

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/1969/2019
DATE: 23RD JANUARY, 2020**

BETWEEN:

THE DEPUTY SHERIFF OF THE HIGH COURT OF THE FCT - APPLICANT

AND

**1. SULEIMAN RABIU - CLAIMANT
2. MRS. MARY OGAZIECHI - JUDG. CREDITOR**

Parties absent and not represented.

Court – This is the ruling.

R U L I N G

By an Originating Summons dated 24/4/2019 brought pursuant to Section 34, Sheriff and Civil Process Act 2014, the Applicant seeks for the determination of the following questions:

1. Whether or not Suleiman Rabiou (the Claimant) is the lawful owner of the Smart Saloon Car with a customized Registration No. **NICE GUY** which was attached in execution of the court's judgment in Suit No. CV/199/2017.
2. An Order of this Honourable Court directing the Applicant to either:
 - (a) Release the Smart Saloon Car with a customized Registration No. NICE GUY to the Claimant pursuant to

his claim if the claim is found by this Honourable Court to have been established

OR

(b) Transfer the said vehicle to the court for sale, and the proceeds given for the satisfaction of the Judgment Creditor's judgment sum; where the claim is deemed by the court to have failed.

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

In support of the originating summons is 10-paragraph affidavit dated 22/5/2019 deposed to by Edna Shuaib, a Litigation Secretary of the Legal Unit of the High Court of the FCT. Annexed thereto are documents marked as Exhibits 1A, 1B and 2 respectively. Reliance is placed on all the said paragraphs of the affidavit.

Learned counsel to the Applicant also filed 4-page written address dated 24/4/19 and adopts same as his oral argument in this matter and urge the court to grant his prayers.

The Claimant filed particulars of claim dated and filed on 1/11/19; the particulars of claim were deposed to by Philip Aji, a counsel at Everlaw Associates. It is a 6-paragraph affidavit. Attached to the said particulars of claim/affidavit are documents marked as Exhibit AC¹, AC^{2A}, AC^{2B} and AC³ respectively. Reliance is placed on all the paragraphs of the affidavit and the exhibits attached thereto.

Learned counsel to the Claimants filed 5-page written address dated 1/11/2019 and went on to adopt same as his oral argument

in this case; wherein counsel formulated a lone issue for determination to wit:

“Whether the Claimant/Respondent is the lawful owner of the car attached in execution of the judgment?”

On this lone issue, it is the submission that to prove ownership of the subject matter car, they are relying on all the exhibits attached to their affidavit which are the vehicle papers of the car in question and which establish a prima facie case of ownership of the said car.

It is also the submission that the averments in the affidavit in support of the claimant/respondent's claim clearly shows that he is the owner and was in full possession and control of the car which is the subject matter of this proceedings at all material times.

Submitted that in the case of W.A. COTTON LTD v MAIWADA the Court of Appeal per Kekere-Ekun held thus:

“In Interpleader proceedings, the Claimant generally is deemed to be the Plaintiff and the Judgment Creditor the Defendant.

Accordingly, the burden of proof as a general rule is on the Claimant as Plaintiff in the proceedings. The onus lies on him to establish his title to the property in dispute, or where his claim is not absolute title, he must prove the precise interest or title he claimed; where however the Claimant was in possession of the property at the time of its attachment, it would seem that the Judgment Creditor shall in that case be deemed a Plaintiff and the burden of proof shall reverse

accordingly. In that case the onus must be on the Judgment Creditor to establish his claim”

It is also the submission that in view of the direct averments in the affidavit in support, the Claimant has clearly establish the ownership and possession of the attached car, the burden of proof is on the Judgment Creditor/Respondent to prove that the Claimant is not the owner of the car.

In conclusion, learned counsel to the Claimant urge this Honourable Court to sustain the claim of the Claimant and order the release of the car to him.

From the processes before the court, the Judgment Creditor did not file any response, however, the Applicant's counsel informed the court that he called the Judgment Creditor's Counsel few minutes before the commencement of the proceedings and the judgment Creditor's counsel informed him that he did not intend to file any process in response to the Claimant's claim, however he will be relying on his notice of disputation dated 3/4/19 which is before the court.

I have carefully considered the processes filed and submission of learned counsel.

I have also read through the Notice of Disputation dated 3/4/2019.

It is instructive to point out here that the essence of this proceedings is to determine whether the property in question, in this case the car belongs to the Judgment Debtor or the Claimant.

In the instant case, I am satisfied that the Claimant have adduced sufficient evidence to warrant the grant of this application in his favour as can be clearly seen in paragraph 3 of his affidavit and the exhibits attached thereto.

In the circumstances, I am of the considered view that the Claimant is entitled to judgment.

Judgment is accordingly entered in favour of the Claimant and I order as follows:

1. I order the Applicant/Deputy Sheriff of this court to release the Smart Saloon car with a customized registration number **NICE GUY** to the Claimant forthwith being the lawful owner.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
23/01/2020