THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, COURT NO. 29, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE J. ENOBIE OBANOR

SUIT NO. FCT/HC/CV/2993/2019
MOTION NO. FCT/HC/M/6661/2021

DATED THE 26TH DAY OF NOVEMBER 2021

MRS. DORIS OJEME ……. APPLICANT

AND

1. ALEXANDER OJEME
2. STELLA OJEME … RESPONDENTS
3. NATIONAL AGENCY FOR THE PROHIBITION OF TRAFICKING IN PERSONS (NAPTIP)

RULING

This Motion on Notice M/6661/2021, was filed on 11th October, 2021, by the Applicant, who is the Claimant in this suit. The Motion on Notice prays for the following Orders:

1. An Order of this Honourable Court discharging the Order of cost made against the Applicant, dated the 14th day of July, 2021.

2. And for such other Order(s) as the Honourable Court may deem fit to make in the circumstance.

The Application is predicated on the following grounds:

A) On the 14th of July, 2021, the Court awarded cost of N20,000 against the Applicant to each of the Respondent.

B) The Applicant exercised the right of change of Counsel/Solicitors.

C) The new Solicitors asked for adjournment to enable them prepare for the hearing.

D) The Court has the powers and discretion to discharge its Order of cost.

E) The new solicitors are entitled to be heard.

In support of the Motion, the Applicant filed an Affidavit of 11 paragraphs deposed to, by Priscilla Ortil, a secretary in the law Firm of Bob James & Co., Solicitors to the Applicant.

As required by the Rules of this Court, the Applicant filed a Written Address and contended that the matter before the Court is one of Fundamental Right Enforcement proceedings, which the Applicant in discharging his duty to present his/her case properly, changed her Solicitors and the Solicitors needed to have good knowledge of the facts prior to hearing. Hence, the application for adjournment that gave rise to the award of cost.

Applicant, in his argument, formulated a sole issue for determination as follows:

> ***"Whether the Court has the powers in the circumstance to discharge the Order of cost made against the Applicant upon this Application, and ought to set aside the said Order?"***

The Applicant's Counsel in support of his position, contended that the law is that a party against whom an Order of Court is made is entitled to apply to the Court that made the Order and have it set aside. He referred the court to the case of ***STANBIC IBTC BANK PLC V LGC LTD (2020) 2 NWLR (PT17071) AT 17; ALO V. ACB LTD (200) 9 NWLR (PT 672), 264.***

Further, Counsel submitted that in ***OKOBI V OKOBI (2020) 1 NWLR (PT 1705), 301***, the Court of Appeal held that every superior court of record has inherent power to set aside its order or Judgment in appropriate circumstances in situations specified by law, including an Order made in violation of the fundamental right to fair hearing.

According to Counsel, the order of cost made by the Court affected the Applicant's right to a Counsel of his choice, which is a constitutional right. He cited the case of ***IHEDIOHA V. NWOSU (2020) 5 NWLR (Pt 1717) 291, at Paras B-C****;* and further cited Order VI Rule 2 of the Fundamental Rights Enforcement Procedure Rules, 2009, and contended that **hearing under the Fundamental Rights can be adjourned from time to time where extremely expedient.**

By way of adumbration, Counsel further buttressed that the principle of law established by the Court of Appeal, is that if at the time a Court makes an Order for cost and did not specify that no other step should be taken until that Order is complied with, that condition cannot be read into the Order. See the case of ***SHUGABAN V. UBA PLC (1997) 4 NWLR (pt 500) paragraph 481****.*

He also maintained that the Counter Affidavit filed by Counsel to the 1st and 2nd Respondents are not to be relied upon by the Court as the two Affidavits filed by different deponents are the same, word for word.

Finally, Appellant's Counsel urged the court to discharge the Order of cost made against the Applicant.

On his part, Counsel to the 1st Respondent filed a Counter Affidavit of 7 paragraphs dated 18th October, 2021, deposed to, by one Collins Maduagwu. In compliance with the Rules of this Court, a Witten Address was filed wherein a sole issue was formulated for determination, to wit;

> ***"Whether a party in disobedience of Court Order can be heard by the Court***?"

Arguing on the aforesaid issue, Counsel for the 1st Respondent submitted that the general principle of law is that all orders of Court must be obeyed and a party in disobedience of Court orders, cannot be heard when still in disobedience. He referred the Court to the case of ***BARRISTER ORKER JEV V. SEKAV D. IYORTYOM (2014) LPELR-23000 SC.***

However, according to the 1st Respondent's Counsel, there are exceptions and these are stated in the Judgment of the Apex Court in the case of ***CHIEF UJILE D. NGERE & ANOR V. CHIEF JOB* WILLIAM OKURUKET *XIV & Ors (2014) LPELR-22883, SC***, where the court held that parties are bound to obey court orders that are clear and unambiguous, notwithstanding the fact that the order may be wrong. Counsel further stated that so long as a party refuses to implement or obey a Court Order, he would not be given a hearing in the subsequent application. See ***ODOGWU V. ODOGWU (1992) NWLR (PT 225) 5239); GOVERNOR OF LAGOS STATE V. OJUKWU (1986) 3 NWLR (PT 26) 39.***

Furthermore, Counsel for the 1st Respondent argued that the authority cited by the Applicant's Counsel (i.e. Ihedioha v. Nwosu (2020) 5 NWLR (Pt 1717) 291 at Paras B-C), is not applicable in the present case as the Applicant was not denied the right to be represented by Counsel of her choice neither were they denied the right to fair hearing. To buttress his point, he stated that it was the Applicant's Counsel that served the Respondents hearing notices, so he cannot complain that he was denied the opportunity to change Counsel. He urged the Court to dismiss the Applicant's Application.

