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

THIS MONDAY, THE 8TH DAY OF JUNE, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

APPEAL NO: SC.318/2019
APPEAL NO: CA/A/74/2014
MOTION NO: GWD/M/47/2020

BETWEEN:

1. **INTERNATIONAL ENERGY INSURANCE PLC**
2. **NEM INSURANCE PLC**
3. **UNION ASSURANCE COMPANY LIMITED**
   (Now known as ALLIANZ NIGERIA INSURANCE PLC)

….JUDGMENT DEBTORS/ APPLICANTS

AND

1. **SEC EQUIPMENT & COMM. L.T.D**
2. **RISK PLAN INSURANCE BROKERS LTD**

.....JUDGMENT CREDITORS/ RESPONDENTS

AND

1. **ACCESS BANK PLC**
2. **GUARANTY TRUST BANK PLC**
3. **ECO BANK PLC**
4. **UNITED BANK FOR AFRICA PLC**
5. **FIRST BANK OF NIGERIA PLC**
6. **FIRST CITY MONUMENT BANK**
7. **UNION BANK OF NIGERIA PLC**
8. **STANBIC IBTC**
9. **STERLING BANK PLC**
10. **WEMA BANK PLC**
11. **POLARISE BANK PLC**
12. **HERITAGE BANK PLC**
13. **ZENITH BANK PLC**
14. **FIDELITY BANK PLC**

.....GARNISHEES

RULING

The Judgment Creditors by this action sought to enforce the Judgment of the Court of Appeal in **Suit No. CA/A/74/2014: SEC EQUIPMENT & COMM. NIG. LTD & ANOR V. INTERNATIONAL ENERGY INSURANCE LTD & 2 ORS** delivered on 11th December, 2018.

They accordingly filed a **Motion Ex-parte** dated 25th February, 2019 seeking for a Garnishee Order Nisi attaching the sum of **N44, 370, 750.00** (Forty-Four Million, Three Hundred and Seventy Thousand, Seven Hundred and Fifty Naira) from the bank accounts of the Judgment Debtors with the Garnishees and for the Garnishees to show cause why the said sum(s) should not be applied to satisfy the Judgment sum. The matter was then subsequently assigned to my court by the Honourable, the Chief Judge of F.C.T.

On 14th January, 2020, this court granted the order nisi having been satisfied on the materials supplied that the Judgment Creditors have met the required legal threshold under Section 83 of the Sheriff and Civil Process Act (S.C.P.A). The Court ordered that the order nisi be served on the Garnishees and Judgment Debtors. The matter was then adjourned to 2nd March, 2020 which was clearly intended to cover the time frame of at least 14 days before hearing and to allow for service of the order nisi on both the Garnishees and the Judgment Debtors.

Now when the matter came up on 2nd March, 2019, the Judgment Debtors/Applicants filed an application dated 11th February, 2020 seeking for the following reliefs:

1. **An Order setting aside the Garnishee Order Nisi made by this Court on the 3rd February, 2020 and 17th April, 2018 in satisfaction of the Judgment of this Court for want of jurisdiction of this Court.**

2. **An Order striking out/dismissing the entire processes filed by the 1st Respondent for incompetence and being contrary to Section 83 (2) of the Sheriff and Civil Process Act, Cap 56 Laws of the Federation of Nigeria 2004.**

3. **A consequential order that all the monies paid upon the grant of the Garnishee Order should be refunded by the Applicant.**

4. **And for such further Order or Orders as this court may deem fit to make in the circumstance of this case.**

In support of the application is a five (5) paragraphs affidavit with two (2) annexures marked as **Exhibits A and B**, the Notice of Appeal to the Supreme Court and the Notice of transmission of the Record of Appeal in the said Appeal to the Apex Court. The Applicants also filed a further affidavit with one (1) annexure marked as **Exhibit "IEI 1",** an application filed at the Supreme Court dated 7th February, 2020 seeking for a stay of execution of the Judgment of the Court of Appeal and an order staying the extant garnishee proceedings. A brief written address was filed which forms part of the records of court in which no issue was precisely streamlined but I will here summarise the essence of the submissions. It was submitted that the provision of Section 83 (1) of the S.C.P.A. was not complied with in that (1) the order nisi was not served on the Judgment Debtors (2) the 14 days time frame was not complied with before hearing and finally (3) that the application for the order nisi was not signed by both the Applicant and the legal practitioner.

The cases of **U.B.A Plc V Hon. Iboro Ekanem & 1 Anor (2010) 6 NWLR (pt.1190) 207 at 220 G-H; Nigeria Breweries plc V Chief Worhi Dumuje & 1 Anor (2016) 8 NWLR (pt.1515) 536 at 627-629** were cited.

