

**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. 15**  
**CASE NUMBER : SUIT NO: CV/1212/2018**  
**DATE: : THURSDAY 7<sup>TH</sup> OCTOBER, 2021**

**BETWEEN:**

**O. BUKKY INTEGRATED SERVICES LTD. JUDGMENT  
CREDITOR/RESP  
ONDENT**

**AND**

**1. DR. FATIMAH TAGWAI AJI**  
**2. MAINNAGE GENERAL MERCHANT LTD.**  
**3. RUBBELS BUREAU DE CHANGE LTD. JUDGMENT**  
**4. GWAMMAJA GENERAL SUPPLY CO. LTD. DEBTORS/**  
**5. MUSA TASIU YAU ENTERPRISES APPLICANTS**  
**6. MUSA YAU TASIU**  
**7. MUSA YAHAYA**  
**8. USMAN BASHIR DAUDA**  
**9. JAMILU MUSA GWAMMAJA**  
**10. NASIRU JAMILU MOHAMMED**  
**11. ADAMU JAMILU**

## **RULING**

The Applicants herein approached this Honourable Court seeking for an Order setting aside its Default Judgment Coram; Hon. Justice V.V.M Venda (retired) delivered on the 18<sup>th</sup> day of June, 2019 in **Suit No. FCT/HC/CV/1212/18** and for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is a 13 paragraph affidavit duly deposed to by Musa YauTasiu the six Judgment Debtor/Applicant.

It is the deposition of the Applicant that the Originating Processes by which the Judgment Creditor/Respondent commenced this Suit were never served on the Judgment Debtors/Applicants to enable them know and respond to the case of the

Judgment Creditor/Respondent and that due to the fact of non-service, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Judgment Debtors/Applicants were not afforded an opportunity of filing their responses.

Applicants aver further that they were shocked when they could not access their bank accounts and upon enquiry, they were informed by their bankers that Judgment was delivered against them and garnishee proceedings commenced against them.

That it would be in the interest of justice to grant this application.

In compliance with the law, a written address was filed wherein the issue *“whether the Judgment of this Honourable Court delivered on the 18<sup>th</sup> of June, 2019 in Suit No. FCT/HC/CV/1212/18 against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Judgment*

***Debtors/ Applicants is not liable to be set aside for non-service of the Originating Processes on the Judgment Debtors/Applicants.”***

Arguing on the above, learned counsel submit that when a court delivered Judgment in a matter, it becomes functus officio with respect to the matter.

But that there are exceptional circumstances where injustice would be meted on a party that was never aware of the pendency of a case by virtue of the fact that they were never served Originating Process of this Court. ***F.B.N PLC. VS T.S.A/ IND. LTD. (2010) 15 NWLR (Pt. 1216) 247 SC.***

Learned Counsel argued that services of an Originating Process on an adverse party is a sine qua non for the activation of the judicial powers of a Court under our adversarial system of justice.

Counsel finally urge the court to grant this application in the interest of justice.

In response, the Judgment Creditor/Respondent filed a counter affidavit of 23 paragraphs deposed to by One Timothy Agowa, a Litigation Secretary in the Law Firm of the Judgment Creditor/Respondent.

It is the deposition of the Respondent that the 8<sup>th</sup> Judgment Debtor/Applicant is the alter ego of the 2<sup>nd</sup> – 5<sup>th</sup> Judgment Debtors and also connected with the 1<sup>st</sup>, 7<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Judgment Debtors as business partners.

That the Originating Process which commenced this Suit was served on all the Judgment Debtors by substituted means as Ordered by the Honourable Court. Hearing Notices & Certificate of Service is annexed as Exhibit '00&C1' and '00&C2'.

That throughout the proceeding of the Court, hearing notices were served on the Judgment Debtors/Applicants vide Exhibits '00&C3', '00&C4' and '00&C5' respectively.

Judgment Creditor/Respondent avers further that the Judgment Debtors/Applicants were aware of the case as well as the Judgment before Order Nisi was made by the Court.

In compliance with the law, a written address was filed wherein three (3) issues were formulated for determination to wit;

***1. Whether the Judgment Debtors/Applicants were not served by substituted means consequent upon the Order of the Honourable Court and whether substituted service is not a proper service.***

2. *Whether a Court of coordinate jurisdiction can set aside the Judgment of his brother Judge; whether the Judgment Debtors/Applicants comply with the condition precedent in Order 10 Rule 11 of the Rules of this Court to the effect that an application for setting aside a default Judgment shall show a good defence with payment of penalty, whether the Judgment Debtors/Applicants having failed to obtain leave before filing their application same is not incompetent.*
3. *Whether the Court is not functus officio since the Judgment has been delivered in this Suit.*

*On issue one, whether the Judgment Debtors/Applicants were not served by substituted means consequent upon the Order of the*

***Honourable Court and whether substituted service is not a proper service.*** Learned counsel submit that, where there is a challenge to the service of an Originating Process, the affidavit of service deposed to by the Court Bailiff is prima facie evidence of service. ***AHMED VS AHMED (2013) ALL FWLR (Pt. 699) 1025.***

***On issue two, whether a Court of coordinate jurisdiction can set aside the Judgment of his brother Judge; whether the Judgment Debtors/Applicants comply with the condition precedent in Order 10 Rule 11 of the Rules of this Court to the effect that an application for setting aside a default Judgment shall show a good defence with payment of penalty, whether the Judgment Debtors/Applicants having failed to obtain leave before filing their application same is***

*not incompetent.* Learned Counsel submit that the Applicant have not complied with Order 10 Rule 11 of the Rules of this Honourable Court and therefore, they cannot use interest of justice as an excuse to breach the rules of this Court.

