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

SUIT NO: CV/27/2018

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

ECOBANK PLC……JUDGMENT CREDITOR/APPLICANT

AND

OBAT OIL AND PETROLEUM…… JUDGMENT DEBTOR/RESPONDENT

JUDGMENT

This is a motion on notice brought pursuant to Order IV Rule 16 of the judgment (Enforcement) Rules and under the inherent jurisdiction of this court, and whereof the applicant seeks for the following:

a) An order of this Honourable Court granting leave to issue a writ of attachment and sale of the immovable property of the judgment debtor known as Febson Hotels & Malls, situate at Plot 2425 Herbert Macaulay way Abuja, same being in line with the terms of settlement duely executed by the parties made consent judgment of the High Court of Lagos State and registered as the judgment of this Honourable Court in the above captioned suit.

b) And for such further or other orders as this Honourable Court may deem fit to make in the circumstance.

The ground upon this application is brought are as follows:

1) The parties herein executed terms of settlement which was duly entered as the consent judgment of the High Court of Lagos state on the 15th day of March, 2017 in suit No. LD/ADR/545/2013.
2) The said consent judgment was pursuant to the leave of this Honourable Court Coram B Hassan J. granted on the 7th day of February, 2019 registered at the register of judgment of this Honourable Court as FJ/27/2018.
3) By the terms of settlement (the consent judgment of the Honourable Court) the judgment debtor duely admitted to pay the applicant herein the sum of N5,000,000,000.00 (Five

Billion Naira) in full and final settlement of its indebtedness to the applicant.

4) It was duley agreed by the parties that the judgment sum shall be realised from the sale of property known as Febson Hotels & Malls, situate at Plot 2425 Herbert Macaulay way Abuja, belonging to the judgment debtor herein.
5) That all efforts made by the applicant to sell the said property have been unsuccessful as the judgment debtor who is currently in control/possession/occupation of the said property has prevented potential buyers from paying for the said property by demanding exorbitant/unrealistic amount for the sale of the property.
6) That there is urgent need for this Honourable Court to authorise the attachment and sale of the said property by the Sheriff of this Honourable Court, to enable the applicant enjoy the fruit of its successful litigation.

The application is supported by a fifteen paragraphed affidavit deposed by one David Sunday Thomas, being a litigation clerk in the law firm of the counsel to the applicant, and same relies upon all the averments as are contained therein.

Attached to the affidavit are the following documents.

a) The enrolled judgment based upon the terms of settlement of the High Court of Lagos State dated the 15th day of March, 2017.
b) The certificate of judgment dated the 18th day of July, 2017.
c) The court order of this Honourable Court directing the Chief Registrar of this court to recognise and register the particulars of judgment delivered by the High Court of Lagos State Coram: Oyefeso J. on the 15th March, 2017 in **LD/ADR/545/2013 – Obat Oil and Petroleum Ltd V. Eco bank Plc** (Eco Bank Nig. Ltd) in this court's Nigeria Register of judgment for the execution and/or enforcement of the judgment within jurisdiction.
d) Offer letter to purchase the said property made by Roland & Partners dated the 15th January 2018.
e) Letter of offer made by Alfcom Golding Properties International Ltd dated the 26th April, 2018.

f) Letter of offer made by Cos-Metro Property Services Ltd dated the 15th day of November, 2017
g) Certificate of occupancy of the said property with file No. MISC 57515
h) Letter of consent made by the respondent addressed to the Minister of the Federal Capital Territory, Abuja.

The counsel filed a written address which he adopts as oral argument.

The respondent filed seven paragraphed counter affidavit deposed to by one Thomas Ojo, a legal practitioner in the law firm of the counsel to the respondent, and same relies upon the averments as are contained therein.

Attached to the counter affidavit is one document captioned "Notice of Assignment" dated the 5th day of April 2017 written by the applicant to the respondent.

Accompanying the affidavit is a written address of counsel, which he adopts as his oral argument.

The counter affidavit of the respondent and the written address of counsel to the respondent were all served on the counsel to the applicant in court on the 29th October, 2019, and the counsel to the applicant attempted to address the court orally on the documents attached to the counter affidavit and to reply on point of law in which the counsel to the respondent vehemently opposed on the ground that the provision of Order 43 Rule 1 (4) of the Rules of this court are clear to the effect that a party who is served with a counter affidavit is only allowed to respond by filing a reply affidavit and a written address on point of law, and urged the court to refuse to allow the counsel to the applicant to address the court orally.

Even though, the counsel to the applicant insisted that he has the right to respond orally to the documents attached to the counter affidavit and the content of the counter affidavit by virtue of the fact that he was only served with such documents and the counter affidavit on the same day of the hearing of the motion, however, this court deemed it appropriate to direct the two counsel to address the court as to the propriety of the counsel to the applicant responding to the counter affidavit orally, and a date was taken.

On the next return date, the counsel to the applicant filed and served on the counsel to the respondent a reply affidavit and a reply on point of law. The reply affidavit was dated and filed the 5th day of November, 2019.

On the same day of 18th November, 2019, the counsel to the respondent filed and served on the counsel to the applicant a judgment debtor/respondent's written address with respect to the issue raised su motu by the court as to the propriety of the counsel to the applicant responding to the counter affidavit filed by the respondent.

The counsel to the respondent filed a notice of objection to the applicant's reply affidavit filed the 5th day of November, 2019 and a reply on point of law dated the 4th day of November 2019, and this is accompanied by a written address of counsel to the respondent in support of the Notice of objection dated the 15th day of November, 2019.

The counsel to the applicant filed a written address in opposition to the notice of objection of the counsel to the respondent and was dated the 22nd day of November, 2019.

The counsel to the applicant further filed an affidavit for the record dated the 18th day of March, 2020, and attached the following documents:

a) A letter from the respondent addressed to the Managing Director of the applicant dated the 16th day of November, 2019.
b) A Memorandum of Understanding entered between the applicant and the respondent dated the 27th November, 2019 in which the respondent approached the applicant for amicable resolution of the outstanding indebtedness.

Thus, let me resolve the issue raised su motu by this court as to the propriety or otherwise of allowing the counsel to the applicant to respond to the documents and the counter affidavit of the respondent orally instead of in writing.

