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IN THE COURT OF APPEAL OF NIGERIA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

APPEAL NO CA/ABJ/CV/66/2026  
SUIT NO: FCT/HC/CV/3139/2024

BETWEEN

SENATOR TOKUNBO AFIKUYOMI

APPELLANT

AND

PRINCE SAMSON A. ATAIYERO

1ST RESPONDENT

THE DEPUTY SHERIFF, FCT HIGH  
COURT.

2ND RESPONDENT

2ND RESPONDENT'S BRIEF OF ARGUMENT

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**2ND RESPONDENT'S BRIEF OF ARGUMENT**

**1.0 INTRODUCTION**

1.1 This is an Appeal against the decision of the High Court of the Federal Capital Territory hereinafter referred to as (the Lower court), presided over by Hon Justice Christopher O. Oba, who on the 16th day of October, 2025 dismissed an application brought by the Appellant by a Motion on Notice in Suit No. FCT/HC/CV/3139/2024; seeking to set aside a duly carried out enforcement/ execution of judgment of the lower court on the Resident of the judgement debtor (Appellant) at No 33 Lake

Chad Crescent, Maitama Abuja, by the 2nd Respondent upon an application of 1st Respondent as Judgment Creditor, to the court.

1.2 The lower court refused the application to set aside the valid execution levied on the judgment Debtor (Appellant)'s residence and dismissed the said Application for lacking in merit. The Appellant who was dissatisfied with the ruling of the lower court, filed a notice of appeal dated 21st October 2025 against the whole decision of the lower court and formulated seven grounds of appeal and sought for two reliefs, namely: an order allowing his appeal and an order to set aside the ruling of the lower court delivered on the 16th of October 2025. The persons directly affected by this appeal are: 1. Prince Samson A Ataiyero (1st Respondent) and 2. The Deputy Sheriff, High Court of the FCT (2nd Respondent).

The Appellant transmitted the Records of Appeal and his subsequent Appellant's Brief of Argument, ventilating the real issues in contention between the parties.

## **2.0. BRIEF STATEMENT OF FACTS**

2.1 This is a matter arising from a dispute between a lessor and a Lessee in respect of a leased property at No. 33 Lake Chad Crescent, Maitama, Abuja on a lease of five years agreement that expired on 31st August 2023. The lessee refused to renew the lease agreement after expiration and refused to surrender peaceful vacant possession.

2.2 The lessor (1st Respondent), applied to the FCT High Court, Uwais Dispute Resolution Center, sitting at Gudu, in obedience to a clause in the lease agreement that mandated parties to result to an Alternative Dispute Resolution (Arbitration Tribunal) for settlement, in the event of a dispute arising from the lease agreement.

2.3 At the Arbitration Tribunal, the claimant (1st Respondent) sought for a peaceful delivery of vacant possession of his premises, payment of mesne profit, payment of cost of representation and others.

2.4 The Arbitration Tribunal gave its award on the 21st of June 2024 for the Lessee (Appellant) to surrender vacant possession, pay the arrears of rent and the cost of representation of the claimant (1st Respondent) on or before the 8th of July 2024.

2.5 The Lessee, judgment Debtor (Appellant) did not honor the Award of the Arbitration Tribunal, instead, he applied to a High court in the FCT alleging compromise of the Arbitration Tribunal and pray the court to set aside the Arbitration award. The Lessor, judgment creditor (1st Respondent) filed a counter Affidavit and other processes through his counsel, challenging the Application of the judgment debtor (Appellant) to set aside the Arbitration award.

2.6 The parties decided to settle before the ruling of the high court of the FCT. The Appellant drafted the memorandum of settlement, signed by all the parties just to embrace peace. It was filed at the lower court via a Motion No M/11024/24. The memorandum of settlement was adopted as the parties' consent judgment which was delivered on 18th November 2024 by Hon Justice Christopher O. Oba. The terms of the consent judgment were also not complied with by the judgment debtor (Appellant). He refused to either settle the judgment sum or surrender peaceful vacant possession to the judgment creditor (1st Respondent) even after the due date and a formal demand for payment of same.

