

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

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

SUIT NO: FCT/HC/CV/4527/2024

MOTION NO: FCT/HC/M/5889/2025

DELIVERED ON THE 06/10/2025

BETWEEN:

DEETBOOK BUREAU DE CHANGE LIMITED....JUDGMENT CREDITOR/RESPONDENT

AND

AS-SUNNAH BUREAU DE CHANGE LTD.....JUDGMENT DEBTOR/APPLICANT

RULING

The Claimant/Judgment Creditor/Respondent initiated an action against the Defendant Judgment Debtor/Applicant vide a Writ under the undefended list procedure in accordance with Order 35 of the 2018 Rules of this court, now Order 34 of the 2025 Rules. The Claimant got judgment against the defendant on the 23/01/2025. Consequent upon the said judgment, a garnishee proceeding was initiated and an Order Nisi was made in favour of the Judgment Creditor/Respondent on the 07/04/2025.

The Judgment Debtor/Applicant brought this Motion No. **M/5889/2025** dated 28/04/2025 seeking an order of this Hon. Court setting aside the garnishee Order Nisi of this Hon. Court made on the 7th April, 2025 having been obtained in concealment of material facts, abuse of court process and being a nullity.

The motion is supported by grounds upon which it is brought and an affidavit of 7 paragraphs deposed to by one Ngozi Theophilus, a litigation secretary in the law firm of the judgment debtor's Applicant counsel.

It is the deposition of the Applicant that the garnishee Order Nisi made on the 07/04/2025 had not been personally served on the Applicant and same was made absolute in suppression of material fact.

That the Judgment Debtor filed an appeal against the judgment of this Hon. Court with a motion for stay of execution dated 13/02/2025 but the Judgment Creditor suppressed the facts as the Judgment Creditor filed a counter affidavit to the motion for stay of execution on the 07/03/2025.

The Applicant contended further that after the motion for stay of execution was heard and dismissed, similar motion for stay was filed at the Court of Appeal but same was suppressed by the Judgment Creditor.

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

whether it is in the interest of justice for the Hon. Court to set aside the order garnishee Order Nisi of this Hon. Court made on the 07/04/2025 having been obtained in concealment of material facts, abuse of court process and being a nullity.

Learned counsel argued the above issue, citing relevant case laws in urging the court to grant this application in the interest of justice.

Reacting to the application, learned counsel for the Judgment Creditor/Respondent filed, a reply on points of law, wherein learned counsel submitted that, service of the garnishee order was duly made on the Judgment Debtor/Applicant. And that the purported appeal had not been entered; as there is no appeal number and record of appeal has not been transmitted.

I have gone through the Judgment Debtor/Applicant's application and the reaction of the judgment creditor vide reply on point of law.

It is true, as it is well settled, that a court of law has an inherent jurisdiction to set aside its own Judgment/Order when the conditions for doing so have been met by a party seeking the setting aside. One of such situation is when the judgment/Order sought to be set aside was obtained by failure to comply with procedural Rules. *NOGA HOTEL INTERNATIONAL S.A. VS. NICON HILTON HOTELS LTD & ORS (2006) LPELR 11811 (CA)*.

There is no gain saying that there is always an end to litigation. It is the law that after finally deciding a matter before it, the court becomes functus officio and lacks jurisdiction to deal with the same matter. Courts must be wary of allowing parties to relitigate matter determined for fear of more or less sitting on appeal over matters determined.

The law with respect to stay of execution is settled, courts have over the years enrolled standard principles to be considered in granting an application for stay of execution of judgments pending appeal. The court has discretion which shall be exercised judicially and judiciously in granting or refusing to grant an application for stay of execution. If the court is satisfied that there are exceptional and special or substantial reasons or circumstances to warrant a deprivation of the successful party of the fruits of his judgment. *LSDPC VS. CITYMARK (WEST AFRICA) LTD. (1998) 7 SC (PT. 1) 59*.

The fundamental principle that the judgment creditor is entitled to the fruits of his litigation can only be defeated by circumstances which render it inequitable for him to enjoy the benefit of his victory. An Applicant for stay of execution bears the burden of showing that the grant of stay of execution will not result in the deformation of the

subject matter of the appeal *FRANCHAL NIG. LTD VS. N.A.B LTD (2000) 6 SC (PT. 1) 1 PAGE 33-34 PARAGRAPH F-A.*

Indeed, this jurisdiction may be exercised where for instance, the judgment sought to be set aside is null and void ab initio or there was a fundamental defect in the proceedings which vitiates and renders same incompetent and invalid. Where it is found that the court's decision was void ab initio or there was a fundamental defect in the proceedings which vitiated and renders same invalid, the court may ex-debito justitiae set aside its decision and make necessary consequential orders that the justice of each case demand. *EDILCOM NIG. LTD VS. UBA (2017) ALL FWLR (PT. 901 PG. 58).*

It is on record that, this Hon. Court delivered final Judgment on this case on the 23/01/2025 against the Judgment Debtor/Applicant.

The Judgment Debtor/Applicant purportedly filed an appeal against the judgment of this Hon. Court on the 12/02/2025. Without an appeal number to be properly called an appeal.

It is on record that the Judgment Debtor/Applicant filed a motion for stay of execution before this Hon. Court on the 13/02/2025 and same was heard and dismissed on the 18/03/2025 with a punitive cost of **₦50,000.00** (Fifty Thousand Naira) against the Judgment Debtor/Applicant.

It is the contention of the Judgment Debtor/Applicant that it has filed another motion for stay of execution at the court of appeal and therefore, the judgment creditor suppressed this fact from the court in obtaining garnishee Order Nisi.

It is instructive to state here that filing of motion for stay of execution and/or filing of notice of appeal does not affect garnishee proceedings. The appeal must be entered. I have seen the Notice of Appeal brandished

by the Judgment Debtor/Applicant, it is obvious that the appeal has not been entered, there is no evidence of transmission of record of appeal and there is equally no motion for extension of time to do so, the time prescribe by law for filing and transmission record having elapsed.

Indeed, the enforcement of the judgment of this Hon. Court can only be stayed by an explicit order of this Court or where the appeal has been entered in the appellate court and record transmitted.

I must state here that setting aside court order is an equitable remedy. And the trite principle of equity is that he who comes to equity must come with clean hands *LAMAZ VS. TOTAL (NIG.) PLC (2007) ALL FWLR (PT 364) 398 AT 401.*

Indeed, the hands of the Applicant are tainted with dirt, therefore, equity cannot come to its aid. Consequently, relief sought, as endorsed on the face of the motion is hereby refused and dismissed.

SIGNED:
HON. JUDGE
06/10/2025.

APPEARANCE:

Uchenna Uwazuruonye, Esq, with Sunday Gadzama, Esq, for the Judgment Creditor/Respondent

F. I. Aliuna, Esq, for the Judgment Debtor/Applicant