

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 22**  
**CASE NUMBER : SUIT NO: CV/1502/17**  
**DATE: :TUESDAY 26<sup>TH</sup> JANUARY, 2021**

**BETWEEN**

**NATASHA HADIZA AKPOTI ...JUDGMENT CREDITOR/RESPONDENT**

**AND**

- 1.THE AUTHORITY MEDIA & PUBLICATIONS LTD**  
**(Publisher of the Authority Newspaper)**
- 2.DR. PATRICK IFEANYI UBAH**  
**(Publisher of the Authority News Paper)**
- 3. WILLIAMS ORJI**

**JUDGMENT DEBTORS/  
APPLICANTS**

**AND**

- 1. FIRST BANK OF NIGERIA PLC.**
- 2. FIDELITY BANK PLC.**
- 3. GUARANTY TRUST BANK PLC.**
- 4. UNITED BANK FOR AFRICA PLC.**
- 5. ZENITH BANK PLC.**
- 6. ACCESS BANK PLC.**
- 7. HERITAGE BANK PLC.**
- 8. ECOBANK PLC.**
- 9. FIRST CITY MONUMENT BANK PLC.**
- 10. UNITY BANK PLC.**
- 11. UNION BANK PLC.**

# **RULING**

The Judgment Debtor/Applicant approached this Honourable Court for the following:-

1. An Order of Court setting aside the Order Nisi made in this Suit for the purpose of garnishing the accounts of the Judgment Debtor/Applicant on the 19<sup>th</sup> day of May, 2020 in satisfaction of the Judgment of this Honourable Court delivered on 7<sup>th</sup> day of May, 2019.
2. And for such further and or other Orders as the Court may deem fit to make in the circumstance.

In support of the application is an affidavit of 19 paragraph duly deposed to by the 3<sup>rd</sup> Judgment Debtor/Applicant.

It is the deposition of the Applicant that this Court made an Order Nisi in this Suit on the 19<sup>th</sup> May, 2020.

That the Appeal against the Judgment of this Honourable Court which sought to be enforced has been entered at the Court of Appeal, Abuja in **Appeal No. CA/A/1121/20** consequent upon the transmission of the Record of Appeal.

Applicant aver that upon delivery of the Judgment of this Honourable Court on 7<sup>th</sup> May, 2020 Judgment Debtor/Respondents filed and served on the Judgment Creditor/Respondent a Notice of Appeal, Motion for Stay of Execution but when the case came upon the 6<sup>th</sup> February, 2020 the Court was informed that Motion for Stay of Execution has been filed at the Court of Appeal vide Exhibit 'A'.

That Appeal having been entered in this Suit robs this Honourable Court of jurisdiction in making the Order Nisi and the anticipated Order Absolute.

That the decision of this Honourable Court granting the Order Nisi impugn the decision of the Court of Appeal and would render nugatory any decision the Appellate Court may make upon the hearing of the application pending before it to stay the execution of this Court's Judgment.

A written address was filed wherein the issue *whether this Honourable Court was right to have granted the Order Nisi the subject matter of this application at a time its attention had been drawn to the pendency of an application for stay of execution as well as the entering of the Appeal*

*against its Judgment was formulated for determination.*

It is the submission of learned counsel that when an application is pending before a High Court, the result of which is likely to affect proceedings in a Lower Court, it is better for the latter Court to await the outcome of the application.

***OWUPELE & ORS VS OGBOLLO & ORS (2002)  
LPELR 12698 CA.***

Counsel submit that as soon as an Appeal is entered in the Appellate Court, it becomes fully seized of the matter and from thence forward, the Court becomes dominus litis having full and complete dominion over all processes filed and ensuring proceedings to the exclusion of the Lower Court. ***ABRAHAM***

***ADELEKE & ORS VS OYO STATE HOUSE OF ASSEMBLY & ORS (2006) LPELR 7655.***

Counsel contended that a Court Order can be regarded as nullity where the Court has acted without jurisdiction or the Judgment or Order was obtained by fraud or where there has been non-compliance with a fundamental procedural rule which has led to breach of fundamental right to fair hearing.

***OKAFOR VS A.G. ANAMBRA STATE (1991) 2 SCNJ 345.***

Court was finally urged to set aside the Order Nisi issued on the 19<sup>th</sup> May, 2020 in the interest of justice.

