

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

SUIT NO: FCT/HC/CV/1293/2018

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

**ADUNMI SALISU
(Suing through his attorney
Harmony Properties Ltd) }CLAIMANT**

AND

**1. MINISTER FEDERAL CAPITAL TERRITORY ABUJA }...DEFENDANTS
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY }**

RULING

This is a Motion on Notice filed by the defendant/judgment debtor/applicant brought pursuant to section 6(6) (a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Honourable Court, and these applicants are seeking for the following orders:

1. An order of court setting aside the judgment of the court delivered by Hon. Justice Babangida Hassan on the 22nd day of June, 2021 in suit No. CV/1293/2018 and discharging the orders made pursuant thereto, having been obtained by fraudulent misrepresentation and for being a nullity.
2. An order dismissing the claimants' suit for being statute barred or alternatively joining Adunmi Salisu as a defendant in the suit and
3. For such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is made are as follows:

1. The claimant/judgment creditor/respondent fraudulently misrepresented facts relating to

Certificate of Occupancy recertification and re-issuance acknowledgment dated 20th October, 2005 and 6th May, 2008 respectively as well as details of the allottee and particulars of the subject matter of the suit.

2. The claimant/judgment creditor/respondent fraudulently misrepresented that this case was one bordering on re-certification simpliciter when it is actually a contest for title over the subject matter.
3. The judgment is a nullity, having been delivered without jurisdiction and when the cause of action had been extinguished by virtue of section 2(a) of the Public Officers Protection Act and or section 3 of the Limitation Act.
4. The claimant/judgment creditor/respondent deliberately failed to join in the suit or disclose the identity of an adverse party who built and is in possession of a fully developed house on the subject matter of this suit.

The motion is supported by a twenty-one paragraphed affidavit and a written address of counsel.

In the affidavit in support of the motion on notice deposed by one Nafisat Hassan Agbadu, a state counsel in the legal services secretariat of the FCT Administration that this suit was filed on the 22nd March, 2018 wherein the claimant in the suit was named as Adunmi Salisu (suing through his lawful Attorney Harmony Properties Ltd), and that the cause of action in that suit is the acknowledgment of Recertification of Statutory Right of Occupancy No. OG 2515 over a plot No. 148, Cadastral Zone B19, Katampe Extension District, Abuja which was done on 20th October, 2005. It is stated that the claimant/judgment creditor

respondent in the suit sought to set aside the decision of the defendants/judgment debtors/applicants to accept and acknowledge receipt of the aforementioned Right of Occupancy for re-certification and that the claimants' main claim before the court was to avoid the acknowledgement of Re-certification with new file No. OG 11251 dated 20th October, 2005 and to validate the one with new file no. OG 11410 dated 6th May, 2008, and that the two defendants whose actions were challenged by the suit are public officers.

The deponent stated that the claimant misrepresented to the court that both applicants for re-certification made in 2005 and 2008 were made in the name of Adunmi Salisu whilst fraudulently concealing the existence of an adverse party who submitted the title for re-certification in 2005 and the party who built a fully completed house on the plot, and that the applicant did not file any statement of defence during the trial.

It is stated further that shortly after the Honourable Court delivered judgment in the case, their officer was served with a letter from the law firm of Onwuneme & Co. which indicated that a third party is interested in the subject matter and had in fact developed same; and based on the said letter, they caused another search to be made in the Department of Land Administration to investigate the claim made by the solicitor on behalf of the adverse claimant on the subject matter.

The said search revealed the following:

- (a) The subject matter was allocated to Adunmi Salisu vide offer of terms of grant No. MFCT/LA/OG 2515 dated 22/10/2002.
- (b) The said Adunmi Salisu submitted her Statutory Right of Occupancy for recertification and

re-issuance vide an application dated 25/04/2005.

- (c) The said Adunmi Salisu's application for re-certification was acknowledged by the defendants/applicants vide the Recertification and Reissuance of Certificate of Occupancy Acknowledgment dated 20th October, 2005 with new file No. OG 11251.
- (d) The said Adunmi Salisu applied to register a Power of Attorney in favour of Umo Ukpong vide a letter dated 18th May, 2007.
- (e) The said Adunmi Salisu on the 8th April, 2016 paid the sum of N104,000.00 (One Hundred and Four Thousand Naira only being the 013 Administrative fee for the registration of Power of Attorney.
- (f) The Department of Land Administration of the FCT issued and served on Adunmi Salisu a demand notice for Grand Rent dated 7th April, 2016 in the sum of N461,070.10 (Four Hundred and Sixty-one thousand, Four Hundred and seventy Naira, Ten kobo) which was paid.
- (g) The Department of Land Administration of the FCT in May, 2015 issued and served on Adunmi Salisu a statutory Right of Occupancy Bill in the sum of N8,285,149.44 (Eight Million, Two Hundred and Eighty Five Thousand, One Hundred and Forty-Nine naira, Forty four kobo) which was paid on the 8th April, 2016.
- (h) The Certificate of Occupancy in favour of Adunmi Salisu is awaiting issuance:
- (i) It is not true that the re-certification applied for on the 20th October, 2005 and the

recertification applied for on the 6th May, 2008 were done in the same name and or on the basis of the same title documents, as the one of 20th October, 2005 was done in the name of Adunmi Salisu and the other in the name of Adunmi Salisu was done on 6th May, 2008.

