

**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. 15**  
**CASE NUMBER : SUIT NO: CV/22/11**  
**DATE: : WEDNESDAY 15<sup>TH</sup> SEPTEMBER, 2021**

**BETWEEN:**

**1. MR. MAKATA SYLVANUS**  
**2. ALHAJI YAHAYA**  
**3. MR. RAPHAEL ODOH**  
**4. ZAKARI YAU**  
**5. MR. CHIKA ARUA**  
**6. IBRAHIM SANI**  
**7. CHUKWUKA UKWUZE**  
**8. ABUBAKAR UMAR**  
**9. MRS. FAITH JIMO**  
**10. MR. BATHOLOME OKEKE**  
(Suing for themselves and on behalf of all the allottees of 715 shops at Karimo market, Abuja Municipal Area Council, Abuja and members of Karimo market traders Association)

**JUDGMENT CREDITORS**

**AND**

**1. HON. MINISTER OF FCT, ABUJA**  
**2. FED. CAP. DEV. AUTHORITY (FCDA)**  
**3. ABUJA MUNICIPAL AREA COUNCIL**  
(Joined by Orders of the Honourable Court at the Prompting of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants)

**JUDGMENT/DEBTORS**

**AND**

- 1. DIAMOND BANK**
- 2. HERITAGE BANK LTD**
- 3. ACCESS BANK OF NIGERIA**
- 4. FIRST BANK OF NIGERIA**
- 5. UNITED BANK FOR AFRICA**
- 6. GTBANK LTD**
- 7. ZENITH BANK LTD.**
- 8. KEYSTONE BANK LTD.**
- 9. FIDELITY BANK LTD.**
- 10. UNITY BANK.**
- 11. SUNTRUST BANK PLC.**
- 12. UNION BANK PLC.**
- 13. ECO BANK PLC.**
- 14. POLARIS BANK LTD.**

**GARNISHEES**

# **RULING**

This is a Consolidated Ruling brought pursuant to **Motion No.M/6969/2020 and Motion No.M/4143/2020.**

In Motion No. M/6969/2020, the Applicant approached this Honourable Court for the following:-

1. Leave of the Honourable Court to apply for the setting aside the proceedings of 23<sup>rd</sup> January, 2020 on Motion No. M/4143/2020.
2. An Order of the Honourable Court setting aside the proceedings of 23<sup>rd</sup> January, 2020 on Motion No. M/4143/2020 for lack of jurisdiction.

3. And such order or other Orders as the Honourable Court shall deem fit to make in the circumstances.

## **ALTERNATIVELY**

- i. Leave of the Honourable Court extending time within which the Judgment Creditors/Applicants shall file and serve counter affidavit and written address on points of law in response to 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion **No. M/4143/2020.**
- ii. An Order deeming as properly filed and served counter affidavit and Reply on Points of law to the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion **No. M/4143/2020.**
- iii. And such order or other Orders as the Honourable Court shall deem fit to make in the circumstances.

The ground upon which the application was brought is as follows:-

- a. The Honourable Court delivered judgment against the Judgment Debtors in Suit No: FCT/HC/CV/22/11.
- b. The Judgment Debtors have not complied with the judgment of the Honourable Court till date.
- c. Pursuant to Garnishee application made by the Judgment Debtors the Honourable Court on the 16<sup>th</sup> October, 2019 granted Order Nisi against the garnishee.
- d. The 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors have filed Motion No. **M/4143/2020** seeking that the garnishee Order Nisi made by the Honourable Court on the 16<sup>th</sup> October, 2019 be set aside.

- e. The Motion **No. M/4143/2020** seeking that the Garnishee Order Nisi granted on the 16<sup>th</sup> October, 2019 be set aside is not competent and does not vest jurisdiction on the court.
- f. The Motion **No.: M/4143/2020** seeking that the Garnishee Order Nisi granted on the 16<sup>th</sup> October, 2019 be set aside filed by the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors and served on the Judgment Creditors was not signed by any known legal practitioner.
- g. No competent application or Motion on Notice vesting jurisdiction on the Honourable court to set aside the Order Nisi was filed and served on the Judgment Creditors by the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors.

