

**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/M/5713/19
DATE: 25TH FEBRUARY, 2019**

BETWEEN:

ELVEN CONTINENTAL LTD - JUDGMENT CREDITOR/RESPONDENT

AND

JEHATA NIGERIA LTD - JUDGMENT DEBTOR/OBJECTOR

AND

- 1. ACCESS/DIAMOND BANK PLC**
- 2. ZENITH BANK PLC**
- 3. ECO BANK PLC**
- 4. FIDELITY BANK PLC**
- 5. F.C.M.B. PLC**
- 6. FIRST BANK PLC**
- 7. UNION BANK PLC**
- 8. ASO SAVINGS & LOANS LTD**
- 9. KEYSTONE BANK PLC**
- 10. KERITAGE BANK PLC**
- 11. POLARIS BANK PLC**
- 12. STANDARD CHARTERED BANK PLC**
- 13. UNITED BANK FOR AFRICA PLC**
- 14. GUARANTY TRUST BANK PLC**

GARNISHEES

Judgment Debtor represented by Jamail Jamaal while the Judgment Creditor absent.

C.U. Obinebu for the Judgment Debtor/Objector.

M/S. Ehbeji for the Judgment Creditor/Applicant.

Marcel Osigbemhe for the 1st Garnishee.

Umaja Dafian for the 4th and 11th Garnishees.

C.D. Azubuike for the 3rd Garnishee.

Chioma Nwakor for the 9th Garnishee.

M. Amana for the 13th Garnishee.

E.G. Igboo for the 8th Garnishee.

Judgment Creditor's Counsel – The matter is for ruling on the Preliminary Objection filed by the Judgment Debtor/Respondent.

R U L I N G

This ruling is predicated on a Notice of Preliminary Objection brought pursuant to Order 4 Rule 11 of the Court of Appeal Rules and under the inherent jurisdiction of this Honourable Court praying the Honourable Court to strike out or dismiss the Garnishee proceedings in this suit pending the determination of appeal already entered before the Court of Appeal in the matter.

The grounds of the objection are as follows:

1. That the Judgment Debtor/Objector has filed an appeal against the Judgment predicated essentially on the want of jurisdiction of this Honourable Court to hear and determine the case and deliver the judgment of 27th February, 2019 which judgment is sought to be enforced by this Garnishee proceedings and the appeal has been entered at the Court of Appeal.
2. That this Honourable Court made a conditional order for stay of execution pending appeal of the 29th June, 2019 and on

18th July, 2019, the Judgment Debtor/Objector filed an application before the Court of Appeal seeking the Appellate court's order to set aside the order of conditional stay and make an order for unconditional stay which application is pending before the Court of Appeal.

3. The Record of Appeal was transmitted and appeal entered on the 26th June, 2019 and the Judgment Creditor/Respondent was served the Record of Appeal on that same day.
4. The Judgment Debtor/Objector filed his brief of argument and served the Respondent within the time allowed by the Rules on the 2nd August, 2019 and the Judgment Creditor/Respondent has failed to file any reply brief up to date.
5. That by the extant rules of the Court of Appeal, once an appeal has been entered, the lower court ceases to entertain any proceedings including the present one pending the final disposal of the appeal.

In support of this application is a 13-paragraph affidavit dated 22/10/2019 deposed to by Jamel Jamaal, the Managing Director of the Judgment Debtor/Objector. Attached thereto are 3 documents marked as Exhibit A1, A2 and A3 respectively.

Learned counsel to the Judgment Debtor/Objector filed a 5-page written address dated 22/10/2019 wherein counsel formulated a lone issue for determination to wit:

“Whether in the circumstances of this case the Honourable Court should grant the preliminary objection”

On this sole issue, it is the submission that the fact that the Judgment for which the garnishee proceedings is pending here is not only on appeal but also the fact that the appeal has been entered and this court cannot be adjudicating on matters relating to the case at the same time.

Learned counsel refer to the provision of Order 4 Rule 11 of the Court of Appeal Rules which provides this:

“After an appeal has been entered and until it has been finally disposed off, the court shall be seized of the whole of the proceedings as between the parties thereto. Except as may be otherwise provided in those Rules, every application therein shall be made to the court and not the court below”

Submits that from Exhibit A the Respondent was aware that the Appeal pending at the Court of Appeal in this case was entered on 28/6/2019 when her counsel was served with a copy of the Record of Proceedings, yet she went ahead to commence garnishee proceedings.

