

**IN THE HIGH COURT OF JUSTICE**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP,**  
**HON.JUSTICE P.A. AKHIHIERO,**  
**ON THURSDAY THE**  
**5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**BETWEEN:**

**SUIT NO: B/815/2021**

**PHARM. EMWINOMA AGBONDINMWIN**

**OSADOLOR-----CLAIMANT/JUDGMENT**

**CREDITOR/RESPONDENT**

**AND**

**MR. ARUTODE KELVIN AJISE -----DEFENDANT/JUDGMENT**

**DEBTOR/APPLICANT**

**RULING**

This is a Ruling on a Motion on Notice, brought pursuant to ***Order 20 Rules 13 Order 30 Rule 5 (2) of the Edo State High Court (Civil Procedure) Rules 2018.***

In this application, the Defendant/Judgment Debtor/Applicant is praying this Honourable Court for the following orders:

- a) An Order granting an extension of time to the Defendant/Judgment Debtor/Applicant to apply to set aside the Judgment of the Honourable Court delivered in Suit No: B/815/2021 on the 7th day of March, 2023;***
- b) An Order setting aside the Judgment of this Honourable Court delivered in Suit No. B/815/2021 on the 7th day of March, 2023;***

- c) An Order setting aside the warrant for possession issued in this suit on the ground that it was issued without jurisdiction;*
- d) An Order setting aside the service of the writ of summons in the suit;*
- e) An Order granting an extension of time to file the Defendant Joint Statement of Defense as having been properly filed and served, the appropriate filing fees having been paid.*

***AND FOR such further order or other orders as this Honourable Court may deem fit to make in the circumstances.***

The Application is supported by a 14 paragraphs Affidavit and a written address of the learned counsel for the Defendant/Judgment Debtor/Applicant.

Upon receipt of the Application, the Claimant/Judgment Creditor/Respondent filed a Counter-Affidavit of 50 paragraphs and the written address of his counsel.

In his supporting affidavit, the Defendant/Judgment Debtor/Applicant narrated how the Claimant/Judgment Creditor/Respondent filed a suit for declaration of title to a piece of land situate at No. 50 Gappiona Avenue, G.R.A Benin City.

He alleged that the order of substituted service obtained from the Court was to effect service of the originating processes in the suit on the Defendant by pasting same on the land where there are buildings and commercial shops occupied by the owners and tenants.

However, he alleged that the processes were pasted on an enclosed, isolated fenced and bushy piece of land without a gate belonging to a third party but within the land in dispute. He maintained that the processes were concealed from the Defendant who is domiciled in the United Kingdom to enable the Claimant/Judgment Creditor/Respondent to obtain judgment in his absence.

He is urging the Court to set aside the judgment.

In opposition to this application, the Claimant/Judgment Creditor/Respondent filed a fifty-paragraph Counter Affidavit deposed to by the Claimant/Judgment Creditor/Respondent himself.

In his Counter-Affidavit, the Respondent asserted that he is the rightful owner of the parcel of land in dispute situate and lying at Princess Ighiwiyisi Eweka's Estate, Ogba Road, Benin City, now No. 50, Gapiona Street, G.R.A, Benin City.

He narrated how he acquired his title to the land and was in undisturbed possession until the Defendant/Judgment Debtor/Applicant forcefully trespassed on the land sometime in April, 2019.

He narrated the steps he took before he instituted the suit in Court where he obtained judgment against the Defendant/Judgment Debtor/Applicant who failed, refused and neglected to show up to defend the case against him.

He maintained that the Writ of Summons along with the originating processes were properly served on the Defendant by substituted service as directed by the Court, by pasting same on the building situate at Princess Ighiwiyisi Eweka's Estate, Ogba Road, Benin City, now Gapiona Street, G.R.A., Benin City. He attached a copy of the enrolled order to his Counter-Affidavit as Exhibit "C16".

He maintained that he did not deliberately cause the bailiff of this Honorable Court to serve the Court processes and paste same on an enclosed area in order to conceal same from the Defendant.

