

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/1490/2013, M/6759/2020
DATE: 3RD JULY, 2020

BETWEEN:

1. HUNTAFRICA EVENTS LIMITED
2. ROSE CROWN INDUSTRIES LTD } **JUDGMENT REDITORS/APPLICANTS**

AND

JULIUS BERGER NIGERIA PLC - JUDGMENT DEBTORS/CONTEMNOR

1st Claimant represented by Nonso Ofole while the Defendant/Judgment Debtor/Applicant absent.

John Anietor for the Claimant/Judgment Creditor.

M.I. Abubakar for the Defendant/Judgment Debtor/Applicant appearing with I.D. Haruna Esq.

Claimant/Judgment Creditor/Respondent's Counsel – The matter is listed for ruling and we are ready to take same.

R U L I N G

This is an application on notice dated 20/3/2020 brought pursuant to Order 5 Rule 2(2), Order 47 Rule 10 of the High Court Civil Procedure Rules 2018, Order IV Rules 8, 9(d) and 10 and Order IX Rule 13(1) & (2) of the Judgments (Enforcement) Rules and under the inherent jurisdiction of this Honourable Court as preserved by Section 6(6) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

In the motion, the Applicant/Judgment Debtor seeks for the following:

1. An Order setting aside the Forms 99 and 100 issued in this suit to the Judgment Debtor/Applicant and/or its Managing Director Engineer Dr. Lars Richter for being incompetent, null and void and of no legal effect whatsoever.
2. An Order dismissing or striking out the entire contempt proceedings in this suit against the Judgment Debtor/Applicant and/or its Managing Director, Engineer Dr. Lars Richter for being incompetent; and
3. Such further or other Order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:

- (a) There is no competent Notice of Motion or Motion on Notice for the committal of the Judgment Debtor/Applicant and/or its Managing Director before this Honourable Court as required by Order 47 Rule 10(2) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules 2018.
- (b) The Forms 99 and 100 issued and served on the Judgment Debtor/Applicant or its Managing Director in this matter were not competently issued by the Registrar of this Honourable Court as mandatory required by the provisions of Order IX Rule 13 (1) & (2) of the Judgments (Enforcement) Rules.

- (c) By virtue of the provision of Order IV Rule 10 of the Judgments (Enforcement) Rules, the Form 99 issued in this matter sometime in February, 2019 is stale or spent and therefore no longer of any legal effect.
- (d) No prior leave of this Court was obtained by the Judgment Creditors/Respondents for the issuance of Forms 99 and 100 before same were issued and served on the Judgment Debtor/Applicant or its Managing Director contrary to the mandatory provision of Order IV Rule 9 of the Judgments (Enforcement) Rules.
- (e) Whereas Form 100 was issued or filed on 16/03/2020 (i.e. more than two (2) years from the date of the judgment sought to be enforced therein), no prior leave of this Court was obtained by the Judgment Creditors/Respondents for the issuance of the Form contrary to the mandatory provisions of Order IV Rule 8(1) & (2) of the Judgments (Enforcement) Rules.
- (f) In consequence of the foregoing, the entire Committal Proceedings in this suit against the Judgment Debtor/Applicant and/or its Managing Director are incompetent and this Honourable Court is thereby deprived of the jurisdiction to entertain same.

In support of this application is an 8-paragraph supporting affidavit dated 23/3/2020 attached thereto are documents marked Exhibits JB1, JB2 and JB3 respectively.

Also filed is a 14-paragraph Further Affidavit in support dated 18/5/2020; all the affidavits deposed to by Paul Esuk, a Secretary/Litigation Officer in Abubakar Mustapha & Associates. Reliance is placed on all the said paragraphs of the affidavits.

Learned counsel to the Judgment Debtor/Applicant filed a written address dated 20/3/2020 wherein counsel formulated alone issue for determination, thus:

“Whether the Forms 99 and 100 purportedly issued and served on the Applicant by or at the instant of the Respondents and indeed the entire committal proceedings commenced thereby are not incompetent and liable to be dismissed or struck out”

On this sole issue, it is the submission of learned counsel to the Judgment Debtor/Applicant that there is no competent Notice of Motion or Motion on Notice for the committal of the Judgment Debtor/Applicant and/or its Managing Director before this Honourable Court as required by Order 47 Rule 10(2) of the Rules of this Court 2018.

