

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : SUIT NO: CV/4103/2013
MOTION M/7430/2020
DATE: : WEDNESDAY 16TH SEPTEMBER, 2020

BETWEEN:

WEMA SECURITIES FINANCE PLC. } JUDGMENT CREDITOR
(In Liquidation) } /RESPONDENT

AND

CORONATION MERCHANT BANK LTD } JUDGMENT DEBTOR
} /APPLICANT

RULING

This Ruling is at the instance of the Judgment Debtor/Applicant who approached this Honourable Court for the following:-

- a. An Order of this Honourable Court setting aside and or vacating the Garnishee Order Nisi made on the 13th day of May, 2020.
- b. An Order of this Honourable Court setting aside and/or vacating the entire proceedings of the 13th day of May, 2020.
- c. And for such order or further Order as this Honourable Court may deem fit to make in the circumstance.

In support of the application is a 7 paragraph affidavit duly deposed to by one **Kadir P. Omatta**, a legal practitioner in the law firm of the Applicant.

It is the averment of the Applicant as distilled from the affidavit in support that the Judgment Creditor/Applicant referred to SuitNo. **FCT/HC/CV/4103/2013** on the face of the said motion paper with Motion No.**FCT/HC/M/6599/2020**, and that Coronation Merchant Bank Limited is not and was not a party in the above suit.

The Applicant avers further that the Applicant ought to have filed a certified true copy of Judgment on or at the exparte application stage. A copy of the judgment was annexed as Exhibit “A”.

Applicant avers that it will be in the interest of justice to grant this application.

In line with law and procedure, a written address was file wherein a sole issue to wit; whether in the circumstance of this case, it will be in the interest of justice to grant this application with the judgment creditors in apparent disregard of order viii 3b of the Judgment enforcement Rule, Sheriffs and Civil Process Act was formulated for determination.

Arguing on the above, learned counsel submit that Order Viii Rule 3 of the Judgment Enforcement Rules, Sheriff and Civil Process Act Provides as Thus:

“A Judgment creditor who desires to take Garnishee proceedings shall file in the registry,

a. An affidavit in form 25 and

b. If the garnishee proceedings are taken in a court other than the court in which the judgment was given or made, a certified copy of the judgment.”

Learned counsel submit that the Rules of Court must be obeyed. And that where the word “shall” as used in the above, its connote mandatory. ***NWANKWO VS YAR’ADUA (2010) ALL FWLR (Pt. 535)1.***

It is further the argument of counsel that, where an Order of court was obtained by fraud or by concealment of fact, the court can set aside such order.

Court was then urge to set aside the order.

Upon service, the Respondent filed a counter affidavit of 11 paragraph deposed to by

AdakuOzokwere a legal practitioner in the law firm of the Respondent.

It is his averment that the Judgment Creditor/Respondent obtained Judgment in **Suit No. CV/4100/2018** against **Mustadrak Contract Ltd & 2Ors** in 2016 and garnishee proceeding was initiated in 2019 vide Exhibit “A”.

That failure of the Applicant herein to appear in the Magistrate Court to show cause, the order was made absolute against it vide Exhibit “D” and that it is on the basis of the forgoing that the Applicant herein became the Judgment Debtor.

The Respondent aver that it is was the failure of the judgment Debtor to comply with the order absolute of the District Court that the Judgment Creditor

commenced the instant garnishee proceeding before this court to enforce the said payment.

In line with law and procedure, a written address was filed wherein learned counsel argued that what the Judgment creditor seeks to do by virtue of this garnishee proceeding is to enforce an order for payment made by the District Court against the Judgment Debtor as contained in the order absolute placed before this court.

Counsel cited and relied on order 46 Rule 2 of the Rules of this Honourable Court and stated that what the Judgment Creditor seeks to enforce is an order for payment and not a Judgment and a garnishee order nisi would only be set aside if the said order was obtained by fraud or where the court lacks the requisite jurisdiction to entertain same. ***ZENITH***

BANK PLC. VS CHIEF GODWIN OMENALLA & ANOR (2016) LPELR 40327 (CA).

