IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/2736/2018
MOTION: M/553/19
BETWEEN:

1. **ATTORNEY GENERAL OF THE FEDERATION**
2. **INSPECTOR GENERAL OF POLICE.....APPLICANT**

VS

1. **NDABAWA UMAR**
2. **MUSA ABDULLAHI**
3. **ABBAS BALA.....RESPONDENTS**

RULING

By a Motion on Notice with Motion Number M/553/19 filed on 30/10/2019, brought pursuant to Order 43 Rule 1 of the High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court. The Applicant herein seek the court the following prayers;

(1) An Order setting aside Ruling/Judgment of the Honourable Court delivered on 5th February, 2019 in a Fundamental Rights Enforcement Suit No. FCT/HC/CV/2736/18, between (1) Ndabawa Umar (2) Musa Abdullahi and (3) Abbas Bala – Applicants And (1) Attorney General of the Federation (2)

Inspector General of Police as Respondents for want of jurisdiction to hear and entertain same.

(2) An Order setting aside Order Garnishee Nisi made on 26th day of September, 2019 pursuant to the enforcement of the said Ruling/Judgment through Motion No. M/1887/19 thereto.

(3) An Order striking out the entire Suit No. FCT/HC/CV/2736/2018 for being incurably incompetent and an abuse of judicial process.

(4) And the Omnibus relief.

In support of the application is a 12 Paragraphs affidavit with four (4) Exhibits attached, deposed to by Insp. Philip Tumba staff of the Applicant. Filed along is a Written Address and adopts same as oral argument.

Responding, Respondents through their counsel filed a 12 Paragraph counter-affidavit deposed to by one Alh. Ndabawa Zakari, brother to the 1st Respondent. Also filed a Written Address and adopts same as oral arguments.

In the Written Address of the Applicant's counsel formulated two (2) issues for determination that is;

(1) Whether Suit No. CV/2736/18 was not incompetent, same having been filed by three (3) Applicants and same being a Fundamental Right Enforcement proceedings.

(2) And if the Answer to issue 1 above is the affirmative, whether this Honurable Court is seized of jurisdiction to entertain this application and grant the reliefs sought in this Motion on Notice?

On issue one, submits that Suit No. CV/2736/18 filed before the court on 12/9/18 jointly by three different Applicants under the Fundamental Right Enforcement proceedings is incurably incompetent for misjoinder of Applicants and thereby deprived the presiding Honourable Judge jurisdiction to entertain the action abinitio. Refer to Section 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria, Order 11 Rule 1 of the Fundamental Right (Enforcement Procedure) Rules 2009, R.T.F.T.C.I.N Vs Ikwecheigh (2000) 13 NWLR (PT.683) 1, Okechukwu Vs Etukokwu (1998) 8 NWLR (PT.562) @ 511 ; Kporharor & Anors Vs Yedi & Ors (2017) LPELR – 42418.

On issue two (2), submits that the court has power or jurisdiction to set aside its own judgment or proceedings conducted without jurisdiction. Refer to the case of Vint Vs Hudspich (1885) 29 Ch 322.

Finally urge court to grant the application. In their Written Address, Respondents' counsel formulated a sole issue for determination that is;

> Having regard to the circumstances of this case and materials before the Honourable Court, whether the Honourable Court has the jurisdiction to revisit its Ruling of February 5th 2019 and grant the application dated 25/10/2019 filed on 30/10/2019.

Submits that the decision of a trial court is presumed to be correct and this presumption must be rebutted by the party seeking to set aside a judgment. Refer to Ukatta Vs Ndinaeze (1997) 4 NWLR (PT. 499) 255. That the Ruling of Court in the matter delivered on 5/2/19 remains valid and enforceable. Submit further that court became functus officio on the matter having delivered its judgment, which judgment can only be set aside upon Appeal. Refer to Balogun Vs Adejobi (1995) 2 NWLR (PT.376) 137, Lawanwi Vs Akubu (1982) 8 – 9 SC 83; Folorunsho Vs Adeemi (1973) 1 NMLR 128. Chief P.U. Ejowhomu Vs Edok-Eter mandilas Ltd 91986) 5 NWLR (PT. 39_ 1 Ratio 8 and Nicon Vs P.I.E. Co Ltd (1990) NWLR (PT. 129) 701.

On a Phethora of authorities submits that court lacks power to vary its judgment once it has been entered and perfected. Refer to Okafor Vs A.G. Anambra State 1991 6 NWLR (PT.200) among others.

Having carefully considered the affidavit evidence the submission of counsel for and against the grant of the application as well as the judicial authorities cited, I find that the issue which calls for determination is;

> "Whether this court has jurisdiction to set aside its own judgment and if in the affirmative, whether the Applicant have placed sufficient facts to warrant the grant of the application".

