

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 2<sup>ND</sup> DAY OF FEBRUARY, 2021.**  
**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI**  
**SUIT NO. CV/1585/2020**  
**MOTION NO: M/6965/2020**

**STARSTEPS LIMITED -----CLAIMANT/APPLICANT**  
**AND**

- 1. AFY EGBUCHE**
  - 2. DEPUTY SHERIFF, -----DEFENDANTS/RESPONDENT**
- HIGH COURT OF THE**  
**FEDERAL CAPITAL TERRITORY**

**RULING**

Learned Counsel to the Claimant in the substantive suit filed a motion on notice dated the 18<sup>th</sup> day of May 2020, brought pursuant to Order 44 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Order 43 Rule 1 (1) & (2) and Rule 9 of the High Court of FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court, praying the Court for an order of interlocutory injunction restraining the defendants/respondents, either by themselves, their officers, agents or privies however so called, from attaching the properties of the claimant/applicant or properties belonging to customers of the claimant/applicant in its custody at any particular time, in purported execution of the judgment of this Honourable court in Motion No: FCT/HC/M/2377/2019; Afy Egbuche v. Imad Boustany, pending the hearing and determination of the substantive suit and for such other orders as this honourable court may deem fit to grant in the circumstance.

The 1<sup>st</sup> Defendant filed a counter affidavit in opposition and also filed a notice of preliminary objection under the inherent jurisdiction of the court challenging the jurisdiction of this court. In his preliminary objection, 1<sup>st</sup> Defendant is seeking for an order dismissing this suit as this suit is bereft of the requisite cause of action and is an abuse of court process.

This court is hereby faced with a motion for interlocutory injunction and also a motion filed by the 1<sup>st</sup> Defendant challenging the jurisdiction of this Court.

The 1<sup>st</sup> defendant files a preliminary objection as follows;

1. That this suit is bereft of the requisite reasonable cause of action.

The grounds upon which this application is brought is;

1. That the Claimant has not disclosed the requisite cause of action in this suit.
2. That this Hon. Court lacks the requisite jurisdiction to hear this matter.
3. That the subject matter in this suit arising from suit no: FCT/HC/M/2377/2019 is currently before the Court of Appeal, Abuja Division in Appeal no, No: CA/ABJ/CV/307/2020 instituted by the Claimant.
4. That the said Imad Boustany (the Judgment Debtor in suit no: FCT/HC/M/2377/2019) paid the sum of N4, 718,000.00 into 1<sup>st</sup> Defendant's account domiciled in Guaranty Trust Bank Plc and presented a receipt of payment of N5, 000, 000 .00 for rent of the 2019/2020 to liquidate the debt the officers of the 2<sup>nd</sup> Defendant sought to levy execution at his address of residence.
5. That this suit is an abuse of Court process.

6. That this suit is highly frivolous, unfounded, waste of the judicial time and a source of unnecessary cost on the 2<sup>nd</sup> Claimant.

I have read through processes and although I raised it suo moto at the initial stage of this matter as to the competence of this court to sit over this issue learned counsel to the Claimant urged it on this court to listen to all parties before making a decision on this matter.

Having listened to both parties, it is the contention of both parties that Judgment was delivered by my learned brother Justice Senchi before the High Court Jabi. Although a court is *funtus officio* subsequent to delivering its judgment but there are however exceptions to this rule. In this instance, this court is being called upon to interpret the judgment of a learned brother as execution of judgment was purportedly done outside the orders of the court. It is the contention of the Claimant that rather than levy execution on judgment debtor execution was levied against the Applicant who is a company and a separate “person” from the Judgment debtor in the earlier suit before my learned brother.

To this end counsel to the Claimant/Applicant filed a writ against the Deputy Sheriff and the Defendant in the earlier suit seeking for declaratory reliefs against both the Deputy Sheriff and the 1<sup>st</sup> Defendant that the act of levying execution over property of Applicant who is not in any way connected to the earlier suit is malicious, oppressive, unwarranted and unconstitutional. Learned counsel to the Claimant had gone a step further and filed this Motion on Notice seeking an injunction restraining both the 1<sup>st</sup> Defendant and Deputy Sheriff from attaching property belonging to the Applicant or properties belonging to the customers of the Applicant in its custody. It is noteworthy to state that Applicant was not a party to the

earlier suit which culminated into the judgment under contention. Applicant is a Limited Liability Company and a separate legal entity from the judgment debtor.

It is in my considered view that counsel to the Claimant rather than file this writ and particularly the Motion on Notice brought pursuant to Order 43 rule 1(1) & (2) of the rules of this court & Rule 9 of the FCT High Court Rules 2018, counsel ought to have filed an interpleader summons. For the benefit of counsel to the Claimant; I will take the pains to explain the essence and definition of interpleader summons. The Interpleader summons is usually filed by the Applicant who is to prove that the property which execution is levied belongs to him and does not belong to the judgment debtor. In such a situation the interpleader who was never a party to the suit becomes the Plaintiff under the interpleader summons proceedings and has the burden of proving that the property attached not only belong to him but was wrongly attached. In such a situation, the Judgment creditor becomes the Defendant to the interpleader application. Hence in an interpleader summons the Plaintiff/Applicant is to establish his title to the property in dispute and prove that execution levied on his property was wrongly executed.

Hence as **Ndukwe – Anyonwa J. C. A.** held in **KALA VS POTISKUM (1998) LPELR-1648 (SC)** that “It is therefore said that an interpleader proceedings is an equitable proceedings to determine the rights of rival Claimants to the property held by a third person having no interest therein”.

Claimant in this suit rather than file an interpleader summons filed a writ seeking for declaratory reliefs and a motion on Notice brought pursuant to order 43 rule 1 (1) & (2) and rule (9) seeking for interlocutory injunction

restraining the Deputy Sheriff and 1<sup>st</sup> Defendant from attaching properties of Claimant/Applicant or properties belonging to the customers of Claimant in purported execution of the judgment.

From processes filed by the Claimant/Applicant, it is seeking this court to analyze, clarify, and elucidate the judgment of a court of co-ordinate jurisdiction. This is a continuous process of the earlier judgment and not one that can be severed from the earlier judgment of my Lord Justice Senchi. If that be the case, then processes as filed before me ought to have been assigned to my Lord Senchi to clarify what is intended in his judgment and whether the execution so done on the 3<sup>rd</sup> party who was not a party to the suit before him is captured in his judgment. On the other hand, if Claimant had filed an interpleader summons, it would have been a separate suit by itself.

In the circumstance and in line with what Claimant/Applicant filed is hereby referred to the office of the Chief Judge for re-assignment to my Lord Justice Senchi.

**Parties:** Absent

**Appearances:** Adetan Akerele for the Defendant/Respondent. Opeyemi Adeyemi for the Claimant/Applicant.

**HON. JUSTICE MODUPE .R. OSHO-ADEBIYI  
JUDGE  
2<sup>ND</sup> FEBRUARY, 2021**