It is submitted that in the instant case, the Respondent merely filed or caused to be issued and served on the Applicant Form 99 and 100 without filing and causing to be served on the Applicant any Motion on Notice for committal.

There being no competent motion or application for committal of the Judgment Debtor/Applicant or its Managing Director before

this Honourable Court. Court is urged to dismiss or strike out the committal proceedings.

It is further the submission of learned counsel for the Applicant that the Form 99 and 100 issued and served on the Judgment Debtor/Applicant or its Managing Director were not competently issued by the Registrar of this honourable Court as mandatory required by the provisions of Order IX Rule 13(1) & (2) of the Judgments (Enforcement) Rules.

It is submitted that by virtue of the above Rule only the Registrar of court is authorized to issue Form 48 (i.e. Form 99 of the FCT Rule) and Form 49 (i.e. Form 100 of FCT Rules). See *ONOCHIE v ODOGWU* (2006) 6 NWLR (Pt 975) 65 at 89 Paras D – E.

It is submitted that a cursory look at the Forms 99 and 100 purportedly issued and served on the Judgment Debtor/Applicant (Exhibits JB1 and JB2) will show that the Form 99 was jointly signed/issued by the counsel for the Judgment Creditor/Respondent and presumable the Registrar of the court while Form 100 was signed/issued by the said counsel alone. That the Registrar of this court did not sign or issue the Form 100 in question. It is trite law that only the Registrar of the court has the vires to do so. See *CHUKWU & ORS v CHUKWU & ORS* (2016) LPELR – 40553 (CA) at 108 – 109 Para B.

It is the submission that by virtue of Order IV Rule 10 of the Judgment (Enforcement) Rules, any process issued under the

Rules has a life span of one (1) year only such that it becomes spent after one year if it remains unexecuted.

It is submitted that by virtue of Order IV Rule 10 of the Judgments (Enforcement) Rules, the one year life span of the Form had expired as at the date or time it was served on the Judgment Debtor/Applicant. It therefore means that the said Form 99 served on the Applicant is a spent and incompetent process which has no legal effect whatsoever. Court is urged to strike out same.

It is the further submission of counsel that no prior leave of this court was obtained by the Judgment Creditors/Respondent for the issuance of Form 99 and 100 before same were issued and served on the Applicant contrary to the mandatory provision of Order IV Rule 9 of the Judgments (Enforcement) Rules.

It is submitted that since the Judgment Debtor/Applicant is a public limited liability joint stock company and the Judgment Creditor/Respondent are seeking to enforce the judgment it obtained against the Judgment Debtor's company against its representative in the person of its Managing Director, Engr. Dr. Lars Richter, the committal proceedings herein falls squarely within the purview of sub-section (1) (d) and (2) of Order IV Rule 9 of the Judgment (Enforcement) Rules. Therefore by virtue of the provisions of the said Rules, the Judgment Creditor/Respondent was not only required to apply for and obtain the leave of this court for the issuance of the Forms 99 and 100 against the said Judgment Debtor/Applicant Managing Director but to also ensure

that a none of such leave when obtained is made on each of the said forms.

It is contended that the failure of the Judgment Creditor/Applicant to obtain the said leave not only rendered the said forms incompetent but deprives this Honourable court of the jurisdiction to entertain the entire committal proceedings. See SOGBESAN v OGUNBIYI (2006) 4 NWLR (Pt 969) 18 at P. 32 Paras A – E. Court is urged to strike out the two forms for being incompetent.

It is also submitted that whereas Form 100 was issued or filed on 16/03/2020 (i.e. more than two (2) years from the date of the judgment sought to be enforced therein), no prior leave of this court was obtained by the Judgment Creditor/Respondent for the issuance of the form contrary to the mandatory provisions of Order IV Rule 8(1) & (2) of the Judgment (Enforcement) Rules.

