

**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
COURT CLERKS: – T. P. SALLAH & ORS
COURT NUMBER: 12**

DATE: 7/12/2020 FCT/HC/CV/2621/2016

BETWEEN:

MUBECO PETROLEUM COMPANY LIMITED----- JUDGMENT CREDITOR

AND

NNPC RETAIL LIMITED----- JUDGMENT DEBTOR

AND

CENTRAL BANK OF NIGERIA (CBN)-- GARNISHEE

RULING

On the 5th October, 2018, judgment was delivered in the substantive suit **FCT/HC/CV/2621/2016**. On the 18th April, 2019, this Court granted a Garnishee Order Nisi as follows:-

“Application for a Garnishee Nisi is hereby granted as prayed. Accordingly, the order Nisi be served on all the Garnishees including the judgment Debtor and the office of the Attorney General of the Federation to appear and show cause why the order Nisi should not be made absolute.”

Then on the 23rd April, 2019, the Judgment Debtor/ Applicant filed a motion on notice No. M/5498/2019 praying this Honourable Court for an order setting aside the entire Garnishee proceedings and indeed the order of Garnishee Nisi in this suit made on 18th April, 2019 as same was made without jurisdiction.

The Judgment Debtor/Applicant also filed a notice of preliminary objection on 23rd May, 2019 challenging the jurisdiction of this Honourable Court thus:-

1. The Judgment Debtor/Respondent's appeal against the judgment of this Honourable Court dated 5th October, 2018 has been entered at the Court of Appeal, Abuja on 26th April, 2019 as Appeal No. CA/A/365/2019 NNPC RETAIL LIMITED AND MUBECO PETROLEUM CO. LIMITED
2. The seal /stamp of Manta Augustine Aondover affixed to the motion has expired and no more valid.

The 1st Garnishee, Central Bank of Nigeria (CBN) also through the law firm of Emeka Ngige & Company by a motion on notice dated and filed on 3rd February, 2020 with motion No. M/4899/2020 seeks the following orders:-

- (1) An order discharging or vacating the Garnishee Order Nisi dated 18th day of April, 2019 made by this Honourable Court in suit No. FCT/HC/CV/2621/2016 MUBECO PETROLEUM COMPANY NIGERIA LIMITED V NNPC RETAIL LIMITED & ANOR in Re-central Bank of Nigeria & 19 Others
- (2) An order striking out the entire Garnishee proceedings in suit No FCT/HC/CV/2620/2016- Mubeco Petroleum Company Nigeria Limited V NNPC Retail Limited in Re-central Bank of Nigeria & 19 Others as well as motion No. FCT/HC/M/4314/2019 for lack of jurisdiction.
- (3) And for such order or further orders as the Honourable Court may deem fit to make in the circumstances.

In response to the various processes filed by the judgment debtor and the 1st Garnishee, Central Bank of Nigeria, the judgment Creditor on the 21st May, 2019 filed a counter affidavit together with a written address in opposition to the Judgment Debtor's motion on notice dated and filed on 23rd April, 2019. The

judgment debtor also filed a further affidavit in response to the judgment creditor's counter affidavit on 31st July, 2019. In respect of the preliminary objection of the judgment debtor filed on 23rd May, 2019, the judgment creditor with the leave of this Court filed a counter affidavit together with a written address on 25th September, 2019 in response. Equally, the Judgment Creditor in reaction to the motion on notice of the 1st Garnishee, Central Bank of Nigeria, (CBN) filed on 3rd February, 2020, the Judgment Creditor filed on 10th February, 2020, a counter affidavit of 19 paragraphs in opposition together with a written address. With the leave of this Court, the 1st Garnishee (CBN) filed a reply on points of law on 7th May, 2020 in response to the judgment creditor's written address.

Further to the above processes filed and identified, the judgment creditor also filed a motion on notice on 25th April, 2019 seeking for the following orders:-

1. An order of this Court awarding 10% interest per annum on the judgment sum of N1,087,573,872.57 from the date of judgment i.e 5th October, 2018 till the judgment sum be fully liquidated.
2. Any further or other orders as the Honourable Court may deem fit to make in the circumstances.

