

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

CLERK: CHARITY

COURT NO. 15

SUIT NO: FCT/HC/CV/1401/17

M/3870/18

DATE: 25-11-2020.

BETWEEN:

SIMTEXINTERNATIONAL(NIG)LTD.....JUDGMENT CREDITOR/APPLICANT

AND

IMOSTATEGOVERNMENT.....JUDGMENT DEBTOR/RESPONDENT

AND

ZENITH BANK PLC..... GARNISHEE

RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

First of all, I want to state that I have divided this ruling into two (2) parts. In the first part, I am going to consider and rule on motion No. 3870/2018 filed by the Judgment Debtor/Applicant. In the second part, I am going to consider the affidavit to show cause and the Counter

thereto and rule on whether the order nisi should be made absolute or not.

RULING ON MOTION NO. 3870

On the 24th March 2016, this Honourable Court entered judgment for the Plaintiff/Judgment Creditor/Respondent against the Defendant/Judgment Debtor / Applicant for the total sum of N651,074,882.16k (Six Hundred and Fifty One Million, Seventy Four Thousand, Eight Hundred and Eighty Two Naira, Sixteen Kobo) only being the 5% of the sum of N13,021,492,640.32k (Thirteen Billion, Twenty One Million, Four Hundred and Ninety Two Thousand, Six Hundred and Forty Naira, Thirty Two Kobo) only recovered by the Plaintiff/Judgment Creditor /Respondent and paid to the Defendant/Judgment Debtor /Applicant and 5%. On the 23rd day of February 2018, the Court made a garnishee order nisi on the application of the judgment creditor thus:

“A GARNISHEE ORDER nisi attaching the monies due to or lying to the credit of the judgment debtor in the bank to wit:

Zenith Bank Plc Acct. Nos.

1012722685

1013197705

Up to the sum of N651,074,882.16k (Six Hundred and Fifty One Million, Seventy Four Thousand, Eight Hundred and Eighty Two Naira, Sixteen Kobo) in satisfaction of the judgment delivered by this Honourable Court in favour of the Judgment Creditor against the Judgment Debtor on 8th day of June, 2017.

The Judgment Debtor/Applicant filed a Motion on Notice No. 3870/2018 dated 12th day of March, 2018 and filed on the 13th day of March, 2018 praying for the following orders thus:

AN ORDER of Court setting aside the **GARNISHEE ORDER NISI** made by this Honourable Court on the 23rd day of February, 2018 Per Honourable Justice S. B. Belgore in Suit No. **FCT/HC/CV/1401/17 between SIMTEX INTERNATIONAL (NIG) LTD Vs. IMO STATE GOVERNMENT.**

AN ORDER of Court restraining the Judgment Creditor/Respondent by itself, its agents, representatives or whomsoever from relying on the said judgment sought to be executed or making any claim thereon against the Applicant or her agents or bankers.

AND for such further order or other orders as the Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:

1. That the Applicant has filed a suit at the High Court of the Federal Capital Territory, Abuja sitting at Jabi challenging the competence of the judgment sought to be executed herein.
2. That the judgment sought to be executed by the Respondent was obtained without hearing the Judgment Debtor/Applicant (Imo State Government) in that suit and therefore void ab initio and of no effect.
3. The funds sought to be attached vide the garnishee proceedings was duly appropriated by the Imo State Government in 2018 and is in the custody of Public Officer. Section 84 of the Sheriffs and

Civil Process Act, 2004 was not complied with by the Judgment Creditor in this garnishee proceedings.

The application is supported by a 19-paragraphed affidavit deposed to by one Christopher Emeka Izima, a Legal Practitioner in the Law firm of Counsel to the Judgment Debtor/Applicant; and attached thereto are Exhibits A and B. The application is also accompanied by a written address dated 12th March 2018 and filed on the 13th March, 2018 pursuant to the rules of this Honourable Court.

The Judgment Creditor/Respondent filed a 26-paragraphed Counter affidavit deposed to by one Sandra Asoluka, a Legal Practitioner with Counsel to the Judgment Creditor/Respondent. Attached to the affidavit are four (4) exhibits marked as 'A,B,C and D' and a written address.

In his affidavit in support of the application, Christopher Emeka Izima stated as follows:

1. The Applicant was not served with the Originating processes leading to the judgment sought to be executed by the garnishee proceedings.
2. Consequently, the Applicant filed a suit at the High Court of the Federal Capital Territory seeking to set aside the judgment in suit No. FCT/HC/CV/1401/2017.
3. The Applicant only became aware of this ORDER NISI made on the 23rd day of February, 2018 through Counsel to the Garnishee on Monday, the 12th day of March 2018.
4. The money sought to be attached was duly appropriated by the Government of Imo State in 2018 and is under the control of

Public Officer and consent of the Attorney General was neither sought nor obtained before the Judgment Creditor sought to attach the funds vide this garnishee proceedings.

