

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 27 GUDU - ABUJA
DELIVERED ON THURSDAY THE 17TH DAY OF FEBRUARY 2022
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. PET/413/2018
MOTION NO: M/8283/2021

BETWEEN

IDAYAT BOLANLE SULEIMAN -----PETITIONER/APPLICANT

AND

DR. NTADOM GODWIN NWANKAMA-----RESPONDENT

RULING

By a motion on notice filed on 23/11/2021, the Applicants seek the following reliefs to wit:

- a. AN ORDER of the Honourable court setting aside the ORDER NISI issued/made on the 14th day of July, 2021 against the Petitioner/Applicant in this suit.
- b. AN ORDER of the Honourable court granting the Petitioner/Applicant access to her account No 2013240331 and 1005617051 she maintains with UBA.
- c. Any other order the Honourable court may deem fit to make in the circumstance.

In support of the application is a 21-paragraph affidavit deposed to by IDAYAT BOLANLE SULEIMAN, the Applicant in this suit. Also attached thereto are 9 exhibits and a written address. The records in the case file shows that the Respondent were served with the motion on notice on 23/11/2021 and on the garnishee on 6/01/2022. When the matter came up for hearing on 1/12/2021, the Respondent were absent and were not represented by counsel. Learned counsel for the applicant, moved the motion on notice. However, on the adjourned date for ruling the court ordered that the motion on notice be served

on the garnishee also. The records in the case file show that hearing notice was served on the respondent and garnishee on 18/01/2022 and 19/01/2022 respectively. When the matter came up for hearing on 20/01/2022, the Respondent was absent and there was no reason for their absence. They did not also file any process in response to the application. The garnishee had a legal representation in court but likewise filed no response to the application.

The facts relied upon by the applicants are that according to the judgment of this honourable court delivered on the 16th day of July, 2020 she was ordered to pay 40,000 for each of her four children which when summed up amount to N160,000.00 (One Hundred and Sixty thousand Naira) only, every month to the Respondent for maintenance and upkeep of the children of the marriage till they attain maturity. That at the time the Judgment of the court was delivered, her first child by name Grace O. Ntadom who was born in May, 2001, has already attained the age of maturity. That her 2nd Child by name Samuel I. Ntadom who was born on 7th December, 2002 was 17yrs 7months at the time the judgment of the Honourable court was delivered in this matter and by virtue of his age she was supposed to pay (200,000.00) representing five months for his maintenance. That her first child Grace O. Ntadom and her 2nd Child Samuel I. Ntadom have attained the age of maturity by virtue of which the obligation to pay for their maintenance by the honourable court has naturally extinguished. That by virtue of the Judgment of this honourable court she is only responsible to pay maintenance for her 3rd and 4th child whom have not attain the age of maturity. That immediately the Judgment Creditor/Respondent furnished her with his account number she transferred the sum of N500,000.00 to the Judgment Creditor account via UBA Electronic Transfer Request Form. That subsequently she transferred the sum of N100,000.00 to the Judgment Creditor's account on the 4th day of October, 2021 through his account number 1275365015 he maintains with FCMB with Account name Godwin Ntadom. That she also transferred the sum of N60,000.00 to FCMB Account No. 6327390018 with Account name Ntadom Samuel Irechukwu with the permission of the Judgment/creditor/ respondent. That the sum N45,680.00 is

being deducted by Army pay office (APPO) from her account every month for the school fees and feeding of her children namely Chidere I Ntadom and Kelechukwu Ntadom whom attend Nigeria Navy Secondary school, Kogi State. That the said amount withdrawn from her account is not part of the amount she pays to the Judgment/Creditor/ Respondent as maintenance of her children. That she has paid the sum of N660,000.00 (Six Hundred and Sixty Thousand Naira) in obedience to the court judgment and as a show of commitment towards the welfare of her children. That she shall continue to pay monthly maintenance of her children as at when due to the Respondent. That it is imperative for the Honourable court to allow her access to her account No 1005617051 and 2013240331 she maintains with UBA with Account name Idayat Bola to enable her fulfil her financial obligations. That she has been fulfilling the financial obligation imposed on her by the Honourable court and it is hereby imperative that the honourable court order nisi made on the 14th day of July, 2021 be set aside. That the granting of this application shall not prejudice the Defendant in this matter. In proof of the averments applicant attached the following documents as exhibits;

- i. Judgment of this court delivered 16/07/2020 in suit no: PET/413/2018.
- ii. Letter of demand addressed to the Judgment Creditor/Respondent dated 7/7/2021.
- iii. Two (2) UPS waybill documents dated 08/07/2021.
- iv. Electronic transfer request form (UBA).
- v. Two (2) copies of transaction receipt dated 4/10/2021 and 3/10/2021 respectively.
- vi. A copy of the order nisi dated 14/7/2021 with motion no: M/1310/2021.
- vii. Nigerian Army Finance Corps Pay slip.