The counsel to the respondent in his written address in that regard raised this issue which in consonance with the issue raised by this court su motu, to wit:

"whether the applicant in a motion on notice who after being served with the respondent's counter affidavit and written address, has elected not to file a written address in reply on points of law with a reply affidavit and has adopted the applicant's written address in support of the applicant's motion on notice ought to be allowed to canvass oral argument in reply on point of law to the respondent's written address?

It is pertinent to note, as pointed out by the counsel to the respondent, that on the 29th October, 2019 when the motion came up for hearing the respondent filed a counter affidavit and a written address in opposition to the applicant's motion, both of which were served on the counsel to the applicant on the same day being the 29th day of October, 2019.

That instead of the counsel to applicant to take a date to file a reply affidavit and a reply on point of law he elected to continue with the hearing of the applicant's motion on notice dated the 18th October, 2019 and which was filed on the 21st October, 2019, and also in the course of adumbration of the applicant's written address in support of this motion, the counsel to the applicant started to canvass oral arguments in reply on point of law to the submissions contained in the respondent's written address filed on the 29th October, 2019 and it was on that the counsel to the respondent vehemently object to the applicant's attempt to canvass oral argument in reply on point of law on the ground that the provisions of Order 43 Rule 1 (4) of the Rules of this court do not provide for such oral address in reply on point of law, hence this court asked the two counsel to address the court su motu. The counsel to the respondent in this regard submitted that this calls for the correct interpretation of the provisions of Order 43 Rule 1 (4) of the Rules of this court and he took his time to reproduce same, and such interpretation should be in line with Order I Rule 4 of the Rules of this court which provides in essence that these Rules of the FCT High Court shall be interpreted in accordance with the Interpretation Act or any re-enactment.

The counsel submitted that by the provisions of Order 43 Rule 1 (4) of the Rules of this court is for the applicant to file, if any, an address in reply on point of law with reply affidavit to the written address of the opposing party and not for the applicant to canvass oral argument, and he emphasise the need for the Rules of court to be complied with, in which he cited the case of **Mike Nnachi V. Cyril Onuorah & Anor. (2011) LPELR 4626 CA,** and he further drew the attention of the court to the case of **Owners of the M.V. Arabella V. Nigerian Agricultural Insurance Corporation (2008) 11 NWLR (pt 1097) at pp. 205-206** to the effect that the Rules of court are meant to be obeyed. He further cited the case of **Nwabueze aru & ors V. Ohafia Live Services Ltd (2014) LPELR – 23158 (CA).**

The counsel referred this court to the case of **Dr. G.O.C. Onuegbu V. Mrs. Veronica Okafor (2016) LPELR-41513 CA** to the effect that where a party fails to file written addresses or comply with the time limits set out as to the time limit to file written addresses, he will be deemed to having nothing to urge the court and shall not be heard in oral argument. To him, the applicant's counsel having waived his right to file further affidavit and reply on point of law to the respondent's counter affidavit and written address in opposition to the written address filed by the respondent before this court thereby failing to take advantage of the provision of Order 43 Rule 1 (4) of the Rule of this court, oral submission goes to no issue and should be discountenanced, and he cited the case of **Okon V. BOB & Ors (2003) LPELR – 6098 (CA)** as the need for a party to file his written address within the time prescribed by the Rules of court before the date set down for hearing and this shall be served on the opponent. The oral submission made on a new point raised or rising from the other party's written address go to no issue, and he relied on the case of **Boniface B. Gwar V. S.O. Adole (2002) LPELR – 7080 (CA)** on the need to save time by filing written addresses in court and to avoid unnecessary delay in the administration to justice.

Thus, I cannot adequately deal with the issue raised above without looking at the notice of objection to the applicant reply affidavit and reply on point of law filed by the respondent's counsel. The respondent's counsel object to the competence and or validity of the reply affidavit and the reply on point of law filed by the

counsel to the applicant dated the 5th day of November, 2019 and 4th day of November, 2019 respectively on the ground that the reply affidavit and reply on point of law were irregularly filed and therefore urged the court to strike out or discountenance the said reply affidavit and reply on point of law.

In his written address in support of the objection, the counsel to the respondent submitted that the judgment creditor's/applicant's reply affidavit sworn to on 5th November, 2019 and the reply on point of law dated the 4th November, 2019 were irregularly filed as were belatedly filed and were grossly and irregularly file having not filed in the way and manner prescribed by law, and therefore urged the court to discountenance them.

The counsel to the judgment creditor/applicant filed a written address in opposition to the judgment debtor/respondent's notice of objection, and he raised this issue for determination with respect to the objection, to wit:

> **"Whether the respondent's notice of objection is alien to the rules of the Honourable Court, unmeritorious and should be dismissed with substantial cost against the respondent?**

The counsel to the applicant submitted that in filing the said objection, the respondent did not provide the grounds or reasons upon which he is urging the court to strike out or discountenance the applicant's processes. He further submitted that it is not the duty of this Honourable Court to speculate on why it should strike out the applicant's reply affidavit and reply on points of law, and he referred to the case of **Universal Trust Bank of Nigeria V. Fidelia Ozoemena (2007) LPELR – 3414 (SC)** to the effect that a court is not entitled to assume or speculate anything.

The counsel submitted that the objection was not brought pursuant to any provision of the rules of this Honourable Court or any other law whatsoever and that no single authority(be it case law or statutory) was cited by the respondent in support of its position.

The counsel submitted that in the event this court is mindful to countenance the objection he submits that the applicant's reply affidavit and reply on points of law were filed within the time prescribed by the rules of this court, that is to say, the applicant

having been served with the respondent's counter affidavit and written address on the 29th day of October, 2019 if filed its reply affidavit and a reply on point of law on the 5th and 4th day of November, 2019 that was within seven days of being served with the counter affidavit and a written address of the respondent, and to him, this is in line with Order 43 Rule 1 of the Rules of this court and he took his time to reproduce Order 43 Rule I of the Rules of this court, and that same were served on the respondent the same date in court, and further submitted that the fact that the Honourable Court has already commenced hearing argument on the applicant's application does not prevent the applicant herein from filing its reply on point of law as legally empowered by the Rules of the court, this is moreso as the respondent's counsel is yet to be heard on the application, noting that the applicant's counsel was unable to conclude his argument due to the objections from the respondent's counsel who was insisting on the compliance with the rules of court, and that the filing of reply affidavit and reply on points of law was meant to properly situate the issues between the parties, and that at that stage the respondent was yet to adopt its processes in opposition to the applicant's processes, and to him the filing of the reply affidavit and reply on points of law cannot be said to have overreached the respondent. The counsel to the applicant cited the cases of **FBN Plc V. Maiwala (2013) 5 NWLR (pt 1348) 44** and **B.B.N. Ltd V. Olayiwola & Sons (2005) 3 NWLR (pt 912) P. 434** all to the effect that the courts are enjoined not resort to technicalities rather it is for the courts to focus on the reality of the issues before them and not to allow too much technicality to affect their minds. He then urged the court to hold that by filing the reply affidavit and reply on point of law the applicant merely exercised its right as provided by the rules of court.

