

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

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU

SUIT NO: FCT/HC/ PET/038/2022

MOTION NO. M/10012/2024

DELIVERED ON THE 15/04/2025

BETWEEN:

EMMANUEL ANGO.....PETITIONER/CROSS RESPONDENT/APPLICANT

AND

JOY EMMANUEL ANGO.....RESPONDENT/CROSS PETITIONER/RESPONDENT

RULING

This Ruling is pursuant to motion No. **M/10012/2024** brought by the Petitioner/Cross Respondent/Applicant who sought for the following reliefs before the Court:

- (1) *An Order of this Hon. Court setting aside or vacating the order made on 5th day of June, 2024 in respect of motion on notice No. M/4961/2024, in essence praying this Hon. Court for maintenance pending the determination of this suit.*
- (2) *And such further order(s) as this Hon. Court may deem fit to make in circumstances.*

The application is supported by 29-paragraph affidavit deposed to by one Faith Akanam, a Counsel in the Law firm of the Petitioner/Applicant.

From the affidavit in support of the application, the grouse of the Petitioner/Applicant has to do with motion No. **M/4961/2024** dated 05/03/2024 which this Hon. Court heard on the 19/03/2024 and ruling delivered on the 05/06/2024.

According to the Applicant, the law firm of Diegbe & Diegbe & Associate was briefed on the 18/03/2024 and took over the matter on the 19/03/2024 but unfortunately the Notice of Change of Counsel was not before the Court and the plea of the Counsel for an adjournment could not be heard and the petition was struck out for want of diligent prosecution and the Respondent/Cross Petitioner was allow to move his motion No. **M/4961/2024**, which the Court granted same on the 05/06/2024.

It is further the averment of the Petitioner/Applicant that L. I. Akharama Esq, Counsel who was representing him withdrew his representation and C. C. Igata Esq of Counsel, began to represent him, and that his Counsel was neither served with motion on notice No. **M/4961/2024** nor hearing notice for 19/3/2024 but same was served in the office of his first Counsel who did not communicate the date to him.

That the Respondent knew that the 1st Counsel, L. I. Akharama, Esq. no longer represented the applicant as he was in Court on the 7th of December, 2023 when C. C. Igata Esq. took over the matter and informed the Court of the change.

Applicant stated that, it will be in the interest of justice to grant the application as the applicant undertakes to expeditiously file his response within the period ordered by the Court and further undertakes to be held liable as the Court may deem fit should his case to be unreasonable.

A written address was filed wherein a sole issue was formulated for determination to wit: ***“whether this Hon. Court can set aside the order made on 5th day of June, 2024, for want of fair hearing, facts and circumstances of the case considered.”***

Learned Counsel submitted while arguing on the above issue that section 36(1) of the 1999 Constitution of the Federation Republic of Nigeria (as altered) has been violated if the order, subject matter of this application is not set aside or vacated to afford him the right to heard fairly.

Reacting to the application, the Respondent/Cross Petitioner filed a 24-paragraph counter affidavit deposed to by the Respondent/Cross Petitioner herself.

It is the counter affidavit evidence of the Respondent that this petition was filed since 2022 on behalf of the petitioner by one Akharamé Izedome Lucky of Counsel. That the petition came up on 25/09/2023 but the Counsel was not ready to proceed, and the petition was adjourned to 01/11/2023 but the lawyer was not in Court and no reason was advanced.

That the petition was again adjourned to 07/12/2023 for hearing and one C. C. Igata appeared for the Petitioner without filing for change of Counsel. The suit was adjourned at the instant of the Petitioner to 15/02/2024 both the Petitioner and the Counsel were not in Court and the petition was adjourned to 19/3/2024 and one Faith Akanam from the Law firm of Diegbe, Diegbe & Associates appeared for the petitioner.

The Respondent/Cross Petitioner avers that the motion No. **M/4961/2024** was duly served on the Petitioner/Applicant through his Counsel on record Akharamé I. Lucky as C. C. Igata has not filed any change of Counsel before the Court. That it will be in the interest of justice to dismiss this application for been vexatious and time wasting.

A written address was filed wherein the issue ***“whether this application is competent and ought to be given any consideration”*** was formulated for determination.

Learned Counsel argued that the application under consideration is not grantable as this Hon. Court is funtus officio having decided on an issue already.

I have gone through the application of the Petitioner/Applicant and the corresponding reaction of the Respondent/Cross Petitioner who is opposed to the grant of this application.

I shall be brief but succinct in dealing with the issues raised in the interest of justice.

