

The Abuse of Legal process in Nigeria: The Remedies

Charles E. Aduaka¹ Ifeyinwa Mercy Anyaegbu²

1. Department Of Jurisprudence and International Law, Faculty of Law, Ebonyi State University, Abakaliki, Ebonyi State, Nigeria

2. Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria.

* E-mail of the corresponding author: barrcharlesaduaka@gmail.com

Abstract

It is trite law that the court has an inherent jurisdiction to protect itself from abuse or to see that its process was not abused. The legal practitioners as an advocate of the court must therefore pay heed to the rule of ethics which requires him never to show marked attention or unusual hospitality for judicial officers, uncalled for by the personal relations of the parties, he must therefore avoid anything calculated act to enable him or her gain or having appearance of gaining special personal consideration or favour from a judicial officer. Legal practitioners should be devoid of carrying out acts or omissions that will derail the due process of the court especially on issues like multiple institutions of actions, frivolity or reckless actions, shop-forum system, instituting different applications on the same subject matter and any form of professional misconduct at the face of the court. The judicial officers should show or adopt an adjudication method or process based on procedural rules of natural justice such like fair hearing, giving opportunity to counsel to present issues without fear and intimidation, making rulings base on substantive laws and maintain accurate case record. Timeous dispensation and conclusion of matters so that there will be an end to litigant.

Keywords: Legal process, litigant, justice, judicial process

1. Introduction

The legal profession is perhaps the only profession in which marks are lost by the assertion of an original but personal opinion and won by showing that one's best opinion has been thought of and expressed by someone else before. This presentation will commence by defining firstly, some fundamental terms having connection or relationship with the topic, abuse of legal or judicial process.

ABUSE: the black law dictionary defines abuse as "Everything which is contrary to good order established by usage that is a complete departure from reasonable use"

An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use¹¹⁰

ABUSE OF DISCRETION: Abuse of discretion is synonymous with a failure to exercise a sound reasonable and legal discretion. It is a strict legal term indicating that the appellat court is of the opinion that there was commission of an error of law by the trail court. It does not imply an intentional wrong or bad faith or misconduct nor any reflection on the judge but it connotes a clearly erroneous conclusion and judgments such that is clearly against logic and the effect of such facts as are presented in support of the application or against the reasonable and probable derivation to be drawn from the facts disclosed upon the hearing or an improvident exercise of discretion or an error of law¹¹¹. It is also an unreasonable departure from considered precedents and settled judicial custom, constituting error of law. A judgment or decision by administrative agency or judge which has no foundation in facts or law amount to abuse. Abuse of discretion by a trial court is any unreasonable; unconscionable and arbitrary action taken without proper consideration of facts and law pertaining of the subject matter.¹¹²

However, it is important to note that any judgment or decision taken by a trail court or an administrative agency upon evidence submitted before it will never amount to abuse even if it was discovered later that disposition/submission was with certain disabilities which are not to the knowledge of the court or the administrative agency.

ABUSE OF PROCESS: The gist of an action for "abuse of process" is improper use or perversion of process after it has been issued¹¹³. A malicious abuse of legal process occurs where the party employs if for some unlawful object not the purpose for which it is intended by the law to effect in other words a perversion of it.

1. 1 what is abuse of court or Judicial process and what constitutes abuse of court/judicial process

¹¹⁰ Black Law Dictionary, Sixth Edition Black, Henry Campbell, Black Law Dictionary Sixth Edition, Continental Edition 1891- 1991 P 990 P 10-11

¹¹¹ State V Draper, 83 Utah 115, 27 P2d 39. Exarter Jones 246 Ala 433, 2050 2d, 859, 862.

¹¹² Back V Wings field Inc C.C.A. Pa 122 F2d, 114, 116, 117

¹¹³ Harey V State OXLCr 458 P2d 336, 338, Swenson V Cahoon, 111 Fla 788, 152, 50203, 204

The concept of abuse of court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. Most of its common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.¹¹⁴

The situation that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations.

- (a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.
- (b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.
- (d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.
- (e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lie in the inconvenience and inequalities involved in the aims and purposes of the action¹¹⁵
- (f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
- (g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal. When the appellants application has the effect of over-reaching the respondents application.
- (h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent¹¹⁶.

