IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI

THIS FRIDAY. THE 25TH DAY OF FEBURARY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/2846/2017
MOTION NO: M/4858/2021

BETWEEN:

1. AYOMANS INVESTMENT LTD
2. ANAYO ODO } **.....PLAINTIFFS/ RESPONDENTS**

AND

ACCESS BANK PLC .....DEFENDANT/APPLICANT

RULING

By a motion dated 29th July, 2021 and filed same date in the Court's Registry, the Defendant/Judgment Debtor/Applicant seeks for the following Reliefs:

1. **An order of this Honourable Court staying execution of its judgment delivered on the 1st of March, 2021 pending the hearing and determination of prayer 2 hereunder.**

2. **An order of this Honourable Court setting aside the Judgment of the Court delivered on the 1st of March, 2021, for want of jurisdiction.**

3. **And for such further order(s) as the Honourable Court may deem fit to make in the circumstances.**

The grounds upon which the application is predicated are as follows:

a. **That the facts of this case show that the 1st Plaintiff/Respondent is a company, incorporated under the Companies and Allied Matters Act, 2020 (CAMA).**

b. **That the 1st Plaintiff/Respondent being a company registered under CAMA has members of Board of Directors and Shareholders.**

c. **That the transaction that led to this suit was purely between the 1st Plaintiff/Respondent and the Defendant/Applicant.**

d. **That the Plaintiffs/Respondents did not obtain a Board Resolution authorizing the 1st Plaintiff/Respondent to sue before instituting this action as required by law.**

e. **That there was no record to show that the 1st Plaintiff/Respondent subsequently regularized its position by obtaining the said Board Resolution before Judgment was given.**

f. **That obtaining the Board Resolution authorizing the institution of this suit is a condition precedent to the commencement of this action.**

g. **That without the Board Resolution had, obtained and tendered in evidence the trial and Judgment herein delivered were done without jurisdiction and therefore a nullity.**

h. **That the execution of the Judgment of 1st March, 2021 if not stayed will render this Applicant nugatory in the event that it succeeds and will foist on the court a fait accompli.**

i. **That the Applicant is by this application challenging the jurisdiction of the court.**

The application is supported by a 7 paragraphs affidavit and a written address in which four issues were raised as arising for determination to wit:

"a. Whether the Plaintiffs/Respondents fulfilled condition precedent to the exercise of jurisdiction by the court for failure to obtain Board resolution authorizing the institution of the case in the name of the 1st Plaintiff?

b. Whether the court can set aside its own judgment?

c. Whether the 1st Plaintiff was a competent party?

d. Whether the court can stay execution of its judgment where there is no pending appeal."

Submissions were made on the above issues which forms part of the Record of Court. I will only briefly highlight the essence of the submissions.

On **issue 1**, the case made out is simply that the Plaintiff did not fulfil the condition precedent to the exercise of jurisdiction by the court by the failure to obtain board resolution authorising the institution of the case in the name of 1st Plaintiff. The case of **Haston Nig Ltd V. A.C.B (2002) LPELR-1359(SC)** was cited.

On **issue 2**, the contention is simply that the court has the powers to set aside its own judgment if such was obtained by fraud or want of jurisdiction as contended in the present case. The case of **Bello V. INEC & Ors (2010) LPELR-767(SC)** was cited.

On **issue 3**, it was contended that for a court to be fully clothed with jurisdiction, the 1st Plaintiff ought to be a competent party duly authorised to act and the lack of which in this case deprived the court of jurisdiction to entertain the case. The case of **Chukwu V. PDP & Ors (2016) LPELR-40962(CA)** was cited.

Finally it was contended relying on the case of **Ofole V. Ofole (2016) LPELR 42037** that a party can in certain cases file an application for stay of execution notwithstanding the absence of appeal and that one of such situations is where a party is seeking to set aside a judgment for certain reasons.

At the hearing, counsel for the Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application and set aside its Judgment.

