

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 11TH DAY OF APRIL, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/644/2016

MOTION NO. M/5142/2021

THERESA MEMBERE

.... JUDGMENT CREDITOR/APPLICANT

AND

1. MR. MICHAEL GINI SABO
2. MR. ABUBAKAR AHMED ABBAS
3. MR. HASSAN PAUL ABARA
4. HASIMA MULTILINKS LIMITED

JUDGMENT DEBTOR/
RESPONDENTS

RULING

Before the Court is a Motion on Notice No. M/5142/2021 filed on 16th August, 2021 praying the Court for

1. *An Order of this Honourable Court for Writ of Possession of Plot 675 with New File No. RV 40733 within Lugbe 1 Extension Layout Lugbe Airport Road Abuja-FCT to the Judgment Creditor/Applicant in FCT/CV/644/2016.*
2. *An Order of Forfeiture of Plot 675 with New File No. RV 40733 within Lugbe 1 Extension Layout Lugbe Airport Road Abuja-FCT and all appurtenances thereto to the Judgment Creditor/Applicant.*
3. *An Order of this Honourable Court directing the Judgment Debtors/Respondent to vacate Plot 675 within Lugbe 1 Extension Layout Lugbe AMAC Abuja-FCT to the Judgment Creditor/Applicant immediately.*

4. *An Order of this Honourable Court directing the Judgment Debtors/Respondent to pay N50,000 (Fifty Thousand Naira only) to the Judgment Creditor/Applicant as cost of this proceeding.*
5. *And for such further order or orders as this Honourable Court may deem fit to make in the circumstances of this case.*

In support of the motion is a 13 paragraphs affidavit deposed to by the Applicant herself, Theresa Membere, with attached Exhibits and a written address.

The 1st and 2nd Respondents reacted by filing a Counter affidavit on 29th March, 2022 with attached Exhibits and an accompanying written address to which the Applicant filed a Further Affidavit.

The 3rd and 4th Respondents did not file any process in opposition to the application.

I have considered the aforementioned processes and the submissions of Counsel. I am of the view that the main issue arising herein for determination is;

Whether the application vide the motion on notice ought to be determined and granted as prayed by the Applicant.

The records before this Court in this case show that the Applicant had instituted the substantive action for declaration of title and trespass in respect of Plot 675 (with New File No. RV 40733) within Lugbe 1 Extension Layout Lugbe Airport Road Abuja-FCT against the 1st and 2nd Respondents. The 3rd and 4th Respondents herein were subsequently joined as defendants in the suit pursuant to an order of this Court. All parties (i.e. the Applicant and the four Respondents) eventually signed and filed Terms of Settlement on 13th June 2019 which was made consent Judgment of this Court in this case on 19th June 2019 upon the application of parties.

The specific terms which parties agreed to in the Terms of Settlement filed on 13th June 2019 and entered as Consent Judgment by this Court are as follows;

1. *That the 3rd and 4th Defendants shall pay the sum of N10,000,000 (Ten Million Naira Only) to the Plaintiff as purchase amount for the Plot 675 within Lugbe 1 Extension Layout Lugbe AMAC Abuja-FCT.*
2. *That the 3rd and 4th Defendants undertakes to pay the N10,000,000 (Ten Million Naira Only) to the Plaintiff in five different instalment payments of Two Million Naira from June 2019 to 31st March 2020.*
3. *The Plaintiff upon receiving the complete amount of the N10,000,000 (Ten Million Naira Only) shall execute a Deed of Assignment and Power of Attorney in favour of the 3rd and 4th Defendant and hand over all the valid original title documents of the Plot 675 within Lugbe 1 Extension Layout Lugbe AMAC Abuja-FCT to the 3rd and 4th Defendants.*
4. *The Defendants, agents and or any person claiming through them hereby undertake and agree to forfeit the Plot 675 within Lugbe 1 Extension Layout Lugbe AMAC Abuja-FCT and all investments thereof to the Plaintiff upon default in paying the Plaintiff as agreed.*
5. *That the Plaintiff hereby undertakes to abandon all claims thereof against the Defendants.*
6. *That the mutual understanding reached between the Plaintiff and Defendants are to ensure that parties settle their dispute accordingly. This settlement shall remain irrevocable and shall form as final judgment to suit CV/644/2016.*

By the affidavit in support of the instant application, the Applicant averred that the sum of N10,000,000 consent judgment has remained unpaid by the Judgment Debtor/Respondents who have failed to comply with the consent judgment. That the Respondents had undertook and agreed to forfeit Plot 675 with all investments upon default in paying said sum. CTC of Judgment of this Court containing the Terms of Settlement of parties as well as CTC of Certificate of Judgment in this suit was attached as Exhibits A and B respectively.

