

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 22

CASE NUMBER : SUIT NO: CV/2739/2018

DATE: : MONDAY 1ST FEBRUARY, 2021

BETWEEN:

**WEST AFRICAN BUSINESS JUDGMENT CREDITOR
PLATFORM LTD (Suing by her /RESPONDENT
Lawful Attorney, Raphael O.
AdakoleEsq., Trading under the
name and style).**

AND

1. TELCOM SATELITE LTD (TSTV)

2. ECHEFU BRIGHT

DEFENDANTS

RULING

This Ruling is at the instant of the Judgment Debtor/Applicant who approached this Honourable Court for the following:-

1. An Order setting aside the Judgment of this Honourable Court, Coram: Hon. Justice Y. Halilu, in **Suit No. FCT/HC/2739/2020**, delivered on the 18th day of November, 2019 in favour of the Judgment Creditor/Respondent same having been obtained by fraud and misrepresentation of facts.
2. An Order for extension of time within which to apply to set aside the ruling of this Honourable Court granting the Judgment Creditor leave to serve the 1st Judgment Debtor/Applicant by

substituted means to wit; By pasting at an address where the Applicant had vacated to the full knowledge of the Judgment Debtor/Respondent.

3. An Order setting aside the ruling and Order of this Honourable Court granting the Judgment Creditor/Respondent leave to serve the 1st Judgment Debtor/Applicant by substituted means to wit; by pasting same at Plot No. 1191, Jahi District off Gilmor Abuja, an address the Judgment Debtor/Applicant had vacated to the knowledge of the Judgment Creditor/Respondent who hid this fact away from the Honourable Court.
4. An Order setting aside the enforcement of the Judgment of this Honourable Court, Coram:

Hon. Justice Y. Halilu, in **Suit No. FCT/HC/CV/2739/2020**, delivered on the 18th day of November 2019 in favour of the Judgment Creditor/Respondent, the Judgment having been obtained by fraud and misrepresentation of crucial facts.

5. An Order directing the Judgment Creditor/Respondent and Chief Registrar/Deputy Sheriff of the High Court of the Federal Capital Territory/Deputy Sheriff to cause to be returned to the Judgment Debtor/Applicant the sums of;
 - a. \$16,000.00 (Sixteen Thousand US Dollars)
 - b. N2,500,000.00 (Two Million Five Hundred Thousand Naira).
 - c. N207,000.00 (Two Hundred and Seven Thousand Naira) enforcement fee being

monies paid by the Judgment Debtor/Applicant during enforcement of the Judgment of this Honourable Court by the Judgment Creditor/Respondent on the 14th of September, 2020.

6. An Order directing the Judgment Creditor/Respondent and Chief Registrar/Deputy Sheriff of the High Court of the Federal Capital Territory/Deputy Sheriff to cause to be returned to the Judgment Debtor/Applicant.
 - a. ONE LEXUS LX570 (REG NO: RSH – 702 MK) JEEP
 - b. ONE INFINITY QX56 JEEP REG. NO: YAB361AZ
 - c. ONE MIKANO GENERATOR SP300

being moveable assets belonging to the Judgment Debtor/Applicant and attached by the Judgment Creditor/Respondent during enforcement of the Judgment of this honourable Court by the Judgment Creditor/Respondent on the 14th of September, 2020.

7. And for such further or other Orders as the Court may deem fit to make in the circumstances of this case.

In support of the application is an affidavit of 16 paragraph deposed to by DotunBhadmus, a Counsel in the chamber of Judgment Debtor/Applicant.

It is the deposition of the Applicant that the Judgment Debtors/Applicants was never served with processes in the matter and as such was never given

the opportunity to be properly represented in the matter.

That the Judgment Creditor hid from the Honourable Court the fact that the address for service which the Applicant is known to operate and which was indeed the same place Judgment was executed was at house 14/C5/69 A Road Gwarimpa.

That even after a counsel attended court, the Judgment Creditor gave the impression of settlement to the Counsel and continued to serve at Green Glas House, Plot 1191, Gilmore Layout, Jahi District instead of serving at the address provided by the Counsel which is a functional office to wit; 44 Yepwi Street, Ibo Road New Karu, Abuja.

