

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE GWAGWALADA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 13 GWAGWALADA FCT  
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU  
ON THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2022

FCT/HC/CV/3034/2019

BETWEEN:

YUSUF WAILI .....JUDGMENT CREDITOR/APPLICANT

AND

ZENITH BANK PLC.....JUDGMENT DEBTOR/RESPONDENT

*B. E. OFFIONG appears with S. E. ESEKHAIGBE for the  
Respondent/Judgement Debtor.*

*OBI C. NWAKOR appears with ADAEZE EDAECHI for the Applicant.*

**RULING**

This is an application for a post judgment interest at 10% per annum on the judgment sum of ~~N~~**5, 000,000 (Five Million Naira)** from the date of judgment on 28<sup>th</sup> September, 2020 till the 24<sup>th</sup> day of April 2022 when the judgment sum was liquidated. And also for an Order directing that all payments in this case due to the judgment creditor be paid through and in the name of his legal practitioner **Obi C. Nwakor & Co.** And lastly for such further order(s) as the honourable court may deem fit to make in the circumstance of this case. The application dated 26<sup>th</sup> April, 2022 was supported by a 12 paragraphed affidavit deposed to by the Judgment

Creditor. The record of the court showed on the 28<sup>th</sup> of September, 2020 the sum of **₦5,000,000.00 (Five Million Naira)** was awarded as judgement sum in this case. The court did not however grant or award 10% post judgment interest on the judgment sum, due to the fact that the learned counsel to the judgment creditor informed the court of his intention to withdraw an earlier application made in respect of the payment of interest. In the words of the learned counsel to the judgement creditor he said; *"I had a fruitful discussion with my learned friend on the other side and this necessitated the withdrawal."* The learned counsel to the respondent/judgment debtor **Samson Esekhaigbe** in his reply stated thus *"That is the position."* And on that note the application for payment of the post judgment sum interest by the judgment debtor was struck out. This fact is also verified by the judgment creditor in paragraphs 3, 6 and 7 of his affidavit, wherein he averred; *"That **Obi C. Nwakor** of counsel to the judgement creditor informed me in his office on or about the 4<sup>th</sup> of October, 2020 at about noon, which information I verily believe that he had a discussion with the counsel to the judgment debtor in which the counsel informed him that the judgment debtor was willing to pay the judgment sum immediately if he would drop the claim for 10% interest on the judgment sum which was not awarded at the time of making the judgment. That because of this discussion, he withdraw the motion for the award of the 10% interest on the judgment sum and followed same with a letter to the judgment debtor confirming the withdrawal of the application and requesting the immediate payment of the judgment sum. Marked as Exhibit. That the judgment debtor after the*

*withdrawal of the motion by my counsel reneged to pay and appealed the decision of this court. The letter of the judgment debtor's counsel on this is marked as Exhibit 2."*

It is also on record that judgement debtor appealed the decision of this court as Appeal no. **CA/A/964/2020- Zenith Bank Plc Vs. Yusuf Ali** and judgment given on the 7<sup>th</sup> day of April, 2022 dismissing the appeal and upholding the judgment of the court. The judgment creditor expressed in paragraph 9 of the affidavit his desire to claim the 10% interest on the judgment sum that was not awarded at the time of making the judgment. The learned counsel to the judgment creditor in a succinct written address in support of the motion formulated a lone issue for determination to wit: ***Whether the court can award post judgment interest after the date of judgment.*** He relied on the provision of Order 39 Rule 4 of the High Court of the Federal Capital Territory civil procedural Rule 2018 which provides thus:

***"The court at the time of making any judgment or Order or at any time within which the payment or other act to be made undone reckoned from the date of the judgment or Order, or from some other points of time as the court thinks fit and may Order interest at a rate not exceeding 10% per annum to be paid upon any judgment."***

He submitted that the above provision is to the effect that a court is not functus officio to grant post judgment interest after delivery its judgment. On the interpretation of the above section, he referred to the case of **UNITY**

**BANK PLC VS. DENCLAG LTD & ANOR (2012) 1-3SC 77@ 141-142** where the Supreme Court held:

*“For guide, it is necessary to refer to some judgments of this apex court where even the provision of Order 40 Rule 7 in Bauchi state just as in this case at hand had to be interpreted with clarity. I further refer to **BERLIET NIG. LTD. VS. KACHALLA (1995) 9 NWLR (PT420) 478**, this court held that a court cannot be said to be functus officio when it grants an application for post judgment as the effect is that the Rule of court places on the judgement debtor statutory duty to pay interest at the rate of the 10% from the date of judgment.”*