Having said the above, it is no longer news and this Honourable Court can take judicial notice of the various processes filed in this case that the judgment of this Court delivered on 5th October, 2018 is on appeal to the Court of Appeal Abuja Division. I have seen a motion on Notice filed on 24th April, 2019 with motion number CA/A/247/M/2019- seeking before the Court of Appeal an order staying all forms of executions including Garnishee proceedings of the judgment of this Court in suit No. FCT/HC/CV/2621/16 delivered on 5th October, 2018 including the

cost awarded pending the hearing and determination of the Appeal lodged to set aside the said judgment of this Court. I have equally seen the notice of appeal filed at the Court of Appeal against the judgment of this Court presided by Honourable Justice D.Z Senchi on the 5th October, 2018.

By the notice of preliminary objection of the judgment debtor/Applicant filed on 23rd May, 2019, paragraphs 4 and 5 of the affidavit supporting the preliminary objection say:-

"(4) On 9th October, 2018 , the Respondent filed an Appeal against the said judgment of this Honourable Court a copy of the notice of Appeal which was filed before this Honourable Court is attached herein and marked as exhibit "A"

(5). After the appeal was lodged, the record of appeal was eventually compiled and transmitted to the Court of Appeal, Abuja. The Appeal was then entered as No.CA/A/365/2019. NNPC Retail Limited v MubecoPetroleum Company limited on 26th April, 2019. The letter forwarding copies of the record of Appeal which was acknowledged at the Court of Appeal is hereby attached and marked as exhibit B. Also attached herein and marked as exhibit C is a written acknowledgement of the Record of Appeal by Chinedu Robinson of the Court of Appeal, Abuja.

Thus, from the records before me and also especially in the course of proceedings, learned Silk, Albert Akpomudje SAN, has consistently drawn my attention to the fact that a motion for stay of proceedings of this matter is before the Court of Appeal and that Appeal in respect of the judgment delivered on 5th October, 2018 by this Honourable Court has been entered before the Court of Appeal, Abuja Division.

Now as I said earlier, I have seen a motion on notice filed at the Court of Appeal on 24th April, 2019 seeking for an order staying all forms of execution including Garnishee proceedings, I have not received any order from the Court of Appeal staying all forms of execution including Garnishee proceedings in this instant matter. However, by the notice of preliminary objection and the affidavit supporting same, the judgment debtor/Applicant avers that the appeal at the Court of Appeal Abuja has been entered. The Judgment Creditor/Respondent at paragraph 5 of her counter affidavit avers as follows:-

"(5) That I am also aware that the Judgment Debtor has appealed against the said judgment while the judgment Creditor's had equally filed a cross appeal"

However, the judgment Creditor/Respondent at paragraphs 11,12,13 and 14 deposed that it is not correct that appeal in the judgment of this Court delivered on 5th October, 2018 has been entered. According to the judgment creditor/Respondent, transmission or forwarding of the records of proceedings to the Court of Appeal does not translate to an appeal having entered and that the judgment debtor/Applicant has filed before the Court of Appeal a motion for extension of time to compile and transmit the records of proceedings which the said motion is yet to be heard.

Now a close perusal of the processes filed by the judgment debtor/Applicant and the judgment creditor/Respondent, there is no dispute between them that appeals have been filed against the judgment of this Honourable Court delivered on 5th October, 2018 by one Honourable Justice D. Z. Senchi, that is notice of Appeal by the judgment debtor and cross appeal by the judgment creditor. Further, by the documents attached to the affidavit supporting the preliminary objection i.e exhibits A, B and C

respectively; exhibit "A" is the notice of appeal; exhibit B is the letter of Albert Akpomudje SAN & partners to the Deputy Chief Registrar Court of Appeal titled : record of Appeal (Civil) volume I and ii. Exhibit C is a response to exhibit B of the judgment debtor's by her Counsel. And in exhibit C, the appeal has been given an appeal number as CA/A/365/2019.

