

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT MAITAMA, ABUJA**

**ON MONDAY, 31<sup>ST</sup> DAY OF JANUARY, 2022  
BEFORE HON. JUSTICE SYLVANUS C. ORIJ**

**SUIT NO. FCT/HC/CV/3400/2020**

**BETWEEN**

**LEADERSHIP GROUP LIMITED**

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**APPLICANT**

**AND**

**UNITED BANK FOR AFRICA**

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**RESPONDENT**

**JUDGMENT**

In the Originating Summons filed on 10/12/2020, the applicant submitted one question for the Court's determination, that is

Whether having regard to the order Nisimade on the on the 28<sup>th</sup> of October, 2019 in Suit No. Cv/1941/2018 between Infinity Security Services Limited and Leadership Group Limited & Anor. and which was served on the respondent on the 31<sup>st</sup> of October, 2019, the applicant can access the funds in the said account.

The applicant seeks the following reliefs against the respondent:

1. A declaration that the applicant is entitled to access the funds in the applicant's account number 1018122094, Leadership Group Limited, United bank for Africa Plc. [UBA] by virtue of the Order Nisi made on the 28<sup>th</sup> of October, 2019 in Suit NO. CV/1941/2018 between Infinity Security Limited V. Leadership Group Limited & Anor. and the affidavit to show cause dated/deposed to by the respondent on the 6<sup>th</sup> of November, 2020.
2. An order mandating the respondent to release all such funds as were accrued in the applicant's account 1018122094, Leadership Group Limited, United Bank for Africa Plc. [UBA] withheld from the applicant.
3. An order of injunction restraining the respondent forthwith from further denying the applicant access to the funds in her account.
4. And for such further order[s] as this Honourable Court may deem fit to make in the circumstances of this case.

Mr. Olakunle Olasanmi, the judicial correspondent of the applicant, deposed to a 4-paragraph affidavit in support of the Originating Summons; attached therewith are Exhibits A, B1, B2, C, D, E, F & G. U.D. Oguekwe Esq. filed a written address. In opposition, Kingsley Ugwueke, the Litigation Secretary in the law firm of U. O. Sule, SAN & CO., filed a counter affidavit of 8 paragraphs together with the written address of Catherine O. Egbodo Esq. At the hearing of the Suit on 1/12/2021, Ajike Ukonu Esq. adopted the

applicant's processes while M. K. Ikyegh Esq. adopted the respondent's processes.

In the affidavit of Mr. Olakunle Olasanmi, he stated that:

1. The applicant maintains account number 1018122094 with respondent.
2. The applicant is the judgment debtor in Suit No. CV/1914/2018 between Infinity Services Ltd. V. Leadership Group Ltd. & Anor. After the Judgment in the said Suit, the Judgment creditor initiated a garnishee proceeding. The respondent was the 18<sup>th</sup> garnishee in the garnishee proceeding.
3. A garnishee order *nisi* was made on 28/10/2019 and served on the respondent on 31/10/2019. The garnishee order *nisi* is Exhibit A.
4. The respondent deposed to an affidavit to show cause. In paragraph 4[d] thereof, the respondent stated: *"that the 18<sup>th</sup> Garnishee went ahead to conduct another search of its database and has confirmed that the judgment Debtors do not have an account with the Bank"*.
5. On 18/12/2019, a garnishee order *nisi* was made against the applicant in Suit No. AB/SDC/CV/96/2019 between Austine C. Ezendu V. Leadership Newspaper Group Ltd. & Leadership Group Ltd.
6. Consequent upon the said garnishee order *nisi* made on 18/12/2019, the respondent [as the 8<sup>th</sup> Garnishee] filed an affidavit to show cause where it stated that the applicant maintains an account with it. The respondent also stated that the funds in the applicant's account had been attached pursuant to a garnishee order *nisi* in Suit No. Cv/1941/2018.

