

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI – ABUJA

THIS 15TH MARCH, 2022

BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA

MOTION NO. FCT/HC/M/4839/2021

BETWEEN

OLAYEMI DAVIES - - JUDGMENT CREDITOR/APPLICANT

AND

FUTURE SEEDS AGRO LIMITED - - JUDGMENT DEBTOR

AND

- 1. UNITED BANK FOR AFRICA PLC**
- 2. ECO BANK NIGERIA**
- 3. GUARANTY TRUST BANK PLC**
- 4. TAJ BANK LIMITED**
- 5. FIRST BANK PLC**
- 6. POLARIS BANK LIMITED**
- 7. ZENITH BANK PLC**
- 8. WEMA BANK PLC**
- 9. FIRST CITY MONUMENT BANK LIMITED**
- 10. ACCESS BANK PLC**
- 11. UNION BANK FOR AFRICA PLC**
- 12. FIDELITY BANK PLC**
- 13. NOVA MERCHAN BANK**
- 14. NEW PRUDENTIAL BANK**

GARNISHEES

RULING/JUDGMENT

This is an application commenced by a Motion Exparte dated and filed on the 28th July 2021 the application is brought pursuant to Section 21 and 83 of the Sheriff and Civil Process Act, Cap 56 LFAL 2004 and under the inherent jurisdiction of this honourable court. The Applicant is praying this honourable court for the following reliefs:

1. *A GARNISHEE ORDER NISI as in Form 26 of the Sheriffs and Civil Process Act, 2004 LFN, against the Garnishee herein, attaching the sum of **N107,500,000.00(One Hundred and Seven Million, Five Hundred Thousand Naira)**,being and representing unpaid or unliquidated portion of the Judgment sum/Judgment debt in **Re: Consent Judgment** reached vide the **Mediation of Salamatu O.Abubakar (Mrs.), Mediator (UDRC), dated 18th February, 2021**, same due and accruing to the Judgment Debtor and which is reasonably believed to be in custody of the Garnishees.*

2. ***AN ORDER RESTRAINING/PROHIBITING*** the Garnishees from paying out or transferring the monies due and accruing to the Judgment Debtor in their custody pending when the Garnishee can show cause why they cannot be ordered to pay or

yield the said judgment sum/judgment debtor to the judgment creditor/applicant.

3. ***AN ORDER*** directing the Garnishees to appear before this Honourable Court to show cause why it should not pay or yield over to the Judgment Creditor/Applicant the sum of N107,500,000.00 (One Hundred and Seven Million, Five Hundred Thousand Naira), in satisfaction of the judgment sum/judgment debt in ***Re: Consent Judgment*** reached vide the ***Mediation of Salamatu O. Abubkar (Mrs.), Mediator (UDRC), dated 18th February, 2021.***

4. ***AN ORDER*** directing the Garnishees to pay to the Judgment Creditor/Applicant the sum of ***N10,000,000.00 (Ten Million Naira)***, being and representing cost of this garnishee proceedings.

5. ***AND FOR SUCH FURTHER OR OTHER ORDERS*** as this Honourable Court may deem fit to make in the circumstances of the case.

Grounds upon which the application is brought are as follows:

- 1. On 18/02/2021, the Honourable Justice Uwais Dispute Resolution Center of this Honourable Court, through the mediation of **Salamatu O. Abubakar (Mrs.)**, entered a Consent Judgment in favour of the judgment creditor/applicant herein, against the judgment debtor to the tune of **N127,000,000.00(One Hundred and Twenty-Seven Million Naira Only)**, pursuant to the terms of settlement filed and duly adopted by parties.*
- ii. The Judgment Debtor has defaulted in complying fully with the terms of the Consent Judgment.*
- iii. Upon the grant of the Consent Judgment, the Judgment Debtor only made a payment of **N19,500,000.00 (Nineteen Million Five Hundred Thousand Naira)**, on **31st March, 2021**, to the Judgment Creditor/Applicant without first paying the initial refund of **N10,000,000.00 (Ten Million Naira)** as prescribed by the consent judgment.*
- iv. That since the Judgment debtor made the first payment of **N19,500,000.00(Nineteen Million, Five Hundred Thousand Naira)**, the judgment debtor has failed and/or*

refused to fully comply with the terms of the Consent Judgment by making subsequent payment as stipulated in the Consent Judgment.