Arising from the above, by paragraph 14 of the counter affidavit of the judgment creditor, they alleged that the judgment debtor has filed a motion on notice for extension of time to compile and transmit the record of proceedings. The deponent of the counter affidavit, one Mr. Richard Adedoyin, a legal practitioner in the law firm of Manta & co alleged to have attached the motion on notice for extension of time of the judgment debtor to compile and transmit the record of proceedings. The said motion on notice was not exhibited. I have equally perused the payment made as to whether any exhibit is attached, the payments revealed the following:-

Counter affidavit – 500

Written address 500

Seal 200

Date of payment 25th September, 2019.

In otherwords, such a motion on notice referred to by the judgment creditor is not exhibited and I have checked through the records, I cannot lay my hands on same and there is no evidence of payment of such a motion as an exhibit.

Thus, by exhibits B and C attached to the affidavit supporting the preliminary objection, it is crystal clear that the record of proceedings of the lower Court has been transmitted to the Court of Appeal. And by order 10 and 11 of the Court of Appeal Rules, 2011, it provides thus:-

"(10) An appeal shall be deemed to have been entered in the court when the record of proceedings in the Court below has been received in the Registry of the Court within the time prescribed by the rules"

"(11) After an appeal has been entered and until it has been finally disposed off, the Court shall be seized of the whole of the proceedings as between the parties thereto. Except as may be otherwise provided in these Rules, every application therein shall be made to the Court and not to the Court below."

In the case of ***INRE: HONOURABLE PRESIDENT ,COURT OF APPEAL, ABUJA & ANOR (2003) LPELR 7225*** the Court of Appeal in considering whether an appeal has been entered in the Supreme Court any subsequent applications must be made to the supreme Court held as follows:-

" Jurisdiction is so fundamental and vital that anything done by the Court without jurisdiction would be a nullity no matter how well the proceedings were conducted. It has been contended that this Court lacks the jurisdiction to entertain the application because the appeal has been entered at the Supreme Court."

The court further held:-

"It is now settled law that where an appeal has been entered in the appellate Court, the lower Court from which the appeal emanated will cease to have jurisdiction."

See also the cases of ***EZEMO V ATT. GEN. BENDEL STATE (1986) 4 NWLR (pt35)P 448***. In the case of ***BIOCON***

AGROCHEMICALS(Nig)LTD V KUDU HOLDINGS (PTY)LTD (1996)3 NWLR (pt437) page 373, the supreme Court held:-

"I must also add that the true position here now is that this Court has already received the record of appeal compiled by the Appellants/Applicants and the appeal having been entered in the cause list, any application thereof including application for stay of proceedings should be made direct to this Court."

See **EZEOKAFOR V EZELIO, (1999) 6 SC (PTII) page 1. And ALIMS (NIG) LTD V UBA PLC (2007) ALLFWLR (Pt348) page 971 at 983 paragraphs B-C.**

In the instant case, by exhibit C attached to the affidavit of the judgment debtor/Applicant the registry of the Court of Appeal has received on the 26th April, 2019 , 10 copies of certified true copies of the record of appeal and two diskettes and have given the appeal number as CA/A/365/2019. In otherwords, the appeal has been entered before the Court of Appeal.

Thus, therefore, as regards the various applications pending in this Court, the Appellate Courts have spoken and stated the position of the law.Thusthis Court is functus officio and it cannot entertain any application in this matter until the appeal at the Court of Appeal is heard and determined. Accordingly, all pending applications either filed and are pending or to be filed in this matter, parties to approach the Court of Appeal whom is now seized of the matter.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
7/12/2020

Parties:- Absent.

OnyekaObiajula:- For the Garnishee (CBN)

O.C Eze:- For the Judgment Debtor

John O. Dike: For the 13th Garnishee Zenith Bank Plc

Sign
Judge
7/12/2020