2. Species of abuse of judicial process

The concept of abuse of court/judicial process involves circumstances and situations of infinite variety and conditions. It has one common feature which is the improper use of the judicial process by a party in litigation interfere with the due administration of justice. It is recognized that the abuse of judicial process may lie in both a proper or improper use of the process in litigation. Note the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the imitation and annoyance of his opponent and the efficient and effective administration of justice. In the words of OPUTA J.SC (as he then was) in the case of *Amaefule & other V The State*¹¹⁷ he defined abuse of judicial process as

“A term generally applied to a proceeding which is wanting in bona fides and is frivolous vexations and oppressive. In his words abuse of process can also mean abuse of legal procedure or improper use of the legal process”

However, instance of abuse of legal process are abound in our legal jurisprudence.

*“In Arubo V Aiyeleru, the court held that
 (“that the rectification of already decided issues is all abuse of courts process even if the matter is not strictly res judicata)”¹¹⁸*

In the case of

*Agwusin V Ojichie. Justice NIKI TOBI JSC observed
 (“that abuse of court process create a factual scenario where appellants
 are pursuing the same matter by two court process).*

In other words, the appellants by the two court process are involved in some gamble a game of chance to get the best in the judicial process. The appellant while appealing against the ruling of the

¹¹⁴ Public Drug Co V Breyerke cream Co, 347, Pa 346, 32A 2d 413, 415

¹¹⁵ Jadesimi V Okotie Eboh (1986) 1NWLR (Pt 16) 264

¹¹⁶ (2007) 16 NWLR (319) 335.

¹¹⁷ (1998) 4SCNJ 69 at 87.

¹¹⁸ (1993) 3NWLR (Pt 280) 12.

Court of Appeal which struck out their appeal for want of diligent prosecution also file a motion in the court of appeal for the restoration or relisting of the appeal. A litigant has no right to pursue *PARIPASUA* two processes which will have the same effect in two courts at the same time with a view of 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. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks”¹¹⁹

In the Learned justice humble view, the two processes were in law not available to the appellant simultaneously. Only one would be available at a time and the choice of each of the two was exclusively the appellants. The appellants could appeal against the decision of the court of Appeal or in the alternative they could ask for the restoration. The pursuit of the two processes at the same time constitutes and amount to abuse of court/legal process. Also in the case of *SARAKI V KOTOYE*¹²⁰. The court in this dealt exhaustively with what constitutes abuse of process of court in his lead Judgment our eminent law lord of *KARIBI –WHYTE JSC* did observed.

“That the abuse of process may lie in both a proper or improper use of the judicial process in litigation. But the employment of a judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It can also arise by instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues”. See also

*OKORODUDU V OKORODUDU*¹²¹

*OYEBOLA V ESO WEST AFRICAN INC*¹²²

“Thus, the multiplicity of actions on the same matter between the same parties even where there exist a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interfere with the administration of justice.....Essentially, it is the inconvenience inequities involved in the aims and purposes of the application which constitute the abuse. Otherwise, when there is a right to bring an action, the state of mind of the person exercising the right cannot affect the rapidity or propriety of the exercise.”

In *Okorodudu V. Okorodudu*. The plaintiff commenced a suit founded on land dispute. After pleadings has been exchanged by both sides and evidence laid, the plaintiff discovered that his case would fall and be dismissed due to some defect in his case which he could not be permitted to remedy by amendment under the rules governing amendment of pleadings. The plaintiff knew that he was between the rock and the hard place. If he withdraws the suit at that stage, the court might under the rules of court, will make an order dismissing it. The plaintiff then commenced another suit the defendant objected on the ground that the commencement of the second suit while the first suit was pending amount to an abuse of the process of court. The Supreme Court agreed and then made an order staying the second suit pending the determination of the first suit.

Clearly, the Supreme Court in taking this rather hard line action against the plaintiff holds the view that by commencing the second suit, the plaintiff was acting in bad faith and it amount to abuse of judicial process.

It is significant that the Supreme Court did not give the plaintiff an option to elect which of the suits to pursue. Naturally, from the circumstance of the instance case, the apex court, considering the inconvenience and purpose for the commencement of the second suit denied the plaintiff a right to election having dismissed the appellant suit where he still has a remedy to redress, one may ask the question whether such action does not negate the fundamental natural *maxin ubi jus ibi remedim* is very sacrosanct and must be given full effect in all its ramification, it means that where there is a wrong, there is a remedy. Now having dismissed the claim of the appellant on account of process abuse, this goes to imply that they appellants right to seek redress and fair hearing has been prematurely foreclosed. The appellant definitely had bonafide right in seeking to justify their claims by having it decided in the appropriate forum where the relevant facts would properly be stated and issues joined.

