

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU**

SUIT NO. FCT/HC/CV/1284/2021

MOTION NO: FCT/HC/M/4911/2024

MOTION NO: FCT/HC/M/4559/2024

DELIVERED ON THE 23/09/2024

BETWEEN:

- | | | |
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| 1. HAJIRAT MOHAMMED
2. HARMONY PROPERTIES LTD | } |CLAIMANTS |
|--|---|----------------|

AND

- | | | |
|---|---|----------------|
| 1. MINISTER, FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL TERRITORY DEVELOPMENT
AUTHORITY
3. M. ALIYU BAWA | } |DEFENDANTS |
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CONSOLIDATED RULING

The Claimants/Respondents herein took out a Writ of Summons and Statement of Claim against the Defendants/Applicants sometimes on the 25th June, 2021 and subsequent concurrent Writ of Summons filed on the 30th March, 2022 Pursuant to the Order of the Court made on the 13th September, 2021.

The 1st and 2nd Defendants upon being served with the Originating Processes entered an appearance through a Memorandum of Appearance filed on the 16th August, 2020.

Whereas, the 3rd Defendant who was served by substituted means upon publication in a National daily on the 1st April, 2022 failed and or neglected to enter appearance to defend this action. This Honourable Court delivered its Judgment on the 13th July, 2023 after it found that the Claimants have proved their case.

The 1st and 2nd Defendants/Applicants counsel and that of 3rd Defendant/Applicants brought the applications under consideration.

This consolidated ruling therefore, is pursuant to Motion No. **M/4911/2024** brought by learned counsel for 1st and 2nd Defendants/Applicants and Motion No. **M/4559/2024** brought by learned counsel for the 3rd Defendant/Applicant.

In Motion No. **M/4911/2024**, the 1st and 2nd Defendants sought for the following;

1. *An Order of this Honourable Court extending time within which the Applicant can seek the leave of the Court to set aside the judgment entered on the 13th July, 2023.*
2. *An Order of this Honourable Court seeking the leave of this Court to enable the Applicant bring this application to set aside the Judgment of this Honourable Court entered on the 13th July, 2023.*
3. *An Order of this Honourable Court setting aside the Judgment of this Honourable Court entered on the 13th July, 2023 obtained by misrepresentation and*

concealment of facts, lack of locus standi and fraud by the Claimant/Respondent.

- 4. An Order of this Honourable Court setting aside the Judgment of this Court entered particularly against the 2nd Defendant who is not a Juristic Person known to law.*
- 5. An Order of this Honourable Court setting aside the Writ of Execution and the execution of Judgment carried out on 23rd February, 2024 by the Deputy Sheriff of this Honourable Court through the Enforcement Unit at the instance of the Claimants/Respondents.*
- 6. An Order of this Honourable Court setting aside the Writ of Possession through which the 3rd Respondent was forcefully evicted from all the property situated at Plot No. **387**, Cadastral Zone **B19**, Katampe Extension, Abuja.*
- 7. An Order of this Honourable Court directing the Deputy Sheriff of this Honourable Court and the Claimant/Respondent to immediately restore the 3rd Respondent to the possession of all that property situated at Plot No. **387**, Cadastral Zone **B19**, Katampe Extension, Abuja.*
- 8. An any further Order(s) as this Honourable Court may deem fit to make in the circumstances of the application including but not limited to an Order of accelerated hearing of this Suit on the merit.*

The grounds upon which the application is brought were clearly stated in the Motion paper which I shall make reference to in the course of this Ruling.

In support of the application is an affidavit of 20 paragraphs deposed to by one Saidu Wodi, a Legal Assistant in the Office of the 1st and 2nd Defendants/Applicants.

It is the deposition of the Applicant that the Judgment of this Honourable Court obtained on the 13th July, 2023 was gotten by fraudulent misrepresentation, concealment and suppression of material facts by the Claimants who stated on oath the 1st Claimant delivered vacant possession of the property to the 2nd Claimant in 2009 and has been in possession.