In his written address, learned counsel for the applicant formulated two issues for the determination, to wit:

- a. Whether the ORDER NISI made on the 14th day of July,2021 by theHonourable court is subsisting same having not been served on the Judgment Debtor on or before the 19th day of September, 2021, the date slated by the Honourable court for "Order Absolute"
- b. Whether the Judgment/Debtor Applicant has not discharged the financial burden placed on her by the Judgment of the court delivered on the 16th day of July,2020 and therefore rendered the Order nisi issued by the Honourable court a nullity.

Summarily, learned counsel submitted that in view of **Section 83 (2) of the Sheriff and Civil Process Act** and decided cases,the Judgment Creditor having not served the Judgment debtor with the Order Nisi rendersthe whole garnishee proceeding null, void and of no effect. He relied on **Wema Bank PLC V. Brastem-Sterr (Nig) Ltd (2012) ALL FWLR Pt. 624 pp.107**. Counsel submitted that it is trite law that when a judgment debtordischarges the burden placed on her by the Honourable court by paying the judgment sum,the right order expected from the Honourable court to make is to suspend execution of the said judgment of the court. He relied on Section 22 (2) of Sheriff and Civil Process Act and urged the Honourable court to hold that the Petitioner/Applicant having paid the sum of N660,000.00 as evidenced in exhibit 3, 4 and 5has fulfilled the provision of the law and as such is entitled to be discharged by the court.

In my considered opinion however, the issue for determination is;

“Whether from the facts before the Court the applicant is entitled to the reliefs”.

It seems to me that this issue encapsulates the two issues formulated by the learned counsel.It is trite law that a court has inherent jurisdiction to set aside its own judgment or order given in any proceeding in which there has been a fundamental defect, such as one which goes to the competence of the court to give the judgment or make the order. In the case of **PURIFICATION TECH. (NIG.) LTD.**

**VS. A-G., LAGOS STATE (2004) 9 NWLR Pt. 879 Pg. 665 at 677
PARAS. C-D, Galadima JCA held as follows:**

“I am of the opinion that the only possible ground upon which the lower court could have entertained the application of the judgment debtor, and set aside the garnishee order nisi was that there had been some procedural irregularity in the proceedings of such serious nature that the order ought to be treated as a nullity.”

Also, in **CITEC INTERNATIONAL ESTATES LTD.& ORS VS. JOSIAH OLUSOLA BIODUN FRANCIS & ORS. (2014) LPELR-22314 (SC) page 36 para A-C**, it was held as follows: -

“...where a judgment of this Court or an order thereof is adjudged a nullity, a party affected thereby is entitled to have it set aside ex debito justitiae. The Court has inherent jurisdiction or power to set aside its own order or decision made without jurisdiction if such order or decision is in fact a nullity or was obtained by fraud or if the Court was misled into granting same by concealing some vital information or facts”.

Now, the restriction on the Applicant's bank account nos. 2013240331 and 1005617051 with the garnishee (UBA) was by virtue of motion exparte no. M/1310/2021 filed by the Respondent and the order nisi in execution of the judgment of this court. However, by annexures attached to this application the Applicant has shown payments made in compliance with the said judgment. Also, the Applicant has averred in her affidavit in support of the application that she has been fulfilling the judgment order of monthly payment for maintenance of her children as and when due to the Respondent. It is worthy of note that neither the Judgment Creditor/Respondent nor the garnishee challenged this application. I have taken into consideration the fact that the judgment is to be fulfilled on monthly basis. It is a continuous act to be completed when all the children of the marriage attain maturity (18 years) and thus far the Applicant has not defaulted in the payment of the judgment order for any month as averred by the Applicant which is not contradicted by either the Judgment Creditor nor the

garnishee. It is trite and settled law that all the Superior Courts created or established by the Constitution and other statutes possess inherent powers to set aside their judgments/orders in appropriate cases.

Flowing from the authorities above, a trial court can set aside its order nisi or order absolute if in the course of hearing, reasonable cause is shown why the order nisi should not be made absolute, the trial court will rightly set aside its order nisi and discharge the garnishee forthwith. If for instance, the facts presented to the court in support of the motion ex parte were incorrect the court has the inherent power to set aside such order when the true facts are presented to the court by the garnishee or the judgment debtor.

I therefore hold the view that the applicant having established that she has not defaulted in the monthly payment of the judgment order thus far and the Judgment Creditor having not contradicted same, the order nisi made on the 14th day of July, 2021 against account No 2013240331 and 1005617051 with UBA with Account name Idayat Bola is hereby set aside to afford the Judgment Debtor/Applicant access to her account and the Garnishee is hereby discharged forthwith.

Parties: Absent

Appearances: O. C. Ugwu for the Judgment Debtor/Applicant.
Judgment Creditor not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

17TH FEBRUARY, 2022