It was further submitted that the Judgment Debtors have by notice of Appeal dated 22nd January, 2019 challenged the decision of the Court of Appeal at the Supreme Court and that by letter dated 21st March, 2019, the Records of Appeal have also been transmitted to the Supreme Court. That in the circumstances, this court no longer has jurisdiction to entertain this or any application including the application seeking the order for a Decree Nisi. The case of **Dr.Tunji Braithwaite V Standard Chartered Bank Nig. Ltd (2012) 9 NWLR (pt.1305) 304 at 323** was cited.

It was finally submitted that the substantive suit was determined at **Maitama Division** of this court before Honourable Justice Salisu Garba which led to the

Appeal at the Court of Appeal and that the same court should entertain the present Garnishee proceedings. That the Judgment Creditors came to this court at Gwagwalada without indicating that the matter is at the Supreme Court and also that they did not indicate the Suit No. at the Supreme Court in the process filed. It was contended that the actions of the Judgment Creditors amounts to forum shopping.

At the hearing, learned **S.A.N, D.C. Enwelum** for the Applicants relied on the paragraphs of the supporting and further affidavits and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the Judgment Creditors/Respondents filed an initial six (6) paragraphs counter-affidavit with one annexure marked as **Exhibit A**, the proof of service on the Judgment Debtors of the Order Nisi on 19th February, 2020. A further counter affidavit of six (6) paragraphs was also filed in response to the further affidavit of the Applicants.

A written address was filed in which one issue was raised as arising for determination as follows:

"Whether this application ought to be dismissed and the Garnishee Order Nisi made absolute."

Submissions were equally made on the issue which forms part of the Records of Court. I will equally only highlight and summarise the key points.

It was submitted that the extant Garnishee proceedings was properly initiated in compliance with the applicable S.C.P.A and that the court granted the Order Nisi equally in compliance with the said Act. That after the grant of the Order Nisi, it was properly served on Judgment Debtors on **19th February, 2020** vide Exhibit A attached to the counter-affidavit. That the **Garnishees** have not been **heard to show cause** and **no order absolute** has been made so it is not possible for the dissipation of funds subject of the Order Nisi as alleged. Furthermore it was submitted that with respect to the filing of an appeal and transmission of records of Appeal, it was contended that an appeal does not operate as a stay of execution and that the Judgment Debtors never at any time filed an application for stay of execution in any court at the time this proceedings was initiated. It was further

submitted that the Judgment Debtors may have transmitted Records, but that they have not filed their Appellant brief of Argument in compliance with **Order 5 Rule 1 (a) of the Supreme Court Rules 2008** and as such the appeal is deemed as abandoned.

It was also contended that Garnishee proceedings are a distinct and sui generis proceedings such that the fact that records have been transmitted to the Supreme Court does not prevent the court from continuing and concluding the Garnishee proceedings. The cases of **Ekiti State Govt. V. Ashaolu (2011) 15 WRN 112 at 117; Oceanic Bank Plc V. Oladepo (2013) 8 WRN 157** were cited.

At the hearing, counsel to the Judgment Creditors/Respondents A.S. Akpala similarly relied on the paragraphs of the counter-affidavits and adopted the submissions in the written address in urging the court to dismiss the application as lacking in merit and proceed with the Garnishee proceedings to its logical conclusion.

I have carefully considered the processes filed and the submissions on both sides of the aisle. The application raises the question of the application and ambit of the provision of **Section 83 of the Sheriff and Civil Process Act** and whether the application should in the circumstances be granted.

Before even going to the merits, it is critical to state that there is no real clarity with respect to the import of the reliefs Applicants seek in the circumstances. That perhaps explains the confusion in the affidavit and complete absence of synergy with the true facts of this case.

Now **Relief (1)** on the motion paper seeks for the **setting aside of the Order Nisi** made by this court on **3rd February, 2020** and **17th April, 2018** in satisfaction of the judgment of court for want of jurisdiction. This court made or granted only one order nisi on **14th February, 2020**. No more. The alleged making of order nisi on two different dates by this court must be a product of someone's imagination. This court never made any such orders on the two identified dates. The Applicants have not on the materials shown that any such orders were given on those dates. The point to make out quickly is that the judgment delivered by law lords of the Court of Appeal subject of this Garnishee proceedings was

delivered on **11th December, 2018**. Is it possible that an order nisi will be granted by the court on **17th April, 2018** before the judgment of the law lords at the Court of Appeal and even before the assignment of the case to this court? These unproven assertions therefore completely lack substance and shall be discountenance. It is clear even at this earlier stage that this application has no relation to any order(s) made by this Court.

