

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO-ABUJA

ON THE 11TH DECEMBER 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT\HC\CV\126/18

BETWEEN:

THE DEPUTY SHERIFF OF FCT HIGH COURT APPLICANT

AND

1. MRS. AKPEZE JOHN OKO CLAIMANT

2. MR. ALFA GABRIEL JUDGMENT CREDITOR

D.A DAVID MRS. FOR THE APPLICANT

MAGNUS ONOH FOR THE CLAIMANT

RULING

The Applicant by way of interpleader summons dated and filed on 7th November 2018 seeks the following prayers:

“1. A DETERMINATION OF THIS HONOURABLE COURT AS TO WHETHER OR NOT THE CLAIMANT HEREIN IS THE LAWFUL OWNER OF THE RED MITSUBISHI ENDEAVOUR SUV JEEP WITH REGISTRATION NO YAB 27 AR, CHASSIS NO 4A4MN21544E011745 which was attached in the execution of the court’s judgment in suit no FCT/HC/CV/1194/16 between Mr ALFA GABRIEL V MR OKOH OWOICHO.

3. AN ORDER OF THIS HONOURABLE COURT DIRECTING THE APPLICANT
HEREIN TO EITHER

(a) TRANSFER THE SAID ATTACHED VEHICLE TO COURT FOR THE
SATISFACTION OF THE JUDGMENT CREDITOR'S JUDGMENT SUM: WHERE
THE CLAIM IS DEEMED BY THE COURT TO HAVE FAILED.

(b) TO RELEASE SAME TO THE CLAIMANT PURSUANT TO HIS CLAIM IF THE
CLAIM IS DEEMED BY THE COURT TO HAVE BEEN ESTABLISHED.

(c) AND FOR SUCH FURTHER ORDER(S) AS THIS HONOURABLE COURT MAY
DEEM FIT TO MAKE IN THE CIRCUMSTANCES OF THIS CASE".

The summon is supported by an 8 paragraph affidavit deposed to by Edna Shuaib, litigation secretary of the legal unit of the High Court of the FCT, Abuja. Therein it was deposed inter alia that in suit no FCT/HC/CV/1194/16 between Mr ALFA GABRIEL V MR OKOH OWOICHIO, judgment was entered against the Defendant/Judgment creditor (sic) that in execution of the said judgment, the execution officers of the Applicant's office attached a RED MITSUBISHI ENDEAVOUR SUV JEEP WITH REGISTRATION NO YAB 27 AR, CHASSIS NO. 4A4MN21544E011745 believing that it belongs to the Judgment Creditor (sic) (debtor)

Subsequently the Claimant wrote to the office of the Applicant claiming ownership of the said attached vehicle, attaching photocopies of all documents he intends to rely on in the course of the INTERPLEADER proceedings.

See Exhibits A& B respectively.

That the Applicant has no financial or pecuniary interest in the attached vehicle and has not in any way, manner or form colluded with either the Claimant or his Judgment Creditor (sic) (debtor).

That the Applicant is willing to transfer the attached vehicle to the court or to dispose of it as the court may direct.

Adopting the Applicant's written address in support of the summons Mrs David placed reliance on Order 48 Rules 2 of the Rules of this court and S.34 Sheriff and Civil Process Act CAP S 6LFN 2004, it was submitted that it is the duty of the Sheriff to present the parties before the court bearing in mind that in Interpleader proceedings, the Claimant is deemed the plaintiff while the Judgment Creditor is the Defendant. See **NIGERIAN-ARAB BANK V ALHAJI MUSA ADAMU ABDULLAHI (2000) 6 NWLR (PT 662) 549 Ratio 4; ALHAJI MUSA KALA V ALHAJI BURAU POTISKUM AND ANOTHER (1998) 3 NWLR (PT 540) 1; WEST AFRICA COTTON LTD V MAIWADA (2008) ALL FWLR (PT 405) 1784 AT 1793 PER KEKERE – EKUN JCA;**

The court was urged to determine the interpleader based on the evidence pleaded before it and to direct the Applicant accordingly. At the hearing of this application on 22nd October 2019, one Reuben ChakuEsq appeared for the Judgment Creditor. He informed the court inter alia that he had just been briefed the day before. He sought a day short date to file their relevant processes.

