

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS.

COURT NO: 6

**SUIT NOFCT/HC/PET/062/2021
MOTION NO: M/8158/2022**

BETWEEN:

ADENIKE JOKOTOLA GREENE.....JUDGMENT CREDITOR/RESPONDENT

AND

MR. SHEDRACH GREENE.....JUDGMENT DEBTOR/APPLICANT

AND

- 1. ZENITH BANK PLC**
- 2. ACCESS BANK PLC**
- 3. POLARIS BANK PLC**
- 4. GUARANTY TRUST BANK PLC.....GARNISHEES**

RULING

By a Motion on Notice dated 2/6/2022 but filed on 20/6/2022, with Motion Number M/8158/2022, brought under the inherent jurisdiction of this Court, Section 83 (1) And 86 of Sheriff and Civil Process Act And Section 6 (6) of the Constitution of the Federal Republic of Nigeria (As Amended), the Judgment Debtor/Applicant pray the court for the following reliefs:

- (1) **AN ORDER** setting aside/discharging the Garnishee Order Nisi made by this Honourable Court in favour of the Respondent on 28th April, 2022 for want of jurisdiction.

- (2) **AN ORDER** staying execution/further proceeding of the Garnishee Order Nisi of this court via Motion No. M/2339/2022 pending the hearing and determination of this application.

The Motion is supported by 22 Paragraph affidavit, with 5 annexures attached and marked Exhibits "001", "002", "003", "004" and "005", deposed to by the Judgment Debtor/Applicant. Also filed a Written Address and adopts same as oral submission, in urging the court to grant the application. With the leave of court, filed a Reply affidavit dated 8/8/2022.

Responding, Judgment Creditor/Respondent with leave of court filed a 25 Paragraph Counter-affidavit with 21 annexure attached and marked Exhibit "A", "B", "C¹⁻¹⁹", deposed to by the Judgment Creditor/Respondent. Also filed a Written Address and adopts same as oral submission, in urging the court to refuse the application.

In the Written Address in support of the Motion, Ahmed Oyegbami Esq of Counsel formulated a sole issue for determination which is;

"Whether in circumstance of this case the court ought not to set aside the garnishee Order Nisi made on 28th April 2022"

And relying on the cases of Hon. Victor Udofia Vs Speaker, Akwa Ibom State House of Assembly Unreported. Suit No. FHC/UY/CS/188/2018 and Mator Ekundayo Awoyomi Vs Chief of Army Staff (2013) LPELR 22/121 (CA) submits that the Judgment sum sought to be enforced by the Respondent is not stated in the Terms of Settlement. And no agreement between the parties

with regards to the exact amount equivalent to the agreed percentage for the purpose of enforcement; therefore the sum of ₦2,401,522.00 (Two Million, Four Hundred and One Thousand, Five Hundred and Twenty-Two Naira) subject of the garnishee was manufactured or unilaterally computed without the input of the Applicant contrary to the decision reached in the case of University of Lagos Vs Oluwasanmi (2017) LPELR 42305. Urge court to hold as follows:-

- (1) That the purported Judgment sum is not assertable in the Terms of Settlement. Thus not capable of being enforced by way of Garnishee.
- (2) The computation arrived at by the Judgment Creditor as Judgment sum was unilaterally carried out or conjure-up by the Judgment Creditor.
- (3) That apparent inconsistency or irregularity in the amount demanded for and actual amount claimed before the court should weigh on the court to vacate the Order Nisi, to afford the Applicant the opportunity to be heard and be involved in the computation of the agreed percentage as per the Terms of Settlement.
- (4) That material facts were obviously concealed by the Judgment Creditor from the court, to secure the Order Nisi at all costs, otherwise this court would not have granted the Order Nisi.

Finally urge court to set aside the Order Nisi granted on 28/4/2022.

On the other hand, Francis Sylvester Esq for Respondent formulated two (2) issues for determination in their Written Address of Judgment Creditor/Respondent that is;

- (1) Whether the Judgment Debtor can be heard in Garnishee Proceedings?
- (2) Whether the Judgment Debtor who is in disobedience of court Judgment can be granted indulgence by the same court?

On issue One, submits that garnishee proceeding is between the Judgment Creditor and the garnishee bank, therefore the Applicant cannot approach the court to set aside its Order Nisi as such is a violation of the Rule and Procedure which guides the conduct of garnishee proceeding. Refer to Heritage Bank Co Ltd Vs. N.U.C (2017) 5 NWLR (PT.1557) 104 @ 107. CBN Vs Interstella Communications Limited & Ors (2017) LPELR 43940 (SC) UBA Vs Ekanem (2009) 40 WRN 150. Submits further that the Applicant have no say in the Garnishee proceeding before the court and urge court to discountenance same.

