

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1408/2020

BETWEEN:

FAMAG – JAI NIGERIA LIMITED

.....JUDGMENT CREDITOR/RESPONDENT

VS

FIRST BANK PLC.....JUDGMENT DEBTOR/APPLICANT

VS

CENTRAL BANK OF NIGERIA.....GARNISHEE

RULING

Sequel to the application of the Judgment Debtor Counsel, on behalf of the Judgment Debtor, this court had earlier granted an Order Nisi on the 23/12/2020 in a Garnishee proceeding before it.

After this court in a considered Ruling, dismissed both the Judgment Debtor Motion on Notice No M/6878/2021 dated 15/10/2021 and the Garnishee/Applicant Notice of Preliminary Objection. Consequent upon the dismissal of the Garnishee/Applicant of the Notice of Preliminary Objection, they exercised their right of Appeal in filing an Appeal at the Court of Appeal against the Ruling of this court on 23/2/2022.

With leave of court, both counsel address the court on the proprietary or otherwise of this court proceeding with the Garnishee proceedings of the fact that the said Appeal has been entered at the Court of Appeal and all parties served.

The Judgment Debtor counsel, contend that where an Appeal has been entered and served on the parties, this court divested with power to proceed by taking any further steps, until the Appeal is determined. And urge the court to so hold.

Judgment Creditor Counsel, on the other hand, contend that in this instance, the Appeal entered does not touch on the Garnishee proceedings perse and that in line with Pletorial authorities, the judgment Debtor is not a party to the proceedings, *Gwede Vs D.H.S.T.A.* (2019) 8 NWLR (PT.1673) Pg 30. *Ekanemen Vs UBA* (2016)6 NWLR (PT. 790) Pg 222. That the right of Appeal enures in favour of a party to the proceedings and not to a stranger. Refer to Order 46 of the Rules of Court, that to allow the Judgment Debtor application would amount to this court sitting on Appeal on its Ruling. Therefore, urge this court to refuse the application and proceed.

Garnishee Counsel, while aligning with the submission of Judgment Debtor Counsel, submits further that, it is trite that once an Appeal has been entered, it is incumbent on the court to stay further action in the matter until the Appeal is determined. Refer to case of *Emmanuel Ogwuche & Ors Vs Mathew Mba & Ors* (1994) 4 NWLR (PT.336) Pg 75. Also contend that it is not correct that Judgment Debtor cannot be a party to Garnishee

proceedings. Referred case of Bogoro L.G.A. Vs Kyauta & Ors (2020) LCN – 14337 (CA) and the court to allow the application and stay action until determination of the Appeal.

In further response by the Judgment Creditor submits that the case cited by Garnishee Counsel, Bogoro L.G.A Vs Kyauta & Ors (Supra) is not on all fours with this case and should not be followed.

The Judgment Debtor Counsel, submits further relying on Section 83 (2) of SCPA, that the effect of the requirement of service of process on Judgment Debtor, denotes a right to be heard. Therefore, urge the court to discountenance the submission of Judgment Creditor Counsel on the point that the Judgment Debtor cannot be a party to the proceedings.

I have carefully considered the submission of all counsel in this instance application, the judicial authorities cited. In this instance, the court is invited to determine whether or not it can proceed with the Garnishee proceedings in the face of the pending Appeal entered against the Ruling of this court delivered on 23/2/2022.

On this very vexed issue in contention, it is not in doubt that an Appeal has been entered at the Court of Appeal against the Ruling of Court this court on 23/2/2022 by the Judgment Debtor and has been affirmed by the Judgment Creditor and Garnishee.

The position of the law, has clearly been stated that where an Appeal has been entered, the court has no business to proceed with the hearing of the matter before it, until the Appeal is determined. See cases of Adeleke

&Ors Vs Oyo State House of Assembly & Ors (2006) LPELR – 7655 CA; Union Bank of Nig Vs Uwa Printers Nig Ltd & Ors (2014) LPELR – 2268 CA, Victor Ikpeazu Vs Dr. Sampson Uche Chukwu Ogoh & Or (2016) LPELR – 40845 CA; Onnoghen Vs F.R.N (2020) 12 NWLR (Pg 300) Para 2.

An by Order 4 Rules 10, 11 of Court of Appeal Rules, 2016, which reads;

“An Appeal shall be deemed to have been entered in the Court when the records of proceedings in the trial court has been received in the registry of the court within the time prescribed by the Rules”

After an Appeal has been entered and until it has been finally disposed of, the court shall seize of the whole of the proceedings, as between the parties thereto. Except as may be otherwise provided in the Rules, every application thereon shall be made to the court of Appeal and not to the trial court”.

Having carefully given an insightful consideration to the above judicial authorities cited on what the court should do when there is an Appeal, and by the Rules of the Court of Appeal, in particular the underline part of the Rules, that is, “Every application thereon shall be made to the Court of Appeal and not to the Trial Court”. The issue raised by Judgment Creditor that the Judgment Debtor is not a party to the Garnishee proceedings should be a matter for the Court of Appeal to determine, upon application by the Judgment Creditor.

In conclusion have so found, I hold that the proper position this court should take at this stage, is to stay action until the Appeal is determined.

Accordingly, this Garnishee proceeding is hereby adjourned sine die pending the determination of the Appeal.

Signed:

HON. JUSTICE O. C. AGBAZA

Presiding Judge

9/11/2022

APPEARANCE

J.S. MSHELIA ESQ FOR THE JUDGMENT CREDITOR.

K.I. AKEREMADE ESQ FOR THE JUDGMENT DEBTOR

V.E. EZOKE ESQ FOR THE GARNISHEE