

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA.
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO. 13
COURT CLERKS –T.P. SALLAH & ORS
DATE: 2/07/2020
FCT/HC/CV/1186/19
BETWEEN:**

THE DEPUTY SHERRIFF OF THE HIGH COURT OF THE FCT ... APPLICANT

AND

1. DERMO IMPEX NIGERIA LIMITED	CLAIMANT
2. WEST AFRICAN EXAMINATION COUNCIL (WAEC)	JUDGMENT CREDITOR

RULING

This action was commenced at the instance of the Applicant the Deputy Sherriff of the FCT High Courtvide originating summons dated 14th February, 2019 and issued on 27th February, 2019 pursuant to Section 34 of the Sheriffs and Civil Process Act 2014. The summons seeks the following:-

1. A determination of this Honourable Court as to whether or not the Claimant herein is the lawful owner of the property which were attached under the purported mistaken belief that they belonged to Okmar Consultancy Limited the Judgment Debtor in execution of the Court's Judgment by the execution officers from the Sheriff's office in Suit No. CV/199/2017.

The property claimed by the Claimant are:

- (a) One (1) executive chair black colour
- (b) One (1) visitors chair
- (c) One (1) standing fan
- (d) One (1) hp Laser-Jet printer
- (e) One metal code (safe)

(f) Five pieces of Dell laptop computer Intel model – D620

2. An Order of this Honourable Court directing the Applicant herein to either:-

(a) Release the listed property to the Claimant herein pursuant to her claim where the Honourable Court finds the claim to have been established.

Or

(b) Transfer the listed property to the Court for the satisfaction of the Judgment Creditor's Judgment Sum; where the claim is deemed by the Honourable Court to have failed.

3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

In support of the summons, the Applicant filed a 10-paragraphs affidavit deposed to by one Edna Shuaib, litigation secretary in the Legal Unit of the High Court of the FCT. Exhibits A, B and C accompanied the said affidavit as well as Counsel's written address dated 14th February, 2019.

The Claimant filed its affidavit of 11 paragraphs with documents attached and marked as exhibits A, B, C and D respectively.

The Judgment Creditor on the otherhand, filed a counter-affidavit of 12 main paragraphs deposed to by one Kayode Adebayo a legal practitioner in the law firm of the Judgment Creditor's Counsel. Counsel's written address also accompanied the counter affidavit in compliance with the Rules of this Court.

Now having perused and identified the processes filed by the Counsel to the respective parties in the written address of learned Counsel to the Applicant the did not formulate any issue for determination in his written address.

The Claimant's Counsel on the otherhand did not file any address and therefore did not present any issue for determination in consideration of the instant application.

However learned, Counsel to the Judgment Creditor for his part formulated two issues for determination of the instant suit as follows:-

1. Whether the Court should accord any merit to the claims of the Claimant.
2. Whether a successful litigant is entitled to benefit from the proceeds of his litigation.

I shall adopt the first issue as my own and address the second issue thereunder. The issue therefore for determination of the instant application is:-

“Whether the Court should accord any merit to the claims of the Claimant.”

The facts on record is that Judgment of Magistrate Court per His Worship, Honourable Ahmed Yusuf Ubangari sitting in Court 6 Wuse Zone 2, Abuja was entered in favour of the Judgment Creditor on 24th July, 2018 in Suit No. CV/199/2017 between WEST AFRICAN EXAMINATION COUNCIL V. OKMAR CONSULTANCY LIMITED. In execution of that judgment, the execution officers of the Applicant, believing the properties to be that of the Judgment Debtor (Okmar Consultancy Limited), attached the following:-

- (a) One (1) executive chair black colour
- (b) One (1) visitors chair
- (c) One (1) standing fan
- (d) One (1) hp Laser-Jet printer
- (e) One metal code (safe)
- (f) Five pieces of Dell laptop computer Intel model – D620

After the execution however, the Claimant served the Applicant with notice of claim in respect of the properties and attached copies of documents as averred at paragraphs 4, 5 and 6 of the supporting affidavit. Exhibit A dated 20th December, 2018 annexed

to the Applicant's affidavit is an application for interpleader to the Applicant and brought to the Judgment Creditor's attention to the Claimant's claim vide Exhibit B annexed to the affidavit of the Applicant. Vide Exhibit C, the Judgment Creditor served its notice of dispute of the Claimant's claim. The Applicant averred that it has no pecuniary interest in the properties claimed nor has it in any way colluded with either of the parties hereto. The Applicant is willing to transfer the properties or dispose of same as the Court may direct.

