

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON FRIDAY 12TH MARCH 2021**  
**BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 13 MAITAMA – ABUJA**

SUIT NO: FCT/HC/CV/2042/17

**BETWEEN:**

ALHAJI YUSUF GARBA BALEWA ... .. CLAIMANT

**AND**

1. ITN HYDROMAK LTD } DEFENDANTS  
2. OJO OLUKAYODE }

**JUDGMENT**

On 12/12/2014, this Court entered final judgment in favour of the 1<sup>st</sup> Defendant in the sum of **₦105,000,000.00 (One Hundred and Five Million Naira)** only, *inter alia*, in suit No. FCT/HC/CV/807/2012 – ITN HTDROMAK LTD. Vs.

ALHAJI YUSUF GARBA BALEWA, originally filed against the Claimant (as Defendant) under the Undefended List Procedure of the Court; but later on transferred to the General Cause List to be tried by pleadings. As it turned out, the Claimant, although was initially represented by counsel who later withdrew his appearance in the case, failed to defend the suit, as the records of proceedings in that suit reflected.

The Claimant however initiated the instant action, contending that the proceedings that resulted in the judgment in suit No. CV/807/2012 were conducted without his knowledge; that he did not brief the 2<sup>nd</sup> Defendant who claimed to have represented him in the suit; that processes claimed to have been filed at his instance in the suit were done without his knowledge or consent; that he only became aware that judgment was entered against him at the point the 1<sup>st</sup> Defendant was making efforts to execute the

judgment through processes filed at the High Court of Bauchi State; that on the basis of his contention that the said suit was heard and judgment was delivered in the same behind his back, that the said judgment was tainted with fraud and that this Court ought to nullify the proceedings and set aside the judgment, the same having been entered without jurisdiction.

In the Writ of Summons and Statement of Claim he filed in this Court on 14/06/2017, the Claimant claimed against the Defendants, reliefs set out as follows:

- 1. An order setting aside the judgment of this Honourable Court dated 12/12/2014 in Suit No. FCT/HC/CV/807/2012 and Suit No. CV/2227/13 between the 1<sup>st</sup> Defendant (as the Plaintiff) and the Plaintiff (as the Defendant).***

2. ***An order directing the Defendants to pay the Plaintiff the sum of Ten Million Naira (₦10,000,000.00) only being general damages.***
3. ***Cost of action.***

The Defendants respectively defended the action. According to the Statement of Defence filed by the 1<sup>st</sup> Defendant on 19/06/2018, no feature of the processes leading to the award of judgment in the suit was fraudulent; that suit No. CV/2227/13 referred to by the Claimant in his claim was not a different action but the same suit No. CV/807/12 which was erroneously headed suit No. CV/2227/13 in the Statement of Claim filed by the Claimant in the said action; that the Claimant indeed attempted to negotiate the judgment debt with the 1<sup>st</sup> Defendant; and that it was when negotiations failed that the 1<sup>st</sup> Defendant proceeded to file processes to execute the judgment at the High Court of Bauchi State.

On his part, the 2<sup>nd</sup> Defendant equally filed Statement of Defence on 03/10/2017, wherein he denied the entirety of the Claimant's case. He narrated the circumstances under which the Claimant was introduced to him and how the Claimant handed over the originating processes in the said suit in context for him to defend the same; that he filed processes on the basis of the brief he received from the Claimant and that the Claimant, in order to avoid paying the agreed professional fees, became *incommunicado* after the suit was transferred to the General Cause List by the Court; that he had to formally withdraw from the suit as a result; but continued to receive subsequent hearing notices and processes on behalf of the Claimant in accordance with the order of Court, of which processes he informed the Claimant. The 2<sup>nd</sup> Defendant denied that judgment in the suit was

fraudulently obtained and he further counter-claimed against the Claimant as follows:

- 1. A declaration that the joinder of the Counter Claimant is frivolous, vexatious and an attempt at embarrassing the integrity of the Counter Claimant.**
- 2. The sum of ₦10,000,000.00 (Ten Million Naira) only as general damages for the psychological trauma the Counter Claimant was subjected to suffer in this case.**
- 3. The sum of ₦1,850,000.00 (One Million Eight Hundred and Fifty Naira) only being the balance of the 2<sup>nd</sup> Defendant's professional fee.**
- 4. The sum of ₦5,000,000.00 (Five Million Naira) only as costs.**

The Claimant thereafter filed Reply to the 1<sup>st</sup> Defendant's Statement of Defence on 29/06/2018

and Reply/Defence to 2<sup>nd</sup> Defendant's Counter-Claim on 20/11/2017.

At the plenary trial, the Claimant testified in person and called no other witness(es). He adopted the three *Statements on Oath* he deposed to as his evidence – in – chief and tendered in evidence as exhibits, a total of twenty one (21) sets of documents, mostly CTC of Court processes. One document (**Exhibit C22**) was subsequently admitted through him under cross-examination by the 1<sup>st</sup> Defendant's learned counsel.

For the 1<sup>st</sup> Defendant, a sole witness was fielded by name **Yusuf Hassan Aliyu**. He claimed to be Property Agent and Manager. He adopted the *Statement on Oath* he deposed to in defence of the suit. He did not tender any documents in evidence.

The 2<sup>nd</sup> Defendant on his part testified in person. He called two witnesses by name **Aminu Abdullahi (DW2)** and **Victor Olisa, Esq. (DW3)** The trio adopted

their respective *Statements on Oath* and in all tendered a total of six (6) sets of documents as exhibits in the defence of the case of the 2<sup>nd</sup> Defendant and to further establish his Counter – Claim.

At the conclusion of plenary trial, parties filed and exchanged their written final addresses as prescribed by the **Rules** of this Court.

The 1<sup>st</sup> Defendant's final address was filed on 16/10/2020, wherein her learned counsel, **Nnamdi Nwaiwu, Esq.**, formulated a sole issue as having arisen for determination in this suit, namely:

***Whether from the pleadings and evidence led, the Claimant is entitled to the reliefs sought.***

The 2<sup>nd</sup> Defendant filed his final address on 07/08/2020, wherein he also formulated a sole issue for determination in this suit, namely:



***Whether in the circumstances of the instant suit, the Claimant has put enough materials before this Honourable Court so as to be entitled to the reliefs sought.***

The Claimant filed his final address on 18/11/2020, wherein his learned counsel, **O. J. Bichi, Esq.**, formulated two issues for determination, namely:

- 1. Whether the judgment of this Honourable Court delivered on 12<sup>th</sup> December, 2014 in Suit No. FCT/HC/CV/807/2012 or CV/2227/2013 between ITN HYDROMAK LTD. Vs. ALHAJI YUSUF GARBA BALEWA was not a nullity and/or delivered without jurisdiction?***
  
- 2. Whether the judgment of this Honourable Court delivered on 12<sup>th</sup> December, 2014 in Suit No. FCT/HC/CV/807/2012 or CV/2227/2013 between ITN HYDROMAK LTD. Vs. ALHAJI YUSUF GARBA BALEWA is/was not tainted with fraud?***

The 1<sup>st</sup> Defendant filed a Reply on Points of Law to the Claimant's final address on 26/11/2020.

