

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 5TH DAY OF OCTOBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/1729/2021
MOTION NO.: -FCT/M/2696/2022

BETWEEN:

GRACIOUS ENVIROWORKERS & PLANNERS LTD.: CLAIMANT/RESPONDENT

AND

ACCESS BANK PLC:.....DEFENDANT/APPLICANT

Victor S. Akinlabi for the Claimant.
UchenamOkafor for the Defendant.

RULING.

The Defendant/Applicant, by this Motion on Notice dated and filed the 9th day of March, 2022 prayed the Court for the following:

1. An Order of this honourable Court extending the time within which the Defendant/Applicant may apply for an order setting aside the order of this honourable Court made on the 13th day of August, 2021, directing the Defendant/Applicant to transfer the sum of \$9,329.22 from the Claimant/Respondent's account number: 0059930886 to the Claimant/Respondent's solicitors account number:1488311767.
2. An order of the honourable Court setting aside the order of this honourable Court made on the 13th day of August, 2021, directing the Defendant/Applicant to transfer the sum of \$9,329.22 from the Claimant/Respondent's account number: 0059930886 to the

Claimant/Respondent's solicitors account number:1488311767.

3. An Order of this honourable Court restraining the Claimant/Respondent, their agents, officers or anybody acting on their behalf or behest, from executing or further executing or taking any step(s) or further step(s) to execute the said order made by the honourable Court on the 13th day of August, 2021, against the Defendant/Applicant in this matter pending the determination of this application.
4. And such further order(s) as this honourable Court may deem fit to grant in the circumstances of this application.

In a 6 paragraphs affidavit deposed to by one Uzoma Moses in support of the application, the Applicant averred that the Court made an order on the 13th day of August, 2021, directing the Defendant/Applicant to transfer the sum of \$9,329.22 from the Claimant/Respondent's account number: 0059930886 to the Claimant/Respondent's solicitors account number:1488311767, in contravention of the CBN Guideline/Circular of 15th August, 2015. That the said CBN Guideline/Circular prohibits the Defendant/Applicant and other Deposit Money Banks from accepting cash deposit on foreign currencies and transferring funds from a domiciliary account to another domiciliary account whether within or outside the same bank.

The Applicant averred that before the Court made the said order, the Defendant/Applicant briefed the law firm of NkemEgbuta& Co. to file a counter affidavit to the Claimant/Respondent's Motion on Notice, bringing the said CBN Guideline/Circular to the attention of the Court. That the said law firm filed the counter affidavit but omitted to bring the CBN Guideline/Circular to the attention of the Court, and

inadvertently informed the Court that the Defendant/Applicant can transfer funds from domiciliary account within same bank.

The Defendant/Applicant further averred that the Nigerian Police, on 24th day of February, 2022 served her with a letter, informing her of an on-going investigation into the Claimant/Respondent's account; and that the amount in the Claimant/Respondent's account is a proceed of fraudulent transaction that took place between the 15th – 16th of June, 2021.

The learned Defendant/Applicant's counsel, NkemEgbuta, Esq, in his written address in support of the Motion on Notice, raised a lone issue for determination, to wit;

“Whether the Applicant has made out a case to warrant the honourable Court to grant this application?”

Proffering arguments on the issue so raised, learned counsel contended that the Central Bank of Nigeria is by law, empowered to make regulations, issue guidelines and circulars to the Deposit Money Banks, DMBs and other financial institutions, and that the Deposit Money Banks, including the Defendant/Applicant, are bound to comply with such regulations, guidelines or circulars. He referred to **Union Bank of Nigeria PLC v. Alhaji Adams Ajabule&Anor (2011) LPELR-8239(SC).**

He argued that the CBN Guideline/Circular of 15th August, 2015, prohibits the Defendant/Applicant and other Deposit Money Banks from accepting cash deposit on foreign currencies and transferring funds from a domiciliary account to another domiciliary account whether within or outside the same

bank in Nigeria, and that the Defendant/Applicant is bound by law to comply with the said Guideline/Circular.

Learned counsel posited that parties to a suit are bound to provide the Court with every evidence and relevant information to enable the Court arrive at a just determination of the case.

He argued that in the instant case, the Claimant/Respondent withheld the fact that its account in issue, is under investigation by the Nigerian Police, and that the refusal of the Claimant/Respondent to provide the Court with this relevant information, misled the Court into making the order of 13th August, 2021.

He relied on **Ede &Anor v. Mba&Ors (2011) LPELR-8234(SC)**, to submit that the Court has an inherent jurisdiction to set aside an order obtained by misrepresentation of facts, deceit or fraud, or without jurisdiction.

Arguing further, learned counsel contended that considering the fact that there is on-going investigation against the Claimant/Respondent in this matter by the Nigeria Police, that the Inspector General of Police must be made a party to the suit, as failure to join the IGP is fatal to this suit and any decision made therein.