In opposition, the Plaintiffs/Judgment Creditors/Respondents filed a 22 paragraphs counter-affidavit and a written address in which two issues were raised as arising for determination thus:

"

1. **Whether the Applicant has satisfied the requirements for an order of this Honourable Court staying the execution of its Judgment.**

2. **Whether the Applicant has made out a case for the setting aside of the Judgment of this Honourable Court given in the Respondents' favour."**

Submissions were jointly made on the two issues above. The address equally forms part of the Record of Court. I will briefly highlight the essence of the submissions made on the two issues which were jointly made or argued together.

The basic thrust of the submission is that in the absence of a challenge or appeal against the Judgment of the court as in the extant case, the application for stay of execution is misconceived and incompetent. The case of **Ezegbu V. FATB Ltd (1992)7 N.W.L.R (pt.251)89** was cited.

It was also contended that even on the merit, the Judgment Debtor/Applicant has not disclosed or furnished special and exceptional circumstances that would warrant a grant of stay and deprive the Judgment Creditors/Respondents of the fruits of the victory obtained in the Judgment in their favour.

On the second issue, praying the court to set aside its Judgment, it was contended that the Applicant has not on the materials made out a proper case of want of jurisdiction to enable the court set aside its decision.

It was contended that the complaints been raised now by Applicant were never raised at any time during trial when Defendant/Applicant filed its defence and further amended same and even when it examined the Plaintiffs' witnesses before they stopped attending trial. That it is too late in the day for them to be raising the issues now and that in law they are deemed to have waived their right to raise such

complaints. The cases of **Socio-Political Research Development V. Minister of FCT (2019)1 N.W.L.R (pt.1653)5133; Mamona V. D. Ket (2019)7 N.W.L.R (pt.1672)495 at 526** were cited.

At the hearing, counsel to the Judgment Creditors/Respondents relied on the paragraphs of the Counter-Affidavit and adopted the submissions in the written address in urging the court to dismiss the application.

I have here carefully and insightfully read and considered all the processes filed and the submissions on both sides of the aisle and the fundamental issue arising from the processes filed is **whether the Judgment Debtor/Applicant has furnished sufficient factual and legal ground(s) to allow the court set aside its Judgment delivered on 1st March, 2021**.

It is to be noted that there are two incongruous reliefs been sought by the Applicant at the same time. **Relief (1)** seeks for an order staying execution of the Judgment delivered on 1st March, 2021 **pending the hearing and determination of prayer 2 hereunder**. **Relief (2)** then seeks for an order setting aside the Judgment of Court delivered on 1st March, 2021 for want of jurisdiction.

It does not appear logical that these two reliefs can be applied for at the same time. To the clear extent that prayer 2 has now been heard, prayer 1 will have no leg to stand, and therefore undermined *abinitio* because it is sought clearly **"pending the hearing and determination of prayer 2 hereunder."**

The case of **Ofole V Ofole (2016) LPELR – 42037** cited by Applicant does not provide support for framing of these 2 reliefs at the same time. Yes, the case may have donated that a stay of execution may be granted in strictly limited situations identified in that appeal despite the failure to appeal, but the case never donated that a stay of execution can be granted at the same time the judgment is sought to be set aside.

It is a different thing where due to exigencies of a particular situation an application to set aside a Judgment for want of jurisdiction is filed but could not be taken, then one can understand an application for stay of execution pending the hearing and determination of the motion to set aside the Judgment of the Court notwithstanding the failure to file an appeal. It is only in that strictly limited sence

that the decision in **Ofole V. Ofole (supra)** cited by counsel to the Applicant allowing an application for stay of execution even where there is no appeal can really be understood and to have any meaningful bearing. The case must therefore be read and understood in its proper context. The case never laid down a new proposition or change the settled jurisprudence that where an Applicant for stay of execution of a Judgement has not appealed against the Judgment, he cannot apply for stay of execution. Indeed the decision underscored the point before donating the few exceptions.