Now, let me quickly formulate the following issues before deciding the merit or otherwise of the main application filed before this court, to wit:

1) Whether the applicant in a motion on notice who after being served with the respondent's counter affidavit and written address has elected not to file a written address on reply on points of law with a reply affidavit and has adopted the

applicant's written address in support of the applicant's motion on notice ought to be allowed to canvass oral argument in reply on points of law to the respondent's written address?

2) Whether the applicant's reply affidavit and the reply on points of law are competent and valid?

On the issue No. I above, the counsel to the respondent, with the aid of judicial authorities emphasised on the need for the complete compliance and observance of the rules of court, that is to say, this court should be strict in obeying Order 43 Rule 1 (4) of the Rules of this court which provides:

> **"The applicant may within seven (7) days of being served with the written address of the opposing party file and serve an address in reply on points of law with a reply affidavit."**

The counsel emphasised also and relied on Order 1 Rule 4 of the Rules of this court which provides for the way and manner in which the rules of this Honourable court will be interpreted, that is to say, in accordance with the interpretation Act or any re-enactment. See the case of **Adeniran V. Ibrahim (2019) All FWLR (pt 971) p. 146 at 162 paras. A-C** where the Supreme Court held that by the provisions of section 18 (1) of the Interpretation Act, rules of court are not mere rules but one by nature alien to subsidiary legislations. Rules of court must be obeyed by litigants and they are binding on all the parties before the court. In the instant case, the parties must be made to observe and comply with the provisions of the Rules of this court with particular reference to Order 43 Rule 1 (4).

In giving a meaning to the above quoted rule of Order 43 Rule 1(4) of the Rules of this court this court has to read the entire Rule I of Order 43. See the case of **Abubakar V. I.N.E.C (2019) All FWLR (pt 1010) p. 195 at p. 320 para. E** where the Court of Appeal Presidential Election Petition Tribunal held that whenever a court is faced with the Interpretation of statutory provisions the statute must be read as a whole in determining the object of a particular provision. In the instant case the provisions of Order 43 Rule I of the Rules of this court must be read as a whole in determining the object of sub rule and of Order 43 Rule I.

"(1) Whereby in this Rules any application is authorised to be made to the court, it shall be made by motion which may be supported by affidavit and shall state the rule of court or enactment under which the application is brought.

(2) Every application shall be accompanied by a written address.

(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter affidavit.

(4) The applicant may within 7 days of being served with the written address of the opposing party file and serve an address in reply on points of law with a reply affidavit."

By the above quoted rule, it can be seen that whenever a party to a case desires to make an application, it has to be by a motion which shall be supported by an affidavit and should be accompanied by a written address, and where the other party intends to oppose, he shall within seven days file his written address and may accompany it with a counter affidavit, and where the applicant intends to respond to the counter affidavit, he shall then file a reply affidavit and written address as a reply on points of law. In essence there are three stages of filing processes with respect to any application to be made under the above rule. First is the application to be supported by an affidavit and a written address, second is for the other party to file a counter affidavit and a written address if he so wishes to oppose the application, and the third is for the applicant to file a reply affidavit and a reply on points of law, and once such is done, pleadings with respect to such an application are deemed closed. In the instant case, the applicant has filed his application supported by an affidavit and a written address and were duely served on the respondent and the later filed a counter affidavit in addition to a written address and were served on the applicant on the same day when the matter came up for hearing of

the motion. It is on record that the counsel to the applicant started to go ahead with the hearing of the motion without him taking a date to file his reply affidavit and a reply on point of law in response to the counter affidavit and a written address of the respondent. The counsel to the applicant further moved his motion, and attempted to respond to the counter affidavit and a written address of the respondent orally when abruptly the counsel to the respondent objected to that on the ground that the rule of this court does not provide for such procedure. The counsel to the respondent insisted that the counsel to the applicant should not be allowed to respond orally. It was at that stage, the court raised the first issue su motu and asked the parties to address on that hence the counsel to the respondent filed his written address.

It is obvious that the counsel to the applicant could not conclude his address in response to the counter affidavit and a written address of the respondent. However, before the next adjourned date and for the fact that the applicant was within time, the counsel to the applicant filed a reply affidavit and a reply on points of law.

Now, the contention of the counsel to the respondent is that the counsel to the applicant has already moved his application and adopted his written address, and therefore, to him, the counsel to the applicant should be shut and not to be allowed to canvass argument orally, and that will be the end of the road for the applicant.

The pertinent questions this court should find answers to are:

1) Whether at that stage the counsel to the applicant is deemed to have concluded moving his motion?
2) Whether the applicant was within time?

To my mind, the counsel to the applicant should not be deemed to have concluded moving his motion as same entails adopting his written address in support of the application and making a submission in response to the counter affidavit and a written address of the respondent, which supposed to be when a reply on points of law and a reply affidavit should have been filed, however, he was estopped by relying orally at that stage based upon the objection raised by the counsel to the respondent. Therefore, for all intent and

purpose of the Order 43 Rule 1 (4) of the Rules of this court, the applicant has not concluded moving his motion along with the response on the counter affidavit and a written address of the respondent, and to this, I therefore so hold.

The applicant was also within time to either conclude his oral submission if he is permitted by the court or to file his reply on point of law along with reply affidavit. The rule provides that he has given days within which to file a reply on points of law and a reply affidavit.

The counter affidavit and a written address of the respondent were served on the applicant on the 29th October, 2019, and the applicant filed his reply on points of law and the reply affidavit on the 4th of November, 2019 and 5th November, 2019 respectively.

