

IN THE HIGH COURT OF THE FEDERALCAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 15TH DAY OF OCTOBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/957/16

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

EMI SYSTEMS LTD.....PLAINTIFF

AND

1. BENJAMIN EROMONSELE

2. SIMON ADEREMI ADEYANJU

3. INTELLIGENCE DEVELOPMENT

CONSULTING GROUP LIMITED

4. THE HONOURABLE MINISTER,

FEDERALCAPITALTERRITORY

.....DEFENDANTS

RULING

The Judgment Creditor/Applicant's application is dated 7/01/2019 and filed on the 9th. It is brought pursuant to Order 43 Rules 1(1) and 2 of the High Court of the FCT (Civil Procedure)Rules 2018.

It prays the Court for the following Orders:

(1). An order of Court for the enforcement of the Judgment of this Court in this Suit dated 22/05/18 by

attaching the property known as Block A10 Flat 1, Zone A, Gudu, Apo, Abuja covered by certificate of Occupancy NO. 24d6w-3aefz-71 acr-1253e-10 and file No. LA30157 for sale.

(2) An order for a Writ of Attachment and sale against the immovable property of the 2nd Defendant known as Block A10, Flat 1, Zone A, Gudu, Apo, Abuja FCT covered by Certificate of Occupancy No. 24d6w-3aefz-71 acr-1253-10 and file No. LA 30157 for the sum of N17,520,00k and \$5000 and 10% interest per annum from the date of judgment until the judgment sum is fully liquidated.

Learned Counsel to the Judgment Creditor/Applicant rely on the 6 paragraph Affidavit in support of the application. The deponent Salihu Omeiza of 30 Chuba Okadigbo Street, Zone B, Apo Legislative Quarters deposes as follows:

1. That the 1st – 3rd Judgment Debtors are in default of their obligation to pay the Claimant the short term debt in the sum of N17,520,000 and \$5,000 only.

2. That the Judgment was delivered in favour of the Claimant/Judgment Creditor on the 22/05/18. The copy of the Judgment and the CTC of Certificate of Judgment is Exhibit A & B respectively.
3. That despite the service of the said Judgment on the judgment debtors, the Judgment Debt of N17,520,000.00k and \$5,000.00 has remained unpaid by the 1st – 3rd Defendants.
4. That the Judgment Creditor now apply for a writ of execution on the property known as Block A10, Flat 1, Zone A, Gudu, Apo Abuja covered by Certificate of occupancy No. 24d6w-3aefz-71 acr-1253e-10 and file No. LA30157 used to secure the short term debt by the 1st – 3rd Defendants which title documents are in possession of the Judgment Creditor. That no movable property of the Judgment Debtor can with reasonable diligence be found sufficient to satisfy the said judgment debt.

The Judgment Creditor/Respondent Counsel also rely on his Counter Affidavit filed in opposition Murphy Inawo of Suite 208, Jinifa Plaza Central Business District deposes that the 1st Judgment Debtor/Respondent retained the services of their law firm in October 2019. That they became aware that this matter is already at the Court of Appeal vide Motion on Notice with Appeal CA/A/792/M/19 dated 23/09/19 filed by the 2nd Judgment Debtor/Appellant having earlier compiled Records of Appeal.

The Motion on Notice is attached and marked Exhibit A. That despite being aware of the appeal the 1st Judgment Debtor/Respondent wilfully paid N2 Million on 14/10/19 being initial payment to settle the Judgment Debt without demand or pressure from the Judgment Creditor see Exhibit B & B1. That the 1st Judgment Debtor/Respondent made another payment of N2 Million vide a bank draft dated 26/11/19. See Exhibit C & C1. That the 1st Judgment Debtor/Respondent is willing and ready to liquidate

the said judgment Debtor has movable property which are sufficient to satisfy the judgment sum.

The 1st Judgment Debtor/Respondent is working towards auctioning same in order to liquidate the remaining balance of the judgment sum. That it was due to the illness of 1st Judgment Debtor/Respondent which affected his business and financial position that has delayed the liquidation of the remaining balance of the judgment sum. That the 1st Judgment Debtor is willing and ready to settle the balance of the judgment sum. That the 1st Judgment Debtor/Respondent is ready to propose a term of payment in order to liquidate the judgment debt and settle the matter amicably. That the 1st Judgment Debtor/Respondent has no intention to deny the Judgment.

I have also considered the Written Addresses of Counsel. Order 44(1) of the Sheriff and Civil Process Act states:

“If sufficient movable property of the Judgment Debtor can be found in the FCT or the state as the case may be, to satisfy the judgment and costs and cost of execution, execution shall not issue against the 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 with cost and the cost 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 the act and any rules made hereunder”.

The Judgment Creditor/Applicant's deposition in paragraph 4(f) is that no movable property of the

judgment Debtor can with reasonable diligence be found sufficient to satisfy the said judgment debt.

On the other hand the 1st Judgment Debtor/Respondent deposes that he is willing and ready to liquidate the judgment debt and has movable properties which are sufficient to satisfy the judgment sum. The judgment Creditor/Applicant has not sufficiently shown the effort it made to attach the movable properties of the Judgment/Debtor/Respondent.

In the circumstance, it is my view and I so hold that the Judgment Creditor did not show that he was diligent in finding or locating the movable properties of the Judgment Debtor.

The judgment Creditor did not also show that the property the subject matter of this application belongs to the Judgment Debtor. The title documents which

the Judgment Creditor said are in its possession are not
availed the Court. In the circumstance, I will not be
able to grant the reliefs sought. The application fails
and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

15/10/20