Upon the Court's appraisal of the totality of the Claim, Counter-Claim, all processes filed and the evidence adduced in this suit, two issues are considered germane to the determination of this suit; and without prejudice to the issues respectively formulated by the parties, are set out as follows:

- 1. Whether, on the basis of the totality of the materials placed before the Court, the Claimant has successfully established that suit No. CV/807/2012, in which judgment was delivered by this Court on 12/12/2014, was a nullity and thus liable to be set aside?***
- 2. Whether or not the 2<sup>nd</sup> Defendant has successfully established his Counter – Claim before the Court.***

In proceeding to determine these issues, I must state that I had carefully considered, taken cognizance and

due benefits of the totality of the arguments canvassed by the respective learned counsel in the respective final addresses they filed to buttress the case made out by the respective parties. I shall endeavour to make specific reference to learned counsel's arguments as I deem needful in the course of this judgment.

### **ISSUE ONE:**

The law is well settled that as a general rule, the Court lacks the jurisdiction under any application to alter or vary a judgment or order drawn up, except so far as is necessary to correct errors in expressing the intention of the Court or under the slip rule. However, an exception to this general rule is that where judgment of a Court is considered a nullity, the party affected thereby is availed of three options to take in order to have the judgment vitiated. The party

affected could either appeal the judgment, or file a separate action to have the judgment set aside, or return to the same Court that delivered the judgment, by motion on notice, to have it set aside. See Olufumise Vs. Falana [1990] 3 NWLR (Pt. 136) 1; Yakubu Vs. Gov, Kwara State [1997] 7 NWLR (Pt. 511) 51; Mark Vs. Eke [2004] 5 NWLR (Pt. 865) 54.

In the present case, the Claimant opted to file a separate action in order to have the judgment of this Court in suit No. CV/807/2012 set aside.

The circumstances under which a party may apply for setting aside of a final judgment of a Court by the same Court that delivered it has also been circumscribed by judicial precedent. In First Bank of Nigeria Plc. Vs. T. S. A. Industries Limited [2012] LPELR-9714(SC), the Supreme Court re-established the circumstances as follows:

1. Where the judgment is obtained by fraud or deceit either in the Court or of one or more of the parties. See Alaka Vs. Adekunle [1959] LLR 76; Plower Vs. Lloyd [1877] 6 Ch.D 297; Olufunmise Vs. Falana [1990] 3 NWLR (Pt. 136) 1.
2. Where the judgment is a nullity and a person affected by the order of Court which can be described as a nullity is entitled *ex debito justicia* to have it set aside. See Sken Consult Ltd. Vs. Ukey [1981] 1 SC 6; Craig Vs. Kansan [1943] 1 KB 256, 262 and 263; Ojiako & Ors Vs. Ogueze [1962] 1 SCNLR 112; Okafor & Ors. Vs. A.G. Anambra State & Ors [1991] 6 NWLR (Pt. 200) 659 at 680.
3. When it is obvious that the Court was misled into giving judgment under a mistaken belief

that the parties consented to it. See Agunbiade Vs. Okunoga & Co. [1961] All NLR 110; Obimonure Vs. Erinosh [1966] 1 All NLR 250.

4. Where the judgment was given in the absence of jurisdiction, for instance where there is a failure to comply with an essential provision such as service of process. Madukolu Vs. Nkemdilim & Ors [1962] 2 SCNLR 341; Sken Consult Vs. Ukey [1981] 1 SC 6.
  
5. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication. See Igwe & Ors Vs. Kalu & Ors [2002] 14 NWLR (Pt. 987) 435; [2002] 12 SCM 89; Alao Vs. ACB Ltd. [2000] 9 NWLR (Pt. 672) 264.

See also Alawiye Vs. Ogunsanya [2013] 5 NWLR (Pt. 1348) 620; ACB Plc. Vs. Lesada Nigeria Limited [1995] 7 NWLR (Pt. 405) 26 @ 27.

By my understanding of the Claimant's case on the basis of the evidence on record, he has relied on two grounds for the contention that the proceedings that resulted in the judgment of this Court in suit No. CV/807/12 was a nullity, namely:

1. That the 1<sup>st</sup> Defendant obtained the judgment by fraud.
2. That the proceedings were conducted behind his back and that he was not served with hearing notices of some stages of the proceedings.

I had carefully assessed and pitched the totality of the oral and documentary evidence placed before the Court by the Claimant in order to establish his case

alongside and against the evidence adduced by the respective Defendants and their witnesses. I shall make reference only to the aspects of the evidence of parties that I consider germane to the resolution of the issues formulated for determination.

I shall consider at first the Claimant's contention that the proceedings in suit No. CV/807/12 was conducted behind his back and that he did not brief the 2<sup>nd</sup> Defendant to represent him in the matter.

The Claimant testified that he was not at anytime aware of suit No. CV/807/12, purportedly filed by the 1<sup>st</sup> Defendant and pending against him at the High Court of FCT, Abuja. He went further, in paragraphs 7 – 16 of his *Statement on Oath* of 01/06/2017 to make far reaching accusations against the person of the 2<sup>nd</sup> Defendant. He stated specifically that he did not brief or instruct the 2<sup>nd</sup> Defendant to represent or defend him in any suit; that



as a matter of fact, he has never met the 2<sup>nd</sup> Defendant in all his life; that he never engaged him or retained his services to represent him in any matter whether for free or upon agreed legal fees; that it was after he later discovered that judgment was entered against him in the case that he applied to peruse the Court file and found out that the 2<sup>nd</sup> Defendant filed a motion on notice on 23/04/2013 for extension of time within which to file notice of intention to defend the action filed under the Undefended List Procedure by the 1<sup>st</sup> Defendant; and that the 2<sup>nd</sup> Defendant also filed Notice of Intention to Defend the action purportedly on his behalf on 23/04/2013. The Claimant tendered in evidence as **Exhibits, C1, C6 and C7** respectively, the Writ of Summons in suit No. CV/807/12; Notice of Intention to Defend and the Motion on Notice for extension of

time filed by the 2<sup>nd</sup> Defendant, purportedly on his behalf in suit CV/807/12.

Again, in paragraphs 4 – 10 of the witness depositions filed by the Claimant on 20/11/2017, in response to the 2<sup>nd</sup> Defendant's Statement of Defence, he completely denied that **Aminu Abdullahi (DW2)** brought or introduced **Victor Olisa, Esq. (DW3)** to him. He denied ever meeting **Victor Olisa, Esq.** anywhere; that he never briefed or engaged **Victor Olisa** or the 2<sup>nd</sup> Defendant and did not hand over any processes with respect to suit No. CV/807/12 or any other documents relating to the case to **Victor Olisa**; or the 2<sup>nd</sup> Defendant. He also denied agreeing to pay fees of **₦2,000,000.00** or that he paid a deposit of **₦150,000.00** to **Victor Olisa** with a promise to pay the balance. In short, the Claimant denied the totality of the case of the 2<sup>nd</sup> Defendant in the Defence he filed to his Counter-Claim.

