IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 6TH DAY OF NOVEMBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/3078/18

BETWEEN:

APOSTLE EUGENE OGU } ------ PLAINTIFF

AND

MR. LARRY OBASI } ------ DEFENDANT

RULING

On the 7th day of February, 2020 this Court delivered Judgment in the Suit filed by Apostle Eugene Ogu against Larry Obasi. In the Judgment the Court after detailed consideration of the Processes filed and after ensuring that due process was followed and all parties given their chance to exercise their constitutional right to fair-hearing delivered its very reasoned Judgment in favour of Apostle Eugene Ogu. The Suit in the main was filed on the 19th of October, 2018.

The Judgment Debtor filed a Motion M/7304/2020 on the 3rd of June, 2020 seeking for the Court to set aside the said Judgement and also to set aside all other Interlocutory ancillary or consequential ORDERS made in the Suit FCT/HC/CV/3078/18.

The grounds upon which the application is based on the following:

That the Judgement delivered on the 7th of February, 2020 is a nullity same being obtained by fraud, deceit, misrepresentation and without due process to wit the non-service of any Process of the Honourable Court – (Originating Processes and Hearing Notice) on the Judgment Debtor/Applicant. That it is a breach of the Fundamental Right of the Judgment Debtor/Applicant to fair-hearing.

Again that the proceedings in the Suit pursuant to which the said Judgment was given is lacking in bobafide and breached the Fundamental Right of the Judgment Debtor/Applicant to Fair-hearing as provided for and entrenched in **S. 36 (1) of the 1999 CFRN as amended.**

The application is supported by an Affidavit of 28 paragraphs and he attached 2 documents – marked EXH A & B. Order from the FCH and Letter from Embassy of the Zech Republic written and addressed to Chairman Economic and Financial Crimes Commission dated 2/8/16.

In the Written Address the Judgment Debtor/Applicant raised an Issue for determination which is:

> **"Whether or not the Judgment of the Court delivered on the 7th day of February, 2020 is not a nullity and if so whether the Court can set aside its own Judgment which is null and void".**

It is the story of the Applicant that he was never served the Originating Processes and Hearing Notices. He never knew that the Suit was in existence. *Contrary to the above submission, Originating Processes were served on the Judgment Debtor. Hearing Notices too were all served on the Judgment Debtor/Applicant (See the case file).*

In the Written Address he submitted that the Court can set aside its Judgment, Ruling or Order if it is a nullity. He referred to the case of:

Craig V. Kanseen
(1943) K.B. 256

That this application is predicated on the jurisdiction of the Court as captioned in **S. 6 (6) of the 1999 CFRN as amended.** That such decision of the Court that is null and void by fundamental defects can be set aside by the same Court that delivered the same decision. That this Court has jurisdiction to do so in this case.

On whether the said Judgment is a nullity, he submitted that it is a nullity because of the manner in which the proceeding was conducted. That he was not in the know about the existence of the case.

It is imperative to reiterate and state equivocally that the Judgment Debtor/Applicant was aware of the existence of the Suit and both the Originating Processes and Hearing Notices were duly served on him per the Order of the Court in that regard. The Court had in the Judgment of the Court delivered on the 7th day of February, 2020 narrated in great detail on the issue of service of both the Originating Processes and the Hearing Notices and Court Orders on the Applicant/Judgment Debtor – Larry Obasi. See details in the said Judgment of the 7th of February, 2020.

The Judgment Debtor went on to state that service of Processes is fundamental to question of fair-hearing. That failure to serve the Judgment Debtor with the Processes is a fundamental defect. He referred to the case of:

National Bank V. Gutheria Nigeria Limited
(1993) 4 SCNJ 1

Wema Bank V. Odulaja
3 SCNJ 64

That failure to serve the Judgment Debtor/Applicant with the said Processes as required by law is a failure to comply with the condition precedent to confer

jurisdiction on the Court and a breach of **S. 36 (1) of the 1999 CFRN as amended.**

That failure to serve the Judgment Debtor/Applicant with the said Processes and Hearing Notices renders the Judgment null and void and that the Court has the inherent powers to set aside the said Judgment in the present case. He urged the Court to do so in the interest of justice. He relied on the case of:

Okafor V. A-G Anambra
(1991) 6 NWLR (PT. 200) 660

That failure to serve the Judgment Debtor/Applicant with the Processes robbed him the right to be in Court and right to be represented by a Counsel in the Suit. That the decision of the Court has failed to do substantial justice in this case as the Judgment Debtor was not heard in this Suit. He cited the case of:

Sken – Consult V. Ukey
(1981) 1 SC 1

He urged the Court to hold that the said Judgment is nullity and set same aside in order to retreat the Suit.