I have also perused the Counter Affidavit filed by the 2nd Respondent. It is true as contended by Counsel to the Applicant that they are the same in wordings. As such, I may not need to repeat the submissions in the said Counter Affidavit and the written address as they are the same. Consequently, I will adopt the argument of the 1st Respondent for the 2nd and 3rd Respondents as same argument has already been adopted by the 2nd Respondent's Counsel on behalf of the 3rd Respondent in this proceedings.

I hereby adopt the sole issue distilled by the Applicant's Counsel for determination. The said issue is hereby reproduced as follows:

> ***"Whether the Court has the powers in the circumstance to discharge the Order of cost made against the Applicant***

upon this Application, and ought to set aside the said Order?"

I agree with the Applicant's Counsel in his submission that every court of record has inherent power to set aside its order or Judgment in appropriate circumstances and in situations specified by law, including an Order made in violation of the fundamental right to fair hearing.

It appears that Applicant's Counsel hinged his reason for setting aside the Order of Court on the circumstance that the Applicant's right to fair hearing under Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) was breached. Applicant's Counsel argued and made copious submissions that the order of cost made by the Court affected the Applicant's right to a Counsel of his choice, which is a constitutional right. He cited the case of ***Ihedioha v. Nwosu (2020) 5 NWLR (Pt 1717) 291, at Paras B-C;*** and he further cited Order VI Rule 2 of the Fundamental Rights Enforcement Procedure Rules, 2009, and contended that hearing under the Fundamental Rights can be adjourned from time to time where extremely expedient. Also at paragraph 4(E), Applicant averred that "Counsel asked for adjournment on 14th July, 2021 to enable solicitors prepare for hearing but the junior Counsel who appeared on that day did not give the Court the full particulars and circumstances of our taken over, and the Court made an order of cost against the Applicant.

The 1st - 3rd Respondents' Counsel, on their part, contended that the authority cited by the Applicant's Counsel does not apply in this case. That the Applicant was not denied the right to be represented by a Counsel of her choice, neither were they denied the right to fair hearing. The Applicant's Counsel who had served them with hearing notice cannot turn back and complain that he has been denied the opportunity to change counsel. This is because cost follow event.

After properly evaluating the arguments canvassed on the issue raised by Applicant that his Client has been denied right to a lawyer of her choice by both Counsel in this case, I found the position taken by the 1st -3rd Respondents' Counsel as valid. Throughout the record of this Court, there is no place where the Applicant's Counsel applied for change of lawyer and he was denied. I have also taken cognisance of

the fact that the Applicant was in Court when this matter was adjourned to 14th July, 2021 for hearing. I have not seen any notice of change of Counsel filed in this Court. However, that did not preclude the Counsel who appeared on behalf of the Applicant to be heard on the 14th day of July, 2021, when the Order of cost was made by this Court.

It is trite that the duty of Court is to create a level play ground for parties. The Court of law cannot force parties to take advantage of the levelled played ground given to them. Therefore, a Counsel who refused to take advantage cannot blame his indolence on right to fair hearing. Accordingly, Per JOHN INYANG OKORO, JCA, in the case of ***OBIOHA OBONNA & ANOR v. CHIEF IGNATIUS OKEAHIALAM & ORS (2013) LPELR-22051 (Pp. 41-42, paras. D-A),*** held***:***

> ***"For a party to complain that he was denied fair hearing there must not be any feature in his behaviour which tends to show that the complaint was self inflicted. In NEWSWATCH COMMUNICATIONS LTD vs. ATTA (2006) ALL FWLR (Pt.318) 580, the Supreme Court held that the fair hearing principle entrenched in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria is not for the weakling, the slumberer, the indolent or the lazy litigant, but it is for the party who is alive and kicking in the judicial process by taking advantage of the principle at the appropriate time."***

Stemming from above, it is clear that Appellant's understanding of the Application of the principles of fair hearing is most misconceived and hallucinating and lacking in merit and I so hold. Accordingly, Appellant's Counsel argument on the issue that the Appellant was not given the right to a lawyer of his choice is hereby discountenanced and I so hold.