Now, not only did the Claimant deny instructing the 2<sup>nd</sup> Defendant or anyone else to file Court processes on his behalf; but further denied knowledge of the Affidavits purported to have been deposed to by him on 23/04/2013 and bearing his passport photographs, to support both the motion on notice and the Notice of Intention to Defend the action. He also denied that the signatures on the Affidavits and the Certificate of Pre-Action Counseling did not belong to him; and that he never appeared before any *Commissioner for Oaths* to depose to the Affidavits. He further testified that he was shocked to have seen his passport photographs affixed to the Court processes in **Exhibits C6** and **C7** and wondered how the 2<sup>nd</sup> Defendant got hold of his passport photographs that were affixed to the processes.

The Claimant was cross-examined on this aspect of his testimony. He was shown **Exhibits C6** and **C7** by the

1<sup>st</sup> Defendant's learned counsel. He denied that he signed the Affidavits attached to those processes. He further maintained that his signatures on the *Statements on Oath* he deposed to in the instant case are dissimilar to those appended to the Affidavits in support to **Exhibits C6** and **C7**. He admitted that the passport photographs affixed to **Exhibits C6** and **C7** belonged to him but denied knowledge of how they got on the processes.

With respect to the 2<sup>nd</sup> Defendant, he further stated, still under cross-examination by the 1<sup>st</sup> Defendant's learned counsel, as follows:

***“I do not know the 2<sup>nd</sup> Defendant. I have never seen him before until this case started. I have never had any previous transactions and dealings with him before.”***

Under further cross-examination by the 2<sup>nd</sup> Defendant, he also testified as follows:

***“I can see Exhibit C22 now shown to me. I signed the Counter Affidavit. It is correct that I did not categorically deny knowledge of Suit No. CV/807/12 at the FCT High Court in the Counter Affidavit.”***

In order to debunk the stern claim of the Claimant that he never knew the 2<sup>nd</sup> Defendant or instructed him to represent him in suit No. CV/807/12, the 2<sup>nd</sup> Defendant testified in person and called two witnesses. He claimed that he met the Claimant through one of his colleagues by name **Victor Olisa, Esq. (DW3)** who had been an age-long solicitor to one **Aminu Abdullahi (DW2)**, a staff of the ECOWAS Court of Justice, Abuja; that it was the said **Aminu Abdullahi** who brought the Claimant to **Victor Olisa, Esq.** and him where they met at a Garden beside Dar Es Sallam Mosque, Wuse 2, Abuja; that it was at this meeting that the Claimant informed **Victor Olisa, Esq.** and him about suit No. CV/807/12 and that the

Claimant personally handed over the Enrolment of Order for substituted service and Writ of Summons dated 27/02/2013 and 13/11/2012 respectively, to **Victor A. Olisa, Esq.** The 2<sup>nd</sup> Defendant tendered in evidence as **Exhibits D1** and **D2** respectively, the said Writ of Summons and Enrolment of Order for substituted service of originating processes of Suit No. CV/807/2012 between ITN Hydromak Ltd. Vs. Alhaji Yusuf Garba Balewa.

The 2<sup>nd</sup> Defendant testified further that the Claimant also handed over documents relating to the transaction between him and the 1<sup>st</sup> Defendant to **Victor Olisa, Esq.**, including his passport photographs, feasibility studies, schematic designs and Environmental Impact Analysis of a proposed Mass Housing Development for the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant further testified that the Claimant personally pleaded with **Victor Olisa, Esq.** and him

that he will pay the sum of **₦2,000,000.00 (Two Million Naira)** only for the defence of the suit but deposited the sum of **₦150,000.00 (One Hundred and Fifty Thousand Naira)** only; that it was on the basis of the commitment of the Claimant that he swung into action and filed the needed processes in Court; that he filed Memorandum of Appearance on 06/03/2013, which he tendered in evidence as **Exhibit D3**; and that he subsequently had to file Notice of Intention to Defend the suit and Affidavit disclosing defence on the merit out of time as a result of the unavailability of the Claimant to depose to the Affidavit and that he was only able to file on 24/03/2013, when the Claimant showed up; that it was on the basis of the processes he filed on behalf of the Claimant that the Court caused the suit to be transferred to the General Cause List to be heard by pleadings; that the 1<sup>st</sup> Defendant (as Claimant in the

suit) filed her Statement of Claim; but that the Claimant's refusal to physically show up made it difficult for him and his colleague, to file Statement of Defence on his behalf; that it was as a result of the Claimant's lack of communication that he filed Notice of Withdrawal of Appearance of the Claimant in the suit on 23/09/2013. He tendered in evidence the original Notice of withdrawal as **Exhibit D4**.

The 2<sup>nd</sup> Defendant further testified that his appearance for the Claimant in suit No. CV/807/2012 was a result of the briefing he received from him; that it was the Claimant who personally handed his passport photographs to **Victor Olisa, Esq.**, whilst they were in the meeting at the Garden beside Dar Es Sallam Mosque, Wuse 2, Abuja; that the Claimant signed the Pre-Action Counseling Certificate by himself; that **Victor Olisa, Esq.** accompanied the Claimant to the Central



Registry of the FCT High Court, Maitama, where he signed the Affidavits attached to **Exhibits C6** and **C7**; that the Claimant deliberately became evasive because he did not want to pay the balance of professional fees in the sum of **₦1,850,000.00 (One Million, Eight Hundred and Fifty Thousand Naira)** only.

Under cross-examination by the Claimant's learned counsel, the 2<sup>nd</sup> Defendant stated that it was his colleague, **Victor Olisa, Esq.**, who accompanied the Claimant to the *Commissioner for Oaths* at the High Court of FCT where he deposed to the Affidavits contained in **Exhibits C6** and **C7**. He further stated that the deposit made by the Claimant was not paid to him directly; but to **Victor Olisa, Esq.**; and that no receipt was issued to the Claimant; that there was no formal agreement executed with the Claimant to defend him in *suit No. CV/807/12*; that the Claimant

handed over the Court processes, **Exhibits D1** and **D2** to **Victor Olisa, Esq.**, but in his presence.

In order to further debunk the Claimant's claim that he never knew the 2<sup>nd</sup> Defendant or ever briefed him to defend suit No. CV/807/12 on his behalf, the 2<sup>nd</sup> Defendant called as witness, **Aminu Abdullahi**, staff of ECOWAS Court of Justice, who claimed to be bosom friend of the Claimant for many years. He testified that when the Claimant informed him of the 1<sup>st</sup> Defendant's suit against him, he introduced the Claimant to his lawyer, one **Victor A. Olisa, Esq.**; that they met at one Garden beside Dar Es Sallam Mosque, Wuse 2, Abuja; that in his presence both the Claimant and the said **Victor Olisa** spoke and exchanged telephone numbers; that he was aware that it was the said **Victor Olisa** that introduced the Claimant to the 2<sup>nd</sup> Defendant; that he was surprised

that the Claimant denied knowing both **Victor Olisa** and the 2<sup>nd</sup> Defendant.

Under cross-examination by the Claimant's learned counsel, the **DW2** maintained that the only role he played with respect of the case was that he linked the Claimant with the 2<sup>nd</sup> Defendant; that he will be surprised if the Claimant denied knowing him (the **DW2**) too, since they were both friends.

