

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 24</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/FJ/25/2022</b>
<b>DATE:</b>	<b>4/7/2022</b>

**BETWEEN:**

FASTECH NIG LTD.....JUDGMENT CREDITOR

**AND**

(1). ZAMFARA STATE GOVERNMENT	}	JUDGMENT DEBTORS/ RESPONDENTS
(2). DIRECTORATE FOR RURAL WATER SUPPLY		
(3). THE ATTORNEY GENERAL ZAMFARA STATE		

**AND**

1. UNITED BANK FOR AFRICA PLC	}	.....GARANISHEES
2. ZENITH BANK PLC		

**APPEARANCES:**

Emmanuel Onoja Esq for the Applicant/Judgment Creditor  
Abdulrahim R. Abdulrahim for the 1<sup>st</sup> Garnishee also hold brief of Solomon  
Onamka Esq for the 2<sup>nd</sup> Garnishee.

**RULING**

By a Motion Ex-parte with Motion No: M/129/2022, hinged on Suit No. FJ/25/2022 and dated 11<sup>th</sup> day of January, 2022, filed on the same day, the Judgment Creditor/Applicant in this Garnishee proceedings, sought and obtained among others, an Order Nisi attaching the monies of the

Judgment Debtors/Respondents in their respective accounts with the Garnishees in satisfaction of the Judgment debt in favour of the Applicant which is yet to be satisfied.

The said Motion Ex-parte, brought pursuant to Section 83(1) of the Sheriffs and Civil Process Act, Cap S6 LFN 2004 and Order VIII Rules 2 and 3(1) of the Judgment (Enforcement Rules) and under the inherent jurisdiction of the Honourable Court was supported by an affidavit of 6 paragraphs deposed to by one Moses Agu, a litigation Secretary in the firm of A. A. Machika Esq & Co, Counsel to the Judgment Creditor/Applicant in this suit. Several exhibits were annexed as follows:-

- “(1). An application for Registration of Judgment in Suit No:ZMS/GS/23/2017 between Fastech Nig. Ltd V Zamfara State Government & Ors, addressed to the Chief Registrar/Deputy Sheriff, High Court of the Federal Capital Territory Maitama, Abuja dated 13<sup>th</sup> December, 2021, written and signed by one Emmanuel S. Onoja Esq for A. A. Machika & Co. marked Exhibit A filed on 13/12/2021.***
- (2). A certified true copy of the Certificate of Judgment High Court of Zamfara State of Nigeria, Holden at Gusau, Judgment in respect of Suit No: ZMS/GS/23/2017, delivered ON 26<sup>TH</sup> October, 2017, marked Exhibit B.***
- (3). Register in respect of Foreign Judgment with No. 12442676 registered as Suit NO. FJ/25/FASTECH NIG LTD, marked Exhibit C.***

Meanwhile, Judgment Debtor and Garnishees were served with the Court's Order Nisi, as seen on the proof of service being the Affidavit of Service of this Court's Bailiff, attached to the Court's file.

In response, the Garnishees herein, United Bank for Africa Plc and Zenith Bank Plc listed as the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees respectively, filed their Affidavits to cause as stipulated by the extant provisions.

1<sup>st</sup> Garnishee (United Bank for Africa Plc) filed an Affidavit to show cause of 8 paragraphs deposed to by Abdulkarhim, a legal practitioner in the law

firm retained by the 1<sup>st</sup> Garnishee, as well as annexures marked Exhibits UBA1, UBA 2A, UBA 2B, UBA 3A, UBA 3C, and UBA 4, respectively.

The 2<sup>nd</sup> Garnishee Zenith Bank Plc, equally filed its Affidavit to show cause on the 8<sup>th</sup> April, 2022, comprised of 5 paragraphs deposed to by one Solomon Unamka, a Counsel in the law firm of Messrs Musah Kabiru U Co, Solicitors to Zenith Bank Plc, the 2<sup>nd</sup> Garnishee.

Also in support are annexures marked Exhibits ZB1 and ZB2 and ZB3 respectively.

In response to the Affidavit to show cause of the 2<sup>nd</sup> Garnishee, the Judgment Creditor/Applicant filed a Further Affidavit dated 19<sup>th</sup> of May, 2022 filed on the same day.

In response, 1<sup>st</sup> Garnishee filed a Further and Better Affidavit to show cause dated 6<sup>th</sup> June 2022, and a Written Address.

