

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/4266/12
DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN

**ADI ALI INTERNATIONAL LTD...JUDGMENT CREDITOR
/RESPONDENT**

AND

1.AHMED GULAK.... JUDGMENT DEBTOR/APPLICANT

2. NA-ALLAH PROPERTIES NIG. LTD.

3. ALHAJI AWWAL MOHAMMED

**4. THE MINISTER FEDERAL CAPITAL
TERRITORY, ABUJA**

5. FEDERAL CAPITAL DEV. AUTHORITY

RESPONDENTS

RULING

1. This Ruling is at the instance of Judgment Debtor Applicant (Ahmed Gulak) who approached this Honourable Court for the following:-

(1) An Order of the Honourable Court permitting the Judgment Debtor/Applicant to satisfy the balance of the Judgment debt by the sale of his property known as Karu Mini Estate, FCT, Abuja.

Or

2. An Order of the Honourable Court permitting the Judgment Debtor/Applicant to satisfy the balance of the Judgment debt by the sale of his property known as Karu Mini Estate, FCT, Abuja to the Judgment Creditor/Respondent.

3. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstance of the case.

In support of the application is an affidavit of 15 paragraph deposed to by the Applicant himself.

It is the deposition of the Applicant that there was amicable settlement of all disputes in the matter leading to agreement and consent judgment in this matter and that the consent judgment sum was Two Hundred Million Naira (~~₦~~200,000,000) only.

Applicant avers that he sold two of his houses to raise the sum of One Hundred and Seventy Million Naira (~~₦~~170,000,000) only which he paid to the Judgment Creditor leaving the balance of Thirty Million Naira (~~₦~~30,000,000) only.

That he tried to raise the balance of Thirty Million Naira (~~₦~~30,000,000) but unable to do so and this necessitated him putting his Mini Estate in Karu, Abuja Municipal Area Council (AMAC) FCT Abuja consisting of Sixteen (16) One Bedroom Flats with Kitchen, Sitting Room, Bedroom in suit and a Visitor's toilet each.

That he is willing to sell the property to the Judgment Creditor so that he can deduct the debt.

A written address was file wherein a sole issue was formulated for determination to wit; *whether the Judgment Debtors by themselves could invoke the jurisdiction of the court for an Order that the immovable property of the Judgment Debtors as fully described, be sold either to the Creditor in settlement of the debt or to any person as the Creditor may agree to raise funds for the full and final settlement of the Judgment debt.*

Arguing on the above, Learned Counsel, cited Order 53 Rules 13 of the Rules of this Honourable Court in urging the Court to do substantial justice in granting the application.

Learned Counsel cited and relied on the case of *COL. AKILU VS CHIEF GAMI FAWEHIMI (NO. 2) (1939)2 NWLR (Pt. 101)122 at 197*. In urging the court to grant the application.

Upon service, the Judgment Creditor/Respondent filed a counter affidavit of 7 paragraph deposed to by one

KemiEdun a Litigation Secretary in the law firm of the Judgment Creditor/Respondent.

It is the deposition of the Respondent that the Applicant paid the sum of One Hundred and Seventy Million Naira only (₦170,000,000.00) to the Judgment Creditor through the efforts of EFCC following a criminal complaint for fraud, breach of trust and criminal misappropriation filed against the Judgment Debtor/Applicant by the Respondent.

That since the payment in 2019, the Applicant had never called the Respondent to discuss how he will pay the balance of Thirty Million Naira only (₦30,000,000.00) Judgment debt.

That having realized that the Judgment Creditor/Respondent was about to apply for execution of the Judgment, the Judgment debtor then filed this application in Order to frustrate the execution of the Judgment.

The Respondent further stated that he does not have money nor is he willing to buy the property.

A written address was filed wherein Learned Counsel contended that Order 52 Rule 13 of this Rule upon which the application was brought relates to the enforcement of a consent judgment of this Honourable Court. And that the relevant statutory law governing the enforcement to Judgment as in the instant application is the Sheriff and Civil Process Act CAP 407 of 2004.

Learned Counsel contended further that, Section 20(1) of the Sheriff and Civil Process Act relied upon by the Applicant caters for execution of Judgment, issue of writ of attachment and sale and the powers of the Sheriff to levy by distress and sell goods attached under the Section.

Finally counsel urged the Court to dismiss the application.

Upon service, the Applicant filed a further affidavit wherein Applicant stated that at no time did the EFCC file

any charge against him and that the certificate of Judgment was obtained on 2nd April, 2019 whereas the application was filed on 30th May, 2018.

Court:- I have gone through the application under consideration, the Applicant brought this application Pursuant to Order 52 Rule 13 of the Rules of this Honourable Court.

For avoidance of doubt Rule 13 provides as thus; Order 5(13) *“where no provision is made by these rule or by any other written law, the court shall adopt a procedure in accordance with substantial justice.”*

Indeed the instant application relates to the enforcement of Judgment of this Honourable Court either by the Applicant selling his property at Karu or by selling the same property to the Judgment Creditor/Respondent.

It is instructive to state here that the Applicant also relies on Section 20 of the Sheriff and Civil Process Act to drive home his point.

For clarity sake, the section provides as thus;

20(1) Any sum of money payable under a Judgment of a Court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by execution against the goods and chattels and the immovable property of the Judgment Debtor in accordance with the provisions of this Act.

(2) The Registrar on the application of the Judgment Creditor shall cause to be issued a writ of attachment and sale whereby the Sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the Court,

the money payable under the Judgment and the costs of the execution.

(3)The precise time of the making of an application to the Registrar for the issue of a writ shall be entered by him in the book prescribed for the purpose and on the writ, and when more than one such writ is issued they shall be executed in the Order of the times so entered.

From above, it is obvious that the Section relates to the execution of Judgment. The Section does not cater for any of the reliefs Applicant is seeking from this Court.

I shall therefore, dismiss this application in the overriding interest of justice. Consequently Motion No M/6612/18 lacken in merit is hereby dismissed.

*Justice Y. Halilu
Hon. Judge
12th March, 2020*

