

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/0785/2018

BETWEEN:

STRONG TOWER DIVINE SECURITY LTD.....JUDGMENT CREDITOR/RESPONDENT

VS

1. HON. CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL

2. ABUJA MUNICIPAL AREA COUNCIL.....JUDGMENT DEBTORS/APPLICANTS

RULING

Before me are two applications filed by the Judgment Debtors/Applicants. The 1st is a Motion on Notice and the 2nd, a Preliminary Objection which are subject of this Ruling. It is appropriate to consider the Motion on Notice first before proceeding to determine the Preliminary Objection.

The Applicants Motion on Notice with No. M/7681/19 is dated 24/6/19 but filed on 28/6/19 brought pursuant to the inherent jurisdiction of the court seeking the following orders:-

- (1) An Order of this Hon. Court setting aside its earlier judgment dated 5th of February 2019 as same was reached in error, considering the fact that the said judgment is predicated on a fundamental defective and misleading Writ and the court should not have entertained the said Writ abinitio.

(2) And the Omnibus relief.

In support of the Motion is a 5 paragraph affidavit deposed to by Danlami Yerima, relies on all the averments. Also filed a Written Address, in urging the court to grant the application.

Upon being served with the Motion, the judgment Creditor/Respondent filed a counter affidavit of 13 paragraph on 7/11/19 in opposition deposed to by Ngozi Casmir Igwe (Mrs). Also filed a Written Address and adopts the Address in urging the court to dismiss the application with substantial cost.

In the Written Address of Applicants settled by Ibe Alex.O, only one (1) issue was submitted for determination;

“Whether in the circumstances of this case, this Hon. Court has the power to exercise its discretion in favour of the 1st and 2nd Judgment Debtors/Applicants and grant their prayer(s) as sought?

Answered this question in the affirmative and submit this court has wide latitude of discretion; power and jurisdiction to set aside its own judgment in appropriate cases, commend court to Section 6 (6) (a) and (b) of Constitution of Federal Republic of Nigeria 1999 (As Amended) and case of Igwe Vs Kalu (2002) 14 NWLR PT 787 435, Salman Abdul Fatai & Aors Vs Aiyelebegan Kayode A. & Ors (2012) LPELR – 1432 (CA) 46 at 47 Para A – D. That based on the Provision of Para 19 of the contract entered into by the parties and pleaded by Judgment Creditor/Respondent as one of its Exhibit in proof of its case, its clear that Judgment Creditor/Respondent’s only option in resolving

any dispute arising from the contract is Arbitration and no more. That parties are bound by the terms of their contract and court cannot redraft terms of contract for the parties. That this means if any issue should arise with regard to the contract it is the terms which invariably will guide as to its interpretation. That from the contents of the Writ before court, its clear Judgment Creditor/Respondent did not enter into the contract under duress or misguidance moreso that same contract was copiously pleaded and relied upon in proof of its case and it is the basis upon which this suit was instituted. That the same Writ does not present any evidence to show that Judgment Creditor/Respondent complied with the fundamental dispute resolution Clause in the said contract, and since there is proof before court to show Judgment Creditor/Respondent complied with the dispute resolution Clause before instituting this Suit that brought about the Judgment, the said Writ is fundamentally defective and same misled court into assuming jurisdiction over the suit whereas the court lacked jurisdiction abinitio. Submit the Writ that set this entire process in motion is defectively incompetent. That its trite any defect in competence is fatal because the proceeding of that court is a nullity however well conducted and decided. That the defect will circumvent the proper adjudication of the suit. In all, commend court to several judicial authorities; Dalek Ltd Vs OMPADEC (2007) 7 NWLR PT. 1033 402 at 44, Olaloye Vs Balogun (1990) 5 NWLR PT. 148, 24 Pg 7 – 8 Paras E-C, Alhaji Abdullahi Baba Vs Nigeria Civil Aviation & Anor (1991) LPELR-692 (SC) Pg. 11 Paras F – G, Effiong Vs Ikpene (1999) 6 NWLR PT 606, 260 at 242 Para W – E, C.B.M Vs Ahmed (2002) 11 NWLR PT. 724 369 at 408 Para A-G.

In the Written Address of Judgment Creditor/Respondent settled by Casmir C. Igwe, same issue submitted by Judgment Debtors/Applicants in their Written Address was raised for determination and that is;

“Whether in the circumstances of this case, this Hon. Court has the power to set aside its Judgment of 5/2/19 or exercise its discretion in favour of the Judgment Debtors/Applicants by granting their prayer(s) as sought?

