

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON TUESDAY, 25TH DAY OF FEBRUARY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/163/2007

BETWEEN

1. CEDDI CORPORATION LTD.	JUDGMENT CREDITORS/
2. BROLL PROPERTIES SERVICES LTD.	RESPONDENTS

AND

MRS. BUNMI JEGEDE	}	JUDGMENT DEBTOR/ APPLICANT
[Carrying on business in the name and style of Honey Bee Fabrics]		

RULING

The judgment creditors/respondents [as the plaintiffs] commenced this suit against the judgment debtor/applicant [as the defendant] on 10/12/2007 vide writ of summons. The matter was before *Hon. Justice A. M. Talba, J.* [as he then was; now JCA]. The case was transferred to me by the Hon. Chief Judge of this Court by a Transfer Order dated 5/6/2013. Throughout the proceedings before me, the defendant and her counsel did not attend Court in spite of the hearing notices served on the defendant's counsel [ChinyereOnyedimEsq.].

At the end of the trial, the Court delivered its judgment on 31/3/2015 in favour of the plaintiffs as follows:

- i. An order for the defendant to vacate and deliver up possession of Shop 42, Ceddi Plaza, Abuja to the plaintiffs forthwith.*
- ii. The sum of US \$550 [or its Naira equivalent which is N71,500.00] per month being mesne profit [or damages for the defendant's use and occupation of Shop 42 Ceddi Plaza, Abuja] from 1/4/2007 until the defendant delivers up possession of the said shop to the plaintiffs.*
- iii. Interest on the sum of US \$550 [or its Naira equivalent which is N71,500.00] per month at the rate of 10% per annum from today [31/3/2015] until the judgment sum is paid.*
- iv. Cost of N30,000.00.*

On 25/6/2018, the Court granted the judgment creditors' motion *ex parte* for garnishee order *nisi* attaching the money of the judgment debtor kept in account number 1011919796 operated by the judgment debtor in the name of Honey Bee Fabrics in the garnishee [Zenith Bank Plc.] to satisfy the above judgment sums.

On 27/7/2018, the judgment debtor [as applicant] filed motion on notice No. M/8185/2018 praying the Court for: [i] an order setting aside the said judgment delivered on 31/3/2015 in the absence of the defendant; [ii] an order of retrial of *Suit No. FCT/HC/CV/163/2007* between Ceddi Plaza Corporation

Limited & 1 Or. v. Mrs. BunmiJegede; and [iii] an order vacating the order nisi granted on 25/6/2018 on the account of the defendant. In its Ruling delivered on 21/3/2019, the Court dismissed the application. The Court held in part:

“From all that I have said, it is clear that the Court gave notice of the pendency of the suit to the defendant and a fortiori, the Court gave her the opportunity to attend the trial and present her case. The defendant did not utilize the opportunity and in the circumstance, the defendant cannot blame the Court for her failure to attend Court to present her case. The law is well established that where a party has been given the opportunity of being heard but fails or neglects to present his case, he cannot subsequently be heard to complain that he has not been given fair hearing. ...

In conclusion, the decision of the Court is that since the defendant was given opportunity to be heard, her right to fair hearing was not violated. Applicant has not established any ground or reason to warrant the setting aside of the judgment of the Court delivered on 31/3/2015. ...”

This ruling is on the judgment debtor/applicant’s motion on notice filed on 23/9/2019 praying the Court for the following orders:

1. An extension of time within which to file a motion to set aside the judgment of this Court in *Suit No. FCT/HC/CV/163/2007* and to deem this motion as properly filed and served.

2. An order of the Court restraining the judgment creditors/respondents from the further execution of the judgment of this Court in this matter.
3. An order of the Court setting aside the Garnishee Order made in favour of the judgment creditors/respondents against the judgment debtor/applicant's banking accounts.
4. An order of the Court setting aside the judgment of the Court in this matter delivered on 31/3/2015 on grounds of fraud and suppression of fundamental and material facts by the judgment creditors/respondents.
5. IN THE ALTERNATIVE, an order of Court varying the judgment sum such as to reflect the actual *mesne profit* owed by the judgment debtor/applicant.
6. And for such other order[s] as the Court may deem fit to make in the circumstances of this case.