In essence, the condition precedent to the issuance of the said Form and/or the commencement of the contempt proceedings herein were not met. The effect is that the Forms 99 and 100 served on the Judgment Debtor/Applicant were rendered incompetent, null and void thereby depriving this Honourable court of the jurisdiction to entertain this committal proceedings. Court is urged to dismiss or strike out this proceeding.

In opposition to this application, the Judgment Creditors/Respondents filed a 9-paragraph counter affidavit dated 8/5/2020 deposed to by Yohanna Shankuk, a Litigation

Officer in the law firm of Festus Keyamo Chambers. Reliance is placed on the said counter affidavit.

Learned counsel to the Judgment Creditors/Respondents also filed a written address dated 5/5/2020 wherein counsel adopted the lone issue submitted for determination by the Judgment Debtor/Applicant in its written address; thus:

“Whether the Forms 99 and 100 pending before this court are competent?”

On this sole issue, it is the submission of counsel to the Judgment Creditors/Respondents that the order being enforced by committal proceedings is a Declaratory and Injunctive Order/Judgment and not an Executory Order/Judgment.

It is submitted that the argument by the Judgment Debtor/Applicant’s counsel in his written address are not applicable to the instant contempt proceedings, as presently constituted. This is because the said Judgment Debtor’s arguments apply to proceedings where a judgment is being enforced by “execution”. The instant case before this court is enforcement by committal to prison, as it affects declaratory and injunctive orders and not executor orders. See *GE INTERNATIONAL OPERATION LTD v Q-OIL AND GAS SERVICES* (2015) 1 NWLR 9Pt 1440) 1 at 267 – 268, Para G – A.

It is further submitted that the present proceeding has nothing to do with the provision of Order 47 Rules 10 and 12 wherein Applicant’s counsel heavily relied on.

Rather, Order 47 Rule 11 is what is applicable to this suit in the circumstance.

The Order of the court in Exhibit CA1 also attached to the counter affidavit is a declaratory and injunctive order which are not to be enforced like executor orders. Rather, declaratory orders are enforced by way of committal proceedings as in the instant suit. In a committal proceeding of this nature, there is no specific provision for a motion on notice before the issuance of the forms as argued by the Judgment Debtor's counsel. Order 47 Rule 10 (2) which provides for a service of a "Notice of Motion" is referring to cases of attachment and not to cases of committal for contempt.

It is the submission that a careful examination of the Forms 99 and 100 would reveal that the signature and stamp of the Registrar of this court is on same. The fact that the name, signature and seal of counsel on the said processes is a surplussage and does not render the processes invalid.

It is the submission that the argument by the Applicant's counsel that Form 99 served on the Judgment Debtor had lapsed, having been served after a period of one (1) year after its issue, is misconceived as Order IV Rule 10 of the Judgments (Enforcement) Rule relied upon by Applicant's counsel does not apply to the instant case. Court is referred to Section 2 the Interpretation Section of the Judgment (Enforcement) Rules.

It is further submitted that there is nothing in the rules of this court that limited the life span of Form 99 of the Rules of this court to one (1) year.

On the issue of not obtaining leave of this court for the issuance of Forms 99 and 100. It is submitted that the argument of Applicant's counsel on this issue are not applicable to the instant case. That a careful study of the entire provision of Order IV of the Judgment (Enforcement) Rules would show that the said provisions can only be applicable to an Executory Judgment or Order and not a Declaratory Order, as in the instant case.

It is further submitted that this court granted leave on 24/2/2020 for the service of the contempt processes (Forms 99 and 100) on the Managing Director of the Judgment Debtor.

It is the submission that the Declaratory Orders in this case remains valid and subsisting and can therefore be enforced against the Judgment Debtor several years thereafter, when same is violated. Court is urged to dismiss the instant application with cost and proceed to determine the committal proceedings before this court.

The Judgment Debtor/Applicant filed a reply on points of law dated 18/5/2020 wherein counsel submitted that the counter affidavit before the court is incompetent same having been filed out of time without the leave of this court to extend time to file same. Court is referred to Order 43 Rule 1(3) of its Rules.

