


IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA
JUDGE
SUIT NO.: FCT/HC/PET/1903/19

BETWEEN:

MR. OSHOPO OSITADINMA ----- PLAINTIFF/APPLICANT

AND

- | | | |
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| <p>1. GREEN WORLD NATURAL
SOLUTION INTERNATIONAL LIMITED</p> <p>2. MR. ZHO ZHAOYU (STEPHEN)
FORMER MANAGING DIRECTOR
GREEN WORLD NATURAL SOLUTION</p> <p>3. MR. RYAM (MANAGING DIRECTOR
GREEN WORLD NATURAL SOLUTION
ABUJA BRANCH)</p> |  | <p>-----DEFENDANTS</p> |
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RULING

On the 16th day of January, 2020 this Court delivered its Judgement before all the parties representatives and Counsel.

As at that day at about 12:34 pm, the Defendant had not filed any Statement of Defence to the case of the Plaintiff. It is imperative to also point out that the Suit was filed sometime in May 2019. The Court had issued an Order

for Interim Injunction which expired after 7 days. The Court had ensured that the Defendants were served per the Order of Court. The Court had equally granted an application made orally for the service of Process on Zhou Zhaoyu (Stephen) who is the former Managing Director of the 1st Defendant/Judgement Debtor to be through the 1st & 3rd Defendants/Judgement Debtors.

It is imperative to note that this Court had ensured that the Defendants/Judgement Debtors were all served Hearing Notices showing everyday this matter is scheduled to be heard. The Judgement Debtors representatives Abdullahi Ibrahim Gamba and Mr. Ryam usually acknowledge the receipt of these Hearing Notices.

Most importantly the Judgement Debtors have their Counsel in Court the day the Judgement was delivered. Their Counsel had withdrawn the Preliminary Objection which was based on the fact that the Writ was not signed. The Court had pointed out to them that contrary to that assertion that the Writ was signed.

Again the Court had on several occasions adjourned the matter for Judgement after the Plaintiff/Judgement Creditor had applied for Judgement based on provision of **Order 10 Rule 5, Order 10 Rule 12 and Order 21 Rule 1 FCT High Court Rules 2018.**

The Court did not grant the application for Judgement but ordered that the parties show cause why Judgement should not be entered as sought. That Order was made on the 13th day of November, 2019.

On the 6th day of December, 2019 Abdullahi Ibrahim Gamba the Marketing Manager of the 1st Judgement

Debtor/Defendant was in Court. He did not appear with any Counsel. He promised to brief a Counsel before the next adjourned date and to ensure that all their Processes are filed in defence of the Suit. The matter was adjourned to the 10th day of December, 2019. The Defendants/Judgement Debtors did not fulfil their promise to file their defence to the Suit of the Plaintiff. The same Abdullahi Ibrahim Gamba pleaded with Court to allow them time to do the needful. The Court granted that and suo motu awarded cost of One Hundred and Fifty Thousand Naira (₦150, 000.00) against the Defendants/Judgement Debtors.

The same Abdullahi Ibrahim Gamba appeared before this Court with Mr. Ryam the 3rd Defendant/Judgement Debtor. They came in company of 3 (three) Counsel – Henry K. Eni-otu, Olamide Oluleye and C.C. Ezeokeke. Their Counsel served the Plaintiff/Judgement Creditor a Preliminary Objection in Court. There was no Statement of Defence filed to challenge the Suit of the Plaintiff/Judgement Creditor. In the interest of fair-hearing the Court adjourned the matter to 16th day of January, 2020.

That day the Judgement Debtors have their Client in the Court in the person of Olamide Oluleye. Abdullahi Ibrahim Gamba the Marketing Manager of the Judgement Debtor was in Court too. The Preliminary Objection was withdrawn as already stated.

Since there was nothing else before the Court as the Defendants/Judgement Debtor did not file any Statement of Defence, the Court delivered its Judgement. That was after dismissing the Preliminary Objection and

granting the Ruling on the Motion for extension of time filed by the Plaintiff/Judgement Creditor Counsel. All these took place on the 16th day of January, 2020.

On the 28th day of January, 2020 in a swift turn the Defendants/Judgement Debtors filed a Motion on Notice for the Court to set aside the Judgement of the Court delivered on the said 16th day of January, 2020. The application was based on eighteen (18) grounds which are:

That the Defendants/Judgement Debtors were served on 16th July 2019 and was not properly informed by the staff who received the Court Process.

That the cost of One Hundred Thousand Naira (₦100, 000.00) was awarded. It is imperative to state that the Court awarded One Hundred and Fifty Thousand Naira (₦150, 000.00) against the Defendants/Judgement Debtors and not One Hundred Thousand Naira (₦100, 000.00) as stated in this Motion.

