

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

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 10

**SUIT NO: FJ/26/2019
MOTION NO./5859/2020**

MOTION NO. M/7755/2020

BETWEEN:

**VISION KAM JAY INVESTMENT LTD.....JUDGMENT CREDITOR/
APPLICANT**

AND

1. PRESIDENT OF THE COMMISSION

**2. ECOWAS COMMISSION.....JUDGMENT DEBTORS/
RESPONDENTS**

AND

1. ECO BANK PLC

2. UNITED BANK FOR AFRICA (UBA)

3. FIRST BANK OF NIGERIA PLC.....GARNISHEES

RULING

By a Motion on Notice with No. M/7755/2020 dated 18/6/2020 and filed same day, brought pursuant to Order 43 Rule 1 (1) and (2) of the FCT High Court (Civil Procedure) Rules 2018, and under the inherent jurisdiction of this Hon. Court, the Applicant pray this Hon. Court for the following:-

1. An Order vacating and/or setting aside the Order Nisi made on the 11th day of June, 2020, in respect of the instant Garnishee Proceedings.

2. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds for this application are as set out in the face of the Motion as follows:-

- (1) The Order Nisi made on the 11th day of June 2020 was obtained by misrepresentation of facts and fraud.
- (2) The Judgment Creditor/Applicant exhibited only the Judgment of the ECOWAS Community Court of Justice (CCJ) in Suit No. ECW/CCJ/APP/37/15, delivered on the 6th day of October, 2016, in Judgment No. ECW/CCJ/24/2016, in respect of his application to register the said Judgment before this Honourable Court and to also obtain the Order Nisi in the instant Garnishee proceedings.
- (3) That prior to the Judgment Creditor's application initiating the instant proceedings, the Judgment Debtor had made the full and final payment of the entire Judgment sum of Twenty Million, Six Hundred and Ninety Eight Thousand, Nine Hundred and Twenty Naira (₦20,698,920.00) only, to the Judgment Creditor, since the 14th day of June, 2017.
- (4) That the Judgment Debtor had also made the full payment of 1% accrued interest per day on the Judgment sum in the tune of One Hundred and Fifty Million Naira (₦150,000,000.00) only, calculated from the 16th day of April, 2015, till the date the

entire Judgment sum was fully and finally liquidated on the 14th day of June 2017.

In support of the Motion is a Five (5) Paragraph affidavit sworn to by one Solomon Oike with exhibits annexed and marked as "A", "B", "C", "D1 A & B". Also filed a Written Address and adopts the Address as their argument. Also filed a Reply on points of law pursuant to Judgment Creditors Counter-affidavit and further affidavit. The 1st Reply is dated 29/6/2020 and filed same day while the 2nd Reply is dated 25/9/2020 and also filed same day. Adopts the said Replies on Points of law as their further submission.

In response, Judgment Creditor filed a counter-affidavit of 16 Paragraphs dated 24/6/2020 deposed to by one John Uttuh. Also filed a Written Address and adopts the said Address. Also filed a further Counter-affidavit of 5 Paragraph dated 24/8/2020, attached thereto are 8 exhibits marked as "CA1 – CA8". Also filed a Written Address, in urging the court to dismiss the application as same did not raise any new facts already captured in the Ruling delivered on 11th June, 2020. Therefore urge the court to make the Order Nisi Absolute, particularly on the affidavit to show cause filed by 1st/2nd Garnishee and urge the court to discharge the 3rd Garnishee.

1st Garnishee counsel responding submits that in obedience to Order of Court, filed affidavit of compliance on 24/6/2020 of 5 Paragraph sworn to by one Francis Philip, relies on all the averments particularly Para 4 (c), urge the court to discharge the 1st Garnishee.

2nd Garnishee Counsel submission in compliance with the Order of Court, filed affidavit to show cause on 24/6/2020, annexed is Statement of

Account of Judgment Debtor of amount in the 2nd Garnishee's custody – the Exhibit "UBA 1" and is deposed to by one Abdulrahim Abdulrahim. Pray the court for further directive having complied.

3rd Garnishee Counsel submits that upon receipt of the Order Nisi filed affidavit to show cause of 4 paragraphs on 3/7/2020 sworn to by one Blessing Isaac with two (2) exhibits annexed marked "FBN1" and "FBN2", relies on all the averments therein, particularly Para 3 (b) (c) and the exhibits. Urge the court to discharge the 3rd Garnishee.

