

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 16TH DAY OF MAY, 2023
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/M/708/2017
MOTION NO.: M/88/2018

BETWEEN:

1. SHEHU ISAH MUBARAK
2. WOOD ROCK INTERNATIONAL LIMITED

**JUDGMENTCREDITORS/
APPLICANTS**

AND

1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
2. THE MINISTER, FEDERAL CAPITAL TERRITORY

**JUDGMENTDEBTORS/
RESPONDENTS**

RULING

By a Motion on Notice dated the 29th of October, 2018 but filed on the 31st of October, 2018 with Motion Number M/88/18, the Judgment Creditors/Applicants brought this application seeking the following reliefs:-

1. An Order that the Garnishee Order Absolute made on 22/02/2018 by this Honourable Court against the Garnishees herein failed to include the payment of ₦2,567,250.00 which represents 10% interest from 17/11/2016 to 17/02/2018 on the Judgment sum of ₦20,538,000.00 awarded in favour of the Judgment Creditors/Applicants on 17/11/2016.

2. AN Order of this Honourable Court directing the Garnishees herein to pay to the Judgment Creditors/Applicants the sum of ₦2,567,250.00 which represents 10% interest from 17/11/2018 to 17/02/2018 on the Judgment sum of ₦20,538,000.00 awarded in favour of the Judgment Creditors/Applicants on 17/11/2016.
3. And for such further Order or Orders this Honourable Court may deem fit to make in the circumstances.

Nine grounds form the premises upon which this application is founded. They include the fact that this Court delivered Judgment on the 17/11/2016 in Suit No. FCT/HC/CV/2950/2013 wherein it ordered the Judgment Debtor to pay to the Judgment Creditors the sum of ₦20,538,000.00 and 10% interest on the said sum from 17/11/2016 being the date of the Judgment; that following the failure of the Judgment Debtors to pay the Judgment sum, the Judgment Creditors commenced Garnishee proceedings against the Judgment Debtor, culminating in the Garnishee Order Absolute against Zenith Bank, Guaranty Trust Bank Plc and Aso Savings and Loans Plc on the 22/02/2018; that a period of one year and three months had elapsed at the time the Garnishee Order Absolute was made; that the Court omitted to include the 10% post-judgment interest when it made the Garnishee Order Absolute and that the Judgment Creditors/Applicants are entitled to the 10% post-judgment interest awarded by the Court.

The Motion on Notice was supported with 18-paragraph affidavit deposed to by one ThankGod S. Alfa, a Counsel in the law firm of Okey Uzoho & Co., Counsel to the Judgment Creditors/Applicants. Attached to the affidavit are five exhibits marked as **Exhibits A, B, C, D, and D1** which are the Certificate of Judgment delivered in Suit No. FCT/HC/CV/2950/2013 on the 17th of November, 2016, enrolled Garnishee Order Absolute made on the 22nd of February, 2018 a Skye Bank Manager's Cheque for the sum of ₦263,093.23 (Two Hundred and Sixty-Three Thousand, Ninety-Three Naira, Twenty-Three Kobo) only, the Statement of Account of Abuja Geographic Information System, a department of the 1st Judgment Debtor/Respondent, domiciled with the 2nd Garnishee and the Statement of Account of Abuja Geographic Information System domiciled with Aso Savings and Loans Plc respectively. The Judgment Creditors/Applicants also filed a Written Address in support of the application.

On the 9th of February, 2021, Zenith Bank, the 1st Garnishee, filed a Counter-Affidavit to the application. The 9-paragraph Counter Affidavit was deposed to by one Solomon Unamka, a Counsel in the law firm of Messrs Musah Kabiru & Co., Solicitors to Zenith Bank. One document was exhibited in the Counter-Affidavit, to wit, the enrolled Garnishee Order Absolute. The 1st Garnishee also filed a written address in support of the Counter-Affidavit.

On the 18th of May, 2020, Aso Savings and Loans Plc, the 3rd Garnishee, filed its written submissions in opposition to the application of the Judgment Creditors/Applicants.

Similarly, Guaranty Trust Bank Plc, the 2nd Garnishee, filed its Counter-Affidavit to the application. The 7-paragraph Counter-Affidavit was deposed to by one Chukwuemelie Ofoma, a litigation secretary in the law firm of Oli and Partners, Counsel to the 2nd Garnishee. Attached to the Counter-Affidavit are eight exhibits. The 2nd Garnishee also filed a Written Address in support of the Counter-Affidavit.