And submits first, that Judgment Debtors/Applicants affidavit in support of the Motion is defective as it contains legal arguments, refer court to Paras 4 c, d, e and f of the said affidavit and rely strongly on Section 15 (1) (2) Evidence Act 2011 and urge court to discountenance and expunge the said Paras of the affidavit and strike out same. Submits that contrary to the depositions in Para 4 (a) – (f) of the affidavit, no agreement as to security services to be rendered by Judgment Creditor was attached in Judgment Creditor’s Statement of Claim or any court process served on Judgment Debtors nor their Notice to Defend or any court process served on Judgment Creditor. That even if there was, though not conceding to that fact, Judgment Debtors/Applicants has lost such right to complain and therefore estopped having waived such right and fully participated and filed processes that culminated into the Judgment, refer court to Section 4 (1), 5 Arbitration And Conciliation Act and case of Onward Enterprises Ltd Vs M.V. Matrix (2010) ALL FWLR PT. 543 1817 at 1820-1821, Obembe Vs Wemabod Estate Ltd (1977) 5 SC, 115, (1977) Vol. II NSCC, 264. Further submits the Agreement which contains Arbitration Clause, in the instant case, does not prevent parties from having recourse to court regarding dispute arising therefrom, refer to Lignes Aeriennes Congolaises (L.A.C.) Vs AirAtlantic Nig Ltd (A.A.N.) (2006) 2 NWLR PT. 96349 at 73.

Submits that once the court delivers Judgment in a matter it becomes functus Officio and therefore cannot reopen in whatever guise except in the event or slip rule or to correct mistake, refer to Iteogu Vs LPDC(2019) ALL FWLR PT 984 272 at 277, Exxon Mobil Corp. Vs Archianga (2019) ALL FWLR PT. 980 689 at 695 and submits the decision of this court in the instant case does not fall within the ambit of situations where the court can set aside its decision.

Submit Judgment Debtors/Applicants application constitutes abuse of court process and urge court to frown at it with punitive cost, refer to C.B.M. Vs Ahmed (2002) 11 NWLR PT. 724, 369 at 408 Para A.G.

Having carefully considered the affidavit evidence of the parties, the submission of both counsel and the judicial authorities cited, the court finds that only one (1) issue calls for determination, and that is:

“Whether or not the Judgment Debtors/Applicants has satisfactory shown good ground to warrant the grant of the application”.

The grant or otherwise of an application of this nature is at the discretion of court which the court must exercise judicially and judiciously. And to be able to do so, the Applicants must place before the court cogent facts to rely on. In Anachebe Vs Ijeoma (2015) ALL FWLR PT. 784, 183 at 195 Paras D – F, the Apex Court held;

“The discretion vested in a court is required to be exercised judicially and judiciously, as it entails application of legal principles to relevant facts/materials to arrive at a just/equitable decision. It is thus, not an indulgence of a judicial whim, but the exercise of judicial Judgment based on facts and guided by the law or the equitable decision”.

Overtime, the court have stated the grounds upon which it may set aside Judgment. They are;

- (1) When the Judgment is obtained by fraud or deceit, either in the court or of one or more of the parties such a Judgment can be impeached or set aside by means of an action which may be brought without leave or;
- (2) When the Judgment is a nullity. A person affected by an order of court which can property be described as a nullity is entitled ex-debit justitae to have it set aside; or,
- (3) When it is obvious that the court was misled into giving Judgment under a mistake belief that the parties consented to it; or,
- (4) Where the Judgment was given in the absence of Judgment; or,
- (5) Where the procedure adopted was such as to deprive the decision or Judgment of the character of a legitimate adjudication

See Babale Vs Eze (2012) ALL FWLR (PT.635 287 at 341 Para C – G. See also Igwe Vs Kalu (2002)_ ALL FWLR PT. 122. 1.

In this instant application, the Judgment Debtors/Applicants is seeking the court to set aside its Judgment, the gravamen of the application are as set out in Paras 4 a – f of the affidavit evidence of Judgment Debtors/Applicants. Principally that Judgment Creditor/Respondent did not explore or complied with the Arbitration Clause in the contract entered between the parties which was the only option provided in resolving dispute arising from the Agreement

before approaching this court for redress which Agreement he claimed was attached by Judgment Creditor/Respondent was part of his evidence before court.

