IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 20 GUDU - ABUJA
ON THURSDAY THE 30TH DAYOF JUNE 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

MOTION NO: M/5089/2022
SUIT NO:FCT/HC/M5660/2021

BETWEEN:

ECONOMIC AND FINANCIAL CRIMES COMMISSION==APPLICANT

AND

1. OLISAEBUKA OKWUCHUKWU EZE==========RESPONDENTS
2. BERLUS RESOURCES LIMITED

RULING

The Respondents by a motion on notice brought pursuant to Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Order 5 Rule 2 (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 and under the inherent powers of the honourable court, prayed the Court for the following reliefs;-

1. AN ORDER SETTING ASIDE the Ruling and or Order of the HonourableCourt in SUIT NO:FCT/HC/M/5660/2022 made on the 28th day of April 2022, attached to this application as EXHIBIT "A" being a nullity and made without jurisdiction.
2. AN ORDER STAYING THE EXECUTION of the Order of the Honourable Court in SUIT NO:FCT/HC/M/5660/2022 made on the 28th day of April 2022, attached to this application as EXHIBIT "A" being anullity and made without jurisdiction.
3. FOR SUCH further Order or other Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the Respondents brought this application are:

a. That the Applicants were not served with the necessary Processes in respect of the instant suit.
b. That the non-service of the Motion on Notice for Final forfeiture in respect of the properties in the Schedule to the suit on the Respondents/Applicantsamounts to breach of their right to fair hearing.
c. That the Honourable Court lacked the jurisdiction to entertain the proceedings in the absence of service of the said Motion for Final Forfeiture and theHearing Notice on the Respondents/Applicants.
d. That the properties as stated in the schedule of the Forfeiture Proceedings in the above suit is already a subject matter of or connected with CHARGENO FCT/HC/CR/1106/2020 BETWEEN FEDERAL REPUBLIC OF NIGERIA VEZE ONYEKA NNADOZIE EZE & ORS.
e. That the Ruling or Order is a nullity and ought to be set aside in the interest of Justice.

Attached to the application is a 22-paragraph affidavit deposed to by the 1st Respondent and attached are three exhibits thereto.Also filed is afurther affidavit of 20 paragraphs. From the facts as deposed, it is the Respondents contention that the properties in this instant suit are connected/related to a pending criminal matter which is pending before Hon. Justice S.C. Oriji.That none of the Respondents/Applicants were served with any Process in this instant suit.

That the Applicant had frozen/seized their assets, but Hon. Justice Belgore had ordered Applicant to release/unfreeze, which Applicant refused, and a stay of proceedings had been granted by Hon. Justice Oriji pending when

the Applicant complies with the order of Justice Belgore and instead of complying with the orders of the Court,the Applicant has gone ahead to file this instant suit for forfeiture. That it will be in the interest of justice to grant this application and set aside the final order of forfeiture for lack of fair hearing.

Learned Silk for the Respondents filed a written address wherein he raised a sole issue for determination thus: “Whether the Honourable Court has jurisdiction to grant the instant application”

Learned Silk submitted that from paragraph 8, 9, 10, 11, 12 and 13 of the Affidavit in support of this Motion, it is clear that the Applicantnever served the 1st and 2nd Respondents with any process and the hearing notice in respect of the instant suit. Thus, there is no compliance with due process of law which is a condition precedence to the exercise of the Court's jurisdiction and as a result, the Court is divested of the jurisdiction to entertain, hear, and determine this matter.

Submitted that by virtue of Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Order 5, Rule 2 (1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018, The Respondents are entitled to bring their application for setting aside immediately after the decision or within reasonable time upon awareness of any irregularity.Submitted finally that the Applicant concealed material facts from the Honourable Court that the pending criminal case against the Respondents in (Exhibit "B") relates to the instant suit and if the Applicant had disclosed those material, the Court would not have been misled into granting the Order as shown in Exhibit "A".

Learned Silk therefore urged the Court to set aside the Order for final forfeiture and stay this proceeding. The following authorities were relied onto buttress their argument: -

a. Madukolu V. Nkemdilim (1962) N.S.C.C. VOL.2Pg. 374 at 379 Lines 50-55, 380 Lines 1-5
b. AdeyemI-Bero V L.S.D.P.C (2013) 8 NWLR (PT. 1356) 238 AT 309 Para F-H
c. Adegoke Motors LTD V Dr. Adesanya& Anor (1989) 3 NWLR (PT. 109) 250 AT 274-275 Para G-A
d. Okoye v. Nigerian Constructions Furniture Company LTD (1991) 6 NWLR (PT. 199) 501,
e. FBN v. Onukwugha (2005) 16 NWLR (Pt. 950) 120 AT 150 PARA E-G
f. Kida v. Ogunmola (2006) 13 NWLR pg 377 AT 394-395 PARAS H-C,

