

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 28TH DAY OF APRIL, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/546/2018
MOTION NO.: M/2972/2022

BETWEEN:

ENGR OPARA PETER AKUJOBI JUDGMENT CREDITOR/APPLICANT

AND

MR OLORUNFEMI AKINTOLA JUDGMENT DEBTOR/RESPONDENT

RULING

This Ruling is on an application for the attachment of immovable property of the Judgment Debtor/Respondent.

By a Motion on Notice dated the 14th day of March, 2022 and filed on the 16th day of March, 2022, the Judgment Creditor/Applicant brought this application seeking the following reliefs:-

- 1. AN Order of this Honourable Court directing the forfeiture of the Judgment Debtor/Respondent's landed property to the Judgment Creditor/Applicant with Certificate Occupancy No. NS 5639 measuring about 2701.59sqm comprising of 4 units of 2 bedroom flats situate, lying and bring at Mararaba, Nasarawa State pledged as collateral for ₦25 Million loan obtained from the Judgment*

Creditor/Applicant and which constituted an alternative relief claimed before the Court.

2. *An Order of this Honourable Court for leave to issue a Writ of Attachment against the Judgment Debtor/Respondent's immovable property, a detached duplex lying and known as No. 32 Benue Crescent, Suncity Estate, Galadimawa, Abuja.*
3. *And for such further Order (s) as this Honourable Court may deem fit to make in the circumstances of this application.*

The application was supported with anineteen-paragraph affidavit deposed to by the Plaintiff/Judgment Creditor/Applicant himself to which were attached three exhibits marked **Exhibits1,2** and **3** which were the Writ of Summons, the Judgment of this Court *coram*, B. Hassan, J. delivered on the 15th of July, 2021 and the irrevocable Power of Attorney respectively. A Written Address also accompanied the Motion on Notice.

In the affidavit, the Judgment Creditor/Applicant deposed to the fact that he instituted a suit against the Defendant/Judgment Debtor/Respondent wherein he sought for the recovery of the total sum he lent to the Judgment Debtor/Respondent along with the accrued interest. It was the fact as he stated it that the loan of ~~N~~25,000,000.00 (Twenty-Five Million Naira) only, the second tranche of the loans he advanced to the Judgment Debtor/Respondent, was secured by a landed property with Certificate of Occupancy No. NS 5639 measuring about 2701.59sqm and situate at Mararaba,

Nasarawa State on which was built four units of 2-bedroom flats. He further stated that his alternative relief before that Court was an order of forfeiture.

According to the Judgment Creditor/Applicant, Judgment was entered against the Respondent in the sum of ₦140,833,333.34K (One Hundred and Forty Million, Eight Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira Thirty-Four Kobo). He also averred that since he was not aware of any movable property of the Judgment Debtor/Respondent, he commenced the process of enforcement of the said Judgment through Garnishee proceedings and was able to recover only the sum of ₦130,494.60K (One Hundred and Thirty Thousand, Four Hundred and Ninety-Four Naira, Sixty Kobo) out of the entire Judgment debt. Since the sum recovered by way of attachment of the monies in the Judgment Debtor/Respondent's accounts were not able to satisfy the Judgment debt, he has come for an Order of this Court to attach the immovable property of the Judgment Debtor/Respondent at Mararaba, Nasarawa State and at No. 32 Benue Crescent, Suncity Estate, Abuja.

In the Written Address in support of the application, learned Counsel formulated one issue, namely, *“From the facts and circumstances of this case whether the Judgment Creditor/Applicant has not satisfied the pre-condition for the grant of this application.”*

Arguing on this sole issue, learned Counsel prefaced his submission with the argument for the forfeiture of the Judgment Debtor/Respondent's property with Certificate of Occupancy No. NS 5639 comprising four units of 2-bedroom flats at Mararaba, Nasarawa State which the Judgment Debtor/Respondent pledged as the collateral for the loan of ₦25,000,000.00 (Twenty-Five Million Naira) only which the

Judgment Creditor/Applicant granted to him. He referred to pages 11 - 12 of the Judgment of the trial Court.

