

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

**BEFORE HIS LORDSHIPS: HON. JUSTICE K.N OGBONNAYA AND HON. JUSTICE
MUHAMMAD S. IDRIS**

DATE: 25TH FEBRUARY, 2022

FCT/HC/CVA/783/21

BETWEEN

FIRST BANK OF NIGERIA PLC-----

APPELLANT

AND

1.MRS. ROSEMARY ATU

RESPONDENTS

2. MRS. MABLE YAKUBU JOHN

(RULING DELIVERED BY HON. JUSTICE M.S IDRIS)

This is an appeal against the ruling of the Chief District Court 1 Wuse Zone 2 Abuja presided by His Worship Samuel E. Idhialli on the 22nd day of March, 2021.

Dissatisfied with the ruling the Appellant filed a notice of appeal with the following grounds:-

GROUND ONE

The lower Court erred in law by refusing to set aside the order absolute made in error

PARTICULARS OF ERROR

1. That the Appellant duly filed at the lower Court's registry an affidavit to show cause dated the 25th January, 2021 which was only three days after being served with the Court's order Nisi where its disclosed that the Judgment debtor/Respondent does not maintain an account with the Appellant. Consequently the Applicant brought a motion to set aside the

order absolute made in error dated 8th February, 2021 and annexed a copy of the Appellant's affidavit to show cause filed before the order absolute was made in error. Upon this motion filed the Court still refused to set aside its order absolute made in error

GROUND NUMBER TWO

The trial Court erred in law when it granted an order absolute against the Appellant in the suit when the Appellant has complied with the order nisi of the lower Court and the provision of the law governing a Garnishee proceedings wherein it filed its affidavit to show cause on why the order nisi should not be made absolute against the Appellant.

PARTICULARS OF ERROR

1. That the Appellant 3rd Garnishee in the lower Court was served with the order Nisi of the trial Court duly filed at the lower Court's registry an affidavit to show cause dated the 25th day of January, 2021 which was only 3 days after being served with the Courts order Nisi and same was dropped with the Court's registrar and before the Court.
2. That the said Appellant affidavit to show cause disclosed particularly at paragraph 3(a) that the judgment debtor in the name of Barr. Chioma Uchendu does not have an account amongst others with the Appellant and urged the Court not to make the order absolute against the Appellant.
3. That the order absolute made by the trial Court was in contravention of the provision of section 83 of the Sherriff and Civil Processes Act (SCPA) that allows the garnishee/Appellant to challenge the order nisi and that directs the Court on what to do upon such challenge by the Garnishee, N20,000.00 cost against the Appellant

GROUNDS THREE

The trial Court erred in law when it failed to recognize that the Respondent failed to provide addresses for service of the Applicant to show cause in

the overriding interest of justice and proceeded to assume that the Appellant had not filed its affidavit to show cause and made an order absolute against the Appellant thereby causing a miscarriage of justice.

PARTICULARS OF ERROR

1. That 1st and 2nd Respondent failed or neglected to provide an address for service of the Appellant's affidavit to show cause. In response to the Order Nisi served on the Appellant
2. That the failure of the 1st and 2nd Respondent to provide their addresses for service of Court processes cause the Appellant not to have served its affidavit to show cause, which service would have prevented the making of the order absolute and the miscarriage of justice against the Appellant.

GROUND FOUR

The trial Court erred in law when it made the order absolute against the Appellant on the 5th February, 2021 when the Appellant's affidavit to show cause was at the Court registry.

PARTICULARS OF ERROR

1. That the Appellant's affidavit to show cause showing that the Judgment Debtor/Respondent does not maintain an account with the Appellant was duly filed in the Courts registry and a copy dropped with Court.
2. That the failure of the trial Court's registry and registrar to bring to the attention of the Court the said filed affidavit to show cause of the Appellant was a mistake of the trial Court's Registry/Registrar.

GROUND FOUR

The trial Court erred in law and in doing so, arrived at a wrong decision when it made the order absolute amongst others against the Appellant for default of appearance of the Appellant and its Counsel.