The counsel stated that the full fact of the case would have been available to the court to aid it in its judgment if the other party that developed the plot was made a party by the judgment creditor/respondent and given an opportunity to state its own side of the case. It is stated that the emergence of these new facts necessitates setting aside the judgment, joinder of a necessary co-defendants, the filing of a statement of defence in the suit and retrial of the case.

It is stated that it will be in the interest of justice to set aside the judgment so that all necessary parties should be heard and for the case to be decided on the merit, and the grant of this application will not prejudice the judgment creditor/respondent as they would still have the opportunity of participating on the retrial of the case, if ordered by the court.

In his written address, the counsel to the defendant/judgment debtor/applicant formulated issues for determination, thus:

- (1) Whether from the circumstances of this case and the emerging facts the judgment of this court in this case should not be set aside?**
- (2) Whether the claimant's suit is not liable to be discussed?**

It is the submission of the counsel that this Honourable court has the power to set aside its judgment under certain circumstances and the power to do so is both constitutional and inherent to the court, and he referred to the provision

of section 6(6) (a) and (b) of the Constitution 1999 (as amended), and the case of **N.P.A V. SAMA (2020) 2 NWLR (pt 1208) 271 at 300, paras. D-E**; and **Dasuki V. Director General, S.S.S. (2020) 10 NWLR (pt 1731) 136 at 152-153, paras. H-F**, all to the effect that the court can set aside its judgment in appropriate circumstances where the decision sought to be set aside is a nullity or invalid or where it is established that the procedure adopted, or the factual legal conclusion or decision reached, the adjudication. He referred to the case of **Nwora V. Nwabueze (2019) 7 NWLR (pt 1678) 1 at 32, paras. E-H**.

The counsel argued that further grounds for this motion and the affidavit in support of the motion as well as documents annexed thereto, it can be seen that there are more than one basis for this Honourable Court to set aside the judgment it earlier entered in this case. He opined that it is certain that the case as presented by the claimant/judgment creditor/respondent herein in the course of adjudication not only falsifies fundamentally the jurisdiction assumed by the court but also the procedure adopted and the factual legal conclusion or decision reached. He submitted that fraud that is extrinsic or collateral to everything that has been adjudicated upon has now been established by affidavit and documentary evidence against the claimant/judgment creditor/respondent herein.

The counsel submitted further that the defendant/judgment debtor/applicant has established by affidavit and documentary evidence that the claimant/judgment creditor/respondent herein during the trial (a) fraudulently misrepresented facts relating to Certificate of Occupancy Recertification and Re-issuance Acknowledgments dated 20th October, 2005 and 6th May, 2008 respectively as well as details of the allottee and other

particulars of the subject matter of the suit. (b) Fraudulently misrepresented that the case was due bordering on re-certification. Simpliciter when it is actually a contest for title over the subject matter, (c) deliberately failed to join in the suit or disclose the identity of an adverse party who built and is in possession of a fully developed house on the subject matter of the suit and on which the judgment of this court will ultimately be enforced.

It is the contention of the counsel that the judgment of this Honourable Court entered in this suit is not capable of being enforced, as the person at the receiving end who would be required to yield title and possession to the claimant/judgment creditor was not a party to the suit and ipso fact, not bound by the decision.

On whether the claimant's suit is not liable to be dismissed, learned counsel submitted that if the judgment of this court in this suit is set aside, the suit itself is liable to be dismissed, as it was commenced after the cause of action had been extinguished by virtue of section 2(a) of the Public Officers Protection Act. He submitted that as at the 22nd March, 2018 when this suit was instituted, this was already statutory barred by the operation of section 2(a) of the Public Officers Protection Act Cap P41 LFN, 2004, and he cited the case of **Ntung V. Longkwang (2021) 8 FWLR (pt 1779) 431 at 491, paras. E-F** as to the purpose of Public Officers Protection Act.