He also referred to the dictum of **Onu JSC** in the case of **HIMMA MERCHANT LTD. VS. ALIYU (1994) 5 NWLR (PT347) 667** where it was stated thus:

*“Order 40 Rule 7 of the Bauchi State High Court Civil Procedural Rules deals with interest on outstanding judgment debt. It has nothing to do with a claim of interest as a right either custom or a principles of equity. It is a statutory authority for a court to award interest of 10% per annum on outstanding judgment debt and for the interest to apply or commence from the date of judgment.”*

Furthermore, the learned counsel relied on the case of **BERLIET NIG. LTD VS. KACHALLA SUPRA AT 495-496** per **Belgore JSC** where the learned jurist opined:

***“In matter of claims for debt, it is presumed that interest will be paid and once application is made on this, even after the judgment has been delivered to award interest if omitted in the judgment.”***

He further relied on the case of **AMBER RESOURCES (NIG) LTD VS. CENTURY ENERGY LTD(2018) LPELR 43671 CA**, where the court relied on Order 35 Rules 4 of the Lagos State High Court Rules 2012 and also said that a post judgment interest is statutory and need not be pleaded. He equally buttresses his argument with the decision of the court of Appeal in **AKUDO VS. GUINNESS NIG. PLC (2011) LPELR 8949 (CA)**, that the issue of 10% need not be pleaded or proved. Finally, he submitted that based on the above decisions, that this honourable court is not functus officio and has the power to award the post judgment interest.

In opposing the application, the respondent filed a 4 paragraphs counter-affidavit of one **Austin Akechi** a litigation manager in the firm of **B. E. Offiong & Co.**, solicitor to the respondent. The deponent on behalf of the respondent deposed to the information supplied to him by one **Adaeze Uzoka** of the respondent legal department on the 31<sup>st</sup> day of May, 2022 at about 2:30 pm and he verily believed him. He re-affirmed the judgment of this court delivered on the 28<sup>th</sup> of September, 2020, and the fact that no interest was awarded on the judgment. He further affirmed that the judgment was appealed against, and the application for award of interest was made by the applicant while the matter was on appeal but was withdrawn by the applicant on his own volition, and same struck out on 8<sup>th</sup>

day of October, 2020. That the communication between counsel were routine conversations as in and out of the work of the court as Minister in the temple of justice without prejudice, and that there was no commitment given to the applicant by the respondent's counsel who had no such authority and only sought to facilitate the payment of the outstanding judgment debt. That the matter having gone on appeal and judgment on the appeal delivered on 7<sup>th</sup> of April 2022, thus extinguishing the authority of this court upon the matter after its judgment. And that the application for interest in the judgment sum was never a part of the suit at the trial and on appeal but an afterthought on the part of the applicant. That this suit has now become hypothetical with no live issues either in this court or at the court of appeal. And that this court no longer has the vires to entertain this matter. That the judgment sum has been fully satisfied and there is nothing more in the matter to compute, interest on or to enforce. He concluded that these proceedings are speculative, academics as this court has become functus officio. Attached to the counter-affidavit is Exhibit ZBA1, a letter addressed to the respondent by its counsel.

In the written address, the counsel to the respondent formulated one issue for determination to wit: ***"Whether this honourable court has the jurisdiction to hear any further application in this matter after its final judgment has been delivered, appealed upon and the judgment therein fully complied with."*** The learned counsel submitted that by the Rules of Court both the High Court and the Court of Appeal, once a matter has been

entered at the Court of Appeal, the lower court become functus officio and can only entertain issue of enforcement of the judgment after appeal has been determined. He argued that labelling parties in this application as judgment creditor and judgment debtor is a misnomer intended to mislead the honourable court as there is no any outstanding judgment sum or debt anywhere to the applicant's credit. That the court is not a charitable institution where party can at any time without processes come to on a shopping spree. He relied on the case of **EDELCON (NIG) LTD V. UBA PLC (2017) 18 NWLR (pt.1596) 74** where the court held thus:

***“A court is not a charitable institution, it is duty in civil case is to render to everyone according to his proven claim.”***