The Judgment Creditors/Applicants, on the 24th of June, 2020, filed a Reply/Further Affidavit in response to the Counter-Affidavit and written submissions of the 2nd and 3rd Garnishees respectively.

This Court heard the parties through their Counsel on the 8th of March, 2023 argue their positions for and against the application and thereafter adjourned for Ruling. In determining this application, this Court hereby formulate the following sole issue: “***Whether the Judgment Creditors/Applicants are not entitled to the reliefs sought in this application.***”

By way of a prefatory remarks, this Court must consider the challenge to the competency of the processes which the 1st and the 3rd Respondents filed in answer to the application which Counsel for the Judgment Creditor/Applicant raised in the course of the hearing of this application. According to the Counsel,

the 1st Garnishee's Counter-Affidavit and the 3rd Garnishee's written submissions were incompetent because they were filed out of time.

I have examined the processes filed in respect of this application. The endorsement and return copy of the Motion on Notice shows that the 1st, 2nd and 3rd Garnishees were served with the Motion on Notice on the 18th of March, 2020. The 1st Garnishee, however, filed its Counter-Affidavit on the 9th of February, 2021. This is ten months, three weeks and one day after it was served with the Motion on Notice of the Judgment Creditors/Applicants. The 3rd Garnishee, on the other hand, filed its written submissions on the 18th of May, 2020. That is, exactly two months after it had been served with the processes of the Judgment Creditors/Applicants.

Order 43 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides that

(1) Whereby in this Rules any application is authorised to be made to the court, it shall be made by motion which may be supported by affidavit and shall state the rule of court or enactment under which the application is brought.

(2) Every application shall be accompanied by a written address.

(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter affidavit.

(4) The applicant may within 7 days of being served with the written address of the opposing party file and serve an address in reply on points of law with a reply affidavit.

The Rules, however, enables a Court, upon a proper application before it by a party in default of doing an act within the time stipulated by the Rules, to enlarge the time for doing an act. Such a party is also required to pay a default fee of ₦200.00 (Two Hundred Naira only) each day they are in default. Order 49 Rules 4 and 5 of the Rules of this Court provides thus:

4. The court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend the time or adjourn for doing any act or taking any proceedings.

5. Any party who defaults in performing an act within the time authorized by the court or under these rules, shall pay to the court an additional fee of N200.00 (Two Hundred Naira) for each day of such default at the time of compliance.

I have reflected on the processes before me and the record of this Court. The 1st and 3rd Garnishees did not file any application for extension of time for them to file their Counter-Affidavit or written submissions in response to the Motion on Notice of the Judgment Creditors/Applicants. I agree with learned Counsel for the Judgment Creditors/Applicants that the processes of the 1st and 3rd Garnishees

are incompetent. What this means in effect is that there is no Counter-Affidavit before this Court. The Rules of Court are meant to be obeyed. See ***Olowokere v. African Newspapers (1993) 5 NWLR (Pt. 295) 583 C.A. at 600, paras D-E; Stowe v. Benstowe (2012) 9 NWLR (Pt. 1306) 450 S.C. at 469, paras C-D; Olomo v. Ape (2015) 14 NWLR (Pt. 1478) 46 C.A at 62, paras B-C, F-G; Sharing Cross E.S. Ltd. v. Umaru Adamu Ent. Ltd. (2020) 10 NWLR (Pt. 1733) 561 S.C. at 578, paras C-D; Bamalli v. F.R.N. (2023) 5 NWLR (Pt. 1878) 417 S.C. at 446, para A. In Adamu v. State (2023) 4 NWLR (Pt. 1873) 127 S.C. at 161, paras D-F,***the Supreme Court held that “***rules of court are not made for fancy, to be treated with levity, but must be obeyed by the parties and the court. There will be no order in judicial process where the rules governing the process are not obeyed or where parties are free, for example, to seek reliefs from a court as they wish and in their own style without any regard to the rules providing for the procedure which a relief could be sought in the court.***”