In the circumstances, it is really difficult to situate how these two reliefs can be concurrently heard together as stated earlier on. **Relief 1** clearly has no leg to stand and must be struck out. In any event, and in addition, since it is sought **"pending the hearing and determination of prayer and hereunder"** and the prayer 2 is now been heard and determined, I am in no doubt that prayer 1 has been overtaken by events. We need not suffer ourselves to be detained by the Relief 1.

I proceed with the fundamental issue earlier streamlined by Court as really arising from the processes filed. In doing so, it is important to appreciate or situate certain background facts.

It is common ground that the Plaintiffs/Judgment Creditors/Respondents by an Amended Writ of Summons and Statement of Claim filed on 30th October, 2021 commenced a civil action against Defendant/Judgment Debtor/Applicant claiming certain streamlined Reliefs against them.

The Defendant filed a **comprehensive Amended Statement of Defence** joining issues with Plaintiffs to which they filed a Plaintiffs' Amended Reply to the Amended Statement of Defence.

It is stating the **obvious** that the **pleadings** of parties streamlines the issues and facts in dispute and therefore on the basis of these pleadings, the matter went on for hearing. The Plaintiffs called two witnesses and they were extensively cross-examined by counsel for the Defendant/Judgment Debtor/Applicant.

With the evidence of PW2, the Plaintiffs closed their case and the matter adjourned for defence. Despite the more than ample time given, inclusive of service of hearing notices, neither counsel nor Defendant appeared in court again. The

election by the Applicant to refuse to attend court led to the foreclosure of their defence and an order for filing of final addresses. The final address of Plaintiffs was equally served on Defendant on the record and they again failed to react which culminated in the final Judgment dated 1st March, 2021 sought to be now set aside on grounds earlier itemised and or as listed on the face of the extant motion paper. These **issues** or **grounds** never featured or arose on the pleadings which defined the issues in dispute. It is settled principle of general application that the primary purpose of pleadings is to allow the case of each party to be stated clearly without ambiguity so that the opponent will know precisely the issue he is facing. See **Balogun V. Adejobi (1995)2 N.W.L.R (pt.376)131 at 158C.**

The preparation of pleadings by the parties is a matter within the general authority of counsel, without limitation. The parties may supply the primary facts but the formulation of the legal process is one within his exclusive expertise. Once counsel prepares the pleadings, it serves the purpose as already alluded of giving notice of the case the adversary is to meet; which then enables either party to prepare his evidence and documents upon the issues raised by the pleadings and saves either side from being taken by surprise. This make for economy and good legal and practical sence. See **Bunge V. Gov. of Rivers State (2006)12 N.W.L.R (pt.995)573 SC at 598-599 A-B.**

Once parties have settled pleadings as done in this case by their pleadings, they cannot go outside it to lead evidence or rely on facts which are extraneous to those pleaded. See **Kyari V. Allsalu (2001)11 N.W.L.R (pt.724)412 at 433-434 H-A.** The court is equally circumscribed by the pleadings and evidence led in resolving the dispute. It cannot go outside the purview of these two processes.

In the circumstances, it is really difficult to situate the **grounds** now been belatedly furnished by Applicant to ground their present misconceived adventure to set aside the Judgment delivered in the case. The question is why were these issues not precisely raised in their pleadings to enable the court decide one way or the other?

The point to underscore is that in every trial, the pleadings and evidence adduced determine the outcome of the trial for parties are bound by the case they put up before the court.

The use of the word **jurisdiction** by Applicant to give false validity to the present motion clearly will not fly. The use of the word jurisdiction is not a magical wand to cure every error. If the matters now been canvassed **were never pleaded**, how then could it have been treated or have a bearing on the decision or judgment of the Court. I just wonder. Facts in law are pleaded, evidence is then led in support of the pleadings. The court is therefore bound to adjudicate only on the issues arising from the pleadings. No more.

The Applicant may have as an afterthought conceived of these new grounds of challenge but this court has no jurisdictional power, again, to sit over its decision and to reconsider same. That matter, unfortunately for the Applicant, must now lie with the law lords at the Superior Court of Appeal, and that is, if they elect or choose to challenge the decision or judgment.