Applicant avers that prior to a hearing notice dated 4th March, 2019, the 1st Judgment Debtor/Applicant

had been open for business at their known office and that there was never any attempt to effect service on the 1st Judgment Debtor/Applicant at its office address.

That the Judgment was obtained by fraud and misrepresentation in the saying that the Power of Attorney which Raphael O. Adakole Esq purport to derive the right to sue in this action is invalid as same was not signed.

In line with law a written address was filed wherein the issues whether the Judgment of Hon. Justice Y. Halilu delivered on the 18th November, 2019 in Suit No. FCT/HC/2739/2020 is liable to be set aside.

It is the submission of learned counsel that when a matter is decided upon by a Court of competent jurisdiction, the Court become *funtus officio*,

however there is an exception to the rule. The court can hear and determine an application or an action setting aside its own Judgment under the following conditions:-

- a. Where the Judgment is a nullity
- b. Where the Judgment was obtained by fraud or deceit
- c. Where it is obvious that the Court was misled into given Judgment
- d. Where Judgment was given in the absence of jurisdiction.

INYANG VS CHUKWU OGOR (2007)ALL FWLR (Pt. 344) 165 at 184 – 185.

Learned Counsel contended that, the Judgment of this Honourable Court was obtained by

fraud/misrepresentation and in absence of jurisdiction as the Originating Process was not served on the Applicant.

Counsel cited and relied on the cases of ***HARRY VS MENAKAYA (2017) LPELR 42363 (SC)***, ***MOBIL PRODUCING NIGERIA UNLIMITED VS EFFIONG (2011) LPELR 9055 (CA)***, ***FIRST BANK OF NIG. PLC.VS T.S.A INDUSTRIES LTD. (2010) LPELR 1283 (SC)***.

Learned Counsel submit further that a perusal of the Records of Proceedings will show that there was nothing before the Court to show that Plot 1191 Jahi District, Off Gilmore Abuja was the last known address of the 1st Judgment Debtor/Applicant. And that there was nothing before the Court to show that Judgment Creditor/Respondent attempted to serve

the Judgment Debtors/Applicants at their known office address.

Counsel urged the Court to grant this application and to set aside the Judgment of Court in this matter.

It is further the argument of Learned Counsel that conditions precedent for the exercise of the jurisdiction of this Court were not fulfilled as there was non-service of Originating Process on the Judgment Debtors/Applicants and that proper parties were not before the Court to clothe this Court with the requisite jurisdiction to adjudicate on the matter.

***DR. IME SAMPSON UMAH VS OBONG (Arc)
VICTOR ATTAH & ORS (2006) LEPLR 3856
(SC).***

Learned counsel contended that where proper parties are not before a Court, the Court lacks jurisdiction to

adjudicate on that matter and any proceeding in such a case amounts to a nullity and is liable to be set aside. Court was urge to set aside the Judgment in the interest of justice.

Upon service, the Judgment Creditor/Respondent filed a 19 paragraph counter affidavit duly deposed to by One Ebenezer C. Egwuatu Esq., a Legal Practitioner in the law firm of the Judgment Creditor/Respondent.

It is the deposition of the Respondent that the Judgment Debtors/Applicants were duly served and they engaged the service of One JegedeOarhe Esq., who actively represented the Judgment Debtors/Applicants in Court by filing the following Court processes:-

- i. Memorandum of Conditional Appearance dated 11th March, 2018 and filed on 11th March, 2019.
- ii. Motion on Notice dated 11th March, 2018 and filed on 11th March, 2019 with Motion No. **M/3985/2019.**
- iii. Motion on Notice dated 8th July, 2019 and filed on 8th July, 2019 with Motion No. **M/3985/2019.**

That the Judgment Debtor/Applicant affidavit in support of their Motion is false as it was the Judgment Debtor/Applicant Counsel JegedeOarhe Esq., who sought for settlement out of Court on the 11th day of March, and the matter was adjourned to 20th March, 2019 for report of settlement or Defence.