He argued that the Court could not pronounce on the alternative prayer of forfeiture because it gave opportunity to the Judgment Debtor/Respondent to satisfy the judgment debt failure upon which the Judgment Creditor/Applicant could enforce the alternative relief.

Learned Counsel argued that forfeiture of a mortgaged property has been recognized by the Courts as a valid means of recovery of secured debts. He referred the Court to ***Diamond Bank Plc v. Opara (2019) All FWLR (Pt. 992) SC 318 at 251***. He therefore urged the Court to grant the first relief sought herein.

Arguing on the second relief sought in this application, Counsel submitted that it was necessary to satisfy the Judgment debt by attaching the property of the Judgment Debtor/Respondent at No. 32 Benue Crescent, Suncity Estate, Galadimawa, Abuja which would be outstanding after the forfeiture of the property at Mararaba, Nasarawa State. He cited the provisions of Order IV Rule 16(1), (2) and (3) of the Judgment (Enforcement) Rules and contended that the Judgment Creditor/Applicant has satisfied the requirements of the law in this regard. Citing the case of ***Cole v. Jibunoh (2016) All FWLR (Pt. 860) S.C. 1123 at 1149*** and section 44 of the Sheriffs and Civil Process Act, he prayed the Court to make the Order as required under Order IV Rule 16(3) of the Judgment (Enforcement) Rules.

The above is the case of the Judgment Creditor/Applicant. The Judgment Debtor/Respondent was served with this application and hearing notice on the 6th of April, 2022. The Court heard this application on the 13th of April, 2022 and thereafter adjourned for Ruling.

The issue before this Court in this application is straightforward: “**Whether this Honourable Court does not have the power to grant the reliefs sought in this application.**” In the first relief, the Judgment Creditor/Applicant has sought for an order of this Court “*directing the forfeiture of the Judgment Debtor/Respondent’s landed property to the Judgment Creditor/Applicant with Certificate of Occupancy No. NS 5639 measuring about 2701.59sqm comprising of 4 units of 2 bedroom flats situate, lying and being at Mararaba, Nasarawa State pledged as collateral for ₦25 Million loan obtained from the Judgment Creditor/Applicant and which constituted an alternative relief claimed before the Court.*” The facts upon which the Judgment Creditor/Applicant founded this relief are contained in paragraphs 4, 5 and 6 of the Affidavit in support of the application. According to the Judgment Creditor/Applicant, the Judgment Debtor/Respondent pledged the property at Mararaba, Nasarawa State as security for the loan of ₦25,000,000.00 (Twenty-Five Million Naira) only. In his action to recover all the monies he advanced to the Judgment Debtor/Respondent as loans, he sought in the alternative an order of forfeiture of the said property.

Exhibit 1 attached to the application is the Writ of Summons through which the Judgment Creditor/Applicant commenced that action against the Judgment

Debtor/Respondent. I hereby reproduce the relevant portion of the reliefs the Judgment Creditor/Applicant sought in that suit:

“The Plaintiff’s claim against defendants jointly and severally is for:

i.

ii. ON 2ND LOAN OF ₦25,000,000.00

(a) A total sum of ₦93,327,778.00 being the outstanding payment due to the plaintiff from the defendant as principal and the agreed/accrued interest between 14th September, 2012 – 31st day of October, 2018.

(b) Alternatively an order of forfeiture of the 1st defendant’s property to the plaintiff with Certificate of Occupancy No. NS 5639 measuring about 2701.59 sqm comprising of 4 units 2 bedroom flats situate, lying and being at Mararaba, Nasarawa State pledged as collateral for ₦25Million loan obtained from the plaintiff.”