5. The said ORDER NISI sought to be set aside was not served on the Applicant and the consent of the Attorney General of Imo State was not sought and obtained before instituting the garnishee proceedings.

6. The Judgment Creditor Respondent commenced Suit No. FCT/HC/CV/1401/2017 against the Imo State Government and made a false claim of N651,074,882.16k (Six Hundred and Fifty One Million, Seventy Four Thousand, Eight Hundred and Eighty Two Naira, Sixteen Kobo) only as her purported commission from the sum of N13,021,492,640.32k (Thirteen Billion, Twenty One Million, Four Hundred and Ninety Two Thousand, Six Hundred and Forty Naira, Thirty Two Kobo) which the Judgment Creditor/Respondent falsely claimed was received by the Applicant in December, 2016 from the Federal Government.

7. On the basis of the Judgment Creditor/Respondent's misrepresentation and /or fraudulent assertion of the Applicant's receipt of payment of the said sum of money, this Honourable Court granted the reliefs sought in suit No. FCT/HC/CV/1401/2017 on 8/6/2017 to the prejudice of the Applicant in this suit.

8. The Judgment Creditor /Respondent knew that the Federal Government did not release the sum of N13,021,492,640.32k (Thirteen Billion, Twenty One Million, Four Hundred and Ninety Two Thousand, Six Hundred and Forty Naira, Thirty Two Kobo) to

the Applicant in 2016 or at all as excess deduction from the Applicant's external debt.

9. The Judgment Creditor/Respondent's claim was made in bad faith and was aimed at defrauding or cheating the Applicant.
10. The Judgment Debtor / Applicant has as a result of the Respondent's false claim and illegally procured judgment of 8/6/2017 suffered untold embarrassment and injury and will continue to suffer same unless and until the said judgment is set aside.
11. The Judgment Creditor/Respondent is using the said judgment to embarrass some banks she believes the Applicant has account in.

In the Judgement Creditor / Respondent's Counter affidavit, Mrs Asoluka stated that:

1. The Judgment Debtor/Applicant was served with the originating processes in suit No. FCT/HC/CV/1401/2017 on the 30th of May, 2017.
2. The Applicant never filed any notice of intention to defend the suit regardless of the fact that it was served with the originating processes.
3. This Honourable Court delivered its judgment in suit No. FCT/HC/CV/1401/2017 between SIMTEX INTERNATIONAL NIG. LTD V. IMO STATE GOVERNMENT on 8th June, 2017 wherein the Court granted the reliefs sought and ordered the Judgment Debtor/Applicant to pay the sum of N651,074,882.16k (Six Hundred and Fifty One Million, Seventy Four Thousand, Eight

Hundred and Eighty Two Naira, Sixteen Kobo) only being the 5% of the sum of N13,021,492,640.32k (Thirteen Billion, Twenty One Million, Four Hundred and Ninety Two Thousand, Six Hundred and Forty Naira, Thirty Two Kobo) only recovered by the Judgment Creditor and paid to the Judgment Debtor.

4. The Judgment Creditor is not on notice of the said suit No. FCT/HC/CV/0020/2017.
5. Upon delivery of the judgment on 8th June, 2017, the Judgment Creditor by an application filed on the 22nd of February, 2018 sought that the judgment sum in the garnishee bank; Zenith Bank Plc be attached and used to satisfy the judgment debt.
6. This Honourable Court made a Garnishee ORDER NISI on the 23rd of February, 2018 and same was served on the Garnishee bank and Judgment Debtor on the 26th of February, 2018 and 27th of February, 2018 respectively.
7. The consent of the Attorney General of Imo State is not required to commence a garnishee proceedings as the money sought to be attached is under the control of the Garnishee which is not a public officer.
8. The judgment of this Honourable Court is subsisting and the reliefs granted therein have not been complied with.
9. The judgment of this Honourable Court of 8th June, 2017 was not obtained by either fraud or misrepresentation.
10. The judgment Debtor has not filed any application and the judgment Creditor is not in receipt of any application filed by the judgement Debtor to set aside the orders made sequel to suit No.

FCT/HC/1401/2017 between Simtex International Nig. Ltd V. Imo State Government.

11. The Judgment Debtor is not a party in garnishee proceedings.
12. There is no notice of appeal filed by the Judgment Debtor/Applicant, same emanating from suit No. FCT/HC/CV/1401/2017 between Simtex International Nig. Ltd V. Imo State Government.
13. The Judgment Debtor/Applicant is not a party in the garnishee proceedings.

The foregoing represents the summary of facts as contained in both the affidavit in support of the motions and the Counter affidavit filed by the Judgment Creditor.

In his written address, Learned Counsel for the Applicant formulated a lone issue for determination to wit:

“Whether the garnishee order sought is competent or proper in the circumstances of this application”.