To avoid any inclination to misconceive or distort the decision of the court, let me quickly state that there are indeed grounds on which a court can properly set aside its decision or a decision of a court of coordinate jurisdiction. These grounds abound in a legion of authorities of our superior courts. It is however important to state that the exercise is not one lightly done and it is not based on flimsy and or whimsical grounds. This is so, because generally when a court completes a case by hearing parties on the grievance submitted for resolution, and delivers its judgment, it ceases to exercise further powers in dealing with the matter except of course to ancillary post judgment issues or matters such as stay of execution, garnishee proceedings, instalmental payment etc. In legal parlance, the court is said to be *functus officio* in the case. Therefore the steps to reverse the judgment does not fall within the jurisdiction of the court but that of the Superior Court of Appeal. See **Onyemobi V. President Onitsa Customary Court (1993) 3 NWLR (pt.381) 50; Edem V Akamkpa Local Govt. (2000) 4 NWLR (pt.651) 70 and Abana V Obi (2005) 6 NWLR (pt.920) 183.**

The foregoing does not however affect the inherent powers of a judge or court to set aside its own judgment or order(s) including judgments, order(s) made by a court of coordinate which for any reason is a nullity. See **Ogueze V Ojiako (1962) 1 SCNLR 112, Abana V Obi (supra).**

Indeed our extant Rules of Court allows for the setting aside of a judgment obtained in the absence of one of the parties or in default of pleadings.

Also, under its inherent jurisdiction or powers, a court can set aside its judgment in the following circumstances:

(a) When judgment is obtained by fraud or deceit either in the court or of one or more of the parties. Such judgment can be impeached or set aside by means of an action which may be brought without leave.

(b) When the judgment is a nullity and the person affected by the order is entitled ex *debito justitiae* to have it set aside.

(c) When it is obvious that the court was misled into given judgment under a mistaken belief that the parties consented to it.

(d) Where the judgment was given in the absence of jurisdiction.

(e) Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.

See **Abana V Obi (2005) 6 NWLR (pt.920) 183 at 203; Ojiako V Ogueze (1962) 1 SCNLR 112; (1962) 1 All NLR 58; Craig V Kanseen (1943) KB 256; Agunbiade V Okunoga (1961) All NLR 110; Edem V Akampka Local Government (2000) 4 NWLR (Pt.651) 70; Igwe V Kalu (2002) 14 NWLR (Pt.787) 435.**

See also **Section 64 of the Evidence Act** which further validates the principle that an adverse party is allowed to show that a decision was delivered by a court without jurisdiction or was obtained by fraud or collusion.

As already demonstrated, none of the grounds stated above gives factual or legal cover to the present application. The Applicant cannot defend a case in bits and pieces or fragment its defence willy nilly. If it were otherwise, then cases will never end. That is why the Rules of Court has a precisely defined and streamlined protocol for filing of processes, hearing of matters, filing of addresses e.t.c. No

party has till eternity to take any legal steps. Furthermore, the Rules of Court and a legion of superior judicial authorities make it abundantly clear that a pleading must be sufficient, comprehensive and accurate as neither party will be allowed to raise at the trial of the suit, an issue which has not been pleaded. See **Makwe V. Nwukor (2001)14 N.W.L.R (pt.733)356 at 383 AC.**

If that is the position, it logically follows that a party cannot raise afresh new issues or facts it never raised after judgment had been delivered and put it as a ground(s) to set aside the same Judgment. There must be an end to litigation. I say no more.

On the whole, this application is completely misconceived and bereft of any merit. It is simply a time wasting process targeted at further denying the Judgment Creditors the fruits of the Judgment delivered on **1st March, 2021**. It is accordingly dismissed with cost assessed in the sum of **₦100, 000** payable by Applicant to the Judgment Creditors/Respondents.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Ekpo Phillips Ekpo, Esq with R.C Ojiaku, Esq., for the Plaintiffs/Judgment Creditors/Respondents.**

2. **I.A Okolo, Esq., for the Defendant/Judgment Debtor/Applicant.**