

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. 13
CASE NUMBER : SUIT NO: CV/736/2004
DATE: : FRIDAY 4TH JULY, 2025

BETWEEN:

HON. JUSTICE MWADA BALAMI } **2ND PLAINTIFF/
JUDGMENT DEBTOR
/APPLICANT**

AND

CHIEF JOHN OGWU } **1ST PLAINTIFF/JUDGMENT
DEBTOR/RESPONDENT**

AND

1. ENGR. GOODNEWS GOODMAN AGBI } **RESPONDENTS**
2. MR. PIUS ACHILIKE }

RULING

This Ruling is at the instance of the Judgment Debtor/Applicant who approached this court vide a Motion on Notice dated 11th July, 2019 and filed on the 19th July, 2019, praying the court for the following reliefs:

1. An Order of this Honourable Court cancelling, revoking or setting aside for deceit practiced on the Court, the issuance and execution of the writ of possession on the property known as Plot E27, Karu Village Extension Layout, FCT Abuja.
2. An Order of immediate restoration of the Applicant unto the property known as Plot E27, Karu Village Extension Layout, FCT, Abuja.
3. An any other Order(s) or further Order(s) as the Honourable Court may deem fit to make.

The grounds upon which this application is brought are;

- a. That the first set of Respondent (Chief John Ogwu) donated a Power of Attorney for valuable consideration to the Applicant in 2003.

- b. That consequent upon that Power of Attorney, the Applicant took possession after being satisfied that the property was not encumbered and his wife began building and completed a storey building thereon and resided thereon with her tenants until the execution was levied throwing her out on the 9th day of May. 2019.
- c. That the 2nd Respondent in the second set of Respondents put up an adverse claim on same property alleging that the 1st Respondent in the second set of Respondents had also transferred Interest on same property to him via a Power of Attorney also following a previous Power of Attorney donated by the 1st Respondent (Chief John Ogwu) in the 1st set of Respondent allegedly to the 1st Respondent in the 2nd set of Respondents.
- d. That the 1st set of Respondents took out a writ against the 2nd set of Respondents at the High Court of the Federal Capital Territory, Abuja presided over by A.M. Talba, J. (as he then was now JCA) and later the present Applicant was joined in the proceedings.
- e. That the Honourable Court, Per A.M Talba, J. (as he then was) rendered its judgment against the Plaintiffs i.e. Hon.

Justice Mwada Balami and Chief John Ogwu and in favour of the Respondents on 5th November, 2009.

- f. Dissatisfied with the said Judgment, an appeal was lodged at the Court of Appeal by the Judgment Debtors. Records compiled and transmitted.
- g. The Appellant subsequently secured an Order for Stay of Execution pending the Hearing and Final Determination of the appeal at the Court of Appeal under the Hand and Seal of the Hon. Justice Y. Halilu on the 31st December, 2013.
- h. That the said order is still subsisting as it has not been varied or set aside by any known order of this Court neither was it appealed against.
- i. That deceitfully, and against all known principles of law, the Respondents moved this Honourable Court to issue a writ of possession on the said property which writ was executed on the 9th day of May, 2019 while the Appeal is still pending and while the order of Hon. Justice Y. Halilu subsists but not brought to the notice of the Court.

- j. That the Respondents have taken possession and vandalized the fixtures on the property, Air conditioners, window frames and protectors and other items therein.
- k. That the fact of Appeal and transmission of Records and the subsistence of the said Order for Stay of Execution pending Appeal were concealed from this Honourable Court to issue and execute the writ of possession on the property.
- l. That this Honourable Court has powers to cancel, revoke and or set aside the writ for deceit even though it has been executed.
- m. That this Court also has the powers to eject the Respondent out of the property and to restore the Applicant by issuing the Applicant with a writ of possession into the property known as Plot E27 Karu Village, FCT Abuja as a mark of respect to the Court of Appeal and to the order of Hon. Justice Y. Halilu pending determination of the Appeal.
- n. That this Court has powers to restore the dignity of this Court.

In support of the application, is a 20 paragraphs affidavit duly deposed to by Hon. Justice Mwada Balami, the Applicant in this matter.

Applicant deposed that on 10th May, 2003, the 1st set of Respondent donated his favour an irrevocable Power of Attorney over and in respect of Plot E27, lying and situate at Karu, Village Extension, FCT, Abuja. Exhibit "A" is a copy of the said Power of Attorney.

That after he had taken possession, his spouse Mrs. Ann Balami began and completed a storey building thereon with his consent.

