

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERK: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/166/2019
DATE: 27TH FEBRUARY, 2020**

BETWEEN:

ASO SAVINGS & LOANS PLC - CLAIMANT/APPLICANT

AND

1. MOHAMMED INUWA SHEHU 2. PERSONS UNKNOWN 3. HON. MINISTER F.C.T. 4. F.C.D.A.	}	DEFENDANTS/RESPONDENTS
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Parties absent.

E.N. Anim for the Claimant.

Amazing Ikpala appearing with Adedayo Adeniyi and Edikan Akpan Esq. for the 1st Judgment Debtor/Applicant.

Judgment Creditor/Respondent's Counsel – The matter is for ruling and we are ready to take same.

R U L I N G

This ruling is predicated on an application on notice No. M/166/2019 dated 17/10/2019 brought pursuant to Order 10 Rule 11; Order 29 Rule 12 of the Rules of this Court 2018 and under the inherent jurisdiction of this court.

The application seeks for the following:

1. An Order of this Honourable Court setting aside the Default Judgment entered on 25th September, 2019 in Suit No. FCT/HC/CV/0889/2018 in favour of the Judgment Creditor.
2. And for such order(s) that this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are:

1. This Honourable Court entered judgment in default of defence in Suit No. FCT/HC/CV/0889/2018 in favour of the Judgment Creditor/Respondent on 25th September, 2019.
2. The 1st Judgment Debtor/Applicant only became aware of the judgment against him on Monday, 14th October, 2019 when he received a copy of the Judgment Certificate and he promptly briefed his lawyers to take necessary steps to set aside the said judgment to enable him defend the suit on its merits.
3. The 1st Judgment Debtor/Applicant was not served with all the processes in this matter and all hearing notices in respect of all adjourned dates before judgment was delivered against him.
4. The main reliefs granted by this Court as sought by the Judgment Creditor/Respondent are declaratory reliefs which cannot be granted on mere admission or in default of defence.
5. The Judgment Creditor/Respondent concealed material facts from the Court which led to the judgment entered against the 1st Judgment Debtor/Applicant.

6. The Judgment Creditor/Respondent concealed the fact that parties were still negotiating terms of settlement, and had indeed reached advanced stage, as at when it applied and obtained default judgment against the 1st Judgment Debtor/Applicant.
7. The Judgment Creditor/Respondent also concealed the fact that the 1st Judgment Debtor/Applicant had submitted title documents in respect of two other properties in respect of the subject matter of the suit.
8. Significantly, by a letter dated 13th September, 2019 with Reference No. ASO/LEGAL/2029/475, the Judgment Creditor/Respondent proposed a modification to the proposed terms of settlement of this matter, and further proposed a timeline of 14 days from receipt of the letter (i.e. on or before 27th September, 2019) for compliance. The Judgment Creditor/Respondent concealed this fact from the court in its application for judgment which was eventually granted on 25th September, 2019 even before the settlement deadline of 27th September, 2019 proposed by this very Judgment Creditor/Respondent.
9. The Judgment Creditor/Respondent's application for judgment in default of defence was made in bad faith.
10. The 1st Judgment Debtor/Applicant disputes the judgment sum of N114,903,586.47 (One Hundred and Fourteen Million, Nine Hundred and Three Thousand, Five Hundred and Eighty Six Naira and Forty Seven Kobo) awarded to the Judgment Creditor/Respondent as claimed, as the sum total is as a

result of computation of excess unilateral charges by the Judgment Creditor/Respondent.

11. The 1st Judgment Debtor/Applicant has a good defence to the entire suit and claims of the Judgment Creditor; he is ready and hereby undertakes to defend the suit on its merits diligently.
12. The Rules of this Honourable Court empowers this Court to set aside the judgment entered in favour of the Judgment Creditor/Respondent on 25th September, 2019.
13. In the circumstances of the instant case, this Honourable Court is vested with the requisite powers to grant this application as prayed.

In support of the application is a 6-paragraph supporting affidavit dated 17/10/2019 deposed to by Tajudeen Ayeni, a Litigation Secretary in the law firm of J.K. Gadzama. Attached thereto are documents marked Exhibits A, B, C, D and E respectively. Also filed is a 6-paragraph Reply Affidavit dated 5/11//2019 deposed to by Madu Gashi, a Litigation Clerk in the law firm of J.K. Gadzama LLP. Attached thereto are documents marked Exhibit F and G respectively. Reliance is placed on all the said Affidavits.

Also filed is a written address dated 17/10/2019 wherein learned counsel to the Judgment Debtor/Applicant formulated an issue for determination, thus:

“Whether the Applicant is entitled to the reliefs sought”

On this sole issue, it is the submission of counsel that there was non-service of all processes and hearing notices in this matter on the 1st Judgment Debtor/Applicant warranting the setting aside of the judgment of 25th September, 2019.