In response, Learned Counsel to the Judgment Creditor/Respondent in his written address also formulated a lone issue for the determination of the Court viz:

“Whether the Judgment Debtor’s application is meritorious to warrant the grant of same”.

It appears to me that both issues raised by the respective Counsel can be merged into a single issue for determination that is; “whether the

judgment Debtor/applicant is entitled to have the garnishee order nisi set aside”.

Counsel for the Applicant argued that the validity of the judgment of 8th June, 2017 is now in issue which raises misrepresentation and fraud on the part of the Judgment Creditor and thereby calls to question the validity of this application for the garnishee order. He cited **OKOLO V. UBN (2004) 3 NWLR (PT.859) 87 pg. 329, paras D-F and MADUKOLU V NKEMDILIN (1962) ALL NLR 587.**

Counsel contended that suppression of truth by a party to a proceeding, leading the Court into making an order which prejudices the other party is an abuse of Court process. He cited the case of **OLUTINRIN V. AGAKA (1998) 6 NWLR (PT. 554) 366; and LAMAZ LIMITED V. TOTAL (NIG) PLC (2007) ALL FWLR (Pt. 364) 396 at page 400** where the Court of Appeal held inter alia that **“the Court is a Court of equity and he who comes to equity must come with clean hands”**. That the Judgment Creditor having misled the Court into giving the Judgment and making the garnishee order nisi is not entitled to the reliefs sought in this application and the Court is urged to resolve this issue in favour of the Judgment Debtor/Applicant.

In response, Learned Counsel to the Respondent submitted that it is trite that a judgment obtained under the undefended list procedure is a judgment on the merit. As such, the judgment can only be set aside on appeal. Counsel continued that however, where there is an allegation that the judgment was obtained by fraud, the trial Court has inherent powers to set it aside as fraud if established will nullify the judgment.

Counsel further submitted that the position of the Judgment Debtor that the judgment delivered on the 8th of June, 2017 was obtained by fraud is unsupported by the true position of the law as the Writ of Summons upon being filed was served on the Judgment Debtor which

service was done in consonance with the provision of the law. In support of his submission, Counsel cited the case of **RIVERS STATE GOVERNMENT V. SPECIALIST CONSULTS (2005) 7 NWLR (PT. 923) @Pg. 145** where the Court of Appeal held that the essence of service is to ensure that parties are put on notice of the pending litigation and this can be achieved through a liaison office, thus where service is effected in the liaison office, it is presumed that the service was properly effected.

Learned Counsel for the Respondent contended that where a Defendant fails, neglects or refuses to call any evidence despite being given the opportunity to do so, not only does he lack the right to raise any issue of denial of fair hearing but the Court is also left with no option than to consider the merits and otherwise of the Plaintiff's case solely on the available evidence as laid by the Plaintiff since there is nothing to be put on the other side of the imaginary scale of justice for the Court to weigh and compare with the evidence of the Plaintiff on any issue. Counsel referred the Court to the case of **BEN THOMAS HOTELS LTD V. SEBI FURNITURE LTD (1989) 5 NWLR (PT. 128) Pg. 523@523 paras B-D** where the Supreme Court held that if a Defendant properly served the Writ of Summons decides to stay away from the Court on the hearing date, he cannot under the rules be heard to say that the trial Judge should not have heard the case on that day particularly when the case was on the undefended list.

Learned Counsel for the Applicant submitted that the non-service of the garnishee ORDER NISI on the Judgment Debtor as required by law vitiates the garnishee proceedings. He referred the Court to **NIGERIAN BREWERIES PLC & ANOR. V. DUMUJE (2016) 8 NWLR (Pt. 1515) 536** where the Court held that a Judgment Debtor is a necessary party in a garnishee proceedings. That a Judgment Debtor has the right to challenge the competence of garnishee proceedings.

In response, Counsel to the Respondent submitted that the Judgment Creditor has exhibited the proof of service of the originating processes filed on the 10th of April, 2017 as well as proof of service of the garnishee order nisi made by this Honourable Court on the 23rd of February, 2018. That it was held in **FIRST BANK NIG. LTD V. KALADU (1993) 9 NWLR (PT. 315) 44 @ 55** that the failure to deliver a notice of intention to defend means only one thing, that is the Defendant has no defence to the Plaintiff's claim.

Counsel further submitted that it is clear from the records of this Court that the Judgment Debtor was served with the originating processes and upon service, it behoves on him to file his notice of intention to defend with an affidavit setting out the grounds of his defence. That in the instant case, the Judgment Debtor neither filed a notice nor an affidavit stating the grounds of his defence. Thus, in the absence of a notice of intention to defend, the Judgment Creditor is entitled to succeed which he did on the 8th day of June, 2017.

I have considered the submissions of Counsel on the issue of allegations of fraud and misrepresentation raised against the Judgment Creditor and I must state that the burden is on the Judgment Debtor / Applicant to prove such weighty allegations that indeed, this Honourable Court was misled by the Judgment Creditor in granting the reliefs contained in the Judgment of 8th June, 2017.