In opposing the application, the Applicant filed a counter affidavit of 6 paragraphs, deposed to by one Samson Oloje, the litigation secretary in the office of the Applicant. The facts from the counter affidavit are that the Respondents were investigated by Applicant for money laundering which investigation reveal Respondents used the proceeds to acquire properties which is the subject of forfeiture order of this Court. That during the period of the interim forfeiture order which was published in the National dailies neither the Respondents nor any other person showed cause why the final forfeiture should not begranted. That the properties being appealed before Hon. Justice Belgoreare not related to the properties under forfeiture in this instant case neither does the criminal case before Hon. Justice Oriji in any way affect this suit, as this suit relates to forfeiture of the properties allegedly acquired by the Respondents with proceeds of unlawful activities.

Applicant attached 6 documents marked as Exhibit EFCC A, EFCC B, EFCC C, EFCC D,EFCC E andEFCC F.

Also filed is a written address wherein Counsel to the EFCC raised a sole issue for determination, thus:- "**Whether in view of the peculiar nature, facts and circumstances of this case,the Respondents could be said to have been served with the motion on notice for final forfeiture and the hearing notice to warrant this Court to set aside and stay the execution of the judgment of this Court delivered on 28th April 2022 for lack of fair hearing."**

Counsel arguing the issue submitted that the provisions of Section 17 of the Advance Fee Fraud Act was duly complied with before the Court granted the final forfeiture order. Counsel contented that the motion on notice for final forfeiture was served on the Respondents via substituted means by order of this Court upon failed efforts to serve the Respondents personally. Counsel urged the Court to refuse the reliefs sought and dismiss the application of the Respondents with cost as same is baseless, vexatious, and lacking in merit. Counsel relied on the cases of;

a. Ogungbeje V. EFCC (2018) LPELR-45317 (CA)
b. Jonathan N. FRN (2019) LPELR-46944 (SC)
c. Dingyadi & Anor V. INEC & Ors. (2010) LPELR-40142 (SC)
d. Kida V. Ogunmola (2006) LPELR-1690 (SC)
e. ZakiraiV. Muhammad &Ors (2017) LPELR-42349 (SC)

I have thoroughly examined the application for the Respondents together with the affidavit, further affidavit, accompanying documents and written address. I have also read the counter affidavit and have considered the oral reply by the Applicant's Counsel. The issue to be determined in this instant

application is "**whether this Court can set aside the final order of forfeiture made on the 28th day of April 2022"**

The Respondents in this case are contending that the Applicant'sdid not serve them with the processes in this instant suit and the Court going ahead to entertain the proceedings in the absence of service of the motion for final forfeiture, amounts to a breach of fair hearing and robs this Court of its jurisdiction to entertain the suit.

Conversely, the Applicants are contending that the procedure required for forfeiture proceedings was duly complied with by the Applicants as the Respondents were served with the motion for final forfeiture by substituted means.

Ordinarily, a judgment/order of a court of competent jurisdiction remains valid and binding until set aside and as rightly submitted by the Respondents Counsel, a Court has powers to set aside its own judgment and/or order. Order 21 Rule 12 of the FCT High Court Civil Procedure Rules empowers the Court to set aside its own order, it provides thus:-

> *"Any judgment by default whether under this Order or this Rule shall be final and remain valid and may only be set aside upon application to the court on grounds of fraud, non-service or lack of jurisdiction upon such terms as the court may think fit."*

This provision of the Rules of Court, has also been pronounced upon with approval by the courts, where it was held in the cases of OLADOSIN .V. OLAOJOYETAM (2012) 1 NWLR P. 85 AND REMAWA .V. NACB & FC LTD (2007) 2 NWLR (PT. 107) P. 155;that the party who alleges that judgment is obtained by fraud or for non-service can apply by way of motion, to set aside the judgment. In the instant case, the Respondents' as aggrieved

parties have alleged that the order was obtained by non-service and fraud have properly applied by motion to have it set aside.

As rightly stated by the Respondents Counsel, service of process on a party to a proceeding is fundamental, failure of which deprives the Court of its competence and jurisdiction to entertain same. All parties to proceedings are entitled, as of right to be served with all Court processes. Service of processes including hearing notices is important and any departureor non-performance of that is bound to vitiate the entire proceedings, no matter how well conducted. See the case of MGBENWELU V. OLUMBA (2017) 5 NWLRR Part.1558 Page 201 paragraph A-B.

