

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 45 SITTING IN WUSE ZONE 2, ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE ELEOJO ENENCHE

DELIVERED ON 26th DAY OF JANUARY, 2023

MOTION NO: FCT/HC/M/1549/2022

BETWEEN:

1. SIL ESTATE DEVELOPERS LIMITED
2. DAUDA ABERE USMAN
3. GEODATA WORLD SERVICES LTD
- RESPONDENTS/JUDGMENT DEBTORS

AND

HON. IGNATIUS AMODU JUDGMENT
CREDITOR/APPLICANT

AND

1. JAIZ BANK LIMITED
2. STANDARD CHARTERED BANK
3. SUNTRUST BANK
4. FORTIS MICROFINANCE BANK
5. CITI BANK
6. ACCESS BANK NIGERIA PLC
7. ECO BANK
8. FIRST CITY MONUMENT BANK PLC
9. FIDELITY BANK PLC
10. FIRST BANK OF NIGERIA PLC
11. GUARANTY TRUST BANK PLC
12. HERITAGE BANK PLC
13. KEY STONE BANK
14. SKYE BANK
15. STANBIC BANK
16. STERLING BANK
17. UNITED BANK FOR AFRICA
- GARNISHEES

18. UNITY BANK PLC
19. UNION BANK
20. WEMA BANK
21. ZENITH BANK
22. HASAL MICRO – FINANCE BANK

RULING

By this application brought pursuant to Order 43 R.4 of the High Court of the FCT Civil Procedure Rules (CPR), Section 24 of the Supreme Court Act and Order VII Rule 37 of the Rules of the Supreme Court, the applicant moved this court to grant the following reliefs:

1. **AN ORDER** of Enlargement of time to apply to set aside the Garnishee Order Nisi dated 25/10/22 made against the Judgment Debtors/Applicants
2. **AN ORDER** setting aside the Garnishee order Nisi dated 25/10/22 made against the Judgment Debtors/Applicants the Judgment Creditor/Respondent having obtained same by misrepresentation.
3. **AN ORDER** striking out the Garnishee proceedings No. FCT/HC/M/9785/22 for being incompetent and an abuse of court process.
4. **AN ORDER** prohibiting any further execution of the Judgment against the Judgment Debtors/Applicant by the Judgment Creditors/Respondent until any pending application for stay of execution in the appellate court is heard and determined.
5. Omnibus.

The application was predicated on the following grounds.

- (a) Judgment Creditor/Respondent is in receipt of a pending application for stay of execution of the Judgment (subject of the Garnishee order Nisi dated 25/10/22) filed on 6/09/22 and served on him.
- (b) Judgment Creditor/Respondent suppressed the material fact of the

pendency of the application for stay of execution in the Court of Appeal when he urged the Court to make the order on 25/10/22.

(c) That if this Court was aware of the pendency of the application for stay of execution in the Court of Appeal when it was urged to make the order on 25/10/22, the Honourable Court would have restrained itself from making an order that will foist fait accompli on the Court of Appeal.

(d) That the Court has inherent powers to set aside its orders obtained by misrepresentation and which is an affront on the court of Appeal.

To support the application, the Applicant filed an 8 Paragraphed Affidavit deposed to by one Fredrick T. Joseph, the gist of which is that the Judgment Debtor filed an appeal to the Supreme Court against the decision of the Court of Appeal on 3/09/22 and a notice of same was served on the Respondent.

A copy of the process was attached as **Exhibit 1**.

It was averred that a motion for stay of execution of the Judgment of the Court of Appeal was equally filed, a copy of which was served on the Respondents. A copy of that process was attached as **Exhibit 2** to the affidavit. The affidavit continues that, the motion would have been heard on 27/09/22 but for the absence of the Respondents and accordingly the matter was adjourned to sometime in February 2023. A copy of the Ruling of the Court of Appeal was attached as **Exhibit 3**. Further in the affidavit, I was called to note that the Judgment Creditor/Respondent suppressed the material fact of the pendency of the application for Stay of Execution of the Judgment in the Court of Appeal hence, this Court unwittingly made a Garnishee Order Nisi on 25/10/22.

In opposing this Motion, Patience Igbitan deposed to a 7 paragraphed affidavit in which it was deposed that paragraphs 4, 5, 6 and 7 of the affidavit in support of the motion are false. It contends that the Judgment Debtors have not entered any appeal at the Supreme Court challenging the Judgment of the Court of Appeal and finally that, the Judgment Debtors are not part of this Garnishee proceeding and hence cannot make any application.

At the plenary hearing of this application on 7th December 2022 counsel adopted all the processes filed including their respective written addresses. There being no material challenge to the first prayer which is for enlargement of time to apply to set aside the Garnishee Order Nisi dated 25/10/22, that prayer is granted as made.

