

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON WEDNESDAY 8<sup>th</sup> DAY OF DECEMBER, 2021**

**SUIT NO: FCT/HC/CV/1524/2021**

**BETWEEN:**

**(1) UYAMADU CHINEDU SAMSON ..... CLAIMANT.**

**AND**

**(1) GUARANTY TRUST BANK PLC**  
**(2) FIRST CITY MONUMENT BANK LTD** } **DEFENDANTS.**

**RULING**

The Counsel to the 1<sup>st</sup> Defendant went further and filed a Motion on Notice dated 18/10/2021.

The Motion on Notice is supported by a 7 paragraph Affidavit dated 20/10/2021 with annexures, deposed to by one Magrate E. Ogbonnah. The Motion on Notice was filed on 20/10/2021 on behalf of the 1<sup>st</sup> Defendant/Applicant praying the Court for:-

- (1) An Order of this Honourable Court vacating its Order of 5<sup>th</sup> October, 2021 foreclosing the 1<sup>st</sup> Defendant/Applicant from defending itself and setting down this suit for judgment.

- (2) An order of this Honourable Court that the 1<sup>st</sup> Defendant/Applicant is still within time to file its Counter Affidavit and other accompanying process in this suit.
- (3) An order of this Honourable Court directing the 1<sup>st</sup> Defendant/Applicant to open its case/defence in this suit.
- (4) And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

### **GROUND OF APPLICATION**

I, that the 1<sup>st</sup> Defendant/Applicant is still within time as allowed by the rules of this Honourable Court to enter and file its Counter Affidavit and other accompanying processes in this suit.

The application is supported by 7 paragraph affidavit in support of Motion on Notice deposed to by one Margrate E. Ogbonna.

In Response:-

The Claimant/Respondent also filed a Counter Affidavit to the 1<sup>st</sup> Defendant Motion on Notice for vocation of order of foreclosure.

It is a 4 paragraph Counter Affidavit deposed to by one UYAMADU CHINEDU SAMSON and Claimant Written Address in support of Counter Affidavit.

The Claimant also filed a 2 paragraph Further and Better Affidavit.

The Claimant/Respondent filed a Counter Affidavit to the 1<sup>st</sup> Defendant Motion on Notice for Vocation of order of foreclosure.

The Counter Affidavit is deposed by one Uyamadu Chinedu Samson, male Christian N citizen of No.6 Henry Nwoke Street Kubwa Abuja FCT that he is the Claimant and virtue of which he is conversant with the facts of this case giving rise to these depositions.

- (3) That he has read the 1<sup>st</sup> Defendant Motion on Notice for Vocation of the order of foreclosure had been informed by his lawyers, Messrs Noble Crest Solicitors at its office on the 27/10/2021 at about 10am of fact which believe to be true to wit:-

That the 1<sup>st</sup> Defendants Motions on Notice affidavit, Written Address in support are not entirely correct.

That the 1<sup>st</sup> Defendant have been served with the Originating Processes failed to formally enter and or file either a conditional or unconditional appearance before the Court, neither did they filed a defence to the Claimant on the day the matter came up for hearing.

That paragraph 4(d) of the affidavit is complete by, false and made to mislead and dubious to attract only sympathy from the Court. As there was no evidence of the said Memorandum of Appearance in the Court records when the matter came up for hearing neither was same serve on me (Claimant) I was surprised by this position as the motion, affidavit (attaching the said Memorandum of Appearance) and Written Address was only just several on the Claimant on the 26/10/2021.

- d. That the Counsel to the 1<sup>st</sup> Defendant rather than actively participate in the suit against it (by filing all the required processes) strolled in to the Court room on the date of hearing announced appearance and sat back to observe proceedings.

That the Counsel to the Claimant during hearing of the matter sort leave to move her Originating Summons given that there was no objection from the 1<sup>st</sup> Defendant Counsel whatsoever who was present in Court.

That it was after the Claimant Counsel had finished moving and adopted its Originating Summons and awaiting Courts' Ruling/Decision that the 1<sup>st</sup> Defendant Counsel stood up to address the Court.

That the said act of 1<sup>st</sup> Defendant Counsel amounts to a waiver of its right in the circumstances.

That in response to paragraph 4 (h) the Claimant never misled the Court in any way whatsoever as Counsel to the 1<sup>st</sup> Defendant was present in Court himself but failed to address the Court with regard to their position on the matter within a reasonable.