That his wife and her tenants resided thereon until 9th day of May 2019 when the Respondents mobilized the Bailiff of this Court to execute a writ of possession in favour of the Respondent whereupon his wife and her tenants were thrown out thus dispossessing him of the property.

That the execution was pursuant to a writ of possession issued by this Honourable Court. Exhibit "B" is a copy of the said writ which was served on the premises by pasting.

That the writ of possession was fraudulently obtained on hidden and undisclosed facts.

That the Respondents got Judgment before Hon. Justice A. M. Talba (now a justice of Court of Appeal) against the Plaintiff/Applicant.

That the Claimant/Judgment debtors appealed against the decision to the Court of Appeal. Exhibit "C" is a copy of the Notice of Appeal dated 5th December, 2013 after obtaining order to appeal out of time. Exhibit "D" is a copy of the order for extension of time to appeal dated 28th November, 2013.

That records have been compiled and deemed properly transmitted on 14th March, 2017. Exhibit "E" is a certified copy of the proceedings of the Abuja Division of Court of Appeal for the 14th March, 2017 wherein the Record was deemed properly transmitted.

That on Exhibit "D" his former Counsel. Mr. S.O. Oche withdrew prayer 2 for Stay of Execution in his judgment to pursue that relief at the High Court.

That the High Court presided over by Hon. Justice Y. Hallu sitting as vacation Judge gave an order on 31st December, 2013 staying execution pending the hearing and determination of the Appeal before the Court of Appeal. Exhibit "F" is copy of the said Order.

That as a fact, the said order is still subsisting, not varied and not appealed against by the Respondents till date.

That the Respondents practiced deceit on this Honourable Court when they applied and secured a writ of possession which was on the 9th day of May, 2019 enforced by the Bailiffs of this Court throwing his wife and other occupants of the said property unto the street.

That the fact of a pending appeal, existence and subsistence of the Order for Stay pending hearing and determination of their appeal was not disclosed to this Honourable Court at the time of moving the Court to issue and execute writ of possession. Exhibits "G" and "G1" are copies of letter written by the Judgment Creditor/Respondent for issuance of writ of execution dated 29th October, 2018 and 8th November, 2017 long after transmission of Records to the Court of Appeal.

That his present counsel Mr. A.U.E Ogbol informed him at his Chambers at No. 21 Onitsha Crescent, Area 11, Garki Abuja at about 2.00pm on the 13th May, 2019 of the following facts which he verily believe him as true.

- a. That this Honourable Court has powers to cancel, revoke and set aside for deceit, the writ of possession it issued and

executed without the Applicant bringing to the notice of the Court of the pendency of the appeal and order for stay.

- b. That the Court also has powers to re-admit or restore him unto the property on the strength of the pending appeal, subsisting order of Hon. Justice Y. Halilu for stay pending determination of the appeal before the Court of Appeal and to maintain the status quo pending the determination of the appeal.
- c. That it will be in the interest of Justice and Rule of Law to respect the Court of Appeal and the order of the Hon. Justice Y. Halilu by both this Honourable Court and the Respondents.

That it is in the interest of Justice to grant this application and that the Respondents will not be prejudiced by the grant of this application.

In line with the law and procedure, learned counsel for the Applicant filed written address, wherein two issues were formulated for determination to-wit;

1. **Whether this Honourable Court has powers to set aside for reasons of deceit practiced on it, the order,**

made by it and executed on 9th May, 2019 for enforcement of Judgment of Hon. Justice A.M. Talba.

2. **If the answer to the above is in the affirmative, whether the Applicant has made out any case for the grant of the reliefs sought.**

Learned counsel seeks to argue the two issues together.

It is the submission of the learned counsel, that an order of Court remains valid and binding on all parties until set aside either by the same Court or by an appellate tribunal. He cited the case of ***AKINYEMI VS. SOYANWO (2006) All FWLR (Pt. 335) 58 @ 70 Paragraphs E - G.***

Learned counsel submits, that an order once made operates as an estoppel as long as it lasts unvaried on appeal or set aside by same Court. The principle is res judicata provaritate occipitur. No party has power to trifle with the order of Court whose jurisdiction he has submitted himself. The case of ***WILLIAMS V. SANUSI (1961) All NLR 334*** was cited.

Learned counsel further submits, that this Court has powers to hear and set aside its orders or decisions especially where it was deceived or misled into reaching such a decision. The Supreme

Court case of Akinyemi (Supra) is on all fours with the case in hand in that while appeal was pending at the Court of Appeal in that case, the Appellant applied for and obtained a writ of execution of the properties of the Respondent and execution was levied. The application was brought before the High Court to set aside the execution. Supreme Court agreed that the High Court ought to be the proper venue for setting aside the issuance of the writ of execution and the execution itself except there are special circumstances suggesting otherwise.