The counsel submitted that it is clear that in order that a person may be protected by the provisions of the section, it is has to be established that the party against whom the action was commenced was a public officer and the act done by him in respect of which the action was commenced was an act done in pursuance or execution of any law or of any public duty as held in the case of **Fokolade V. Public Service Commission (1993) 1 NWLR (pt**

271) at pp. 639-644. He submitted that although not specifically described, from the nature of their act of re-certification complained against, the defendant/judgment debtor/applicant are public officers and the act complained against, that is re-certification and re-issuance of Certificate of Occupancy Acknowledgement File No. OG 11251 on the 20th October, 2005 on the name of Adunmi Salisu as opposed to Adunmi Salisu were carried out by them in pursuance or in execution of appropriate laws and a public duty within the extended definition given in **Ibrahim V. Judicial Service Commission (1998) 14 NWLR (pt 584) 1** where the Supreme Court quoted with approval of dictum of Karibi-why-ye JSC in the earlier case of **Adigun V. Ayinde & 2 Ors (1993) 8 NWLR (pt 313) 516 at 533** on the interpretation of section 2(a) of the Public Officers Protection law of Niger State which is in par-materia with the land on the issues.

“The words of this section appear to me unambiguous and clear, if relates and applies to actions against Public Officers or authorities for acts done or in respect or neglect or default in execution of their duties. Applying literal rule of satisfactory construction the section applies to any action against a public officer or authority, without exception as to who or in respect or who the action was instituted. The phrase “any action” must be given its natural and ordinary meaning”.

The counsel submitted that assuming without conceding that the claimant/judgment creditor/respondent can argue that the provisions of the Public Officers Protection Act are not applicable in this case because it relates to land, whatever limitation law is applied the action would still be caught by statute of limitation. He argued that a holistic consideration of claimant's case indicates that it is a

challenge to the administrative decision of the defendant's binding on re-certification of title over a parcel of land known as plot 148, Katampe Extension District, Abuja, and he argued that once the court has come to the conclusion that a matter is statute barred, it has no choice but to dismiss same.

In the light of arguments canvassed above, he prayed this court to set aside the judgment of the court delivered on the 22nd June, 2021 in this suit and discharge the order made pursuant thereto, having been obtained by fraudulent misrepresentation and for being a nullity. He also prayed that alter setting aside the judgment of the court delivered on the 22nd day of June, 2021 in this suit and discharging the orders made pursuant thereto, dismiss the claimant's suit for being statute barred. He prayed alternatively that alter setting aside the judgment of the court delivered on the 22nd June, 2021 in this suit and discharging the order made pursuant thereto, from Adunmi Salisu as a necessary defendant in this suit so as to be bound by whatever decision the court may deem fit to make eventually.

In his counter affidavit in response to this motion of the judgment creditor, it is stated that the judgment creditor is the owner of plot 148 Katampe Extension District measuring about 2500², and upon the judgment debtor's application for allocation of land within the FCT, the judgment debtors/applicants allocated plot 148 within Katampe Extension District measuring about 2500² to him.

The judgment creditor/respondent was said to have duly accepted the offer of terms of grant/conveyance of approval and took possession of the plot by fixing boundary beacons and sign-post showing that the plot belongs to him.

It is stated further that he knows that the judgment debtor only did one allocation over the plot in issue in favour of the judgment creditor and the judgment creditor had handed over all the original title documents to his attorney, Harmony Properties Limited.

It is stated that the judgment debtor/applicant instructed allottees of land in the FCT to submit their title documents for recertification and re-issuance of Certificate of Occupancy and in compliance with the said directive, the judgment creditor submitted his offer of terms of Grant/Conveyance of approval File No. OG/LA/OG 2575, to the judgment debtor and they issued him re-certification and re-issuance of Certificate of Occupancy Acknowledgment with new File No. OG 11410 dated the 6th May, 2008 and the judgment creditor was said to have donated the Power of Attorney to Harmony Properties Ltd to among other things, prosecute and defend legal proceedings in respect of the plot and thereafter delivered possession and the original title documents of the plot to his attorney, and the Power of Attorney between the judgment creditor and his attorney was duly registered at the judgment debtor/applicants' office.

It is stated that it is only the Power of Attorney that the judgment creditor gave to his attorney with respect to plot 148 within Katampe Extension District that was duly registered and stamped in the office of the judgment debtor/applicant, and that when he visited the office of the judgment debtor to enquire if the re-certified Certificate of Occupancy is ready for collection, the officer in charge of release of re-certified certificate of Occupancy informed him that there is another re-certification in respect of the same plot purportedly done by the judgment creditor, and that the judgment creditor is not aware of the re-

certification with file No. OG 11251, and same was done without consent.

It is deposed to the fact that when the judgment creditor attorney's informed the judgment debtors of their mistake and demanded that the mistake be corrected with File No. OG 11251 deleted from their register and or system, they refused to comply, and that the refusal that caused suit No. CV/1293/2018 to be filed.