The judgment debtor/applicant filed a 43-paragraph affidavit in support of the application; attached thereto are Exhibits A, B, C, D &E. Pope EjioforEsq. filed a written address with the motion. In opposition, FolashadeOlaifa, the 1st judgment creditor/respondent's general manager, filed a 27-paragraph counter affidavit on 25/10/2019; attached thereto are Exhibits A, B, C, D1 & D2. Marcel OsigbemheEsq. filed a written address along with the counter affidavit. At the hearing of the application on 4/12/2019, both learned counsel adopted their processes.

In the affidavit in support of the motion, the applicant stated that:

- i. Sometime in 2007, she instituted *Suit No. FCT/HC/CV/698/2007* against the respondents, which was assigned to *Justice Inyang [now retired]*. During the pendency of that suit, the respondents filed *Suit No. FCT/HC/CV/163/2007* against her, which was assigned to *Justice A. M. Talba [as he then was]*.
- ii. During the pendency of her case before *Justice Inyang*, the agents of the respondents frustrated her continued occupation of the premises as they cut off electricity and central air conditioning to her shop, which made the shop uninhabitable. The above situation was brought to the notice of the Court which made orders for their restoration.
- iii. The respondents did not obey the Court order; this forced her to vacate the shop as it was no longer conducive for her and her customers to use. She moved out of the shop in April 2007 and has never returned there nor had access to it.
- iv. Mrs.ChinyereOnyedim [her lawyer] informed her that the case before *Justice A. M. Talba* was halted because His Lordship was elevated to the Court of Appeal. During the pendency of the cases, she took ill and was hospitalized for a very long time.
- v. By a motion on notice which was heard by *Justice Inyang* on 10/4/2008, the respondents sought an order of court for leave to “enter into the premises of shop No. 42 Ceddi Plaza, Plot 264 TafawaBalewa Way, Central

Business District, Abuja for the purpose of inspecting the electrical works and/or undertaking electrical repairs within the said shop."

- vi. The application was not opposed by her lawyers and it was granted by the Court. She obeyed the Court order and handed over the keys to the shop to the respondents. From April 2008 when she handed over the keys to the respondents, she never had access to the shop.
- vii. As at the time the Court visited the shop on 7/11/2007, she had vacated the shop for over 7 months, precisely on 1/4/2007.
- viii. By a letter dated 7/1/2013 [Exhibit B], the respondents wrote to her lawyers notifying them that they shall *"within five clear days of the delivery of this correspondence enter and occupy the said shop 42 Ceddi Plaza CBD Abuja, except there is any justifiable objection thereto from your office."*
- ix. On 15/1/2013, her lawyers replied and raised no objection to the contents of Exhibit B; the reply letter dated 15/1/2013 is Exhibit C.
- x. From the judgment of the Court, it is obvious that these material facts were intentionally and deliberately withheld and suppressed by the respondents. Respondents knew that she was no longer in occupation of the shop at the time of the judgment but went ahead to pray the Court to order her to deliver possession of the shop forthwith.
- xi. The respondents elected not to take possession of the shop after she had vacated the shop. She was never in occupation of the shop beyond

April 2007 and this fact is on record; the record of proceedings in *Suit No. FCT/HC/CV/698/2007* is Exhibit D.

- xii. She was surprised to hear that the respondents pursued the case and got judgment behind her. When she heard of the development through her bankers, she consulted her lawyers who were also not aware.
- xiii. She engaged the services of another lawyer who has gone into the case file and discovered that the respondents committed intentional fraud in obtaining judgment for a period they know she did not occupy their premises.

In the counter affidavit, Folashade Olaifa stated that:

- i. The respondents have not suppressed any fact from the Court.
- ii. On 17/1/2012, the applicant filed an amended statement of defence and counter claim [Exhibit A] and witness statement on oath [Exhibit B] in this suit. The applicant did not state in her pleadings and statement on oath that she delivered the keys to the demised premises to the respondents at any point in time.
- iii. Shortly after taking possession of the respondents' property in 2006, the applicant refused to pay the agreed charges on the rented premises at Ceddi Plaza. The applicant, on the pretext of a disagreement, filed *Suit No. FCT/HC/CV/698/2007*; the suit was pending before *Justice U. A. Inyang* until it was abandoned by the applicant.

