

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 32
CASE NUMBER: SUIT NO. FCT/HC/CV/6536/2020
DATE: 18th MARCH, 2021

BETWEEN:

COMFORTABILITY MULTY SERVICES LIMITED.....CLAIMANT/APPLICANT

AND

- 1. OHAJI EGBEMA LOCAL GOVERNMENT**
- 2. CHAIRMAN OHAJI/EGBEMA LGA.....DEFENDANTS**

APPEARANCE:

U. K Epuchie Esq for the Judgment Creditor/Respondent.
Judgment Debtor/Applicant unrepresented.

RULING

By a Motion on Notice with Motion No. M/12210/2020, dated 20th day of November, 2020 filed on 23/11/2020, the Judgment

Debtor/Defendants/Applicants prayed this Honourable Court for the following:-

- 1) An Order setting aside the Respective Garnishee order Nisi made in respect of the Judgment in suit NO: HOW/713/2016 by Honourable Justice E. F Njemanze, sitting at Owerri on the 12th day of March, 2018, for being incompetent, null, void thereby robbing the Court of its jurisdiction to entertain same.
- 2) And for such further orders as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which this Application is bought are as follows:-

- 1) This Honourable Court lacks the jurisdiction to entertain this Application.
- 2) The Garnishee proceedings in this case was brought in contravention of the provisions of Imo State Court proceeding Law No. 21 of 2017 and Sections 82 (2) of the Sheriffs and Civil process Act CAP 56 Laws of the Federation of Nigeria 2004, resulting in breach of fair hearing. In that the Judgment Debtor/Defendant/Applicants were not served with the order Nisi as required by Law.

- 3) The consent of the attorney General of Imo State which is a mandatory requirement was not sought by the Judgment Creditor/Respondent before the Commencement of the Garnishee proceedings in this case, hence violating Section 84 (1) of the Sheriffs and Civil Processes Act.
- 4) The Garnishee proceedings is in violation of the Rules set out by the Sheriffs and Civil process Act.
- 5) That the particulars of the Judgment Debtors Accounts wherein the money sought to be attached were not listed.

The Application is supported by an Affidavit of 21 paragraphs deposed to by one Bruno Nwachukwu, a litigation officer in the office of the Hon. Attorney General of Imo State as well as a written address dated 20th day of November, 2020.

Meanwhile, the Judgment Creditor/Respondent filed a written address in opposition to the address filed by the Judgment Debtors/Applicants. The said written address is dated 29th day of January, 2021.

In the written address of the Judgment Debtor/Applicants, a lone issue for determination was formulated thus:-

"Whether the Garnishee order Nisi together with the Garnishee proceedings is incompetent, null and void and therefore liable to be set aside."

Learned Counsel to the Judgment Debtor/Applicant proceeded to argue the issue.

On the part of the Judgment Creditor/Respondent argued specific issues of law as it relates to this Application.

Now, I have carefully considered this Motion on Notice, the reliefs sought, the grounds predicated the Application, the supporting /affidavit as well as the written address filed in support of same.

In the same vein I've given due consideration to the submissions for the Judgment Creditor/Respondent in the written address.

In my view, the issue for determination is whether the Judgment Debtor/Applicant has satisfied the Court to be entitled to the reliefs sought.

The supporting Affidavit of the Judgment Debtor/Applicant provides:-

- "1. That I am a litigation officer in the office of the Hon. Attorney General of Imo state and by virtue of my position, I am conversant with the facts of this case.***
- 2. That I have the consent and authority of the Judgment Debtors/Applicants to depose to this Affidavit on their behalf.***
- 3. That the instant suit was instituted in 2016 and the Judgment was delivered at Imo State High Court***

sitting in Owerri and presided over by Honourable Justice E. F. Njemanze on the 12th day of March, 2018.