This lack of clarity then dovetails into the rather alarming and disturbing conclusions in **paragraph 4 (d) and (f)** that the court had made the order nisi absolute and that the judgment sum had already been withdrawn on which **Relief (3)** was predicated. Again absolutely no proof of these averments were supplied and one then really wonders at the bonafide of such very farfetched and misleading conclusions. I cannot really fathom how an application can be made on outright falsehood.

The point to state clearly is that this court never made any **order absolute**. If the **Garnishees** are yet to show cause, what then would be the basis to grant an order absolute? I just wonder.

The disjointed **reliefs** of Applicants not rooted in **any process** before this court should ordinarily have fatally served to undermine the extant application. Any complaint or challenge as in this case by a party must be rooted necessarily on a process streamlined by an order or decision of a court. A proper challenge cannot be predicated on misplaced guesswork or pure conjecture. The Supreme Court has made it abundantly clearly that where a relief is sought, it must not be a matter of speculation or doubt as to what it entails as in this case. A court therefore cannot be expected to make an order which is subject to different interpretation as to whether it meets the relief claimed. Nor has the court a duty to engage in any semantics in the order it makes in an attempt to explain what the party intended to ask for. The guiding principle or rule is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd. V. Cooperative Development Bank Ltd. (2003) 35 SCM 39 at 105.**

Now out of abundance of caution and to avoid accusations of being unnecessarily pedantic or technical, I will consider the issues raised particularly since the

Respondents would appear to have joined issues even if the substantive application is not rooted in any real process or order(s) of this court as earlier indicated.

The point to underscore at the risk of sounding prolix is that no party is at liberty to formulate a challenge in court predicated on the unwieldy whims of such party. Where a party formulates a complaint as done here on whimsical or no valid grounds, the court will certainly hear same but its fate would already be sealed on the basis of complete absence of a valid or legal foundation to sustain the challenge. Any challenge or complaint rooted in deliberate falsehood must collapse. I say no more.

In this case, the Applicants have questioned the entire processes leading to the making of the **Order Nisi** on grounds of incompetence and contrary to the provision of **Section 83 (1) and (2) of the Sheriffs and Civil Process Act**. We must accordingly take our bearing from the provision of the Section but before doing so, let me **quickly address the contention that since the matter initially commenced before the Respected Honourable Justice Salisu Garba** in 2013 which culminated in the Judgment of the Court of Appeal, that any process to initiate execution of the judgment must necessarily be assigned to the said judge. This submission is with respect misconceived. If the judge has for example retired or was elevated to the Court of Appeal, are the Applicants saying that such a judgment cannot be enforced or executed? The matter for assignment of cases is exclusively an administrative matter for the Honourable, the Chief Judge FCT. The Respondents have no hand in it. The Applicants here have not cited any authority, judicial or statutory to the effect that the judgment of the Court of Appeal can only be enforced through the lower court from where it emanated. **Section 287 (2) of the 1999 Constitution** is clear on enforcements of judgments or decisions of the Court of Appeal throughout the country by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal. I leave it at that.

Now the provisions of **Section 83 (1) and (2)** provides thus:

"83. Debts may be garnisheed

(1) The court may, upon the ex-parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

(2) At least fourteen days before the day of hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor."

The above provisions are clear and have been severally construed by the law lords of the Superior courts. The principle is however now fairly settled and of universal application that where the words of a statute are clear, the court shall give effect to their literal meaning. See **Adewunmi V. A.G. Ekiti State (2002) 2 N.W.L.R (pt.751) 474 at 511-512 H-B.** Therefore, the courts have no jurisdiction to interprete the clear and unambiguous words of a statute beyond their clear and unambiguous meaning or place an onerous weight or burden on the otherwise clear and unambiguous provision(s). See **A.G. Lagos V. A.G. Fed. (2003) 14 NWLR (pt.833) 1 at 186-187 H-B.**

Now in situating the above provisions, it is important to state that an application for garnishee proceedings is made by the Judgment Creditor and the Orders of the court comes in certain defined stages. I shall limit the present discuss to the stages relevant to the extant case and in the process address some of the points raised by the parties. The first stage involves the Judgment Creditor commencing the proceedings by way of an Ex-parte application as done in this case by the

Judgment Creditors. The application is supported by an affidavit deposed to either by the Judgment Creditor or his legal practitioner stating that the Judgment has been obtained to a certain amount and the Judgment is still unsatisfied and that any other person is indebted to such debtor and is within jurisdiction. The contention by the applicants that the affidavit must have both the **"Applicant"** and his **"legal practitioner"** as signatories to the affidavit in support is with profound respect misconceived and without legal basis.

