

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

CLERK: CHARITY ONUZULIKE  
COURT NO. 15

SUIT NO: FCT/HC/M/5322/20  
DATE: 17/02/2021

BETWEEN:

MUTUAL COMMITMENT COMPANY LIMITED.....PLAINTIFF

AND

CLEAR CUT OIL AND GAS NIGERIA LIMITED.....DEFENDANT

**RULING**  
**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

On the 25/11/20, I had an application at the instance of the Judgment Creditor asking me to make the order nisi of this Court made on 14/7/20 absolute.

The application was brought pursuant to **Section 87 of the Sherriff and Civil Process Act and Order 46 Rule 1 and 2 of the FCT High Court (Civil Procedure) Rules, 2018.**

In support is a 4-paragraphs affidavit with two exhibits i.e. 1 & 2 attached. There is also a written address.

Mr. Innocent Lagi, of Counsel to the applicant, moved the Motion summarily.

In opposition to the grant of the application, the judgment Debtor/Respondent filed a counter-affidavit of 14-paragraphs

deposed to by one Kachollom Peters. It was filed on 12/11/20 and has exhibits AA1, AA2 and AA3 attached. A written address was also attached.

Mr. A. T. Aboki of Counsel to the Debtor/Respondent relied on all the averments in the counter-affidavits and adopt the written address filed as his arguments in opposition to this application.

Learned Counsel referred to the Record of proceedings of the Court of Appeal attached to this application and submitted that the appeal has been heard and judgment reserved. That been the case, according to Mr. Aboki, this application is a gross abuse of court process.

Furthermore, the learned Counsel argued that the Court's Ruling of 18/9/20 says the Court would resume after the appeal has been determined. And since the appeal has not been determined, the Court cannot do anything in this case and urged me to dismiss the application with a cost of N1,000,000.00 (One Million Naira) in favour of the judgment Debtor/Respondents.

In a short reply to the above submission of Mr. Aboki, Mr. Innocent Lagi argued that the order nisi was not appeal against and the application staying execution of the Court's order was struck out by the Court of Appeal. He referred to the Record of proceedings of the Court of Appeal attached as an exhibit. Mr. Innocent Lagi Esq further argued that the garnishee proceedings is a separate proceedings that stands on its own. He relied on the unreported case of **KASOWARI (NIG) LTD VS. SIVAN DESIGN D. S. LTD & 14 ORS**, where Bello CJ (as he then was) held that the Court has jurisdiction to preserve the garnishee proceeding res by transferring the sum of money to

the High Court thereby discharging the garnishees that have shown cause already (cases).

I have considered the simple arguments on both sides as canvassed by the two Counsel. To my mind, the issue involved now is very straight forward. And it is, in view of my Ruling of 18/9/20 and the Record of proceeding of the Court of Appeal, wherein the main appeal was heard and judgment reserved, can I grant this extant application?

Mr. Innocent Lagi answered in the affirmative while Mr. A. Aboki answered in the negative.

It is with the position of Mr. Aboki that I found comfort. My reason is that as far back as 18/9/20, I have divested this Court of jurisdiction pending the final outcome of the appeal. In that Ruling of 18/9/20, this is what I said;

*“What all the above portends and manifests to me is that I have been divested of jurisdiction in this case of the strength of the appeal being entered in the Court of Appeal. And so, if I have no jurisdiction to proceed, then I have no jurisdiction to make any preservative order either touching on the res or any process already filed.*

*In conclusion, I hands off this case for now as the parties move to the Court of Appeal while I await the outcome.*

*This case is adjourned sine dine”.*

The question is, has the Court of Appeal determined the appeal? The answer is No. The appeal has been heard and judgment reserved. So, why should I now go back and take any further decision or action contrary to my position of 18/9/20? I should not. Although, Mr. Lagi had argued that garnishee proceedings is a separate proceedings and even cited an unreported decision of the former Chief Judge of this Court. He promised to produce the said authority which is only persuasive but never did. I have not seen nor read the authority, so, I cannot say anything on it.

Finally, it is my candid view that this application is a gross abuse of Court process. My Ruling of 18/9/20 is very clear and remains to be adhered to. Good enough that the appeal has been heard and judgment reserved. We should all wait for the Court of Appeal decisions. This application is dismissed and no cost is awarded.

.....

**S. B. Belgore**  
(Judge) 17/02/21