Upon receipt of the Motion, the Respondent/Judgment Creditor filed a Counter Affidavit of 27 paragraphs. He attached 9 documents marked as EXH AA1 – AA9.

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

"Whether the Applicant has deposed to facts that meet the condition for setting aside a Judgment obtained by Default".

Citing the case of:

Ogolo V. Ogolo
(2006) LPELR – 2311 (SC)

The Judgment Creditor/Respondent submitted that the Judgment Debtor/Applicant has not deposed to the facts that meets the conditions as set out in the said case of **Ogolo V. Ogolo Supra.** That the Affidavit did not disclose cogent reason why the Applicant failed to file his defence in the Suit. That the said Affidavit does not support or sustain the Motion. He referred to **S.115 (1) – (4) Evidence Act 2011 as amended.**

That paragraphs 3 – 10 as well as paragraphs 15 & 16 of the Judgment Debtor's Affidavit contains the information given by another person. That it did not disclose the name of the informant, time, place and circumstance of both the information and grounds of his believe of the information was provided. He referred to the case of:

Ahmed & Ors V. Central Bank of Nigeria (CBN)

That the paragraphs of the Affidavit clearly violates the provision of S. 115 Evidence Act. He urged Court to strike out the paragraphs of the said Affidavit as they are bad and incurably, defective and unstable.

That paragraphs 15 & 16 of the Affidavit is caught up with S. 115 Evidence Act 2011 in that Applicant did not disclose the time, place and when and where the interview with the Bailiff happened as well as the circumstance for Court to believe him or not. He referred to the case of:

Gumau V. Abdullahi
(2017) LPELR – 43421 (CA)

Mgbenwelu V. Olunba
(2017) NWLR (PT. 1558) 169 @ 176

Zakari V. Mohammed
(2017) NWLR (PT. 1594) 197 Rat. 15 SC

That the Applicant's contention that there was no service of Process on him because it was served on his lawyer is groundless. He referred to the provision of **Order 7 Rule 11 (2) (d) FCT High Court Rule 2018.**

That from all indication going by the above provision of the Rules, the Applicant was served by substituted means per Order of this Court by pasting the Originating Processes at **No. 176 Road Federal Housing Authority, Nyanya Abuja** which was the last known address of the Applicant and it is proper service on the Applicant/Judgment Debtor. That the service was at Karu is unfounded. The Affidavit of service shows that the service was done in Nyanya at No. 176 FHA Nyanya. That the Affidavit of Bailiff is a prima facie evidence of service. That to challenge it

the Applicant has to file a Counter Affidavit to do so. He referred to the case of:

Mgbenwelu V. Olumba Supra @ P. 174 Ratio 4

The attached Affidavit as EXH AA1 shows that the Plaintiff is living/lived at the said address in Nyanya to the knowledge of the Judgment Creditor/Respondent. The Order of the Court was to that effect.

The Affidavit of service shows that service was affected at the said Address as ordered by the Court. That the service of the Process was regular and proper.

That the Judgment Debtor is not contesting that the service was not effected as directed by the Court. There is no paragraph of this Affidavit to deny that the Judgment Debtor was not living in the said Address at the time of the service of the Processes. All he said is that he was no longer living in Karu but Processes were served at Nyanya. He did not state any particular address in Karu where he alleged that the Processes were pasted.

He did not also disclose where he was at the time the Processes were served by the Order of Court. He only leaves the Court to speculate which is not the Court's duty.