The word used in Section 83 (1) as underlined above is **"or".** It says **"Applicant or his legal practitioner..."** The word **"or"** is prima facie and in the absence of some restraining context be read as disjunctive. Indeed the word **"or"** is used as a disjunctive participle used to express an alternative, or to give a choice among two or more things. See **Abia State University V. Anyaibe (1996) 3 NWLR (pt.439) 646 at 661; Savannah Bank Nigeria Ltd V. Starite Ind. Oversees Corp. (2001) 1 NWLR (pt.693) 194 at 221.**

In this case, the affidavit in support of the motion ex-parte was deposed to clearly by **Abdulrahman Abubakar**, a legal practitioner in the law firm of A.S. Akpala & Co., legal practitioners to the Judgment Creditors. By the provision of the Section (supra), the Applicant or the legal practitioner can properly deposed to the affidavit as done here. This election or choice by the Judgment Creditors cannot be subject of complaint by the Applicants. The complaint is accordingly discountenanced.

The affidavit as already alluded to is also expected to state the extent of the amount so unsatisfied and that a third party who is within jurisdiction is indebted to the judgment debtors. The affidavit in the extant case equally fulfilled these requirements.

Where the court is satisfied as in this case that the Judgment creditor is entitled to attach the debt, the court makes a garnishee order nisi directing the garnishee to appear in court on a specified date to show cause why an order should not be made against him for payment to the judgment creditor the amount of the debt owed to the judgment debtor. The service of the order nisi on the garnishee binds the debt in the hands of the garnishee such **that any payment of the debt to the judgment debtor or its alienation, without leave of court, shall be null and void.**

The order nisi granted on 14th January, 2020 by the court was in line with the clear provision of **Section 83 (1) (supra).** The court order then expressly stated that the order nisi be served on the Garnishees and the Judgment Debtors and the matter was adjourned to 2nd March, 2020. This was done taking cognizance of the provision of **Section 83 (2),** which provides that at least 14 days before the day of hearing, a copy of the order shall be served on the garnishee and on the Judgment Debtor.

Now on the records, the fourteen (14) Garnishees were served at different times. We are not here strictly concerned with when they were served since the garnishee proceedings was effectively stalled by the extant application. The Judgment Debtors were served on **19th February, 2020 vide Exhibit A** attached to the Respondents counter-affidavit.

Now when the matter came up on **2nd March, 2020**, the garnishee proceeding could not proceed because of the extant application by the Judgment Debtors/Applicants. It was expected logically and that is the practice that before the court proceeds to conclude the garnishee proceedings, it makes sure that the 14 days threshold as provided in **Section 83 (2)** is met.

In this case, the application by the Judgment Debtors put a stop, as it were, to the continuation of the garnishee proceedings. Indeed on the records, the representatives of the Garnishees in court were informed that the process of showing cause will be put in abeyance until the determination of the threshold challenge by the judgment debtors.

In the circumstances, since there was no **hearing** or **continuation of the garnishee proceedings**, the complaint that 14 days had not lapsed by the complainant certainly does not fly. If hearing of the garnishee proceedings to show cause had continued despite the non compliance with the fourteen (14) days time frame, then there may be validity to the complaint of non-compliance with Section 83 (2). It is difficult, again to situate the complaint of non-compliance here. It is certainly not availing.

On the issue of **lack of service** or **failure to serve the judgment debtors with order nisi**, the Applicants then made certain patent and grossly misleading

averments which I will shortly highlight. As stated earlier, no scintilla of evidence was attached to buttress these averments. Let me allow the deponent speak for himself in paragraph 4(d) – (i) of his affidavit as follows:

"d. That on 10th February, 2020, the Managing Director of the Applicant was called while he was in Lagos by the Branch manager of the Applicant's Bank (First Bank of Nigeria Limited Ikoyi Lagos) and informed that there is a Garnishee proceeding against the Applicant. That the said Branch Manager informed the Applicant that the Decree Nisi had been made Decree Absolute.

e. That the Judgment creditor/Applicant filed his notice of appeal and motion for stay at the Supreme Court since 21st January, 2019.

f. Applicant's Bank (First Bank Nigeria Limited Ikoyi Lagos) and informed (sic) that there is a Garnishee proceeding against the Applicant. That the said Branch manager informed the Applicant that the Decree Nisi made and the sum of N44, 370, 750.00 had been withdrawn from his account by the 1st Respondent garnishee.

g. That the judgment debtor was never informed nor served with the order Nisi contrary to Section 83 (2) of the Sheriff and Civil Process Act capS6 laws of the Federation Nigeria 2004.

h. That the Affidavit in support of the Motion ex-parte which initiated the garnishee proceedings, the garnishee Order nisi and Order Absolute was never served on the Applicant.

i. That the affidavit in support of the Motion for an order Nisi was not sworn to by the beneficiary of the judgment."

