

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7, APO, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

BETWEEN:

CALIPHATE GLOBAL INVESTMENT LIMITED ---- CLAIMANT

AND

MUHAMMADU JIBRILA --- DEFENDANT

**RULING**

**DELIVERED ON THE 8<sup>TH</sup> MARCH, 2022**

By motion no m/7902/2021 brought under order 43 Rule 1 and order 52 Rule 13 of the high court of federal capital territory civil procedure rules 2018, section 36 (1) of the constitution of the federal republic of Nigeria 1999 and under the inherent Jurisdiction of this Honourable court.

The applicant is praying the court for the following orders:

1. AN ORDER of this court setting aside its proceedings of 1<sup>st</sup> July, 2021 having been conducted in breach of the Applicant's right to fair hearing enshrined in the constitution of the Federal Republic of Nigeria, 1999.
2. AN ORDER of this court setting aside the consent Judgment entered on the 1<sup>st</sup> day of July, 2021, the matter have been entertained and the Judgment delivered in the absence of the Applicant as a party before the court.

The application has six grounds:

1. The Terms of settlement filed by the claimant adopted before this court upon which the court entered a consent Judgment was forged.
2. Neither the Defendant Applicant nor his counsel on record were served a hearing Notice for the proceedings where the terms of settlement was adopted and the consent judgment given.
3. The Defendant/Applicant has never entered into any terms of settlement with the Claimant/Applicant or any other person in respect to this suit.
4. The consent Judgment was obtained by fraud Perpetuated by the Claimant/Respondent and its Director Alhaji Mustapha Suleiman.
5. The only Terms of Settlement between the Applicant and the Respondent is the one filed at the FCT High Court sitting at Nyanya Coram Honourable Justice M.B. Idris.
6. There cannot be multiplicity of Terms of Settlement between parties in respect of one subject matter.

It supported by a 19 paragraphs affidavit sworn to by one Alhaji Muhammadu Jibrila (M) Muslim of No 1, G-close off 1<sup>st</sup> avenue, Gwarinpa Abuja. And it equally attach by Exhibit MJ 1. which was the record of proceeding of high court no 25 Nyanya Abuja and also exhibit MJ 2. Which is the terms of settlement filed in the same court by the parties, it has also attached Exhibit MJ 2(A) which was letter from law and equity firm to caliphate global investment firm No. 33 Plot 1958, Tunis street wuse zone 6, Abuja. With the heading RE: Request for variation of settlement date sign by Dorcas O. Anaja.

It is equally accompany by written address of counsel where reference were made to paragraphs 2.1, 4.11, 4.12 to 4.23.

1. The subject matter of the entire suit is the Defendant/Applicant's Plot of land known as Plot No.1958 Cadastral Zone A02 Wuse, Zone 6, Abuja own by and for which the Applicant entered a Memorandum of Understanding with the Claimant/Respondent to develop as an Estate.
2. It is humbly submit that if the court was aware that there was an existing Terms of Settlement filed in this Court sitting at Nyanya the court would not have proceeded to enter the consent Judgment. He urge the court to hold that the act of the Respondent constitutes fraud which will vitiates the Judgment obtain in the suit especially as the Applicant has taken steps immediately upon being aware of the Judgment obtained by fraud. See: VULCAN GASES LTD V. GECELLSCHAFT FUR. IND. GASY ERWERTUNG A.G (2001) LPELR-3465 9SC) AT P.105 PARA S A-C.
3. Exhibit MJ2 (A) is a Letter to the Respondent by the Applicant's Counsel to the effect that the Respondents' by its own letter had breached the Terms of Settlement filed at the Nyanya Division of this Court. The letter was delivered in May, but not withstanding the content of the letter, the Respondent Counsel on the 1<sup>st</sup> July, 2021 about two (2) Months after receipt of the letter proceeded to move this Court to enter the Terms as consent Judgment.
4. The facts of this case is "pari materia" with the facts of the case of Vulcan Gases commended to you above in that case the Supreme Court held that the lower Court was right in sitting aside the consent Judgment obtained by fraud.