That in response to paragraph 4 (1) the Court has no jurisdiction to set aside its order of foreclosure made against the 1<sup>st</sup> Defendant from defending itself as against the belief knowledge and prayers of the 1<sup>st</sup> Defendant.

That an order or decision made by the Court can only be set aside where same was obtain by fraud, concealment of facts misrepresentation and deception.

That the 1<sup>st</sup> Defendant need not exhaust the 42 days provided by laws before entering appearance or filing it processes considering the fact that he was in Court on the day of hearing but decided to stay mute neither made prayers nor opposes Claimant's prayer to the Court. After been dully served with the Claimant's Originating Processes and issued Hearing Notice, same which was acknowledge by them.

That the 1<sup>st</sup> Defendant was aware of the date for hearing, several weeks before the said date, but failed to take any step in the matter. To come back and complain to the Court that it has not exhausted that 42 days given them within which to enter appearance.

That the 1<sup>st</sup> Defendant was diligent and serious in pursuing/defending its case.

3. That I depose to this affidavit in god faith believing same to be true and in accordance with the act Oaths Act.

The Counter Affidavit by the Claimant to the Motion on Notice of the 1<sup>st</sup> Defendant corroborates with the proceedings in the Court.

They also filed a Written Address and adopt same as their Oral and Final Argument.

### **Issue for Determination:-**

The sole issue for determination is “Whether considering the fact and circumstances of this case, evocating the order of foreclosure earlier made by this Honourable Court will be just and in accordance with the law.

The Claimant also deposed to Further and Better Affidavit. It is a 4 paragraph affidavit

2. That the 1<sup>st</sup> Defendant’s Counter Affidavit and all facts and documents relating thereto are entirely false and meant to tactically refute and avoid responsibly obligation and consequences thereof.

That the Claimant is not in position to admit or deny the facts deposed to in paragraphs 1, 2 and 3 of the 1<sup>st</sup> Defendant’s Counter affidavit.

That paragraph 3 (a, h, e, f, g, j, k, l, m) 4, 5, 6 and 7 of the 1<sup>st</sup> Defendant Counter Affidavit.

That in reply to paragraph 3 (d and e) the Claimant reiterates the fact that the 1<sup>st</sup> Defendant placed a PND in my account whether a lawful Court order as it expected of them as it was clearly admitted that on

reception of a letter from EFCC a post NO DEBIT (PND) was placed on his account making it impossible for him to transact with the account.

- e. That at the point of placing PND on his account until this moment the 1<sup>st</sup> Defendant did not had any Court Order directing them to do so. They acted and relied on a letter from EFCC, contrary to the position of the law.

In further response to the 1<sup>st</sup> Defendant Counter Affidavit in paragraph 3(f, g, h, and i) the Claimant still strongly relies on paragraph 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of his affidavit in support of Originating Summons and equivocally states that several transactions were initiated on the account at different times and occasions all to no avail. Exhibit GTB 1 which was presented on the 24<sup>th</sup> day of June 2021, 2 (two) months after the 1<sup>st</sup> Defendant placed PND and supposedly lifted same supports this fact.

That the Exhibit GTB 1 was duly completed and signed by the Claimant after which it was stamped by the 1<sup>st</sup> defendant with inscription of its stamping matching showing date and time the document was presented to the bank appearing on two parts of the document (middle and for right).

That the said Exhibit was even returned with a note behind addressed to the Cashier after confirmation of the account stating that the Claimant had just been released by the EFCC and that they were working to source out my account.

That the said Exhibit GTB 1 dully passed the test as presented and put by the 1<sup>st</sup> defendant in paragraph 3 (h) of its Counter Affidavit same being acceptable and admissible. The original copy of which will be presented to the Court for continuation.

That the 1<sup>st</sup> defendant has no proof whatsoever to prove that the restriction on the Claimant's account was lifted automatically after 72 hrs as alleged.

3. That the Claimant herein further relies and unequivocally reiterates all the paragraphs of his affidavit in support of Originating Summons.
4. And that he deposes to this affidavit in good faith believing same to be true and in accordance with the Oaths Act.

### **REPLY ON POINT OF LAW**

- a. Whether in the circumstance of this case, the Claimant has sufficiently proved his case as required by law.
- b. Whether the Claimant has established any cause of actions whatsoever against the 1<sup>st</sup> Defendant in persuading this Honourable Court to exercise its discretion in his favour.