The matter was adjourned to 12th February, 2020 for definite hearing.

Thereafter, as is now public knowledge the covid-19 pandemic broke out, followed by a lock down.

On 14th October 2020 D.A David Mrs appeared for the Applicant and Magnus OnohEsq appeared for the Claimant. There was no appearance for the Judgment Creditor.

Mrs David informed the court that the Judgment Creditor had not served them any processes. Mr Onoh also informed the court that they served hearing

notice on the counsel to the Judgment Creditor on 12th October 2020 and he had met him personally and spoken to him delivering the service and he had acknowledged service on 9th October 2020, he had also sent counsel to the Judgment Creditor a text message reminding him of the case. All this notwithstanding learned Judgment creditor's counsel still had not filed anything in opposition to the Claimant's claim.

The court on being satisfied that hearing notice was served on the counsel to the Judgment creditor, proceeded to hear the interpleader summons.

Mr Onoh for the Claimant relied on the exhibits filed by the Applicant and urged the court to release the vehicle to the Claimant, the owner, in the absence of any contrary evidence from the Judgment creditor.

Now the question to be determined by this Honourable court is whether or not the Claimant is the lawful owner for the Red Mitsubishi Endeavour SUV Jeep with Reg. No YAB 27 AR Chassis no 4A4MN21544E011745 which was attached in the execution of the court's judgment in suit no FCT/HC/CV/1184/16 between Mr Alfa Gabriel V Mr Okoh Owoicho.

As rightly submitted by learned counsel to the Applicant, in interpleader proceedings the onus is on the Claimant to prove her title to the property. In this case that the vehicle belongs to her and not to the Judgment debtor.

See **CHIEF OBUMSELI & ANOR V CHINYELUGO P. UWAKWE(2019) LPELR – 46937 (CA).**

I have perused Exhibits A & B attached to the affidavit in support of this interpleader summons.

Exhibit A is the notice of claim to the said vehicle from TochukwuNwazotaEsq counsel to the Claimant, dated 12th June 2018, attached to Exhibit A are inventory and notice of sale dated 6th June 2018, and the particulars of the said vehicle in the name of Akpezi John Oko from 2014 to 2017 I did enquire of learned counsel to the Claimant MrsAkpeze John Oko to explain the difference in the name "Akpezi John Oko in the vehicle particulars attached to which he responded that the "Akepeze" is a typographical error as the actual name of the Claimant is "Akpezi John Oko"

In the absence of anything to the contrary I accept learned counsel's explanation that the Claimant is indeed Akpezi John Oko whose name appears in the vehicle particular Endeavour SUV Jeep with Registration NO YAB 27 AR, chassis NO 4A4MN21544E011745 which was attached in the execution of the court's judgment in suit no FCT/HC/CV/1194/16 between Mr Alfa Gabriel V Mr Okoh Owoicho.

There is no contrary claim of ownership to the said vehicle before this court. Akpezi John Oko is not a party in suit No FCT/HC/CV/119/16. The vehicle should not have been attached.

A judgment cannot be binding on a person who is not a party to the suit, therefore a successful writ of execution can only bind other parties before the court, especially the Judgment debtor, and not a third party. See **HOLMAN BROS V THE COMPASS TRADING CO. LTD 91992) I NWLR PT 217 AT 368.**

Having determined that the Claimant is the lawful owner of Red Mitsubishi Endeavour Jeep Reg. NoYAB 27 AR, CHASSIS NO. 4A4MN21544E011745 which was attached in the execution of the court's judgment in such No FCT/HC/CV/1194/16 between Mr Alfa Gabriel V Mr Okoh Owoichio, the Claimant's claim succeeds. I hereby order the Applicant, the Deputy Sheriff High Court of the FCT to release the said vehicle forthwith to the Claimant.

Hon. Judge