- v. *On several occasions, Counsel to the Judgment Creditor/Applicant, caused written correspondences dated **4/04/2021, 12/04/2021, 4/05/2021, 24/05/2021** to be sent to the Judgment debtor demanding the judgment debtor to comply with the terms of the consent judgment.*
- vi. *Further to v supra, these demands have not yielded results as the Judgment debtor has wilfully, deliberately and consciously failed and/or neglected to heed to these demands.*
- vii. *The period for the payment of all monies as prescribed in the Consent Judgment, being on or before **30th June, 2021** by the Judgment Debtor, has since elapsed.*
- viii. *That no Appeal has been filed against the Consent Judgment under reference herein and time to do so has since lapsed.*
- ix. *The continuous refusal and/or failure of the judgment debtor to comply with the terms of the Consent Judgment has necessitated this application.*

- x. *That the Judgment debt can be recovered and/or realized from the judgment debtor by deducting same from monies belonging to the judgment debtor but in custody of third parties referred to as the Garnishee.*
- xi. *That the outstanding on the judgment debt/sum that remains unpaid by the Judgment debtor (following the payment of **N19,500,000.00**)(**Nineteen Million, Five Hundred Thousand Naira**)on **31st March, 2021**) is **N107,500,000.00** (**One Hundred and Seven Million, Five Hundred Thousand Naira**).*
- xii. *That the sum of N107,500,000.00 (One Hundred and Seven Million, Five Hundred Thousand Naira) is now in the custody of the Garnishee herein.*

Attached to the Motion Exparte is a 21 paragraphs affidavit deposed to by one Olayemi Davies the Judgment Creditor/Applicant herein, annexed to the affidavit are Exhibit A, B1, B2, B3 and B4 respectively.

1. Exhibit A is a copy of the settlement Agreement dated 18/02/2021.

2. Exhibit B is a notification of non compliance with terms of settlement agreement.
3. Exhibit B2 to B4 are copies of letters of demand from by the applicant's solicitor to the judgment debtor.

The Applicant avers that he and the judgment debtor approached the Honourable Justice Uwasi Dispute Resolution Center (UDRC) of the High court of the FCT sometimes in February 2021 sequel to a mediation clause contained in an investment contract entered into by the parties. That a consent judgment was entered after listening to both parties. That as part of the terms of settlement agreement the judgment creditor/applicant waved the sum of N40,000,000.00(Forty Million Naira)from the entire judgment debt/sum of N167,000,000(One Hundred and sixty Seven Million Naira)thereby bringing the outstanding judgment debt/sum to N127,000,000.00 (one Hundred and Twenty-seven Million Naira) that the judgment debtor failed and or refused to comply with the terms of the consent judgment as it did not pay the initial refund of N10,000,000.00 (Ten Million Naira)as stipulated in the consent judgment. That the judgment debtor only made the first payment of N19,500,000.00 (Nineteen Million, Five Hundred Thousand Naira)on 31st March, 2021, but failed to make subsequent payments for April, May, June and July 2021

respectively. That several demand letters were written to the judgment debtor by the applicant's solicitors. That the judgment debtor maintains/operates several accounts with the 2nd to 11th garnishees. The Applicant avers that he believe the judgment debtor has monies sufficient to offset the judgment debt herein. That the total judgment debt/sum that is outstanding, unliquidated and remains unpaid is the sum of N107,500,000.00(One Hundred and seven Million Five Hundred Thousand Naira).

In his written address in support of the application dated the 28th July, 2021, learned SAN counsel to the applicant formulated a lone issue for determination to wit:

Considering the facts and circumstances of this proceeding, whether this Honourable court ought not to grant the reliefs sought herein.

On the lone issue above Learned SAN, counsel to the applicant urged that the whole essence, spirit and/ or crux of a garnishee proceedings is to enforce a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which forms part of the judgment debtors property available in execution. Learned silk cited Section 83(1) of the Sheriffs and

civil processes Act, LFN, 2004. He cited also the case of **GARANTY TRUST BANK PLC VS INNOSON NIGERIA LIMITED (2017)16 NWLR (PT. 1591)181 AT 197 F-H 198 A-H** to the effect that garnishee is a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which form part of his property available in execution, where the third party holds the debt or property of the judgment debtor. By this process the court orders the third party to pay directly to the judgment creditor or to the court the debt due or accruing from him to judgment debtor as much of it as may be sufficient to satisfy the amount of the judgment debt and the cost of garnishee proceedings.

Learned silk also cited **UBN PLC VS BONEY MARCUS IMD LTD (2005)13 NWLR (PT. 943)654 AT 666 PARA D-F, HON. MINISTER OF MINES & STEELS DEVELOPMENT & ANOR VS GREENBAY INVESTMENT & SECURITIES LTD & ORS (2020) LPELR – 50470** amongst others.

