

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE**

**SUIT NO. FCT/HC/CV/921/2012**

**BETWEEN**

**OKEZIE MBONU**  
(suing on behalf of FATIMAH KURFI YAKUBU)

}

**PLAINTIFF/JUDGMENT  
CREDITOR/RESPONDENT**

**AND**

1. **HON. MINISTER OF FEDERAL CAPITAL TERRITORY**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
3. **ISA A.  
BADAMASI.....DEFENDANT/APPLICANT**

**R U L I N G**

The 3<sup>rd</sup> Judgment Debtor/Applicant vide this Motion No. 661/2021 dated and filed 27<sup>th</sup> January, 2021 prays this Court for two principal reliefs;

1. An Order of Court extending the time within which the 3<sup>rd</sup> Defendant/Applicant may apply to set aside the Judgment of this Court delivered on the 17<sup>th</sup> December, 2020.
2. An Order of Court setting aside the Judgment of this Court delivered on the 17<sup>th</sup> December, 2020 and directing a continuation of hearing.

This application is brought pursuant to Order 10 Rule 11 of the rules of this Court. Also, the grounds upon which this application is premised are as follows;

- a) Leave of Court is required to file processes out of the time fixed by the Rules of Court.
- b) The Plaintiff/Respondent has been proceeding in this case as if the Applicant is not party in this case.
- c) The Plaintiff has not been serving the 3<sup>rd</sup> Defendant processes filed by him at the office and address provided by his Counsel, O. J. Aboje Esq., in the Notice of Change of Counsel filed.
- d) The final written address of the Plaintiff/Respondent was not served on the 3<sup>rd</sup> Defendant.
- e) The Amended writ of Summons and Statement of Claim of the Plaintiff were not served on the 3<sup>rd</sup> Defendant.
- f) The 3<sup>rd</sup> Defendant only became aware of them not by service but by inquiries made at the registry of this Court after Judgment had been delivered unknown to the 3<sup>rd</sup> Defendant.
- g) Service of Court processes is a sine qua non to assumption of jurisdiction by the Court.

- h) The 3<sup>rd</sup> Defendant was not notified that the suit had been adjourned for adoption of final written addresses.
- i) On the 15<sup>th</sup> December, 2020 when O. R. Inyang (Esq.) paid a visit on the Registry of the Court to be given a date for service he was informed that the suit had been adjourned to 28<sup>th</sup> January, 2021 for adoption of final written address.
- j) The 3<sup>rd</sup> Defendant has a Notice of Change of Counsel in his favour is the Court's file and duly served on the Plaintiff but the Plaintiff amended his processes and endorsed different address thereon for the 3<sup>rd</sup> Defendant.
- k) The final written address of the Plaintiff was not served on the 3<sup>rd</sup> Defendant.
- l) No Hearing Notice was served on the 3<sup>rd</sup> Defendant since 2017.
- m) Fraud was practiced on the Court by the Plaintiff and his counsel.

In support of the application is a 5 paragraph affidavit, 4 Exhibits and a written address. In moving the application summarily in Court, Mr. Aboje relied on all the processes and urged the Court to grant the application.

He referred to paragraphs 6, 7, 9, 12, 13, 14, 15 – 22 of the counter affidavit and submitted that those paragraphs offend Section 115 of the

Evidence Act as they are legal arguments and conclusions. He urged the Court to strike out those paragraphs from the affidavit.

On the part of the Plaintiff/Judgment Creditor Respondent in opposition to the application of the 3<sup>rd</sup> Defendant/Applicant filed a 24 counter affidavit and a written address. He submitted that those paragraphs referred to by the Applicant's Learned Counsel as being in violation of Section 115(2) of Evidence Act cannot hold water. Both Learned Counsel submitted issues for determination in their respective addresses.

For the Applicant, the issue submitted is this *"Whether sufficient matters and/or materials have been exposed to the Court for the Court to exercise its inherent powers to extend time as prayed and set aside its Judgment"*

For the Plaintiff/Judgment Creditor/Respondent, he submitted two issues for determination. They are;

- (i) Whether this Court has jurisdiction to sit on appeal over its Judgment delivered on merit.
- (ii) Whether a party who is aware of the pendency of a matter and was represented in Court and also aware of the next adjourned date but deliberately refused to attend, can successfully seek to set aside the Judgment against him.

With due respect to the Applicant's Learned Counsel and without mincing word, I think the only issue that calls for determination of this Court in this application is the issue 2 as framed by the Respondent's Counsel.