Equally in response to the Further and Better Affidavit of the Judgment Creditor/Applicant, the 2<sup>nd</sup> Garnishee herein filed a Reply on Points of law on the 7<sup>th</sup> June 2022.

Well, I have studied extensively all these processes filed by both the Judgment Creditor/Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees wherein.

Therefore, I shall raise a sole issue for determination to wit:

***“Whether the Judgment Creditor/Applicant has made out a case to be entitled to the grant of a Garnishee Order Absolute in this case?”***

Addressing this Court on the 10<sup>th</sup> June 2022, learned Counsel to the Judgment Creditor Emmanuel Onoja Esq while adopting their processes, submitted that the 1<sup>st</sup> Garnishee exhibited their Exhibit UBA1 which shows a credit balance of N4.4 Billion and that the Exhibit shows over a hundred transactions which are payments to creditors in one day.

Submitted inthat regard that it shows that the 1<sup>st</sup> Judgment Debtor is solvent and there’s no lien in their account.

Submitted further that 1<sup>st</sup> Garnishee's failure to exhibit their whole Statement of Account for the month is a deliberate ploy to hide from the Court that inflow into the account for the month, and the fact that they are taking their inflow from the account.

It is further argued by the learned Counsel that same was done contrary to Section 167(d) of the Evidence Act, 2011 on withholding of evidence by a party.

For the 2<sup>nd</sup> Garnishee, while adopting their earlier submissions, learned Counsel stated that the 2<sup>nd</sup> Garnishee has a credit balance of N1.9 Billion, as such they have woefully failed to show cause.

Learned Counsel therefore urged the Court to make the Order Nisi Absolute in respect of the judgment sum maintained with the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees herein.

Meanwhile, in response learned Counsel to the 1<sup>st</sup> Garnishee Abdulkarim R. Abdulkarim Esq, submitted while adopting their processes, urged the Court to hold that the 1<sup>st</sup> Garnishee has shown cause why the Order Nisi should not be made absolute and urged the Court to discountenance the submissions of learned Counsel to the Judgment Creditor and to discharge the 1<sup>st</sup> Garnishee.

Meanwhile, in their response, Solomon Onoja Esq learned Counsel to the 2<sup>nd</sup> Garnishee herein adopted their processes and submitted that it is not in dispute that the Judgment Debtor is indebted to the 2<sup>nd</sup> Garnishee to the tune of over (Eleven) 11 Billion Naira. Learned counsel relied on Exhibit ZB2 a credit facility agreement exhibited by the 2<sup>nd</sup> Garnishee in support of their position on the issue.

Learned Counsel further submitted that the crux of their case is that the 2<sup>nd</sup> Garnishee is a creditor the Judgment Debtor Zamfara State Government and therefore ought not to be proceeded against as a garnishee by virtue of Section 83 of the Sheriffs and Civil Process Act.

Arued in that regard, that money paid into a bank customer's account does not belong to the customer where the customer is indebted to the bank since the money is used to settle the indebtedness.

Learned Counsel relied on the case of **BARBADOS VENTURES LTD V FBN PLC (2018) 4 NWLR (Pt.275)** cited in their written address.

Finally, learned Counsel urged the Court to hold that the 2<sup>nd</sup> Garnishee has shown cause why the Order Nisi should not be made absolute against it and to discharged.

Now, in the affidavit to show cause of the 1<sup>st</sup> Garnishee (United Bank for Africa Plc) deposed to by Abdulkarim Abdulkarim, legal practitioner representing the 1<sup>st</sup> Garnishee, it is deposed in paragraphs 3 – 6 thereof as follows:

- “3. That by virtue of paragraph 2 above, the facts and matters stated herein are either of my own personal knowledge (direct or derived from reading the relevant documents related to this proceedings) and are true or supplied to me by the source stated herein in which case they are true to the best of my knowledge, information and belief.**
- 4. That I have the consent and authority of the 1<sup>st</sup> Garnishee and my employer to depose to this affidavit.**
- 5. That I was present and verily informed by Mario Mohammed, an Account Officer of United Bank for Africa Plc, at a meeting held in our office located at F4, 1<sup>st</sup> Floor, No. 2, Cotonou Crescent, Off Bissau Street, Wuse Zone 6, FCT on 8<sup>th</sup> April, 2022 at about 3pm and the information which I verily believe as follows:-**
  - a. That upon receiving the Order Nisi, she conducted a search on the bank’s data base to ascertain the bank’s indebtedness to the Judgment Debtors.**
  - b. That she took necessary steps through a comprehensive search on the bank’s data base on whether the Judgment Debtors maintains account(s) with the Bank using every necessary information and if they do, the amount in the account(s) balance(s) would be declared.**

