

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE BWARI JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7 APO, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

SUIT NO: CV/0228/2017

**BETWEEN:**

XL INSURANCE BROKERS LIMITED

(Suing for itself and on behalf of)

- i. PRECUNIATRY AND TRUST INSURANCE  
BROKERS LIMITEED
- ii. CARRIES INSURANCE  
BROKERS LIMITED
- iii. QUALITY INSURANCE BROKERS LIMITED
- iv. MILLBANK INSURANCE UM TED
- v. VISION TRUST BROKERS UM TED

JUDGMENTCREDITORS/  
ESPONDENTS

AND

1. NICON INSURANCE LIMITED
2. MINISTER, FEDERAL MINISTRY OF EDUCATION

JUDGMENT/  
DEBTORS

**AND**

FIRST CITY MONUMENT BANK PLC

**RULING**

**DELIVERED ON THE 24<sup>th</sup> FEBRUARY, 2022**

BEFORE ME IS A MOTION ON NOTICE BROUGHT PURSUANT TO SECTION 6(6) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999, (AS AMENDED), ORDER 43 RULE (1), OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE RULES) 2018 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

Praying the Court for the following orders:

1. AN ORDER of this Honourable Court setting aside the Garnishee Order absolute made by this Honourable court on the 13<sup>th</sup> of November, 2020 against account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee.

The grounds upon which this application is brought in addition to those contained in the accompanying affidavit are as follows:

- a. The 4<sup>th</sup> Garnishee was served with an order of Garnishee Nisi dated 25<sup>th</sup> September, 2019, delivered by this Honourable Court directing the 4<sup>th</sup> Garnishee to show cause why the Order Nisi should not be deemed absolute against the 4<sup>th</sup> Garnishee in respect of a judgment obtained against two Judgment/Debtors including the Minister, Federal Ministry of Education i.e the 2<sup>nd</sup> Judgment Debtor.
- b. While searching through the data base of the 4<sup>th</sup> Garnishee to find out whether the judgment debtors maintained any account with the bank, the regional legal officer of the 4<sup>th</sup> Garnishee inadvertently disclosed the account of the Federal Ministry of Education to be owned by the 2<sup>nd</sup> Judgment Debtor, Minister, Federal Ministry of Education and consequently an affidavit to show cause was filed exhibiting the statement of account of the Federal Ministry of Education.
- c. As a result of this inadvertence or mistake, the Court on the 13<sup>th</sup> of November, 2020, made the Garnishee Order absolute against account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee.
- d. Federal Ministry of Education is neither the 2<sup>nd</sup> Judgment Debtor nor a party to the main sui that occasioned the Garnishee Proceeding.
- e. In the circumstances, the order absolute made against account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee was made without jurisdiction

and the Court was obviously misled into making the Order absolute against the account.

- f. The 2<sup>nd</sup> Judgment Debtor is also not a juristic person and cannot and does not maintain an account with the 4<sup>th</sup> Garnishee
- g. By the Rules of his Honourable Court, this Court has the inherent jurisdiction to set aside any Judgment or order made where the Court is obviously misled into making such orders or judgment.

Accompany the motion is a 8 paragraphs sworn affidavit by Adamu Shuaibu, adult, Male, Muslim and Nigerian Citizen of 50, Aguiyi Ironsi Street, Maitama, Abuja do hereby make oath and state as follows:

1. I am the litigation officer in the law firm of Primera Africa Legal, Counsel to the 4<sup>th</sup> Garnishee and by virtue of my position I am conversant with the facts of this case.
2. That I have the consent and authority of both my Employers and the 4<sup>th</sup> Garnishee to depose to this affidavit. Save and except where expressly stated, all the facts deposed to herein are within my personal knowledge and belief.
3. That the 4<sup>th</sup> Garnisnee was served with an order of Garnishee Nisi dated 25<sup>th</sup> September, 2019 delivered by this Honourable Court directing the 4<sup>th</sup> Garnishee to show cause why the Order Nisi should not be deemed absolute against the 4<sup>th</sup> Garnishee.
4. That an affidavit to show cause was filed on behalf of the 4<sup>th</sup> Garnishee.
5. That on the 18<sup>th</sup> of October 2019, an affidavit to show cause was filed on behalf of the 4<sup>th</sup> Garnishee deposed to by me from information derived from Sule Elakamah, the regional legal officer of the 4<sup>th</sup> Garnishee and attached the statement of account of the Federal Ministry of Education.

