

**IN THE HIGH COURT OF RIVERS STATE OF NIGERIA**  
**IN THE PORT HARCOURT JUDICIAL DIVISION**  
**HOLDEN AT PORT HARCOURT**

**RESUMED ON THURSDAY THE 13<sup>TH</sup> DAY OF NOVEMBER, 2025**  
**BEFORE HIS LORDSHIP HON. JUSTICE G. O. OLLOR – JUDGE**  
**SITTING AT HIGH COURT PORT HARCOURT**

**SUIT NO. PHC/4375/2019**

**BETWEEN:**

**ROSBY & SONS ENTERPRISES LTD ... CLAIMANT/RESPONDENT**

**AND**

**MEDITERRANEAN SHIPPING COMPANY NIGERIA LIMITED ---- DEFENDANT/  
APPLICANT**

**RULING**

**PARTIES:**

Parties absent.

**APPEARANCES:**

V. U. UZOCHUKWU, ESQ for the Claimant/Respondent.

T. DIEPIRIYE, ESQ for the Defendant/Applicant with BLESSING EZI,  
ESQ.

This is a Motion on Notice brought pursuant to the inherent jurisdiction of this Honourable Court filed on the 6/9/2023 wherein the Defendant/Applicant prayed the Honourable Court for the following:

- (1) AN ORDER for extension of time within which the Defendant/Applicant shall seek leave to apply for an Order setting aside the Judgment delivered by this Honourable Court in the matter herein on the 20<sup>th</sup> day of December, 2022.



- (2) AN ORDER granting leave to the Defendant/Applicant to apply for an Order setting aside the Judgment delivered by this Honourable Court in the matter herein on the 20<sup>th</sup> day of December, 2022.
- (3) AN ORDER setting aside the Judgment delivered by this Honourable Court in the matter herein on the 20<sup>th</sup> day of December, 2022.
- (4) AN ORDER staying execution and/or further execution by whatsoever means of the aforesaid Judgment delivered by this Honourable Court in respect of the matter herein.

AND for such further or other Order(s) as this Honourable Court may deem fit to make in the circumstance.

In support of the Motion on Notice is an affidavit of 28 paragraphs filed on the 6/9/2023 which states that on Thursday, August 24, 2023 the Defendant/Applicant received an email from one of its bankers, Citi Bank Plc stating that *a Garnishee order attached was received with regards to a case between MSC and Roseby and Sons Ent Ltd. on the basis of the Court order it has blocked the sum of N25.1 million in account pending further instruction from the court.* The said attached Court Order was forwarded to the Logistics and Claims Manager, Mr. Kehinde Iyowun for necessary action.

The Defendant/Applicant only became aware of the suit herein when its bankers informed it about the Garnishee Order Nisi aforesaid and was neither aware of the Originating Processes/other processes in the matter herein nor the proceedings leading to the judgement of the Honourable Court delivered on the 20<sup>th</sup> day of December, 2022. Hearing Notices for the various proceedings (spanning a period of 3 years – 2019 to 2022) preceding the delivery of the Judgment sought to be set aside, were not duly served on the Defendant/Applicant herein.

The Defendant/Applicant being a responsible corporate entity does not ignore or disregard Court processes duly served on it. Upon the receipt of any Court Process the Defendant/Applicant immediately sends the same to its Solicitors for necessary action.

The Claimant/Respondent herein obtained the Judgment sought to be set aside by a misrepresentation of, and/or concealment/suppression of material facts, in that it averred that in 2019 the Claimant engaged



the services of the Defendant to ship the Claimant's Containers, containing several goods and items, numbering 207, from China to Port Harcourt in Nigeria, and that the Defendant herein had wrongly put the name of NEWPAL NIGERIA LTD as the consignee of the container, rather than ROSBY & SONS ENTERPRISES LIMITED.

The aforesaid Bill of Lading was issued by the said MEDITERRANEAN SHIPPING COMPANY SA (the Carrier) at ZHONGSHAN, China and not by the Defendant herein who at all material times to the action has its head office in Lagos.

The Claimant/Respondent does not have a reasonable or any cause of action whatsoever against the Defendant/Applicant herein.

The first and principal relief granted to the Claimant/Respondent herein is declaratory in nature. The Defendant/Respondent did not establish its entitlement to the same by cogent, credible and verifiable evidence. The Defendant/Applicant is out of time in applying to set aside the judgment entered against it without its knowledge.