The next issue raised by the Applicant in support of his prayers is that if at the time a Court makes an Order for cost and did not specify that no other step should be taken until that Order is complied with, that condition cannot be read into the Order. He cited the case of

Shugaban v. UBA PLC (supra). Respondent's Counsel on his own part, insisted that Court orders must be obeyed and a party in disobedience of Court orders, cannot be heard when still in disobedience. He referred me to the case of ***BARRISTER ORKER JEV V. SEKAV D. IYORTYOM(supra); ODOGWU V. ODOGWU (supra)*** and other cases.

As a general rule, court Orders are not there for fashion. They are meant to be obeyed. It is also the duty of a Court to ensure compliance with its Orders. See the case of ***ODOGWU V. ODOGWU (supra).***

However, it is my humble view that parties should not add meaning to Judgment or Orders given by a Court of competent jurisdiction. Court Orders should be given their plain meaning where they are unambiguous. Thus, for the purpose of clarity, the Court Order made by this Court on the 14th of July, 2021 is reproduced as follows:

> ***"Cost of N60,000.00 is hereby awarded against the Applicant in respect of the 3 Respondents"***

From the wordings of the Court Order, as reproduced above, there is nowhere, it was stated that the Applicant will not be given right to hearing until he purged himself of the said Order. Also, technical disobedience of Court order should not be treated as a ground of denying a party right to hearing. Thus, in the case of **WAEC V. HENRY (2015) LPELR-40995 (CA),** the Court of Appeal held:

> ***"There is no doubt, that there is an unquestionable obligation placed on every person against or in respect of whom an order of Court is made, to obey such order unless and until it is discharged or set aside. So long as such order subsists, whether seen as irregular or void, it must still be obeyed and given due reverence. This is moreso, given that our system of administration of justice cannot be sustained, without the willingness of parties to a dispute to abide by the findings and orders of a competent Court until set aside or reversed on appeal... It***

> ***follows therefore that situations may arise where a party who refused to obey or implement an order of a competent Court will be refused audience until he purges himself of such conduct. See SHUGABA VS UBN (1999) 2 SCNJ (PT 11) 357. It seems to me however that the decision whether or not a party should be denied audience by a Court for failure to obey any order made against him depends on the peculiar facts of each case. Thus a technical disobedience of the order of a Court should not be strongly regarded by the Courts. In other words for a party to be denied audience, his conduct vis-a-vis the order made against him must be shown to be disrespectful, despicable or contemptuous display of arrogance that amount to undermining the authority of the Courts."***Per SAMUEL CHUKWUDUMEBI OSEJI, JCA, (Pp. 8-9, para. B-B)

I therefore hold the view that the contention of 1st-3rd Respondents, that so long as a party refuses to implement or obey a Court Order, he would not be given a hearing in the subsequent application is misconceived and is hereby discountenanced

Another issue raised by the Applicant is that the Counter Affidavit filed by Counsel to the 1st and 2nd Respondents are not to be relied upon by the Court as the two Affidavits filed by different deponents are the same, word for word. The 1st-2nd Respondents on their part argued that they filed the two separate Affidavits are filed by different parties and duly deposed to on oath.

I have seen the two Counter affidavit in contention. The 1st Respondent's Counter Affidavit filed on the 18th October, 2021 was deposed to by one Colins Madugwu and duly sworn to before a Commissioner for Oaths, Ishaku Umar on the the same date. The 2nd Respondent Counter Affidavit was filed on the 20th October, 2021 and deposed to by One Bright Ojo before the same Commissioner for Oaths of the same date. From the 2 Counter affidavits before this Court, they have met the requirement of the Evidence Act. It is the duty of Counsel to the Applicant to depose to a further Affidavit if he has any

contrary depositions. In fact, a Court may permit the use of an Affidavit even though it is defective if the Court is satisfied that it is duly sworn before an authorise person. Thus, The Court of Appeal in the case of F.G.N & ANOR V. A.I.C. LTD (2005) LPELR-6152(CA) held:

> ***".... The general rule as to the admissibility of an affidavit is that every affidavit used in the court shall contain only statements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true and shall not contain extraneous matters by way of objection, prayer, or legal argument or conclusion... A trial Court may permit the use of an affidavit even though it is defective in form if the Court is satisfied that it has been sworn before a person duly authorized. Per IBRAHIM TANKO MUHAMMAD ,JCA (Pp. 16-17, paras. A-E)***

Similarly, in this case before me, I am satisfied that the 1st and 2nd respondent's Counter affidavit are duly sworn to and did not offend the Provision of the Evidence Act and I so Hold. Therefore the contention of Applicant Counsel that the Counter affidavit of the 1st and 2nd Respondent are the same, word for word and therefore should be discountenanced is of no moment and I so hold.

Consequently therefore, having considered all the issues raised by Counsel, the Affidavit and Counter Affidavits filed by all parties and their argument in support of this application and the position of law, I hold the view that the relief sought by the Applicant to discharge the Order of Court made on the 14th July, 2021 cannot be sustained and accordingly failed. Therefore, prayer one on the face of the Motion paper is hereby refused. However, the Order made by the Court does not preclude the Applicant from the hearing of this case and I so hold.

SIGNED
HON. JUSTICE J. ENOBIE OBANOR
(PRESIDING JUDGE)