

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 11 BWARI, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

**SUIT NO: FCT/BW/CV/197/19  
MOTION NO: M/11773/2020**

**BETWEEN:**

1. IMAD OIL AND GAS LIMITED                    ---                    APPLICANTS  
2. ENET OIL AND GAS LTD

**AND**

ENET OIL AND GAS LIMITED                    ---                    RESPONDENT

**RULING**

**DELIVERED ON THE 6<sup>TH</sup> JULY, 2021**

By a Motion dated the 21<sup>st</sup> day of October, 2020 the present application was commenced by the Applicants under **Order 10 rules 2, 11 & 13 of the civil Rules of the FCT High Court 2018 and section 6 (6) (9) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)** which seeks to claim, from this Honourable Court, the under-listed reliefs:

1. An order extending the time within which the Applicants can apply to set aside the judgment delivered in **Suit No FCT/HC/BW/CV/197/19** by this Honorable Court against persons unknown in unlawful occupation of plot No. PFS 771 Gbazango layout, Kubwa, Bwari, Abuja.
2. An order setting aside the judgment delivered in **Suit No FCT/HC/BW/CV/197/19** by this Honorable Court against persons

unknown in unlawful occupation of plot No. PFS 771 Gbazango layout, Kubwa, Bwari, Abuja.

3. An order granting leave to defend the action as per the statement of defence and Accompanying Documents filed along with this application.
4. An order granting stay of execution of the judgment delivered in suit No FCT/HC/BW/CV/197/19 by this Honorable Court against persons unknown in unlawful occupation of plot No. PFS 771 Gbazango layout, Kubwa, Bwari, Abuja, for non-service of the originating processes, fraud, defaults of appearance and defense pending the final determination of the suit of the merits.
5. AND FOR such further orders as this Honorable Court deems fit to make in the circumstances of this case.

Below is found, in the very words of the Applicants, the grounds upon which the application is pillared:

1. The judgment was obtained by fraudulently deceiving this Honorable Court that the defendants known while in actual sense they are known to the plaintiffs of the Defunct Anti Armed Robbery Squad (SARS) at Area 11 known as Abattoir.
2. The hearing and trial of this suit was done without serving the Court the originating processes and hearing notice on the Defendants i.e. lack of service.
3. The defendants early became aware of this suit in this Court after judgment was given and make efforts to apply to set it aside by briefing the current counsel handling it for them.

4. The Defendants/Applicants have a better title over the plot PFS 771 in issue than the Respondent and where there equal equities first in time shall prevail.
5. The Plaintiff /judgment creditor company name was delisted and deregistered for long by the Corporate Affairs Commission.
6. The 2<sup>nd</sup> Defendant / Applicant had registered its company name with the Corporate Affairs Commission long before the judgment creditor registered its own company name.
7. This Honorable Court has stated as a 2<sup>nd</sup> relief in the judgment in this suit that any person who has a better title or interest in the said land, shall apply to set aside the said order timeously.
8. The Plaintiff/Judgment creditor is neither a legal or juristic person that can competently initiate this suit before this Honorable court as it name as a company was deregistered by the Corporate Affairs Commission for the reason of similarity of name with the 2<sup>nd</sup> Defendant.
9. The 2<sup>nd</sup> Defendant / Applicant had registered its company with the Corporate Affairs Commission with the RC: Number: 759525 while the Plaintiff / judgment creditor has its Re: Number 1265623.
10. The Applicants want stay of execution of this judgment due to the reason that the award of damages will not be sufficient to compensate the Applicants if the Plaintiff is permitted to develop the said plot of land in dispute and the Applicants succeeds at the hearing of the suit on the merits.

11. The Applicants apprehend fears that if execution levied and or is carried out, the judgment creditor/ respondent will erect structures and develop the said plot of land and that will definitely make it difficult for this Honorable Court to order for execution in favour of the Applicant if at the end of the day the Applicant succeeds at the end of the trial.
12. The failure to grant stay of execution of the judgment of the said land, will render execution of the judgment obtained on the merit if same is given in favour of the applicants nugatory.
13. The Applicants have valid title documents over the said plot of land and the plaintiff is not even competent to file this suit.