- c. ***That she found out from the search she conducted that only the 1<sup>st</sup> Judgment Debtor maintains an account with the Bank, while the 2<sup>nd</sup> and 3<sup>rd</sup> Judgment Debtors do not maintain any account(s) or have funds with the Bank.***
- d. ***That the details of the account of the 1<sup>st</sup> Judgment Debtor is as follows:***

**1<sup>ST</sup> JUDGMENT DEBTOR**

**ACCOUNT NAME: ZAMFARA SATE ACCOUTANT  
GENERAL FAAC ACCOUNT**

**ACCOUNT NUMBER: 1001069140**

**BALANCE: N4, 434, 007, 853.73**

- e. ***That the account statement of the above declared account is hereby attached as Exhibit UBA 1.***
- f. ***That she is also aware by virtue of her position as an account officer of the 1<sup>st</sup> Garnishee, that the 1<sup>st</sup> Judgment Debtor took a loan to the tune of N30, 000, 000, 000.00 (THIRTY BILLION NAIRA ONLY) from the 1<sup>st</sup> Garnishee covered by INPRINCIPLE OFFER OF N30, 000, 000, 000.00 (THIRTY BILLION NAIRA ONLY) CONTRACT FINANCE FACILITY dated 15<sup>th</sup> May 2019 and IRREVOCABLE STANDING PAYMENT ORDER dated 23<sup>rd</sup> September, 2019. The Inprinciple Offer of N30, 000, 000, 000.00 (THIRTY BILLION NAIRA ONLY) contract finance facility and the Irrevocable Standing Payment Order are hereby attached as Exhibits UBA 2A & 2B respectively.***
- g. ***That she is also aware that the 1<sup>st</sup> Garnishee granted the 1<sup>st</sup> Judgment Debtor another additional term loan facility of N100, 000, 000, 000.00 (One Hundred Billion Naira Only) covered by an EXECUTIVE COUNCIL RESOLUTION AND HOUSE RESOLUTION dated 29<sup>th</sup> October, 2021 of which the 1<sup>st</sup> Judgment Debtor accepted through its Permanent Secretary and Accountant General. The EXECUTIVE COUNCIL***

**RESOLUTION AND HOUSE RESOLUTION letter by the 1<sup>st</sup> Judgment Debtor is hereby attached as Exhibits UBA 3A, 3B & 3C.**

- h. That she is aware that the 1<sup>st</sup> Garnishee has a right to lien, set-off of the account of the 1<sup>st</sup> Judgment Debtor at any time, which is also envisaged in page 6 (paragraph 9) of the Offer Letter supra.**
- i. That the said pending loans were granted on 23<sup>rd</sup> September, 2019 and 29<sup>th</sup> October, 2021 with their various loan tenure as contained in the documents attached as “Exhibit UBA 2A & 2B and Exhibit UBA 3A, 3B & 3C” respectively above.**
- j. That monthly deductions of the various amounts are being made in the bid to serve the said loans facility**
- k. That she is aware that the said loan facility of N30, 000, 000, 000.00 (Thirty Billion Naira Only) and N100, 000, 000, 000.00 (One Hundred Billion Naira Only) granted to the 1<sup>st</sup> Judgment Debtor by the 1<sup>st</sup> Garnishee has not been totally liquidated till date.**
- l. That all funds belonging to the 1<sup>st</sup> Judgment Debtor in the above exhibited account is attached because the 1<sup>st</sup> Judgment Debtor is indebted to the 1<sup>st</sup> Garnishee and the repayment of the said loans takes priority over any other party’s claim to funds in the account of the 1<sup>st</sup> Judgment Debtor.**
- m. That she is also aware of a pending Garnishee Order Nisi of the High Court of the Federal Capital Territory in Suit No. FCT/HC/FJ/22/2021 & M/105/2022 BETWEEN ANSTEL LIMITED V THE ZAMFARA STATE GOVERNMENT (Coram Hon. Justice S. B. Belgore) wherein the Judgment Debtor herein is the Judgment Debtor in the suit. The said Garnishee Order Nisi is hereby attached and marked Exhibit UBA4.**