Going forward, I have considered the totality of the arguments raised by both counsel in their expostulations for and against this motion and I must state that the arguments raised herein throw up recondite legal issues for my determination however, besides the argument of counsel, a Court in making its determination in an application such as this must determine at the outset what the problem(s) presented to it for solution are as this route will separate the chaff from the wheat and lead the court to the meat or as it were, the crux of the matter which if determined would resolve the dispute one way or the other. In this instance I have identified two of such issues the first being whether in the circumstance I can hear the Judgment debtor on this application minded that the learned counsel for the judgment creditor argued in law that in

this proceeding, the judgment debtor is an officious entity who cannot and should not be heard.

This issue has long been settled. I assume we know how a garnishee proceeding works. The concept is that a judgment creditor who after an assiduous expedition comes to the knowledge that the judgment debtor has some money standing to its credit but in possession or custody of a third party which for instance could be a bank or other institution, may file an ex-parte application praying a Court for an Order Nisi ordering the garnishee to appear and show cause why the money in its custody but standing to the credit of the judgment debtor should not be paid to the judgment creditor on whose behalf the application was made. If the order is granted, the said order must be served on the garnishee, and the judgment debtor and the court will then fix a date which must not be less than 14 days after the service of the order nisi on the parties aforesaid.

Let me pause here to note that when the ex - parte application is made, only two parties, i.e., the judgment creditor and the garnishee are involved in the proceedings. However, as soon as the order nisi is served on the judgment debtor, the proceeding that will follow automatically assumes a tripartite dimension in which the three parties must be represented. I am indeed persuaded by law to agree that at this stage of the proceedings, the three parties can be heard by the Court before an order absolute is made but, depending on the facts and circumstance of the case. In other words, each case should be determined on its merits depending on the matters canvassed by the judgment debtor. It is

instructive to note that being an enforcement proceeding, parties especially the judgment debtor are estopped from re-opening of hearing in a matter which has been settled by a considered court judgment which is being sought to be enforced. See **UBN PLC vs. BONNY MARCUS (2005) 7 SC (Pt. 11) 70.**

The above procedure is my fair representation of Section 83(1) and (2) of the Sheriffs and Civil Process Act in simple language. To that, I will only add Order VIII Rule 8(1) of the Judgment (Enforcement) Rules which provides that;

"If no amount is paid into Court (following service of the garnishee order nisi), the Court, instead of making an order that execution shall issue, may after hearing from the judgment creditor, the garnishee and the judgment debtor or such of them as appear, determine the question of liability of the garnishee, and may make such order as to the payment to the judgment creditor of any sum found to be due from the garnishee to the judgment debtor..."

My interpretation of this which I believe tallies with logic is that that by a combined reading of Section 83(2) of the Sheriff and Civil Process Act and Order VIII Rule 8 of the Judgment Enforcement Rules , a judgment debtor, after being served with order nisi can be heard by the Court if and only if, after looking at whatever is filed by the judgement creditor either irregularities are observed or the court notes facts that if had earlier

come to its knowledge, it might not have granted the order nisi in the first instance. As I noted earlier, this stage is not an opportunity given to the judgment debtor to reopen the case upon which judgment has been entered. Where there is some confusion or facts that were not before the court as at the time it made the order nisi are put before it by the judgement debtor, I am of the view that justice demands that the "judgment debtor" be heard in such circumstance. In other words, it is not cast on stone that a judgment debtor cannot be heard in garnishee proceedings. It is the Court that will determine whether the judgment debtor should be heard or not. If the application of the judgment debtor before the Court is to reopen issues settled in the judgment, he cannot be heard. But if the application is to draw the attention of the Court to misleading facts put forward by the judgment creditor, there is nothing wrong with him being heard. On this, see generally the decision of the supreme court in **ELDER DR. FRIDAY SANI v. KOGI STATE HOUSE OF ASSEMBLY & ORS (2021) LPELR-53067(SC)** where the supreme court quoted in-extenso its earlier decision in **GWEDE V. DELTA STATE HOUSE OF ASSEMBLY & ANOR (2019) LPELR-47441(SC)**.

My decision on this point is that in the circumstances of this case, having put before me, facts which I consider as germane and which have the capacity to compel my reconsideration of the order nisi earlier made, the Judgement Debtor has made a good enough case to be heard on its application made on notice and I so hold.

Now, to the main contest. The contestation has been mainly around the fact that there is an appeal pending which arose from the substantive matter that has birthed the judgement creditor's right to enjoy the fruits of his labour by moving the court via this garnishee proceeding. In brief, the Judgment debtor via its affidavit has told this court that it has already appealed against that judgment and as such, it is wiser for the court to set aside the order nisi made pending the determination of the appeal. It was noted that, that fact was concealed from the court when the Order Nisi was made. On the other hand, and for the JudgmentCreditor it was argued that the Notice of Appeal had no Appeal number a fate which is also suffered by the motion for stay of execution pending before the Court of Appeal.