5. It is now a settled principles of law that a Court possess the vires to set aside consent Judgment especially where it is induced as in this case by fraud or misrepresentation.

In AFEGBAI V. A. G. EDO STATE (2001) LPELR-193 (SC) AT P.43 PARAS F-C. The Supreme Court Per Karibi-Whhyte, JSC held:

**"It is well settled that a consent Judgment can be set aside if the Application to do so can establish that there was a unilateral mistake induced by fraud or misrepresentation. See: AKINWUMI V. IDEWU (1969) 1 ALL NLR 319".**

**See also: IGWE V. KALU (2002) LPELR-1455 (SC) AT PP.16-17 PARAS B-A.**

6. It is further submitted that the Terms of Settlement upon which this Court entered Judgment is an ambush on this Court as it confers appellate Jurisdiction against the consent Judgment on an Arbitrator and the parties a reason for the Court to set it aside.

7. Paragraph 22 of the Terms confers power on the parties to terminate the agreement/judgment which terms is now a Judgment of this Court thus:

"22 TERMINATION

Not withstanding the anything contain in this agreement, either party shall be entitled to terminate this agreement in accordance with the terms hereof'. Paragraph 24 contains an Arbitration Clause thus:

"All parties agree to refer any disputes between the parties arising out of or in connection with the agreement including any question regarding its existence, validity or term nation to Arbitration Rules of the Nigeria Arbitration Centre. The appointed Arbitrator shall

hold the proceedings in Abuja or any state chosen by the parties and the Rules of the Nigeria Arbitration shall apply".

8. It is humbly submit the above provisions in the Terms of Settlement, which the court has entered as judgment subjects your Judgment to termination by any aggrieved party or to an Arbitrator for review and decision.

9. It is trite that the only Institution that can inquire into the judgment of this Court if there is a disagreement between the parties is the court of Appeal.

See: **Section 240 of the Constitution (Supra).**

10. It is humbly submit that the subjection of the Terms of Settlement now the Judgment of this Court (until set aside) to termination by parties or an Arbitrator's review is an aberration.

11. This he humbly submit is a feature or vice which had ab initio affected the Jurisdiction of this Court to have entertained the application for the consent Judgment, aside from the absence of the Applicant or his Counsel at the proceedings.

12. It is trite law that a Court is enrobed with Jurisdiction if there is no feature in the matter, which disrobes it of Jurisdiction.

See MARK V. EKE (2004) 17 NSCQR-60 AT P.89.

13. It is submit that this Court is not clothed with the requisite Jurisdiction to enter a Judgment, which provides that parties can approach an Arbitrator upon any dispute or that parties can terminate the agreement, which has been entered as a Judgment of this Court.

14. It is humbly submit that such a Judgment is a nullity and this Court can even without an application by the applicant "Suo Motu" set it aside.

See: KALU V. MARK (SUPRA) AT P 79 PARA E. Where the Supreme Court held:

"...Such a Judgment is a nullity. A person affected by it is therefore *ex debito justitiae* to have it set aside. The Court can set it aside suo motu and the person affected can apply by motion and not necessarily by way of Appeal..."(underline mine).

In conclusion, the learned Applicant counsel urge the court to set aside the proceeding and consent Judgment of this court of 1<sup>st</sup> July, 2021 because of the followings:

- a. The proceedings were conducted and the Judgment obtained in breach of the Applicant's constitutional right to fair Hearing.
- b. The Applicant was not served any hearing notice in respect of the proceedings/matter which last came up on 28<sup>th</sup> of January, 2020.
- c. The consent Judgment was obtained by fraud as the Respondent not only abused the process of this court by filing one Terms of Settlement in this Court and the Court sitting in Nyarya but also misled the Court into believing that the parties wished to adopt the terms even in the absence of the Applicant.

On the other hand the Respondent filed a counter affidavit challenging the prayer sought by the Applicant and urge the court to decline in holding that the case of the Plaintiff is incompetent and abuse of court process and lacking the jurisdiction to entertain same. The defendant filed a 33 counter affidavit and attach Exhibit A which is the memorandum of understanding sign by the parties, he equally attach

exhibit B, which is a letter to the director Urban and regional planning FCDA Abuja title application for update of land use in respect of plot 1958 Wuse Cadastral Zone A02 FCT Abuja sign by Muhammadu Jibrila.