- n. ***That there is no fund available to satisfy the judgment sum of this proceedings as the 1<sup>st</sup> Garnishee's loan facilities granted to the 1<sup>st</sup> Judgment Debtor is still subsisting and takes priority until the loan facilities are finally liquidated.***
  - o. ***That the 2<sup>nd</sup> and 3<sup>rd</sup> Judgment Debtors do not maintain account(s) or have funds with the bank.***
  - p. ***That it is necessary in the circumstance that the 1<sup>st</sup> Garnishee is discharged from this proceeding."***
6. ***That it is in the interest of justice to discharge the 1<sup>st</sup> Garnishee from garnishee proceeding and refuse an application for an Order Absolute against it."***

Meanwhile, in reponse to the above it is deposed in the Judgment Creditor's Further Affidavit of Moses Agu particularly paragraphs 1 and 2 as follows:-

- "1. That I am the deponent of the affidavit in support of the Motion Ex-parte upon which this Honourable Court granted Order Nisi on the 1<sup>st</sup> Garnishee and I depose to this Further Affidavit from the facts as disclosed to me my principal A. A. Machika Esq., of Counsel, on 17<sup>th</sup> May 2022, around 12:45 in our office Jima Plaza, situate at Plot 1267 Ahmadu Bello Way, Garki Abuja, whose information I verily believe to be true and correct as follows:-***
- a. ***That Exhibit UBA1 annexed to the 1<sup>st</sup> Garnishee's affidavit to show cause discloses a credit balance in the sum of N3, 007. 180, 457, 14 which is more than enough to satisfy the Judgment debt of N43, 172, 283.00.***
  - b. ***That the same Exhibit UBA1 discloses 139 entries of only one day, 29<sup>th</sup> march 2022, and all are payments towards various companies, individuals and agencies.***



- c. That the said Exhibit UBA1 has not disclosed the outstanding balances as at 15<sup>th</sup> March, 2022, the date this Honourable Court granted Order Nisi to attach the amount of the judgment debt from the account of the Judgment Debtors with the 1<sup>st</sup> Garnishee.**
  - d. That the said Exhibit UBA1 has not disclosed the amount of money being the monthly deduction in satisfaction of the loan liability of the Judgment Debtors to the Garnishees.**
- “2. That A. A. Machika Esq of Counsel further informed me, and whose information I verily believe to be true and correct that:**
- a. That by Exhibit UBA 2A annexed to the 1<sup>st</sup> Garnishee’s affidavit to show cause the loan liability of N30 Billion Naira only of the Judgment Debtor to the 1<sup>st</sup> Garnishee was to be repaid, both the principle and interest, in 40 monthly instalments, which amounts to N750, 000, 000.00 only monthly, thus not exhausting the entire monthly allocation and capital receipts of the Judgment Debtor from the Federation Account.**
  - b. That by Exhibit UBA 2B, the same period of 40 monthly repayments was irrevocably granted by the Judgment Debtor to the 1<sup>st</sup> Garnishee since 23/09/2019, which translates to 31 monthly repayments so far made.**
  - c. That by Exhibit UBA 3A, 3B and 3C annexed to the 1<sup>st</sup> Garnishee’s affidavit in support are uncertified public documents of activities of public offices but are not private contractual documents between the Judgment Debtor and the 1<sup>st</sup> Garnishee and do not disclose whether or not the loans of N10 Billion or N100Billion were granted and on what term or modes of repayments.**
  - d. That by Exhibit UBA1 of the 1<sup>st</sup> Garnishee’s affidavit to show cause discloses a credit balance of N3, 007, 180, 457, 14, which is enough to settled the Judgment**

***Creditor in this suit as well as the Judgment Creditor in Exhibit UBA4.”***

However, it is deposed in the 1<sup>st</sup> garnishee’s Further and Better Affidavit particularly paragraphs 5(b), (d), (e) and (f) as follows:

- 5(b). That contrary to the deposition in paragraphs 1c & d of the Judgment Creditor’s “Further Affidavit”, the 1<sup>st</sup> Garnishee states that Order Nisi of this Honourable Court was served on it on 30<sup>th</sup> March 2022 and as such the Order Nisi attaches only the funds of the 1<sup>st</sup> Judgment Debtor as at the date when the Order Nisi was served on it.***
- (d). That in specific response to paragraphs 1d, 2a & 2c of the Judgment Creditor’s “Further Affidavit”, the 1<sup>st</sup> Garnishee states that by the clause in page 6 paragraph 9 of Exhibit UBA 2A, the 1<sup>st</sup> Garnishee is entitled lien the account of the 1<sup>st</sup> Judgment Debtor at any time and has a right of 1<sup>st</sup> (first) charge on the 1<sup>st</sup> Judgment Debtor account domiciled with it.***
- (e). That in response to paragraph 2d of the Judgment Creditor’s “Further Affidavit”, the 1<sup>st</sup> Judgment Debtor is heavily indebted to the 1<sup>st</sup> Garnishee and the 1<sup>st</sup> Garnishee has a right of 1 (first) charge on the 1<sup>st</sup> Judgment Debtor’s account.***
- (f). That the repayment of the loan obtained from the 1<sup>st</sup> Garnishee by the 1<sup>st</sup> Judgment Debtor takes precedence over any subsequent charge by any authority and bodies.”***

It is therefore argued for the 1<sup>st</sup> Garnishee in their written address dated 6<sup>th</sup> day of June 2022 that 1<sup>st</sup> Garnishee was right to have attached and exhibited only the statements of account of the 1<sup>st</sup> Judgment Debtor as at when the Order Nisi was served on it. Counsel cited the case of **SOKOTO STATE GOV’T V KAMDAX (NIG) LTD (2004) 9 NWLR (Pt. 878) @ 375 – 376, Paras H – E.**

Also, relying on Section 85 of the Sheriff and Civil Process Act, Counsel submitted that it is only the amount standing to the credit of the Judgment

Debtor as at the time the Order Nisi was served on the Garnishee is attachable and should be exhibited and not from the date when the Order Nisi was granted. That Order Nisi does not attach funds in retrospect and in prospect of funds available as at the time the Order Nisi of Court is served on the Garnishee.

Reliance was also placed on the case of **SKYE BANK V GTB (2020) LPELR-50529 (CA) per Mahmoud JCA.**

On whether the Judgment Creditor had complied with the Rules of this Honourable Court, it is submitted that Rules of Court are meant to be obeyed and that there are sanctions for their breach which must be invoked. Counsel relied on the cases of **NWORA V NWABUEZE (2019) 7 NWLR (Pt.1670) 1 @ 11 and NWANKWO & ORS V YAR ADUA & ORS (2010) LPELR – 2109 (SC); HARRY & ANOR V NYESOME & ORS (2015) LPELR-25998 (CA)** as well as Order 43 Rule 1(3) of the Rules of the F.C.T High Court (Civil Procedure) Rules 2018, to argue that the Judgment Creditor's Further Affidavit is bereft of a Written Address, showing a flagrant disobedience of the rules of this Court, while urging the Court to strike it out.

It is equally argued or contended in the said address that paragraph 2c of the Judgment Creditor's Further Affidavit offends Section 115(1)(2) & (3) of the Evidence Act, 2011.

However, while conceding to the fact that Exhibit UBA 3C attached to 1<sup>st</sup> Garnishee's Affidavit to show cause requires certification as a public document for it to be admissible in evidence. Learned Counsel submitted that it is trite law that documents attached to an affidavit forms part of the Affidavit and placed reliance on the case of **EZECHUKWU & ANOR V ONWUKA (2016) 5 NWLR (Pt. 1506) 529 @ 562, Para F, per Peter-Odili, JSC, as well as the cases of AONDOKAA V OBOT (2022) 5 NWLR (Pt.1824) 523 @ Pg. 599; GENERAL & AVIATION SERVICES LTD V THAHAL (2004) LPELR – 1317 (SC); AKPOKINIOVO V AGAS (2004) 10 NWLR (Pt.881) @ page 418.**

In conclusion, learned Counsel urged the Court to strike out the offensive paragraph and discharge the 1<sup>st</sup> Garnishee from these proceedings.

Meanwhile, the 2<sup>nd</sup> Garnishee Zenith Bank Plc in its affidavit to show cause. It is deposed in paragraphs 3(i), (ii), (iii) and (iv) thereof, among others that the Account of the 1<sup>st</sup> Judgment Debtor with No. 1014480255 specifically mentioned in the Order Nisi exists in the books of the 2<sup>nd</sup> Garnishee with a balance of N103, 269, 356.43CR (One Hundred and Three Million, Two Hundred and Sixty Nine Thousand, Three Hundred and Fifty Six Naira, Forty three Kobo) only, as shown in Exhibit ZB1 annexed therein.