It is settled principle of law that a court can set aside its own decision or judgment under certain conditions in the case of Daniels Vs Insight Engineering Co. Ltd (2002) ALL FWLR (PT.99) 1113 @ 1127 Para B-C the court held that;

> "The court has inherent jurisdiction to set aside its own judgment or Order given in any proceeding in which there has been a fundamental defect, such as one which goes to the competence of the court".

Again court can set aside its own judgment where the judgment was obtained by fraud or consealment of material facts or given in absence of jurisdiction. See Tom Vs Ameh (1992) 1 NWLR (PT. 217) 306 and Olorunfemi Vs Asho (2000) ALL FWLR (PT. 20) 654. It is also settled that the High Court can on its own set aside its judgment or upon an application by a party affected by the decision by a Motion and not necessary by way of Appeal, See Ezeokafor Vs Ezeilo (1999) 6 SCNJ 209 @ 225.

Thus from all of the above this court has the powers and jurisdiction to set aside its own decision even where it is functus officio as notwithstanding the submission of the Respondents' counsel, that the court is functus officio on the Suit.

On whether the Applicant has placed before the court sufficient facts to warrant the grant of the reliefs,the reliefs sought by the Applicant are within the discretion of the court, which it must exercise judicially and judiciously. And to be able to do so the Applicant must place before the court cogent facts as the court will not rely on its own whims to determine the application.Thus, it is imperative for the Applicant to place before the court cogent facts for the reliefs sought to be successful.

In the instant case the grounds for the application to set aside the judgment of court delivered on 5/2/2019 is that, three persons jointly applied to court to enforce their Fundamental Rights opposed to the Provision of Section 46 (12) (2) of the 1999 Constitution of the Federal Republic of Nigeria, thus rendering the Suit incompetent and therefore robs the court of jurisdiction. On the other hand, the contention of the Respondents is that this court cannot set aside its judgment having become functus officio.

It has been resolved above that this court can set aside its own judgment given certain circumstance. The question is does this case fall within any of the circumstance under which the court can set aside its own judgment?

I have taken a look at records of court and I find that the application for enforcement of Fundamental Right was indeed filed by three persons as a joint action. The Rules of court indeed approve of joint action particularly where the issue for adjudication arose from same transaction or action being complained of. However, I agree with the Applicants that the Fundamental Rights Enforcement Procedure is a unique procedure which is governed by the Provisions of Section 46 (1) (2) of the 1999 Constitution of the Federal Republic of Nigeria and therefore removed from the Provisions of the Rules of Court. This issue has been settled in the case of Kporharor & Anos Vs Yeldi & Ors (2017) LPELR – 42418 cited by the Applicants, it is instructive and applicable to this instant application and the court will adopts it. In that case the court ruled that Section 46 (1) (2) of the 1999 Constitution forbids joint Applicant in an action for enforcement of Fundamental Right by its clear wordings. Therefore since the parties in the

Suit sought to set aside were more than one, the Suit is abinitio incompetent and the court would lack jurisdiction to entertain the matter, I so hold.

It is trite law that where a court hears a matter which it had no jurisdiction any decision reach therein will amount to a nullity and can be set aside by the court which reached that decision. In Ansa Vs R.T.P.C. (2008) ALL FWLR (PT. 405) 1681 @ 1705 Paras A, the court held that;

> "Lack of jurisdiction of court in an action invalidates all proceedings including judgment or review on Appeal".

From all of these, having found the Suit for enforcement of Fundamental Right as lacking in jurisdiction abinitio, this court holds that this application has merit and should succeed accordingly the court hereby grant the reliefs the Applicants as follows:

(1) An Order setting aside Ruling/Judgment of the Honourable Court delivered on 5th February, 2019 in a Fundamental Rights Enforcement Suit No. FCT/HC/CV/2736/18, between (1) Ndabawa Umar (2) Musa Abdullahi and (3) Abbas Bala – Applicants and (1) Attorney General of the Federation (2) Inspector General of Police as Respondents for want of jurisdiction to hear and entertain same.

(2) An Order setting aside Order Garnishee Nisi made on 26th day of September, 2019 pursuant to the enforcement of the said Ruling/Judgment through Motion No. M/1887/19 thereto.

(3) An Order striking out the entire Suit No. FCT/HC/CV/2736/2018 for being incurably incompetent and an abuse of judicial process.

HON. JUSTICE O.C AGBAZA
Judge
8/6/2020

A.Y. JIBRIN WITH UKEH STEPHEN FOR THE JUDGMENT CREDITOR

J.C.A. IDACHABA FOR THE JUDGMENT DEBTOR/APPLICANT

DANIEL CATHERINE FOR THE GARNISHEE