IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS THURSDAY, THE 26TH DAY OF MAY, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

SUIT NO: FCT/HC/CV/245/95
MOTION NO: GWD/M/16/2020

BETWEEN

INNOCENT C.N. OSONDU ….JUDGMENT CREDITOR/RESPONDENT

AND

1. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
2. **DIRECTOR GENERAL F.C.D.A**
3. **DIRECTOR OF FINANCE AND ECONOMIC DIVISION F.C.D.A**

….JUDGMENT DEBTORS/ APPLICANTS

RULING

By a Motion on Notice dated on 16th January, 2020, the Judgment Debtors/Applicants pray for the following Reliefs:

1. **An Order for extension of time within which to apply to set aside the Order of this Honourable Court made on the 26th day of November, 2010.**

2. **An Order setting aside the Order of this Honourable Court made on the 26th day of November, 2010 having been made without jurisdiction.**

3. **An Order of this Honourable Court directing the Judgment Creditor/Respondent to refund the monies paid by the Judgment Debtors/Applicants, which were paid at various times, having been paid without a valid Order of this Honourable Court, to wit:**

i. **The sum of Three Million, Eight Hundred and Sixty Seven Thousand, Eighty Nine Naira, Twenty Four Kobo.**

ii. **Five Million, Four Hundred and Fifty Five Thousand, Eight Hundred and Twelve Naira Thirty Nine Kobo.**

The application is supported by a twelve (12) paragraphs affidavit and a written address, but this address was subsequently withdrawn by counsel to the Applicants.

The Applicants then filed a further and better affidavit in support of the motion in response to the Counter-Affidavit of Respondent with two annexures marked as **Exhibits A** and **B**. A written address was filed in support in which one issue was raised as arising for determination as follows:

"Whether in the circumstances of this case, the Judgment Debtors are entitled to the Orders sought?"

Submissions were then made in support of this issue which forms part of the Record of Court. I will highlight the essence of the position as made out.

It was contended that the Respondent/Judgment Creditor was never entitled to all the sums paid to him and that the order of court made in **November 2010** was made without jurisdiction as the court failed to make a pronouncement on the application challenging its jurisdiction to hear the Garnishee proceedings and accordingly that the purported orders made by court were void.

That the court had an obligation to hear the objection to the court's jurisdiction and that the failure to determine the application violated the Applicants constitutional right to fair hearing.

It was also submitted that the Respondent failed to comply with the condition precedent for the enforcement of judgment out of time. That the Judgment (Enforcement) Rules under **Order IV Rule 8 (1)** and **(2)** provides that leave of court is required to issue any process for enforcement of judgment after six years of the judgment. That the Respondent neglected or refused to comply with this provision which renders any orders of court void.

In opposition, the Respondent filed two processes, to wit:

1. Judgment Creditor/Respondents Counter-Affidavit and

2. Further and Better Counter-Affidavit in opposition to Applicants further and better Affidavit.

The first Counter-Affidavit has twenty one (21) paragraphs with one annexure, the judgment of the court delivered in 1995 attached as **Exhibit A**. A written address was filed in compliance with the Rules of Court in which four issues were raised as arising for determination thus:

1. **Whether the Honourable Court did not determine the Notice of Preliminary Objection filed by the Judgment Debtor dated 22nd April, 2010 and filed on 23rd April, 2010.**
2. **Whether the Honourable Court can set aside its Order in this case.**
3. **Whether the Judgment Debtors/Applicants are timeous in bringing this application.**
4. **Whether the Judgment Creditor can refund the sums paid to him.**

Submissions were then made on all the above issues which form part of the Records of Court. I shall here also summarise the essence of the submissions as made out.

On **issue 1**, it was submitted that the contention that Applicants preliminary objection was not taken is wrong. That the Applicants filed a preliminary objection to counter one of the applications of the judgment creditor which was for an order to issue and serve a Form 49 for committal to prison of the Judgment Debtors having disobeyed the judgment of court. That the judgment creditor withdrew the said application for issuance of Form 49 and same was struck out along with the preliminary objection.

