

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON WEDNESDAY THE 19TH DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. CV/525/2018
MOTION NO: M/3178/2022

BARRISTER CHEKWUBE OSITA EBUBEALOR -----APPLICANT

AND

- 1. NIGERIA IMMIGRATION SERVICE**
- 2. COMPTROLLER GENERAL OF IMMIGRATION ----- RESPONDENT**
- 3. SUPERINTENDENT OF IMMIG. PASSPORT, S.D. MUHAMMED**
- 4. CHIEF IMMIG. ASSISTANT PASSPORT, H.B USMAN**

AND

POLARIS BANK PLC ----- GARNISHEE

RULING

The Applicant by a motion on notice dated and filed 17/11/2022 prays the Court for the following;

- a. AN ORDER of the Honourable Court directing the Garnishee to pay in the Judgment sum of Fifty Million Naira only N50,000,000.00 been set aside in their custody by the order of this court over two years ago be paid into an interest yielding account that will be set up by the Registrar of this Honourable Court, before the hearing and determination of any other court process(es) filed or incidental to this matter.
- b. AN ORDER of 10% interest annually on the judgment sum been set aside by the Garnishee on 30th September 2020, from the date the Order Nisi made by this honourable court was served on the Garnishee, counting from the 23rd September 2020, and being the date the Order was made by this Honourable Court until the judgement sum is fully liquidated by both judgment debtors and the garnishee.
- c. AN ORDER directing the Judgment debtors and Garnishee to make such payment into an interest yielding account to be set-up by the Registrar of this Honourable Court within 14 days from the date of this Court's ruling.
- d. AND FOR SUCH FURTHER ORDER(S) as this Honourable court may deem fit to make in the circumstances of this case.

The grounds for this application are;

1. The judgment Creditor/Applicant was awarded the judgment sum of Fifty Million Naira only N50,000,000.00 in his favour against the Judgment Debtors in an action to enforce his fundamental Rights, by this Honourable Court.
2. The Judgment sum/Debt is still wholly unsatisfied by the judgment Debtors/Garnishee.
3. The Judgment sum was set aside by this honourable Court on the 23rd day of September 2020.
4. It has been over two (2) years since the judgment sum was set aside by this Court without been paid into an interest yielding account.
5. The Garnishee still has the funds or monies of the judgment Debtors been set aside in their custody without accruing interest whatsoever to the Applicant's knowledge.
6. The judgment of this court is monetary judgment, which ought to be paid into an interest yielding account as a condition precedent before the judgment debtors will proceed to the Court of Appeal.
7. The general rule is that a judgment creditor is entitled to the fruits of his judgment.
8. The Judgment debtors filed a Notice of Appeal in the Court of Appeal since on the 25th day of August 2020 against the Judgment of this Honourable Court delivered on the 10th day of June 2020, without Stay of execution been filed and moved till date before this Court or in the Court of Appeal.

Learned Counsel to the Applicant relied on the 15 paragraph affidavit in support of the application deposed to by Chekwube O. Ebubealor, Esq, the Applicant wherein the deponent averred that this Honourable Court on the 10th June, 2020 delivered a monetary Judgment in favor of the Applicant, being the Judgment Creditor. That the Garnishee has in its possession funds set aside and belonging to the Judgment debtors. That the Garnishee/Judgment debtors are yet to comply with the Judgment of this Court since over two years ago. That the Appellants/Judgment debtors filed a Notice of Appeal on the 25th day of August 2022 against the Judgment of this Court in their bid to delay the cause of justice in this matter. That there is no motion for stay of execution pending before this Court or before the honourable Court of Appeal filed by the Appellants. That the general rule is that a judgment creditor is entitled to the fruits of his judgment. That the judgment debtors intend to keep in the Garnishee's possession, the judgment sum

in this suit as long as they can, even in utter disregard of the Judgment of this court. That the purpose of his application is that the judgment sum be paid into an interest yielding account in the interest of justice. That the Judgment debtors are seeking to deprive a successful litigant of the fruit of his labour. That the Judgment debtors' appeal is frivolous, vexatious and has no degree of success at the Appeal hence the reason for their undue delay. That the judgment debtors and Garnishee will not be prejudiced if this Application is granted by the court. That the filing of judgment debtors' Appeal is a ploy to arrest, delay the cause of Justice and enforcement of the judgment of the Honourable FCT High Court and in their bid to deny justice to the Judgment creditor/Applicant.

Attached to this application is a written address wherein learned counsel raised a sole issue for determination to wit;

“WHETHER having regards to the Applicant's prayers and depositions in the affidavit in support of this application, the Applicant has satisfied the Court for the grant of this application?”.