But that the Judgment Debtor Zamfara State Government (inclusive of the 2<sup>nd</sup> and 3<sup>rd</sup> Judgment Debtors) is heavily indebted to the 2<sup>nd</sup> Garnishee at present to the tune of over 11 (Eleven) Billion as it has (4) credit facilities from the 2<sup>nd</sup> Garnishees shown in the affidavit to show cause.

Reliance was also placed on copies of the Offer Letters marked Exhibit ZB2, duly accepted by the Zamfara State Government evidencing the Judgment Debtor's indebtedness to the 2<sup>nd</sup> Garnishee.

It is further deposed that in view of the available balances as shown in paragraph 3(1) thereof, the sums cannot be attached as the 1<sup>st</sup> Garnishee has a right of lien and/or set of over the said funds.

It is further averred in paragraph 3iv, that the 1<sup>st</sup> Judgment Debtor equally maintains four (4) other accounts (stated in paragraph 3(v) as well as Exhibit ZB3) attached that the balances in the said accounts are in debt and as such cannot be attached in this garnishee proceedings.

It is further deposed in paragraph 4 thereof as follow:

***“In the light of the foregoing, we humbly seek the Order of this Honourable Court to be discharged.”***

However, in response to the 2<sup>nd</sup> Garnishee's Affidavit to show cause, it is deposed in the Judgment Creditor's Further Affidavit to show cause particularly paragraph 1(a), (b), (c) and (d) as follows: -

***“1(a). That Exhibit ZB 1 annexed to the 2<sup>nd</sup> Garnishee's affidavit to show cause discloses a credit balance in the sum of N103, 269, 356.43 which is more than enough to satisfy the judgment debt of N43, 172, 283.00***

- (b). ***That the same Exhibit ZB 1 annexed to the 2<sup>nd</sup> Garnishee's affidavit to show cause discloses the opening balance of N661, 455, 162.58 out of which two terms loans were deducted in the sums of N309, 356, 503.19 and N246, 525, 526.80 both amounting to N558, 175, 806.15, leaving credit balance of N103, 269, 356.43, as at 1<sup>st</sup> April, 2022, the date the Order Nisi of this Honourable Court was served on the 2<sup>nd</sup> Garnishee.***
- (c). ***That Exhibit ZB 2 of the 2<sup>nd</sup> Garnishee's Affidavit to show cause discloses that the loan facility of the Judgment Debtor to the 2<sup>nd</sup> Garnishee is to repaid in 24 months of monthly repayment in the sum of N73, 247, 066.38 out of the monthly statutory allocation (VAT) secured by the UBE Counterpart funding in the sum of N1, 510, 664.674.26, leaving a balance more than enough to satisfy the Order Nisi of this Honourable Court.***
- (d). ***That Exhibit ZB 3 contains statements of loan accounts of both UBE and Ministry of Finance Zamfara State, and they all contain enough credit balances capable of satisfying the Judgment debt in this suit after deduction and payment of the loan facility of the Judgment Debtor to the 2<sup>nd</sup> Garnishee."***

Consequently, in the 2<sup>nd</sup> Garnishee's reply on points of law to the Judgment Creditor's Further Affidavit, learned Counsel submitted that in law the onus is on a garnishee to show cause and a garnishee would be discharged where it successfully establishes that the account(s) covered by the Garnishee Order Nisi do not exist in its system or if it exists, it is in debt and not in credit or that it has a right of set off or lien which are due effective against the customer. Reliance was placed on the cases of ***FIDELITY BANK PLC V OKWUOWULU & ANOR (2012) LPELR-18 (CA); MAINSTREET BANK LTD V UBA PLC (2014) LPELR – 26 to 27; UBA PLC V BONEY MARCUS INDUSTRIES LTD (2005) ALL FWLR (Pt. 278) at PP. 1046 to 1047;*** as well as Section 83 of the Sheriffs and Civil Process Act.

Submitted moreso, that the crux of their case is that the Judgment Debtor is indebted to the 2<sup>nd</sup> Garnishee to the tune of over 11Billion Naira which credit facility is secured by an Irrevocable Standing Payment Order and domiciliation of payment of specific fund.