6. That on the 13<sup>th</sup> of November, 2020, the court made the Garnishee Order absolute against account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee.
7. That I was informed by Sule Elakamah, the regional legal officer of the 4<sup>th</sup> Garnishee at my above stated address on the 20<sup>th</sup> day of January, 2021 at about 05:00 pm in the process of deposing to this affidavit and I verily believe her to be true as follows:
  - a. That while searching through the data base of the 4<sup>th</sup> Garnishee to find out whether the judgment debtors maintained any account with the bank, he inadvertently disclosed the account of the Federal Ministry of Education to be owned by the 2<sup>nd</sup> Judgment Debtor, Minister, Federal Ministry of Education.
  - b. That the 2<sup>nd</sup> judgment Debtor is not a juristic person and cannot and does not maintain an account with the 4<sup>th</sup> Garnishee.
  - c. That the 2<sup>nd</sup> Judgment Debtor, Minister, Federal Ministry of Education is not a juristic person and is distinct from the Federal Ministry of Education.
  - d. That he ought not to have disclosed the account of the Federal Ministry of Education as that of the 2<sup>nd</sup> Judgment Debtor as they are distinct persons.
  - e. That the affidavit to show cause filed on behalf of the 4<sup>th</sup> Garnishee misled the court into attaching the account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee.
  - f. That immediately he realized the mistake of disclosure of the Federal Ministry of Education account, he notified the counsel handling the matter to take steps to file an application to set

aside the Garnishee Order absolute made against the said account.

g. That the affidavit to show cause was yet to intentionally mislead this Honourable Court but was caused by his inadvertence in disclosing the wrong account

h. Federal Ministry of Education is neither the 2<sup>nd</sup> Judgment Debtor nor a party to the suit that occasioned the Garnishee Proceeding.

i. In the circumstances, the order absolute made against account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee was made without jurisdiction and the Court was obviously misled into making the Order absolute against the account.

j. By the Rules of this Honourable Court, this Court has the inherent jurisdiction to set aside any judgment or order made without jurisdiction or where the Court is obviously misled into making such orders or judgment

k. That it will be in the interest of justice for this Honourable Court to grant the 4<sup>th</sup> Garnishee's application and set aside the Garnishee Order absolute made by this Honourable court on the 13<sup>th</sup> of November, 2020 against account 2984460011 belonging to the Federal Ministry of Education maintained with the 4<sup>th</sup> Garnishee.

l. That the grant of this application will not in any way prejudice the Judgment Creditors/Respondents.

8. That I solemnly and sincerely declare that I make this declaration conscientiously believing same to be true and in accordance with the Oaths Act, 2004.

The 4<sup>th</sup> Garnishee/Applicant raised a sole issue for determination

**Whether the Applicant has disclosed a prima facie case before this Honourable Court to warrant the court granting the instant application in its favour?**

HE ARGUED THAT WHETHER THIS HONOURABLE COURT CAN SET ASIDE ITS OWN ORDER;

The General Rule of law is that when a trial court has given judgment in a case on the merit, that court is functus officio in relation to the judgment once it is pronounced. It cannot ordinarily re-open the case for a fresh hearing. A party dissatisfied with the judgment can only bring proceedings on appeal against it. However, there are exceptions to the general rule. REMAWA v. NACB CONSULTANCY & FINANCE CO LTD & ANOR (2006) LPELR 7606 (CA).