To this, I have to have recourse to Order 49 Rule 1 of the Rules of this court in computing the time between the date the applicant was served with the counter affidavit accompanied by a written address and the date the applicant filed his reply on point of law and a reply affidavit, and it reads:

> "(1) whereby any law or order made by the court a time is appointed or limited for the doing of any act, the period shall be reckoned:
>
> (a) As excluding the day on which the order is made or on which the event occurs;
>
> (b) Where the last day of the period is a holiday the time shall continue until the end of the next day following which is not a public holiday;
>
> (c) Where the act is required to be done within a period which does not exceed six days, holiday shall be left out of account, in computing the period."
>
> (2) In this order "holiday" means a day which is Sunday or a public holiday.

By the above quoted rules, it could be inferred that the day the event occurs and Sunday should be counted out while computing the period. Order 43 Rule 1 (4) of the Rules of this court provides that the applicant has seven days within which for him to file a reply on points of law and a reply affidavit. Therefore, the date the applicant was served that was the 29th day of October, 2019 should be counted out, and a time starts to run on the 30th of October, 2019,

and the fact that the applicant filed his reply on points of law the 4th day of November, 2019 which is barely five days excluding the Sunday of 3/11/2019 obviously the applicant was within time, and for the fact that the applicant further filed his reply affidavit on the 5th day of November, 2019, obviously he was within time because it was barely six days excluding the Sunday of 3rd of November, 2019.

Notwithstanding that the counsel to the applicant has started to move his motion and has not concluded, and for the fact that he was within time, I have to hold that the counsel to the applicant would not be allowed to proffer oral submission in response to the counter affidavit and a written address of the respondent as there is no room for doing so as it is not provided by the Rules of the court, and in strict compliance with Order 43 Rule 1 (4) of the Rules of this court, the counsel to the applicant is refused to conclude his argument orally. However this court will not shut the applicant or rather the counsel to the applicant in filing his reply on point of law and a reply affidavit as he was within time. See the case of **Buhari V. Yabo (2019) All FWLR (pt 1007) p. 860 at 874 para. D** where the Supreme Court held that whenever the law prescribes time frame within which a step shall be taken, the step must be taken within the time the law stipulates unless, pursuant to leave sought and obtained, time was been extended by the court for taking the particular step. In the instant case, the applicant or rather the counsel to the applicant was within time to have filed his reply on points of law and a reply affidavit and to this, I therefore, so hold. Based upon the foregoing analises, I have adequately resolved issue No. I.

As I have adequately resolved issue No. I and held that the counsel to the applicant would not be allowed to conclude his response to the counter affidavit and a written address of the respondent orally, in the same vein, he would not be shut from filing his reply on point of law and a reply affidavit as he was within time, that has resolved issue No. 2, and I hold that the reply on point of law and a reply affidavit of the applicant are competent and valid.

Now, coming back to the main application of which the applicant filed a fifteen paragraphed affidavit, some documents and a written address, while the respondent filed a counter affidavit

and a written address and the applicant filed a reply on points of law and a reply affidavit in addition to it is affidavit for the record deemed that pleadings are closed.

It is in the affidavit in support to this application that the parties herein executed terms of settlement which was duely entered as the consent judgment of the High Court of Lagos State on the 15th day of March 2017 in suit No. LD/ADR/545/2013, and that the said consent judgment was pursuant to the leave of this Honourable Court granted on the 7th day of February, 2019 registered at the Register of judgment of this Honourable Court as FJ/27/2018 and that by the said terms of settlement or consent judgment that the judgment debtor duely admitted to pay, the applicant herein the sum of N5,000,000,000.00 in full and final settlement of its indebtedness to the applicant.

It is stated that it was agreed by the parties that the judgment sum shall be realised from the sale of property known as Febson Hotels & Malls, situate at plot 2425, Herbert Macaulay Way, Abuja belonging to the judgment debtor herein.

It is further stated that all efforts made to sell the property have been unsuccessful and the said property is currently in possession/occupation of the judgment debtor and has prevented the buyers from paying for the said property by demanding exorbitant amounts for the sale of the said property.

It is stated that prior to the consent judgment, the judgment debtor had duely mortgaged the said property to the applicant (via its predecessor; Oceanic Bank International Plc), and it will be in the interest of justice to authorise the sale of the said property by the Sheriff of this Honourable Court. In his written address, the counsel to the applicant raised this issue for determination to wit:

> **Whether it is just and equatable in the present circumstance of this case to grant the applicant's prayers in view of the depositions, documents and/or exhibits placed before this Honourable Court?**

The counsel referred this court to the provisions of Order IV Rule 16 (1) (2) & (3) of the judgment (Enforcement) Rules which provides:

"(1) When a judgment creditors desires a writ of attachment and sale to be issued against the immovable property of the judgment debtor he shall apply to the High Court.

2) The application shall be supported by evidence:

a) What steps, if any have already been taken to enforce the judgment, with what effect; and

b) What sum now remains due under the judgment; and (c)…

3) If upon the hearing of the application it appears to the court that the writ of attachment and sale may lawfully issue against the immovable property, the court shall make an order accordingly".

The counsel therefore asked this question: Whether the applicant has shown enough reasons why the court should indeed grant the said relief, and he answered the question in the affirmative. The counsel referred this court to the affidavit in support of this application, and further referred this court to EXH. 1 attached to the affidavit, same being the consent judgment duely entered by the High Court of Lagos State in the suit between the parties.

The counsel submitted that parties are bound by their agreement they freely entered, and therefore the parties are bound by the consent judgment entered by the High Court of Lagos State and to him, the applicant has deposed to the facts that all efforts it made to give effect to the consent judgment proved abortive, as the judgment debtor is currently reaping the benefits from the said property, and this has continuously discouraged the buyers.

The counsel submitted that it is a cardinal principle of law that a party should be allowed to reap the fruits of its successful judgment and he referred to the case of **Nigerian Maritime Administration and Safety Agency & Anor. V. Hensmor Nig. Ltd (2012) LPELR 7931 CA,** and the only way the judgment creditor can reap the benefit of the judgment is if this court grant the reliefs and therefore, urge this court to hold that the applicant herein has made out sufficient case for this court to grant the relief.