Submitted moreso that in the instant case, the 2<sup>nd</sup> Garnishee is not a Debtor to Zamfara State Government. Instead, the Zamfara State Government is a Debtor to the 2<sup>nd</sup> Garnishee in view of the unchallenged Exhibit ZB2. Reliance was placed on Section 83 of the Sheriffs and Civil Process Act and the cases of **ALLIED BANK OF NIGERIA V AKUBEZE (1997) NWLR (Pt/ 509) 374; YUSUF V CO-OPERATIVE BANK LTD (1994) 7 NWLR (Pt.359) 676; CBN V AUTA IMPORT EXPORT (2013) 2 NWLR (Pt. 1337) 80; WEMA BANK PLC V OSILARU (2008) 10 NWLR (Pt.1094) 150; BARBEDOS VENTURES LTD V FBN PLC (2018) 4 NWLR (Pt.275) B – C.**

It is further argued that the total balance as shown in Exhibit ZB2 in the Judgment Debtor's Account No: 1014480255/Zamfara State Gov't. VAT A/C, referred by the Judgment Creditor in Paragraph 1(a) and (b) of its Further and Better Affidavit is less than the total indebtedness of the Judgment Debtor to the 2<sup>nd</sup> Garnishee which stood at over 11Billion Naira as at the date the Order Nisi was served on the 2<sup>nd</sup> Garnishee, and cannot therefore be attached in view of its right of set off and/or lien.

Replying to issues raised in paragraph 1(c) of Judgment Creditor's Further and Better Affidavit, it was submitted by the learned Counsel that 2<sup>nd</sup> Garnishee on the strength of Exhibit ZB2 has the right to unilaterally vary the terms and conditions of the Credit Facility at any time during the life span of the facility. Reliance was place on Exhibit ZB2.

Submitted in that regard that the instant garnishee proceeding against the Judgment Debtor's a basis for declaring a default. Therefore, the mere fact that the Judgment Debtor is being garnished constitutes default as the garnishee proceeding is truly impairing the prospect for the payment or performance on the loan.

Reliance was placed on the case of **BARBEDOS VENTURES LTD V FIRST BANK OF NIGERIA PLC (supra).**

Meanwhile, replying to the issues raised in paragraph 1(d) of Judgment Creditor's Further and better Affidavit, learned Counsel re-reiterated their position that an account can only be garnisheed if it is in credit as against debit, which presupposes that there's no money in the said account and that the Judgment Debtor is also indebted to the 2<sup>nd</sup> Garnishee.

That by Exhibit ZB3, which discloses the true position of the loan account in issue, same cannot constitute money standing to the credit of the Judgment Debtor. Finally, on the strength of their submissions, learned Counsel urged the Court to discountenance the Further and Better Affidavit of the Judgment Creditor and hold that the 2<sup>nd</sup> Garnishee has adequately shown cause why the Order Nisi should not be made absolute against it and to discharge 2<sup>nd</sup> Garnishee accordingly.

Now before I dwell into the main issue at hand, let me first of all consider the preliminary point raised by learned Counsel to the 1<sup>st</sup> Garnishee in paragraph 4:09 of their address.

The crux of their argument is that paragraph 2c of Judgment Creditor's affidavit offends the provision of Section 115(1), (2) and (3) of the Evidence Act 2011, reproduced in their paragraph 4:10 of the said address.

For ease of reference I hereby reproduced paragraph 2(c) of Judgment Creditor's Further Affidavit as follows: -

***“That Exhibits UBA 3A, 3B and 3C annexed to the 1<sup>st</sup> Garnishee's Affidavit in support are uncertified public documents of activities of public officers but are not private contractual documents between the Judgment Debtor and the 1<sup>st</sup> Garnishee and do not disclose whether or not the loans of N10 Billion or N100 Billion were granted and on what terms or modes of payments.”***

Indeed, Section 115(2) of the Evidence Act (supra) provides that an Affidavit shall not contain extraneous matter, by way of objection, prayer, or legal argument or conclusion. Therefore in my humble view having carefully looked at the paragraph above i.e 2c of Judgment Creditor's Further Affidavit, it is clear that it contains a legal argument. Legal arguments are preserved for addresses and should by no means be

included in an Affidavit, for fear of offending Section 115(2) of the Evidence Act.

Therefore, the issue raised by learned Counsel to the 1<sup>st</sup> Garnishee on this point is hereby sustained. I hold that the said paragraph offends Section 115(2) of the Evidence Act 2011, and it is hereby struck out.