That having failed to file a Counter Affidavit to challenge the Affidavit of Service filed by the Court

Bailiff, the presumption of proper service in favour of the Judgment Creditor/Respondent still stands. He urged the Court to dismiss this application based on that. He referred to the case of:

Forby Engineering Co. Limited & Anor V. AMCON (2018) LPELR – 43861 (CA)

Emeka V Okoroafor & Ors
(2017) LPELR – 41738 (SC)

That in this case the Judgment Debtor/Applicant did not exhibit any proposed defence for intention to defend the claims of the Judgment Creditor/Respondent to enable the Court determine if his case is supportable.

He did not equally obtain the leave of the Court to file this Motion out of time as required by the Rules of the Court. He urged Court to dismiss the application for lacking in merit. He relied on the case of:

Ogolo V. Ogolo Supra

Anozie V. IGP
(2016) NWLR (PT. 1524) 387 @ 391

That the Judgment Creditor/Respondent will automatically be prejudiced if this application is granted. That the Judgment Debtor/Applicant did not deny that he received money from the Judgment Creditor/Respondent for the purchase of the Interlocking Marking Machine as the gravamen of the

Suit decided by the Court was on liquidated money demand.

He urged the Court to so hold that he will be highly prejudiced if this application is granted.

That the Applicant's case is highly unsupportable. That the allegation that Judgment Debtor was not served the Processes and Hearing Notices and that the Proceeding were done behind his back. That the EXH AA1 attached to the Counter Affidavit shows that Judgment Debtor/Applicant's address is at 176 FHA Nyanya FCT Abuja as he deposed to on Oath where he claimed he lives. That the admission therefore automatically defeats his claim that Proceeding happened behind his back. That facts admitted need no proof. He relied on the case of:

Ademoye V. Nigeria Maritime Admin Safety Agency (NIMASA) & Ors
(2013) LPELR – 20825 (CA).

That where the Judgment Debtor/Applicant failed to comply with the law by not filing Notice of Intention to defend and no placing before the Court actual and cogent defence before this Court, his application to set aside must fail. He referred to the case of:

Adhekegba V. Minister of Defence & Ors
(2013) LPELR – 20154 (CA)

In conclusion he urged the Court to dismiss the application.

The Judgment Debtor/Applicant filed a further Affidavit of 14 paragraphs upon receipt of the Counter Affidavit filed by the Judgment Creditor/Respondent.

In the further Affidavit the Applicant continued the denial that he was not in the know about the pendency of this Suit against him and that he was not properly served and that the unnamed Bailiff of the Court told him that service was done in the Address 176 FHA Nyanya where the Judgment Debtor/Applicant said he do not live in.

COURT:

The Court has summarized the stances of the Applicant and the Respondent above, the question is can it be said that the Applicant has established through his Affidavit and Further Affidavit reasons enough for this Court to set aside the Judgment it delivered on the 7th day of February, 2020 in that the application is meritorious? Or can it be said that the Respondent/Judgment Creditor had been able to counter this application with the facts in his Counter Affidavit so much so that this Court should uphold its Judgment made in his favour on the 7th day of February, 2020 and therefore dismiss this application?

It is the humble view of this Court that the Judgment Debtor/Applicant has not been able to present before this Court such cogent and credible facts and reason why this Court should grant his application and set

aside its Judgment delivered on the 7th day of February, 2020. This is because the application is UNMERITORIOUS.

To start with it is the right of a party to file for setting aside the Judgment of the Court. But it is for the Court to decide whether to set aside the said Judgment. The Applicant in such circumstance has the herculean task of stating facts and where necessary tendering enough convincing evidence to show why the Court should set aside its Judgment or Ruling or any decision it had taken. It is not merely asking for Court to Set Aside. Such application must be done following due process of the law and backed up by raw cogent facts showing that the Judgment sought to be set aside was gotten in default and by fraud.

The Court has in the cases of:

Ogolo V. Ogolo Supra

Williams V. Hope Rising Volunteer Funds Society (1982) 1 – 2 SC 145

listed all the principles which must be present and which the Applicant must establish through the facts in his Affidavit in support for setting Aside of Judgment of the Court. These Principles or Elements as emanated in the case of:

Williams V. Hope Rising Volunteer Funds Society are as follows:

(1) Reason for Default in filing a Defence in the case where the Judgment was delivered in default.
(2) Whether the Application was unduly delayed so as to prejudice the Respondent/Judgment Creditor.
(3) Whether the Respondent would be prejudiced or embarrassed upon an Order for re-hearing being made so as to render in inequitable to permit the case to be re-opened and whether the Applicant's case is manifestly unsupportable.