In the Written Address in support of the Motion, counsel for Applicant Eric Ibe Esq. formulated two (2) issues for determination and that is;

- (1) Whether or not the Hon. Court has inherent jurisdiction to set aside its own order.
- (2) Whether or not the Judgment Debtor/Applicant has shown sufficient cause in the facts contained in the affidavit in support of its application to warrant the Hon. Court invoke its inherent jurisdiction power and exercise same in favour of the Plaintiff/Applicant.

On issue 1, submits the court has inherent jurisdiction to set aside its own order where it was obtained by fraud or deceit, refer to case of OtuVs ACB Int; Bank Plc (2008) 3 NWLR PT. 1073, 179. Further that in Elias Vs Ecobank Nig Plc (2016) LPELR – 40216 (CA), the court laid out the circumstances where it can set aside its own Order or Judgment.

On Issue 2, submits the grounds upon which this application is predicated and the facts stated in the supporting affidavit have shown sufficient cause to warrant the court to invoke its inherent jurisdictional power and exercise same in favour of Applicant. That the said affidavit has shown sufficient cause that can warrant the court to invoke its inherent jurisdictional power of setting its own decision by disclosing that facts that Judgment Creditor has been paid the full amount of the entire Judgment sum with all the accrued interest.

In the Written Address of the Judgment Creditor, John Anietor Esq of Counsel submitted a lone issue for determination and that is;

“Whether the Judgment Debtors/Applicants have placed sufficient materials and new facts before this court to prove that the Order Nisi made by this Court on 11th June 2020 was obtained by misrepresentation of facts and fraud to warrant the vacating and /or setting aside of same”

And submit that the Judgment Debtors/Applicants have not presented, disclosed, shown or place sufficient materials and new facts before court different from facts already placed before court by Judgment Creditor upon which the Garnishee Order Nisi made to warrant the vacating and/or setting aside the Order Nisi, refer to case of Adedoyin Vs African Petroleum Plc (2014) 11 NWLR PT 1419 415 at 434. Submit Judgment Debtors/Applicants have the burden to prove that the Order Nisi made by court on 11th June, 2020 was obtained by misrepresentation of facts and fraud. Refer the court to Para 2 (i) of the affidavit in support of this

application, Para 7a and 7b of the counter affidavit and submit Judgment Debtors/Applicants have not shown or proved what facts were misrepresented or how the Order Nisi was obtained by fraud. Also refer to Para 2 (ii) of the affidavit in support of the application, Para 7C and 7 d of the counter-affidavit and the Ruling of Court delivered on 11th June, 2020 and submit the allegation of Judgment Debtors/Applicants that Judgment Creditor only exhibited the Judgment of ECOWAS Court delivered on 6th October, 2016 is false and erroneous as Judgment Creditor exhibited several other documents already before court which were duly considered by court on 11th June, 2020. Submits that they have not proved or shown what other document Judgment Creditor failed to disclose to court. Further refer the court to Para 2 (iii) and V of the affidavit in support of the application, Para 7 e and 7g of the counter-affidavit and case of Balogun Vs Yusuf (2010) 9 NWLR PT 1200 515 at 537 and submits Judgment Creditor had already admitted receipt of sum of ₦170,698,920.00 paid in breach of various settlements Agreements at the time the accrued Judgment Debt was up to ₦284,610,150.00 for the amount paid and therefore no need for further proof of the said payments. That the Exhibits "B", "D1 A & B" and "D2 A & B" annexed to the application are of no moment as the contents and substance of the said Exhibits have been earlier admitted and considered in the application upon which the Order Nisi was made.

Also refer to Para 2 (iv) of the supporting affidavit of Applicant and Para 7h, I, J and K of the counter-affidavit and submit the settlement Agreement not new to court. That Judgment Creditor had already

presented it before court explaining how it was honoured in breach and the court considered same and made a finding of facts on it in its Ruling of 11th June, 2020 before making the Order Nisi. Submits Judgment Debtors/Applicants have not furnish sufficient materials and new facts before court to sustain the grant of the application. That everything being relied upon by Judgment Debtors/Applicants were brought to the attention of court by the Creditor before the Orders of Court on 11th June 2020.

Replying on points of law filed on 29/6/2020 pursuant to Judgment Creditor's counter-affidavit, formulated a sole issue for determination;

“Whether or not interest on Judgment sum will continue to accrue after liquidation of the entire Judgment sum”.

And submit once the principal Judgment sum is fully liquidated or paid, interest stops to accrue refer to Micro Finance Bank Ltd Vs Nwadozie B.O. (2018) LPELR – 44957 (CA). That the principal Judgment sum of ₦20,698,920.00 awarded in favour of Judgment Creditor and the accrued interest of ₦150,000,000.00 fully paid since 14th June, 2017.