Learned counsel submit that application to set aside must be brought within a period of six days failure of which the Applicant must apply for extension of time to bring the application to set aside the Judgment. *ISONG VS UMOREN (2011) ALL FWLR (Pt. 550) P. 937.*

On issue three, *whether the Court is not functus officio since the Judgment has been delivered in this Suit.* Learned counsel submit that the court is functus officio once Judgment was delivered. And therefore, court was urge to dismiss this application.

Judgment Debtors/Applicants filed a further reply affidavit to the counter affidavit of the Judgment Creditor.

It is the deposition of the Judgment Debtor that the address of the place of business of the 5<sup>th</sup> Judgment Debtor/Applicant as contained in its Certificate of Registration is No. 3 GidanLabaranKantinKwari Market, Fagge LGA, Kano State. Whereas all the certificates of service as well as hearing notices were purportedly served on the 5<sup>th</sup> Judgment Debtor/Applicant at Suites 027 and 028 Blue World Plaza Aminu Kano Crescent Wuse II, Abuja.

That the recent address of No. 522 UbaLida Street, Gwammaja Quarter Kano State and No. 42 Tuluntawa Quarters 200 Road Kano are glaringly

different from Suites 027 and 028 Blue World Plaza Aminu Kano Crescent Wuse II, Abuja.

A written address was filed wherein the issue “whether service of the Originating Process on the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Judgment Debtors/ Applicants as an unknown address and outside their principal place of business can be regarded as proper service to be bound by the Judgment of this Honourable Court delivered on the 18<sup>th</sup> of June, 2019 in Suit No. FCT/HC/CV/1212/18.”

Learned counsel submit that service of Originating Processes must be effected on a Company of the registered business address of the said Company. ***KRAUS THOMPSON ORGANIZATION LTD. VS UNIVERSITY OF CALABAR (2004) 9 NWLR (Pt. 1110) Page 335.***

Counsel submit that by Section 78 of the Companies and Allied Matter Act make provision for service in the registered place of business.

Court was urge to set aside the Judgment of this Honourable Court.

The Judgment Creditor/Respondent filed further counter affidavit wherein it stated that the Judgment Debtors/Respondents agent Mr. Egdo Friday Daniel who acted as a go between and linked the Judgment Creditor with the Judgment Debtor informed the Judgment Creditor that the Registered address is Suites 027 & 028 Blue World Plaza, Aminu Kano Crescent, Wuse II, Abuja. The statement of the agent was annexed as Exhibit “00&C1”.

A written address was filed wherein the issue whether a corporate entity cannot be served at its

branch office or at any office where it conducts transactions with any other party; whether this Honourable Court can set aside the Order of its brother Judge of a Court of coordinate jurisdiction.

Learned counsel submit that service of process provided by the Rules of Court and Order 12 Rule 8 provides that a writ may be served when the Suit is against a Corporation or a Company subject to the enactment establishing that Corporation.

That Order 7 Rules 8 makes provision for the service at the registered office or any other place of business of the organization.

**Court:-**

I have gone through the arguments for and against the motion on notice filed by counsel to the

Judgment Debtors/Applicants and the reaction of the Judgment Creditor/Respondent.

It is instructive to state from the outset that service of process is a sine qua non for court to assume jurisdiction. I shall therefore consider whether there was any valid service in line with law.

Failure to serve process where service of process is required is a fundamental vice. It deprives the trial Court of the necessary competence and jurisdiction to hear the suit.

See *KIDA VS OGUNMOLA (2006) 13 NWLR (pt. 997) 377.*

It is the argument of learned counsel for the Judgment Debtors/Applicants that the writ of summons and other processes in this matter were not served on the Judgment

Debtors/Applicants' registered place of business as contained in the certificate of incorporation of the Applicant in line with the provision of extant laws and therefore there was no proper service of process. And court was urged to set aside its judgment.

A careful perusal of the court process and the affidavit annexed by the Judgment Creditor/Respondent will reveal that the court process was served by Bello Dogara a clear in my brother's court who delivered the judgment in issue.

On Service of process the law is settled that failure to serve process where service of process is required is a failure which goes to the root of the case. Indeed a court's jurisdiction and competence can only be activated when such service of process is affected.