That the cost was because of the failure of the Defendants/Judgement Debtors to be in Court despite that several Hearing Notices were served on them. They paid the cost of One Hundred and Fifty Thousand Naira (₦150, 000.00) as awarded on the 10th day of December, 2019.

That the Defendants/Judgement Debtors appeared three (3) times in Court – 13/11/19, 10/12/19 and 16/1/19.

NOTE:

It is imperative to note that as at the 16th day of January, 2019 this matter was not yet filed. So the Defendants could not have been in Court before the matter was filed.

That the Court entered Judgement against the Defendants/Judgement Debtors on the basis of failure to file their pleadings.

That they have constitutional right to put their defence and receive fair-hearing in the matter.

That the failure to file Defence was because of unavailability of the 2nd Defendant who was a major ploy in the transaction that gave rise to the Suit as the 1st Defendant's office Headquarters is in China.

That as expatriates the Defendants do not understand the content of the Process of the Court.

That 2nd Defendant is no longer in employ of 1st Defendant.

That failure to file a Statement of Defence was as a result of inadvertence of the staff of the 1st Defendant/Judgement Debtor.

That the Defendants have now filed a Statement of Defence on the 28th day of January, 2020 twelve (12) days after the Judgement was delivered. They also filed a Counter Claim to enable the Court to entertain and determine the Suit fairly.

That it will be in the interest of justice to grant this application as the Defendants/Judgement Debtors will not be prejudiced.

They supported the Motion with Affidavit of 25 paragraphs deposed to by Ezeokeke Celestine.

In the Written Address they raised as Issue for determination which is:

“Whether the Court can exercise its discretion in favour of the Plaintiff given the circumstance of this case”.

The Defendants/Judgement Debtors submitted that the Court can exercise its discretion in their favour as Court has inherent powers to set aside its Judgement entered in default of pleadings or appearance as in this case. That they have filed their Defence to the Plaintiff's Claim.

That they have disclosed reasonable cause for the default of pleadings. That this application is within the exclusive discretion of the Court. They urged Court to exercise its discretion in their favour. They referred to the case of:

**UTC Nigeria Limited V. J P Pamote & ors
(1989) LPELR – SC 147/1988.**

That the claim of the Plaintiff having included declaratory Reliefs was one in which should have proceeded to call Witness and gave evidence to prove same because the Court will deliver Judgement in their favour. That failure to proceed in that manner robbed Defendants/Judgement Debtors of a fair trial. They urged Court to set aside the Judgement as it is a breach of right to fair-hearing which occasioned miscarriage of justice. That the Judgement was given in default. They cited the case of:

**Enakhimon V. Edo Transport Services
(2006) All FWLR (PT. 334) 1882 – 1899**

**Malgwi V. Gadzama
(2000) 11 NWLR (PT. 678) 258 – 267 – 8**

**Bello V. INEC
(2010) 8 NWLR (PT. 1196) 342 @ 379 – 380**

**Jamiu V. Ayinla
(2009) 17 NWLR (PT. 1170) 238 @ 281**

They urge Court to set aside the said Judgement in the interest of justice and exercise its discretion judicially and judiciously.

On their part the Plaintiff, upon receipt of the Motion filed a Counter Affidavit of 11 paragraphs deposed to by James Gambo.

In the Written Address the Counsel for Plaintiff raised an Issue for determination which is:

“Whether on the face of the application the Defendants/Judgement Debtors have shown enough cause for this Court to exercise its discretion and set aside its Judgement delivered on the 16th day of January, 202”.

They submitted that **Order 21 Rule 12 FCT High Court Rules 2018** states the criteria/grounds for which a Judgement obtained in default of pleadings may be set aside. That the Judgement of the 16th day of January, 2020 was not obtained by fraud or for non-service of the Originating Process.

That Defendants/Judgement Debtors did not show in their Affidavit or prove any of the requirements for setting aside the Judgement as provided for in **Order 21 Rule 12 High Court Rules 2018**. That the Defendants admitted in paragraph 4 of their Affidavit that they were served with the Writ on the 16th day of July, 2019 exactly six (6) months before the Judgement was delivered.

That Court gave the Defendants ample time to file their Defence to the Suit. That Court arrested its Judgement on the 6th day of December, 2019 which it was about to

deliver which is alien to our jurisdiction prudence and ordered Defendants to file their defence to the Suit.