- iv. Upon the determination of the tenancy and due to the refusal of the applicant to pay charges or comply with the terms of the tenancy, the respondents commenced this action i.e. *Suit No. FCT/HC/CV/163/2007* to recover possession of the shop.
- v. The applicant's deposition that she delivered possession of the premises in April 2007 is false and the applicant did not deliver any keys to the respondents.
- vi. When the respondents sought and obtained leave of the Court to effect repairs, the applicant allowed the respondents' agents access to the said shop to effect electrical repairs. The respondents did not take possession of the shop thereafter nor did the applicant deliver any keys to the respondents' officials.
- vii. When the applicant continued to hold on to the shop, the Court [Coram: *Hon. Justice Talba*] advised the parties to negotiate how the applicant can release the keys of the shop to the respondents. This led to the letter from the respondents' solicitors to the applicant's solicitors[i.e. Exhibit B attached to the applicant's affidavit].
- viii. In response, the applicant's solicitors stated that she had no objection to the repossession as the applicant has been "*wrongfully evicted from her shop.*"
- ix. Due to the said response, the respondents decided to call off the issue of repossession and await the Court's verdict on the issue. Respondents'

solicitors by letter dated 24/1/2013 [Exhibit D2] wrote the applicant's solicitors to communicate this position. The said letter was delivered to the applicant's solicitor on 29/1/2013 by FEDEX Courier Services.

- x. There were proceedings in this suit after the letter of 24/1/2013 and at no time did the applicant or her solicitors raise any objection to the continuation of the claim for possession by the respondents.

From the applicant's prayers, the affidavit evidence of the parties and the submissions of both learned counsel, the Court is of the view that the main issue for determination in this application is whether the judgment debtor/applicant has made out a case for setting aside the judgment of the Court or for varying the judgment sum. The resolution of this issue turns on the question whether the applicant has established the allegations of fraud and suppression of material facts made against the respondents.

Learned counsel for the judgment debtor/applicant referred to the case of Alaov. ACB [2000] 9 NWLR [Pt. 672] 264 to support the principle that a court has inherent power to set aside its judgment or order, which it made without jurisdiction or if same was obtained fraudulently. He posited that facts have emerged to show that the judgment creditors/respondents did not obtain the judgment of this Court with clean hands in so far as they withheld and suppressed vital, fundamental and material facts from the Court. Pope Ejiogor Esq. stated that:

- a) the respondents did not mention or bring to the notice of the Court that they had taken possession of the shop as shown in the letter, Exhibit B;
- b) the respondents were aware that the applicant had vacated the shop on or before the dates from which they claimed *mesne profit*; but they did not mention to the Court that the applicant had vacated the shop;
- c) the failure of the respondents to take possession of the shop during the pendency of the case was not as a result of the applicant's action or conduct; and
- d) the respondents did not at any point apply to this Court or any other court for an order to break into the shop allegedly held by applicant.

Pope Ejiofor Esq. also referred to pages 7, 10, 11, 14 & 15 of Exhibit D [i.e. record of proceedings in *Suit No. FCT/HC/CV/698/2007* before *Hon. Justice Inyang*] to support his position that the applicant moved out of the shop of the respondents in April, 2007. He submitted that the respondents committed fraud by deliberately suppressing vital facts which are directly linked to the reliefs sought. Mr. Ejiofor concluded that in the light of the new facts brought to the knowledge of the Court, the judgment cannot be allowed to stand. The applicant has made out a case for the Court to set aside the judgment delivered on 31/3/2015. However, if the Court is not minded to set aside the judgment in its entirety, it may decide to determine the issue of *mesne profit* and do justice to both parties.

