

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 15**  
**CASE NUMBER : SUIT NO: CV/1931/2021**  
**DATE: : FRIDAY 23<sup>RD</sup> JULY, 2021**

**BETWEEN:**

**SABA INTEGRATED RESOURCES LTD. } JUDGMENT  
CREDITOR/  
RESPONDENT**

**AND**

**ABUJA MUNICIPAL AREA COUNCIL } JUDGMENT  
DEBTOR/  
APPLICANT**

## **RULING**

The Applicant vide a Motion on Notice approached this Honourable Court for the following:-

1. An Order of this Honourable Court setting aside its earlier Judgment dated the 16<sup>th</sup> day of October, 2018, as same was reached in error, considering the fact that, the said Judgment is predicated on a statute bared Suit, and also that the said Writ was fundamentally defective and misleading as well, and the Court should not have entertained the said Writab initio.
- b. And for such other Order(s) as this Court may deem fit to make in the circumstance of this Suit.

In support of the application is a 5 paragraph affidavit deposed to by DanlamiYerima.

It is the deposition of the Applicant that the Judgment Debtor had already started enjoying the completed contractual obligation of the Judgment Creditor/Respondent since 2013 and 2014 respectively, vide Exhibit '4'.

That paragraph 1900 of both contract agreements executed by the parties to the contract as averred to and pleaded as Exhibits '4' and '5', in paragraph 6 and 7 of the Judgment Creditor/Respondent affidavit in support of its writ, is to the effect that any dispute arising from the said contract, which cannot be settled amicably, shall be settled by Arbitration under the Arbitration Act Cap 13 LFN but that same was not complied with.

That the Judgment Creditor/Respondent will not in any way be prejudiced if this application is granted.

A written address was filed wherein a sole issue was formulated for determination to wit;

***“Whether in the circumstance of this case, this Honourable Court has the power to exercise its discretion in favour of the Judgment Debtor/Applicant and grant their prayer(s) as sought?”***

Learned counsel argued that Court has a wide latitude of discretion to grant the application and that such a discretion must be wielded judiciously and judicially and that it is a well-known doctrine that every Court of law has inherent powers and jurisdiction to set aside its own Judgment or decision in appropriate case. ***IGWE VS. KALU (2002) 14 NWLR (Pt. 787) 435; SALMAN ABDULFATAI & ANOR VS. AIYELABEGAN KAYODE A. & ORS***

*(2012) LPELR – 1432 (CA) at Page 46 G Page 47 Para A – D* were cited.

Learned counsel further argued that where the law provides for an action within a prescribed period in respect of a cause of action accruing to the Claimant, proceeding shall not be commenced after the expiration of the time prescribed by the statute. As a result, an action commenced after the prescribed period has expired is contrary to the provision laws and does not give rise to a cause of action. *NDUKA VS. OGBONNA (2011) 1 NWLR (Pt. 1227) 153 CA.* was cited.

Counsel submit that it is obvious on the face of the Judgment Creditor/Respondents' writ, that the Court was misled into entertaining same and premised on this, the said Judgment of the Court, should be set

aside. *C.B.M VS AHMED (2002) 11 NWLR (Pt. 724) 369 @ 408 Para A – G* was cited.

It is further the argument of learned counsel that the writ that sets this entire process in Motion was defectively incompetent, and Court was urged to so hold.

Upon service, the Judgment Creditor/Respondent filed a counter affidavit of 5 paragraphs deposed to by One Joy Ideh.

It is the deposition of the Respondent that the Judgment Debtor shamelessly emphasized in paragraph 4 (a) and (b) the fact that the Respondent has duly completed the contract but deliberately refused to pay even after issuing a job completion certificate to the Respondent.

That the Judgment Creditor has since commenced execution of the said Judgment and the sum of N4,062,466.94 (Four Million, Sixty Two Thousand, Four Hundred and Sixty Six Naira, Ninety Four Kobo) part of the Judgment debt has been paid and received from the Judgment Debtor, and that this objection is a delay tactic geared at overreaching or frustrating the final execution of the Judgment debt and to endure non-compliance by AMAC Microfinance Bank Limited, by the Judgment Debtor.