That the Claimant suppressed facts as the 3rd Defendant has been the one in possession and had fully developed the property into a massive duplex where he has lived with his family for about 18 years.

Applicants further avers that, the 2nd Defendant is not a Juristic person known to law. And that the 1st and 2nd Defendants/Applicants' counsel who was assigned the case by her team lead counsel could not attend Court on several occasion due to marital and health challenges and it was only after Judgment had been delivered that the 1st and 2nd Defendants realized that the matter was left undefended for a prolonged period of time.

That the title to the land was vested on the 3rd Defendant since 2002 before the purported allocation to the Claimant in 2003.

That it will be in the interest of justice to grant this application.

A written address was filed wherein four (4) issues were formulated for determination, to-wit;

1. *Whether the 2nd Defendant in this suit is a juristic person known to law.*
2. *Whether this Honourable Court can grant the application of the Applicants for extension of time and grant leave to apply for the Judgment to be set aside.*
3. *Whether or not, given the circumstance of this case, this Honourable Court can set aside its own Judgment delivered on the 13th day of July, 2022 same having been obtained by misrepresentation and concealment of material facts and set the matter down for hearing on the merits in the interest of justice.*
4. *Whether this Honourable Court can also set aside the execution of the Judgment carried out against the 3rd Respondent, on the 23rd of February, 2024 by the Deputy Sheriff of this Court.*

Learned counsel argued the above issues citing cases and statute in urging the Court to grant the application in the interest of justice.

The Claimant upon service, filed a counter affidavit of 17 paragraph deposed to by one Emeka Ukaga, Estate Manager of the 2nd Claimant/Respondent.

It is the counter affidavit of Claimant that the 1st Claimant is the original allottee of Plot No. **387** with old file No. **NG 2907** and New file No. **NG 11418**, Cadastral Zone **B19**, Katampe Extension, Abuja measuring about **2,600** square meters and the 2nd Claimant/Respondent has equitable interest in same.

That the Claimants were never served with any revocation notice before purported allocation of her Plot to 3rd Defendant. And upon discovery of the revocation, the Claimant instituted this action in Court and the Originating Process were duly served on the 1st and 2nd Defendants and memorandum of conditional appearance were duly filed by them vide Exhibit “A”.

That when the Judgment was delivered, he wrote to Solicitor General of the 1st and 2nd Defendants through Exhibit “B” and that there was no misrepresentation of facts by the Claimant.

That the 3rd Defendant/Applicant has transferred his purported interest in the Plot to Senator Albert Bassey Akpan who has also settled with the Judgment Creditors.

And that this Honourable Court is functus officio and cannot revisit the case again.

A written address was filed wherein the two (2) issues were formulated for determination to-wit;

- 1. Whether the Applicant presented credible affidavit evidence to be entitled to the reliefs on the face of his Motion on Notice.*
- 2. Whether Motion on Notice is the appropriate procedure to set aside Judgment purportedly obtained by fraud or misrepresentation.*

Learned counsel submits, that this application is lacking in merit and be dismissed.

Reacting to the application, the 1st and 2nd Defendants/Applicants filed a further affidavit wherein they insisted that the Judgment of this Honourable Court was obtained by fraud.

With respect to Motion No. **M/4559/2024** filed by learned counsel for the 3rd Defendant/Applicant, the reliefs sought are similar to those of the 1st and 2nd Defendants already captured in the preceding part of this ruling.

The grounds upon which the application is brought was stated in the face of the Motion paper. In support of the application is an affidavit of 40 paragraph duly deposed to by one IniUtuk, a legal practitioner in the law firm of the 3rd Defendant/Applicant.

It is the deposition of 3rd Defendant, that offer letter was given to him in 2002 over Plot No. **387**, Katampe Extension, the subject matter of litigation and acceptance was made immediately, and possession was taken.

Applicant avers that the sum of **₦4,237,308** was swiftly paid for certificate of occupancy and same was issued.