That to return to this honourable court after the judgment and the consequently costs awarded by the court appeal have been fully paid is a deliberate attempt to scandalize the authority of justice on the altar of the insatiability of the litigant. He further argued that the award of post judgment interest is a discretionary power of the court and once a court has fulfilled or accomplished its function in respect of a matter by delivering its judgment it lacks the power to review, re-open or revisit the matter again. The counsel referred the court to the case of **OKONS & ANOR V. MRS. EKANEM (2003) FWLR (PT 136) 981 @ 1002 (CA)**. That any additional forays into the matter becomes an abuse of court process except under the very restricted slip rule to correct clerical mistakes or some errors arising from any accidental slip or omission. He relied on the cases of **SHANU & ANOR**

**VS. AFRIBANK NIG. PLC. (2003) FWLR (PT. 136) 823 @ 851-2 SC, CBN V. KOTOYE (1994) 3NWLR (PT.330) 66, NDIC V. FMB LTD (1997) 4 NWLR (PT.501) 519, FBN PLC. V. T.S.A. INDUSTRIES LTD (2010) 15 NWLR (PT.1216) @ 296.** That the applicant's case is an invitation for this honourable court to revisit a matter which it now lack authority, and that this court has become functus officio.

He also relied on the case of **DAN-ASABE & ANOR V. BABALE (2013) LPELR 22360 CA** where the court held thus:

***"This court cannot sit on appeal over its said earlier judgment to review it or add to it having become functus officio therein."***

And that this court had earlier dismissed a similar motion by striking it out on the 8<sup>th</sup> of October 2020 when this matter was pending on appeal. That to bring it afresh as a live issue or pending suit amount to a gross abuse of the process of this court. He relied on the case of **CITEC INTERNATIONAL ESTATE LTD VS. MINISTER OF THE FCT ABUJA AND ORS (2018) LPELR 45941 CA**. He also argued that the judgment of this court delivered on 28<sup>th</sup> September, was a final judgment and not an interlocutory Order subject to review. On this point, he referred to the case of **AWHANGWU & ORS VS. AWHANGWU & ANORS (2016) LPELR 41158 CA**. Where the court held that:

***"A final decision has been defined as an Order which disposes of the entire controversy on the merits, leaving nothing but the enforcement of that which has been determined."***



A further reference was also made to the case of **IFEDIORA V. UME (1998) LPELR 1434 SC**. He further submitted that there is nothing more to enforce or review as far as this suit is concerned. That any additional tinkering becomes also academic and clearly against public policy. The learned counsel also relied on the case of **OCHUBA V. LAGOS STATE AGRICULTURAL DEVELOPMENT AUTHORITY (2018) LPELR 45828 (CA) 42-43** where he said the Court of Appeal decline a similar application for post judgment interest such as the one brought by the applicant on the ground that it was not brought timeously. He also referred the court to the case of **IGBADO & ANOR V KEYSTONE BANK LTD (2021) LPELR 52677 CA**. lastly he submitted that the applicant herein had the opportunity to cross appeal on the issue of post-judgment interest but failed to do so. That the applicant is caught by the doctrine of res judicata which operates as estoppel against the applicant reopening a fully determined matter under the guise of claiming a post judgment interest on a non-existing judgment debt. He therefore urged the court to dismiss the application with substantial costs.

I have painstakingly gone through the written arguments of both counsel to the parties and the legal authorities cited in their addresses. One main issue that resonate throughout the entire gamut of their argument and calls for determination is; ***whether this court has become functus officio in deciding the application for post-judgment interest by the applicant.*** Now looking at the definition of functus officio as used to describe a court in a Wikipedia search; ***“It refers to one whose duty or authority has come to an end.”***

Once a court has passed a valid sentence after a lawful hearing, it becomes a functus officio and cannot reopen the case. Functus officio is thus bound up with the doctrine of res-judicata which prevails in the absence of statutory authority, the reopening of a matter before the same court, tribunal or other statutory actor that rendered the final decision.” Res-judicata means; ***“The thing has been decided.”*** The question that I quickly ask myself therefore is; has this court decided or pronounced on the post-judgment interest? The answer obviously is “No.” The argument of the learned counsel that this court has become functus officio and also caught by the doctrine of res-judicata is not applicable in this instance. I therefore discountenance all the arguments and all the authorities cited in respect thereof as irrelevant and of no moments.