From the trajectory of the narrative in this case, it is not correct that the Applicants were not served the Order Nisi. They were duly served vide **Exhibit A on 19th February, 2020**. It is equally false that a decree absolute was made by court as earlier stated. It cannot therefore be correct that consequent upon **"the Decree Nisi,"** that the sum of **N44, 370, 750.00** was withdrawn from the account of the 1st Applicant. Any payment(s) or alienation of the sum attached without leave of

court shall be null and void. In this case there is absolutely no evidence of any payment to anybody. As highlighted earlier, it is clear that these averments are simply sterile concoctions of the Acting Company Secretary of 1st Applicant. The applicants have clearly by the approach they have adopted sought to pool wool across the face of the court by the attempts to misrepresent facts. The bottom line as we have demonstrated above is that they have not shown or established creditably what was incompetent in the process leading to the order nisi up to when they intervened in the proceedings.

Now it is true that by **Exhibit B**, the Applicants may have filed an appeal against the Judgment of the Court of Appeal vide Notice of Appeal attached as Exhibit B. The notice is dated 22nd January, 2019.

It is trite principle now of general application that an appeal does not operate as a stay of execution. As at the time this court granted the order nisi on 14th January, 2020, that was the only process filed at the **Supreme Court**. The Notice simpliciter cannot therefore operate to stop or stay the garnishee proceeding which is a *sui generis* proceeding. There was equally no application for stay of execution pending in any of the Superior courts as at the time this garnishee proceeding commenced. The averment in **paragraph (e)** of the affidavit that Applicants had filed a pending application for stay of execution on **21st January, 2019** is clearly another false averment. They themselves agree that it was not a correct representation which they now sought to correct in the further affidavit they filed which show clearly that an application for stay of execution and other reliefs was only filed on **14th February, 2020** after the order nisi clearly in what appears to be an afterthought to frustrate this garnishee proceeding. I shall return to this pending application later on.

Now **Exhibit A** attached to the affidavit of applicants, show that apart from the notice of appeal, the record of the appeal has also be transmitted to the Supreme Court on 21st March, 2019.

The filing of the notice of appeal simply means that the appeal is deemed to have been brought while the transmission of the records connote that the appeal has been entered at the Superior court in this case the Supreme Court.

It is trite principle of general application that once a lower court has transmitted the record of appeal to the court that will hear the appeal and the latter has received it, this means that the appeal has been entered in the appellate court or the Supreme Court in this case. What flows automatically from an appeal being entered is that the appellate court which has received the record of appeal is seized of the whole proceedings in the sence that the *res* in the appeal passes automatically into the custody of the court. The implication is that the Supreme Court is by operation of law deemed to have become seized of the proceedings of the appeal and the jurisdiction of the lower court to entertain any application appears ousted. See **Ogunsola V. Nicon (1996) 1 NWLR (pt.423) 126 at 136; Leaders & Company Ltd V. Kusamotu (2008) ALL FWLR (pt.405) 1800 at 1812-1814.**

Learned senior counsel for the Applicants with profound respect has made heavy weather of the transmission of records and that in the circumstances this court lacks the jurisdiction to hear the **garnishee proceedings.**

I am clearly not enthused by these submissions. These submissions with profound respect would appear to have arisen from a lack of proper appreciation of the true nature and import of the special garnishee proceedings vis-a-vis, the appeal entered at the Supreme Court of Appeal. Before directly addressing the point, let me quickly state that the arguments by Respondents that after the records were transmitted, the Applicants did not file their brief of Argument at the Supreme Court which meant that the appeal was "abandoned" clearly has no traction and does not fly. There is nothing before me showing that the appeal was dismissed or struck out. If the Applicants were not diligent in prosecuting the appeal, the Respondents then must be proactive and take necessary steps to get the Apex Court to strike or dismiss same for want of diligent prosecution. They did not. The contention that the Appeal is abandoned will lack validity in the circumstances. It is accordingly discountenanced.