In this instant case, the Respondents are contending that they were not served with the motion for final forfeiture. The question that begs to be answered at this juncture is whether or not the Respondents were served with the motion on notice for final forfeiture. To answer this question the Court would look at its records in order to arrive at a just conclusion. This instant suit first came up before this Court on the 22nd day of November 2021 with the Applicant's Counsel moving the ex-parte motion for interim order of forfeiture which was granted on the next adjourned day with the Court ordering the Applicant to issue a 14days notice via newspaper publication in any of the national dailies to persons interested or affected to show cause why the properties should not be forfeited. This order was complied with by the Applicants as the interim order of forfeiture was published in the Leadership Newspaper of December 2nd, 2021. The fact that leadership newspaper published the interim order of forfeiture is unchallenged by the Applicants.

After the lapse of the notice for interim forfeiture and nobody adduced any cause, on the next day of sitting, Applicant sought to move the motion on

notice for final forfeiture and this Court noticing that the Respondents were not served upon sighting the affidavit of non-service by the Court bailiff, ordered that the Respondents be served by substituted means via pasting at their last known address at No. 5 Ifeanyi Ararume Street, Mabushi Abuja. The Court further ordered that picture of the service be included in the affidavit of service. This order was also complied with, and the court being satisfied, granted the final forfeiture order in the absence of any opposition.

The FCT High Court (Civil Procedure) rules empowers the Court to order that service be effected by substituted means when personal service is impossible one of which is by delivery of the document to the last known place of abode or business of the person to be served.The Respondents are now contending that they were not served and the address upon which the substituted service was done, is not the address of the Respondents. Mere stating that it is not their residence is not enough. In fact, the 1st Respondent in paragraph 3 of the affidavit in support of the application stated that

> "**That I have read on social media that this Honourable Court had in its Ruling or Order in SUIT NO: FCT/HC/M/5660/2022 BETWEEN ECONOMIC AND FINANCIAL CRIMES COMMISSION V. OLISAEBUKA OKWUCHUKWU EZE & ANOR, made on the 28th day of April 2022 by Hon. Justice Modupe R. Osho-Adebiyi ordered a final forfeiture of my property…"**

In the further affidavit of the Respondents, particularly in paragraph 14 stated thus

> **"That Applicant/Respondent knew that as at the time of filing the exparte application, the 1st Respondent/Applicant was no longer an employee**

of Prince Arthur Eze and <u>did not reside at No. 5 Ifeanyi Ararume Street Mabushi anymore.”</u>

The inference to be drawn from this statement is that the 1st Respondent was a resident at the said address. It is worthy to note that the fact that No. 5 Ifeanyi Ararume Street, Mabuchi was the last known address of the Respondent is unchallenged and uncontroverted, hence, the service of the motion for final forfeiture qualifies as proper service as the said No. 5 Ararume Street qualifies as his last known address.Also, the 1st Respondent stated the properties in the schedule to be his; the first property on the schedule of property is a 7-bedroomduplex house situate at No. 5 Ifeanyi Ararume Street Mabushi. Having clearly stated in paragraphs 3 of the affidavit in support of the motion that that is his property, service on that property is sufficient service.As held by the by the Supreme Court in the case of OLUWAROTIMI ODUNAYO AKEREDOLU V. DR. OLUSEGUN MICHAEL ABRAHAM & ORS. (2018) 10 NWLR (Pt. 1628) 510 at 539, per Okoro, JSC; as follows:

> *"...the object of all types of service of Court processes, whether personal or substituted, is to give notice to the other party on whom service is to be effected so that he might be aware of and be able to resist, if he may, that which is sought against him*".

The substituted service in my opinion at the last known address is sufficient service on the 1st Respondent,as affidavit of proof of service together with pictures showing the service is pima facie evidence of service. Likewise, the order for interim forfeiture published in a national daily newspaper is sufficient service and I so hold.As it relates to the 2nd Respondent, in the case of NBC PLC v. UBANI (2013) LPELR-21902(SC) **Per MAHMUD MOHAMMED, JSC (Pp 60 - 61 Paras E - C)**held that

> *"Section 78 of the Companies and Allied Matters Act makes provisions for service of two types of documents. The relevant one in the instant case is the provision for service of Court processes where the Section provides - "A Court process shall be served on a Company in the manner provided by the rules of Court" The relevant Rules of Court in this respect are contained in Order 12 Rule 8 of the Cross-River State High Court (Civil Procedure) Rules, 1987 which provides mode of service of Court process on a Company by "<u>giving the same to any Director, Secretary or other principal officer or by leaving it at the office of the Corporation or company."</u>*

There is nothing to show that indeed the address where the motion was served was not the office of the 2nd Respondent. In my view, as stated earlier, the purport of service is for parties to be made aware of proceedings. The 1stRespondent being a director of the 2nd Respondent is the alter ego of the 2nd Respondent and having held that the service on the 1stRespondent is sufficient the service on the 2nd Respondent is also sufficient and in line with Section 104 Companies & Allied Matters Act 2020 and I so hold.

