IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT WUSE ZONE 2
HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
AND
HIS LORDSHIP HON. JUSTICE Y. HALILU
ON THE 30TH DAY OF OCTOBER, 2018

APPEAL NO: CVA/95/15

BETWEEN:

AUDU EMMANUEL BAMAYI ----------APPELLANT

AND

ABUBAKAR USMAN ----------RESPONDENT

JULIUS ANGBASHIN*for the appellant.*
1st Respondent is present in court but counsel is absent.

JUDGEMENT

This is an appeal against the ruling of the Upper Area Court of Federal Capital Territory sitting at Gwagwalada in motion No. M/018/2015 dated 23rd of July, 2015. The appellant formulated two grounds of appeal. The two grounds are one and the same. We shall therefore reproduce the 1st ground as captured on the notice of appeal:

Ground 1:

The learned trial judge erred in law leading to grave miscarriage of justice when after granting and making an order nisi garnishing the account of the respondent/judgement debtor and after the said account has been garnished absolutely seven (7) months later refused to hold that he is fiancé (Sic) his office but rather turned around and reversed the garnishment order and then ordered for the re-opening of the account in question.

Particulars:

The relevant paragraphs are 3-8. They consist of the facts leading to the appeal. The paragraphs are reproduced thus:

"Paragraph 3: The appellant/judgement creditor filed a civil suit against the respondent/judgement debtor on the 13th August 2012 seeking to now cover (Sic) the sum of ***₦500,000*** *being the debtor collected from the creditor and thereafter breached the agreement by refusing to convey any piece of land to the creditor but rather issued the creditor with papers which turned out not to be genuine.*

Paragraph 4: Judgement was given to the creditor on the 10th of May, 2013.

Paragraph 5: The debtor since then has been evading the enforcement of judgement until in the year 2014 when the creditor succeeded in getting his account number with the Microfinance Bank Keffi, Nasarawa State.

Paragraph 6: The creditor thereafter filed a garnishment proceedings before the leaned trial Upper Area Court of FCT sitting at Gwagwalada seeking to garnish the account of the debtor with the bank mentioned above and the learned trial Judge granted an Order nisi garnishing the account of the debtor sometime in August 2014 and in accordance with the order the account was garnished until when the judgement sum would be liquidated.

Paragraph 7: About six (6) months later the judgement debtor filed a motion with motion number M/081/2015 seeking the trial court to reverse the garnishment order and to order for instalmental payment of ***₦10,000*** *Monthly.*

Paragraph 8: Inspite of our agreement (Sic) on point of law that the judge is functus officio, the learned judge went ahead reversed the garnishment order nisi and ordered for re-opening of the account of the debtor and an order for instalmental payment."

The parties filed and exchanged brief of arguments which were adopted by their respective counsel on the 26th of June, 2018. Both the appellant and the respondent formulated two issues for determination in their respective brief of arguments. We have critically examined all the issues formulated by both parties and agree with the respondent's counsel that the issues formulated by the appellant are grossly incompetent as they do not flow from or supported by the ground of appeal.

It does appear to the court that the appellant's counsel does not know the difference between freezing of an account by an order of the court simplicita

and a garnishee proceeding. We refer to paragraph 3:06 of his reply brief where counsel stated thus;

"Also with regard to the argument that the 2nd respondent garnishee was not made a party to the garnishment proceeding, the appellant as the garnishor applied to the Area Court Rules and the inherent jurisdiction of the Upper Area Court and not the Sherriff and Civil Process Act and the Upper Area Court gave an Order for garnishment. The Upper Area Court is not strictly bound to follow all those techniques and has closed and disposed the case file and should not re-open it again."

This brings us to the issue raised for determination by the judgement debtor/respondent in his brief to wit; Whether by the motion on notice dated 7th day of July 2014 and the enrolled order of court dated 28th day of October 2014 as contained in the record of appeal pages 17-21 a valid order will be said to have been granted against Microfinance Bank Keffi?

