

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20, GUDU - ABUJA
ON TUESDAY THE 15TH DAY OF FEBRUARY 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/M/7030/2021

BETWEEN:

ALIBERT PRODUCTS NIG. LTD=====APPLICANT

AND

1. MR. QIN SHIWEI ===== 2. HIS WORSHIP EKWOABA ANTHONY CHIGOZIE (JUDGE Senior District Court Wuse Zone 2, Abuja) 3. MAJED TANA OF ALIBERT PRODUCTS NIG. LTD 4. MR. AMINU OF ALIBERT PRODUCTS NIG. LTD	}	RESPONDENTS
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RULING

The Applicant upon being granted leave by this Honourable Court to apply for an Order of Certiorari filed a motion on notice on the 17th day of November 2021 praying for the following reliefs: -

1. AN ORDER of this Honourable Court quashing the entire proceedings as it affects the Applicant in SUIT NO: CV/WZI/1825/2021, pending before the 2nd Respondent.
2. AN ORDER of this Honourable Court, setting aside the Order Nisi made by the 2nd Respondent against the Applicant, on the 20 day of September 2021.
3. AND for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the Applicant filed this application are as follows:

- a) That the 2nd Respondent, the Presiding Magistrate of Court 17b, District Court of the Federal Capital Territory, Wuse Zone 2. Abuja. sequel to SUIT NOCV/WZI/1825/2021 (Garnishee Proceedings), filed by the 1st Respondent, granted a Garnishee Order Nisi against the Applicant who is neither a Judgment Debtor nor party in SUIT NO: O/MISC.127/2020, wherein Judgment was delivered by the High Court of Anambra State, Onitsha Judicial Division, sought to be enforced by the 1st Respondent.
- b) That there is nothing to show from the records of SUIT NO: CV/WZI/1825/2021 that the 1st Respondent registered the said Judgment in respect of SUIT NO: O/MISC.127/2020, prior to filing SUIT NO. CV/WZI/1825/2021 to enforce same.
- c) That the 2nd Respondent making a Garnishee Order Nisi against the Applicant in respect of an unregistered judgment delivered outside his jurisdiction, is in contravention of Section 105 of the Sheriffs and Civil Process Act.

Attached to the application is an affidavit of 15 paragraphs deposed to by OLABISI BODUNRIN, the Company Secretary of the Applicant. From the facts deposed therein, what gave rise to this application is that the 1st Respondent commenced Garnishee proceedings against the Applicant, at the Senior District Court of the Federal Capital Territory, holden at Wuse Zone 2, presided over by the 2nd Respondent, seeking to attach funds belonging to the Applicant. That the 1st Respondent is seeking to enforce a judgment delivered by the High Court of Anambra State, Onitsha Judicial Division. That the 2nd Respondent, made a Garnishee Order Nisi against the Applicant, and consequently attached funds in the Applicant's accounts. That the Applicant is not a party nor a Judgment Debtor to the said judgment obtained by the 1st Respondent at the High Court of Anambra

State, Onitsha Judicial Division. That the Respondent failed to obtain certificate of judgment as well as failed to register the said judgment prior to instituting the said Garnishee proceedings, which is not in compliance with the law.

The Applicant attached the following exhibits as follows:

1. A Certified True Copy of the Judgment delivered at the High Court of Anambra State marked 'Exhibit APNL 1'.
2. A Certified True Copy of the Garnishee Order Nisi granted by the 2nd Respondent marked 'Exhibit APNL 2'.

Also filed is a written address wherein Applicant's Counsel raised a sole issue for determination thus: -Whether the Applicant has shown grounds for the grant of the reliefs prayed for in this application?

Arguing the sole issue, Counsel submitted that the balance of convenience is in the Applicant's favour in view of the depositions contained in the affidavit evidence before this Court and the facts deposed therein has shown a prima facie case of the existence of a legal right in the Applicant's favour, which is likely to be grossly affected in the event that the 2nd Respondent is allowed to continue with the proceedings before him and make a Garnishee Order Absolute against the Applicant's account.

Counsel contended that the said proceedings pending before the 2nd Respondent clearly affects Applicant's interest and ought to be quashed, in view of the fact that the Applicant was not a party to the said Judgment in SUIT NO: O/MISC.127/2020, neither is the Applicant a Judgment Debtor to the suit and as such it cannot be bound by the judgement.

Counsel submitted finally that the 1st Respondent was ab-initio wrong to have even commenced proceedings in respect of SUIT NO: O/MISC.127/2020 against the Applicant, in view of the fact that the Applicant was never a party to the said suit; and the learned 2nd

Respondent, was in dearth of jurisdiction to entertain and hear Motion No: MN/01/2021, which culminated to the grant of EXHIBIT APNL 2.

Counsel urged the Court to resolve the sole issue in favour of the Applicant and hold that the entire proceedings in SUIT NO: CV/WZII/1825/21, as it affects Applicant's interest, is manifestly defective, and same ought to be quashed.

