

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2 ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 22ND OF JUNE, 2021
SUIT NO: FCT/HC/CV/1364/20**

BETWEEN:

MRS. AKANIMO ANWANA AMBA ----- CLAIMANT

AND

MR. ANWANA ETIM AMBA ----- DEFENDANT

***C. C. AGIDI* appears with *C. S. NWAOGAZI* and *I. C. NWEKE* for the
*Defendant.***

***MICHAEL OMOSEGBON* for the Claimant.**

JUDGEMENT

The claimant filed an originating summons on the 9th March 2020 and urged the court to determine the following issues:

1. Whether an order for substituted service is suitable and right to effect service of court process on a defendant known to have relocated outside the jurisdiction of a court as at time of filing and making the application with the order thereto
2. Whether in the absence of proper service of the originating process and subsequent court processes, a court can assume jurisdiction to try a matter.

3. Whether of (sic) this court can exercise jurisdiction in divorce petition without competent verifying affidavit.
4. Whether the court can set aside its own judgement on ground of fraud and lack of jurisdiction.

And that upon the determination and consideration of the above questions by the court, the Claimant seeks against the defendant the following reliefs:

- a. A declaration by this court that the order for substituted service granted by the Honorable court in exparte Motion No. M/3115 in respect of the divorce petition in Petition No. 81/2014 was and it is a nullity.
- b. A declaration by this Honorable court that the respondent (herein claimant) was not served with the originating process and subsequent court process of the divorce petition filed by the petitioner (herein defendant) in the said Petition No. 81/2014.
- c. A declaration that the judgement of the Honorable court delivered on 12th January, 2016 was obtained by the petitioner by fraud and misrepresentation of facts in view of overwhelming evidence of concealment of facts, condonation and misrepresentation of facts before the court.
- d. A declaration that there was no competent verifying affidavit accompanying the divorce petition on which the judgement

delivered on 12th day of January 2016 in Petition No. 81/2014 was based.

- e. An order of this Honorable Court setting aside the entire judgement delivered on 12th day of January 2016 with orders thereto on grounds of nullity.
- f. And for such order or further orders this court may deem necessary to make in the circumstance of this case.

In the 28 paragraph affidavit in support of the originating summons, the claimant averred that she proceeded to the United Kingdom for a Masters Degree program sponsored by the Niger Delta Development Commission in January 2014 with the consent of the defendant and that before she returned to Nigeria in 2019, the defendant had filed and obtained a judgement in divorce proceeding against her in 2016 without being personally served with the originating process of the divorce petition. That the defendant/petitioner deliberately withheld from the court the fact of his approval/condonation to her travel to the United Kingdom. That if the petitioner had disclosed to the court the fact of his condonation, the court would have reached a different outcome in the divorce petition.

And that the defendant/petitioner deliberately misled the trial judge and obtained the judgement by fraud. That her counsel informed her and she verily believed him that the verifying affidavit deposed to by the

defendant/petitioner in the divorce petition is incompetent and on the said basis, the judgement can be set aside by this court. That she is ready and willing to defend the petition on its merit if the said judgement is set aside. She annexed to the affidavit several documents, which includes the record of proceeding at the High Court Jabi Division presided over by Hon. Justice Jude Okeke of blessed memory and other correspondences between her and the defendant/petitioner amongst other documents marked as Exhibit A – J. Also attached to the originating summons is the counsel's written address as filed by one Stephen Mere Esq.

In reaction to the originating summons, the defendant filed a Notice of Preliminary Objection dated 3/11/2020 wherein the court was urged to do the following:

1. An order dismissing the suit for being incompetent.
2. An order dismissing the suit for lack of jurisdiction.
3. An order dismissing the suit for lack of locus standi as the Claimant/respondent is in disobedience of the order of court.
4. An order dismissing the suit for constituting an abuse of court process.
5. An order dismissing the suit for showcasing cases of unprofessional and unethical conducts
6. And for such further order(s) as this Honorable Court may deem fit to make in the circumstance.