Now a Garnishee proceeding is a proceeding that is *sui generis*, in a class of its own and is to be distinguished from other proceedings for enforcement of judgment such as that by writ of execution. See **Nigeria Agip Oil Company Ltd V. Peter Ogini (2011) 2 NWLR (pt.1230) 131 at 147 BC.** By a long time of authorities, our Superior Courts of Appeal have settled and emphasised the "**Distinctiveness"** of Garnishee proceedings as a mode of enforcing Judgments of

court from other modes of levying execution, where money is subject of the Judgment, and the need to treat it as such. The foundation of Garnishee proceedings being on attachment is situated within the clear provisions of **Section 83 of the Sheriffs and Civil Processes Act.**

The extant Garnishee proceeding without any doubt is not part of the appeal before the Supreme Court. The Garnishees in this case are not parties to this pending appeal. Indeed there is no aspect of the extant Garnishee Proceeding that can be said to form part of the pending appeal as to allow for the application of the principle earlier highlighted. To the extent that the garnishee proceeding is distinct and has no real bearing with the Appeal said to have been entered, the transmission of the records of appeal without more would not serve to oust the jurisdiction of the court to entertain the Garnishee proceedings.

In addition, on the authorities, the preponderance of judicial opinion projects the position that a judgment debtor whose money is in the custody of the garnishee, even though served with the order nisi is merely a nominal party. He is a nominal party whose money in the custody of the garnishee is being recovered by the judgment creditor in satisfaction of the judgment debt he is owing to the judgment creditor. He is not the one requested to appear before the court to show the cause why the order nisi should not be made absolute. It is the garnishee that is expected to inform the court if there is any third party interest in the said judgment debtor's money in its custody. It is thus only the garnishee that is expected to react if the law was not properly followed or observed. See **UBA Plc V. Ekanem (2010) 6 NWLR (pt.1190) 207 at 222 B-C.**

In **VC, UNILORIN & Ors V. Prof. Olufeagba & Ors (2014)17 WRN (pt.92) at 35-40,** the Court of Appeal per Hon. Justice Uchechukwu Onyemenam JCA, explained the exceptional but helpless situation of the Judgment debtor in these matters:

"Although a Judgment debtor and the garnishee are required to be served with the ensuing order nisi, the Sheriff and Civil Process Act by its own dictate singled out the necessary parties to the Garnishee proceedings. Its *sui generis* nature also accounts for the same reason why the purpose of serving a judgment debtor with an order nisi is not to give him an opportunity to be

heard but merely to put him on notice since the garnishee proceedings outcome will affect him as a Judgment debtor whose right to his money would cease once the order nisi is made absolute."

On whether the Judgment debtor is entitled to complain about the breach of his right to fair hearing on account of his being shut out from the proceeding, His Lordship further explained that:

"…the Judgment debtor exhausted his right to fair hearing in the case that gave rise to the judgment which made him a debtor. The subsisting judgment against him only imposes a legal obligation on him to settle the Judgment debt. When he fails to do so, by the Sheriffs and Civil Process Act and Section 44(1) and (2)(e) of the Constitution, the right of the Judgment Creditor shall be enforced and the order nisi made absolute through garnishee proceedings…since garnishee proceedings excludes a Judgment Debtor as a party…a Judgment debtor cannot be heard in its proceedings as a party. And, if he cannot be heard, he cannot invoke the provisions of Section 36 of the Constitution as the section will not be applicable."

In the case of **Central Bank of Nigeria V. Interstella Comms Ltd & 3Ors (2015)8 N.W.L.R (pt.1462)456 at 502G,** the Court of Appeal again, restated the principle in the following terms:

"Garnishee proceedings is a separate and distinct action between the Judgment Creditor and the person or body holding in custody the assets of the Judgment debtor. Although it follows from the Judgment that pronounced the debt owing. Thus, a successful party in his quest to move fast against the assets of the Judgment debtor usually makes an application ex-parte for a "Garnishee Order Nisi" attaching the debt due or accruing to the Judgment debtor from such person or body that from the moment of making the order is called the garnishee. Garnishee Proceeding is a separate and distinct action between the Judgment Creditor and the person or body holding in custody the assets of the Judgment Debtor….See Re: Diamond Bank Ltd (2002)17 N.W.L.R (pt.795)120."

See also the following Court of Appeal decisions which clearly accentuated this settled position and much more. See **Setonye Denton-West V Muoma (2007) LPELR – 8172 (CA), Purification Techniques V AG Lagos State (supra); Portland Paints & Products Nig. & Anor V Olaghere & Anor (2012) LPELR-7941 (CA), Nimasa V Odey (2012) 52 WRN 108 CA and Ekiti State Govt. & ors V Ashaolu (2012) ALL FWLR (pt.622) 1800 (CA),** etc.