He said that the Defendant had prior notice of the suit against him. He referred the Court to Exhibits C6, C7, C8, C9, C10 and C11 to show that he had correspondence with the Defendant before the said suit was eventually filed.

He alleged that the purported Certificate of Occupancy dated 18th January 2022 being paraded by the Defendant was acquired during the pendency of this suit.

He said that he would be seriously prejudiced if this application is granted.

The learned counsel for the two parties filed written addresses along with their affidavits.

In his written address, the learned counsel for the Defendant/Judgment Debtor/Applicant, *M.O. Iguodala Esq.* formulated two issues for determination as follows:

- 1. Whether or not the Applicant has made out a case warranting the setting aside of the judgment delivered in this suit on the 7<sup>th</sup> day of March, 2023; and***
- 2. Whether the warrant of possession issued in this suit on the 13<sup>th</sup> day of May, 2024 was not issued without jurisdiction.***

Thereafter, the learned counsel argued the two issues seriatim.

## **ISSUE 1**

Arguing the first issue, the learned counsel submitted that from the affidavit evidence, the Applicant did not know about the suit or the Judgment delivered on the 7<sup>th</sup> day of March, 2023 until the 19<sup>th</sup> day of April, 2024 when the warrant of possession was executed on the property.

He submitted that the grounds upon which a court can set aside its Judgment delivered in a suit in the absence of a party affected by the Judgment were settled in the case of ***WILLIAMS V. HOPE RISING VOLUNTARY SOCIETY 1982 ANLR (Reprint Edition) 1***. He said that they are as follows:

- 1. Whether the Applicant has good reason for being absent;***
- 2. Whether the Applicant has shown that there was good reason for his delay in bringing the application to set aside the judgment;***
- 3. Whether the Respondent will not be prejudiced or embarrassed if the order of re-hearing was made;***
- 4. Whether the applicant's case is manifestly unsupportable; and***
- 5. Whether the applicant's conduct throughout the proceedings is deserving of sympathetic consideration.***

Learned counsel drew the court's attention to pages 5 – 6 of the report where His Lordship Idigbe, J.S.C (of blessed memory) made the following important pronouncement: -

***“When, however, the application before court is for it to set aside its own Judgment given in the absence of one of the parties before it, in order to give the other party opportunity of being heard different considerations apply. These were fully set out by me in Idam Ugwu and others v. Nwaji Aba and others (1961) All N.L.R 438 {See also Adebayo Doherty V. Ade Doherty (1964) N.M.L.R 144 AT 145} among other things, the court must consider (1) the reasons for the applicants failure to appear at the hearing or trial of the case in which judgment was given in absence, (2) whether there has been undue delay in making the application to set aside the Judgment so as to prejudice the party in whose favour the Judgment subsists (3) Whether the latter party(i.e in whose favour the Judgment subsists) would be prejudiced or embarrassed upon an order for rehearing of the suit being made, so as to render such a course inequitable, and (4) Whether the applicant's case is manifestly unsupportable and I respectfully, agree with the views expressed by my Learned brother, My Lord, Bello S.P.J. (as he then was) in Momoh V. Gulf Insurance Corporation***

*(1975) (I) N.N.L.R. 184 at 186 that in addition to the foregoing factors the court being asked the exercise its discretion to set aside its own Judgment must also be satisfied that the applicants' conduct throughout the proceedings i.e "from the service of the Writ upon him to the date of judgment" has been such as to make his application worthy of a sympathetic consideration."*

He also referred the Court to the judgment of the Supreme Court in the case of *SANUSI V. AYOOLA 1992 9 NWLR (PT 265) 275 AT 294 – 295* where the apex court reiterated the principles governing an application of this nature already highlighted above.

He maintained that every court is imbued with the inherent jurisdiction to set aside its own judgment that is tainted with a fundamental vice that renders the judgment incompetent and invalid and he relied on the decision of the Supreme Court in the case of *EXXON MOBIL CORP V. ARCHIANGA 2018 14 NWLR (PT 1639) 229 AT 247 -248 Paras G – A.*

He also relied on the case of *ADEBIYI V. ADEKANBI 2018 16 NWLR (PT 1645) 242 AT 256 Paras C – E.*

He submitted that applying the foregoing principles, the Applicant has firmly established good grounds for this Honourable Court to set aside its aforesaid judgment.

