

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT MAITAMA, ABUJA  
ON THE 5<sup>TH</sup> DAY OF APRIL, 2022  
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH  
PRESIDING JUDGE.

SUIT NO. FCT/HC/CV/14513/2019

MR. NNAMDI OKONKWO        ....     JUDGMENT CREDITOR/RESPONDENT

AND

CHIEF AUGUSTINE OGUEJIOFOR        .....     JUDGMENT DEBTOR/APPLICANT

AND

1. ACCESS BANK PLC
2. FIDELITY BANK PLC
3. FIRST CITY MONUMENT BANK LIMITED
4. FIRST BANK OF NIGERIA LIMITED
5. GUARANTY TRUST BANK PLC
6. UNION BANK OF NIGERIA PLC
7. UNITED BANK FOR AFRICA PLC
8. ZENITH BANK PLC
9. CITIBANK NIGERIA LIMITED
10. ECOBANK NIGERIA
11. HERITAGE BANK PLC
12. KEYSTONE BANK LIMITED
13. POLARIS BANK LIMITED
14. STANBIC IBTC BANK PLC
15. STANDARD CHARTERED
16. STERLING BANK PLC
17. TITAN TRUST BANK LIMITED
18. UNITY BANK PLC
19. WEMA BANK PLC
20. GLOBUS BANK LIMITED
21. SUNTRUST BANK NIGERIA LIMITED
22. PROVIDUS BANK LIMITED
23. JAIZ BANK PLC
24. TAJBANK LIMITED
25. CENTRAL SECURITIES CLEARING SYSTEMS PLC

GARNISHEES

GARNISHEES

## RULING

Before this court is a notice of preliminary objection filed on the 25<sup>th</sup> November, 2021 brought pursuant to Order 4, Rule 11(1) of the Court of Appeal Rules, 2021 and under the inherent jurisdiction of this court.

The Applicant prays for:

1. An order setting aside the Garnishee Order Nisi granted by this court (on the 5<sup>th</sup> of October, 2021) for want of jurisdiction.
2. An order striking out these Garnishee Proceedings from the record of this court for want of jurisdiction.
3. And any further orders or orders as this court may deem fit to make in the circumstances.

The Application is supported by a 5 paragraph affidavit, attached exhibits and a written address.

In opposition the judgment creditor filed on the 29<sup>th</sup> November, 2021 a counter affidavit and a written address.

I have considered the application before the court and the response thereto, I am of the view that the issue arising for determination is:

*“Whether the application ought to be granted”*

The issue of whether the Judgment Debtor is a nominal or necessary party that ought to be heard in a garnishee proceedings has in the past been embroiled in huge controversy. It is however now settled that a judgment debtor can and must be heard in matters that generally pertain to the competence of the garnishee proceedings such as non-service of the garnishee order nisi, the amount of the judgment debt

sought to be garnished, the existence of a pending motion for stay of execution in an appeal etc. See the case of **BOGORO LOCAL GOVT. COUNCIL V. KYAUTA & ORS (2020) LPELR-49812(CA) AT PP. 11–16PARAS. C-F.**

See also

**AWOYOMI V. CHIEF OF ARMY STAFF & ORS (2013) LPELR-22121(CA) AT PP. 15–20PARAS. A-E;**

**BARBEDOS VENTURES LTD V. ZAMFARA STATE GOVT (2017) LPELR-42499(CA) AT PP. 21–28PARAS. A-E**

and

**NIGERIAN BREWERIES PLC V. DUMUJE & ANOR (2015) LPELR-25583(CA) AT PP. 76–95 PARA. D-D.**

The Judgment Debtor in this case has brought the instant application to set aside the order nisi granted by this Court on grounds that same was made without jurisdiction. The Judgment Debtor is entitled to be heard on the merits of his application and I so hold.

The ground upon which the Judgment Debtor is asking this court to set aside the garnishee order nisi and strike out the instant garnishee proceedings is that this Court lacked the jurisdiction to make the order nisi. The Judgment Debtor averred that he had filed a notice of appeal against the judgment from which the judgment debt (sought to be enforced via the instant garnishee proceedings) arose. That compilation and transmission of the record of appeal was

done to the registry of the Court of Appeal and received on 25th August 2021. The Judgment Debtor's contention is thus that his appeal has been entered at the Court of Appeal since 25th August 2021 and it is the Court of Appeal that is seised of the matter such that any application must be made to that court. Exhibits A and B attached to the affidavit in support are averred to be the Judgment Debtor's Notice of Appeal to the Court of Appeal and acknowledgment of receipt of record of appeal. The Judgment Debtor thus contends that this Court lacked the jurisdiction to make the garnishee order nisi of 5<sup>th</sup> October 2021.

