

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 5<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/2823/2018**

**MOTION NO.: M/8462/2023**

**BETWEEN:**

**PA.LIN.HO GLOBAL SERVICES LTD ---- JUDGMENT CREDITOR/RESPONDENT**

**AND**

**1. BENTELL PROPERTIES LIMITED**

**2. BENARD NWAORA**

**3. FIRST GENERATION MORTGAGE BANK LIMITED**

**{a.k.a First Generation Homes (Savings & Loans) Ltd}**

**} JUDGMENT DEBTORS/  
APPLICANTS**

**----- RESPONDENT**

## **RULING**

In main case in this Suit Consent Judgment was entered into voluntarily and gladly by all the parties after they filed the Terms as agreed and had adopted same, urging Court to enter same as their Judgment consented to by the parties. All the parties were ad idem with the terms and their respective Counsel witnessed for them. The Court entered same terms as Consent Judgment of the parties

without any addition or subtraction. The parties gladly paid **₦50, 000,000.00 (Fifty Million Naira)** out of the **₦100, 000,000.00 (One Hundred Million Naira)** and the **₦1.5 Million** cost.

In order to ensure that the total Judgment sum is paid, the Judgment Creditor filed a Motion Ex-parte for Garnishee Order Nisi, the Court granted same and ordered the Garnishees to show cause why the Order Nisi should not be made Absolute against any of them for failing to show cause. While that is pending, the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors, who had paid part of the Judgment sum as agreed, filed the present Motion on which this Ruling is premised on, seeking for the following Orders/Reliefs:

- (1) An Order of this Honourable Court declining jurisdiction and staying further entertainment of the Garnishee Proceedings in this matter for non compliance with the mandatory service of the Order Nisi on the Judgment Debtor at least 14 days before the hearing wherein the Order Nisi will be made Absolute.
- (2) An Order staying further Proceeding for the execution of the Consent Judgment in this Suit delivered on the 3<sup>rd</sup> day of March, 2021 pending the determination of the Suit for setting aside the said Consent Judgment with Suit No.: FCT/HC/CV/1073/2021 between Bentell

Properties Limited, Chief Benard Nwora (Claimants) and Pa.Lin.Ho Global Services Limited, First General Mortgage Bank Limited (Defendants) already filed, served and pending before this Honourable Court, Coram: Honourable Justice A.O. Ebong of the High Court of Justice of the Federal Capital Territory, Abuja.

- (3) An Order of this Honourable Court directing both parties in this matter to maintain status quo pending hearing and determination of the Suit for setting aside the said Consent Judgment already filed and served copy of which is annexed herein and marked as Exhibit A.
- (4) And for any further Order or other Orders that this Honourable Court may deem fit to make in the circumstances.

They filed Affidavit of 24 paragraphs and Written Address. They attached several documents, most of which has nothing to do with the case in which Consent Judgment has already been delivered. A look at most of the documents has nothing to do with the Agreement of the parties in the Consent Judgment – Terms of Settlement which was adopted by the parties that culminated into the said Consent Judgment. The Affidavit was filled with

exactly the Reliefs sought in the main Suit which the parties have jettisoned when they entered into Consent Judgment voluntarily.

In the Written Address in support of the Motion the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors raised 5 Issues for determination which are:

- (1) Whether S. 83(2) S & CPA is mandatory as per 14 days service of Order Nisi on the Judgment Debtors before the making of the Order Absolute.
- (2) Whether the 2 methods of challenging Consent Judgment available to an aggrieved litigant are either by Appeal against the Judgment or by instituting a fresh Suit asking the Court to vacate the Consent Judgment. If yes, whether the Applicants are right by filing a new Suit to set aside the Consent Judgment.
- (3) Having regard to the pendency of the new Suit to set aside the Consent Judgment, whether the Order Nisi granted in this case is not liable to be stayed and further Proceedings for execution of the said Consent Judgment stayed pending the determination of the new Suit to set aside the Consent Judgment.
- (4) Whether Court can grant Garnishee Order Absolute notwithstanding aggrieved party pending challenge and

application to set aside the Judgment through fresh Suit.

(5) Whether the Applicants are entitled to the Reliefs sought in this application.

Taking question 1 and 4 together, they submitted that the service of Order Nisi on the Judgment Debtors is mandatory as the Judgment Debtors are necessary parties and should be served at least 14 days before the hearing of the Motion to make the Order Nisi Absolute. That Court should not grant the Order Absolute while there is a pending application challenging the Judgment, seeking to set aside the Judgment through fresh Suit. They cited extensively the case of:

**Delta State Govt. V. Kay Que Investment Ltd & Anor (2018) LPELR – 45545 (CA)**

They urged Court to hold that the Judgment Debtors are supposed to be served at least 14 days before the hearing of the application to make the Order Nisi Absolute and that the Judgment Debtors should also be heard along with the Judgment Creditor and the Garnishees before the Order Absolute is made. They also urged Court to hold that the Court cannot grant Order Absolute when there is a pending application to set aside the Judgment through a fresh Suit.

