

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS 31st DAY OF MARCH, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA
SUIT NO: FCT/HC/CV/3121/2020

BETWEEN:

ALHAJI UMAR KARETO LAWAN-----JUDGMENT CREDITOR/RESPONDENT

AND

- 1. CHIEF DANIEL KANU**
- 2. HON AMINU MOHAMMED DAN MALIKI**
- 3. D M T WEBS COMMUNICATION LTD -----JUDGMENT DEBTORS/RESPONDENT**
- 4. AZUBIKE EKWEREKWU**
- 5. THE DEPUTY SHERIFF FCT HIGH COURT ----- RESPONDENT**

AND

- 1. CLEANALL ENVIROMENTAL SERVICE LTD**
- 2. DIK INTERNATIONAL LTD -----CLAIMANTS/APPLICANTS**
- 3. CHINWE AKURUKA**

Ruling/JUDGMENT

This is a suit commenced by an Interpleader Summons dated and filed on the 9th day of November 2020. The Interpleader Summons is brought pursuant to Order 34, Rule

1 of the Sheriffs and Civil processes Act & Order 48 Rules 4, 5, and 6 of the High Court Of The Federal Capital Territory Rules 2018 and under the inherent Jurisdiction of the Honourable Court. The Claimants/ Applicants claims are as follows:

- A. A Determination of this Honourable Court as to whether or not, the claimant/ applicants are the lawful owners of the property which were wrongfully attached during the execution of judgment on Monday October 26, 2020.
- B. An Order of this Court setting aside the enforcement execution carried out on Monday, October 26, 2020 AS ALL the properties carried away do not belong to the 1st or the 3rd judgment debtors Respondent in this suit; as can be gleaned from the attached exhibits.
- C. An Order of Court staying any sale or purported auction with respect to all properties carried away from the 1st judgment debtor/respondents premises in the belief that same belongs to the 1st defendant is wrong, null and void and of no effect whatsoever in law.
- D. An Order of this Court directing the release of all the properties stated in this application to the claimants/applicants as the rightful and proper owners of the properties as contained in the attached exhibits.
- E. And for such order or further orders as the honourable court may deem fit to make in the circumstance.

Attached to the application is an 8 paragraphs Affidavit deposed to by one Sunday Audu with 5 annexures as exhibits.

1. Exhibit 1 is a Motor Vehicle duty certificate with NCS 073652 and Serial No. 135238 and Chasis Number 146175 dated 13/11/2012.
2. Exhibit 2 is a Proof of Ownership Certificate with dated 27/08/2012
3. Exhibit 3 is a Proof of Ownership Certificate dated 13/12/2014
4. Exhibit 3 is Proof of Ownership Certificate dated the 24/05/2018.
5. Exhibit 5 is an Invoice Receipts by Anyi Tiger Global World dated 23/10/2018.

Also attached to the application is a written address wherein Judgment Creditor/ Respondent Counsel formulated two issues for determination to wit:

- 1. Whether the Claimants/ Applicant are entitled to the claim sought.**
- 2. Whether the Claimants/ Applicants have placed sufficient material facts before the honourable Court for the granting of the prayers being sought.**

Learned Counsel to the Claimants/ Applicants cited the following cases in proof of his case

- 1. ANIDIOBI VS ANIDIOBI (2007) 2NWLR(pt1017) 1**

2. **JINADU VS {HIGH COURT, LAGOS ; TAYLOR,C.J 10th OCTOBER, 1966}SUIT NO .LD/39A/66 (1966) ANLR 519.**
3. **ETCHAKA CTILE-RANCH LTD VS NACB LTD.(1998) 4NWLR (pt.547) 526**

At the hearing of suit on the 16th of February 2021 the Mr Martin Odey appeared for the claimant while the Judgment creditor /Respondent was represented by Mr. Arome Onaja who informed the court of a Notice of Preliminary Objection filed and he made an oral Application to correct the suit no as it appears on the said Notice of Preliminary Objection which carried Suit No. **CV/2772/15** To The correct suit No of the suit which is **FCT/HC/CV/3121** the application was granted.

Learned Counsel to the Judgment Creditor/Respondent Learned in moving his Preliminary Objection dated and filed on the 15th day of February 2021 stated the grounds of the said Preliminary Objection as follows:

1. The Mode and manner in which this interpleader Summons is brought before this Honourable Court amount to an abuse of Court process.
2. The Claimants/ Applicants/Respondents has no Locus Standi to institute this Interpleader Summons.
3. The Claimants/Applicants/Respondents is incompetent and lacks the capacity to institute this action.