Judgment Creditor/Respondent, on the other hand, contends there was no such Arbitration Clause in any Agreement between parties and Judgment Debtors/Applicants never raised any such issue or Arbitration Clause during the trial of this Suit. That its estopped from raising this objection having actively participated in the trial of this suit till Judgment was given as such right was waived by Judgment Debtors/Applicants.

In determining the competing claims of the parties, the court must consider and look at its records and this the court is empowered to do. See the case of Agbareh Vs Mimra (2008) ALL FWLR PT. 409, 559 at 585 Para D – F. I have perused the records of court and find the claim of Judgment Debtors/Applicants as misleading, false and without iota of truth such that the court is made to believe Judgment Debtors/Applicants by its application did so in bad faith and just to waste precious judicial time of court. I say this because from the records, its clear there was no such Agreement with Arbitration Clause between parties annexed by Judgment Creditor/Respondent as part of its evidence before court as claimed by Judgment Debtors/Applicants. What was annexed by Judgment Creditor/Respondent amongst other documents as part of its evidence in proof of its claims which also form part of the basis upon which the suit and claims of Judgment Creditor/Respondent was determined is the Letter or Engagement, that is the Exhibit "A" of Judgment Creditor/Respondent. There was no other separate written Agreement between the parties that was before court aside the said Letter of

Engagement, the Exhibit "A" of Judgment Creditor/Respondent. And to make the court further believe Judgment Debtors/Applicants, filed this application in bad faith and to waste precious judicial time of court, Judgment Debtors/Applicants did not annex copy of the Agreement with Arbitration Clause he claimed to exist between the parties to its application which is the basis of its application thereby leaving the court to speculation on its existence. Overtime, the courts are enjoined to refrain and not indulge in speculation. See the case of Adegbola Vs NDLEA & Anor (2019) LPELR – 4721 (CA). Again, the Writ Summons and other processes of this Suit which include the said Letter of Engagement the Exhibit "A" of Judgment Creditor/Respondent, were duly served on Judgment Debtors/Applicants before the commencement of hearing of this Suit and Judgment Debtors/Applicants never raised any objection to the said Letter of Engagement, that is the Exhibit "A" of Judgment Creditor/Respondent and even went ahead to enter appearance, filed defence and defended this suit till Judgment was delivered.

Assuming there existed an Agreement with Arbitration Clause between parties as claimed by Judgment Debtors/Respondents, which is not the case in this instant; this application of Judgment Debtors/Applicant is incompetent and an abuse of the process of court. I say so because its trite principle of law that when a party jumps the gun of Arbitration and take steps beyond formal appearance, he would be deemed to have waived his right to Arbitration and by implication also waived his right to challenge the competence or jurisdiction of the court. See the case of Enyelike Vs Ogoloma (2008) 14 NWLR PT 1107 247 at 250 – 251. See also Guthrie (Nig) Ltd Vs Kwara State Govt. (2018) ALL FWLR PT 964 2041 at 2044 – 245. In this instant case, beyond the

formal appearance, Judgment Debtors/Applicants took steps by filing a defence to this suit and fully participated in the hearing of this Suit uptill when Judgment was delivered and cannot in law be heard to talk of Arbitration in an Agreement he claimed to have existed between parties which this court earlier find not to be correct and without iota of truth and misleading to the extent of moving the court to believe he filed this application in bad faith for reasons I earlier stated above.

From all of these, I find this application of Judgment Debtors/Applicants as frivolous, baseless, abuse of process of court and lacking in merit. It is hereby dismissed with cost of sum of ₦30,000 (Thirty Thousand Naira) only awarded against Judgment Debtors/Applicants in favour of Judgment Creditor/Respondent. I so ordered.

Now to the preliminary Objection of Judgment Debtors/Applicants in opposition to Garnishee Proceedings. It's dated 24/6/19 but filed on 28/6/19 urging this court to discountenance the application of Judgment Creditor/Applicant and to quash the Order Nisi and the entire garnishee proceedings as is presently instituted with cost as same is fundamentally incompetent and a gross abuse of court process. In the said Preliminary Objection, a sole issue was formulated for determination and that is;

“Whether in the circumstance of the case the application of the Judgment Creditor/Applicant in its entirety is competent to cloth this Hon. Court with the garment to entertain same?

