

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRIDAY THE 29<sup>TH</sup> DAY OF APRIL, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CV/1627/15**

**BETWEEN:**

**MOHAMMED BELLO USMAN**

(Suing through his lawful attorney Alhaji Bilya Bala)

--- PLAINTIFF/APPLICANT/  
JUDGMENT CREDITOR

**AND**

**CMB BUILDING MAINTENANCE & INVESTMENT -- DEFENDANT/**

**CO. LIMITED**

**JUDGMENT DEBTOR**

**COURT RULING:**

In this Post Judgment Proceeding, this Court earlier delivered Judgment in this Suit sometime in May 2017. But dissatisfied with the Judgment, the Judgment Debtor went on Appeal. After the Appeal, the Judgment Creditor had filed this application under the Judgment Enforcement Procedure Rules – 2018 particularly pursuant to **Order III Rule 16 (4) Order 4 Rule 1 (b) etc** in order to enforce the said Judgment so that he can enjoy the fruit of the Judgment. In this application, he seeks for the following Reliefs:

**(1) An Order that a Writ of Attachment and sale be issued against the immovable property of the Defendant/Judgment Debtor within the jurisdiction of this Honourable Court including but not limited to that described as eleven (11) unit of three (3) bedroom apartments with one (1) Boy's Quarter within the premises lying, known and situate at Plot 523 Cadastral Zone B19 Katampe Extension, Abuja and any or other immovable property of the Judgment Debtor for purposes of satisfying the balance of the total Judgment sum outstanding against the Judgment Debtor herein, that is the sum of Eleven Million, Eight Hundred and Eighty Three Thousand, Seven Hundred and Sixty Five Naira Four Hundred and Eight Kobo (₦11, 883,765.408) and 10% Annual post Judgment interests thereon from 12<sup>th</sup> May, 2017 till Judgment sum is full liquidated.**

**ALTERNATIVELY**

**An Order of this Honourable Court vesting and transferring the ownership of the immovable properties of the Judgment Debtor consisting of eleven (11) unit of three (3) bedroom apartments with one (1) Boy's Quarter within the premises lying, known and situate at Plot 523 Cadastral Zone B19 Katampe Extension Abuja, purposes of satisfying the balance of the total Judgment sum outstanding against the Judgment Debtor herein,**

**that is the sum of Eleven Million, Eight Hundred and Eighty Three Thousand, Seven Hundred and Sixty Five Naira Four Hundred and Eight Kobo (₦11, 883,765.408) and 10% Annual post Judgment interests thereon from 12<sup>th</sup> May, 2017 till Judgment sum is full liquidated.**

**ALTERNATIVELY**

**An Order of this Honourable Court, pursuant to Order V Rule IX of the Judgment Enforcement Rules, appointing Mrsrs Dupe Longe & Associates, Estate Surveyors and Valuers as MANAGERS of the identified immovable properties of the Judgment Debtor known as eleven (11) unit of three (3) bedroom apartments with one (1) Boy's Quarter within the premises lying, known and situate at Plot 523 Cadastral Zone B19 Katampe Extension, Abuja for the purposes of valuation and disposal of same, purposes of satisfying the balance of the total Judgment sum outstanding against the Judgment Debtor herein, that is the sum of Eleven Million, Eight Hundred and Eighty Three Thousand, Seven Hundred and Sixty Five Naira Four Hundred and Eight Kobo (₦11, 883,765.408) and 10% Annual post Judgment interests thereon from 12<sup>th</sup> May, 2017 till Judgment sum is full liquidated.**

- (2) Ten Million Naira (₦10, 000,000.00) only as cost of this application.**

**(3) And for such further Orders as this Honourable Court may deem fit to make in the circumstances of this case, inclusive of imposition of undertaking as to damages.**

He supported the application with an Affidavit of 17 paragraphs. He attached several documents which include the Judgment of this Court, the Judgment from Court of Appeal, Certificate of Judgment, Garnishee Order Nisi Absolute, Letter of Inquiry into Account of Judgment Debtor.

