

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

15TH DAY OF JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/130/2020
MOTION NO. M/5269/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

DIYOKE MARTINS OGBONNA APPLICANT/RESPONDENT

AND

1. THE NIGERIA POLICE FORCE	}	RESPONDENTS/ APPLICANTS
2. COMMISSIONER OF POLICE FCT COMMAND		
3. EVER ROOFING COMPANY LTD		

RULING

The Respondents/Applicants' Motion is dated 27/04/2022 brought pursuant to Order 32 (5) (2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of the Court.

The Motion prays the Court for:

- (1) An Order setting aside the Judgment entered against the Applicants on 14/03/2022 in default of appearance.
- (2) And for such Order or further Orders as the Court may deem fit to make in the circumstance.

Learned Counsel relies on the 12-paragraph Affidavit filed in support. One Francis Udofia, a Police Officer and Litigation Secretary deposed to the said Affidavit.

He deposes that the Applicant was being investigated and charged to Court for criminal conspiracy and armed robbery. That it was assigned to Court 23, Kwali before the present suit was filed. A copy of the Charge is Exhibit POL1.

That Applicant was not aware of the pendency of this suit. That the processes were not minuted to him due to administrative bottlenecks hence he could not file a Counter Affidavit. He became aware when the Applicant's Counsel filed an application for bail in Court

23 Kwali and the 3rd Respondent's Counter Affidavit was attached.

That Respondent deliberately failed to exhibit the Charge filed. That they have a good defence to the action. That issues are joined in the other Court. That the Respondent will not be prejudiced if the Default Judgment is set aside.

That the Certified True Copy of Judgment was not made available until 26/04/2022 long after the period provided by law to file a Motion to set aside has lapsed. The delay in filing the Motion was not deliberate.

The Applicant/Respondent filed and relied on their Counter Affidavit of 23 paragraphs deposed to by Chioma Nwokenna of Suite F35 Efab Mall Extension, Area 11, Garki Abuja, FCT.

She deposes that Applicant/Respondent was never charged to Court as at the time of filing the Fundamental Human Rights application.

That Applicant was in detention since November, 2021 and the 1st and 2nd Respondents/Applicants vehemently refused either to grant him administrative bail or arraign him before a Court. The copy of the Fundamental Right Application and Charge are Exhibits A and B.

That it was after an advance copy of the Fundamental Rights application was filed that the Respondents/Applicants hurriedly charged him to Court for armed robbery when the Proof of Evidence did not reveal any iota of armed robbery.

That Respondents/Applicants filed a Charge and refused to serve the Respondent until few days of arraignment. That Respondents/Applicants were aware of the pendency of this suit as all processes were duly served on them.

That the Judgment was not a Default Judgment but a Judgment on the merit. That the judgment was delivered on 14/03/2022 while Motion to set aside was filed on

9/05/2022 more than 6 days allowed by the Rules of Court to file a Motion for setting aside.

That Respondents/Applicants did not file a Motion for extension of time or pay default fees. That it will be in the interest of justice to refuse the application.

I have read the Affidavit, Counter Affidavit and considered the Addresses of Counsel.

A Default Judgment is a binding Judgment in favour of either party based on some failures to take action by the other party. Most often, it is a Judgment in favour of a Claimant or Applicant in this case, when the Defendant or Respondent has not reacted or has failed to appear before the Court. The failure to take appropriate action by filing a Counter Affidavit is the default.

From the records of the Court, the substantive application leading to the Judgment entered was filed against three Respondents. The 1st and 2nd Respondents failed to attend Court despite the service of processes.

The 3rd Respondent filed a 10-paragraph Counter Affidavit, participated fully in the trial.

In the circumstance, the judgment delivered by this Court on the 14/03/2022 cannot be called Default Judgment. It is a Judgment on the merit and I so hold.

When a trial Court has given judgment on the merit, it is *functus officio* in relation to the Judgment once pronounced. It cannot ordinarily reopen the case for fresh hearing.

A party dissatisfied with the Judgment can only bring proceedings on appeal against it. However, at common law and equity, a person against whom a Judgment had been procured by fraud is entitled to approach the Court by an action or a Motion such as this to set aside the Judgment.

See INEC vs. NNAJI (2004) 16 NWLR (PT. 900) 473.

To set a Judgment such as this aside, it is not sufficient to allege fraud without giving particulars thereof. The Court

will require a strong case. In the instance case, no fraud is alleged, therefore no particulars were supplied.

To show the unseriousness of the Applicant, this Motion was filed on 19/05/2022 about two months after Judgment was entered. There is no record of the Applicant/Respondent's application for Certified True Copy (CTC) of the Judgment. His deposition that he could not get the CTC of the Judgment fails flat on the face.

There is no doubt the 1st and 2nd Respondents were served with the processes of Court on 7/02/2022. They were further served with Hearing Notices on 7/03/2022 but failed, refused and neglected to put up appearance or defend the suit.

The excuse of the 1st and 2nd Respondents' Counsel that the case was not minuted to him on time or administrative bottleneck delayed his getting the Court processes cannot avail 1st and 2nd Respondents. They shall enjoy the fruits of their lackadaisical attitude.

This Court will be unable to set aside the Judgment. The Application therefore fails for lack of merit and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
15/06/2023

Parties absent.

Chibuzor C. Ejike, Esq. for the Applicant/Respondent
with me is M. N. Elizah, Esq.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
15/06/2023