In its affidavit, the Claimant averred that it is a company incorporated under the Company and Allied Matters Act to carry on business in Nigeria. That sometime on 3rd November, 2018 officers of the FCT High Court execution unit came to the Claimant's office at WAEC Building, Maitama Abuja to levy execution in respect of a judgment between the West African Examination Council (WAEC) as the Judgment Creditor and Okmar Consultancy Limited as the Judgment Debtor. That in the process of execution, officers of the Applicant wrongly carried some properties belonging to the Claimant (DermoImpex Nigeria Limited) who is not the judgment debtor. According to the Claimant, the said properties are:-

- (a) One (1) executive chair black colour costing N55,000
- (b) Two (2) visitors chair costing N33,000
- (c) One (1) standing fan costing N5000
- (d) One (1) HP Laser-Jet printer costing N20,000
- (e) One metal code (safe) costing N200,000
- (f) Five (5) pieces of Dell laptop computers, Intel model – D620 A with the series no: S/N JF945 A01, S/N TP387 A01, S/N TP387 A02, S/N HY469 A00, S/N QHCYH 4ORTY, S/N DP429 A00 costing N175,000.

The Claimant averred that the total cost price of the above listed properties is about N521, 000. Exhibits A, B and C are copies of cash/credit sales invoice issued to DermoImpex Nigeria Limited. That the above listed properties belong absolutely and exclusively to it and not Okmar Consultancy Limited i.e. the Judgment Debtor. That the Claimant was neither party nor judgment debtor

in Suit No. CV/199/177 and as such is not bound by the judgment so executed. In response to the Judgment Creditor's dispute to the Claimant's claim, the Claimant averred that sometime in July 2018, the Judgment Debtor (Okmar Consultancy Limited) had approached the Claimant through a letter dated 10th July, 2018 and titled "A Plead for Financial Assistance to Enable Us Paid Our Rent to West African Examination Council". Exhibit D is a copy of said letter. That the Claimant had, in consideration of this request and as payment for the Judgment Debtor, issued its UBA Bank Cheque No. 81402581 to DejiAina & Co. Counsel to West African Examination Council (WAEC) on its behalf. That the Claimant and Judgment Debtor are however two distinct companies. The Claimant further averred that it had moved some of its properties to Block A, Upper Basement, WAEC Office Complex, No. 10 Zambezi Crescent, Maitama, Abuja which is the Judgment Debtor's office for safe keeping. That Claimant did not connive or conspire with the Judgment Debtor or anyone in respect of the matter of its claim herein. That other peoples' properties were also wrongly seized by the Enforcement officers but were promptly released upon proof of ownership.

In its own counter affidavit, the Judgment Creditor averred that after it had obtained judgment against the Judgment Debtor, it (Judgment Debtor) reached out through its lawyer for payment of the judgment debt. That the Judgment Debtor made part payment of the judgment sum on 19th October, 2018 with a United Bank for Africa (UBA) Cheque bearing the name of DermoImpex Nigeria Limited (the Claimant in this action). That the Claimant and the Judgment Debtor both share and use the demised premises to operate their businesses. That execution was levied on 3rd November, 2019 during which property of the tenants and occupants of the premises was attached but personal belongings of staff were released upon establishment of ownership. That all properties attached were identified by the Debtor's lawyer to be the property of the company. That the letter dated 10th July, 2018 attached by the Claimant to its Counter affidavit shows from its address that the Claimant operates in the demised premises.

In his address, Counsel to the Applicant submitted that the duty of the Sheriff in an application of this nature is to present the parties before the Court bearing in mind that the Claimant is deemed the Plaintiff while the judgment creditor is the defendant in interpleader proceedings. Counsel relied on a plethora of decided cases to support his point. He therefore urged this Court to determine the instant suit based on the evidence before it and direct the Applicant accordingly.

Arguing the issues formulated in his address, Counsel to the Judgment Creditor submitted that the enforcement was done in accordance with the law. He contended that the Claimant is also an occupant of the premises and shares accommodation with the Judgment Debtor. He pointed out that the address on Exhibit D to the Claimant's affidavit gives the Claimant's address as 'No. 10 Zambezi Crescent Maitama Abuja'. He submitted that every judgment creditor is entitled to the fruits of his judgment unless the other party can successfully prove that there was illegality. He cited the case of **NIGERIA NATIONAL PETROLEUM CORPORATION V. FAMFA OIL LTD & ANOR (2012) 17 NWLR (PT.148)**. Counsel submitted that the Claimant's act is aimed at frustrating the Judgment Creditor and urged this Court to dismiss this application with cost of N100,000.00.

In the resolution of the issue before this Court, let me agree very quickly with the Judgment Creditor's Counsel on the principle that a party, who has succeeded in a litigation, is fully entitled to the fruits of the litigation until the judgment in his favour has been set aside. – see the case of **FBN PLC. V. J. O. IMASUEN & SONS LTD. (2005) 18 NWLR (PT.957) P. 258**. The question to ask in this particular case however, is whether the properties which the Claimant lays claim to forms part of the fruits of the judgment to which the Judgment Creditor is **lawfully** entitled to.