The Applicant's application is re-inforced by a twenty-two paragraphed affidavit of one Bashir Adamu Imad, Adult, Male, Nigerian Citizen of No. 3 Usuma Close, Maitama stating as follows;

1. That I am the 1<sup>st</sup> Applicants Managing Director in this suit and the subsequent purchases of the plot of land in dispute and therefore conversant with the facts of the case.
2. That I have the consent and authority of the 2<sup>nd</sup> Applicant to depose to this Affidavit.
3. That all the facts deposed to herein are within and from my personal knowledge except where otherwise is expressly stated.
4. That suit No. FCT/BW/CV/197/19 was filed by the judgment creditors / respondent against persons unknown in unlawful occupation of plot No. PFS 771 at Gbazango Kubwa, Bwari Area Council, Abuja for title

over the said piece of land. A copy certified true copies of the records of proceedings are herewith annexed and marked exhibit "A"

5. That the hearing of the suit was commenced and determined by this Honorable Court in the absence of the Defendants/ Applicants.
6. That Plaintiff / judgment creditor had misled this Honorable Court into believing that those who occupied the said plot of land were unknown to the Plaintiff.
7. That it's very surprising for the Plaintiff to inform the Court through court processes that the persons in occupation of the said plot of land are unknown to him.
8. That the fact of the matter is that IMAD OIL AND GAS LTD purchased the said plot of land from ENET OIL AND GAS LTD and that title documents such as right of occupancy, letter of grant, survey plan, Deed of Assignment and Power of Attorney all were executed and or handed over to the 1<sup>st</sup> Applicant by their vendor (i.e. ENET OIL AND GAS LTD). Copies of the title documents listed above are herewith annexed and marked exhibit "A2"
9. That the 1<sup>st</sup> Applicant and 2<sup>nd</sup> Applicant have a better title over the property/ the said plot of land than the judgment creditor / respondent.
10. That based on the fact that this Honorable Court was misled into believing that the persons unknown in unlawful occupation of the said plot of land were unknown and the entire processes of this Honorable court were not at all served upon the 2<sup>nd</sup> Applicant and 1<sup>st</sup> Applicant

as a subsequent purchaser of the said plot of land from the original owner/ holder of right of occupancy.

11. That the Applicants want to be granted leave by this Honorable Court defend this suit filed by the Plaintiff /judgment creditor on the merits.
12. That the reason why the Applicants could not defend this suit was due to the lack of service of the entire processes of the Honorable Court on them by the Plaintiff.
13. That the Plaintiff did not even have the legal capacity, competence to file this suit because it is no longer a Juristic person that can sue or be sued in its own name because the Corporate Affairs Commission had already given the Plaintiff a letter of delistment and or de-registration for similarity of name.
14. That the Plaintiff has no good title of the said plot of land and the Applicants title was first in time and date.
15. That this Honorable Court has the power to grant a stay of execution of the judgment delivered in suit No. FCT/BW/CV/197/19 in favor of the Plaintiff/ Respondent in default of appearance and defense.
16. That the said judgment is to the detriment of the Defendant/ Applicants and absolutely in breach of the Applicants rights to have their case determined on the merits.
17. That the Applicants not only have a good defense to the action but are ready, willing and able to pursue this suit to its logical conclusion. Exhibit "A3" annexed.

18. That the Applicants only became aware that the judgment delivered by this Honorable Court in this suit No. FCT/HC/BW/197/19 on the 29<sup>th</sup> day of September, 2020.
19. That there has not been undue delay in the making this application by the Applicants.
20. That the Plaintiff /Respondent will not be prejudiced if this application is granted.
21. That it will be in the interest of justice if this application is granted so as to determine the matter on the merits.
22. That I swear to this affidavit in good faith and in accordance with the oath Act.

In opposition, the judgment creditor/Respondent to this application countered with a sixteen paragraphed counter-affidavit deposed to by one, Mohammed Garba, Male, Adult, Muslim and a Nigerian Citizen of Plot 9, Hamza Abdullahi Road, Kubwa, Abuja, who stated as follows:

1. That I am a member Director of the judgment creditor herein by virtue of which I am quite conversant with the fact of this suit.
2. That the judgment creditor is a beneficiary of the judgment of this Court delivered on 13/02/2020 after fulfilling all requirements for the judgment of the Court by virtue of its own suit for possession of our land illegally occupied by unknown persons.
3. That we are also shown a motion on notice filed by one IMAD OIL AND GAS LTD together with E-NET OIL AND GAS LTD against ENET OIL AND GAS LTD seeking to set aside the judgment of this Court in our favor.

4. That all the parties in the said motion are unconnected to us and have no relationship with our land in issue.
5. That we had to respond to the Applicants motion dated 21/10/2020 because even though the parties are unconnected to us, the land subject matter of the motion belonged to us.
6. That paragraphs 1-22 of the Applicants affidavit supporting the motion is not true and a total falsehood and I wish to respond to same below.
7. That it was only after filing our instant suit upon which the Honorable Courts judgment now stands that we stumbled on a newspaper publication advertisement of loss of our land document by one Bashir Adamu whom we do not know.
8. That we instantly caused a criminal action to be taken by our solicitors to unravel the identity of the said Bashir Adamu and his collaborators.
9. That a criminal direct complaint action was filed at the Magistrate Court who ordered police investigation through whom the identities of applicants were unravel but could not substantiate their claim to our land. A copy of the criminal direct complaint summons is herewith annexed as Exhibit 'E1'.
10. That all the processes of this Court were promptly and properly served as ordered by the Court with all proof of service before the court.
11. That our land document was never missing from our custody and possession since we took delivery and possession of same.

