

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANYA ON THE 6TH DAY OF OCTOBER, 2020

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/0138/17

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

1. LUCAS ADEOSUN
2. YOMI OGUNDANA
3. BAYO OYEBAMIJI
(Trading under the name and style
OWOADE, ADEOSUN & CO.)

.....JUDGMENT CREDITOR/
APPLICANTS

AND

1. BREDERO NIGERIA LIMITED
2. ALHAJI AHMADU YARO

.....JUDGEMENT DEBTORS/
RESPONDENTS

RE: ALHAJI AMINU YARO
(Legal Representative/Next of Kin of the estate
Of Late Alhaji Ahmadu Yaro)

RULING

The Judgment Creditor/Applicant's motion dated 4/11/19 brought pursuant to Order 11 Rule 17, 18 & 19

of the Judgment (Enforcement) Rules Cap 407 LFN. Section 44 & 46 of the Sheriff and Civil Process Act Cap 55 Laws of FCT and Order 13 Rule 32 of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court.

The motion prays this Court for the following orders:

1. An Order substituting the 2nd Judgment Debtor Alhaji Ahmadu Yaro (deceased) with Alhaji Aminu Yaro, the Eldest son of the 2nd Judgment Debtor, the 2nd Judgment Debtor having died.
2. An order for the issuance of a Writ of Execution against the immovable property of the 2nd Judgment Debtor, situate at Plot 146, A3 Garki II District known as No. 19 (formerly No. 9) Ogbomoso Street, Garki, Area 8, Abuja in satisfaction of the Judgment Debtors indebtedness which stood at N157,086,00 as at 10th October 2019 by attaching and selling the

said immovable property, the Judgment Debtor having failed, neglected and or refused to liquidate the said judgment debt.

In the alternative

1. An Order of Injunction restraining Alhaji Aminu Yaro (Legal Representative/Next of Kin of the Estate of Late Alhaji Ahmadu Yaro) either by himself or acting through his agents, servants, privies or however described from disposing, selling and/or transferring or alienating the proprietary/ownership interest of the property of his late father, Alhaji Ahmadu Yaro (deceased), the said property situate at Plot 146, Zone A3, Garki II District, known as No. 19 Ogbomoso Street, Area 8, Garki Abuja, which said property is captioned in "Exhibit A" pending when the post judgment proceedings is concluded.

2. And for such further order or orders as the Court may deem fit to make in the circumstance.

Learned Counsel rely on the grounds of the application which are on the face of the motion paper. He further relied on the Affidavit of 39 paragraphs deposed to by Yomi Ogundana, the 2nd Judgment Creditor/Applicant. In the said Affidavit, he deposed that on 10/12/18, this Court entered judgment in favour of the judgment creditor. That all attempts to enforce the judgment has not been successful. That the 1st Judgment Debtor has no asset whatsoever, within jurisdiction.

The 2nd Judgment Debtor has its office in the property of the 1st Judgment Debtor situate at 19 Ogbomoso Street, Area 8, Garki Abuja. That it was formerly No. 8 Ogbomoso Street, Garki, Abuja. The digital photo is Exhibit A. That the property is currently vacant and unoccupied. That enquiry from security men at the

property revealed that the family is about to sell the property, the 2nd Judgment Debtor having passed on. That he used his phone camera to snap the said property. That the 2nd Judgment Debtor once handed over photocopies of his title documents and other related documents of the property to him to enable the firm, Owoade, Adeosun & Co request for the accrued ground rents over the said property from the Ministry of Federal Capital Territory. The statutory right of occupancy is Exhibit C.

Exhibit D is a letter from the FCDA stating that the survey of the 2nd Judgment Debtors land was successfully completed. Exhibit E is a copy of revenue receipt evidencing the payment for survey in respect of Plot 146, Zone A3, Garki 11, Abuja. That an attempt to garnish the accounts of the judgment debtors was unsuccessful. That the 2nd Judgment Debtor lived greater part of the twilight of his life in Dubai UAE where he ran and

operated the 1st Judgment Debtor. That most of the Judgment Debtors movable and immovable assets are probably located in Dubai, U.A.E. That 2nd Judgment Debtor passed on sometime in March ending or early April 2019 in Dubai. That except he is substituted with his eldest son, Alhaji Aminu Yaro, the post judgment proceedings will not be able to go on. That a letter was written informing the party sought to be joined of the indebtedness of the 2nd Judgment Debtor. The letter is Exhibit F. That the movable properties of the Judgment Debtors cannot be levied because the judgment creditors could not locate same.

He makes an undertaken to indemnify the Judgment Debtors in the event of an order for injunction. That no monetary compensation can assuage the Judgment Creditor. That the grant of the application will serve the interest of justice.

In reaction, the Judgment Debtor said he did not come to the Court with the case file. He does not know if he filed any response to the application. That they filed a further Affidavit. That his chambers only filed an appeal against the ruling of this Court delivered on 07/05/20.

However, there is a Counter Affidavit dated and sworn to by one Mercy C. Ngbadike. It is of 21 paragraphs.