2.7 The judgment Creditor (1st Respondent)'s counsel wrote an application dated 3rd March 2025 to the Chief Registrar of the High Court of the FCT (principal) of

the 2nd Respondent, seeking for enforcement/Execution of the judgment in Suit No. CV/3139/24 between the Appellant and the 1st Respondent. The application was duly approved after diligent confirmation of the court processes and non-compliance with the terms of the consent judgment.

2.8 The Deputy Sheriff (2nd Respondent) levied execution on the 7th of March 2025; through a valid writ of attachment dated the 6th of March 2025. This singular act brought 2nd Respondent into this case as a party.

2.9 The judgment Debtor (Appellant) filed a Motion No M/3938/25 dated the 18th of March 2025 before the lower court challenging the execution done by the 2nd Respondent, alleging that the execution was premature, that clause C of the consent judgement availed him an automatic extension of his tenancy to 31st July 2025, and prayed the lower court to set aside the execution. The 2nd Respondent and the 1st Respondent filed counter Affidavits respectively and challenged the judgment debtor (Appellant)'s application to set aside the execution.

2.10. The motion was argued by all the parties, and the lower court gave a well-considered ruling, dismissing the application of the judgment debtor (Appellant) for lacking in merit. The said ruling of the lower court on the application to set aside the execution is on pages 588-600 of the Record of Appeal. The judgment debtor (Appellant) was again aggrieved with the ruling of the lower court and brought this appeal to this honorable court to challenge the said ruling.

### **3.0. ISSUES FOR DETERMINATION:**

3.1 The 2nd Respondent formulates three issues for Determination in this appeal.

#### **ISSUE ONE:**

3.2 Whether, having regard to the clear and unambiguous terms of the consent judgement, particularly clauses B and C thereof, the Appellant was entitled to

remain in possession of the judgment creditor (1st Respondent)'s premises up to 31st July 2025.

**ISSUE TWO:**

3.3 Whether the execution levied on the 7th March 2025 pursuant to the duly issued writ of attachment for recovery of possession and enforcement of the monetary judgement was premature, unlawful, or otherwise liable to be set aside in the absence of subsisting order staying, suspending, or restraining execution.

**ISSUE THREE:**

3.4 Whether the Appellant's constitutional right to fair hearing was violated by the 2nd Respondent, as argued on ground three of the Appellant's Brief .

3.5 These issues shall be argued seriatim in this Brief of 2nd Respondent.

**4.0 LEGAL ARGUMENT ON THE ISSUES**

**4.1 Legal Argument on issue one.**

4.1.1 Whether having regard to the clear and unambiguous terms of the consent judgment, particularly clauses B and C thereof, the Appellant was entitled to remain in possession of the judgment creditor (1st Respondent)'s premises up to 31st July 2025.

4.1.2 The Judgment Debtor /Appellant could not have remained in possession without first establishing the occurrence of the unavoidable, cogent and compelling circumstances which constituted the condition precedent to the extension contemplated by clause C.

4.1.3. it is well established in the Supreme Court decision in *Race Auto Supply Company Ltd & Ors V Alhaja Faosat Akib* (2006) 12 NWLR (pt 997) 333, that, a party who has freely agreed to terms which are subsequently entered as judgment cannot ordinarily treat the judgment as though it were merely an agreement capable of unilateral repudiation.

4.1.4 On this my Lords, we seek to reproduce the clauses a - f of the consent judgment delivered by the lower court. This is contained in pages 583 to 584 of the record of appeal.

4.1.5 Clause A: That notwithstanding Arbitral Award entered between parties on 21st June 2024, following a plea for extension of the tenancy by the Applicant, parties resolved to renew the tenancy relationship between them for yet a period of one (1) year and six (6) months, beginning from the period of the expiration of the last lease; said extension which commenced from 1st September 2023 and shall expire on 29th February 2025.