It was only on the 24<sup>th</sup> day of August 2023 that the Defendant/Applicant became aware of the existence of the suit herein and the Judgment delivered in respect of the same via the email sent to it by its bankers, Messrs. Citi Bank Limited aforesaid.

It was on the 30<sup>th</sup> day of August 2023 that the Defendant/Applicant's Solicitors obtained from the Archives & Record of this Honourable Court the Certified True Copies of the Processes aforesaid. The relevant Record of Proceedings are yet to be ready. The delay in applying to set aside the Judgment delivered against it in default of appearance and defence was occasioned by the fact that it was only recently that the Defendant/Applicant became aware of the same.

The Defendant/Applicant now requires the leave of this Honourable Court to apply for an extension of time as well as an extension of time within which it shall apply to set aside the Judgment delivered by this Honourable Court on the 20<sup>th</sup> day of December 2022.

It will be in the greatest interest of justice for this Honourable Court to grant the reliefs being sought by the Defendant/Applicant in the instant application.

The Defendant/Applicant is willing and ready to defend the action upon being properly served the Originating Processes in the matter herein.

In arguing the Application, Learned Counsel to the Applicant submitted that non service of the Originating processes and the Hearing Notices on the Defendant/Applicant in respect of all or any of the proceedings



leading to the judgement sought to be set aside, robs the Honourable Court of the requisite jurisdiction to hear and determine the matter. See **UWEMEDIMO Vs. MOBIL PROD. (NIG.) UNLTD (2022) 2 NWLR (Pt. 1813) 53 at 73, paras B-E.**

Counsel further contended that the Claimant obtained judgment in the matter herein by a misrepresentation of, and/or concealment/ suppression of material facts. the reason is that the Claimant had FALSELY averred that in 2019 the Claimant engaged the services of the Defendant to ship the Claimant's Containers containing several goods and items, numbering 207, from China to Port Harcourt in Nigeria, and that the Defendant had wrongly put the name of NEWPAL NIGERIA LTD as the consignee of the container, rather than ROSBY & SONS ENTERPRISES LIMITED.

It would be seen that the aforesaid bill of lading was issued by the said MEDITERRANEAN SHIPPING COMPANY SA (the Carrier) at ZHONGSHAN, China and not by the Defendant who at all material times is a Nigerian based company with its head office in Lagos. The fact clearly gives a tie to the allegation of the Claimant that *"the Defendant had wrongly put the name of NEWPAL NIGERIA LTD as the consignee of the container, rather than ROSBY & SONS ENTERPRISES LIMITED."*

It would be seen also from the aforesaid bill of lading that the Defendant herein was clearly indicated as the "PORT OF DISCHARGE AGENT".

It is trite law that only parties to a contract can sue and be sued on it. A non-party or a stranger to a contract cannot sue or be sued on it even if it was made for his own benefit. See **BASINCO MOTORS LTD Vs. WOERMANN-LINE & ANOR (2000) 13 NWLR (Pt. 1157) p. 149 at p. 180, para E.**

The first and principal relief granted to the Claimant/Respondent herein is declaratory in nature. Under and by virtue of Nigerian law, a Declaratory Judgment is given in favour of a Claimant NOT on either the admission of a Defendant, or weakness of his defence or upon his failure to file a Statement of Defence BUT upon the Claimant establishing his entitlement to the same by credible, cogent and verifiable evidence. That is not the situation in the matter herein.



In the instant case, the Appellant sought declaratory relief from the trial court and therefore had the duty to adduce and place before that court credible and sufficient evidence that would reasonably establish that he was indeed entitled to them. He must rely and succeed on the strength of his own case and not on the absence of a defence or presumed admission by the Respondent. See **EYIBOH Vs. MUJADDADI (2022) 7 NWLR (Pt. 1830) 381 at 412, paras. G-H.**

It is also the law that a party aggrieved by a decision of a Court has two alternative options. The party may appeal against the decision or file an application to same court to have the decision and the orders therein set aside *ex debito Justitia* on grounds of jurisdiction ultra vires. See also **FIDELITY BANK PLC Vs. THE M. T. TABORA (2018) 12 NWLR (Pt. 1632) 135 at 147, paras G-H.**

Counsel submitted that by the application herein, the Applicant is also praying for an Order Staying execution and/or further execution, by whatsoever means, of the aforesaid judgment delivered by this Honourable Court in respect of the matter.