In the Written Address he raised an Issue for determination which is:

**“Whether the Applicant is entitled to the grant of this application having regard to the facts and all the circumstance of this case?”**

The Judgment Creditor Counsel submitted that the Issue for determination be resolved in the Affirmative in favour of the Applicant. That Judgment Creditor had supplied all the facts and had met the requirement of the law relating to this application and as such he is entitled to the Reliefs sought.

That **S. 44 Sheriffs and Civil Process Act** provides that if sufficient movable property of a Judgment Debtor can be found to satisfy the Judgment and cost of execution, then execution shall not be issued against the immovable property of the Judgment Debtor otherwise, the Judgment Creditor can apply for Writ of Execution on the immovable property where the immovable property will not be able to

satisfy the Judgment and cost of execution. The Judgment Creditor may apply to Court in that regard for Writ of Execution against the immovable property in accordance with the provision of the Sheriffs and Civil Process Act 2004. He referred to the cases of:

**Mercantile Bank V. Nwobodo**

**(2000) 3 NWLR (PT. 648) 297 @ 319 – 320**

**Koya V. Zawan**

**(1958) NRNLR 1 @ 2**

That the Applicant had shown in his Affidavit **paragraphs 3 – 7** that there is a Judgment of this Court in his favour which he sought to enforce by Garnishee Proceedings. He had shown steps had taken to attach the immovable properties of the Judgment Debtor to satisfy the Judgment, interest and cost. That the immovable properties are insufficient to satisfy the total Judgment debt including the 10% interest; the cost and Judgment sum of **Eleven Million, Eight Hundred and Eighty Three Thousand, Seven Hundred and Sixty Five Naira Four Hundred and Eight Kobo (₦11, 883,765.408)** which remains unsatisfied. He referred to **S. 47 Sheriffs and Civil Process Act CAP S6 LFN 2004.**

That there is no necessity to name any immovable property in order to levy execution. If the Applicant/Judgment Creditor has proved that no moveable property is left to satisfy the debt, he is entitled to apply to Court for a Writ to be issued against any immovable property that the Judgment Debtor may have

without naming it. In that case, the Sheriff can levy execution against any immovable property of the Judgment Debtor that he can find. He referred to the case of:

**Salami V. Adebanke**  
**(2010) 4 NWLR (PT. 1185) 456**

He urged the Court to resolve the application in Applicant's favour and grant their Reliefs.

Upon receipt of this application, the Respondent filed a Counter Affidavit of 13 paragraphs. He attached the Judgment of this Court, Court of Appeal, Motion for Leave to file an Appeal against the Judgment of Court of Appeal, proposed Notice of Appeal.

In the Written Address the Judgment Debtor raised a sole Issue for determination which is:

**“Whether or not in view of the Affidavit evidence, this is a proper case to grant the Reliefs sought.”**

They submitted that this is not a proper case to grant the Reliefs because the Judgment Creditor has not discharged the evidential burden of proof on him showing the search for the movable properties of the Judgment Debtors. That the properties, the subject matter of this application no longer belong to the Judgment Debtor as it has been transferred to a faceless and nameless 3<sup>rd</sup> party financier.

That the Judgment Debtor has Motion at the Supreme Court praying for an Order staying the execution of the Judgment of Court of Appeal. That there is no legal or

factual basis for the humongous cost as prayed for by the Judgment Creditor. He referred and relied on the following law and cases respectively:

**S. 44 Sheriffs and Civil Process Act**

**Lotafex Nigeria Limited & Anor V. Bank of Agriculture (2015) LPELR – 40754 (CA)**

**Mohammed V. Olawunmi**

**(1993) 4 NWLR (PT. 287) 254 @ 278 Paragraphs D – E**

**NAB Limited V. Coenex Limited**

**(1999) 6 NWLR (PT. 608) 648 @ 665**

They urged the Court to discontinuance the submission of the Judgment Creditor and dismiss the application particularly as the matter is pending at the Supreme Court.

Upon receipt of the Counter Affidavit the Applicant Counsel filed a Further and Better Affidavit of 3 paragraphs and Reply on Points of Law.

