

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 5TH DAY OF JULY, 2024

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

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

MOTION NO.: M/590/2023

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/
RESPONDENTS**

**} JUDGMENT DEBTOR/
APPLICANT**

RULING ON PRELIMINARY OBJECTION

On the 3rd day of March, 2021 the Court entered Terms of Settlement gladly entered into by the parties in this Suit as their Consent Judgment. They all signed the Terms of Settlement and it was witnessed by their respective Counsel. In the said Terms of Settlement they spelt out all the terms which they agreed to amicably and had adopted same in their agreement in full and final settlement of the Issues in dispute. All the parties had Counsel

representation and the said Counsel were all very senior members of the Bar, one of who had become Senior Advocate of Nigeria – Counsel for the 3rd Defendant. Before the amicable settlement and subsequent adoption of the Terms of Settlement the matter was already going into Hearing. They all opted to explore settlement. The Court obliged them time and they settled after a considerable period of time. They approached the Court to adopt same and applied in turn for the Court to enter same as their Consent Judgment in full and final settlement of all the disputes in the case. The Court granted them their heart desires and entered the said Terms of Settlement as Consent Judgment of the parties which has the same judicial force and efficacy as any Judgment gotten after full Hearing and call of evidence by the parties.

In the Terms of Settlement, paragraph 4, the parties agreed thus:

Paragraph 4

That all parties in this Suit by virtue of these Terms of Settlement waive and forfeit all or any other claims against each other.

Paragraph 3

That this payment is final settlement of all the claims against the Defendants by the Claimant and her contracts.

Paragraph 1

That the Defendants shall pay to the Claimant the sum of ₦100,000,000.00 (One Hundred Million Naira) as full and final settlement of this Suit.

Based on the said terms by the parties the Court ordered as follows:

“IT IS HEREBY ORDERED with consent of all the parties that the above listed Terms of Settlement having been adopted by their respective Counsel is made the Consent Judgment of this Honourable Court.”

The above was ordered on the 3rd day of March, 2021.

The parties had paid to the Claimant the sum of **₦50,000,000.00 (Fifty Million Naira)** remaining **₦50,000,000.00 (Fifty Million Naira)** and **₦1.5 Million** cost. While the Claimant/Judgment Creditor was waiting for the Defendants/Judgment Debtors to fulfill their obligation under the Consent Judgment as amicably agreed, the 3rd Judgment Debtor who had Counsel representation who is now a Senior Advocate filed a Preliminary Objection challenging the Garnishee Order Nisi made by this Court. Meanwhile, this Court had given a Ruling dismissing a Stay filed by the 1st & 2nd Judgment Debtors earlier. The Preliminary Objection was filed on the 18th of April, 2023 – 2 years after the Consent Judgment was entered and over one year after part of the Judgment sum was paid.

In the Preliminary Objection the 3rd Judgment Debtor Counsel claimed that the 3rd Judgment Debtor was not a party to the contract between the Judgment Creditor and the 1st & 2nd Judgment Debtors. That there is no claim against the 3rd Judgment Debtor/Applicant in the Suit in which Consent Judgment was entered. He had repeatedly stated that the 1st & 2nd Judgment Debtors had paid part

of the Judgment sum. That they had filed a Motion to set aside the Consent Judgment at the Court of Appeal. He had urged the Court to set aside the Consent Judgment.

This Court deems as if set hereunder seriatim the said grounds as set out in the Preliminary Objection. He supported same with Affidavit of 18 paragraphs. He attached some documents – FGMB 1 – 4.

In the Written Address he raised an Issue for determination which is:

“Whether it is right for the Judgment Creditor to commence Garnishee Proceedings to enforce the Consent Judgment in this case during the pendency of the Suit FCT/HC/CV/279/2022 seeking to set aside the Consent Judgment?”

