IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)

HOLDEN AT MAITAMA – ABUJA.

BEFORE THEIR LORDSHIP: HON. JUSTICE Y. HALILU – PRESIDING JUDGE,

HON. JUSTICE A . A FASHOLA – HON. JUDGE

THIS 29TH DAY OF JANUARY, 2025.

APPEAL NO. CVA/88/2023

SUIT NO. FCT/DC/CV/81/2021

BETWEEN:

1. GOCHETECH NIGERI LTD.
2. MR. COLLINS CHUKWUKERE } **APPELLANTS**

AND

1. ANDREY AKHIGBE - ANDERSON (Trading under the name and style of Andreys food Enterprise)
2. ACCESS BANK PLC.
3. FIRST BANK OF NIGERIA PLC. } **RESPONDENTS**

JUDGMENT

The Appellant dissatisfied with the Ruling/Judgment of the District Court of the FCT Coram; Theresa Ntenotu, sitting at Wuse Zone 2, Abuja, most particularly stated in paragraph I of the Notice of Appeal, has filed this instant Appeal.

The grounds upon which this Appeal is premised are as stated in paragraph 4 of the Notice of Appeal.

The reliefs being sought by the Appellant as set out in the Notice of Appeal, are as follows:-

a. An Order setting aside the Ruling, Judgment/Decision of the Chief District delivered on the 29th March, 2023.

b. Further Orders as the Court may deem appropriate.

It is instructive to note that an application on notice for leave to adduce further evidence by way of further affidavit and exhibiting additional material delivered to the 1st Respondent during the pendency of this appeal was also filed which was consolidated with the principal appeal.

This shall be dealt with eventually before the determination of the Appeal.

Appellants filed their Brief of Argument wherein four issues were formulated for determination to-wit;

1. ***Whether or not the conclusion/judgment of the learned trial court was supported by its findings to the effect that 1 – 3 mentioned in clause 7 of the parties' terms of settlement be read conjunctively (Ground 2)***

2. ***Whether the failure of the lower trial court to consider, make findings or pronounced on exhibit Collins 3 has not occasioned miscarriage of justice on the Appellants (Ground 3).***

3. ***Whether the learned trial court acted without jurisdiction when it made a defective and/or an irregular order Nisi Absolute against the 2nd and 3rd Respondents (Ground 4).***

4. ***Whether the learned trial Court did not constituted itself as an Appellant Court under the guess of enforcing judgment delivered on the 26th day of January, 2022 by her learned brother, Chukwuemaka of district Court 5, Wuse Zone 2, Abuja (Ground 1)***

On issue 1, ***Whether or not the conclusion/judgment of the learned trial court was supported by its findings to the effect that 1-3 mentioned in Clause 7 of the parties' terms of settlement be read conjunctively. (GROUND 2)***

It is the submission of counsel, that the conclusion or the judgment of the trial court did not logically flow nor supported by her finding of facts to the effect that 1-3 mentioned in the Clause 7 of the parties' terms of settlement be read conjunctively. This court is referred to page 69 of the records of proceedings wherein the trial court stated thus:

> ***"I have also read paragraphs 2, 3 to 6 and particularly paragraph 7 that is a proviso to paragraphs 1 to of the said term and consent judgment. From a conjunctive reading of the said three paragraphs, it is clear as crystal that the Defendants judgment Debtors/Applicants have failed to comply with the terms contained in the said paragraphs 1-3, Although, it could be agreed that the judgment Debtor complied fully with paragraph 3 given the proviso as contained in paragraph 7, which states a maturity date, and the Defendants haven***

made the payment of N300,000 on the said maturity date of 8th of February, 2022 fulfilled the condition as stated in paragraph 3 of the terms only, thereby failing to comply with the terms as stated in paragraphs 1 and 2 of the said terms of agreement wherefore the judgment creditor/Respondent is right to proceed against the judgment Debtor who is now liable to the later as enunciated in paragraph 7 of the terms."

Learned counsel further submits, that the trial court having found that 1-3 in Clause 7 of the parties' terms of settlement must be interpreted conjunctively and having also discovered that their clients had fully discharged their obligation under paragraph 3 as contained in clause 7, it is therefore their firm view that the trial court was absolutely wrong to have held that the Judgment Creditor/Respondent is right to proceed against the judgment Debtor who is now liable to the later as enunciated in paragraph 7 of the terms. Their position is predicated on the fact that conjunctive (and) as found by the trial court is a connecting words which means thus 'added to', ***'together with' "taken along with the first' joined with' etc.***

RUBICON PROPERTIES AND DEVELOPERS LTD. & ANOR VS. NACRDB LTD. (2021) LPELR-54820 (CA) was cited.

