

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT 28 GUDU – ABUJA**

**DELIVERED ON WEDNESDAY THE 9<sup>TH</sup> DAY OF FEBRUARY, 2021**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI**

**SUIT NO. CV/1584/2020**

**BETWEEN:**

**IMAD BOUSTANY ----- CLAIMANT/RESPONDENT**

**AND**

**1. THE DEPUTY SHERIFF, ----- DEFENDANT/RESPONDENT**

**HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**2. AFY EGBUCHE ----- DEFENDANT/APPLICANT**

**RULING**

Learned Counsel for the 2<sup>nd</sup> Defendant filed a preliminary objection dated the 26<sup>th</sup> day of June, 2020 under the inherent jurisdiction of this Court. It is seeking an Order:

1. That this Hon. Court lacks jurisdiction to hear, entertain and grant the reliefs as contained in the originating summons.

The grounds for bringing this application are as follows:-

- a. That this Hon. Court lacks jurisdiction to hear this matter.
- b. That this Hon. Court has become functus officio having delivered his judgment in the suit no: FCT/HC/M/2377/2019 on the 2/07/2019, being the suit upon which this suit is predicated.
- c. That the subject matter in thus suit arising from suit no: FCT/HC/M/2377/2019 is currently before the Court of Appeal, Abuja Division in Appeal no: CA/ABJ/CV/307/2020 instituted by the Claimant.

- d. That the reliefs as set forth in the originating process and the entire suit is an invitation on this Hon. Court to sit on appeal in its judgment delivered on the 2/07/2019.
- e. That the execution upon which the Claimant grievances are founded have been carried out and the Claimant as judgment debtor willingly complied in part in satisfaction of the judgment debt by paying the N5,000,000.00 rent for the apartment Kaira Boustany, before the execution was levied.
- f. That this Hon. Court lacks the jurisdiction to determine any issue arising from the execution of its judgment duly carried out pursuant to a writ of attachment approved by this Hon. Court.
- g. That this suit is highly frivolous, unfounded, waste of the judicial time and a source of unnecessary cost on the 2<sup>nd</sup> Claimant.

In support of the objection is a written address. Learned Counsel to the 2<sup>nd</sup> Defendant adopted the said Written Address. He raised one issue for determination which is whether this Honourable Court has the requisite jurisdiction to entertain this suit and grant the reliefs of the Claimant as presently constituted. Summarily learned counsel submitted that the duty the Claimant is asking this Hon. Court to perform is out of its limits as the function of declaring the legality, validity or otherwise of the content of a judgment of a trial or lower court rest exclusively and constitutionally reserved for the Appeal Court. Thus this court therefore lacks every legal powers and jurisdiction to hear or make declarations as the Claimant is asking and praying this court to do. Counsel humbly urged the court to restrain itself from further adjudicating on this matter, uphold 2<sup>nd</sup> Defendant's objection and dismiss this suit in its entirety. Learned counsel relied on the case of **ALOR & ORS V. REGISTERED TRUSTEES OF ENUGU NORTH DIOCESE ANGLICAN COMMUNION & ANOR** (citation not supplied) and Sections 240 & 241 of the 1999 Constitution (As Amended).

The claimant filed a 4-paragraph counter affidavit dated the 13<sup>th</sup> day of July, 2020. Attached is Exhibits A and a written address. The 1<sup>st</sup> Defendant filed nothing to this regard. The Preliminary Objection is on point of law. It is not supported by an Affidavit. It is therefore not necessary for the Claimant to depose to an Affidavit or Counter Affidavit. I shall not therefore bother to reproduce the said Affidavit. Learned Counsel to the Claimant adopted his Written Address wherein he raised a sole issue for determination to wit; “whether the 2<sup>nd</sup> Defendant’s preliminary objection has any factual or legal basis to be accorded any merit”. He submitted that the instant originating summons is not an invitation to this court to sit on appeal over its own judgment because nowhere in the judgment in Suit No; FCT/HC/M/2377/2019 did the court stipulate the mode of enforcement of its orders, as it is only in that case that the instant Originating Summons will amount to inviting the court to sit on appeal over its own decision. Rather what is submitted before this Hon. Court for interpretation are the relevant sections of the Sheriffs & Civil Processes Act in relation to the acts done by the defendants and the reliefs sought seeks to prevent a further violation of extent laws by the Defendants. On the grounds that the subject matter of the instant originating summons is also before the court of Appeal, counsel submitted that it is a principle of law that “He who asserts must prove” however, applicant did not deem it fit to buttress her assertion by exhibiting the relevant processes in the referenced appeal especially on the face of the Claimant’s denial. Counsel further submitted that the provisions of Order 4 Rule 10 of the Court of Appeal Rules 2016 and the case of ALOR & ORS V. REGISTERED TRUSTEES OF ENUGU NORTH DIOCESE ANGLICAN COMMUNION & ANOR cited by the objector are wholly inapplicable to the instant case because the instant originating summons is a fresh action challenging the propriety of the execution of a restraining order by a Writ of Habeas Corpus, not an application emanating from the matter which is currently on appeal.

