

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

**ON THE 10<sup>TH</sup> DAY OF JUNE, 2024**

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

**SUIT NO. FCT/HC/NY/CV/01/2021**

**MOTION NO. M/2692/2024**

**COURT CLERKS:** *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

BENPIMORE ENGINEERING & DEV. CO. LTD ...  
CLAIMANT/RESPONDENT

AND

1. AMARACHI CHYNA IWUANYANWU	.....	DEFENDANTS/
2. SUNGOLD ESTATE LIMITED	}	APPLICANTS

**RULING**

The Defendants/Applicants' application brought pursuant to Order 21 (12) of the Rules of Court prays the Court for:

(1) An Order of Court setting aside the Judgment of Court delivered on the 1<sup>st</sup>

day of December 2022 against the Defendants.

(2) And for such Order or further Orders as the Court may deem fit to make in the circumstance.

The application is supported by a 22-paragraph Affidavit sworn to by Emmanuel Chinonye, the Senior Manager of the 2<sup>nd</sup> Defendant.

Succinctly he states that:

Their Account Officer informed him that an Order Nisi had been made against the Defendants in a garnishee proceeding.

That they were shocked as they were not served with the Court processes.

That their Solicitor upon enquiry discovered that it was a Default Judgment

and that there was an Order for substituted service of the Originating Processes by pasting at the last known address of the Defendants which is 20 Godoly Ogbaga Street, Off 3<sup>rd</sup> Avenue, Gwarimpa Estate, an address unknown to the Defendants/Applicants.

That 1<sup>st</sup> Defendant is Deputy Speaker of Imo State House of Assembly and resides in Owerri. The registered address of the 2<sup>nd</sup> Defendant is Block C, Flat 2, Lagos Court, Gaduwa, Abuja, FCT. The Certified True Copy of the registered address is Exhibit C.

That no attempt was made at serving the Defendants/Applicants by the Claimant/Respondent. That Exhibit E, letter written by 2<sup>nd</sup> Defendant clearly shows the branch office of the 2<sup>nd</sup> Defendant.

That Exhibit F, Claimant/Respondent's Solicitor's Letter of Demand Notice to 2<sup>nd</sup> Defendant also bears the same address as in Exhibit E.

That the Claimant has been to their office severally but misled the Court to serve at a wrong address.

That the Defendants are ready and willing to defend the action and have filed a Statement of Defence. That unless the action is set aside, the Defendants' right to fair hearing will be breached.

The Claimant filed a Counter Affidavit of 37 paragraphs deposed to by Gideon Shatar. He deposed that:

The Defendants were duly served at their last known address at Plot 20, Godoly

Ogbaga Street, formerly known as Plot 340, Road 111, Off 3<sup>rd</sup> Avenue Gwarimpa Estate.

That the Defendant did not inform them of a change of address. That Plot 340, Road 111, Off 3<sup>rd</sup> Avenue, Gwarimpa and Plot 20, Godoly Ogbaga Street are one and the same thing.

The building and structure is Exhibit A. That the Court was not misled.

That the Motion to set aside was filed without leave of Court after a year plus.

That there was no fraud or misrepresentation. That it is a Judgment on the merit.

I have also considered the Written Addresses of Counsel. It is settled that

a trial Court such as this Court has power to set aside its decision and relist same for hearing where Judgment has been obtained not on consent of the parties or on the merit of the case.

The Judgment in the instant case was not obtained on the merit but by default of appearance and filing of defence. Order 11 of the Rules of Court provides for the said procedure.

By Order 4 (4) of the Rules of Court, where a party served with the processes and documents intends to defend the action, he shall file its processes within a prescribed time and if the Court is satisfied that he has a good defence, he could be permitted to defend.

It is therefore clear that the Judgment obtained by the Claimant in this case is not a Judgment on the merit.

The power of the Court to set aside its Judgment is discretionary and must be exercised judicially and judiciously guided by the following principles:

- (a) The reasons for the Applicant's failure to appear at the hearing.
- (b) Whether there has been undue delay in making the application.
- (c) Whether the person in whose favour the Judgment subsists will be prejudiced or embarrassed.
- (d) Whether the Applicant's case is manifestly unsupportable.

(e) The Applicant's conduct throughout the proceedings has been such that is worthy of sympathetic consideration.

The Defendants/Applicants' ground for bringing the application is that he was not served.

That the Claimant deliberately misled the Court by serving the processes on a different premises which was not the last place of abode as ordered by the Court. That the Claimant was fraudulent.

The law is now settled, to set aside a Judgment on the ground of fraud, it is not sufficient to merely allege fraud without giving particulars thereof.

The fraud alleged must relate to matters which prima facie will be the reason for



setting aside the Judgment. The Court requires a strong case to be established before it will set aside its Judgment on the ground of fraud.

Fraud is a crime. It must be proved beyond reasonable doubt.

The Claimant's deposition is that the address of service, Plot 340, Road 111, Off 3<sup>rd</sup> Avenue is the same as Plot 20, Godoly Ogbaga Street, Off 3<sup>rd</sup> Avenue, Gwarimpa, Abuja.

The Defendants/Applicants did not file a Further Affidavit. The fact that the 1<sup>st</sup> Defendant is a Deputy Speaker does not help the situation. This process is not against him in his official capacity.

I have also seen the various Proof of Service and Hearing Notices pasted on the same address. It is my view and so hold that the addresses aforementioned refer to the same premises the Defendants occupied. No fraud was proved.

The Judgment of this Court was entered on 1/12/2022. The Motion to set aside is dated 18/01/2024 almost a year. The application was not made within a reasonable time.

The Defendants did not apply for leave to apply to set aside the Judgment.

In the circumstance of this case, the application fails and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC  
(HON. JUDGE)  
10/06/2024

Parties absent.

Douglas Najime, Esq. for the Judgment  
Creditor/Respondent.

Luka S. Gule, Esq. for the Judgment  
Debtors/Applicants.

**COURT:** Ruling delivered.

(Signed)  
**HON. JUDGE**  
10/06/2024