He submitted that a Judgment obtained by fraud can be set aside by means of a fresh action by one or more parties in the Suit. That Suit FCT/HC/CV/279/2022 filed by the Judgment Debtors us proper procedure to set aside the Consent Judgment. He referred to the case of:

**Sen. Mohammed Abdulsalami Ohiare & Anor V. Ogembe Salami Ahmed & Ors
(2016) LPELR – 451157 (CA)**

**Ecobank Nig. Ltd & Anor V. Olive Energy Oil & Gas Ltd
(2018) LPELR – 44112 (CA)**

That there is a pending Suit for setting aside the Consent Judgment which the Garnishee Proceeding is predicated

upon. That the Applicant/3rd Judgment Debtor has locus standi to do so. He relied on the case of:

Jenkins Duvie Giane Gwede V. Delta House of Assembly & Anor
(2019) 8 NWLR (PT. 1673) 30 @ 54 – 55

That the Garnishee Proceeding if made Absolute will make the Suit or foist on Court a fait accompli. He referred to the case of:

Ali Modu Sheriff & Anor V. PDC & Ors
(2017) LPELR – 41808 (CA)

That Motion **M/5054/23** and Suit No.: **FCT/HC/CV/279/22** are the same. That the enforceability of the Consent Judgment is the same as in Suit FCT/HC/CV/2823/18. That the Motion M/5045/23 is an abuse of Court Process and should be dismissed in limine. He urged Court to so hold and strike out the Garnishee Proceedings.

Like the 1st & 2nd Judgment Debtors, the Judgment Creditor did not file anything but responded on Points of Law and submitted as follows:

That all the facts material to the application are already before the Court. That in paragraph 1 of the Terms of Settlement clearly stated that the Defendants shall pay the Claimant **₦100, 000,000.00 (One Hundred Million Naira)** as full and final settlement of all the issues in the dispute. That they adopted the Consent of Judgment in this Suit.

That Court has dismissed an application for Stay earlier filed by the same 3rd Judgment Debtor who filed the present Preliminary Objection. That he never challenged same in the application. That this application filed 2 years and 3 months after the Consent Judgment was entered into is an afterthought.

That the Preliminary Objection was a reproduction of the claims of the Judgment Creditor in the main Suit. That parties in this Suit cannot re-litigate the issues already settled in a Garnishee Proceeding. That Court cannot allow re-litigation, review of Judgment or Garnishee Proceeding or decide on whether a Judgment is properly enforceable or not or sit on Appellate ground over its Judgment.

That issue of indebtedness of the Judgment Debtors to the Judgment Creditor is no longer an issue which can be decided or to be decided at this stage in the Suit or whether the Judgment Debtor can sue or be sued or was sued cannot be looked into at this stage when Consent Judgment had been delivered and Order made.

That any reference to the claims can no longer come up at this stage. That the 3rd Judgment Debtor held themselves to be bound by the Terms of Settlement which was adopted and entered as Consent Judgment of the parties which is by agreement of the parties which is distinct from other Suit where there was full hearing. That the parties agreed to pay the Judgment Creditor and that **N50,000,000.00 (Fifty Million Naira)** has already been paid to the Judgment Creditor by the Judgment Debtors.

That in the letter of demand to pay the remaining balance of **₦50, 000,000.00 (Fifty Million Naira)** written to the 3rd Judgment Debtor it was not stated anywhere that they were NOT obligated to pay or that their name (3rd Judgment Debtor) was stated therein in error. The 3rd Judgment Debtor on said in the letter that they cannot pay because there is a pending Stay of Execution and that the 1st & 2nd Judgment Debtors filed a Suit to set aside the Judgment.

That in a Ruling on the Stay the Court dismissed the stay on 4th November, 2022. That Court held in the said Ruling that there is no element of fraud in the said Consent Judgment. That the 3rd Judgment Debtor never filed a Stay of Execution on its own or any Appeal against the case. That the 3rd Judgment Debtor haven agreed to the Consent Judgment is bound and Court is obliged to dismiss the Preliminary Objection as it is incompetent and no Relief sought in the Preliminary Objection. That the Preliminary Objection is a ploy to cause undue delay and should be dismissed with cost.