Learned counsel submits, that this Court has inherent powers to set aside its order for execution of the writ of execution which it issued against the Applicant under cover of vital facts. For a number of reasons, a Court which made an order has powers to set aside the said order. ***DIKE VS. STATE (2018) 13 NWLR (Pt. 1635) 35 @ 41 Paragraphs D – G was cited.***

It is the argument of the learned counsel, that the questions which determine this matter are: whether there is in fact a pending appeal vide Exhibits "C" and "E"; which was not brought before the Court. Whether the Order of Hon. Justice Y. Halilu still subsists and if it does, whether it was brought or in fact disclosed to the Court by the Respondents at the time of applying for

Issuance and execution of writ of possession on the property in question. And thirdly, whether the Court was thereby deceived and or misled into granting the execution on the belief that no such order for stay Exhibit "F" or evidence of transmission of Records to the Court of Appeal Exhibit "E" and or Exhibit "C".

Learned counsel further argued, that the answers to these questions are established adequately by the affidavit evidence before the Court. The Order Exhibit "F" has not been set aside by any Court in any proceedings, not appealed against since obtaining same and not brought to the notice of this Court before issuing the writ of possession and before the execution proper was levied.

Learned counsel contends, that the only thing this Court could do legitimately was to transmit all applications including Exhibits "G" and "G1" relating to this matter to the Court of Appeal in the face of the Exhibit "D". He cited Akinyemi case (Supra); ***BRAITHWAITE VS. S.C.B. LTD. (2012) 9 NWLR (Pt. 1305) RR 2 and 3.***

Learned counsel submits, that taking steps outside the law to thwart an order of stay and to render the appeal nugatory is grossly unacceptable, unknown to law, a misconduct and

contempt in facie as deceitful as it is in the present circumstance. The Court is urge to so hold.

Learned counsel submits, that this is an appropriate case where this Court has powers to set aside its order issuing a writ of possession and setting aside the execution levied on Plot E27 and restore unto the property. The Applicant in respect to the living order of Hon. Justice Y. Halilu and Exhibit "E" as the step was an abuse of Court process and as irregular in law.

In conclusion, the court is urge to rescind, cancel, revoke and set aside the issuance and execution of the writ of possession and restore the Applicant unto the property.

Upon service, Judgment Creditor/Respondent filed 25 paragraphs counter - affidavit in opposition to the Applicant's Motion on Notice, duly deposed to by one Promise Edem, Litigation Secretary in the Law firm of Counsel to the Respondent.

Judgment Creditor/Respondent deposed that he has gone through the affidavit of the Applicant and noticed that most of the averment in the affidavit is either incorrect or outright falsehood meant to deceive the honorable court.

That the grounds of the application are issues that had been heard on merit and argument canvassed in suit number **FCT/HC/CV/736/2004** and judgment delivered on 5th November, 2009.

That Exhibit "A" annexed to paragraph 4 of the affidavit in support of the motion on notice is not registered and that Exhibits "B", "C" and "D" are all public documents that ought to be certified.

That parties in suit number **FCT/HC/CV/736/2004** has been altered by the applicant and that most of the averments in the affidavit in support of the motion on notice are facts already within the knowledge of the court which were pleaded facts in suit number **FCT HC/CV/736/2004**.

That the Applicant did not state the particulars of the fraud allegedly committed by the Respondents stated in paragraph 8 of his affidavit in support.

That paragraph 8 of the affidavit in support is false and incorrect as all the processes leading to the execution of judgment in suit number **FCT/HC/CV/736/2004** followed due process before the High court of FCT execution unit.

That the applicant is not diligent in prosecuting the said appeal in paragraph 10 of his affidavit in support.

That since the Applicant filed the notice of appeal in 2009 nothing concrete has been done by the Applicant in prosecuting the appeal and the applicant notice of appeal at the court of appeal Abuja is over a year now.

That it is the Applicant's belief that his appeal is lacking in merit hence the inexplicable delay by the Applicant in prosecuting the appeal.

That on 14th March, 2017 the Applicant was given 7 days at the Court of Appeal Abuja to appeal against the judgment of the FCT High court in suit number **FCT/HC/CV/736/2004**, the subject matter of this application, which he has failed to do till date.

That paragraph 11 of the Applicant affidavit in support is false and misleading as the Applicant record of appeal at the Court of Appeal Abuja division was deemed properly transmitted on 4th June, 2014.