The deponent stated that he knows that the suit was duly served on the judgment debtor and that the applicants fully participated in the hearing of the suit, and that he knows that the applicants are the custodian of all the land filed in the FCT and as such, all the information relating to plot 148 the subject matter of this suit are within their exclusive knowledge, and he categorically stated that the applicants know about the person that carried out re-certification number OG 11251 but blatantly refused to tell the court.

The deponent stated that the respondent (judgment creditor is never the custodian of any land file in the FCT except the information is given to him by the applicant who had rightly informed the respondent/judgment creditor that there is another re-certification in respect of plot 148 done by judgment creditor.

It is stated that the applicants were fully aware of the judgment creditors reliefs in the suit but choose not to file any defence to the suit, and that the judgment creditor never misrepresented fact but only presented the facts the way the applicants informed him and the applicants never challenged those facts.

The deponent stated also that he knows for a fact that both the applicants and Adunmi Salisu are fully aware that the plot subject matter of this suit belongs to the judgment creditor/respondent as shown in the letter written by the law

firm of Onwuneme & Co. on the 24th day of June, 2021 to the applicants two days after the judgment of this court which shows that both the applicants and Adunmi Salisu were aware of the pendency of this suit and have been following the proceedings.

It is stated that he knows that the judgment creditor is the owner of plot 148 and he never applied or executed any document with File No. OG 11251 as contained in paragraph 16(a) (b) (c) (d) (e) (f) (g) (h) and (i) of the affidavit in support of the motion of the applicants, and that he knows that the applicants only filed this extent motion to destabilize the judgment creditor and to intimidate him and take away the plot rightly belongs to him.

The deponent further stated as was informed by Bar. Ezekiel C. Egbome of the counsel to the judgment creditor in the law firm of Obinna Ajoke & Co. Wuse 2 on the 9th July, 2021 at about 2:20pm as follows:

- (a) That he knows as a lawyer that EXH. 'A' attached to this motion shows that both the judgment debtors and Adunmi Salisu known about the pendency of this suit.
- (b) That he knows out of experience as a lawyer that the applicants/judgment debtors participated fully in the hearing of this case.
- (c) That he knows for a fact that the judgment of the court disposes the right of the parties.
- (d) That he knows out of experience as a lawyer that once a court gives judgment over suit he becomes functus officio.
- (e) That he knows as a lawyer that there is no reason placed before the court that should move this court into setting aside his judgment.

- (f) That from experience as a lawyer, that all the prayers of the claimant on the motion paper are baseless and misleading.
- (g) That granting this application will cause great injustice on the judgment creditor and will amount to condoning the judgment debtors that slept over their right.

In his written address, the counsel to the judgment creditor/respondent relied on the averments contained in the counter affidavit and urged this court to rely and act on all the exhibits tendered in the substantive suit in refusing this application.

The counsel submitted that the defendants/applicants' application asking the court to set aside the judgment delivered on the 22nd June, 2021 in suit No. CV/1293/2018 and discharging the orders made, alleging that the judgment of court was obtained by fraudulent misrepresentation and for being a nullity cannot stand as it does not fulfill the necessary requirements laid down by the courts.

Counsel agreed that the court indeed has the powers to set aside its own judgment or ruling that is a nullity as emphasized in the cases of **Fidelity Bank Plc V. The M.T. Tabora (2018) 12 NWLR (pt 1632) 147, para, 4;** and **Ogueze V. Ojiako (1962) 1 SCNLR 112;** and **Ekerete V. Eke (1962) 1 NLR 118.**

The counsel argued per contra that this court having delivered its judgment, it has become automatically functus officio and cannot revisit the judgment by giving a second judgment or sit on appeal on the same matter. He submitted that the only remedy available to an aggrieved party is to appeal the judgment of the court which is duly applicable solution as this present case and scenario.

The counsel submitted further that the defendants/applicants are aware that this Honourable court ruled on that the claimant having proved its case is entitled to leg (a) (b) (c) (d) of its reliefs and as such, it will most certainly be unjust for this court to re-open this case and act on it again having determined the rights of the parties and he cited the cases of **MR "DELANAR" V. MT "ANE" (EX MT LESTE (2018) 13 NWLR (pt 1530) 482;** and **Ngere V. Okuruket XIV (2012) 5 NWLR (pt 1559) 440,** all on the issue of *functus officio* and its effect.

