

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

ON THE DAY OF MARCH, 2025

SUIT NO.FCT/HC/CV/441/23

BEFORE HIS LORDSHIP:
HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

BETWEEN:

FIRST CITY MONUMENT BANK LTD -----APPLICANT

AND

MRS. OBIANUJU GERALDINE IFEATU -----RESPONDENT

RULING

INTRODUCTION

By a motion on Notice dated the 23rd day of February, 2024, brought pursuant to Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Order 43 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and Under the Inherent Jurisdiction of the Court.

The Applicant prays for the following Order:

1. AN ORDER OF THE HONOURABLE COURT varying its Order made against the Applicant on the 13th day of February, 2024 making absolute its order Nisi as same was made in the erroneous belief that there is money to satisfy the judgment debt of the judgment Debtor.
2. AN ORDER OF THIS HONOURABLE COURT discharging the Applicant from the Garnishee proceedings instituting by the Judgment Creditor/Respondent as the Applicant is not indebted to the Judgment Debtor/Respondent.

3. AND FOR SUCH FURTHER OR OTHER ORDDERS as this Court may deem fit to make in the circumstances.

The Grounds upon which this Application is brought are:

1. The Applicant filed its Affidavit to show cause on the 19th October, 2024
2. The Applicant disclosed that the Judgment debtor was indebted to the Applicant in its Affidavit to show cause filed on the 19th day of October, 2024.
3. The Applicant does not have fund of the Judgment Debtor/Respondent in its custody to satisfy the Judgment debt.
4. This Court has the Power to vary its Order of 13th February, 2024.
5. This application is necessary to set aside the order.
6. The Applicant will be prejudiced if the order absolute made on the 13th February, 2024 is not set aside.

The application is supported by a 6 deposed to by one Esther James a Litigation Secretary in the office of the Applicant's counsel. The Affidavit is attached with Exhibit FCMB . The Applicant in Compliance with the rules of this court filed a written address as its legal submission in support of its case.

The Respondent in reaction filed an 8 paragraph Counter-Affidavit deposed to by one Elijah Paul a Litigation Secretary in the firm of the Respondent Counsel. The Respondent also filed a written address as her legal submission in support of her case.

COURT'S ANALYS

I have considered the application, the affidavit in support, the grounds upon which the application is brought as well as the Further and Better Affidavit with the Reply on points of laws. More especially the Applicant deposed in its affidavit at paragraph 3 (d-i) that:

That in the affidavit to show cause, the Applicant disclosed that the Judgment debtor maintains the account 4242858013.

That the said account has a debit available balance of N5,394,347.37 (Five Million, Three Hundred and Ninety Four Thousand Three Hundred and Forty-Seven Naira Thirty Seven Kobo).

That the judgment Debtor is in fact indebted to the Applicant as the account is in debt.

That the Applicant does not have any fund belong to the Judgment Debtor to satisfy the Judgment debt.

That it will be impossible for the bank to satisfy the Judgment debt as the Judgment debtor is indebted to the bank.

That enforcement the Absolute order made against the Applicant will cause material and substantial injustice on the Applicant.

This Court having carefully considered averments and the averments of the Respondents in paragraphs 3(a-f) and paragraph 4 of the Respondent's Counter affidavit in response, which she deposed thus:

a. That an Order Nisi was made against the applicant on the 31st day of May 2023 and was duly served on the applicant.

b. That the applicant through its affidavit to show cause deposed to by one Prosper Ambaka a legal practitioner of the law firm Yakubu Maikasuwa (SAN) & Co of the applicant attorney admitted that the Judgment debtor maintains an outstanding balance in its FCMB account no 4242858013.

c. That the applicant exhibited a statement of account marked as FCMB 1 which clearly shows that the said account has a balance of the sum of Five million, three hundred and Ninety four thousand, three hundred and forty seven naira, thirty seven kobo (N 5,394,347.37) DR.

d. That the said affidavit of means did not state that the account is indebted to the bank, rather it only stated that the account is frozen by the directive from the Security and Exchange Commission (SEC) for fraudulent suspicion, and that the account has several other court orders placing restrictions on the account.

e. That the exhibits attached and marked as FCMB 2, FCMB 3 and FCMB 4 in the Applicants Affidavit to show cause were merely Order Nisi issued by lower courts in respect of the judgment debtor which if considered from the date issued has expired, and were not made absolute.

f. That this honourable court had on the 13th day of February 2024 made the Order Nisi earlier granted Absolute.