In response to the submission by the Respondent's counsel that the judgment/order of the court is declaratory in nature, it is the submission that the judgment/order of the court is executor and not declaratory. Court is referred to Exhibit JB2 attached to the Judgment Debtor's affidavit in support. See the case of OKAFOR v NWAZOJIE & ORS (2016) LPELR – 42840 (CA) at PP. 22 – 26 D – A.

It is the submission that leave to issue a process is different and distinct from leave to serve such process. By virtue of the provision of Order IV Rule 8 & 9 of the Judgment (Enforcement) Rules, it was incumbent on the Judgment Creditors to have applied for and obtained the leave of this Honourable Court to issue the said Forms 99 and 100 before the issuance and service of same.

It is the contention of learned counsel to the Applicant that the absence of Motion on Notice for the committal of the Judgment Debtor and/or its Managing Director for contempt supported by a written address renders the instant committal proceedings incompetent. Court is referred to Order 47 Rules 10, 12 and 13 of the Rules of this Court. Court is urged to uphold the objection and grant the Judgment Debtor's application as prayed.

I have carefully considered the processes filed and submission of learned counsel on both sides, I am in one with counsel on both sides that the issue that calls for determination is whether the Forms 99 and 100 pending before this court are competent?

Before delving into the sole issue, it is pertinent to address the issue of competence of the Judgment Creditor's counter affidavit and

written address as raised in paragraph 2.0 to 2.3 of the Judgment Debtor/Applicant's reply on points of law. Therein it is the contention of counsel to the Applicant that the Judgment Creditor's counter affidavit and written address haven been filed outside the seven (7) days mandatorily as provided by Order 43 Rule 13 of the Rules of this court without the leave of this court extending time for same to be filed, renders the said counter affidavit and written address incompetent.

I must state here that by the Practice Direction 2020 issued by my lord the Honourable Chief Judge of this court which came into effect on 19/5/2020 particularly Rule 5 thereof which provided that the period from 22/3/2020 to 4/5/2020 being the period of Sit at Home Lock Down shall be excluded for the purpose of computation of time for doing any act under the Rule of this court, the counter affidavit and written address filed on 6/5/2020 is competent, same haven filed within time, I so hold.

Now on the issue at hand, it is the contention of the Judgment Creditor's counsel at paragraph 3.3 of his written address that the Judgment Debtor's written address in support of his application under consideration are not applicable to the instant contempt proceedings as presently constituted; his reasons was that the said Judgment Debtor's arguments apply to proceedings where a judgment is being enforced by "execution". That the instant case before the court is "enforcement by committal to prison" as it affects declaratory and injunctive orders and not "executor" orders.

It is pertinent at this stage to determine whether the Judgment/Orders of this court made on 16/6/2017 is a “declaratory in nature or “executor” in nature.

For want of doubt the said judgment of this court is reproduced here below as follows as contains in Exhibits JB2 and CA1 respectively.

“Judgment is entered in favour of the Plaintiffs and against the Defendant as follows:

- 1) It is hereby declared that the 1st Plaintiff is entitled to the possession and use as Recreational Centre all that portion of land of about 1000 square meters, adjoining Julius Berger Shooting Range, Jabi, Abuja by virtue of the letter of temporary approval to develop a Recreational Centre dated 25th May, 2011, with Reference No. AMMA/P&R/5,420; approved by the Abuja Metropolitan Management Agency but subject to the Right and Powers of the Minister of FCT under relevant laws of Nigeria.***
- 2) An Order of perpetual injunction restraining the Defendants either by itself, servants, privies, agents or any other person howsoever called acting on its authority from further trespassing into, grading with Bulldozers, demolishing, constructing, defacing, developing or in any way interfering with all that portion of land of about 1000sqm adjoining Julius Berger Shooting Range, Jabi approved for the 1st Plaintiff by AMMA vide the letter of temporary approval to develop a Recreational Centre,***

dated 25th May, 2011 with Reference No. AMMA/P&R/S.420.

3) General damages of N3 Million is hereby awarded against the Defendant in favour of the Plaintiff.

4) 10% post judgment interest is hereby awarded from today until judgment sum is fully liquidated.

This is the judgment of this court."

