

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON FRIDAY 24, OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8, MAITAMA, ABUJA

SUIT NO.CV/126/2020

BETWEEN

1. LOUIS IWEH
2. IHEJIRIKA EBERE
3. EZEBIRO CHRISTOPHER C.
4. CHIWENDU OCHULOR
5. VINCENT UBANI
6. CHIBUIKE OSUAGWU
7. JOHN OBINNA EBERENDU
8. JONES ALEX OGBONNA
9. UGWUEZE ONWUMA
10. DAVID EGBU

JUDGMENT CREDITORS/RESPONDENTS

AND

1. GOVERNOR OF ABIA STATE
2. ATTORNEY GENERAL OF ABIA STATE
3. ABIA STATE HOUSE OF ASSEMBLY

JUDGMENT DEBTORS/APPLICANTS

AND

1. UNITED BANK FOR AFRICA PLC – GARNISHEE

RULING

Pursuant to the Judgment-Creditors' ex parte application filed on 11/03/2022, this Court, on 08/03/2022, made a Garnishee Order Nisi compelling the named Garnishee Banks to show cause why they should not be made to pay the Judgement Creditors/Respondents the sum of **₦149,046,080 (One Hundred and Forty-Nine Million, Forty-Six Thousand, Eighty Naira)** being the total prescribed statutory salaries and allowances of the Judgement Creditors/Respondents as Councilors of Abia State Local Government Council for 23 months at the sum of **₦14,909,608.00** per each Judgement Creditor/Respondent, from the funds held in their respective custodies belonging to the Judgement debtors in satisfaction of the judgment of the Supreme Court of Nigeria in Appeal No. SC/209/2010

awarded in favor of the Respondents on 11/07/2014 which judgment debt remains unsatisfied.

At the proceedings of 29/03/2022, learned senior counsel for the Judgment-Debtors informed the Court of the motion on notice and Notice of Preliminary Objection filed respectively to challenge the Garnishee proceedings. Facts also emerged, by the Affidavit to show cause filed on behalf of the erstwhile 5th Garnishee – United Bank for Africa Plc., that the Judgment-Debtors have in her custody the sum of ₦362,531,239.46, belonging to the 1st Judgment-Debtor, which is in excess of the amount to which the Order nisi relate.

In the circumstances, and as agreed to by learned counsel for the two contending sides, the Court made an order attaching the precise sum of ₦150,000,000.00 from the funds belonging to the 1st

Garnishee in the 5thGarnishee's custody, pending the determination of the intervening application filed by the Judgment-Debtors.

Furthermore, the Court discharged the remaining sixteen (16) Garnishees on record from any further liability to the Judgment-Creditors with respect to the Garnishee proceedings.

The first Application was filed on 25/03/2022 and the second; a preliminary objection was filed on 28/03/2022. The former is praying the Court for the following:

- 1.**AN ORDER** setting aside the process for garnishee order nisi issued in Suit No: M/1488/2022 in LOUIS IWEH & 9 ORS VS GOVERNOR OF ABIA STATE & 2 ORS on the 11th of February, 2022.
- 2.**AN ORDER** setting aside the garnishee order nisi granted in Suit No: M/1488/2022 in LOUIS IWEH

&9 ORS VS GOVERNOR OF ABIA STATE & 2 ORS
on the 8th day of March, 2022.

Whereas the latter, a Preliminary Objection solely
prayed the Court for:

AN ORDER striking out the suit for want of
jurisdiction on the grounds that:

- 1.The initiation of the proceedings contravened the
mandatory provisions of section 84 of the Sheriffs
and Civil Process Act Cap. S6 LFN, 2004.
- 2.Non-compliance with the mandatory provisions of
ORDER IV RULE 8 of the Judgments (Enforcement)
Rules made pursuant to section 94 of the Sheriffs
and Civil Process Act Cap. S6 LFN, 2004.
- 3.Non-compliance with the mandatory provisions of
sections 104 and 105 of the Sheriffs and Civil
Process Act Cap. S6 LFN, 2004.

4.The proper venue for the garnishee proceedings is where the judgment debtors reside, in the Umuahia High Court of Abia State.

5.The Honorable Court lacked the jurisdiction to grant the garnishee order nisi in the proceedings of 8th March, 2022.

In reaction, the Respondents also filed two counter affidavits on 08/04/2022 strongly contesting both Applications and ultimately urging the Court to dismiss them.