That the aforesaid Order being sought is well-founded in law. See **NIGERIAN BREWERIES PLC Vs. DUMUJE (2016) 6 NWLR (Pt. 1515) 537 at 578, paras A-D; 625, paras, E-F.**

Counsel submitted that it will be in the interest of justice for this Honourable Court to grant the reliefs being sought by the Defendant/Applicant in the instant application.

The Claimant filed its Counter Affidavit of 13 paragraphs on 22/09/2023 and stated that the Claimant brought this suit PHC/4375/2019 against the Defendant before this Honourable Court and that after the hearing of the suit and the evaluation of the evidence given by the Claimant's sole witness one Mr. Beinbo Briggs, the Managing Director of the Claimant on the 2/3/2022. That the Honourable Court in its wisdom entered a judgment in favour of the Claimant on the 20<sup>th</sup> of December, 2022. The judgment and Judgment Order of this Honourable Court in PHC/4375/2019 is marked Exhibit A & A1.



That after the Judgment of this Court was made on 20<sup>th</sup> of December, 2022 and till date, the Defendant has not performed the monetary terms of the judgment.

That the Claimant has approached the magistrate court in suit PMC/700/CS/2023 in a garnishee proceeding against the Defendant and that the Chief Magistrate, per V. L. Kobani Buzugbe, Esq., Chief Magistrate grade 1 of Chief Magistrate Court 8 of Port Harcourt magisterial district on the 25<sup>th</sup> of July, 2023 made an Order Nisi against the Defendant. A copy of the Garnishee Order Nisi is marked Exhibit B.

That Exhibit A, the Judgment of this Court made the 20<sup>th</sup> of December, 2022 conspicuously state that the writ of summons in the suit and all other originating court processes were duly served on the Defendant at "Plot 303 Danjuma Drive, Trans-Amadi Industrial Layout, Port Harcourt, Rivers State" on the 30/12/2019, which said address is same and exact address stated in the affidavit of the Defendant/Applicant in support of their present application to set aside the Judgment of this Court.

By the Honourable Court's record, the Writ of Summons, other originating processes including the hearing notices were all served at the Defendant/Applicant address now verified as same address in their affidavit in support of their application to set aside now before this court. Form C27, an affidavit of service deposed to by a Chief Bailiff of Court one Mr. Amachree Apaemi filed on the 13/1/2020 before the Court also showed that the Defendant was duly served on the 30/12/2019 at the same address "Plot 303 Danjuma Drive, Trans-Amadi Industrial Layout, Port Harcourt, Rivers State". Several Hearing Notices were ordered, issued and served on the Defendant but refused or failed to appear in Court.

Despite the failure of the Defendant to appear and defend the suit and with the Court's leave, the Claimant opened her case and called her sole witness one Mr. Benibo Briggs, the Managing Director of the Claimant who testified in chief on the 2/3/2022 and the matter was adjourned to the 7<sup>th</sup> and 14<sup>th</sup> of March, 2022 for continuation of evidence in Chief of CW1.

The Defendant notwithstanding the service of the Writ of Summons, other originating processes and the hearing notices did not appear before the Court either on the 7<sup>th</sup> of March, 2022 and that on the 14<sup>th</sup> of March, 2022, the Honourable Court foreclosed the Defendant from cross examining the Claimant's witness as the Defendant also refused



to appear before the Court consequent of which the Claimant closed her case and the matter was adjourned to the 24/5/2022 for Defence. On the 24/5/2022 the Defendant also failed to appear before the Court without any reason and that by an Order of the Honourable Court the Defendant/Applicant was foreclosed from opening her defence and the matter adjourned for adoption of final written addresses.

On the 26/10/2022 the Defendant/Applicant also failed to appear before the Court and with the leave of Court, the Claimant adopted her final address and on the 20/12/2022 the Honourable Court consequently considered the evidence of the Claimant and entered judgment in favour of the Claimant as contained in Exhibits A and A1. The processes in PHC/4375/2019 were all served on the Defendant and at her address and that she is aware of the pendency of the case before the Court but instead decided not to appear or defend the case as Form C27 which is the affidavit of service in PHC/4375/2019 endorsed by the Defendant's staff are before the Court.

That an application for stay is not granted as a matter of course or routine but as a matter of law and facts and that it is required that the Applicant show or disclose a special or exceptional circumstances. The Defendant did not intend to defend the case as she failed to appear during the hearing of the case despite service of hearing notices on her, and the balance of convenience is in favour of refusing the application of the Defendant/Applicant in its entirety.