That paragraph 13 of the Applicant's affidavit is an outright falsehood meant to deceive the honorable court as there was no time that applicant filed any motion for stay of execution of

judgment in suit number **FCT/HC/CV/736/2004** before any FCT High court and that Exhibit "F" is an afterthought, procured through the back door, meant to deceive the Honorable court as there was no time the Respondents were served with any motion on notice for stay of execution from FCT High court.

That FCT High court in suit number **FCT/HC/CV/736/2004** held in its judgment of 5th November, 2009 that the subject matter of this application is the bonafide property of the Respondent which the Applicant trespassed to.

That the judgment has not being appealed against till date by the Applicant and judgment has equally not been set aside.

That in line with the FCT High court judgment in suit number **FCT/HC/CV/736/2004** the subject matter of the present application, the Applicant does not have any property in Plot E27 Karu Village Extension Layout, FCT - Abuja for the Honorable Court to restore him to.

That Plot E27 together with the development thereon is now the bonafide property of the Respondents in line with FCT High Court No. 10 Judgment of 5th November, 2009 delivered by Hon Justice A .M Talba.

That it is in the best interest of justice to refuse the application.

On their part, 2nd Judgment Debtor/Applicant filed 4 paragraph further affidavit in support of Motion on Notice filed on 19th July, 2019 wherein he averred that when the 1st and 2nd Respondents/Judgment Creditors were served with the Motion on Notice with Motion No. **M/FCT/HC/CV/3020/2013** for stay of execution of the judgment of this Court, the 1st and 2nd Respondents'/Judgment Creditors Counsel, Ikechukwu Obidike, Esq., did not raise opposition to the said Motion.

That upon granting relief for a stay of execution, the 1st and 2nd Respondents/Judgment Creditors courtesy of their Counsel were very much aware of the said order in view of the fact that 1st and 2nd Defendants' counsel did not file counter affidavit.

That the 1st and 2nd Respondents Counsel have since the 31st day of December, 2013 had actual and constructive notice of the order of this Court staying the execution of the judgment of this Court in Suit No **FCT/HC/CV/736**.

That as a fact while the instant Motion was pending, the 1st and 2nd Respondents/Judgment Creditors Courtesy of their Counsel filed a suit, with Suit No. **CV/3110/19**, before this Court,

seeking to validate the fraudulently obtained execution of the judgment of this Court as aforesaid.

That part of the documents frontloaded in the said Suit No. **CV/3110/19** so filed by the 1st and 2nd Respondents/Judgment Creditors were the enrolled order of this court delivered on the 31st day of December, 2013, staying the execution of the Judgment of this Honourable Court. A copy of the said suit with Suit No. **CV/3110/19**, so filed by the 1st and 2nd Respondents Judgment Creditors containing the aforesaid frontloaded enrolled order at pages 32 and 33, among others is hereby attached as Exhibit "FA1".

That upon discovering the fraud committed by the 1st and 2nd Respondents/Judgment Creditors, courtesy of their Counsel, this Honourable Court, on the 7th day of May, 2020 struck out the said suit and awarded the sum of **N500,000.00** (Five Hundred Thousand Naira) against the 1st and 2nd Respondents/Judgment Creditors Counsel. A copy of the ruling of this Court striking out the said suit as well as the said award of cost are hereby attached as Exhibits "FA2" and "FA3" respectively.

That if the 1st and 2nd Respondents/Judgment Creditors courtesy of their Counsel had not been put on actual/constructive notice of

the order of this court, staying the execution of the judgment of this court as aforesaid, he would not have been able to frontload the aforementioned Exhibit "FA1", mentioned above.

That if the 1st and 2nd Respondents/Judgment Creditors, courtesy of their counsel had no knowledge of the order of this court, staying the execution of the judgment of this court, upon being served with the instant Motion, the 1st and 2nd Respondents/Judgment Creditors, courtesy of their Counsel became aware of the said order and had ample opportunity to retrace his steps as regards the fraudulently obtained execution.

That it would serve the best interest of justice to grant the instant Motion.

