

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 08<sup>TH</sup> DAY OF MARCH, 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/3517/2020**  
**MOTION** **NO.:**  
**FCT/HC/M/1497/2022**

**BETWEEN:**

**ISMAILA YUSUF OVAYOZA**  
(Trading under the name and  
style of Loady Big Ent.)

**JUDGMENT CREDITOR  
/RESPONDENT**

**AND**

**PERSON(S) UNKNOWN**

**JUDGMENT DEBTOR(S)**

- 1. FRANCFILI GLOBAL SERVICES LIMITED**
- 2. OLIVER NWUJU**

**PARTIES SOUGHT TO  
BE JOINED/APPLICANTS**

**RULING**

This Ruling is on an application for joinder by the Parties Sought to be Joined/Applicants.

By a Motion on Notice dated and filed on the 5<sup>th</sup> of October, 2022, the Parties Sought to be Joined/Applicants brought this application seeking the following reliefs:-

- a. An Order of this Honourable Court granting leave to the Applicants to join as parties in this suit.*

- b. An Order of this Honourable Court deeming the Applicants' processes in Motion on Notice M/10916/2022, M/10917/2022 and Counter-Affidavit in Motion No. M/10981/1011 (SIC) and all other court processes as properly filed and served appropriate fees haven (sic) been paid.*
- c. And for such order or orders as this Honourable Court may deem fit to make in the circumstances.*

The application was founded on seven grounds. These are that the Applicants are necessary parties who were sued as "Person(s) Unknown", that the Applicants are persons who would be affected by the Order of this Court, that the Applicants have shown that the Respondent is claiming title to the plot which was allotted 16 (sixteen) years before he registered the name, that the Applicants are the owners and in possession of the subject matter of the suit, that the Orders of this Court would affect the Applicants directly, that the Applicants would be foreclosed from proving their rights to the ownership of the plot and that the Court has the discretionary powers to grant the application in the interest of justice.

In support of the application is a 9-paragraph affidavit deposed to by one MrsOfili, Francisca Anulika, who described herself as the director of the 1<sup>st</sup> Applicant. Attached to the affidavit is one exhibit. The exhibit is the acknowledgement of the application for regularization of land titles and

documents of Area Councils issued to the 1<sup>st</sup> Applicant. The Applicants also filed a written address in support of the application.

In the affidavit, the deponent averred that the suit was instituted against them as unknown persons. She added that the 1<sup>st</sup> Applicant was the owner of the property described as Plot ED 1816 Sabon Lugbe South-East Extension Layout, Lugbe, Abuja. She concluded the Applicants were proper properties and would be prejudiced if they were not joined as parties.

In the written address, Counsel for the Applicants formulated a sole issue for determination, which is “*Whether or not the Applicants who are sued as Person(s) Unknown party must obtain the leave to defend this suit.*” Arguing this sole issue, Counsel referred to Order 13 Rules 9 and 10 of the Rules of this Court, the cases of ***Ogunuyi v. Mustapha (1996) 4 NWLR (Pt. 442) 345, Olowosoke v. Oke (1972) 11 SC 1, Nalsa team Associates v. NNPC (1991) 8 NWLR (Pt. 221) 655*** among other cases to support his submissions that the application is proper. He maintained that the Applicants were seeking the leave of this Court to be joined as Defendants because that was the proper and lawful thing, especially, as they had disclosed their interest in the subject of the suit. He urged the Court to grant the reliefs sought.

In answer to the application of the Applicants, the Judgment Creditor/Respondents, on the 25<sup>th</sup> of October, 2022, filed 7-paragraph

Counter-Affidavit deposed to by the Judgment Creditor/Respondent himself, Ismail Yusuf Ovayosa. He averred in the Counter-Affidavit that the Applicants had already joined themselves as parties going by the structure of the heading of their processes, that Judgment in this suit was delivered on the 30<sup>th</sup> of March, 2021 and, as a result, the Court was *functus officio*, that the present application was not an application that could be entertained by the Court in the exercise of its jurisdiction to hear post-judgment applications; that the Applicants were seeking conflicting reliefs and that the application of the Judgment Creditor/Respondent before the Court was an application for the issuance of a Writ of Possession.