On issue 2, ***Whether the failure of the lower trial court to consider, make findings or pronounced on exhibit Collins 3 has not occasioned miscarriage of justice on the Appellants. (GROUND 3)***

Learned counsel submits, that it is the cardinal duty of every court to evaluate and make findings on all the evidences and issues properly raised before it and failure of which will occasion miscarriage of justice requiring the Appellate court to step in. ***KARIBO & ORS VS. GREND & ANOR (1992) LPELR – 1667 (SC) was cited.***

It is the contention of learned counsel, that the said Exhibit Collins "3" is vital in underscoring the parties' intention as captured in the terms of settlement. The terms of settlement/ consent judgment is at pages 22-26 of the records of proceedings. It is their position that the failure of the trial court to consider or make findings on Exhibit Collins "3" was the only reason that misled the trial court to conclude that maturity date of delivering the items mentioned on paragraphs 1-3 was on the 8th day of February, 2022 whereas Exhibit Collins "3" shows that

receiving of items mentioned in the said Clause 1-3 continued even after the said 8th day of February, 2022.

Learned counsel submits, that purposeful reading of Clause 7 of the parties' terms of settlement/ consent judgment will reveal abundantly that 8th day of February, 2022 mentioned in the said clause only operate to acknowledge when the right of the 1st Respondent will revert to his original claim in the event of completely failure to performed clauses 1-3 thereof by the Appellants but did not evidence or operate as a deadline of delivery of the items contained thereof. To buttress this, is the receipt of Exhibit Collins "3" by the 1st Respondent on the 14th day of March, 2022.

It is further the submission of learned counsel, that during the pendency of this appeal, the 1st Respondent through the instrumentality of Nigeria Police Coerce the Appellant to deliver further items mentioned in the delivery Invoice as contained in the additional evidence presented before this court and marked as Exhibit Collins 4. It will cause a serious injustice if the 1st Respondent will be allowed to benefit from garnishee proceedings after the receiving over 80% of the items detailed in the consent judgment of the parties'.

On issue 3, ***Whether the learned trial court acted without jurisdiction when it made a defective and/or an irregular order nisi absolute against the 2nd and 3rd Respondents. (GROUND 4)***

Learned counsel submits, that the above question is answered in the affirmative. That trial court acted without jurisdiction when it purportedly enforced the judgment of it learned brother delivered on the 26th day of January, 2022 by a way of garnishee proceedings, a mode different and distinct from the mode agreed upon vide the parties' terms of settlement and the consent judgment thereof. Counsel referred the court to paragraphs 1, 2 and 3 in both the consent judgment and terms of settlement at pages 22 to 26 of the records of proceedings. That the Appellants having fully discharged Clause 3 of the terms of settlement/consent judgment which has to do with payment of monitory sum, there is nothing in the said terms of settlement/consent judgment entered into by the parties which justified or supported the right of the 1st Respondent to garnishee the accounts of the Appellants.

Learned counsel further submits, that by virtue of section 83 (1) of the Sheriffs and Civil Process Act, a judgment creditor is only

entitled to garnished the outstanding debt owed to it by the Judgment debtor. The trial court granting Order Nisi in excessive to the indebtedness of the Appellant to the 1st Respondent, again acted without jurisdiction and such act cannot be supported by any known laws or authorities.

Learned counsel submits further, that at the time the Order Nisi and subsequent Order Absolute was made, the Appellant had performed over sixty percent (60%) of their obligation in the said terms of settlement/consent judgment. Counsel referred the court to paragraph 22 of pages 34 of the records of proceedings.

On issue 4, ***Whether the learned trial court did not constituted itself as an appellant court under the guess of enforcing judgment delivered on the 26th day of January, 2022 by her learned brother, Chukwuemaka- of district Court 5, Wuse Zone 2, Abuja (GROUND 1)***.

Learned counsel submits, that the trial district Court constituted itself into an appellant court when it erroneously reviewed the judgment of its learned brother under the guess of enforcement.

