

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/1395/2018**

**BETWEEN:**

**FAMAG – JAI NIGERIA LIMITED**

**.....JUDGMENT CREDITOR/RESPONDENT**

**VS**

**FIRST BANK PLC.....JUDGMENT DEBTOR/APPLICANT**

**VS**

**CENTRAL BANK OF NIGERIA.....GARNISHEE**

**RULING**

By a Motion on Notice No. M/6878/2021 dated 15/10/2021 and filed same day, brought pursuant to Order 43 Rules 1 & 2 of FCT High Court (Civil Procedure) Rules 2018, and under the inherent jurisdiction of this Honourable Court, the Applicant herein, prays for the following reliefs;

- (1) An Order discharging in its entirety or setting aside the Garnishees Order Nisi made by the Honourable Court on 23/12/2020.
- (2) An Order of this Honourable Court staying further proceedings in this Garnishee proceedings in respect of the Judgment of

Hon. Justice A.M. Talba delivered on 3 November, 2017 pending the determination of the Appeal filed by the Judgment Creditor before the Supreme Court.

(3) Omnibus Relief.

The grounds for this application are as set out in the face of the Motion as follows:-

**GROUND FOR THE APPLICATION**

- (a) This Garnishee/enforcement proceedings was commenced for the enforcement of the Judgment of this High Court of the Federal Capital Territory in Suit No. FCT/HC/CV/1408/15 which was delivered on 3 November, 2017.
- (b) That the Judgment dated 3 November, 2017 at page 14 stated that the Agreement between the Plaintiff and the Defendant must run its course. And where there is a default on the part of the mortgagor after the due date. And the Defendant has made a demand. Then the Defendant can exercise its right of sale under the legal mortgage.
- (c) That the Defendant in Suit No. FCT/HC/CV/1408/15 now the Judgment Debtor/Applicant herein had by its letter dated 22<sup>nd</sup> December, 2017, in compliance with the Judgment requested from the Plaintiff who is the Judgment Creditor/Respondent herein the sum of ₦513,985,875.75 which had become due and payable.

- (d) The Plaintiff vide its Counsel by a letter dated 29<sup>th</sup> December, 2017 requested for the breakdown of the sum of ₦513,985,875.75.
- (e) The Judgment Debtor/Applicant had by its letter dated 31<sup>st</sup> January, 2018 responded by giving the Plaintiff the breakdown it requested.
- (f) The Defendant by an Originating Summons dated 26<sup>th</sup> March, 2018 filed at the Federal High Court in Suit No. FHC/ABJ/CS308/2018 raised three (3) issues for court to determine particularly issue three (3) which states as follows:

**WHETHER** by virtue of the Judgment delivered by Honourable Justice A.M. Talba of the High Court of the Federal Capital Territory on the 3<sup>rd</sup> day of November, 2017, the Applicant is within its rights to demand for the unpaid sum of ₦855,598,247.82 as at 31<sup>st</sup> January, 2018 and interest at 18% from 1<sup>st</sup> of February, 2018 until Judgment and thereafter at a rate to be decided by the Court until liquidation or in the failure of same, foreclose the legal mortgage against the Respondent.

- (g) The Respondent filed a preliminary Objection dated 31<sup>st</sup> October, 2018 to which the Applicant responded to. The Respondent also filed a Counter-Affidavit to the originating Summons.

- (h) On 9<sup>th</sup> April, 2019 Honourable Justice A.R. Mohammed heard both the Originating Summons and the Preliminary Objection and reserved Judgment to 13<sup>th</sup> June, 2019.
- (i) On 2<sup>nd</sup> July, 2019 Honourable Justice A.R. Mohammed delivered its Ruling and dismissed the Preliminary Objection filed by the Respondent for lacking in merit. The Court directed as regards the Originating Summons that parties call oral evidence with regards to the issue of the interest that accrued on the principal sum.
- (j) The Respondent being dissatisfied with the Ruling delivered on 2<sup>nd</sup> July, 2019 filed a Notice of Appeal dated 12<sup>th</sup> July, 2019.
- (k) On 2<sup>nd</sup> June, 2021 the Court of Appeal in Appeal No. CA/A/740/2019 delivered its Judgment and dismissed the Appeal for lacking in merit. The Court further affirmed the Judgment of Hon. Justice A.R. Mohammed delivered on 2<sup>nd</sup> July, 2019 in Suit No. FHC/ABJ/CS/308/2018.
- (l) The Appellant being dissatisfied with the Court of Appeal delivered on 2<sup>nd</sup> June, 2021 in Appeal No. CA/A/740/2019 filed a Notice of Appeal to the Supreme Court.
- (m) The Appellant has transmitted the Record of Appeal to the Supreme Court and the Appeal is pending.

