

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/279/2006
DATE: 18TH February, 2021

BETWEEN:

ENE BLESSING OSUAFOR.....JUDGMENT CREDITOR/RESPONDENT

AND

- 1. ALHAJI MOHAMMED MURTALA**
- 2. NURA S. DANGE.....JUDGMENT DEBTORS/RESPONDENTS**

APPEARANCE

O. J. Agu Esq for the Applicant.

RULING

By a Motion on Notice dated 5th day of December, 2019 and filed same day. Brought pursuant to Order 43 Rule 1 of the High Court of Federal Capital Territory Abuja (Civil Procedure Rules) 2018 and the inherent Jurisdiction of the Court.

The Applicant herein prayed the Court for the Following Orders:-

- 1) An Order of the Court setting aside the writ of Attachment in Motion No. M/15058/12 dated 7th day of October, 2019 against immovable property of the Applicant situate at Plot 926, Cadastral Co2, Gwarinpa, Abuja FCT.
- 2) A declaration that the Execution levied pursuant to the writ of attachment on the property of the Applicant on the 28th day of October, 2019 and 4th day of December, 2019 is unconstitutional, null and void and therefore a grave violation of the right of the Applicant.
- 3) An Order of the Court mandating the immediate refund of the sum of ₦9,800,000.00 (Nine Million Eight Hundred Thousand Naira only) being the total amount transferred to the Judgment Creditors Counsel on behalf of the Applicant to suspend the purported execution of the 25th day of October, 2019 and 4th day of December, 2019.
- 4) An Order of the Court restraining the Respondents more particularly the Judgment Creditor and Chief Registrar/Deputy Sheriff FCT High Court either by themselves, agents, privies, assigns or representatives from further levying execution on the Applicant's property situate at Plot 926, Abubakar Koko Avenue before Stella Maris College Life Camp, Abuja.
- 5) And for such further or other orders as the Court may deem fit to make in the circumstances.

Filed in support of the Motion on Notice is an 8 paragraphed Affidavit deposed to by one Fredrick T. Joseph, a litigation Clerk in the Law firm of J. M. Jai & Co. Solicitors to the Applicant herein Attached to the supporting Affidavit and annexures marked as Exhibit 1 to 8 respectively. Also filed in support is a written address dated 5th day of December, 2019.

In the said written address Learned Counsel to the Applicant, formulated two (2) issues for determination to wit:-

- 1) Whether or not having regard to Section 44 of the Sheriffs and Civil process Act, order iv Rule 16 (2) (a) and (c) of the Judgment Enforcement Rules order II Rule 22 of the Judgment (Enforcement) Rules, the Execution of the Writ of attachment against the immovable property of the Applicant situate at Plot 926, Cadastral C02, Gwarinpa, Abuja FCT and the intended further Execution is legal and/or Constitutional.
- 2) Whether or not this Honourable Court, possesses the Discretionary power to grant the reliefs sought on the Motion paper.

In arguing the issues counsel on the issue one, referred the Court to Section 44 of the sheriffs and Civil process Act and submitted that it is trite that you cannot place something on nothing and expect it to stand. He stated moreso that the Act makes it clear that both the movable and immovable properties sought to be attached must be that of the

Judgment Debtor. Reliance was placed on the case of **HOLMAN BROS VS THE COMPASS TRAINING CO. LTD (1997) 5 NWLR (PT. 583) 69 at 78-79.**

The Learned Counsel stated that due and reasonable diligence is required on the part of the Judgment Creditor to ensure that the property sought to be attached is that of the Judgment Debtor. Reference was made to Order iv Rule 16 (2).

In addition, Counsel stated that Nura S. Dange donated Power of Attorney in respect of Plot 926, Cadastral C02, Gwarinpa Abuja FCT to Chukwemeka JohnPaul Anyaene dated 2007. That the Applicant has since developed the property to the point it is now. He submitted that there is presumption of regularity and of deeds to complete title. Reliance was placed on Section 168 (3) of the Evidence Act, (2011).