It is the submission of learned counsel, that the only duty of the Garnishee Court is to enforce the monetary debt as contained in

the judgment sought to be enforced by the Judgment Creditor. Sections 83 and 84 of the Sheriffs and Civil Process Act were cited. Put differently, it is not the duty of the garnishee court to review and make findings in the judgment of its learned brother. On this counsel commend the instructive decision of the Apex Court in the case of ***OBOH & ANOR VS. NIGERIA FOOTBALL LEAGUE LTD. & ORS. (2022) LPELR-56867 (SC)*** wherein it admonished the court whom application for garnishee proceedings is pending before to resist the temptation of constituting itself into an appellant court by reviewing the monetary judgment.

Learned counsel also submits, that the trial district court acted in error when it reviewed the judgment of its learned brother and imposed obligations which ipso facto were not part of the obligations contained in the parties consent judgment and same have occasioned miscarriage of justices and put the Appellants into a double jeopardy. There is nothing in the parties consent judgment that support enforcement by a way of garnishee or double compensation and if any, the purported clause 7 relied on by the said trial district court is absolutely inapplicable in the circumstance.

In conclusion, counsel urge the Honourable court to allow the instant appeal by setting aside the Garnishee Order Nisi and subsequent Garnishee Order Absolute for being incurably defective as the monetary part of the consent judgment had been completely liquidated and paragraph 7 of the consent judgment is absolutely inapplicable or had been overtaken by event. The noble court should direct the 1st Respondent to take delivery of his remaining items which has been long set out be the Appellants.

On their part, 1st Respondent filed their Brief of Argument wherein three issues were formulated for determination to-wit;

1. ***Was the lower Court not within its jurisdiction in reaching the Ruling/Decision of 29th March, 2023? (Distilled from Ground 1 (One) of the Appellant's Notice of Appeal).***

2. ***Whether failure to comply with Clause 1 and 2 of the Consent Judgment automatically entitles the 1st Respondent to the right conferred on him by Clause 7 of the said Consent Judgment, and the purported delivery of way bill of 14th day of March, 2022***

amounts to a waiver of such right? (Distilled from Ground 2 (Two) of the Appellant's Notice of Appeal).

iii. ***Whether the Learned Judge of the lower court was entitled to make findings on Exhibit Collins 3(Distilled from Ground 3 of the Appellant's Notice of Appeal).***

On issue One, ***Was the lower Court not within its jurisdiction in reaching the Ruling/Decision of 29th March, 2023? (Distilled from Ground 1 (One) of the Appellant's Notice of Appeal).***

It is the submission of learned counsel, that the Appellant's submission albeit erroneously is that the Lower Court Judge constituted herself into an appellate court and erroneously reviewed the judgment of her learned brother under the guise of enforcement.

Learned counsel humbly submits, that all the Lower Court did, was to consider the merits of the Motion on Notice filed by the Appellants (Pages 27 - 48 of the Records of Appeal) vis-à-vis the 1st Respondent's Counter-affidavit & address contained at pages 49 - 65 of the Records of Appeal. It was upon a consideration of the processes that the Appellants' motion was dismissed by the

Lower Court for being frivolous, vexatious and same being a calculative attempt at delaying proceedings and a harvest of fruit by a successful Judgment Creditor.

Learned counsel also submits, that the facts which ultimately grounded the very apt decision of the lower court are thus; The Judgment Creditor (now 1st Respondent) commenced this action against the Judgment Debtors (now Appellants) claiming the sum of **N2,500,000.00 (Two Million, Five Hundred Thousand Naira)** only, cost of action and Post Judgment interest of 10% Subsequently and owing to the criminal charge also faced by the Appellants for their fraudulent conduct, the Appellants approached the 1st Respondent for an amicable settlement of the issues between the parties.

Learned counsel further argued that on account of agreements reached by the parties, they voluntarily drew up Terms of Settlement and same was accordingly entered as the Consent Judgment of the trial District Court. It is thus instructive to state that the said Consent judgment is binding on the parties and ought to be complied with to the later by all parties to the Consent Judgment. Counsel cited ***ARIJE VS. ARIJE & ORS (2018) LPELR-44193 (SC)*** where the Supreme Court held

thus:

> ***"A consent judgment is binding between the consenting parties and their privies and is effective in respect of the matters settled therein in the same manner as any judgment given thereafter in respect of matters fully fought out to the end."***

It is the submission of learned counsel, that, the Lower Court or even before this court, did the Appellants show that they have complied conjunctively with Clauses 1, 2 and 3 of the Consent Judgment. Thus, the right of the 1st Respondent to hold them liable for his claims as per his particulars of claim duly crystallized and he exercised same to file an application for garnishee nisi on 28th September, 2022, which the court granted on the merit.