Attached to the Notice of Preliminary Objection is a 12 paragraphs Affidavit with one annexure marked as Exhibit 1. In the Written Address in support of the Notice of

Preliminary Objection Counsel to the Judgment Creditor/ Respondent formulated two issues for determination of the Court

1 WHETHER CLAIMANT /APPLICANT /RESPONDENT have the locus standi to institute this summons

2 WHETHER the 1st and 2nd CLAIMANTS / APPLICANT RESPONDENT is a competent party to institute this action in view of the fact that it is not a registered company under any law in force in Nigeria.

The Learned counsel went further to buttress his argument by citing the following Laws and cases

- 1. Order 48 Rule 1 of the FCT High Court Civil Procedure Rules (2018**
- 2. Section of the sheriff and civil process Act, CAP S6, Laws of the federation of Nigeria, (2004)**
- 3. Omobomi Adedeji Oladimeji Vs. Col. Felix Abayomi Adeoye & Anors. Suit No. FCT/HC/CV/569/16(Unreported)**
- 4. Nigeria Dev. Co .Ltd Vs ASWB (2008) 9 NLR Pt. 1093 pg.498.in the case of AFanah Vs. Ebosele (2009)ALL FWLR (PT 473)1385 At 140**
- 5. Onyukei Vs. the Peoples of lagos state Ors (2013)LPEPR-24809(CA).**
- 6. White Diamond Property Development CO. Ltd Vs Trade Wheels Ltd (2018) LPELR-44572 (CA).**

Learned Counsel for the Judgment Creditor/ respondent/Applicant urged the court to strike out the matter as the Claimant/Applicant/Respondent lacks the capacity to sue.

In Response, the Claimant/Applicants/Respondents filed a 5 paragraphs Counter- affidavit with annexures marked as Exhibits 1 to 3 and a written Address dated 24th February 2021. In his written address Learned Counsel to the Claimant/Applicant/Respondent argued that the Court has jurisdiction to entertain the matter as the parties can sue and be sued Learned Counsel relied on the following Law and cases in support of his argument.

- 1. Section 36 and 37 Companies and Allied Matters Act 1990 (CAMA)**
- 2. Ataguba and Company Vs Gura Nigeria Limited SC 295/2000**
- 3. Fawehinmi Vs N.B.A 2(NWLR) (PT 105)**
- 4. Knight Vs Dove (1964)2 All E.R 307 at 301**
- 5. Carlen (Nig) Ltd Vs Unijos (1994) 1 NWLR (Pt 323)**
- 6. Goodwill & Trust Investment Ltd & Anor Vs Witt & Bushc Ltd (2011) 2-3 S.C PT 1**
- 7. Taiwo Vs Adegbero & 2 Ors (2011) 5 S.C (Pt II)**
- 8. AG Kaduna State Vs Hassan(1985) 2 NWLR (PT.8) 433**
- 9. Madukolu Vs Nkemdilim (1962) NSCC 374**
- 10. Socio- Political Research Development Vs Ministry Of FCT& ORS(2018) LPELR-45708 (SC)**

11. Chief V.C Obumseli & Anr Vs Chinyelugo P. Uwakwe(2019) SC 652009.

Learned Counsel further urged the court that the applicants have satisfied the requirements of the Law and that the court has jurisdiction to hear and determine the case.

On his reply on point of Law, learned counsel to the Judgment Creditor/Respondent/ Applicant argued that based on the provision of **Section 34 of the Sheriffs and Civil Processes Act, CAP 56, Laws of The Federation of Nigeria (2004)**. He argued that on the strength of the Section 34 a Sheriff Interpleader Summons can only be commenced by the Sheriff or officers of the court that attached the property of the Claimant. He also cited the provision of **Order 48 Rule 1 of the FCT High Court Civil procedure Rules 2018**

Also cited are the following cases on his reply on point of Law:

- 1. Chemical & Wire Manufacturing Ltd Vs Ibachem (IBAFON CHEMICALS) LTD(2011) LPELR-3906 (CA):**
- 2. Registered Trustees Ikoyi Club 1938 Vs Ikujuni (2019) LPELR-47373 (CA)**

Learned counsel contended that the case of **CHIEF V.C OBUMSELI& ANOR Vs CHINYELUGO P UWAKWE (2019) LPELR-46937 (SC)** relied on by the Claimants/Applicants/Respondents does not support the argument of the Claimants/Applicants/Respondents and that the issue before the apex court was whether an

interpleader summons can be heard by Oral Evidence or by an affidavit and not that of the issue of the procedure for instituting a Sheriff interpleader summons.

Learned Counsel submits that this honourable Court should strike out the matter for lack of Jurisdiction.

