



# JUDGMENT

This is an Appeal against the Garnishee Order Absolute Ruling of the Senior Magistrate Court, Life Camp Division Abuja FCT (hereinafter referred to as “The Lower Court”) delivered on the 8<sup>th</sup> day of March, 2018 by His Worship Hauwa S. Aliyu (Mrs.). The Ruling was predicated upon a Garnishee Proceedings which commenced in the Lower Court by way of Ex-parte Motion dated 8<sup>th</sup> day of December, 2017 whereof the Respondents prayed the Lower Court to make the following Orders:

- i. An Order of Garnishee Order Nisi garnishing the sum of ₦4,650,000 only against the Judgment Debtors account with the garnishees herein in the Judgment Debtors name on record as full satisfaction of the Judgment debt awarded by the Lower Court in favour of the Judgment Creditors/Applicants in Suit No. CV/430/16.

- ii. An Order directing the garnishees on record to appear before the Honourable Court to show cause why the Garnishee Order Nisi should not be made Absolute and or the Judgment Debtors' funds in their possession/custody should not be attached and paid to the Judgment Creditor/Applicants.
- iii. And for such further Order(s) as the Honourable Court may deem fit to make in the circumstance.

The Applicant upon being served with the Order Nisi thereafter assigned the brief to the firm of Glorious Chambers (one of the External Solicitors) to the Appellant to file Affidavit to Show Cause and represent the Bank accordingly with further instructions that the Judgment Debtor had no account with the Appellant (13<sup>th</sup> Garnishee).

It is the case of the Appellant that Barr. Hillary Ndukwu of Glorious Chambers for inadvertent reason of sudden death on the 19<sup>th</sup> January, 2018 of a parent travel out of

Abuja to his place to attend to the burial arrangement of his late parent and forgot to file an affidavit to show cause and put an appearance in court on the return dates 24<sup>th</sup> January, 2018 and 31<sup>st</sup> January, 2018.

Appellant avers that Court delivered its Ruling on the 31<sup>st</sup> January, 2018 in favour of the Respondents by making the Order Nisi Absolute against Account Number 00126202246, which is not in existence (An 11 digits number) and does not belong to anyone including the Judgment Debtor and that the sum payable to the Respondents (Judgment Creditors & Garnishor is the total sum of ₦4,650,000) only.

In view of the decision of the Lower Court against the Appellant in the suit to the effect that Garnishee Order Absolute is made against Account number 00126202246, appellant filed a motion on notice dated 13<sup>th</sup> February, 2018 and filed the same date praying the Court to set aside the Order Absolute delivered on the 31<sup>st</sup> day of

January, 2018 and an Order restraining the Judgment Creditor/Respondents from enforcing or executing the Order Absolute, since the Order was granted on the mistaken belief that the Judgment Debtor maintained an account with the Appellant (13<sup>th</sup> Garnishee) and the absence of the Appellant (13<sup>th</sup> Garnishee from Court on the return date). The said application was referred by the lower court.

Refusal of the Lower Court to set aside its Order Absolute has necessitated the Appellant to bring the instant Appeal.

The Appellant formulated the following as grounds in the Notice of Appeal.

## **GROUND ONE**

The learned trial district judge erred in law when he refused to set aside the 2018 order absolute made on 31<sup>st</sup> day of January, 2018 despite the fact that the affidavit evidence in

support of the motion on notice to set it aside was unchallenged and uncontroverted.

### **PARTICULARS OF ERROR:**

- i. It is trite that an unchallenged and uncontroverted affidavit evidence is deemed admitted.
- ii. An admitted fact needs no further proof.
- iii. The facts deposed to in the Appellant's unchallenged and uncontroverted affidavit evidence are of the nature that a reasonable tribunal would believe them.

### **GROUND TWO**

The learned trial district judge misdirected himself, which misdirection led to a miscarriage of justice when he refused to set aside the Garnishee Order absolute made on the 31<sup>st</sup> of January, 2018 even though there was affidavit

evidence before him that it was made based on mistaken, non – existent and misrepresented facts.

## **PARTICULARS OF MISDIRECTION**

1. The uncontroverted and unchallenged affidavit evidence before the court showed that the judgment debtor does not maintain any account with the Appellant.
2. The account number the judgment creditor supplied to the court does not exist being an 11 – (eleven) digit number which is not obtainable in the Appellant’s data base.

## **GROUND THREE**

The learned trial district judge misdirected himself when he refused to set aside the order absolute made on 31<sup>st</sup> January, 2018 despite that it was clear from the affidavit evidence before him that the Appellant’s failure to file an

affidavit to show cause was as a result of the mistake of the Appellant's counsel.

## **PARTICULARS OF MISDIRECTION**

- a. Counsel without informing the principal counsel failed to file the Appellant's affidavit to show cause.
- b. Inadvertence or mistake of counsel ought not to be visited on the litigant.