4. That I believe that the applicant has no justifications to its claim that the money in the Judgment debtors account with it as exhibited in the statement of account which the sum amount to Five million, three hundred and Ninety four thousand, three hundred and forty seven naira, thirty seven kobo (N 5,394,347.37) is a debt the Judgment debtor owes it (the Applicant) as it did not exhibit any loan agreement or overly it gave to the Judgment/debtor.

The superiors Courts have in a platora of case stated the conditions where a judgment of Court and or in this instance case the Order Absolute made by the Court, can be set aside

Generally, a Court has the inherent power to set aside its own judgment or Order under certain conditions, the most common are when the judgment was obtained in default of procedural rules necessary for the initiation of the suit and those given without jurisdiction. I derive my support from the case of **SANUSI V. AYOOLA & ORS (1992) LPELR-3009(SC)** where the apex Court held thusly:

It is true and well settled that a Court has an inherent jurisdiction to set aside its own judgment where the conditions have been met by the applicant. These are where the judgment sought to be set aside was obtained on failure to comply with procedural rules. See Evans v. Bartlam (1937) AC. 473.

Fundamentally, an application to set aside a judgment is not granted as a matter of course, there are conditions to granting such applications particularly by a Court of coordinate jurisdiction. I am tempted to cite the case of **COVALENT OIL & GAS**

SERVICES LTD & ANOR V. ECOBANK (NIG) PLC & ANOR (2021) LPELR-53391(CA) where the Court held thus:

...Having said that, there are however situations where the Court is permitted to exercise jurisdiction, to set aside its own judgment or the judgment of a Court of co-ordinate jurisdiction. This includes, where the judgment is entered in default of the defendant's appearance or in default of pleadings; where the judgment was obtained by fraud; where the judgment breached the fundamental right of a party; and where the judgment will work injustice on one of the parties; See U.B.A. Plc v. Ajileye (1999) 13 NWLR (pt. 633) 166; Okafor v. A.G. Anambra State (1991) 6 NWLR (pt. 200) 659 and LSDPC v. Adeyemi-Bero (2005) All FWLR (pt. 252) 486 @ 503. A Court has inherent jurisdiction to set aside its own null and void decision or order and also the null and void judgment of a Court of co-ordinate jurisdiction. See SKENCONSULT V. UKEY (1981) SC 6. A fortiori a person whose interest is affected by such decision can come to Court without much ado to have it set aside ex debito justitiae by the same Court. See EGBUZIEM v. NRC (1994) 3 NWLR (pt. 330) 23 @ 33. Furthermore, in setting aside a void order or judgment it does not matter which Judge, be it the Judge that issued the alleged void order or another Judge of the Court of concurrent jurisdiction that sets aside the other. The order being null and void can be set aside by the Judge who made it or another Judge of the same Court through a judicial pronouncement without the necessity of an appeal. Furthermore, in setting aside a void order or judgment it does not matter which Judge, be it the Judge that issued the alleged void order or another Judge of the Court of concurrent jurisdiction that sets aside the other. The order being null and void can be set aside by the Judge who made it or another Judge of the same Court through a judicial pronouncement without the necessity of an appeal. Per MUSTAPHA, J.C.A

The settled and accepted conditions under which a Court could set aside a judgment are:

- i. Lack of jurisdiction;
- ii. Fraud and misrepresentation;
- iii. Default of appearance of certain rules of Court:

iv. Slip rule These conditions and others were restated in the case of APC V. AGUMA & ORS (2020) LPELR-52309(CA) as follows:

This Court has the power to set aside its decision in the following circumstances: -

- 1. Where the judgment was obtained by fraud or deceit either in the Court or of one or more of the parties.**
- 2. When the judgment is a nullity in which case a person affected by such order is entitled ex debito justitiae to have it set aside.**
- 3. When it is obvious that the Court was misled into giving such judgment under a mistaken belief that the parties consented to it.**
- 4. Where in a cross-appeal, the respondent's cross-appeal was not considered in the judgment.**
- 5. Where the judgment was given in the absence of jurisdiction; and**
- 6. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.**

