

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

**IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
25TH DAY OF JANUARY, 2022**

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

SUIT NO. FCT/HC/CV/3183/2020

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

ZAMFARA STATE GOVERNMENT

.....

.....CLAIMANT

AND

- 1. ALHAJI USMAN KAURA**
- 2. ALHAJI ABDULAZIZ YARI**
- 3. DIRECTOR-GENERAL DEPARTMENT
OF STATE SECURITY SERVICE**

..DEFENDANTS

4. HAJIA MARIAM SHAGARI

(TRADING UNDER THE NAME AND STYLES OF
KANGIWA & CO. (SOLICITORS & ADVOCATES)

5. ALHAJI ALIYU ABUBAKAR

6. BT OIL AND GAS LTD

RULING

The 1st, 2nd and 6th Defendants/Applicants' application dated 3/02/2021, M/978/20 is brought pursuant to Order 43 Rule 3 of the Rules of Court and Section 6.6 of the

1999 Constitution of the Federal Republic of Nigeria and under the inherent jurisdiction of the Court.

It prays the Court for:

- 1) An Order vacating and or setting aside its order of interlocutory injunction made on the 16th day of December 2020.
- 2) An Order of Court directing the 1st, 4th and 5th Defendants to pay the sum of ~~N~~840 Million only into the Solicitor's account, Mahmud & Co. (Client), Access Bank Account No. 0714394006, Solicitors to the 6th Defendant/Applicant pending the hearing and determination of the substantive suit.
- 3) And for such Orders or further Orders as the Court may deem fit to make in the circumstance.

Learned Counsel to the Applicants relies on the 19 paragraph Affidavit filed in support deposed to by Ede Uko, Esq. of No. 9, Bazoum Close, Off Adetokunbo Ademola Crescent, Behind AP Plaza, Wuse 2, Abuja.

He deposes that on 27/01/2021, this Court *suo motu* made an Order joining the 6th Defendant/Applicant. That upon being served with the processes, the 6th Defendant became aware of the subsisting Order of Court made on the 16th of December 2020 affecting his interest in the sum of ~~N~~840 Million, which belongs to the Defendants/Applicants.

That the Law Firm of Mahmud & Co. was briefed to negotiate for and on behalf of the 6th Defendant/Applicant with A. Group Properties Ltd for the sale of the 6th Defendant/Applicant's property situate at Plot 2879 Cadastral Zone A, Maitama, Abuja.

That following negotiation, the Law Firm wrote a Letter of Offer for the sale of the said property dated 9/01/2017 to A. Group Properties Ltd.

The A. Group Ltd accepted the offer of outright purchase of the said property. That A. Group Properties Ltd made a part payment of ~~N~~840 Million for the purchase of the said property.

That Claimant refused, failed and or neglected to bring it to the knowledge of the Court to properly guide the Court on the exercise of its discretion.

That at the time the Order was made against the interest of the 6th Defendant/Applicant, she was not a party before the Court. That the 6th Defendant required the leave of Court to apply to set aside its Order.

That the Order was obtained by misrepresentation of facts. That it is in the interest of justice to grant the application.

The 4th and 5th Defendants/Applicants' Affidavit is deposed to on 19/12/2021. He deposes that the Counsel to the 2nd Defendant is also the Counsel to the 6th Defendant.

That 6th Defendant/Applicant was joined on 27/01/2021. That since the joinder, the 6th Defendant/Applicant has not filed any process but this Motion is seeking a transfer of the sum of ₦840 Million, the subject matter of this suit, to his Solicitor's account.

That no leave was obtained. There is nothing to show that any money was paid as consideration by the 6th Defendant to the 4th and 5th Defendants.

That the 6th Defendant/Applicant did not pay ~~N~~840 Million or any money to him or the 4th Defendant. That the 4th and 5th Defendants will be prejudiced.

The Claimant on the other hand by its Counter Affidavit sworn to by Collins Chukwudi deposes that the Law Firm of Mahmud & Co. filed a Memorandum of Conditional Appearance for the 1st and 2nd Defendants in this suit.

That the Affidavit of 6th Defendant is a blatant falsehood and misrepresentation of facts. That the 6th Defendant through its agent and negotiator, Messrs Mahmud & Co. knew that an Order of Interlocutory Injunction was granted against the 6th Defendant.

That the 6th Defendant's agent, lawyer and negotiator for the purchase of Plot 2879 Cadastral Zone A06, Maitama, Abuja was privy to these facts as evidenced by the Letter of Offer, yet never brought them to the knowledge of the Court.

That the purported offer and negotiation between the 6th Defendant and the 5th Defendant in respect of the purchase of the 5th Defendant's property situate at Plot 2879 Cadastral Zone A06, Maitama are facts within the knowledge of the 6th Defendant/Applicant and negotiator.

The 2nd Defendant also failed to bring same to the attention of the Court that the trust money or property purportedly belong to the 6th Defendant, a company he has strong ties with.

That the firm of Messrs Mahmud & Co. filed a Counter Affidavit on 19/12/2020 to the said Motion for Interlocutory Injunction but failed to revealed that the trust property, i.e. the ~~N~~840 Million purportedly belong to the 6th Defendant.

That 6th Defendant was recently implicated in a criminal suit as a conduit pipe through which the 2nd Defendant/ Respondent siphoned money belonging to the Claimant.

The 6th Defendant cannot identify contracts or projects that earned her such a whooping amount with which she purports to buy the Defendant's hotel worth ~~N~~4 Billion Naira.