The contention of the Judgment Debtor that the originating processes of Suit No. FCT/HC/CV/1401/2017 was not served on it cannot avail it as there is sufficient proof before this Honourable Court that the said originating processes was served on the Judgment Debtor's liaison office and that in itself is sufficient service based on the decision of the Appeal Court in **RIVERS STATE GOVERNMENT V. SPECIALIST CONSULTS (2005) 7 NWLR (PT. 923) @Pg. 145** where the Court held that the essence of service is to ensure that parties are put on notice of the

pending litigation and this can be achieved through a liaison office, thus where service is effected in the liaison office, it is presumed that the service was properly effected.

Therefore, the argument of the Judgment Debtor on this issue is not only watery but also failed to advance particulars of fraud and misrepresentation alleged against the Judgment Creditor in this regard.

I must agree with the submission of the Learned Counsel for the Judgment Creditor that the Judgment Debtor is trying to resuscitate facts that were already litigated upon in suit No. FCT/HC/CV/1401/2017 vide the instant application. The issue of allegations of fraud and misrepresentation raised against the Judgment Creditor by the Judgment Debtor is resolved in favour of the Judgment Creditor.

On the applicability of section 84 of the Sheriffs and Civil Process Act; that is whether the consent of the Attorney General of Imo State is required in the instant garnishee proceedings, Learned Counsel for the Applicant submitted that the consent of the Attorney-General of Imo State was not sought and obtained before the commencement of this application as required by section 84 of the Sheriffs and Civil Process Act, 2004 which renders the garnishee proceedings incompetent and liable to be set aside. He cited in support of his submission the cases of **ONJEWU V. KOGI STATE MINISTRY OF COMMERCE AND INDUSTRY (2003) 10 NWLR (Pt. 827) 40** and **CENTRAL BANK OF NIGERIA V. HYDRO AIR PTUY LTD (2014) 16 NWLR (PT. 1434) 482 @ 506-507.**

In response, Learned Counsel to the Judgment Creditor/Respondent submitted that the cases of **ONJEWU V. KOGI STATE MINISTRY OF COMMERCE AND INDUSTRY (supra)** AND **CENTRAL BANK OF NIGERIA V. HYDRO AIR PTUY LTD (supra)** cited by the Judgment Debtor cannot apply in the instant case.

Counsel argued that in the instant case, Zenith Bank Plc (the Garnishee) is not a Public officer within the definition of section 84, thus, there is no requirement for the consent of the Attorney General of Imo State. Counsel cited the decision of the Court of Appeal in the case of **PURIFICATION TECH (NIG) LTD V. A.G LAGOS STATE (2004) 9 NWLR (PT. 879) Pg. 665 @ 680** where it held that:

“Monies in the hands of a Garnishee banker are not in the custody or control of the Judgment Debtor customer. Such monies remain the property in the custody and control of the banker and payable to the Judgment Debtor until a demand is made. In the instant case, the monies held by the Respondents in the garnishee banks were not under the custody of the Respondents or a public officer. Consequently, such monies are not subject to the provision of section 84 of the Sheriffs and Civil Process Act as contended by the Respondents”.

For emphasis, Section 84 (1) and (3) of the Sheriffs and Civil Process Act is reproduced below:

84. (1) *Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodia legis, the order nisi shall not be made under the provisions of the last preceding section unless consent to such attachment is first obtained from the*

appropriate officer in the case of money in the custody or control of a public officer or of the court in the case of money in custodia legis, as the case may be.

(3) In this section, “appropriate officer” means-

- (a) In relation to money which is in the custody of a public officer who holds a public office in the public service of the Federation, the Attorney-General of the Federation;**
- (b) In relation to money which is in the custody of a public officer who holds a public office in the public service of the State, the Attorney-General of the State.**

The fundamental question here is whether the money in the Garnishee bank [Zenith Bank Plc.] attached by the garnishee order nisi “is in the custody or under the control of a public officer in his official capacity” as required by section 84 [1] of the said Act. Before I go further, I must state that the issue at hand was not one of the issues resolved in Christopher Onjewu V. Kogi State Ministry of Commerce & Industry & Ors. [supra] relied upon by learned counsel for the Judgment Debtor / Applicant.

Learned Counsel for the Judgment Creditor / Respondent relied heavily on the decision of the Court in the case of **Purification Techniques [Nig.] [supra]**. In this case, the Appellant sought and obtained a garnishee order nisi against several banks as part of its effort to enforce a judgment against the Respondent. The Respondent, vide a motion on notice sought to set aside the order nisi on the ground inter alia that the monies held by the Respondent in a bank is in the custody or under the control of a public officer and, therefore, subject to the provisions of section 84 of the Sheriffs and Civil Process Act, which requires the consent of the Attorney General before the monies could be attached

in satisfaction of a judgment debt. The trial court set aside the garnishee order nisi.