The Appellant formulated the following issues for determination to wit;

1. *Whether the Lower Court did not err in law when it refused to set aside the Order absolute made on 31<sup>st</sup> day of January, 2018 despite the fact that the affidavit evidence in support of the Motion on Notice to set aside was unchallenged and uncontroverted.*
2. *Whether the Lower Court did not misdirect itself, and which misdirection led to a miscarriage of*



*justice when it refused to set aside the Garnishee Order Absolute made on the 31<sup>st</sup> day of January, 2018, even though there was affidavit evidence before it that the Order was made based on mistaken, non-existence account details and misrepresented facts. Since the Judgment Debtor has no such account number and details in the data base of the Appellant.*

3. *Whether the Learned Trial District Judge did not misdirect it when it refused to set aside the Order Absolute made on 31<sup>st</sup> January, 2018 despite that it was clear from the Affidavit evidence before it that the Appellants failure to file an Affidavit to show cause was as a result of the inadvertent mistake of the Appellant's Counsel.*

*On issue one, whether the Lower Court did not err in law when it refused to set aside the Order absolute made on 31<sup>st</sup> day of January, 2018 despite the fact that the*

*affidavit evidence in support of the Motion on Notice to set aside was unchallenged and uncontroverted.*

Learned Counsel for the Appellant submitted that where evidence particularly affidavit evidence as in this case is not challenged or controverted by the adverse party, the Court is obliged to rely on such evidence. ***CENTRAL BANK OF NIGERIA VS EDET (2015)ALL FWLR (Pt. (768) Page 878 at 879.***

*On issue two, whether the Lower Court did not misdirect itself, and which misdirection led to a miscarriage of justice when it refused to set aside the Garnishee Order Absolute made on the 31<sup>st</sup> day of January, 2018, even though there was affidavit evidence before it that the Order was made based on mistaken, non-existence account details and misrepresented facts. Since the Judgment Debtor has no such account number and details in the data base of the Appellant.*

Learned Counsel contended that the refusal to set aside the Order Absolute against the Appellant without considering that the account number supplied to the court was an eleven digits and therefore not correct, was a misdirection which could lead to a miscarriage of justice.

Counsel contended further that, Garnishee Proceeding is a special method of recovering debt owed by a particular person or agency as provided by Section 83 of the Sheriff and Civil Process Act and not a Process to obtain money from an Institution or person who does not have monies belonging to the Judgment Debtor. Court was urge to set aside the Order Absolute.

*On issue 3, whether the Learned Trial District Judge did not misdirect itself when it refused to set aside the Order Absolute made on 31<sup>st</sup> January, 2018 despite that it was clear from the Affidavit evidence before it that the Appellants failure to file an Affidavit to show cause was*

*as a result of the inadvertent mistake of the Appellant Counsel.*

Learned Counsel argued that it is the general practice that Court does not punish Litigant for the mistake, blunder, negligence or inadvertence of his Counsel.

***EMMANUEL S. DANIANG VS TEACHERS SERVICE COMMISSION (1996)5 NWLR (Pt. 446) Page 97.***

Learned Counsel finally urge the Court to uphold the Appeal and set aside the Judgment of the Lower Court.

We have gone through the Applicant's application which was not challenged by the Respondent. We shall be brief in addressing the issues raised by the Appellant and we shall address same together.

It is true as well as settled, that a Court of law has an inherent jurisdiction to set aside its own Judgment where the conditions for doing so have been met by a party seeking the setting aside. One of such situations is when

the Judgment sought to be set aside was obtained by failure to comply with Procedural Rules. ***NOGA HOTELS INTERNATIONAL S.A VS NICON HILTON HOTELS LTD & ORS (2006)LPELR 11811 (CA).***

There is no gain saying that there is always an end to litigation. It is the law that after finally deciding a matter before it, the court becomes functus officio and lacks jurisdiction to deal with the matter. Courts must be wary of allowing parties to relitigate matters determined for fear of more or less sitting on appeal over such matters.

We must state here that Garnishee Proceeding is sui generis i.e it is in a world of its own.

Once a named Garnishee is served with an Order Nisi, he/she shall file affidavit against such an Order Nisi to show cause why an absolute should not be made against him.

If however, no such affidavit to show cause is filed for the court to see reason in not making an Order Nisi Absolute, the court shall proceed to make same absolute. The Order is final and irreversible by the same court. The said Court must hands up because it is *funtus officio*.

Supreme Court in the case of ***UBN PLC VS BONEY MARCUS IND. LTD. (2005) 7 S.C. (Pt. 11)70***, has this to say:-

***“Application for Garnishee Proceedings are made to the Court by the Judgment Creditor and the Orders of the Court usually come in two steps. First is a Garnishee Order Nisi. Nisi is a normal French Word and it means “unless”. It is therefore an Order made, at the stage, that the sum covered by the application be paid into Court or to the Judgment Creditor within a stated time unless there is some sufficient reason why the party on whom the Order is directed is given why the payment Ordered***

*should not be made. If no sufficient reason appears, the Garnishee Order is made Absolute and that ends the matter in that the party against whom the Order Absolute is made is liable to pay the amount specified in the Order to the Judgment Creditor. The Court thereafter becomes functus officio as far as that matter is concerned in that the Judge who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him.”*

We make bold to say that the position in *UBN PLC.* supra remain the law as we deliver this judgment.

The trial court did well by refusing the temptation of setting aside its ruling.

Courts are bound by judicial precedence. Any attempt to go contrary to the principle of Stare Decisis shall be condemned by superior courts, as same shall be seen as an

act of impertinence and rascality. See ***DALHATU VS TURAKI (2003) 7 S .C 1.***

We find no legally good reason to disturb the decision of the trial court.

Appeal unmeritoriously filed and argued is refused and dismissed.

**HON JUSTICE Y. HALILU**  
*Presiding Judge*  
*5<sup>th</sup> December, 2019*

**HON JUSTICE V.S GABA**  
*Hon. Judge*  
*5<sup>th</sup> December, 2019*