The 1st & 2nd Judgment Debtors aligned with the 3rd Judgment Debtor and urged the Court to set aside the Judgment and not the Order Nisi.

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Be it known to all and sundry that in this case the Judgment was by agreement and consent of the parties. The Terms are as spelt out by the parties. They all signed

same in unison and came before this Court and adopted same terms and condition which they gladly entered into after long deliberation. They signed same and their Counsel witnessed, filed same and passionately appealed to Court with joy and happiness to enter same as their Consent Judgment. This Court did say a “Judicial Amen” to the desires of the parties’ heart.

Two years after the 3rd Judgment Debtor came up with this Preliminary Objection. Meanwhile, the parties had enforced part of the Judgment by payment of about 50% of the Judgment sum which amounts to **₦50, 000,000.00 (Fifty Million Naira)**. It is when the 1st & 2nd Judgment Debtors wrote to the 3rd Judgment Debtor to pay the remaining **₦50, 000,000.00 (Fifty Million Naira)** and the cost accrued that the 3rd Judgment Debtor woke up to remember that it can file the present Preliminary Objection after Garnishees had shown cause after the Order Nisi was made and Order Absolute scheduled to be made against the Garnishees not even the Judgment Debtors.

This Court had given its reason on the fact that this Judgment was not obtained by fraud and shall not reopen its view in this Preliminary Objection because that decision has not been vacated and it has not been set aside. The parties are still bound by it. So also is the Consent Judgment in this case.

It has been held in plethora of cases that Garnishee Proceeding concerns the Garnishees and not the parties in the dispute per se especially the Judgment Debtor

notwithstanding that it is the money of the Judgment Debtor in custody of the Garnishees that are encumbered where the Order is made Absolute.

Also in Consent Judgment parties have agreed to the terms and condition. They are the ones who have bound themselves in such Judgment by the said terms. Such Judgment can only be challenged by filing a fresh Suit on the same claim or an Appeal where the Judgment is set aside. Filing pending Motion for Stay of Execution or Set Aside at the Court of Appeal is not setting aside. That means that unless and until the Court of Appeal sets aside or grants such Motion the Judgment of the Court below shall stand and subsist. The reasoning of Court of Appeal in this case is because oftentimes people file such frivolous applications and abandon same using same to stall enforcement of the Judgment and enjoyment of the fruit of the Judgment by the Judgment Creditor. Such application oftentimes does not see the light of the day. The Apex Court had held that unless there is a Stay already granted, the Court below should not halt the Proceeding in the case before it.

In every agreement parties are bound by the terms and condition they have agreed to, whether spelt out in writing or by conduct or correspondence or long relationship between them. This principle applies to Terms of Settlement entered into by any party as in this case. Again where there is Terms of Settlement by the parties, the parties have forgone the rigors of presenting their

respective cases and defences as the case may be and calling of Witnesses and tendering of documentary evidence. Once the terms are spelt out in paper and signed, filed and adopted, the Court has no power to force the parties to call evidence. Again there will not be any reason or need to call evidence or analyze documents. Once the Court enters the said Terms of Settlement as Consent Judgment of the parties the Court becomes, as in other regular cases, *functus officio* and cannot entertain anything concerning the issue in dispute once the Terms of Settlement was not obtained by fraud and there is no overwhelming circumstance. There is no such circumstance in this case. This Court has become *functus officio* as far as the issues in dispute in this case are concerned. So the issue of having no claim against the 3rd Judgment Debtor in this case cannot be entertained by this Court and cannot be a subject matter that can sue this Court to dismiss the Order Nisi and stop the Order Absolute.

In other words the Preliminary Objection lacks merit as this Court cannot dismiss the Garnishee Proceeding as sought by the 3rd Judgment Debtor in this Preliminary Objection.

