

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

ON THE 29TH DAY OF FEBRUARY, 2024

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

SUIT NO. FCT/HC/CV/3065/2017

MOTION NO. M/209/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

11 PLC (Formerly called MOBIL OIL NIG. PLC) **CLAIMANT/
RESPONDENT**

AND

ENGR. OKEZIE OGALI **DEFENDANT/
APPLICANT**
(Carrying on business in the name and
style of PLEASURE PARADISE PARK)

RULING

The Defendant/Applicant's application is for the following reliefs:

- (1) An Order of Court setting aside the Default Judgment of this Court delivered on the 7th day of March, 2023.

- (2) An Order granting leave to the Defendant/Applicant to file and serve its Memorandum of Appearance and Statement of Defence out of time, the period of filing of same having elapsed.

The grounds upon which the application is brought are:

- (1) The Applicant was not aware of the pendency of this suit till Judgment was delivered.
- (2) That the Applicant has a good defence.

Learned Counsel to the Defendant relies on the 22-paragraph Affidavit filed in support. It is sworn to by Engineer Okezie Ogali of Plot 2030 Cadastral Zone A02, Herbert Macaulay Way, Wuse 1 District, Abuja.

That he is the Defendant in this matter. He carried on business in the name and style of Pleasure Paradise Park situate at Park No. 2030 Cadastral Zone A02 Herbert Macaulay Way, Abuja but was unlawfully ejected by 1st – 5th Defendants in Suit No. CV/2449/17 at the instance of 1st – 5th Defendants.

That on the 19th July 2017, he instituted a suit against the Claimant/Respondent and five others at Court No. 7 Gwagwalada. The Writ of Summons is Exhibit OK1.

The reliefs sought in the said suit are amongst others a declaration that the Park No. 2030 within Cadastral Zone A02 was lawfully leased to Applicant by 1st – 3rd Defendants for a period of 30 years.

That the suit is presently pending at Court No. 37 Gudu and all parties including the Claimant/Respondent are aware and parties have been attending Court up to 23/10/2023.

That during the pendency of the suit, Claimant proceeded to file another Suit on 6/10/2017, three months after the previous Suit claiming the same property leased to him.

He was not served with the Originating Processes pending before this Court. He only became aware when Claimant filed an Amended Statement of Defence wherein the Default Judgment was attached. It is Exhibit OK2.

He applied to inspect the Court's records. That he saw that the Bailiff of Court deposed to an Affidavit. The Affidavit is Exhibit OK4.

That the Claimant misled the Court into granting an exparte order for substituted service by giving the wrong reasons.

The Claimant/Respondent did not make any effort to serve the Originating Processes on the Applicant before proceeding to apply for an Order of substituted service.

That as at 1/11/2017 when the Originating Processes were purportedly attempted to be served on him at the premises, the entire structures within the premises of his Plot 2030, Cadastral Zone A02, Herbert Macaulay Way were completely demolished and sealed by 1st – 5th Defendants.

That nobody was therefore available to be served. The photograph of demolition is Exhibit OK5.

That after demolition, the property was sealed. That he does not have a son old enough to be the Manager of his business.

That he has known the Claimant's Counsel since 2017 and he never brought the suit to his attention. That he was not aware of any processes pasted on the property. That he has a good defence on the merit.

That after demolition and sealing of the property, he was denied access to the property. He has paid his penalty for default.

That he did not deliberately omit or refuse to defend himself. The interest of justice requires that the application be granted.

The Claimant relied on its Counter Affidavit of 23 paragraphs. The Defendant filed a Suit laying claim to Park No. 2030 Cadastral Zone A02, Wuse 1 District, Abuja while Claimant instituted a Suit in respect of the land known as

Plot 2395 Cadastral Zone A02, Wuse 1 District. That the subject matter of both suits are not the same.

That Defendant was served with the Originating Processes in this suit and was fully aware.

That in the various pleadings before the other Court, the pendency of this suit was brought to the attention of the Defendant but he dismissed it with a wave of hand.

That all efforts to serve the Defendant by personal service failed. The Defendant was eventually served by substituted means.

The 1st & 5th Defendants in Suit CV/2449/17 did not demolish and seal off the Defendant's Plot No. 2030 Cadastral Zone A02, Herbert Macaulay Way but it was FCDA that demolished the shanties/illegal structures of the Defendant which encroached into Claimant's Plot No. 2395 Cadastral Zone A02, Wuse 1 District.