Thus, both the enrolled judgment or rather consent judgment of the High Court of Lagos State dated the 15th day of March, 2017 and the Certificate of judgment dated the 18th day of July, 2017 issued by

the High Court of Lagos State point at that the parties have agreed that the claimant (the judgment debtor) shall pay the sum of N5,000,000,000.00 (Five Billion Naira) to the defendant/judgment creditor) in full and final settlement of the claimant's indebtedness to the defendant. That the parties hereby agreed that the agreed sum of N5,000,000,000.00 (Five Billion Naira) shall be paid from the proceeds of the sale of Febson Hotels & Malls located in Abuja, mortgaged by the claimant to the defendant. That these terms of settlement shall serve as full and final settlement of claims and counter claims in this suit. By these documents, it could be inferred that an agreement was entered by the parties herein and which agreement was made as a consent judgment by the High Court of Lagos State.

There is also an enrolled order of this court where the Chief Registrar of this court was directed to recognise and register the said consent judgment of the High Court of Lagos State delivered on the 15th March, 2017 in this courts Nigeria Register of judgments for the execution and enforcement of same within the jurisdiction.

The remaining documents attached are the various offer letters for the purchase of the said property Febson Hotel & Malls from various persons, the certificate of occupancy of the said property bearing the name of the judgment debtor and the letter of consent given by the judgment debtor addressed to the Minister of the Federal Capital Territory, Abuja.

Thus, it is also in the counter affidavit of the respondent that the applicant by the letter dated the 5th April, 2017 informed the respondent that the applicant had assigned the applicant's rights and interests in the judgment debts to ETI Specialised Finance Company Limited, and this letter was labeled as EXH. 'AA', and that the applicant did not disclose to the Honourable Court the fact that it had assigned the judgment debt to ETI Specialised Finance Company Limited and informed the respondent of the said assignment, and that the applicant had no longer any right and interest in the judgment debt to be enforced by this Honourable Court.

Attached to the counter affidavit is one document which is the letter dated the 5th day of April, 2017.

In his written address in support of the counter affidavit, the counsel to the respondent raised three issues for determination to wit:

1) Whether the applicant has the requisite locus standi to file the motion on notice dated the 18th day of October 2019 having regard to the assignment of the judgment debt sought to be enforced by the applicant to ETI Specialised Finance Company Limited.
2) In the event of the resolution of issue one is in favour of the respondent, whether the applicant's motion on notice dated the 18th October, 2019 ought to be struck out by the Honourable Court for being incompetent and legally misconceived?
3) Whether the respondent's reliefs in the Notice of counter affidavit ought to be granted by the Honourable Court having regard to the materials placed before the Honourable Court?

On the issues one and two, the counsel to the respondent submitted that the competence of the applicant to approach the court for any relief raises the issue of the locus standi to institute the action, and where an applicant is not competent, the court will also not be competent, and he cited the case of **Green V. Green (1987) LPELR – 1338 (SC).**

The counsel submitted that a proper applicant should be one who has a right of action, the person who was wronged, and he cited the case of **Olaosebikan Abass & Anor. V. Kamil Tope Oyedele & Ors. (2010) LPELR – 3552 CA** to the effect that a court cannot assume jurisdiction over a matter unless the plaintiff who has brought an action has a right of action. He went further to cite the cases of **Prof. Onuegbuchi Chukwu V. P.D.P & Ors (2015) LPELR – 40962 (CA) and Ojo V. Fadeyi & Anor. (2018)** to the effect that for an action to be properly constituted so as to vest jurisdiction on the court to adjudicate on it, there must be competent plaintiff and competent defendant, and he cited the case of **Ayaguba V. Gura (Nig) Ltd (2005) All FWLR (pt 226) p. 1219.**

On what constitute an assignment, the counsel submitted that a debt is a chose in action and is therefore assignable by the

creditor, and he cited the case of **Julius Berger (Nig.) Plc & Anor. V. Toki Rainbow Community Bank Ltd LPELR – 4381 (CA)** where the Court of Appeal defined assignment to mean to give something to somebody for their use or benefit. It also mean to transfer right, property or title from the person's legally entitled to them to somebody else for their benefit.

The counsel drew the attention of this court to the case of **George V. UBA Ltd (1972) LPELR 1321 (SC)** to the effect that where the burden of a debt is being assigned, the creditor must consent or the assignment could be used as a simple means of avoiding liability. When the benefit of a debt is assigned the debtor does not need to consent. He still owes the money which he previously borrowed, and so long as he knows when to pay in order to get an effective receipt and discharge he has no cause to be consulted over the assignment, and therefore, to him, once creditor or judgment creditor has assigned its interest or right under the loan or judgment debt to a third party, the assignment is complete and is binding on the judgment debtor.

On the effect of assignment of debt, the counsel to the respondent submitted that the creditor has assigned the debt, that means it has relinquished its rights under the debts or judgment debt, and having divested itself with the rights and interest in the said judgment debt the applicant cannot be permitted to enforce the rights or interest it has voluntarily given away. The counsel cited the case of **Sanya Olu V. Coker & Ors. (1989) LPELR 2012 SC** to the effect that a person cannot eat his cake and have it, and he urged the court to resolve issues no. one and two in favour of the respondent.

On the issue three, the counsel to the respondent urged the court to grant the respondent's relief in the counter claim or notice of counter claim, and further submitted that the purported registration of the consent judgment entered by the High Court of Lagos in Suit No. LD/ADR/545/2013 is liable to be set aside as the purported registration is predicated as nothing on it can therefore not stand, and he cited the case of **Mamman & Anor. V. Hajo (2016) LPELR – 40655 (SC)** to the effect that one cannot put something on nothing and expect it to stand, and he then urged the court to strike

out the motion on notice and to also set aside the registration of the consent judgment and to grant the reliefs in the counter claim.

It is in the reply affidavit of the applicant that contrary to the depositions in paragraph 5 of the counter affidavit, that EXH. 'AA' attached to the counter affidavit does not show that the consent judgment was among the interest transferred, and that even after the alleged transfer on April, 2019, the applicant herein in furtherance of its legal right still exchanged correspondence with the respondent regarding the judgment sum and the sale of the said property, and to him, the applicant has the locus standi to enforce the consent judgment duely entered in its favour.

Attached to the reply affidavit are some other letter for the purchase of the said property exchange between Messrs less oil through its solicitor and the judgment creditor.

