

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA.
ON THE 25TH DAY OF FEBRUARY, 2020.
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

MOTION NO. M/4009/2020.

BETWEEN

HAJIYA HAFSATU ABDULLAHI UMAR....APPLICANT/JUDGEMENT CREDITOR

And

ALHAJI ABUBAKAR M. IMAM.....RESPONDENT/JUDGEMENT DEBTOR

RULING.

Before this Honourable Court is a motion on notice filed on the 7th of January, 2020 and brought pursuant to section 44 of the Sheriff and Civil Process Act and under the inherent powers of this Honourable Court.

The Applicant/Judgement Creditor prays for the following orders:

1. An Order attaching immovable property of the judgment debtor situate at No.76, Lome Crescent, Wuse Zone 7, Abuja for sale to satisfy the judgement debt of N3,050,000 and N2,000,000.00 being judgement of the His Worship, Musa Abdulrazaq Eneye of Magistrate Court 8, sitting at Wuse Zone 2, Abuja.
2. An Order deducting N900,000 paid by the Judgement debtor after the judgement.
3. An Order that the judgement debtor should produce before this Honourable Court his Certificate of Occupancy of House No. 76, Lome Crescent, Wuse Zone 7, Abuja.
4. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The application is supported by a 5 paragraph affidavit deposed to by Hajara Mohammed, attached Exhibits and an accompanying written address.

I have considered the application before the Court, the affidavit in support, the attached Exhibits, the written and oral submissions of Counsel and I am of the view that the sole issue for determination is:

Whether the Applicant has satisfied the provisions of Section 44 of the Sheriffs and Civil Process Act to be entitled to the reliefs sought.

Before I proceed, it is important to examine the provisions of Section 44 of the Sheriffs and Civil Process Act which provides as follows:

“If sufficient movable property of the judgement debtor can be found in the Federal Capital Territory, Abuja or the state as the case may be to satisfy the judgement and cost and the cost of execution, execution shall not issue against his immovable property, but if no movable property of the judgement debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the judgement and cost and the cost of execution, and the judgement debtor is the owner of any immovable property, the judgement creditor may apply to the court for a writ of execution against the immovable property of the judgement debtor, and execution may issue from the Court against the immovable property of the judgement debtor in accordance with the provisions of this Act, and any rules made thereunder.

Provided that where the judgement has been obtained in a Magistrate’s Court, execution shall not issue out of the Magistrate’s Court against the immovable property, but shall issue out of the High Court upon the conditions and in the manner prescribed.

It is trite that by the above provision, what a judgement creditor needs to show to apply for attachment of immovable property are as follows:-

1. What steps, if any, he/she has taken to enforce the judgement and with what effect;
2. What amount of the judgement debt still remains unpaid ; and
3. That there is no movable property of the judgement debtor, or if there is, it is insufficient to satisfy the judgement debt.

See

LEEDO PRESIDENTIAL MOTEL LTD V. BANK OF THE NORTH LTD & ANOR. (1998) LPELR-1775 (SC) PG. 40-41 Paras. E-B.

And

GAMBARI V. FOLORUNSHO (2018) LPELR-44238 Pg. 13-15, Paras. B-B. Per Ugo JCA.

The provisions of Section 44 of the Sheriffs and Civil Process Act is very explicit on the duty placed on the Applicant/Judgement creditor upon application for an order for attachment of immovable property. In bringing an application of this nature, the Applicant must show that he has with reasonable diligent search ensured that no movable property exists anywhere. See

UMAR v. MANAGER (2018) LPELR. PP. 7-11, PARAS. C-B

ASRACO (NIGERIA) LTD V. TRADE BANK PLC (2003) 6 NWLR(P.T.815) 22 or (2002) LPELR-5367 (CA) PP. 14-15, PARAS. E-E. Per Omege JCA.

The Judgement Debtor/Applicant initially sought for the above reliefs by way of motion Exparte. Though the law and the Judgement (Enforcement) Rules is silent on whether such application can be made exparte or on notice, but this Court upon

hearing the Exparte application by the judgement creditor/Applicant on 12th December, 2019 for an Order of attachment of the immovable property of the judgement debtor, ordered that the judgement debtor/respondent be put on notice of this application in the overall interest of justice. And in compliance with the order of the Court, the judgement debtor was served with the instant motion on notice on 30th January, 2020. Despite the service of the motion on notice on the judgement debtor/respondent, he did not file any process in opposition to the instant application.

The averments in the supporting affidavit were never denied, controverted nor contradicted by the judgement debtor/respondent. It is trite law that facts not denied are deemed admitted. See

ADERONPE V. ELERAN & ORS. (2018) LPELR-46308 (SC) Pg. 6, Paras. E-F. per Eko JSC.

ADEBAYO V. OLAJOGUN (2016) LPELR-41390 (CA)PG.22-24, Paras.E-B. Per Tsammani, JCA.