The Appellant appealed to the Court of Appeal. One of the issues raised was whether the monies held by the Respondent in the Garnishee banks were in the custody or under the control of the Respondent and therefore not subject to garnishee proceedings. The Court held that:

“Monies in the hands of a garnishee banker are not in the custody or control of the Judgment Debtor customer. Such monies remain the property in the custody and control of the banker and payable to the Judgment Debtor until a demand is made. In the instant case, the monies held by the Respondents in the garnishee banks were not under the custody of the Respondents or a public officer. Consequently, such monies are not subject to the provision of section 84 of the Sheriffs and Civil Process Act as contended by the Respondents”.

At page 681, B-E, the Court of Appeal [per Galadima, JCA] held:

“...Therefore, given the nature of the relationship between banker and customer and of the contract that exists between them, the customer has neither the “custody” nor “the control” of monies standing in his

credit in an account with the banker. What the customer possesses is a contractual right to demand repayment of such monies...In my respectful view I can say that monies in the hands of garnishee banker are not 'in custody or under the control' of the Judgment Debtor customer. Such monies remain the property in the custody and control of the banker; and payable to the judgment debtor until a demand is made....."

The above decision settles the issue under focus with the result that the money in account numbers 1012722685, 1013197705 up in the garnishee bank is not "in the custody or under the control" of the Judgment debtors. So, the requirement of the consent of the Attorney-General of Imo State under section 84 of the Sheriffs and Civil Process Act is not applicable to this case. Therefore, such monies, which is clearly in the custody of the garnishee (Zenith Bank Plc) cannot be said to be under the custody and control of a Public Officer. Such monies are held by garnishee for the Judgment Debtor under the ordinary and the usual bank-customer relationship, hence, the consent of the Attorney General of Imo State is not required in the circumstance. This issue is also hereby resolved in favour of the Judgment Creditor.

On the right to challenge the competence of garnishee proceedings, Learned Counsel for the Judgment Debtor/Applicant contended a Judgment Debtor is a party to a garnishee proceedings and consequently has the right to challenge the competence of such proceedings. He cited **FIDELITY BANK PLC V. OKWUOWULU (2013) 6 NWLR (PT. 1349) @ 152-153 and CBN V. AUTO IMPORT EXPORT (2013) 2 NWLR (PT. 1337) 80 @ 127 paras F-G.**

In response to the above submissions, Learned Counsel for the Judgment Creditor argued that the cases of **FIDELITY BANK PLC V. OKWUOWULU (supra)** and **CBN V. AUTO IMPORT EXPORT (supra)** cited by the Judgment Debtor/Applicant to support the argument that the Judgment Debtor has the right to challenge the competence of the garnishee proceedings cannot apply to the instant matter. Thus, relying on the principle of stare decisis, Counsel argued that it is pertinent to state that in a more recent decision, the Court of Appeal in **HERITAGE BANK CO. LTD V. NUC (2017) 5 NWLR (PT. 1557) Pg. 104 @ 124-125 paras D-A** held as follows:

“In a garnishee proceedings, the only parties are the Judgment Creditor, the garnishee or garnishees. This is borne out of the Sheriffs and Civil Process Act. Thus, the garnishee proceedings are principally between the Judgment Creditor and the garnishee. The judgment Debtor is not a necessary party to the proceedings. Therefore, it is only the garnishee who is to show cause why the order nisi should not be made absolute and it is only the garnishee against whom an order absolute can be made. Such order cannot be made against the Judgment Debtor. See also UBA PLC V. EKANEM (2010) 6 NWLR (PT. 1190) 207 AND FBN PLC V. FCMB PLC (2014) ALL FWLR (PT. 751) 1451.

Counsel further submitted that the position in the case cited by the Judgment Debtor has been overruled by decision in HERITAGE BANK CO. LTD V. NUC (supra). He urged the Court to dismiss the Judgment Debtor/Applicant's application as same is lacking in merit.

I have listened to and considered the submissions of Counsel from both sides of the divide on the issue, that is, whether a Judgment Debtor is a party to a garnishee proceedings and therefore possesses the right to challenge same.

I must add to the submissions of the Counsel to the Judgment Creditor Respondent that as recent as 2018, the Appeal Court maintain its decision in HERITAGE BANK CO. LTD V. NUC (supra) that a Judgment Debtor is not a party to a garnishee proceeding where the Court in **AMARAN V. VIRGIN ATLANTIC AIRWAYS & ORS (2018) LPELR 44786 (CA)** Per NIMPAR, J.C.A (Pp. 15-27, paras. A-B) held that:

“This statement of law was expressed with emphasis in P.P.M.C. LTD. Vs. DELPHI. INC. [2005] 8 NWLR (Pt. 928) 458 at 484, C-G, where SALAMI, JCA, (Later PCA) held as follows and I quote: “The reason for inability of the appellants to appeal against a garnishee order is for the simple fact that it is a product of proceedings between the judgment creditor and the person in possession of the assets of the judgment debtor. In the instant case, Guaranty Trust Bank is the garnishee or a person holding the assets of the judgment debtor, the appellants herein, while the

respondent is the judgment creditor. A garnishee proceedings although incidental to the judgment pronouncing the debt owing, the appellants being judgment debtor are not necessary party to the said proceedings”.