It is a well settled law and practice that the Court cannot give a judgment against a person who will be affected by its decision if such person is not made a party or has no opportunity of defending the suit. The Court has no jurisdiction to decide the fate of a person or a matter concerning him when such person is not made a party to the action. BABATOLA v. ALADEJANA (2001) LPELR-696 (SC)

In OTU V ACB I NT' L BANK PLC (2008) 3 NWLR (pt 1073) page 179, the Supreme Court of Niger as per Nik JSC (as he then was) of blessed memory said:-

“In the judicial process, a Court of law has the power or jurisdiction to set aside Its own order in appropriate circumstances. It has the discretion to do so and once the discretion is exercised judicially and judiciously an appellate Court cannot interfere. After all, the Court is the owner of the order and it can do anything with it, like every owner of property.”

A Minister is a public officer charged by the Legislature of this country with the duty of discharging a public discretion affecting the citizens. *Stitch v. Ag Fed & Ors* (1986) LPELR-3119(SC). By virtue of section 147 of the 1999 constitution (As Amended), the minister is saddled with the responsibility of the administration of the ministry and therefore cannot own and operate any bank account in his name.

In conclusion he humbly and respectfully urge this Honourable Court to exercise its discretion in favor of the 4<sup>th</sup> Garnishee and set aside the Order of this Honourable Court made on the 13<sup>th</sup> of November, 2020 against account 2984460011 as it belongs to the Federal Ministry of Education and not the Minister, Federal Ministry of Education sued as the 2<sup>nd</sup> Judgment Debtor in this suit.

In reply to the Garnishee/Applicant motion on notice the Judgment Creditor/Respondents filed a counter affidavit to the motion and a written address in opposition to Application and prayer sought by the Garnishee/Applicant thus:

I, Habu Haruna Irimiya, Litigation clerk of No. 6 Adetokunbo Ademola Crescent, Wuse 2, Abuja and a citizen of Nigeria do hereby make Oath and state as follows:

1. That I am Litigation clerk in the Chambers of Messrs Bayo OJo & Co., Counsel to the Judgment Creditor in this suit;
2. That by virtue of my position in the law firm, am familiar with the facts of this case;
3. That I have the consent and the authority of the Judgment Creditor to depose to this counter affidavit;
4. That on 6<sup>th</sup> April, 2021 at about 12pm at our office, Bayo Ojo & Co situate at ITF House, 6 Adetokunbo Ademola Crescent Wuse 2,

Abuja one of the Counsel in our law firm handling this matter; Joyce K. Adeyele, Esq. informed me of the following and I verily believe:

- i. That the 4<sup>th</sup> Garnishee/Applicant has not attached the Garnishee order absolute of the trial court upon which his application for Stay of Execution is brought.
- ii. That the Applicant misconceived the capacity in which the 2<sup>nd</sup> Judgment Debtor was sued, which is in his office as a juristic person and not personally.
- iii. That contrary to the depositions in paragraph 7 (b), (c) and (d) of the 4<sup>th</sup> Garnishee's motion to stay execution of Garnishee Order Absolute, the 2<sup>nd</sup> Judgment Debtor was sued in his official capacity being the head of the Federal Ministry of Education and a bank account for the Ministry cannot be opened in his name but that of the Ministry's as created by the Constitution of the Federal Republic of Nigeria.
- iv. That the 2<sup>nd</sup> Judgment Debtor is a public officer who in his official capacity is in control and the custodian of monies held by the Federal Ministry of Education which he heads.
- v. That the 2<sup>nd</sup> Judgment debtor is the head of the Federal Ministry of Education whose bank account the Applicant attached to his affidavit to show cause.
- vi. That the 4<sup>th</sup> Garnishee/Applicant's has not placed before this Honourable Court any special and exceptional circumstances to warrant a stay of execution thereby preventing the Judgment Creditor/Respondent from enjoying the fruit of its judgment by taking sums of money on the 2<sup>nd</sup> Judgment Debtor's account



