, 2023. I had to remind the counsel through WhatsApp message before she advised me on the 5th February, 2024 to go back to court. The WhatsApp message is attached as Exhibit 2.

Attached also is a written address, Exhibit 1; the defendant's bank statement showing N45,000.00 paid to his First Bank Account on the 3rd February, 2023, as averred in his affidavit paragraph 11.

Exhibit 2; the WhatsApp correspondence between the claimant and the defendant's counsel as averred in his affidavit paragraph 15 while RMC/SCC/15/2023 was still pending before this Court.

Attached is the Certificate of Authentication in compliance with section 84(4) of the Evidence Act, 2011.

A reply on points of law filed by the defence, Helen Anih, Esq. is also before me in response to the counter affidavit of the claimant; the defence submitted there in that;

In the case of **OLOTU V. POWER HOLDING COMPANY OF NIGERIA (2014) 42 NLLR (PT. S 132) 529**; where the Court held that for a plea of estoppel to succeed, the parties or their privies must be the same in both the previous and present proceedings and the Res or subject matter of litigation in the two cases must also be the issue, Also in the cases of **A. G. NASARAWA vs. A. G. PLATEAU 50 NSCQR 1**. The Supreme Court defined estoppel per rem judicatam as a doctrine that prevents parties or their privies from re-litigating a case that has been previously decided by a court of competent jurisdiction. In the instant case, parties have settled amicably the monetary issue that was brought before this Honourable Court in suit No. RMC/SCC/12/2023 which was also evidenced in Exhibit A, the Claimant cannot be seen to turn around and make another claim against the defendant which borders on the same subject matter.

In **FEDERAL AIRPORT AUTHORITY V. NWONYE (2015) 53 NLLR (PT. 180) 446 CA**. the court held that a party who improperly uses the judicial process to irritate and annoy their opponent commits an abuse of Court process.

See also the case of **IKEME V. VC UNIVERSITY OF NIGERIA & ORS. (2014) 40 NLLR (PT. 123) 466 NIC** where the Court stated that a multiplicity of suits intended to annoy or harass an opponent constitutes an abuse of Court process. It is against the rule of public policy that no one shall be vexed twice

on the same ground or for one and the same issues. See **ADAMBA V. ODIESE (1990) 1 NWLR (PT. 125) 165 @ 178.**

It is also an application of the rule of public policy that it is for the common good that there should be an end to litigation, that is to say interest *rei publicae ut sit finis litium*. See **JOHN OMOKHAFE V. ESEKHOMO (1993) 8 NWLR (PT. 309) 58.**

The plea of res judicata operates not only against the parties but also against the jurisdiction of the court itself and robs the Court of its jurisdiction to entertain the same cause of action on the same issues previously determined by a Court of competent jurisdiction between the same parties. The parties affected are estopped per rem judicatam from bringing a fresh action before any Court.

In the instant case, this suit has been laid to rest by the Court in RMC/SC/12/2023. The Claimant bringing up this suit after the suit has been struck out after parties have resolved the monetary issues involved is an abuse of court process. The striking out of this suit is tantamount to dismissal.

Issue for determination

Whether the principle of Estoppel Per Rem Judicata is applicable in this case?

COURT

The Court having perused through all the processes and Exhibits attached thereto from both parties, the claimant in the previous suit filed, RMC/SCC/12/2023 same as RMC/SCC/17/2024, claimed the sum of N366,800.00 from the defendant, money the defendant took from him from the business they did, which he refused to pay.

The Court on the 13th September, 2023 was informed by the defence R. E. Akporido – Uwanogho (Mrs.) that parties had settled, the Court having granted leave for out of Court settlement on the 3rd August, 2023 in the presence of both parties, upon the application of the said defence counsel.

The claimant informed the Court on the 13th September, 2023 that the defendant had paid him N130,800.00 only out of the money owed to him, received on the 29th of August, 2023.

He further informed the Court that the outstanding balance could be resolved between both parties, he prayed the Court to strike out this matter since they had come to a logical conclusion, that they will settle amicably out of Court. The defence counsel was not opposed, the Court thus ruled;

“Both parties having amicably resolved their monetary issues in this suit, the Court hereby orders that this suit be struck out”.

Hitherto, O17 rule (2) rules of Court 2007 provides that; any cause struck out may by leave of Court be relisted on the cause list on such terms as the Court may seem fit.

Rule 3 Provides on such longer period than 5 days of the judgment or order, as the Magistrate may direct or allow for good cause shown.