In my respectful view and with all due respect to the submissions of the Learned Counsel for the Judgment Creditor/Respondent and the judicial authorities relied thereon, regardless of the fact that only a garnishee is required to show cause why an order nisi should not be made absolute by the Court, a Judgment Debtor against whom a judgment is sought to be enforced has a right to be heard in some circumstances as recently held by the Supreme Court.

The Court of Appeal decision in **HERITAGE BANK CO. LTD V. NUC** (supra) sought to rely on by the Judgment Creditor/Respondent which was delivered in the year 2017 has also been qualified and fine-tuned by the Apex Court in some of its recent decisions.

In **GWEDA V. DELTA STATE HOUSE OF ASSEMBLY & ANOR (2019) LPELR 47441 (SC) Per OKORO J.S.C (Pp. 35-40, paras. C-A)** held thus:

“Let me state briefly that in garnishee proceedings, a judgment creditor who after diligent search identifies or knows that the judgment debtor has some money in possession or custody of a bank or other institution, may file an ex-parte application in Court with an affidavit in support praying the Court for an order NISI ordering the garnishee to appear and show

cause why he should not pay the amount due to the judgment debtor in his possession to him. After the grant of the order nisi which I said is made ex-parte, the said order must be served on the garnishee, judgment creditor and the judgment debtor and the registrar must then fix a date not less than 14 days after the service of the order nisi on the three parties aforesaid. It has to be noted that at the stage of the ex-parte application only two parties, i.e. the judgment creditor and the garnishee are involved in the proceedings. However, after the service of the order nisi on the judgment debtor, as the Court of Appeal would say in *NADC Ltd V. Ogini (supra)*, the subsequent hearing envisage a tripartite proceedings in which the three parties are represented. I am persuaded to agree with the learned counsel for the 1st Respondent herein that at this stage of the proceedings, the three parties can be heard by the Court before an order absolute is made depending on the facts and circumstance of the case. I say so advisedly bearing in mind that garnishee proceedings is in the nature of enforcement of the judgment of a Court of law and does not permit the re-opening of hearing in a matter which has been settled in the judgment sought to be enforced.....There appears to me that by a combination of Section

83(2) of the Sheriffs and Civil Process Act and Order VIII Rule 8 of the Judgment Enforcement Rules, a judgment debtor, after being served with order nisi can be heard by the Court only if or where he observes irregularities in what is presented before the Court by the Judgment creditor. Why I say so is that at that stage, it is not an opportunity to reopen the case which judgment has been entered. It is strictly for the enforcement of such judgment. Thus, where the judgment sought to be enforced is certain, in terms of the parties, the judgment sum and the party adjudged the debtor, then the judgment debtor has nothing to say in the proceedings. However, where, as in this case, the judgment sum is not certain and the party adjudged as the debtor is confused by the judgment creditor, I think that justice demands that the “judgment debtor” be heard in such circumstance. In other words, it is not cast on stone that a judgment debtor cannot be heard in garnishee proceedings. It is the Court that will determine whether he should be heard or not. If the application of the judgment debtor before the Court is to reopen issues settled in the judgment, he cannot be heard. But if the application is to draw the attention of the Court to misleading facts put forward by the judgment creditor, there is nothing wrong

with him being heard. I am persuaded by some Court of Appeal authorities in this matter including but not limited to Barbedos Ventures Ltd v Zamfara State (2017) LPELR-42499, CA, Nigerian Breweries Plc v Dumuje (Supra).”

From this decision of the Apex Court, it is now clear that there are circumstances where a Judgment Debtor may be heard in a garnishee proceeding and the circumstances include the following:

1. An application by the Judgment Debtor to draw the attention of the Court to misleading facts put forward by the judgment creditor;
2. Where the judgment sum is not certain and the party adjudged as the debtor is confused by the judgment creditor.

Now, having identified the exceptions outlined by the Supreme Court in **Gwede’s** case supra, can it be conveniently said that the instant application by the Judgment Debtor falls within the exceptions given by the Apex Court? The answer to that is certainly in the affirmative, but I must quickly point out that, though, the instant application filed by the Judgment Debtor seeks to draw the attention of the Court to some purported misleading facts put forward by the Judgment Creditor, the Judgment Debtor has woefully failed in that regard to prove its claims.

From the foregoing and in conclusion, I hold that the Judgment Debtors/Applicant failed to establish any ground to warrant the setting aside of the garnishee order nisi made by the Court on the 23rd day of February 2018. The application is refused and same is hereby dismissed.