Exhibit 2 is the Judgment of this Honourable Court *coram* B. Hassan, J. delivered on the 15th of July, 2021. At page 13 of the Judgment, the Court held that ***“The Claimant is only entitled to the sum of ₦11,000,000.00 on the 2nd tranche of loan in the sum of ₦25,000,000 – with an interest of ₦3,500,000.00 for a tenor of three months, and to this, I therefore, so hold.”*** At page 15 of the Judgment, the Court computed the entire principal sums the Judgment Creditor/Applicant advanced to the Judgment Debtor/Respondent and found that ***“The total is in the sum of***

₦140,833,333.34K (One Hundred and Forty Million, Eight Hundred and Thirty-Three and Thirty-Three Naira, Thirty-Four Kobo.” At page 18 of the Judgment, the Court held that **“The 1st Defendant is hereby found liable to the tune of ₦140,833,333.34K. The 1st Defendant is hereby ordered to pay to the Claimant the sum of ₦140,833,333.34K (One Hundred and Forty Million, Eight Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira Thirty-Four Kobo with immediate effect.”**

Since Relief No. ii in the Writ of Summons was sought in the alternative. Since the Court had granted Relief ii (a), Relief ii (b) could not have been granted. The Courts in a long line of judicial pronouncements have laid down the principles guiding the grant of reliefs sought in the alternative. In the case of ***N.A.O.C. (Nig.) Ltd. v. Ebila (2016) 3 NWLR (Pt. 1498) 120 at Pp. 127-128, paras. G-A; 129 paras. C-D***, the Court of Appeal held that **“A plaintiff can plead the reliefs he seeks separately or in alternative. A plaintiff who pleads his reliefs in alternative is in effect asking the court to grant or award any of the reliefs he proves. But he cannot be granted or awarded both reliefs. He either gets one or the other.”** In ***Help (Nig.) Ltd v. Silver Anchor (Nig.) Ltd. (2006) 5 NWLR (Pt. 972) 196 at Pp. 211 -212, paras. G-A; 212, paras. B-C; 222, paras. E-G***, the Supreme Court explained that **“When a party makes a claim in the alternative, the belief is that he wants either of the reliefs sought, in which case when he is granted any of the reliefs it suffices for the purpose of satisfying his claim.”** And in ***S.P.D.C.N. Ltd. v. Amadi (2010) 13 NWLR (Pt. 1210) 82 at P. 146, paras. A-B***, it was held that

“Where a party asks for alternative claims and the court grants one of the claims asked for, the party should be satisfied and contented with what the court gives him. He cannot complain or be heard to complain that he did not get what he prayed for.”

The Supreme Court put the issue beyond all scintilla of equivocation when it held in ***Nwoye v. FAAN (2019) 5 NWLR (Pt. 1665) 193 at P. 217, paras. G-H*** that ***“An alternative relief arises in an “either/or” situation. If the main relief is granted, there would be no need to consider the alternative relief. If the main relief is refused, the court would be obliged to consider whether the claimant is entitled to any of the alternative reliefs. The alternative reliefs are part and parcel of the claim but would only be considered where the main claim has been considered and refused.”*** See also the case of ***Ministry of Land & Housing, Bauchi State & Anor v. Tijjani (2021) LPELR-55039 (CA)***.

It is important to state the law on the grant of alternative reliefs because of the tenor of the argument of learned Counsel for the Judgment Creditor/Applicant in his written address in support of the application. In the written address, learned Counsel had contended that ***“...the alternative prayer of forfeiture cannot be pronounced upon as it is primarily important for the Judgment Debtor to satisfy the 1st leg of the relief failure which the Judgment Creditor can fall back to the alternative relief/prayer.”*** This argument, I hold, is unsupported in law. To hold otherwise will tantamount to, first, granting both the main and the alternative reliefs. In ***Nwoye v. FAAN (2019) supra at 207 paras B - E*** the apex Court held that ***“Both the main and alternative claim***

cannot be granted at the same time as it will be improper to again grant alternative claim because it would amount to double jeopardy.” In *Oforishe v. N.G.C. Ltd. (2018) 2 NWLR (Pt. 1602) 35 at p. 58, paras. A-C*, the Supreme Court held that **“Where the court grants the main reliefs claimed, it should not consider the alternative relief claimed in the suit. In this case, the court granted the main relief sought by the appellant. There was thus no need to consider the alternative reliefs. If the alternative reliefs were considered and granted it would have amounted to double compensation and that would have been wrong in law.”** Secondly, granting the alternative relief sought in the main suit will amount to this Court sitting on appeal over the Judgment of this Court delivered on 15th of July, 2021 *coram* B. Hassan, J.