The Court will take each of the points seriatim.

On the issue of default in filing a defence to the case of the Respondent. It is incumbent on the Applicant to disclose cogent and convincing reason why it defaulted in filing the Statement of Defence or as in this case Notice of Intention to defend the Suit of the Judgment Creditor/Respondent. Such facts as contained in the Affidavit shall be set out in accordance with the law not disjointedly.

Where an Applicant fails to give cogent reason and fails to state facts why it failed to file a defence to the case, the Court will not set aside its Judgment. That is the decision of the Court in the case of:

Ogolo V. Ogolo
(2006) LPELR – 2311 (SC)

Again where an Applicant delays in making an application there is no proposed defence to the Respondent/Judgment Creditor's claim, the Court will not grant the application. This means that for the application to set aside to succeed the Applicant must not delay in filing the application. Any such delay will cause the application to fail. This means that the Applicant must show in his Affidavit that there was no delay or that where there is delay that it is not his fault. That is what the Court held in the case of:

Anozie V. IGP
(2016) NWLR (PT. 1524) 387 @ 391 Ratio 7.

Again where there is an application to set aside the Judgment of the Court the Applicant must attach to the application proposed (Statement of Defence) thereto to the Respondent's claim. This is so as to enable the Court to ascertain whether or not the Applicant's case is manifestly unsupportable.

In all application where Judgment entered as in this case the Court can only set aside the Judgment on terms. Such terms is possible where the application was made within a reasonable time, showing evidence of payment of penalty for default, showing good defence on merit to the claim and reasonable cause of the default. Anything outside this the Court may not grant the application. The above is what the Court held in the case of:

Ogolo V. Ogolo Supra

That is also what the law provides in **Order 10 Rule 11 FCT High Court Rules 2018.**

It is after the Court had looked at the attached defence that it can determine whether the case of the Applicant/Judgment Debtor is supportable. There is no how the Court can know that if the Applicant did not attach the proposed Defence. Where such Defence is not attached to the application the Court cannot know or determine whether the case is supportable and will invariably not grant the application. So where such defence is not annexed the application to set aside will naturally fail.

Again where there is delay in filing an application or performing an action in the cause of a Suit, it is incumbent on the Applicant to seek and obtain leave of the Court to file such application or perform such act out of time. So failure to do so is fatal to the application.

Again where the grant of an application would embarrass or prejudice a Respondent in an application to Set Aside a Judgment of the Court where there is Order for Rehearing being made so as to render it inequitable to permit the case to be reopened the Court will not grant same. This is so because every Judgment Creditor whether Judgment was given in default or not is entitled to enjoy the fruit of its Judgment. More so where the other party was given ample opportunity to be heard but decided to sleep on his or her right. It is not proper to the

other party and the Court that a recalcitrant and defaulting party should hold the Court and Judgment Creditor/Respondent to ransom by undue delay and by none response to the Processes served on it by filing Defence to the claim or entering appearance and filing Memorandum of Appearance.

The business of the Court cannot be dictated by the whims and caprices of an unwilling and reluctant party. Justice at every stage in a case must be even handed. Moreover fair-hearing is open to all parties and must be enjoyed within a reasonable limit as it is not open-ended and in perpetuity. That is the decision of the Court in the case of:

Okocha V. Herwa Limited
(2000) 15 NWLR (PT. 690) 249 @ 258

So for an Applicant to succeed his case must be supportable otherwise the Court cannot set aside the Judgment as sought.

It is the law and has been held in plethora of cases that facts admitted need no further elucidation.

Again where a party challenges the fact in an Affidavit, such challenge can only be done by filing a Counter Affidavit challenging such facts.

Also where the Rules of the Court set out the way and manner of doing a certain act or performing a duty and even in claiming a right, such method or procedure must be followed to validly perform such

duty or claim such right. So failure to follow the procedure or comply with such provision of the law, such claim fail. See the case of:

Adhekegba V. Minister of Defence & Ors Supra

Again Order of the Court is binding on parties as the case may be unless and until it is vacated by the Court or set aside by an Appellate Court or by effluxion of time even where such Order is alleged to be wrongly made.