Learned counsel further; In order words, there is no point in the argument in support of the said issue that the Appellants showed to this court, the erroneous findings, either of facts or law been challenged, no reference to the specific pronouncement/decision or judgment of 26th day of January, 2022 was made. The Appellants could not even in the least probable, point this Court to any page of the Ruling/ Decision of 29th March, 2023 where the lower court made the findings or pronouncement on the

Consent Judgment. In any event, the Consent Judgment itself was not a product of any spectacular findings by the trial Judge, rather, it was a product of rights and obligations agreed upon by parties. Consent Judgment is not a judgment on the merit, it is not a judgment given on the basis of evidence adduced by parties, but purely an agreement in writing of new rights created and endorsed by parties, and in furtherance of their willingness to uphold same as final and mutual settlement of the pending dispute before the court, filed same and moved the Court to adopt same as the judgment of the Court.

On issue two, ***Whether failure to comply with Clauses 1 and 2 of the Consent Judgment automatically entitles the 1st Respondent to the right conferred on him by Clause 7 of the said Consent Judgment, and the purported delivery of way bill of 14th day of March, 2022 amounts to a waiver of such right?***

It is the submission of counsel, that failure of the Appellants to comply with Clauses 1 and 2 of the Consent Judgment entitles the 1st Respondent of the right conferred on him by Clause 7 of the Consent Judgment which is to the effect that, failure of the Appellants to comply with clauses 1-3 of the Consent Judgment

by the 8th day of February, 2022, they shall be liable to the Plaintiff as per reliefs contained in the Plaintiff's particulars of claim filed before the Honourable Court (now Trial District Court).

That by a community reading of clause 1-3 and 7 of the Consent Judgment of the Trial District Court, made on the 26th day of January, 2022, the Appellants ought to comply fully with clauses 1-3 within the stipulated time. The Consent Judgment of the court gives no room for partial compliance and or leave to the Appellants to pick and choose which part of the judgment to comply with.

Learned counsel further submits, that the Appellants have brought into the terms of settlement which this court adopted as consent judgment, terms that are unknown to this Court and the 1st Respondent, and that is the issue of "substantial compliance". Learned counsel insists, that there is no clause in the consent judgment that gave the Appellants the free will to choose what part of the consent judgment to comply with or which part to abandon. A close look at the terms of settlement, particularly Clause 1 will reveal this fact. Clause 1 of the Consent Judgment is to the effect that,

"The Defendants SHALL deliver ALL materials, equipment and kits for the construction of 12 feet by 12 feet by 8 feet cold-room as detailed in the Proforma invoice issued by the Defendants to the Plaintiff and tendered in evidence before this Honourable Court".

It is the contention of learned counsel, that on the second leg of the issue at hand, the Appellants also canvassed at paragraph 4.3. of their brief of argument that the fact of receiving delivery/way bill by the 1st Respondent on the 14th day of March, 2022 amounts to a waiver of the 1st Respondent's right to treat 8th day of February, 2022 as a maturity date for compliance with Clauses 1-3 of the Consent Judgment.

Learned counsel submits; that contrary to the above contention by the Appellants, it is rather, the benevolence and patience of the 1st Respondent that has been taken by the Appellants to be a purported waiver. However, rather than this contention being ingenious as the Appellants might want it to be, it actually exhibits their bad faith and hardheartedness toward the 1st Respondent. In any event, a valid judgment of the court as in the instant consent judgment cannot be waived or compromised by

either party, and the 1st Respondent decision to give the Appellants "enough rope to hang themselves" before enforcing his rights under the Consent Judgment cannot be taken as a waiver because a Judgment remains extant once delivered, and is not capable of being impliedly varied and that it is our law that a party who seeks equity must do equity, and he who comes to equity must come with clean hands. The Appellants had willfully defaulted and delayed compliance with the judgment of the trial District Court for a continuous period of over 2 years and there is no end in sight yet.

Learned counsel also submits, that the Appellants no doubt started complying with the Consent Judgment of the trial Court but stopped midstream, when the bulk of the materials, equipment and kits for the construction of 12 feet by 12 feet by 8 feet cold-room have not been delivered. The instant amount sought to be recovered cannot even cover for the amount of materials and equipment yet to be delivered, thus, the issue of waiver in the Appellants favour cannot arise. It is until the Appellants have fully complied with clauses 1-3 of the Consent Judgment that they can lawfully contend that the 1st Respondent has waived his right to claim as per his particulars of claim.

