

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/27/2018

BETWEEN:

DIAMOND BANK PLC -----APPELLANT

AND

COL. ABAYOMI DARE & 3 ORS -----RESPONDENTS

JUDGEMENT

This is an appeal against the decision of the Chief District Judge S. E. Idhiarhi sitting at Lugbe delivered on the 26th of January, 2018 in Suit No. CV/6422/2015, Motion No. 44/17 wherein the court made absolute an Order Nisi granted on the 14th of October, 2017. The appellant formulated three grounds of appeal but only the first ground appears to capture the whole essence of the appeal. We hereby reproduce ground one of the appeal;

“Ground One

Error in Law: The learned trial magistrate erred in law when he held that appellant did not comply with court order of 9th January, 2018 wherein the court directed appellant to file judgement debtor’s statement of account for the period up to 9th January 2018 and proceeded to make the garnishee order absolute against the appellant for the judgement sum of Three Million, Thirteen Thousand and Forty Nine Naira (~~N~~3,013,49:00) and thereby occasioned a miscarriage of justice.”

The particulars of error are further stated as follows;

- i. Appellant deposed to an affidavit that the judgement debtor's account with the appellant is to the tune of Three Thousand, Three Hundred and Forty Four Naira (~~N~~3,344:00K).
- ii. The statement of account showed that it was for period of 01/01/2015 to 09/01/2018 in compliance with the court order of 9th January 2018.
- iii. The Judgement Creditor was served with the said affidavit filed to contradict the depositions in the appellant's affidavit aforesaid.
- iv. The learned trial magistrate ought to have relied on the appellant's affidavit.

The parties filed and exchanged briefs of argument. The appellant's brief of argument dated the 6th of March 2018 and filed on the 7th of March 2018 was settled by **Prisca Ozo Ilezi** Esq., while the respondent's brief of argument dated 19th April 2018 was settled by **Kayode Komolafe**. The appellant submitted two issues for determination in its brief namely;

1. Whether the discretion of the learned trial court in making the garnishee order absolute was exercised judicially and judiciously (Distilled from grounds 1 & 3)?
2. Whether the learned trial court had jurisdiction to make the garnishee order absolute (Distilled from ground 2)?

Contra- wise, the 1st respondent submitted a sole issue for determination to wit; whether the learned trial court was right in making the garnishee order absolute against the appellant?

Both parties seem to be saying the same thing i.e. questioning the discretion of the learned trial magistrate to reach the decision appealed against.

The appellant argued and rightly too that the grant or refusal of a garnishee order is purely discretionary. That the court must base its discretion on material facts placed before it and not extraneous considerations. He relied on the case of **CFAO NIG PLC V SANI (2008) 15 NWLR (PT. 1109) 1, BELLO V YAKUBU (2008) 14 NWLR (PT. 1106) 104**. The appellant contended that the trial court failed to properly evaluate the evidence presented before him and also failed to be guided by the provision of law with respect to garnishee proceeding. He relied on Section 87 of Sheriff and Civil Process Act and the

case of **ODOFIN & ORS V MOGAJI (1978) NSCC 275**. The appellant referred to pages 123-135 of the record of appeal, and affirmed that it complied with the order of court made on the 9th January, 2018 by filing her further affidavit to showcase that the statement of account was for the period of 01/01/2015 to 09-01/2018 in compliance with the court order.

The 1st respondent in his reply at Par 4.9 of its brief argued that the appellant concealed truth in its affidavit dated 18th October, 2017 by deposing to the fact that the 2nd respondent did not maintain any account with it. That it was after the 1st respondent tendered the 2nd respondent's statement of account with the appellant that appellant did a turn around and actually admitted that the 2nd respondent maintain an account with it. That the appellant failed to produce that statement of account as directed by the court, and the disobedience led the court in arriving at the conclusion that appellant has not shown any good cause why the order nisi should not be made absolute. The 1st respondent submitted that the trial court exercised its discretion in accordance with the provision of the law and urged the appeal panel to resolve the issue in favour of the 1st respondent.