He applied the principles seriatim to the instant case.

First, he posited that the Applicant had a good and cogent reason for being absent at the trial. He said that the Applicant and his counsel were not served with the court processes in this suit. He referred the court to Paragraphs 4 (vi), 4(vii), 4(viii), 4(ix), 4(x), 6, 7, and 8 of the affidavit in support of the motion which have not been challenged, controverted or contradicted by the Respondent and he relied on the case of *EGBUNA V. EGBUNA 1989 2 NWLR (Pt. 106) 773 at 777.*

Secondly, he submitted that the Applicant has also clearly demonstrated that he has a good reason for not bringing the application earlier in time. He said that the Applicant only got to know of the judgment sought to be set aside on the 19<sup>th</sup> day of April 2024.

Thirdly, he submitted that the Respondent will not be prejudiced or embarrassed if an order of re-hearing is made. He said that the Applicant has a fundamental right guaranteed by *Section 36(I) of the Constitution of the Federal Republic of*

*Nigeria 1999 (as amended)* to be heard by the Court before Judgment touching on his interest in land is delivered. He said that the Respondent deliberately shut out the Applicant by not serving the processes on his property at No. 50 Gappiona Avenue, G.R.A, Benin City as ordered by court. He maintained that the Respondent served the processes on an isolated, enclosed bushy property belonging to a third party who was not made a party to the suit. He referred to the judgment of the Court of Appeal in the case of *AMUDA V. AJOBO 1995 7 NWLR (PT 406) 170 AT 183 , Paras A – B.*

Fourthly, learned counsel posited that from the depositions in paragraphs 4(i), 4(ii), 4(iii), 4(iv), 4(v), 4(vii), 4(viii), and 4(ix) of the Applicant's supporting affidavit, the Applicant is asserting his title to the property in dispute. He said that this claim is backed up by documentary evidence in Exhibit 'AKA2' which he said has also not been challenged or controverted by the Claimant/Respondent. He urged the Court to hold that the Applicant has scaled the fourth hurdle and this application ought to be granted.

Fifthly, he submitted that the Applicant's conduct deserves sympathetic consideration because he had no notice of the proceedings in the instant suit until the 19<sup>th</sup> day of April 2024. He said that even after the Judgment was delivered in this suit on the 7<sup>th</sup> day of March, 2023 the Claimant/Respondent deliberately failed, refused and/or neglected to bring the Judgment to the attention of the Applicant or the tenants in occupation of the property on the land and the persons having interest in the land subject of the judgment in clear breach of the procedure for enforcement of judgments relating to land occupied by persons who were not parties to the suit as firmly enunciated by the Supreme of Court of Nigeria in the case of *ODUOLA & ORS V. NABHAN & OTHERS 1981 NSCC 180 AT 190, 194, 208 – 209.*

He also referred the Court to the case of *A.P.C V. UDUJI 2020 2 NWLR (Pt. 1709) 541 At 571 Para A.*

## **ISSUE NO 2**

Arguing this second issue, learned counsel submitted that the Warrant of Possession issued in the suit was issued without jurisdiction. He maintained that the Applicant was the occupier of the property at No. 50, Gappiona Avenue, G.R.A, Benin City through his tenants operating the commercial shops and two third parties who are interested parties in the land subject of the judgment.

Consequently, he said that there was a compelling need to have issued an Originating Summons pursuant to ***Order 54 Rules 1(1) and (2) of the Edo State High Court (Civil Procedure) Rules 2018***.

He reproduced the provisions of the Rules and cited the case of ***OGUNBIYI V. MUSTAPHA 1996 4 NWLR (PT 442) 337 AT 344 – 345***.

Furthermore, he submitted that it is settled law that all persons in actual occupation of land must be served with the court processes in an action for recovery of possession of land and he relied on the judgment of the apex Court in the case of ***ODUOLA & OTHERS V. NABHAN & OTHERS 1981 N.S.C.C 180 AT 194***.