- 4. That the Judgment Creditor/Respondent commenced a Garnishee proceeding before this Honourable Court.*
- 5. that the Order Nisi was made by this Honourable Court on the 17th of July, 2020, during the Covid-19 pandemic with the attendant nationwide lockdown which prevented inter-state movement.*
- 6. That the service of the Garnishee Order Nisi was never effected on the Judgment Debtors/Applicants but was only served at the Civil Litigation Department, Ministry of Justice, Owerri.*
- 7. That I know as a fact that the consent of the Attorney General of Imo State was not sought and obtained by the Judgment Creditor/Respondent before the Garnishee Proceedings in this case.*
- 8. That I also know that failure to serve the Orders on the Judgment Debtors is an infraction of the Judgment Debtors constitutional right to fair hearing.*

- 9. That the Judgment Creditor/Respondent did not State the Particular Banks with the Account Numbers wherein they seek to attach the funds.**
- 10. That the Judgment Debtors/Applicants do not have any asset/funds within the jurisdiction of Federal Capital Territory Abuja.**
- 11. That all the assets of the Judgment Debtors/Applicants are within Imo state.**
- 12. That the Application for Order Nisi was listed in Motion No. M/8287/2020.**
- 13. That the Garnishees as shown on the face of the motion were Central Bank of Nigeria, Polaris Bank Plc and Keystone Bank Plc.**
- 14. That the Second Motion is Motion No. M/10760/2020 between same parties wherein the Judgment Creditor/Respondent sought and obtained order for joinder of seventeen (17) other Banks to the Application for Garnishee order Nisi.**
- 15. That the Learned trial Judge by order made on 26th October, 2020, directed that the Garnishee order Nisi made on 17/7/2020 to extend to the 4th -20th Garnishees.**

- 16. That after the joinder, the Application was adjourned to 24/11/2020 for hearing of the second phase.***
- 17. That on the 16/11/2020 by 7:25, a certified true copy of these two orders were served on the litigation Department of Ministry of Justice. Imo State.***
- 18. That I know that application for Garnishee Order Absolute is only listed for hearing after all the parties have been served and there must be fourteen (14) days gap between the date of service and the date it is fixed for hearing.***
- 19. That the Judgment Creditor/Respondent has not complied with these statutory requirement.***
- 20. That it is in the interest of Justice to grant this Application as same touches on the Judgment Debtors/Applicant's Constitutional right to be heard.***
- 21. That I depose to this Affidavit in good faith, sincerely and conscientiously believing the contents to be true and correct to the best of my knowledge and in accordance with the Oaths Act 2004.***

All the above issues raised by the Judgment Debtor/Applicants were extensively argued in the written address filed in support of the Application.

It is the argument of the Applicants particularly in 3.01-3.04 of their address that the Court has inherent Jurisdiction to set aside its decisions, or orders in appropriate cases especially that relating to lack of jurisdiction.

Likewise it is submitted particularly in paragraphs 3.05-3.29 therefore that service of mandatory process is fundamental to the jurisdiction of the Court when there's a specific provision in that regard. Reliance was placed on Section 83 (2) of the Sheriffs and Civil Process Act.

It is submitted by the Learned SAN L. M ALOZEI in the written address that service of order Nisi on the Judgment Debtor at least Fourteen days before the hearing wherein the Order Nisi will be made absolute is mandatory.

Many authorities were cited in this regard and it is submitted that failure to serve the order Nisi on the Judgment Debtor/Applicants goes to the root and robs the Court of jurisdiction to make the order absolute.

Furthermore, it was submitted by the Learned silk in the written address, particularly paragraph 3.30-3.44 thereof, that Application

for Garnishee proceedings in this case was commenced in breach of the provisions of Section 84 of the Sheriffs and Civil process Act CAP 56 LFN 2004 and Section 8 of the Imo State Court proceeding law No. 21, 2017.