In line with the procedure, written address was filed, wherein adopts the two issues raised in the Motion on Notice dated 19th day of July, 2019 to wit;

1. **Whether this Honourable Court has powers to set aside for reasons of deceit practiced on it, the order made by it and executed on 9/519, for enforcement of the judgment of Hon. Justice A.M. Talba?**

2. **If the answer to the above is in the affirmative, whether the Applicant has made out any case for the grant of the reliefs sought?**

On issue 1, **whether this Honourable Court has powers to set aside for reasons of deceit practiced on it, the order made by it and executed on 9/519, for enforcement of the judgment of Hon. Justice A.M. Talba?**

It is the submission of the learned counsel, that the execution levied on the 2nd Plaintiff Judgment debtor/Applicant in respect of Plot E27, Karu Village, FCT, Abuja was illegal and therefore liable to be set aside. The court is urge to so hold. **AKINYEMI. SOYANWO (2006) ALL FWLR (PL.335) 58 was cited.**

Learned counsel submits, that the law is trite that a decision of a Court is binding on that court, itself. He refers this court to **ADESOKAN VS. ADETUNJI (1994) 5 NWLR (Pt.346) 540, S.C.**

Learned counsel further submits, that on the strength of paragraph 2 (f) and Exhibits "FA2" and "FA3", the unappealed decision of this court on the 7th day of May, 2020, where this Court found the 1st and 2nd Respondents/Judgment Creditors Counsel to have acted rascally and unprofessionally in obtaining

and causing to be levied, the execution in respect of the already stayed judgment of this court, is binding on this court and on the 1st and 2nd Respondents/Judgment Creditors, and their Counsel was duty bound, not to have held the order of this court in disdain. The Court is therefore urged to so hold and grant the instant application.

In conclusion, learned counsel submits that on the strength of the arguments, submission and authorities cited, the instant suit is incompetent and an abuse of court process and is therefore, liable to be struck out. The Court is urge to so hold and award costs in the sum of **N2,000,000.00 (Two Million Naira)** personally against the 1st and 2nd Claimant's Counsel, and further award cost against the 1st and 2nd Claimants in the sum of **N1,000,000.00 (One Million Naira)** only.

The Court is further urge to make a consequential order, referring the records of these proceedings to the Nigerian Bar Association for appropriate action, in view of the gross disregard by the 1st and 2nd Claimants/Respondent's Counsel for the RPC, particularly Rule 15 RPC.

In turn, Judgment Creditors/Respondent filed additional Counter of 7 Paragraph Affidavit duly deposed to by Maurice Oru Ebam

Esq., Legal Practitioner in the Law firm of Counsel to the Judgment Creditors/Respondent in opposition to 2nd Plaintiff Judgment/Debtor Applicant.

It is his deposition that most of the depositions in the affidavit are manifestly incorrect and outright falsehood meant to deceive the Honorable Court.

That the grounds 1 - 14 of the Applicants application are mere recounting of the facts of this case which is not before the honorable court and equally full of legal conclusions which is totally extraneous to the issue before the honorable court.

That the court is not seized of the facts of this case since the honorable court is not the trial court that heard this case on its merit and delivered judgment.

That the records of proceedings of the trial court was equally not transmitted before the honorable court so as to assist the honorable court to reach an informed decision one way or the other.

That the Applicant is not diligent in prosecuting the said appeal in paragraph 10 of his affidavit in support.

That the Exhibit "D" relied upon by the Applicants gave the Applicants 7 days from 28th November, 2013 to enter appeal against the judgment of the trial court and that the 7 days in Exhibit D elapsed on 4th December, 2013.

That there was no enrollment of the alleged order of stay that was allegedly issued by Justice Y. Halilu.

That throughout the pendency of the motion on notice **M/3020/13** before Justice Y. Halilu no hearing notice was issued and served on the respondent so as to alert the respondents of the pendency of the said motion. That the motion on notice No. **M/3020/13** and Exparte Motion No. **M/3063** are hereby annexed and marked as Exhibits "A1" and "A2" respectively.

That the Respondents were not heard in Motion No. **M/3020/13** that was allegedly moved before Justice Y. Halilu in 2013 and that the CTC of Proceedings and Ruling of Justice Y. Halilu in Motion on Notice No. **M/3020/13** for stay of execution is hereby annexed and marked as Exhibit "B".

That this Motion on Notice No. **M/7378/2019 (M/8031/19)** has become a subject of litigation in suit No. **FCT/HC/CV/3110/2019** before FCT High Court Abuja and that

the Deputy Sheriff has been served in the said suit. Annexed and marked as Exhibit "C" is the originating processes of the above suit (**FCT/HC/CV/3110/2019**)

That the above suit which subsumes the present application (Motion on Notice of the Applicants) will afford the FCT High Court a wider platform that will enable the Court have holistic view of the entire case between the parties to this application.

That currently there are more than ten families living in the premises who are tenants of the 2nd Respondent who rented the premises as soon as the 2nd Respondent was put into possession of Plot E27 by the Honorable Court on 9th of May 2019.

That the granting of the Applicants prayers in this application through motion on notice will render the outcome of suit No. **FCT/HC/CV/3110/2019** nugatory.

That granting this application will prejudice the interest of the Respondents, the innocent tenants and the outcome of suit **FCT/HC/CV/3110/2019**.

