

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 33
CASE NUMBER: SUIT NO. FCT/HC/CV/531/18
DATE: 18TH MAY, 2020

BETWEEN:

SIMON FRANCISAPPLICANT

AND

- 1. INSPECTOR GENERAL OF POLICE**
 - 2. COMMISSIONER OF POLICE (FCT POLICE COMMAND)**
 - 3. THE D.P.O NYANYA POLICE STATION ABUJA**
 - 4. INSP BULAMA NYANYA POLICE STATION ABUJA**
 - 5. THE I.P.O GINAM NYANYA POLICE STATION ABUJA**
- }JUDGMENT DEBTORS

APPEARANCE

Pius Ofolue Esq for the Judgment Creditor/Applicant.

RULING

By a motion on notice dated and filed on 27/05/2019, the 7th Respondent/Applicant herein, prayed the court for the following:-

- 1) An order of this Honourable Court setting aside order or this court dated 27th day of February, 2019 issued against the 7th Respondent by the Judgment Creditor/Respondent secured under misrepresentation of facts

and in its entirety for being an abuse of the process of this Honourable Court.

- 2) An for such further order (s) as this Honourable Court may deem fit to make in the circumstances.

The Application which is brought pursuant to order 10 Rule 11, order 15 Rule 18 & order 46 Rule 5 of the High Court of the F.C.T (Civil Procedure) Rules 2018 and under the inherent Jurisdiction of this Honourable Court, is supported by an Affidavit of 18 paragraphs deposed to by one Christopher Onebunne, a litigation officer in the legal unit, office of the Accountant General of the Federation, annexures marked Exhibits AGF2, AGF3, AGF4, AGF5 as well as a written address dated 27-5-2019.

Meanwhile in opposition to this motion on notice the judgment Creditor/Respondent filed a Counter Affidavit of 10 paragraphs deposed to by Pius. C. Ofulue, counsel to the Judgment Creditor as well as a written address filed in support of same dated 2nd October, 2019.

On the 7th of Mach, 2020 when this matter came up for hearing, counsel to Judgment debtor was absent despite being served with the motion papers.

Now since Judgment Creditor has filed a Counter Affidavit to this motion on Notice, this court shall deem it as duly adopted and proceed to consider this Application.

In the written address in support of this motion on Notice the 7th Respondent/Applicant formulated a sole issue for determination which is:-

“Whether from the facts and circumstances of this case, this Honourable Court has the power and Jurisdiction to dismiss this case?”

Learned counsel then proceeded to argue same accordingly.

While in the written address in opposition to this motion on Notice, the Judgment Creditor/Respondent also formulated a lone issue for determination thus:-

“Whether this Honourable Court has power to set off and or charge the Judgment Debtor monthly allocation of monies from the Federal Account to offset its Judgment debts owed by the judgment debtors which are all Federal Government Agencies?

The learned counsel then proceeded to argue the issue Accordingly.

Now, I have carefully considered this motion on Notice, the Reliefs sought, the supporting Affidavit, the Exhibits attached and marked Exhibits AGF1, AGF2, AGF3, AGF4, AGF5, and the written address in support of same.

I have equally given due Consideration to the Counter Affidavit filed in opposition to same, as well as the written address of the Judgment Creditor/Respondent.

Therefore, in my humble view, the issue for determination is whether the 7th Respondent/Applicant has made out a case for the grant of this Application?

Firstly, the Applicant set aside order of this court dated 27th day of February, 2020 issued against the 7th Respondent by the Judgment Creditor/Respondent secured under misrepresentation of facts and in its entirety for being an abuse of Court process of this Honourable Court.

In the supporting Affidavit of the 7th Respondent/Applicant it is averred particularly in the following paragraphs thus:-

Paragraph 5a:-

“That I know as a fact an order of court with suit NO. M/531/18 dated February, 2019, the judgment Creditor commenced an action against the 7th Respondent in suit No. M/531/18. A copy of that court order is here shown to me and marked Exhibit AGF!”

Paragraph 5f:-

“Whereas in an earlier GARNISHEE ORDER NISI in suit No. FCT/HC/M/7975/12 MOTION NO: M/1389/14 dated 27th day of November, 2014, there was an order issued by the His Lordship Hon.