Learned SAN submitted that there are conditions a judgment Creditor/Applicant must satisfy before the commencement of a garnishee proceeding. He relied on the case of **SCOA (NIG) PLC & ANOR VS REGISTERED TRUSTEES OF METHODIST**

**CHURCH OF NIGERIA & ANOR (2016)LPELR – 40194
(CA)UBA VS SGB LTD (1996)10 MWLR (PT. 478)478 AT**

381. These requirements are as follows:

- a. An applicant must satisfy that judgment has been delivered.*
- b. An applicant must satisfy the court that the judgment is still unsatisfied.*
- c. An applicant must satisfy the court as to the amount that still unsatisfied; and*
- d. An applicant must satisfy the court that a debt is accrued the judgment debtor from the third party.*

It is the contention of learned silk that from the cases cited above it is apparent that the judgment creditor/Applicant herein has satisfied all the legal requirements necessary and incidental to warrant the grant of the reliefs sought by the judgment creditor/applicant.

Learned counsel argued that there is an existing judgment between the parties that was duly entered and obtained from the Honourable Justice Uwais Dispute Resolution Centre (UDRC) and that same remains valid and unsatisfied counsel submitted that

the judgment debtor has failed or neglected to comply with same despite the services of demand letters on him.

Learned silk submitted that the judgment Creditor/Applicant herein has not only been able to show that the judgment sum remains unsatisfied but has also been able to specifically indicate the exact amount of the judgment debtor/sum that remains unpaid by the judgment debtor. Counsel argued that vide his affidavit evidence, the judgment Creditor/Applicant has been able to show that there exist a number of third parties who are in custody of certain amount of monies belonging to the judgment debtor and from which the judgment debt/sum as well as cost of this garnishee proceedings can be sufficiently satisfied.

On the whole, the learned silk urged this honourable court to grant the reliefs sought in this application as the judgment creditor/applicant has satisfied the conditions/requirement prescribed and or laid down by both statute and case law to warrant the grant of the application.

In response, the judgment debtor filed a 19 paragraphs counter affidavit dated the 17th of November, 2021 and filed on the same day. The counter affidavit is deposed to by one Imoh Justin Obot the Chief Executive Officer and managing director of Future Seeds

Agro Limited with annexures marked as Exhibit FSAL 1 and FSAL2 which are printed copies of bank statements. The judgment debtor avers that the judgment sum claimed being N107,500,000.00 (One Hundred and seven million, five Hundred Thousand Naira) and stated as unpaid is not true. That on the 30th day of March 2021 he transferred the sum of N10,000,000.00 (Ten Million Naira) to Olayemi Davies the judgment creditor on behalf of Future Seeds Agro Limited as part payment of the judgment sum. That on the 31st day of March he transferred the sum of N9,500,000.00 (Nine Million, Five Hundred Thousand Naira) to Olayemi Davies as part payment of the judgment sum. That on the 1st day of October, 2021 he transferred the sum of N5,000,000.00 (Five Million Naira) as part payment of the judgment sum. That the total sum paid to Olayemi Davies the judgment creditor as part payment of the judgment sum is N30,000,000.00 (Thirty Million Naira). That the said payments shown above was made to the judgment creditor through his details Bank Stambic IBTC Account No. 0018219848. That the only outstanding from the judgment sum is N77,500,000.00 (Seventy-seven Million Five Hundred Thousand Naira) the N30,000,000.00 (Thirty Million) having been paid.

At the hearing on the 18th day of November 2021, the 2nd, 3rd, 5th, 7th, 8th, 9th, 11th and 12th Garnishees were discharged upon the application of counsel to the judgment creditor/applicant having shown cause that the judgment debtor do not owe or maintain an account with the respective banks.

On the 13th of January 2021, which was slated for continuation of hearing. The learned counsel to the judgment Creditor/Applicant applied that the 10th garnishee be discharged having showed cause that the judgment debtor does not maintain an account with it. The 10th garnishee was discharged.

Learned counsel to the judgment creditor/applicant filed a further affidavit in support of the Motion Exparte filed on the 28th July 2021. The said further affidavit is dated 10th of January, 2022 and filed on the same date. The further affidavit is deposed to by one Olayemi Davies the judgment creditor/applicant.