- with the 4<sup>th</sup> Garnishee/Applicant already attached by vide the Garnishee order absolute.
- vii. The Federal Ministry of Education can only open an account in its name and not the name or designation of its head.
  - viii. That contrary to the erroneous deposition for the 4<sup>th</sup> Garnishee/Applicant, the 2<sup>nd</sup> Judgment Debtor is a juristic person and did not contend otherwise, being a creation of the Constitution.
  - ix. That if the Federal Ministry of Education feels its account was wrongly attached through the Garnishee Order Absolute made by this Honourable Court, it can so contend by applying to this Honourable Court.
  - x. That this application is a clear abuse of process by a party seeking to fight for the cause of another (Federal Ministry of Education) who is aware of the order against it and is not complaining.
  - xi. That by this application, the 4<sup>th</sup> Garnishee/Applicant is seeking to assist a Judgment Debtor (Minister, Federal Ministry of Education) to frustrate realizing the fruit of the judgment against it by tie Judgment Creditor/Respondent.
5. That it will NOT be in the interest of justice to grant this application.
  6. That the Judgment Creditor will be highly prejudiced if this application is granted.
  7. That I depose to this affidavit bona fide and conscientiously believing the content to be true and in accordance with the Oaths Act.

Written address in support of Judgment Creditor/Respondent's counter affidavit in response to the 4<sup>th</sup> Garnishee/Applicant's motion filed 12<sup>th</sup> February, 2021 seeking for an Order staying the execution of the Garnishee Order Absolute made by this Honourable Court on 13<sup>th</sup> November, 2020.

The Judgment Creditor/Respondent has filed a seven (7) paragraphed Counter affidavit deposed to by Habu Haruna Irimiya, the Litigation Clerk in the law firm of Messrs Bayo Ojo & Co. He rely on all the paragraphs of the Counter Affidavit and our arguments contained herein

The fact is that the Garnishee order absolute was delivered by this Honourable court in favour of tie Judgment Creditor/Respondent in this matter.

The Judgment Creditor/Respondent respectfully raise a sole issue for determination:

"Whether the Applicant has satisfied the requirements for granting an application for stay of execution considering the facts and circumstances of this case".

#### ARGUMENT OF THE SOLE ISSUE

"Whether the Applicant has satisfied the requirements for granting an application for stay of execution considering the facts and circumstances of this case".

Application for stay of execution should not be granted as a matter of cause. An Applicant must show some cogent, compelling and convincing reasons to warrant the Court granting such an application. Counsel submit that stay of execution will only be granted by the court, if and only if it is satisfied that there are special or exceptional circumstances

to warrant doing so. See in AMADI V. CHUKWU (2013) 5 NWLR (PT. 1347) 301 (E) 310, PARAS. C-E; 313, PARAS. D-E.

The Supreme Court further held in AMADI V. CHUKWU (2013) (supra) per Ariwoola, J.S.C. that:

"...The reason being that, the law is that a Judgment of a court of law is presumed to be correct and rightly given until the contrary is proved or established, it follows therefore that courts will not make it their practice of depriving successful litigant of the fruit of his success in court".

Counsel submit and urge this Honourable Court to hold that the Judgment Creditor/Respondent is entitled to the full benefit and fruits of his judgment by the court and nothing less especially having proven that the 2<sup>nd</sup> Judgment Debtor has some amounts in its account with the 4<sup>th</sup> Garnishee/Applicant.

He submits and urge this Honourable Court to hold that the 4<sup>th</sup> Garnishee/Applicant has not shown any special or exceptional circumstances in his supporting affidavit to warrant a stay of execution. Contrary to the depositions in paragraph 7 (b), (c) and (d), the 2<sup>nd</sup> Judgment debtor was sued in his official capacity being the head of the Federal Ministry of Education and a bank account for the Ministry cannot be opened in his name or designation but that of the Ministries.

The Supreme Court further held in AMADI V. CHUKWU (2013) (supra) that:

"Therefore, an application for a stay of execution has a duty to show clearly and convincingly that special or exceptional circumstances exist, making the balance of Justice weigh in his/her

favour. It is however conceded that what constitutes special or exceptional circumstance may vary from case to case."

It is our humble submission that taking a look at the affidavit in support of the 4<sup>th</sup> Garnishee/Applicant's application, it does not convincingly show special and exceptional circumstances to warrant a stay of execution, the 4<sup>th</sup> Garnishee/Applicant have misconceived the law by stating that the 2<sup>nd</sup> Judgment Debtor is not a juristic person. The Federal Ministry of Education can only open an account in its name and not the name or designation of its head.