He testified further, still under cross-examination by the Claimant's learned counsel as follows:

*“Mr. Yusuf Garba (Claimant) had called me sometime that I should plead with the 2<sup>nd</sup> Defendant about his fees because he did not pay him and that he has been going to Court on his behalf.”*

The much talked about **Victor Olisa, Esq.**, also lent his voice to the case of the 2<sup>nd</sup> Defendant. He confirmed in his written testimony that the **DW2** was his client and that he was the one that brought the Claimant to see

him at a Garden beside Dar Es Sallam Mosque, Wuse 2, Abuja; that at the meeting the Claimant brought the Writ of Summons served on him in suit No. CV/807/2012; that the Claimant explained to him that he had an agreement with the 1<sup>st</sup> Defendant to secure for her 26 hectares of land in Kubwa, Abuja; that he demanded for documents evidencing the transaction and that the Claimant, three days later, met him at the same Garden where he brought the relevant documents; and that this time, he introduced the 2<sup>nd</sup> Defendant to the Claimant as his colleague and partner. The **DW3** tendered in evidence as **Exhibits D5** and **D6** respectively, the original Feasibility Studies & Schematic Design for the proposed Mass Housing Development by I.T.N Hydromak Ltd., made in June 2012; and original Environmental Impact Analysis of a proposed Mass Housing Development in the FCT, Abuja, by I.T.N.

Hydromak Ltd., which he claimed the Claimant handed over to him.

The **DW3** testified further that at the meeting the Claimant pleaded to pay **₦2,000,000.00** as fees but that he deposited the sum of **₦150,000.00**; that it was the 2<sup>nd</sup> Defendant who prepared the Court processes for the defence of the case, using facts elicited from the Claimant in the Affidavit in support of the Notice of Intention to defend the suit; that the Claimant came to sign the Affidavits personally before the *Commissioner for Oaths* at the FCT High Court, before the same were filed.

The **DW3** further testified that after the Court transferred the suit to the General Cause List, the Claimant stopped to pick his calls and that of the 2<sup>nd</sup> Defendant.

Under cross-examination by the 1<sup>st</sup> Defendant's learned counsel, the **DW3** testified further as follows:

***“With respect to the passport photographs affixed to the Affidavits of the Claimant in the old suit, this is how I obtained it from him: I called him to meet me at the High Court Registry, Maitama, Abuja, where he dropped his passport and he appended his signatures on the Affidavits for filing. It is correct that the Claimant signed the said Affidavits in my presence before the Commissioner for Oaths.”***

The foregoing are the salient testimonies of the parties with respect to the Claimant’s disclaimer of the 2<sup>nd</sup> Defendant and his denial of the knowledge of suit No. CV/807/12 filed against him by the 1<sup>st</sup> Defendant at the High Court of the FCT.

It is interesting to remark as I proceed, that in many a case, two parties who know the truth of their case come before the Court to present such case with sharply divergent, conflicting and sometimes irreconcilable facts. Yet these two parties still expect the Court, perhaps as God’s representative on earth,

imbued with the wisdom and discerning spirit of Solomon; and as the trusted adjudicator, to see through the case they present and unravel the intricately hewn facts and arrive at the same truth they both know.

The present case is one of such in which facts and evidence led by the contending sides were sharply in conflict. As expected, this Court has done what the law enjoins it in order to unravel the mysteries of the conflicts. The Court has placed the evidence adduced on record by both sides of the divide side by side on the imaginary scale of justice, in order to see whose evidence carries more weight than the other.

Now, with particular focus on the issue at hand, there are a few points I pondered aloud – Why would a lawyer go on a frolic to file a defence in an action on behalf of a party he never met or knew or ever had any form of contact with? How did the 2<sup>nd</sup> Defendant

obtain the materials with which he prepared the defence if indeed he never had any form of contact with or briefing from the Defendant (now Claimant) he represented in suit No. CV/807/12? In fact, how did he get hold of the Court summons? Did he just pick them on the road and proceeded to file papers on behalf of someone he never had any contact with or knew? In my view, these scenarios are clearly illogical, abnormal, incredible and clearly implausible if one was to buy the Claimant's account of what happened or what did not happen.

So then, what actually happened? After weighing the testimonies of the 2<sup>nd</sup> Defendant and his two witnesses against the bare denials of the Claimant, it is apparent and more believable that the **DW2 – Aminu Abdullahi** – was the link between Claimant and **Victor Olisa, Esq.** and invariably the 2<sup>nd</sup> Defendant. Or why would the said **Aminu Abdullahi**



come to Court to testify to his friendship with the Claimant and how he linked him with **Victor Olisa, Esq.**, when the Claimant told him of a case pending against him, if it was not so? Was anything at stake for the said **Aminu Abdullahi** for him to have come to Court to lie against the Claimant? Or did the 2<sup>nd</sup> Defendant just pick him on the road to come and testify in Court against someone he did not know and to what end? I do not believe so.

Another question is whether the 2<sup>nd</sup> Defendant could have also procured the **DW2, Victor Olisa, Esq.**, his learned friend, to come to Court to lie against the Claimant who he did not know? I do not also believe so.

I would rather believe the testimony of **Aminu Abdullahi**, as against the bare faced denials by the Claimant, that he was the one that linked the Claimant, his bosom friend, to **Victor Olisa, Esq.**, who

had been his long standing Solicitor, to help him look into the Court case filed against him. I so hold.

In this regard, I must also disbelieve the testimony of the Claimant that he was not aware of the Court case or that no Court papers were served on him. I believe the testimony of **Victor Olisa, Esq.**, that the Claimant handed over the Writ of Summons and Enrolment of Order for substituted service to him after **Aminu Abdullahi** linked the two of them together.

Crucially, under cross-examination by the 2<sup>nd</sup> Defendant, the Claimant admitted living at No. 22, Bamako Street, Wuse Zone 1, Abuja in 2012 and later got an apartment at No. 77, Nelson Mandela Street, Asokoro, Abuja. As shown on **Exhibit D2**, the Enrolment of Order for substituted service of the originating processes in suit No. CV/807/12, the Court ordered that the Claimant (as Defendant in the suit) be served

by substitution at the same address he admitted to have lived in 2012.

It can therefore be correctly inferred that indeed the Claimant received the originating processes in the suit which were served by substitution at the address he once resided in 2012 after which he contacted the **DW2** who later introduced him to **Victor Olisa, Esq. DW3**, to whom he then handed **Exhibits D1** and **D2**. I totally believe the testimony of the **DW3** in this regard that it was the Claimant that handed over to him the Writ of Summons and Enrolment of Order for substituted service in suit No. CV/807/12, **Exhibits D1** and **D2** respectively.

On that score, it can be safely affirmed that suit No. CV/807/12 was commenced by the 1<sup>st</sup> Defendant against the Claimant at the material time by due legal process. I so hold.

The Court also believes the testimony of the 2<sup>nd</sup> Defendant that he was present when the Claimant briefed **Victor Olisa, Esq.** on the case and handed over the documents, **Exhibits D5** and **D6** to him, which related to the transaction between the Claimant and the 1<sup>st</sup> Defendant.

I also believe the testimony of **Victor Olisa, Esq.**, that the Claimant orally offered to pay for the brief, the sum of **₱2,000,000.00** of which he paid **₱150,000.00**. I doubted that the 2<sup>nd</sup> Defendant would have been generous enough to have filed papers on behalf of the Claimant, with whom he had no prior relationship, if truly the Claimant did not make any financial commitment on the case.