On issue three, ***Whether the Learned Judge of the lower court has a duty to make findings on Exhibit Collins 3***

Counsel further submits, that the learned Judge of the Lower Court had no obligation to make fresh findings on an Exhibit that has already been tendered in an application and the said application was dismissed by the Court for been frivolous.

Learned counsel also submits, that the Exhibit Collins "3" the Appellants are contending that the Lower Court ought to have made findings on, was tendered by them in their affidavit in support of motion to set aside garnishee Order Nisi. What the Exhibit in question seeks to achieve (assuming but not conceding that it is even believable), is to show that the Appellants have allegedly complied up to 40 or 60% of the Consent Judgment and nothing more. The Appellants also narrated the said facts in their affidavit, thus, there is no other burden on the lower court to make extraordinary findings on facts that are crystal clear and laid before it.

In conclusion; learned counsel submits that having regards to the foregoing legal arguments and authorities cited, this Honourable Court is urged to resolve all the issues raised in favour of the 1st

Respondent, dismiss the instant appeal and uphold the Ruling of the Lower Court.

Above represents the gamut of the respective arguments of both Appellant and the 1st Respondent in the instant Appeal.

As indicated in the preceding part of this Judgment, the issue of leave sought by the Appellant shall be considered and determined before the consideration of the main Appeal in line with procedure.

In the said application dated the 10th January, 2024, Appellant/Applicant sought for the following:-

a. Leave to adduce further evidence by way of further affidavit exhibiting additional material delivered to the 1st Respondent during the pendency of the instant appeal.

The said application which is supported by an affidavit of 16 paragraphs deposed to by Collins Chukwu (2nd Respondent) similarly has written address in support wherein legal argument was canvassed.

It is the argument of the Appellant that;

That he is the 2nd Appellant and by virtue of his aforesaid position, he is conversant with the facts and circumstances leading to instant suit.

That he depose to this affidavit based on his personal knowledge or experience except were otherwise stated.

That on the 26th day of January, 2022 a consent Judgment was entered between the Appellants and the 1st Respondent on the following terms to-wit;

The sum of the Three Hundred Thousand Naira (300,000) be paid to Plaintiff now the 1st Respondent by the Defendants now the Appellants.

That the Defendants now the Appellants deliver all material, equipment and kits for construction of 12 feet by 12 feet by 8 feet cold-room as detailed in the platform a invoices issued to the Plaintiff now the 1st Respondent.

That a time of ruling/decision of the Lower District Court appealed against, the Appellants have fully compiled with the monitory Judgment and had delivered over sixty (60) of the material, equipment and kits to the Plaintiff now the 1st Respondent.

That after filing the instant appeal but while the matter was still pending at District Lower Court, the 1st Respondent made complaint against Appellants at Criminal Investigation Department Section of FCT – Police Command over same issue.

That consequent upon paragraph 5, above the 2nd Appellant was invited by the officers of criminal investigation department of FCT Police Command.

That on the intervention of the officers of FCT Command of Nigeria Police, 2nd Appellant delivered remaining items as contained in the parties' consent judgment to the 1st Respondent.

That the 2nd Respondent assessed the material presented by the 2nd Appellant thereafter he took some and reject some.

That the Appellants need the leave of this Honourable Court to adduce new evidence of the material delivered by the Appellants and received by the 1st Respondent.

That the said new evidence came into existence after the lower trial district court had delivered its ruling/judgment appeal against.

That the said new evidence formed part of the subject matter of the instant appeal sought to be enforced by the 1st Respondent in a way of garnishee proceedings.

That Appellants have attached the proposal further affidavit and exhibit evidencing delivery of further materials, equipment or kits to the 1st Respondent on the 11th day of August, 2023 and marked Exhibit Collins "A".

That it is in the overall interest of justice that this application be granted.

That granting of the instant application will further reveal the intention of the parties' as contained in the said consent judgment.

That the 1st Respondent will not be prejudiced if the instant application is granted.

A lone issue for determination was formulated to wit:

Whether this court has the power and competence to receive and hear new evidence in view of the facts and circumstances of the instant case.

Relying on Order 50 Rule 20 of the Rules of this Court, learned counsel then prays this court to so grant them leave to adduce the said additional evidence.