Learned counsel opined that while giving utmost consideration and respect to the general rule of *functus officio* as stated above, even if the court were to consider the circumstances that permit a slight departure from the general rule allowing the court to set aside its own judgment, this case would not qualify, and he cited the case of **Onwuchukwu V. Co-operative & Commerce Bank Plc (1995) 5 NWLR (pt 603) 409** where the factors to be considered in setting aside a judgment was laid down as follows:

- (1) A judgment or order which is a nullity owing to failure to comply with an essential provision such as service of process, can be set aside by the court which gave the judgment or made the order set aside and the matter re-opened;
- (2) A judgment or order made against a party in default may be;
- (3) There is jurisdiction to make upon proof of a new *tauten* an order supplemented to an original order e.g. a supplemental order to an order for specific performance that there be an inquiry as to damages sustained by reason of the defendant's delay in completing the agreement at any rate

from the date of the original order for specific performance;

- (4) If a judgment or order has been obtained by fraud, a fresh action will lie to impeach the judgment;
- (5) A judgment may be set aside on the ground that fresh evidence has been discovered which if tendered at the trial, will have an opposite effect on the judgment.

It is the contention of the counsel that the defendants/applicants plea to set aside this judgment will fail because they do not satisfy any of these conditions and also because the court does not simply set aside a judgment just because an applicant prays the court to do so, and he referred to the case of **Iteogu V. L.P.D.C (2018) 11 NWLR (pt 1630) p. 358 paras. C-D** which also laid down conditions the court will consider where choosing to set aside its previous judgment, they are that:

- i. The previous judgment was given per incuriam
- ii. The previous judgment was erroneous in law;
- iii. The previous judgment is contrary to public policy or is occasioning miscarriage of justice or perpetuating injustice,

and he cited the case of **A.G. Federation V. Guardian Newspaper Ltd (1999) 9 NWLR (pt 618) 187**; and **Tanko V. The State (2009) 1 NWLR (pt 1131) 430** referred to.

It is the submission of the counsel that the affidavit in support of the motion filed by the defendants/applicants reveals none of the instances in which judgment or a court can be set aside has been invoked and yet they have alleged fraudulent misrepresentation and non-disclosure of facts, and he urged the court not to re-open this case in order not to sit on appeal on its own case. He opined that if the defendants/applicants want the judgment of this court

to be set aside on the ground of fraud, misrepresentation of facts or that the judgment is a consent judgment to succeed, they must come by way of fresh action.

He argued that a judgment, traditionally disposes of the rights of the parties so the defendants/applicants deliberately choosing to challenge this judgment by merely filing this third application, is not only wrong in form but also in principle and an abuse of court process and he cited the case of **Vulcan Gases Ltd v. GF Ind. AG (2001) 9 NWLR (pt 719) 610** to the effect that where a party to an action seek to challenge on the ground that it was obtained by fraud or mistake, a judgment or order that finally disposes of the issues raised between the parties the only ways of doing it that are open to him are:

- (a) by appeal from the judgment or order to a higher court or
- (b) by bringing a fresh action to set aside.

The counsel submitted that the form and the procedure for assailing a judgment to have been obtained by fraud have not been rightly followed by the defendants/applicants and as such, this application should be dismissed with heavy cost. The counsel also said that all that is before the court is a motion on notice and an affidavit, no fresh action where the court can evaluate or ascertain whether there was fraud of any kind or not by the claimant/respondent, and he cited the case of **N.S. Eng. Co. Ltd. V. Ezenduka (2002) 1 NWLR (pt 748) pg. 1769**.

The counsel submitted further that instituting a fresh action will not amount to rehearing the case since fresh facts of fraud and misrepresentation of facts will be merely dealt with by the court. He added that an appeal in this case will not be ideal as the issue at hand involves fraud and misrepresentation of fact which is entirety different from the case presented by the claimant, and he reiterated that

the solution lies in fresh action and nothing more, and he urged to so hold and dismiss this application.

Counsel submitted that the defendants/applicants in this application is seeking (2) two reliefs on the face of the motion paper but that in action like this, he ought to pray for fraud and fraud alone in order to succeed, and he referred to the case of **N.S. Eng. Co. Ltd V. Ezendu (supra)**.

Counsel submitted that this application is not asking for setting aside of the judgment alone but also asking for an order of dismissal of the suit on the ground that it is a statute barred.

He argued that this contrary to the principles stated in the above case of **N.S. Eng. Co. Ltd V. Ezenduka (supra)** and should be dismissed.

On the issue of fraudulent, misrepresentation, counsel submitted that whilst they disagree with the defendants/applicants that the claimant fraudulently misrepresented facts relating to the Certificate of Occupancy Recertification and re-issuance, he said the court must give heavy regard to the fact that there is indeed no evidence before this Honourable court supporting this allegation, and he drew the attention of the court to the case of **Aliyu V. Okoye & Ors (2018) LPELR – 45429 (CA)** on the issue of particularising the fraud and establishing same by evidence.