Upon service, the Judgment Creditor/Respondent filed 8 paragraph counter affidavit deposed to by

One Katherine ChindiutoOkereke, a litigation secretary in the law firm of the Judgment Creditor/Respondent.

It is the deposition of the Respondent that no Appeal is pending before the Court of Appeal with respect to the Judgment of this Honourable Court delivered on the 7<sup>th</sup> May, 2019 in **Suit No. CV/1502/17**.

That the Judgment of this Honourable Court made on the 7<sup>th</sup> May, 2019 was made in respect of **Suit No.CV/1502/2017** and not **Suit No. NIC/LA/88/2015** as contained in Exhibit 'B'.

That all other processes filed by the Applicants before the Court of Appeal with respect to **Suit No. CV/1502/2017** are not proper before the Court of Appeal and that it will be in the interest of justice to refuse this application.

A written address was filed wherein the issue *whether the Judgment Debtor has filed and entered an Appeal with respect to the Judgment of this Honourable Court delivered on the 7<sup>th</sup> May, 2019 in Suit No. CV/1502/17 between NATASHA HADIZA AKPOTI VS THE AUTHORITY MEDIA & PUBLICATIONS LTD. & 2 ORS was formulated for determination.*

Arguing on above, learned counsel contended that no Notice of Appeal was filed by the Applicants herein with respect to the Judgment of this Honourable Court and that a careful examination of the said Notice of Appeal shows that it was not filed with respect to **Suit No. CV/1502/17** which is the case the garnishee Order Nisi was made by this Honourable Court.



Learned Counsel submit that a competent Notice of Appeal is the foundation and substratum of every appeal. *ADELEKAN VS ECU-LINE (2006) LPELR (SC)*.

Counsel submit that the alleged stay of execution filed by the Applicant before the Court of Appeal incompetent.

Court was urged to dismiss this application.

**Court:-**I have gone through the arguments of both parties with respect to the position of Garnishee proceedings generally.

It is a settled position of the law that Garnishee Proceedings is in a class of its own.

It is instructive to note that the law regulating Garnishee proceedings is the Sheriff and Civil Process Act and the Judgment Enforcement Rules.

Garnishee Proceedings, is a separate action initiated by a Judgment Creditor against a 3<sup>rd</sup> party who is allegedly in custody of funds belonging to a Judgment Debtor.

The law over the years permits for both proceedings to be initiated regardless of pendency of appeal against the Judgment of the court in question in view of the fact that the said Judgment Debtor is not usually a party to the Garnishee proceedings. Above underscores the argument of learned counsel for the Judgment Creditor/Respondent in this situation.

I have read the authority of ***NIGERIA BREWERIES PLC. VS DOMUJE & ANORS***

*(2015) (Pt. 1515) LPELR – 25583 (CA) Per OGUNWUMIJU JCA, (Page 78-84) paragraph B-E,* which clearly seem to depart from the ageless position with relation to Garnishee Proceedings, regardless of the provisions of section 83(1), (2) and (3) of the Sheriff and Civil Process Act, Judgments Enforcement Rules.

The Court of Appeal has held in the aforementioned case of *DUMUJE & ANOR*(supra) that the existence of an application for stay of execution is a bar to even commencement of Garnishee Proceedings.

It is the argument of learned counsel for the Judgment Debtor/Applicant that Judgment Creditor's counsel suppressed the fact that appeal was lodged and application for stay filed after same

was entered and served on them from court. I have seen the said Notice of Appeal, application for stay of execution filed at the Court of Appeal. Even though the Suit No. was **NIC/LA/88/2015** different from case No. **CV/1502/2017**. I have however seen a Motion on Notice filed by the Respondent seeking to correct the error made on the said Notice of Appeal.

I am satisfied without much ado that being a trial court, I must await the outcome of the Court of Appeal decision on the same matter. This is a matter of Constitutional Law.

Accordingly, the initial Order Nisi made, cannot stand, same having been made after an application for stay of execution which was duly filed and served on the Judgment Creditor was subsisting.

Accordingly, the said Order Nisi made is hereby set aside. I rely on section 91 of the Sheriff and Civil Process Act.

The battle field shall now be the Court of Appeal. I wish parties well.

*Justice Y. Halilu*  
*Hon. Judge*  
*26<sup>th</sup> January, 2021*

**APPEARANCE**

SAMUEL OGALA – for the Judgment  
Creditor/Respondent.

Judgment Debtor/Applicant not in court and not  
represented.