Counsel beseeches the court to pay no heed to the submissions and prayers of the 2<sup>nd</sup> Defendant and accordingly dismiss same as lacking in substance and merit. Counsel cited **Okoli & ors v. Onwugbufor (2018) LPELR-46660 (CA)** and **Nsefik & Ors v. Muna & Ors (2007) LPELR-3934 (CA)**

I have read the Notice of preliminary objection and considered the Written Addresses of Counsel. The 2<sup>nd</sup> Defendant's contention is that the reliefs sought as set forth in the originating process and the entire suit is an invitation on this Hon. Court to sit on appeal in its judgment delivered on the 2/07/2019 hence this court lacks jurisdiction to entertain this suit. In my considered opinion, the issue for determination is;

“Whether or not this honorable Court has jurisdiction to hear this suit and grant the reliefs as sought by the Claimant”.

Jurisdiction is fundamental to any case, and where raised it must be looked into first. The Court of Appeal rightly held in the case of **ONI – ORISAN & ANOR V. EDUNJOBI & ORS (2018) LPELR – 49368 (C. A.)**:-

*“..The law is trite and settled. When the jurisdiction of a Court is challenged, the Court must first handle that issue. This is understandable because jurisdiction is what gives the Court power to look into a matter. It is the life wire of the Court in a matter. Anything done by a Court without jurisdiction amounts to a nullity... It is to avoid a wasted effort that the Courts have decided in a plethora of cases that when the issue of jurisdiction is raised, the Court should handle same first...”*

Jurisdiction of a Court is so crucial that the lack of it will render an order or Judgment made a nullity see the case of **Edet v. State (2008) LPERL – 4016 (C A)**:-

*“...Jurisdiction is radically fundamental to any judicial proceedings, it must be clearly shown to exist at the commencement of or during*

*the proceedings otherwise such proceedings no matter how well conducted and any judgment arising there from no matter how well considered or beautifully written will be a nullity and waste of time...”*

In the instant case, it is incontrovertible that judgment was delivered in suit No: FCT/HC/M/2377/2019 between Afy Egbuche v. Imad Boustany (the 2<sup>nd</sup> Defendant and Claimant in this suit) by this Hon. Court sitting at Jabi, before his Lordship Hon. Justice D. Z. Senchi. The question therefore that begs to be answered is whether this Honourable Court has the powers to revisit the said Judgment by interpreting whether the orders made vide the said judgment are enforceable vide a writ of attachment (fifa)? The Claimant in the Originating Summons in this suit sought for the determination of some questions after which the Court will make declaratory Orders. These questions are as follows;

1. Whether having regards to the provisions of the Sheriffs and Civil Processes Act, particularly at Section 20 thereof, the orders made vide the judgment in suit No: FCT/HC/M/2377/2019; Afy Egbuche (Applying in the capacity as mother & guardian to Kaira Boustany, minor) vs. Imad Boustany, which by their very nature are restraining/prohibitory orders, and not orders for the payment of money, are enforceable vide a writ of attachment (fifa).
2. Whether having regard to the provisions of the sheriffs & Civil Processes Act (SCPA) and the Judgment Enforcement Rules, particularly Section 22 (1) of the Sheriffs and Civil Processes Act, the Judgment obtained in Suit No: FCT/HC/M/2377/2019 by the 2<sup>nd</sup> defendant herein, against the Claimant herein, which was purportedly enforced on the 26<sup>th</sup> February 2020 by officers of the 1<sup>st</sup> defendant could be so enforced by a Writ of Fifa, to realize a sum of money neither stated in the orders made nor arrived at by

any subsequent legal proceedings, but which was extra judicially concocted by the defendants.