He submitted that it is evident from the above that the defendants/applicants have not furnished this court with sufficient proof and prima facie evidence as to the alleged acts or fraud committed by the claimant to warrant the judgment of this court to be set aside and any other reliefs sought in the application. He argued that since the applicants are alleging that there has been some fraudulent misrepresentation in obtaining the judgment in this case without according the court the respect to

specifically plead same, then it is trite law that the court surely cannot of its own volition raise it, as the court is bound to consider only issues on the pleadings before it, and he cited the case of **Obijuru V. Ozims (1985) 2 NWLR (pt 6) p. 187; Nwadike V. Ibekwe (1987) 4 NWLR (pt 67) 718; and Abacha V. Fawehinmi (2000) 6 NWLR (pt 660) 228.** He argued that the court to consider the fraud being a criminal allegation, the standard of proof is beyond reasonable doubt as decided in the case of **Busari V. State (2015) 5 NLR (pt 1452) 343 at 347.**

The counsel also called the court's attention to section 135 of the Evidence Act 2011, and he quoted the provision of section, and submitted that the defendants/applicants cannot be said to have proved this allegation beyond reasonable doubt as they have undeniably failed to particularise what they have deemed as fraudulent in their processes before the court and it will be a grave miscarriage of justice the court to consider such baseless claims, and he submitted further that the defendants/applicants are the custodians of all the files on land in the FCT and they are aware of every fact, information, and dealings with regards to the plot in issue and as such, they gave the applicants ample opportunity to let them know, from the onset that there exists an adverse party in this suit. He maintained about who carried out the recertification with file No. OG 11251 is evidently within their knowledge but they blatantly choose to look the other way round only to come back with this frivolous application and he referred to the case of **Agbaso V. Iwunze (2015) 11 NWLR (a) 1471) 527, paras. F-G.** to the effect that a party who has been given ample opportunity to be heard or has in fact been heard, cannot complain of denial of fair hearing. He cited the case of **Ogunsanya V. State (2011) 12 NWLR (pt 1261) 401 at 429.**

The counsel moved the court to note that the defendants/applicants did not file any process in defence of the suit of the claimant or in disapproval of any fact averred by the claimant in the substantive suit, and as such, they cannot be heard complaining there was a misrepresentation of facts by the claimant. He also reminded the court that the claimant being unaware of the other recertification with file No. OG 11251 on plot 148 that was never authorized by him was not denied by the defendants. He submitted that the claimant has been proactive in informing this court, that when the officers of his attorney who had been following up with the Recertification noticed another recertification, they immediately informed the defendants who are the custodian of their files in contention of their grave mistake, urging them to delete file No. 11251 from their register or system. He also submitted that the defendants/applicants being the custodian of the files having failed to file a statement of defence or join issue with the claimant must by law be taken to have admitted the facts encompassed in the claimant's statement of claim and must be treated as such, and he cited the case of **Aderonpe V. Eleran (2019) 4 NWLR (pt 1661) 170 paras. D-E** to the effect that a defendant who does not file a statement of defence is deemed to have admitted the facts pleaded by the claimant.

The counsel urged the court to dismiss the application.

Thus, having reviewed the submissions of both counsel in this application, it is imperative to formulate the following issues, thus:

Whether the applicant was right to have filed this application instead of a fresh action?

The grounds 1 and 2 upon which the application was filed were based upon fraud alleged to have been committed by the claimant/judgment creditor/respondent

in obtaining this judgment dated the 22nd June, 2021 in suit No. CV/1293/2018, and paragraphs 11 and 12 of the affidavit in support are also referred to.

It is the contention of the counsel to the defendants/judgment debtors/applicants that they have established by affidavit and documentary evidence that the claimant/judgment creditor/respondent fraudulently misrepresented facts relating to Certificate of Occupancy Recertification and re-issuance Acknowledgments dated 20th October, 2005 and 6th May, 2008 respectively as well as details of the allottee and other particulars of the subject matter of this suit, and that the claimant/judgment creditor/respondent fraudulently misrepresented that the case was one bordering on re-certification simpliciter when it is actually a contest for title over the subject matter, and so the judgment of this court entered in this suit is not capable of being enforced, as the person at the receiving end who would be required to yield title and possession to the claimant/judgment creditor/respondent was not a party to this suit ipso facto not bound by the decision, and that if the judgment in this suit is set aside, the suit itself is liable to be dismissed. While it is the contention of the claimant/judgment creditor/respondent the judgment traditionally dispose of the rights of the parties and so the defendants/judgment debtors/applicants deliberately choose to challenge this judgment by merely filing this kind of application, which is only wrong in form but also in principle, and abuse of court process, and he cited the case of **Vulcan Gases Ltd V. GF Ind. AG (supra)** where the court held that where a party to an action seek to challenge on the ground that it was obtained by fraud or mistake, a judgment or order that finally disposes of the issues raised between the parties, the only ways of doing it that are open to him, are:

- (a) by appeal from the judgment or order to a Higher court, or
- (b) bringing a fresh action to set aside.

