

IN THE MAGISTRATE COURT OF RIVER STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT
RESUMED ON TUESDAY THE 20TH DAY OF JANUARY, 2026
BEFORE HIS WORSHIP S. S. IBANICHUKA, ESQ. SENIOR MAGISTRATE GD. I
SITTING AT SENIOR MAGISTRATE COURT 6 PORT HARCOURT
SUIT NO: PMC/SCC/418/2025

BETWEEN

DAPPS BROWN

----- **JUDGEMENT CREDITOR/RESPONDENT**

AND

FRANKLIN EBESI

----- **JUDGEMENT DEBTOR/APPLICANT**

RULING

This ruling is on a motion on notice filed by the Applicant dated the 20/11/25 and filed on same day . The motion seeks for an order of this court setting aside the judgement of this Honorable Court delivered on 30/10/25, an order of this honourable court referring the Judgement Creditor/Respondent to the state Criminal Investigation Department (SCID) for investigation with respect to the facts of this case and for such further order (s) as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds of the motion is as stated on the face of the motion paper and the motion is supported by a 27 paragraph affidavit and Exhibits "A" to "E2" , in accordance with the rules of this court the applicants counsel also filed a written address on the same date as the motion. The Respondent in opposition to the motion filed a 9 paragraph counter affidavit and a reply on points of law dated and filed 2/12/25, the counter affidavit also has a written address filed on same day, accordingly the applicant reacted by filing a further affidavit on 4/12/25.

All the processes were adopted before this court by counsels on 10/12/25 with the applicants counsel asking the court to order as prayed on the motion paper and the Respondents counsel opposing the grant of the application.

The facts of this application are that this court entered judgement in favour of the claimant in the substantive suit now the Judgement Creditor /Respondent on 30/10/25, there was no representation for the then defendant now judgement debtor/Applicant until judgment of this court was delivered. By this motion on notice the applicant seeks an order of court setting aside the said judgement of this court on grounds of fraud, that the judgement creditor had earlier obtained judgement in another court with respect to the same subject matter. That the judgement creditor did institute a garnishee proceeding against the judgement debtor and the judgement debtor following a garnishee order absolute did fully pay the judgement sum to the judgement creditor, hence this application, the judgement creditor denies these averments of the judgement debtor on grounds that the judgement debtor took two different loans and the judgement obtained in the other court is with respect to a different loan from the loan transaction in this suit, that as fact the defendant/judgement debtor took three different friendly loans from the claimant judgement creditor/Respondent.

From the lone issue each raised for determination by both counsels in their respective addresses, this court shall adopt the same and raise a lone issue as well only differently couched to wit :

“Whether having regard to the entire facts and circumstances of this case, the applicant is entitled to the relief sought in this application?”

The summary of the grounds of the applicants application is as stated earlier in this ruling.

It is argued for the applicant that the judgement of this court should be set aside for being obtained by fraud citing previous judgment already delivered in suit NO:PMC/SCC/198/2025 before my Learned Brother Chief Magistrate G C Amadi.Esq and also executed by way of garnishee order nisi.

There are a few grounds upon which a judgement of court can be set aside and the ground relied upon by the applicant which issues have been joined is fraud, this ruling shall then focus on whether the judgement of this court delivered on 30/10/25 was obtained by fraud of the claimant and as such should be set aside as the law is that a judgement obtained by fraud can be impeached by actions and set aside. See the case of A-G Federation v Ijewere(1995) 8 NWLR (Pt 415) 618.

Before going fully into this ruling, it is important to consider one of the grounds raised by the applicants counsel in his application which is that the process of this court was never served on the defendant, this averment was also made in paragraph 20 of the affidavit in support of this application.

Case laws have long established the position of the law that failure to serve processes where service is required is failure which goes to the root of the jurisdiction of the court and any proceedings in such a case shall be a nullity. See; **Teno Eng. Ltd v Adisa (2005) 22 NSCQR 858 Ratio 2 & 3.**

Affidavit of service of the bailiff of court is *prima facia* proof of service and the law is now settled that the only way to challenge, Controvert, contest or rebut an affidavit of service is by filing a counter affidavit to that effect and failure to so do is fatal. See: **Uko v Ekpenyong (2006) 5NWLR (Pt 972) 70 @ 98. paras C-G.**

In this case there is bailiffs affidavit of service filed on 28/08/25 for proof of service of the originating processes and another affidavit of service deposed to by the bailiff of this court filed on 10/10/25 as proof of service of hearing notices in this suit, all in the courts file.

In the circumstance if the applicant is not satisfied with the said affidavit and wishes to challenge same the law is that it has to be by way of a counter affidavit and not by a motion on notice, the way to challenge an affidavit is by filling a counter affidavit.

There is no counter affidavit challenging the bailiffs affidavit of service before me and I have no difficulty in holding that the *prema facia* proof of service being the bailiffs affidavit of service has from the above judicial authorities metamorphosed into factual,actual and the only proof of service before me.

This score is resolved in against the applicant.

The applicant has insisted in paragraph 4 of his further affidavit that he took only one loan from the respondent on 5/12/2020 in the sum of N824,000.00 (Eight Hundred and Twenty Four Thousand Naira). the Respondent in reaction to the allegation of fraud against him on grounds that the respondent has previously obtained and executed judgement with respect to the particular subject matter in this suit is that the loan for which judgement was initially obtained and partly executed before my learned brother is different from the loan subject matter of the suit in which judgement has been delivered before this court. I have gone through the originating processes and the judgement of

this court in the instant suit and have also considered the judgement of my learned brother, I find that in this instant suit the principal claim of the claimant for which judgement was entered is in the sum of N824,000.00 (Eight Hundred and Twenty Four Thousand Naira) being and representing the loan sum and capital left unpaid in the friendly loan transaction of 03/01/21. While on the face of the judgement delivered by my learned brother the loan sum therein and subject matter of that suit is in the sum of N894,000.00 (Eight Hundred and Ninety Four Thousand Naira) for a friendly loan transaction between the parties of the 31/12/19.

It has been argued for the applicant that there was only one loan transaction between the parties, however, the records of this court reveals two separate loan transaction, two different amounts, entered into on two different dates. The documents speak for themselves. See Rauf Aregbesola & 2ors v Olagunsoye Oyinlola & 2 Ors (2011) 9 NWLR Pt 1253 pg 582.

In the circumstance I agree with the judgement Creditor/Respondent that there is more than one loan agreement between the parties.

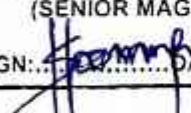
The court requires a strong case to be established before it will allow a judgement to be set aside on ground that it is obtained by fraud , see the case of Olufunmise v Falana (1990) 3 NWLR (Pt 136) 1.

The grounds given in the applicants further affidavit as particulars of fraud one of which is that the judgement creditor obtained the judgement by fraud because he used different lawyers at different times are not tenable to proof fraud.

In the circumstance, this application is lacking in merit and same is accordingly dismissed.

I make no order as to cost.

Dated this 20th day of January , 2026

SAMUEL S. IBANICHUKA, ESQ.
(SENIOR MAGISTRATE)
SIGN:  DATE: 20/1/26

Signed:
S.S.IBANICHUKA ,ESQ.
20/01/2026.