RULING ON THE GARNISHEE PROCEEDING

The above apart, I will now proceed to consider the Garnishee proceeding.

Generally, a garnishee proceedings is a special proceedings with special purpose in that its procedure is simple, brief and direct. The Supreme Court in **GWEDE V. DELTA STATE HOUSE OF ASSEMBLY & ANOR (supra) Per OKORO, J.S.C (Pp. 23-25, paras. F-B)** handed us a brief overview of the principles governing garnishee proceedings where it held that:

“A few words on garnishee proceedings. A garnishee proceedings is usually commenced by an ex-parte application made to the Court having jurisdiction to hear the matter by the Judgment creditor and the orders of the Court usually come in two steps. The first is a garnishee order NISI. Simply, NISI is a Norman – French word which means “Unless”. It is therefore an order made, at that stage, that the sum covered by the application be paid into Court or to the judgment creditor within a stated time unless there is sufficient reason given by the party on whom the order is directed why the payment ordered should not be made. Such reasons could be that he does not hold any money belonging to the judgment debtor or that such money belonging

to the judgment debtor in his possession is a subject of litigation or has been assigned to a third party or any other legal and reasonable excuse. If no sufficient reason is given, the garnishee order is then made absolute and that ends the matter in that the party against whom the order to the judgment creditor. The Court then becomes functus officio as far as that matter is concerned in that the Judge who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him. See Union Bank of Nigeria Plc vs Boney Marcus Industries Ltd & Ors (2005) 13 NWLR (pt. 943) 654, Choice Investments Ltd v Jeromnimon (Midland Bank Ltd. Garnishee) (1981) 1 All ER 225 at 328, Guaranty Trust Bank Plc v Innoson Nig. Ltd (2017) LPELR – 42368 (SC).”

It is on record that this Honourable Court made a garnishee ORDER NISI on the 23rd of February, 2018 attaching the Judgment Debtor’s funds in the Garnishees’ custody following the Judgment Creditor’s Ex-parte application. The Garnishee was in the same Order directed to show cause why the Garnishee Order nisi should not be made absolute.

The Garnishee Bank filed a 6-paragraphed affidavit to show cause deposed to by one Solomon Unamka and dated 5th day of March 2018, which contains the following facts:

➤ That the Garnishee/Respondent was served with the Garnishee Order Nisi made by this Honourable Court on the 26th March 2017.

➤ That further to the service of the said order, the Garnishee immediately without any delay conducted a search on its record which revealed that the two (2) accounts stated in the order nisi existed in the books of the Garnishee with the following balances:

Imo State Government Joint Allocation A/C Comm. (JAAC)
Ministry of Local Government & Chieftancy Affairs Account No:
1012722685 = N357.51 DR.

Imo State Government (FAAC) A/C Accountant General's Office
Account No: 1013197705 = N242.77 CR.

➤ That the statement of accounts for the above listed accounts are attached to the affidavit to show cause and marked as Annexures ZB1 and ZB2.

➤ That further check on the books of the Garnishee revealed that the Respondent is heavily indebted to the Garnishee via two different loan agreements dated 3/9/2015 and 26/1/2016 which together with a statement of the loan account are attached to the affidavit to show cause and marked as annexures ZB3 and ZB4 respectively.

➤ That the Garnishee/Respondent humbly seeks to be discharged of the order nisi made by this Honourable Court.

On its part, the Judgment Creditor filed a 23-paragraphed Counter affidavit deposed to by Sandra Asoluka the summary of which are as follows:

- The Judgment Creditor was served with the garnishee's affidavit to show cause on the 6th day of March 2018.
- The statement of account of the Judgment Debtor in exhibit ZB1 and ZB2 attached to the affidavit to show cause by the Garnishee contained only account balance of 26th February, 2018 being the day the Garnishee order nisi was received by the Garnishee Bank.
- The order nisi made by this Honourable Court on 23rd February, 2018 attached funds in the said accounts within the next 14 days beginning from the 23rd February, 2018.
- The statement of account of the Judgment Debtor with the Garnishee did not disclose financial activities in the said account from 26th of February to 6th March, 2018, being the date of service of the Garnishee's affidavit to show cause on the Judgment Debtor's Counsel.
- From exhibit ZB5, the Judgment Debtor only service the credit facility from the Garnishee bank with sum of N181,879,152.11 (One Hundred and Eight One Million, Eight Hundred and Seventy Nine Thousand, One Hundred and Fifty Two Naira, Eleven Kobo) monthly.
- Upon grant of the garnishee order nisi on the 23rd of February 2018, a due diligence inquisition was carried out at the Accountant General's office wherein it was discovered that the sum of 8,082,406,972.06 (Eight Billion, Eighty Two Million, Four Hundred and Six Thousand, Nine Hundred and Seventy Two Naira, Six

Kobo) only was paid into the judgment Debtor's account after the garnishee order nisi was served on the Garnishee.