Due service of process is a sine qua non to the hearing of any suit. Therefore, if there is failure to serve process where service is required the person affected by the order of court but not served process is entitled *ex-dibito* Justifie to have the order set aside as nullity.

***See PEREMOLIZE NIGERIA LIMITED & ANOR VS GIBE MOTORS HOLDING LIMITED (2007) LPELR – 4840.***

The Rules of court governing the service of process in issue is the FCT High Court civil procedure rules 2018.

I shall consider some provisions:-

Order 7 Rule 11 (2) of the said Rules provides as follows:-

1. Where it appears to a court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently affected, the court may order that service be affected either by:-

a. Delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served;

or

b. Delivery of the document to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or

- c. Advertisement in the Federal Gazette, or in somenewspaper circulating within the jurisdiction; or
- d. Notice put up at the principal Court house of, or a place of public resort in the judicial Division where the respective proceeding in instituted, or at the usual or last known place of abode or of business, of the person to be served; or
- e. E-mail or any other scientific device now known or later developed; and
- f. Courier service or any other means convenient to the court.

It is important to note here that, my brother Hon. Justice V. V.M Venda (retired) gave an Order for substituted service on the Defendant on the 14<sup>th</sup> day

of May, 2018. In the said Order, my brother Ordered that all processes in this suit shall be served on the Judgment Debtors/Applicants by pasting all the said court processes on the front wall of the office complex of the Defendants at suit 027 and 028 Blue World Plaza, Aminu Kano Crescent, Wuse II, Abuja.

The said Order was effected by the staff of this Court on the 26<sup>th</sup> June, 2018. The affidavit of service was annexed as Exhibit “00&C2”.

It is trite law that where an affidavit of service has been sworn to by bailiff, the presumption is that proper service has been affected. Where there is proof of service on a party by means of an affidavit of service sworn to by a bailiff or an officer of court, the only recommended and acceptable way of

challenging or rebutting the presumption of such service by the party concerned is by filing a counter affidavit to controvert the affidavit of service. ***FATUKUN VS SOMEDE (2003) 1 NWLR (Pt. 802) 431 at 438.***

It is the argument of Judgment Debtors/Applicants that service of originating processes must be affected on a company at the registered business address of the said company and that the mode of service on a Limited Liability Company under the relevant rules of court is different from service of process on a natural person. ***MARK & ANOR VS EKE (2004) 5 NWLR (Pt. 856) page 54.***

It is necessary to mention here that section 78 of the companies and Allied Matters Act as amended, provides for service, as follows;

***“A court process shall be served on a company in the manner provided by the rules of this court. NIGERIAN BOTTLING CO. PLC. VS UBANI (2014) 4 NWLR (Pt. 1398) page 421.”***

Above provision is in tandem with the provisions of order 7 Rule 8 of the Rules of this Court.

Order 7 Rules 8 of the Rules of this Honourable Court provides as thus;

***“Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivery at the head office or any other place of business of the organization within the jurisdiction of the court.”***

From above, service of process on company can be rightly done in the company's place of business.

Back to the issue in contention..was the service under contention done at the place of business of the Judgment Debtors/Applicants as provided by law?

It is the argument of the Judgment Debtors/Applicants that the registered address of the Judgment Debtors/Applicants' Company is No. 3 GidanLabaranKantinKwari Market Fagge L.G.A, Kano State, Nigeria, whereas all the certificates of service as well as hearing Notices were served at suites 027 and 028 Blue World Plaza, Aminu Kano Crescent Wuse II, Abuja.

In reaction to this assertion, the Judgment Creditor/Respondent exhibited a certified true copy (CTC) of a written statement made by the agent of

Judgment Debtors/Applicants before EFCC upon the Judgment Creditor/Respondent's petition against the Judgment Debtors how she was defrauded of some money. The said statement was annexed as Exhibit "00&C1" wherein the business address was mentioned as suites 027 and 028, Blue World Plaza, Aminu Kano Crescent Wuse 2, Abuja.

This assertion was not controverted by the learned counsel for the Judgment Debtors/Applicants.

Therefore same is deemed to have been admitted and must be acted upon by court. See *OFORLETE VS STATE (2000) SC*.

It is true as 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. See *NOGA HOTELS INTERNATIONAL S.A VS NICON HILTON HOTELS LTD & ORS (2006) LPELR 11811 (CA)*.

Service of all processes were usually done on the Defendant/Judgment Debtor who are deemed to have had all the opportunity to know the reliefs against them.

The argument of Defendants/Judgment Debtors has the coloration of technicality.

Courts must always see to it that justice triumphs in view of the fact that it does not reside in forms and formalities, nor in technicalities. Reliance on technicalities leads to injustice.

The application is clearly a waste of time and resources. Same is refused and dismissed.

*Justice Y. Halilu*  
*Hon. Judge*  
*7<sup>th</sup> October, 2021*

### **APPEARANCE**

A.M Adoyi, Esq. – for the Judgment Debtors/Applicants.

R.I.O Oloyede, Esq. – for the Judgment Creditor/Respondent.