We agree with the submissions of counsel to the respondent that the whole garnishee proceeding is a nullity ab-initio for the following reasons;

1. There was no application brought pursuant to the provision of Order 20 Rule 1 of the Area Court Act. The first step in garnishee proceeding is filing of an application exparte seeking for order nisi. The order is directed at the garnishee attaching the debt claimed to be due from him to judgement debtor. The parties to the garnishee proceedings are the judgement creditor, the garnishee and the judgement debtor.In the instant case, the Microfinance Bank Keffi, Nasarawa State was never made a party to the garnishee proceeding. And to further worsen the case of the appellant, the garnishee is not within the jurisdiction of the court.
2. As rightly pointed out by the respondent there is no proof that the judgement debtor and the garnishee were served with the order nisi as enjoined by the provision of Order 20 of the Area Court Act. The provisions are reproduced hereunder;

Order 20, Rule 2:

"On the application of a judgement creditor for a garnishee order the court may either before or after oral examination of the judgement debtor, require the judgement creditor to make a declaration which may be on oath in the discretion of the court, that the judgement or order is still unsatisfied and to what amount and that the garnishee is indebted to the judgement debtor."

Rule 3

"(1)*Where the court is satisfied that the garnishee indebted to the judgement debtor the court may order the debts so owing to the judgement debtor shall be attached to satisfy the judgement or order, together with the costs of the garnishee proceeding and may order by the same or a subsequent order that the garnishee appears before the court on a day and at a time stated in the order to show cause why he should not pay to the creditor the debt due from him to the judgement debtor or so much there of as may be sufficient to satisfy the judgement or order together with costs as aforesaid."*

(2)*An Order under paragraph (1) of this order shall be served on the garnishee and the judgement debtor at least fourteen days before the day of hearing."*

The procedure for garnishee proceeding has been given judicial impetus by the Court of Appeal in the case of **N. A. O. C. V OGINNI (2011) 2 NWLR (PT. 1230) 131 CA Per OGUNWUMIJU JCA** where she held;

"A garnishee proceeding is a proceeding sui generis and unlike other proceedings for enforcement of judgements, it is provided for in the Sherriff and Civil Process Act and the Judgements Enforcement Rules made pursuant to the Act. It is another process different from Writ of Execution whereby the judgement creditor can realize the fruits of his judgement, if the judgement creditor knows that the debtor has an amount of money with any bank or institution, he will as garnishor file an exparte application in form 23 of the Judgement Enforcement Rule (JER) for an Order that the garnishee (This case UBA Plc) shall show cause why he should not pay the amount due to the judgement debtor to him. These proceedings are strictly exparte between the garnishor (Judgement Creditor) and the garnishee (the bank or institution.

Where the court grants the order nisi on the garnishee, the Registrar through the Sherriff of the court must serve on the garnishee, the judgement creditor, the judgement debtor, the order nisi on form 26 (JER). The registrar must then fix a date not less than 14 days after the service of the order nisi on the judgement creditor, judgement debtor and the garnishee for hearing. This subsequent hearing envisages a tripartite proceeding in which all interests are represented. That is when the judgement debtor has the opportunity to convince the court to discharge the order nisi by filling affidavits to that effect.

After that hearing on notice, the court may discharge the order nisi or make it an order absolute. This, the Judgement Enforcement Rules envisages two proceedings one exparte and the other one on notice."

The court have gone through the Rulings of the Area Court as contained in pages 47 and 48 of the Record of Appeal, there is no where the court ordered the garnishee to show cause via an order nisi, rather the Area Court Judge after satisfying himself that the judgement debtor was served with the application for garnishee, orders that the account of the judgement debtor be garnished in satisfaction of the debt.

The entire garnishee proceeding of 27/8/16 is a misapplication of the provision of Order 20 of the Area Court Act. We hereby set aside the Order. We further hold that the appeal lacks merit and hereby dismissed it accordingly.

HON JUSTICE A. S. ADEPOJU	**HON JUSTICE Y. HALILU**
Presiding Judge	**Hon. Judge**
30/10/2018	**30/10/2018**