They argued questions 2 & 3 together and submitted as follows, relying on the following cases:

**Bessey Ltd V. Honey Legon Nig. Ltd & Anor  
(2008) LPELR – 8329 (CA)**

**Oct Edu. Services Ltd V. Padson Enterprises Ltd & Anor  
(2012) LPELR – 14069 (CA)**

They submitted that the Applicants – the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors have the right to file fresh Suit to Set Aside the Consent Judgment and also by Appeal, asking Court to vacate the said Consent Judgment. That Court should also hold that they are right in filing the present application to set aside the Consent Judgment.

That the Order Nisi is liable to be stayed and any further Proceeding for execution of the Judgment be stayed pending the determination of the new Suit challenging the Consent Judgment.

On Issue No. 5, they submitted that they are entitled to the Reliefs sought. They cited the case of:

**Gwede V. Delta State House of Assembly & Anor  
(2019) LPELR – 47441 (SC)**

They urged Court to grant the Reliefs as sought and resolve all the questions in the interest of the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors.

Upon service of the Motion, the 3<sup>rd</sup> Judgment Debtor/Respondent and the Judgment Creditor did not file any Counter. The Judgment Creditor Counsel responded orally on Points of Law and submitted, vehemently opposing the Motion, as follows:

That all the arguments and submission of the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors in the application were already canvassed in the Stay of Execution and in the Statement of Claim in the Suit.

The 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors filed a Further and Better Affidavit on 11<sup>th</sup> May, 2023. It was of 7 paragraphs. They attached 2 documents – Notice of Appeal filed on 11<sup>th</sup> May, 2023. They referred to the case of:

**Uzodinma V. Izunaso  
(2011) LPELR – 20011 (CA)**

They urged Court to dismiss the Garnishee Proceeding and uphold the Motion on Notice.

In a very comprehensive Reply on Points of Law the Judgment Creditor Counsel submitted further that the application is incompetent and an abuse of Court Process. That the present Motion does not refer to the Garnishee Proceeding in any way. That they only referenced the Motion for Garnishee. That the Motion is on the main Suit **CV/2823/18** which was not determined in the Consent Judgment in which the 1<sup>st</sup> – 3<sup>rd</sup> Judgment Debtors filed a Stay of Execution which this Court dismissed.

That this application is for further Stay and should not be allowed. That the Motion which the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors anchor on, the parties are not the same with the parties in this Proceeding. That it is trite that every application is predicated on particular procedure.

That Reliefs in the said application are like asking for Stay which the Court had already dismissed. That the application is caught up by estoppel.

That the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors had admitted in paragraph 9 of their Affidavit that they have paid part of the Judgment sum. That the present application is based on part payment of the Judgment sum which is made voluntarily.

That the 1<sup>st</sup> – 3<sup>rd</sup> Judgment Debtors were ready to pay as agreed but because they received a letter from A.R. Sabo & Associates who told them about a pending Suit against the Judgment Creditor as seen in paragraphs 11 – 15 of the Affidavit in support of the Motion.

That Order for Stay should not be granted based on mere filing of Notice of Appeal or filing of Stay at the Court of Appeal.

That the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors stood by and watched for their destiny to be decided by another party. That they cannot say that the Judgment is not binding on them. That the argument of the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors holds no water as it is standing on nothing. They urged Court to dismiss the application and make the Order Nisi Absolute.

## **COURT**

Having summarized the stand of the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors in their Affidavit and Further and Better Affidavit as well as the response of the Judgment Creditor Counsel



above, can it be said that there is merit in the above application and that this Court should stay Proceeding and not make the Order Nisi Absolute and hands off the Suit and wait for the outcome of the fresh Suit, and also hands off the Suit by dismissing the Order Nisi because the service of the Order Nisi on the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors was less than 14 days before the hearing of the application to make the Order Nisi Absolute?

It is the humble view of this Court that the application should be dismissed. The Reliefs should not be granted. The Court shall go on to make the Order Nisi Absolute as the Judgment Debtors does not deserve or merit the Reliefs sought.

To start with, there is more than 14 days interval after the service of the Order Nisi on the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors before the hearing of the Order Absolute.

The Order Nisi was made on the 20<sup>th</sup> of February, 2023. The 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors were served on the 17<sup>th</sup> of April, 2023. The matter for Order Absolute or put straight, the hearing of the Garnishees to show cause was on the 12 of May, 2023; several weeks after the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors were served. That is why this Court holds that on that point, this application lacks merit. This Court cannot therefore grant the Reliefs as sought in that regard. The Judgment Creditor complied with the provision of **S. 83(2) S & CPAC.**

A closer look at the new Suit filed, it shows that the parties are not the same with the Suit – CV/2823/18. The former 1<sup>st</sup> & 2<sup>nd</sup> Defendants in the Suit to which Consent Judgment was delivered are Plaintiffs in that Suit. While the Plaintiff in the Suit CV/2823/18 and the former 3<sup>rd</sup> Defendant in the same CV/2823/18 are the Defendants. They are not the same. Besides, the time of filing of the new Suit had made the Suit to be caught up by estoppel rem judicatan. They cannot therefore on that ground succeed in this case.

