

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA COURT 4, FCT., ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK**

**MOTION NO. FHC/HC/M/539/2019**

**BETWEEN:**

**GUARANTY TRUST BANK PLC } PLAINTIFF/JUDGMENT  
CREDITOR**

**AND**

**UMAR ABDULLAHI } DEFENDANT/JUDGMENT  
DEBTOR**

**AND**

1. POLARIS BANK LTD.
2. FIRST BANK OF NIGERIA LTD.
3. UNITED BANK FOR AFRICA PLC
4. ZENITH BANK PLC
5. FIRST CITY MONUMENT BANK PLC
6. ACCESS BANK PLC
7. DIAMOND BANK PLC
8. ECOBANK NIGERIA PLC
9. WEMA BANK PLC
10. FIDELITY BANK PLC
11. KEYSTONE BANK LTD.
12. MAINSTREET BANK LTD.
13. STANBIC IBTC BANK PLC
14. STERLING BANK PLC
15. UNION BANK PLC
16. STANDARD CHARTERED BANK PLC
17. ASO SAVINGS & LOANS PLC
18. HERITAGE BANK PLC
19. JAIZ BANK PLC
20. UNITY BANK PLC
21. CITE BANK PLC

**GARNISHEES**

**RULING**

The 3<sup>rd</sup> Garnishee/Applicant is by a Motion on Notice under reference M/539/2019.

The 3<sup>rd</sup> Garnishee/Applicant identified five grounds for bringing his application. Still in furtherance of this application, the Garnishee/Applicant filed a 6 paragraph affidavit deposed to by Kingsley Ugwueke, a secretary in the Law Firm of Messrs U. O. Sule, SAN & Co. the crucial facts to this application in summary are that on the 16<sup>th</sup> October, 2019 this Court made an order absolute against the 3<sup>rd</sup> Garnishee.

The deponent has disclosed that the garnishee was never served with any Motion on Notice pursuant to the Order Nisi delivered by this Court.

Besides, it is also asserted by the 3<sup>rd</sup> Garnishee that the 3<sup>rd</sup> Garnishee/Applicant were never served with any Hearing Notice of this Court's fixture of the 17<sup>th</sup> April, 2019, 27<sup>th</sup> May, 2019 and 16<sup>th</sup> October, 2019.

Finally, the 3<sup>rd</sup> Garnishee/Applicant contends that having not been served with the Motion on Notice and Hearing Notice, it could not have appeared in Court on the day the order absolute was made.

One Habila Danladi, a litigation secretary in the Firm of Oli and Partners, Counsel for the Judgment Creditor/Respondent deposed to

a 13 paragraph counter affidavit. I have read the entire gamut of the counter affidavit and note that the Judgment Creditor/Respondent has not denied that it didn't file and serve a Motion on Notice to show cause, specifically, in paragraph 10 of the counter affidavit deponent disclosed that a Motion on Notice is not required to be served on the 3<sup>rd</sup> Garnishee.

The deponent maintains that the 3<sup>rd</sup> Garnishee was served with an order nisi which was received by the Judgment Creditor on the 12<sup>th</sup> April, 2019. He reasons that service of an order nisi on the 3<sup>rd</sup> Garnishee for the purposes of obtaining an order absolute will suffice.

Both Counsel filed and exchanged written addresses. Usman O. Sule, SAN, in his written address for the Garnishee formulated a lone issue for determination that is, whether the order made absolute on the 16<sup>th</sup> October, 2019 against the 3<sup>rd</sup> Garnishee/Applicant was valid where the 3<sup>rd</sup> Defendant has not been served with Hearing Notice on the 3<sup>rd</sup> Garnishee/Applicant.

C. P. Oli Esq. in his written address dated 4<sup>th</sup> November, 2019 formulated a lone issue for the determination, that is, whether in the circumstance of this case, the 3<sup>rd</sup> Garnishee was not aware of the Garnishee Proceedings having been duly served with the Order Nisi.

I have considered both issues for determination, however, having considered the facts and circumstances of this case, I am of the view that the pertinent issue for determination in this application for setting aside is whether the proceedings of the 16<sup>th</sup> day of October, 2019 is competent having regard to the non filing and non service of the Motion on Notice to show cause on the 3<sup>rd</sup> Garnishee.

From the onset, I must point out here that this Court in granting the order nisi made several orders on the 5<sup>th</sup> March, 2019. This Court ordered, *inter alia*, that the “ *...Garnishee are to be served with a Motion on Notice wherein the Garnishee are to show cause why an order absolute should not be made in respect of the funds kept by the Judgment Debtor’s account maintained by the respective Garnishees...*”

Flowing from the affidavit evidence presented by both parties, I am not left in doubt that this Court’s order directing that a Motion on Notice is to be filed and served is not complied with by the Judgment Creditor.

It must be noted that the filing and service of a Motion on Notice for the garnishee to show cause why an order absolute is to be granted is a statutory requirement, prescribed by the Sheriff and Civil Process Act. The filing and service of this process is fundamental,

failure to file and effect service on the garnishee robs this Court of the jurisdiction to entertain the garnishee proceedings as it relates to hearing of an application for an order absolute. The spillover effect of the non service on the garnishee extends to subsequent proceedings which renders it a nullity, particularly the proceedings of the 16<sup>th</sup> October, 2019.

It is of no moment that an order nisi has been served on the garnishee, service of the order nisi with the Motion on Notice for an order absolute cannot right the wrong in hearing the proceedings of the 16<sup>th</sup> October, 2019.

It is the Motion on Notice that sets the pace for hearing of the application for an order absolute. Where the Motion has not been filed and served, the Garnishee/Respondent has no reason for showing cause, putting it another way, there is no basis for showing cause or not showing cause why the order absolute should be made in the absence of service of the Motion on Notice. It is tantamount to depriving the garnishee its right of fair hearing on the application for granting (or otherwise) of an order absolute.

I find the decision in **NUT TARABA STATE v. ITAHU (2018) 15 N.W.L.R. (PART 1642) pages 381 at 391 – 392** rather illuminating regarding the scenario before this Court.

It was held that:

*“ Failure to serve Hearing Notice on a party entitled to such service is a fundamental defect in the proceedings and fatal to the case. It amounts to a breach of the right of the party who should have been entitled to a fair hearing, a right guaranteed by Section 36(1) of the 1999 Constitution”*

The consequence of such failure is that the Court lacks jurisdiction to entertain the proceedings which are thereby rendered null and void. In other words, the defect is fatal to the proceeding, it is a nullity, however well the proceedings was conducted and decided. The defect is fatal to adjudication as it touches on the competence of the Court to exercise in jurisdiction in the matter.

Applying the foregoing reasoning to this case, I am of the view and will so hold that the non service of the Motion on Notice is even worse than non service of the Hearing Notice. This is because the Motion on Notice in garnishee proceedings is the heart of the Judgment Creditor’s claim against the Judgment Debtor it is on the same pedestal as non service of the originating process in a regular suit.

In the light of the foregoing considerations, I am of the view and will so hold that the proceedings of the 16<sup>th</sup> October, 2019 against the

3<sup>rd</sup> Garnishee is a nullity, accordingly, the Order Absolute made by this Court on that day lacked the competence of this Court, the Order Absolute is accordingly set aside. Any execution made pursuant to the Order Absolute is also set aside on account of its being a nullity.

**O.O. Goodluck,  
Hon. Judge.  
28<sup>th</sup> May, 2020**

**APPEARANCES**

**Parties absent**

**Usman O. Sule, SAN with me is Adejoh Ms.: For the Plaintiff,**

**Defendant unrepresented**