Again, the Claimant merely feigned amazement as to how his passport photographs got to be affixed on Affidavits attached to processes filed in Court on his behalf; but did not contend that his passport

photographs were at any time missing or perhaps that the 2<sup>nd</sup> Defendant stole them. In this regard, I believe the testimony of **Victor Olisa, Esq.**, that the Claimant indeed handed the passport photographs to him.

On the Claimant's denial that the signatures appended to the Affidavits attached to **Exhibits C6** and **C7** did not belong to him, in as much as the duty of this Court is not to conduct forensic investigation of the claims of the Claimant herein, it is very significant to state that a mere cursory examination and comparison of those signatures with the ones on **Exhibit C22** as well as the *Statements on Oath* deposed to by the Claimant in the present case, suggests that all of those signatures bear striking similarity.

As rightly submitted by the 1<sup>st</sup> Defendant's learned counsel, by the provision of **s. 101(1)** of the **Evidence Act**, a Court is empowered, *suo motu*, to take the

initiative of making necessary comparisons of signatures in documentary exhibits before it before coming to a reasonable conclusion in the matter. See Tomtec Nigeria Ltd. Vs. FHA [2009] LPELR-3256(SC) (cited by the 1<sup>st</sup> Defendant's learned counsel); and Agu Vs. Duru [2017] LPELR-43184(CA).

Again, the requirement of the law and the **Rules** of this Court is that before any affidavit could be filed in Court, it must be affixed with the passport photograph of the deponent, who must appear personally before the *Commissioner for Oaths* to depose to the same. The evidence on record is that the contentious Affidavits were purported to have both been deposed to before the *Commissioner for Oaths* on 23/04/2013. It is also shown that the *Commissioner for Oaths* signed and sealed the Affidavits. The presumption is therefore that the Claimant duly deposed to the Affidavits before the

*Commissioner for Oaths* of the High Court of FCT, Maitama. As such, pursuant to the provision of s. **168(1)** of the **Evidence Act**, the presumption of regularity of official acts is in favour of the Affidavits, the implication of which is that the Claimant presented himself before the *Commissioner for Oaths* where he signed the Affidavits in contention. See *Seamarine International Ltd. & Ors. Vs. Ayetoro Bay Agency & Ors.* [2017] LPELR-41932(CA).

The argument of the Claimant's learned counsel that the *Commissioner for Oaths* ought to have been called as a witness by the Defendants is totally misplaced. The four options open to a Court in resolving the issue of due execution of a document where the alleged maker denies his signature is well laid down by the Supreme Court in the decision of *Amadi Vs. Orisakwe & Ors.* [2005] LPELR-443(SC), cited by the 1<sup>st</sup> Defendant's learned counsel. Receiving evidence from

the *Commissioner for Oaths* is one but not the only option. The Court is entitled to also receive evidence from a person who is familiar with the signature of the alleged signatory or who saw him write the signature. The Court could also compare the contentious signature with another one admittedly signed by the signatory.

In the present case, not only did the **DW3, Victor Olisa, Esq.**, confirm in his testimony that the Claimant signed the Affidavits attached to **Exhibits C6** and **C7** in his presence before the *Commissioner for Oaths*; the Court went further to also compare the contentious signatures with the ones he appended on the *Statements on Oath* the Claimant deposed to in the present suit, to come to the firm conclusion that the signatures were very similar and as such the inference could be drawn that he indeed signed the contentious signatures.



Let me add here that even if the evidence on record tend to establish that the Claimant briefed **Victor Olisa, Esq.**, but not the 2<sup>nd</sup> Defendant directly to represent him in defending suit No. CV/807/12, the fact that he endorsed Court processes prepared by the 2<sup>nd</sup> Defendant on his behalf, especially **Exhibits C6** and **C7** respectively, is evidence of his affirmation of the 2<sup>nd</sup> Defendant as his counsel in the matter. I so hold.

The evidence on record clearly weighs heavily against the Claimant's allegation that his signatures which were appended on the Affidavits filed in support of **Exhibits C6** and **C7** were forged by the 2<sup>nd</sup> Defendant, as he was unable to lead any credible evidence, let alone prove such weighty criminal allegation beyond reasonable doubt as required by the provision of **s. 135(1)** of the **Evidence Act**.

I must therefore hold that one of the planks on which the Claimant hinged the allegation that the judgment in suit No. CV/807/12 was obtained by fraud, in that his passport photographs were procured without his knowledge and that his signatures were forged on Affidavits filed in the proceedings, has irredeemably crumbled. As such, the allegation is unsustainable.

Now, in order to further establish that the Claimant is not a witness of truth whose testimonies cannot be relied upon, I make reference to his categorical testimony in paragraph 59 of his *Statement on Oath* of 01/06/2017, where he stated as follows:

***“59. That I became aware of the suit and judgment against me after the High Court of Justice of Bauchi State granted the 1<sup>st</sup> Defendant leave to serve me with the motion on notice dated 4/8/2016 to attached (sic) a house purported to be mine and the motion dated 4/8/2016 contained CERTIFICATE***

***OF JUDGMENT OF SUIT NO. FCT/HC/807/2012  
as an exhibit, and it was at that point I became  
aware of the judgment in suit No.  
FCT/HC/CV/807/2012.”***

Under cross-examination by the 1<sup>st</sup> Defendant’s learned counsel, the Claimant again maintained the same stance when he testified as follows:

***“It is correct that it was in respect of the transaction involving \$605,000 that the 1<sup>st</sup> Defendant sued me in 2012 but I only became aware of the action when she sought to levy execution in Bauchi State.”***

Still under cross-examination by the 1<sup>st</sup> Defendant’s learned counsel, the Claimant further testified as follows:

***“It is not correct that I attempted to settle the judgment debt with the 1<sup>st</sup> Defendant before he started the execution process. When I was served with Exhibits C19 and C21, I cannot recall if I filed***

***any processes in the Bauchi High Court in rebuttal of those execution processes.”***

At this point, the 1<sup>st</sup> Defendant’s learned counsel confronted the Claimant with the Counter Affidavit dated the 4<sup>th</sup> of August, 2016, which he deposed to and filed in respect of Motion No. BA/342M/2016 – ITN HYDROMAK LTD Vs. ALHAJI YUSUF GARBA BALEWA at the High Court of Bauchi State, in opposition to the Motion on Notice filed by ITN HYDROMAK LTD., on the same 4<sup>th</sup> August, 2016, to seek leave to attach and sell his immovable property in satisfaction of the judgment debt in suit No. CV/807/12 (which process he had earlier on tendered in evidence as **Exhibit C19**). Upon sighting the process, he further had this to say:

***“I can see the Court process now shown to me. I can recognize the process as the one I filed in***

***opposition to papers filed by the 1<sup>st</sup> Defendant in  
Bauchi State High Court.”***

At this point, the said Counter Affidavit was tendered through him as **Exhibit C22**.

Let me state in passing here that I agree with the 1<sup>st</sup> Defendant’s learned counsel that **Exhibit C22**, which amounts to evidence given by the Claimant in previous proceedings, is in law admissible and relevant in the present case only for one purpose, which is to impeach his credit and to show that his testimony in the previous proceedings contradicts his evidence in the case at hand, as permitted by the provisions of **Ss. 232 and 233** of the **Evidence Act**. See also *Alakija Vs. Abdulai* [1998] 6 NWLR (Pt. 552) 210; *Bankole Vs. Dada* [2003] 11 NWLR (Pt. 830) 174; *Kekong Vs. State* [2017] LPELR-42343(SC).