By virtue of **Order 4 Rules 10 and 11 of the Court of Appeal Rules 2021** an appeal is entered in the Court of Appeal when the Record of Appeal has been received in the registry of the Court of Appeal and the Court of Appeal shall then be seized of the whole proceedings after the appeal has been so entered until it is finally disposed of, such that every application therein shall be made to the Court of Appeal and not to the lower court. See the case of **GTB V. INNOSON (NIG) LTD & ORS (2018) LPELR-48686(CA) AT PP. 16–19 PARAS. B-A** where the Court of Appeal interpreted similar provisions and held the position that any application to a lower court in breach of these rules is incompetent as the lower court would have no jurisdiction to entertain same.

In his Counter-affidavit, the Judgment Creditor however denies the fact that an appeal has been entered at the Court of Appeal and avers that no notice of appeal, record of appeal or any other process whatsoever in an appeal was ever served on him.

The Judgment Debtor in this case did not file any further affidavit to dispute the rather important averment in the Counter-Affidavit that the Judgment Creditor was not served with any process in the Judgment Debtor's purported appeal. This Court is at liberty to accept such an unchallenged Counter affidavit evidence as true and correct. It is trite that where there is failure to depose to a further affidavit, it is deemed that the counter affidavit is admitted as being correct. See **OKEKE V. GOV, ENUGU STATE & ORS (2020) LPELR-49838(CA) AT PP. 22 – 23 PARAS. E-A.**

Now by virtue of **Order 2 Rule 1 of the Court of Appeal Rules 2021**, a Notice of Appeal SHALL be served on the Respondent and such notice of appeal shall be caused to be served by the Registrar of the lower court OR THE APPELLANT on all parties mentioned in the appeal.

By **Order 8 Rules 1 and 2 of the Court of Appeal Rules 2021** the Registrar of the court below has 60 days from the filing of the Notice of Appeal to compile and transmit the Record of Appeal to the Court of Appeal. In doing so, the Registrar is obliged to summon the parties to settle the documents to be included in the Record of Appeal. The Registrar can however go ahead to compile records in the parties' absence PROVIDED the notice summoning the parties have been served by parties (see **Rule 3 of Order 8**). In such situation, the party that fails to appear to a notice summoning him can not complain about any irregularity in the compilation of the record of appeal. See **EKPENYONG V. ACN & ORS (2012) LPELR-20206(CA) AT PP. 28–30 PARAS. D-D.**

The implication is that where however, the Registrar fails to summon a party to settle documents and proceeds to compile and transmit records, such compilation in the absence of such party and subsequent transmission thereof would amount to a breach of that party's right to fair hearing. The compilation and transmission of such record of appeal cannot be proper and the Court of Appeal cannot be said to be properly seised of matter.

Having failed to establish that the Court of Appeal has been properly seised of the matter in the manner prescribed by the Rules, the Judgment Debtor has failed to establish without doubt that this Court had lost its jurisdiction to make the garnishee order nisi and entertain the instant Garnishee proceedings. It is trite law that a Court must guard its jurisdiction jealously and must do everything to preserve its jurisdiction such that Statutes seeking to divest it of jurisdiction must be interpreted strictly. – see

**NOBIS- ELENDU V. INEC & ORS (2015) LPELR-25127(SC) AT P. 40 PARAS. D-F**

and

**EBOHON V. AG EDO STATE & ORS (2016) LPELR-41269(CA) AT PP. 21–22 PARAS. G-B.**

On this fore, the Judgment Debtor's preliminary objection ought to fail.

Another question that may be agitating for answer here also is even if the compilation and transmission of records could somehow be said to have been properly done and the appeal against the judgment be said to have been entered at the Court

of Appeal, would such entry of appeal deny this Court the jurisdiction to entertain the instant garnishee proceedings?

On the nature and procedure for garnishee proceedings, the Supreme Court recently held as follows per Eko JSC in the case of **OBOH & ANOR V. NIGERIA FOOTBALL LEAGUE LTD & ORS (2022) LPELR-56867(SC) AT PP. 14–16 PARAS. D-D;**

*“Garnishee proceedings, according to Akintan, JSC in UNION BANK OF NIGERIA PLC v. BONEY MARCUS INDUSTRIES LTD (2005) 13 NWLR (pt. 943) 654 at 666, are a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which form part of his property available in execution. It is a specie of execution of adjudged debt for which ordinary methods of execution are inapplicable. By this process, the Court has power to order a third party to pay direct to the judgment creditor the debt due or accruing from him to the judgment debtor, as much of it as may be sufficient to satisfy the amount of judgment and the costs of the garnishee proceedings. The judgment creditor first makes the application to the Court for garnishee proceedings. The order of Court then comes in two stages. The first is garnishee order nisi which directs the garnishee to pay the sum covered by the application either to the Court or the judgment creditor within a stated time unless the party (the garnishee), against whom the order is made, shows good cause why the payment should be made. If no sufficient good cause is shown the Court then makes the garnishee order absolute directing the third party (the garnishee) to pay over the amount specified to the*