Summarily, learned counsel submitted that they are urging the honourable court that the judgment sum be paid into an interest yielding account that will be set up by the Registrar of this Court pending the determination of the appeal by the judgment debtors, relying on the case of **B.O.N V ABIOLA, (2007) 1 NWLR (pt 1014) page 23 at 38 paragraph B** —Cand Order 39(4) of the High Court of FCT, Abuja Civil procedure rules 2018. Counsel submitted that the whole essence of granting the application is the preservation of the res. That if the court will allow a judgment debtor to be in possession of the res and retain its enjoyment pending the Appeal, then the whole essence of securing the judgment is defeated. Conversely, that the courts have always frowned at the proposition that judgment sum should be in the hands of the judgment debtor, be it a bank, a financial institution or an individual, notwithstanding his financial base. That it will certainly smack an unfair advantage being given to the judgment debtor. He relied on **L.S.D.P.C. v. City Mark (WA) Ltd. (1998) 8 NWLR (Pt. 563) 681; UBN Ltd. v. Emole (1991) 9 NWLR (Pt. 213) 74; UBN Ltd. v. Odusote Bookstore Ltd. (1994) 3 NWLR (Pt. 331) 129 and Diamond Bank Ltd. v. P.l. co. Ltd. (2001) 4 NWLR (Pt. 703) 259**. Counsel further submitted that it is well settled that a court of law does not make the practice of depriving a successful litigant of the fruit of his litigation and thereby locking up the funds to which he is, prima facie, entitled pending the determination of the appeal. Citing **SPECIALIST**

CONSULT vs. RIVERS STATE GOVERNMENT (2002) FWLR (Pt. 91) 1478 at 1491. Counsel also submitted that in the case of **ADELEKE & ORS v. LAWAL & ORS (2013)**

LPELR-20090 (SC) it was held by the Supreme Court that "An order of interlocutory injunction is not granted as a matter of course. Balance of convenience must be considered. The target of the order is to preserve the res. Citing **Missini & Ors. v. Balogun & Anor (1968) 1 All NLR 318.**" **Per JOHN AFOLABI FABIYI, JSC (Pp 27 - 27 Paras D - E).** Counsel then submitted that this Honourable Court has the powers to grant the Applicant's application and urged the Honourable Court to resolve this lone issue formulated in favour of the Applicant.

The Garnishee did not file counter affidavit in opposition to this application. However, the Garnishee orally submitted that looking at the prayers of the Judgment Creditor seeking for Garnishee Order Nisi he made a prayer in paragraph E & F seeking that the money be placed in the Judgment Creditor's account which the court refused. That judgment Creditor is now seeking an order of the court to remove the money and place it in an interest yielding account. That the court has no powers to do that.

The issue for determination is;

"Whether the applicant has satisfied the court for the grant of prayers sought".

Garnishee Proceedings is covered by the Sheriff and Civil Process Act. It is the attachment of monies as pronounced in a judgment belonging to the judgment debtor in the hands of a Garnishee (3rd party) for the purpose of satisfying a judgment debt. Judgment Creditor in the quest to reap the fruits of his judgment had applied for and was granted a Garnishee Nisi Order in respect of the judgment sum. Thereafter the Garnishee (I.e. Polaris Bank) had set the money aside in the account of the judgment debtor domiciled with Polaris bank, but before the court could grant on Order Absolute, the judgment debtor had filed an appeal against the judgment of the court. It is unchallenged and uncontroverted that Appeal is pending at the court of Appeal. Applicant is seeking that judgment sum be placed in an interest yielding account set up by the court's registrar. In other words, Applicant is seeking an order transferring the judgment sum from the account of judgment debtor into an interest yielding account to be set up by the registrar of this court. First and foremost, for the benefit of the judgment creditor, it is necessary to set the records straight. The submission of judgment

creditor that the Appellant did not file a stay of execution against the judgment of the court is of no moment as it is trite that once a matter is in court (as in this case appeal) parties are to maintain status quo. Whether or not stay of execution is filed goes to no issue as the status quo is the situation of things as at the date of Appeal. Also, contrary to submissions of judgment creditor, the judgment sum is not in the hands of the judgment debtor rather in the custody of the Garnishee (i.e Polaris Bank). The fact that the judgment sum is retained in the judgment debtor's account does not suggest that it is within easy reach of judgment debtor; rather the judgment debtor cannot access the said sum as it is being held by the garnishee pending the final order of court as to which of the parties the Garnishee should pay the judgment sum to.

It is trite that when a matter is pending in court, status quo should be maintained. Status quo means the state of affairs prior to the dispute. Dispute in this matter connotes the pending Appeal at the Court of Appeal, the state of affairs prior to appeal which is that the judgment sum was set aside on the judgment debtors account domiciled with Polaris Bank. This court does not have the power to make orders moving the money from its present state of affairs to an interest yielding account managed by the registrar of the court. That is outside the court's jurisdiction. Application is dismissed for want of jurisdiction.

PARTIES: Absent

APPEARANCE: Martin I. Kalu appearing for the garnishee. Applicant is not represented.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
19THAPRIL, 2023**