In the Reply, the Judgment Creditor Counsel responded to the following points which arose from the Judgment Debtor/Respondent reaction to the application.

- (1) Whether EXH 1 stall the Motion.**
- (2) Whether the Judgment Debtor discharged the onus on it that it is not the owner of the property in dispute which is attached.**
- (3) Whether the allegation that the speculative cost or value of the property sought to be attached is**

**higher than the outstanding Judgment Debt is relevant in the instant application.**

**On point No. 1** whether EXH 1 has the effect of stalling this Motion by Judgment Creditor, he submitted that, relying on the content of the Affidavit, that contrary to paragraphs 6 – 8 of the Counter Affidavit, the Judgment Debtor's EXH 1 – Motion for Leave to Appeal the Judgment of Court of Appeal is never an Appeal against the Judgment of the Court. The Judgment Creditor was never served any Notice of Appeal to Supreme Court as filed by the Judgment Debtor. He urged Court to discontinuance the said EXH 1, content of paragraph 6 – 8 of the Counter Affidavit and submission of the Judgment Debtor in paragraph 2.01 and 5.0 – 5.05 of the Written Address in support as they are misconceived and only set up to stall this application. He referred to the case of:

**ACB Benin City V. Ehiemua  
(1978) 11 NSCC 55**

**ACB V. Nnamani  
(1991) 4 NWLR (PT. 186) 486**

That there is no pending Appeal or Stay of Proceeding of the Judgment in this case contrary to the submission of the Judgment Debtor/Respondent. Again, a pending Appeal does not operate as a Stay of Execution. He referred to the case of:

**Fawehin V. Akilu  
(1989) 3 NWLR (PT. 112) 643 @ 668 – 669**



That even when proper Appeal has been entered at Appellate Court, lower Courts are not bound to Stay Execution because Court is to consider the circumstance of the case before conceding to Stay of Proceedings on the basis of the Process before the Appellate Court. He referred to the following cases:

**Oduba V. A.H & Anor**

**(1997) 6 NWLR (PT. 508) 185 @ 205 – 206**

**Mohammed V. Olawunmi**

**(1993) 4 NWLR (PT. 287) 254 @ 278 Paragraphs D – E**

That by Court of Appeal Rules Order 1 Rule 22 unless and until an Appeal is entered and disposed off, the Court is still seized of the whole proceeding as between the parties thereto. Every application shall be made to the Court and not to the Appellant Court.

That all the cases relied on by the Judgment Debtor/Respondent, the Processes pending at the Appellant Court had valid and legal foundation. They were not Garnishee Proceeding and Appeals were entered there too. That in Olawunmi case there was a Stay of Further Proceedings before the trial Court. Again, for precedent to Appeal, the case must be at all four with the case in issue. He relied on the case of:

**Skye Bank V. Akinpelu**

**42 NSCOR 546**

**On point No. 2** whether Judgment Debtor discharged the onus that it is not the owner of the property in dispute

and that it is not attachable, the Judgment Creditor submitted that contrary to paragraph 9 of the Counter Affidavit and argument in paragraph 4.01 – 4.03 of the Written Address, that there is no evidence that Applicant/Judgment Creditor has taken any other step from commencing a Garnishee Proceeding to locate the movable properties of the Judgment Debtor/Respondent. He submitted that his Affidavit in support of his Motion is very clear. That he complied with the provision of **S. 44 Sheriffs and Civil Process Act** as shown in paragraph 14 of the Affidavit. That it is not in law that Judgment Creditor must produce evidence that he has searched for an immovable property of the Judgment Debtor. The law requires an averment in the Affidavit of the Applicant. He referred to the cases of:”

**Koya V. Zawan Supra**

**Coker V. Olusola Supra**

**Salami V. Adebanke Supra**

What is required is to find a Judgment Debtor’s moveable properties as the Judgment Creditor had shown in the paragraphs 3 – 7 of the Affidavit and in the Exhibits too. He referred to the case of:

**Mutual Aid Society Limited V. Ogonade  
(1957) NRNLR 118**

That what is required is only a Motion on Notice served on the Judgment Debtor. Again, the only thing required is for the Judgment Creditor to put Judgment Debtor on Notice

so that Judgment Debtor and all other interested in the property can be heard. He relied on the case of:

**James Opubor V. May Deniruru  
(1961) All NLR 436**

That it is the duty of the Debtor to draw the attention of any interested party to the application which it failed to do. That upon attachment, any 3<sup>rd</sup> party has the right of audience by way of Interpleader before the sale. He urged the Court to resolve this point against the Judgment Debtor.