The prevailing consensus of judicial opinion as related by the Superior Courts is that it is only the **"garnishee"** who logically should appear in court and show why he should not be made to pay the judgment debt to the person who obtained Judgment. See **Sections 83, 84 and 87 of the Sheriffs and Civil Process Act, Cap. S6, Laws of Nigeria 2004**. Indeed **Section 87** makes it clear that **"if the garnishee appears and disputes this liability, the Court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in any proceedings may be tried or determined, or may refer the matter to a referee."**

There is no **express provision** which expressly allows a judgment debtor to as it were, dispute his liability. This probably arises from the fact that the whole garnishee proceeding is predicated on the existence of a valid judgment.

Now it is true or correct that the decision of the Court of Appeal in **Nigerian Breweries Plc V Dumuje & 1 or (2016) 8 NWLR (pt.1515) 536 at 601-602, 628-629** projects a different position from the decisions earlier referred to. In this case, the Court of Appeal stated the position that a judgment debtor can be heard to postulate that the order nisi should not be made absolute on certain streamlined grounds to wit:

1. Show cause why the order should be set aside for want of or excess of jurisdiction for instance where the garnisheed amount is not in accordance with the Judgment of Court.

2. Show that there has been a partial or full execution of the judgment subject of the garnishee proceedings.

3. Prove that proper parties are not before the court.

4. Show that there has been an order staying execution of the judgment or that there is a pending application for stay of execution of the judgment before a court.

The case may have created some uncertainty on the well established decisions of the Court of Appeal on the relationship between a judgment debtor and Garnishee proceedings but later decisions of the Court of Appeal after **Dumuje's** case reiterated and or sided with the decisions which donated the proposition that a judgment debtor is a nominal party in the garnishee proceedings and has no significant role to play.

In **Nigerian Agip Oil Co. Ltd V. Ogini & ors (2017) LPELR – 42859 (CA)**, the Court of Appeal per Agbo JCA held that:

"A garnishee process is one of the tools with which a judgment Creditor prevents a judgment debtor from dissipating his assets in the hands of a 3rd party. It is a proceeding between the judgment creditor and a 3rd party who is in custody of all or part of the assets of a judgment debtor and flows from the judgment pronouncing the debt owed but distinct from it. See Re: Diamond Bank Ltd (2002) 17 NWLR (pt.795) 120. It is a process of execution and may not be affected by any order of stay of execution. The pendency of an application for stay does not however preclude the judgment creditor from taking steps to avoid the dissipation of the assets of the judgment debtor. That is why Section 86 of the Sheriff and Civil Process Act requires that the garnishee pays into Court from the debtor's assets in his possession the amount equivalent to the judgment debt, or show requisite cause why he should not to do so or is unable to do so. It is therefore immaterial that there are pending applications for stay of execution."

In **Mrs. Francisca Pablo Amaran V. Virgin Atlantic Airways & Ors (2018) LPELR-44786 (CA),** the Court of Appeal per Nimpa J.C.A held as follows:

"Looking at the ruling against which the appeal is based, it was premised on an application made by the judgment debtor praying the Court for Orders of stay of execution, setting aside of order nisi pending the determination of an

appeal, an order staying further garnishee proceedings and injunction. This (sic) after the order nisi was made by the Court before the making of the order absolute. The reason why the order nisi was not made absolute was clearly stated in the ruling and the court said thus; "it is therefore very clear that as from the 7th of February, 2017, this Court would not have any jurisdiction to entertain any application in respect of this case anymore..."

... I agree with the appellant that the Court below was in error in failing to proceed to determine whether to make the garnishee order nisi absolute. The sums attached by the order nisi should have been sustained until the appeal is determined. In fact I agree with appellant that the judgment debtors Application should not have been made part of the Garnishee Proceedings at all. He has nothing to urge the court even though he could seek leave to appeal against the order absolute as a person interested. The Respondent as judgment debtor in a Garnishee Proceeding should not have been allowed to interject those proceedings with other applications which are extraneous to the garnishee proceedings. A motion seeking to set aside order nisi and a stay of execution are both extraneous to a Garnishee Proceedings. The judgment debtor is merely to be served with the order nisi after which he has no role to play except if he desired to appeal after the order absolute..."

