IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON TUESDAY THE 14TH DAY OF NOVEMBER, 2023

SUIT NO: FCT/HC/GWD/PET/22/2018

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

IKECHUKWU ANAGO……..PETITIONER/APPLICANT

AND

MRS INNOCENTIA BLESSING ANAGO……RESPONDENT

R U L I N G

The court delivered judgment in respect of this matter on the 16/11/2020. Sequel to that, the judgment creditor filed motion ex parte; same was heard and ruling delivered on the 11/07/2023 wherein the court ordered garnishee to appear before it to show cause why the order nisi should not be made absolute. Soon thereafter, the learned counsel to the judgment creditor/petitioner applicant Chief Anugom Ifeanyi informed the court of their two pending applications and was ready to move them having been duly served. One of the two applications is a committal proceeding under the Sheriff and Civil Process Act and the second is a motion on notice. The learned counsel to the respondent E.O. NWafor admitted being served with the two applications but that he was still within time to respond to the second application which is a motion on notice having been served few

days before the date for the hearing. The court agreed with him and obliged his request to respond to it.

Chief Anugom in moving the other application, narrated how the Sheriff and Civil Process Act and its rule did not envisage motion on notice rather that the alleged contemnor should show cause why he should not be committed to imprisonment for disobedience of court order. What the applicant is expected to file and serve is form 48 which is a warning of the consequences of disobedience of the order of court and added that they have complied. He further posited that they have also filed and served Form 49 which accompanied with affidavit.

He acknowledged the receipt of a counter affidavit from the respondent and concluded that there are facts that are irreconcilable which can only be resolved by oral evidence, to that end the learned counsel urged the court to set down the matter for hearing to enable them establish beyond reasonable doubt the guilt of the respondent. On this he referred the court to Order 47 rule 11 and 12 of the High Court Civil Procedure Rules.

Learned counsel to the respondent, E.O Nwafor Esq put the court through another lecture that if there is existence of disobedience of court order, form 48 is issued and served, after service of form 48 and the disobedience continued then form 49 is served. In the instant case, the counsel contended that being a quasi criminal proceeding strict compliance with service of form 48 and 49 is required. The counsel admitted the service of form 48; but alleged that form 49 was not served instead, what was served is a motion attached with affidavit labeled as form 49 but bereft of the character of form 49. The counsel submitted that what the applicant served on the respondent as form 49 can best be described as motion. It is

therefore their position that the process is incompetent for non compliance with the law. The respondent added that the only reason they filed address was to point out the non compliance.

In response to the submission of the applicant that there are irreconcilable facts to be resolve, it is the contention of the respondent that it is the court that determines whether or not there are irreconcilable facts and not the parties.

The learned counsel to the applicant in his reply on point of law submitted that the respondent did not comply with section 72 of the SCPA and that they did not file statement instead they file written address which did not qualify as statement which deals with facts. He added that the applicant filed form 49 which was personally served in compliance with the requirement of the law. In reaction to the argument that it is the court that determines whether or not the facts are irreconcilable, the applicant argument is that it is the parties that make the application. That is to say the court cannot sou motu raise the issue of irreconcilable facts in the affidavit of the parties.

For a contempt proceeding to be proper before the court, the applicant who alleges the contempt must serve on the respondent a supposed contemnor with Form 48 and 49 in line with Sheriff and Civil Process Act and order 9 rule 13 of judgment and enforcement rules. The respondent admitted the service of Form 48 but denied ever being served with Form 49. It is trite that the service of Form 48 and 49 in committal proceedings is a must; hence, failure to serve any of the forms in line with the relevant law will invalidate the proceedings. The claim of the respondent against the service of Form 49 is that what the applicant served is a motion labeled

Form 49 with prayers bereft of character of Form 49. That is to say, in my understanding of the respondent's submission, a document labeled Form 49 was served on the respondent by the applicant, but their contention is that the said document does not carry the form or character of form 49.

The general format for Form 49 is set out in Judgment Enforcement rules. What the applicant presented before this court is not exactly the same, however, the non compliance with the exact format will not occasion a miscarriage of justice and I am not misled by it. I therefore hold that the form 49 served on the respondent by the applicant is in substantial compliance with the general format. More so, there is no denial that it was properly served.

On the issue of irreconcilable fact, I agree with the respondent that it is the duty of the court to determine that, however, it is in the place of the party alleging such to call on the attention of the court to it. When that is done as in the instant case, the court will now take a close examination of the facts where it will either agree or disagree with the submission.

For the court to invoke its power to commit a defendant for contempt for disobedience of court order, the court must ensure that the applicant proved (1) the existence of a valid order of a competent court (2) that the order was disobeyed by the defendant. On the existence of a valid order of the court, the applicant averred in paragraph 3(b) that this Honourable Court delivered judgment on the 16/11/2020 granting him inter alia unrestricted access to his two children while in the custody of the respondent during public holidays and weekends, the right to visit the children at school during visiting days and visit of the children at the home of the respondent. It is further averred in several paragraphs of the

applicant affidavit that the respondent denied the applicant access to the children to the point that the applicant has to report the matter to Apo Police Station for intervention.

I want to pause at this point to express my displeasure on the conduct of the applicant in reporting a matter before the court to the police on issue already dealt with by the court. Where a court is seized of a matter and the parties have submitted themselves to the jurisdiction of the court they must desist from any action that may be inimical to the power of the court. That will amount to self help.

I have carefully read the affidavit in support of the application for committal particularly paragraphs 9, 11, 12, 15, 16, 17, 19 and 24 vis-à-vis the counter affidavit in opposition; I noticed a host of conflicting facts, for example, the applicant had averred how in obedience of the order of the court he has taken over the school fees of the children while the respondent in contradiction averred that in spite of the order of the court, she has continued the payment the school fees of the children till date. Such conflict or contradiction can only be resolve by oral evidence. In the light of this, I called on the parties to present their witnesses before the court for oral evidence to enable the court ascertain whether there is contempt of court order against the respondent.

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HON. JUSTICE. A. I. AKOBI
14/11/23