UNDERSTANDING CONSENT JUDGMENT¹

1. INTRODUCTION

Generally, the court’s judgment is the fruit of every litigation, and the outcome of every legal dispute that is referred for resolution by the Court. In Ogboru v. Uduaghan² the Supreme Court defined judgment as “the official and authentic decision of a court of law upon the respective rights and claims of the parties to an action or suit, which were litigated and submitted for the court’s determination.” A judgment of a court is usually the last stage of a judicial process after the legal right, claim or interest has been converted into a judgment or order which remains to be enforced.

2. SCOPE AND EFFICACY OF CONSENT JUDGEMENTS

A consent judgment can be defined as a decision, where the provisions and terms are settled and agreed to by parties to the action, and due effect is given thereto by the court. Given that the Nigerian judicial system allows and encourages parties to resolve disputes between them amicably, the terms agreed upon by parties in settlement discussions are usually set down in writing as terms of settlement. These terms of settlement are filed in Court and upon the application of the parties, become the judgment of the court in that case. It is when the terms of settlement are filed in court and made the judgment of the court that it crystalizes into a consent judgment.³

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² [2012] 11NWLR (Pt. 1311) pg. 357.
Indeed, in *Vulcan Gases Ltd. v. Okunlola* the Court held that a consent judgment presupposes out of court settlement reached by the parties, and that the terms of the said settlement or agreement are furnished to the court and forms the basis of the court’s judgment in the suit. Such judgment is intended to put an end to further litigation between parties just as much as if the judgment was the result of a decision of the court after the matter had been fought to the end. Similarly, in *D.T.T. Ent. (Nig.) Co. Ltd. v. Busari* the Supreme Court held that consent judgments are not like the regular judgments of the courts entered after a trial is conducted by the court either summarily or upon a full trial. It is not dependent upon exchange of pleadings or calling of evidence. In fact there is no stage in the proceedings where the law requires a consent judgment to be entered as the same can be entered at any stage in the proceedings because it is simply based on an agreement between the parties to the litigation which agreement they consider binding on them and those who claim through them. In view of the fact that consent judgment creates new rights between the parties in substitution for and in consideration of the abandonment of the extant claim(s), it does not matter whether at the stage in which it was entered, the defendant had filed a defence to the claim(s) of the claimant or the claimant had filed a defence to a counter-claim or that evidence had been called or issues resolved. What matters is the agreement of the parties. A judgment obtained on admission by a defendant is not a consent judgment.

To have a valid consent judgment the parties must be *ad idem* as far as the agreement is concerned; their agreement must be free, voluntary and unambiguous. Furthermore, the terms of settlement must be filed in court. It should be noted that Counsel can also enter into consent judgment on behalf of litigants. In *Afegbai v. A.G., Edo State* the Supreme Court held that where a person has given his Counsel a general authority without limitation to act on his behalf and to represent him in an action, the fact that the terms of agreement were negotiated and judgment entered by Counsel on behalf of such client and not by the client will not affect the validity of the judgment. The consent judgment so entered, will be valid and enforceable. Finally, it should be noted that consent judgment is not applicable to criminal proceedings and is quite different from plea bargaining. In *Nwude v. F.R.N.* the Court held that in criminal cases, the accused has a right to plead “guilty” or “not

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guilty”.

When the accused pleads guilty it will not be taken as a consent judgment *simpliciter*. It only means that the accused, after due consideration and consultation with his legal team, has decided to admit his/her culpability/guilt. Pleading guilty to a criminal charge reduces the time frame for the trial as there is no longer any need to call witnesses to prove the charge against the accused. In other words, consent judgment is not applicable in criminal cases.

A consent judgment may be the outcome of a civil matter where the defendant has no defence to the claims of the claimant. If at that time, a defendant has no defence and consents to judgment, it binds all the parties.

### 3. SETTING ASIDE CONSENT JUDGMENT

Generally, consent judgment being a final judgment, cannot be set aside by the court, which gave the judgment and is appealable only with leave of court. In *Samba Petroleum Co. Ltd. v. F.C.M.B.* the Court held that by virtue of Section 241(2)(c) of the 1999 Constitution as amended, parties cannot appeal without leave of court from a decision of the High Court made with the consent of parties. A consent judgment has higher efficacy and binding effect than an ordinary judgment and is therefore more difficult to dislodge. The party seeking to rescind the terms mutually agreed upon has an arduous task and heavier duty to prove fraud and other vitiating elements. In *Lamurde v. Adamawa State J. S. C.* the Court stated the circumstances for setting aside a consent judgment and they are as follows:

a. Where the consent judgment was obtained by fraud,

b. Where it was obtained by misrepresentation or non-disclosure of a material fact for which there was an obligation to disclose,

c. Where it was obtained under duress,

d. Where it was concluded under a mutual mistake of fact,

e. Where the consent judgment was obtained without proper authority.

An aggrieved litigant has two major ways of challenging a consent judgment which he claims was obtained by fraud or mistakenly entered by the judge on the basis of

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13 *Supra* [n. 6] p. 2.
fraudulent misrepresentation. The aggrieved litigant can either appeal against the judgment; or file a fresh action seeking an order of the court to vacate its judgment.14

4. CONCLUSION

Consent judgment is as effective in law as any other judgment or order arrived at after full trial. Where the parties enter into an agreement or written terms of settlement, one cannot read into the agreement or settlement terms on which the parties have not agreed. An exception to the general rule that consent judgments cannot be set aside by the Court which gave the judgment is when the consent judgment is tainted with vitiating elements (such as fraud, duress, undue influence, mistake etc.) of a contract.

A consent judgment is a final decision and can, in an appropriate case, sustain a plea of res judicata.15 Consent judgment remains binding until set aside by a fresh action or an appellate court, if it can be established to have been obtained by fraud, misrepresentation, duress or mutual mistake of parties.

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