In his reply on point of law, the counsel to the applicant submitted that the respondent failed clearly to challenge any of the depositions in the applicant's affidavit in support, and to him, where the respondent has failed to contradict the depositions in the applicant's affidavit in support. These facts may be regarded as established and he cited the case of **Ajomale V. Yaduaye (No. 2) 1991 5 NWLR (pt 191) 266** and **Olateju V. Comm. L. & H.; Kwara State (2010) 14 NWLR (pt 1213) 297 at 321 para. A.** He submitted that not only that the facts are duely established but are admitted where the opposing party fails to controvert same, and he cited the case of **Okoh V. Nigerian Army (2018) 6 NWLR (pt 1614) 176.**

The counsel submitted that from the refusal of the applicant's affidavit in support of this application, the following facts are undisputed:

That there exist a consent judgment between the parties on record herein, which said judgment was duely entered by the High Court of Lagos State.

That the consent judgment has been duely registered as the judgment of this Honourable Court pursuant to an extant order of this Honourable Court.

That by the consent judgment, the respondent herein admitted its indebtedness to the applicant herein in the sum of N5,000,000,000.00 (Five Billion Naira).

That it was duly agreed by the parties in the said judgment that the respondent's property known as Febson Hotels & Malls, situate at Plot 2425 Herbert Macaulay Way, Abuja shall be sold and the proceeds utilised to repay the admitted judgment sum.

That efforts to sell the property has been unsuccessful as the respondent has turned down various offers from several interested buyers, while consisting on a huge unrealistic amount for the property.

That since the consent judgment on the 15th March, 2017 the respondent continued to enjoy the rent and other accruals from the property, while frustrating the sale of same.

To him, having failed to contradict or challenge the above facts this Honourable Court is legally enjoined to accept the said facts as true and to act upon them.

The counsel submitted that the respondent has raised a new issue in its affidavit alleging that since the applicant has transferred its facilities to a different company the applicant has no locus standi to maintain the application, and to him, this is the sole point raised and argued by the respondent, however, to him, the respondent is not saying that there was no consent judgment between it and the applicant herein or that it has fully paid the duly admitted judgment sum either to the applicant herein or to the said ETI Specialised Finance Company Limited.

To him, the respondent is attempting to rely on undue technicalities to frustrate the execution of the judgment of the Honourable Court and the Courts are enjoined not to sacrifice the justice at the altar of technicalities, and he referred the court to the cases of **FBN Plc V. Maiwala (2013) 5 NWLR (pt 1348) 44** and **BBN Ltd V. Olayiwola & Sons (2005) 3 NWLR (pt 912) 434.**

The counsel to the applicant further submitted that the counsel to the respondent failed to comprehend the nature of the application under consideration as it is brought pursuant to Order IV Rule 16 of the judgment (Enforcement) Rules that is to say, it is a post judgment application to enable the judgment creditor execute the judgment duely entered by the Honourable Court in its favour.

The counsel posed this question: whether the applicant who is the judgment creditor lacks the locus standi to enforce the judgment

duely entered in its favour? The counsel answered this question in the negative, as the applicant has all the legal rights/locus standi to apply for the enforcement of the judgment entered in its favour, and he relied on Order IV Rule 16 (1) of the judgment (Enforcement) Rules.

The counsel took his time to reproduce the portion of the intent of the document relied upon by the respondent that is EXH. 'AA', and to him, it will be seen that it is not shown in any paragraph of the letter EXH. 'AA' that the judgment sum has been sold or transferred and what is in the letter is that the applicant's interest arising from term loan or contract has been transferred to the company and to him, it is not the duty of the court to speculate and he cited the case of **Universal Trust Bank of Nigeria V. Fidelia Ozoemena (2007) LPELR-3414 (SC).**

The counsel to the applicant also took his time to quote another portion of the letter EXH. 'AA' thus:

> **"The Bank hereby irrevocably instructs you, and already agreed, to pay all monies payable to the Bank under the contract at any time after the purchaser has given you a written notice to this effect, to such bank account as the purchaser may from time to time specify to you"**

To him, the respondent has failed to show to the court that the conditions stated therein have been met by it, that is to say, the respondent has failed to show that if indeed received a written notice from ETI Specialised Finance Company Limited on where the judgment sum should be paid, and that it indeed complied with the written notice by paying the judgment sum in the said amount provided, and to him it is settled law that where a party has failed to perform its part of an obligation under a contracts, such party cannot attempt to reap the benefits of such contract and he referred to the cases of **Beta Glass Plc V. Epaco Holdings Limited (2010) LPELR – 3872 (CA)** and **Bust (Nig.) Ltd V. Blackwood Hodge (Nig.) Ltd (2011) 5 NWLR 95.** He submitted that the respondent having failed to show that it has received a written notice from ETI Specialised Finance company Ltd as to where it should pay the judgment sum, and that it has indeed paid the judgment sum as

requested, the respondent lacks the legal standing to rely on EXH. 'AA'.

The counsel went further to quote the portion of the letter EXH. 'AA' thus:

> **"receivables and proceed arising from and in connection with the collateral Document(s) connected there with but excluding for the avoidance of doubt, any obligation or liability of the Bank under the Loan Agreement or Collateral Document"** and to him, by the above, it is beyond

doubt that the applicant herein being the party in whose name the consent judgment was entered, has an extent obligation to ensure the judgment sum is realised.

The counsel further submitted that as shown in EXH. 'A' attached to the applicant's reply affidavit, the parties herein, even after the alleged transfer, exchanged various correspondence wherein the respondent through its solicitors duly acknowledged the right of the applicant herein to recover the judgment sum.

He further submitted that the sale or transfer of an indebtedness from one creditor to another has nothing to do with the debtor, that is to say, the consent of a debtor is not required to enable a creditor transfer the indebted sum to another creditor, and he then urged the court to grant the application.