Now, when the Claimant was confronted with the said Counter Affidavit, **Exhibit C22** he was asked to read

paragraphs 3(a), (b) and (c) thereof, which he did and after which he had this to say:

***“I stated in the Counter Affidavit that I tried to settle the judgment debt amicably.”***

I find that this testimony is the exact opposite of what he had said earlier on before he was confronted with **Exhibit C22.**

Indeed the Claimant had deposed in the said paragraph 3(a) and (b) of the Counter Affidavit as follows:

**“3...**

***(a) That contrary to the depositions contained in paragraph (a) of the Applicant’s affidavit, it was the Executive Members of the Applicant that sometimes this year 2016 drew his (my) attention to this Judgment and after which the judgment***

**both of them (us) commence (sic)**  
**negotiation on how to offset same.**

**(b) That paragraph (f) of the Applicant's affidavit is not true as the Applicant and myself have since my attention was drawn to the judgment put heads together to resolve the issue as the Applicant knows full well that the money it committed in the transaction was delivered to the as it instructed me."**

(Underlined portions for emphasis)

When the Claimant made the deposition in paragraph 59 of his *Statement on Oath* reproduced in the foregoing, that he found out about suit. No. CV/807/12 for the first time after the Bauchi State High Court granted leave to the 1<sup>st</sup> Defendant pursuant to his motion of 04/08/2016 to attach a house purportedly belonging to him, he seemed to

have forgotten his testimony in that Counter Affidavit (**Exhibit C22**) or perhaps he did not expect that the 1<sup>st</sup> Defendant will get hold of it and confront him with his depositions therein; which depositions apparently contradicted his stance in the present suit.

It is easily deducible from the Claimant's depositions in **Exhibit C22** that he was apparently aware of the suit against him at the High Court of FCT that produced the said judgment sought to be enforced in Bauchi. Someone who claimed he was not aware of a suit filed against him could not at the same time be dialoguing with the Judgment-Creditor with a view to offsetting the judgment-debt. If indeed he was not aware of the suit, that ordinarily would have been his first point of opposition in the said Counter Affidavit; but nowhere in the enforcement proceedings in Bauchi State High Court did he deny knowledge of the suit which produced the judgment that was sought to be



enforced. Rather, all he said was that he was negotiating with the 1<sup>st</sup> Defendant to settle the judgment-debt and that the property sought to be attached no longer belonged to him.

It is therefore laughable and ridiculous for the Claimant to turn around and contend in the instant action that he was not aware of the pendency of suit No. CV/807/12 against him or that he did not brief counsel to represent him. I must therefore hold, without equivocation, that the Claimant's **Exhibit C22** has further exposed him as a serial liar whose testimonies cannot be relied upon.

The position of the law is that two pieces of evidence contradict one another when they are by themselves inconsistent; and where a witness gives contradictory and inconsistent testimonies the Court cannot choose and pick between conflicting testimonies of witnesses on the existence of a fact, which to believe and which

not believe. It must disregard the two conflicting versions as unreliable. See Egbuche Vs. Egbuche [2013] LPELR-22512(CA).

It must further be placed on record in this judgment that in the course of plenary trial, this Court indeed observed the Claimant's evasive demeanour in the manner he responded to questions posed to him in the course of cross-examination by the 1<sup>st</sup> Defendant's learned counsel and noted on the records of proceedings the following remarks:

***“The Claimant is shifty and evasive. He attempted to avoid obvious answers to questions put to him by the 1<sup>st</sup> Defendant's learned counsel. His evidence should be taken with a pinch of salt.”***

These remarks are to further underscore the point that the Claimant has not been forthright in his oral testimony before the Court.

Having found and held that the Claimant has unsuccessfully established that he was not aware that suit No. CV/807/12 was filed against him at the High Court of FCT by the 1<sup>st</sup> Defendant that produced the judgment sought to be set aside; and that he did not brief the 2<sup>nd</sup> Defendant to represent him in the action; the next question to be resolved is whether there is any feature of the proceedings in the suit that could be said to be irregular or lacking in the character of a legitimate adjudication for the same and the judgment resulting therefrom to be rendered as null and void?

For consideration is the Claimant's contention that despite the fact that the 1<sup>st</sup> Defendant was aware that the 2<sup>nd</sup> Defendant had withdrawn his purported representation for him in suit No. CV/807/12, on 23/09/2013, yet, she continued to serve the 2<sup>nd</sup> Defendant with hearing notices and other subsequent

processes in the suit; which were never brought to his attention.

In support of this contention, the Claimant tendered in evidence as **Exhibit C14, NOTICE OF WITHDRAWAL OF APPEARANCE**, filed by the 2<sup>nd</sup> Defendant on 23/09/2013, by which he withdrew his appearance from the suit as representing the Claimant. The Claimant further tendered in evidence the Record of Proceedings in the suit, as **Exhibit C11**.

Evidence adduced by the Claimant further revealed that pursuant to the order of Court of 25/09/2013, directing hearing notice to be served on the Claimant through his former counsel, hearing notices for the proceedings of 21/10/2013; 18/03/2014 and 08/08/2014, were indeed issued and served on **“Alhaji Yusuf Garba Balewa c/o Ojo Olukayode, Esq.”** accordingly. Certified true copies of the hearing

notices were admitted in evidence as **Exhibits C4, C13** and **C12** respectively.

Again, the Claimant had alleged that the 1<sup>st</sup> Defendant purported to file Statement of Claim in suit No. CV/2227/13 – ITN HYDROMAK LTD. Vs. ALHAJI YUSUF GARBA BALEWA, certified true copy of which he tendered in evidence as **Exhibit C2**; that the said suit No. CV/2227/13 was never initiated by any originating process; that the said suit is different from suit No. CV/807/12 which the Court transferred to the General Cause List; that the said Statement of Claim in suit No. CV/2227/13 was never served on him; that the Court relied on the said Statement of Claim (**Exhibit C2**), in deciding suit No. CV/807/12 against him.

The Claimant further alleged that despite the order of Court that hearing notices be served on him, same were served in the office of the 2<sup>nd</sup> Defendant and

that the Court relied on the purported service on the 2<sup>nd</sup> Defendant in proceeding with the case, foreclosed him from cross-examining the 1<sup>st</sup> Defendant's witnesses and further adjourned for adoption of final addresses.

The Claimant further claimed that the 1<sup>st</sup> Defendant's final address in the suit was served on the 2<sup>nd</sup> Defendant. He again tendered in evidence as **Exhibit C9**, the "*Plaintiff's final written address*" filed on 22/11/2013 and which shows in its face that same was served on the 2<sup>nd</sup> Defendant on 28/11/2013.

The Claimant further contented that he was also not served with hearing notice for the date judgment in the suit was delivered on 12/12/2013 and tendered in evidence certified true copy of the judgment in the said suit No. CV/807/12, as **Exhibit C10**.

On the basis of these facts, the Claimant contended that the proceedings of this Court in suit No.

CV/807/12 were a nullity, same having been entertained without jurisdiction and that the judgment of 12/12/2014, entered in favour of the 1<sup>st</sup> Defendant in the suit is also liable to be set aside.