The grounds upon which this application was brought are that:

- a. The purported originating summons has expired.
- b. The reliefs of the claimant/respondent are not grantable.
- c. The purported originating summons did not set out any statute, deed, will, written instrument or enactment for construction.
- d. There is no statute, deed, will, written instrument or enactment for construction before this Honorable court.
- e. The Honorable court lacks the vires and the jurisdiction to set aside judgement delivered by a court of coordinate jurisdiction presently constituted.
- f. The Claimant/Respondent was served with the originating process and all processes in suit No. FCT/HC/PET/81/2014.
- g. The Claimant/Respondent was represented by counsel in suit No. FCT/HC/PET/81/2014 and filed processes in reaction to the petition.
- h. The institution of the present case is meant to vex and annoy the Defendant/Applicant.
- i. The Claimant/Respondent through her counsel has withheld information necessary for the determination of this case.
- j. The acts of the counsel representing the Claimant/Respondent amounts and constitutes a professional misconduct.
- k. There is no valid ground for the grant of the reliefs of the Claimant/Respondent.

In support of the Preliminary Objection is a 30 paragraph affidavit with three (3) exhibits attached. Likewise the counsel also filed written address in support of the Preliminary Objection whilst the Claimant/Respondent filed a counter-affidavit and a written address in opposition to the Preliminary Objection

I have taken a swipe at the entire processes filed by the parties and the arguments of their learned counsel embodied in their respective written addresses. My understanding of what the Claimant wants is for this court to set aside the judgement of my learned brother Honorable Justice Jude Okeke (of blessed memory) delivered in petition No. 81/2014 on the 12th day of January, 2016 based on the grounds enumerated above. There is no doubt that a court can set aside its own judgement or a judgement of a court of coordinate jurisdiction if the judgement was obtained by fraud or misrepresentation or the judgement is a nullity.

The learned counsel to the claimant in his address supported this view with the case of **MICHAEL V B. O. N (2015) 12 NWLR (PT. 1473) SC 370 405 PARAS C – F Per AKA AH JSC**. This principle was also reiterated by the Supreme Court in the case of **OLUFUNMISE VS.FALANA (1990) LPELR-2016 SC**. *"The law on setting aside a judgement obtained by fraud is very well settled. It is not in doubt and the elements of fraud to be proved to entitle a claimant/plaintiff to succeed are clear and precise. The learned authors of Halsbury Laws of England 2nd Edition Vol. 22 page 790 set out the law in paragraph 1669 as follows: " A judgement, which has been obtained by fraud*

either in the court or of one or more of the parties, can be impeached by means of an action which may be brought without leave and is analogous to the former chancery suit to set aside a decree obtained by fraud. In such an action, it is not sufficient merely to allege fraud without giving any particulars, and the fraud must relate to matters which prima facie would be reason for setting the judgment aside if they were established by proof and not to matters which are merely collateral. The Court requires a strong case to be established before it will allow a judgment to be set aside on this ground, and, unless the fraud alleged raised a reasonable prospect of success and was discovered since the judgment complained of, the action will be stayed and dismissed as vexatious."

Per OBASEKI ,J.S.C (Pp. 8-9, paras. D-B)

Similarly in the case of **UWAIFO & ORS V GOVERNOR OF LAGOS STATE (2007) LPELR 9017 CA** the Court of Appeal succinctly stated as follows:

"The principle of law is that once a court makes an order it become functus officio. As a general rule a court of coordinate jurisdiction has no jurisdiction to set aside the judgement of another court of similar jurisdiction. But where an Order is a nullity such an order would be set aside by another court of similar jurisdiction. See WILT & BURCH LTD V PPS PLC (2007) AFWLR (PT. 382) 1816 @ 1842 PAR G - H" – Per Mshelia JCA.

See also in the case of EDO STATE HOUSE OF ASSEMBLY & ORS VS. AGBEBAKU(2018) LPELR-45055 CA. See ALAO VS. ACB LTD.(2000) LPELR 408 SC.

In the instant case, the Claimant contended that she was not personally served with the originating processes of the divorce petition. However she admitted that she was outside the shores of the country when the processes were filed and served on her, this fact can be deduced from paragraph 18 of her affidavit where she averred thus”

“That I know as a fact that even when I arrived at the United Kingdom my husband and I were still exchanging electronic and internet messages to show his approval/condonation to my travel to the United Kingdom, certified true copies of the e-mail message dated 30th January, 2014 and the one dated 21st February, 2014 are hereby attached as Exhibits H and H1 respectively”.

