

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 13<sup>TH</sup> DAY OF APRIL, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/901/2016**

**MOTION NO. M/1186/2021**

**BETWEEN**

1. SUNAS INVESTMENT COMPANY LTD. } JUDGMENT CREDITORS/  
2. MR. SUNDAY ADINNU } APPLICANTS

**AND**

EMMANUEL OTOKPA --- JUDGMENT DEBTOR/  
RESPONDENT

**RULING**

The claimants [now judgment creditors/applicants] commenced this suit on 8/2/2016 vide writ of summons. On 11/2/2019, the Court entered judgment for the claimants for: [i] the sum of N7,500,000.00; [ii] interest on the sum of N7,500,000.00 at the rate of 10% per annum from 11/2/2019 until the judgment sum is paid; and [iii] the sum of N200,000.00 as cost.

This Ruling is on the judgment creditors/applicants' *MotionNo. M/1186/2021* filed on 9/2/2021 seeking the following orders:

1. An order for issuance of Writ of Execution against the immovable property of the judgment debtor [Emmanuel Otokpa] in this suit in which judgment was delivered on 11<sup>th</sup> February, 2019.
2. An order for execution of judgment against the judgment debtor's immovable property known as Plot numbers 50 and 51 situate along 201 Road Phase 1, Kubwa, Abuja.
3. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

Victor Ighalo Esq., one of the counsel for the judgment creditors/applicants, filed a 9-paragraph affidavit in support of the application; attached therewith are Exhibits Sunas 1 & 2. Chiemeka J. Okereke Esq. filed a written address. In opposition, the judgment debtor/respondent filed a 17-paragraph counter affidavit on 12/2/2021; attached therewith are 2 documents/exhibits both marked Exhibit A. OjenObase Esq. filed a written address with the counter affidavit. On 19/3/2021, 2<sup>nd</sup> judgment creditor/applicant filed a 15-paragraph reply affidavit; attached therewith are Exhibits Sunas 1-4. K. P. Ikoroha Esq. filed a reply on points of law along with the reply affidavit. On 17/1/2022, the counsel for the parties adopted their respective processes.

In the affidavit in support of the application, Victor Ighalo Esq. stated that:

1. The Court delivered judgment in this matter on 11/2/2019; a copy of the judgment is Exhibit Sunas 1. There is no pending appeal in this matter

hence the judgment creditors applied for execution of the judgment on 18/6/2021; a copy of the application is Exhibit Sunas 2.

2. After the application was approved, he did thorough search for any moveable property of the judgment debtor but could not locate any except the immovable property.
3. His search revealed that the judgment debtor is the owner of Plot numbers 50 and 51 situate along 201 Road Phase 1, Kubwa, Abuja. The judgment debtor acquired the said Plots, developed same and is currently doing his business there. The judgment debtor is the owner of Drake Hotel and Drake Lounge and Bar and operates the hotel and bar businesses in the said Plots.
4. The attachment of the said Plots 50 and 51 will fully satisfy the judgment debt.

On the other hand, the judgment debtor deposed to the following facts in his counter affidavit:

1. There is no pending appeal against the judgment as he is not aware that the judgment has been delivered.
2. He is not the owner of the properties mentioned in the affidavit of the judgment creditors.
3. The owner of Plot 50 is Mr. Chinedu Michael Nwadigwe who acquired his interest from G. and James Nigeria Limited while the owner of Plot

51 and the buildings thereon is G. and James Nigeria Limited. The powers of attorney evidencing the ownership of the plots are marked Exhibit A. Mr. Chinedu Michael Nwadike and G. and James Nigeria Limited are not the judgment debtors and have no connection with this suit; hence their properties cannot be used to satisfy the judgment sum.

In the reply affidavit, the 2<sup>nd</sup> judgment creditor stated that:

1. His search revealed that the judgment debtor is the owner of the said Plots 50 and 51 and is currently living and doing his business in the said Plots.
2. Attached as Exhibit Sunas 4 is a certified true copy of the particulars of directors of Drake Hotel Limited having the judgment debtor's name and signature with emphasis on his residential address which is the same Plots 50 and 51.
3. A copy of the judgment of this Court in this suit was served on the counsel that represented the judgment debtor during trial.
4. A power of attorney is not a document of title and cannot convey or transfer title.
5. A look at the signature pages of the two powers of attorney attached by the judgment debtor shows that the judgment debtor signed the two powers of attorney as director. The powers of attorney are not registered with the Land Registry.