¹¹⁹ *KARIBI WHYTE JSC* (2004) 18 NSCR

¹²⁰ (1992) 9nwlr (Pt 264) 256

¹²¹ (1977) 3SC21

¹²² (1966) 1 ALL NLR 170.

This however suggested that it could not be justifiable to deny the appellant the opportunity to have their suit tried on pleading.

This situation stands as a limitation to the courts power to critically evaluate circumstances; but where the abuse of process emanates from institution of a suit without any known legal backing, the court is at liberty then to dismiss the suit immediately it was discovered.

Other instance on court process occurs when proceedings are commenced where there is no iota of law supporting it and where proceedings are premised or founded on frivolities or recklessness. See

*The Central Bank of Nigeria V Saidu H. Ahmed and others*¹²³ the appellant herein was the defendant in the suit before Federal High Court Lagos wherein the respondent are plaintiffs, after their claims were made, pleadings were ordered, filed and exchanged. The action proceeded to trial at the conclusion of which and after addresses by counsel for the parties, the trial court adjudged and entered judgment for the defendant. Being dissatisfied with the judgment of the trial court the appellant appealed against the decision to the court of Appeal. The appellant subsequently applied to the Court of Appeal for an order of stay of execution of the said judgment, though a similar application has been struck out by the trial court for lack of diligent prosecution. The Court of Appeal granted the application subject of the condition that the appellant deposits the judgment sum with the Deputy Chief Registrar of the court.

The appellant subsequently filed an application for an extension of time within which to comply with the order of the Court of Appeal. Before the application could be heard, the appellant applied to the Supreme Court for an extension of time within which to seek leave to appeal, leave to appeal and extension of time to appeal against the ruling of Court of Appeal and an order of interlocutory injunction restraining the respondents, from enforcing the judgment of the trial court. The respondents opposed the application and also filed a preliminary objection that the application be dismissed on the ground that it constitutes an abuse of process of the court in that the appellant had already accepted the decision of the Court of Appeal to which it had filed a motion for extension of time within which to comply therewith. It is of utmost important at this junction to note that where two processes are used in respect of the same right, namely cross appeal, objection and a respondent's notice, it is tantamount to an abuse of the process of court. Also an application to the Supreme Court for adjournment by a party to an action to bring an application to the court for leave to raise issues of fact already decided by the lower court is an abuse of process. The instances discussed above are not exhaustive; there are other instances such like in the case of;

JOSIAH v CORNELIUS LTD & SONS

V

*CHIEF CORNELIUS OKEKE EZENWA*¹²⁴ In this case after the court of trial had entered judgment in this suit; one of the parties spotted an error in the judgment and applied to the court for rectification of the error. He, then at the same time appealed based on the same error *OGUNDARE JSC* of blessed memory in delivery the lead judgment of the Supreme Court stressed that by maintaining that against the decision simultaneously with his application for rectification he was grossly in abuse of the process of the court.

On the part of the legal practitioners, any conduct in relation to pending proceeding which run contrary of the legal practitioners duty under the Rules of Professional Conduct in the legal profession particularly Rule 24 is abuse of judicial process because of its significance and importance, I choose to reproduce Rule 24 which read thus

“Lawyers are duty bound to uphold the law and no service or advise ought to be rendered or given by them to clients, corporate or individual of any description or to any cause whatever involving disloyalty to the law or brining disrespect upon the holder of any judicial office or involving corruption of holders any public office. Improper service or advise in such circumstance as aforesaid are unethical and merits strong condemnation as unprofessional conduct. On the other hand, service or advice rendered or given which impresses clients with fact that the service or advice not only accords with the letter of the law but embraces moral principle cannot be too highly commended. He must also observed and advise his client to observe the statute law, save that until a statute has been constructed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. Above all, a lawyer however finds his highest honor in a deserved reputation for fidelity to private trust and to public duty as an

¹²³ (2001) 11 NWLR (Pt 36a) 373.