- h. The Honourable court proceeding of 23<sup>rd</sup> January 2020 was the hearing of Motion **No. M/4143/2020.**
- i. The Judgment Debtors prior to making Garnishee Order Nisi absolute cannot challenge Order Nisi.
- j. The Judgment Debtors have no right of audience in the garnishee proceedings.
- k. leave of the Honourable court within which the Judgment Creditors shall file and serve the Counter affidavit and reply on points of law to the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion **No. M4143/2020,** is fundamental where the Honourable Court found that 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion **No.**

**M/4143/2020** served on the Judgment Creditors is competent vesting jurisdiction on the court.

1. The 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors will not be prejudiced.

In support of the application is a 14 paragraph affidavit deposed to by Mr. Makata Silvanus Ogechukwu.

It is his deposition that the High Court of the Federal Capital Territory on the 29<sup>th</sup> June, 2018 entered judgment for the Judgment Creditors/Applicants in suit No. FCT/HC/CV/22/11 whereof inter alia it awarded thus “I hereby award N3,000,000.00 (Three Million Naira) against the Defendants.”

That no known legal practitioner that sign Motion **No.M/4143/2020** seeking that the Garnishee Order Nisi granted on the 16<sup>th</sup> October, 2019 be set aside.



That Motion No.:**M/4143/2020** is incompetent. That the court lack jurisdiction to determine Motion No.**M/4143/2020**. Judgment Creditors were not served with proper and competent motion on notice for setting aside of Order Nisi.

That counsel Oscar Nnamdi who was assigned to prepare, file counter affidavit and reply on points of law to Motion No. **M/4143/2020** was unable to because he was bereaved. And that the said counsel arrived Abuja the very day the proceeding on the Motion No. **M/4143/2020** was held.

That leave of the court extending time within which to file and serve counter affidavit and reply on points of law is pertinent where the court accepts that Motion No. **M/4143/2020** served on the Judgment Creditors was competent and properly served.

A written address was filed wherein 2 issues were raised for determination to wit;

1. Whether the court has the jurisdiction to determine the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion No. M/4143/2020.
2. If prayers 1, 2 and 3 is in the negative, whether the Alternative prayers are grantable by the court.

On issue 1, learned counsel submit that it is trite law that the issue of jurisdiction can be raised at any time, even at the Supreme Court for the first time.

***S.L.B CONSORTIUM LTD. VS NNPC (2011) 9 NWLR (Pt. 1252) 317 at 332, paragraphs G-H; 335 paragraphs C-D (SC); MADUKOLU VS NKENDIRIM (1962) 1 ALL NLR 587 at 595; A.G***

***LAGOS VS DOSUNMU (1989) 3 NWLR (Pt. 111) 552 were cited.***

Counsel argue that a feature in the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion No. **M/4143/2020** that ousted the jurisdiction of the court is that no known legal practitioner signed the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion No. **M/4144/2020. NWEKE VS FRN (2018) LPELR – 46033 (CA) at 22 – 23.**

Learned counsel further submit that it is evidence that there is a signature on the third page of 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion No.: **M/4143/2020**. Under the signature 5(five) names are stated, which are Abari Jonah O. Esq., B.N Azuka – Molokwu Esq., Nnokam Chioma Esq., M.M Baba Esq. and Frankhin Monovie Figilo Esq. a critical examination of the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors

Motion No. **M/4143/2020** shows that there is no indication among the 5 (five) names the signature belong to. The duty of the court is not to speculate on whom among the named counsel that signed 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion No. M/4143/2020, ***S.L.B CONSORTRIN LTD VS NNPC (2011)9 NWLR (Pt. 1252) 315 at 337 – 338 was cited.***

On issue two, learned counsel submit that the discretion of the court can only be exercised judiciously with the sole purpose of ensuing that justice is done in the matter placed before it. ***RIMI VS INEC (2004) 16 NWLR (Pt. 895); was cited.***

Counsel further alluded that it is a trite principle of law that an Applicant for leave and extension of time to take a procedural step must place before the court sufficient materials to warrant the exercise of the

court's discretion in his favour. *FALOUGHI VS F.I.C LTD (2010) 10 NWLR (Pt. 1203) 656 at 665 paragraphs A-B; EZECHUKWU ONWUKA (2006) 2 NWLR (Pt. 963) 151 at 192 paragraphs B – D were cited.*

Upon service, Judgment Debtors filed a counter of 8 paragraph deposed to by SaiduWodi.