12. That the police investigation of our criminal complaint is still ongoing and the Applicants of the instant motion are the persons delaying the conclusion of the police investigation for begging for time to produce one document and the other which was never forthcoming.
13. That the Applicants companies and their respondent are not owners of our land but the claimant in whose favor the Honorable Court judgment was delivered.
14. That the information we have about the 2<sup>nd</sup> Applicant is that it was registered in 2008 while our land was allocated to us in 1995 to our cooperative body which was in existence since 1993. A copy of a search report of the 2<sup>nd</sup> Applicant obtained from CAC is herewith annexed as Exhibit 'E2'.
15. That the Applicants are not entitled to the reliefs being sought and it will be in the interest of justice for their motion to be dismissed.
16. That I make this affidavit in good faith and in accordance with the oath Act 2004 LFN.

When served with the Judgment Creditor/Respondent's counter-affidavit reproduced above, the Applicants yet again filed a further affidavit deposed to by the same Bashir Adamu, who earlier deposed to the affidavit in support of the Motion stating further thusly;

1. That I am the Managing Director of the 1<sup>st</sup> applicant in this suit and of course conversant with the facts of this case and that I had the consent and authority of the 2<sup>nd</sup> Applicant to depose to facts herein on its behalf.

2. That all the facts deposed to herein are within and from my personal knowledge except where expressly stated in this affidavit.
3. That paragraph 2 of the counter affidavit is true to the extent that default judgment is delivered on 3<sup>rd</sup> February, 2020 for the respondent but totally false and denied on the grounds that the judgment was obtained by deception, misrepresentations, fraud, lack of legal capacity to file the suit No. CV/197/2019 and that there was failure to fulfill the requirements of law.
4. That paragraph 4 of the counter affidavit is false and in response to that I state that the applicants are the genuine owners of the land in dispute, and had been in actual possession of the said plot of land for more than ten years before anyone known as the respondent to begin to lay a title claim over the plot of land in dispute.
5. That paragraph is not true and in response to that I state that the respondent knows the applicant since on the 19<sup>th</sup> August, 2019 when a criminal case was filed against the applicants.
6. That it is not true that the respondent knows the applicant after coming across a newspaper publication in which the applicants advertised a loss of their title documents pertaining to the plot of land in dispute.
7. That the respondent is only deceiving this Honorable Court that he does not know the applicants while he had the case with the applicants at the police station during a course of investigation of the direct criminal complaint as ordered by the lower Magistrate Court.

8. That paragraphs 7 of the counter affidavit conflicts with the contents of paragraphs 8 & 9 of the counter affidavit of the respondent.
9. That the service of the originating processes was done by substituted means with an order of this Honorable Court while the applicants were outsmarted by the respondent for filing this suit without serving the applicants with the processes of the court even though they knew the applicants and their place of abode or residence and as the case started at the Magistrate Court in Gwagwalada, Abuja and at the police office during the pending investigation into the case by the police as directed by the lower court.
10. That paragraphs 12 & 13 of the counter affidavit are not true and in response to that I state that the applicants are the true owners and or occupiers of the plot of land in dispute.
11. That paragraph 14 of the counter affidavit admitted and agreed that the 2<sup>nd</sup> applicant was registered with the Corporate Affairs Commission while it has agreed with the deposition of the applicants that the respondent had already been delisted and or deregistered by the CAC on grounds of similarity of name with the name of the 2<sup>nd</sup> applicant herein.
12. That the instant application is meritorious and the grant of same will serve the best interest of justice but the refusal will defeat substantial justice.
13. That I swore to this affidavit conscientiously believing same to be correct and true and in accordance with the oaths Act.

**PRELIMINARY REMARKS:**

The sole issue distilled by the Applicants for the resolution of this Honourable Court now reads:

Whether the Applicants have made out a case for the grant of this application?

Arguing the sole issue, the Applicants invoked the authorities of **Okafor vs Ezenwa (1992) 4 NWLR (Pt. 237) 611 and Williams vs Hoperising (1982) 12 SC** in ventilation of the accepted principles guiding the Court in deciding whether or not to accede to the plea for the vacation of its own judgment as I am faced in the present proceedings. Making references to different portions of the supporting affidavit and contended that the case of the Applicants has satisfied the thresholds set by the law for the grant of their application.