The application is therefore unchallenged and shall be treated as such. See ***Incorporated Trustees of Ladies of Saint Mulumba, Nigeria v. Ekhaton (2022) 15 NWLR (Pt. 1852) 35 S.C. at 61, paras B – C*** where the Court held that “***Affidavit evidence constitutes evidence. Therefore, any deposition that is not challenged is deemed admitted.***”

The Judgment Creditors/Applicants have brought this application seeking the reliefs contained on the face of the Motion papers. The facts as stated in the affidavit in support of the application are straightforward. This Court coram A. S. Umar, J. (as he then was, now JCA) had delivered a Judgment in Suit No. FCT/HC/CV/2950/2013 wherein he ordered that **“(1) ...the Defendants shall refund to the Plaintiffs the sum of N20,538,000.00 being the sum paid by the Plaintiffs to the Defendants for issuance of certificate of occupancy on the property which sum the Defendants still retain despite having revoked the said allocation. (2) 10% interest on the said sum of N20,538,000.00 from today until Judgment sum is fully liquidated.”** See **Exhibit A** attached to the affidavit in support of the application.

When, however, the Garnishee Order Nisi made on the 03/07/2017 was made absolute on the 22nd day of February, 2018, the Court inadvertently omitted the 10% post-Judgment interest it had imposed on the Judgment sum of ₦20,538,000.00. See **Exhibit B**. It is this omission that has necessitated this application.

There is no doubt that the Court has the inherent powers to correct errors in its Judgments and Orders. This has been restated in many decisions of the Courts. See, for instance, ***Dingyadi v. I.N.E.C. (2011) 10 NWLR (Pt. 1255) 347 S.C. at 408 – 409, paras F-A; Kanawa v. I.N.E.C. (2022) 1 NWLR (Pt. 1812) 393 S.C. at 416, paras F-H; Maza v. Awuna (2023) 2 NWLR (Pt. 1868) 207 S.C. at 250-251,***

paras F-A; C. This is known as the Slip Rule. In the case of *Berliet (Nig.) Ltd. v. Kachalla* (1995) 9 NWLR (Pt. 420) 478 S.C. at 495, *paras B-D*, the Supreme Court per Ogwuegbu, JSC described the Slip Rule as “...*a rule of great convenience...*” adding that “...*in the present case real hardship would have resulted if the court had not felt able to make the order asked for on the motion paper.*” In *Jegade v. Akande* (2015) 6 NWLR (Pt. 1455) 228 C.A. at 255, *paras D-F*, the Court held inter alia that “...*the said slip rule is an in-built mechanism designed to correct accidental slips and omissions in the court's judgment and order properly brought to its notice...*”

From the facts before this Court, and the documentary exhibits annexed to the affidavit in support of the application, there is no question that this Court *coram* A. S. Umar, J. (as he then was, now JCA) inadvertently omitted 10% post-Judgment interest which it had imposed on the Judgment sum. This Court has the inherent powers as guaranteed under section 6(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that “*the judicial powers vested in accordance with the foregoing provisions of this section shall extend notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a Court of law.*”

I find this application meritorious. Accordingly, the reliefs sought in this application are hereby granted as follows:-

1. THAT the Garnishee Order Absolute made on 22/02/2018 by this Honourable Court *coram* A. S. Umar, J. (as he then was, now, JCA) against the Garnishees herein failed to include the payment of ₦2,567,250.00(Two Million, Five Hundred and Sixty-Seven Thousand, Two Hundred and Fifty Naira) which represents 10% interest from 17/11/2016 to 17/02/2018 on the Judgment sum of ₦20,538,000.00 (Twenty Million, Five Hundred and Thirty-Eight Thousand Naira)awarded in favour of the Judgment Creditors/Applicants on 17/11/2016.
2. THAT an Order of this Honourable Court is hereby made directing the Garnishees herein to pay to the Judgment Creditors/Applicants the sum of ₦2,567,250.00(Two Million, Five Hundred and Sixty-Seven Thousand, Two Hundred and Fifty Naira)which represents 10% interest from 17/11/2018 to 17/02/2018 on the Judgment sum of ₦20,538,000.00 (Twenty Million, Five Hundred and Thirty-Eight Thousand Naira)awarded in favour of the Judgment Creditors/Applicants on 17/11/2016.

This is the Ruling of this Court delivered today, the 16th day of May, 2023.

HON. JUSTICE A. H. MUSA
JUDGE
16/05/2023