

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

**BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE**

**ON MONDAY THE 29<sup>TH</sup> DAY OF FEBRUARY, 2016**  
**SUIT NO: FCT/HC/CV/365/2009**

**APPEAL NO: CA/A/243/2012**

**MOTION NO: FCT/HC/CV/1004/2015**

**BETWEEN:**

PROFITEL LIMITED.....JUDGMENT CREDITOR/APPLICANT

**AND**

(1). CHIEF OF ARMY STAFF }  
(2). NIGERIAN ARMY } .....JUDGMENT DEBTORS

**AND**

CENTRAL BANK OF NIGERIA.....GARNISHEE

**RULING**

By a Judgment delivered on 7<sup>th</sup> July, 2015 in the Appeal arising from the substantive suit, the Court of Appeal Abuja entered a Consent Judgment in favour of the Judgment Creditor/Applicant in the sum of N123, 380, 000.00 against the Judgment Debtors in favour of the Judgment Creditor/Applicant ("The Applicant").

By a Motion Ex-parte filed on 12<sup>th</sup> October, 2015, the Applicant sought for a Garnishee Order Nisi attaching the Judgment Debtors' funds in the custody of the Garnishee in satisfaction of the said Judgment sum of N123, 380, 000, 000.00. In a Ruling delivered on 3<sup>rd</sup> November, 2015, this Court

granted a Garnishee Order Nisi as prayed it above attaching the Judgment Debtors' funds in the custody of the Garnishee in satisfaction of the Judgment sum aforesaid. The Court also, inter alia, directed the Garnishee to appear in Court on the next date being 14<sup>th</sup> December, 2015 to show cause why the Garnishee Order Nisi should not be made absolute. The matter was then adjourned to 14<sup>th</sup> December, 2015 for hearing.

In response to the order, the Garnishee on 25<sup>th</sup> November, 2015 filed a 9-paragraph Affidavit in show of cause. The Applicant in reaction to it, on 14<sup>th</sup> December, 2015 filed a 15-paragraph Counter Affidavit which was served on the Garnishee on same 14<sup>th</sup> December, 2015.

The matter was heard on 14<sup>th</sup> December, 2015 with Counsel for the Applicant relying on its affidavits to urge the Court to make the Garnishee Order Nisi against the Garnishee absolute. The Garnishee and the Judgment Debtors were absent and not represented by Counsel. The Garnishee Order Nisi and a Hearing Notice were served on the Judgment Debtors on 6<sup>th</sup> November, 2015 Ruling was then reserved for today.

Upon a perusal of the affidavits of the Applicant and the Garnishee, the crucial issue that arises is whether or not the Applicant has made out a case to justify a grant of a Garnishee Order absolute against the Garnishee.

In its affidavit to show cause, it was averred inter alia on behalf of the Garnishee that the Garnishee Order Nisi made by this Court on 3<sup>rd</sup> November, 2015 was served on it on 6<sup>th</sup> November, 2015. That the Order directed it to appear in the Court on the next adjourned date to show cause why an order absolute should not be made against it. That there is no account in the name of the Judgment Debtors, the Chief of Army Staff and the "Nigerian Army" with it. In view of this, it is unable to comply with the Order of the Court.

As aforesaid, the Applicant filed a Counter Affidavit in reaction to the Garnishee's above affidavit. In it, it was averred inter alia, that the averment in paragraph 7 of the Garnishee's affidavit to show cause is false. That the Federal Government Independent Revenue Collection Scheme had commenced. That all revenues collection of Ministries, Departments and Agencies (MDAs) will be paid directly to the Garnishee through the Remita e-collection platform ([www.remita.net](http://www.remita.net)). All Departments, Agencies

(MDAs) must close all existing revenue accounts in all Deposit Money Banks not later than 28<sup>th</sup> December, 2015 and transfer their money to the Garnishee. The Garnishee's circular dated 25<sup>th</sup> February, 2015 in this regard is attached as Exhibit CA1.

The President and Commander –In-Chief of the Federal Republic of Nigeria, Muhammadu Buhari in compliance with Sections 80 and 162 of the Constitution of Nigeria directed all Ministries, Departments and Agencies of the Federal Government to unfailingly close all accounts with Deposit Money Banks/Commercial Banks and commence banking with the Garnishee latest by 15<sup>th</sup> September, 2015. The office of the Accountant General of the Federation earlier issued a Federal Treasury Circular to the Heads of Ministries, Departments and Agencies including the Judgment Debtors to implement the Treasury Single Account policy. The circular is attached as Exhibit CA2.

As a result of the above, the Judgment Debtors have closed all their accounts with Deposit Money Banks/Commercial Banks and now maintains and conducts its banking activities with only the Garnishee. The Garnishee has custody of the funds of the Judgment Debtors in the Treasury Single Account and other designated accounts with the Garnishee. Account no. 011600300100 amongst others, is the Judgment Debtors' Account with the Garnishee listed on the Remita e-collection platform-[www.remita.net](http://www.remita.net). A copy of the screenshot of the search on [www.remita.net](http://www.remita.net) showing this is attached as Exhibit CA3.

The Garnishee's affidavit to show cause is calculated to mislead the Court and it is in bad faith. It will be in the interest of justice to make the Garnishee Order Nisi absolute.