The authority of ***AG OYO STATE VS. FAIRLAKES HOTELS LTD. (1988) 5 NWLR (Pt. 92) 1 at Page 19 – was cited*** in aid of the argument.

Reacting to the application in issue, learned counsel for the 1st Respondent contended that this application is most overreaching in that the alleged additional evidence was made by a party interested in this appeal and also made during the pendency of the present appeal.

The case of ***ANAGBADO VS. FARUK (2019) 1 NWLR (Pt. 1653) 292 at 307 SC*** where the court evidence pronounced during the pendency or in anticipation of a case is not admissible in law.

It is the argument of learned counsel for the 1st Respondent that the said document was made on the 11th August, 2023 and deposed in the said affidavit by the 2nd Applicant who is a Director in the 1st Appellant/Applicant, which makes him

interested in this proceedings, and that the instant appeal was pending when the said document was made.

Counsel on the whole, urge the court to refuse the application.

COURT:-

The reliefs and legal argument in support of the application for leave to adduce further evidence has already been reproduced in the earlier part of this Consolidated Ruling/Judgment, and would not be any gainful purpose reproducing again.

We shall however touch on all the issues.

The Kernel of the argument of learned counsel is anchored on wanting to be granted leave so rely on a document that Appellants/Applicant made during the pendency of the instant appeal and as interested parties.

It is the law, through a long line of decided cases that evidence procured during the pendency or in anticipation of a case is not admissible in law.

See ***ABDULLAHI VS. HASHIDU (1999) 4 NWLR (Pt. 600) 638 at 645.;***

SAMSON OWIE VS. SOLOMON E. IGWIHI (2005) NSCQR Volume 21 Page 207 (4373).

We have seen the date on the said document.. It is very clear that same was made during the pendency of the instant appeal.

This is clearly against our adjectival law.. See ***SAMSON OWIE (Supra)***

We are in agreement with learned counsel for the 1st Respondent that this court ought to refuse the instant application for the fact that same is clearly overreaching. Application for leave is withheld. Consequently, the said application for leave dated 10th January, 2024 is refused and dismissed.

Hon. Justice Y. Halilu	***Hon. Justice A. A Fashola***
(Presiding Judge)	***(Hon. Judge)***
29th January, 2025	***29th January, 2025***

With the dismissal of the said motion, we now proceed to consider the instant appeal which shall be resolved on the strength of the issues formulated as afore-reproduced in the preceding part of this Judgment, and needless therefore, to reproduce the said issues hook, line and sinker again, as same may not be of any additional value.

Suffices however to state, however, that upon the consideration of issues formulated for determination by both Appellants on the one hand, and 1st Respondent, on the other hand, we have formulated a lone issue for the determination of the instant Appeal.

The issue is:-

Whether the decision of learned Trial District Judge was correct in the eyes of the law.

It is instructive to note that arising from the claim of the 1st Respondent who was Claimant in Suit No. **FCT/DC/CV/81/2021** against the instant Appellant before the lower District Court for the claim **of N2,500,000.00** being sum Plaintiff transferred into the 1st Defendant's account on the instructions of the 2nd Defendant for a contract of construction

and fabrication of a Cold Room which the 1st and 2nd Defendants have failed to deliver and interest of 10% on the judgment which is contained at pages 23 – 26 of the records of proceedings.

In the course of hearing the said suit before the Trial District Judge, parties decided to settle their differences but on terms which was drawn – up and filed before the Lower Court.

The said Terms of Settlement is herein reproduced for ease of reference.

Terms of Settlement

The Plaintiff instituted the instant suit against the Defendants, the following reliefs;

a. The sum of N2,500,000.00 being the sum the Plaintiff transferred into the 1st Defendant's Bank Account on the instructions of 2nd Defendant for a contract of construction and fabrication of a Cold Room which the 1st and 2nd Defendants have failed to deliver.

b. Interest in the above sum at the rate of 10% per annum from the date of judgment until final liquidation of the entire judgment sum.

c. Costs of this action claimed in the sum of N500,000.00 only.

WHEREBY IT IS AGREED AS FOLLOWS:-

1. The Defendants shall deliver **ALL** materials, equipment and kits for the construction of 12 feet by 12 feet by 8 feet cold – room as detailed in the Proforma invoices issued by the Defendants to the Plaintiff and tendered in evidence before this Honourable Court.

