

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DELIVERED ON THE 27TH OF JANUARY 2020**

**SUIT NO: FCT/CV/275/11
M/7392/19**

BETWEEN:

ARCHIBONG BASSEY ESSO.....JUDGMENTCREDITOR/RESPONDENT

AND

PATNASONIC INDUSTRIES LIMITED...JUDGMENT DEBTOR/APPLICANT

AND

ZENITH BANK PLC.....GARNISHEE/RESPONDENT

**VICTOR C. CHIMEZE FOR THE JUDGMENT CREDITOR
HAMEEDOGUNBIYI FOR THE JUDGMENT DEBTOR
VIVAN CHARLES FOR ZENITH BANK.**

RULING

By way of a Motion on Notice dated and filed the 21st day of June, 2019, the Judgment Debtor hereinafter referred to as the Applicant is praying the Court for the following Orders: -

1. An Order Setting Aside/Discharge the Garnishee Order Nisi made by this Honourable Court on 28th May 2019.
2. And for such further Order (s) as this Honourable Court may deem fit to make in the Circumstances.

The Grounds upon which this Application is founded are as follows: -

- 1) The Order Nisi was given in error due to the Misrepresentation of Facts by the Judgment Creditor.
- 2) Garnishing Proceeding is for Liquidated Judgment Sum Only.
- 3) This Honourable Court awarded to the Judgment Creditor in its Judgment of 2nd December 2013 as follows: -
 - i) N1, 500,000.00 as Deposit made by him
 - ii) N 500, 000.00 as General Damages
 - iii) N 200, 000. 00 as Cost of Litigation
 - iv) Total –N2, 200,000.00
- 4) The Judgement Creditor rather applied to the Court via Motion Ex Parte with **Motion No. FCT/HC/M5652/19** for the following
 - i) N2,200.000 as Judgment Sum
 - ii) 10% of N 2,200,000 =1,100,000.00
 - iii) 700,000 as Cost of the Garnishee Proceedings
 - iv) Total =N4,000,000.00
- 5) By the Judgment of this Court, Judgment Sum due is N2,200,000.00
- 6) The Honourable Court did not award 10% Interest on the Judgment Sum per annum to the Judgment Creditor
- 7) The Cost of N700, 000.00 as Cost of the Garnishee Proceedings was not part of the Sum due in the Judgment of this Honourable Court to the Judgment Creditor.
- 8) The Order Nisi is in excess of the Jurisdiction of this Court.

In Support of this Application is a Thirteen Paragraph Affidavit deposed to by Ajuma Isah, a Legal Practitioner in the Law Firm to

the Applicant and a Written Address dated and filed on the 21st of June 2019.

In response, the Judgment Creditor hereinafter referred to as the Respondent, filed a Fifteen (15) Paragraph Counter Affidavit deposed to by Victor Izebhor, a Legal Practitioner in the Law Firm of Counsel to the Respondent dated and filed on the 3rd of July 2019 and also a Written Address.

The Applicant filed a Reply on Points of Law dated The 30th of September 2019 but filed on The 8th of October 2019.

Processes were duly Served and Adopted.

The Applicant raised Three Issues for determinations in its Written Address, which are “

- 1) *Whether the Judgment Debtor/Applicant has a right to be heard in the Garnishee Proceedings with respect to Garnishee Order Absolute*
- 2) *Whether the Order Nisi not in excess of the Jurisdiction of the Court”.*

The Respondent on the other hand raised a Sole Issue for determination, which is: *“Whether the Honourable Court has Powers to award ancillary Reliefs in Garnishee Proceedings”.*

The Applicant had in its Supporting Affidavit, stated that the Oder Nisi made on the 28th of May, 2019 in favour of the Respondent, was granted in error due to the Misrepresentation of Facts by the Respondent. He averred that the Court awarded the Respondent in the Judgment delivered on 2nd December 2013 as follows: -

- A) N1, 500, 000. 00 as deposit made by him

- B) N500, 000.00 as General Damages
- C) N200, 000.00 as cost of Litigation.

While the Ex parte Application dated the 29th of April 2009 applied for

- a) N2, 200.00 as Judgment sum
- b) 10% of N2, 200,000=N1, 100,000.00
- c) N700.000.00 as Cost of the Garnishee Proceedings
- d) Total =N4, 000. 000.00.

The Applicant argued that by the Judgment of the Court, the Judgment Sum due is N2, 200,000.00 because the Court did not award 10% interest on the Judgment Sum per annum.

Further, the Cost of N700, 000.00, as Cost of Garnishee Proceedings was not Part of Sum due in the Judgment of the Court.

On the other hand, the Respondent contended that the Court has Powers to award 10% Post Judgment Interest, which was affirmed by the Court.

He submitted that the Appeal filed by the Applicant was decided on the 1st of March 2019 and dismissed, yet, the Applicant made no effort to pay the Judgment Sum.