Answered the above question in the negative and submits, while conceding that a successful litigant should not be denied the joy of reaping the benefits

of his Judgment, Judgment Creditor/Respondent's application is not on all fours with Section 83 and 84 of Sheriffs And Civil Process Act must especially where it has been established in the case of CBN Vs J.I. Nusanyanwu & Sons Enterprises Nig Ltd (2014) LPELR – 22745 (CA) that the first and perhaps the most important factor to consider in determining application for garnishee is where money liable to be attached is in custody or under the control of a public officer's in his official capacity or in custodian legis, the order should not be made unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody and control of a public officer. On who is public officer and unto whom can such consent be sought and obtained, commend the court to CBN Vs Hydro Air (PTY) Ltd 2014 16 NWLR PT 1434 482 at 521 Para D – F, CBN Vs Adedeji (2004) 13 NWLR PT.890 226 at 254 Para E – F and submit Judgment Debtor/Applicant is Public Officer who though not in custody of the funds being sought to be garnishee, is in sole control of the funds being kept in the custody of any Commercial Bank and as such any application for garnishee over such monies kept in custody of any Commercial bank but within the control of Judgment Debtor/Applicant must be subjected to an application for consent from the Attorney General of the Federation before any garnishee can be competently instituted, refer the court to UBA Plc Vs Access Bank & Anors (2018) LPELR-44058 (CA). That any application for garnishee against Public Officer under the legal covering of the Attorney General, the consent of the Attorney General must first be sought and obtained which Judgment Creditor/Respondent failed to secure before coming to court.

In his Written Address in reply to the Preliminary Objection dated 4/11/19 but filed on 7/11/19, Judgment Creditor/Respondent submitted same sole issue raised by Judgment Debtors/Applicants in the Preliminary Objection as issue for determination, that is;

“Whether in the circumstance of this case, the application of the Judgment creditor/Applicant in its entirety is competent to cloth this Hon. Court with the garment to entertain same”

And submit Judgment Debtors/Applicants Preliminary Objection is alien and that its trite law that its not his position to show cause why the Order Nisi should not be made absolute because it's a nominal party whose money in custody of the garnishee is being recovered in satisfaction of judgment debt he owes Judgment Creditor, commend the court to Ecobank Plc Vs Ette & Ors (2104) LPELR – 233444 (CA), Kogi L.G.C. Vs Qumec (Nig) Ltd 2019 ALL FWLR PT 990 1370 at 1377. That garnishee proceedings is strictly between Judgment Creditor and garnishee, that even when Judgment Debtor is made party to the Suit, he can only be seen and not to be heard and any process filed by him will be an abuse court process bringing him in the light of a meddlesome interloper, refer to CBN Vs Interstellar (2018) ALL FWLR PT 930 442 at 498 Para C-D.

On Section 83 and 84 Sheriff And Civil Process Act, submits monies of Govt kept with Commercial Bank are not monies in custody of Public Officer to require consent of Attorney General before it can be attached vide garnishee proceedings because Commercial Banks are not Public Officer within the meaning of the law as Judgment Debtors monies in custody of garnishee

Banks in such circumstances as an arm of Government, commend the court to Purification Techniques Nig Ltd Vs Attorney General Lagos State (2004) 9 NWLR PT 879 665, Balogun & Co Ltd Vs Ijebu Ode Local Govt. HCS/74/80 of 20/788. Submit even Section 84 Sheriff And Civil Process Act prescribing consent of Attorney General cannot stop the grant of an application for garnishee proceedings, refer to Purification Techniques (Nig) Ltd Vs AG, Lagos State (Supra) that it will amount to an interested party being a Judge in its own case. That it goes to show an Applicant does not need consent of the AG or any Govt. official to enforce valid court Judgment, refer to CBN Vs Interstellar Communication (Nig) Ltd (Supra) University of Calabar Teaching Hospital Vs Lizikon (Nig) Ltd & Anor (2017) LPELR-42339 (CA). Submits right to enforce Judgment of court is Constitutional and provided in Section 6 (6) 1999 Constitution (As Amended), therefore any law that tends to interfere with exercise of judicial powers or ousting the jurisdiction by way of enforcing Judgment of court through garnishee proceeding is unconstitutional, refer to Jallo Vs Military Governor, Kano State (1991) 5 NWLR PT. 194 754 at 764 – 765.

I have taken insightful consideration of the submission of both counsel for and against the grant of this application and find that only one (1) issue calls for determination and that is;

“Whether or not the Judgment Debtors/Applicants has made out a case to entitle them to the grant of the relief sought”.