Also whoever asserts or claim that a fact exists must prove that such facts actually exists otherwise the Court will not believe that such facts exists.

In this case the Applicant want this Court to set aside its Judgment delivered on the 7th day of February, 2020 in a case filed on the 19th day of October, 2018 in a Writ dated 18/10/18.

The reason being that he was not served with the Writ of Summons, Hearing Notices and other Processes and that the whole proceeding was done behind him. That he never had a wind of the case.

He did not deny that there was no service but claimed that the service was effected in a wrong place which was not his address – 176 FHA Nyanya Abuja within the FCT.

He had claimed that an undisclosed and unidentified Court Bailiff told him about pasting document in the

said address. That though a hearsay all the same confirmed that there was service of Process on him.

To start with, this Court had issued an Order for substituted service of the Originating Process on the Judgment Debtor/Applicant after all efforts to serve him personally proved abortive and impossible. That Order substituted until the Judgment was delivered. The Court ensured that all Processes filed and Hearing Notices were served on the Applicant at the address No. 176 FHA Nyanya Abuja FCT. This address was the address for service in the Originating Process – Writ filed by the Plaintiff in the Suit. In the Order issued by the Federal High Court per Ijeoma L. Ojukwu shows that service of Process on the Applicant should be in his address at the same 176 Road FHA Nyanya. This Order was made on the 24th day of June, 2019. Meanwhile this Court had made its Order since the 23rd of May, 2019 after several futile attempts at personal service failed.

In the said Order by Federal High Court it state in paragraph 1 thus:

"It is hereby ordered as follows:

> **That the Processes of this Court shall be served by pasting at the address of the 3rd Respondent as stated in the Affidavit of the Applicant being at No. 176 Road FHA Nyanya Abuja".**

The above is as contained in the Order for substitute service made by FHC on the 24th of June, 2019 in Suit No: FHC/ABJ/CS/697/2018 between:

Apostle Eugene Ogu

V.

ICPC
A-G Federation
Larry Obasi

The said Order was attached by the Applicant in support of this application. Of interest is the document attached by the Respondent in their Counter Affidavit marked EXH 1. That document is a Counter Affidavit filed by the Applicant in the FHC in Suit No: **FHC/ABJ/850/2016** filed by Applicant.

In the said Counter, the Applicant stated in the preamble to the Counter Affidavit thus:

> **"Larry Obasi Male, Adult Nigerian Citizen of 176 Road Federal Housing Authority, Nyanya, Abuja do hereby make Oath and state as follows ..."**

From all the above it puts no one in doubt that the service of the Process on the Applicant in the Suit in which Judgment delivered is sought to be set aside was properly done in that the Applicant/Judgment Debtor was aware and was duly served with the Originating Process and was aware of the existence of the said case, but decided to sleep on his right for a

reason only known to him. This means that the application to set aside the Judgment of the 7th day of February, 2020 is not meritorious and the claim of the Applicant is not supportable. So this Court holds. On that ground this application is therefore dismissed. The reasoning of the Court in that regards still stand, so also the Judgment. The Applicant is aware of the existence and pendency of this Suit all the while.

Again the 2nd document attached by the Applicant in support of his case is a hoax. To start with document was adduced to the Chairman Economic and Financial Crimes Commission (EFCC) dated in what looks like sometime in 2016 August to be precise. It was not signed by any one. It was not copied to the Applicant. It was not certified by either EFCC or the Embassy of Czech Republic in Abuja.

It is strange that the document was only dated at the bottom part of it with no person's name on it as the writer. Even the stamp of the Embassy looks superimposed. Strangely it does not have the Coat of Arms of the country. It only has an expression of a horse at the extensive left side of the document. The content has little or nothing to do with the Writ in this case which is on liquidated money demand for refund of Fifty Four Thousand Naira (₦54, 000,000.00)

The allegation of non-service and improper service as claimed by Applicant is unfounded. The address

where he was served is his last known and only known address. So the reason of non-service of the Originating Process and non-service of the Hearing Notice on him as lyingly alleged by Applicant is not good reason for not filing his defence in this case.