The Respondent had to brief a Law Firm to commence Fresh Garnishee Proceedings to attach Funds standing to the Applicant's Credit. If the Applicant had paid the Judgment Sum willingly, the need for the Garnishee Proceedings would not have arisen.

Arguing further, the Respondent submitted that the Court did not grant the Order Nisi in error and there was no Misrepresentation. The Court has Powers to make Orders for Ancillary Cost and therefore the Order made is not in excess of the Jurisdiction of this Court.

Submitting further, he stated that a Judgment Creditor is usually entitled to Cost of Garnishee Proceedings.

It is the Court that is in the best position to interpret its own Judgment.

All arguments of Learned Counsel for the Parties are all on Record.

After a careful consideration of all Submissions made by Learned Counsel, the issue before the Court is **“Whether this Application is Meritorious”**

These Issues will be in Two (2) Legs. The First will be on the 10% Interest of Judgment Sum and the Second will be on the Sum of N700, 000.00 (Seven Hundred Thousand Naira) being Cost of Garnishee granted by the Court.

Now, on the First Leg, the Court has had a close look at its Judgment and **Notes** that the 2nd Prayer of its Judgment reads ***“As regards the claim for Twenty One Per cent (21%) interest rate of the Judgment sum per annum from the Date of Judgment till the final liquidation of the Judgment Sum. There was no part of the agreement entered into by the Parties that showed that this was agreed upon by the parties in the event of a breach, nor did the agreement show that this was in anticipatory claim or an established mercantile custom in respect to sale for houses. How this claim for 21 % was arrived at, is best left to their own imagination but the Justification was not proved before the Court.....
The Claim for 21% interest was unforeseeable and is not justified before this Court. In any event, by Paragraph 1(iv), of the Contract, it was understood that any deposit made, may be refunded without***

attracting any interest. So the Parties clearly by express agreement, signed away the right to calculate and refund any interest on deposits made. However, the Court has inherent Powers by the Provision of Order 39 Rule 7 to make an Order for 10% interest per annum, on the Sum paid from the date of this Judgment until final liquidation of the Judgment”.

In the Case of **DAVID MBANI V. MBIABE BOSI & ORS (2000) 11 NWLR (PT. 991) 400**, It is Settled Law that in Interpreting a Judgment the Document or Judgment must be read as a whole and Interpreted in that light with effort being made to achieve harmony among the parts. Reference is made to the Cases of **ADE VS OYIWOOLA (2000) 10 NWLR (PT 167) 116; SALE VS YAHAYA (1998) 4 NWLR (PT 546) 1**.

In the light of this, the referred portions of the Judgment contended to be inexplicit must be read along side the entire Judgment as a whole and be interpreted in that light for the purpose of achieving harmony among the parts.

From the above Excerpt, it can be seen that the Applicant had claimed Interest of 21% which was refused, and the Court went further to hold that it has inherent Powers by the Provision of Order 39 Rule 7 of the Federal Capital Territory Rules of Court to grant 10% Interest as permissible under the Rules of Court and that is what was Ordered. The Judgment speaks for itself, the Court ordered for this Payment to be paid within a specific time frame, that is, Per Annum on the Judgment Sum from the date of the Judgment until final Liquidation of the Judgment. This Order therefore stands.

In respect to the Issue on the Second Leg, the Order Nisi was granted on the 28th day of May 2019. This Leg deals with the Principal Sum, the Interest and the Sum of N700, 000. 00 (Seven Hundred

Thousand Naira Only), which is an Ancillary Sum of Money claimed for the Cost of the Garnishee Proceedings. In the Case of **NABO PROPERTIES LTD VS PEACE COVER NIGERIA LIMITED AND ORS 2014 LPELR 22586**, the Black's Law Dictionary defined Ancillary Relief as a Subordinate or Subsidiary or a Legal Proceeding that is not the Primary Dispute but which aids the Judgment rendered in, or the Outcome of the Main Action.

By Virtue of **SECTION 86 OF THE SHERIFFS AND CIVIL PROCESS ACT**, the Court has the Power to Award Cost of the Garnishee Proceedings in favour of the Garnishor. See also the Cases of **FIDELITY BANK PLC V OKWUOWULU & ANOR (2012) LPELR - CA/L/776M/06 AND DUBA VS PRIMA IMPEX NIGERIA LIMITED AND ORS 2017 LPELR 42015**.

However, it is important to bear in mind the fact that the Order Nisi granted is not a Permanent Order, which could only be granted on the merits after the Judgment Debtor and the Garnishees are heard on the Application. The Court has had a close look at the Order Nisi Granted and seen that the Order was made Absolute in respect of the Payments, which ought not to be the case at the onset. It was certainly premature and therefore the Order Nisi granted is hereby set aside.

Without further ado, the Objections raised in the Motion on Notice are found to be partly meritorious and the Order Nisi is accordingly Set Aside.

HON. JUSTICE A.A.I. BANJOKO
JUDGE