It is also the contention of the counsel to the claimant/judgment creditor/respondent contended that the procedure followed by the defendants/judgment debtors/applicants was wrong, and therefore this application should be dismissed with heavy cost, and he cited the case of **N.S. Eng. Co. Ltd. V. Ezenduka (supra)**.

It is also the contention of the counsel to the claimant/judgment creditor/respondent that the position lies in filing a fresh action and nothing more, and that the reliefs sought on the face of the motion paper are based on fraud but in an action like this, the defendants/judgment debtors/applicants ought to pray for fraud and fraud only in order to succeed, as it was decided in the case of **N.S. Eng. Co. Ltd V. Ezenduka (supra)** where it was held that in a case of a judgment obtained by fraud, the courts have powers to give adequate reliefs to the judgment debtor, but that must be done by a proceeding putting issue of that fraud and that fraud only, however, the counsel contended that this application is not asking for setting aside of the judgment alone but also asking for an order of dismissal on the ground that it is statute barred, and this contrary to the principles stated in the above case of **N.S. Eng. Co. Ltd V. Ezenduka (supra)** and urged the court to dismiss the application.

Thus, I agree with the submission of the counsel for the claimant/judgment creditor/respondent in this application that when a judgment or order is null and void or obtained by fraud practices on the court, it is viewed as what was not given or made at all. It can be set aside by fresh action to be brought before the High Court. See the case of **Agiri V. Ogundele (2005) All FWLR (pt 250) 86 at 102, paras. D-F**. See

also the case of **Dana Impex Ltd V. Aderotoye (2006) All FWLR (pt 308) 1340 at 1349, paras. D-H** where the Court of Appeal, Calabar Division set aside its own judgment to include where the judgment was obtained by fraud or deceit either in the court or of one or more of the parties, such judgment can be impeached or set aside by means of action which may be brought without leave.

I, therefore answer the issue No. 1 in the negative that this application should not have been filed by the judgment debtors/applicants as it is wrong to have done so. The defendants/judgment debtors/applicants should have filed a fresh action to seek to set aside the judgment of this court dated the 2nd June, 2021, and I so hold. See the case of **N.S.Eng. Co. Ltd V. Ezenduka (supra)**.

On the issue No. 2 above, it is the contention of the defendants/judgment debtors/applicants that the claimant misrepresented to the court that both applications for Recertification made in 200 and 2008 were made in the name of "Adunmi Salisu" whilst fraudulently concealing the existence of an adverse party who submitted the title for recertification in 2005 and the party who built a fully completed house on the plot, and also stated that the applicant did not file any statement of defence during the trial. It is also the contention of the counsel to the defendants/judgment debtors/applicants that it is certain that the case as presented by the claimant/judgment creditor/respondent herein in the course of the adjudication not only falsifies fundamentally the jurisdiction assured by the court but also the procedure adopted and the factual legal conclusion or decision reached; and that fraud that is extrinsic or collateral to everything that has been adjudicated upon has now been established by affidavit and documentary evidence against the claimant/judgment creditor/respondent herein, while it is

the contention of the claimant/judgment creditor/respondent that the suit was duly served on the defendants/judgment debtors/applicants, and that the applicants are the custodians of all the land files in the FCT and as such, all the information relating to the plot 148, the subject matter of this suit are within their exclusive knowledge, and that the applicants know about the person that carried out recertification number OG 11251 but blatantly rendered to tell the Honourable Court, and that the claimant/judgment creditor/respondent is never the custodian of any land file in the FCT except the information is given to him by the applicant who had rightly informed the claimant/judgment creditor/respondent that there is another recertification in respect of plot 148 done by the judgment creditor, and that the applicants were fully aware of the judgment creditor's reliefs in the suit but choose not file any defence to the suit. It is the contention of the counsel to the claimant/judgment creditor/respondent that they disagree with the defendants/judgment debtors/applicants that the claimant fraudulently misrepresented facts relating to the Certificate of Occupancy Recertification and Re-issuance, and that the court must give regard to the fact that there is indeed no evidence before this Honourable Court supporting this allegation, and he cited the case of **Aliyu V. Okoye (supra)** to the effect that a person alleging fraud is not only required to make the allegation in his pleadings but must set out particulars of facts establishing the alleged fraud, so that defends goes into court prepared to meet them, and that since the applicants are alleging that there has been some fraudulent misrepresentation in obtaining the judgment in this case without according the court the respect to specifically placed same, it is trite law that the court cannot of its volition raise it, as the court is bound to consider only