In their Counter-Affidavit, the 1st and 2nd Respondents averred that the Applicant repeatedly refused to accept part or instalment payment of N10,000,000 judgment debt from the 3rd and 4th Respondents. That the circumstances leading to the delay in the 3rd and 4th Respondent's compliance with the judgment is beyond the 1st and 2nd Respondents' control and they (1st and 2nd Respondents) would be adversely prejudiced by the enforcement of the consent judgment as the 3rd and 4th Respondent had developed and sold their portion of the Plot No. 675.

In her further affidavit however, the Applicant denied the 1st and 2nd Respondents' averments and stated the efforts she made in respect of getting the Judgment Debtors/Respondents to pay her the Judgment sum. She averred that the Respondents never attempted to pay the judgment sum or requested to make any part payment of the judgment sum.

Relying on Section 21(1) and (2) of the Sheriffs and Civil Process Act, learned Counsel to the Applicant submitted in his written address that there are good and justifiable reasons why this Honourable Court should exercise its discretion in favour of the Applicant and order possession of the Plot to her.

Counsel to the 1st and 2nd Respondents for his part submitted that the Applicant failed to show this Court the steps taken to enforce the monetary debt on the 3rd and 4th Respondent as well as steps taken to trace moveable properties of the 3rd and 4th Respondents to satisfy the judgment before latching on their immovable property. He referred this Court to the cases of UNITED BANK FOR AFRICA PLC V. HON. IBORO EKANEM (MD PARAGON ENG. LTD) & ANOR (2009) LPELR-8428(CA) and ABUBAKAR UMAR V. BELLO MANAGER (2018) LPELR-44526(CA).

In the resolution of the issue before this Court, it is pertinent to first consider the nature of a consent judgment.

In WOLUCHEM V. WOKOMA (1974) LPELR-3502(SC) AT PP. 20 – 21 PARAS. D-E the Supreme Court per Ibekwe JSC held as follows;

“The rule is that actions may be settled by consent during the trial. Usually, such settlement is a compromise and, in order to have a binding effect on the parties, it is imperative that it should have the blessing of the court. Settlement between the parties may be described as a contract whereby new rights are created between them in substitution for, and in consideration of, the abandonment of the claim or claims pending before the court. When the court moves and takes action as agreed upon by the parties, it becomes a consent judgment. In such a situation, the court may give judgment, or make an order of discontinuance or may order a stay, in so far as the circumstances of the case may permit. To give one or two illustrations:

- (i) Where the settlement is that the parties shall do certain things which they have respectively agreed to do by the terms of settlement, there should be a decision making the agreed terms an order of the court which shall be carried out. If either party fails to carry out the court's order, then on an application by the aggrieved party, the court will enforce it.*
- (ii) The settlement may consist of an agreement by the defendant to pay a liquidated sum of money by specified instalments. In such a case, the practice is for the court to give judgment for the total amount agreed to be paid coupled with an order for a stay of execution so long as the instalments are paid in accordance with the terms agreed upon between the parties. The implication of this kind of settlement is that if there is a failure to comply with the terms of instalmental payment, the party who suffers may proceed to levy execution.*
- (iii) The settlement may simply be in the form of an order of the court made by consent staying all further proceedings on the matter upon the terms agreed upon by the parties. The stay may be qualified or unqualified as the case may be.”*

See also **RAS PALGAZI CONSTRUCTION CO. LTD V. FCDA (2001) LPELR-2941(SC) AT P. 17 PARAS. C-F.**

A consent Judgment which is a valid, final and subsisting judgment of a Court *cannot be enforced vide institution of another action* before the same Court seeking for an order to compel a party to such existing judgment or Judgment Debtor thereof to comply with the judgment. Recourse must be had by a Judgment Creditor to the procedure provided by the Sheriffs and Civil Process Act and Judgment Enforcement Procedure Rules. See **AMCON V. CAPITAL OIL & GAS INDUSTRIES LTD (2019) LPELR-48065(CA) AT PP. 24 - 33 PARAS. E-A AND PP. 59 – 73 PARAS. A-F.**

In **INT’L BANK FOR WEST AFRICA V. SASEGBON (2007) LPELR-8246(CA) AT P. 18 PARAS. B-C** the Court of Appeal held thus;

“Consent judgment is a judgment of Court. Although parties to such consent judgment are generally not allowed to appeal against such negotiated decisions, it is nonetheless enforceable just like any judgment in case of non-compliance. See S.P.D. C.Ltd. v. Edamkue (2003) 11 NWLR (Pt.832) 533.”