4.1.6 Clause B: That the Applicant shall deliver vacant possession of the Respondent's property, a three (3) Bedroom Duplex with two (2) Bedroom Bungalow Guest Chalet; two (2) Room Boys Quarter (BQ); serviced with Air Conditioners and Swimming Pool and all its appurtenance, located at No.33 Lake Chad Crescent, Maitama, Abuja on/before 28th February 2025.

4.1.7 Clause C: That where there arose any unavoidable situation or cogent and compelling reason that made it impracticable for the Appellant to vacate the property and deliver vacant possession as per these terms of settlement by 28th

February 2025, a further extension of the tenancy for a period not exceeding five months shall be granted by the Applicant, which will expire on 31st July 2025.

4.1.8 Clause D: That the Applicant shall pay to a bank as may be provided by the Respondent or his counsel, the sum of N12,000,000) (Twelve million Naira only) representing the current rent of the property for a period of one (1) year and being arrears of rent, on before 30th November 2024. Whilst the balance of N6,000,000.00 (six million Naira) will be paid on or before the 31st of January 2025.

4.1.9 Clause E: That in case of any further extension as provided for by Clause C above, the rent will be prorated based on the subsisting tenancy and the monies paid.

4.1.10 Clause F: Notwithstanding the above payment proposition, the Appellant reserves the Rights to pay the whole payment once and for all.

4.1.11 By the community reading of all the clauses A to F in the judgment, the parties meant to be bound by all of them, and no one was to be treated in isolation.

4.1.12 See the case of Chief S.O Agbareh & Anor V Dr. Anthony Mimra & Ors (2008)2 NWLR (pt. 1071)378 at 420. The Supreme Court stated that the terms of consent judgement must be interpreted harmoniously as a whole, with reference to the underlying agreement, and effect must be given to every word and clause.

4.1.13 Appellant's argument, urging this noble court to treat clause C, of the consent judgment as an automatic extension of the tenancy period to 31st July, 2025, when the Appellant is in disobedience to Clause B (non-delivery of vacant possession on the 28th February, 2025, also failed to establish or prove the condition precedent

to clause C, (no evidence of an unavoidable, cogent, compelling situation that made it impracticable for the Appellant to comply with clause B.) is a misconception of the judgment. Appellant also defaulted clause D. (No payment of judgement sum, both the first part payment of N12,000,000 which was to be paid on the 30th of November 2024 and the balance sum of N6,000,000 that ought to be paid on 31st of January 2025 despite a letter of demand.

4.1.14 A letter of Demand/Reminder dated 27th December 2024 written by the 1st Respondent Counsel, N.I. Harrison Esq, was served on the Appellant on the 28th of December 2024 intimating the Appellant of the first payment of the arrears of rent that was due in line with the consent judgment, was never replied to neither was payment made by the Appellant. This letter of demand is on page 496 of the record of Appeal.

4.1.15 The disobedience of the Appellant to the judgment of the court is a fatal omission, and an aberration. We therefore state, my Lords, that, Appellant cannot simply disregard a court order and subsequently seek the court's discretionary protection while remaining in disobedience.

4.1.16 The Appellant cannot cherry pick from the clauses contained in the judgment of a court and further instruct this honorable court to modify the judgment. On this, we refer my Lords to the Latin maxim of 'Expressio Unius est exclusio alterius. An express mention of one thing implies the exclusion of another. We also refer my Lords to the case of:

Race Auto Supply Co. Ltd v Alhaja Faosat Akib (2006) 12 NWLR (pt 997) 333 pg. 466 para e-g supra.

.... High court wrongly entertained the suit to modify the operational timeline of the consent judgment. Court of Appeal set the high court's ruling aside and reinstated the Respondent's immediate right to possession. The Supreme Court affirmed the Court of Appeal's decision, establishing that a court cannot interpret, or modify a clear consent judgement like a contract or deed, nor can a court of coordinate jurisdiction review or rewrite an existing judgment.