A written address was filed wherein two issues were formulated for determination to wit;

- 1. Whether the court can set aside a Judgment delivered on merit and has already been executed by Garnishee Order Absolute, if yes,***

***2. Whether the Judgment Debtor has provided any legal basis upon which the Judgment of this Honourable Court can be set aside.***

On issue one, learned counsel submit that a Court of law has no power to set aside its own Judgment delivered on merit except under the slip rule which is not the issue in this case and no facts of fraud is disclosed in the affidavit in support of the Motion by the Judgment Debtor relating to the said Judgment, thus the Court is already functus officio. ***UBA VS. BONEY MARCUS IND. LTD. & ORS (2005) LPELR – 3394 (SC); OKWOR & ORS VS. UGWU & ORS (2016) LPELR – 42094 (CA)*** were cited.

On issue two, learned counsel contended that there was nowhere issue of arbitration was ever raised

before the court during trial and the Judgment Debtor was duly served with all Court processes.

***KWARA STATE MINISTRY OF HEALTH VS. MALAN ISA ELECTRICAL ENT. (2011) LPELR – 9097 (CA).***

Counsel further argued that the provision of the Arbitration Act has settled this issue, it gave the power to this Honourable Court to continue with the proceeding by the use of the word “**MAY**”. The agreement of the parties is subject to the Constitution, which is the supreme law of the land. Section 5 of the Arbitration and Conciliation Act; ***GLOBAL FORMWORK (NIG.) LTD. VS. E.A GOREM LTD. (2018) LPELR – 46986 (CA)*** were cited.

**Court:-**

I have read carefully the relief sought by the Judgment Debtor/Applicant and the corresponding counter affidavit of the Judgment Creditor/Respondent. The gamut of Judgment Debtor/Applicant's grouse is centered on the fact that there was Arbitration Clause which suggested that Arbitration would be resorted-to in the event of any default arising from the contract between Judgment Debtor/Applicant and Judgment Creditor/Respondent, but that was not complied with when Judgment Creditor/Respondent rather approached this Court and eventually got Judgment against Judgment Debtor/Applicant with respect to the same contract.

I am not unmindful to the fact that parties are bound by their contract and that is the whole essence of sanctity of contract.

It is on record that Defendant/Judgment Debtor/Applicant were duly served processes of the Claimant/Judgment Creditor/Respondent sequel to the hearing of the matter.

Defendant/Judgment Debtor who were seized of the terms of the contract were at liberty to have objected to the jurisdiction of the Court on ground of the Arbitration Clause contained in their contract but failed to so... once they were served with Claimant's marked writ but failed to do so. What more. Defendant/Judgment Debtor/Applicant commenced payment of the Judgment sum in the sum of N4,062,466.94 (Four Million Sixty Two Thousand Four Hundred and Sixty Six Naira Ninety Four Kobo) to the Judgment Creditor/Respondent, after judgment was handed down against them.

It is trite that delay defeats equity and that equity does not aid the indolent but vigilant. Equity like an immaculate garment abhors the company of those who are likely to contaminate its majesty, taint its purity or dampens its alleys! Since equity does not trade on detergents those who approach her hallowed portaly are forewarned to denude their hands of all dirt's and appear with unimpeachable allegations.. why is Judgment Debtor/Applicant just realizing the fact that there was Arbitration Clause and the need to have used that as ground of objection to jurisdiction after Judgment on the undefended list had long been entered and part payment of the Judgment sum had been made!

Why did Defendant/Judgment Debtor/Applicant fail to appeal against the Judgment of this Court but nowseek to have the said Judgment set aside on

ground of a “Clause” it knew but did nothing and even complied partly with the Judgment of this Court!

Clearly, Defendant/Judgment Debtor/Applicant approach flits and reeks of smell of dishonesty and wickedness.

Clearly, the intention of Defendant/Judgment Debtor is clearly targettedat frustrating the Judgment Creditor from reaping fruits of its labour, and nothing more.

This Court cannot be used. God forbid.

The instant application is most unmeritorious, same being annoying and vexatious... same is refused and dismissed.

***Justice Y. Halilu***  
***Hon. Judge***

*23<sup>rd</sup> July, 2021*

**APPEARANCE**

Festus Akpoghalino- for Judgment  
Creditor/Respondent.

Judgment Debtor/Applicant not in Court and not  
represented.