Learned Counsel to the Claimant formulated two (2) issues for determination viz:

- (1) *"Whether by the Supreme Court decision in IDAM UGWU & ORS Vs. NWAJI ABA & ORS (1961) NLR 438, the Defendant by her affidavit in support of her application has proved the existence of special circumstance, reason(s) required by law preventing her from appearing and defending the principal suit PHC/4375/2019 despite services of the Writ of Summons, other Originating processes and several hearing notices at her address at "Plot 303 Danjuma Drive, Trans-Amadi Industrial Layout, Port Harcourt, Rivers State."*



- (2) *“Whether reliefs 3 and 4 of the Defendant/Applicant’s motion are not distinct reliefs and whether this court can consider reliefs 3 and 4 of the Defendant/Applicant’s where it resolves reliefs 1 and 2 against the Defendant/Applicant?”*

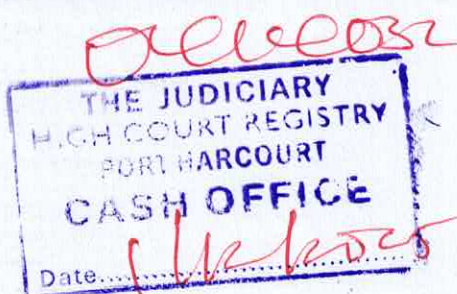
Learned Counsel answered issue No. 1 in the negative and submitted that it is a settled law that a decision of a Court of law, no matter how incorrectly arrived at, subsists until set aside by a competent court. see **NWANGWU Vs. OFOEGBU (2003) 7 NWLR (Pt. 820) 496.**

In that instant case, amidst the grounds of the Defendant/Applicant’s motion is that she was not aware of the Originating Processes/other processes in PHC/4375/2019 nor the proceedings leading to the Judgment delivered on the 20/12/2022 by the Court, that it is in other words that the Defendant was not served with the Writ of Summons, other originating processes and including the Hearing Notices in the Suit PHC/4375/2019. The Defendant therefore is not alleging any issue of fraud or lack of jurisdiction.

The Writ of Summons, other originating processes and including the Hearing Notices in the principal Suit PHC/4375/2019 were all served on the Defendant at her known and verified address at “Plot 303 Danjuma Drive, Trans-Amadi Industrial Layout, Port Harcourt, Rivers State” and the several affidavits of service duly sworn to by the Chief Bailiffs of this Honourable Court as are gleaned from the record were appropriately filed before this Court in this suit. The dates of receipts are also clearly written on the return copies of the processes attached to the Affidavits of service. The proof of service is unmistakable in content and in the identities of the addresses. See **GBAGI Vs. OKPOKO (2014) (Supra).**

Counsel submitted that where a party had a notice of the date of hearing which is the principle of Audi alteram partem arising from the rule of natural justice, he cannot turn around to complain of denial of fair hearing right.

Counsel submitted that mere submission of the Defendant/Applicant without more does not take the place of proof of services deemed by this Honourable Court on record to have been effectively and properly



done and the Court is urged to so hold and refuse the application of the Defendant and dismiss same.

On issue No. 2, Counsel answered issue No. 2 in the negative and submitted that the reliefs 1 and 2 of the Defendant's Application are distinct from reliefs 3 and 4 of the said application and are to be considered separately by the Honourable Court. Counsel further submitted that it will amount to academic exercise for this Court to consider the Reliefs 3 and 4 where reliefs 1 and 2 are resolved against the Defendant/Applicant.

The Defendant/Applicant had by paragraphs v(a) (b), vi(a-c), vii to x raised issues of misrepresentation of facts on issues of proper parties before the Court in respect to liabilities and cause of action and that principal relief of the Claimant is of a declaratory nature. The Claimant in response referred the Court to the content of Exhibit 7 before the Court. Exhibit 7 is a letter written by the Defendant MEDITERRANEAN SHIPPING COMPANY NIGERIA LIMITED to the office of Director of National Security Adviser requesting that the wrong name NEW PAL NIGERIA LTD be removed and replaced with the Claimant's name. It therefore will amount to speaking from two sides of the mouth for the Defendant to allege in another breath that it owes the Claimant no contractual relationship or that it is different from her parent company MEDITERRANEAN SHIPPING COMPANY SA.

Counsel finally urged the Court to refuse the application of the Defendant/Applicant as being unmeritorious, unfounded and baseless as it is only calculated to embarrass the Claimant/Respondent and to deny her from reaping the fruit of her Judgment in PHC/4375/2019.