6. The judgment debtor has failed to provide credible evidence before the Court to prove that he has transferred his title in Plots 50 and 51 to a third party [or parties].

**Submissions of Learned Counsel for the Judgment Creditors/Applicants:**

Learned counsel for the judgment creditors/applicants formulated one issue for determination, which is whether the judgment creditors/applicants are entitled to the reliefs sought in this application.

Chiemeka J. Okereke Esq. referred to the facts stated in the affidavit in support of the motion particularly the fact that the said Plots 50 and 51 belong to the judgment debtor. Counsel relied on the provision of section 44 of the Sheriffs and Civil Process Act, which reads:

*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 cost of execution, execution shall not issue against the 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 cost 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's 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 counsel for the judgment creditors argued that section 6[6][b] of the 1999 Constitution [as amended] gives the Court the judicial powers to grant an application of this nature. Also, the reliefs sought are at the discretion of the Court and should be granted according to the rules of equity and justice especially when it is necessary to give effect to the judgment of a court. He urged the Court to grant the reliefs sought.

**Submissions of Learned Counsel for the Judgment Debtor/Respondent:**

Learned counsel for the judgment debtor/respondent distilled one issue for determination, which is whether the judgment creditors can levy execution on the property of any other person[s] other than the judgment debtor.

OjenObase Esq. argued that the judgment debtor has shown that the said Plots 50 and 51 belong to Mr. Chinedu Michael Nwadigwe and G. & James Nigeria Limited respectively. Counsel referred to section 20[1] of the Sheriffs and Civil Process Act, which provides:

*Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times*

*and in the manner thereby directed, by execution against the goods and chattels and the immovable property of the judgment debtor in accordance with the provisions of this Act.*

The judgment debtor's counsel referred to the case of **Suleiman & Anor. v. Upper Sharia Court No. 1, G.R.A. Zaria & Anor. [2014] LPELR-22905 [CA]** to support his submission that only the judgment debtor's property can be used to satisfy the judgment sum. He emphasized that Mr. Chinedu Michael Nwadigwe and G. & James Nigeria Limited are not parties to the suit leading to the judgment sought to be enforced. He further argued that the judgment creditors/applicants have not proved that the said Plots 50 and 51 belong to the judgment debtor. He urged the Court to hold that the application is misconceived and made in bad faith and should be refused.

**Reply on Points of law by Learned Counsel for Judgment Creditors/Applicants:**

In the reply on points of law, K. P. Ikoroha Esq. stated that the judgment debtor failed to provide credible evidence to prove that he has transferred his title in the said Plots 50 and 51 to third parties. He referred to the depositions in the reply affidavit that the judgment debtor signed the two powers of attorney as director. Also, the judgment creditor stated that the judgment debtor owns, resides and operates both hotel and bar at the said Plots 50 and 51. It was submitted that to discredit this deposition, the judgment debtor *“is expected to provide credible title documents of the purported Mr. Chinedu Michael*

*Nwadigwe and G. & James Nigeria Limited, or in the alternative, provide his [Judgment Debtor's] Tenancy Agreement with details of his Landlord over the premises, but the Judgment Debtor failed to do any of these."*

The applicants' counsel further submitted that since the defence of the judgment debtor in this application is to identify Mr. Chinedu Michael Nwadigwe and G. & James Nigeria Limited as the owners of the said Plots 50 and 51, the burden of proving same is on him. He referred to Akinduro v. Alaya [2007] All FWLR [Pt. 381] 1655 on the five ways to prove title to land and argued that mere production of powers of attorney falls short of the proof required to establish grant or transfer of title over the said Plots in favour of Mr. Chinedu Michael Nwadigwe and G. & James Nigeria Limited. He cited Ude v. Nwara [1993] 2 NWLR [Pt. 278] 638 to support the principle that a power of attorney does not transfer any title or interest in land.