Consequently, Counsel urged the Court to hold that the purported Execution carried out on the 28th day of October 2019 and 4th day of December, 2019 and every agreement therewith is unconstitutional, null and void of no effect whatsoever.

On when the execution could be regarded as done wrongfully, Counsel referred the Court to the case of **LEEDO PRESIDENTIAL HOTEL LTD V B. O. N. LTD 11 (1993) 1 NWLR (PT. 269) 334 at 353; BAYERO V CRUSADER INSURANCE CO. LTD (1998) 6 NWLR (PT.553)214 at 266; ALALADE V N. B. N LTD (1997) 5 NWLR**

(PT. 502) 69 at 77-778. FER EAST MERIANTILE CO. LTD V JACKIE PHILIPS PHOTOS LTD (1974) SC 225.

On issue two Counsel's submitted that the Court is saddled with the power to grant the prayers on the motion paper. It was the Learned Counsel's contention that the said writ of attachment against the immovable property of the Applicant situate at Plot 926, Cadastral C02, Gwarinpa, District, Abuja FCT was made without the full grasp of the details of the property subject matter of the execution levied. He cited in support the cases of **BLOOMFIED V SERENY (1945) 2 ALL ER 646; R-BENKAY NIGERIA LIMITED V CABBURY NIGERIA LIITED (2012) 19 NWLR (PT. 1306) 596 at 625.**

Finally Counsel urged the Court to hold that the issuance of the order of a writ of attachment against the immovable property subject matter of this Application was made based on facts that were factually untrue and misleading being that the Applicant is the owner of the said property. Reference was made to the Exhibits attached to the Supporting Affidavit.

In opposing the Application the Judgment Creditor/Respondent filed a 26 paragraphed Counter Affidavit deposed to by one Anon Obaka, a Litigation Clerk in the law firm of Dare & Dare's law Chamber, Solicitors to the Judgment Creditor/Respondent herein. Annexed to the Counter Affidavit are documents marked as Exhibit are A to G

respectively. Also filed in support of the Counter Affidavit is a written address dated 3rd day of February, 2020.

In the said written address, Learned Counsel to the Judgment Creditor/Respondent formulated three issues for determination to wit:-

- 1) Whether the ruling on Motion on Notice No: M/15058/12 delivered on the 6th day of February, 2013 by His Lordship Hon. Justice A.S Umar granting leave to the Judgment Creditor to attaché and sell Plot 926, Cadastral C02 Gwarinpa District Abuja is not valid?
- 2) Whether parties are not bound by contents of a written agreement duly executed by then?
- 3) Whether the Judgment Creditor is not entitled to be awarded a cost of action in this circumstance?

In arguing the issues Counsel submitted on issue one that in the instant case, it is obvious that the Decision in ruling on Motion on Notice No: M/15058/12 delivered on 6th day of February, 2013 by His Lordship Hon. Justice A. S Umar granting leave to the Judgment Creditor to attach and sell Plot 926, Cadastral C02, Gwarinpa District Abuja is valid. Counsel submitted moreso that the Judgment Creditor did not misrepresent Plot 926 Cadastral C02 Gwarinpa District Abuja before this Honourable Court for the writ of attachment to be issued against the said Plot as the Judgment creditor action is in compliance with the ruling on the said motion on Notice. Counsel urged the Court to so hold and

resolve issue one in favour of the Judgment Creditor. Reference was made to paragraphs 4, 5, 9, 12, 13 of the Affidavit in Support. And the case of **MADAM ABUSATU AGBOGUNLERI V MR. JOHN DEPO & ORS (2008) LPELR-243 (SC)**.