In particular it is submitted by the Learned silk in paragraph 3.33 as follows:-

"My Lord, the Judgment Creditors/Respondents are by their Application seeking for an Order of Garnishee over the joint account of the State and Local Government Councils in the State. It is in Evidence and indeed a notorious fact that though the money sought to be Garnisheed is in the custody of the Garnishee Bank, it is however under the control of the Accountant-General of Imo State who is a public officer. The consent of the Attorney General which as a result of the above became a mandatory requirement was not sought for by the Judgment/Creditor/Respondent before the commencement of the Garnishee proceeding in this case, and that same renders the order Nisi a nullity and liable to be set aside."

On the other hand in his reply address, the Learned Counsel to the Judgment Creditor/Respondent. Epuchie Esq, submitted in paragraph 2.7 of the address that the applicants herein acted in total disregard of a valid Court Judgment against them which led to filing of Garnishee proceeding to satisfy the Judgment sum and instead of trying to assist the Court to arrive at Justice for the Judgment Creditor, the Learned silk intends to frustrate the entire process by bringing this Application.

It is submitted further in paragraph 2. 10 of the reply that the Court of competent Jurisdiction in Imo State Judiciary delivered Judgment in respect of this case on the 12th day of April 2018. The Judgment Debtor alongside his Counsel refused, failed and neglected to obey the Judgment of the Court with the mind set that they are Government Agency and agent and are above the law. In paragraph 2. 12 it is submitted further that is on this backdrop that the Judgment Creditor/ Respondent approached the F.C.T Judiciary via an Application to Registrar the said Judgment as foreign Judgment as provided by the Rules of this Honourable Court, thereby making the Judgment the Judgment of the F.C.T High Court which foretells that there is no business whatsoever and however to do with Imo State Judiciary.

It is submitted in paragraph 2.14-2.17 among others, that in the instant case, consent of the Hon. Attorney General of Imo state is not required.

That the said funds in the Garnishees custody are not funds belonging to or in the custody of a public officer or in custodial egis to require the consent of the Attorney General prior to disbursement or attachment vide Garnishee Proceedings.

Authorities were cited in support of these arguments. In paragraph 2:18, it submitted that Garnishees in custody of the Judgment Debtors/Applicants funds are not Federal Government Agencies or public officers and will not require any form of consent to release the fund in their custody to satisfy Judgment sum delivered by competent Court of record. In 2.21 thereof, Counsel submitted that failure of the Applicants to do the needful makes it contemptuous and until the that contempt is purged, they cannot approach any Court of law for any redress because he that comes to equity must come with clean hands and their hands are not clean.

Learned Counsel finally urged the Court to discountenance the submissions of the learned silk and dismiss this Application with substantial cost.

Now, pursuant to a Motion Exparte dated 17th day of March, 2020 and filed same day, the Respondent herein filed an Application before this Honourable Court brought pursuant to order 52, Rule 5 (2) of the High Court of the F. C.T (Civil Procedure Rules) 2018, Sections 104 and 105 of the Sheriffs and Civil Process Act for leave of the Court to Registrar the Judgment delivered by Hon. Justice E. F. Njemanze of the Imo State High Court as the Judgment of this Court.

In the supporting Affidavit to the said Application, particularly paragraph 3 (h) thereof it was averred that the Defendants may have undue influence to frustrate the Judgment within the territorial jurisdiction where the Judgment was obtained.

A Judgment Order of the High Court of Imo State was also annexed.

This Court considered the Application and granted same on 21/7/2020.

First of all, let me address the issue raised by A. C Onyekwu Esq Learned Counsel to the Judgment Debtors/Applicant's while addressing this Court on 1/2/2021.

It is the Learned Counsel's submission among other things that this Court does not have the territorial jurisdiction to entertain these Proceedings which relate to Judgment of Imo State. That

the said Judgment is not a foreign Judgment. It is the Learned Counsel's further submission that she has looked at the F.C.T High Court Rules and there's no provision on Registration of a foreign Judgment, and that the proper venue is Imo State.