On issue two, submits that the Applicant is acting in disobedience to the valid and subsisting Consent Judgment entered by this court on 20/6/2021, therefore, a Judgment Debtor who is in disobedience of the Order of Court cannot turn around to ask for the indulgence from same court he holds in disdain. Refer to Adelodun & Anor Vs Ajikobi & Ors (2021) LPELR – 56432 (CA); Abeke Vs Odunsi & Anors (2013) LPELR – 20640 (SC). Nigerian Army Vs Mowarin (1992) 4 NWLR (PT.235) 345, Military Government of Lagos State

Vs Ojukwu (1986) 1 NWLR (PT. 18) 621 and the JCN Property Development Vs Company Ltd Vs Hon. Minister of the Federal Capital Territory Administration & 2 Ors; Unreported Suit No. FCT/HC/BW/CV/1320/2018 delivered on 9/5/2009. Also refer to Black's Law Dictionary 9th Edition. Finally urge court to dismiss the application.

Having carefully considered this instant application, submission of counsel and the judicial authorities cited, as well as the affidavit evidence of the parties and Exhibit attached, the court finds that only one issue calls for determination that is;

“Whether the Applicant has made out a case deserving of the relief sought against the Judgment Creditor/Respondent”

In this instant application the court is invited to consider the facts deposed to by the parties to find if the Applicant has sufficiently sworn that he is entitled to the grant of the relief sought.

In this case the Applicant has stated copiously in Paragraphs 7, 8, 9, 10 and 11 of his supporting affidavit along with Exhibit “002” and “004” showing that the 70% and 60% contribution to be made by the Applicant in respect of the sums to be paid as schools for his son and daughter respectively were not ascertained in Exhibit “002”, Term of Settlement adopted as Consent Judgment of this court. Also the Applicant was not involved in the computation of the Judgment sum sought to be enforced by the garnishee proceeding. Against this; Respondent referring to the same Consent Judgment of Court states that the Applicant is in disobedience of the Order of Court and should not be granted any indulgence, also supported by Exhibits

"A", "B". To resolve this competing claims the court must consider the Consent Judgment delivered on 23/6/2021 and this the court is empowered to do. See *Agbareh Vs Mimra* (2008) ALL FWLR (PT. 40) @ 559. I have taken a considered look at the Terms of Settlement filed and adopted by the parties as Consent Judgment on 23/6/2021 as well as the Order of Court granted on 28/4/2022 wherein the Court ordered the Garnishee Bank to show cause why the payment of the sum of ₦2,401,522.00 in their custody accruing to the Judgment Debtor should not be made absolute, I find that the said Terms of Settlement and Consent Judgment states clearly percentage to be contributed by the Applicant in settlement of the school fees of the children of the marriage and not the sum now be claimed as Judgment Debt. However, the Applicant deposed to the fact that he was not involved in the computation of the sum and on the other side, Respondent states that the Applicant knows the school fees of the children, this deposition in my view is not sufficient to rebut the claim of the Applicant that he was not involved in the computation of the Judgment sum now subject matter of this application, flowing from the Consent Judgment delivered on 23/6/2021 which only mention percentages to be contributed by the Applicant in satisfaction of school fees of the children of the marriage. I am of the firm view that in computation and ascertainment of the Judgment sum, the Judgment Debtor must be carried along and not left to the Judgment Creditor as the Judgment sum must be ascertained and clearly stated in the Judgment. The authority of *Gwede Vs Delta State House of Assembly* (2019) LPELR 4794 (SC) cited by the Applicant is instructive and the court will go by it.

On the issue of the Applicant not being a party to the garnishee proceeding as canvassed by the Respondent, the Supreme Court in the case of Gwede Vs Delta State House of Assembly (Supra) has held that after the hearing of the application for a Decree Nisi, subsequent hearing envisage a tripartite proceedings in which the Judgment Creditor, Judgment Debtor and the Garnishee Bank are represented, depending on the facts and circumstance of the case, I am persuaded that in view of the facts contained in the affidavit of both parties as well as the fact that the Judgment sought to be enforced is Consent Judgment as settled by both parties, this is one garnishee proceedings where a tripartite proceedings in which all three parties are represented is allowed. I so hold.

On the issue of the Applicant being in contempt of the judgment of court, the facts deposed to by the Respondent is that the Applicant is in compliance with the aspect of the Judgment whose Judgment involved the sale of the matrimonial home and the settlement of the accommodation of the Respondent, as well as the exchanges between the parties evidence by Applicant's Exhibit 003 and 004, the Applicant has demonstrated good faith and not cogent enough to conclude that Applicant is in contempt and therefore should be denied access to this court.

From all of these, this court holds that the Applicant has established a case for the grant of the reliefs sought; therefore the application has merit and should succeed. Accordingly, reliefs 1 and 2 are hereby granted as prayed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

15/12/2022

APPEARANCE

FRANCIS SYLVESTER ESQ FOR JUDGMENT CREDITOR

BLESSING ONYECHE ADOLE ESQ FOR THE 1ST GARNISHEE – ZENITH BANK
PLC

O.N. EKUNWE ESQ FOR THE 2ND GARNISHEE ACCESS BANK PLC HOLD BRIEF
OF APANAS MORAH ESQ FOR THE 3RD GARNISHEE – POLARIS BANK PLC

MARCEL OSIGBEMHE ESQ FOR 4TH GARNISHEE – G.T.B. PLC

AHMED OYEBENI ESQ FOR THE JUDGMENT DEBTOR/APPLICANT