He referred to **UBA PLC v. Gbadeyan&Ors (2018)LPELR-44859(CA)**.

Furthermore, he urged the Court to hold that the failure to bring the CBN Guideline/Circular to the attention of the Court, was a mistake of counsel, which must not be visited on the Defendant/Applicant.

He urged the Court in conclusion to hold that the Defendant/Applicant has made out a case for the grant of this

application, and therefore, to set aside the order made on the 13th day of August, 2021.

In opposition to the application, the Claimant/Respondent filed a 19 paragraphs counter affidavit deposed to by one ChiamakaOkoye.

The Claimant/Respondent averred that there is no Central Bank of Nigeria directive restraining her from dealing with the funds in her accounts as sought in this suit or as directed by the Court.

She averred that at the hearing of the application leading to the order of this Court sought to be set aside, the Defendant/Applicant duly informed the Court that there was no impediment on the account of the Claimant/Respondent and that the Claimant/Respondent has unfettered access to her account with the Defendant/Applicant.

The Claimant/Respondent further averred that contrary to paragraphs 3(j) & (k) of the affidavit in support of this application, the funds in her account are not proceeds of fraud and that there is no on-going investigation whatsoever on her account. That this application is one of the many tricks the Defendant/Applicant has been deploying to ensure that the funds in the Claimant/Respondent's account are siphoned and stolen.

Learned Claimant/Respondent's counsel, David I. Ajaba, Esq, in his written address in support of the counter affidavit, raised a sole issue for determination, namely;

“Whether a Court can set aside its order made after fair hearing.”

Proffering arguments on the issue so raised, learned counsel relied on **Tsokwa Motors (Nig) Ltd v. UBA PLC (2008) 2 NWLR (PT.1071)347,** to submit that a Court of law does not make an order in vein, and that it is not every slip in its judgment, even where such exists, that can qualify to allow the Court to set aside its order.

He argued that while misrepresentation is a basis for which a Court may set aside its judgment or ruling, that the party seeking to have that equitable discretion of the Court, has a duty to prove its allegation of misrepresentation to the Court.

Learned counsel contended that the Defendant/Applicant had informed the Court per its motion filed on 10/8/2021 that there was no impediment on the account of the Claimant/Respondent. He argued that the Defendant/Applicant is guilty of approbating and reprobating by the filing of motion, which act the Court frowns at. He referred to **Suberu v. State (2010)8NWLR (Pt.1197) 586 at 612.**

Relying on Section 169 of the Evidence Act, 2011, he submitted that the Defendant/Applicant is estopped from making the case contained in this application and from filing same.

He further referred to **Oqualaji v. A.G. Rivers State &Anor (1997)5 SCNJ 240 at 248, Joe Iqa v. Amakiri (1976)11 SCNJ 12-13.**

Learned counsel argued further, that this application is an attempt by the Defendant/Applicant to re-open and re-argue Motion No. M/4963/2021 which was duly heard on 10/8/2021 and accordingly granted on 13/8/2021, and that the Court has no jurisdiction to do such.

He contended that this motion is an afterthought, merely filed to stall the obedience to the Court order by the Defendant/Applicant.

With reference to the purported CBN Guideline/Circular and the alleged petition being relied on by the Defendant/Applicant, learned counsel relied on **GTB PLC v. Adedamola (2019) 5 NWLR (Pt.1664) 30 at 43,** to submit that only a Court of competent jurisdiction has power to order the freezing of a customer's account.

He argued that the exhibits relied upon by the Defendant/Applicant, are illegal, being that they purport to confer powers which the legislature have not conferred.

Placing reliance on **Tomtee (Nig) Ltd v. FHA (2009)18 NWLR (Pt.1173)558 at 373-376,** he posited to the effect that this application is an abuse of Court process, on the ground that same is premised on frivolity and recklessness.

He urged the Court to dismiss the application in the interest of justice as same is grossly lacking in merit.

In the determination of this application, the issue to consider is, **whether the Applicant has made out a case to warrant the grant of the reliefs sought?**

The first relief sought in this application, is for an order of this Court extending time within which the Defendant/Applicant may apply to set aside the order of Court made on the 13th day of August, 2021.

There is no gainsaying the fact that this Court, by virtue of Order 49 Rule 4 of the High Court of the FCT, Abuja (Civil Procedure) Rules, 2018, has the inherent powers to extend time for doing any act or taking any proceedings.

An application for an order of extension of time, is however, not granted as a matter of course. Being a discretionary relief, an applicant for an order of extension of time, must satisfy the Court that he is entitled to the exercise of the Court's discretion in his favour.

In **Oke&Anor v. Mimiko&Ors (2013) LPELR-20645(SC)**, the Supreme Court held, per Ogunbiyi, JSC, that the overriding factor to consider in an application for extension of time, is the reason for and the effect of the application.

Throughout the length and breadth of the affidavit in support of this application, nothing was stated by the Applicant as the reason for its failure to take the step which it seeks to take by this application, within the time allowed by the Rules.

