

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA**

THIS WEDNESDAY, THE 26TH DAY OF FEBRUARY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

MOTION NO: FCT/HC/M/4113/18

BETWEEN:

DR. FESTUS JOSHUA UDHUDE

- 1. OGHENEKARO DANIEL FESTUS**
- 2. ENAHORO GIDEON FESTUS**
- 3. ODAFE JOSHUA FESTUS**
- 4. OMOEFE MARVEL FESTUS**

(Suing through Festus Joshua Udhude as their next friend)

**.....APPLICANTS/JUDGEMENT
CREDITORS**

AND

THE INSPECTOR GENERAL OF POLICE

- 1. ASST. INSPECTOR GENERAL OF POLICE
(ZONE 5 COMMAND)**
- 2. DCP MOHAMMED**
- 3. ASP HASSAN ABDULKAREEM**
- 4. INSPECTOR FOLORUNSHO SALAMI**

**....RESPONDENTS/JUDGMENT
DEBTORS**

AND

CENTRAL BANK OF NIGERIA

..... GARNISHEE

RULING

Hon. Justice A.S. Umar (now JCA) granted the following order on 28th March, 2018 as follows:

“Upon hearing FESTUS AKPOGHALINO ESQ. counsel for the Applicants/Judgment Creditors on a motion ex-parte, the attached 6 paragraphs affidavit and adopted written address in support of same praying the Honourable Court for the following orders:

- 1. An Order of court granting leave to the Judgment Creditor/Applicant for the issuance of writ of attachment by garnishee order on the 1st Judgment Debtor's bank account with the garnishee.**
- 2. A garnishee Order Nisi against the 1st Respondent/Judgment Debtor's account with the Central Bank of Nigeria, in the sum of N13, 000, 000 (Thirteen Million Naira).**
- 3. And for such other Orders that this Honourable Court may deem fit to make in the circumstances.**

IT IS HEREBY ORDERED AS FOLLOWS:

Prayers 1 and 2 on the motion paper are granted as prayed.

This Order Nisi shall be served on the garnishee and the judgment debtors respectively.

The return date shall be 8/05/18 for continuation of hearing of garnishee proceedings.”

The Respected learned trial judge did not conclude the garnishee proceedings before he was elevated to the Court of Appeal and the matter was then transferred to my court to conclude same.

Now in response to the **order to show cause**, the garnishee, the Central Bank of Nigeria (CBN) filed a 9 paragraphs affidavit to show cause in which the Central Bank of Nigeria stated that they do not have any account in the name of the 1st Judgment Debtor (the Inspector General of Police) and that they are unable to comply with the order nisi.

The Judgment Creditors then filed a counter affidavit to the affidavit to show cause with four (4) annexures marked as Exhibits E, F, G and H disputing the assertions made by the Garnishee that it has no account of 1st defendant/Judgment Debtor.

The Garnishee in response filed a further affidavit to show cause in response reiterating its earlier position while the Judgment Creditors also filed a further

affidavit emphasising its position that the Garnishee indeed maintains an account of the 1st Judgment Debtor, the Inspector General of Police.

I have here carefully considered the processes filed by parties and the narrow issue is whether the 1st defendant/Judgment Debtor has an account with the Garnishee?

The Garnishee in this case, the CBN has categorically advanced the position that it does not maintain an account in the name of the 1st Defendant/Judgment Debtor. If that position is established, then the extant Garnishee proceedings stands undermined: if otherwise, then there is template to continue with the garnishee proceedings.

I have insightfully read and considered the processes filed by the Judgment Creditors/Applicants and there is really nothing denoting clearly and precisely that the Inspector General of Police maintains an account in that capacity with the CBN. This is an issue that cannot be determined by guess work or speculations. It is a matter of cogent and credible evidence streamlining that position.

It is correct that some of the attached exhibits by the Judgment Creditors to wit Exhibits A, B and C talk about the introduction of a Treasury Single Account relating to transfer of all Federal Governments Public Funds to the CBN but it is difficult to accept that this without more, translates to or tantamounts to the Inspector General of Police maintaining an account with the Central Bank of Nigeria.

Exhibit A1 attached to the further affidavit of the Judgment Creditors is said to be a letter from the Ministry of Police Affairs stating that the I.G.P has an account with the CBN. Now this letter is dated 11th August, 2010 and predates by many years the introduction of the Single Treasury Account in 2015. There is nothing before me to show that the account still exists with the CBN and or that it is still operational and the court cannot speculate.

If the CBN says it does not have such account, then unless there is cogent evidence to the contrary, the court would have no option but to accept the stated position of CBN. The Court clearly has no metaphysical or magical powers to know the specific accounts with CBN.

I also note that in the affidavits of the Judgment Creditors, allusion was made to the fact that the Judgment Debtor is the Nigeria Police and that the IGP is the alter ego of the Nigerian Police Force. The point being made is to effect that the IGP and the Nigerian Police Force is one and the same so that if the Nigerian Police Force has an account with CBN, that the garnishee proceedings can proceed against it.

Now the point must be made clear that the **Nigeria Police Force** is not one of the parties in the extant action. The Judgment Creditors never sued the Nigeria Police Force. The parties subject of the extant proceeding cannot therefore be changed or altered at this stage to suit a particular purpose. The garnishee proceedings here must fail or succeed on the basis of the parties in the existing action.

Most importantly, the IGP is not the alter ego of the Nigeria Police Force as erroneously canvassed. The Nigeria Police Force was established by and under the provision of **Section 214 of the 1999 Constitution**. By **Section 215**, an Inspector General of Police is appointed by the President from among serving members of the Nigeria Police Force. The Nigeria Police Force may under **Section 215 (2)** be under the command of the IGP but he is clearly not the alter ego of the Nigeria Police Force. The IGP is clearly part and parcel of the Nigeria Police Force.

If the Nigeria Police Force as a body is not part of the Judgment Debtor(s) as it is evidently so on the records, it is logical to hold that its account(s) with a third party cannot be subject of the extant garnishee proceedings.

On the materials as earlier alluded to, there is no real clarity precisely denoting that the 1st Defendant/Judgment Debtor maintains an account with the Garnishee (CBN). While it is expected that the CBN will be honest and be transparent with respect to providing credible facts relating to accounts of the Judgment Debtors with them; unless there are clear and cogent facts showing that they were not truthful and or that they were not honest; then the court will have no option but to accept the position they have advanced as in the present situation.

In this present case, the court has not been put on a commanding height by cogent and convincing materials, showing clearly and unequivocally that the 1st Defendant/Judgment Debtor maintains an account with the Garnishee. The volume

of processes filed on both sides rather than derogate only served to reinforce the lack of clarity on the matter.

In such fluid and unclear circumstances, it will be difficult to make the Order absolute as enjoined by the applicable Rules. The court is loathe to make orders that cannot be enforced or orders that will ultimately turn out to be barren orders incapable of been realised.

It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff whose affidavit does not prove the reliefs he seeks must fail. See **A.G. of Anambra State V. A.G of Fed. (2005) All F.W.L.R (pt.268)1557 at 1611; 1607 G-H.** So be it in the extant situation.

In the circumstances, the appropriate order to make in the circumstances is to discharge the Garnishee from this proceedings. They are accordingly so discharged.

.....
Hon. Justice A.I. Kutigi

Appearances:

- 1. Festus Akpogalino Esq., for the Judgment Creditors.**
- 2. A.O. Ugochukwu Esq., for the Garnishee.**