The Applicant, with respect, has misconceived and misplaced the laws on the status of the 2<sup>nd</sup> Judgment Debtor being a juristic person which led to its submissions that it misled the Court when it disclosed the account of the 4<sup>th</sup> Garnishee/Applicant. He submit that an account opened in the name "Federal Ministry of Education" is akin to a case where the Minister, Federal Ministry of Education is sued in his official capacity as the head of the Ministry.

Counsel submits with respect, that the issue of jurisdiction does not arise here, the Honourable Court having been clothed with Jurisdiction to grant the garnishee order absolute. There is nothing that warrants any sympathetic consideration by this Honourable Court of this application to grant stay of execution. He submits thus and urge this Honourable court to hold that the 4<sup>th</sup> Garnishee/applicant does not have any genuine reason to warrant this Honourable Court to exercise the discretion of stay of execution in its favour.

Additionally, it was held per Oguntade JCA (as he then was) in LAWRENCE OKAFOR & CRS V. FELIX NNAIFE (3 998) 4 NWLR (pt. 64) 129 @ 137 that:

"... in granting of an order staying execution or proceedings. the Court should be guided primarily by the necessity to be fair to both parties" See also OBI VS. ELENWOKE (1908) 6 NWLR (pt. 554) 436 'a) 443.

In like manner, it was held by the Court of Appeal, per Tobi JCA (as he then was) in CARIBBEAN TRADING & FIDELITY CORP. VS. NNPC (1991) 6 NWLR (PT.197)352 @ 360-361 PARAS. H-A that:

"The burden is invariably on the Applicant to prove that the application for stay of proceedings deserves all the sympathetic and favourable consideration of the Court, where the burden is not discharged, the application must be dismissed".

Accordingly, he submit that having failed to discharge the legal burden imposed on an applicant seeking stay of execution, the applicant's application deserves to be dismissed, and we respectfully urge the court to so hold and dismiss this application.

In conclusion he respectfully urge the court to dismiss the instant application for staying execution of the garnishee order absolute granted by this Honourable Court on 13<sup>th</sup> November, 2020, and resolve the sole issue posited by the Judgment Creditor/Respondent in its favour:

1. The 2<sup>nd</sup> Judgment Debtor in his official capacity is in custody and in control of monies owned by the Federal Ministry of Education which he heads and as such is a juristic person with legal capacity.
2. A bank account cannot be opened in the name or designation of the Minister who heads the Federal Ministry of Education but in the name of the Ministry which is the "Federal Ministry of Education".

3. The 4<sup>th</sup> Garnishee/Applicant has not convincingly shown in its affidavit special and exceptional circumstances to warrant a grant of stay of execution.
4. The issue of jurisdiction does not arise having shown in our affidavit and this written address that the 2<sup>nd</sup> Judgment Debtor is a juristic person, his office having been established by the Constitution of the Federal Republic of Nigeria.
5. The Judgment Creditor/Respondent can rightfully seek redress from this Honourable Court for outstanding commission due to them from the 2<sup>nd</sup> Judgment Debtor and held by 4<sup>th</sup> Garnishee/Applicant.

On the whole, haven satisfied with the submission of the counsel to the Judgment Debtors, I agreed with the submission of the learned counsel to the Judgment creditors Respondents and the decision of the case haven cited in support of same. Therefore, I hold very firmly that the applicant has failed to show convincingly the exceptional circumstances that exist to enable this Honourable court to set aside its Order earlier granted.

As such the application stand to be dismiss and its hereby dismissed accordingly. The 3<sup>rd</sup> Garnishee stand discharged.

### **APPEARANCE**

Sylvia Imhanobe Esq. for the Judgment Creditor.

Abdulwahab Abayomi Esq. for the Judgment Debtor.

T. O. Alade Esq. for the Garnishee FCMB.

U. H. Usman Esq. for the 3<sup>rd</sup> Garnishee First Bank Plc.

Sign  
Hon. Judge  
24/02/2022