It is further the affidavit of the Judgment Creditor/Respondent that all correspondences of the

2nd Judgment Debtor/Applicant is Plot 1191 Gilmore Layout Jahi District, Abuja as letter of demand was issued and served on the 2nd Defendant on the above address. A copy of the letter was annexed as Exhibit 'B'. And the Defendant responded to the letter by given N10,000,000 (Ten Million Naira) Cheque dated 18th July, 2018 with Serial No. 79947084, 79947805, 79947806,7994707 and 79947808. And these cheques were presented for clearing but were dishonoured. The said cheques were annexed as Exhibit 'C'.

That the said Judgment were not obtained by fraud as Counsel participated in the case.

It is further the affidavit of the Judgment Creditor/Respondent that Incorporation Certificate of the Judgment Creditor/Respondent was not placed

before the Honourable Court because the legal juristic personality of the Judgment Creditor/Respondent was not challenged by either the Judgment Debtors/Applicant throughout the trial of this case. In line with law a written address was filed wherein, the issue, *whether the Judgment delivered by Hon. Justice Y. Halilu on the 18th of November, 2019 in Suit No. FCT/HC/CV/2739/2020 is liable to be set aside.*

Learned Counsel argued that this application is misconceived and brought mala fide, as the Judgment of this Honourable Court is valid as same was not procured by fraud, misrepresentation of facts or any other vitiating factor and therefore, this court becomes functus officio and is precluded from reviewing the form of the Judgment or order apart

from the correction of the typographical or accidental slips under the slip rule.

NWANKWO VS CUSTOMARY COURT NDIAWA & ORS (2009) LPELR 4589 (CA).

Counsel submit further that before a party will succeed in setting aside a Judgment obtained by fraud, the following conditions must be present;

- a. The fraud must be alleged with particulars.
- b. The fraud must relate to matters which prima facie will be a reason for setting the Judgment aside if they were proved and not to matter, indirectly connected.
- c. The fraud alleged must raise a reasonable propel of success and will therefore require to be such as to support a strong case.

- d. The fraud must have been discovered since the Judgment complained of
- e. Mere allegation of perjury without new facts making it patently unconscionable to allow such Judgment to stand is not enough.

A.G FED. VS IJEWERE SUIT NO. CA/L/404/88

Learned counsel maintained that the conditions for setting aside a Judgment obtained by fraud has not been met by the Judgment Debtors/Applicants and therefore Court should dismiss the application.

Upon service, the Judgment Debtors/Applicants filed a reply on point of law wherein counsel argued that there was nothing on the records of this Honourable Court to show that effort were indeed made to properly serve the Judgment Debtors and that same was reported to the Court.

Learned counsel cited and relied on Section 131 of the Evidence Act 2011 to the effect that the Judgment Creditor/Respondent has failed to proof the burden thrust on them to show that service were actually effected on the Judgment Debtor/Applicant.

Counsel argued further that the online newspaper which the Judgment Creditor/Respondent relied upon does not comply with Section 84 (1)(2) and (4) of the Evidence Act 2011 and therefore be expunged. That also documents annexed as Exhibits 'A1' and 'A2' are public documents and are mere photocopies contrary to Section 96(2) of the Evidence Act 2011. Therefore, Court should expunged same.

Judgment Creditor/Respondent on their part, filed a further counter affidavit of 8 paragraphs deposed to by One faith Jonah, a Litigation Assistant in the law firm of the Respondent. Wherein a certified true copies of Exhibits 'A1', 'A2' and Exhibit 'G3' were annexed. And also Certificate of Compliance were made on Exhibit as 'F', 'J' and 'I' respectively.

Court:-I have gone through the Applicant's application and the counter reaction of the Respondent who is vehemently opposed to the grant of the application, in view.

