

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 4TH DAY OF APRIL, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/2882/17
MOTION NO.:-FCT/HC/M/6870/2021

BETWEEN:

DR. JOHN EZEUHWE SABO:.....CLAIMANT/APPLICANT

AND

CHIEF DAVID SABO KENTE:...DEFENDANT/RESPONDENT

Miriam Bello for the Defendant.
Claimant unrepresented.

RULING/JUDGMENT.

By a Motion on Notice dated the 14th day of October, 2021 and filed the 15th day of October, 2021 the Claimant/Applicant brought this application praying this Court for the following;

1. An order of this Honourable Court setting aside the ruling of this Court delivered on the 15th day of July, 2021 for want of jurisdiction.
2. And forsuch further or other orders as this honourable Court may deem fit and expedient to make in the circumstance.

The grounds for the reliefs sought as set out by the Claimant/Applicant are that;

- i. the parties have compromised Suit No. CV/2882/2017 pending before this honourable Court by virtue of the terms of settlement reached by both parties.

- ii. the jurisdiction of this Court to proceed with the subject matter of the original suit has been ousted by the terms of settlement reached between the parties.
- iii. the jurisdiction of the Court has been ousted and the original suit has been spent.
- iv. the parties can only maintain a fresh action to enforce any unfulfilled part of the terms of settlement and not to proceed with the already compromised Suit No. CV/2882/17.

In the supporting affidavit deposed to by Iyaji Patrick, Counsel to the Claimant/Applicant, the Applicant averred to the effect that after the Claimant closed his case and the matter adjourned for defence to open, the parties met and reached an agreement for the settlement of the matter out of Court, thus composing the suit.

The Applicant stated that in compliance with part of the terms of settlement reached by the parties, the Defendant paid the sum of N4,000,000.00 to the Claimant but refused to comply with the second condition stipulated in the terms of settlement and instead filed an application for the refund of the already paid sum.

The learned Claimant/Applicant's counsel, in his written submission in support of the application, raised a sole issue for determination, to wit;

“Whether the(sic) this Court has the jurisdiction to sit and make an order over an already compromised Suit CV/2882/17?”

Proffering arguments on the issue so raised, learned Applicant's counsel relied on **Madukolu&Ors v. Nkemdilim (1962)LPELR-24023(SC)** to posit that the Court can only

assume jurisdiction to entertain a matter where it is duly constituted and there is no feature in the matter that robs the Court of its jurisdiction.

He argued that the terms of settlement reached by the parties on the basis of which the N4,000,000.00 was paid has compromised the existence of Suit CV/2882/17, and that this Court consequently no longer has the jurisdiction to continue to entertain the matter, same having been spent. He contended that the only option open to the Court in situation like this, is to strike out the matter, thus leaving the parties with the choice of enforcing the unfulfilled part of the terms of settlement.

He referred to **Abey v. Alex (1999) 14 NWLR (Pt.637) 159.**

He further contended that this Court did not have the vires at the date it heard the Motion on Notice and made the Order, therein on the 15th day of July, 2021, the suit having been compromised by the settlement.

He urged the Court to set aside the said order of 15th July, 2021 for want of jurisdiction, and to dismiss the cause of action in the suit, same having been exhausted.

In response to the application, the Defendant filed a Reply on Points of Law wherein the learned defence counsel, Mariam Bello, Esq, posited that this Court is functus officio to entertain this application.

He relied on **Allied Energy Ltd &Anor v. Nigerian Agip Exploration Ltd (2018) LPELR-45302** and **Etinyin J.L.E. Duke v. Chief E.O. Ephraim &Anor (2010) All FWLR (Pt.549)1015 at 1024,** to submit that where a Court delivers its decision in a matter, it becomes functus officio and cannot revisit the decision. That a Court ceases to have legal

competence or jurisdiction in respect of matter/issue it has decided and cannot sit on appeal over its own decision.

He argued that contrary to the contention of the Claimant/Applicant that this suit has been compromised by an out of Court settlement; that there was indeed, no concluded out of Court settlement as the attempted settlement failed.

He contended that the Claimant having reneged on settlement out of court, cannot turn around to claim that Suit No. CV/2882/2017 has been compromised.