The Defendant/Applicant filed its Further and Better Affidavit and Reply on points of law on 11/10/2023 and virtually repeats the earlier facts and reargued its application earlier canvassed.

Counsel urged the Court to discountenance the arguments of the Claimant/Respondent and grant the reliefs sought by the Defendant/Applicant herein.



I have perused the application of the Defendant/Applicant, the supporting Affidavit and the submissions of the learned Counsel as well as the Response of the Claimant/Respondent, the Counter-Affidavit, submissions of learned Counsel as highlighted above in this Ruling.

Service of originating processes, whether personal or by substituted means on party in a suit before a court is fundamental in invoking the jurisdiction of the trial court. It has been settled that the purpose of service is to bring to the notice of the Defendant in the case, the knowledge and existence of a pending suit against him. And for him to prepare and defend the action adequately. Where service is not effected, it goes to the root of the matter. The Supreme Court in **EKE Vs. OGBONDA, (2007) ALL FWLR (Pt. 351) 1456 at 1482**, held that failure to serve originating processes on the Defendant is a fundamental vice and the person affected by the Order but not served with the process is entitled *ex debito Justitiae* to have the order set aside as a nullity.

This position however does not apply in a case where the Defendant was shown to have been properly and duly served with the Writ of Summons, other originating processes and including the Hearing Notices at her known and verified address.

In the instant case, there is evidence that the Defendant/Applicant was duly served with the Writ of Summons, other originating processes and including the Hearing Notices at her known and verified address at "Plot 303 Danjuma Drive, Trans-Amadi Industrial Layout, Port Harcourt, Rivers State". See the record of the Court in the principal suit PHC/4375/2019 of the 19/7/2021 and 30/11/2021.

The record of Court is supreme on itself and cannot be contradicted by the submission or argument of Counsel and/or a party notwithstanding how beautifully constructed by Counsel and/or a party. See **GBAGI Vs. OKPOKO (2014) 4 NWLR (Pt. 1396) at 136**.

The Defendant/Applicant in her affidavit filed in support of her Application before this Court clearly stated her address to be "Plot 303 Danjuma Drive, Trans-Amadi Industrial Layout, Port Harcourt, Rivers State" which is the exact address which is in the record of this Court the same address where the Writ of Summons, other originating



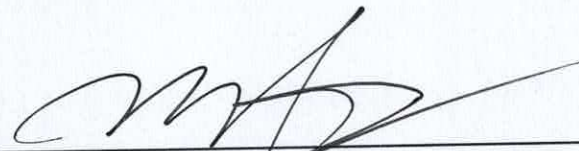
processes and including the Hearing Notices were served on the Defendant. There is no paragraph in the affidavit of the Defendant stating that the said address is wrong instead the Defendant simply argued that "the Defendant/Applicant was neither aware of the Originating Processes/Other Processes in the matter herein nor the proceedings leading to the Judgment of the Honourable Court delivered on the 20<sup>th</sup> day of December, 2022 and that Hearing Notices for the various proceedings spanning a period of 3 years were not duly served on the Defendant/Applicant herein". It is my humble view that such an assertion is incorrect and unsustainable.

The Defendant by reliefs 1 and 2 seeks for the extension of time to apply for leave to set aside the Judgment of the Court made on the 20/12/2022 and an order for leave to apply for an order setting aside the Judgment of the Court. In the case of **N. A. WILLIAMS & ORS Vs. HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) SC. 42**, the Court held that where an application is brought seeking for an extension of time to seek for leave to apply to set aside a judgment, the leave to set aside a Judgment and for an order seeking to set aside a judgment of a Court, the principles upon which Court exercises its discretion in respect of these reliefs are distinct as the reliefs are separate. Thus the application of the Applicant has failed to establish good reasons to grant same as prayed distinctly and separately.

In the main therefore, I find that the Application of the Defendant/Applicant lacks merit and it is accordingly dismissed in its entirety for lacking in merit.

Cost of N200,000.00 is awarded against the Defendant/Applicant in favour of the Claimant/Respondent.

I so Order.



HON. JUSTICE G. O. OLLOR  
(JUDGE)  
13/11/2025

THE JUDICIARY  
HIGH COURT REGISTRY  
PORT HARCOURT  
CASH OFFICE  
Date: 11/12/2025

CERTIFIED TRUE COPY  
SIGN: [Signature]  
07 DEC 2025  
IGWE JOHN PROMISE (ACA)  
ASST CHIEF REGISTRAR

Checked by me  
Faber  
11/12/2025

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