That the purported claim to the ~~N~~840 Million by the 6th Defendant is a mere afterthought as they would have said so earlier if true.

That if the Order is granted, the Claimant's case would be defeated. It will also prejudice the main issue in controversy.

The 2nd Defendant has close tie with the 6th Defendant being a Director. That it will best serve the interest of justice to refuse the application.

I have also read the 6th Defendant/Applicant's reply Affidavit to the 4th and 5th and Claimant's Counter Affidavits. The Counsel to the Claimant, 1st, 2nd and 6th Defendants and the 4th and 5th Defendants adopted their Written Addresses. I have equally read and considered same.

The issue for determination in my humble view is **whether this Court can set aside its Ruling delivered on 16/12/2020 pending the hearing and determination of the substantive suit.**

The Claimant's claim vide a Writ of Summons and Statement of Claim dated 16/11/2020 is for:

- (1) A Declaration that this Court has power to place a charge over the Claimant's trust property or asset being the sum of ~~N~~840,000,000.00 deposited by the 1st Defendant acting under the authorisation or instruction or stead of the 2nd Defendant, the then Executive Governor of Zamfara State as part payment of outright purchase of the 5th Defendant's hotel for and on behalf of the Claimant at an agreed purchase price of N4 Billion the said fund being the trust property of the Claimant.

- (2) A Declaration that by the equitable doctrine of tracing, the Claimant having been able to trace and identify its asset or funds amounting to ~~N~~840 Million being deposit by the 1st Defendant acting under the authorisation and instruction of 2nd Defendant, the then Executive Governor of Zamfara State as part payment for an outright purchase of the 5th Defendant's hotel for and on behalf of the Claimant.

- (3) A Declaration that the 2nd Defendant acting through the 1st Defendant cannot lay claim to the Claimant's trust property, i.e. the ₦840 Million deposited by the 1st Defendant.
- (4) An Order directing the 4th Defendant to refund forthwith the Claimant's trust property or asset in her possession being the sum of ₦840 Million deposited by the 1st Defendant under the instruction of the 2nd Defendant.

The Order for Interlocutory Injunction granted by this Court on 16/12/2020 was sequel to an application by the Claimant filed on the 16/11/2020.

The Interlocutory Order complained about is not obtained by default. It is an order obtained on the merit. The Ruling was a considered Ruling.

Under our law, a Court lacks the jurisdiction to set aside its own decision except as permitted by common law in the following circumstances:

- (a) Where the decision is a nullity.

- (b) By reason of a breach of procedure.
- (3) Where there is a miscarriage of justice.
- (4) As provided by the Rules when judgment is obtained by default.
- (5) Fraud.

An interlocutory order such as in this case cannot be altered except by means of an appeal.

See **ONWUKA vs. MADUKA (2002) 18 NWLR (PT. 799) 586 SC.**

I have read the Affidavit in support of the application. The 6th Defendant's averment is that the fund the subject matter of the suit belongs to it.

That it was not a party at the time the Order of Interlocutory Injunction was granted. That its interest or rights are affected by the grant of the said Order.

There is nothing in the Affidavit to suggest that 6th Defendant paid the said ~~N~~840 Million to the 4th and 5th Defendants. There is no receipt of payment. The 6th

Defendant has also not shown its entitlement to the ~~N~~840 Million.

From the 6th Defendant's Affidavit, the Law Firm of Messrs Mahmud & Co. was acting as agent, solicitor and negotiator culminating in the alleged payment of ~~N~~840 Million. The said negotiator was a Counsel representing the 2nd Defendant leading to the grant of the Order of Interlocutory Injunction. There is nothing to suggest that he made these facts known to the Court at the earliest opportunity.

In the circumstance of this case, these facts and of course this application is an afterthought.

To get a Ruling or an Order set aside on the ground of fraud or misrepresentation, it is not sufficient to merely allege fraud or misrepresentation without giving the particulars thereof.

The Court requires a strong case to be established before it will set aside its Order on the ground of fraud or misrepresentation. The 6th Defendant/Applicant has not shown by Affidavit, a strong case, fraud or

misrepresentation to enable this Court set aside its Order/Ruling.

More so, the substratum of the main suit is the ~~N~~840 Million allegedly paid by the 6th Defendant to the 5th Defendant. In the processes before this Court, particularly the originating processes, the property in issue belongs to the 5th Defendant.

The law is trite that the Court should not delve into a substantive issue in an interlocutory application.

In the circumstance, granting this application will be tantamount to delving into the substantive issue.

For the above reasons the application fails and it is refused. Motion dated 3/02/2021 but filed on the 4/02/2021 is hereby dismissed.

M. O. Onyilokwu, Esq. for the 4th and 5th Defendants.

4TH AND 5TH DEFENDANTS' COUNSEL: The subject matter is with us.

COURT: The money, the subject matter presently is with the 4th and 5th Defendants by their solicitor's admission. The Claimant, 4th and 5th Defendants and the 2nd and 6th Defendants are all claiming ownership of the subject matter.

I shall therefore make a consequential Order.

The 4th and 5th Defendants/Respondents are hereby ordered to deposit with the Chief Registrar the said sum of ~~N~~840 Million being the res, the subject matter.

The Chief Registrar shall open an interest yielding account with the said sum pending the hearing and determination of the suit while the case is adjourned to 11/05/2022 for Hearing.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
25/01/2022

Parties absent.

Ede Uko, Esq. for the 1st, 2nd and 6th Defendants.

COURT: Ruling delivered.

(Signed)

Hon. Judge

25/01/2022