



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

**IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



MOTION NO: FCT/HC/M/350/2018

BETWEEN:

MACKRELL TURNER GARRETT (A FIRM).....RESPONDENT

AND

XERXES GLOBAL INVESTMENT LIMITED.....APPLICANT

RULING

The Respondent vide an Exparte application dated 7th November, 2018 sought and obtained leave of this Court on 25th January, 2019 to register the Judgment of the **Senior Courts Costs Office, England and Wales obtained against the Applicant in Claim No.JJ1705226:Mackrell Turner Garrett (A Firm) Vs Xerxes Global Investment Limited dated 28th August, 2018.**

The Applicant who is not happy with the above Order filed a Motion on Notice on 3rd July, 2020 seeking an Order for enlargement of time within which to apply for an Order setting aside the registration of the above Judgment. The Applicant is also seeking an Order

suspending the execution of the registered Judgment and an Order setting aside the registration of the disputed Judgment. Eight grounds were listed in support of the application. Mr. Emmanuel Okewu, a Legal Practitioner in the Firm representing the Applicant deposed to a 25-paragraphs affidavit in support. Three documents were annexed to the affidavit and marked as Exhibits AAA1 to AAA3. There is also a written address in line with the Rules of Court.

In opposing the application, the Respondent filed a counter affidavit of 17-paragraphs deposed to by one Ikechukwu Odozor of Counsel to the Respondent. Photocopies of certain documents were attached and marked as Exhibits GOC1 to GOC9. Learned Counsel also filed written address in obedience to the Rules of this Court.

The Learned Counsel to the Applicant informed the Court that he did not file a reply because the Respondent's counter affidavit was filed out of time. In reaction, the Respondent's Counsel submitted that since the Applicant's motion among other things sought for extension of time, the Respondent was not out of time taken into account that the application for extension of time was granted at the last adjourned date. I agree with the Respondent's Counsel on this point as his argument represents the correct position of the law. This now takes me to the main application.

I have read the gamut of processes filed by parties in this application and it is clear to me that the grounds upon which this application is founded as captured on the face of the application are as set down below:

- (a) The Judgment Debtor/Applicant did not receive any notice to Defend the claim neither did the Judgment Debtor/Applicant appear in the entire proceedings that led to the Judgment delivered by the Senior Courts Cost Office, England and Wales with Claim No.JJ1705226: Mackrell Turner Garrett (A Firm) Vs Xerxes Global Investment Limited as provided for under Section3(2)(c) of the Reciprocal Enforcement of Judgment Ordinance Cap 175 LFN 1958 and Section 6(1)(a)(iii) of the Foreign Judgments (Reciprocal Enforcement) Act Cap. F35 LFN 2004.**
- (b) The original Court, that is: Senior Courts Cost Office, England and Wales did not have the jurisdiction to determine the Suit with Claim No.JJ1705226: Mackrell Turner Garrett (A Firm) Vs Xerxes Global Investment Limited as provided for under Section3(2)(a) & (c) of the Reciprocal Enforcement of Judgments Ordinance Cap 175 LFN 1958 and Section 6(1)(a)(ii) of the**

**Foreign Judgments (Reciprocal Enforcement) Act Cap.
F35 LFN 2004.**

- (c) Lack of proper service.**
- (d) That the Judgment Creditor/Respondent is unknown to the Judgment Debtor/Applicant, as the Judgment Debtor/Applicant never briefed the Judgment Creditor/Respondent for its legal services.**

Now the primary contention of the Applicant is that it was denied fair hearing by the Senior Courts Cost Office, England and Wales in Claim No.JJ1705226: Mackrell Turner Garrett (A Firm) Vs Xerxes Global Investment Limited as notice of the Suit was not served on it. Applicant also denied the existence of any contractual relationship with the Respondent. These issues in my view are weighty as fair hearing is fundamental to judicial adjudication. However, the Respondent joined issue with the Applicant vide its counter affidavit where it stated that the Applicant was duly served through Newspaper publication and that the Applicant indeed engaged the services of the Respondent.

With due respect to the Applicant's Counsel, this Court is not the proper forum to challenge the validity of the Judgment in dispute. The proper thing is for the Applicant to approach the Senior Courts Costs Office, England and Wales to contest the validity of the

Judgment or appeal same. This Court cannot pretend to be clothed with requisite jurisdiction to review the decision of a Foreign Court. Whether the Applicant was served with originating process and hearing notices or not can only be resolved by looking at the record of the Senior Courts Costs Office, England and Wales. It is also the record of that Foreign Court that will resolve the question of whether evidence was led by the Respondent that he was engaged by the Applicant. This Court with the greatest respect is not competent to determine these critical issues.

In **CONOIL PLC Vs VITOLS S.A (2011) LPELR- 199951 (CA)**, the Court of Appeal (per Bada, JCA) aptly stated the Law as follows:

“The Law is that it is not the duty of the registering Court to sit on appeal over the decision of the original Court that delivered the Judgment sought to be registered. My view is fortified by the decision of the Supreme Court in the case of WITT & BUSCH LTD V. DALE POWER SYSTEMS PLC (2007) 17 NWLR PART 1062 Page 1 at 23 – 24 Paragraphs G – A: where it was held as follows:- "I entirely agree with the statement of the laws as declared in the lead Judgment particularly on the point that Section 3 (1) of the Reciprocal Enforcement of Judgment Ordinance was

applicable to the case. I will also add that it is not the duty of the Court entertaining application for the registration of a Foreign Judgment to sit as an Appellate Court over the Foreign Judgment. The Respondent to the Judgment sought to be registered is expected to have exercised its right of appeal under the laws of the Foreign Country. All that the Court to which the application is made needs to do is to ensure that the Appellant complies with the requirements of our laws on registration of Foreign Judgment. I believe that requirement has been met."

See also the case of **I.F.C Vs DSNL OFFSHORE LTD (2008) 9 NWLR (PT. 1093) 606 AT 633 PARAS E-F** where Galadima, JCA (as he then was) made it abundant clear that:

"The fact that the registration of a Foreign Judgment ought not to have been made in the first instance, without more, is not a ground for setting aside a registration because if it were, the Judge that registered it would be sitting in Judgment over his own earlier Ruling."

From the incisive position of the Law set out above, it is clear to me that this application is conclusively lacking in merit. This Court

cannot sit on appeal on its Ruling. It is also inconceivable that this Court under whatever pretence will assume jurisdiction to impeach the Judgment of a Foreign Court. The application is accordingly refused and dismissed for want of merit without further assurance.

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
04/02/2021