The Courts have held severally that a Court has inherent jurisdiction to set aside its order or vary same so as to carry its own meaning or in cases where the language used is doubtful, in order to clarify the position or correct a clerical error. ***JOE-DES VENTURES LTD & ANOR VS. NDIC & ANOR (2014) LPELR 2314 (CA)***.

On whether this Court in exercise of its inherent jurisdiction can set aside its own order. I must observe here that the powers and jurisdiction of Court are provided for in the Constitution and not to say the least, these powers are wide and far reaching in order to enable the Court function properly, efficiently and effectively.

Again, the Rules of Court are very much instructive in this regard. See ***CITEC INTERNATIONAL ESTATE LTD & ORS VS. JOSIAH OLUSOLA BIODUN FRANCIS & ORS. (2014) LPELR 22314 (SC) PT.***

The learned Counsel for the Petitioner/Applicant argued in its written address that, the principle of fair hearing was breached by the Court as the motion No. **M/4961/2024** sought to be set aside was never served on the petitioner/Applicant.

Indeed, the law is settled that fair hearing is not a cut and dry principle which parties can always apply at the abstract of their convenience and comfort. It is a principle which is based on the facts placed before the Court, only the facts of the case can influence and determine the application or applicability of the principle. The principle of fair hearing is helpless and completely dead outside the facts of the case. ***MEGIT VS. UNIVERSITY OF AGRICULTURE MAKURDI (2005) 19 NWLR (Pt. 959) pages 243-244 per F – A.***

The law is trite that a party whom an opportunity is given to be heard but chose not to utilize it by absconding or exempting himself from Court's proceeding without any substantial excuse cannot be heard to complain of denial of fair hearing. See ***OKOYE & ORS. VS. NIGERIAN CONSTRUCTION & FURNITURE CO. LTD & ORS. (1991) 6 NWLR (PT. 199) 501 AT 541.***

It is settled principle of law that a Court has inherent powers to set aside its own orders however, the exercise of that power is subject to certain conditions and circumstances which are enumerated in the case of **UBA VS. SANNI (2019) ALL FWLR Pt. 983 at Page 109**. The conditions are as follows:

- (1) Where it is shown that the decision reached in the Judgment or order was made without jurisdiction or is a nullity due to absence of fair hearing or was reached because of fraud.**
- (2) When the Court was misled into given Judgment under a mistaken belief that the parties consented to it; or**
- (3) Where the procedure adopted was such as to deprive the decision or Judgment of the character of a legitimate adjudication.**

The pertinent question is, does the Applicant satisfy the above conditions listed for this Court to set aside its order in motion No. **M/4961/2024**?

It is on record that this petition was filed by Akhrame Izedome Lucky of flat 2, Plot 5, Mubi Close, Off Emeka Anyaoku Street, Area 11, Abuja.

The said Akhrame Izedome Lucky appeared for the petitioner on the 20/02/2023, 03/05/2023, 13/06/2023, 18/10/2023. Where as one C. C. Igatha appeared for the petitioner on the 07/12/2023 without Notice of Change of Counsel in line with law and procedure. The Court advised the Respondent/Cross Petitioner's Counsel to serve motion No. **M/4961/2023** on the Counsel on record, hence there is no correspondence from the Counsel on record that he is withdrawing his appearance for the Petitioner.

By the record of the Court, the said motion No. **M/4961/2023** was duly served on the Petitioner/Respondent before the Court allow same to be adopted on the 19/03/2024.

It is instructive to state here that a Court has an inherent power to set aside its Judgment or order where it has become such that it is fundamentally defective or given without jurisdiction. In such a case, the Judgment or order given becomes null and void, thus liable to be set aside. A Court can set aside its Judgment or order in circumstances where (a) The writ or application was not served on the other party or (b) the action was tainted with fraud or the Court lacks jurisdiction to entertain the action. ***BELLO VS. INEC & ORS. (2010) LPELR 767 (SC).***

From the record before the Court, the order was validly made with the requisite jurisdiction as the application was properly served on the Petitioner vide his Counsel on record, there was fair hearing as the Petitioner/Applicant was given enough time and opportunity to be heard and the motion was not tainted with fraud.

In line with the finding above, I shall dismiss this application for being frivolous and lacking in merit. Consequently motion No. **M/10012/2024** is hereby dismissed.

**SIGNED:
HON. JUDGE
15/04/2025.**

Appearance:

E. E. Nweke, Esq, for the Petitioner/Cross Respondent/Applicant
E.K. Olorunju, Esq, for the Respondent/Cross Petitioner/Respondent