

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY**

IN THE NYANYA JUDICIAL DIVISION

**HOLDEN AT COURT 8, NYANYA ON THE 25TH DAY OF
MARCH 2021**

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

SUIT NO: FCT/HC/ABUJA/CV/2602/20

COURT CLERKS: JOSEPH BALAMI ISHAKI & ORS.

BETWEEN:

NETPRO INTERNATIONAL LIMITED.....CLAIMANT

AND

GOLEAMA GLOBAL SERVICES LIMITED....DEFENDANT.

RULING

The Judgment Debtor/Applicant's application dated the 17th day of December 2020 is for

1. An Order setting aside the Summary Judgment in Suit No. FCT/HC/CV/2602/20 delivered on 16th December 2020 for non service of the Claimant's Writ of Summons and Motion for Summary Judgment.
2. An Order relisting the Suit for hearing and determination on the merit.

The grounds for the application relied upon are on the face of the Motion paper.

Learned Judgment Debtor/Applicant's Counsel relies on the 4 paragraph Affidavit sworn to by Emmanuel Tsebo, male of No. 34 Kumasi Crescent Wuse 2, Abuja.

He deposes that the Defendants were not served with any Originating Process or application for Summary Judgment.

That this Court was misled by the Claimant into believing that the Defendant had indeed been served with the originating processes.

That Defendant has a registered office. That Defendant's Head Office/Registered Company address is House 1, Flat A, Major IK Nwakwesili Close, Kurudu Abuja. The incorporation documents are attached.

That upon an inspection of the processes purportedly served on the Defendant from the registry of this Court, the said processes respectively placed the address for service on the Defendant as No.8 Bello Street, Apo Resettlement, Abuja FCT which address is not the Head Office of the Defendant.

On the Certificate of Service endorsed by Obaje Danjuma, the Chief Bailiff, the Writ of Summons was purportedly dropped at No. 7 Sirasso Crescent, Wuse Zone 7 Abuja.

That the said No.7 Sirasso Crescent Wuse Zone 7 Abuja is not the registered office address of the Defendant.

That Defendant does not have any branch office anywhere else in the Federal Capital Territory.

That Defendant does not know the nature of the case brought against it.

That the Defendant brought this application temuously. That Defendant is desirous of defending this Suit. That it will be in the interest of justice to grant this application.

The Judgment Creditor/Respondent's Counsel rely on the 6 paragraph Counter Affidavit filed in opposition to the Motion.

Mr. Austin Itua, male of Suite EO2, 4th Floor, Plot 1002, 1st Avenue, Shehu Shagari Way, Central Business District deposes as follows:

That Mr. Obaje Danjuma effected service of the Originating processes on 28/10/20 by dropping same at No. 7, Sirasso Crescent, Wuse Zone 7 Abuja as the Defendant refused to accept service. The Certificate of Service is Exhibit A11.

That before 28/10/20, he visited the Defendant's address on record at No.8 Bello Street, Apo Resettlement Abuja FCT to effect service but was informed that Defendant had left the

premises. That he contacted the Defendant's Managing Director Mr. Emeka Egole on his Mobile No. (08130955220) to ascertain the Defendant's current address and he told him that he traveled outside Abuja but that he should serve the processes on his staff at No. 7 Sirasso Crescent Wuse Zone 7 Abuja. The bailiff then dropped the processes when the staff refused to accept and acknowledge service.

That the Judgment Debtor, throughout their dealing in this transaction never gave House 1, flat A, Major IK Nwakwesili Close, Kurudu Abuja as its address but provided No. 8 Bello Street, Apo Resettlement Abuja FCT which is the address the Defendant used in the three Memorandum executed by the parties. The Defendant had since left 8 Bello Street Apo Resettlement for No. 7 Sirasso Crescent Wuse Zone 7, Abuja as conveyed to the bailiff by the Defendant's Managing Director.

The Defendant was properly served with the originating processes and is aware of the case against him. That on 3/12/20 when the Suit was slated to come up, the Defendant was represented by its Counsel and was served with a hearing Notice for the return date 16/12/20.

That on 16/12/20 when the matter came up, Defendant failed to file any response.

That Defendant was served on 28/10/2020 and had an ample time to file his response but failed to do so.

That the Summary Judgment delivered on 16/12/2020 is a Judgment on the merit.

That it is in the interest of justice to dismiss the application.

Learned Counsel to the Judgment Debtor/Applicant's argument is that this Court is bereft of the requisite jurisdiction to entertain the Motion for Summary Judgment for non service.

That by Order 21(12) of the rules of Court, a Judgment by default shall be final and remains valid and may be set aside upon application. That since the service of the Writ of Summons and Motion for Summary Judgment were effected on an address unknown to the Defendant, it is clearly impossible for the Defendant to know of the pendency of the Suit to enable her put up a defence.

That the Court acted without jurisdiction and the Judgment ought to be set aside.

The Judgment Creditor/Respondent on the other hand submits that the Judgment Debtor/Applicant was properly served and was aware of the Suit against it but refused to file a response.

Learned Counsel cited Section 78 of the Companies & Allied Matters Act and Order 7(8) of the rules of Court. That by Order 21(12) of the rules of Court, a Judgment can generally be set aside on grounds of fraud, non service or lack of jurisdiction.

That none of the above three is present in this case.

