

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT JABI**

**THIS THURSDAY, THE 26<sup>TH</sup> DAY OF MAY, 2023**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE**

**SUIT NO: FCT/HC/CV/245/95**  
**MOTION NO: M/2095/2019**

**BETWEEN**

**INNOCENT C.N. OSONDU ..... JUDGMENT CREDITOR/APPLICANT**

**AND**

|   |   |   |
|---|---|---|
| <b>1. FEDERAL CAPITAL DEVELOPMENT<br/>AUTHORITY</b>             | } | <b>...JUDGMENT DEBTORS/<br/>RESPONDENTS</b> |
| <b>2. DIRECTOR GENERAL F.C.D.A</b>                              |   |   |
| <b>3. DIRECTOR OF FINANCE AND<br/>ECONOMIC DIVISION F.C.D.A</b> |   |   |

**RULING**

This is an interesting matter involving a Judgment delivered as far back as 1995. The extant application is related to this judgment. Let us perhaps situate the remit of the application.

By a Motion on Notice dated 15<sup>th</sup> January, 2019, the Judgment Creditor/Applicant prays for the following Reliefs:

- 1. An Order mandating the Judgment Debtors/Respondents to pay the sum of N2, 828,452.4 to the Judgment Creditor/Applicant being Emoluments, Salaries and Entitlements which has accrued to the Judgment Creditor/Applicant from July 2016 to December, 2018.**
- 2. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.**

The application is supported by an eleven (11) paragraphs affidavit with 5 annexures marked as **Exhibits A-E**. A brief written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination:

***“Whether the Judgment Creditor/Applicant is entitled to this application?”***

Submissions were made on the above issue which forms part of the Record of Court to the effect that once a court delivers judgment in a case as done here, the judgment subsists until it is set aside on appeal. That the judgment debtors are bound by the judgment of this court.

The Judgment debtors/Respondents in response filed a thirteen (13) paragraphs counter-affidavit with a brief written address in which two issues were raised as arising for determination:

- 1. Whether the judgment creditor is entitled to the sums of money sought or already received as there was a preliminary objection pending before the court?**
- 2. Whether he is entitled to salaries and emoluments so called where he has been out of service and asking for gross sums without the legal and laid down deductions and remittance?**

Submissions were equally made on the above issues which forms part of the Record of Court. I will also here highlight and summarise the essence of the submissions as made out.

On **issue 1**, it was submitted that the Applicant was not entitled to any sums because as at the time the Order was made, there was a pending Preliminary Objection challenging the jurisdiction of the court to entertain the application which was still pending.

On **issue 2**, it was contended that the salaries and emoluments computed by Applicant as his entitlements when he is out of service and without the legal and laid down deductions and remittance amounts to a gross abuse of process.

The Applicant then filed a Further and Better Affidavit in response to the Counter-Affidavit of the Judgment debtors/Applicants with 2 annexures marked as **Exhibits B1** and **B2**. The Applicant again filed a written address in support

of the further and better affidavit and again raised three new issues in the address as follows:

- 1. Whether the Judgment Creditor/Applicant is entitled to his Reliefs on the salaries and emoluments as contained in his motion dated 15<sup>th</sup> January, 2019.**
- 2. Whether there is any preliminary objection filed by the Judgment debtors/Respondents not determined by this court and**
- 3. Whether the Judgment creditor/Applicant is entitled to his salaries and emoluments based on the Court's Judgment?**

Submissions were made on the above issues which equally form part of the Record of Court. I will again summarise the submissions. On **issue (1)** it was contended that the judgment of this court delivered on 21<sup>st</sup> November, 1995 remains binding and it is based on the judgment that the reliefs sought in the extant motion dated 15<sup>th</sup> January, 2019 is predicated.

On **issue 2**, it was submitted that the Respondents did not exhibit any evidence or the Record of proceedings to support the allegation that a preliminary objection they filed was not taken.

It was submitted that the only Preliminary Objection filed by Judgment debtors was in respect of the **Form 49** they filed which they withdrew and was struck out along with the Preliminary Objection. Finally on **issue 3**, it was submitted that the Applicant is entitled to his salaries and emoluments based on the judgment of the Court of **21<sup>st</sup> November, 1995**.