In **NIGERIAN BREWERIES PLC V. DUMUJE & ANOR NIGERIAN BREWERIES PLC v. CHIEF WORHI DUMUJE & ANOR (2015) LPELR-25583(CA)77**, the Court held that garnishee proceeding is just another form of execution of judgment, no more, no less. It also held the view that where there is a pending application for stay of execution, especially in a superior Court, it will be absurd for a party to execute the same judgment by way of a Garnishee proceeding on the premise that it is an independent proceeding which is not an execution of judgment and does not require the attention of the judgment debtor. The objective of this view to my mind was to establish that if such judgment is executed, it will impose on the superior court a *fait accompli* which situation was vehemently condemned by the Supreme Court in **VASWANI TRADING COMPANY v.**

SAVALAKH & COMPANY (1972) (Supra). See also **A.M. & Co. Nig Ltd v. Volkswagen Nig. Ltd. (2012) 11 NWLR (Pt.1312) Pg. 405.** I might only add that this position applies to a stay of proceeding pending equally in this court and not just a superior one. The pendency of a motion for the order of a stay of execution, or proceeding, is clearly a special circumstance on which the court should act and refrain from further conducting the proceedings in a way that would be detrimental to the res. Relating this position of law to the case at hand, I have looked at the exhibits attached to the affidavit in support of the application and I note that as rightly observed by learned counsel for the judgment creditor, both the Notice of Appeal to the Supreme Court and the Motion on Notice for stay of execution filed at the Court of Appeal have no appeal number and motion number respectively. However, I am not unmindful of Exhibit 3 which is the record of proceedings of the Court of Appeal of Tuesday 27th September 2022 in CA/A/244/2019 between Sil estate Development limited & ors v. Hon. Ignatius Amodu & Anor. From the records, the order of court is clear and does not admit of any equivocation. The court held that ***“the stay of execution pending appeal to the supreme court is adjourned to 6th February 2023 for hearing. Fresh hearing notice to be served on the Respondent.”*** This is clearly an indication that the said stay of execution which is allegedly without a motion number came up for hearing before the Court of Appeal and the court has in fact adjourned it for hearing again to February this year. Having been confronted with this fact, will this court not be on a collision

course with the Court of Appeal and the Supreme Court as well if it were to take further steps in these proceedings? I am of the view that the wiser and more cautious approach is to allow the law lords upstairs take the reins and determine the matters before them and then, when all the smoke clears the baton can return to this court if need be.

But I will not only stay proceedings as the order of the Court of Appeal with which I have been confronted was made on the 27th of September 2022 meanwhile, this court made a Garnishee Order Nisi on 25th October 2022. Going by this I will state the obvious which is that, I would not have made an order Nisi if I was aware of the pending appeal. While I will concede that the fact of the pending application for a stay of execution was not within the knowledge of the Judgment Creditor, I am of the view that the court should have been informed of the appeal and the fact that as at the time the application was made, that the appeal had been determined one way or the other. But as it stands now, it will seem that all the facts relevant to the grant of an application that flows from the unfettered exercise of the court's discretion were not put before this court and if it were, I would not have made the order nisi.

After my consideration above and in summation, I hold the view that there is a motion for stay of execution still pending for determination in respect of the judgment that has given the judgment creditor the right to commence this process. I also proceed to add that if that application had been brought to my knowledge, I would certainly have declined making the Order Nisi when I did. For this and all other reasons earlier

given, I find that this application does have merit and accordingly, I hereby set aside the Garnishee Order Nisi made by this court on the 25th October 2022.

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Eleojo Enenche
26/01/23
Judge

COUNSEL:

J.E. Uzuegbu – for Judgment Creditor/Applicant

O.J. Agu – for Judgment Debtors/Defendant

D.Achiri – for 2nd **Garnishees – Standard**

5th City Bank

12th Heritage Bank

20th Wema Bank

O.B Opajobi – for 3rd **Garnishees – Suntrust**

Eugene Uwnadi – 8th FCMB

14th Polaris Bank

15th Stanbic IBTC

16th Sterling Bank

Madalene U. Ikhide – 7th Eco Bank

Rita K. Awuru – 9th Fidelity Bank

George Ikemu – 11th GTBank

Holding for Godswill Donatus Uwmi for 10th Garnishees – FBN

Holding for Obaga Emmanuel 18th Unity Bank

Ugonna Maduabuchi – 6th Access Bank

M.B. Oluwabiye 13th Keystone Bank

Jeremiah Agala 17th Garnishees – UBA

Olufunmilayo Igunnu 9th Union Bank

IGNATIUS AMODU V. SIL ESTATE DEVELOPMENT LIMITED & 2ORS