

CONSENT JUDGMENT IN NIGERIAN COURTS – GENERAL PRINCIPLES AND NOTABLE EXCEPTIONS

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Abstract

Buoyed by the general principle of law that parties are bound by their agreement and no party will be permitted to resile or renege from agreements duly reached, it is often thought that consent judgment cannot be set aside or reversed. Whether this principle of law is cast in steel has remained unsettled. Consequently, this paper investigated the conditions that may lead to setting aside consent judgment in Nigerian Courts. From the body of decided cases considered in this paper, it was determined that the scheme of consent judgment exists in various Rules of Court to enable parties in Court, on their own accord and freewill, reach an amicable settlement of their disputes which, when duly executed as terms of settlement, may be adopted by the Court as its judgment. The paper further established that consent judgment is binding and final although it is not infallible as it may be reversed either by the trial Court itself, a Court of coordinate jurisdiction or appellate Court where the consent judgment is successfully attacked on the ground that it was actuated by fraud or entered by mistake or misapprehension of the facts. The paper viewed that consent judgment is a durable and welcome procedure in the administration of justice ecosystem. It therefore recommended among other things that in reaching amicable settlement, in addition to avoiding the pitfalls that may vitiate the consent judgment, parties must also comply with the peculiar procedure or protocol of the particular Court seised of the matter or where the case is pending or being tried.

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***Related declarations are provided in the final section of this article.*

1.0 Introduction

Various Rules of Court provide for amicable settlement of issues by parties in litigation before the Court. Based on this, either on their application or on the prompting of the Court, parties are encouraged by the Court to “settle rather than to fight”. Where parties explore the option of amicable settlement and reach concrete agreement on how to resolve the matter in Court, they are expected to file their terms of settlement in Court which the Court will in turn adopt as consent judgment. This consent judgment is final and can only be reversed on appeal. However, the finality of consent judgment is subject to it meeting certain irreducible minimum conditions. Unveiling these grounds or conditions that may vitiate the bindingness of consent judgment that forms the fulcrum of this paper. Against this background, this paper interrogates the questions whether or not consent judgment can be set aside; if yes, by which Court; and on what ground or grounds? This research effort is undertaken to illuminate the general principles on consent judgment and to bring to light what factors that can vitiate it so that parties, lawyers and the Court will avoid the pitfall of reaching a consent judgment that does not satisfy the minimum requirements of the law thereby leading to the implication that the trial was a nullity, a colossal waste of time and liable to be set aside. To this end, this paper is divided into the following segments namely:

2.0 Meaning, ingredients and requirements of consent judgment

A consent judgment arises when parties unequivocally agree to terms of settlement which they mutually refer to the Court as basis for the Court's judgment. By their mutual agreement to settle the matter, they have given their consent to end the matter (litigation). As held in *Race Auto Supply Co Ltd and Ors v Alhaja Faosat Akib*, "Settlement between parties may be described as a contract whereby new rights are created between them in substitution for and in consideration of the abandonment of claims pending before the Court. When the Court moves and takes action as agreed upon by the parties, it becomes a consent judgment". Furthermore, “a consent judgment is a judgment given after the parties to the case have agreed among themselves to have the claim resolved amicably and later file the terms of settlement in Court and urged on the Court to adopt it as the judgment of the Court”. In *Afegbai v A-G. Edo State & Anor*, it was established, per Karibi-Whyte, JSC, that "There is a consent judgment where parties to an action in Court have fashioned out an agreement as to how to settle their dispute out of Court and apply to the Court

to give judgment on the terms they have agreed upon. Such judgment when given is called a judgment by consent and serves as a final determination of the dispute between the parties”

The ingredients or requirements of consent judgment are that- (a) Parties must reach a complete and final agreement on the vital issue or issues in their Term of Settlement. (b) They must be meeting of the minds (*consensus ad idem*) in the terms of their compromise agreement. (c) Their consent must be free and voluntary. The above are the requirements for a valid consent judgment and in the case of *Star Paper Mill Ltd Anor v Bashiru Adetunji Ors*, it was decided that where therefore any of these requirements is missing, a consent judgment would be rendered invalid *ab initio*.