On issue two, Learned Counsel referred the Court to the cases of **OLORO JAY JAY V SKYE BANK PLC (2016) LPELR-40185 (CA)**; **ALHAJI JIMOH AJAGBE V LAYIWOLA IDOWU (2016) LPELR-279 (SC)**; **BENJAMIN UKELERE V FIRST BANK OF NIGERIA (2011) LPELR-3869 (CA)**. AND **J. E OCHEVIRE LTD V TRIPOLI MOTORS (1975)5 NWLR (PT. 503) 1**, and stated that the Applicant agreed to pay a total sum of ₦5,000,000.00 (Five Million Naira) only on 28/10/2019 and to pay the balance of ₦4,470,000.00, four Million Five Hundred and Seventy Thousand Naira only on 15/11/2019 and same was reduced into a written agreement by the parties dated 28/10/2019.

Consequently Counsel urged the Court to so hold and resolve issue two in favour of the Judgment Creditor.

On issue three, Counsel referred the Court to the case of **MR. OLAREWAJU ADEROUNDMU V. MRS OLABISI OLAIDE ADEROUNMU (2002) LPELR-5896 (CA)** and submitted that as a result of this Application, the Judgment Creditor has procured large expenses to prosecute this Counter-Affidavit and urged the Court to dismiss this Motion with a substantial Cost.

I have carefully perused the Motion on Notice, the reliefs sought herein the supporting Affidavit together with the annexures attached therewith and the written address. I have equally gone through the Counter Affidavit in opposition to the Motion on Notice, the Exhibits attached therewith and the written address in support of the Counter Affidavit. Therefore, it is my humble view that the issues for determination are two to wit:-

- 1) Whether in view of the facts and surrounding circumstance of this case, this applicant's application is competent before the Court.
- 2) Whether the Applicant herein has made out a case to be entitled to the reliefs sought in this Application.

I shall take the issue one after the other. On issue one it is germane to state that it is the case of the Applicant that he is the owner of Plot 926, Cadastral C02 Gwarinpa District Abuja, FCT attached by the Judgment Creditor/Respondent in satisfaction of the Judgment Sum in the suit between **ENDY OSUAFOR ESQ AND ALHAJI MOHAMMADU MURTALA & 1 OR.** And the Applicant not being a party to the said suit. The applicant referred the Court to Exhibits 2, 3 and 4 attached to the supporting Affidavit.

At this juncture, the question that comes to mind is where a third party who is not a party to a suit is laying Claim to the property attached for the purpose of satisfying Judgment sum, what is the procedure to be

followed, is it by filling a Motion on Notice or an interpleader proceeding?

The applicant herein brought this Motion on Notice via Order 43 Rule 1 of the Rules of this Honourable Court. I have gone through the said order and Rule this present Application was brought pursuant to, there is nothing stated therein suggesting how to prove ownership of a property. However, in an interpleader proceeding provided for under Order 48 Rule 1, 2, & 3 of the Rules of this Court the object of an interpleader proceeding is to determine the ownership of goods/properties attached while enforcing the Judgment of a Court. In this respect see the case of **TUNDE V. O. A. U & ANOR (1998) 1 NWLR (PT. 594) 178 page 26-27, paras C-A** where it was hold thus:-

“.....In interpleader proceedings. The Claimant is deemed to be the Plaintiff and the Judgment Creditor the Defendant. Accordingly, the Onus is generally on the claimant to Establish title to the property he claims to be his. Like in any other Civil proceeding, he who asserts must prove.”

In the circumstance and without much ado, this Motion on Notice is not competent before he Court, the procedure adopted by the Applicant is strange and unknown to law. I so hold.

In the light of the above, I hereby resolve issue one in favour of the judgment Creditor/Respondent against the Applicant.

That takes me to issue two, without desipating energy on same having found in issue one above that the Application before the Court is incompetent this issue two is therefore overtaken by events. On that note, same is equally resolved in favour of the Judgment Creditor/Respondent against the Applicant.

Finally, this Motion on Notice with No. M/1712/19 be and is hereby struck out for the reason given above. I make no order as to cost.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

18/02/2021.