The judgment Creditor/Applicant avers that the sum sought to be garnisheed at the date of filing the application was N107,500,000.00.(One Hundred and seven Million, five hundred Thousand naira) only being and representing the Judgment debt/sum. That after commencement of this action, the judgment debtor made further payments of N5,500,000.00 (Five Million,

five hundred thousand naira only) and N5,000,00.00 (Five million naira)only on the 30th of September and 1st October, 2021 respectfully that the judgment debtor made additional payments of N5,000,000.00 (Five Million Naira) to the Judgment creditor applicant twice on 9th December, 2021 and 10th December, 2021. That the payments made after the commencement of this suit, when computed mathematically amounts to N20, 500,000.00 (Twenty Million, Five Hundred Thousand naira) only. That a subtraction of the total amount of N20, 500,000.00 (Twenty Million Five Hundred Thousand Naira Only) being and representing the total sum paid by the judgment debtor to the judgment Creditor/Applicant after the commencement of this suit. That the total judgment sum/debt of N107,500,000.00 (One Hundred and Seven Million, Five Hundred Thousand Naira only) sought to be garnisheed by the judgment creditor, will amount to a balance of N87,000,000.00 (Eighty Seven Million Naira only) which is the outstanding judgment debt/sum that remains unpaid by the judgment debtor.

Annexed to the further affidavit are annexures marked as Exhibits SA1 and SA2, SA3 and SA4 respectfully which are copies of the judgment Creditor/Applicant bank statement

I have considered the Motion Exparte, the affidavit with the annexures thereof and the written address of the learned SAN, counsel to the judgment creditor/applicant. I have in the same vein considered the counter affidavit of the judgment debtor together with the annexures. Equally considered is the further affidavit of the judgment creditor/applicant. Having done this, it is my considered legal opinion that the issue for determination in this application is :

"Whether or not the judgment creditor/applicant has satisfied the requirement for the grant of this garnishee proceeding?"

In the case of **CBN VS AUTO IMPORT EXPORT (2013)2 NWLR (PT.1337)PAGE 80.** The court will consider the following in determining whether a garnishee proceeding is valid.

- i. That the garnishee must be indebted to the judgment creditor within the state and be resident in the state in which the proceedings are brought. As such, if the debt is owed by someone outside the state, the proceedings are inapplicable.*
- ii. The proceedings should be filed in any court in which the judgment debtor could under the High court (Civil*

Procedure) Rules or under the appropriate section or rules governing civil procedure in magistrate court as the case may be, sue the garnishee in respect of the debt.

- iii. The application for the garnishee order shall be made ex parte. The court if satisfied that the judgment creditor is entitled to attach the debt, shall make a garnishee order nisi.*
- iv. The service of the order nisi thereon binds or attaches the debt in the hands of the garnishee shall therefore consider the affidavit of the 1st Garnishee **United Bank for Africa.** In its affidavit to show cause filed on the 15th December, 2021 the Bank avers that the judgment debtor maintains two accounts with the Bank with Account Number 1022309306 with N8,489.62 and Account Number 3002769173 with the balance of and 177.21*

I shall therefore consider the affidavit of the 1st Garnishee, United Bank For Africa (UBA) in its affidavit to show cause filed on the 15th December 2021, the Bank avers that the judgment debtor maintains two accounts with the Bank with Account Number with 1022309306 with the credit balance of N8,489.62 and Account Number 3002769173 with the credit balance of \$ 177.21 dollars.

On its part, the 4th Garnishee, Taj Bank Ltd filed an affidavit to show cause on the 12th November 2021. The Bank avers that the judgment debtor maintains an account with the bank with the credit balance sum of N16, 757.50.

On the part of the 6th Garnishee, Polaris Bank Plc filed an affidavit to show cause on the 15th November 2021 the Bank avers that the judgment debtor maintain an account with the balance of N23,542.48.

From the record of the court, the 13th and 14th Garnishee failed to file an affidavit to show cause despite the service of the order nisi on the them.

I call in aid here the admonition of the court of Appeal in **OCEANIC BANK PLC VS OZADEPO & ANOR (2021)LPELR 19670 (CA)** where Ita Mbaba JCA stated that:

“..... it is not the business of a Garnishee to undertake to play the role of an advocate for a judgment debtor by trying to save and protect the money of the judgment debtor.....”

Accordingly, I hereby proceed to make absolute the order *NISI* granted by this honourable court on the 2nd day of November 2021 against the 13th 14th 4th and 6th Garnishees for payment to

the judgment Creditor forthwith the sum of N107,500,000 (One Hundred and Seven Million, Five Hundred Thousand Naira).

Appearances:

Parties absent

Eviuhi Eyeghere for the Judgment Creditor/Applicant

Austine J Otah for the 4th Garnishee

Signed

Presiding Hon. Judge

15/03/2022