Well, ii quite agree with the Learned Counsel to the Applicant that there's no provision under the Rules of this Court for Registration of foreign Judgments.

However, the Learned Applicant's Counsel apparently had not averted her mind to the fact that the Application for Registration of the Judgment of Imo State High Court referred to in this Application was also brought pursuant to Sections 104 and 105 of the Sheriffs and Civil process Act CAP 56 LFN 2004, which relates to Enforcement of Judgments interstate.

Most importantly, Section 287 of the 1999 Constitution (as amended) provides that the decisions of all the superior Courts of records shall be enforced in any part of the Federation by all authorities and persons. On that regard therefore, a Judgment may be given in one State but will have to be executed in another State, either because the Judgment Debtor resides there or has property there. This is clearly regulated by the provisions of Sections 104-110 of the Sheriffs and Civil and process Act.

Therefore, this Court being a superior Court of Record is empowered under Section 287 of the CFRN (Supra) to enforce Judgment of Imo State, if the requirements of the Law are met by the Applicant.

Having said that, I have carefully studied Section 83 (1) (2) of the Sheriffs and Civil process Act, and I quite agree with the Learned Silk's address in support of this Application that service of the order Nisi in Garnishee proceedings is a mandatory requirement.

Likewise, on the issue of consent of appropriate officer or Court necessary if money is held by a public officer, I have also considered the arguments of the Learned Silk vis-à-vis Section 84 of the Sheriffs and Civil process Act (Supra)

Now, Section 84 (1) of the Sheriffs and Civil process Act (Supra) provides:-

"Where money liable to be attached by Garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodia legis, the order Nisi shall not be made under the provisions of the last proceeding Section unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of a public officer or of the Court

in the case of money in custodia legis, as the case may be."

In this case, the Applicants are Ohaji Egbema Local Government and Chairman, Ohaji Egbema Local Government, being an Agency and public officer in Imo State? As such by the provision of the Act reproduced above, consent of the Attorney General of Imo State must be sought and obtained before Garnishee proceedings are commenced. On this I commend the decision of the Court of Appeal in the case of **CENTRAL BANK OF NIGERIA V UMAR SABO** (Supra) cited by the Learned Silk in the address. The Court of Appeal in the case held thus:-

"This Court in its several decisions has held that prior consent of the Attorney General under Section 84 of the Sheriffs and Civil Process Act is necessary and mandatory before the Judgment of the Court can be properly enforced against the State. Obtaining the said consent of the Attorney General is a condition precedent which must be complied with before a party commences Garnishee proceeding and failure of the party to obtain consent of the Attorney-General robs the Court of jurisdiction to entertain the action and renders the whole proceedings a nullity".

See also **CBN V INTERSTELLA COMM. LTD (2008) NWLR (PT. 1618) 294 @ 305, Ratio 10.**

Now, although I quite understand the predicament of the Respondent who is yet to reap the fruits of the Judgment obtained in High Court of Imo State (per Hon. Justice Njemenze) it is trite law that the Hon. Attorney General must give consent before such proceedings are commenced.

No Counter-Affidavit was filed in this case, therefore the Court shall regard all the unchallenged averments in the Applicant's Affidavit as the truth.

In conclusion therefore, I resolve the issue for determination in favour of the Applicants and hold that this Honourable Court lacks Jurisdiction to entertain this Garnishee proceedings for the reasons given earlier.

Consequently therefore, the Application is granted as prayed. This Honourable Court hereby sets aside the Order Nisi made on the 2nd of July 2020, as well as the entire Garnishee proceedings before this Court in respect of the Judgment in Suit No: HOW/713/2016, made by Honourable Justice E. F. Njemanze, sitting at Owerri on the 12th day of March, 2018 for want of Jurisdiction. Accordingly. This Suit with No. M/6536/2020 be and is hereby struck-out.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

18/03/2021.