

**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/BW/CV/44/2016
MOTION NO: M/1128/2022**

BETWEEN:

MR. ARTHUR EKOKIGHO.....JUDGMENT CREDITOR/APPLICANT

VS

- 1. INSPECTOR GENERAL OF POLICE**
- 2. NIGERIA POLICE FORCE**
- 3. COMMISSIONER OF POLICE, FCT POLICE COMMAND**
- 4. CPL USMAN MOHAMMED**
- 5. CPL MOSES ABRAHAM**
- 6. CPL SAMUEL MEMAKO.....JUDGMENT DEBTORS**

VS

- 1. GUARANTY TRUST BANK PLC..... 1ST GARNISHEE**
- 2. POLICE HEALTH MAINTENANCE LTD.....2ND GARNISHEE**

RULING

By a Motion on Notice No. M/1128/2021 filed on 9/11/2021, brought pursuant to Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria, Section 83 and 84 of Sheriff and Civil Process Act, Order 46 and under the inherent jurisdiction of this Honourable Court, the Applicant prays for the following reliefs;

- (1) An Order of this Honourable Court setting aside Order Nisi issued by this Honourable Court on the 5th day of October, 2021.
- (2) Omnibus Relief.

The grounds upon which this application is predicated are:-

- (1) The Honourable Court lacks jurisdiction to make the Order Nisi absolute in this matter.
- (2) The 2nd Garnishee/Applicant's Account maintained with the 1st Garnishee sought to be garnished does not belong to the Judgment Debtors.
- (3) The Garnishee application before the court amounts to an abuse of court process.
- (4) The Judgment Creditor/Respondent Misled this Honourable Court which led to the grant of the Order Nisi by attaching the account of the 2nd Garnishee/Applicant who is separate and distinct personality separate from the Judgment Debtors.
- (5) The Judgment Creditor/Respondent's action is vexations and a waste of the time and resources of the court.
- (6) It is in the interest of justice and fair hearing to set aside the Order Nisi.

In support of the Motion, is a 12 Paragraph affidavit sworn to by one Suleiman Idris, with one Exhibit marked as "HM1-10". Also filed is a Written Address, adopts same, in urging the court to set aside the Order Nisi.

In response, the Judgment Creditor filed a 13 Paragraph counter-affidavit sworn to by one Ruth Aleke and in compliance with the Rules, filed a Written Address, adopts same and urged the court to refuse the application and make the Order Absolute.

The 1st Garnishee-Guaranty Trust Bank not opposed to the application.

In the Written Address in support of the Motion settled by Uche Benson Egbuchi Esq. Applicant Counsel, only three (3) issues were formulated for determination;

- (1) Whether the Order Nisi can be make absolute against the account of the Applicant.
- (2) Whether the 2nd Garnishee/Applicant enjoy a separate and distinct personality from the Judgment Debtors particularly the 1st and 2nd Judgment Debtors such that their liabilities can be borne by the 2nd Garnishee/Applicant.
- (3) Whether a Garnishee proceedings can be instituted against a Public Officer without first seeking and obtaining the consent of the Attorney General.

In the Written Address of the Judgment Creditor, settled by Uchenna Vs Egelemba Esq. only one (1) issue was formulated for determination which is;

“Whether the Order Nisi can be made absolute against the monies in possession of the 2nd Garnishee which are for the benefit of the Judgment Debtors in the circumstances 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 will adopt issues 1,2 and 3 as formulated by the 2nd Garnishee/Applicant.

The three (3) issues formulated and adopted by the court on encapsulates the sole issue 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 courts 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. In the case of *Anachebe Vs Ijeoma* (2015) All FWLR (PT. 784) 183 @ 195 Para D – F, the Apex Court, held;

“The discretion vested in a court is required to be exercised judicially and judiciously, as it entails the application of legal principles to relevant facts/materials to arrive at a just equitable decision. It is thus, not an indulgence of a judicial whim, but the exercise of judicial Judgment based on facts guided by the law or the equitable decision”

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

- (1) When the Judgment is obtained by fraud or deceit.
- (2) When the Judgment is a nullity such as when the court itself was not competent; or
- (3) When 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 to deprive the decision or judgment of the character of a legitimate adjudication.

See the case of Wende Vs Longe & Ors (2011) LPELR 8899 (CA); Igwe Vs Kalu (2002) 14 NWLR (PT. 787) @ 435.

In this instant case, the 2nd Garnishee/Applicant, is seeking the Order of Court to set aside Order Nisi granted by this court on the 5th October, 2021, on the grounds that the court lack jurisdiction, the account sought to be Garnished does not belong to the Judgment Debtors; that the account belongs to the 2nd Garnishee/Applicant, who is separate and distinct personality separate from the Judgment Debtors. These facts are contained in Paragraphs 5,6,7,8,9,11,12(b) (c) (d) (e) (f) and (i) of the supporting affidavit of the Motion.

The Judgment Creditor, on the other hand, had contended that the Order Nisi made by this court on 5/10/2021, was proper having complied with the Provisions of the Sherriff And Civil Process Act and the Rules. That the order is against the 2nd Garnishee in whose custody funds of the Judgment Debtor are kept, as a Garnishee for the purpose of this application. That it is not correct that the consent of Attorney General is required before a commencement of a Garnishee proceeding. These facts are contained in Paragraphs 3,4,10.

On whether the Order Nisi can be made against the account of the Applicant. It is the contention of the 2nd Garnishee/Applicant, that the Order Nisi was not properly served on them, consequently, deprives this court of the jurisdiction to make the order absolute, refer the court to Section 83 (2) of Sherriff Civil

Process Act and the case of First Bank & Ors Vs FCMB (2016) LPELR – 42217 (CA), and Order 46(1) of the FCT High Court (Civil Procedure) Rules; in urging the court to so hold.