It is the deposing of the Judgment Debtors/Applicant that the court struck – out the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors Motion being Motion No. **M/4143/2020** filed on 6<sup>th</sup> December, 2019 seeking that the Garnishee Order Nisi granted on 16<sup>th</sup> October, 2019 set aside based on supplied recondite grounds.

That in compliance with the instruction of the court, the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors upon effective signing, name ticking and affixing of seal (By a

known legal practitioner) motion number and affixing of seal (By a known legal practitioner) Motion No.**M/4143/2020** as filed on 14<sup>th</sup> January, 2020 and accordingly served on all parties concerned.

That on 23<sup>rd</sup> January, 2020 the court making reference to its record asked parties to proceed with the business of the day, wherein the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Creditors moved their application and urged the court to set aside the Order Nisi.

That the Judgment Debtors to the surprise of the court in response to the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Creditors application proceeded to move their counter affidavit bearing filing date same as the motion struck at the last sitting.

That contrary to the misleading assertion by the Judgment Creditor, the appeal unit of the Trial court was since transmitted record and the appeal has been entered with Appeal Number (CA/A/971/M/2018).

A written address was filed wherein a sole issue was formulated for determination to wit;

Whether or Not the Rule 10 of the Rules of professional conduct was not adhered to by the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors in the proceedings of 13<sup>th</sup> January, 2020 on Motion No.M/4143/2020.

Learned counsel submit that it is a trite law that a process prepared and filed in a court by a legal practitioner must be sign by the legal practitioner and in deed our motion was properly signed ticked with seal affixed. ***SLC CONSORTIUM LTD VS NNPC (2011) 9 NWLR (Pt. 12522) 317 SC; GTB***

***VS INNOSON NIG. LTD. (2017) 16 NWLR (Pt. 1591) 181 SC and section 10 Rules of Professional Conduct were cited.***

Counsel further submit that 1<sup>st</sup> and 2<sup>nd</sup> Respondents complied in letters and spirit with the requirement of section (10) rules of professional conduct by affixing the seal approved by the Nigeria Bar Association.

Counselurge the court to strike out the frivolous application herein brought by the judgment Debtors in view of the foregoing. It is only but a calculated attempt to waste the precious time of the court.

On Motion no. M/4143/2020 the Applicant/Judgment Debtor approached this Honourable court for the following:-

- a. An Order of this Honourable Court setting aside the Garnishee Order Nisi granted by the Courton



the 16<sup>th</sup> of October, 2019 attaching the sum of N3,000,000.00 (Three Million Naira) and N100,000.00 (One Hundred Thousand Naira), in suit No: FCT/CV/22/11 against the judgment Debtors/Applicants accounts domiciled with the Garnishees in realising the ruling of this Honourable Court delivered in this suit.

- b. Any such Further or other Orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which same is brought are as follows:-

1. The Appeal is not exhausted.
2. The statutory pre-condition of the grant of the orders was not fulfilled

3. There is a pending appeal against the Judgment and the appeal has been entered and a Motion for stay of Execution of the judgment was filed.

In support of the application is a 12 paragraph affidavit duly deposed to by one SaiduWodi a Legal Assistant with the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors/Applicants.

It is the deposition of the Applicant that a Judgment was delivered in favour of the Judgment Creditor/Respondent on the 29<sup>th</sup> June, 2018 and an appeal was filed against the Judgment vide Exhibit “A”.

That the Judgment Debtors/Applicants have a motion for stay of execution of the Ruling pending before this Honourable court vide Exhibit “B” and

that the record of Appeal has since been transmitted vide Exhibit “C”.

Applicant avers that execution of the Judgment will adversely affected the resident of the FCT who will be denied the dividends of government owing to the non-availability of funds to execute project by the Judgment Debtor/Applicant.

That the Judgment Creditor/Respondent is not in the position to repay this money if the Judgment is executed and the appeal succeeds.

A written address is filed wherein learned counsel formulated a lone issue for determination to wit;

Whether the Judgment Debtors/Applicants are entitled to have the garnishee Order Nisi set aside.

Arguing on the issue, learned counsel submit that by provision of section 84 of the Sheriffs and Civil Process Act, the consent of Attorney General of the Federation must be sought and obtained and that same having not sought for, this court does not have jurisdiction to entertain this suit.