Upon service, the Judgment Debtor filed a reply on point of law wherein learned counsel stated that the learned counsel has disregard order viii 3b of the Judgment enforcement Rules, Sheriffs and Civil Process Act and that the procedure adopted by the Judgment Creditor/Applicant is unknown to law. Court was urged to set aside its Order.

On the part of court, it is trite law, that for a garnishee proceeding to be valid, it behoves the trial court to ensure that basic conditions set out in the case of ***CBN VS AUTO IMPORT EXPORT, (2013) LPELR 20660 (CA)*** are complied with, the conditions are that;

- a. The garnishee must be indebted to the Judgment Creditor within the state, and be resident in the state which proceedings are to be brought.
- b. The proceeding must be filed in any court which the Judgment Debtor could sue under the High Court (Civil Procedure) Rules or under the appropriate section or rules governing Civil Procedure in Magistrate Court.
- c. The application be made ex parte the service of the Order Nisi therein binds or attaches the debt in the hands of the garnishee.

Having said that, contrary to the contention by Learned Counsel for the Applicant, clearly therefore a garnishee matter can only be initiated in a court where the Judgment Debtor can sue for the debt; the court has to have jurisdiction to entertain the suit by

the Judgment Debtor against the garnishee in respect of the debt; and it follows from this that Section 83(1) of the Sheriff and Civil Process Act goes hand in hand with Order viii Rules 2 of the Judgment Enforcement Rules.

On whether the Applicant was a party in the Judgment annexed as Exhibit, in its motion, I must say here by Exhibit 'A' annexed to Respondent counter affidavit, i.e the Order obtained from the Senior District Court of FCT, the Applicant is No. 14 in that Order. By Exhibit 'D' the said Order Nisi was made absolute against the Applicant thereby necessity the Applicant to become Judgment Debtor.

Therefore, the argument of the Applicant that they were not a party to the Judgement is misplaced in law and refused.

On whether the Judgment of the court must be annexed to the application for garnishee proceeding; I have seen the Order absolute annexed to the motion ex parte which is enough evidence that Judgment was indeed obtained and Order Absolute was made against the Applicant.

It is the law that the Rules of Court must be obeyed. See ***BASHIRU VS INEC & ORS (2008) LPELR – 3857(CA)***. The said Rule of Court stated above provides that where an Order Absolute is made against the garnishee (as it was done against the Applicant/Judgment Debtor at the District Court), the said Order Absolute may be enforced in the same manner as any other Order for the payment of money.

It has therefore been long established and indeed the position of our law that one of the methods which an Order for the payment of money may be made is by initiating garnishee proceedings. See ***INCORPORATED TRUSTEES OF NIGERIAN GOVERNORS FORUM & ANOR VS. RIOK (NIG) LTD. & ORS (2018) LPELR – 44915(CA).***

Order 46 Rule 2(b) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 directs that the Judgment Creditor in initiating the garnishee proceeding shall identify the Judgment or Order to be enforced and stating the amount of the Judgment or the amount unpaid under it at the time of the application.

The Rule clearly makes a distinction between a ‘Judgment’ and an ‘Order’.

It is therefore important to state again that what the Judgment Creditor seeks to enforce is an Order for payment and not a Judgment. It is equally important to state that the Judgment Creditor herein complied with the Provisions of Order 46 Rule 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 in initiating this garnishee proceeding and had identified and attached the Order sought to be enforced.

The Applicant has not put before this court any material fact to warrant the setting aside of the garnishee Order Nisi made by this court.

It is clear that the enforcement of Judgment Creditor seeks to make is the Order Absolute made by the

District Court and not the Judgment in Suit No.**FCT/HC/CV/4103/2013**as stated by the Applicant.

Consequently, this application is hereby dismissed.

Justice Y. Halilu
Hon. Judge
16th September, 2020

APPEARANCES

ChukaIleoje with Joseph John U. – for the Judgment Creditor/Respondent.

Judgement Debtor/Applicant.