I have given due consideration to the averments in the parties' affidavits. The position of the law is that after service of a Garnishee Order Nisi on the Garnishee, if on the return date it does not attend Court (where so directed) or dispute the debt due or claimed to be due from it to the Judgment Debtors, the Court may, subject to some restrictions make a Garnishee Order absolute against it. The Order absolute may be enforced in the same manner as any other Order for the payment of money. See: **TAPP V JONES (1875) LRPO QB P 591.**

A Garnishee may be required to show cause (as is the case here) by deposing to an affidavit which should not be restricted to denying the existence of the debt alleged to be due to the Judgment Debtors, but should state specifically whether it is indebted to the Judgment Debtors at all and if so, in what amount. See: **VINALL V DE PASS (1892) AC P90**.

By Section 87 of the Sheriffs and Civil Process Act, where the Garnishee denies liability and the Judgment Creditor contends otherwise, the Court is to order any issue necessary for determination of the Garnishee's liability to be tried in any manner in which any issue in any proceeding may be tried and determined. See: **NIGERIA HOTELS LTD V NZEKWE (1990) 5 NWLR (PT. 149) P. 187; STD LTD V CONTRACT RESOURCES NIG LTD (1996) 10 NWLR (PT. 478) P. 381**.

This said, it is also the law that Accounts with banks or Deposit taking institutions are garnisheeable. In **FLIONE V OLADIPO 11 NLR P. 18** the Court made the point that an Order of Garnishee will lie against a fixed deposit. In **LUCY V WOOD (1884) WNP 58 and DEVLEN V COUNTY COURT JUDGE (1938) 2 NIR P. 50**, it was pointed out that despite the fact that the amount of debt due and accruing cannot be ascertained, it is still liable to be attached by a Garnishee Order Nisi. In **UBA LTD V SOCIETE GENERALE BANK LTD (1996) 10 NWLR (PT. 478) P. 381** however, the Court held that where there is doubt as to whether any amount is being owed by the Garnishee to the Judgment Debtor or that any money due or which has accrued to the Judgment Debtor is in the possession of the Garnishee, the proper order for the Court to make consistent with the provisions of Sections 87 of the Sheriffs and Civil Process Act and Order 8 Rule 8(2) of the Judgment (Enforcement) Rules is to direct for an inquiry to be made to establish the status of the money.

In this matter, whilst the Garnishee in its affidavit to show cause averred inter alia, that the Judgment Debtors do not have their funds with it, in other words, that it is not indebted to them, the Applicant in its Counter Affidavit averred inter alia, in response, that by the Federal Government Independent Revenue Collection Scheme which has commenced and all revenues collection of Ministries, Departments and Agencies, (the Judgment Debtors inclusive) are to be paid directly to the Garnishee through Remita e-Collection Platform ([www.remita.net](http://www.remita.net)) as directed in the Garnishees Circular of 25<sup>th</sup> February, 2015 attached as Exhibit CA1 and the Accountant General of the Federation's Federal Treasury Circular to

the heads of Ministries, Departments and Agencies (the Judgment Debtors inclusive), attached as Exhibit CA2 that the Judgment Debtors have closed all Accounts with commercial banks and now maintain and conduct their banking activities with the Garnishee. That by virtue of this, the Garnishee has custody of the funds of the Judgment Debtors in the Treasury Single Account and other designated accounts with the Garnishee. That one of the Accounts is Account no. 011600300100 as shown in the document attached as Exhibit CA3.

As aforesaid, the Applicant's Counter Affidavit wherein the foregoing averments were made was served on the Garnishee on 14<sup>th</sup> December, 2015 before the matter was heard same day. He did not controvert same vide a Further Affidavit. The implication of this failure in the eyes of the law is that the averments are admitted by the Garnishee. What this has established however is that the Garnishee has admitted the existence of the Judgment Debtors' funds in its custody particularly in Account no. 011600300100 per Exhibit CA3. It did not however establish the fact that the sum of N123, 380, 000.00 being the Judgment sum and in respect of which the Garnishee Order Nisi which is sought to be made absolute is in the said Account or in the custody of the Garnishee in any other account.

In the circumstances, it cannot be said that for certain the Garnishee is indebted to the Judgment Debtors in the ascertained and due debt of N123, 380, 000.00. It is doubtless that a Garnishee may have in its custody the Account of a Judgment Debtor. Whether or not the Judgment Debtor has funds in the account is a different matter.

In the light of the above uncertainty, it will be improper to grant a Garnishee Order absolute against the Garnishee. On the other hand, it will be premature to refuse the Applicant's application. See: **BARCLAYS BANK D.C. V BADERINWA: RE LEDB (1962) 2 ALL NLR P. 28**. What the law requires of this Court in these circumstances is to direct for an inquiry in trial of the issue of whether or not the Garnishee has in its custody the Judgment Debtors' funds and in the amount or lesser of it sought to be attached and in respect of which a Garnishee Order absolute could be made. This is particularly so as the Applicant's Exhibit CA3 does not disclose any sum of money being held therein in the name of the Judgment Debtors by the Garnishee.

By reasons of all I have said above, a trial of whether or not the Garnishee holds in its custody in any account with it money or monies due and payable to the Judgment Debtors upon which a Garnishee Order absolute could be made in full or part satisfaction of the Judgment sum is hereby ordered. The trial shall be by way of ordinary civil trial guided by the FCT High Court Civil Procedure Rules 2004; Sheriffs and Civil Process Act and Judgments (Enforcement) Rules.

I make no order as to costs.

**SIGNED  
HON. JUDGE  
29/2/2016.**

**LEGAL REPRESENTATIONS:**

- (1). Mr. Ataguba Aboje/Mr. Abutu Achema and Mr. Chidi Dimgba for the Judgment Creditor/Applicant.
- (2). No legal representations for the Garnishee and Judgment Debtors.