The respondent posited that this court did not award an interest on the judgment sum, and that by bringing the instant application, the applicant is trying to revisit the issue of the post-judgment and asking the court to review its judgment. The record of the court showed that after the award of the judgment sum, the learned counsel to the applicant orally applied to the court for the post-judgment interest which was later withdrawn for reasons of the respondent agreement to pay the judgment sum immediately which were not denied by the respondent’s counsel in the open court save and except that the learned counsel to the respondent stated later in Exhibit 2 attached to the applicant’s affidavit that his client in principle is not entirely convinced by this line of action as its still feels aggrieved by the award of the

said judgment. The issue therefore is whether the applicant is entitled to the post –judgment interest after the respondent reneged on its promise to pay the judgment sum immediately and after the decision of the Court of Appeal? The contention of the respondent was that the claim for judgement interest was not pleaded and was not made a subject of appeal by the instant application.

The provision of Order 39 Rule 4 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018 is an exception to the rule that the court will not grant a relief that was not expressly pleaded or claimed by a party at the trial. At the risk of being repetitive, the provision states thus:

***“The court at the time of making any judgment or Order or anytime afterwards, may direct the time within which the payment is to be made or others act is to be done, reckoned from the date of the judgment or Order, or from some other point of time, as the court may deem fit and may Order interest at a rate not less than 10% per annum to be paid upon any payment.”***

In my view the rationale behind post-judgment interest is to allow judgment creditor have value for his judgment debt when a judgment debtor as in the instant case decides to go on appeal and ordered to pay the judgment debt thereafter. It stands to reason that the value of the judgment sum in 2020 cannot be the same in 2022 when it was finally liquidated. Therefore the provisions of the rules makes it mandatory for a judgment debtor to pay a

post judgment interest of not less than 10% per annum unless the court direct otherwise.

The Supreme Court per Ogundare JSC has explained the rationale behind the compulsory award of post judgment interest in the case of **BERLIET NIG. LTD VS. KACHALLA (1993) 9 NWLR (PT. 420) 478** thus:

*“The principle behind the rule seems to me to be, to provides incentives to judgment debtors for the speedy payment of judgment debts and to ensure that judgment creditors do not suffer much detriment as a result of delay in the settlement of judgment debts. The wordings of the rule clearly show that the judgment automatically carries interest at 10% percent per annum until it is satisfied. The rule however gives the court discretion to order otherwise. In my respectful view, the discretion is a veto which the trial court may exercise to direct that no interest be paid on a judgment debt, or to order that a lesser interest to be paid. Where he does not give any direction or where the judgement is silent as to payment of interest on the judgment debt the judgment debt automatically carries interest at the rate fixed by the rule that is i.e. 10% per annum from the date of judgment.”*

See also **C.K.F. INVESTMENT NIGERIA LIMITED VS. NIGERIA TELECOMMUNICATION PLC (2009) 15 NWLR (PT 1164) 344 SC** where the Supreme Court in interpreting a similar provision of Order 38 Rules of the Lagos State High Court Civil Procedure Rules 1994 had this to say:

***“In the instant case where the rules of the recovery of interest on a judgment sum, the entitlement is automatic unless otherwise ordered by the court. Since the lower court had neither ordered the payment of interests to the appellant nor given a direction to the contrary the sum of ₦200,000.00 awarded to the appellant automatically carries interest at the rate of 7.2 % fixed by Order 38 Rule 78 of Lagos State High Court Civil Procedure Rules 1994 as amended.”***

See also the case of **ULI MICROFINANCE BANK NIGERIA LIMITED VS. AGBANI NORBERT (2018) LPELR 44953 CA** where the Court of Appeal also held that the principle of awarding post-judgment interest on a liquidated judgment sum has been accepted as an exception that no person is entitled to any remedy or relief not claimed. This court is therefore in total agreement with the submission of learned counsel to the applicant, that it is not functus officio, and that the entitlement of the applicant to the post-judgment interest as claimed is statutory. The instant application succeeds as prayed on the motion paper. Furthermore, the interest must be paid within the next 14 days, failure which applicant shall be at liberty to levy execution on the respondent.

**SIGNED**  
  
**HON. JUDGE**  
**27/9/2022**

**SIGNED**

**HON. JUDGE  
27/9/2022**