At the hearing, counsel on either side relied on the contents of the processes filed in urging the court, to on one hand, grant the application and on the other side of the aisle, to refuse the application.

I have carefully considered the processes and submissions made on both sides of the aisle. The narrow issue is whether there is really clear basis, factual and or legal to grant the sums claimed by Applicant.

The issue appears simple but when it is situated within the dynamics of the age and facts of the case which appear rather fluid and unclear, the matter presents or raises complications.

As stated earlier, the application is predicated on a judgment of this court delivered on 21<sup>st</sup> November, 1995.

Now it is stating the obvious that every Judgment of a court must be obeyed until it is set aside and it is effective from the date of its delivery or from such a date as the judgment itself appoints. See **Government of Gongola State V Tukur (1989) 4 NWLR (pt.117) 529 at 600 E.**

By the same token, a ruling and order of the court remain valid until set aside by a higher court or the court itself. See **Balogun V Adejobi (1995) 2 NWLR (pt.376) 131 at 163 F-G.**

Because of the contested assertions in this case, it is critical in resolving the issues to take our bearing from the judgment delivered on **21<sup>st</sup> November, 1995** by **His Lordship Hon. Justice A.A. Kolajo.**

The judgment may not have been attached to the processes relating to the extant motion but the judgment creditor fortunately attached a **Certified True Copy of the judgment as Exhibit A to the Counter-Affidavit he filed on 23<sup>rd</sup> January, 2020 to the Judgment Debtors motion to set aside the Order of Court given on 26<sup>th</sup> November, 2010.**

In law a trial Judge has a right to look at a document in the file which was not tendered as an Exhibit. See **Agbahamovo V Eduyegbe (1999) 3 NWLR (pt.594) 170 at 182 E.** Indeed a court can *suo motu* make reference to the case file before it and make use of any relevant document and relevant evidence. See **Famudoh V Aboro (1991) 9 NWLR (pt.214) 210 at 229 E; Onasoruwa V Adeniji (1993) 5 NWLR (pt.293) 317 at 331 G-H.**

We must thus take our bearing from this judgment. I must however at the outset underscore the point that a **Judgment of court** supersedes the Certificate of Judgment (which was what was attached in the extant application as Exhibit A) and a writ of possession. See **Alhaji Isyaka Yakubu Ent. Ltd V Omolaboje (2006) 3 NWLR (pt.966) 195 at 204 A-B.**

Now by **Exhibit A**, the judgment delivered on **21<sup>st</sup> November, 1995**, the plaintiff commenced this action on 7<sup>th</sup> October, 1992 against defendants and I shall here quote his claims as captured by the trial Judge, the Respected **Justice A.A. Kolajo** in the judgment as follows:

***“The plaintiff’s claims against the Defendants jointly and severally as endorsed in paragraph 22 of his statement of claim are as follows:***

- 1. A declaration that the plaintiff is and remains an employee of defendants and should be allowed to continue his service.***
- 2. That short of the determination of the relationship between the plaintiff and defendants, the plaintiff is entitled to and should be paid his net emoluments and entitlements from November 1990 till date.***
- 3. The sum of N100, 000 as general damages for the hardship, embarrassment and inconveniences occasioned the plaintiff by the actions of the defendants aforesaid.”***

The case may have not been defended as the defendants failed to lead evidence in support of their joint statement of Defence but the above **Reliefs** defined clearly the claims made by plaintiff. The reliefs are unambiguous.

Now, the power of court to make declarations concerning the rights of parties is unlimited and is an equitable remedy. However the court is bound to confine itself to the reliefs claimed. See **Nwosu V Nwosu (2012) 8 NWLR (pt.1301) 1; Oloruntoa Oju V Dopamu (2008) 7 NWLR (pt.1085) 1.**

The plaintiff is thus bound by the case he put up before the court and cannot go outside it or create a scenario extraneous to case made out on the pleadings, the evidence and ultimately the findings of the court. See **Kyari V Alkali (2001) 11 NWLR (pt.724) 412 at 433-434 H-A.**

After a careful evaluation of the evidence, the trial judge concluded his judgment in the following clear terms:

***“In leg 3 of his statement of claim, the plaintiff claims at paragraph 22 the sum of N100, 000.00 general damages for the hardship, embarrassment and inconvenience he occasioned by the actions of defendants. In U.T.C Vs. Nwokokuru (1993) 3 NWLR (Pt.281) 295, the Court of Appeal as per Uwaifo JCA held at p. 312 that in breach of contract of employment, award of general damages is inappropriate. This is known only in the law of tort. This aspect of the plaintiff’s claim must therefore fail. It is dismissed. The plaintiff however succeeds on legs 1 and 2 of paragraph 22 of his statement of claim. I***

*hereby declare that the plaintiff is and remains an employee of the defendants and should be allowed to continue his service. Short of the determination of the relationship between the plaintiff and the defendants, the plaintiff is entitled to and should be paid his net emoluments and entitlements from November, 1990 till date. Those two items of the plaintiff's claim succeed.”*

The above conclusions are clear and unambiguous. The above decision for me is not difficult to discern or decipher as it was arrived at through a demonstrable process of clear reasoning based on the facts proven in evidence guided by decisions of our Superior Courts and the applicable laws.

At the risk of sounding prolix, the court unequivocally pronounced that “**Legs 1 and 2 of paragraphs 22 of the statement of claim**” which I had reproduced above succeeds. The Judge then made it clear to avoid any confusion that “**I hereby declare that the plaintiff is and remains an employee of the defendants and should be allowed to continue his service. Short of the determination of the relationship between plaintiff and defendants, the plaintiff is entitled to and should be paid his net emoluments and entitlements from November, 1990 till date. Those two items of the plaintiff's claims succeed.”**

As stated earlier, this Judgment was delivered on **21<sup>st</sup> November, 1995**.

The above concluding part of the judgment was what was encapsulated in the Certificate of Judgment vide **Exhibit A** which reads thus:

- “1. Judgment entered in favour of plaintiff against the defendant.**
- 2. Plaintiff is declared remains an Employee of the defendants and should be allowed to continue his service.**
- 3. The Plaintiff is entitle to and should be paid his nets emoluments and entitlements from November, 1990 till date.”**

It is on the basis of the above **Order (3)** that the Applicant situates the **extant application**. Indeed based on this Order, the Applicant has obtained **monetary sums** from the Respondents at different times. Let me perhaps here allow the affidavit of Applicant speak directly on the issue thus:

- “8. That the Judgment Debtors/Respondents paid the sum of N3, 867, 089.24 covering the period from November 1990 to March 2011 to the Chief Registrar High Court of Justice Maitama Abuja who then paid me through Aso Savings & Loans Plc FinBank Cheque for the said sum.
9. That a photocopy of the said cheque is hereby annexed and marked as Exhibit C.
10. That the said payment was based on my employment, salaries and entitlement from November 1990 to March 2011.
11. That after the said payment by the Judgment Debtors/Respondents in compliance with the second limb of the judgment relating to the payment of my emoluments and entitlements, they refused to comply with the first limb of the judgment relating to reinstatement contrary to the order/judgment of the Court.
12. That the refusal to reinstate me in accordance with the judgment of this Honourable Court resulted in another Court Order for payment of the sum of N5, 454, 750.04 to me which accumulated as my emolument and entitlements from April, 2011 to June, 2016.
13. That following an execution levied by the High Court of Justice, FCT Abuja, the said sum of N5, 455, 812. 39 was paid by the Judgment Debtors/Respondents to the Chief Registrar High Court who in turn paid me the balance after deduction of expenses through e-payment to my First Bank Plc Account.
14. That the e-payment by the High Court of Justice in respect of the sum of N5, 455, 812. 39 is hereby and marked as Exhibit D.”

The above situates clearly **the payments** made to Applicant based on the above **Order (3)** in the Certificate of Judgment.

It is again on the basis of the same **Order (3)** that he now claims the sums in the extant application as situated in the following paragraphs of his affidavit thus:

- “15. That after the said payment of N5, 455, 812.39 to me by the Judgment Debtors/Respondents, they still refused to reinstate me to my position of employment.