2. All materials, equipment and kits **MUST** be brand new in their untampered containers/packs and must be accompanied with a waybill and/or delivery note.

3. The Defendants shall refund the sum of N300,000.00 (Three Hundred Thousand Naira) only to the Plaintiff, being the sum for labour/installation of the cold – room. Said sum is to be paid on or before the 31st day of January, 2022. The said sum is to be paid to the Plaintiff's bank account, the details of which are given thus;

   Account Name - Andreys Food Enterprise

   Account Number - 1022239452

   Bank - United bank for Africa (UBA).

4. The Plaintiff agrees to waive his claim to an additional sum of N100,000.00 (One Hundred Thousand Naira) only and concedes same to the Defendants to defray the Defendants' cost of transporting the materials to the Plaintiff.

5. The Plaintiff also agrees to discontinue the associated criminal matter against the Defendants.

6. Parties shall bear their own costs.

7. The Defendants hereby agree that in the event of their failure to abide with clauses 1 – 3 of this Terms of Settlement by the 8th day of February, 2022, they shall be liable to the Plaintiff as per reliefs contained in the Plaintiff's particulars of claim filed before this Honourable Court.

Parties reached settlement and eventually adopted same before the lower District Court which became the judgment of the court.

The said consent judgment was later executed vide Garnishee Proceedings with Order Nisi made on the 14th October, 2022 which was later made absolute.

The said Order Nisi/Judgment was what the Appellant challenged and sought for Order setting same aside as contained at page 27 of the records of proceedings.

We need to state at this point the importance and effect of consent judgment in law.

It is as binding as all judgments once the court makes pronouncement on same.

In ***ALBERT ATEGBAI VS. AG EDO STATE & 1 OR (2001) NSCRQ Vol. 7 Page 549 (3646);*** where it was held that a consent judgment is a final decision, since its finality determines the issues and dispute between the parties. Section 241(1)(a) of the 1999 Constitution (as amended) of the Federal Republic of Nigeria is instructive.

Parties are generally bound by the terms of agreement freely entered into, regardless of whether it is filed in Court for judicial blessing or not, otherwise, a contract will be useless since same cannot be enforced.

The implication of filing settlement agreement or memorandum of Settlement in Court usually, is to seek judicial blessing especially when there is a pending suit before the Court, as in this situation.

From the content of the terms of settlement aforementioned, Appellants and 1st Respondent agreed on terms as contained in Clauses 1 – 3 of the Terms of Settlement as contained at page 24

of the records of proceedings and the consequence of not keeping to the said terms as contained in paragraph 7 of the said Terms of Settlement/Judgment. In the event of failure to abide with the said Clauses 1 – 3 of the terms of settlement by the 8th day of February, 2022, they shall be liable to the Plaintiff as per reliefs contained in the Plaintiff's particulars of claim filed before this Court.

It is of paramount importance to note once again, that the terms of the said settlement which are very clear, did not contemplate partial compliance and there is no such promise as to the effect of such.

It is therefore erroneous on the part of the Appellants who have made heavy weather with respect to partial compliance to the terms of the Settlement/Judgment to contemplate waiver of right to take the step so taken by the 1st Respondent who in law is the Judgment Creditor.

We hereby hold that the Trial District Court Judge was right in law to have refused the application to set aside the said Order Nisi as contained at page 66 to 73 of the records of proceedings.

The Order Nisi which was made Absolute is unshakably rooted in law.

See ***UBN PLC. VS. BONEY MARCUS INDUSTRIES LTD. (2005) 7 S.C. (Pt. 11) 70.-***

The four (4) issues formulated by the Appellant for determination which were distilled from grounds 1, 2, 3 and 4 of the Notice of Appeal are merely bogus without any atom of substance.

We agree with the 1st Respondent's counsel argument.

The lone issue formulated is therefore resolved in favour of the 1st Respondent.

Having so determined, all that remains is for us to pronounce that Appeal is unmeritorious and order for the dismissal of same.

On the whole, the said Appeal No. **CVA/88/2023** is hereby dismissed.

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Hon. Justice Y. Halilu	***Hon. Justice A. A Fashola***
(Presiding Judge)	***(Hon. Judge)***
29th January, 2025	***29th January, 2025***

APEARANCES

U.P Ogaraku, Esq. – for the Appellants.

Opeyemi O. Adeyemi, Esq. – for the 1st Respondent with **Aaron John, Esq.**