PARTICULARS OF ERROR

1. That the Appellant duly complied with the order nisi of the trial Court when it filed its affidavit to show cause on the 25th January, 2021 and forwarded same to the trial Court's registry.
2. That the Counsel to the Appellant was unable to arrive at the hearing of the matter by the trial Court to assist the trial Court in showing the Appellant's compliance with the order nisi of the trial Court to avert the order absolute was due to ill health of Counsel and in worst case be ascribed to be a mistake of the Counsel not to be in Court. Briefs of argument were filed and exchanged the Appellant brief is notice of appeal filed on 23rd June, 2021, Appellant brief and record of appeal on 15th July, 2021 appealing the Garnishee Order absolute and ruling of the lower Court contained on page 95 to 100 of the record of appeal (herein after referred to as the record)

STATEMENTS OF FACTS

The judgment creditors were Plaintiff in suit CV/LUG/178/2018 while the Judgment debtors was the Defendant, a judgment to pay two years arras of rent of ₦ 750,000.00 only was delivered by the trial Court against the judgment Creditor on 8th of August, 2019 the said judgment and certificate of judgment are contained in page 35 to 38 of the judgment creditor began the execution of the said judgment by a writ of attachment wherein the Execution Unit at Maitama High Court only realized the sum of ₦83,350.00 after tax. The auction sales report is contained on page 40 of the record. The judgment creditor by a motion exparte dated 16th October 2020 initiated a Garnishee proceedings against the Appellant and five other banks to recover her balance of ₦721,000.00 and a Garnishee Order Nisi was granted for all the Garnishee including the Appellant to show cause why the order may not be made absolute from the records of proceedings. The Appellant's was adequately served. However same have not filed counter affidavit showing cause why the order should not be made absolute. A careful perusal of the entire record of proceedings it shows

that the Appellant even though claimed to have filed it counter but from the entire records it clearly shows the Appellant have not even if he filed as he claimed he must have filed out of time. The Appellant raised issue that the entire action of the District Chief Judge is a denial of fair hearing as such the Appellant Counsel urge the Court to grant this application as contains in his notice of appeal. Counsel to the respondent submits that the Appellant at the lower Court failed to do the needful so as not for the Court to make the order absolute. I have gone through the record of proceedings and the brief filed by the Respondent and the Appellant notice of appeal. I am in complete agreement with Appellant there is nothing to stay having taking into consideration the fact of the entire case and even how the proceedings was conducted. It is a settled principle of law a party who disqualified himself from being heard by the Court as a result of his failure to take procedural steps cannot complain of lack of fair hearing see **OYEGUN VS NZERIBE (2010) 7 NWLR (pt1194) Q 577** ratio 3. The respondent Counsel referred the Court to page 29-30 of the record where several adjournment was given at the instance of the Defendant/Appellant but never the less the Defendant failed to make the best opportunity given to him to cross examine and defend the case. He cannot be allowed to complain later of denial of fair hearing as claimed by the Appellant in this case in **BILL CONSTRUCTION LTD VS IMANI LTD (2006) 28 NSCQR page 1**. The Supreme Court dealt extensively on the issue of natural justice fair hearing and granted adjournment at the discretion of Court in Rule 4 "On whether a party who was given ample opportunity to present his case but failed to do so can be heard to complain of breach of fair hearing the answer is no. in response to Appellant conclusion at page 1 to 5 in his Appellant brief, the Appellant had no counter claim before the lower Court section 16 of the recovery of Premise Act provides that written notice of particular of counter claim shall be given to the land lord three clear days before the date fixed for hearing.

The Appellant has failed to show any circumstances upon which it can be inferred that the District Judge has same created contrary to any existing

law. Therefore on the premise the appeal fails and same is hereby dismissed.

Hon. Justice K.N OGBONNAYA
(Presiding Judge)
25/2/2022

Hon. Justice M.S IDRIS
25/2/2022

Appearance

F.C Sunday: - For the Appellant.

Katherine Ogusi:- For the Respondent

Sign
Judge
25/2/2022