That counter claiming for damages, if any, by the Applicants in suit No. **FCT/HC/CV/3110/2019** will meet the justice of the applicants' case.

That the Applicant filed his Appellant Brief of Argument on 6th August, 2019 well over 4 clear years outside the period given to him by the Court of Appeal in Exhibit "D" for him to do so.

That until the time of filing this additional counter affidavit the Applicants have not bothered to secure a date for his motion, for extension of time within which to file and serve their Brief of Argument, to be heard, this shows clearly that the Applicant is not diligent in prosecuting the appeal 9 years after judgment was delivered against him.

The paragraphs 15 and 16 of the Applicant's affidavit is incorrect and outright falsehood as no such order of court was served nor brought to the attention of the Respondent.

That it is in the interest of justice to refuse this application.

That the Judgment Creditor Respondents will be prejudiced by the grant of this application.

Respondent in its further affidavit in opposition deposed further that the entire paragraph 2 of the Applicant further affidavit is outright falsehood as neither was he serve with any hearing notice for the said motion nor was he by any stretch of

imagination served any Court order relating to stay of execution of any judgment by the Applicant.

That the above enrolled order, if any, referred to in paragraph (iv) above was for the first time brought to the attention of the Respondents long after execution has been levied against the Applicant by the Respondent.

That there was no fraud whatsoever committed by the Respondent against the Applicant and/or against the honourable court.

That the Applicant is being challenged by the Respondent to show the honourable court evidence/proof of service on the Respondents of the order of the honourable court pertaining to stay of execution of the judgment in Suit **No FCT/HC/CV/736/2004.**

That it would serve the best interest of justice not to grant the instant Motion.

In line with the law and procedure, learned counsel for the Judgment Creditors/Respondent filed written address.

Learned counsel submits that it is an elementary rules of practice that once judgment has been delivered in a suit and execution of

the judgment levied, the trial court has become functus officio. This principle is based on the popular saying in law that there must be an end to litigation. If any of the parties feel dissatisfied at this stage, the only option open to the party is for him to go on appeal in respect of the said suit. The Applicant has woefully failed to do for ten years since judgment was delivered in this suit. He cited the case of ***NNAMANI VS. EZE (2014) WRN VOL. 46 Page 67 Ratio 18.***

Learned counsel argued, that from the Applicant's grounds in support of the application and supporting affidavit, it is crystal clear that all the issues raised by the Applicant are issues already raised and canvassed in the main suit (suit No ***FCT/HC/CV/736/2004***) which the trial court has already delivered judgment, the suit is now res-judicata and the Court is urge to so hold. He cited ***OKOROCHA VS. PDP (2014) WRN VOL. 26 MER 25 Ratio 31.***

In the instant case, there is overwhelming evidence in support of plea of res judicata and the Court is urge to so hold.

It is the counsel's contention, that the judgment debtor, by virtue of the judgment of the trial court of 5th November, 2009, do not

have any property in Plot E27 Karu Village Extension, the Honorable Court will restore him back to.

Learned counsel argues, that the allegation of fraud raised by the judgment debtors in their application is weighty issue which ought to be paid serious attention by the honorable court but the applicant did not help himself when he decided to make the allegation look like a joke by not supplying the honorable court with the particulars of the alleged fraudulent procurement of execution against the judgment creditor. It is the learned counsel's submission, that the judgment debtor's argument tantamount to the popular saying that the thief is now calling the owner of the house thief, and that the Judgment Debtor/Applicant did not for once notify the Judgment Creditor of the pendency of the motion neither did he enroll and serve the said order on the Judgment Creditor and or execution unit of the FCT High Court. He cited Order 45 Rule 3 of the High Court of FCT Civil Procedure Rules 2004 (now Order 61 Rule 4 of High Court of the FCT Civil Procedure Rules 2018).

Learned counsel contends, that the operative word "SHALL" which has a clear element of compulsion failing which amounts to

nullity which means there is actually no order for stay by Justice Y. Halilu.

In all cases, the Applicants must ensure that the person against whom it is sought to apply the sanction of the law of contempt has sufficient prior notice of the items of the judgments or order which the Applicants alleges has been disobeyed. Until the defendant has knowledge of the court order, he has no obligation to obey the order obtained behind him. It is an elementary justice system that justice is for both parties, that the need for a motion of this nature to be heard on his merit by affording both parties the opportunity to hear can never be over emphasized. In fact it is the bed rock of justice system. On whom lies the duty of service of hearing notice on parties and effect of failure thereof. The case of ***BADA VS. ATUNBI (2011) WRN 33 Page 179 Ratio 2 was cited.***

Learned counsel submits, that personal service of the order is important failing which robs the honorable court of the jurisdiction to entertain the matter in first place. In the instant case the applicant before Justice Y. Halilu in Motion No. **M/3020/13** failed woefully to enroll the alleged order for stay of execution against the clear provision of Order 45 Rule 3 2004

Rules of Court now Order 61 Rule 4 2018 Rules of Court. By the Applicant failing to enroll the alleged order of court means in effect that there was no order for stay for execution against the applicant.