Now, with respect to the issue of suit No. CV/2227/13 referred to by the Claimant, the 1<sup>st</sup> Defendant's witness, **Yusuf Hassan Aliyu**, explained in paragraph 18 of his *Statement on Oath* that the 1<sup>st</sup> Defendant's learned counsel erroneously stated the suit No. on the Statement of Claim filed in respect of suit No. CV/807/12 as suit No. CV/2227/13; that it was not a different suit.

On the part of the 2<sup>nd</sup> Defendant, he admitted that after he formally withdrew appearance from the suit, he started receiving hearing notices in respect of the case meant for the Claimant and that he always informed **Victor Olisa, Esq.** of the dates who in turn

informed the Claimant but that the Claimant failed to take any action on his case.

Under cross-examination by the Claimant's learned counsel, the 2<sup>nd</sup> Defendant again admitted that after withdrawing his appearance for the Claimant in suit No. CV/807/12, he continued to receive hearing notices meant for the Claimant; including the 1<sup>st</sup> Defendant's motion on notice for extension of time to file her final address and her final address (**Exhibits C5 and C9** respectively).

He was also shown the hearing notices **Exhibits C12, C13, C15-C17** and he admitted that they were duly served on him. He further testified as follows:

***"I did not file any Affidavit in Court to show the attempts I made to trace and serve the Claimant with those processes I mentioned. It is correct that it was Victor Olisa, Esq., not me, that made calls to the Claimant. It is correct that we, as a firm, did not***



***make any Affidavit that we attempted to call the Claimant without success.”***

The Claimant’s learned counsel equally cross-examined the **DW3, Victor Olisa, Esq.**, on the same issue and he had this to say:

***“I cannot say if any Affidavit was filed to say that the Claimant could not be reached when his former lawyer withdrew his appearance. ... I did not receive any process or hearing notices meant for service on the Claimant in the old suit”***

Now, the proceedings of 25/09/2013 in suit No. CV/807/12 (contained in **Exhibit C11**), are of particular relevance to the issue under resolution. I reproduce the salient portion as follows:

***“PC: The matter was scheduled for hearing today. But whilst I was in Court this morning, I was served with a notice of withdrawal of appearance filed by the Defence counsel on 23/09/2013. Even though***

***our other witnesses are available in Court, but our hands now seem tied.***

***Court: In view of withdrawal of appearance of the Defendant's erstwhile learned counsel, this suit shall further be adjourned to 21/10/2013, for further hearing. Fresh hearing notice shall be served on the Defendant in person through his former counsel.***

***Sgd.***

***Hon. Judge***

***25/09/2013"***

(Underlined portion for emphasis).

The order of the Court with respect to service of hearing notice on the Claimant (as Defendant in that suit) was clear and unambiguous in its face. It was to the effect that fresh hearing notice of the subsequent hearing date be served on the Claimant through the 2<sup>nd</sup> Defendant.

At this point, I must again place on record what I found to be a desperate attempt by the Claimant's learned counsel to deceive and mislead this Court by deliberately misrepresenting the relevant portion of the record of proceedings, **Exhibit C11**, in his final address, by omitting the crucial portion of the order of this Court of 25/09/2013. Whereas the Court ordered that ***“Fresh hearing notice be served on the Defendant in person through his former counsel;”*** the Claimant's learned counsel, at page 6 of his final address, whilst quoting the same portion of the order, audaciously omitted to include the most crucial words – ***“through his former counsel.”*** Learned counsel went on to build a substantial portion of his arguments on this deliberate misrepresentation by contending that the Claimant was not served personally any hearing notice as ordered by the Court.

The conduct of the Claimant's learned counsel in this regard is a clear act of sharp practice; it is a clear violation of **Rule 15(3) (g) and Rule 32(1) & (3)(f) and (k)** of the **Rules of Professional Conduct for Legal Practitioners**.

**“Sharp practice”** has been described as **“unethical action or trickery especially by a lawyer”** in BLACK'S LAW DICTIONARY, EIGHTH EDITION, page 1409; and as the Court of Appeal held in Dr. (Rev.) Olapade Agoro Vs. Oba Adekunle Aromolaran & Anor [2011] LPELR-8906(CA), it is the duty of the Court to repress sharp practice.

I therefore, in no uncertain terms, condemn the despicable conduct of the Claimant's learned counsel in seeking to mislead this Court in order to obtain judgment by trick and falsehood. As a Minister in the Temple of Justice, a lawyer should always refrain from conducts that portray him as being desperate to

win a case at all costs, as the Claimant's learned counsel has done in the present case. That is by the way.

Evidence on record and as duly confirmed by the 2<sup>nd</sup> Defendant, is that the 1<sup>st</sup> Defendant complied with the order of Court by serving the Claimant hearing notices and subsequent processes in the suit through the 2<sup>nd</sup> Defendant. Having complied with the clear order of Court, the question then is whether it was the responsibility of the 1<sup>st</sup> Defendant (as Claimant in that case) to further ensure that the 2<sup>nd</sup> Defendant got the hearing notices across to the Claimant?

In order to better understand the scenario in the present case, it is fitting to use the analogy of the situation where a Court orders substituted service of a process on a party through an adult inmate of his abode and the Bailiff of Court complies with the order and deposes to Affidavit of Service in that regard. If

the party ordered to be served turns up later to seek to set aside proceedings of Court on the ground that he did not receive any Court processes, could he succeed in law? Could it be said that the Bailiff did not serve in accordance with the tenor of the order for substituted service? Should the innocent party who ensured that the order of Court was complied with in its terms be penalized for the failure of the adult inmate to deliver the Court processes served on him on the party ordered to be served by substitution? My answer to these posers is No!

So is the situation in the present case. The Court ordered the 1<sup>st</sup> Defendant to serve hearing notice on the Claimant through the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant complied with the order. The 2<sup>nd</sup> Defendant admitted that hearing notices and processes meant for the Claimant were indeed served on him by the 1<sup>st</sup> Defendant; but he failed on his own

to turn over the processes served on him to the Claimant. This Court, in law and in good conscience cannot in the circumstances hold the 1<sup>st</sup> Defendant responsible for the lapse of the 2<sup>nd</sup> Defendant in failing to ensure compliance with the Court order. It would have been a different case if the 2<sup>nd</sup> Defendant had returned the hearing notices and other processes to the Court and informed the Court that he was unable to locate the Claimant. He did not do so in that case. As such, whatever grievances the Claimant have cannot be against the proceedings in that case or the 1<sup>st</sup> Defendant; but personally against the 2<sup>nd</sup> Defendant who failed to act in accordance with the order of the Court. I so hold.

I must add that all the authorities cited by the Claimant's learned counsel with respect to the issue at hand relates to situations where it is shown that hearing notices were not served at all; which is

different from the circumstances in the present case. Those authorities indeed supported the steps the Court took as shown in **Exhibit C11**.