*judgment creditor or to the Court, whichever is more appropriate. See CHOICE INVESTMENTS LTD v. JEROMNIMON (1981) QB 149 at 154 - 155; UNION BANK PLC v. BONEY MARCUS INDUSTRIES LTD (supra). At the stage of garnishee order nisi the amount standing to the credit of the judgment debtor in the hands of the third party (the garnishee) is, or has been, attached, that is garnished. In SOKOTO STATE GOVERNMENT v. KAMDAX NIG. LTD. (2004) 9 NWLR (pt. 878) 345 at 380, it was stated:*

*"Where the judgment creditor has garnished the debt standing to the credit of the judgment debtor in the hands of the garnishee, upon service of the order nisi from the Court, the garnishee becomes a custodian of the whole of the judgment debtor's funds attached."*

*See also AZUBUIKE v. DIAMOND BANK PLC (2014) 3 NWLR (pt. 1394) 116 (CA). In making the order nisi, the trial Court exercises its undoubted judicial discretion - judicially and judiciously."*

It must be conceded outrightly that where there is a pending application for stay of execution in an appeal against a Judgment, garnishee proceedings cannot be initiated or proceed into in respect of that judgment. The law is settled on this principle. – See **NIGERIAN BREWERIES PLC V. DUMUJE & ANOR (SUPRA) AT PP. 76–95 PARAS. D-D.**

There is however no pending application for stay of execution of the Judgment in this case. The only fact which the Judgment Debtor seeks to rely on in the instant preliminary objection is that his appeal against the Judgment (sought to be



enforced by the instant garnishee proceedings)has purportedly been entered at the Court of Appeal.

It is settled law that garnishee proceedings is a distinct and separate action from the proceedings that gave rise to the judgment debt subject of the garnishee proceedings. - See **NIGERIAN BREWERIES PLC V. DUMUJE & ANOR (SUPRA) AT PP. 101–104 PARAS. D-C.**

See also **GTB V. TAFIDA & ANOR (2021) LPELR-56131(CA)AT P. 10 PARA.** Awhere the Court of Appeal held thus;

*“Garnishee proceedings are separate and distinct from the original action that generated the judgment sought to be enforced. See HERITAGE BANK LTD v. INTERLAGOS OIL LTD (2018) LPELR 44801 (CA) and POLARIS BANK v. GUMAU & ORS (2019) LPELR-47066(CA).”*

The Supreme Court emphasized in **OBOH & ANOR V. NIGERIA FOOTBALL LEAGUE LTD & ORS (SUPRA) AT PP. 58–59PARAS. E-E** that the validity of the judgment and the debt ensuing from the original proceedings and determined therein, cannot be challenged or questioned in garnishee proceedings for its enforcement as all the Court entertaining garnishee proceedings is simply expected to do is to determine if the Judgment Debtor has funds with the Garnishee sufficient to satisfy the judgment debt.

If garnishee proceedings are separate and distinct actions from the judgment which they seek to enforce, can the mere entry of an appeal against the judgment at the Court of Appeal

(without an application for stay of execution) estop this Court from entertaining garnishee proceedings?

I find to be relevant the provisions of **Sub Rule 2 of Rule 11 of Order 4 of the Court of Appeal Rules 2021**. For avoidance of doubt, **Rule 11(1) and (2) of Order 4** provide as follows;

11.

(1) *After an appeal has been entered and until it has been finally disposed of, the Court shall be seised of the whole of the proceedings as between the parties thereto. Except as may be otherwise provided in these Rules, every application therein shall be made to the Court and not to the lower court.*

(2) *Nothing in sub-rule(1) above shall be construed as required the lower court to order stay of proceedings, or adjourn sine dine, proceedings in relation to matters or proceedings in the lower court that are not impacted by or to which the appeal entered in the Court of Appeal does not relate to.*

From the foregoing provisions of the Court of Appeal Rules, it is my humble view that as the garnishee proceeding before this Honourable Court is a separate and distinct cause or action from the proceedings that gave rise to the Judgment which it seeks to enforce, the purported entry of the appeal against that judgment at the Court of Appeal cannot operate to deny this Court of the jurisdiction to entertain the garnishee proceedings. As there is no pending application for stay of execution of the Judgment in this case, this Honourable Court

therefore has the requisite jurisdiction to entertain the instant garnishee proceedings despite any purported entry of an appeal at the Court of Appeal against the original proceedings that gave rise to the Judgment.

Either way one looks at it, the Judgment debtor's instant preliminary objection to the jurisdiction of this Court to entertain the instant garnishee proceedings is without merit. The Judgment debtor's preliminary objection thus fails and it is accordingly dismissed.

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HONOURABLE JUSTICE M. E. ANENIH

APPEARANCES:

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Celestine Ighadolo Esq for judgement Debtor/Applicant

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