In as much as a Judgment Debtor has a right to file a fresh Suit to challenge a Consent Judgment such Suit must be based on merit. The claims should be known and defined. The Judgment Debtor must show exceptional circumstance and deceit or fraud. The Judgment Debtor should not be forum-shopping to.

In this case this Court had dismissed the Stay of Execution filed by the same Applicants and stated in the well considered Ruling that the Consent Judgment was not obtained by fraud. The Court refers to the said Ruling in which the application for Stay of Execution was dismissed.

It is the law and it is trite that once a Court had deliberated on an issue and had its decision made, the Court becomes functus officio as far as that matter is concerned.

This Court cannot stay the execution of a Consent Judgment wherein the parties had made a part payment of

the Judgment sum and wherein the Judgment Debtors were given more than 14 days after service of the Garnishee Order Nisi to respond and was given chance to be heard.

The 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors/Applicants have no right to re-litigate or reopen issues which were already determined or left by the parties based on the Consent Judgment.

The service of the Garnishee Order Nisi on the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors was proper. So this Court holds.

Yes, they have a right to file fresh Suit or Appeal, but the fresh Suit is yet to be determined and the Motion for Stay at Court of Appeal is also obviously abandoned. The Court refers to the case relied on by the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors where the Court warned that Garnishee Proceeding is not and should not be for reopening of matter already determined in the Judgment which is sought to be enforced by the Order Absolute. See the case of:

**Gwede V. Delta State House of Assembly & Anor Supra**

Such application as this is not granted as matter of cause. It is incumbent on the Applicant to establish that there is a dire situation, fraud or fundamental irregularity which the Judgment Creditor has presented before the Court in such a case. This Court gave the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors audience, heard their Motion for Stay of Execution and dismissed it because it lacks merit.

In this case the Judgment is by consent of the parties, the Judgment sum is certain and the parties were ad idem. So for Court to Stay as sought such Order must come from a Court of higher allotment. In this case there is no such Order. Mere filing of Motion for Stay at Court of Appeal does not mean that there is Order for Stay. Until such Order is made by the higher Court the Order of the Court of first instance still stands especially where there is no element of fraud in obtaining the Judgment in the first place and where the Applicants, as in this case, has not established any such fraud.

This Court had given the Judgment Debtors right to be heard. There is no justice in staying further execution in this case pending the hearing of the new case. Besides, the same 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors did not even obtain leave of Court before filing the Stay at the Court of Appeal as required by law. Again as held in the case of:

**Afeghua V. A-G Edo State**  
**(2001) SCNJ 418 @ 456 per Karibi Whyte**

where Court held that Consent Judgment entered into by parties is binding until it is set aside by a fresh action where it is established that there was fraud.

From the above it is until a Court in a fresh action sets aside the Consent Judgment on a fresh action, it is still binding on the parties. It is not based on mere filing of fresh action as the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors are claiming.

Yes, the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors/Applicants has a right to challenge such Judgment, but until it is set aside by a Court, it is still binding. Any Appeal of the Consent Judgment shall be based on leave sought and obtained. That is the decision of Court in the cases:

**Octs Educational Services Ltd V. Padson Industries Ltd  
& Anor**

**(2012) LPELR – 14069 (CA)**

**Besoy Ltd V. Honey Legon Nig. Ltd & Anor Supra**

**Vulcan Gases Ltd V. G.F. Ind. A-G**

**(2001) 9 NWLR (PT. 719) 610 @ 646**

It is the humble view of this Court that the Garnishee Order Nisi is not liable to be set aside until the determination of the new Suit. There is no Order to that effect. Again, there is no merit in the application and as the application is even status barred.

Since there is no merit in this application and the Court had earlier dismissed the Motion to set this Judgment aside and dismissed the stay of execution filed by the 1<sup>st</sup> – 3<sup>rd</sup> Judgment Debtors this Court shall therefore grant the Garnishee Order Nisi Absolute when the Garnishees have shown enough course as the challenge by the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors lacks merit and there is no Order setting aside the Consent Judgment which is still binding on the parties – 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors and on the Judgment Creditor and the 3<sup>rd</sup> Judgment Debtor.

From all indication the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors are not entitled to their Reliefs since their application lacks merit. This Court therefore dismisses the application and shall make the Garnishee Order Nisi Absolute against the Garnishee that has shown enough cause – 22<sup>nd</sup> Garnishee in this case.

The Order Nisi is made absolute against the United Bank for Africa PLC which has shown that it has more than the Judgment sum of the Judgment Debtors' money in its custody. The said Order Nisi is made Absolute to the extent of the Judgment sum and accrued interest if any.

**This is the Ruling of this Court.**

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2024 by  
me.**

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**K.N. OGBONNAYA**

**HON. JUDGE**