In **Aburime V. UBA & Ors (2018) LPELR-44769 (CA)** the Court of Appeal Per Oniyangi, J.C.A. again held thus:

"The other aspect of the judgment by the appellant (sic) is whether or not the Garnishee is competent to seek for an order of stay of execution. My understanding of the decision in U.B.A. V Hon. Iboro Ekanem (MD Paragon Eng. Ltd & Anor. (2009) LPELR 8428) is that it is the Garnishee that has the power to challenge the order absolute. The reason for this is simple. In a garnishee proceeding the judgment debtor is a silent and dormant party. Therefore, it is the Garnishee Bank that can initiate an order of stay or an appeal. In addition to this, the order of the trial court making an order nisi absolute is a final order and appealable by any aggrieved party to the proceeding i.e the judgment creditor and the garnishee, in particular. But definitely, a judgment debtor is incompetent to initiate a process for stay of an appeal."

It may be relevant to on this point to refer to the Supreme Court decision in **CBN V Interstella Communications Ltd (2018) 7 NWLR (pt.1618) 294 at 339 F-B**, where Ogunbiyi J.S.C stated thus:

"... The law is settled that a garnishee proceeding is strictly between the judgment creditor and the garnishee who is indebted to the judgment debtor. See the persuasive decision of UBA V Ekanem (2010) 6 NWLR (pt.1190) 207 at 226."

The case may have not directly dealt with the critical point of the role of the judgment debtor in a garnishee proceedings, but the above pronouncement clearly gives an indication on how the Apex Court may approach the issue in the event it is a precisely defined issue before them.

Even without going into the dynamics of the fact that the later 2017 and 2018 decisions of the Court of Appeal would take precedence over the earlier decision of **Dumuje** in 2016, it is obvious that this court has fully enquired into to merits of the challenge lodged by the **judgment debtors**. There can therefore in the extant case be no complaint that they have been shut out or not allowed to ventilate their grievances relating to the order nisi. The court fully addressed their concerns in this case and found same to wholly lack merit.

The bottom line is that on the materials, the Judgment debtors have not creditably established or shown why the **decree nisi** should be set aside. The challenge unfortunately cannot be availing. The next logical question is simply whether the court can proceed with the **Garnishee proceedings** to its **logical conclusion** in the face of the Application filed on 14th February, 2020 by the Judgment debtors now pending at the Supreme Court, albeit filed after the Garnishee proceedings has commenced. For purposes of clarity, the reliefs sought are as follows:

1. **An Order of this Court staying execution of Judgment of the lower court in Appeal No: CA/A/74/2014 delivered by the Court of Appeal Abuja Division on the 11th December, 2018 presided over by ABDU ABOKI JCA.**

2. **An Order of this Court staying garnishee proceedings initiated by the Respondents pending the determination of this Appeal.**

3. **And for such further Orders or Orders as this court may deem fit to make in the circumstance of this case.**

Whatever the merits of the application and it will be presumptuous on my part to offer an opinion, it is clear that there is now an application directly affecting the extant Garnishee proceeding. The Judgment debtors/Applicants this time in contradiction to the position advanced by this application that the Garnishee proceedings is incompetent now want a stay of proceedings of the Garnishee proceeding pending the determination of the appeal. There appears here to be a two (2) pronged strategic attack to stop the Garnishee proceedings in its track both in this court and at the Apex Court. The extant challenge has failed but the challenge at the Apex Court to stay the Garnishee proceedings is still pending. The court cannot as it were play the ostrich and pretend it does not exist. It would appear to me that in such circumstances, that the court in the overall interest of justice must defer to the law lords at the Apex Court and sustain the **order nisi** until the application at the Supreme Court is determined. See **Mrs. Francisca Pablo Amaran V. Virgin Atlantic Airways & ors (supra)**. It is for me better to err on the side of caution and not take any action(s) that would create an irreparable situation in the proper and due administration of justice or thrust upon the Apex Court a situation of fait-accompli. The approach adopted would serve to secure the funds subject of the **order nisi** for both sides pending the determination of the application.

On the whole, the application to set aside the order nisi completely lacks merit and is dismissed. For the avoidance of doubt, the **order nisi still subsist** but further proceedings shall be stayed pending the determination of the motion for stay of execution and stay of Garnishee proceeding now pending at the Supreme Court.

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Hon. Justice A.I. Kutigi

Appearances:

1. **D.C. Enwelum SAN with Mohammed Mohammed Esq. and O.N. Uwaifoh for the Judgment Debtors/Applicants.**

2. **A.S. Akpala Esq. with Sam A. Achiloge Esq., for the Judgment Creditors/Respondents.**