He reiterated that in the instant proceedings as earlier posited, no process was served on the Applicant, so he had no notice whatsoever of the proceedings in court, which obviously were initiated against him in respect of a property for which two other persons have acquired interest.

In the circumstances, he submitted that both the judgment delivered and the warrant of possession issued without notice to the Applicant ought to be set aside. He relied on the case of ***N.P.A V. SAMA 2020 2 NWLR (Pt. 1708) 271 At 297 Paras A – C***.

Furthermore, counsel contended that assuming but without conceding that the proceedings were properly initiated, he submitted that the Claimant/Respondent having not claimed possession as a specific relief in his claim and the court having not made a specific order for possession, a Warrant of Possession cannot be issued to enforce the judgment of the court.

He submitted that the Warrant of Possession issued in this suit was issued without jurisdiction. He referred to the book –“***Enforcement of judgments***” by ***Afe Babalola, SAN, OFR at Chapter 8, page 153***.

He reproduced the reliefs granted by the Court in the said judgment and submitted that from the reliefs granted, the only means of enforcement open to the Claimant/Respondent is an order of committal of the named Defendant and not a Writ of Possession (or Warrant of Possession). He maintained that possession was neither claimed nor an order for possession made by the Court.

In the light of the foregoing, he urged the Court to resolve Issue 2 in favour of the Applicant.

In his written reply in opposition to this application, the learned counsel for the Claimant/Judgment Creditor/Respondent ***K.O. Owie Esq.*** formulated two issues for determination as follows:

- 1. Whether the service of the court processes on the applicant was valid; and***
- 2. Whether the said judgment and the execution of the said judgment can be set aside***

Thereafter, he argued the two issues seriatim.

Arguing the first issue, learned counsel submitted that on matters relating to service of court processes, the Court is guided by the proof of service or the affidavit of service in the court's file. He said that it does not lie in the mouth of a party to assert that he was not served or properly served.

He maintained that the court must ascertain whether the mode of service ordered by it was substantially complied with. He referred to the case of: ***Societe Generale Bank (Nig) Ltd V Adewunmi (2003) 10 NWLR Part 829 Page 526 at 546-547 Paras H-A*** where the Court held that the purpose of an affidavit of service is to convince the court that the persons on whom the processes are to be served have been duly served. He therefore submitted that in the instant case, the purpose of the affidavit of service is to convince the Court and not the Defendant/Applicant that the processes were duly served.

He submitted that it is not the business of the court to enquire why the applicant did not participate in the proceedings and he relied on the case of: ***OMOBUWA V. OWHOFATSHO (2006) 5 NWLR (PT 972) PG 40 AT 66*** where the Court expounded as follows:

***"No Court has the right to force a party to give evidence. After both parties to a dispute had been duly notified of the hearing date and a party, for no justifiable reason decide to opt out of the proceedings, the case presented by the other party, once it is not discredited in any legal way should be considered on its merit. The intention of the other party why it refused to take part is not the business of the court"***.

He also relied on the following cases: ***NWANKUDU VS. IBETO (2011)2 NWLR (PT 1231) PAGE 209, RATIO 4; NEWSWATCH COMMUNICATIONS LTD VS. ATTA (2006) 12 NWLR (PT 993) PG 144, RT 6 AT PG 150 & RT 11 AT PG 152***

He submitted that it is settled law that when a Claimant leads evidence and the Defendant does not, the onus of proof on the Claimant to establish the facts pleaded would be discharged on minimal proof because the Defendant is deemed to have accepted the pleadings and the evidence led by the Claimant. He relied on the case of: ***ESEIGBE VS AGHOLOR (1993)9 NWLR (PT 316) PG 128.***

Learned counsel submitted that in the instant suit, service was effected as directed by this Honorable Court: ***“by pasting same on the building situate at Princess Ighiwiyisi Eweka's Estate, Ogba Road, Benin City, now Gapiona Street, G.R.A., Benin City”.***

He contended that pasting on a building is one of the recognized methods of substituted service under the Rules. He said that the essence is not the physical structure, but whether the method is reasonably likely to bring the process to the notice of the Defendant and he cited the case of ***Okoye v. Centre Point Merchant Bank Ltd (2008) 15 NWLR (Pt. 1110) 335.*** ***Mark v. Eke (2004) 5 NWLR (Pt. 865) 54.***

