

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA  
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO – JUDGE  
DELIVERED ON THE 14<sup>th</sup> OF DECEMBER 2020**

**SUIT NO: FCT/HC/CV/1887/2019  
MOTION NO: FCT/HC/M/7119/20**

**BETWEEN  
OLWOKERE OLUSOLA.....JUDGMENT CREDITOR/ APPLICANT**

**AND**

**VISCOUNT MULTIPURPOSE COOPERATIVE SOCIETY  
LTD.....JUDGMENT DEBTOR/RESPONDENT**

**AND**

**THE DEPUTY SHERIFF, HIGH COURT FCT.....RESPONDENT.**

**LAWRENCE ALABI AND O.J ADENUSI FOR**

**J.I. EKEOMA AND S.C. OKEKE FOR THE JUDGMENT  
CREDITOR/APPLICANT RESPONDENT.**

**RULING**

This Ruling is premised on a Motion on Notice dated the 22nd of May 2020 and filed on the 27th May 2020, which is seeking the following Orders of this Court:

1. Leave to Issue a Writ of Attachment and Sale against the Immovable Property of the Judgment Debtor situate at House No. 6A, Plot 476, Urugary Street, Maitama Abuja.

2. An Order granting that the Enforcement Unit of the FCT High Court should only assist the Judgment Creditor to obtain Possession of the Property herein described in one above in furtherance of the mutual understanding of both Parties to jointly dispose of the Property.
3. An Order directing the Judgment Debtor to pay the Judgment Sum to the Judgment Creditor from the Proceeds of the Joint Sale of the Property.
4. The Omnibus Prayers.

The Grounds upon which the Application is brought are as follows

1. By the Terms of Settlement dated 19<sup>th</sup> November 2019 executed by the Parties in the Suit, this Honourable Court delivered Judgment in favour of the Judgment Creditor on 21<sup>st</sup> November, 2019 and same has not been liquidated by the Judgment Debtor till date.
2. The Judgment Debtor has a Property at House No. 6A, Plot 476, Urugary Street, Maitama, Abuja which the Judgment Creditor seeks to attach in Order to Satisfy the Judgment of this Court.
3. There is no pending Appeal against the Judgment of this Court.
4. The Judgment Creditor will only be able to enjoy the Fruits of his Judgment if the Immovable Property of the Judgment Debtor is attached and sold to liquidate the Judgment Debt.
5. The Immovable Property of the Judgment Debtor can only be attached with the leave of this Court first sought and obtained.

In support of the Motion is a Fifteen Paragraph Affidavit deposed to by Adelusi Seun and a Written Address of Counsel together with Five Exhibits marked as **A, B, C, D and E**.

The Application was served on One Waza Z. Kefas, a Principal Registrar II of the Legal Unit FCT High Court Jabi on the 1<sup>st</sup> of June 2020 and One Miracle Ugoh the Secretary of Lynks Solicitors on the 8<sup>th</sup> of June 2020.

The Respondent filed a Written Address on the 2<sup>nd</sup> day of June 2020, which was served on the Learned Counsel for the Applicant.

Now, the Deponent averred that since the delivery of the Judgment by this Court on the 22<sup>nd</sup> May 2019, the Judgment Sum of Twenty Nine Million Naira only (N29, 000,000.00) remained due and unpaid to the Judgment Creditor and no Notice of Appeal has been filed by the Judgment Debtor.

Further, the Respondent has no movable property that can satisfy the Judgment but own an Immovable Property situated at House No. 6A, Plot 476, Urugary Street, Maitama Abuja, which the Applicant seeks to attach to satisfy the Judgment of the Court.

In further support of the Application is Learned Counsel Written Address wherein he formulated a Sole Issue for determination, which is: -

*Whether from the Facts and Circumstances of this Application, the Judgment Creditor has satisfied the Provisions of Section 44 of the Sheriffs and Civil Process Act, 2004 to warrant grant of same.*

*On the part of the Respondent, Learned Counsel formulated a sole issue for determination which is, whether the Applicant is entitled to the second prayer in his Application.*

After a Careful Consideration of Issues raised by Learned Counsel as well as their submissions and argument which are all on record, the

Issue for determination before this Court is whether the Court can grant the Orders sought by the Judgment Creditor Applicant.