Counsel relied on the following cases:

1. Egharevba V.Eribo (2010) ALL FWLR pt. 530 (pp.1230-1231) Paras g-a.
2. Onyekwulieje Vs.Benue State Govt. (2005) 8 NWLR (pt. 928) p. 614 at 636 para c,
3. Nwoaoboshi Vs.Milad Delta State (2003) 11 NWLR (pt.831) 305 at 318,
4. Ezenwa V. Bestway Electronics Manufacturing Company Ltd. (1999) 8 NWLR (pt. 613) 61 at 82 para-D.
5. Lawal V.Quadri (2004) 6 NWLR (pt. 868) 1 at 12 paras D-G.
6. Igbadoo &Anor V. Keystone Bank Ltd (2021) LPELR-52677,
7. Incorporated Trustees of Algon v. Riok (Nig) Ltd &Ors (2018) LPELR-45289,
8. Anosike &Anor v. Regd Trustees of Anglican Diocese of Owerri &Ors (2014) LPELR-22498

The Respondents did not file a counter affidavit with an accompanying written address to oppose this application, the inference to be drawn is that depositions in theApplicant's affidavit are deemed admitted and this court is to act thereon.

I have duly considered the Applicant's motion and accompanying affidavit together with the exhibits attached, as well as the written submission of the Applicant's Counsel and the law is well settled that in proceedings such as this, the Court is solely concerned with whether or not on the record

sought to be quashed, it exhibits errors or jurisdictional irregularities that must be rectified or stalled by quashing the record of the inferior Court. See the case of *ESABUNOR & ANOR V. FAWEYA & ORS* (2019) LPELR-46961 (SC). An order of certiorari will thus issue to quash the decision of an inferior Court where it is established that: a) The inferior Court has acted in excess of its jurisdiction b) There is a breach of the rules of natural justice c) There is an error of law on the face of the plaint filed in the inferior Court containing the claim or charge. See *R. v. District Officer* (1961) All NLR 51 and *Onuzulike v. CSD Anambra State* (1992) 3 NWLR Pt. 232 Pg. 791.

In this instant case, from the facts as deposed in the affidavit, the 1st Respondent is seeking to enforce a judgment against the Applicant before the 2nd Respondent and had indeed obtained a Garnishee Order Nisi against the Applicant and consequently attached funds in the Applicant's account. However, the grouse of the Applicant is that the Applicant was neither a party nor a judgment debtor to the said judgment sought to be enforced by the 1st Respondent before the 2nd Respondent.

From the documents before me, particularly Exhibit APNL1, on the face of the judgment, the Applicant is not listed as a party in that suit and going through the body of the judgment, it did not reveal any order against the Applicant. How the Applicant became a party in the suit enforcing the judgment of the Court of Anambra State is a mystery and an obvious error which the 2nd Respondent indulged, and this must not be allowed; as the judgment sought to be enforced is against the 5th to 7th Respondents who are; *DSP CHINEDU, ANTI VICE SECTION, WUSE ZONE 2, SCID, FCT COMMAND, ABUJA*; MAJED TANA, THE DEPUTY MANAGING DIRCETOR, *ALIBERT PRODUCTS LTD.ABUJA* AND MR. AMINU, *ALIBERT PRODUCTS NIG. LTD*, all individuals as opposed to the Applicant who is a corporate entity.

The Applicant not being a party in the substantive suit and now being made a party in the garnishee proceeding to enforce the said judgment is an obvious error and robs the 2nd Respondent of its jurisdiction to entertain the garnishee application against the Applicant as the Applicant is not a proper party before it. The suit before the 2nd Respondent for the enforcement of judgement cannot be made with the Applicant as a party as the Court has held in the case of AG FED v. A.I.C LTD (2000) LPELR-628(SC) Per UTHMAN MOHAMMED JSC (Pp 16 - 17 Paras F - A) that;

“..... You cannot make a consequential order directing a complete stranger to the proceedings and judgment to pay money in satisfaction of the enforcement of a judgment.....”

Going by the principle as espoused in the case of ESABUNOR & ANOR V. FAWEYA (supra), this instant case falls under the circumstance where the remedy of Certiorari would avail.

It is also the Applicant's contention that the said certificate of judgment being enforced by the Respondents was neither obtained nor registered at the Registry of this Honourable Court prior to the institution of the garnishee proceedings. The procedure for the registration of certificate of judgment for the purpose of levying execution are provided for in Section 104 and 105 of the Sheriffs and Civil Process Act and by the provision of Section 108 of the Act, the Court in which any such certificate of a judgment has been registered shall, in respect of the issue of process upon the certificate and the enforcement of the judgment, have the same control and jurisdiction over the judgment as if the judgment were a judgment of such Court. Hence, by this provision vis a vis the uncontroverted facts before this Court, the failure of the 1st Respondent to obtain and register the certificate

of judgment in the Registry of this Court divest the 2nd Respondent of its jurisdiction to enforce the said judgment.

Therefore, it is my view and I so hold that the 1st Respondent was manifestly wrong to have commenced the Garnishee proceedings against the Applicant as the judgment debtor knowing full well that the Applicant was never a party in the substantive suit that gave rise to the garnishee proceedings, and the order of the 2nd Respondent granting the Order Nisi against the Applicant as well as the proceedings is erroneous, manifestly defective and ought to be quashed and is hereby quashed.

Consequently, it is hereby ordered as follows:-

1. An order is hereby granted quashing the entire proceedings as it affects the Applicant in suit No. CV/WZII/1825/2021.
2. That the Order Nisi made by the 2nd Respondent against the Applicant on the 20th day of September 2021 is hereby set aside.

Parties: Parties absent.

Appearances: No legal representation for either party.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
15TH FEBRUARY 2022