Justice O. A Musa (not Hon. Justice J. Y. Tukur as imprinted on Exhibit AGF1) and same is shown to me herein annexed and marked as Exhibit AGF: the Judgment Creditor sought reliefs against the 7th Respondent.”

Paragraph 6:-

“That from the Claim of the Judgment Creditor and contents of the respective court orders as contained in the Exhibits AGF1 & AGF2 obtained against the 7th Respondent and he extant suit are the same.”

Paragraph 7:-

“That I also know as a fact that in suit No. M/531/18 that the Judgment Creditor herein is also Judgment Creditor in suit No: FCT/HC/M/7975/12 MOTION NO: M/1389/14 therein.”

Paragraph 8:-

“I further know as a fact that the subject matter in both cases is the same.”

Paragraph 10:-

“That upon being served with the Garnishee court order Nisi AGF2 as per paragraph 8 herein, the 7th Respondents (among others) filed Affidavit to show cause dated and filed on 16th February, 2015 and said Affidavit is shown to me and herein annexed and marked as Exhibit AGF3”.

Paragraph 11:-

“That while the 6th Respondent in response to same Garnishee order Nisi filed a preliminary objection dated 16th April, 2015 challenging the jurisdiction of the court to hear and determine the suit, a copy of which having shown to me further hereby annexed and marked as Exhibit AGF4.”

Paragraph 12:-

“That the court as per Hon. O. A Musa after evaluating both 7th Respondent’s Affidavit to show cause and 6th Respondent’s preliminary objection delivered the judgment and Ruled that the court lacks jurisdiction to entertain the matter and equally set aside the order Nisi earlier issued. A copy of Ruling of said court is shown to me and here to annexed and marked as Exhibit AGF5.”

Paragraph:-

“That the reliefs sought by the Judgment Creditor to warrant the issuance of court order to show cause against 7th Respondent/Applicant dated on 27th February, 2019 by this Honourable Court are frivolous, vexatious and oppressive and it would be in the interest of justice for same court order to be discharged against 7th Respondent and the extant suit be dismissed.”

On the other hand, it is averred in the counter Affidavit of the Judgment Creditor/Respondent, particularly in paragraphs 2, and 3 that the 7th Respondent’s counsel misrepresented facts of the Ruling as contained in Exhibits AGF1, AGF2, AGF3, AGF4, & AGF5 as parties, the issues, the Ruling are not the same as this present Judgment Summons suit.

That paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 are false.

In paragraph 4 it is averred as follows:-

“That the Ruling in suit No. FCT/HC/M/7975/12. MOTION NO: M/1389/14 by the Honourable Justice Musa discharged the Nigeria police Microfinance Bank on Technical grounds that its registered name at corporate Affairs Commission is NFP Microfinance Bank Plc. That also consent of AGF was required which position has been overruled recently by the Supreme Court. Therefore justice Musa declined Jurisdiction and set aside the order Nisi (we refer to the 7th Respondent i.e Accountant General Exhibit AGF5: i.e ruling of Honourable Justice Musa dated 29th June, 2018, attached to their Affidavit to show cause and their motion on

Notice of preliminary objection) see Exhibits AGF1 AGF2, AGF3 AGF4 & AGF5.”

Paragraph 8:-

“That the Judgment Creditors herein annexed a copy of Guardian Newspaper report of September, 15 2019 of admission by CBN and accountant General of the Federation of being TSA ACC: NO:300002095, ACCT. Name: Accountant General of the Federation domiciled with CBN.”

Paragraph 9:-

“That it is in the interest of Justice to dismiss the Affidavit to show cause and motion on Notice of the 7th Defendant/Respondents and compel them to comply with the Attorney General of the Federation letter which directed them to comply which gave rise to this Judgment Summons suit”.

Now, let me begin by considering the concept or meaning of the terms abuse of court process.

In the case DREDGING INTERNAIONAL SERVICES (NIG) LTD VS AB SEA OILS LTD (2019) LPELR- 49179 (CA), PER JUMBO-OJO –JCA, Page 12-14, paragraphs C-A, the court held as follows:-

“On what therefore constitutes an abuse of court process? The law is settled that what constitutes an abuse of court process is the multiplicity of suit or proceedings by the parties in respect of the same subject of the same subject matter and issues whether in the same court or different courts.....”