The written addresses accompanying the applications filed by both sides have been duly considered and shall be referred to where necessary in the course of the ruling.

Beginning with the Preliminary Objection, the Judgment Debtors/Applicants' learned senior counsel had contended that the instant Garnishee Proceedings

contravenes the mandatory provisions of **s. 84 (1) of the Sheriffs and Civil Process Act** in that the consent of the Attorney-General of Abia State was not first sought and obtained before the order Nisi was made, thus the trial Court lacked jurisdiction to entertain the garnishee proceedings.

The section under reference provides that:

“Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodia legis, the order nisi shall not be made under the provisions of the last preceding section unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of a public officer or of the court in the case of money in custodia legis, as the case may be.”

Learned senior counsel for the Judgment-Debtors has argued that the order nisi should not have been made for failure to first obtain the consent of the 2nd Judgment Debtor/Applicant who is the Attorney General and a public officer in the public service of Abia state because according to him, “money in the custody or under the control of a public officer in his official capacity” must be interpreted with reference to the owner of the money and not the person in physical possession of the money.

In opposing their position, the Respondents argued that “consent” of the Attorney General of Abia State is unnecessary in the instant case because the Government of Abia State, who is the Judgment Debtor had admitted in their affidavit before this Court of negotiating the Judgment Debt with the Judgment Creditors; that when there is such negotiation, the

consent of the Attorney General is no longer be required.

It was settled in **CBN vs Interstella Communications Ltd. &Ors (2017) LPELR-43940 SC** which incidentally is being relied upon by both parties but with different interpretations to suit their individual arguments, that for a case to come under the purview of Section 84 of SCPA, certain qualifying condition must be met which is that the Attorney General must be a neutral or a nominal party in the transactions and proceedings giving rise to the application for order nisi and not him being the debtor.

However, in the instant case, the Attorney General of Abia State is the second judgment debtor sued in his official capacity and one who is directly embroiled and involved in the cause of action leading to this suit. He

cannot therefore be considered a neutral or a nominal party in the circumstances.

Although learned senior counsel for the Objectors made an attempt to distinguish the case of **CBN vs INTERSTELLA (Supra)** with the instant suit, he however overlooked the depositions in paragraphs 12 and 13 of the affidavit in support of their earlier application of 25/03/2022, of which the Court take judicial account of, to the extent that the judgment creditors had withdrawn the garnishee proceedings to enable parties reach an amicable settlement out of Court and that the Attorney General, on behalf of the Governor of Abia State, had convened a meeting with the Judgment Creditors/Respondents with the objective of resolving their outstanding salaries and allowances due them in SC/209/2010. This, by my understanding, is no different from the concept of negotiation and therefore on all four with the decision in **CBN vs. INTERSTELLA**

(Supra). Hence, it cannot be said that the Attorney General of Abia State is a neutral party who would have been impartial in the grant of his consent even if same had first been sought and obtained by the Respondents. This is because no Attorney General will freely give his consent for a judgment to be enforced against him or his principal i.e the government of his State. This is evident from the several processes filed at different Courts and at different stages which were all aimed at getting the Judgment debtors to pay the judgment sum.

Thus, going by the decision in **CBN vs. INTERSTELLA (Supra)**, it is impossible for the peculiar circumstances of this case to be fitted within the general interpretation of s. **84** of the **SCPA**. This is because seeking to first obtain the Abia State Attorney General's consent when he is a proper and necessary party to the suit, with a pivotal role to either withhold

or give his consent, would have been a herculean task to achieve by the Respondents/Judgement Creditors which would invariably defeat the cause of justice if insisted by the Courts. Consequently, it is my firm view that the absence of consent in this instance does not vitiate or render the garnishee proceedings incompetent.

It is also the contention of the Objectors that time within which to enforce the judgment had elapsed and no leave of court was sought or granted to bring the instant garnishee proceedings. This, they argued offends the mandatory provision of **Order IV Rule 8 of the Judgment (Enforcement) Rules.**

Now, the correct position of the law as regards non-compliance with a Rule of Court is that failure to obtain leave prior to fulfilling any condition precedent does not render the writ or process void, but only renders it

voidable, which may be set aside at the instance of the aggrieved party who has not taken any step after becoming aware of the such irregularity.