He also attached exhibit C, it was a reply to letter reference No. FCDA/URP/EST/14637 dated 23<sup>rd</sup> January, 2018 sign by Zaliha' u Ahmed (Mrs.) director Urban and regional planning. Equally attached exhibit D, which is certificate of occupancy No. 1717W/D766Z/471cr.16b47.10 file No. AD11222 sign by the Honourable Minister Muhammed Musa Bello. Equally attach exhibit E. which is a Writ suit No CV/1754/18 dated 16<sup>th</sup> March, 2020 equally attach Exhibit E1, E2 and EF.

Furthermore, in view of the forgoing and fact set out above it is my humble view that I agree in totality with the submission of the learned Defendant Applicant counsel to extend that this court if it was aware that there was an existing terms of settlement filed in this court sitting at Nyanya before my learned brother Honourable Justice M. B Idris, I wouldn't have proceeded to enter the consent judgment for that reason I believe this court was deceived by the Claimant respondent counsel of which I am and bound to hold that such an act of the Respondent constitute a fraud which I shall not close my eyes to vitiates the judgment obtain in the suit especially as the Applicant has taken steps immediately upon been aware of the judgment of this court which was obtain by fraud. The word fraud was defined in the case of ACN & ORS V. INEC & ORS (2013) LPELR-19991 (CA) meaning of fraud:

".... I shall draw attention to FABUNMI V. AGBE (1985) 1 NWLR (Pt. 2) where Obaseki, JSC held at Page. 319 paragraphs C, that "fraud is a serious crime and in civil matters, the particulars must be pleaded and proved strictly."

A court who discovered that the judgment obtained by fraud is bound to set it aside. See the case of IDAKWO (RTD) V. IBRAHIM & ORS (2011) LPELR-8936 (CA). from the forgoing haven satisfy myself that the consent judgment was obtain by the Claimant through fraud am bound to set it aside see the case of VULCAN GASES LIMITED V. GECELLSCHAFT FUR. IND. GASVERWERTUNG A.G (2001) LPELR-3465 9SC) AT P.105 Paras A-C.

“Where the Supreme court held that the lower court was right in setting aside the consent judgment obtained by fraud.”

Therefore, on the whole it in the case of AFEGBAI Vs. A. G. EDO STATE 2001 LPELR-193 (SC) @ P.43 Paras. F – C. the Supreme Court per KARIBI- Whyte, JSC held that:

“It well settled that a consent judgment can be set aside if the application to do so can establish that there was a unilateral mistake in induced by fraud or misrepresentation.”

Finally, I hold that the proceeding were conducted and the judgment obtained was by fraud and therefore is hereby set aside.

On the other hand as for motion No. M/782/2020 moved by the Claimant Applicant counsel and countered by the Respondent Counsel the application is supported by 7 paragraphs affidavit sworn to buy Mustaches Suleiman of No. 33 Tunis Street Zone 6, Wuse Abuja. Attached to it is exhibit A and written address urging the for another setting aside the proceeding of the court together with the hearing of motion No. M/7902/2021 by the court on 25<sup>th</sup> January, 2022. The said motion has a 15 paragraphs counter affidavit in opposition, deposed to



by Mustapha Suleiman, it is supported by written address of counsel, after going through the written address of counsel for and against.

Is my humble view that haven understood the various submission of counsel hence the Applicant counsel failed to attach any documentary evidence to prove it averment, apart from the deposition in the affidavit that is to say it is proper for the applicant counsel to show clearly to court by exhibiting a document or process which will stand as an evidence of filling a process at the court of Appeal and failure to do so as in this case the applicant prayer shall not see the light of the day and it is bound to be dismiss and it so dismiss.

**APPEARANCE**

U. C. Ikeji Esq. for the Claimant/Applicant.

Dorcas O. Anaja Esq. for the Defendant/Respondent.

Sign

Hon. Judge

08/03/2022