¹²⁴ (1996) 4 SCNJ 124

*honest man and as patriotic and loyal citizen*¹²⁵

A legal practitioner has as its duty not to mislead the court or to commence proceedings where there is no iota of law supporting the process or when the process is premised on or founded in frivolities or recklessness. It is the responsibility of the counsel to protect an abuse of process by the judge because the moment a court ceases to do justice in accordance with the law and procedures laid down for it, its ceases to be a regular court see *ANIAGOLU JSC IN EDUN V ODAN COMMITTEE & OTHERS IN re CHIEF YAKUBU DAWODU THE OLOJO OF OJO*¹²⁶. Similarly, the court in course of entering fair hearing must include giving to a party or legal practitioners of his choice the opportunity to present his case before an impartial court in an atmosphere free from fear and intimidation see *OKODUWA V THE STATE*¹²⁷.

However, on the part of the judge, any conduct in relation to pending proceedings which runs contrary to the provisions of the Code of Conduct for Judicial Officers especially on Rule 1(ii) and Rule 2(1)(4) and (6) constitute an abuse of the judicial process. I will reproduce the relevant rules for clarity.

- Rule 1 Any Judicial officer should avoid impropriety and the appearance of impropriety in all his activities.
- (1) A judicial officer should respect and comply with the laws of the land and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary¹²⁸
- Rule 2 (1) A judicial officer should be true and faithful to the constitution and the law uphold the course of justice by abiding with the provisions of the constitution and the law and should acquire and maintain professional competence¹²⁹
- (4) A judicial officer should be patient, dignified and courteous to accused persons and litigants, assessors, witnesses, legal practitioners and all others with whom he has to deal with in his official capacity and should demand similar conduct from legal practitioners, his staff and others under his direction and control¹³⁰
- (6) A judicial officer should promptly dispose of the business of court. In order to achieve this, the judicial officer is required to devote adequate time to his duties to be punctual in attending court and expeditions in bringing to a conclusion and determining matters under submission. Unless illness or unable for good reasons, to come to court a judicial officer must appear regularly for work avoid tardiness and maintain office hours of the court.¹³¹

In addition to the code of conduct guide for both legal practitioners and judicial officers, our supreme book the 1999 Constitution of the Federal Republic of Nigeria has provided in Section 6(6)¹³² (a) that all courts have inherent powers and jurisdiction to ensure that the machinery of justice is duly applied and properly lubricated and not abused. One most important fact of such inherent powers of the court is to prevent the abuse of it process which simply means that the process of the court must be used bona fide, properly and must not be abused.

The constitutional provision was specifically meant to ensure that the judiciary is independent in cause of interpreting the constitution with emphasis on procedure and direction. It is important that any departure from the laid down rules will be attributed to failure of intellect or moral courage and strength on the part of the operation of our court system the judicial officers and legal practitioner and such will be considered as an aspect of an abuse of the judicial process.

3. Remedies for abuse of Judicial process in Nigeria

Upholding of discipline is fundamental for the proper growth of any society or institution; there is absolute need to follow due process and not to rush to a hasty decision. The constitution of the Federal Republic of Nigeria

¹²⁵ Rule 24 Legal Practitioners Act, Rules of Professional Conduct

¹²⁶ (1980) 8-11 SC 103 @ 137

¹²⁷ (1988) 2NWLR (Pt 76) 333.

¹²⁸ Rule(1) code of conduct for Judicial Officers

¹²⁹ Rule 2(1) code of conduct for judicial officers

¹³⁰ Rule 2(4) code of conduct for judicial officers

¹³¹ Rule 2(6) code of conduct for judicial officers

¹³² Section 6(6) 1999 Constitution of the Federal Republic of Nigeria

1999 which is the supreme law or ground norm should be obeyed to the letter; fair hearing is a *sine quo non* to national justice, equity and good conscience.

There cannot be better use of inherent powers and sanctions of a court of law than to protect the processes of the court from abuse. However, in exercise of its inherent powers, the court will always strike out or otherwise dispose *brevi manu* any matter or cause before it which is an abuse of its powers.