That the Applicant developed same by erecting a mansion on the property and completed same and in occupation since 2010 before renting it out to 3rd Party in 2014.

That unknown to the 3rd Defendant/Applicant a suit was instituted in 2021 but the Claimant who is aware that the 3rd Defendant is in the occupation of the property refused to serve process in the property but deliberately kept him in the dark in a bid to obtain Judgment in default.

That it will be in the interest of justice to grant this application.

A written address was filed wherein two (2) issues were formulated for determination to-wit;

- 1. Whether this Honourable Court possesses the requisite power to set aside the Judgment delivered on the 13th day of July, 2023 same having been obtained by misrepresentation and concealment of material facts and proceed to set down the matter for the hearing of the case on the merit?*
- 2. Whether this Honourable Court possesses the requisite power to set aside the execution of the*

Judgment carried out against the Applicant/3rd Defendant on the 23rd February, 2024 by the Deputy Sheriff of this Court.

Learned counsel argued the above issue citing laws in urging the Court to grant this application in the interest of justice.

Reacting to the application, the Claimants/Respondents filed a counter affidavit of 17 paragraph deposed to Emeka Ukaga, Estate Managers of the 2nd Respondent.

The deposition of the Claimants/Respondents is a repetition of the counter to the Motion filed by the 1st and 2nd Defendants/Applicants. Given that the 3rd Defendant is residing at **BZ 130**, Kazaure Road, Kaduna State, outside the jurisdiction of this Court, an application for issuance of concurrent writ was duly granted by the Court vide Exhibits **“B1” and “B2”** respectively. And that the enrolled Order of Court and concurrent Writ were served through DHL but same were returned because the address of the 3rd Defendant was incorrect, and an application was made for publication in National Dailies and same was granted; same was published constituting service on the 3rd Defendant vide Exhibits **“D1”, “D2” and “D3”**.

That Senator Albert Bassey Akpan purchased the plot of the Claimants/Respondents from the 3rd Defendant and 3rd Defendant had transferred his purported interest in the Plot to Senator Albert Bassey Akpan who has also settled with the Judgment Creditors.

A written address was filed wherein two issues were formulated for determination to-wit;

- 1. Whether the Applicant presented credible affidavit evidence to be entitled to the reliefs on the face of his Motion on Notice.*
- 2. Whether Motion on Notice is the appropriate procedure to set aside Judgment purportedly obtained by fraud or misrepresentation.*

Learned counsel argued that this application be dismissed in the interest of justice.

A further affidavit was again filed by the 3rd Defendant/Applicant wherein he urged the Court to grant this application.

I have gone through the arguments for and against the motion on notice filed by both counsel for the 1st and 2nd Defendants/Applicant and that of the learned counsel for the 3rd Defendant/Applicant and the reaction of the Claimants/Respondents.

It is a general principle of law that once a court has given Judgment in a matter, it becomes functus officio. It cannot revisit the Judgment again except to correct clerical mistakes or errors arising from accidental slips or omission. See ***ONWUCHEKWA VS. C.C.B (1999) 5 NWLR (603) 409 at 414 C –D.***

There are however, notable exceptions to the application of the Rule that a Court cannot revisit, review, reopen a

matter it has decided, one of which is where the Judgment or Order is a nullity for want of jurisdiction due to failure to comply with an essential provision or failure to fulfill a condition precedent. The other exception is where the Judgment was a default judgment or where it was obtained by fraud or illegality. See ***BRILLA ENERGY LTD. & ORS. VS. AMCON (2023) LPELR 60493 (Page 15 -18) Paragraph E – A.***

The Supreme Court has stated the circumstances in which a Judgment of Court can be set aside in the case of ***STANBIC IBTC BANK PLC. VS. L.G.C LTD. (2020)2 NWLR (Pt. 1707) (Page 8)*** as follows:

“The Supreme Court has the power and leeway to set aside its judgment and rehear a case under these circumstances;