In their reply on points of law filed on 25/9/2020 in response to the further counter affidavit of Judgment Creditor submits that the Judgment of ECOWAS Court as to interest awarded in favour of Judgment Creditor on principal sum to the effect that the interest should accrue until the principal sum is fully liquidated and that Judgment Debtors/Applicants has complied as required. That is settled law a Judgment of Court is either obeyed, enforced or appealed against. And no post-Judgment Agreement whatsoever can take the place of a valid Judgment of court.

Having carefully considered this instant application, the submission of both learned counsel, the judicial authorities cited as well as the exhibits annexed, the court finds that only one (1) issue calls for determination and that is;

“Whether the Judgment Debtors/Applicants has made out a case deserving the grant of the reliefs sought in this application”

The grant or otherwise of an application of this nature is at the discretion of the court and in exercising that discretion, the court are enjoined to exercise it judicially and judiciously. And to be able to do so, the Applicant must place before court cogent facts to rely on. In *Anachebe Vs Ijeoma* (2015) ALL FWLR PT. 784, 183 at 195 Para D – F the Apex Court held;

“The discretion vested in a court is required to be exercised judicially and judiciously, as it entails the application of legal principles to relevant facts/materials to arrive at a just/equitable decision. It is thus, not an indulgence of a judicial whim, but the exercise of judicial Judgment based on facts guided by the law or the equitable decision”

The courts overtime have stated the grounds upon which it may set aside its own Judgment or order. They are;

1. When the Judgment is obtained by fraud or deceit.
2. When the Judgment is a nullity such as when the court itself was not competent; or
3. When the court was misled into giving Judgment under a mistake belief that the parties consented to it; or

4. Where the Judgment was given in absence of jurisdiction.
5. Where the procedure adopted was such as to deprive the decision or Judgment of the character of a legitimate adjudication.

See the case of Wende Vs Longe & Ors (2011) LPELR – 8899 (CA). See also Igwe Vs Kalu (2002) 14 NWLR PT. 787, 435.

In this instant case, the Judgment Debtors/Applicants seek order of court to vacate and/or set aside the Garnishee Order Nisi made by court on 11th June, 2020 on the ground that the said Order Nisi was obtained by misrepresentation and fraud baseon the facts stated in Para 2 (ii) (iii) (iv) (v) of the supporting affidavit of the Motion.

The Judgment Creditor, on the other hand, had contended that the Order Nisi made by court on 11th June, 2020 was not obtained by misrepresentation of facts and fraud. But that she disclosed all the facts stated by Judgment Debtors/Applicants and more or additional facts the basis of which the Order Nisi was made on 11th June 2020. That Judgment Debtors/Applicants has not disclose or furnish court with new facts beyond what Judgment Creditor had disclosein her affidavit sworn to on 28th February 2020.

The law is settled that he who asserts must prove. See Section 131 (1) of the Evidence Act, 2011. See also Darlington Vs F.R.N (2019) ALL FWLR PT 1006, 600 (SC). And in the determination of the competing claims of the parties the court shall have recourse to the records of court and this the

court is empowered to do. See the case of Agbareh Vs Mimra (2008) ALL FWLR PT 409 559 at 585. I have, accordingly, taken a considered look at the records of court.

On the claim by Judgment Debtors/Applicants that Judgment Creditor only exhibited the Judgment of the ECOWAS Court in Suit No. ECW/CCJ/APP/37/15 delivered on the 6th day of October, 2016 to the application upon which the Ruling of court and Order Nisi was obtained on 11th June, 2020. This assertion by Judgment Debtors/Applicants is far from truth from the records of court. From the records, the Judgment Creditor did not only exhibited the Judgment of the ECOWAS Court but several other documents were annexed as Exhibits "A" – "K" to her application which were duly considered, the basis of which the Garnishee Order Nisi was made on 11th June, 2020. The Exhibit "A" annexed to Judgment Debtors/Applicant's Motion which is the Certified True Copy of the Judgment of ECOWAS Court in Suit No. ECW/CCJ/APP/37/15 delivered on 6th October, 2016 is same document exhibited as Exhibit "A" to Judgment Creditor application.