It is thus clear from all the foregoing that in case of non-compliance therewith, a consent judgment can be enforced in the manner provided for by the Sheriffs and Civil Process Act and the Judgment (Enforcement) Rules just like any judgment.

In the instant case, by contending that the Consent Judgment made by this Court on 19th June 2019 is a monetary one, the 1st and 2nd Respondents have displayed a misunderstanding of the terms of the said Consent Judgment. They apparently do not therefore understand the purport of the instant application to enforce the said Consent Judgment of this Court.

Now it must be stated and made clear beyond peradventure that the Consent Judgment entered by this Court in this case on 19th June 2019 is not strictly a monetary judgment *per se*. By the Consent Judgment, the Respondents were to pay the Applicant the sum of N10 Million as purchase price of Plot 675 within the period from June 2019 and 31st March 2020 (see clauses 1 and 2 of the Terms of Settlement incorporated in the Consent Judgment). By clause 4, should there be a default in payment as stipulated, the Respondents shall forfeit Plot 675 and investments thereon to the Applicant. These, *inter alia*, were the terms parties agreed to and which were made the Consent Judgment of this Court.

It therefore follows from the foregoing terms of the Consent Judgment that the consequence of default of payment of the N10 Million to the Applicant is not to recover the said sum from the Respondents as Judgment debt. The consequence of default in payment of the N10 Million is already stipulated in the Consent Judgment itself. The consequence is forfeiture of Plot 675 by the Respondents to the Applicant. That is the essence of the instant application which seeks order issuing writ of possession and order of forfeiture of Plot 675 to the Applicant.

The Applicant's Counsel has erroneously referred this Court to Orders 20 and 21 of the Sheriffs and Civil Process Act under which this application has been brought. The said provisions provide for execution of monetary judgments or orders against the moveable and immoveable properties of a judgment debtor. They are therefore inapplicable to the situation presented by the Consent Judgment sought to be enforced by the instant application.

The appropriate provisions applicable to the instant application for issuance of writ of possession are **Section 24 of the Sheriffs and Civil Process Act** and **Order XI Rule 5 of the Judgment (Enforcement) Rules**.

For avoidance of doubt, **Section 24 of the Sheriffs and Civil Process Act** provides that

24. *For the purpose of executing a writ to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.*

Order XI Rule 5 of the Judgment (Enforcement) Rules further provides as follows;

5. *A judgment or order for the recovery of land, or for the delivery of possession of land, in an action other than an action between landlord and tenant, shall be enforceable by a writ of possession, which shall be in like form as warrant of possession under the Recovery of Premises Law of a State, and shall be addressed to the Sheriff.*

The terms of the Consent Judgment of 19th June 2019 are very clear. The Respondents are to pay the Applicant N10 Million before 31st March 2010. Default in making such payment amounts to the forfeiture of Plot 675 and all investments therein by the Respondents to the Applicant.

The Applicant has averred that the Respondents defaulted in making the payment of N10 Million as directed by this Court. The Respondents have not denied that they have not paid the N10 Million. The 1st and 2nd Respondents however averred that attempt was made to pay but the Applicant refused payment. The Applicant denied this averment insisting that the Respondents never made such attempt.

There is nothing before this Court (aside of bare allegation which was denied) showing that the Respondents ever made attempt to make payment of N10 Million or any sum to the Applicant as directed in the Consent Judgment. When and how was attempt made but refused by the Applicant? The 1st and 2nd Respondents who have the onus of establishing their allegation have failed to do so as they have placed nothing before this Court to support or substantiate their allegation.

As it is, the fact remains that the Respondents defaulted in making the payment of N10 Million as purchase price of Plot 675 to the Applicant as contained in parties' agreement and Consent Judgment of 19th June 2019. The consequence is that the Respondents forfeit Plot 675 and all investments thereon to the Applicant. The 1st and 2nd Respondents' averment in their affidavit to the effect that they find it difficult to comply with the terms of the Consent Judgment is neither here nor there and cannot avail them in the circumstances. The Consent Judgment is a valid and subsisting judgment of this Court which must be obeyed and complied with!

The Applicant is thus entitled to the prayers numbers 1 and 2 of the of the instant application which are for orders of forfeiture and issuance of writ of possession in respect of Plot 675 to the Applicant.

Costs follow the event. The Applicant is entitled to cost.

Consequently, the issue for determination in this application is resolved against the Respondents and in favour of the Applicant.

Pursuant to all the foregoing, the instant application succeeds. Prayers numbers 1, 2 and 3 are hereby granted. The Respondents shall pay the sum of N..... to the Applicant as cost of the instant proceedings.

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Honourable Justice M. E. Anenih

APPEARANCES:

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