The Judgment Debtors would agree that they have taken numerous steps to file processes at the Federal High Court and National Industrial Court, Owerri Judicial Division, in challenge of the outcome of the garnishee order absolute granted therein and had further taken steps to indulge the judgment creditors to explore settlement out of court despite the order absolute in place. This in my view is tantamount to the Judgment Debtors waiving their right to complain on the non-compliance to obtain leave to enforce the judgment. See **Tsokwa Oil Marketing Co. (Nig.) Ltd vs. Bank of the North Ltd (2002) LPELR-3268 (SC)**, where it was held that while non-compliance with the **Act** is fatal, the non-compliance with the Rules is a mere irregularity.

The Judgment-Debtors further contended that the judgment creditors failed to comply with the mandatory provision of **s.104 and 105** of the **SCPA** in that before a judgment of a Court is enforced in another Court sitting in a different jurisdiction, the said judgment must first be registered before enforcement proceedings can be initiated.

In my understanding, **s. 105 (1) of the SCPA** cannot be read in isolation and before it can be invoked, section 105 (3) (a) and (b) provides that the Court from which the judgment emanates must be a Court of first instance. Appellate Courts judgments were expressly left out of the provision of the subsection. In the instant case, the judgment sought to be enforced is a judgment of the Supreme Court which is not a Court of “like jurisdiction” with the High Court or Magistrates’ Courts as specified. And as correctly submitted by counsel for the Respondents, the Supreme Court is not a Court that

is subject to territorial jurisdictional limitation. In my view, it is a Court with a universal application whose decisions by s. **287 (1)** of the **1999 Constitution** of the Federal Republic of Nigeria (as amended) can be enforced across the 36 States of the federation including the FCT. I therefore agree with the submissions of the Respondents/Judgment Creditors that the Objectors argument in this regard is indeed grossly misconceived.

The fourth ground of their objection is that this Court is not the proper venue for the garnishee proceedings; that the garnishee proceedings can only be commenced in the Umuahia High Court of Abia State where the judgment debtors reside. Counsel for the Objectors relied on the cases of **Central Bank of Nigeria vs. Shipping Company Sara B.V. (No.1)(2015) 11 NWLR (Pt. 1469) 130**, and **Kraus Thompson Organization**

vs. University of Calabar (2004) 9 NWLR (Pt. 879) at 631-639.

I have carefully reviewed the decision in **CBN vs. Shipping Co. Sara(supra)**, and it is inapplicable to the case at hand. The decision was made pursuant to the provision of **Order VIII rule 2 of the Judgment (Enforcement) Rules** which is to the effect that Garnishee Proceedings may be taken where the Judgment Debtor can sue the Garnishee in respect of the judgment debt. The garnishee in that case is CBN which is not only a body corporate but also an agent of the FGN to be sued at her principal place of business. The Government of Abia State is not a body corporate and the garnishees herein; they are all commercial banks. Thus, this argument is both lame and untenable because the law is trite that the judgment debtor is not a necessary party in a garnishee proceeding. It is between the judgment creditor and

the garnishee even though **section 83 (2) of the SCPA** requires that the order nisi be served on the judgment debtor at least 14 days before the hearing of the order absolute. The law is further that even where a judgment debtor feels aggrieved by the decision of the Court in garnishee proceedings, he cannot maintain and sustain a valid action against the decision of the Court on Appeal. This means that where he resides is immaterial for purposes of the proceedings. See **Amaran vs Virgin Atlantic Airways &Ors (2018) LPELR-44786 and P.P.M.C Ltd. vs. Delphi Pet. Inc (2005) 8 NWLR (Pt. 928) 458.**

As regards ground 5 of the objection, this Court is not sitting on the subject matter of the suit nor as a trial Court, its role here is to enforce the judgment of the Supreme Court which is an entirely separate and distinct action from the main suit. See **CBN vs. interstellar (supra).**

In the light of the above, I find the judgment debtors preliminary objection to be unmeritorious and it is hereby accordingly dismissed.

I now proceed to the Judgment-Debtors' motion on notice filed on 25/03/2022, by which they prayed, inter alia, for an order setting aside the process for garnishee order nisi issued in this case on 11/02/2022 for being an abuse of judicial process. It is the Applicants/Judgment Debtors contention that the Respondents had commenced similar garnishee proceedings at the Federal High Court, Abuja Judicial Division to enforce the Supreme Court Judgment.

It is contended on behalf of the Judgment-Debtors that although the Respondents/Judgment Creditors have discontinued further participation in that suit, the proceedings at the Federal High Court, Abuja Judicial Division is still pending.