That the Defendants were given ample time to enter defence before Judgement was entered in favour of the Plaintiff. That the Defendants have not shown any special circumstances to warrant exercise of the Court discretion in their favour. They have not shown any evidence of fraud in the said Judgement. That the Defendants have admitted in their Affidavit that they were served with the Originating Processes. Again that the Preliminary Objection filed by Defendants was dismissed. That exercise of the discretion of the Court is based on facts and circumstance of the case. They referred to the case of:

**Mba V. Mba
(2018) LPELR – 44295**

They submitted that the Defendants have not shown any sufficient cause, facts and circumstance to warrant the exercise of the Court's discretion in their favour.

That Defendants right to fair-hearing has not been breached as they were given ample time and more than enough opportunity to be heard in this matter. That they were served with the Originating Process and served with Hearing Notices.

The entered appearance, filed a Preliminary Objection on the 10th day of December, 2019 but they did not file any defence when they know that Demurrer Proceedings has long been abolished. They referred Court to the provision of Order 23 Rule 1 FCT High Court Rules 2018.

That the right to fair-hearing as in this case is based on facts and circumstance placed before the Court. They referred to the case of:

GHO Construction General Nigeria Ltd V. Essien
(2019) LPELR – 47098 (CA)

That based on the conduct of the Defendants and the Court's Record, the Defendant's right to fair-hearing was not breached as alleged as they have enough time from the 10th of July 2019 when they were served with the Originating Process to the 10th of December 2019 when they entered appearance to 16th January 2020 when Judgement was delivered.

That despite the Court Order made on the 6th of December, 2019 and the promise of the Defendant's representatives to file their defence before 10th December 2019, the Defendants have more than enough time to file their Statement of Defence and be heard.

That the Defendants have not shown enough cause why the application should be granted and why the Judgement of this Court should be set aside. That the Defendants right to fair-hearing was not breached as the act of not filing their pleadings despite the Court Order of 6th December 2019, was disrespectful and contemptuous to the Court.

They urged the Court to discountenance and dismiss the application for lacking in merit as the same has not met the requirement of Order 21 Rule 2 FCT High Court Rules 2018.

COURT:

The provision of Order 21 Rule 12 states the condition which the Court should consider in determining whether or not it can set aside its Judgement already delivered holding same as default Judgement. It is imperative to state that an Applicant can only succeed in an application to set aside present in their Affidavit facts and circumstance that occasioned the Judgement sought to be set aside.

For clarity it is imperative to cite in full the said Order 21 Rule 12:

“Any Judgement by default whether under this Order or this Rule shall be final and remain valid and may only be set aside upon application to Court on grounds of FRAUD, NON-SERVICE or LACK OF JURISDICTION upon such terms as the Court may think fit”.

From the above it is very clear that a default Judgement is final and binding on the parties. Again the only ground upon which the Court will consider in an application to set aside a default Judgement are: where there is evidence to show that the Applicant was not served the Originating Process and Hearing Notices. The other grounds are where the Court has no jurisdiction to entertain the Suit and there is allegation of fraud.

Again it is also imperative to cite the provision of **Order 21 Rule 9:**

“In all actions ..., if the Defendants makes default in filing of a defence, the Claimant may apply to the Court for Judgement. Such Judgement SHALL be given on Statement of Claims the Court SHALL consider the Claimant to be entitled to”.

The above is self explanatory. It was upon the application of the Claimant in respect to **Order 21 Rule 9** that the Court anchored its Judgement on as there was clear default in filing Statement of Defence by the Defendants.

It is important to note that the Court has the discretion to grant or refuse an application to set aside its Judgement. To do so the Court will go through the Affidavit in support of the application and examine the facts and circumstances.

It is the responsibility of the Applicant to ensure that it has cogent facts to show that the Judgement was obtained either by fraud, non-service of the Originating Process and Hearing Notices or by the fact that the Court lacks jurisdiction to entertain the Suit upon which the default Judgement is based. In this case there was no allegation of fraud, Defendants were served with the Originating Processes and Hearing Notices. The Court has jurisdiction too. Defendants did not file any Statement of Defence.