7. It was the same Ugwueke kingsley that deposed to both affidavits to show cause and the same law firm of U. O. Sule, SAN & Co. handled the garnishee proceedings in the two suits. The copies of the affidavits to show cause in the two suits are Exhibits B1 & B2 respectively.
8. The garnishee order *nisi* dated 18/12/2019 was made absolute on 19/3/2020. On 14/5/2020, the applicant wrote a letter to Zenith Bank Plc. requesting for its statement of account covering the date of the garnishee order nisi in the said Suit No. AB/SDC/CV/96/2019.
9. On 15<sup>th</sup> of May, zenith Bank Plc. Wrote to the applicant that it has paid the sum of N1.5 million to the judgment creditor in the said Suit No. AB/SDC/CV/96/2019. The said letter is Exhibit C.
10. The applicant also filed an affidavit [Exhibit D] notifying the court and the respondent of the payment of the said judgment sum.
11. On 29/5/2020, the applicant wrote a letter [Exhibit E] to the respondent notifying it of the payment of the said judgment sum in Suit No. AB/SDC/CV/96/2019. The applicant requested the respondent to lift the lien on account number 1018122094.
12. Despite the fact that the applicant has satisfied the judgment sum in Suit No. AB/SDC/CV/96/2019, the respondent still continued to deny the applicant access to the said account on the ground of the order *nisi* made on 28/10/2019 in Suit No. Cv/1941/2018.

13. On 31/10/2019 when the said other *nisi* in Suit No. CV/1941/2018 was served on the respondent, the fund in the applicant's account number 1018122094 was the sum of N772.20.
14. As at 1/11/2019, the monies in the said applicant's account was the sum of N772.20 The Account Statement from 1<sup>st</sup> November, 2019 to 2<sup>nd</sup> May, 2020 is hereby attached and marked as Exhibit F.
15. After 31/10/2019, monies have accrued to the applicant's account but the applicant has not been able to access the said monies due to the respondent's continuous denial of access.
16. All effort to access the fund that entered/accrued into the account after the service of the garnishee order *nisi* dated 28/10/2019 have proved abortive as the respondent has continuously denied the applicant access to the said account. One of the applicant's letters to the respondent dated 29/5/2020 is Exhibit G.

In the respondent's counter affidavit, Kingsley Ugwueke stated that:

1. The applicant is one of the customers of the respondent with account number 1018122094 with the name Leadership Group Ltd.
2. The order *nisi* made by the court on 28/10/2019 directing the respondent to show cause was specific on account number 1062087866 domiciled

With the respondent. The respondent conducted search on its database which revealed that account number 1062087866 belongs to Sanusi Libabatu.

3. The garnishee order *nisi* made on 18/12/2019 did not specify any account number but only supplied the names of the judgment debtors.
4. The search conducted by the respondent on the names of the judgment debtors supplied in the order *nisi* dated 18/12/2019 revealed that the applicant maintains account No. 1018122094 with the respondent.
5. The search conducted further revealed that the account of Leadership Newspaper Group Ltd. had been attached pursuant to garnishee order *nisi* in Suit No. FCT/HC/CV/1941/18, Motion No. FCT/HC/M/2519/2019 pending before the FCT High Court.
6. Suit No. FCT/HC/CV/1914/2018, Motion No. FCT/HC/M/2519/2019 are still pending before the Court and has been adjourned *sine die* as parties are on appeal.
7. As a matter of the respondent's banking policies, once an order *nisi* has been given in respect of any account, funds in the account cannot be accessed until the order *nisi* is discharged.
8. Releasing the account will jeopardize the decision of the Court in Suit No. FCT/HC/CV/1941/2018, Motion No. FCT/HC/M/2519/2019 as it will put the court in a situation of *fait accompli*.

Submission of the Applicant's Counsel:

Learned counsel for the applicant distilled one issue for determination, viz:

Whether having regard to the order *nisi* made on the 28<sup>th</sup> of October, 2019 in Suit No. CV/1941/2018 between Infinity Security Services Limited and Leadership Group Limited & Anor. And which same was served on the respondent on the 31<sup>st</sup> of October, 2019 and the affidavit to show cause deposed to by the respondent on 6<sup>th</sup> of November, 2019, the applicant access the funds in the said account.

The applicant's counsel posited that upon service of garnishee order *nisi* on

The garnishee, he has an obligation to make a disclosure of the funds of the Judgment debtor on the date of service of the order, when a garnishee order

*nisi* is served on the garnishee, it binds and attaches the debt in the hands of the garnishee at the time of the service of the garnishee order. It becomes obligatory on the part of the garnishee not to release the money attached by

the order unless he is directed to do so by the court. He referred to **Skye**

**Bank**

**Plc. V. Cornelio Colombara & Anor. [2014] LPELR-22641[CA].**

U. D. Oguekwe Esq. pointed out that when the respondent was served with the garnishee order *nisi* made on 28/10/2019, it filed an affidavit to show cause on 6/11/2019 [Exhibit B1] stating that the applicant did not maintain an account with it. Thus, the applicant accounts would not have been attached as the respondent stated that the applicant did not maintain any account with it. He submitted that assuming a garnishee order *nisi* can be made against an account not disclosed in the garnishee's affidavit to show cause, a garnishee order *nisi* does not affect the funds that entered a judgment debtor's account after the service of garnishee order *nisi*.