On the other hand, the view of learned counsel for the judgment creditors/respondents is that the respondents did not suppress any information or material fact from the Court. The applicant actively participated in the proceedings in this suit but did not bring any of the alleged facts [in support of this application] before the Court either in her pleadings or in any other way. The applicant's application is clearly an attempt to re-litigate the same issues which the applicant had the opportunity to canvass but failed to canvass. Marcel Osigbemhe Esq. further submitted that the applicant filed pleadings and appeared in this suit before she abandoned her defence; thus, she should not be allowed to have a second bite at the cherry. He referred to **Chief S. L. Durosaro v. T. A. A. Ayorinde [2005] 8 NWLR [Pt. 927] 407.**

As I said before, the grounds of this application are fraud and suppression of material facts by the respondents. The case of the applicant is that she moved out of the said shop 42, Ceddi Plaza, Central Business District, Abuja in April 2007; and that pursuant to the leave of the Court granted to the respondents to enter the said shop for the purpose of inspecting the electrical works and/or undertaking electrical repairs within the shop, she handed over the keys to the respondents in April 2008 and never had access to the shop since then. The applicant's allegation is that the respondents suppressed material facts as they did not disclose to the Court that she vacated the shop/premises in 2007 and handed over the keys to them in April 2008. The respondents

denied that the applicant handed over the key to the shop to them in April 2008.

Now, in order to determine whether the applicant established that the respondents suppressed material facts, the critical question is whether the applicant has proved from the affidavit evidence before the Court that she delivered possession of the said shop to the respondents in April 2007 or in April 2008.

The applicant's counsel relied on pages 7, 10, 11, 14 & 15 of Exhibit D [i.e. record of proceedings in *Suit No. FCT/HC/CV/698/2007: Mrs. Bunmi Jegede Vs. Broll Properties Services Ltd. & Ceddi Corporation Ltd.* before Hon. Justice Inyang] to support his standpoint that the applicant vacated the shop in April 2007 or April 2008. Do these pages of Exhibit D support the view of Mr. Ejiofor?

At page 7 of Exhibit D, Mr. Marcel Osigbemhe, counsel for the defendants in that suit, informed the Court on 30/7/2007 as follows:

"... while the case is still pending before this Court, the Plaintiff has packed out of the Shop occupied by her without informing the Defendants about her action.

Furthermore, the Defendant [sic] having packed out of the shop, leaving it empty is still holding on to the key of the shop thereby making the place unusable by the Defendants."

The Court then noted that Timothy A. AchinuguEsq. who appeared for the plaintiff; holding the brief of Pope EjioforEsq. “*should during the adjournment visit the shop of the Plaintiff to verify the facts given to the Court by the Defence Counsel this morning.*”

At page 9 of Exhibit D, which is the record of proceedings on 1/11/2007, the Court noted that there is need for it “*to visit the locus in quo in view of some minor discrepancies in the explanation of Counsel for the Parties pertaining to the locking up of the Plaintiff’s Shop by her.*” Page 10 thereof shows that the Court visited the *locus in quo* [i.e. the said shop 42 Ceddi Plaza] on 7/11/2007 and noted that the shop “*has not been in use for the past seven months effective from 1st April, 2007 till 7th November, 2007 when the Court met at the locus.*” On that day, the plaintiff’s counsel made a proposal to amicably settle the matter. Page 11 of Exhibit D, which is the record of proceedings on 20/11/2007, shows that the efforts to amicably resolve the matter out of Court failed.

At pages 14 & 15 of Exhibit D, i.e. the record of proceedings on 10/4/2008, the defendant moved the motion for leave of Court for the defendant to enter the said shop for the purpose of inspecting the electrical works and/or undertaking electrical repairs in the said shop. The application was granted as the counsel for the plaintiff did not oppose it. Thereafter, the matter continued before My Lord, *Hon. Justice Inyang* till 24/6/2013 being the last date shown in Exhibit D.

It is important to note the applicant's deposition in paragraph 20 of her affidavit that she took the keys to the shop to the respondents in April 2008 pursuant to the leave granted by the Court for the respondents to undertake electrical repairs in the shop. This means that in April 2008, she was still in possession of the shop since she had the keys. In paragraph 21 of her affidavit, she stated that from April 2008 when she handed over the key to the respondents, she never had access to nor used the said shop. The respondents denied this assertion in paragraph 18 of the counter affidavit where it is deposed that the applicant allowed respondents' agents access to the shop to effect electrical repairs but the respondents did not take possession of the shop and the applicant did not deliver the keys to respondents' officials.