Placing further reliance on **CITEC International Estates Ltd v. Minister of the FCT, Abuja & Ors (2018)LPELR-45941**, he posited that wherein a suit, an application separately determined does not determine the suit, the parties are bound by the determination of the interlocutory issue, that they cannot subsequently in the same suit advance argument or adduce further evidence directed at showing that the earlier interlocutory ruling was wrongly determined.

He argued that since there is no appeal against any of the findings in the ruling delivered on 15th July, 2021, that the ruling is binding on the parties and that the Applicant can no longer adduce further argument in this proceeding that the issue was wrongly determined as this Court has become functus officio as regards same.

Learned counsel further contended that this application is an abuse of Court process. He relied on **Alhaji Yusuf Kadiri & Anor v. Otunba Chief (Dr.) J.A. Ewuso (CA/L/356/2012)** to posit that where a party litigates again on the same issue which has already been litigated upon with the same person, on facts on which a decision has already been reached, it constitutes an abuse of Court process.

He argued that the Applicant by the instant application, is merely seeking to litigate an issue that has been decided upon by this Court and that it thus constitutes an abuse of Court process. He further referred to **First Bank of Nigeria PLC v. T.S.A. Industries (Nig) Ltd LER (2018)** and urged the Court to dismiss the Claimant's application.

The question is **whether this Court can set aside its order or judgment obtained in error?**

In **Barnabas Nwacharo&Ors v. The President & Members of Customary Court Ossomala (2016)LPELR (CA)**, the Court of Appeal, held thus:

“The trial Court has the jurisdiction to set aside any of its order, decision or judgment obtained by means of misrepresentation and misprision or concealment of facts. It is settled law that a Court of record has the inherent jurisdiction to set aside its judgment, decision or order obtained by fraud or deception of the Court or one or more of this parties. In the case. See Igwe v.Katu (2000)14 NWLR (Pt.787)436 SC...”.

The argument of the Claimant/applicant in this application to set aside the Court's ruling of 15th July, 2021 was for want of jurisdiction.

On the grounds as stated on page I of this ruling/judgment. The applicants argument is that because the parties have compromised the suit CV/2882/17 by virtue of the terms of settlement by both parties.

The term of settlement was that the Defendant writes a letter of apology with a payment of N4m which letter and receipt for payment of N4m are attached to the earlier Motion on Notice

M/10151/20 dated 25/9/20 upon which this Court relied upon to deliver the ruling sought to be set aside.

The applicant based on ground two argued that the Defendant having paid the N4m and signed the letter of apology, that the Court has no longer any jurisdiction to continue to entertain the matter.

That the only option left for the Court was to strike out the suit. Learned counsel relied on **Abey v. Alex (1999) 14 NWLR (Pt. 637)159.** That consequently this Court lacks jurisdiction to entertain application Motion on Notice M/10151/20 since the original suit CV/2882/17 has been spent.

It is on record, from the oral averments of both parties, that consequent upon the settlement reached by the parties, the sum of N4m was paid to the Claimant by the Defendant as the cost of instituting this action and part of the settlement and the Defendant has also taken steps to retract the alleged offensive words published against the Claimant by writing letters to that effect to the former employer of the Claimant.

By this application, the Claimant is clearly no longer interested in pursuing this matter any longer, and learned Claimant/Applicant's counsel in paragraph 3.7 of his written address in support of this application, has consequently urged this Court to dismiss the cause of action in this suit, same having been exhausted. The purport of this application is that the Claimant/Applicant who instituted the substantive suit in the first place, is now satisfied with the payment of N4m by the Defendant as a satisfaction to all his claims in this suit.

In the circumstances of this case, this Court agrees with the Claimant/Applicant, that the parties have compromised the Suit No. CV/2882/2017 by virtue of the settlement reached by both

parties. This application therefore, succeeds and this Court hereby sets aside the ruling delivered in this case on the 15th day of July, 2021, same having been made in error.

Flowing from the above therefore, and in line with the learned Claimant's counsel's submission in paragraph 3.7 of his written submission in support of this application, the Suit No. CV/2882/2017 is hereby dismissed, the cause of action having been exhausted. No cost awarded.

HON. JUSTICE A. O. OTALUKA
4/4/2022.