That the Judgment in this case is Summary Judgment which is a Judgment on the merit.

The Judgment Debtor/Applicant's remedy lies on filing an appeal.

That the application lacks merit and is liable to be set aside.

There are two issues to be resolved to determine this application:

1. Whether or not the Defendant was properly served.
2. Whether the Judgment of this Court delivered on the 16/12/20 is a Judgment on the merit or in default?

On issue 1, the Defendant in this case is a Company as deposed to in paragraph 3 (d) of the Applicant's Affidavit in support of this Motion.

Section 78 of the Companies & Allied Matters Act states:

“A Court process shall be served on a Company in the manner provided by the rules of Court and any other document may be served on a Company by leaving it at or sending it by post to the registered office or Head Office of the Company.”

A Court process including a Writ of Summons and Motion for Summary Judgment **shall** be served on a Company as provided by the rules of Court.

By Order 7 Rule 8 of the High Court of the FCT (Civil Procedure) Rules 2018, every originating process requiring personal service may be served on a registered Company, Corporation or Body corporate by delivering at the Head Office or any other place of business of the organization within the jurisdiction of the Court. The Judgment Debtor/Applicant deposed that Defendant's registered office

is at House 1, Flat A, Major IK Nwakwesili close, Kurudu Abuja.

That the address for service on the Defendant in the process is No. 8 Bello Street, Apo Resettlement Abuja which is not the Head Office.

That the processes were purportedly dropped at No.7 Sirasso Crescent Wuse Zone 7, Abuja which is not the registered Office of the Defendant.

The Defendant does not have a branch office anywhere else in the FCT.

The Judgment Creditor/Respondent deposed that service was effected by dropping same at 7 Sirasso Crescent Wuse Zone 7, Abuja as the Defendant refused to accept service. That he had visited No. 8 Bello Street, Apo Resettlement which is the address on record and was informed that the Defendant had moved out of the premises.

That the MD, Emeka Egole whose Mobile No. is provided gave the Bailiff No. 7 Sirasso Crescent Wuse Zone 7 Abuja as the address where service could be effected.

The Judgment Debtor/Applicant filed a Further & Better Affidavit. The said Affidavit was filed out of time contrary to

Order 43(4) of the rules of Court. It is therefore discountenanced and struck out Motion HC/NY/M/82/2021.

By the rules of Court, the bailiff of Court is not confined to serve the originating processes on the Defendant at its registered Head Office. Service can be affected on the Defendant at any of its place of business within jurisdiction.

The Defendant was served with the Writ of Summons and Motion on Notice for Summary Judgment on 28/10/20 by the Affidavit of service at Sirasso Crescent.

By the Affidavit of Service, No. 7 Sirasso Crescent, Wuse Zone 7 is the office of the Defendant.

To further buttress the fact that the Defendant was served, the first day the cause was listed for hearing, the Defendant was represented by one Justice Ukomadu. He informed the Court the Defendant had not been served.

The Court drew his attention to the fact that there is proof of service in the Court's file. The Court proceeded to hear the Motion for Judgment and accordingly entered Judgment in favour of the Claimant.

The essence of service is to ensure that the Defendant is aware of the case against him so as to enable him enter its defence.

In the instant case, the Defendant was aware of the Suit against him. He briefed a lawyer who attended the hearing but who failed, refused and or neglected to file any process in opposition.

The processes were served on 28/10/20 while Judgment was entered on 16/12/20.

The Defendant had ample opportunity to file a defence or bring an application to set aside the service of the Originating Processes but choose to stand by at its peril.

In my humble view, the Originating processes in this Suit were properly and validly served and I so hold.

On whether the Judgment of this Court dated 16/12/20 is a Judgment on the merit or in default.

I revert to the rules of Court and Case Law.

Order 21 Rule 12 of the rules of Court states:

“Any Judgment by default whether under this Order or this rule shall be final and remains valid and may only be set aside upon application to the Court on grounds of fraud,

non service or lack of jurisdiction upon such terms as the Court may think fit.”

The law is that a trial Court, in considering an application such as this to set aside a Judgment obtained in default of appearance must consider the following:

1. Whether the Applicant has good reasons for being absent at the hearing.
2. Whether he has shown that there was good reason for his delay in bringing the application.
3. Whether the Respondent will not be prejudiced or embarrassed if the Order for rehearing is made.
4. Whether the Applicant's case is manifestly unsupportable.
5. Whether the Applicant's conduct throughout the proceeding is deserving of sympathetic consideration.
6. Whether the Judgment is tainted with fraud or irregularly obtained.

All the above must be resolved in favour of the Applicant.

See ***OGOLO VS. OGOLO (2006) 5 NWLR (PT. 972) 163 SC.***

WILLIAMS VS. HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) 1-2 SC 145.

The Defendant was represented on the date the case came up. The Defendant or Counsel failed to react to the originating process despite being aware. The conduct of the Applicant is not worthy of sympathetic consideration.

The Defendant deliberately brought this debacle on itself.

The Judgment Debtor/Applicant did not prove fraud, non service or lack of jurisdiction in this case.

The Judgment Debtor/Applicant's case is manifestly unsupportable.

This issue is also resolved in favour of the Judgment Creditor/Respondent against the Judgment Debtor/Applicant.

In totality, the application lacks merit and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

25/03/21