That contrary to the deposition in paragraph 9 of the Counter Affidavit and paragraphs 4.02 & 4.03 of the Written Address, that the Judgment Debtor has transferred its title to a nameless and faceless financier, it is not necessary to aver that the Judgment Debtor is the owner of the property upon application for Writ of Attachment and Sale of Immovable Property of a Judgment Debtor. Again, it is not necessary to inquire into the title to the property before making the Order sought. He referred to the case of:

**Koya V. Zawan Supra**

**On the point No. 3**, allegation that speculative cost or value of the property sought to be attached by this Motion is higher than the outstanding Judgment Debt is relevant to the instant application, he submitted that the same Judgment Debtor who claimed to have transferred title to the property to a 3<sup>rd</sup> party over a year ago, claim to know that value of the flats is higher than the outstanding sum

it owes, all in availed bid to suggest that for that reason the application is not supportable. That there is no law that impedes attachment of immovable property to satisfy outstanding Judgment Debt merely because the sale of the property is higher than the balance of the Judgment Debt.

**On cost of the application,** he submitted that contrary to the paragraph 6.0 of the Judgment Debtor Written Address the Sheriffs and Civil Process Act 2004 provides for cost of execution proceedings. That cost follows event which is granted at the discretion of the Court. That the averment in paragraphs 3 – 14 of the Affidavit in support and paragraph 2 (e) – (g) of the Further and Better Affidavit are facts justifying the cost claimed. He urged Court to discontinuance the Counter Affidavit and the Written Address and grant the application.

### **COURT:**

Having summarized in grate details the submission of the parties for and against this Motion, can it be said that there is a pending Motion to Stay the Execution of the Judgment of Court of Appeal; that there is no basis for the cost as prayed, that the subject matter no longer belong to the Judgment Debtor and that the Applicant/Judgment Creditor has not discharged the bond of proof placed on him as he did not show that he searched for the moveable properties of the Judgment Debtor? Put differently, has the Judgment Creditor through his Affidavit and Further and Better Affidavit and Reply on Points of Law established his case in this Motion in that he has

discharged the onus and have no need to show that he searched for the moveable properties of the Judgment Debtor before making this application? Is it really true and is it trite to say that the property no longer belongs to the Judgment Debtor and as such the application should fail? Is there a pending Stay of Execution at the Supreme Court that this Court should therefore hands-off the matter? Is the cost as prayed really humongous that the Court should not grant same?

Not necessarily answering the question seriatim as raised, it is the humble view of this Court that there is no pending Stay of Execution pending at the Supreme Court. The Judgment Creditor has discharged the onus placed on it through the Affidavit, Further Affidavit and Better Affidavit, the Reply on Points of Law in response to the Counter Affidavit filed by the Judgment Debtor. He need not show that he had done a search on the moveable properties of the Judgment Debtor before he files this application. There is no evidence before this Court to show that the property in question has been transferred to any faceless and nameless 3<sup>rd</sup> party financier. The issue of cost belongs to the Court to determine the quantum of cost.

This Court totally agrees and adopts the submission of the Judgment Creditor in both the Affidavit, Further and Better Affidavit, Written Address and Reply on Points of Law in response to the Counter Affidavit as set up in this application. To start with, unless and until there is an Order for Stay of Execution by an Appellant Court, the

Court below still has right to go on with the matter. In this case there is no Order to Stay of Execution of the Judgment of this Court delivered since 2017. What is in this Court only is an application for leave to file a Motion for Stay. The Court in Nigeria had gone beyond the level of “staying” Proceeding just because a party who had decided to delay, waste the time of the Judgment Creditor and its own resources, had filed an application as the Judgment Debtor has done in this case. It has been discovered that Judgment Debtors who are hell-bent on denying a Judgment Creditor the enjoyment of the fruit of its Judgment usually embark on endless and fruitless journey by filing Motions upon Motions to delay justice simply to frustrate a Judgment Creditor from enjoying the fruit of its Judgment.