On **issue 2**, it was conceded that while a court can set aside its decision, it has to be on well established grounds and that no such situation or ground was established by Applicants in this case.

On **issue 3**, it was submitted that the Applicants are late in bringing this application in that the Orders sought to be set aside were made in 2010 and 2016 and that Applicants have since complied with the orders. That it is now too late to bring this application.

Finally on **issue 4,** it was contended that the Judgment Creditor complied with all legal requirements in executing the Judgments of Court and accordingly that there was no basis for any refund as contended by Applicants.

The **Further and Better Counter-Affidavit** has twenty-two (22) paragraphs with two annexures marked as **Exhibits A1** and **A2**. A very brief one page written address was filed in support of this further and better counter-affidavit which essentially sought to accentuate the points earlier made.

At the hearing, counsel on either side again relied on the processes filed in praying the court to grant the application on one hand, and on the other hand, to refuse the application.

I have carefully considered the processes filed and the submissions made on both sides of the aisle and the twin issues to be resolved is whether the Applicants have proffered legal basis why time should be extended to set aside the order of court granted on 26th October, 2010 and secondly, whether the court should on the material supplied by Applicants set aside the order of Court.

The relief for payment back of moneys will only have any traction depending on the answers to the above questions.

I will take the reliefs seriatim.

On **Relief 1**, it is not in dispute that the order sought to be set aside by Applicants was made as far back as 26th November, 2010 a period of about ten (10) years before the filing of this extant application to set it aside.

As a prefatory point, I have not been referred to any provision of the Judgment (Enforcement) Rules Cap 407 LFN which provides or allows for extension of time to set aside the order of Court sought to be set aside by the extant Application.

Order IV Rule 8 (1) and **(2)** referred to has nothing to do with extension of time to apply to set aside any Order(s) of Court. I incline to the view that any Relief sought must be situated within a precise or clear legal framework to put the court in any commanding height to grant the application. I leave it at that. I will however still consider the application and the Reliefs for whatever it is worth.

The application for extension of time by an applicant firstly is a recognition that the applicant did not do the needful within the period as allowed by the Rules or a legislation which requires or provides that the application for extension of time be brought within a defined time frame.

Generally, the grant of the application is one of exercise of discretion; a discretion to be exercised judicially and judiciously predicated on good reasons been proffered for failure to take steps as legally allowed.

I have in this case carefully gone through **both affidavits** filed by Applicants and no where in the two affidavits was any reason or reasons given as to why no steps were taken to set aside the decision given as far back as 26th November, 2010. All the Applicants were saying is that they filed a preliminary objection challenging the jurisdiction of the court but that it was not taken before the Order of **26th November, 2010** was made. They also said that the Respondent has been misrepresenting and misleading Applicants officials into making payments to him.

All these contested and unproven assertions then begs the question as to why Applicants did not take any action since **2010** to challenge the order on appeal or to apply to set it aside or to even stop the payments made at two different times based on the alleged misrepresentation made to their officials? **Relief 1** cannot be granted on whimsical grounds or no grounds at all. An extension of time to do anything procedurally required is not granted as a matter of course or granted automatically once the application is made. Cogent reasons must be furnished as to why the steps were not taken within time. What this means is that some materials must be placed before the court which will enable it decide whether the circumstances of the application justify the exercise of the courts equitable jurisdiction in the applicants favour. See **Akpoku V Ilombu (1998) 8 NWLR (Pt. 561) 283 at 291 F-G**.

There is really no ground or material proffered to support this application for extension particularly here, where the Orders subject of the decision of the court has since or long been carried out and payments made to **Respondent** by **Applicants**. To grant **Relief 1** even if it is legally available, is to reward indolence of the worst type or extreme kind.

An application for extension of time as sought under **Relief 1** is an equitable Relief and the equitable doctrine is that equity aids the vigilant and not the

indolent. The Applicants on the facts were staggeringly indolent. **Relief (1)** is not availing.

