

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/714/2017
M/4733/2020
DATE 11/11/2020

BETWEEN:

VISCOUNT MULTIPURPOSE

COOPERATIVE SOCIETY LTDJUDGMENT CREDITOR/APPLICANT

AND

HON. KAKA A. MUSTAPHA JUDGMENT DEBTOR/RESPONDENT

RULING

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

The Judgment Creditor/Applicant vide Motion Number M/4733/20 prayed the court essentially for an order of this honourable court directing that a writ of attachment and execution be issued against the immovable property belonging to the Judgment Debtor situate at House No. 12, 116 Road, Gwarinpa II Estate, Abuja for the sale of the property either by Public Sale or Private treaty in realization of the Judgment of this court dated 22nd May, 2017.

The grounds upon which this application is premised are as follows:

1. This Honourable Court delivered Judgment in favour of the Judgment Creditor on 22-5-2017 and same has not been liquidated by the Judgment Debtor till date despite service of same on him.

2. The Judgment Creditor sought to execute the said Judgment on the Judgment Debtor(s) movable properties but was not able to locate any property belonging to him which could satisfy the Judgment of this Honourable Court.
3. There is no pending appeal on the Judgment of Honourable 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.
5. The immovable property of the Judgment Debtor can only be attached with the leave of this honourable court first sought and obtained.

The application is brought pursuant to S. 44 of the Sheriff and Civil Process Act, Order 4 Rule 16 of the Judgment Enforcement Rules and under inherent jurisdiction of the court.

It is supported by 12 paragraphs affidavit to which is attached exhibits A-D and a written address.

Exhibit A- is headed “application for writ of execution/certified true copy and certificate of Judgment in Suit No: FCT/HC/CV/714/2017 on the letter head of Lynks Solicitors addressed to the Registrar of this court and dated 16-1-2018.

Exhibit B- is the Certificate of Judgment dated 25-3-2018.

Exhibit C- is an affidavit deposed to by one Eyong Ogbodim Otu dated 28-6-2018.

Exhibit D- is a deed of assignment between Y. M. MAIGARI and HON. KAKA ADAM MUSTAPHA in respect of House No. 12, 116 Road, Gwarinpa II Estate Abuja.

In moving the application in court, the applicant's learned counsel relied on all the depositions in the supporting affidavit and exhibits attached.

He adopted his written address as his oral argument in urging the court to grant his application since there is no appeal against the Judgment and no counter-affidavit against the grant of this application.

On the part of the Judgment Debtor/Respondent's learned counsel who replied on points of law submitted that the issue is whether the applicant has satisfied provision of the Sheriff and Civil Process Act 2004 to warrant the grant of this application.

He said further that it is trite that writ of attachment can only be granted upon satisfaction of S.44 of the Sheriff and Civil Process Act 2004. He finally urged the court not to grant this application.

I have considered this simple application. I have also adverted to the arguments and submissions of both learned counsel both for and against the grant of this instant motion. I agree with both learned counsel that the only issue for determination is 'whether from the facts and circumstances of this application, the Judgment Creditor/Applicant has satisfied the provisions of S.44 of the Sheriff and Civil Process Act, 2004 to warrant the grant of the application?

Section 44 of the Act provides:

“execution upon immovable property if sufficient movable property of the Judgment Debtor can be found in the Federal Capital Territory, Abuja or

the State, as the case may be, to satisfy the Judgment and costs and cost of execution, execution shall not issue against his immovable property, but if no movable property of the Judgment Debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the Judgment and costs and the costs of execution, and the Judgment Debtor is the owner of any immovable property, the Judgment Creditor may apply to the court for a writ of execution against the immovable property of the Judgment Debtor, and execution may issue from the court against the immovable property of the Judgment Debtor in accordance with the provisions of this Act, and any rules made thereunder: provided that where the Judgment has been obtained in a Magistrate's court execution shall not issue out of the Magistrate's court against the immovable property but shall issue out of the High Court upon the conditions and in the manner prescribed".

From the provisions of this Section, some conditions precedents were laid down which conditions have been pronounced upon by our Courts. From the case cited by the applicant's learned counsel is the case of **SUNKO(NIG.) LTD VS SKYE BANK PLC (2017) 12 NWLR (PT. 1579)** where it was held that before a court can grant an application of this nature, the applicant must show the following:

(a) The judgment sum or the part thereof which remains due;

(b) What steps if any, had already been taken to enforce the Judgment and with what effect and

(c) That no movable property or sufficient movable property of the Judgment debtor had with reasonable diligence, been found to satisfy the Judgment debt. If upon hearing the application it appears to the Court that the writ of attachment and sale may lawfully issue against the immovable property, the court shall make an order accordingly.

The germane question to ask now is, what did I find from the supporting affidavit and the exhibits attached particularly and most importantly exhibit C?

Paragraph 7 of Exhibit C reads thus:

“that due to the Judgment Debtor’s absence on that very day we could not find any reasonable movable properties of him at the said premises to satisfy the Judgment sum which stand to the tune of N80,000,000.00 plus the 10% interest on the Judgment sum as well as cost of executing the writ”.

The deponent to Exhibit C is the Staff of Enforcement Unit of this court that went to execute the Judgment of this court. His deposition quoted above cannot in my humble view be taken to have satisfied the provision of S.44 of the Sheriff and Civil Process Act 2004 as the steps taken so far before this instant application was brought to court.

It is for the above reason that I find no merit in this application and it is therefore refused.

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S.B. Belgore
(Judge) 11-11-2020.

LEGAL REPRESENTATION:

J.N.EGWUONWU SAN, WITH JOHN AUDU for Judgment
Creditor/Applicant.

NNAMDI MBAH for Judgment Debtor/Respondent.