See **DIKE VS. STATE (2018) 13 NWLR (PT. 1635) 35 SC; ELIAS VS. ECOBANK NIG. PLC (2017) 2 NWLR (PT. 1549) 175 CA; TOMTEC (NIG) LTD VS. FHA (2009) 18 NWLR (PT. 1173) 358; JEV VS. IYORTYOM (2015) 15 NWLR (PT. 1483) 484."**

An Applicant has the responsibility of placing sufficient materials or grounds before the Court to warrant granting the application. Once an Applicant can show good and sufficient cause, the application will be granted in the interest of justice. I lay credence to the cases of **WILLIAMS VS. HOPERISING VOLUNTARY FUNDS SOCIETY (1982) 1-2 SC 145; N. N. S. CO. LTD VS. ESTABLISHMENT SIWA OF VADUZ (1990) 7 NWLR (PT. 164) 526."**

I derive my authority from **Per NIMPAR ,J.C.A in BAMGBOYE & ANOR V. UBA & ORS (2022) LPELR-57842(CA) (PP. 31-35 PARAS. E-E).**

I am in total agreement with the Respondent Counsel's submission at paragraph 3.0 to 3.4 of his written address that the garnishee was served with the Order Nisi.

The Applicant filed an affidavit to show cause which disclosed a balance of money in the Judgment debtors bank account with it, which it is now claiming to be in debit. The question before your noble lord is whether the sum of Five million, three hundred and Ninety four thousand, three hundred and forty seven naira, thirty seven kobo (5,394,347.37) in the statement of account of the judgment debtor exhibited by the Applicant which this honourable court considered in making the Order Nisi absolute constitute an error of law or fact which constitute fraud in order to sustain the application?

The Applicant in its affidavit to show cause, relied on paragraph 3 (b) (ii), (3) (b) (iii) to arrive at paragraph 4 of the said affidavit, which formed the basis of its ground 3 of this application.

It is not in doubt that when a bank is served with an Order Nisi, the bank has a duty to place a restriction on the account pending the outcome of the case that would automatically place the account on the debit balance, but until the order is made absolute, the amount even though on the debit in the statement of account is still that of the judgment debtor. The case of **CBN v Auto Import Export (2013)2 NWLR Tt 1337 (Ratio 8 at page 89)** support the above principle.

Another question flowing from this position as applies to the instant case is Does that restriction stays in perpetuity? .it certainly not. The Order Nisi exhibited in the instant case have all expired. It suffice to say that they were issued by lower courts which lacks jurisdiction to do so. Hence we submit that Exhibits FCMB 2 dated 22/3/2021, FCMB 3 dated 15/12/2021, FCMB 4 dated 11/08/2021 have all expired, and there was no evidence that the matter were still ongoing. There are no evidence that they were made absolute either, hence they cannot continue to subsist in perpetuity.

This Court believes that they were merely exhibited to confuse and mislead this Honorable court. I so hold.

The Court in line with Order 46 (1) (4) High Court of the Federal Capital Territory Abuja civil procedure Rules 2018 and also Section 83 (2) of the Sheriffs and Civil process ,Section 6 Laws of the Federation of Nigeria 2004 to have made the Order Absolute,. The above provisions require that the Garnishee be served Order Nisi at least 14 days before the date set for hearing. That was to set the time frame for the

garnishee to show cause. Once it showed cause with its affidavit, the matter would be resolved one way or the other. It is important to note that the Applicant did not make any further explanation in its affidavit to show cause in relation to these exhibit FCMB2, FCMB3, and FCMB4 he seeks to rely upon to confiscate the fund of the Judgment debtor in its custody. The Applicant only dumped them to the court. The Court ought to know whether those exhibits are dead or still alive.

The Applicant claimed that the balance in the account is its money in paragraph 3 (f) of the affidavit in support of this application, the applicant stated "the judgment debtor is in fact indebted to the Applicant as the account is in the debit".

A careful look at exhibit FCMB 1 indicates available balance Five million, three hundred and Ninety four thousand, three hundred and forty seven, naira, thirty seven kobo (5,394,347.37).

COURT'S DECISION

This Court therefore, holds that there is no basis for this Court to vary its order Absolute made on the 13th day of February 2013 as there was not error of law or facts, so also, there is no fraud or misrepresentation or none service.

In the final summation, the application lacks merit is accordingly dismissed for being unmeritorious.

This is the ruling of the Court.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

- 1.