With the failure of **Relief (1), Relief (2)** has no leg to stand on, but in the event I am wrong, let me again situate whether on the materials the Applicant has provided grounds allowing for **Relief (2)** to be granted and the order of court set aside.

Let me quickly make the point that on the materials, the order of court made on **26th November, 2010** was predicated or based on the Judgment of Court delivered in **1995**. An action therefore brought upon a judgment is an invocation of the coercive powers of the trial court to enforce the enforceable orders and reliefs granted in the judgment. In other words, the orders given in **2010** were intended to enforce specific orders in the judgment of **1995**. See **Purification Technique Ltd V Jubril (2012) 18 NWLR (pt.1331) 109 (S.C.)**

Now generally once a court makes an order or gives judgment in an action, it becomes *functus officio* and ceases to possess the power to vary or review such order or judgment. See **Alhaji Ahmed & Co. (Nig.) Ltd V A.I.B. Ltd (2001) 10 NWLR (pt.721) 391 at 403 E-F**.

It is however equally settled principle that courts have the inherent powers to set aside their orders or judgment in the following clear delineated circumstances.

i. **If the judgment is obtained by fraud or deceit;**
ii. **If the judgment is a nullity, such as when the Court itself is not competent;**
iii. **If the Court was misled into giving the judgment under a mistaken belief that the parties had consented to it;**
iv. **If judgment was given in the absence of jurisdiction;**
v. **If the procedure adopted was such as to deprive the decision or judgment of the character of legitimate adjudication.**

See **Besoy Ltd V Honey Legion (Nig.) Ltd (2010) 4 NWLR (pt.1184) 300 at 316-317 G-B**.

Now in this case, the situated reason by Applicants for this relief is absence of jurisdiction; that they filed an objection which was never heard or withdrawn

before the **order** was made by Court on 26th November, 2010. The Respondent however gave a contrary narrative. That the preliminary objection filed by Applicants was related to the application for Form 49 they issued which was withdrawn and struck out along with the preliminary objection.

In the circumstances, the burden of proof of these assertions was on the applicants to prove what they asserted. See **Section 131 (1), 132 and 133 of the Evidence Act**. If they filed the application vide **Exhibit A** on 23rd April, 2010, the question is what happened to the motion? There was clearly a period of about **7 months** between the filing of the motion and the order of court on 26th November, 2010. Did the Applicants attend court to move the application? The Applicants cannot just file an application in court and then simply go to sleep as is said in popular parlance. Why did Applicants not produce the record of proceedings to situate what precisely happened leading to the Order of 26th November, 2010. In the absence of the **Records of proceedings**, the court has no crystal back to engage in an idle exercise in speculating that the applicants filed a preliminary objection which was not taken.

Indeed the failure of Applicants to procure the Record allows for the invocation of the principle under **Section 167 (d) of the Evidence Act** that if they had produced the Records of proceedings, it would have been unfavourable to their case.

On this Relief, the Applicants have not situated any legal ground or situated basis to allow for the setting aside of the order. Again, if the order was given without jurisdiction as is now been belatedly advanced, why did they then pay the Judgment Creditor, the sum subject of the order. I just wonder.

Relief (2) in the absence of any verifiable basis must equally fail. With the failure of both **Reliefs (1)** and **(2)**, **Relief (3)** as stated earlier clearly lacks any foundation, factual or legal and must fail.

As stated earlier, the sums subject of **Relief (3)** were products of Orders of this court. This decision was never challenged at any time by Applicants for over 10 years. A Ruling and Order of Court remains valid and subsisting until set aside by the court itself or on an appeal by a Higher Court. There is therefore an unqualified obligation for every person against whom it is given to obey it. The Applicants here had all the time to challenge these Orders. They never did. They infact complied with the orders. It is rather too late in the day to complain. I say no more. **Relief (3)** equally fails.

On the whole, this application completely lacks any merit and is dismissed.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***G.N. Umerie, Esq., for the Applicant/Judgment Creditor.***
2. ***Y. Abubakar, Esq., with K.P. Binga, O.G. Obialor and M.S. Ugwu for the Respondents/Judgment Debtors.***