- The account balance presented by the Garnishee bank did not disclose any excess fund after the debit of the loan sum and interest from the Judgment Debtor's account with the Garnishee.
- The affidavit to show cause dated 5th March, 2018 did not disclose the balance of account No. 1012722685 and 1013197705 of the said Judgment Debtor with the Garnishee Bank from the 27th and 28th February, 1st, 2nd, 3rd, 4th, 5th, and 6th of March 2018.
- The Judgment Creditor prays the Court to make an order for the Garnishee to show cause from 27th and 28th February, 1st, 2nd, 3rd, 4th, 5th, and 6th of March 2018 why the order nisi should not be made absolute.

In response to the Counter affidavit filed by the Judgment Creditor, the Garnishee filed two (2) separate affidavits titled further and better affidavit and further affidavit both deposed to by Solomon Unamka and dated 14/03/2018 and 22/03/2018 respectively.

Responding to the Judgment Debtors affidavits of 14th and 22nd March, 2018, the Judgment Creditor also filed two (2) affidavits deposed to by Sandra Asoluka, titled further affidavit and further and better affidavit dated 15/03/2018 and 20/03/2018 respectively.

From its affidavit evidence, and the content of exhibits ZB1 and ZB2 attached thereto, the Garnishee only furnished the Court with details of the Judgment Debtor's accounts for the 26th day of February 2018 as against the specific order of the Court which clearly is for 27th and 28th of February, 2018, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th, March 2018. At this point, I do not know what the Garnishee Bank

is trying to hide by refusing to furnish the Court with the details of the account statements for 27th and 28th of February, 2018, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th, March 2018.

The Garnishee by this attitude tends to take this proceedings hostage, which this Honourable Court will not allow. The funds sought to be attached is not the Garnishee's. Courts have held in plethora of cases that it is not for the Garnishee to fight the cause of a Judgment Debtor. The only role of a Garnishee is to show cause why the order nisi should not be made absolute.

In **GTB V. INNOSON NIGERIA LTD (2017) LPELR-42368 (SC)** Per EKO, J.S.C (Pp. 19-20, paras. F-D) outlined the role of a garnishee in a garnishee proceedings in the following words:

“It is not for a garnishee to fight the cause of a judgment debtor who either accepts the judgment against him and does nothing about it, or who may be indolent to fight his cause. No power in law inheres in the garnishee to make himself a busybody and proceed like Don Quixote, the Knight Errant, to fight the cause of the judgment debtor who is his customer. A judgment debtor whose money or property is seized or attached through garnishee proceedings in excess of the judgment sum has several options in law to deploy to forestall such unwarranted seizure or attachment. It is not for the garnishee to embark

on any such options, which he lacks the locus standi to embark on. The cause of action accruable to the garnishee in a garnishee proceeding is quite a limited one. It does not include his usurping the cause of action of the Judgment Debtor. It is for this reason that I consider or view this aspect of the instant application an abuse of Court process.”

I hereby expressed my disappointment on the attitude of Garnishee for disobeying a direct order of the Court. I need not mention that Court orders are not given in vain; they are meant to be obeyed. Therefore, it is my view that the Garnishee is yet to show cause why the order nisi already made should not be made absolute.

But for the fact that the instant proceedings is a garnishing proceedings and the Court is expected to have a palpable sense of certainty that there is presence of funds in the account sought to be attached before it makes the order nisi absolute, I would have simply proceed to make the order absolute due to the disrespectful attitude exhibited by the Garnishee Bank towards the Court.

That not being the case, however, the Judgment Creditor in paragraph 22 of the Counter affidavit in opposition to affidavit to show cause filed by the Garnishee, pray this Honourable Court to make an order directing the Garnishee to show cause from 27th and 28th February, 2018, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th, March 2018 why the order nisi should not be made absolute in view of the fact the details of accounts statements already provided by the Garnishee vide exhibit ZB1 and ZB2 are for the 26th day of February 2018.

Therefore, bearing in mind that we are dealing with a garnishee proceedings; which is a special proceeding and to further avoid a situation that will make it impossible for an order of the Court to be enforced, I make no hesitation to rule as follows:

The Garnishee Bank is hereby ordered to, unfailingly within the three weeks, furnish this Court with further detailed statement of account numbers 1012722685, 1013197705 for 27th and 28th of February, 2018, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th, March 2018.

This case is adjourned to 12/1/2021 for ruling on whether the order nisi already made by this Honourable Court should be made absolute or not.

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S. B. Belgore
(Judge)25/11/20

LEGAL REPRESENTATION:

AbdulRauf M. Abba with N.C. Ebegbezor for Judgment Creditor/Respondent.

J. M. Mathew for Judgment Debtor/Imo State /Applicant

Solomon U. for Garnishee bank.