The claimant in RMC/SCC/17/2024, is claiming N715,000.00 which ought to be money resolved out of Court after all efforts proved abortive in settling with the defendant.

It should be noted that this Court did not give a judgment in this case as to the legal rights of both parties, but struck out the previous case on the ground that the defendant paid only N130,800.00 to the claimant and the claimant told the Court they will resolve the balance amicably between themselves.

The essence of the plea of estoppel per rem judicata as rightly put by the defendant’s counsel in her written address is to bar a party or his privies from re-litigating a matter or an issue already settled between the parties to a suit by a Court of competent jurisdiction.

Res judicata means – a thing adjudged, judicially acted upon or decided.

In *Ntuks Vs. NPA* (2007)13 NWLR (pt. 1051)417, Per Tobi JSC. held inter alia; “The rule of res judicata is that a final judgment rendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or action”.

It means a thing adjudicated.

In other words, for the doctrine of res judicata to apply in this case, the parties, the issue, claims and the subject matter, must all be the same.

The matter which should be litigated upon in a Court of competent jurisdiction, must come to a final conclusion by the Court, which final decision must be given by a Court of competent jurisdiction.

See;

1. *Nwaneri Vs. Oriuwa* (1959) 4 FSC 132, 1959 SCNLR 316.
2. *Okorie Vs. Akurunwa* (1972) 8 – 9 SC 210.

3. Ekpoke Vs. Osilo (1978) 6 – 7 SC 187
4. Aro Vs. Fabolude (1983) 1 SCNLR 58

The principle of *res judicata*, upon which the defendant has hinged his preliminary objection, applies only where there is a suit between parties to preclude a party from raising the same issues that were present in the former case decided by the Court, wherein judgment had been given, it also applies to their privies.

A finding of fact must be made in the case where the Court has given judgment, predicated on the law. See *Cardoso Vs. Daniel* (1986) 2 NWLR (pt. 20) 1.

Res judicata can only be considered with the surrounding background facts of the case; See *Ntuks Vs. NPA* (supra) pg. 417, see also *Iyaji Vs. Eyigebe* (1987) 3 NWLR (pt. 61) 523.

From the facts enunciated above, it is clear that no Court of competent jurisdiction has given a final judgment in this suit.

There is nothing before the Court to show that the proceedings in RMC/SCC/12/2023 were brought to a conclusive end by this Court as clearly and rightly argued by the claimant.

One of the principles of *Estoppel per rem judicata* is that the parties or their privies involved, should be the same in both the previous and present proceeding and that the claim or issues in dispute must be the same, i.e. the *res* must be the same which had clearly been adjudged by a Court of competent jurisdiction and judgment given.

The defendant's contention that the matter had already being litigated upon and concluded cannot stand in this case. No final judgment was given by the Court to which the parties are bound by. The defendant paid N130,800.00 (One Hundred and Thirty Thousand, Eight Hundred Naira) only in RMC/SCC/12/2023, being part of the claimant's demand excluding damages and cost of litigation, wherefore this Court struck out the case, the claimant informed the Court that parties will conclude with their settlement afterwards.

The aforementioned preconditions do not exist in this case, as has been addressed by this Court. The only condition is that the parties are the same, which does not make the principle of *estoppel per rem judicata* applicable here.

Estoppel per rem judicata is a rule of evidence whereby a party or his privy is estopped from disputing in any subsequent suit, that which has already been adjudicated upon previously by a Court of competent jurisdiction between the same parties in dispute. This principle is not applicable in this suit.

The Court consequently orders that the preliminary objection raised by the defendant challenging the Court's jurisdiction to entertain this suit, on the ground that the principle of Estoppel Per Rem Judicata is applicable here, be and is hereby dismissed, as there is no merit in the said application.

The matter being shout in RMC/SCC/12/2023 is hereby allowed to be relisted or refiled by the claimant in accordance with O17 rule 2(3) rules of Court, 2007, due to the fact that the parties thereto dis not resolve their monetary issues amicably.

If the Court had given a full judgment, the doctrine of Estoppel Res Judicata would have been applicable, thereby robbing this Court of jurisdiction to entertain this suit.

Accordingly, this case is allowed to continue. Hearing may proceed. Both parties should go ahead and proof their claim and counter claim.

The Court has the jurisdiction to entertain this suit.

This is the ruling of the Court.

There is no order as to cost.



MRS BARIYAAH .H. ABE, ESQ.
Chief Magistrate
22nd July, 2024.

