IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO – ABUJA

CLERK: CHARITY
COURT NO. 16
SUIT NO: FCT/HC/CV/136/16
MOTION NO: M/4688/18
DATE: 30 – 1 – 2020

BETWEEN:

OLALEKAN OGUNLEYE **PLAINTIFF /RESPONDENT**

AND

1. PARTNERSHIP INVESTMENT COMPANY PLC **DEFENDANT**
2. PARTNERSHIP SECURITIES LIMITED **/APPLICANT**
3. PARTNERSHIP INVESTMENT COMPANIES LIMITED

RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This application vide motion on notice, number M/4688/18 dated 9th March, 2018 but filed on the 22nd March 2018 prayed the court essentially for a single relief;

> *"An order setting aside the judgment of this court delivered on the 9th June 2017 for lack of jurisdiction*."

It was brought pursuant to Sections 6(6)b and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); **S. 417** of the **Companies and Allied Matters Act; Order 13 Rule 6 of the High**

Court of the Federal Capital Territory (Civil Procedure) Rules 2004; and under the inherent jurisdiction of this court.

The grounds upon which this application is premised are as follows;

1) The dispute in this case arose from an alleged business relationship purportedly between the Claimant and the Defendants.

2) There is no entity in law known as PARTNERSHIP INVESTMENT COMPANY LIMITED.

3) A Provisional Liquidator for the 2nd defendant was appointed in November 2016 by the Federal High Court, Lagos Division whilst the 1st Defendant has been wound up by the same Court.

4) This Court had no jurisdiction to entertain the suit or enter judgment in respect thereof;

5) In the premises of the foregoing, the judgment of this court made on the 9th June 2017 is liable to be set aside.

The learned counsel to the applicant while moving this motion submitted that the application is supported an eight paragraphs affidavit, two exhibits annexed and a written address.

He placed reliance on the deposition contained in the supporting affidavit, the two exhibits and as well adopted his written address as his argument in support of this application.

He equally referred the court to his reply on points of law filed on the 7th June 2018 adopted same too as his further submission and arguments in favour of the application.

Finally, he urged the court to grant the application and set aside the said judgment.

The Judgment Creditor/Respondent on his part vehemently opposed the grant of this application by filling counter-affidavit of Nine paragraphs and a written address as his arguments and submissions against the grant of this application.

It must be noted that the two exhibits that accompanied the affidavit in support are exhibit PICOL A and B. they are Certified True Copies of the Court order appointing a Liquidator for the 2nd Defendant and the order of Court winding up the 1st Defendant respectively.

Also, of importance is the date the two orders were issued. PICOL A was issued on the 8th day of November, 2016 while PICOL B was issued on the 12th day of June, 2017 respectively.

The two learned counsels in their written addresses submitted issues for determination. According to the Applicant's counsel, he distilled one issue for determination. And it is this;

> *"Whether this court ought not to set aside the Judgment delivered on the 9th of June 2017 for lack of jurisdiction."*

As for the learned counsel to the Respondent, he submitted these two issues for determination and they are as follows;

a) Whether the Applicant's (Judgment Debtor) has the requisite competence to bring the application before the Honourable Court?

b) Whether the Court can on the face of the motion paper set aside its judgment in this suit.

With due respect to the learned counsel in to the Respondent, the sole issue that is germane to the determination of this application is as couched by the Applicant's counsel.

I agree in toto with the learned counsel to the Applicant, the judgment in question is a default one given under the provision of the old Rule, I mean Civil Procedure Rules 2004 of the Federal Capital Territory, Abuja.

Under the Rule, any defendant that is defaulted in filing a defence to the claims of the plaintiff or refused or neglected to appear in court to defend the claims of the Claimant, such Claimant may be given judgment especially when it is a liquidated money demand.

Order 25 Rule 1 provides thus;

> *"Where a plaintiff's claim is only for a debt or liquidated demand and the defendant does not, within the mode and time allowed by these Rules file a defence, the plaintiff may, at the expiration of such time, apply for final judgment for the amount claimed, with costs."*

Having considered the arguments and submissions of both learned counsel and incorporated them in the record of this court, there is no doubt that the judgment of this court in this case is not final but valid, unless set aside by the same court of higher appellate court. See **BELLO VS INEC AND ORS (2010) LPELR 767 (SC).**

However, **Order 25 Rule 9** gives the court at the same time to set aside such judgment entered in default in default of appearance.
It provides thus;

> *"A Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this order."*

It is evident vide exhibit PICOL A that all the Defendants/Applicants had been for a Provisional Liquidator as 8th day of November 2016 that brings in and made the provision of **S.417** of the **COMPANIES AND ALLIED MATTERS ACT (CAMA)** relevant at this point and came to play.
S. 417 provides thus;

> *"If a winding up order is made or a provisional liquidator is appointed, no action or proceeding shall be proceeded with or commenced against the company except by the leave of court…"*

The true position is that once a provisional liquidator is appointed for a company, no action or proceeding shall be proceeded with or commenced against the company. See FMBN VS NDIC (1999) 2 NWLR (PT 591) 33.

In the present case, the judgment of the court delivered on the 9th of June 2017 while the Defendants/Applicants had ceased to be in existence since the 8th day of November 2016 cannot stand in due obeisance to the dictate of law.

In the case of **BELLO VS. INEC AND ORS** (Supra), the apex court said;

> *"The High Court Civil Procedure Rules gives the High Court the powers to give judgment in default of pleadings or appearance. Any judgmentin default of pleadings or appearance is not a final judgment since both parties were not heard on the merit of the case. The judgment was obtained by failure of the Defendant to follow certain rules of procedure… such a judgment may be set aside by*

a trial court in the judicial division where the judgment was obtained. See ***WIMPEY LTD VS. BALOGUN (1986) 3 NWLR (PT 28).***

In final analysis, I must say that I am not persuaded with the Ruling of my Learned Brother Adeniyi J cited and supplied by the Respondent in that the procedure adopted in instituting that case is entirely different and not the same with the procedure employed in the instant case.
In that case, the Respondent/Plaintiff came by way of undefended list procedure which is not the case here.

I therefore have no hesitation and without much ado set aside the judgment of this court entered in favour of the Plaintiff/Respondent as being a nullity having been entered against non-existent parties and for lack of jurisdiction.

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Suleiman Belgore
(Judge) 30-1-2020.