Besides, an order of forfeiture of a property used to secure a loan cannot be sought at the point of execution of a Judgment already delivered in respect of the loans. The Rules of this Court is clear on the procedure to adopt in bringing an action for forfeiture of a mortgaged property. Order 58 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 provides that:

“Any mortgagor or mortgagee, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an originating summons, for such relief of the nature or kind following as may be

specified in the summons, and as the circumstances of the case may require; that is

- (a) Payment of moneys secured by the mortgage or charge;*
- (b) Sale;*
- (c) Foreclosure;*
- (d) Delivery of possession whether before or after foreclosure to the Mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;*
- (e) Redemption;*
- (f) Reconveyance; and*
- (g) Delivery of possession by the mortgagee.”*

In view of the foregoing, therefore, Relief (i) sought in this application, that is, an Order of forfeiture of the Judgment Debtor/Respondent's landed property to the Judgment Creditor/Applicant with Certificate of Occupancy No. NS 5639 measuring about 2701.59sqm comprising four units of 2-bedroom flats situate, lying and being at Mararaba, Nasarawa State is not grantable and is, accordingly, refused.

I shall consider Relief (ii). This application is for an Order of this Court to issue a Writ of Attachment against the Judgment Debtor/Respondent's immovable property, a detached duplex lying and known as No. 32 Benue Crescent, Suncity Estate, Galadimawa, Abuja. The relevant laws governing enforcement of Judgments are the

Sheriffs and Civil Process Act and the Judgment Enforcement Rules. Section 44 of the Sheriffs and Civil Process Act provides that,

“If sufficient movable property of the judgment debtor can be found in the Federal Capital Territory, Abuja or the State as the case may be to satisfy the judgment and costs and the costs of execution, execution shall not issue against his immovable property, but if no movable property of the judgment debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the judgment and costs and the costs of execution, and the judgment debtor is the owner of any immovable property, the judgment creditor may apply to the court for a writ of execution against the immovable property of the judgment debtor, and execution may issue from the court against the immovable property of the judgment debtor in accordance with the provisions of this Act, and any rules made thereunder:

Provided that where the judgment has been obtained in a magistrate court execution shall not issue out of the magistrate' s court against the immovable property but shall issue out of the High Court upon the conditions and in the manner prescribed.”

The procedure for the attachment of the immovable property of a Judgment Debtor is provided in Order V of the Judgment Enforcement Rules. Specifically, Rules 1(b), 3, 4 and 9 of the Order are relevant. On the other hand, Order IV Rule 16(1) and (2) of the Judgment Enforcement Rules stipulates the conditions that a Judgment Creditor

who seeks to attach the immovable property of a Judgment Debtor must satisfy. The Rule provides as follows:-

(1) When a judgment creditor desires a writ of attachment and sale to be issued against the immovable property of the judgment debtor he shall apply to the High Court.

(2) The application shall be supported by evidence showing-

(a) what steps, if any, have already been taken to enforce the judgment, and with what effect; and

(b) what sum now remains due under the judgment; and

(c) that no movable property of the judgment debtor, or none sufficient to satisfy the judgment debt, can with reasonable diligence be found.