Again, the Judgment was delivered on the 7th day of February, 2020. The Motion for setting aside was filed on the 3rd of June, 2020 – four (4) months after the Judgment was delivered. There is some delay in making the application to set aside this Judgment so much so that the Respondent will greatly be prejudiced. So this Court holds. Fair-hearing is not open-ended. It must be enjoyed with a reasonable time. It is equally open to all parties not only to a Defendant or an Applicant challenging fair-hearing. There is no doubt that the Respondent/Judgment Creditor will be prejudiced and embarrassed if this application is granted and this Court Order for a rehearing or reopening of the case.

In the Affidavit in support of the Motion the Applicant did not state facts under the law to sustain this Motion. He had stated that he had an interview with the Bailiff but he did not state the name of the Court Bailiff, the venue of the interview, the date or time and he did not state reasonable particular of the information and circumstance of the information as required by **S. 115 1-4 Evidence Act 2011.** This Court does not believe that those facts exist. It is a mere hearsay and is unfounded. See the case of:

Ahmed & Ors V. Central Bank of Nigeria Supra

This Court dismisses the paragraphs of the Affidavit on which those facts are anchored as it violates **S. 115 1-4 Evidence Act 2011.**

He did not challenge the Affidavit of the Bailiff stating that the Order of the Court for substituted service was carried out to the letter. Such challenge can only hold by filing of a Counter Affidavit. So failure to challenge the said Affidavit of the Bailiff by filing of Counter Affidavit has fundamental negative effect on this Motion. The service of the Process was very regular and proper and in accordance with the procedure permitted by the Rules of this Court.

The Applicant does not deny that he is not living in the address where the Processes were served – 176 Road FHA Nyanya, Abuja at the time of the service of the Process on him. Even the Order for service attached by Applicant shows that that is his place of abode. He did not disclose his most recent address. The Court has no business with speculation. This Court holds that the service of the Processes on the Applicant was properly done in line with the provision of the Rules of this Court. This application on that ground is dismissed.

The Applicant did not attach any Statement of Defence or Intention to defend the claim of the Plaintiff as required. Ordinarily he ought to attach such proposed defence which the Court would have

looked at to determine whether it is worth the while to Set Aside the Judgment and Order rehearing of the same. This would have enabled the Court to determine if his case is supportable or not. He did not also seek the leave of this Court to even file the application out of time. This makes the Motion to be devoid of any merit.

The grant of this application will prejudice the Respondent. To start with, the Applicant did not deny that he received money from the Respondent.

He did not show that address in Karu where he alleged the service was done. That submission is a hearsay. He did not disclose his present place of abode.

The Applicant was availed all the leverage and opportunity to be heard. He was served the Process by the substituting Order of Court in the address made avail in the Originating Process, the same address in which the Applicant had in his Counter Affidavit in the case FHC/ABJ/CS/850/2016 described as his address of service and place of Abode. It was equally the address in the Order of the FHC per Ijeoma Ojukwu J. for substituted service of Process on the same Applicant in the Suit FHC/ABJ/CS/679/2018.

This Court holds that the ground upon which the application is based – non-service of Process, is not true as the service on Applicant was duly served with

the said Process. The Proceeding was not heard behind his back. He only slept on his right for reason best known to him alone.

From all the above, this Court holds that his application lack merit. The case of the Applicant is UNSUPPORTABLE. Granting this application will prejudice the Respondent.

There is no reason for the default in filing a defence to the claim of the Respondent because the Applicant was properly served and he was aware of the pendency of this Suit. Again he delayed the making of this application and never filed any proposed Defence to the Respondent's claim as required. The Respondent is entitled to enjoy the fruit of its Judgment.

Based on all the above, this Court hereby DISMISSES this application for lacking in merit.

The Judgment of this Court delivered on the 7th of February, 2020 is not Set Aside. It is still substituting and binding on the Judgment Debtor/Applicant.

This is the Ruling of this Court.

Delivered today the __ day of _____, 2020 by me.

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K.N. OGBONNAYA
HON. JUDGE