Per contra, the Judgment Creditor/Respondent contended that the application before the Court is incompetent and an abuse of court process for the reason that the Applicants, who were never parties to the suit, have not taken any step to be joined in the suit by making an application for them to be joined as their instant Motion never sought the leave of the Honourable Court for them to be joined as a party to the suit for a successful invocation of the Court's jurisdiction in their favour one way or the other. The Respondent yet again pointed out that apart from the suit number which tallies with the Respondent's suit, the parties on the face of the Applicants' Motion are unknown to it. Respondent derided the Exhibits attached to the Applicants' application as self-contradictory, false and unable to create any right to land as it were, else, according to it, how will

their purported letter of allocation be dated 15/6/1995 but the Claimant's company was established in 2008 and the name on the allocation letter is ENET OIL AND GAS registered in 2008 for a land that was already in existence since 1995 to the Claimant/Respondent? The Respondent drew the attention of the Court to the fact that the Power of Attorney and Deed of Assignment made between the 1<sup>st</sup> and 2<sup>nd</sup> Applicants together with the sworn affidavit of loss of document and police report extract were all made the same day and date, that is the **4/04/2013** as endorsed officially on all the 'so-called' title document attached as EXHIBIT A3 by the Applicants herein. Deriding the contention of the Applicants to the effect that the Respondent is not a legal personality, Respondent referred the Court to its EXHIBIT A1 attached to its Originating Summons wherein it is shown that it is a cooperative society registered on the 24th March, 1993 by which personality they applied and were granted the land on the 2/2/1995.

Relying on **ONOUKWUSI VS TRUSTEES (2011) 1 SCNJ 126 at 143**, the Respondent canvassed the view that the personality of a cooperative society is recognised by law and can own a property, sue and be sued in their names. The Respondent further contended that, pursuant to the Ex-parte order of this Court, substituted service was effected by pasting the processes on the property and nobody showed up. He referred to the affidavit of service before the Court and submitted that that the Applicants cannot complain of none-service and that it is too late in the day for this application to have been brought. Moreover, no iota of fraud or misrepresentation as alleged by the Applicants was established before this Court and should be discountenanced as a consequence, the Respondent

submitted. The Court is urged to dismiss the instant application with a cost of One Hundred Thousand Naira Only.

In their Reply on Point of Law, the Applicants submitted that the Respondent's counter affidavit was filed out of time since the seven days within which they were supposed to file their counter expired without any redeeming application for extension of time to file same. Reiterating that the Rules of Court are meant to be obeyed, they consequently urged the Court to strike out the Respondent's counter-affidavit and the accompanying written address and grant the prayers of the Motion.

**On the 11<sup>th</sup> day of March, 2021**, I reserved Ruling on this application. I now proceed to express my view thereon against the backdrop of the agitations of respective parties which I have diligently read, assimilated, summarised and alluded to elsewhere in this Ruling.

There is no doubt that there is no power in this Court to hear an application by an Applicant who was never made a party to the suit without the said Applicant first seeking to be joined as a party in the suit and such prayer for joinder being granted. In other words, for the jurisdiction of the Court to be properly invoked to hear an application, such as the post-judgment application now before me, the Applicant who was never made a party ought to, as a condition precedent, seek that it be joined as a party before proceeding to table other reliefs such as were sought on the face of the Motion which is the subject of our deliberation. This fundamental error with which the Applicant's application was/is afflicted has crumbled the Applicant's application. It may be argued, and it may very well be, that the Respondent to the instant application filed its counter-affidavit out of the

time prescribed by the Rules of this Court without first seeking for extension of time, however, that argument becomes of no moment or pales into oblivion when it is taken into account that the party raising this issue, crucial or fundamental as it may appear, is **unknown** to this Court having not been properly admitted into the proceedings as a party. The cart, in the instant application, must not go before the horse. It is the prayer for joinder (as a *conditio sine qua non*) which is the horse that must pull the other prayers contained on the face of the Motion paper which are the metaphorical cart in this analogy.

This not being the case in the instant application, there is no useful purpose to be served in going into the merit or otherwise of the application at this stage. This application is liable to be aborted forthwith. I hereby enter an order striking out this application for lack of jurisdiction on the part of this Court to entertain an application filed by a party who is **unknown** to the Court and who refused to apply so that it could be joined properly as a party to enable it ventilate its grievances against the Ruling of this Court made on **the 13<sup>th</sup> day of February, 2020**.

This shall be my Ruling which earlier, on the 6<sup>th</sup> day of July, 2021, I had reserved. Motion struck out.

### **APPEARANCE**

A.G. Bello Esq. with me P.E. Okoro Miss

S.O. Adegoke Miss for the Judgment/Creditor Respondent.

The Respondent/Applicant not in court.

Sign  
Hon. Judge  
06/07/2021