He submitted that the term “building” in this context is not limited to a completed, habitable house. He said that it includes any structure that is identifiable on the land in dispute whether completed or under construction provided it can reasonably be associated with the land in dispute. He cited the case of ***Mark v. Eke (2004) 5 NWLR (Pt. 865) 54.***

He maintained that in this case, service was effected on the said land wherein the Defendant trespassed upon, and he cited the following cases: ***Nwabueze v. Obi-Okoye (1988) 10-11 SCNJ 60; Okoye v. Centre Point Merchant Bank Ltd (2008) 15 NWLR (Pt. 1110) 335.***

He posited that in the case of ***UBA Plc v. Achoru (1990) 6 NWLR (Pt. 156) 254,*** the Court of Appeal reaffirmed that substituted service is valid if the process was affixed at the address connected to the defendant, even if the defendant was not personally present there at the time.

He said that the Court held that what is material is whether the place of service is the Defendant's last known address not whether the structure was physically completed or occupied.

Counsel submitted that what is paramount here is that service was effected within the confines of the address ordered by this Honorable Court and most importantly

within the land which was in issue wherein the Defendant trespassed upon, therefore pasting a court process on that structure amounts to valid service.

On Issue two, learned counsel submitted that the Court is not competent to overrule the decision of another court of co-ordinate jurisdiction. He maintained that in the absence of statutory authority, a court has no power to set aside or vary the order of another court of co-ordinate or concurrent jurisdiction. See: *Emodi V Kwentoh (1996) 2 NWLR (Pt. 433) 656, at 681 paras A-B.*

Furthermore, he posited that a court cannot sit on appeal over its own decision or the decision of courts of co-ordinate jurisdiction and he relied on the case of *Ogunsola V Usman (2002) 14 NWLR (Pt. 788) Page 636 CA at 660-661 Paras H-A.*

He submitted that a court is only competent to set aside its own judgment and/or that of a court of co-ordinate jurisdiction if the judgment is a nullity resulting from want of jurisdiction or is affected by debilitating defects that go to the root of the jurisdiction.

He submitted that a ruling and final order remains final and valid until set aside by a higher court and he relied on the case of *Balogun V Adejobi (1995) 2 NWLR (Pt. 376) 131 at 163 Para E.*

He said that the general rule is that a court has no power under any application in an action to alter or vary a judgment or order after it has been uttered or drawn up, except so far as is necessary to correct errors in expressing the intention of the court or under the "slip rule".

He submitted that this judgment and its execution can only be set aside on the following grounds:

- i. That this Honorable Court lacked jurisdiction when it sat during the pendency of this suit;
- ii. That the Applicant was not served with the relevant court processes;
- iii. That the said judgment was obtained by means of fraud; and
- iv. That there was a breach of procedure in the means of commencing the action.

Counsel posited that the Applicant is seeking equity but has refused to do equity, he maintained that the Applicant has also not come to equity with clean hands.

He said that the Applicant in total disobedience to the order of this Honorable Court despite the execution of the said judgment and the sealing of the premises, the Applicant reopened the place after breaking the seal of the Court.

He submitted that if this application is granted by this Honorable Court at this stage of the proceedings, the Claimant/Respondent would be deprived of the fruits of his judgment.

Furthermore, he submitted that the Claimant/Respondent would be seriously prejudiced by the grant of this application considering the pains he went through and sacrifice he made to get justice.

He finally urged the Court to refuse the application.

I have carefully examined the processes filed in this application with reference to the affidavits, counter-affidavit and the written addresses of the learned counsel for the parties.