And should the Honourable Court answer the aforesaid question in the negative, the Claimant seeks the following reliefs:

1. A declaration that the orders of this Honourable Court contained in its judgment in suit No; FCT/HC/M/23377/2019 are restraining/prohibitory orders incapable of being enforced by a Writ of FIFIA.
2. A declaration that the purported enforcement of the restraining/prohibitory orders of this Honourable Court in Suit No: FCT/HC/M/23377/2019 by writ of FIFIA is irregular, invalid, illegal and unconditional.
3. An order of this honourable court annulling and setting aside the issuance of the writ of FIFIA, purportedly issued to enforce the orders of this Honourable Court in Suit No: FCT/HC/M/23377/2019 which was carried out by the Defendants jointly and severally against the Claimant on the 26<sup>th</sup> of February, 2020.
4. An order mandating the 2<sup>nd</sup> Defendant to repay the sum of N4, 718,000.00 (Four Million, Seven Hundred and Eighteen Thousand Naira) only, realized from the Claimant upon the wrongful execution of the judgment by means of a writ of FIFIA.
5. An award of general and exemplary damages in the sum N20,000,000.00 (Twenty Million Naira) only, against the Defendants jointly and severally, for the irregular, malicious and reckless enforcement of the restraining orders of the court by writ of FIFIA, against the properties of the Claimant and properties of his employer who was not a party to the suit, which caused him material losses and severe emotional distress.
6. An order of perpetual injunction restraining the Defendants either by themselves, their servants, agents, officers, employees or

howsoever designated from seeking to enforce the restraining/prohibitory orders of this court in suit No: FCT/HC/M/2377/2019 by means of a writ of Fifea against the Claimant.

The Court of Appeal held in the case of **Olarotimi Makinde V. Albert Abiodun Adeogun (2008) LPELR-4462 (C A)** that:-

*“As a general Rule, no Court or judge has the power of rehearing, reviewing or varying any Judgment or order either in an application made in the original action or in a fresh action brought for that purpose. That task ordinarily belongs to the appellate body by law empowered.*

*The rule which is informed by the policy that litigations must be brought to an end has many exceptions. These exceptions are either as provided for in the applicable rules of Court or under the inherent jurisdiction of the Court. If not so empowered, the Court that has determined a cause or matter ceases to possess further power in dealing with the case except with respect to such ancillary matters as stay of execution matters, installment payments e.t.c the Court is said to have become functus officio, its powers to review, or vary the decision having been assigned to an appellate body..”*

Also the Supreme Court in **Okoye & ORS V. Nigerian Construction & Furniture Co. Ltd & ORS (1991) LPELR-2509 (SC)** held that;

*“The conditions under which a High Court can adjudicate on the judgment of another High Court of equal jurisdiction are principally: (i) Where the judgment is obtained by fraud; (ii) Where there is a serious procedural fundamental defects in the proceedings that led to the Judgment; and (iii) Where on the face of the Record the proceedings that led to the Judgment is a nullity.”*

These questions sought to be answered and the orders prayed for in the Originating Summons are with regards to judgment delivered by this Hon. Court in Suit No: FCT/HC/M/2377/2019 which does not fall within the conditions under which a High Court can adjudicate on the judgment of another High Court of equal jurisdiction as laid down by the Supreme Court in the case of **Okoye & ORS V. Nigerian Construction & Furniture Co. Ltd & ORS (Supra)**. It is the law that once a Court has delivered its decision on a matter it becomes functus officio with respect to that matter. It ceases to be seized of the matter and cannot reopen it for any purpose whatsoever. This is because a Court has no jurisdiction to sit as an appellate Court over its own decision. From the foregoing therefore, I answer in the negative and I align myself with the submission of the 2nd Defendants counsel that this Honourable Court is functus officio as regards this suit. Moreover the 2<sup>nd</sup> Defendant in paragraph C of grounds in support of this application stated that the subject matter of the said Judgment in Suit No: FCT/HC/CV/2377/2019 is currently before the Court of Appeal Abuja Division in Appeal no: CA/ABJ/CV/307/2020 instituted by the Claimant in this suit. The Claimant in paragraph 3(b) of his counter affidavit to the notice of preliminary objection averred that the subject of this instant suit is not pending before the Court of Appeal Abuja Division in Appeal no: CA/ABJ/CV/307/2020, however attached to the 2<sup>nd</sup> Defendant's counter affidavit in response to the originating summons is a Notice of Appeal and an Amended Notice of Appeal No: CA/ABJ/CV/307/2020 between IMAD BOUSTANY V. AFY EGBUCHE with seven (7) grounds basically on the jurisdiction of the trial Court (FCT High Court). The Claimant in this suit cannot therefore deny the existence of an appeal filed by himself, thus this court cannot adjudicate on a matter already before the court of Appeal as it amounts to abuse of court process.



The 2<sup>nd</sup> Defendant's Preliminary Objection is hereby allowed and upheld. I so hold that this Honourable Court lacks the jurisdiction to preside over this suit. This suit is hereby struck out for want of jurisdiction and abuse of Court process.

**Parties:** Absent

**Appearances:** Opeyemi Adeyemi for the Claimant. Adeotun A. Akerele for the 2<sup>nd</sup> Defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**9<sup>TH</sup> FEBRUARY, 2021**