The issue in contention by Judgment Debtors/Applicants is that the garnishee proceedings instituted by Judgment Creditor/Applicant is fundamentally

incompetent and gross abuse of the process of court because its not in line with the Provisions of Section 84 Sheriffs And Civil Process Act which required that in an application for garnishee, where money liable to be attached, is in custody or under the control of a Public Officer, the order should not be made unless consent to such attachment is first obtained from the appropriate officer and contend Judgment Debtors/Applicants is Public Officer who though not in custody of the funds sought to be garnished is in sole control of the funds kept in any Commercial Bank and any application to garnishee such funds must be subjected to application for consent from the Attorney General of the Federation which Judgment Creditor/Applicant failed to do in this instance.

Judgment Creditor/Respondent had contend funds of Govt. kept with Commercial banks are not funds in custody of Public Officer to require consent of the Attorney General before it can be attached through garnishee proceedings because Commercial Banks not Public Officers.

Now Section 84 (1) Sheriff And Civil Process Act provides;

“Where money liable to be attached by garnishee proceeding is in the custody or control of a Public Officer in his official capacity or in custodian legis, the Order Nisi should not be made under the Provisions of the last preceding Section unless consent to such attachment is first obtain from the appropriate officer in the case of money in the custody or control of a Public Officer or of the court in the case of money in custodian legis as the case may be”.

The Sheriff And Civil Process Act does not defined who or what is a Public Officer. I shall, however, adopt the definition of Public Officer as given by the

interpretation Act. Section 18 (1) of the Interpretation Act defines Public Officer to mean member of the Public Service of the Federation within the meaning of Constitution of the Federal Republic of Nigeria or of the Public Service of a State. Going by this definition, it is not subject of controversy that Judgment Debtors/Applicants herein is Public Officer. This has even been given a judicial affirmative. See the Supreme Court case of Ibrahim Vs JSC (1998) 14 NWLR PT 584, 1. See also Central Bank of Nigeria Vs Hydro Air Properties (2014) 16 NWLR PT. 1434, 482. The issue to be considered, however is whether Section 84 of the Sheriff And Civil Process Act reproduced above is applicable to cases of garnishee proceedings. In other words can Judgment Debtors/Applicants herein be regarded as Public Officer for purposes of garnishee proceedings requiring consent of the Attorney General of the Federation before garnishee proceedings can be competently instituted? My answer to the poser is a clear No. I say No because the law is clear that in garnishee proceedings, as in the instant, Judgment Debtors/Applicants is not Public Officer in the context of Section 84 of the Sheriff And Civil Process Act requiring the consent of the Attorney General of the Federation before a garnishee proceedings can be competently instituted or commenced to attach funds in the custody or control of Judgment Debtors/Applicants and there are Plethora of judicial authorities in affirmation. See the case of Purification Techniques Nig Ltd Vs AG, Lagos State (2004) ALL FWLR PT 211 1479. See also CBN Vs Njemanze (2015) 4 NWLR PT 1449, 276. The Supreme Court in the recent case of Central Bank of Nigeria Vs Interstellar Communications Limited(2018) ALL FWLR PT.930, 442 at 464 – 469 emphasized this position of the law when it stated that in garnishee proceedings, as in the instant, the

Judgment Debtors/Applicants is not a Public Officer and therefore the requirement of consent of the Attorney General of the Federation was not required to initiate garnishee proceedings to attach funds in its custody or control. The Apex Court went on to state that it would be absurd and contrary to the natural justice to require a Judgment Creditor to first obtain the consent of Judgment Debtor before proceeding against him to recover his money. That this could not have been the intention of the legislature that Section 84 (1) of Sheriff And Civil Process Act be used as shield by Judgment Debtors to evade a debt owed by requiring consent of the Debtor itself before proceeding against him to recover his money. See the more recent case of the Court of Appeal in Central Bank of Nigeria Vs Doma (2018) LPELR – 45639.

From all of these, it is the findings of court that the Judgment Debtors/Applicants contention is a total misconception of the understanding and interpretation of Section 84 (1) of Sheriff And Civil Process Act. I so hold. Consequently, this Preliminary Objection filed by Judgment Debtors/Applicants lacks merit and it is hereby dismissed in its entirety.

HON.JUSTICE O.C. AGBAZA

Judge

29/5/2020

AUTA NYADA HOLDING BRIEF OF AMINU .M. MAU'ZU – FOR JUDGMENT DEBTORS/APPLICANTS

CASMIR .C. IGWE – FOR JUDGMENT CREDITOR/RESPONDENT