The Applicant Learned Counsel contended that this Court is imbued with the powers/jurisdiction to set aside its Judgment by statutory and judicial pronouncement of the Courts. He cited the case of **ADEBIYI v. ADEKANBI (2018) 16 N.W.L.R. (PART 1645) 242** and **Order 10 Rule 11** of the Rules of this Court. He referred to some instances where a Court can set aside its decision to include but not limited to;

- a) When a Court is misled into giving such a decision or Judgment under a mistaken belief in perceptions different from the reality.
- b) The need to do substantial justice by allowing all parties to be heard.
- c) When processes are shown not to have been served; and
- d) When fraud is practiced on the Court.

For all the above submissions, he referred to the cases of **NDIC V. ETTE (2016) 8 N.W.L.R. (PART 1514) 345; ADEBIYI v. ADEKANBI (supra)** and **ANOZIE v. I.G.P. (2016) 11 N.W.L.R. (PART 1524) 387.**

Submitting further, he said some of the grounds on which this application is brought is that the 3<sup>rd</sup> Defendant/Applicant was not served

Hearing Notices and processes in this suit. He said these grounds were not only contained in the grounds for bringing the application but also contained in paragraphs 3(c); 3(g); 3(i); 4(d) and 4(g) of the supporting affidavit respectively as evidence of the fact that he has not been served Hearing Notices and court processes. He relied on the case of **BELLO v. INEC (2010) 8 N.W.L.R. (PART 1196) 342.**

On the part of the Respondent, he contended that fair hearing as a concept does not only enures only the 3<sup>rd</sup> Defendant/Applicant but to both parties and the Court. That is, it is three way traffic. He submitted that when a party or his Counsel is seen to have slept on his right to fair hearing, he cannot turn around to accuse the Court as in this instance. He relied on the authority of **A.C.N. v. LAMIDO & 4 ORS. (2012) 8 N.W.L.R. (PART 1303) 560** and **NEWSWATCH COMMUNICATIONS LTD. V. ATTAH (2006) 12 N.W.L.R. (PART 993).**

In his further submission, he said in line with paragraphs 8, 12, 13 and 14 of the counter affidavit, the 3<sup>rd</sup> Defendant/Applicant was well aware of the adjournment of the suit to the 19<sup>th</sup> November, 2019, as same was done at the instance of the applicant for him to open his defence and which neither he or his Counsel was present, nor did they deem it fit to notify the Court of the reasons for their absence on the said date and subsequently

on 28<sup>th</sup> January, 2020 when the 3<sup>rd</sup> Defendant/applicant was foreclosed from defence due to their lack of diligence prosecution.

He finally submitted that where a litigant or his Counsel is absent from Court on the date of hearing, having been fully ceased of the next adjournment date therefore he cannot successfully claim to have been denied his right to fair hearing as same was self-inflicted and done at his own peril. He called in aid the case of **NATIONAL FILM AND VIDEO CENSORS BOARD v. ADEGBOYEGA (2012) 10 N.W.L.R. (PART 1307) 45**. He urged me to discountenance with this application.

I have considered both the arguments and submissions of both Learned Counsel for the grant and in opposition to the grant of this simple application.

To start with, and I am not prepared to rigmarole or beat about the bush, on the issue of some paragraphs of counter affidavit violating the provisions of Section 115(2) of the Evidence Act, I agree with the Applicant's Counsel that affidavit evidence should only contain statement of facts and facts only. For this reason, I hold that paragraphs 6, 7, 13, 15, 21 and 22 offend this provision of Evidence Act 2011 (as amended) for being conclusions and legal arguments and they are hereby expunged.

Now, the question is can the remaining paragraphs stand and match with those paragraphs in the supporting affidavit? My answer is yes.

The reason for my answer in affirmative is that for the 3<sup>rd</sup> Defendant/Applicant, who was represented by his Counsel one Mr. C. K. Agu Esq. who also, in the course of trial, cross examined PW1 but said he had no cross examination for PW2 on the 22<sup>nd</sup> March, 2018, when the matter was adjourned to 19<sup>th</sup> November, 2019 for defence, would turn around and claim not to be aware of the suit is not only laughable but a flagrant lack of due diligent in pursuing their case in Court.

Since that time up to the time the Judgment was delivered, they did not deem it fit or border to know the position of their case in Court until when they suddenly realized that they have a case pending in this Court and that was when the Judgment was already delivered.

For the above reason, I pitch my tent with the Respondent that this Court lack jurisdiction to entertain this application and it is hereby refused for lacking in all merits.

---

**S.B. Belgore**  
**(Judge) 2/3/2023**