The Supreme Court had reason to pronounce on these provisions in the case of ***Saleh v. Monguno (2006) 15 NWLR (Pt 1001) 26 at 54 – 55, paras E-H.*** In the words of the Supreme Court,

“...the attachment and sale of the immovable property of a judgment debtor must be by leave or order of court made upon an application. Although both the Law and the Judgment (Enforcement) Rules are silent on the question of whether the application can be made ex parte or notice, since there are many things the court has to satisfy itself about, it is only but fair and just that the judgment debtor be put on notice of the application. In other words, such an application

must be on notice to the judgment debtor, because of its crucial nature involving a determination of the judgment debtor's constitutional rights. Moreover, Order IV rule 16(2) lays down the evidence to be produced. From the nature of the evidence upon which the court must satisfy itself before a writ of attachment and sale is ordered to issue, the civil rights and obligations of the judgment debtor must obviously come up for determination. Such a determination cannot be made behind the back of the judgment debtor without breaching his constitutional right to fair hearing under the Constitution.”

The Judgment Creditor/Applicant in this application has adduced evidence showing how much he has realised from the execution of the Judgment of this Court against the movable property of the Judgment Debtor/Respondent. This can be found in paragraphs 11 of the affidavit where the Judgment Creditor/Applicant stated that “*I know as a fact that the total sum received from First Bank and Ecobank accounts through garnishee proceedings is ₦130,494.60 (One Hundred and Thirty Thousand, Four Hundred and Ninety-Four Naira, Sixty Kobo) thereby leaving the sum of ₦140,702,838.74Kobo (One Hundred and Forty Million, Seven Hundred and Two Thousand, Eight Hundred and Thirty-Eight Naira, Seventy-Four Kobo) of the Judgment debt to be satisfied by the Judgment Debtor herein.*” This application was brought by way of Motion on Notice and there is evidence in the case file that the Judgment Debtor/Respondent was served with the Motion and the hearing notice.

This Court is satisfied that the Judgment Debtor/Respondent does not have any movable property that can satisfy the outstanding judgment debt. It, therefore, becomes necessary to attach the immovable properties of the Judgment Debtor/Respondent. The Judgment Creditor/Applicant has adduced incontrovertible evidence that establishes the fact that the Judgment Debtor/Respondent is the owner of the properties known as No. 32 Benue Crescent, Suncity Estate, Galadimawa, Abuja and the property covered by a Certificate Occupancy No. NS 5639 measuring about 2701.59sqm comprising four units of 2-bedroom flats situate, lying and situate at Mararaba, Nasarawa State.

In view of this, therefore, THIS HONOURABLE COURT HEREBY GRANTLEAVE TO THE JUDGMENT CREDITOR/APPLICANT TO ISSUE A WRIT OF ATTACHMENT attaching for the purpose of sale pursuant to the execution of the judgment of this Honourable Court *coram* B. Hassan, J of the High Court of the Federal Capital Territory, Abuja delivered on the 15th July, 2021 wherein the sum of ₦140,833,333.34K (One Hundred and Forty Million, Eight Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Naira, Thirty-Four Kobo) was awarded against the Judgment Debtors/Respondents in favour of the Judgment Creditor/Applicant and in satisfaction of the judgment debt thereof the following immovable property of the 1st Judgment Debtor/Respondent:

- a. The plot of land measuring 2701.59 sqm comprising of 4 units of 2 bedroom flats lying and situate at MararabaGurku, Karu Local

Government Area of Nasarawa State and covered by a Certificate of Occupancy with Certificate Number NS 5639.

Meanwhile, the Judgment Debtor/Respondent is hereby restrained from selling, alienating, gifting, mortgaging or otherwise disposing of the property described as adetached duplex particularly known as No. 32 Benue Crescent, Suncity Estate, Galadimawa, Abuja Municipal Area Council, Federal Capital Territory, Abuja until the entire judgment sum of ₦140,702,838.74Kobo (One Hundred and Forty Million, Seven Hundred and Two Thousand, Eight Hundred and Thirty-Eight Naira, Seventy-Four Kobo)has been recovered. A warning should be posted on the property to this effect.

This is the Ruling of this Honourable Court delivered today, the 28thof April, 2022.

**HON. JUSTICE A. H. MUSA
JUDGE
28/04/2022**