In his Response to the main suit, Learned Counsel to the Judgment Creditor/ Respondent filed an 18 paragraphs Counter Affidavit dated the 2nd day of March 2021 with annexures as Exhibits AUK1 and AUK2 and a written address wherein he formulated two issue for determination to wit:

1. Whether this Interpleader Summons instituted by the Claimant/Applicants is not an abuse of Court process?
2. Whether the 1st and 2nd Claimants/ Applicants are competent parties to institute this action in view of the fact that they are not registered companies under any Law in Force in Nigeria?

In support of his argument on the two issues raised, Counsel relied on the following cases.

- 1. Bukoye Vs Adeyemo (2017) 1 NWLR (Pt 1546) 173 SC.**
- 2. Umeh Vs Iwu. (2008) 8 NWLR 9(Pt 1089)**
- 3. Amaefule Vs The State (1988) Vol. 19 NSC 667.**
- 4. Onyuike Vs The People's of Lagos State Ors (2013) LPELR-24809**
- 5. Ataguaba and Company Vs Gura Nigeria Limited (2005) 8 NWLR (Pt 927) 429**
- 6. Shittu Vs Ligali (1941) NLR 21**

7. **Agbonmagbe Bank Ltd Vs General Manager G.B Ollivant Ltd and Anor (1961) ALL NLR 116.**
8. **White Diamond Property Development Co .Ltd Vs Trade Wheels Ltd (2018) LPELR-44572(CA)**
9. **Alhaji Olorunkemi Ajao Vs L.E Sonola& Anor (1973) LPELR-288 (SC) 1 at page6**
10. **Goodwill& Trust Investment Company & Anor Vs Witt& Bush Ltd (2011) 8 NWLR (Pt 1250) 500 at B-H**

At the hearing Counsel further urged the court to reject the document sought to be relied upon by the judgment Creditor/Respondent as it failed all the acid test as provided in Section 89, 98, and 102 Of the Evidence Act.

I have perused the Notice of Preliminary Objection before me, the Counter Affidavit in Opposition to the Notice of Preliminary Objection and the Reply on Point of Law. It is my considered view that even though from the evidence before me the Claimants/ Applicants are juristic or legal personality the provision of Section 34 of the Sheriffs and Civil Process Act is clear. Section 34 provides:

“(1) if a claim is made in respect of any property attached in execution under process of a court, or in respect of a proceed or value thereof, the registrar may, upon the application of the sheriff, as well before as after any action brought against him, issue a summons calling before the court the party at whose instance the process issued and the party making the claim .

(2) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the writ shall be stayed

(3) on the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising or capable of arising out of the execution of the writ by the sheriff, and shall make such order in respect of any such claim and the cost of the proceedings as it thinks fit.

See also Order 48 Rule 1 of the High Court Civil Procedure Rules of the Federal capital Territory Abuja. Which provides as follows:

“(1) Relief by way of Interpleader may be granted where the person seeking relief “the applicant” is under liability for any debt money, goods, or chattels for or on which he is ,or expects to be used by two or more parties the claimant making adverse claims. But where the applicant is a sheriff or other officer charged with the execution of process by under the authority of the high court, provision of section 34 of the Sheriff and Civil Process Act and the rules made under it shall apply.

In view of the above, I shall adopt the issues set out for determination by the learned counsel to the Judgment Creditor/Respondent/Applicant in this notice of Preliminary objection as follows:-

1. Whether Claimant /Applicant /Respondent have the locus standi to institute this summons

2 Whether the 1st and 2nd Claimants / Applicant/Respondent is a competent party to institute this action in view of the fact that it is not a registered company under any law in force in Nigeria.

On the first issue above, learned counsel to the Judgment Creditor/ respondent/Applicant contended heavily that the Claimants/Applicants/Respondent does not have a locus standi to institute this action that a sheriff interpleader summons is being instituted by the sheriff himself when faced with two rival parties claiming ownership of a property in possession that are subject of execution of a court judgment. That there are no instances where an interpleader summons can be commenced by any party that is claiming ownership of the property in contention; not even the case of stakeholder interpleader. That Order 48 rule 1 of the FCT High Court Civil procedures Rules 2018 and section 34 of the Sheriff and Civil Process Act, Cap 56, Laws of the Federation of Nigeria 2004 are the relevant laws.

On the other hand, learned counsel to the claimant/Applicant in this action argued that all the supporting documents attached to the interpleader summons are in the names of the claimants as the owners of such properties and this clearly demonstrated that their rights have been infringed and ought to be protected.