It is worthy of note that the Respondent raised no objection in regard to the prayers contained in **Orders 1, 3 and 4** but objected to **Order 2** which states that '***this Court that the Enforcement Unit of the FCT High Court should only assist the Judgment Creditor to obtain Possession of the Property herein described in one above in furtherance of the mutual understanding of both Parties to jointly dispose of the Property***'.

Learned Counsel to the Respondent's argued to the effect that it is only the Sheriff or his Deputy or his Appointee that has the power to deal with the Property as well as grant a Certificate to a declared the Lawful Purchaser. Reference was made to **Section 25, 26 and 50 of the Sheriff and Civil Process Act**.

He also stated that the Applicant did not prove that the Sheriff was incapable of performing his statutory duties conferred on him by the Act. There was no comeback on this objections by the Applicant.

Now, it is important at the get go to state that the Consent Judgment delivered by this Court was in regard to a Monetary Claim. The gamut of this Application is whether the Judgement Creditor has satisfied the provision of Section 44 of the Sheriff and Civil Process Act whereon he would be issued with a Writ of Attachment and Sale against the Immovable Property of the Judgment Debtor situated at No. 6A Plot 476 Uruguay Street, Maitama- Abuja.

For the purposes of granting Leave to Issue a Writ of Attachment and Sale of an Immovable Property, the appropriate governing Laws

are the **Sheriff and Civil Process Act** and **the Judgments (Enforcement) Rules of Court**.

**Section 44 of Sheriff and Civil Process Act** in a nutshell states that where no Movable Property of the Judgment Debtor can with reasonable diligence be found, or if such Property is insufficient to satisfy the Judgment, Cost and Cost of Execution and the Judgment Debtor is the owner of the Immovable Property, the Judgment Creditor may apply to the Court for a Writ of Executions against the Judgment Debtor immovable Property in accordance with the provisions of this Act and any Rules made thereunder.

Now, to enable the Judgment Creditor/Applicant satisfy Section 44, he must also take cognizance of **Order IV Rule 16 (1) and (2) of the Judgments (Enforcement) Rules of Court**, which states that: -

(1) When a Judgment Creditor desires a Writ of Attachment and sale to be issued against the immovable property of the judgment debtor he shall apply to the High Court.

(2) The Application **shall** be supported by evidence showing

a) What steps if any, have already been taken to enforce the Judgment and with what effect, and

b) What Sum now remains due under the Judgment and

c) That no Moveable Property of the Judgment debtor, or none sufficient to satisfy the Judgment debt, can with reasonable diligence be found.

By above Rules, it can be seen that the Judgment Creditor has filed his Application before the appropriate forum, that is, this Court, which is to say, his Application has scaled the First Hurdle.

The Second Hurdle the Application has got to scale is that contained in Sub-Rule (2). The use of the Word '**SHALL**' in Sub Rule 2 makes it mandatory for the Judgment Creditor to satisfy the Court with Evidentiary Steps showing that after a thorough investigation, no Movable Property of the Judgment Debtor whatsoever is sufficient to pay off the Judgment Debt. The only recourse, therefore, is to go after the Judgment Debtor's Immovable Property through the issuance of a Writ of Attachment and Sale.

Now, from the Supporting Affidavit and the Annexures attached thereto, the Judgment Creditor has not demonstrated before this Court the steps he had taken to satisfy the Monetary Judgment Sum made out against the Judgment Debtor. What is before the Court is mere averment that the Judgment Sum remained unsatisfied and that the Judgment Debtor has no movable property except the immovable property over which a Writ of Attachment and Sale is sought. He needed to do more. The Affidavit was bereft of any inquiry disclosing a search into the Judgment Debtors Bank Account, Goods, and Chattels etc.

Therefore, the Court finds that the Application is lacking in every merit and is therefore struck out until the necessary Procedures are exhausted.

**HON. JUSTICE A.A.I. BANJOKO**

**JUDGE**