- (n) That it is the Judgment of Honourable Justice A.M. Talba delivered on 3<sup>rd</sup> November, 2017 that the Judgment Creditor in Suit No. FHC/ABJ/CS/308/2018 had asked the Court to interpret and decide.
- (o) That the originating Summons in Suit No FHC/ABJ/CS/308/2018 is still pending as the Judgment Creditor has filed yet another Appeal on the Ruling delivered by Hon. Justice A.R. Mohammed on 2<sup>nd</sup> June, 2019 having lost at the Court of Appeal.
- (p) While Suit No. FHC/ABJ/CS/308/2018 is yet to be decided one way or another by the Court due to the Appeal filed by the Judgment Creditor/Respondent at the Supreme Court, the Judgment Creditor/Respondent brought this Garnishee Proceedings against the Judgment Debtor in respect of a Judgment whose interpretation of the Order of Court is still pending before the Federal High Court in Suit No. FHC/ABJ/CS/308/2018 due to the Appeal filed by the Judgment Creditor at the Supreme Court.

In support of the Motion is 19 Paragraph affidavit sworn to by Oluwasegun Odunsi and attached are 10 Exhibits marked as "1 – 10". Also filed is a Written Address. And in response to the counter-affidavit served on the Applicant, filed a further affidavit on 28/10/2021. Also filed is a Written Address, adopts the Written Addresses, in urging the court to set aside the Order Nisi and dismiss the Garnishee proceedings.

In response, the Judgment Creditor filed a Counter-Affidavit of 6 Paragraphs on 20/10/2021 sworn to by Ali BubaSa'id Ali. Also filed is a Written Address, adopts same in urging this court to discountenance the Judgment Debtor's application and dismiss same for lacking in merit. Further submits way of adumbration, that the said Appeal at the Supreme Court is not on the same issue and subject.

The Garnishee Counsel is not opposed to the application of the Judgment Debtor.

In the Written Address in support of the Motion, settled by C.O. Aduroga (SAN), Applicant Counsel, formulated three (2) issues for determination, which are;

- (1) Whether the Judgment Debtor herein may be heard in this Garnishee proceedings.
- (2) Whether the Judgment Debtor has disclosed facts to warrant the discharge or setting aside of the Order Nisi made Ex parte.
- (3) Whether the court can proceed to take any further steps in the Garnishee proceedings in view of the Interlocutory Appeal filed by the Judgment Creditor which is pending at the Supreme Court.

In the Written Address of the Judgment Creditor settled by John S. Mshelia Esq, three (3) issues were formulated for determination, which are;

- (1) Whether the Judgment Debtor can be heard in the circumstances of this garnishee proceeding.

- (2) Whether the Judgment Debtor has placed before the court any material in the circumstances of this case to warrant a setting aside of the Order Nisi.
- (3) Whether the court can continue to proceed with the garnishee proceedings in the circumstance of this case.

Having carefully considered this instant application, the submission of both Learned Counsel, the judicial authorities cited as well as the Exhibits annexed, the Court shall adopts issue 1 and 2 of the Applicant Counsel put together as Issue 1 for determination and Issue 3 of the Applicant Counsel as Issue 2 for determination by this Court. That is;

- (1) Whether the Judgment Debtor can be heard in this garnishee proceedings and/or whether the Judgment Debtor has disclosed facts to warrant the discharge or settling aside of the Order Nisi made Exparte.
- (2) Whether the court can proceed to take any further steps in Garnishee proceedings in view of the Interlocutory Appeal filed by the Judgment Creditor, pending at the Supreme Court.

These two (2) issues formulated and adopted by the Court encapsulates the two issues formulated by the Judgment/Creditor.

The grant or otherwise of an application of this nature, is at the discretion of the court and in exercising that discretion, the court are enjoined to exercise it judicially and judiciously. And to be able to do so, the Applicant

must place before the court cogent facts to rely on. See AnachebeVsIjeoma (2015) ALL FWLR (PT. 784) @ 183 @ 195 Para D – F.

On whether the Judgment Debtor can be heard in the garnishee proceedings, it is the contention of the Judgment Debtor/Applicant Counsel relying on the case of GweduVs D.S. H.A. (2019) 8 NWLR (PT.1673) S.C 30, that based on the facts stated in Para 4 – 6 of affidavit in support of the Notice Preliminary Objection, that the Judgment Creditor failed to give information to court which could have assisted the court at the time the application of this Ex parte was taken and granted which if the Judgment Debtor had the privilege to be heard would have decided differently, hence based on this, the Judgment Debtor ought and can be heard in this application.

On the other hand, the Judgment Creditor, contends and relying on the case of CBNVs Interstella Communication Ltd & Ors (2017) LPELR – 500 (SC), that it settled law that garnishee proceedings is strictly between the Judgment Creditor and the garnishee. And contend that the case cited by Judgment Debtor is distinguishable to this case. Further submits that what the Judgment Debtor/Applicant seek in the matter in FHC/ABJ/CS/308/2018 against the FCT/HC/CV/1408/2015 is quite distinct from each other, while in the FHC/case the Judgment Debtor is attempting to re-open the case, that is sub-judice. In all submits that the Judgment Debtor has failed to bring before this court any materials to enable them be heard in this garnishee proceedings.