There is no credible evidence before the Court to prove that the applicant delivered possession of the shop to the respondents after the electrical works carried out in the shop pursuant to the order of the Court. Besides, pages 7, 10, 11, 14 & 15 of the record of proceedings, Exhibit D, do not support the view of Mr. Pope Eji for that the applicant delivered possession of the shop to the respondents in April 2007 or April 2008.

The applicant's counsel also relied on two letters, Exhibits B & C, to support the submission that the respondents took possession of the said shop in 2013. In the letter dated 7/1/2013 [i.e. Exhibit B], the respondents' solicitor [Marcel Osigbemhe Esq.] wrote to the applicant's solicitor [Mrs. Chinyere Onyedim] when this suit was before *Hon. Justice Talba, J. [as he then was]* thus:

Kindly recall that at the last proceedings in the above stated Suit, and upon your application for a further adjournment of the hearing of the Suit, the Honourable trial Judge did remark that in the interest of justice, the parties should liaise towards the Plaintiffs securing the possession of the Shop located at Ceddi Plaza. The Honourable trial Judge's remarks were premised on your statement that the Defendant was not holding over the Plaintiffs' Shop and also given the duration of the pendency of the Suit [the Plaintiffs having been denied possession of the Shop for about Six [6] years].

Be this as it may, and without prejudice to the respective rights and liabilities of the parties in the pending Suit, we do hereby notify the Defendant, vide your Office, that the Plaintiffs shall proceed [within five clear days of the delivery of this Correspondence] to enter and occupy the said Shop 42, Ceddi Plaza, CBD, Abuja, except there is any justifiable objection thereto from your Office.

Please accept our profound compliments of the Season.

In the reply dated 15/1/2013 [Exhibit C], Mrs.ChinyereOnyedim wrote:

We acknowledge receipt of your letter dated 7/1/2013 informing us of your intention to enter the said shop, the subject matter in this suit.

We do not have any objection against your intention to enter the said shop. The Plaintiffs that you represent have forcefully ejected the Defendant from the premises since March 2007.

It is pertinent to note that the applicant's counsel did not disclose to the Court that there was a further reply by Marcel Osigbemhe Esq. on 24/1/2013, which clearly showed that the respondents declined to take possession of the shop and opted for the matter to continue in Court. The letter dated 24/1/2013, which is attached to the counter affidavit as Exhibit D2, is a further reply by Marcel Osigbemhe to Mrs. Chinyere Onyedim where he wrote in part:

"However, given the position raised in your Correspondence, we shall accordingly proceed [to] with our Claims and await the decision of the Honourable Court on the pending claims inclusive of the claim for the recovery of possession of the said Shop."

This letter of 24/1/2013 shows without doubt that the respondents did not take possession of the shop as they proposed in the letter of 7/1/2013 and the issues in the suit - including the claims for possession and *mesne profit* - were left for the Court to decide.

It is clear from the foregoing that the applicant was unable to prove that the respondents took possession of the said shop in April 2007 or April 2008 or in 2013. Therefore, the applicant failed to establish the allegations of fraud and suppression of material facts made against the respondents.

The applicant had the responsibility to adduce evidence at the trial to prove when she vacated the said shop in order to disprove the respondents' case that she was still in possession of the shop from 1/4/2007 until 31/3/2015 when

judgment was delivered. As I held in the Ruling delivered on 21/3/2019, the applicant was given the opportunity to attend Court to present her case as hearing notices were served on her counsel [ChinyereOnyedimEsq.]. The applicant failed to utilize the opportunity to present her case. She cannot blame the Court or complain of violation of her right to fair hearing. See the case of **Kano Textile Printers Plc. v. Gloede& Hoff Nig. Ltd. [2002] 2 NWLR [Pt. 751] 420.**

From all that I have said and in conclusion, the applicant failed to establish any ground for setting aside the judgment of the Court delivered on 31/3/2015 or for varying the judgment sum with respect to the *mesne profit*. The application is dismissed. I award cost of N30,000.00 to the judgment creditors/respondents against the judgment debtor/applicant.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

1. Pope EjioforEsq. for the judgment debtor/applicant; with O. I. Chime Esq.
2. OkeyOjukwuEsq. for the garnishee.

