

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU - ABUJA**  
**ON THURSDAY THE 3<sup>RD</sup> DAY OF FEBRUARY, 2022.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO. CV/1952/2021**  
**MOTION NO: M/6429/2021**

**BIZFIELD NIGERIA LIMITED -----JUDGMENT CREDITOR/  
RESPONDENT**

**AND**

**FORTIS MICRO FINANCE BANK PLC ----- JUDGMENT DEBTOR/  
OBJECTOR**

**AND**

**FORTIS MOBILE MONET LIMITED ---- GARNISHEE/RESPONDENT**

**RULING**

The Judgment Debtor filed a notice of preliminary objection brought pursuant to Section 83 (2) of the Sheriff and Civil Process Act 2004, Sections 577 & 580 of the companies and Allied Matters Act 2020 and under the inherent jurisdiction of this Court, the objector is praying the Court for the following orders;

1. AN ORDER setting aside the Order nisi made in this matter on the 14<sup>th</sup> day of July, 2021 and nullifying the entire Garnishee proceedings.
2. And for such further order (s) as this Honourable Court may deem fit to make in the circumstances

The grounds upon which this application is brought are;

1. The Judgment Creditor/Respondent's non-compliance with the provisions of Section 83(2) of the Sheriff and Civil Process Act Cap. S6 LFN, 2004 and Section 580 of the Companies and Allied

Matters Act, 2020 which is sine qua non to commencing and proceeding with this action.

2. The court is robbed of the requisite jurisdiction to hear and determine this case as per Section 577 of the Companies and Allied Matters Act, 2020.

I have carefully considered the preliminary objection. Upon examining the Applicant's motion and affidavit in support as well as the counter affidavit of the Respondent, the issue to be determined is;

“Whether this Court can grant the Applicant's application”.

The general proposition of law is that a court has no power to set aside or vary its earlier order except in circumstances where there has been a fundamental defect in the proceedings leading up to the making of the order sought to be set aside. A person affected by orders which are nullities by reason of a fundamental defect which goes to the jurisdiction and/or competence of the Court is entitled *ex debito justitiae* to have the order set aside; and this could be done by the Court which made the order without any need for an appeal to a higher court as held in **ANATAGU v IWEKA II [1995] 8 NWLR (PT. 415) 547 at 586 and AGWUWENDU v ONWUMERE [1994] 1 NWLR (PT. 321) 375.**

**Section 83(2) of the Sheriff and Civil Process Act (SCPA) provides that;**

“at least fourteen days before the hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor”.

I have gone through the court file, evidently there is no proof of service of the order nisi on the Judgment Debtor. The Court of Appeal held in **Nigerian breweries Plc v. Dumuje (2016) 8 NWLR Part 1515 Page 536 at 598-600 Para C-H per Ogunwumiju JCA** that; *“By the use of the word “shall” in Section 83 (2) of the Sheriffs and Civil Process Act, garnishee proceeding will be a nullity where the order nisi is not served on the judgment debtor within the time prescribed by law”.*

**Section 83(2) of the Sheriffs and Civil Processes Act** unequivocally requires that the judgment debtor be served with the order nisi along with the garnishees who are parties, before the return date for hearing to show cause to the Court why the order should not be made absolute. As statutory provision and requirement, a Court of law has the judicial duty and obligation to comply and ensure compliance therewith. The non service of the order nisi is not a condition upon which to set aside the order nisi as there was no fundamental defect in the proceedings leading to the making of the order nisi. The non service of the order nisi renders subsequent proceedings a nullity being in conflict with the fundamental condition precedent to the exercise of the jurisdiction of the court. The Court of Appeal in **Nigerian Breweries Plc V. Dumuje (2016) 8 NWLR Part 1515 Page 536 at 598-600 Para C-H per Ogunwumiju JCA** held;

*“By the use of the word “shall” in Section 83(2) of the Sheriff and Civil Process Act, garnishee proceedings will be a nullity where the order nisi is not served on the judgment debtor within the time prescribed by law”.*

In view of the above, the Judgment Creditor is hereby ordered to serve the garnishee Order Nisi on the Judgment Debtor. At this point it will be an academic exercise to determine the other grounds relied upon in the preliminary objection as the non service of the order nisi could deprive the court of jurisdiction to proceed.

**Parties:** Absent

**Appearances:** P. Okorie appearing with Shehu Abubakar appearing for the Judgment Debtor/Object. Femi Motojesi holding brief of Samuel Ogala for the Judgment Creditor.

**HON. JUSTICE MODUPE OSHO-ADEBIYI  
JUDGE**

**3<sup>RD</sup> FEBRUARY, 2022**