Garnishee Proceedings is a distinct and separate proceedings outside the main Suit; and by judicial pronouncement, it is between the Judgment Creditor and the garnishee, unless where cogent facts are given to enable the court to so decide. To do this the court must have recourse to processes before it. On a careful perusal of the facts before the court by the Judgment Debtor, this court is unable to hold that the Judgment Debtor can be heard in the Garnishee proceedings.

On the issue of whether sufficient facts have been disclosed to warrant the setting aside of the Order Nisi.

The courts overtime have stated the grounds upon which it may set aside its own Judgment or orders. They are;

- (1) Where the Judgment is obtained by fraud or deceit.
- (2) Where the Judgment is a nullity such as when the court itself was not competent; or
- (3) Where the court was misled into giving Judgment under a mistaken belief that the parties consented to it; or
- (4) Where the Judgment was given in absence of jurisdiction.
- (5) Where the Procedure adopted was such as deprived the decision or Judgment of the character of a legitimate adjudication.

See the case of WendeVsLonge&Ors (2011) LPELR – 8809 (CA); Also case of IgweVsKalu (2002) 14 NWLR (PT. 787) @ 435.

In this instant the Judgment Debtors/Applicant contend and relying on relevant Paragraphs 4 – 6 of their affidavit in support of the Motion, that the Judgment Creditor failed to disclosed relevant facts to the court in deciding whether or not to grant the garnishee Order Nisi. That based on the misrepresentation of facts, the court was led to grant the Order Nisi; are sufficient grounds for the court to set aside the order Nisi. In assuaging the court to grant, referred to case of S.A.P. (Nig) Ltd Vs CBN (2004) 15 NWLR (PT. 1897) 655, CA; IyaboVs FRN (2017) LPELR – 47194 (CA).

On the other hand, the Judgment Creditor contends that the authorities cited are not on all fours with this instant case and that the Judgment Debtor has failed to show succinctly material facts of any misrepresentation to court, that would warrant the court to set aside the order Nisi.

It is settled that he who asserts must prove, see Section 131 (1) of the Evidence Act, 2011. Also case of Darlington Vs F.R.N (2019) ALL FWLR (PT. 1006) 600 (SC). In the determining the competing claims of the parties, the court shall have recourse to the records of court and this the court is empowered to do. See case of AgbarehVsMimirah (2008) ALL FWLR (PT.409) 559 @ 585.

A careful perusal of the alleged facts as argued by the Judgment Debtor in their Para 4 – 6 of their affidavit in support, the court finds that the facts so stated are facts not related to the facts leading to the Judgment delivered bythe court on 3/11/2017 by My Lord Hon. Justice A.M. Talba (as he then was) what went before the Federal High Court was for

interpretation of the Judgment of My Lord's Judgment of 3/11/2017, which subsequently is at the Supreme Court for determination on the Appeal before it.

Question; How can a matter not a product of an Order of Court based on a Judgment in a garnishee proceedings for which no appeal against it, can be subject of an application to set aside. This court is of the firm view that this garnishee proceeding being sui generis and distinct cannot be a subject for this instant application. In the circumstance, I find that there is no misrepresentation of facts that would have caused this court to act differently if brought to its knowledge at the time of considering the application for the grant of Order Nisi. I resolve this issue in favour of the Judgment Creditor.

On the 2<sup>nd</sup> issue, whether this court can proceed with the garnishee proceedings in view of the fact that there is a pending appeal at the Supreme Court filed by the Judgment Creditor.

I have carefully considered the competing claims of the both parties and the judicial authorities cited. It is trite that where a Notice of Appeal and a Motion for Stay of Execution in respect of the Judgment sought to be enforce by the garnishee proceedings, the court will not proceed with the garnishee proceedings. See Nigeria Breweries PlcVs Chief WorhiDumuje&Ors (2015) LPELR – 25563 (CA). In this instant, garnishee proceedings now sought to be set aside is not subject of Appeal before any court, what is presented before this is this instant application by the Judgment Debtor is the pending Appeal at the Supreme Court in respect of

a matter not, in my view, connects to this garnishee proceedings, which this court have statedis sui geneis; neither is there a Stay ofExecution before the court in respect thereof. The prayer for stay in this instant by the Judgment Debtor,in my view, is likened to the principle that placing something on nothing, it cannot stand but fall. In consequence therefore, this application ofthe Judgment Debtor/Applicant is lacking in merit and therefore fails and accordingly dismissed.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

23/2/2022

**APPEARANCES**

C.O. ADURAJO (SAN) WITH O.A. AKANBI FOR THE JUDGMENT DEBTOR/APPLICANT

J.S. MSHELIA FOR THE JUDGMENT CREDITOR.

M.W. BAWA FOR THE GARNISHEE