Also in paragraph 7 e of the affidavit the claimant admitted applying for and obtaining the Certified True copies of Motion Exparte No. M/31115/2014 for substituted service(Exhibit G), written address in support of the Exparte Motion (G2) and Court Order on the Exparte Motion Exhibit G3. It is glaring that there was proper service of the divorce petition vide the Order for substituted service on the claimant. And has not denied that. Also on the second leg of claimant’s argument that the verifying affidavit did not contain the fact that the defendant

consented or condoned her travelling to the United Kingdom, this argument is preposterous, this is because the claimant filed an answer to the petition, caused counsel to appear for her, as could be gleaned from pages 3-7 of the records of proceedings, but the respondent and her counsel were absent when the matter was set-down for hearing and on subsequent dates for cross examination and for defence of the petition.

The Judgment in respect of the petition was delivered on the 12th of January, 2016; there was no appeal against any of the positive Orders of the court. The claimant suddenly woke up from her slumber in 2020 to file this irritating and vexatious application to set aside the said judgment, which are apparently unsupportable by the reasons urged on the court by the claimant. The Claimant has failed to adduce any credible evidence to buttress her claim of fraud and lack of jurisdiction on the part of the court that delivered the said judgement sought to be set-aside. This action is frivolous.

Furthermore, I agree with the submission of Learned Counsel to the Defendant that the mode of commencement or procedure adopted by the Claimant is unknown to law and strange. I think the Learned Counsel to the Claimant needs to be schooled that rules of court are meant to be obeyed, they are not for fancy. And that oftentimes failure to obey the rules of court, robs the court of the jurisdiction to determine the case of a litigant. The provision of Order 3, Rule 3 of the High Court of FCT Civil

Procedure Rules stipulates circumstances when originating summons are used in commencing an action thus:

“1. Any person claiming to be interested under a deed, will, enactment or other written instruments may apply by originating summons for the determination of any question or construction arising under the instrument and for a declaration of the right of the persons interested.

2. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.”

The issues set-out for determination in the originating summons filed by the claimant are issue of facts and not construction of any written law, instrument, deed or will and cannot be determined by way of originating summons. I hold that the mode of commencement employed by the claimant is wrong and therefore robs this court the jurisdiction to determine the issues raised therein. See **JIMOH V ALECHINLOYE II & ORS (2014) LPELR 22552 (CA)**;

“In reiteration Originating Summons which is an action in the High Court is limited on its application to cases, where specific rules or statutes have provided for its use. See ADEYELU II V ONYEWUMI (2007) 14 NWLR (PT. 1053) 1 @ 14, OSSAI V WAKWAH (SUPRA) while the general rule states

that Originating process is ideal for use in an action seeking for the construction and interpretation of documents or where there is likely to be no or any notable dispute of facts relevant to the determination of the issue in controversy. In determining whether originating summons is an appropriate procedure to commence an action in a particular case, after abiding the general rule; there must be a crossover to any statutory provision or specific rules that may be applicable.” See KEYAMO V HOUSE OF ASSEMBLY LAGOS STATE (2002) LPELR 1689 SC PER IGUH JSC.

In addition, I endorse the submission of Counsel to the defendant that this suit is an abuse of the process of the court. It is also a waste of the precious time of the court. I doubt if the Counsel to the Claimant appraised the case of his client and advised her on the futility of filing such a useless action which seeks to have this Court sit on appeal over a judgement delivered on merit by a court of coordinate jurisdiction. Counsel should on their honor and in protection of the dignity of the legal profession decline and refuse to accept such briefs that demean and debase their integrity as a member of the noble profession.

The Learned Counsel to the Claimant has pursuant to Order 2, Rule 2 (e) shown his readiness to be liable in the event that the Claimant’s action turn out to be frivolous. This is a very appropriate and convenient situation that warrants the invocation of the said Order. The learned

Counsel to the Claimant is liable for instituting this vexatious and frivolous action, and will be penalized accordingly. On the whole, the entire action is hereby dismissed for being frivolous and an abuse of Court process. The Learned Counsel to the Claimant is hereby fined the sum of **One Hundred and Fifty Thousand Naira (N150,000.00)** for filing this frivolous action.

Signed

Hon. Judge

22/6/2021