

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA -FCT.**

**CLERK: CHARITY ONUZULIKE
COURT NO. 11**

**SUIT NO: FCT/HC/M/5322/2020
DATE: 20-09-2021**

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 22/2/21, when this case came up for continuation of the garnishee proceeding following the Court of Appeal affirmation of the earlier judgment of this Court, learned Counsel to the Judgment Debtor, A. T. Aboki Esq made oral application touching on jurisdiction. He prayed the Court not to proceed based on an appeal already filed. In the Court of Appeal and Supreme Court. He relied on an affidavit of facts dated and filed on 19/2/2021. Mr. Aboki, while referring to the content of the 11-paragraphs affidavits and the two exhibits attached i.e. Exhibit TRANS 1 and TRANS 2, urged me not to take any application further in this case.

Learned Counsel further submitted that since there is an appeal against the Judgment of the Court of Appeal and also appeal in the Court of Appeal against the Order *nisi* of this Court, any application

should be taken to either the Supreme Court or the Court of Appeal.

In a short reply, learned Counsel to the Judgment Creditor, Mr. Innocent Lagi, said he was served with the affidavit of FACTS by the Judgment Debtor and that he believes there is no jurisdictional issue involved. That apparently was the reason why he did not file any counter-affidavit to controvert the content of the affidavit of FACTS filed by the other side. Mr. Lagi went further to submit *inter alia* that the Court of Appeal decision in Appeal No. CA/ABJ/CV/589/2020 that affirmed the decision of this Court cannot be tampered with in any manner whatsoever. And that that decision is final for now making this Court *functus officio*.

Finally, he urged me to hold that the affidavit of FACTS is a gross abuse of the process of this Court.

I have considered the above two simple submission. The question to ask is whether or not there are pending appeal that has been entered in any of the higher Courts? I think it is apparent to me based on paragraphs 8 and 9 of the affidavits of FACTS filed that there are pending appeals in the Court of Appeal and Supreme Court and which appeals has been ENTERED.

Exhibits TRANS 1 AND TRANS 2 made these facts more apparent, obvious and grandly fixed.

Exhibit TRANS 1 – shows that appeal against the Order *nisidated* 15/7/20 has been entered and appeal number given as CA/CV/83/2021 while appeal against the Court of Appeal decision has been entered in the Supreme Court and appeal number given as SC/CV/168/2021. See Exhibits TRANS 2.

No counter-affidavits to controvert the above positions as given in paragraphs 8 and 9 of the Judgment Debtor's affidavit of FACTS.

The law is long settled in this country that where the opposition party does not challenge depositions in an affidavit, by way of a counter-affidavit, such evidence or depositions are deemed to stand and can be admitted as true facts. See OGOEJEOFOR VS. OGOEJEFOFO (2006) 3 NWLR (PT. 966) 205; IKPANA VS. RTPCN (2006) 3 NWLR (PT. 966) 106; FMCT VS. EZE (2006) 2 NWLR (PT. 964) 221; FGN VS. AIC LTD (2006) 4 NWLR (PT. 970) 337; EZECHUKWU VS. ONWUKA (2006) 2 NWLR (PT. 963) 151.

It thus manifest to me beyond any shadow of doubt that there is a pending appeal at the Court of Appeal against the Order *nisi* of this Court and there is a pending appeal in the Supreme Court against the Judgment of the Court of Appeal.

But for the above two facts, we should have proceeded with the garnishee hearing on that 22/2/21. Consider what I said on 17/2/2 when the Judgment of the Court of Appeal affirming my Judgment was tendered in Court:

“Now, it is my view that having regard to the circumstance of this Case and or the road we have travelled to reach this point, the coast is now clear to proceed with the garnishee proceeding. I have seen the CTC of the Court of Appeal Judgment dismissing the appeal and affirming my earlier Judgment. That is all that is of prime interest to me. So, in compliance with my own Order of 18/9/20 that this case be put on holding pending the outcome of the Court of Appeal decision and since we have known the Court of Appeal, there is no more clog to our proceeding. This case is now

adjourned to Monday, the 22/2/2021 to enable the garnishees in this case show cause why the Order nisi made on 14/7/20 should not be made absolute.”

Now what the above facts portends and I mean is that I have been divested of jurisdiction to continue to hear the garnishee proceedings chiefly on the strength of the pending appeal against the Order *nisi* earlier made by me in this Court.

In conclusion, I agree with Mr. A. T. Aboki that I have no jurisdiction to continue in the present circumstance. We should all await the outcome of the appeal in the higher Courts. This oral application is granted and the case adjourned *sine die*.

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Suleiman Belgore
(Judge) 20-09-2021