The Respondents are also contending that the order was obtained by fraud as the Applicant failed to disclose material facts that there is a pending criminal case which is connected to this suit and as such misled the Court into granting the final order of forfeiture, the criminal matter having not been determined. Forfeiture proceedings under Section 17 of the Advance Fee Fraud Act 2006 is a non-conviction-based forfeiture.

The law clearly provides that the law enforcement agency can apply to a Court for an interim forfeiture order if there is a reasonable suspicion that

the purchase of the properties emanated from unlawful activity. The argument that the Applicant concealed the fact that there is a criminal proceeding pending before Hon. Justice Orji which is closely related to the properties in this instant suit cannot avail the Respondents. Merely stating that the criminal proceedings is related to this suit is not enough. Respondent has the onus to prove by credible evidence the link between the criminal charges and this forfeiture suit, which they have failed to do. A mere statement that "*it is linked/connected*" to the criminal trial before Justice Oriji will not avail the Respondent. More so, I have looked at the charges against the Respondents before Hon. Justice Orji and having gone through the entirety of the 114 Counts, I have observed that all 114 Counts are with respect to funds in possession of the Respondents and nothing concerning the properties listed in the schedule. Going by the provisions of Section 17 (6) of the Advance Fee Fraud Act 2006 which provides thus: *"(6) An order of forfeiture under this section shall not be based on a conviction for an offence under this Act or any other law"*, this proceeding is distinct from the criminal proceeding and can be determined independently from the criminal proceeding. See the case of **ADIGUN v. EFCC & ORS**(2020) LPELR-52302(CA).It is therefore within the legal powers of this Court to grant the interim order which can only be set aside if the Respondents show cause why the money should not be forfeited. The Respondents had the opportunity to come before the Court to show cause why the final forfeiture order should not be granted instead, they slept on their right and have now come to Court for the order to be set aside.

The Respondent submitted that the assets forfeited ought not to have been forfeited to the Federal Government for the benefit of the nominal complainant, Prince Arthur Eze. Applicant in this suit had applied that assets be forfeited to the Federal Government but on the day of hearing of

the motion on notice, applicant had prayed the Court orally that the assets be forfeited to the Federal Government "*for the benefit of the nominal complainant"*, which the Court granted. It is worthy to reiterate that despite the publishing of the interim order in the national dailies and the service of the motion on notice on the Respondents, they were neither represented nor were Respondents present in Court. Learned Silk for the Respondents submitted that application for final forfeiture was to the Federal Government and the Court went outside its jurisdiction when it granted the oral prayers of the Applicant that assets be forfeited to the Federal Government "*for the benefit of the nominal complainant*". Learned Silk for the Respondents submitted that nominal complainant ought to have deposed to an affidavit linking him with the assets listed in the schedule before the Court granted the final forfeiture order. It is worthy to state that Applicant investigated the matter and on conclusion of investigation had filed the orderseeking for interim forfeiture and subsequent order seeking for final forfeiture of the assets. The Applicant had likewise deposed to an affidavit stating that the assets sought to be forfeited belong to the nominal complainant. The Respondent also had in their paragraph 12 of Respondents further affidavit in support of the motion to set aside the order had specifically mentioned that one of the assets sought to be forfeited *"…..is the Residence of Prince Authur Eze…."*. There is no iota of proof in the Court's file to suggest that the depositions in the affidavit of the Applicant and likewise the depositions in the affidavit of the Respondents are false, hence the Court placed heavy reliance on both affidavits. It is also worthy to reiterate that none of the 114-count charge before Justice Oriji are subject of the interim forfeiture before this Court and likewise none of the assets sought to be forfeited are replicated in the 144-count charge before Justice Oriji. The peculiarity of this instant suit before me is that

assets sought to be forfeited are not proceeds of crime from the coffers of the Federal Government as held in the case of JONATHAN VS. FRN (2019) LPELR-46944 (SC), wherein assets were forfeited and returned to the source of the alleged crime which was the Federal Government of Nigeria. In this instant suit, there is nothing contained in the processes before me to suggest that assets in this matter belong to the Federal Government rather Applicant has shown that assets belong to the nominal complainant. Consequently, it would be a great injustice to the complainant if assets which cannot be traced to the Federal Government as in the case of Jonathan Vs. FRN (supra) are forfeited to the Federal Government. It is only logical that assets said to belong to the nominal complainant Prince Arthur Eze be forfeited to the Federal Government of Nigeria for the benefit of the nominal complainant which in essence is returning the assets back to its original source. As stated earlier, this proceeding is distinct from criminal proceeding and can be determined independent of criminal suit. The Respondents have not in their affidavit been able to convince this Court to set aside its order for final forfeiture. Consequently, the application to set aside the final forfeiture fails and it is accordingly dismissed.

Appearances: M. I. Buba, Esq., appearing with Samuel Chime, Esq., for the Applicant. C. O. Ogbe, Esq., for the Respondent.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
30TH JUNE 2022