3.0 Implication of consent judgment

A consent judgment is a final decision. It is also a judgment on merit that issued from the agreement of the parties. An agreement by the parties to settle the dispute out of Court creates new rights in place of the claims pending before the Court. A judgment entered on the new rights created by the mutual agreement of the parties becomes a judgment on the merits, in that it is based on the rights carved out by the parties in substitution for the claim before the Court; not a judgment given in default of appearance, which is a sample of a judgment not given on the merit. A consent judgment is a final decision, since it finally determines the issues and dispute between the parties. It is a final decision within section 241(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. However, leave of the High Court or of the Court of Appeal is required for the exercise of a right of appeal as provided under section 241(2)(c) of the Constitution 1999".

In *Star Papermill Ltd & Anor v Adetunji & Ors* explained that "... consent judgment, is a contract between the parties whereby rights are created between them in substitution for order of consideration of the abandonment of the claim or claims pending before the Court. This is intended to put a stop to litigation between the parties just as such as a judgment which results from the decision of the Court. It is a judgment entered, pursuant to an agreement between the parties. Consent judgment, thus by its nature, is first and foremost, a contractual agreement between the parties. Thus, a consent judgment constitutes a final judgment of the Court and it is only appealable with the leave of the Court. In line with this definition, where the parties before a Court have agreed on how their dispute should be determined and ask the Court to enter judgment by consent and in accordance with their terms of settlement and the Court orders with

their consent that judgment be entered, the product is a consent judgment. In this regard it is necessary to point out that a consent judgment or order is as effective in law in respect of all the matters which are herein settled as any other judgment or order arrived at after the matters are fully fought out, to the end in a full trial.”

4.0 Exceptions to the finality and bindingness of consent judgment- Grounds for setting aside consent judgment

Consent judgment is final and binding but it is liable to be set aside either by the trial Court, Court of coordinate jurisdiction or appellate Court under any of the following grounds-

(a) Where the consent judgment is actuated by vitiating elements

The general rule is that once entered, a consent judgment cannot be set aside, save on appeal with leave, even if it was entered under a mistake vide *U.T.C. Nigeria Ltd. v. Chief Pamotei and Ors.* However, *Star Paper Mill Ltd v Adetunji (supra)* held that the Court that gave the consent judgment may, upon application, set it aside on grounds of fraud, mistake, misconception or for any other reason which would afford a good ground for setting aside the agreement on which the judgment or order is based. It may also be aside based on the principle that where there are conflicting judgments the later in time prevails vide *Osakue v FCE Asaba and Ors.* Following this principle, in *Sterling Bank v C.T & Associates Ltd & Ors*, these subsequent decisions were followed to hold that consent judgment attacked on the ground that it was entered by mistake or misapprehension of the facts can be set aside by the trial Court.

Thus, where a purported consent judgment is vitiated by fraud, mistake, misconception, or by any other vice which would afford a ground for setting aside the compromise agreement on which the order was based, no true consent judgment binding on parties would have emerged. Parties must be *ad idem* otherwise it will be a solid ground where a Court can set aside a consent judgment it entered. Where parties were never *ad idem* to the alleged terms of settlement and a lower Court made the "consent" judgment of the Court, such judgment given by the lower Court is a nullity and the Court in its inherent jurisdiction can set aside its own judgment made in such circumstances. This position of law was restated by the Supreme Court in *Vulcan Gases Ltd v G.F Ind A.G* as follows-

"It is long settled that a consent judgment or order made by a Court to give effect to the compromise of a legal claim by the parties may be set aside, not only on the ground of fraud, but for any other reason which would afford a good ground for setting aside the agreement on which the judgment or order is based, e.g. on the ground of a common mistake, fraudulent misrepresentation or misconception. See *Attorney-General v Tomline* (1877) 7 Ch. D 388, *Huddersfield Banking Company Ltd v Henry Lister and Son Ltd* (1895-99) All E.R. 868 (C.A)."

