

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITMAM – ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NUMBER: FCT/HC/FJ/007/2021

MOTION NUMBER FCT/HC/M/4431/2021

DATE: 15/10/2021

BETWEEN:

1. **AKAN COSMAS NYAM**
 2. **ALFRED .A. JOR**
 3. **YOMGA NYACINTH**
 4. **TORLEKE HANSEZA HYACINTH**
 5. **VENDEYONGU FRANCIS**
 6. **CLETUS ORGA EMBERGA**
 7. **JORUMA JONATHAN**
 8. **KWAGHHANGE TERUNGWA EMMANUEL**
(The Administrator of the Estate of Late Kwaghange Tyonongu James)
- JUDGMENT CREDITORS/RESPONDENTS**

AND

1. **BENUE STATE LOCAL GOVERNMENT PENSIONS BOARD.**
 2. **ATTORNEY GENERAL OF BENUE STATE**
 3. **THE GOVERNOR OF BENUE STATE**
- JUDGMENT/DEBTORS/APPLICANTS**

AND

1. **ACCESS BANK OF NIGERIA PLC**
 2. **FIRST CITY MONUMENT BANK PLC**
 3. **FIDELITY BANK PLC**
 4. **FIRST BANK OF NIGERIA LIMITED**
 5. **STANBIC IBTC BANK PLC**
 6. **ZENITH BANK PLC**
 7. **UNITED BANK OF AFRICA PLC**
 8. **POLARIS BANK LIMITED**
 9. **GUARANTY TRUST BANK PLC**
 10. **HERITAGE BANK PLC**
 11. **UNION BANK OF NIGERIA PLC**
- GARNISHEES**

Appearance:

J.M. Gbagyo, Esq. for the Judgment Creditor/Respondent

J.I. Aguawa Esq. for the Judgment Debtors/Applicants

RULING

By a Motion on Notice filed by the Judgment /Debtors/ Applicants, they seek for the following reliefs:

1. An Orders of the Court setting aside and discharging the Order Nisi attaching accounts of the Applicants with the Garnishees.
2. And for such further Order(s) as the Court may deem fit to make in the circumstances of this case.

The Application is predicated on the following grounds:

- A. That upon Judgment being entered, the Applicants filed Motion on Notice for liquidation of the Judgment debt by monthly installments vide suit No. NICN/MKD/30M/2020.
- B. That the Motion was served on the Judgment Creditors and has being adjourned to 17/11/2021.
- C. That in view of the above, the execution of the Judgment is within valid nor lawful.

In the affidavit filed in support of the application deposed to by one Richard Ihua, it was averred that Judgment was entered against the Applicants by National Industrial Court, Makurdi Division in the sum of N65, 766, 715, 64 only on the 20th of January, 2020. That they filed an application for installment payments before the

NICN and while it was pending the Respondents have filed for and obtained Order Nisi on the 22nd day of June 2021 in the Judgment sum of 10% interest against the Applicants. That the Respondent aware of the pending of the Motion before filing this matter, that this matter is an abuse of Court process.

A written address was also filed wherein Counsel for the Applicants formulated a sole issue for determination of the Court to Wit:

“Whether with the pending Motion for installment payment before the NICN Makurdi, this Court will grant Order absolute for the Judgment Creditors without first waiting for the NICN to determine the Motion for installment pending before it?”

The Learned Counsel argued the issue succinctly in urging the Court to grand the application.

In response, the Respondents file a Counter affidavit deposed to by one Joel Kohol Akerigba. Wherein it was averred, that the averments in the affidavit of the Applicants do not represent the true state facts. That the Respondents retired in 2016 and 2017 after attaining 35 years in service or the age of Sixty years. That the Judgment in this proceeding relates to were delivered on 6th of December, 2019 and 20th January, 2021.

That the NICN ordered that the Applicants pay the Respondents within 30 days of the Judgment and they willfully neglected and that the Applicants has funds in custody of the 1st, 4 – 6th and 7th Garnishees to satisfy the Judgment debt in full and at once.

In their written address Learned Respondent's Counsel raised an issue for the determination of the Court, to Wit:

“Whether the Applicants have placed sufficient materials before the Court to entitle them to the discretion in the circumstances of the case.

I have carefully read and considered the Motion paper and the affidavits of both parties. I have also considered the argument canvassed by both Counsels on the application.

The issue:

“Whether this Garnishees proceeding amounts to an abuse of Court process in the light of the pending Application for installmental payment is formulated”.

To address this issue, I wish to refer to and rely on the decision in *SCOA NIG PLC & ANOR V. THE REGISTERED TRUSTEES OF METHODIST CHURCH (2016) LPELR – 40192 (CA)* where the Court held on the nature of Garnishee proceedings thus:

“A Garnishee proceeding has been defined as: It behoves a successful Plaintiff who does not want to lose the fruits of his victory to move fast against the assets of the Judgment debtor to realize the fruits. One of such methods is to obtain the order of Court to attach any debt owing to the Judgment debtor from any person or body within the jurisdiction of the Court to satisfy the Judgment debt. That processes is known as “attachment of debt (Garnishees proceeding). And it is a separate and distinct action between the Judgment Creditor and the person or body holding in custody the asset of the Judgment debtors. Although it flows from the Judgment that pronounces the debt owing.....”

..... A Garnishees proceeding is therefore not the kind of action that can qualify to be adjudged for abuse of Court process. In any case, it is a process for the execution of Judgment debt. I do not see how taking such a step can amount to abuse of Court process.

I wish to add that application for installmental payments are not granted as of course. And where, as in this case, monies to satisfy the Judgment debt have been attached, the proper thing to do is to proceed to grant the Order absolute to enable the Judgment Creditor reap the fruit of his victory. I find that this Application is not an abuse.

In the light of the Decision in SCOA case supra and the finding of the Court. The Application to set aside the Order Nisi fails and is accordingly dismissed.

Accordingly, the application for Order Nisi to be made absolute against the 4th and 6th Garnishees is granted. 4th and 6th Garnishees shall pay to the Judgment Creditors all that sums owing and standing to the account of the Judgment/debtor in their custody.

In the matter of the 1st Garnishees. I have carefully perused the further affidavit of both the Judgment Creditor/Applicants and the 1st Garnishees, I finds as follows:

1. It is not improper for the bank to notify its client that there is an order of Court and the monies in the account has been attached.
2. The further had exhibited statement of Accounts for periods between 30/June – 31 August, 2021.

3. Order Nisi was granted on the 22 June, 2021.

Considering all this I shall rely on the provision of Section 87 of SPCP Act and call on the Judgment Creditor and the 1st Garnishee which dispute's liability to address is nothing there positions. The 1st Garnishee is given 7 days to submit his address and the Judgment Creditor shall respond in 7 days and the 1st Garnishee may reply in another 7 days. Parties may file affidavit. Matter is adjourned to 15/11/2021 for adoption.

Signed
Hon. Judge
15/10/2021.

Both Counsels: We are grateful.

Signed
Hon. Judge
15/10/2021.