Learned counsel contended further that the garnishee Order Nisi is nebulous and wide, the Judgment Creditor/Respondent did not state the branch of the banks they intended to garnish the accounts. Counsel contended that it is mandatory provision of the Garnishee procedure that the account to be garnished must be within the jurisdiction of the court making the order.

And that failure of the Judgment Creditor in this garnishee proceeding to state clearly whether or not

the garnishee is within the jurisdiction of this Honourable Court is fatal to the application.

***C.B.N VS AUTO IMPORT (2013) 3 NWLR (Pt. 1337) 80 at 128.***

It is further the contention of the Applicant that they have an appeal pending against the Judgment sought to be enforced and this court should not foist a state of helplessness on the superior court ***STB LTD VS CONTRACT RESOURCES (NIG) LTD (2001) 6 NWLR (Pt. 708) 115 at 122.***

On the hearing date, the court observed that the counter affidavit filed by the Respondent pre-date the Motion on Notice and same was struck out.

## **COURT:-**

I have gone through the Applicant's application and the failure of the Respondent to file a counter.

It is true, as it is well settled, that a court of law has an inherent jurisdiction to set aside its own Judgment where the conditions for doing so have been met by a party seeking setting aside. One of such situation is when the Judgment sought to be set aside was obtained by failure to comply with Procedural Rules.

***NOGA HOTELS INTERNATIONAL S.A VS  
NICON HILTON HOTELS LTD. & ORS (2006)  
LPELR 11811 (CA).***

There is no gain saying that there is always an end to litigation. It is the law that after finally deciding a matter before it, the court becomes functus officio

and lacks jurisdiction to deal with the same matter. Courts must be wary of allowing parties to relitigate matters determined for fear of more or less sitting on appeal over matters determined.

It is the Applicant's contention that the consent of the Attorney General of Federation was not sought and obtained by the Judgment Creditor before the garnishee proceeding was initiated contrary to Section 84 of Sheriff and Civil Process Act.

For avoidance of doubt, Section 84(1) of the Sheriff and Civil Process Act states as thus; ***“where money liable to be attached by garnishee proceeding is in custody or under the control of a public officer in his official capacity or in custodian legislae, Order Nisi shall not be made under the provisions of Section 83 unless consent to such attachment is first obtained from the Attorney General in case of money in custody or control of a Public Officer or***

*the Court in the case of money in custodian legis as the case may be”.*

However, where public or government funds are in custody of a commercial bank, as in this case, such consent is not necessary.

Indeed, the argument of learned counsel for the Applicant is misplaced in law.

On whether there is a pending appeal against this Judgment of this Honourable Court, I have gone through the Notice of Appeal annexed by the Applicant, I must observe that the Appeal has no Appeal Number, and therefore the Appeal has not entered and same cannot be used as a ploy to stop the Judgment Creditor to reap the fruit of its labour.

On whether there is a Motion for Stay of Execution of the Judgment of this Honourable Court pending



before this Honourable Court, I have seen the said Motion which was filed on the 27<sup>th</sup> August, 2018 when the court handed down the Judgment on the 29<sup>th</sup> of June, 2018. The said Motion was filed and no step was taken to move same. I must say this is sad and unfortunate.

Indeed, the said motion is deemed abandoned, but however for that to be effective in law same ought to be struck – out by this Honourable Court, because garnishee proceeding is a means of executing a judgment and as such ought not to proceed when the motion is still pending.

It is settled law that the decisions of this court are final by which is meant that the court has no jurisdiction to sit on appeal over its decision once delivered. However, the court has the inherent power

to set aside its decisions which same are later found to be a nullity.

The above power does not extend to sitting on appeal over its decisions. *EKE VS OGBONDA (2007) ALL FWLR (Pt. 351) 1456.*

I shall reluctantly set aside the Garnishee Order Nisi granted by the Court on the 16<sup>th</sup> day of October, 2019 attaching the sum of N3,000,000.00 (Three Million Naira) and N100,000.00 (One Hundred Thousand Naira) against the Judgment Debtor/Applicant.

Consequently, same is hereby set aside.

All Garnishees are hereby discharged.

*Justice Y. Halilu*  
*Hon. Judge*  
*15<sup>th</sup> September, 2021*

## **APPEARANCE**

Marcus Ugwuja – for the Judgment  
Creditors/Applicants.

U.C Ndubuisi – for the 7<sup>th</sup> Garnishee.