I shall take it as having been relied upon by the judgment debtor. She stated succinctly as follows. That the 2nd Judgment Debtor/Respondent has passed on. That he was the alter ego of the 1st Judgment Debtor. That the agreement that led to the institution of the action was in the name of the 1st Judgment Debtor. That the 2nd Judgment Debtor is just a nominal party. That it will not be proper for Alhaji Aminu Yaro to substitute the said 2nd Judgment Debtor/Respondent. That 2nd Judgment Debtor/Respondent has left 14 children which includes 8

sisters. That it is not certain who the next of kin would be. That the immovable property situate at Plot 146, A3 Garki 11 District Abuja known as No. 19 Ogbomoso Street, Garki, Area 8 is different from the house contained in Exhibit A. That the property in Exhibit A was given as a gift by the 2nd Judgment Debtor to one of his heirs Abubakar Ahmadu Yaro. The deed of gift is Exhibit S& C1. That the said property is not a family property. That it will be in the interest of Justice to refuse the application.

I have read the Affidavit in support and the Counter Affidavit of the Judgment Debtors. I have also read the Written Addresses of Counsel. Learned Counsel to the judgment creditor canvassed that the counter affidavit deposed to by Mercy Ngbadike has no probative value. That she is a litigation Secretary. That the source of the

information she received relates only to paragraph 4a – 4c.

Section 115 (3) & (4) of the Evidence Act states:

“3. When a person deposes to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

“4. When the belief is derived from information received from another person, the name of the informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.

The deponent deposes in paragraph 4 of the Counter Affidavit thus

“That I was informed by Barrister Mohammed Sani Esq. Counsel handling the matter in chamber at 04.00 pm on the 16th Day of March 2020 as follow...”

In paragraph 1 & 2 she deposes:

“1. That I am the litigation Secretary in the law firm of Sani & Co

“2. That by virtue of my position aforesaid, I am conversant with the facts leading to this Counter Affidavit.

In my humble view, the Deponent satisfies Section 115 (3) &(4) of the Evidence Act. The argument of judgment Creditor Counsel to discountenance the Counter Affidavit fails.

The 1st issue in my view is whether the Judgment Creditor/Applicant has made out a case to enable the Court substitute the 2nd Judgment Creditor Applicant with Alhaji Aminu Yaro. In paragraph 21 of the Affidavit in support of the motion, the deponent deposes that the 2nd Judgment Debtor passed on sometime in March or early April 2019.

In paragraph 22 & 23, the Applicant deposes that the party sought to substitute the 2nd Judgment Debtor is his eldest son Alhaji Aminu Yaro. That the said Alhaji Aminu Yaro was informed of his fathers indebtedness vide Exhibit F. That he failed to reply. In the Judgment Debtors Counter Affidavit, they acknowledged the Judgment. They also confirmed in paragraph 5 that the 2nd Judgment Debtor has passed on. There is no dispute therefore that the party sought to substitute the 2nd Judgment Debtor is his first son.

I have taken a Cursory Look at Order 13 Rule 32 and Order 11 Rules 17, 18 & 19 of the Judgment (Enforcement) Rules Cap 407.

Rule 17 states – “If any person against whom a judgment has been given shall die before execution has been fully levied, an application for execution therefore may be made against the legal representative or the estate of

the person so dying as aforesaid; and if the Court shall think proper to grant such application the judgment may be executed accordingly”.

In the circumstance of this case, the party sought to substitute the 2nd Defendant being the 1st son is the heir to the estate of the 2nd Judgment Debtor. It is therefore necessary that he be joined as a party to this proceedings.

On the issue of whether the applicant has put sufficient materials to warrant the issuance of a writ of execution. I have read the argument of the Counsel to the Judgment Creditor and the Judgment Debtor. By Order 44 of the Sheriff and Civil Process Act.

“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 cost 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 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 this Act, and any rules made thereunder.

It is clear from the Affidavit evidence of the Judgment Creditor/Applicant that:

(1).He has shown the steps she took to enforce the Judgment. That the 1st Judgment Debtor has no asset whatsoever within jurisdiction. That all efforts to garnish

the accounts of the Judgment Debtors have failed. That most of the Judgment Debtors movable and immovable assets are probably in Dubai U.A.E. That the Judgment Debtors indebtedness to the Judgment Creditor/Applicant stands at N157,086,000. That the Judgment Creditor has with due diligence been unable to locate, the moveable assets of the Judgment Debtors sufficient to defray their indebtedness to the Judgment Creditor.

Exhibit C is the statutory right of occupancy in the name of the 2nd Judgment Debtor in respect of the property sought to be levied upon. The above is confirmed by Exhibit D & E which are all in the name of the 2nd Judgment Debtor/Respondent.

The Judgment Debtor/Respondent Affidavit evidence is not weighty enough to sway me from granting the reliefs sought. The depositions and the Exhibit A attached to

the Counter Affidavit are not reliable. The Deed of Gift is not admissible. It is not stamped and or dated. It is worthless in my view.

In totality, the application succeeds.

(1) The 2nd Judgment Debtor Alhaji Ahmadu Yaro (deceased) is hereby substituted with Alhaji Aminu Yaro, the eldest son of the 2nd Judgment Debtor.

(2) A Writ of Execution is hereby issued against the immovable property of the 2nd Judgment Debtor situate at Plot No. 146, A3 Garki II District known as No. 19 (Formerly No. 8) Ogbomoso Street, Garki Area 8, Abuja in satisfaction of Judgment Debtor's indebtedness which stood at N157,086,000 as at 10th October 2019 by attaching and selling the said immovable property.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)

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