Where an Order is to prevent the doing of a particular act by the Defendant, the order must have been served beforehand so as to forestall the doing of that particular act by the parties involved. In the instant case both the Judgment Creditors and the Execution Unit of the FCT High Court is hearing about the Order for Stay for the first time more than one month the execution of the judgment was successfully carried out.

The competency of committal motion may consist in falling to serve the order of injunction personally. He cited the case of ***HON ZAKAWANU GARUBA VS. THE STATE (2014) WRN Vol. 26 Page 149 particularly Page 154 Ratio 1.***

Learned counsel further submits, that Exhibits "A", "B" and "F" of the Applicant are all public documents which ought to be certified in line with section 104 of evidence Act 2011 as amended and the Court is urge to ex-purge same from the records of the Honorable Court as they are not admissible evidence, the Judgment Creditor/Applicant only tried to be smart by half by attempting to

bring through the back door annexures/Exhibits which ordinarily is not admissible in evidence.

It is further the learned counsel's submission, that by virtue of the above cited provisions of the Evidence Act 2011, the annexures are not admissible in evidence as the condition precedent to their being admissible in evidence have not been met by the judgment debtor applicant. The Honorable court by this fundamental omission of the judgment debtor Applicant is in the dark of how to help the case of the Applicant.

In conclusion, and based on the above legal arguments the Court is urge to dismiss the application of the Applicant with heavy cost.

COURT:-

I have read through the arguments of Judgment Debtor/ Appellant/Applicant, affidavit in support of the application under consideration, legal arguments on the one hand, and the corresponding counter affidavit and written address filed by the Judgment Creditor/ Respondent on the other hand.

The kernel of the application is anchored on the fact that execution was carried-out despite the fact that an Order for stay

of execution was in place to the knowledge of the Judgment Creditor/Respondent.

From the records, Judgment in Suit No. FCT/HC/CV/3110/2009 was delivered on the 5th November, 2009. Dissatisfied with the Judgment, a Notice of Appeal was filed on the 5th December, 2013, application for stay of execution was similarly filed, moved and granted on the 31st December, 2013 while Writ of Execution was issued on the 24th January, 2019 during the pendency of the Order for Stay of Execution.

Permit me to note that the right of a litigant to appeal against a decision of court, be it final or interlocutory, is a Constitutional Right provided under Section 243 of the Constitution of Federal Republic of Nigeria 1999 (as amended).

Where therefore, a dissatisfied litigant decides to activate such an Appellate right to the knowledge of the Judgment Creditor, it is only rational and morally fair for all steps that may lead to rendering the decision of the Appellate Court nugatory and hopeless to be ceased, not to speak of where such a dissatisfied Judgment Debtor/Appellant has taken steps to obtain Order for stay of execution of such a Judgment.

Why would any rational thinking party take any such adverse step as to render the Appellate Court's judgment futile! why?

The pertinent question to be asked and answered is whether Judgment Creditor/Respondent was aware of the pendency of the said Appeal when the said execution was applied-for and carried out?

I raise above poser in view of the persistence of the said Judgment Creditor/Respondent's counsel that they were never aware of the pendency of the said application for stay of execution and that when same was moved and granted, they were similarly not served with the enrolled order.

It is on record that the duo of the Defendants/Respondents in the instant suit instituted another suit with suit No: FCT/HC/CV/3110/2019 wherein the said Defendants who were Claimants in the said suit sought amongst other Orders "a declaration by the Honourable Court that the execution levied on Plot – E27 Karu Village Extension, FCT- Abuja in respect of suit No. FCT/HC/CV/736/2004, the subject of this suit is valid, legal and proper in law, amongst other reliefs.

In the said suit, the 1st and 2nd Defendants who are Claimants in the present suit, filed a joint statement of defence and pleaded

the fact that there was a subsisting Appeal, order for stay of execution to the knowledge of the Judgment Creditor/ Respondents.