I am of the view that the sole issue for determination in this application is *whether the Defendant/Judgment Debtor/Applicant is entitled to the reliefs which he seeks in this application.*

It is settled law that a Court of law has the plenitude of power to set aside its own judgment on grounds of any vitiating circumstances. The issue of functus officio has no place in law in an application to set aside a judgment on grounds of incompetence of the suit or lack of jurisdiction or nullity See the following cases on the point: *DAHUWA V. ADENIRAN (2003) 17 NWLR (PT. 849) 376; IGWE V. KALU (2002) 14 NWLR (PT. 787) @ PP.435-453;* and *DAVIES & ORS V. ODOFIN & ORS (2017) LPELR-41871(CA) (PP. 52 PARAS. A).*

Generally, a Court has the inherent power to set aside its own judgment under certain conditions, the most common are when the judgment was obtained in default of procedural rules necessary for the initiation of the suit and those given without jurisdiction. See *SANUSI V. AYOOLA & ORS (1992) LPELR-3009(SC)* where the apex Court held thus: *"It is true and well settled that a Court has an inherent jurisdiction to set aside its own judgment where the conditions have been met by the applicant. These are where the judgment sought to be set aside was obtained on failure to comply with procedural rules. See Evans v. Bartlam (1937) AC. 473."*

Fundamentally, an application to set aside a judgment is not granted as a matter of course, there are conditions to granting such applications particularly by a Court of coordinate jurisdiction. See the case of **COVALENT OIL & GAS SERVICES LTD & ANOR V. ECOBANK (NIG) PLC & ANOR (2021) LPELR-53391(CA)** where the Court held thus: *"...Having said that, there are however situations where the Court is permitted to exercise jurisdiction, to set aside its own judgment or the judgment of a Court of co-ordinate jurisdiction. This includes, where the judgment is entered in default of the defendant's appearance or in default of pleadings; where the judgment was obtained by fraud; where the judgment breached the fundamental right of a party; and where the judgment will work injustice on one of the parties; See U.B.A. Plc v. Ajileye (1999) 13 NWLR (pt. 633) 166; Okafor v. A.G. Anambra State (1991) 6 NWLR (pt. 200) 659 and LSDPC v. Adeyemi-Bero (2005) All FWLR (pt. 252) 486 @ 503. A Court has inherent jurisdiction to set aside its own null and void decision or order and also the null and void judgment of a Court of co-ordinate jurisdiction. See SKENCONSULT V. UKEY (1981) SC 6. A fortiori a person whose interest is affected by such decision can come to Court without much ado to have it set aside ex debito justitiae by the same Court. See EGBUZIEM v. NRC (1994) 3 NWLR (pt. 330) 23 @ 33. Furthermore, in setting aside a void order or judgment it does not matter which Judge, be it the Judge that issued the alleged void order or another Judge of the Court of concurrent jurisdiction that sets aside the other. The order being null and void can be set aside by the Judge who made it or another Judge of the same Court through a judicial pronouncement without the necessity of an appeal. Furthermore, in setting aside a void order or judgment it does not matter which Judge, be it the Judge that issued the alleged void order or another Judge of the Court of concurrent jurisdiction that sets aside the other. The order being null and void can be set aside by the Judge who made it or another Judge of the same Court through a judicial pronouncement without the necessity of an appeal."* Per MUSTAPHA, J.C.A

An Applicant has the responsibility of placing sufficient materials before the Court to warrant granting the application. Once an Applicant can show good and sufficient cause, the application will be granted in the interest of justice. See **WILLIAMS VS. HOPERISING VOLUNTARY FUNDS SOCIETY (1982) 1-2 SC 145; N. N. S. CO. LTD VS. ESTABLISHMENT SIWA OF VADUZ (1990) 7 NWLR (PT. 164) 526.**

The grounds upon which a court can set aside its judgment delivered in a suit in the absence of a party affected by the judgment were settled in the classical case of **WILLIAMS VS. HOPERISING VOLUNTARY FUNDS SOCIETY (1982) 1-2 SC 145**. They are as follows:

- 1. Whether the Applicant has good reason for being absent;**
- 2. Whether the Applicant has shown that there was good reason for his delay in bringing the application to set aside the judgment;**
- 3. Whether the Respondent will not be prejudiced or embarrassed if the order of re-hearing was made;**
- 4. Whether the applicant's case is manifestly unsupportable; and**
- 5. Whether the applicant's conduct throughout the proceedings is deserving of sympathetic consideration.**