In support of the above submission, Mr. Oguekwe relied on section 85 of the Sheriffs and Civil Process Act, which provides that; "*Service of an order that a Debt due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court may direct, shall bind such debt in his hands*" He relied on **FCMB v. Liquid Africa Holdings & Ors.[2019] LPELR-47623[CA]** where the above provision was considered. Relying on this decision, counsel submitted that the garnishee order *nisi* was served on the respondent on 31/10/2019, the monies that accrued in the applicant's account to maliciously place a lien on the applicant's account where there is no court order attaching the money in the account. He urged the court to grant the reliefs sought.

*Submission of the respondent's counsel:*



Learned counsel for the respondent posed one issue for determination, to wit:

Whether by a combined reading of all the averments contained in the Applicants affidavit in support of the Originating Summons and the Respondent's counter affidavit, the applicant is entitled to the reliefs Sought.

The respondent's counsel stated that the High court of FCT had made a Garnishee order in Suit No. CV/1941/2018, Motion No. FCT/HC/M/2519/2019

Attaching the account of the applicant. Thus, the funds in the account cannot be released unless and until the garnishee order is set aside. It was submitted that the decision of a court, including orders, subsist and remain binding on the parties until set aside by a court of competent jurisdiction.

The cases of **BCE.Counseling Engineers v. NNPC [2019] 14 NWLR [Pt.1691] 136** and **Ezim v. Menakaya [2018] 9 NWLR [Pt. 1623] 113** were relied upon.

Catherine O. Egbodo Esq. Submitted that the instant suit is an attempt by the applicant's to foist a *fait accompli* on the court in Suit No. CV/1941/2018, Motion No. FCT/HC/M/2519/2019, which has been adjourned *sine die* pending the determination of the appeal thereon. No party to a suit is permitted to unilaterally alter the *status quo* in order to undermine the authority of the court and also to overreach the adversary in litigation. The case of **A.P.C. v. Karfi [2018] 6 NWLR [Pt. 1616] 479** was cited in support.

The respondent's counsel further submitted that after a judgment creditor has gone through the rigours of establishing his rights through the legal system, the garnishee who is asked to surrender the judgment debtor's money in its possession should not release same to the judgment debtor. The case of **C.B.N. Interstella Comm. Ltd. [2018] 7 NWLR [Pt. 1618] 294** was referred to. Learned counsel for the respondent urged the court to dismiss the application.

Decision of the Court:

In determining whether the applicant has established its case to be entitled to the reliefs sought, the starting point is the garnishee order *nisi* made by the Court [*Coram: Hon. Justice U. P. Kekemeke*] on 28/10/2019 in Motion No. FCT/HC/M/2519/2019 filed in Suit No. FCT/HC/CV/1914/2018. The said order *nisi* is attached to the applicant's affidavit as Exhibit A. the said Motion was a garnishee proceeding initiated by Infinity Security Services Ltd. [as Judgment creditor] against Leadership Group Ltd. & Allan Woods Ltd. The garnishees were Access Bank plc. and 20 other banks. United Bank for Africa Plc. [the respondent in the instant case] was the 18<sup>th</sup> garnishee. In the garnishee order *nisi*, 19 accounts were specified. Account number 6, which related to United Bank for Africa Plc. [as the 18<sup>th</sup> garnishee] reads:

*"Account Number 2098653980 belonging to ALLAN WOODS LIMITED held at the 18<sup>th</sup> Garnishee [UNITED BANK FOR AFRICA PLC.]"*

It is evident from the garnishee order *nisi* made on 28/10/2019 in the said Suit No. FCT/HC/CV/1914/2018 that the applicant's account number 1018122094 maintained in the respondent [United Bank for Africa Plc.] was not mentioned in the order. In the affidavit to show cause [why the order *nisi* shall not be made absolute], which the respondent [as the 18<sup>th</sup> garnishee] filed on 6/11/2019, it stated in paragraph 4[b] & [d] as follows:

*[b] That we have searched our Database and confirmed that the account number listed in number 6 of the Order Nisi exists but belongs to SANUSI LIBABATU with balance N698.93.*

*[d] That the 18<sup>th</sup> Garnishee went ahead to conduct another search of its Database and has confirmed that the judgment debtors do not have an account with the Bank.*