- a. Where there is a clerical mistake in judgment or order***
- b. Where there is an error arising from accidental slip or omission***
- c. Where there arises the necessity for carrying out its own meaning and to make its intention plain;***
- d. Where any of the parties obtained judgment by fraud or deceit;***
- e. Where such a decision is a nullity;***

- f. Where it is obvious that the Court was misled into giving the decision under a wrong believe that the parties consented to it.*
- g. When Judgment was given without jurisdiction.*
- h. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.*
- i. Where the Writ or application was not served on the other party, or there is the denial of fair hearing.*
- j. Where the decision/judgment is contrary to the public policy and will perpetuate injustice. Aside from the foregoing circumstances, judgment of the Supreme Court cannot be reviewed, the Court has no power to overrule, reverse, or nullify the previous decision whether on questions of substantive or procedural law.”*

The main contention of the 1st and 2nd Defendants/Applicants is that the Judgment was obtained by misrepresentation and concealment of material facts and that the 2nd Defendant is not a Juristic Person known to law.

It is instructive to observe here that an application to have a party's name struck out in a proceeding as a result of not being a juristic person is usually brought during the pendency of a suit and not when judgment is delivered.

And where such application is made, the proper option open to the Court is to strike out the name of the non-juristic person.

The 1st and 2nd Defendants/Applicants who were duly served with the Claimants processes, filed their memorandum of appearance without taken further steps to challenge the legal personality of the 2nd Defendant until Judgment is delivered.

It is my ruling on this issue that the argument of learned counsel in this regard is without merit and ought to be refused, same is hereby refused.

On issue two, that the Judgment was obtained by misrepresentation and concealment of materials facts.

It is the contention of learned counsel for the 1st and 2nd Defendants/Applicant that the Claimant has failed to disclose to the Court that the land which is the subject matter of disputed ownership was fully developed and has since been occupied by the 3rd Defendant/Applicant.

Counsel also stated that a due diligence by the Claimant would have shown that, the 3rd Defendant had an earlier title to the land as shown in Exhibits “A” – “G”.

On these premise, counsel contended that, the Judgment delivered by this Honourable Court was made based on misrepresentation and concealment of facts and this Court has the jurisdiction to set aside its own judgment.

It is instructive to state here that the Applicants were sued as the 1st and 2nd Defendants in the above suit, and the Applicants were duly served with all the processes of this Honourable Court including Hearing Notices. The Applicant had equally filed their memorandum of appearance and went into slumber. The Applicant has duty as the custodian of the land files in the FCT to make sure that all the facts relevant are present before the Court but has failed to do so.

The law is trite that, once a trial Court has given a party ample opportunity to defend himself, and the party does not avail himself of that opportunity, then the party cannot complain that he was deprived of the right vested on him. See *OGUNSANYA VS. STATE (2011) 12 NWLR (Pt. 1261) (Page 401 at 429)*

The feeble narration of the Applicants that the counsel who was assigned the file was having marriage challenges and ill health does not hold waters as the Applicants have a sizeable number of lawyers under its employment and payroll but deliberately refused to take advantages of the opportunity given to them to bring the application and complain of misrepresentation.

From the above, it is my ruling that, the 1st and 2nd Defendants/Applicants have failed woefully to place before the Court any material evidence cogent to warrant this Honourable Court to exercise its discretion to set aside its Judgment delivered on the 13th July, 2023.

Consequently Motion No. **M/4911/2024** filed by 1st and 2nd Defendants is hereby dismissed.

I shall now turn to Motion No. **M/4559/2024** filed by the 3rd Defendant/Applicant to ascertain whether same has merit worthy of the reliefs sought.

It is an old principle of law which is enshrined in our own law of evidence, that a Judgment obtained by or tainted by fraud can be challenged and if the fraud is proved, such Judgment can be set aside. See ***FAJUKE VS. OGEDENGBE (1968) LPELR 25490 (SC)Pp. 4 – 4.***

It is the contention of the 3rd Defendant/Applicant that service was not properly done in this case.