**16. That the continued refusal of the Judgment Debtors/Respondents to reinstate me in accordance with the terms of the judgment has resulted in another accumulation of salaries, emoluments and entitlements in the sum of N2, 828,452.4 from July, 2016 to December, 2018.**

**17. That a photocopy of the calculation by Olu Adasonla & Co. Chartered Accountants, of my emoluments and entitlements from July 2016 to December 2018 is hereby annexed and marked as Exhibit E.”**

Now it will be presumptuous on my part to question the orders made by Courts of co-ordinate jurisdiction with respect to the payments **earlier** made to Applicant. I have no such jurisdictional powers or mandate.

This court however has the powers to **interrogate** the claims contained in the present application which seeks for **“Emoluments, Salaries and Entitlements which has accrued to the Judgment Creditor/Applicant from July 2016 to December, 2018.”** Since the application is now before this court, the Applicant must situate or establish a justifiable basis that would put the court in a Firm position to grant the application. The grant or failure of the application is therefore not dependent on the fact that similar applications were earlier granted. Put another way, the success or failure of the extant application is wholly depended on a consideration of its merits. No more.

At the risk of prolixity, **Order (3)** above in the **Certificate of Judgment** and situated within the judgment reads thus:

**“The plaintiff is entitled to and should be paid his net emoluments and entitlements from November, 1990 till date.”**

The judgment in the case as stated earlier was delivered on **21<sup>st</sup> November, 1995**, a period of about **28 years now**, but for me there is no ambiguity in it. The judgment projects unequivocally that the net emoluments and entitlements of the plaintiff are to be paid from **“November 1990 till date”** which is the date of the Judgment, **21<sup>st</sup> November, 1995**. The **“till date”** expression used does not mean that emoluments and entitlements will be paid in perpetuity or till eternity as erroneously conceived and contended by Applicant. The expression in English Language means “up to the present time; until now”. The correct usage of the expression depends on whether one is referring to a period of time up to the present or to a period of time up to some specified time. From the

judgment of the Court, the usage of the expression was clearly in the context of or up to the date of the judgment.

I incline to the view that the use of the expression by the learned trial judge that the plaintiff is entitled to and should be paid net emoluments and entitlement from November 1990 “**till date**” could only mean or be in reference to the date of judgment which is 21<sup>st</sup> November, 1995 and the period plaintiff was out of work during the trial because by **Order (2)** above, the learned trial Judge had already declared that the **plaintiff remains an employee of the defendants and should be allowed to continue his service** from the date of judgment and therefore will ordinarily be then entitled to be paid his entitlements from that date. Effectively, from the day of **judgment**, he was legally and in the eyes of the law recognized as a staff of defendants.

There is **however nothing in the judgment** to support or project the case made out by Applicant that because he was not absorbed back by the defendants, that he could then now use the judgment and sit somewhere and calculate what he considers are his entitlements. There is nothing in the judgment allowing for plaintiff to be making demands for payments at different times. That will be making clear **additions** and **interpolations** to the judgment of the court, and he clearly lacks the jurisdictional competence to either add or subtract to the orders to suit any particular purpose. See **Section 128 of the Evidence Act**. The fact that he had successfully earlier moved the court to grant such orders does not mean he will automatically get the same treatment whenever he comes again seeking for fresh payments. It is equally important to add that the Chartered Accountants who made the computations vide **Exhibit E** on which the Applicant relies on to make the extant claims are equally not the Court and therefore the computations they made without any reference to rules applicable to the civil service and also without any ascertainable parameters or indices or basis really have no admissible and or probative value in the circumstances. If the Applicant was however not reabsorbed as ordered, he had plenitude of options under the law to enforce that arm of the claim, but he cannot make awards to himself which the judgment never made or contemplated.

The point to underscore here is that the **Judgment of Court** appears to me sufficiently clear not to allow or accept the rather strenuous and or onerous interpretation placed on it by Applicant allowing him to at intervals make claims for payment of Emoluments, Salaries and Entitlements without any verifiable basis.

That cannot be the intention of the **Judgment** as far as I can see or discern. At some point, there really must be an end to litigation. The court has therefore not been put in a clear commanding height to grant the application. On the unclear and rather fluid facts presented, there is really no factual or legal basis to grant this application. It fails and it is hereby **dismissed**.

.....  
*Hon. Justice A.I. Kutigi*

*Appearances:*

- 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.*