**Decision of the Court:**

By the provisions of sections 20[1] & 44 of the Sheriffs and Civil Process Act earlier set out, for the Court to issue a writ of execution against the immovable property of the judgment debtor, it must be satisfied that the immovable property is that of the judgment debtor. In this application, the assertion of the judgment creditors/applicants is that the said Plots 50 and 51 belong to the judgment debtor while the position of the judgment debtor is that the said properties do not belong to him. The Court is of the view that the judgment

creditors/applicants - who assert that the said Plots 50 and 51 belong to the judgment debtor - have the burden or duty to satisfy the Court that the properties indeed belong to the judgment debtor in order to be entitled to the orders sought.

In a nutshell, the arguments of the judgment creditors/applicants' counsel are that: [i] the judgment debtor failed to provide credible evidence to prove that he has transferred his title in the said Plots 50 and 51 to third parties; [ii] the judgment debtor signed the two powers of attorney as director; and [iii] a power of attorney does not transfer any title or interest in land. Clearly, these submissions are predicated or hinged on the fact that the judgment debtor was/is the owner of the said Plots 50 and 51.

My respectful opinion is that from the processes and documents before the Court, there is no proof that the said Plots 50 and 51 situate along 201 Road Phase 1, Kubwa, Abuja belong to the judgment debtor. My view is supported by the contents of the powers of attorney attached to the counter affidavit. The first power of attorney dated 10/10/2016 was donated by G. & James Nigeria Limited [the Donor] to Chinedu Michael Nwadigwe [the Donee] in respect of Plot 50. The first recital thereof is that the Donor is the beneficial owner of the said Plot 50 *"having acquired interest from MOSES AWUJoola who acquired the said Plot 50 from the original allottee, MOHAMMED ALIYU ZURMI by virtue of a Deed of Assignment dated 28<sup>th</sup> August, 2002."*

The second power of attorney dated 15/3/2016 was donated by Mr. Moses Awujoola [the Donor] to G. & James Nigeria Limited [the Donee] in respect of Plot 51. The recitals thereof read:

- 1. By a letter dated 5<sup>th</sup> April, 1990 with reference No. FHA/EST/33 the original allottee became seized of the property located on a site covering an area of about 800 square metres, Plot No. 51, along 201 Road, Phase 1, Kubwa Estate, Abuja.*
- 2. By a DEED OF ASSIGNMENT dated 28<sup>th</sup> day of August, 2002, the DONOR became seized of the property located on a site covering an area of about 800 square metres, Plot No. 51, along 201 Road, Phase 1, Kubwa Estate, Abuja.*

From the above recitals, the judgment debtor was never the owner of the said Plots 50 and 51. The original allottee was Mohammed Aliyu Zurmi who executed a Deed of Assignment dated 28/8/2002 in favour of Moses Awujoola who in turn appointed G. & James Nigeria Limited as his attorney by virtue of the power of attorney dated 15/3/2016. By virtue of the power of attorney dated 10/10/2016, G. & James Nigeria Limited appointed Chinedu Michael Nwadigwe as its attorney in respect of the said Plot 50.

I have considered the contention of the judgment creditors' counsel that the judgment debtor signed the two powers of attorney as a director of G. & James Nigeria Limited. The judgment debtor did not deny this fact. I am of the humble view that this fact does not make the judgment debtor the owner

of the said Plots 50 and 51. It is trite law that a limited liability company has a distinct legal personality from its members and directors. See the case of Adamu v. Ashaka Cement Co. Plc. [2015] LPELR-25610 [CA]. Therefore, the property of G. & James Nigeria Limited is not the property of the judgment debtor, its director.

**Conclusion:**

In the light of all I have said, the conclusion of the matter is that the judgment creditors/applicants failed to satisfy the Court that the said Plots 50 and 51 belong to the judgment debtor. Accordingly, the application for an order to issue a writ of execution against the property known as Plot Nos. 50 and 51 situate along 201 Road, Phase 1, Kubwa, Abuja is refused.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

**Appearance of Counsel:**

1. Chukwuemeka J. Okereke Esq. for the judgment creditors/applicants;  
with G. E. Amole Esq.
2. OjenObase Esq. for the judgment debtor/respondent.