Submitted that the issue of say of execution pending appeal is still pending before the Court of Appeal as the court is yet to hear the application seeking unconditional stay.

It is also the submission that the garnishee proceedings is an abuse of the process of this court as the contest has shifted to the Court

of Appeal and any attempt as the Respondent is now doing to commence a proceeding concurrently with the earlier appeal on the same subject matter amounts to the abuse of the appeal process. Learned counsel refer to the case of KWARA STATE v LAWAL (2018) NWLR (Pt 1606) Pg 266.

In conclusion, learned counsel to the Judgment Debtor/Objector urged this Honourable court to dismiss or strike out the garnishee proceedings for running foul of the rules of Court of Appeal and being an abuse of court process.

In opposition to this application, the Judgment Creditor/Respondent filed 16-paragraph counter affidavit in opposition to the Notice of Preliminary Objection. It is dated 29/10/2019 and deposed to by N.S. Egbaji counsel to the Judgment Creditor/Respondent.

Learned counsel to the Judgment Creditor/Respondent filed 5-page written address dated 29/10/2019 wherein counsel formulated 2 issues for determination to wit:

- 1.** Whether this Honourable Court can set aside this garnishee proceeding following the claim of the Applicant in this preliminary objection.
- 2.** Whether this proceeding amounts to abuse of court process.

On Issue 1, it is the submission that this court cannot on the mere basis that the Applicant has an appeal pending at the Court of Appeal stop the proceeding of this garnishee as the law is clear

and long standing that appeal does not operate as a stay unless an applicant can show that special circumstances exist to warrant a stay of execution. See *FATOYINBO v OSEDEYI* (2002) 11 NWLR (Pt 778) Og 384.

Submit that even if the Applicant is challenging the conditional order of this court at the Court of Appeal, the circumstances of this case being a monetary judgment requires that the Applicant first comply with the order of this court to deposit the money or a security to that effect before waiting for the determination of their application at the Court of Appeal. Since that is not the case here, the Applicant cannot run to this court now for protection when garnishee proceeding is pending and more so the Applicant is a stranger to this proceedings.

Submitted that the main crux of the matter is that the Supreme Court have reaffirmed its earlier position that the Judgment Debtor is a meddlesome interloper in a garnishee proceeding. See *C.B.N. v INTERSTELLA COMMUNICATIONS LTD* (2018) 7 NWLR (Pt 1618) Pg 209.

On Issue 2,, it is the submission that this proceedings does not in any way amount to abuse of court process as alleged by the Applicant in this preliminary objection. Submits that abuse of court process has been defined by the Supreme Court in the case of *LADOJA v AJIMOB*E (2016) All FWLR (Pt 843) Pg 1846 at 1887 Paras B – D.

In conclusion, learned counsel urge this Honourable Court to dismiss this preliminary objection with cost.

In reply on points of law, learned counsel to the Judgment Debtor/Objector submits that the Record of Appeal has been transmitted and they have filed their Brief of Argument.

On the part of the court after considering the processes filed and submission of learned counsel on both sides, it has been observed that by Exhibit A2 attached to the Affidavit in support of the preliminary objection, records has been transmitted and appeal entered with Appeal No. CA/A/580/2019.

It is instructive to state here that when appeal is said to be pending must not be confused with when an appeal is said to have been entered; while an appeal is pending as soon as Notice of Appeal is filed, an appeal is entered when the Records of Appeal is complied and forwarded to the Appellate court and received by that court and entered in the court in accordance with the Rules of the court. See *QUADRI v STATE HOUSE OF ASSEMBLY & OTHERS* (2006) LPELR 7655, it was held that as soon as an appeal is entered in the Appellate court, it becomes fully seized of the matter and from then, the court becomes ***dominus litis*** having full and complete dominion over all processes filed and ensuring proceedings to the exclusion of the lower courts. See also Order 4 Rule 11 of the Court of Appeals Rules 2011.

With the above decisions and the provision of the Court of Appeals Rules 2011 at the back of my mind, I am of the considered view that this court is ***functus officio***.

In the circumstance, the garnishee proceedings pending before this court is hereby struck out.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
25/02/2020

Judgment Creditor's Counsel – We thank the court for the ruling.

Judgment Debtor's Counsel – We also thank the court for the ruling.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
25/02/2020

1st Garnishee's Counsel – The Garnishee proceeding having been struck out we pray the court to discharge the Garnishees.

Judgment Creditor's Counsel – No objection.

Judgment Debtor's Counsel – No objection.

Court – The Garnishees in this proceedings are hereby discharged.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
25/02/2020