Again, unless an Appeal has been entered – that is there is evidence that the Record of Appeal has been compiled and transmitted from the lower Court to the higher Court, it cannot be said that there is a pending Appeal. In this case, there is no evidence that any Appeal is pending. There is no evidence that there is any Order allowing the Judgment Debtor to file a Motion for Stay. Such Motion as filed by the Judgment Debtor has not been moved and no Order given. The leave to Appeal has not been granted too. There is no Order restraining the Judgment Creditor from giving effect to the Judgment of this Court or the Judgment of the Court of Appeal delivered since 15<sup>th</sup> May, 2020. So based on that, this Court holds that there is no Order for Stay and Notice of Appeal is not Stay of Execution or Stay of Proceeding as the Judgment Debtor

has submitted. The Counter Affidavit is therefore discontinuance and dismissed on that ground.

Again, in the length and breadth of the Counter Affidavit, I did not see where the Judgment Debtor mentioned the name and address of the faceless and nameless financier who he claimed he has transferred title of the property to. There is also no evidence of any instrument of title executed on the property and in favour of the so called financier. Such deal is not done orally. Again, such deal as any deal on House/Land is based on documentary evidence. This Court does not believe and refuses to buy the idea of and submission of the Judgment Debtor that it has suddenly transferred to the financier the title of the property who he claimed provided fund for the construction of the houses immediately after the Judgment of Court of Appeal was delivered. One wonders why the same Judgment Debtor could not do so all the while the matter has been pending. Even doing so, if truly did, is even a disobedient to the Order of Court of Appeal which has in its Judgment ordered that the houses be transferred to the Judgment Creditor as this Court had earlier ordered in its Judgment of 2017. It is incumbent on the Judgment Debtor to make full disclosure as to who the mysterious financier is, the nature of the Agreement entered into with the said faceless financier as regards the property of the Claimant which title is still vested on Judgment Creditor. It is also incumbent on the Judgment Creditor to have a copy of the Agreement attached to convince the Court about the genuineness of the Agreement. But the Judgment Debtor failed to do so. That

is why this Court does not believe that such transfer was done. If it was even done, which this Court does not believe, it is illegal and unlawful. The Judgment Debtor failed to discharge the onus placed on it in that regard. So its submission on that point is discontinued and the Counter Affidavit dismissed on that point. So this Court holds that the said property is not in hand of any faceless financier. The property is still in the hand of the Judgment Debtor and should be released without delay. The Judgment Creditor has been able to show that the property is not in the hand of any faceless and nameless 3<sup>rd</sup> party financier. The Judgment Creditor is therefore entitled to the Relief in this application. So this Court holds.

Again, it is the responsibility of the party who filed a Process to serve that Process on the other party. Failure to do so means that the other party's right to fair-hearing has been breached. The Judgment Creditor has alleged that they were not served with the Process filed at the Supreme Court by the Judgment Debtor. The Judgment Debtor did not state any reason for not serving the Judgment Creditor with the said application. That one itself makes the Process to be non-existent. So based on that the said EXH 1 attached by the Judgment Debtor is discontinued. More so, there is no pending Appeal and no Order for Stay. On all the above, see the following cases:

**Bank of Africa V. NIPCO Limited Supra**

**Zenith Bank V. John & 2 Ors**



**(2015) 7 NWLR (PT. 1458) 393 @ 424**

**ACB Benin City V. Ehiemua & Anor Supra**

**BCE Consulting V. NNPC & 2 Ors  
(2005) FHCNLR 98**

See also **Order 1 Rule 22 Court of Appeal Rules.**

It is imperative to state that nowadays Court of law and competent jurisdiction no longer follow and “precedence sheepishly.” To do so, the Court must ensure that the case in question and the precedent have very similar facts. That is only time the Court will follow such precedent. There must be reference to peculiar facts before it can apply.