We also refer my Lords to the case of *Fasesin V Oyerinde* (1997) 11 NWLR (pt. 530) page 552 at page 561, paras A-C per Belgore JSC (as he then was) .....said, "Where the Applicant (claimant) has no equity on his side and have behaved recklessly, the court will be on the side of the truth and the law in support of the case. Whoever comes to equity must have clean hands and thus do equity."

4.1.17 We humbly urge my Lords to follow the side of the truth in this case.

#### **4.2. Legal Argument on ISSUE TWO:**

4.2.1 Whether, the execution levied on 7th March, 2025 pursuant to the duly issued writ for recovery of possession and enforcement of the judgment was premature, unlawful, or otherwise liable to be set aside in the absence of any subsisting order staying, suspending, or restraining execution.

4.2.2 The consent judgment imposed the obligation on the Appellant to vacate the premises by 28th February 2025, (Clause B) subject only to the conditional extension in clause C.

4.2.3 The judgment debtor Appellant failed to establish the condition precedent in clause C, failed to comply with Clause B and failed to comply with clause D and

the judgment creditor (1st Respondent) thereafter, obtained the process of enforcement with an application dated 3rd March, 2025 to the principal of 2nd Respondent. On the 6th of March, 2025, A valid writ of attachment was issued by the court upon the approval of the application of the 1st Respondent.

4.2 4. The 2nd Respondent levied execution on the 7th of March 2025 on the judgment debtor (Appellant) who has defaulted in both vacation of premises on the 28th of February 2025 and payment of judgement sum on the 30th November 2024 and 31st of January 2025; all the above defaults predated the date of execution levied by the 2nd Respondent.

4.2.5 The execution done by 2nd Respondent, was in compliance with the High Court of the Federal Capital Territory's Compendium of Practice Directions 2024/2025. Enforcement Department's Practice Direction page 23, particularly page 24 paragraphs 1 and 2.

4.2.6 Direction paragraphs 1: The Execution Department shall not initiate or engage in any undue communication with the judgment creditors, judgment debtors or their counsel for monetary benefit.

4.2.7 Direction paragraph 2: Upon receipt of a writ of execution duly signed by a High Court/District Court Judge, the Execution Department shall promptly carry out the execution unless same is recalled or formally stayed by a judge or an Appellate Court.

4.2.8 There was none of the conditions stated in direction paragraph 2 above existed to the consent judgment before the execution of 7th March, 2025 and after it , to

warrant a denial of fair hearing of the judgment debtor /Appellant. We therefore submit that the execution carried out by the 2nd Respondent is valid, legal, matured with adequate fair hearing accorded to the Appellant.

4.2.9. We also refer my Lords to Section 20 sub-Section 1 to 3 of the Sherriff and Civil Process Act, cap 56 LFN 2004. We humbly reproduce the provision of the said Sheriff and Civil Process Act, herein.

4.2.10 Section 20(1) Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times in the manner thereby directed, by execution against the goods and chattels and the immovable property of the judgment debtor in accordance with the provisions of this Act.

4.2.11 Section 20 (2). The Registrar on the application of the judgment creditor shall cause to be issued a writ of attachment and sale whereby the Sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the court, the money payable under the judgment and the costs of the execution.

4.1.12 Section 20(3). The precise time of the making of an application to the Registrar for the issue of a writ shall be entered by him in the book prescribed for the purpose and on the writ, and when more than one such writ is issued, they shall be executed in the order of the times so entered.

4.2.14 My Lords, from the above, we humbly submit that the execution carried out on 7th March, 2025 by the 2nd Respondent was matured and legal in the absence

of any legal inhibition before the date of execution. We urge the court to resolve issue two in favour of the 2nd Respondent.

#### **4.3. Legal Argument on Issue Three:**

4.3.1 Whether, the Appellant's Rights to fair hearing was violated by the 2nd Respondent as argued on ground three of the Appellant's Brief.