See also;

BADEJO V. FEDERAL MINISTRY OF EDUCATION (1996) 8 NWLR (PT.464) P.15 AT 42 PARAS. E-F, the Supreme Court held that:-

“It is elementary principle of law that facts contained in an affidavit form part of documentary evidence before the Court. Where an affidavit is filed deposing to certain facts, and the other party does not file a counter affidavit or reply to the counter affidavit, the facts deposed to in the affidavit would be deemed unchallenged and undisputed. In the instant case, these paragraphs which disclosed that the interview for admission into Federal Colleges had already taken place on 8th October, 1988 were not denied- They are therefore deemed admitted.”

As earlier mentioned, the Judgement debtor/Respondent who was represented in Court by Andy N. Valentine Esq, did not file any response to this application.

I have carefully gone through the Exhibits attached to this application particularly the Judgement of the lower Court and the affidavit deposed to by one Muhammad Audi, a staff of the F.C.T High Court of the Enforcement Department. It is imperative to state that this is a consent judgement delivered since 7th November, 2016 and the only effort made so far by the judgement debtor was the payment of N900,000 and since then, no effort has been made to defray the outstanding judgement sum even when the payment of the judgement sum was to be made in three instalments as can be gleaned from the Judgement.

I have carefully read the consent judgement delivered and signed by his Worship, Musa Abdulrazaq, where his worship stated thus:

“ The Defendant who owes the plaintiff rent shall pay the outstanding rent arrears of N3,050,000.00 please, but must be in three instalments. 1st shall be paid before 31st December 2016, the 2nd shall be paid before the 31st day of March, 2017 and the final instalment shall be paid not later than June 2017. The Defendant’s tenancy shall be extended to the 13th day of July, 2018, at the sum of N2 million per annum.

The Defendant shall also put the property in tenantable repair before vacation and handing over of the property he currently occupies as tenant to the Landlord.

It is the consent Judgement of the Court and parties are thus bound.”

The judgement debtor has not informed this court if and how the above order/judgement of the court has been obeyed. Judgement/Orders of Court are not made for the fun of it, they are to be complied with.

It is trite law that courts do not make orders in vain, orders of Court are meant to be obeyed. See

AMALGAMATED TRUSTEES LTD V. ASSOCIATED DISCOUNT HOUSE LTD (2007) LPELR-454 (SC) PP. 92-93, PARAS. F-A.

Where his lordship, Muhammad JSC held that:

“Learned SAN for the Applicant, I believe, knows it very well that court do not make orders in vain and they are meant to be obeyed. See NNSC Ltd v. Alh. Sabana & Co. Ltd. (1988) 2 NWLR (Pt.74) 23.”

See also;

OGUNLEYE V. AINA (2012) LPELR-7877 (CA) PP.50-51, PARAS. F-D Per Mbara, JCA.

“Generally, the law is on the side of the successful party, to assist him to reap the benefit(s) of the judgement. See NZERIBE V. DAVE ENGINEERING CO. LTD. (1994) 9SCNJ 9 SCNJ 161. In the case of Labour Party vs INEC (Supra) the apex Court held that ‘...whether the Court of Appeal was right in making its said order is of no moment. This is because, that order subsists and must be obeyed by all concerned. It is now firmly settled that Court order must be obeyed even if such order is perverse, until such a time that the order is set aside by a competent Court. See Oba Aledegbami vs. Oba Fasanmade (1988) 3 NWLR (Pt.81) 131; Jimoh Akinfolarin & Ors. vs. Solomon Oluwole Akinola (1994) 4 SCNJ 30; Tunde Osunrinde & Ors. vs. Mutairu Togun Ajamogun & Ors. (1992) 7 SCNJ 79.”

It is in light of the foregoing that I am of the view that this application for attachment of immovable property ought to succeed.

Consequently, this application succeeds and Orders are hereby made as follows:-

1. An Order attaching immovable property of the judgment debtor situate at No.76, Lome Crescent, Wuse Zone 7, Abuja for sale to satisfy the judgement debt reflected in the judgement delivered on 7th November, 2016 by his Worship, Musa Abdulrazaq Eneye of Senior District Court of Federal Capital Territory, sitting at Wuse Zone 2, Abuja.
2. An Order deducting N900,000 paid by the Judgement debtor after the judgement from the total judgement sum of the Senior District Court Wuse Zone 2, Abuja.
3. An Order that the judgement debtor should produce before this Honourable Court his Certificate of Occupancy/and or Right of Occupancy of House No. 76, Lome Crescent, Wuse Zone 7, Abuja.

Signed

Honourable Judge.

Appearances:

A.A. Sanda Esq for Plaintiff/Judgement Creditor/Applicant.

Andy N. Valentine Esq for the Defendant/Judgement Debtor/Respondent.