Mere filing a Motion for Stay of Execution at the Court of Appeal does not culminate in stay. After all, the 3rd Judgment Debtor had not gone to move the said application at the Court of Appeal since it was filed. The 3rd Judgment Debtor cannot feign ignorance of the fact

that it was not party to the settlement Agreement because it was. It was the same 3rd Judgment Debtor and the 1st & 2nd Judgment Debtors that all applied for time to explore settlement. The Court refers to its Record. The same 3rd Judgment Debtor has Counsel representation who by now is a Senior Advocate, who signed as Witness for the 3rd Judgment Debtor in the said Terms of Settlement as filed by them. The same Counsel adopted and humbly applied that Court enter same as Consent Judgment of the parties. The 3rd Judgment Debtor cannot re-litigate the issues already fully decided on by the parties and they had stated in unison that it is for final settlement of all the claims against the Defendants and any other claim against each other is forfeited.

That is why this Court holds that the present Preliminary Objection is an attempt by the 3rd Judgment Debtors to re-litigate the issues. Again, given the fact that it has the same prayers, claims and Reliefs and grounds as the Suit in which the Consent Judgment was delivered some years ago.

The **FGMB 4**, the letter of the Judgment Creditor to the 3rd Judgment Debtor was a reminder to the 3rd Judgment Debtor that it has not fulfilled its obligation under the Consent Judgment in which all the parties were ad idem with the Terms of Settlement Agreement. The 3rd Judgment Debtor cannot by this unmeritorious application delay the Garnishee Proceeding and re-litigate

the case in which Judgment had already been delivered based on consent and consensus of the parties.

The pendency of the Suit FCT/HC/CV/279/22 cannot be a ground for grant of the Preliminary Objection. To start with, this Court had rejected and dismissed a Motion for Stay of Execution earlier filed. The parties to the Suit FCT/HC/CV/279/22 are not the same with the parties in the Suit in which the Consent Judgment was delivered.

In that case – **FGMB 5** the parties are:

First Generation Mortgage Bank Ltd -- Claimant

V.

1. Pa.Lin.Ho Global Services Ltd	}	Defendants
2. Bentell Properties Ltd		
3. Chief Benard Nwora		

While in the case FCT/HC/CV/2823/18 the parties are:

Pa.Lin.Ho Global Services Ltd -- Claimant

V.

1. Bentell Properties Ltd	}	Defendants
2. Chief Benard Nwora		
3. First Generation Mortgage Bank Ltd		

From the above it is clear that the parties are not the same as in **FGMB 1 & 3** – the Writ and Consent Judgment respectively. There are fundamental differences in the 2 cases.

In **EXH FGMB 5**, the Claimant is the 3rd Defendant in **EXH FGMB 1**. In the same FGMB 5, the Claimant in FGMB 2 is the 1st Defendant while the 2nd Defendant is the 1st Defendant in FGMB 2 and 3rd Defendant in FGMB 5 is the 2nd Defendant in FGMB 2 and the 1st Defendant is the Claimant in FGMB 2 and Claimant in FGMB 5 is the 3rd Defendants in FGMB 2. Again, the claims are not the same to the 2 cases.

Again, even the Terms of Settlement which the 3rd Judgment Debtor is clamoring to be set aside has been partially enforced by the parties. If the 3rd Judgment Debtor has any problem with the other Judgment Debtors he should settle it with them as to the fulfillment of their obligations under the Consent Judgment. They should not bring it up as a ground of Preliminary Objection to challenge the Garnishee Proceeding and stall the enforcement of the Judgment which it has consented to. After all, it never raised any such objection before this Court before the parties settled their dispute ad idem with the Claimant and in the Consent Judgment. The issues in the dispute closed upon the parties exploring settlement and actually settling.

That is why it is the most humble view of this Court that this Preliminary Objection lacks merit. It is an abuse of the Court Process and the argument and submission of the Judgment Creditor's Counsel in response to the Preliminary Objection by the 3rd Judgment Debtor is upheld.

The said Preliminary Objection is therefore DISMISSED with cost of ₦50, 000.00 (Fifty Thousand Naira) against the 3rd Judgment Debtor.

This is the Ruling of this Court.

Delivered today the ____ day of _____ 2024 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

JUDGMENT CREDITOR COUNSEL: ESQ.

JUDGMENT DEBTORS' COUNSEL: ESQ.