In the case of ADESOKAN V ADEGOROLU (1991) 3 NWLR (PT179) 293 AT 305-306 It was held in that case by the court of Appeal that to decide if the claimant has locus standi, it is the statement of claim filed by the claimant that must be looked into and considered as it is a matter of Law.

The provision of Order 48 rule 1 of the FCT High Court Civil Procedures Rules 2018 is very clear and without any ambiguity that the procedure for commencing an interpleader summons is as provided in section 34 of the Sheriff and Civil processes Act. Pursuant to the above, it is my humble legal opinion that the Claimant/ Applicant respondent lacks the locus standi to institute this action.

On the second issue:-

Whether the 1st and 2nd Claimants / Applicant/Respondent is a competent party to institute this action in view of the fact that it is not a registered company under any law in force in Nigeria.

It was argued on behalf of the Judgment Creditor/ respondent/Applicant that only a competent party can institute an action before any court of law in Nigeria either as a natural or juristic persons. Learned counsel argued further that any business purporting to be a company but no incorporated with the Corporate Affairs Commission as required by the Companies and Allied Matters Act, 2020 or not given any legal status by any law currently in force in Nigeria cannot be competent to institute an action before any court of law in Nigeria.

That is a fundamental principle of law that for a matter to be properly constituted so as to vest jurisdiction in the court to adjudicate on it, there must be competent plaintiff and competent defendant. Thus only natural or juristic person such as body corporate are competent to sue and be sued. A company must be a juristic person competent to sue or be sued if it be duly registered or incorporated under a valid law in Nigeria. That the 1st and the 2nd Claimant is not competent to institute this action. The 1st and the 2nd Claimants are not body corporate under any law in force in Nigeria.

That a search conducted at the corporate affairs commission website revealed that no company as 1st and 2nd Claimant was registered.

On the other hand, learned counsel to the Claimants/Applicant contended that the exhibits attached to the counter-affidavit of the 1st and 2nd Claimants have demonstrated not only that the 1st and 2nd Claimants are applicants and juristic persons, they are also legal persons which the action as presently constituted is maintainable clothing this court with jurisdiction to entertain same. That the 3rd Claimant/Applicant is a natural person and needs not to prove or show to this court that it has the capacity to bring this action. Learned counsel contended that the Companies and Allied Matters Act 1990 (CAMA) which is the law that deals with and govern the registration,

regulation and general management of Companies provides in section 36 (6) that,

“The certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of Registration and matters precedent and incidental to it have been complied with and that the Association is a company authorized to be registered and duly registered under this Act”.

Learned counsel said the attached exhibits to the affidavit in support of counter-affidavit of the Claimant/Applicant was issued by the Corporate Affairs Commission to the 1st and 2nd Claimant/Applicant.

Finally, on this note, learned counsel contended that by virtue of section 36 of the Companies and Allied Matters Act 1990, a certificate of incorporation is a proof that a company has been registered.

In his reply on point of Law, the Judgment Creditor/respondent/Applicant’s counsel argued in the main that assuming – but not conceding – that the first and the 2nd Claimants are incorporated Companies under the Companies and Allied Matters Act, 2020, they are still not competent parties to institute sheriff interpleader summons as provided under section 34 of the sheriffs and Civil Processes Act, Cap 56 Laws of the Federation of Nigeria 2004.

In conclusion, from the exhibits attached to the counter-affidavit by the 1st and 2nd Claimant/Applicant/Respondent that is, the certificate of Incorporation, I Find that the 1st and 2nd Claimant/Applicant/Respondent are duly registered, they can sue and be sued in their registered names. I so HOLD. Having ruled on the first issue that the Claimant/Applicant/Respondent in this action, pursuant to section 34 of the Sheriff and Civil Processes Act and Order 48 Rule 1 of the FCT High Court Civil Procedure rules (2018) lacks the locus standi to institute this action. See the cases of ADESANYA Vs FRN (1981) 5 SC 112 AT 148 per Bello See also ALHAJI CHIEF YEKINI OTAPO Vs CHIEF R.O SUNMONU & 1 ORS(1987)2 (NWLR) (PT 58) and also OKOLO Vs UNION BANK OF NIGERIA LTD (2004) 3 NWLR (PT 859) 87 AT 110 per Tobi JSC as he then was.

I find that the Notice of preliminary objection dated the 15 day of February 2021 succeeds. Interpleader summons dated 9th day of November 2020 is hereby stuck out for lack of jurisdiction.

Appearances:

Parties absent.

A.I Habibullai with H.E Abdul Esq for the Judgment/Respondent/Applicant.

Lydia I. Ukaegbu for the 5th Respondent.

Signed
Hon. Presiding Judge
31st/03/2021