The Judgment-Debtors have further contended that the Judgment-Creditors, pursuant to the decision of the Supreme Court, had also proceeded to file a suit at the National Industrial Court, Owerri Division, in Suit No: NICN/OW/37/2014- HON. CHIGOZIE EZE & ORS VS. GOVERNOR OF ABIA STATE & 2 ORS, wherein they alleged the Respondents to have sought for a determination of what they were entitled to as arrears of salaries and allowances based on the judgment in SC209/2010; that the National Industrial Court, Owerri Division, has delivered judgment in the matter on 17th November, 2020 based on the Supreme Court Judgment. That the judgment subsists, has not been appealed and that the Respondents/Judgment Creditors filed garnishee proceedings to enforce the judgment but withdrew same to enable parties settle out of Court.

Now, in determining this application, it is proper to set the facts not in dispute between the parties in proper perspectives. The judgment of the Supreme Court upon which the Judgment-Creditors filed ex parte application for Garnishee order nisi is clear. In the said judgment, the Supreme Court did not make any specific order as to the specific amount adjudged as the Judgment-Creditors' arrears of salaries and allowances which Judgment-Debtors are obliged by that Judgment of the Supreme Court, to pay them. The relevant portion of the judgment of the Supreme Court, *per Rhodes-Vivour, JSC*, at pages 20-21 thereof, held as follows:

“Furthermore, since no evidence was led on salaries and allowances due to the appellants the sum of ₦13,636,889.00 claimed is highly suspect. In the circumstances, no probative value can be ascribed to the contents of the affidavit... In the

absence of the fact that no evidence was led to establish the sums due to the appellants as salaries and allowances no specific sum can be ordered by this Court.”

The Supreme Court further held, at page 23 of the judgment, as follows:

“To my mind, if this Court orders that a specific sum of money be paid to the appellants when there is no evidence to support the sum ordered to be paid that would be wrong as a consequential order should not be given for unproven relief.”

And the Supreme Court, in conclusion of the judgment, held, at page 26 thereof, as follows:

“For the avoidance of doubt it is hereby ordered that the 1st respondent pays immediately to all the appellants their salaries, allowances for 23 months.”

Flowing from the portions of the judgment of the Supreme Court reproduced in the following, it is quite

clear that the apex Court refrained from awarding any specific amount to the Appellants (some of whom are the Judgment-Creditors in the present proceedings), order than affirming that they are entitled to be paid their arrears of salaries and allowances for 23 months by the Abia State Government.

It is therefore apparent that when the Judgment-Creditors approached this Court, vide motion ex parte filed on 11/03/2022, seeking a Garnishee order nisi to execute the judgment of the Supreme Court, their application was not based on the judgment of the Supreme Court, but on their personal interpretations of the Judgment of the Supreme Court. In other words, even though the Supreme Court did not make an award of any specific sum of money in favour of the Judgment-Creditors, they approached this Court to claim the sum of N149,046,080, which, according to

them, is the prescribed statutory salaries and allowances for the 23 months for which the Supreme Court ordered the Abia State Government to pay them. The deponent of the Affidavit filed to support the ex parte application for Garnishee order nisi, deposed in paragraph 9 thereof to the specific amounts each of the Judgment-Creditors is entitled to, placing reliance, according to him, “prevailing statutory rate fixed by the Revenue Mobilization, Allocation & Fiscal Commission as at 2006/2007.” The deponent relied on public documents in that regard which were not shown to have been validly issued by the said Revenue Mobilization, Allocation & Fiscal Commission.

Quite apart from this, the position of the law is clear, where a judgment-creditor brings an application vide Garnishee to enforce an uncertain judgment. A similar case, as in the present case, arose in the decision of *Gwede Vs. Delta State House of Assembly* [2019]

LPELER-47441(SC), where the Supreme Court, per Okoro, JSC, held as follows:

“In this matter, the Appellant failed to make full and frank disclosure before the Federal High Court hearing the garnishee proceedings. First, the appellant represented that he is entitled to a judgment debt of N490,803,002.00 when, in actual fact, neither the Supreme Court's judgment of 24th October, 2014 nor the consequential order of 26th October, 2015 enumerated any specific sum of money the appellant was to be paid. This Court only ordered that Mr. Edoja Rufus Akpodiete, the removed member of the 1st Respondent should refund all the salaries and allowances he received while sitting as ‘member’ of the 1st Respondent. One wonders how the Appellant was able to compute those sums of money by himself alone outside the judgment of

the Court and tag it as the judgment sum. In garnishee proceedings, the judgment sum must be certain and can be located in the judgment. It is not to be left to conjecture.”