It is submitted that there was concealment of material facts from the court which led to the judgment entered in favour of the Judgment Creditor. Court is referred to paragraph 3(e) to (h) of the supporting affidavit and the case of ALH. DARMA v ECOBANK NIG LTD (2017) 9 NWLR (Pt 1571) 480 at 511 Paras A – C.

It is submitted that the constitution provision for fair hearing arises from two common law principles of natural justice. **“Audu alteram partem and nemo judet in causa sua”** What the rule of doctrine of fair hearing means is that the parties must be given equal opportunity to present their case to the court and no party should be given more opportunity or advantage in presentation of his case. See INAKOJA v ADELEKE (2007) 4 NWLR (Pt 1025), 423 at 618 Paras C – E.

It is further submitted that this is a proper case for this Honourable Court to set aside its judgment as the main reliefs granted in favour of the Judgment Creditor are declaratory in nature which cannot be granted on mere admission or default of defence. See SALAU & ORS v PARA-KOYI (2000) LPELR – 5920 (CA). Court is urged to grant the application.

In opposition to this application, the Judgment Creditor/Respondent filed a 4-paragraph counter affidavit dated

24/10/2019 deposed to by Julius Ayuba, a Law Office Assistant in the firm of Legal Trust LP. Attached thereto are documents marked Exhibits 1, 2 and 3 respectively.

Learned counsel equally filed a written address dated 23/10/2019 wherein counsel distilled an issue for determination, thus:

“Whether from the affidavit in support of the motion on notice, the Judgment Debtor/Applicant has satisfied the conditions precedent for the grant of an order setting aside a Default judgment”

On this sole issue, it is the submission that the Applicant herein has not satisfied the requirements of case law and the rules of court for the instant judgment to be set aside. See WILLIAMS v HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) 1 – 2 SC 145.

It is submitted that the Supreme Court has since taken a different position on the issue that declaratory reliefs cannot be granted via motion for default judgment. See GE INTERNATIONAL (NIG) LTD v Q-OIL AND GAS SERVICES LTD (2016) 10 NWLR PT. 1520 at 304 and Order 21 Rule 9 of the FCT High Court (Civil Procedure) Rules, 2018.

On the issue of alleged concealment of settlement attempt from the court as contended by the 1st Defendant, it is submitted that the Judgment Creditor’s counter affidavit has made it clear that its discussions with the Applicant was without prejudice to the pendency of this suit.

It is further submitted that it is now an established principle of law that negotiation aimed at out of court settlement should not

preclude a party from showing up in court to defend a case against him or filing requisite processes in court. See the case of S & D CONSTRUCTION LTD v AYOKU (2003) 5 NWLR Pt 813 Pg 278 at 300 – 301.

On the issue of non service, it is submitted that the Applicant was served the writ of summons since February, 2018. They were also served with the motion for judgment, hearing notice for the day it was to be heard and hearing notice for the day judgment was to be delivered.

It is further submitted that the case of DARMA v ECO BANK cited by the Applicant's counsel in his address was not the lead judgment and should not be followed. See Supreme Court case of SIFAX (NIG) LTD v MIGFO (NIG) LTD (2018) 9 NWLR PT 1623 Pg 138 at 176 Paras B – C.

It is submitted that the Applicant and his two lawyers ought to have followed up with the court and find out the next adjourned date. See EKITI STATE L.G.A. v AJE PRINTING (NIG) LTD (2009) 4 NWLR Pt 1131 Pg 304 at 329 Paras E – H. Court is urged to refuse the application.

Counsel to the Judgment Debtor/applicant filed a written reply on point of law dated 5/11/2019 wherein counsel submitted that the fundamental defect manifest in paragraph 37 of the Judgment Creditor's supposed sole witness statement on oath which is before the court, is fatal and renders the supposed witness statement on oath incompetent and incurably bad. The resultant

effect is that the statement of claim in this suit was not accompanied by any valid witness statement on oath as required by the Rules of this court. See GTB PLC v ABIODUN (2017) LPELR – 42551 (CA).

It is submitted that the Default Judgment cannot be entered in the absence of a competent witness statement on oath.

It is the submission that the decision in the case of GE-INTERNATIONAL OPERATIONS (NIG) LTD v G-OIL & GAS SERVICES LTD (Supra) cited by the Respondent's counsel was wrongly cited. That a calm reading of the decision in the above case will reveal without difficulty that the decision of the trial court in that case is only affirmed because the Supreme Court found that the claim was for liquidated demand which is not the case here. Court is urged to grant the Applicant's prayers.

I have carefully considered the processes filed and submission of learned counsel on both sides, I do agree with the learned counsel to the Judgment Debtor/Applicant that the sole issue for determination is whether the Applicant is entitled to the reliefs sought?.