In the same case, the apex Court further observed that when the application before the court is for it to set aside its own Judgment given in the absence of one of the parties before it, the court must also consider the following factors:

- i. The reasons for the applicant's failure to appear at the hearing or trial of the case in which judgment was given in absence;**
- ii. Whether there has been undue delay in making the application to set aside the Judgment so as to prejudice the party in whose favour the Judgment subsists;**
- iii. Whether the party in whose favour the Judgment subsists would be prejudiced or embarrassed upon an order for rehearing of the suit being made, so as to render such a course inequitable;**
- iv. Whether the applicant's case is manifestly unsupportable.**

Applying the foregoing principles to the instant case, in his affidavit in support of the application the Applicant informed the Court that the reason for his failure to appear in court was because he was not aware of the suit which was pending in court against him. He consistently maintained that the court processes were pasted in an isolated and obscure part of the land to prevent him from being aware of the suit in the court.

In paragraph 4(viii) –(x) of the Affidavit in support of this motion, the deponent stated as follows:

**“viii. That the Defendant/Judgment Debtor/Applicant who is now factually the owner of the property habiting the commercial shops built on a part of the land**

*along Gappiona Avenue with the Garden space, guest house on a land area of 100ft x 100ft lying deep within the total area of land measuring 100ft x 200ft which is the subject matter of the Judgment in this suit pictural evidence showing the commercial shops on the property along Gappiona Avenue are attached hereto as Exhibits AKA5 – 5A.*

*ix That the Defendant/Judgment Debtor/Applicant has his living house built in a part of the land measuring 100ft x 200ft which is not in dispute or made subject of the Judgment in this suit and he is in possession through his tenants in the shops, guest house and his conspicuous living house even though he is based in Kent in England with his family and shares his life between England and Benin City which he sparingly visits on yearly holidays that are necessary pictural evidence of his international passports information and family photographs are attached hereto as Exhibits AKA6 – 6F.*

*x. That the Claimant deliberately with intent to deceive and keep the Defendant in the dark, caused the bailiff of court to serve the originating processes, other processes filed and hearing Notices by pasting same on the enclosed and isolated, fenced and bushy piece of land without a gate measuring 36ft x 100ft belonging to KESTER OKHAN in the United States but located within the land measuring 100ft x 200ft which has commercial shops in front along Gappiona Avenue obviously in a covert design to conceal the processes and the pendency of the suit from the Defendant’s tenants who are doing business in the property on a daily basis pictural evidence of the bailiff of court effecting service on the isolated bushy piece of land are attached as Exhibits AKA7 – 7A.”*

Upon the alleged service of the court processes by substituted service, the court bailiff took some pictures of where he pasted the court processes within the premises. The pictures were attached to the Applicant’s supporting Affidavit as Exhibits “AKA7” and “AKA7A” respectively.

Upon a careful examination of the two pictures, it is quite clear that the processes were pasted on the wall of an abandoned foundation covered with weeds in an obscured part of the compound. The choice of this obscure position for the pasting of the processes appears quite curious and mischievous. This is more so, in view of the pictural evidence showing the existence of some commercial shops on the property along Gappiona Avenue as shown in the pictures attached to the supporting Affidavit as Exhibits “AKA5 – 5A”.

Incidentally, in his Counter-Affidavit, the Claimant/Judgment Creditor/Respondent did not dispute the fact that the processes were pasted inside the bush while there are some shops in the premises.

Clearly, the motive behind this service by pasting on a hidden part of the premises was to prevent the Defendant/Respondent from getting the notice of the aforesaid processes.

From the foregoing, I hold that the Applicant has adduced sufficient reasons for his failure to appear at the hearing to defend the suit.

Furthermore, from all the circumstances put together, I do not think there was any undue delay by the Applicant in making this application to set aside the Judgment. The deponent explained that the Applicant only got to know of the judgment sought to be set aside on the 19th day of April 2024.