Indeed, service of process is a *sine qua non* for Court to assume jurisdiction, I shall therefore consider whether there was any valid service in line with law. See ***KIDA VS. OGUNMOLA (2006)13 NWLR (Pt. 997) 377.***

Indeed, it is trite law that where the service of notice of a proceeding is required to be given, failure to notify any party to the case is a fundamental omission which entitle the party not served and against whom any order is made in his absence to have the order set aside on the ground that a condition precedent to the exercise of jurisdiction for making the Order has not been fulfilled. ***MPAMA VS. FBN PLC (2013) 5 NWLR (Pt. 1346)177.***

On whether the processes of this Honourable Court were served on the 3rd Defendant/Applicant in compliance with law, I shall resolve same shortly.

The Claimant vide an Ex-parte Motion dated the 29th October, 2021 but filed on the 1st November, 2021 sought for an Order of substituted service of the Originating Processes in this suit on the 3rd Defendant by publishing same in Leadership Newspaper and to paste all other subsequent Court Process in this suit at the Maitama High Court Complex FCT, Abuja. The said motion was granted on the 11th November, 2021. In compliance with the Order of Court, the Claimant caused to be published the said Originating Processes on the Daily Sun Paper of Friday, 1st April, 2022 vide Exhibit “D”.

Indeed, the law on setting aside a Judgment obtained by fraud is well settled. It is not in doubt and the element of fraud to be proved to entitle an Applicant to succeed are clear and precise. It is not sufficient merely to allege fraud without giving any particulars, and the fraud must relate to matter which prima facie would be reason for setting the Judgment aside if they were established by proof and not matters which are mere collateral. See ***CORPORATE IDEAS SECURITIES LTD. HON. MINISTER FCT & ORS (2022) LPELR 58818 (Pt. 10 – 11) Para E – E.***

Indeed, the Court requires a strong case to be established before it will allow a Judgment to be set aside on this ground and unless the fraud, alleged raised a reasonable

prospect of success. ***OLUFUNMISE VS. FALANA (1990) LPELR 2616 (SC).***

The question that arises naturally is as follows:-

1. Why did the Claimant fail to disclose to the Court that the land which is the subject matter of dispute was fully developed and occupied by the 3rd Defendant/Applicant within jurisdiction?
2. Why did the Claimant fail to seek for an Order pasting the Court process on the disputed land within jurisdiction?

Of a truth, the action of the Claimant calls for concern. Here, I would have to agree with the Applicant that the court was misled. On the whole, this application succeeds, it is hereby Ordered as follows:-

1. An Order of this Honourable Court extending time within which the Applicant can seek leave to set aside the Judgment delivered on the 13th July, 2023 is hereby granted.
2. An Order of this Honourable Court granting the leave of this Honourable Court in favour of the Applicant to bring an application to set aside the Judgment of this Honourable Court entered on the 13th July, 2022.
3. Court hereby make an Order setting aside the Judgment of this Honourable Court entered on the 13th July, 2023 obtained by misrepresentation and concealment of facts, by the Claimant/Respondent.

4. The case is hereby set down for proper and all-exclusive trial on the merit.
5. The Writ of Execution and the execution of Judgment carried out on 23rd February, 2024 by the Deputy Sheriff of this Court is hereby set aside.
6. The Writ of Possession through which the Applicants was forcefully evicted from all the property situated at Plot No. 387, Cadastral Zone B19, Katampe Extension, Abuja is hereby set aside.
7. An Order is hereby granted directing the Deputy Sheriff of this Court and the Claimants/Respondents to immediately restore the Applicant to possession of all that property situated at Plot No. 387, Cadastral Zone B19, Katampe Extension, Abuja.
8. I hereby Order for accelerated hearing of this suit on the merit.

SIGNED:
HON. JUDGE
23/09/2024.

Appearance:

Chioma Nnokam, Esq, for the 1st and 2nd Defendants

Collins Ojay, Esq, for the 3rd Defendant/Applicant