A bird's eye view of the facts that led to this appeal is that the appellant in its quest to show cause sequel to an order nisi granted by the lower court filed an affidavit dated 18th October, 2017 wherein it affirmed that the judgement debtor did not maintain an account with it. The appellant was discharged by the lower court. The judgement creditor later filed and served on the appellant a motion on notice dated the 20th day of November, 2017 seeking to set aside the order discharging the appellant from the garnishee proceeding. In response the appellant filled a counter-affidavit and stated in paragraph 12 of the counter-affidavit as follows;

“When the 2nd garnishee/respondent received the motion on notice, conducted a search at the Corporate Affairs Commission and discovered a similar name known as ‘KYC Inter-Project Ltd’ which can be seen in the certificate of incorporation is hereby attached and marked as Exhibit 4

(b) The 2nd garnishee further conducted a search on her database and found out that there is an account with the name ‘KYC Interproject Ltd’ with an

available balance of N3,300:44. A copy of the statement is hereby attached and marked as Exhibit 5.

(c) In further answer to paragraph 13 and 14 of the affidavit in support of the motion on notice, the judgment creditor/applicant misguided the court and the 2nd garnishee/respondent by providing an incorrect name 'KYC Interproject Ltd' of the 1st judgement debtor. From Exhibit 1, 4 and 5 it is difficult to ascertain which one is the actual name of the 1st judgement debtor."

Evidently the claim of the appellant that the judgement debtor had no account with it was based on the way the name 'KYC Interproject Ltd' was written. That 'KYC Inter-project Ltd' was joined whereas the one on their database was separate. The court ruled that the area of difference was slight and discharged its earlier order discharging the appellant. The appellant was further asked to produce an account statement up to date from 1st August 2017 – 19th January 2018. Rather than producing the statement of account as ordered by the court, the appellant stated that the statement of account of the judgement debtor stopped at 2nd August 2017. In the affidavit to show cause the appellant pursuant to the said Order, the 2nd garnishee further conducted a search in her database and found out that there has been no transaction on the account as from 2nd of August 2017 to the 9th of January, 2018.

Our finding and conclusion from the entire facts as could be gleaned from the record of what transpired at the lower court is that there is no good faith on the part of the appellant. When the appellant discovered from its database that the name 'KYC Interproject Ltd' was written differently from what it has on its record, why did it not search or go for the account opening forms before concluding that the judgement debtor did not maintain an account with it? The learned trial judge was correct when he concluded that the appellant was evasive having failed to produce an updated statement of account of the judgement debtor as directed by the court. It is not the duty of the garnishee to protect a judgement debtor from fulfilling its obligation towards a judgement creditor. The garnishee stands the risk of paying such debt personally where it fails to disclose the amount in the judgement debtor's account, or allow the judgement debtor deplete its account in order to frustrate the judgement creditor from realising the fruit of its judgement.

The 1st respondent cited the case of **FIDELITY BANK V CHIEF EMMANUEL EZE ONWUKA (2017) LPELR 42839 (CA) PER OGUNWUMIJU JCA**, she stated aptly;

“It has been reiterated by the court that it is not the duty or business of the garnishee to play the role of a defender or advocate for a judgement debtor by attempting to protect the money of the judgment debtor in its custody. By refusing to disclose the accounts of the judgement creditor it is clear to me that the appellant is doing its best to disobey an order of court.”

The appellant in the instant case was trying to disobey the order of the court and should not be encouraged.

The appeal lacks merit, and it is hereby struck out. We therefore affirm the decision of the lower court. The sum of **₦10,000 (Ten Thousand Naira)** is awarded as cost against the appellant.

HON JUSTICE A. S. ADEPOJU

Presiding Judge

30/10/2018

HON JUSTICE Y. HALILU

Hon. Judge

30/10/2018