It is as true, as it is well settled, that a court of law has an inherent jurisdiction to set aside its own judgment where the conditions for doing so have been met by a party seeking setting aside. One of such situation is when the judgment sought to be set

aside was obtained by failure to comply with procedural rules. ***NOGA HOTELS INTERNATIONAL S.A VS NICON HILTON HOTELS LTD & ORS (2006) LPELR – 11811 (C A)***

It is the contention of the Applicant that Judgment was given in the absence of jurisdiction as there was no service of processes on the Judgment Debtor known to law. And that Judgment Creditor concealed from the Honourable Court the facts that the address for service was the same place judgment was executed which is House 14/1569a, Road, Gwarnipa. From the record of this Honourable Court, the Defendant was served vide substituted means by pasting same in TSTV Green Glass House plot 1191, Gilmore Layout, Jahi, District Abuja vide an Order dated 11th October, 2018.

After the Order for substituted service was made, the case came up on the 7th November, 2018. The said Order was served by one Bashir Abdullahi a (staff of this Honourable Court) with affidavit of service and his picture photograph showing the pasting of the order.

The matter came up on 3rd December, 2018, 7th April, 2019 and 18th February, 2019. The same court bailiff deposed to affidavit of service.

Defendants all the same, were not in court and or represented.

Eventually, the Defendants put up an appearance vide their counsel Jegede Oarhe on the 11th March, 2019. The said counsel filed memorandum of conditional appearance and motion for extension of time. Same was moved and granted.

The said Defendants' counsel after wardsought for settlement out of court which the court obliged and adjourned suit to the 28th March, 2018 for report of settlement.

On the said date, i.e 28th March, 2018 the Defendants were not in court neither their counsel. Hearing notice was again ordered to be served on them. Same was complied with by the staff of this court (Bashir Abdullahi) with the affidavit of service deposed to that effect.

Indeed, when the bailiff has sworn to the proof of service, it is in law a compelling prima facie proof of service on the appellant of the writ of summons, statement of claim and other processes. ***EGBAGBE VS ISHAKU & ANOR (2006) LPELR 1156.***

Similarly, where a process of court, such as hearing notice, has been served, it is necessary for the court to have before it evidence of that fact; proof of service is particularly needed.

If a party allegedly failed to appear in court in response to the process allegedly served, it is his/her business. From available record of court, it is obvious that Defendants were duly served with necessary process of court.

Indeed a court can set aside the decision reached in the judgment or order under its inherent jurisdiction where it is shown that it was made without jurisdiction or is a nullity due to absence of fair hearing or was reached as a result of fraud. ***KHALID VS AL – NASIM TRAVELS & TOURS LTD & ANOR (2014) LPELR 22331.***

It is the law that an application to set aside judgment is not always granted to a Defendant whose attitude in the prosecution of the case is not salutary *N.H INTERNATIONAL VS N.H.H LTD (2007) 7 NWLR (Pt. 1032) 86 at 115.*

It is well settled, and it is unnecessary citing of decided cases that after finally deciding a matter before it, the court becomes functus officio and lacks jurisdiction to deal with the matter.

This is essentially because the court cannot sit on appeal on its own decision, having not been vested with any power to so do.

A party urging the court to invoke its equitable jurisdiction in his favour, when seeking an equitable remedy, must satisfy the court, by deposing to facts

articulated by the law, why the particular equitable remedy should be granted.

The Issue of mode of service of a court process is a procedural issue that bothers on the procedural jurisdiction of the Court, unlike the issue of substantive jurisdiction that can be raised at anytime, even for the first time on appeal, that of Procedural Jurisdiction has to be raised timeously - see ***EFFIOM VS UDOEKA (2017) LPELR-43342(CA)*** - Where the Court held that - "The jurisdiction conferred by substantive law is sacrosanct and cannot be side stepped. Rules of procedure come into effect to give life to the jurisdiction conferred by substantive law. However, procedural jurisdiction could be waived by a litigant once no injustice or prejudice has occurred to his opponent. In construing rules of procedure, care is taken to ensure that

technicality is not permitted to trump substantial justice. See *NAGOGO VS CPC (2012) 51 NSCQR 485 at 511...* I place reliance on *JIKANTORO VS DANTORO (2004) ALL FWLR (Pt.216) 390 OR (2004) 13 NWLR (Pt. 889) 187, MOBIL UNLIMITED VS LASEPA (2002) 18 NWLR (Pt.799) 1 at 33; ETIM V OBOT (2010) 12 NWLR (Pt.1207) 108.*

In the same case, *CHUKWUMA-ENEH, JSC* elaborated further on the same issue at 532-533 thus:

“Coming back as to the propriety or not of having initiated this action by originating summons, it is my view that for the appellant to urge solely on that ground as outlined above to have the action declared null and void and to set aside the decisions of the two lower Courts

is based on a total misconception of the distinction between jurisdiction as a matter of procedural law and jurisdiction as a matter of substantive law.