It is not incumbent on the Judgment Creditor to show evidence that he had conducted search on any of the immovable properties of the Judgment Debtor before it can bring an application to attach such property. That is not what is required by S. 44 of the Sheriffs and Civil Process Act. The Judgment Creditor only requires an averment. This the Judgment Creditor had done in this case. See **paragraph 15 of the Affidavit in support of the Motion.**

In this case, the only thing required by the Judgment Creditor to do is to show effort made to find moveable properties of the Judgment Debtor. This the Judgment Creditor did by attaching **EXH C – G.** This is the decision of Court as far back as 1957 in the case of:

**Mutual Aid Society Limited V. Ogonade**

### **(1957) NRNLR 118**

An in-depth look at **S. 44** which both parties cited in full shows that reasonable diligence should be shown on moveable and not immovable property of the Judgment Debtor by Judgment Creditor. The law requires that the Judgment Creditor must make an application for attachment of property on Notice so as to give chance for the Judgment Debtor and anyone claiming through it to have a say. Even where a 3<sup>rd</sup> party is involved, which is evidently not so in this case, such 3<sup>rd</sup> party has a right to come in by way of an Interpleader application.

In this case, the Judgment Creditor has ensured that the present application is on Notice and the Judgment Debtor was served. If actually the Judgment Debtor is truthful about the case and existence of the so called 3<sup>rd</sup> party financier, it should have called for service of the Process on it and that mysterious 3<sup>rd</sup> party financier should have come in by an Interpleader application. But there is no such thing. If that is the case such 3<sup>rd</sup> party will be heard. See the case of:

### **Jane Opubor V. Mary Deniruru (1961) All NLR 436**

There is no provision of law that makes it necessary for the Judgment Creditor to aver that the Judgment Debtor is the owner of the immovable property sought to be attached. The Judgment Creditor need not inquire if the Judgment Debtor is the owner of a property before it can apply for an Order to attach same. So this Court holds

that the action of the Judgment Creditor in that regard is proper. The submission of the Judgment Debtor is discountenanced and dismissed in that regard. The Court relies on the case of:

**Koya V. Zawan Supra**

On the issue of cost, it is the Court that determines the quantum of cost to be awarded. But the Applicant has a right to ask for cost of any amount it deems fit. This is so where it is obvious that the Applicant has expended money and other resources in the case. Again, the Sheriffs and Civil Process Act provides for cost of Execution Proceeding. Cost follows event.

In grant of cost, the Court must act judicially and judiciously by weighing the event which the cost follows. It is after that that Court makes its pronouncement and award cost as appropriate in the given circumstance of the case.

The change in the value of a property sought to be attached does not and cannot impede the attachment of such property to satisfy the outstanding Judgment Debt merely because the value of such property has changed as the Judgment Debtor has submitted. Meanwhile, he did not even show any Evaluation Report that the value of the property has changed and that its value is higher than the Judgment sum. The submission of the Judgment Debtor is also discontinued in that regard. Without further ado, this application is meritorious. It is therefore granted to wit:

*In that an Order that a Writ of Attachment and Sale be issued immediately against the immovable property of the Judgment Debtor within the jurisdiction of this Court including but not limited to that Eleven (11) Units of the 3 Bedroom Apartment with one (1) Boy's Quarter with the premises lying, known and situate at Plot 523 CAD Zone A19 Katampe Extension, Abuja FCT and any other immovable property of the Judgment Debtor for the purposes of satisfying the balance of the total outstanding Judgment Sum of **Eleven Million, Eight Hundred and Eighty Three Thousand, Seven Hundred and Sixty Five Naira Four Hundred and Eight Kobo (₦11,883,765.408)** and the 10% Post Judgment Interest thereon from 12<sup>th</sup> day of May, 2017 until the Judgment Sum is fully liquidated.*

*Where the Judgment Debtor fails to do so, the alternative prayers shall apply.*

**This is the Ruling of this Court.**

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2022 by me.**

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**K.N. OGBONNAYA**  
**HON. JUDGE**