3.1 Instances

Where the appellant having filed an appeal used the same to obtain an order of stay of execution of judgment and then went to sleep abandoning the appeal, Osun State Independent National Electoral Commissioner National Electoral Commissioner Party¹³³

Where the appellant as defendants having lost in the judgment of the trial court promptly appealed against it the following date by filing of notice and proceeded immediately to file a motion for stay of execution of that judgment using the notice of appeal filed which application was promptly heard and granted by the trial court the following week only for the appellant to go to sleep without taking necessary steps to put the appeal on ground for hearing at higher court. An application by the respondent to the court below got the notice struck off for abuse¹³⁴

Where a party improperly uses the machinery of the judicial process to the intimidation and annoyance of his opponent and the efficient and effective administration of judicial per KARIBI WHYTE in OLUITINRIN V AGAKA¹³⁵

Where the rule of Audi Alterem Partem is violated it is immaterial that the decision reached is correct¹³⁶

Where the appellant is pursuing the same matter by two processes of the court Agwasin V Ojichie¹³⁷

Where proceedings are commenced and there is no iota of law supporting it CBN V SAIDU H. AHMED and others

The instances of abuses that require remedies cannot be exhausted, however, this submission in looking beyond the existing constitutional or rather statutory provisions as contained in the Constitution, Legal Practitioner Act and Code of Conduct for Judicial Officers. A stringent measure which will deter other from the practice of abusing judicial process is hereby recommended.

Firstly, apart from the application of inherent powers of the court to either struck off or dismiss any process that has abused the judicial practice direction an extra ordinary cost should be awarded against such litigant who wants to carry out an abuse or who encourage the perversion of justice. Presently, the cost to be awarded basically was at the discretion of the judge but a stiffer higher cost of ₦50,000 for High Courts, ₦100,000 for Appeal Courts and ₦200,000 for Supreme Court will deter litigants from engaging in such wholesome act is recommended.

Secondly, on the part of legal practitioners who encourages or advises their clients to embark on acts that will derail the dignity of the judicial process such as Instituting multiple applications on the same subject matter, different application on the same matter at different courts, instituting two processes in respect of the same right, adoption of forum-shopping system, instituting processes without a supporting legal premise all these and others instances mentioned earlier should be regarded as professional misconduct because it all tend towards misleading the court.

A recommendation is hereby submitted that such legal practitioner having committed an act of professional misconduct should be banned and brought before the Legal Practitioner disciplinary committee for proper investigation. If at the end he found wanting, such person will be fine ₦100,000 or more before he is readmitted to continue in practice.

¹³³ (2013) 9 NWLR (Pt 280) 126

¹³⁴ Arubo v Alyeleru (1993) 3NWLR (Pt 280) 126

¹³⁵ (1998) 6 NWLR (Pt 554) 366, Conwalk v Military Administration Plateau State (1986) 6 NWLR (PL555) 653, AG Federation V.A.G Abia State & 35 others (2011) nwlr (Pt 725) 717 718

¹³⁶ Tukur V Government of Gongola State (1989) SCNJ

¹³⁷ (2004) 18 NSCR 359

Thirdly, on the part of judicial officers, the reform process going on or rather being driven by the National Judicial Council speaks volume as any erring judicial officer has automatically incurred a violation of his Oath of office and allegiances. Many of such judicial officers whose action were investigated by the National Judicial Council and found guilty have been punished varying from retirement, suspension and dismissal depending on findings.

However, a call for concern is about the activities of others officers in our judicial system the magistrates. The issues of abuse of judicial processes are abounding within the magistrate, customary and Sharia Court system.

The National Judicial Council should extend their search light on the activities of such categories of legal officers as a matter of fact most complaint about these categories of officers end up in the state Chief Justice and President of the customary or Sharia Court of Appeals table.

The National Judicial Council should extend the reform to them. Such action will sanitize that level of judicial disposition and the erring one should suffer the same fate with the higher judicial officers. The need for urgent intervention of the National Judicial Council in this regard need not be over emphasized.

4. Conclusion

The lesson of this presentation is that whether the legal practitioner accept it or whether the judicial officers accepts it or not every abuse of due process represents either a moral failure or an intellectual failure of both the legal practitioners and the judicial officers and of course any litigant seeking to pervert justice.

It is of utmost important to note that the legal practitioners and judicial officers who by professional implication are officers in the justice temple and any act or omission which tend to derail the pride of justice disposition should be resisted, if not both of them should be blamed whenever inconsistency is observed. The litigant who wants to pervert justice will hide under their umbrella before such act or omission will be actualized.

However, the legal practitioner and judicial officers will take the full blame and will be seen as sinners if they ever succumb to that bait. As a matter of fact, it is the duty of a legal practitioner not to mislead the court, not to commence proceeding when there is no iota of law supporting the process or when the process is on frivolity or recklessness. It is also the responsibility of legal practitioners to protest the abuse of due process by the judicial officers. On the other hand any judicial officer who permits the proceedings before him to be abused due to moral weakness or professional incompetence has no alibi to plead.

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