Again, in its judgment, tendered in evidence by the Claimant, as **Exhibit C10**, the Court affirmed in page 3 thereof as follows:

*“...and by Notice filed on 23/09/2013, erstwhile learned counsel for the Defendant, Ojo Olukayode, Esq., withdrew his appearance for the Defendant. Therefore, the Court ordered fresh hearing notice to be served personally on the Defendant; which order was duly complied with, as borne by the records of the Court. In spite of this, the Defendant failed to further appear in the suit; as such, the Court ordered that the matter proceeded to trial.”*

The decision of the Court reproduced here touched on the issue of service of hearing notice on the Claimant. The Court made a positive finding to the extent that



the Claimant was served. This aspect of the decision cannot be subjected to any form of review by the same Court in another action. It will amount to the Court sitting on appeal over its own decision of which it is *functus officio*. If the Claimant was aggrieved by the Court's decision here, the proper approach was for him to have appealed the judgment. Having failed to appeal, he cannot, by another action filed in the same Court as in the instant suit, seek to reverse a positive decision of a Court. I so hold. See Fapa Company Ltd. Vs. Ocean Waves Corporation Ltd. [2017] LPELR-41932(CA); Edo State House of Assembly Vs. Agbebaku [2018] LPELR-2213(CA).

The situation could have been different if the Court, in its judgment, was totally silent on the issue of service and it turned out that the Claimant was not served. A separate action could suffice in such circumstance to set aside the judgment.

It is therefore improper for the Claimant's learned counsel to argue and contend before the same Court that delivered a judgment and made a definite finding on the issue of service of hearing notice, that the Court did not ensure compliance with its directive or order but relied on the statement of the of the 1<sup>st</sup> Defendant's counsel that the Claimant was served with hearing notice before embarking on adjudication on 21/10/2013. Such arguments can only be tenable before the appellate Court, in the circumstances. I so hold.

I therefore hold, without hesitation, that the proceedings in suit No. CV/807/12 were conducted in accordance with the law and **Rules** of Court; and no feature of the proceedings has be proved to be tainted either by any legally recognized elements of fraud or by unfair hearing.

The Claimant made heavy weather of an innocuous error committed by the 1<sup>st</sup> Defendant by mistakenly stating a wrong suit No. on the Statement of Claim she filed in suit No. CV/807/12. A simple comparison of the reliefs endorsed on the said Statement of Claim with the reliefs endorsed on the Writ of Summons will further reveal that they are exactly the same; which presupposes that the wrongly labelled suit No. CV/2227/13 is one and the same with suit No. CV/807/12; and the 1<sup>st</sup> Defendant's error in mistakenly referring to suit No. CV/807/12 as suit No. CV/2227/13 cannot constitute a vitiating factor of the proceedings sought to be set aside by the Claimant since the Court or no one else is shown to have been misled by the error. I so hold.

Finally, on the Claimant's contention that he was also not notified of the date the judgment in suit No. CV/807/12 was delivered and as such the judgment

was a nullity and is liable to be set aside, the well known position of the law is restated by the Supreme Court in Chime Vs. Chime [2001] 3 NWLR (Pt. 701) 527, where it was held as follows:

***“I am yet to come across a provision of any of our laws which provides that where a judgment is delivered without due notice of the delivery date to a party involved in consequence of which he is absent in court when the judgment is delivered, the judgment so delivered is null and void. Its delivery is neither without jurisdiction, nor is it null and void. It may amount to a mere irregularity which has no effect on the substance of the judgment or jurisdiction of the court.”***

The Court has engaged in the foregoing in-depth analysis to come to the overall conclusion that the first issue must be and is hereby resolved against the Claimant in that the imaginary scale of evidence weighed heavily against him in this suit. His claim for

the setting aside of the judgment of this Court in suit No. CV/807/12 and for general damages of the sum of **₦10,000,000.00 (Ten Million Naira)** only are unfounded, unproven, lacked in merit and substance and as such cannot be sustained. The claim shall be and is hereby accordingly dismissed.

## **ISSUE TWO:**

I now proceed to the second issue for determination which deals essentially with the 2<sup>nd</sup> Defendant's Counter-Claim against the Claimant. The 2<sup>nd</sup> Defendant claimed that he had been in active law practice for a period of fourteen (14) years as of 31/10/2017 when he filed the Counter-Claim. The crux of the Counter-Claim, as contended by the 2<sup>nd</sup> Defendant, is essentially that the Claimant had no basis and justification to have dragged him to the present suit, having regard to the fact that he briefed

him to represent him in the suit. He had repeated the entirety of the evidence he relied upon in defence of the main suit to further support his Counter-Claim.

I have carefully examined the totality of the legal arguments canvassed by the 2<sup>nd</sup> Defendant in his written address. Nowhere did he draw the attention of the Court to any provision of the law that precludes the Claimant from suing him to Court, no matter how frivolous or unmeritorious the action may turn out to be. The 2<sup>nd</sup> Defendant cannot be seen to be contending that he is immune from law suits.

As such, by joining the 2<sup>nd</sup> Defendant to the instant action as a co-defendant and making allegations against him, does not, as much as I know the law, donate any course of action to the 2<sup>nd</sup> Defendant in the same action by way of Counter-Claim.

On that score, the claim for damages cannot also arise and I would waste no time in dismissing reliefs (1) and (2) of the Counter-Claim.

With respect to the claim for the payment of the sum of **₦1,850,000.00 (One Million, Eight Hundred and Fifty Thousand Naira)** only, as balance of professional fees, the evidence on record is that there was an oral agreement between the parties that the Claimant shall pay **Victor Olisa, Esq.** and the 2<sup>nd</sup> Defendant the sum of **₦2,000,000.00** as fees for handling the Claimant's defence of suit No. CV/807/12. The further evidence on record is that the Claimant paid **Victor Olisa, Esq.** a deposit of **₦150,000.00 (One Hundred and Fifty Thousand Naira)** only; that the 2<sup>nd</sup> Defendant filed processes on behalf of the Claimant that resulted in the Court ordering the suit filed under the Undefended List Procedure to be transferred to the General Cause List

to be tried by pleadings. The further evidence before the Court is that the 2<sup>nd</sup> Defendant withdrew his appearance and abandoned the suit, at the crucial stage of trial, after efforts to reach the Claimant proved abortive, according to him.

The Court had earlier on held, upon assessing the state of the evidence that it believed the testimony of the 2<sup>nd</sup> Defendant and the **DW3** that the Claimant agreed to pay the sum of **₦2,000,000.00** as fees for the defence of the suit and that he paid the deposit of the sum of **₦150,000.00**.

However, I believe that it is against public morality for learned counsel who withdraw from a case and failed to effectively communicate the facts of his withdrawal to the party that engaged him to come forward later to claim payment of professional fees for job he abandoned. The 2<sup>nd</sup> Defendant having not shown by evidence that he communicated his notice of



withdrawal from further participating in suit No. CV/807/12 to the Claimant, cannot claim entitlement to payment of balance of professional fees. I so hold. Consequently, I hold that the entirety of the 2<sup>nd</sup> Defendant's Counter-Claim is unmeritorious. It shall be and it is hereby accordingly dismissed. I make no order as to costs with respect to the main claim and the Counter-Claim.

**OLUKAYODE A. ADENIYI**

***(Presiding Judge)***

**12/03/2021**

**Legal representation:**

**O. J. Bichi, Esq. – for the Claimant**

**Nnamdi Nwaiwu, Esq. (with Joseph Usman, Esq.) – for the 1<sup>st</sup> Defendant**

**Adedamola Fanokun, Esq. – for the 2<sup>nd</sup> Defendant**