The present Judgment Debtors/Applicants stated in their said statement of defence in Suit No: CV/3110/2019 the fact that Claimants (who are Judgment Creditors/Respondents) in suit CV/736/2004 fraudulently concealed the existence of the Order for Stay of Execution when they wrote letters dated the 8th November, 2017 and 29th October, 2018 to the Chief Judge for the renewal of the Writ of Possession in the Judgment delivered on the 5th November, 2009. Eventhough the suit was dismissed in favour of the present Judgment Debtor/Applicant, being process of court, I am duty bound to take judicial notice of same.

I hereby take judicial notice pursuant to section 122 of the Evidence Act, 2011 as amended. I also rely on the case of ***OGUNSANYA OLUWASEYI VS. THE STATE - ELC (2018) 3069 – (SC).***

It is similarly, the Defence of the Defendants who are the Judgment Debtor/Applicant in the instant suit that counsel for the Judgment Creditor/Respondent (Barr. Ikechukwu Obidike) was

not just aware of the pendency of Appeal, but participated in the proceedings.

I have seen the frontloaded documents in line with the Rules of this court. I note with concern the fact that the letters written by Obidike, Esq., counsel representing the Judgment Creditors/ Respondents in the present suit to the Hon. the Chief Judge, were written way years after the Order for Stay of Execution was made. The next question to ask is;

Why then would learned counsel Barr. Obidike, for the Judgment Creditors/Respondents in the instant suit who was not just well aware of the pendency of Appeal and Order for Stay of Execution, but has been participating in the proceeding at the Court of Appeal be suggesting in their counter affidavit to the instant application that they were never served the said Motion for Stay of Execution and or the enrolled Order!

This is no good approach to matters of law... counsel must understand the need to help the Court in the disposition of justice, always and refrain from doing what could ultimately destroy their image.

Once there is an Order of Court, parties must respect it as respect for Order of Court is indeed essential for maintaining the integrity and authority of the judicial system.

Respect for Court Order promotes public trust, effective justice which leads to stability and social order.

The Rule of law is a Constitutional doctrine which emphasis on the Supremacy of the law. The Rule of law ensures that individuals, institutions and government officials, act, always, according to the law. It promotes justice, stability, economic growth and Human Rights.

Absence of the Rule of law is a recipe for chaos and disorder where crime and instability shall be the order of the day.

Before I land, I will like to make an observation with respect to the conduct of counsel for the Judgment Debtors/Appellants/Applicants.

It is rather preposterous how Judgment Debtors/Appellants/Applicant instead of making effort to prosecute the said appeal, is now pursuing an Order of this Court to set aside the said Order allowing the Judgment Creditor/Respondent to execute the Judgment of this Court,

regardless of the Court's reservation on the conduct of the Judgment Creditor/Respondent's counsel who applied for Writ of FiFa and ensured execution was carried-out hence this application.

I am morethan sure that had the Judgment Debtors/Appellants/Applicants intended to prosecute the said Appeal with diligence, this appeal would have been disposed-off even to the Supreme Court. This is so frustrating... why would Judgment Debtor/Applicant forego pursuing his appeal but dissipate energy over an application that can easily be dealt with at the conclusion of final Appeal!

I say this because any decision of the Court of Appeal and Supreme Court in favour of the Judgment Debtor/Appellant/Applicant would render the execution carried-out by Sheriff of this Court in favour of the Judgment Creditor/Respondent null and void as Judgment Debtor/Appellant/Applicant shall easily be restored back into the said property.

I say no more.

While I am in sympathy with the position of the Judgment Creditor/Respondent on the fact that the said Appeal filed by the Judgment Debtor/Appellant/Applicant has not been diligently

prosecuted by the Judgment Debtor/Applicant, my sentiments will not go far as not to protect Orders, indeed valid Orders made by Court of competent jurisdiction.

After all, it is good law that sentiments have no place in the judicial process, particularly when the sentiments are against the law. As the Judge that I am, I must bow to the law, and I so bow. For the reasons given above, the said Writ of Execution ought to be set aside for deceit and misrepresentation.

Accordingly, reliefs 1 and 2 are **hereby granted** as prayed, as follows:-

1. An Order of this Honourable Court cancelling, revoking or setting aside for deceit practiced on the Court, the issuance and execution of the writ of possession on the property known as Plot E27, Karu Village Extension Layout, FCT Abuja.

2. An Order of immediate restoration of the Applicant unto the property known as Plot E27, Karu Village Extension Layout, FCT, Abuja.

Above is the Ruling of this court.

***Justice Y. Halilu
Hon. Judge
4th July, 2025***

APPEARANCES

D. A Akatugba, Esq. – for the Judgment Debtor/Applicant.

U.K Obioha, Esq. – for the Judgment Creditor/Respondent.