IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CV/642/2018

BETWEEN:

INFINITY TRUST MORTGAGE BANK PLC…PLAINTIFF/RESPONDENT

AND

SUNDAY UWAIFOH EROMOSELE AIGBOGUN……..DEFENDANT/ APPLICANT

RULING

The Judgment Creditor/Respondent on 23rd March, 2020 obtained Judgment against the Judgment Debtor/Applicant pursuant to Order 43(1) and Order 21(1) of the Rules of this Court in the sum of N13, 854, 282. 04 (Thirteen Million, Eight Hundred and Fifty-Four Thousand, Two Hundred and Eighty-Two Naira, Four Kobo). I shall herein after refer to parties simply as "Applicant" and "Respondent" respectively.

On 26th June, 2020, Vantage Attorneys filed a Motion on Notice on behalf of the Applicant seeking an Order to set aside the default Judgment entered in favour of the Respondent and the matter

restored to the Court's docket for hearing. Fifteen grounds were listed on the face of the application. However, it would appear that apart from grounds 11, 12, 13, and 15, the remaining paragraphs listed as grounds in support of the application are nothing but a simple narrative of the story of the circumstances leading to the Judgment entered against the Applicant. I will therefore ignore those irrelevant paragraphs. To facilitate ease of understanding, the relevant paragraphs are as set down below:

> 11. **The Claimant, in their application upon which the said default Judgment is premised, concealed fundamental/material facts regarding the Defendant's ill health and that of his son as well as update on the efforts of the Defendant to settle the matter out of Court.**
>
> **12. The Claimant's suit in which Judgment was entered in their favour is premature having been instituted prior to the expiration of the Mortgage agreement executed by both parties.**
>
> **13. The Honourable Court lacks the jurisdiction to enter Judgment in this suit.**
>
> **15. This Honourable Court has the power to set aside/vacate, *ex debito justiciae*, any Judgment/Order delivered/made without the requisite jurisdiction,**

obtained by fraud, or on the ground of non-service or any other ground the Court may deem suitable.

The Applicant personally deposed to a supporting affidavit of 33-paragraphs accompanied by some annexures marked as Exhibits A to G. Mr. Abdulfatai Oyedele of Counsel to the Applicant also filed a written submission in line with the Rules of the Court. The Respondent in opposing this application, filed a counter affidavit of 31-paragraphs deposed to by one Babasola Adewumi Esq, a Counsel in the Firm representing the Respondent.

I have read the processes put forward by parties and I agree with the learned Counsel to the Applicant that this Court is empowered to set aside its Judgment delivered in default of pleadings upon sufficient cause shown by the Applicant. I refer to the case of **WILLIAMS & ORS VS HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) 1-2 S.C 145** which is the *locus classicus* on this principle of Law. Idigbe, JSC at page 160 of the report set out factors that will agitate the mind of the Court when considering an application to set aside a default Judgment, to wit:

> **"I will summarise once again the matters which call for the consideration of the learned trial Judge in these circumstances and they are whether:**

1. **The Applicant has good reasons for being absent at the hearing;**
2. **He has shown that there was good reason for his delay in bringing the application i.e. in other words, whether there was undue delay in bringing application so as to prejudice the party in whose favour the Judgment subsists;**
3. **The Respondent will not be prejudiced or embarrassed if the Order for re-hearing was made;**
4. **The Applicant's case was manifestly ..supportable; and**
5. **The Applicant's conduct throughout the proceedings is deserving of sympathetic consideration.**

All these matters ought to be resolved in favour of the Applicant before the Judgment should be set aside. It is not enough that some of them can be so resolved."

See also the case of **TOMTEC NIG LTD VS F.H.A (2009) NWLR (PT.1173) 358 and ALAWIYE VS OGUNSANYA (2013) 5 NWLR (PT.1348) 570** cited by the learned Counsel to the Applicant

without specifically tying the authorities to the facts of this application as rightly observed by the learned Counsel to the Respondent .

Having carefully perused the grounds and facts in support, it would appear that this application is thoroughly misconceived. For avoidance of doubt, all the grounds canvassed in support are in my view unsustainable. I will take them one after the other, starting with the contention that Plaintiff's action is premature.

By the Mortgage Agreement pleaded and front loaded by the Plaintiff, the effective date of the facility is 26th February, 2013 with a tenor of 60 months. Parties are also agreed that:

> **"Any violation by the borrower on the terms and conditions of this offer after disbursement makes the outstanding facility become immediately payable."**

Plaintiff's suit was filed on 16th January, 2018 which is about 59 months from the date of execution of the loan agreement. However, the Plaintiff pleaded at paragraph 10 that the action of the Defendant was predicated on failure to make monthly payment which in effect makes the entire loan sum and accrued interest due for payment. It is therefore not correct that Plaintiff's action is premature and I so hold.

The Applicant has also alluded to non-service of process and fraud as grounds for the presentation of this application. On service of process, the record of the Court revealed that the Applicant was served the Writ of Summons on 26th February, 2018 and he personally signed the endorsement and return copy. He also acknowledged service of hearing notice against 5th March, 2018 when the matter was slated for mention. Subsequently, the Law Firm of Okuja & Associates of Suite B10, AMAC Plaza, No.2 Kabale Close, Off Sultan Abubakar Way, Wuse Zone 3, Abuja announced appearance for the Applicant. When the Respondent filed its application for Judgment in default of pleadings, it was duly served on the Applicant's counsel. Godwin Okuja Esq, acknowledged the receipt of the motion on 27th September, 2018 at exactly 12:36pm but elected not to file any process. As a matter of fact, in entering Judgment for the Respondent, the Court observed inter alia:

> **"The Defendant was served since 2018 and although he is represented by counsel, no process was filed in the form of defence."**

It is therefore not true that the Applicant was not served with relevant processes in this suit. The Applicant in my view appreciates the futility of the allegation of non-service as no specific mention was made of the particular process that was not served on the

Applicant. This ground is accordingly discountenanced, as it is baseless and unsupportable.

The last leg of Applicant's contention is that the Respondent fraudulently concealed the fact that Applicant was sick and that parties are exploring out of Court Settlement. This point is in my view unfounded taking into account the fact that the Applicant was represented by Counsel. It is not the responsibility of Respondent's Counsel to inform the Court of facts within the knowledge of Applicant's Counsel. There is nothing to support the wild allegation against the Respondent of fraudulent concealment of facts that would have defeated the Judgment entered in favour of the said Respondent.

At the end of the day, I have come to the inevitable conclusion that this application is frivolous, vexatious and time wasting with the sole aim of irritating the Respondent and the Court alike. The Applicant has failed woefully to satisfy the condition for the grant of this application, as carefully laid out in the case of **WILLIAMS & ORS VS HOPE RISING VOLUNTARY FUNDS SOCIETY (Supra).**

The application is conclusively lacking in merit. If that be the case, it is refused and dismissed without any further assurance.

SIGNED
HON. JUSTICE H. B. YUSUF
(PRESIDING JUDGE)
24/11/2020