the issues on the pleadings before it, and he cited some judicial authorities among which is the case of **Obijuru V. Ozims (supra)**. It is also the contention of the counsel to the claimant/judgment creditor/respondent that fraud being a criminal allegation, the standard of proof is beyond reasonable doubt as decided in the case of **Bwari V. State (supra)**, and he referred to section 135 of the Evidence Act, 2011 and argued that the defendants/judgment debtors/applicants cannot be said to have proved this allegation beyond reasonable doubt as they have failed to particularize what they have deemed as fraudulent in their processes before the court, and it will be a grave miscarriage of justice to consider such a baseless claim, having known that the defendants/judgment debtors/applicants are the custodian of the files on land in the FCT and are aware of every fact, information and dealings with regard to the plot in issue, and the whole information about who carried out the recertification with file number OG 11251 is evidently within their knowledge but they blatantly chose to look the other way round only to come back with this frivolous application, and he cited the case of **Agbaso V. Iwunze (supra)** to the effect that a party who has been given ample opportunity to be heard, and has in fact been heard, cannot complain of denial of fair hearing; the counsel asked the court to note that the defendants/judgment debtors/applicants did not file any process in defence of the suit of the claimant/judgment creditor/respondent or in disapproval of any fact averred by the claimant in the substantive suit, and as such, they cannot be heard to be complaining that there was a misrepresentation of facts by the claimant.

Thus, having looked at the affidavit in support, the applicants have not particularised their fraud, and I agree with the contention of the claimants/judgment creditor/respondent that fraud is a criminal offence. The

commission of crime such as fraud must be proved beyond reasonable doubt. The person who asserts fraud in a civil case has the heavy burden to provide clear, clean, unequivocal and unreserved proof of crime perpetrated by the wrong doer, and I refer to the case of **Agiri V. Ogunaele (supra)**. See the case of **Dana Impex Ltd V. Aderotoye (supra)** where it was held that in an action to set aside a judgment based upon fraud, it is not sufficient to merely allege fraud without giving any particulars and the fraud must relate to a matter which prima facie would be reason for setting the judgment aside. The fraud must be established by proof and not matters which are merely collateral.

In the instant case, it is clear that the defendants/judgment debtors opted not file any statement of defence which would have contained the particulars of fraud for the court to consider in delivering its judgment dated the 22nd June, 2021, and it is evident that the defendants/judgment debtors/applicants are the custodian of the file on all lands in the FCT, the assertion which has not been denied, and it is evident that the defendants/judgment debtors/applicants have not particularised the fraud they are alleging, and that has really cast a doubt as to whether really the claimant/judgment creditor/respondent had perpetrated a fraud, and this doubt has to be resolved in favour of the claimant/judgment creditor/respondent. See the case of **Awosika V. State (2019) All FWLR (pt 995) 719 (SC)**. I therefore, hold that the defendants/judgment debtors/applicants have not established beyond reasonable doubt the crime of fraud to warrant this court to set aside its judgment entered on 22nd June, 2021, and I so hold.

On the issue of “Adunni” spelt out as “Adunmi”, the applicants’ stance is that they are not the same person and as such, the proper party was not informed of the pendency of the suit. Thus, the issue is one that should have been treated as a mere misnomer, this is because at no point were the applicants confused as to the property in dispute even if the name was misspelt, as someone interested in the subject matter and having been served, as be it with the supposed wrong name, they ought to have sought for an order of court joining them in the suit, see the case of **Registered Trustees of the Airline Operators of Nig. V. Nama (2014) LPELR 22372 (SC)** to the effect that when parties are well familiar with the entity envisaged in a writ of summons and could not have been misled or have any real doubt or misgiving as to the identity of the person suing or being sued, then there can be no problem of mistaken identity to justify striking out of the action. A misnomer that will vitiate the proceedings would be such that will cause reasonable doubt as to the identity of the person intending to sue or be sued. See also the case of **APGA V. Ubah & Ors 2019 LPELR-48132 (SC)**, and **Nicholas Chukwujekwu Ukachukwu V. PDP & Ors (2014) LPELR – 22115 (SC)** to that effect.

In the circumstances of this application, I find no merit and is hereby dismissed accordingly.

Hon. Judge
Signed
13/3/2025

Appearances:

Chidozie Ajoku Esq appeared for the applicant.

M.S. Ugwu Esq appeared for the 1st and 2nd defendant/applicants.

Akintoye Akintokun Esq appeared for the third party who brought the judgment to be set aside.