It is trite law that a declaratory judgment or order is one that proclaims or declares the existence of a legal relationship, but does not contain any order which may be enforced against the Defendant once rights declared in a declaratory judgment are infringed, fresh proceedings are needed for enforcement. Declaratory judgment cannot be enforced by execution, as there is nothing to execute. See IRAGBIJI v OYEWINLE (2013) 13 NWLR (Pt 1372) 566 at 580 Paras C – D.

A look at the Committal Forms 99 and 100 (Exhibits JB1 and JB2 attached to the Applicant's affidavit, shows that the orders sought to be enforced in the said Committal Forms are the first and second orders in the judgment i.e. the order declaring the 1st Judgment Creditors' right to the possession and use of the disputed piece of land claimed by it and the order of perpetual injunction restraining the Judgment Debtor from further trespassing into or in any way interfering both the said piece of land. The question that comes to mind is that are the above orders of the court declaratory or executor in nature?

In OKAFOR v NWAZOJIE & ORS (Supra) the Court of Appeal held inter alia:

“In Chike A. Akunnia vs Attorney General of Anambra State (1977) 1 All NLR 118 where Idigbe, JSC held at Page 128 as follows: “The end result of an action, whatever its nature and no matter how framed, is that the party who approaches the Court obtains the order he seeks; the order he seeks may be declaratory or executor. It is executor where the order declares the right of the parties before the Court and then proceed to enjoin the Defendant to act in a certain way. It is declaratory where it merely proclaims the existence of a legal relationship, but contains no specific order to be carried out by, or enforced against, the Defendant. In the first class of order (executor) it is necessary to have the assistance of the law enforcement agencies to carry out the order, if the order of the Court is disregarded; there is hardly any need for this in the second class of order (declaratory),

.....
.....

A declaratory judgment by itself merely states some existing legal situation. It requires no one to do anything and to disregard it will not be contempt of Court.”

In its judgment in the instant suit, the court after declaring the right of the 1st Judgment Creditor to the possession and use of the piece of land claimed by it proceeded to make an order of perpetual injunction restraining the Judgment Debtor from

trespassing into or in any way interfering with the said piece of land.

In the light of the cases cited above, it is clear that the Judgment/Orders sought to be enforced herein by the Judgment Creditors is executor in nature and not declaratory.

Therefore contrary to the arguments of the Judgment Creditors, the submission and authorities cited by the Judgment Debtor/Applicant's counsel including the provisions of the Judgment (Enforcement) Rules relied upon therein are applicable to the instant case on the ground that the judgment being sought to enforce is executory.

It is the contention of learned counsel to the Judgment Creditors/Respondents that the provisions of the Judgments (Enforcement) Rules particularly Order IV Rules 8, 9 and 10 thereof do not apply to the committal proceedings in this suit, is a misconception of the law. This is so because the Rules of this court relating to committal proceedings before this court (i.e. Order 47 Rules 10 – 13 of the Rules of this Court) are expressly subject to the Sheriffs and Civil Process Act and by extension, the Judgment (Enforcement) Rules which is a subsidiary legislation made pursuant to the Act. Order 47 Rule 10 (3) (c) of the Rules of this court provides thus:

“(c) subject to the Sheriff and Civil Process Act, any proceedings in the High Court or where the contempt consist of disobedience to an order of the court”

It is clear as crystal that by the provision of Order 47 Rule 10 of the Rules of the court requires that a Notice or an application for committal shall be filed by an Applicant for service on the Respondent.

In the instant case, the Judgment Creditor/Respondent merely filed or caused to be issued and served on the Judgment Debtor/Applicant Forms 99 and 100 without filing any Notice of Motion for Committal.

In the light of the above, there being no competent motion or application for committal of the Judgment Debtor/Applicant and/or its Managing Director before this court, it will amount to an academic issue to proceed in determining other issues raised in the respective submission of learned counsel on both sides.

Accordingly, I hold that the preliminary objection by the Judgment Debtor/Applicant be upheld and same is upheld. This proceeding is hereby struck out for being incompetent.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
03/07/2020

Judgment Debtor/Applicant's Counsel – We are grateful for the ruling.

Judgment Creditor's Counsel – We are grateful for the ruling.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
03/07/2020