The applicant further filed an affidavit for the record dated the 18th day of March, 2020 and it is deposed to the fact that the applicant filed this application to enable it take over and sell the asset of the respondent pursuant to the terms of settlement executed by the parties, which was made a consent judgment, and that upon being served with the application, the respondent approached the applicant for an amicable settlement of the dispute by the respondent informing the applicant that the N.N.P.C. had indicated intention to buy part of the asset, and in the spirit of amicable settlement, the applicant yielded to the plea of the respondent prompting the parties herein to execute a Memorandum of Understanding dated the 27th November, 2019. That by the covenants on the Memorandum of Understanding the respondent herein was meant to receive the proceed of the sale from N.N.P.C.

and utilize same to liquidate the judgment sum of N5,000,000,000.00 (Five Billion Naira) on or before the 31st December, 2019, and that the time agreed by the parties in the Memorandum of Understanding has since elapsed without the receipt of a dime from the respondent. That the settlement having broken down due to the inability of the respondent to pay the judgment sum there is need to proceed with the applicant's application.

Attached to the said affidavit are the following documents:

a) a letter from the respondent to the applicant dated the 16th day of November, 2019 indicating that the N.N.P.C. has shown interest to purchase the Febson property.
b) Memorandum of Understanding dated the 27th day of November, 2019.

Now, having summarised the affidavits of the parties and the submission of their counsel, let me adopt the following issues for determination, to wit:

1) Whether it is just and equitable in the present circumstances of this case to grant the applicant's prayers in view of the depositions, documents and/or exhibits placed before the Honourable Court?
2) Whether the applicant has the requisite locus standi to file the motion on notice dated 18th October, 2019 having regard to the assignment of the judgment debt sought to be entered by the applicant to ETI Specialised Finance Company Limited?

Thus, with respect to the issue No. 1, let me refer to paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the affidavit in support of this application to the effect that the parties herein executed terms of settlement which was duely entered as the consent judgment of the High Court of Lagos State on the 15th March, 2017 in Suit No. LD/ADR/545/2013, and that the said consent judgment was registered at the Register of judgment of this Honurable Court as FJ/27/2018. That by the said terms of settlement vis-à-vis the consent judgment, the judgment debtor duly admitted to pay the applicant herein the sum of N5,000,000,000.00 (Five Billion Naira)in full and final settlement of its indebtedness to the applicant, and that it was agreed which formed the consent judgment that the judgment sum shall be realised from the sale of property known as

Febson Hotels and Malls, situate at Plot 2425, Herbert Macaulay Way, Abuja belonging to the judgment debtor herein, and that all efforts made by the applicant to sell the said property have proven unsuccessful as the judgment debtor is currently in possession and occupation of the said property and has prevented potential buyers from paying for the said property thereby the judgment debtor refusing to show interest on the sale of the property contrary to the agreement of the parties as contained in the consent judgment that notwithstanding the foregoing as prior to the consent judgment, the judgment debtor had duly mortgaged the said property to the applicant via its predecessor, Oceanic Bank International Plc. All the documents attached to the affidavit have shown that there is a consent judgment entered by the High Court of Lagos State, and that such judgment was registered by this court as a foreign judgment and is with No. FJ/27/18, and that there were offers made by different persons for the purchase of the said property, coupled with Certificate of Occupancy indicating that the said property belongs to the judgment debtor and that the judgment debtor has consented to charging the property. To this, I refer to Order IV Rule 16 (1) & (2) of the judgment (Enforcement) Rules, under which the applicant's predicates this application and which provides:

> **"(1) When a judgment creditor desires a writ of attachment and sale to be issued against the immovable property of the judgment debtor, he shall apply to the High Court.**
>
> **(2) The application shall be supported by evidence showing:**
>
> **a) What steps, if any, have already been taken to enforce the judgment, and with what effect and (b) what sum now remains due under the judgment, and**
>
> **(c) That no movable property if the judgment debtor or none sufficient to satisfy the judgment debt, can with reasonable diligence be found."**

By the above quoted provisions, it could be inferred that there should be an application to be made by the judgment creditor if he desires to levy execution against the immovable property of the judgment debtor and that such an application shall be supported by an affidavit. Therefore, putting the provisions of Order IV Rule 16 (1) & (2) of the judgment (Enforcement) Rules side by side with the affidavit in support of this application, it could also be inferred that the judgment sum still remains unpaid and that the immovable property which is Febson Hotels and Malls, situate at Plot 2425, Herbert Macaulay Way, Abuja, was made by the parties in the consent judgment that should be subject of sale, and therefore, the need to attempt to sell movable property does not arise in this circumstance. Efforts were made by the applicant to sell the said property have been unsuccessful as the judgment debtor is currently in possession/occupation of the said property, and this has prevented buyers from paying for the said property.

In the circumstances, recourse has to be had to Order IV Rule 16(2) of the judgment (Enforcement) Rules which provides:

> **"If upon the hearing of the application it appears to the court that the writ of attachment and sale may lawfully issue against the immovable property, the court shall make an order accordingly."**

All the averments as are contained the affidavit in support of this application have not been controverted in the counter affidavit of the respondent, and the implication is that the averments in the supporting affidavit are deemed admitted and the court must act upon them. See the case of **Allen V. Titilayo (2019) All FWLR (pt 1014) p. 153 at 170 paras. B-E** where the Court of Appeal Lagos Division held that any averment in an affidavit which has not been controverted is deemed admitted and this court can proceed to use same in arriving at a decision. See also the case of **Akiti V. Oyekunle (2019) All FWLR (pt 981) p. 724 at 731 para. B** where the Supreme Court held that where documentary evidence support depositions in an affidavit, such depositions are the correct position of what it seeks to establish. Documentary evidence lends credence to material facts deposed to in an affidavit. In the instant case, all that have been deposed in the affidavit in support of this

application have been supported by documents, and I therefore, hold that the depositions are the current position. Having done that, I have to also hold that the applicant can be granted the order to levy execution against the movable property of the judgment debtor. Therefore, issue No. 1 has been resolved in favour of the applicant.

To narrow down the issue between the parties herein is to answer question No. 2.

It is the contention of the judgment debtor that the applicant has informed the former that the applicant had assigned the applicant's rights and interests in the judgment debt to ETI Specialised Finance Company Limited and it relied on EXH. 'AA', while the applicant contends that EXH. 'AA' attached to the counter affidavit does not show that the consent judgment was among the interest transferred and that even after the alleged transfer on April, 2019, the applicant herein furtherance of its legal right (locus standi) still exchanged correspondence with the respondent herein regarding the judgment sum and the sale of the property. The counsel to the applicant on the paragraph of EXH. 'AA' which reads:

> **"Arising from and in connection with the (TERM LOAN), (The contract) therewith including without limitation the proceeds of, cash in order, right to, or chose in action in relation to, such loan and all rights, title, interest, benefits and proceeds arising from and in all security interest pertaining to the contract, (the collateral), and all rights, title, interest, benefits, receivables and proceeds arising from and in connection with the collateral document(s) connected therewith but excluding, for the avoidance of doubt, any obligation or liability of Bank under the Loan agreement or collateral Document",** and to him, it is not shown in the above paragraph that the judgment sum has been sold or transferred.