I paused to remark that contrary to the deposition in the respondent's counter affidavit in this proceeding that account number 1062087866 stated in the garnishee order *nisi belongs to Sanusi Libabatu*, the said account number is listed as number 5 in the garnishee order *nisi*. It reads thus: *"Account Number 1062087866 belonging to ALLAN WOODS LIMITED held at the 2<sup>nd</sup> Garnishee [CITI BANK]."*

Now, Exhibit B2 attached to the applicant's affidavit is the affidavit to show caused filed by the respondent [as the 8<sup>th</sup> garnishee] on 6/2/2020 in the garnishee proceeding initiated by Austine C. Uzendu Esq. [as the judgment creditor] in Suit No. AB/SDC/CV/96/2019. The judgment debtors therein were Leadership Newspaper Group Ltd. & Leadership Group Ltd. In its

affidavit to show cause, the respondent [as the 8<sup>th</sup> garnishee] stated in paragraph 4[b], [c] & [d] that:

*[b] The 8<sup>th</sup> Garnishee has searched its database in compliance to the Court order for information relating to the judgment debtor and has confirmed that the judgment debtors maintain an account with 8<sup>th</sup> Garnishee.*

*[c] As at the date of the service of the Order, the 1<sup>st</sup> judgment debtor's account has been attached pursuant to the Garnishee order in Suit No. FCT/HC/CV/1941/18, Motion No. FCT/HC/M/2519/19 – Infinity Security Services Ltd. V. Leadership Group Ltd. & Anor. for the sum of N37,660,093.57 and the suit is still pending.*

*[d] The 2<sup>nd</sup> judgment debtor's account read LEADERSHIP GROUP LIMITED – N25,000,772.20CR - 1018122094.*

Clearly, the respondent's reason for refusing to allow the applicant access to its account number 1018122094 is the garnishee order *nisi* made on 28/10/2019 in Suit No. FCT/HC/CV/1941/2018. As I said earlier, the garnishee order *nisi* made on 28/10/2019 did not mention the applicant's account number 1018122094 maintained in the respondent. By Exhibits C & D attached to the applicant's affidavit, it has adduced credible and unchallenged evidence to prove that the judgment sum of N1.5 million in favour of Austine C. Ezendu Esq. in Suit No. AB/SDC/CV/96/2019 and has been paid through Zenith Bank Plc.

In the light of the foregoing, the Court finds no justifiable reason for the respondent's refusal to grant the applicant access to its account number 1018122094. The Court rejects the submission of the learned counsel for the respondent that the funds in the applicant's account cannot be released unless and until the garnishee order *nisi* made on 28/10/2019 is set aside. There is no factual or legal basis to uphold this submission.

For the sake of completeness, let me consider the alternative submission of the applicant's counsel which is that assuming the garnishee order *nisi* made by the Court on 28/10/2019 related to applicant's said account, the order can only affect the funds in the account as at the date of service of the order on the respondent [as the 18<sup>th</sup> garnishee]. The Court agrees with this submission. In the case of **FCMB v. Liquid Africa Holdings & Ors. [supra]**, the Court of the Appeal considered the provision of section 85 of the Sheriffs and Civil Process Act and held that a garnishee order *nisi* does not attach debt[s] which did not exist at the time order was made and served on the garnishee, but only debts shown to be owed to the judgment debtor by the garnishee at the time the order was made and served.

From the applicant's statement of account in the respondent from 1/11/2019 to 2/3/2020 [ i.e Exhibit F attached to applicant's affidavit], the account balance on 1/11/2019 was N772.20. the Court is in agreement with the learned counsel for the applicant that even if the garnishee order *nisi* dated 28/10/2019 – which was served on respondent on 31/10/2019 – affected the applicant's account number 1018122094, the sum liable to be

attached is the sum of N772.20 which was the sum in the account as at 1/11/2019.

Conclusion:

From all that I have said, the Court's answer to the question submitted by the applicant for determination is in the affirmative. The decision of the Court is that having regard to the garnishee order *nisi* made on 28/10/2019 in Suit No. FCT/HC/CV/1941/2018 which was served on the respondent on 31/10/2019, the applicant can access the funds in its account number 1018122094. Accordingly, the 3 reliefs sought by the applicant against the respondent have merit and are granted. I award cost of N200,000.00 to the applicant against the respondent.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

Appearance of Counsel:

Applicant - A. E OKOSUN, M.K IKYEGH, C.O EGBODO, L.C. OKO  
JAJA, FADILAH IBRAHIM