Coming back to the issue at hand, let me first of all state that from the two Affidavits to show cause filed by the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees, it is not disputed that the Judgment Creditor Zamfara State Government maintains some accounts with both the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees respectively.

However, as clearly seen from their respective affidavits both have contended that the Judgment Debtor had taken loans with the two Garnishees as evidenced in the exhibits annexed to their respective affidavits to show cause.

I refer to Exhibit UBA 2A and 2B attached by the 1<sup>st</sup> Garnishee as well as Exhibit ZB2 attached by the 2<sup>nd</sup> Garnishee.

Therefore, from the provision of Section 85 of the Sheriffs and Civil Process Act, a Garnishee Order Nisi attaches the money of the Judgment Debtor in the hands of the garnishee until it shows cause.

I refer to Section 85 of the Sheriffs and Civil Process Act.

Nevertheless, the law is trite on the step or procedure to be adopted by a trial Court where the garnishee appears (such as in this case) and disputes his liability for the Judgment debt.

On this premise, I refer to the case of ***ECO BANK (NIG) PLC V MBANEFO & BROS LTD (2014) LPELR – 41106 (CA), the Court, per Yakubu, JCA, PP. 33 – 36, Para B***, held thus:-

***“Undoubtedly, the instant matter that is, the garnishee proceedings at the Court below was clearly and potentially contentious as the garnishee directly, disputed the garnishor’s application, hence the question of the appellant/garnishee’s liability called for its trial and determination....”***



Moreso, while commenting on the provision of Section 87 of the Sheriff and Civil Process Act, His Lordship Yakubu J.C.A, in the same case cited above opined as follows:-

***“...The simple grammatical meaning of the above provision of the Sheriffs and Civil Process Act reproduced above is that the Judge had the option of trying and determining the liability of the garnishee in any manner in which any issue or question in any proceedings might be tried or determined, otherwise, he must refer the matter of the liability of the garnishee to a referee.....Order 8 Rule 8(2) of the JER sets out how the Court session is to proceed to determine the issue of liability of the garnishee who disputes the claim. The proper procedure is for the Court to stand down the proceedings in respect of the issue of whether to make the order absolute and order that the Court would now proceed to try the liability of the garnishee. If the Court makes such an order, it directs which of the three parties to the proceedings and any other person claiming interest or lien on the debt shall be Plaintiff and which shall be Defendant in the proceedings for the trial of the issues.....the fact that the garnishee disputed liability implied that Section 87 of Sheriff and Civil Process Act be applied as stipulated by law.....the issue of the liability of the garnishee must then be tried separately. That procedure was not followed in this case. So also the learned trial Judge did not follow that procedure in the instant matter.”***

See also the cases of ***MAINSTREET BANK LTD V UBA PLC (2014) LPELR – 24118 (CA); FIDELITY BANK PLC V OKWUOWULU & ANOR (2012) LPELR – 8497 (CA); UBA V SAS & ORS (2015) LPELR – 40394 (CA); CENTRAL BANK OF NIGERIA V HYDRO AIR PROPERTY LTD (2014) LPELR – CA/L/238/2012.***

Moreso, in this case, I've considered the arguments canvassed for the Judgment Creditor that 1<sup>st</sup> Garnishee has not made full disclosure on the statement of account of the Judgment Debtor attached as Exhibit UBA.

It is trite law that a garnishee has a duty to disclose the true state of account of a Judgment Debtor and not single entries, this is to enable the

Court to determine the actual or real state of indebtedness of the Judgment Debtor to the Garnishee in their accounts as at the date of its Order.

On this premise, I refer to the case of ***F.C.M.B V LIQUID AFRICA HOLDINGS LTD & ORS (2019) LPELR – 47623 (CA), per Garba, J.C.A at PP: 46 – 47, Paras D – E.***

Therefore, without further ado, fortified with the above cited authorities and considering the fact that this garnishee proceeding is contentious, this Court hereby orders that the issues raised by both the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees disputing liability in their respective affidavits to show cause, be tried separately in line with the provisions of Section 87 of the Sheriff and Civil Process Act, and Order 8 Rule 8(2) of the Judgment Enforcement Rules for full and frank disclosures to be made in the separate trial.

Consequently therefore, the 1<sup>st</sup> and 2<sup>nd</sup> Garnishees shall be the Plaintiffs while the Judgment Creditor shall be the Defendant in the trial.

***Signed:***

***Hon. Justice S. U. Bature  
4/7/2022.***