It has been held in plethora of cases that where a Defendant has placed facts and circumstance in an application to set aside a default Judgement, the Court in exercise of its discretionary power should be guided by

law, justice and common sense. The above is the decision of the Supreme Court in the case of:

Mba V. Mba
(2018) LPELR – 44295 (SC)

That was exactly what this Court did in this case. Similar decisions were taken in the following cases:

Emenike V. PDP
(2012) NWLR (PT. 1315) 556 P.37 Paragraph A – C

Waziri V. Gumel
(2012) 9 NWLR (PT. 1304) 185

Fair-hearing is a constitutionally bestowed right of every person. But such right to fair-hearing is not open-ended. It is open to all parties in a Suit and must be enjoyed reasonably following the rule of law. So whether such right to be heard was breached is a question of facts to be determined on facts and circumstances placed before the Court by the party who alleges the breach of right to fair-hearing. Since fair-hearing is a matter of facts, it is only when those facts are ascertained that the law should apply to the established facts to see whether the facts constitutes a breach of right to fair-hearing. Anything outside that cannot stand. That is the decision of the Court in the case of:

Gitto Construzioni Generali Nigeria Ltd V. Essien
(2019) LPELR – 47098

See also the case of:

Newswatch Communication Ltd V. Alhaji Ibrahim
Atta

(2006) 12 NWLR (PT. 993) 144. The Defendants were not able to present such cogent facts in this case.

Again the FCT High Court had since 2004 abolished Demurrer Proceedings. The reason behind that is the facts that Courts are enjoined to do substantial justice with dispatch because any delay in delivering justice makes the belated justice lose its taste and efficacy and does no good to the parties and the public.

In this application the Applicant is seeking for the Court to set aside its Judgement. The reason being that there was no fair-hearing and that they have a right to be heard even though they did not file their Statement of Defence before the Judgement was delivered.

The Plaintiff thinks otherwise, holding that the application is unmeritorious and that Defendants have not presented before the Court good facts and circumstances for the Court to exercise its discretionary power in their favour by setting the Judgement aside.

The question is going by the summary of the Defendants facts, can it be said that this Judgement was based on fraud, non-service of Processes or lack of jurisdiction and that the Defendants were not given the right to be heard?

Or should this Court dismiss the application as the Plaintiff Counsel is postulating in that the Defendants have not presented enough facts and circumstances to warrant the exercise of the Court discretion in their favour in that the application is unmeritorious as the Defendants were given more than enough time to defend the Suit but they decided to sleep on their right, more so that the facts and circumstances and the application as

a whole does not meet up to the grounds set out in **Order 21 Rule 12 FCT High Court Rules.**

It is my humble view that the Defendants were not able to state facts and circumstances for this Court to exercise its discretion in their favour. More so their application failed to meet the requirement in the provision of Order 21 Rule 12 & 9. There was no fraud. The Defendants were given time to be heard but they failed to file any Statement of Defence and this Court has jurisdiction to hear the case as it did.

To start with the Defendants were given ample time to exercise their right to be heard in this case. In that the Court ensured that all Originating Processes and Hearing Notices were duly served on them with evidence of receipt and acknowledgement. The Court gave an Order that the 2nd Defendant should be served through the 1st & 3rd Defendants. The Court “arrested” its own Judgement to enable the Defendants enter appearance and file their Processes in defence more than 4 months after Originating Process was served on them. But they failed to do so even after the Defendants representative promised to ensure that their defence will be served before the next adjourned date. Even after they failed to do so, the Court still gave them another time from the 10th day of December, 2019 to the 16th day of January, 2020 yet they did not file their defence.

They only succeeded in filing a Preliminary Objection which was dismissed. They never filed any Statement of Defence. By provision of Order 21 Rule 9, the Court upon

hearing the application by the Counsel to the Claimant entered Judgement. It is clear that there is no breach of fair-hearing as the Defendants are erroneously and deceptively claiming.

Again since there is no demurrer proceeding, the Court has the right to forge ahead to deliver Judgement. That is what this Court did on the 16th day of January, 2020.

The Defendants only filed a Statement of Defence thirteen (13) days after the Judgement was delivered and Order Nisi has been given too. The Defendants were served with that Order in accordance with the provision of the law.

This Court had at the beginning of this Ruling narrated the facts as far as the case is concerned particularly on the Record of Proceeding – what transpired in the case.

Most importantly there is no allegation or proof that the Judgement was obtained by fraud or that the Court lacks jurisdiction to entertain the Suit.

So since there is absence of the ground set out in **Order 21 Rule 12**, the application to set aside the Judgement of this Court delivered on the 16th day of January, 2020 cannot stand because it failed to establish any of the grounds set out in the said provision of **Order 21 Rule 12 FCT High Court Rules**.

That being the case this application is **NOT** meritorious as the facts and circumstances upon which it is based is not cogent enough for this Court to exercise its discretionary powers in favour of the Defendants/Applicants/Judgement Debtors.

This application is therefore **DISMISSED**.

The Judgement of this Court delivered on the 16th day of January, 2020 is **NOT SET ASIDE**.

It is **FINAL** and remains **VALID**.

This is the Ruling of this Court.

Delivered today the _____ day of _____ 2020 by
me.

K.N. OGBONNAYA
HON. JUDGE