That Defendant had full knowledge of the suit. That the Defendant still operates his business till date.

That only shanties and structures illegally constructed by the Defendant/Applicant when he trespassed into the Claimant's Plot 2395 were demolished by Development Control. Photograph of Defendant's garden is Exhibit C7(i) – (iii).

The Claimant will be prejudiced if this application is granted.

I have also read the Further Affidavit filed in response to the Claimant's Counter Affidavit and considered the Written Addresses of Counsel.

The only issue for determination is: **Whether in the circumstance of this case, the Defendant/Applicant is entitled to the reliefs sought.**

In **BELLO vs. INEC (2010) NWLR (PT. 1196) p.342 SC**, the Supreme Court held that the power of a Court to set aside its Judgment is statutory. The Court does not

have power to set aside its Judgment without a statutory provision enabling it to do so.

By Order 10 (11) of the Rules of Court, this Court can set aside its Judgment on terms, however the application shall be made within a reasonable time, showing evidence of payment of penalty, a good defence to the claim and a reasonable cause for the default.

Judgment was delivered on 7/03/2023. This Motion for setting aside was filed on 27/10/2023 more than six months after Judgment was delivered.

The Defendant avers that he has paid the penalty for default. In paragraph 16, the deponent avers that he has a good defence to the action.

That the suit was not brought to his knowledge as the property was demolished and sealed by the 1st – 6th Defendants in the other Suit.

In the said proposed Statement of Defence, the Defendant avers that the subject matter of both Suits are the same. That this Court was misled by the Claimant.

That the Claimant herein and Counsel hid the existence of this Suit despite the fact that they were meeting in Court in respect of the other cases. The Claimant on the other hand deposes that the Defendant was served and was fully aware.

I have taken a cursory look at paragraph 21 of the Statement of Defence in Suit No. CV/2449/17 served on the Defendant, Exhibit C1 attached to Claimant's Counter Affidavit.

It states:

"The 6th Defendant (who is the Claimant herein) avers that by a Writ of Summons and Statement of Claim both dated and filed on the 6th day of October 2017 before this Court, the 6th Defendant commenced an

action against the Claimant herein and Cleson Investment Ltd as 1st and 2nd Defendants respectively in Suit No. CV/3065/17 over the ownership of Plot 2395 ...”

The Defendant filed a Reply to the said Statement of Defence. He referred to the Suit herein as a forged document. See paragraph 14 (v) of the Reply dated 3/09/2019 filed by him, Exhibit C of the Claimant’s Counter Affidavit.

The Defendant had an opportunity of seeing the Writ filed against him. The Defendant/Applicant cannot claim ignorance of the existence of this suit. He ignored it at his peril.

In **TOM TEC NIG. LTD vs. FEDERAL HOUSING AUTHORITY (2009) 12 SC (PT. 111) p. 162**, the Supreme Court held, *"It is settled law that Courts of record have the inherent jurisdiction to set aside their*

judgment/decisions... in appropriate cases and under certain circumstances which include

(1) Judgment obtained by fraud

(2) Judgment which is a nullity

(3) When the Court is misled

(5) When Judgment is given in the absence of jurisdiction."

This Judgment, the subject of this Motion was not obtained by fraud. It is not a nullity. The Court was not misled as the Defendant was adequately put on notice. The Court is seised of jurisdiction.

In the circumstance of this case, I do not have any sympathy for the Defendant. It was his choice to ignore the Writ of Summons and all other processes.

It is also the duty of this Court to enter Judgment in default.

The Defendant in my humble view is not entitled to the reliefs sought.

The Motion fails for lack of merit. It is accordingly dismissed.

CLAIMANT/RESPONDENT'S COUNSEL: We ask for ₦500,000 cost. Cost follows event.

DEFENDANT/APPLICANT'S COUNSEL: My principal is not in Court. I shall not concede to cost.

COURT: Cost follows event. The event of today is to deliver Ruling. It is done. Cost is not punitive.

The Claimant has been put to some expenses. ₦50,000.00 (Fifty Thousand Naira) cost as out of pocket expenses.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
29/02/2024

Parties absent.

Chief Paul C. Obi for the Claimant/Respondent with E. C.
Ikeatuegwu, Esq.

Charity Benjamin, Esq. holding the brief of Abang-Odok
Ogar, Esq. for the Defendant/Applicant.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
29/02/2024