On the consideration of whether the Judgment/Creditor would be prejudiced or embarrassed upon an order to set aside the Judgment, I don't think he will be prejudiced or embarrassed by such an order in the face of the defect in the service of the court processes. Furthermore, I think the application deserves some sympathetic consideration because the defective service was purely the fault of the court bailiff who chose an obscure place to paste the court processes. The sins of the court bailiff should not be visited on the innocent litigant who was deprived of service of the court processes.

Furthermore, from the contents of his affidavit in support of the application, it is evident that the Defendant/Applicant is prepared to contest this suit on the merits.

Moreover, in an application to set aside a judgment on the ground of non-service of the originating processes on the Defendant, the merit of the Defendant's defence to the claim by the Claimant is not a relevant consideration because the proceedings are a nullity. See the case of **NWADIARO & ORS V. PRESIDENT & MEMBERS OF CUSTOMARY COURT OSSOMALA (2016) LPELR-40925(CA) (PP. 45 PARAS. A)**.

From the foregoing, I hold that the service of the originating and subsequent processes on the Defendant/Applicant were fundamentally defective.

Having regard to the facts of this case, the effect of the improper service of the court processes is the same as that of non-service. It is settled law that the effect of non-service is that the Court is deprived or divested of its competence and

jurisdiction to entertain the cause or matter. See the following cases: ***MOHAMMED MARI-KIDA V. A.D. OGUNMOLA (2006) 13 NWLR (PT.997) 377 AT 39; UNITED BANK FOR AFRICA PLC V. MAGAMA (NIG) LTD & ANOR (2013) 16 NWLR (PT.1379) 36 AT 55; and RICHARD AGBAPURU v. MRS. IFEYINWA AGBAPURU (2021) LPELR-55235(CA)***

Further, I must reiterate that a judgment or order which is a nullity owing to failure to comply with an essential provision, such as, service of process, can be set aside by the Court which gave it or made the order. See the case of ***Anatogu v. Iweka II (1995) 9 SCNJ 1 at 33 - 34 or (1995) 8 NWLR (Pt. 415) at 547. At 586,***

Furthermore, it is settled law that a judgment that is a nullity has no legal validity and can confer no right nor impose any obligation on anybody. See the cases of ***AJIBOYE V. ISHOLA (2006) LPELR-301(SC) (PP. 22 PARAS. F-F); WEST AFRICAN AUTOMOBILE & ENG. CO. LTD v. AJANAKU (1972) U.I.L.R. 335 and BUSARI & ORS v. OSENI (2018) LPELR-6635(CA).***

Coming to the validity of the execution of the Warrant for Possession, the validity of the execution of a judgment must be based on a valid judgment or order of the Court. Any execution levied upon a judgment that has been adjudged to be a nullity is itself a null act, this is simply because one cannot put something on nothing and expect it to stand, it will collapse. See the old case of ***UAC V. MACFOY (1961) 3 ALL ER 1169.*** See also the cases of ***IN RE: APEH & ORS (2017) LPELR-42035(SC)*** and ***IN RE: ASAGH (2020) LPELR-50235 (CA) (PP. 18-19 PARAS. C).***

From the foregoing, I hold that the sole issue for determination is resolved in favour of the Applicant. The Defendant/Judgment Debtor/Applicant is entitled to the reliefs which he seeks. The Application is granted as follows:

- 1. An Order granting an extension of time till today for the Defendant/Judgment Debtor/Applicant to apply to set aside the Judgment of the Honourable Court delivered in Suit No: B/815/2021 on the 7th day of March, 2023;***
- 2. An Order setting aside the Judgment of this Honourable Court delivered in Suit No. B/815/2021 on the 7th day of March, 2023;***
- 3. An Order setting aside the Warrant for Possession issued in this suit on the ground that it was issued without jurisdiction;***

4. *An Order setting aside the service of the Writ of Summons in the suit;  
and*
5. *The suit shall be heard de-novo.*

*I make no order as to costs.*

**P.A. AKHIHIERO  
JUDGE  
05/02/2026**

**COUNSEL:**

**M.O. IGUODALA ESQ-----DEFENDANT/JUDGMENT  
DEBTOR/APPLICANT**

**K.O.OWIE ESQ-----CLAIMANT/JUDGMENT  
CREDITOR/RESPONDENT**