On the claim that prior to Judgment Creditor's application, Judgment Debtors/Applicants had made full and final payment of the entire Judgment sum being ₦20,698,920.00 since 14th June, 2017. Judgment Creditor in her affidavit in support of her application, Para 25 – 30 thereof disclosed and indeed admitted payment by Judgment Debtors/Applicants sum of ₦170,698,920.00 which sum was paid at various time in breach of various settlement Agreements, that is the Exhibit "C", "D", "E" annexed to Judgment Creditor's application. The Exhibit "C" attached to Judgment

Debtors/Applicant Motion is same document as Exhibit "E" annexed to Judgment Creditor's application. The breach of the settlement Agreement resulted to the reversal in line with the terms of Agreement, to the original terms of the Judgment of ECOWAS Court at the time the Judgment sum and accrued interest had risen to ₦284, 610,150.00.

On the claim that Judgment Creditor had settlement Agreement with Judgment Debtor in respect of the accrued interest accruing total sum of ₦150,000.000 calculated from 16th April, 2015, till the date when the entire Judgment sum was fully and finally liquidated, that is the 14th June, 2017 and exhibited the Exhibit "D1", "A" & "B" and "D2" A & B" in proof. These facts also already disclosed and admitted by Judgment Creditor before court in her affidavit in support of her application and in her Exhibit "C" annexed to her application. The said sum, however were paid in breach of the settlement Agreement.

On the claim Judgment Debtor had made the full payment of 1% accrued interest per day on the Judgment sum in the tune of ₦150,000,000.00 in two tranches calculated from 16th April 2015 till the date the entire Judgment sum was fully and finally liquidated on 14th June, 2017. This claim is interrelated with the claim just considered above and I adopt my findings on that claim to this claim.

It is therefore my findings that there is no misrepresentation of facts or fraud on the part of Judgment Creditor regarding the Garnishee Order Nisi that was made on 11th June, 2020 is the court made the said order based on the facts and documents furnished before court. The Judgment

debtors/Applicants has not presented any new facts or documents beyond what Judgment Creditor had furnished court. In fact if for anything it is the Judgment Creditor that has presented more facts than the Judgment Debtors/Applicant. I therefore find this application of Judgment Debtors/Applicants as lacking in merit and it is hereby dismissed. I so Order.

In respect of the 1st Garnishee – Eco Bank Plc, by Para 4 a, b, c of the affidavit to show cause confirmed that Judgment Debtors has sufficient balance of their funds in its custody to accommodate the Garnishee sum of ₦218, 440, 776.00 (Two Hundred and Eighteen Million, Four Hundred and Forty Thousand, Seven Hundred and Seventy Six Naira).

In respect of the 2nd Garnishee – United Bank for Africa Plc, by Paragraph 5 c, d of the affidavit to show stated 1st Judgment Debtor does not maintain an account with them and has no funds with the 2nd Garnishee. That only the 2nd Judgment Debtor maintains an account with the bank and the amount standing to the credit of 2nd Judgment Debtor with them is ₦2,200,388.74 (Two Million, Two Hundred Thousand, Three Hundred and Eighty-Eight Naira, Seventy-Four Kobo).

In respect of the 3rd Garnishee – First Bank of Nigeria Plc, by Para 3 (c) of the affidavit to show cause stated the Judgment Debtors do not have banking relationship and do not maintain account with the 3rd Garnishee.

Having heard the submission of 1st, 2nd, 3rd Garnishees, I find that pursuant to the Order Nisi made on 11th June, 2020 against the sum of ₦218, 440, 776.00 (Two Hundred and Eighteen Million, Four Hundred and Forty

Thousand Seven Hundred and Seventy Six Naira) being the outstanding Judgment Debt due to the Judgment Creditor as at Friday, 28th February, 2020 as per the Judgment of ECOWAS Court, I shall in the circumstance make an Order that the Order Nisi granted on 11th June, 2020 for the sum ₦218, 440, 776.00 be made Absolute against the 1st Garnishee for the sum of ₦218, 440, 776.00 to be paid to the Judgment Creditor. I so order.

In respect of 2nd Garnishee since the entire Judgment sum can be paid by the 1st Garnishee and the 3rd Garnishee stating Judgment Debtors does not maintain account and has no funds with the Bank, the 2nd and 3rd Garnishee are hereby discharged.

I make no order as to cost in this application.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

1/12/2020

ERIC IBE ESQ – FOR JUDGMENT DEBTORS/APPLICANT.

JOHN AINETOR ESQ – FOR JUDGMENT CREDITOR/RESPONDENT.

KELECHI NWAIWU ESQ – FOR 1ST GARNISHEE

J.O. OKAKWU – FOR THE 2ND GARNISHEE

U.H. USMAN – FOR THE 3RD GARNISHEE