A cursory perusal of the supporting affidavit will reveal that the main plank of this application to set aside the default judgment of this court delivered on 25/9/2019 is that the 1st Judgment Debtor/Applicant was not served with all the processes in this matter and all hearing notices in respect of all adjourned dates in

this matter and that the judgment is declaratory in nature; therefore ought not to be given in default.

Now from the record of this court, the Applicant was personally served with the originating writ of summons on 10/4/2018, hearing notices against 24/4/18, 4/10/18, 25/10/18, 5/3/19, 8/4/19, 7/5/19, 24/6/19 and 19/9/2019 was personally served on the Applicant who acknowledged same.

In the proceeding of 14/11/18 M. Onoja Esq. announced appearance for the 1st Defendant/Applicant.

In the proceedings of 17/1/19 A.A. Askira appeared for the 1st Defendant/Applicant herein.

In fact the Motion No. 5466/19 praying for an order of this court to enter judgment in terms of the statement of claim, and a hearing notice against the 24/6/19 when the said Motion was moved was personally served on the Judgment Debtor/Applicant on 29/4/2019 and 19/6/2019 respectively.

From the forgoing, it will be wrong for the Judgment Debtor/Applicant to say that he was not served with the originating process and hearing notices of this court.

It is interesting to note that the Applicant upon the service of the originating processes did not deem it fit to file his statement of defence until this stage of the proceedings.

It is worthy of note that the Applicant herein has not met the condition precedent for the setting aside of the judgment of this court in this suit.

By the provision of Order 32 Rules 5(3) of the Rules of this Court, the Applicant ought to have paid penalties for failing to file this application within 6 days of the delivering the judgment sought to be set aside and also sought for leave for extension of time to file this application to set aside.

In the instant case, there is no application for extension of time. The judgment in the main suit was delivered on 25/9/2019 while the application to set aside was filed on 17/10/19 outside the time provided by the Rules of this court.

In the Supreme Court case of A. S.T.C. v QUORUM CONSORTIUM LTD (2009) 9 NWLR Pt 1145 Pg 1 at 10 ratio 7 the court held inter alia:

“The settled law is that rules of each court are not made for fun, but to be obeyed. Once such rule are in place they must be adhered to and not contravened or ignored”

In the instant case, no leave of this court was sought and obtained.

Now on the 2nd leg of the application that declaratory reliefs cannot be granted via motion for default judgment, I am of the considered view that it is not a ground for setting aside of default judgment at best it could be a ground for appeal.

It is trite law that where a purported erroneous order is made within jurisdiction, it can only be reviewed by an Appellate court. See IBOK v HONESTRY 11 (2007) 6 NWLR (Pt 1029) 55.

It is the strong contention of the Judgment Debtor/Applicant that he was not served with hearing notice for the date of delivery of judgment. However, from the record of this court the Applicant was duly served with the hearing notice for the date of delivery of judgment i.e. 19/9/2019. The court could not deliver its judgment on that date and it was subsequently adjourned to the 25/9/2019.

There is uncontradicted affidavit evidence deposed to by the Bailiff of this court that the Applicant was duly notified of last day the suit came up before judgment was delivered (19/9/2029) and the Applicant took no step to find out what happened that day or the next adjourned date of the case.

It is the law that the Applicant and his lawyers ought to have followed up with the court and find out the next adjourned date. In the case of EKITI STATE L.G.A. v AJE PRINTING (NIG) LTD (Supra) the court held inter alia:

“...This is more so that the courts have been consistent in holding that generally, where a matter has been slated for hearing on a particular date and parties have been properly informed by due service of hearing notices on them, there is no further duty on the court to serve them with hearing notices on subsequent dates of adjournments. A diligent litigant and his counsel are expected to keep abreast of all

subsequent dates on which the case is adjourned to. Where they neglect to do so, they cannot be heard to complain as equity aids the diligent and not the indolent. I am satisfied that the Appellant was given fair hearing. The failure of the court to serve him a hearing notice on the subsequent date of adjournment is of no moment and has not occasioned a miscarriage of justice...”

In the instant case, the Applicant was duly served with the originating process and hearing notices in this case, except for the hearing notice against the 25/9/2019 which to my mind has not occasioned any miscarriage of justice to the Applicant. He has ample opportunity to have file his statement of defence and a counter affidavit in response to the motion for judgment that was duly served on him. More so no leave of this court was sought and obtained before filing this application.

In conclusion, I am of the considered view that this application is lacking in merit and do not have any substance, it is accordingly dismissed.

**(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/02/2020**

Judgment Creditor's Counsel – We are very grateful for the considered ruling.

1st Judgment Debtor's Counsel – We are grateful.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/02/2020