The procedure for interpleader proceedings is guided by **Section 34 of the Sheriffs and Civil Process Act** and **Order VI of the Judgments (Enforcement) Rules**. By these provisions a party

who claims property attached in execution of a process of Court shall give notice of his claim to the Sheriff of Court who shall in turn give notice of such claim to the execution creditor (judgment creditor) requesting a response within 7 days. Where the judgment creditor either, in response disputes the claim or altogether fails to respond within the time specified, the Sheriff may apply to Court for issuance of summons for the party so claiming to attend to prove his claim before the Court. Where the Claimant appears in pursuance of such summons the Court shall then adjudicate over the claim and make such orders as may be just and reasonable including orders as to costs.

In interpleader proceedings, as I said earlier, the claimant as a rule is deemed to be the plaintiff and the judgment creditor, the defendant. The onus is therefore generally on the claimant, as the plaintiff in the proceedings, to establish title to the property he claims. See the Supreme Court's decision in the cases of **OLATUNDE V. O.A.U (1998) 5 NWLR (PT. 549) P. 178** and **OBUMSELI & ANOR v. UWAKWE (2019) LPELR-46937(SC)**. See also **I.M.B. (NIG) LTD V DABIRI (1998) 1 NWLR (PT. 533) P. 284** where it was held that the burden is on the Claimant in interpleader proceedings to prove his claim and such burden is discharged by preponderance of evidence of probability and not proof beyond reasonable doubt as in the commission of a crime.

I have looked carefully at the affidavit evidence and documents in support thereof in the instant interpleader proceedings. Two key points have to be noted as firmly established by the Claimant.

1. The Claimant is neither judgment debtor nor named as a party in Suit No. CV/199/17 in satisfaction of which Judgment the properties in question were attached by the Applicant (Sherriff). See certified true copy of certificate of judgment 26th July, 2018 annexed to the Applicant's affidavit in support.
2. The Claimant has established ownership of the properties in question (allegedly wrongly attached) by producing copies of receipts of the said properties which receipts are in the

Claimant's name. See Exhibits A, B and C annexed to the Claimant's affidavit.

Having established the foregoing, the Claimant should ordinarily be entitled to an order releasing the properties in question to it.

The Judgment Creditor has however contended that part of the judgment sum had been paid off with the Claimant's cheque. This situation the Claimant however explained to the effect that its said cheque had been issued in favour of the Judgment Creditor pursuant to a request for financial assistance by the Judgment Debtor. This fact is credible as it is supported by documentary evidence i.e. the Judgment Debtor's said written request (Exhibit D to the Claimant's affidavit).

The Judgment Creditor however also posits that the Claimant also uses the premises where execution was levied together with the Judgment Debtor, being the demised premises.

I have looked carefully at the certificate of judgment annexed to the Applicant's affidavit. The judgment does not appear to be against unnamed occupants of premises. The judgment is against a named defendant who is clearly and undisputedly NOT the Claimant in the instant interpleader proceedings. The mere fact that the Claimant also shares the use and occupation of the premises with the Judgment Debtor who is the named defendant in that suit does not *ipso facto* render the Claimant's properties liable to be attached in execution of the judgment obtained against the Judgment Debtor. There is no principle of law that I am aware of to support such proposition made by the Judgment Creditor. I do not say this carelessly as I have carefully perused the provisions of both the **Recovery of Premises Act Cap 544 Laws of FCT Nigeria 2006** and the **Sheriffs and Civil Process Act**.

Consequently, I hold the view that the Judgment Creditor has been unable to successfully dispute the claim which the Claimant has been able to establish to the properties in question and I so

hold. On the preponderance of evidence before this Court therefore, the Claimant is entitled to the release of the properties in question.

Let me however observe that the quantity of the second item listed by the Claimant (i.e. visitors chair) is two while that listed by the Applicant which it averred it removed under the execution is just one. The Applicant is to release the precise number it has averred that it took into its custody and withdraw from possession by releasing same to the Claimant forthwith. This is the number contained in the reliefs sought from this Court in the originating summons and there has been no amendment to those reliefs. Accordingly, therefore the Applicant is hereby ordered to release from its possession the properties of the Claimant to the Claimant forthwith.

That is the ruling of this Honourable Court.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
2/07/2020

Parties:-Absent

DD. Venda:-For the Applicant

Kayode Adebayo:-For the judgment creditor

Claimant's Counsel:Absent

Charles Ikechukwu:-I profusely apologised for coming in late

Sign
Judge
2/07/2020