4.3.2 Can a mere executing officer who neither adjudicated upon the Appellant's Rights nor varied the consent judgment, but merely executed the duly authorized process of the High Court in accordance with the law, violates the Rights to fair hearing of the Appellant just because the date of execution of the judgment was not communicated ahead to the judgment debtor(Appellant)?

4.3.3 The Appellant argued that non communication of the date of enforcement of the judgment ahead of 7th March, 2026 is a violation of His right to fair hearing by the 2nd Respondent. The Appellant cited the case of *Danladi v Dangiri & Ors* (2014) LPELR-24020(SC). The fact of the case of *Danladi v Dangiri* cited by the Appellant's counsel does not relate to the fact in issue in this case. We agreed it is a case on fair hearing but there is nowhere in the Practice Direction of FCT High Court, Sheriff and Civil Process Act or any judicial authority that mandates the deputy sheriff to communicate to judgment Debtor the date of execution ahead of time.

4.3.4 The Deputy Sheriff is not under a legal obligation to give the judgment debtor advance communication contrary to the FCT High Court's Practice Direction. *Supra*.

The Appellant cannot convert compliance with the court's enforcement procedure into a violation of his Constitutional rights of fair hearing.

4.3.5 The Deputy Sheriff did not participate in the adjudication of the case in court and did not determine the judgment in court. The Deputy Sheriff was not a party to the consent judgement. The Deputy Sheriff merely executed the process authorized by the court in line with the provision of its statutory duties.

4.3.6. The Appellant's complaint on this ground is unfounded . He was not denied an opportunity to approach the court. He had judicial opportunity. He was in court or represented in court, he had copy of the judgment but chose to disobey it. The Appellant ought to know that disobedience to the nature of judgement he had, execution is eminent. Appellant cannot eat his cake and still have it. Appellant attempting to characterize the execution itself as a denial of fair hearing should be refused.

4 3. 7 My Lords, On the above, I refer to Section 20 Sub-Section 1 to 3 of the Sheriff and Civil Process Act earlier cited and Section 17 of the same Sheriff and Civil Process Act, cap 56 LFN 2004, reproduced below. On the protection of Sheriff:

Section 17. Neither the Sheriff nor any deputy sheriff shall be liable to be sued for any act or omission of any police officer or other person in the execution of any process, which shall have been done or may have occurred either through disobedience or neglect of the orders or instructions given by the sheriff or a deputy sheriff.

## **5.0 CONCLUSION.**

5.1 In the absence of any evidence to substantiate Appellant's argument in this appeal, there is the presumption of regularity of official and judicial acts where there is no evidence to the contrary, things are presumed to have been properly and rightly done.

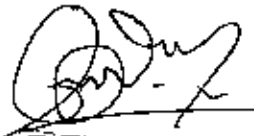
5.2. In addition to the brief of 2nd Respondent in this appeal, it aligns itself with the argument of the 1st Respondent in support of the case of 2nd Respondent in this appeal and therefore urge my Lords to discountenance with the argument of the Appellant and the cases cited, and hold the appeal frivolous, lacking in substance and in merit and dismiss it with cost.

5.3. We are most obliged my Lords.

## **LIST OF AUTHORITIES CITED**

1. Race Auto Supply Co. Ltd V Alhaja Faosat Akib & Ors (2006)12 NWLR (pt997) 333
2. Chief S.O. Agbareh & Anor V Dr. Anthony Mimra & Ors (2008)2 NWLR (pt 1071) 378 at 420.
3. -Fasesin V Oyerinde (1997)11 NWLR (Pt 530) Page 552 at 561,, Paras A-C
4. High Court of The FCT Compendium of Practice Directions 2024/25
5. Sheriff and Civil Process Act Cap 56 LFN 2004

DATED THIS 22<sup>nd</sup> DAY OF SEPTEMBER 2026



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