Likewise it must be noted that before a charge of abuse of process is sustained, certain ingredients must co-exist. On this I refer to the case of UMEH VS IWU (2001) 6 NWLR (PT. 1030) 416, at 243, per CHUKWUMA –ENEH JSC, where the court states thus:-

“Therefore, to sustain a charge of abuse of process as in the instant suit therefore must co-exist inter-alia.”

- 1) A multiplicity of suits;
- 2) Between the same opponents; and
- 3) On the same subject matter; and
- 4) On the same issues;

Now, having thoroughly considered all the submissions of counsel for and against this application, and also having carefully looked at all the Exhibits attached, it is quite clear that the Judgment Creditor in the instant suit is the same Judgment Creditor in former suit No FCT/HC/M/7978/12 as well as Motion No. M/1389/14, as Evidence in Exhibits AGF1, AGF2, AGF3, AGF4 and AGF5 respectively.

Again, the Accountant General of the Federation listed in the instant suit as the 7th Respondent, is also a Garnishee listed in Exhibits AGF1-AGF5, therein listed as the 3rd Garnishee.

Therefore, the parties in this suit and in the former suit are the same, listed along with other Garnishees.

Likewise the subject matter in suit No. FCT/HC/M/7968/12 and Motion No. M/1389/14 is in respect of a Judgment obtained by the present Judgment Creditor/Respondent against the same Judgment Debtors in that suit and the present suit, in the sum of ₦500,000.00 (Five Hundred Thousand Naira) granted by Hon. Justice O. A Musa on the 13th of February, 2013.

The same is reflected in Reliefs No. 2 being sought for by the Judgment Creditor/Respondent in the instant suit, as well as the issues in the two suits which I find to be the same.

In relief No. 3 in this Judgment Summons, I have noted that the Judgment Creditor also seeks an order of this Court compelling the 1st judgment Debtor and 6th, 7th & 8th Respondents to appear before this Honourable Court or a named date to be examined on oath as to its means and to explain why the Judgment debt has not been paid till date as per Judgment herein annexed as Exhibit A & Exhibit B i.e the AGF1 letter dated 22nd March, 2018 and Exhibit C.

Here, it must be pointed out that the 7th Respondent/Applicant in this suit, who's also listed as the 3rd Garnishee in the former suit, as annexed Exhibit AGF3 to show that pursuant to Exhibit AGF2, it had filed its Affidavit showing cause in respect of the same subject matter.

While Exhibit AGF4 as annexed by the Applicant shows the motion on Notice filed by CBN listed as the 2nd Garnishee in the former suit, seeking the court to set aside the Garnishee order Nisi, amongst other grounds that the CBN is an agency of the Federal Government as such it is only the Federal High Court that has the Jurisdiction to entertain Garnishee proceedings against it.

In a considered Ruling attached as Exhibit AGF5 my learned brother Hon. Justice A. O. Musa set aside the Garnishee order Nisi made against the 2nd Garnishee CBN for lack of Jurisdiction.

And now, the same judgment Creditor has now approached this court seeking the same reliefs, on the same subject matter and issues against some of the same opponents namely the 6th and 7th Respondents herein i.e CBN and the Accountant General of the Federation.

From the above I have no hesitation in agreeing with the 7th Respondent/Applicant that the instant suit is clearly an abuse of court process.

Likewise in addition, it must be clearly pointed out that it is now settled that Garnishee proceedings against CBN (listed herein as the 6th Respondent) can only be instituted before the Federal High Court by virtue of its exclusive jurisdiction under Section 251 CC CFRN 1999 (As Amended).

On this I humbly refer to the case of CBN VS KAKURI (2016) LPELR-41468 (CA) where the court held as follows:-

".....So Garnishee proceedings can be brought in only a court where the Judgment debtor can sue the Garnishee for the debt. Agree with the learned counsel for the appellant that the court where the police service Commission (2nd Judgment debtor) can sue the Central Bank of Nigeria (Garnishee) for the funds in the custody of the Appellant attached by

Garnishee order is the Federal High Court of Nigeria and not Federal Capital Territory High Court.....”

Therefore in the final analysis, I find that this suit constitutes an abuse of court process, as such the issue for determination I hereby resolved in favour of the 7th Respondent/Applicant against the judgment Creditor/Applicant. The Reliefs sought in this Application are accordingly granted as prayed.

Consequently, this suit with No. FCT/M/531/18 be and is hereby struck-out.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

18/05/2020.

Counsel: We are grateful for the ruling.