In the written address in support of the Counter-Affidavit, Counsel for the Judgment Creditor/Respondent formulated a sole issue for determination, to wit: “*Whether this Honourable Court has the jurisdiction and the vires to entertain and grant the Applicants’ application?*”

Arguing this sole issue, Counsel submitted that the Court does not have the jurisdiction to entertain the present action, as the Court was already *functus officio*, having delivered its judgment in the suit on the 30<sup>th</sup> of March, 2021. He pointed out that the application was brought eighteen (18) months after the delivery of the Judgment in this suit. He added that only the Court of Appeal had the powers to determine the nature of the application the Applicants have brought before this Court. Citing the cases of ***Group Capt.***

*E. E. Ibok (Rtd) v. HRH EtubomEyo E. Eyo Honesty II (2007) 6 NWLR (Pt. 1029) 55 at 69, Madukolu v. Nkemdilim (1962) All NLR 587, Abbas v. Tera (2013) 5 NWLR (Pt. 1338) 284* among other cases, Counsel submitted that the Judgment being a Judgment on its merits which was delivered within jurisdiction, only the Court of Appeal could set it aside. He urged the Court, therefore, to discountenance the application.

I have studied the facts and circumstances of this application and I believe that the issue which learned Counsel for the Judgment Creditor/Respondent has formulated will dispose, most effectively, this application. I hereby adopted the issue and frame it as thus: “**Whether this Court is not functus officio insofar as this application is concerned and therefore lacks the requisite jurisdiction to hear and determine this application?**”

I have provided a precis of the positions of the parties in this application. It is important I also provide a recapitulation of the facts of this case prior to this application. The substantive suit was an action for possession of land brought pursuant to Order 60 Rule 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018. The Judgment Creditor/Respondent, as the Claimant, sought the following sole relief: “**An Order to recover possession of all that parcel of land described as Plot ED 1816 Sabon Lugbe South East Extension Layout, Lugbe, Abuja on**

***the ground that he is entitled to possession and the person(s) in occupation is (are) in occupation without his license or consent.”***

This suit first came up for mention on the 28<sup>th</sup> of January, 2021. Counsel for the Claimant moved a Motion *Ex Parte* for leave of this Honourable Court to serve the Defendant(s) by substituted means. This Court granted the prayer and adjourned the matter to 10<sup>th</sup> of February, 2021. On the 10<sup>th</sup> of February, 2021, the matter could not go on because the Claimant was unable to serve the Defendant(s) with the processes in this suit. This Honourable Court, however, noted that the record of the Court showed that service of the originating processes and the Hearing Notice had been effected on the Defendant(s) and, as such, the suit would be ripe for hearing on the next adjourned date. It accordingly adjourned the matter to the 4<sup>th</sup> of March, 2021. On the 4<sup>th</sup> of March, 2021, learned Counsel for the Claimant proceeded to present the case of the Claimant and urged the Court to grant the relief sought by the Claimant. The Court, upon the conclusion of the case of the Claimant, adjourned the suit to 30<sup>th</sup> March, 2021, for Judgment. This Court, in its considered Judgment delivered on the 30<sup>th</sup> of March, 2021, granted the relief sought by the Judgment Creditor/Respondent, then, as the Claimant.

The Judgment Creditor/Respondent, in the process of enforcing the Judgment, brought an application for the issuance of the Writ of Possession.

Somehow, the Parties Seeking to be Joined/Applicants woke up from their slumber and brought this application for joinder. The question, now, is whether this Court is clothed with the requisite jurisdiction to hear and determine this application.