Similarly, an order, be it by consent or otherwise, which is a nullity is something which the person affected thereby is entitled to have set aside *ex debito Justitiae*. The Court in its inherent jurisdiction has the definite jurisdiction or power to set aside its own order or decision made without jurisdiction if such order is in fact a nullity and an appeal in such circumstance cannot be said to be necessary. It can thus be said that outside the appellate procedure, a judgment or order can be set aside if it is a nullity or where a Court was misled into giving the judgment by some mistake, believing that parties consented to its being given, whereas, in fact, they did not. From the foregoing, it is apparent that once it is established that the parties to a purported 'consent' judgment did not in fact consent to the terms of settlement that led to the judgment, the Court can set aside such judgment and in the instant case, the lower Court ought to have set aside its purported 'consent' judgment that was not the product of the compromise of the parties therein.

(b) Consent judgment signed by Counsel to parties alone is ineffective

The settled law is that a consent judgment arises when the parties unequivocally agree to terms of settlement which they mutually refer to the Court as the basis for the Court's judgment. In *Ayanyan v Alli & Anor*, the Terms of Settlement upon which the consent judgment is predicated was signed by their solicitors. It was held that it is absolutely clear that the agreement which would lead to a consent judgment must be that subscribed freely to by the parties and not their counsel. A counsel has no business in subscribing to a term of settlement as a party. It is the responsibility of the parties to subscribe to such term of settlement. This is because if there is any breach of the terms, it is not the counsel but the parties that should be confronted. At the very best, Counsel can witness the signature of their respective client who has subscribed to the terms of settlement. Even if they have to do that, it must be in the name they are granted license to practice as a legal practitioner and not their business/commercial name. The license to practice was not granted to the firm but to the professional who has gone through the prescribed training and so quality and not the firm which came into existence after the legal practitioner has been

granted the license to practice (Call to the Nigeria Bar). By section 2 (1) and 24 of the Legal Practitioner's Act, only a legal practitioner can sign processes before a Court, therefore, the term of settlement signed by the respective party's firm of solicitor other than the parties themselves cannot be regarded as a valid term of settlement upon which a consent judgment can be predicated. Where there is no consent by the parties there can be no consent judgment by the Court. A valid term of agreement duly signed by parties would vest power in the Court to make pronouncement (enter consent judgment) between the parties. Where therefore a firm of solicitor, signs the terms of settlement then the procedure for a valid term of settlement has been breached. A judgment which is the product of such invalid term of settlement can be set aside. The consequence like in the case at hand is to set aside such judgment. A consent judgment may be set aside by either the Court that entered the judgment or any Court of competent or Court of concurrent jurisdiction on the ground that the terms of settlement signed by a firm of legal practitioner and not the parties is void.

5.0 Conclusion and recommendations

Parties before a Court are encouraged to settle amicably instead of wasting the precious time of the Court in arduous and laborious litigation. Where parties reach amicable settlement, its byproduct, which is consent judgment is judgment on merit and final. Its bindingness is not in dispute if it issued from the consent of the parties and can only be the subject of appeal by leave of Court. However, being contractual in nature, where consent judgment is actuated by any of the vitiating elements of a contract already robustly discussed in this paper, either the trial Court itself, a Court of Coordinate jurisdiction or the appellate Court on appeal is allowed to reverse or upturn such vitiated or impugned consent judgment. This is in the interest of justice and to avoid the Court being used as an instrument of fraud. It is therefore recommended that parties, Counsel and the Judex must take early notice of the vitiating elements of consent judgment and take steps to avoid them in order not to labour in vain. It is further recommended that in reaching amicable settlement, in addition to avoiding the pitfalls that may vitiate the amicable settlement, parties must also comply with the peculiar procedure or protocol of the particular Court seised of the matter or where the case is pending or being tried. This is because Rules of Court must be obeyed. It was held in *Chief Onwuka Kalu v. Chief Victor Odili & Ors*, per Nnaemeka Agu, JSC, that "Rules of Court must prima facie be obeyed, if there has been a noncompliance with the rules and it is not explained, then unless it is of minimal kind, no indulgence of the Court can be granted."

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