In the present case, the amount claimed by the Judgment-Creditors, on which the order nisi was based, did not arise from and could not be located in the judgment of the Supreme Court, on which the application for Garnishee order nisi was based. In my view, the Judgment-Creditors misled the Court into granting the order nisi. I so hold.

The case of abuse of Court process became even more glaring when one makes reference to the Judgment of the National Industrial Court of Nigeria, Owerri, relied upon by the Judgment-Debtors and referred to in paragraph 9 of the Affidavit in support of the instant motion on notice. In that case, the Claimants had

approached the NICN to determine the specific amount they are adjudged to be entitled to as salaries and allowances for the 23 months period in contention, since the judgment of the Supreme Court did not make specific orders in that regard. At the end of the day, the NICN adjudged that each of the Claimants was entitled to be paid the sum of ₦2,476,350.89k. I make reference to paragraphs 10 and 16 of the Affidavit in support of the instant application. I also refer to the judgment of the NICN, delivered on 17/11/2020, attached as exhibit to the Affidavit.

I note the contention of the Judgment-Debtors/Applicants in the Affidavit in support, to the extent that the Judgment-Creditors were parties in the suit at the NICN and that the judgment of that Court, in issue, was not appealed against and had remained subsisting. The Judgment-Creditors did not deny these contentions. All they had to say is that the suit filed at

the NICN was without their consent and that the suit was an affront to the decision of the Supreme Court. Yet, the Judgment-Creditors neither applied for the judgment to be set aside nor appealed against the same.

My finding is therefore that the Judgment-Creditors deliberately suppressed very vital facts relevant to the Garnishee proceedings when they filed and obtained the Garnishee order nisi of this Court, on 08/03/2022. They were aware of, and indeed parties to the proceedings at the NICN, where the judgment of that Court had specifically pronounced on the amounts they are entitled to as salaries and allowances for the due period, from the Judgment-Debtors. They were also aware that efforts were on-going to amicably resolve the debt issue and that the Judgment-Debtors have begun to pay the debt. Yet the Judgment-Creditors

deliberately omitted these facts when they applied to this Court to obtain Garnishee order nisi.

One of the known grounds upon which a Court is empowered to set aside its own decision is where the decision is shown to have been obtained by fraud or deceit. See Olufunmise Vs. Falana [1990] 3 NWLR (Pt. 136) 1; First Bank of Nigeria Plc. Vs. T. S. A. Industries Limited [2012] LPELR-9714(SC).

My decision is that the Judgment-Creditors obtained the Garnishee order of this Court *vide* motion ex parte filed on 11/03/2022, by fraud and deceit, being aware, on the one hand, that they are not entitled to the amount they claimed before this Court as the judgment-debt which they sought to enforce in pursuance of the judgment of the Supreme Court delivered in their favour on 11/07/2014; and on the other hand, that the judgment of the NICN delivered on

17/11/2020, had settled the amount to which each of the Judgment-Creditors are entitled, pursuant to the judgment of the Supreme Court on the matter.

In the final analysis, I find merit in the Judgment-Debtors motion on notice. Accordingly, the order nisi of this Court, made on 08/03/2022, pursuant to the Judgment-Creditors' motion ex parte filed on 11/02/2022, is hereby set aside. In consequence, the order of this Court, made on 29/03/2022, attaching the sum of ₦150,000,000.00 belonging to the Judgment-Debtors, in custody of the Garnishee, that is United Bank for Africa Plc, is hereby vacated forthwith. The said United Bank for Africa Plc is hereby discharged from any further liability whatsoever to the Judgment-Creditors in these proceedings.

OLUKAYODE A. ADENIYI
(Presiding Judge)

24/10/2022

Legal representation:

Chief Uche C. Ihediwa, SAN (Hon. Attorney General of Abia State) (with N. N. Akinola(Mrs.) (Director of Civil Litigation, Abia State Ministry of Justice) &C. I. Amanamba, Esq. (Principal State Counsel, Abia State Ministry of Justice) – *for the Judgment-Debtors/Applicants*

Darlington N. Ozurumba, Esq. – *for the Judgment-Creditors/Respondents*