It is settled law that jurisdiction as a substantive law is not amenable to be waived as is the case with procedural jurisdiction which can be waived. It is clear that procedural jurisdiction does not go to root of the action. Normally the litigant is allowed to cure the defect in the form of action by amendments with regard to the form of action provided there is no misleading of the other party to the action by the mistake. Whereas here the defendant/appellant has not been misled he ought not to be allowed to take the point of defective form of action when he has filed all

his papers and he is not misled as in this matter, in short, I can find no justification for challenging the question of the form of action by which the instant action has been commenced at the trial Court. On the facts of this matter to have commenced this action by original summons is proper. And the Appellants submission to contrary is rejected.”

It is instructive to state here that the age of technicality is over. Courts are more interested in seeing to the ultimate resolution of the matter in controversy between the parties on the merits, regard being heard to all other procedural issues.

The essence of Service is to bring to their notice the pending suit, with reliefs sought against such a party..Defendants who were aware of the pendency

of the said suit caused appearance to be entered by counsel on record.

Another reason why their objection is highly procedural is that, is assuming they raised it timeously, the effect would only be that the service will be set aside and not the suit. If it was Substantive then the whole case will be thrown out. But in this case, even if they are right, the whole case will not be thrown out, in view of the fact that it is procedural.

Service of process whether personal or substituted is to give notice to the other party on whom notice is to be effected so that he may be aware of and be able to resist if he may, that which is sought against him.

EGBABE VS ISHAKA & ANOR (2006) LPELR – 11656 CA.

Can a Defendant, as in this case, who filed memorandum of appearance without more, and decides to go to sleep ever complain!

Isn't it the plight of the present Defendants?

Can they blow hot and cold at the same time?

It is indeed the law that equity does not aid the indolent but the vigilant.

It is also the law that delay defeats equity.

Another question that begs for answer is, whereas Judgment Debtors claimed that they had left the property in question;whereas they cannot contest the fact that when they entered into the premises, they were handed the keys, Judgment Debtors/Applicants failed to state to whom they handed over the keys to the property when they purportedly left same.

Raphael Adakole, Esq, who is the lawful attorney to the owners of the property, contended in paragraph 16 of its counter affidavit to the instant application under consideration that keys to the property in question were never handed over to him, a practice that is common. Judgment Debtor/Applicant did not contest above assertion.

It is the law that averments not debunked or countered are deemed admitted in law. See the case of *AMAYO VS ERINMWINGBORO (2006) 5 SC (Pt. 1) 1*.

Being in possession of keys to a property as tenant is an act of being in possession and therefore, service of court process on Judgment Debtor/ Applicant at the last known address is proper in law.

I say this because in judicial proceedings, there is generally no credit, save to things sworn (Judicio non Creditor Nisi Juratis).

The entire of this application which is centered on non – service on the Judgment Debtor/Applicant, having being found unmeritorious cannot stand in the eyes of the law, same being carefully packaged to lure this court into looking the direction of technicality.

He who passively accepts evil is as much involved in it as he who helps to perpetrate it. God forbid.

Lloyd Ekweremadu Esq. of counsel, made a very beautiful argument in his attempt to sway the mind of the court.

As most intelligent as counsel's argument seem, I have not seen the merit in the application for the reasons advanced in the body of my ruling.

Lack of merits and substance, this application cannot stand.

I shall dismiss same by making an Order of dismissal. **Motion No: M/10082/20** is accordingly dismissed.

Justice Y. Halilu
Hon. Judge
1st February, 2021

APPEARANCES

Lloyd I. Ekweremadu with Chike N. – for the Judgment Debtor/Applicant.

K.O Agadagba – for the Judgment Creditor/Respondent.