The discretion of the Court must be exercised judiciously and judicially. An indolent litigant cannot sleep over his right only to wake up whenever he pleases and apply to the Court to exercise its discretion in his favour by enlarging time for him to do a thing which he, by reason of indolence failed to do within time allowed by the Rules.

No material has been placed by the Applicant herein before the Court, on the basis of which this Court may exercise its discretion in favour of the grant of an order of extension of time.

Accordingly, relief (1) is refused.

The Applicant, in relief (2), prays the Court for an order setting aside the Order of this Court made on the 13th day of August, 2021.

Given the refusal of relief (1); relief (2) automatically fails. But supposing that relief (1) is granted (which is not conceded); the question to consider in respect of relief (2), is **whether the**

Applicant has established the conditions that would warrant this Court setting aside its order?

It is a wellsettled position of the law, that a Court of law has an inherent jurisdiction to set aside its own order or judgment where the conditions for doing so have been met by a party seeking such setting aside. See **N.H. Int'l S.A. v. N.H.H. Ltd (2007) 7 NWLR (Pt.1032) pg. 86.**

The conditions for a Court to set aside its judgment/Order, as set out by the Supreme Court, are as follows;

- (a) The applicant must show good reasons for being absent at the hearing.
- (b) The application must have been brought within the prescribed period.
- (c) The applicant must show an arguable defence to the action, which is not manifestly unsupportable.
- (d) The conduct of the applicant throughout the trial must be such as is not condemnable but deserving sympathy.
- (e) The applicant must show that the respondent will not suffer any prejudice or embarrassment if the judgment/order is set aside.
- (f) Whether the judgment/order is tainted with fraud or irregularity obtained.

See **INEC & ANor v. Maduabum (2008)LPELR-4316(CA).**

In the instant application, none of the above conditions was established by Applicant. The Applicant was present and fully participated in the proceedings leading to the order which it now seeks to set aside. Even in bringing this application, the Applicant did not bring same within the prescribed time,neither did it state the reason(s) for failing to do so.

Furthermore, the Applicant, in its counter affidavit, (Exhibit “BB”), informed the Court under oath, in paragraph 3(k) thereof, that the funds in the Claimant/Respondent’s account could be transferred within the same bank in Nigeria, a position which the Applicant now denies. The said information, according to the averments in Exhibit “BB” attached to this application, was given to the Deponent by one UnomaNndulue, Applicant’s legal officer, and therefore, cannot be attributed to mistake of counsel, as alleged by the Applicant.

Furthermore, the ground for this application, is not one of the conditions for setting aside its order by a Court.

The Applicant placed reliance on a purported CBN Guideline/Circular (Exhibit “AA”), which it alleged prohibits the transfer of foreign currency from one account to another.

It is a settled position of the law, that document speaks for itself. The purported CBN Guideline/Circular, for whatever it is worth, did not prohibit the transfer of foreign currencies from one account to another as mischievously alleged by the Applicant.

It merely prohibited “the acceptance of foreign currency cash deposits by DMBs”. (underlining mine for emphasis).

It stated for clarity that: “For the avoidance of doubt, only wire transfers to and from Domiciliary Accounts are henceforth permissible.”

A transfer of foreign currency from one Domiciliary Account to another Domiciliary Account in the same bank as was ordered by the Court, cannot by any stretch of imagination, be termed ‘cash deposit’ which Exhibit “AA” prohibits.

The Applicant further sought refuge, in bringing this application under a letter written to it by the Nigeria Police on the 24th day

of February, 2022. The Police in the said letter, Exhibit “EE”, stated that it is investigating a case in which account number: 1218672344 was involved.

What is very clear, is that the order of this Court which the Applicant seeks to set aside, was not made in respect of account number:1218672344, which the Police is allegedly investigating. The account number to which the order of this Court relates are account numbers: 0059930886 and 1488311767.

But supposing the Police investigation has anything to do with the accounts which the order of this Court relates to; the question that begs for an answer, is why did the Applicant not comply with the order of Court made on the 13th day of August, 2021 until it received a letter from the Nigerian Police on the 24th day of February, 2022?

Evidently, the Applicant has no intention of complying with the order of this Court, hence its desperate search for justification for its obstinacy.

I therefore, agree with the learned Claimant/Respondent’s counsel, that this application was brought mala fide, as same has no substance.

In the circumstances, relief (2) also fails.

Reliefs (3) prays the Court for a restraining order against the Claimant/Respondent from executing the order of Court in issue, pending the determination of this application.

This relief is otiose. A restraining order cannot be made pending the determination of an application that has already been determined.

Thus, the said relief (3) equally fails.

From the totality of the foregoing, this application fails in its entirety, and same is accordingly dismissed, with cost of N300,000.00 awarded against the Defendant/Applicant.

HON. JUSTICE A. O. OTALUKA
5/10/2022.