The Judgment Creditor, on the other hand, contend that the position as contended by the 2nd Garnishee/Applicant is at variance with their averments in their supporting affidavit, with particular reference to their Paras 1, 2, 3 and 4 of the 2nd Garnishee/Applicant, wherein they admitted being in receipt of the Order Nisi on 5/10/2021 and subsequently filed an affidavit to show cause. That having taken steps cannot be heard to complain of lack of fair hearing. Commend the court to case of Balogun Vs Yusuf (2010) 16 WRN 158 @ 163 Ration 5, that where facts are admitted, needs no further proof. To determine whether or not Order Nisi can the Applicant on account of the facts relied on, this must have recourse to the records as contained in the records, and the court to so do, see case of Agbareh Vs Mimrah (2008) ALL FWLR PT 409, 559.

A careful perusal of the affidavit evidence in support of the Applicant Motion, in particular, the Applicant admitted receiving the said Order Nisi in Paras 3, 4, and reacted by filing an affidavit to show cause on 9/11/2021 sworn to by one Suleiman Idris by Para 5, the Applicant contended that they were not served any of the court processes in the suit instituted in this court.

It is clear from the records that the Applicant were served and this facts admitted by the Applicant and even took steps by filing an affidavit to show cause. In the light of trite law, that facts admitted need no further proof, this

court holds that this position of the Applicant cannot stand, therefore this submission fails against the Applicant.

On the 2nd issue, whether the Garnishee/Applicant can enjoy a separate and distinct personality from the Judgment/Debtors particularly the 1st/2nd Judgment Debtors such that their liabilities can be borne by the 2nd Garnishee/Applicant.

It is the contention of the Applicant, the liabilities of the 2nd Judgment/Debtor cannot be visited on the Applicant based on their distinct and separate personality occasioned by their respective Laws creating them. The Applicant being a Limited Liability Company under CAMA, 2020 while the 1st Judgment/Debtor is a creation of Legislation by virtue of Section 1 of Police Act, whilst the 2nd Judgment/Debtors a Public officer established under Section 215 (2) of 1999 Federal Republic of Nigeria and Section 6 of Police Act. And urge the court to so hold.

The Judgment/Creditor on the other hand, contends that the position of the Applicant in this instant, is a case of double speak. That having admitted as a Garnishee in this proceedings, that the monies in their custody is for the benefit of the men and officers of 1st, 3rd – 6th Judgment/Debtors) cannot be heard to pray this court to set aside this Order Nisi.

Garnishee proceedings is a distinct and separate proceeding outside the main suit and by judicial pronouncement – see Nigerian Breweries Plc Vs Dummiye (2015) LPELR – 25583 (CA), it is between the Judgment Creditor and the Garnishee, unless where cogent facts are given to enable the court to so decide. To do so, the court must have recourse to its records. In this instant,

the 2nd Garnishee/Applicant was made a party to the Garnishee proceedings, as Garnishee and by their own admission vide their affidavit in support and affidavit to show cause admitted that monies in their custody is for the benefit of men and officers of 1st, 3rd& 6th Judgment/Debtor). It is therefore the finding of court that the Applicant cannot at this stage, turn round to claim or hide under the cover of distinct personality; therefore this argument enures in favour of the Judgment Creditor.

On the 3rd issue, whether a Garnishee proceeding can be instituted against a Public officer without the consent of the Attorney-General.

It is the contention of the Applicant, that the 2nd Judgment Debtor is a Public Officer and by the Provision of Section 84 of Sherriff And Civil Process Act, no enforcement against it can be done without consent of the Attorney General. Commend this court to Section 18 of the Interpretation Act, Section 318 of 1999 Constitution of the Federal Republic of Nigeria, case of CBN Vs Hydro Air Pty Ltd CA/1/235/2012; CBN Vs J.I. Nwanyanwu & Sons Enterprises Nig Ltd (2014) LPELR 22745 (CA), in urging the court to hold that failure to obtain requisite consent of Attorney General robs this court of the jurisdiction to entertain the garnishee proceedings.

The Judgment Creditor on the other hand, contend that the Applicant is not a Public Officer within the ambit of law, refer to case of CBN Vs Adedeji (2004) 13 NWLR (PT. 890) 226 @ 245; and Section 18 of the Interpretation Act. Further, by Para 12 (a) of the supporting affidavit of the Applicant, the Applicant clearly admitted they aren't Public Officers. In all urge the court to hold the Applicant are not Public Officer within the contemplation of the

Section 84 of Sherriff And Civil Process Act. That in any event, it is not for the Applicant to lay or assert a claim on the applicability of the Section 84 of the Sherriff And Civil Process Act, rather it is for the Judgment Debtor to do. In all urge the court to so hold.

In this instant, the position of the law is that it is for the Judgment/Debtor that could raise these grounds of Section 84 of SCPA, not the Garnishee. Moreso, the Applicant clearly admitted their position as not being Public Officer in their supporting affidavit; wherein they stated that they are Private Limited Company. In the circumstances this argument enures in favour of the Judgment Creditor.

In all having carefully considered this instant application, this court finds that this application lacks merit and should be dismissed. Accordingly, the Order Nisi is hereby made absolute against the 2nd Garnishee/Applicant.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

22/3/2022

APPEARANCE:

U. V. EGELEMBBA FOR THE JUDGMENT CREDITOR

ELVIS OKPOH FOR THE 1ST GARNISHEE – GTB PLC

JOSHUA BOYEDE WITH LINUS OGBOOLE FOR THE 2ND GARNISHEE.