Now, jurisdiction has been defined as the power of the Court to hear and determine any matter brought before it for adjudication. See ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 239; Adeyemi v. Achimu NDIC (2023) 1 NWLR (Pt. 1866) 583 S.C. at 640, paras A – B.*** The issue of jurisdiction enjoys preeminence over every other issue before the Court. Once it is raised, the Court is bound to rule on it first before it proceeds to determine other issues before it. It is the livewire of any adjudicatory process. See ***Nulec Ind. Plc v. Dyson Tech. Ltd. (2022) 18 NWLR (Pt. 1863) 735 S.C. at 755, paras B – C; Uba v. Moghalu (2022) 15 NWLR (Pt. 1853) 271 S.C. at 295, paras B – C.*** A decision arrived by the Court without jurisdiction goes to no issue and is of no effect no matter how beautifully conducted the proceedings were. See ***Ogbuji v. Amadi (2022) 5 NWLR (Pt. 1822) 99 at p. 157, paras. C-D; E-G.***

It is against this background that one begins to appreciate the application of the Parties Seeking to be Joined/Applicants. Can this Court, at this point in time, be competent to sit and hear the application of the Applicants? Is this Court, having delivered its Judgment on the 30<sup>th</sup> of March, 2021, that is,

almost two years ago, not *functus officio*? A Court is said to be *functus officio* when it has exhausted the limits of its jurisdiction in respect of the suit before it. Its jurisdictional limits are said to be exhausted when it has made a final pronouncement on the matter before it and has effectively and conclusively determined the rights of the parties before it. At that point, the only applications the Court can entertain are applications which seek to give effect to the Judgment or final order already delivered. See *Alh. A. AhmedCo. (Nig.) Ltd. v. A.I.B. Ltd.*(2001) 10 NWLR (Pt. 721) 391 C.A.at 403, paras E – F;*Ujoatuonu v. Anambra State Govt.*(2010) 15 NWLR (Pt. 1217) 421 C.A. at 440, para F;*Jegede v. Akande*(2015) 6 NWLR (Pt. 1455) 228 C.A. at 261, paras C – E. In *Oboh v. N.F.L. Ltd.*(2022) 5 NWLR (Pt. 1823) 283 S.C at 317, paras. A-D; 318, para. D,the apex Court held that “**Once a court delivers its final judgment, it becomes functus officio. This is because, the court's judicial duty or function has been wholly accomplished and it thereby lacks further judicial authority or legal competence to revisit and review the judgment, since it cannot sit as an appellate body over its own final decision.**”

Can this application the Parties Seeking to be Joined/Applicants be considered part of the applications that seek to give effect to the Judgment of this Court in respect of this suit? I will not hesitate to answer the question

in the negative and do hereby answer the question in the negative. Order 13 of the Rules of this Court deals with parties generally. Order 13 Rule 18(2) and (3) and Rule 19(1) and (2) and Rule 20 of the Rules of this Court, 2018 presuppose that any application for joinder must be made during the pendency of a suit, and not after Judgment has been delivered. Where an interested party appears after Judgment has been delivered in the suit before a Court, the only option open to such interested party is to appeal against the Judgment as an Interested Party. Such an application to appeal as an Interested Party can be brought only at the Court of Appeal. Invoking this Court to hear such application is to invite this Court to sit on appeal over its Judgment. That, without mincing words, is an abuse of the process of this Court. This Court will not condone such abuse of its process.

It is for this reason, therefore, that I hold that this Court lacks the jurisdiction to hear and determine this application, as it is *functus officio*. I therefore find this application unmeritorious. It is liable to be dismissed and is accordingly dismissed.

This is the Ruling of this Honourable Court, delivered today, the 08<sup>th</sup> of March, 2023.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**08/03/2023**

**APPEARANCES:**

**FOR THE JUDGMENT CREDITOR/RESPONDENT:**

**Chibuike Nwodo Esq.**

**FOR THE PARTIES SOUGHT TO BE JOINED/APPLICANTS**

**Darlington I. Dike Esq.**