To him, assuming that the court is to hold that EXH. 'AA' conveyed the transfer of the judgment sum to ETI Specialised Finance Company Limited, it is also in another paragraph of EXH. 'AA' stated thus:

> **"The Bank hereby irrevocably instructs you, and hereby agree, to pay all monies payable to the bank under the contract at any time after the purchaser has given you a written notice to this effect, to such bank account as the purchaser my from time to time specify to you"** and to

him, the respondent has failed to show that the above conditions have been met by it or that it failed to show that it indeed received a written notice from ETI Specialised Finance Company Limited on where the judgment sum should be paid and that it has indeed complied with the written notice by paying the judgment sum in the said account.

In the circumstances of this application and even though I have not been privileged to lay my hands on the loan sale and purchase Agreement (the Loan Purchase Agreement) entered between the applicant herein and ETI Specialised Finance Company Limited, however, by the above quoted paragraph of EXH. 'AA', certainly, the applicant has instructed irrevocably the respondent (to whom the EXH. 'AA' was addressed to) and in which the respondent has agreed, to pay all monies payable to the bank under the contract at any time after the purchaser has given to the respondent a written notice to this effect, to such bank account as the purchaser may from time to time specify to the respondent. In essence there is something, as per the loan purchase Agreement, that ETI Specialised Finance Company Limited should do, that is to give a written notice to the respondent as to such account where all the monies should be paid by the respondent. It is also added that the instruction given to the respondent in EXH. 'AA' may not be revoked without the prior written consent of the purchaser.

Thus, putting the whole paragraphs of EXH. 'AA', it could be inferred that there was an agreement between the applicant and ETI Specialised Finance Company Limited otherwise called Loan Purchase Agreement in which the rights, benefits, interest, receivables and proceeds arising from and in connection with the term loan, the contract and the contract here means (the collateral). However, it is also captured in EXH. 'AA' that the purchaser, that is, ETI Specialised Finance Company Limited would

give a written notice to the respondent as to such bank account as the purchaser may from time to time specify.

It is not contained in the counter affidavit of the respondent that such instruction as is contained in EXH. 'AA' has been carried out, and it is also not contained that the purchaser has given a written notice to the respondent as to the bank account upon which the monies payable to the applicant under the contract as the purchaser may specify. Where it is agreed that by this court that the purchaser has an obligation to perform under the Loan Purchase Agreement, and such conditions have not been fulfilled, then such contract is not binding upon the applicant and the contract is not formed. See the case of **Atiba Iyalama Savings & Loans Ltd V. Sureru (2019) All FWLR (pt 1008) p. 953 at 970 paras. G.H.** where the Supreme court held that where a contraction is made subject to the fulfillment of specific terms and conditions, the contract is not turned and not binding unless and until those terms and conditions are fulfilled. In the instant case, for the fact that it is not shown that ETI Specialised Finance Company Limited has fulfilled its obligations in the Loan Purchase Agreement, such an agreement made between the applicant and ETI Specialised Finance Company Limited will not be binding on the applicant and the contract is not even formed and to this I so hold. For the fact that it is not binding on the applicant, this gives the locus standi to the later to seek to enter the consent judgment by levying execution against the said property belonging to the judgment debtor/respondent, and to this I therefore so hold.

The consent judgment entered by the High Court of Lagos State still subsists as it is not appealed against and therefore must be obeyed. See the case of **Fidelity Bank Plc V. M.T. Tahora (2019) All FWLR (pt 975) p. 888 at 902 paras. E-F** where the Supreme Court held that there is a presumption in favour of the correctness of a court's judgment and until that presumption is rebutted and the judgment set aside, it remains subsisting and prevailing between and binding on the parties. Consequently, it must be obeyed. In the instant case, the judgment debtor/respondent has not paid the judgment debt in accordance with the consent judgment, and therefore, it remains unpaid.

The two counsel, in their arguments, relied on the case of **George V. UBA Ltd (1972) LPELR – 1321 (SC)** where the Supreme Court held that obviously, where the burden of a debt is being assigned, the creditor must consent or the assignment could be used as a simple means of avoiding liability. When the benefit of a debt is assigned the debtor does not need to consent. He still owes the money which he obviously borrowed, and so long as he knows whom to pay in order to get an effective receipt and discharge, he has no cause to be consulted over the assignment.

In the instant case, assuming but not conceding that the judgment debt has been assigned to ETI Specialised Finance Company Limited, still the judgment debtor/respondent owes the debt and that will not exonerate him from discharging his responsibility of paying the debt.

The judgment of the High Court of Lagos State is still subsisting and is binding upon all the parties. See the case of **C.B.N V. Aribo (2018) All FWLR (pt 925) p. 110 at 142 para. C.** where the Supreme Court held that judgment or order of every law court remains in force and binding until it is set aside on appeal by a court of competent jurisdiction. In the instant case, and for the fact that the parties remains the same, the consent judgment is binding on them, and the applicant has the locus standi to seek to enforce it, and to this I therefore so hold.

Based upon the foregoing analises and considerations, I have come to the conclusion that the two issues are resolved in favour of the applicant, and relying on Order IV Rule 16 (3) of the Judgment (Enforcement) Rules, it is hereby ordered that the writ of attachment and sale against the said property otherwise known as Febson Hotels and Malls, situate at plot 2425, Herbert Macaulay Way, Abuja belonging to the judgment debtor/respondent be issued and the sum of N5,000,000,000.00 (Five Billion Naira) shall be paid from the proceeds of the sale of the said property to the applicant.

I therefore order that the writ be issued and the judgment be executed accordingly.

Signed
Hon. Judge
07/01/2021

Appearances:

O.A. Divine Esq appeared for the judgment creditor/applicant.

Olaleken Ojo (SAN) appearing with Thomas Ojo Esq for the judgment debtor/respondent.

Signed
Hon. Judge
07/01/2021