

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

**SUIT NO: CV/1436/2019**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN**

**BETWEEN:**

**THE DEPUTY SHERIFF, HIGH COURT OF FCT- APPLICANT**

**AND**

**1. ADAMU ABUBAKAR .....JUDGMENT  
CREDITOR**

**(suing through his lawful agent  
Rilwanu Mohammed Bauchi)**

**2. SAMUEL GIFT ONYINYE OLA.....CLAIMANT**

Appearances:

Arnold Ekwerekwu Esq appeared for the applicant.  
Chinedu Akubue Esq appeared for the claimant.

**JUDGMENT**

By the originating summons with No. CV/1436/2019 dated the 25<sup>th</sup> day of February, 2019 whereof the applicant seeks for the following:

- 1) a determination of this Honourable Court as to whether or not the claimant herein is the lawful owner of the Honda Accord with Registration Number AYB 215 AH which was attached in the execution of the court's judgment in suit No. FCT/HC/CV/120/2018 between ADAMU ABUBAKAR V. RICHARD ROTIMI.
- 2) an order of this Honourable Court directing the applicant herein to either:

- a) transfer the said Honda Accord with Registration No. AYB 215 AH to the court for the satisfaction of the Judgment creditor 's judgment sum where the claim is deemed by the court to have failed;
  - or (b) to release same to the claimant pursuant to her claim, if the claim is deemed by the court to have been established;
- 3) and for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by eleven paragraphed affidavit deposed to by one Edna Shuaib, the litigation secretary of the Legal Unit of the High Court of the FCT (which is the office of counsel to the office of the Deputy Sheriff/applicant) and in which the later relies upon all the averments as are contained therein. The counsel to the applicant proffered and filed a written address in support of the application, which he adopts as his oral argument.

Attached to the application are the following documents:

- a) a claim or a complaint of wrongful attachment of the said vehicle with Registration No. AYB 215 AH which was wrongfully attached to be the property of Rotimi Richard on the 20<sup>th</sup> day of December, 2018 at No. 16, Ephraim Ukpabia Street, off Arab Road;
- b) Notice of claim written to the Judgment Creditor and the Claimant dated the 6<sup>th</sup> day of February, 2019;
- c) Vehicle License bearing the name of Samuel Gift Onyinye Ola dated the 18<sup>th</sup> day of June, 2018;
- d) Certificate of Roadworthiness bearing the name of Samuel Gift Onyinye Ola in respect of the vehicle with Registration No. AYB 215 AH dated the 18<sup>th</sup> day of June, 2018;
- e) Proof of ownership bearing the name of Samuel Gift Onyinye Ola in respect of vehicle with Registration No. AYB 215 AH;
- f) Insurance Certificate of Nikon Insurance Ltd bearing the name of Samuel Gift Onyinye Ola dated the 18<sup>th</sup> day of June, 2018;
- g) National identity card bearing the name of Samuel Gift Onyinye Ola with No. 8896695058;

- h) an identity card of Nynnah Attorney bearing Samuel Gift O.O;
- i) Corporate Affairs Commission accreditation card for individual with No. NBA/(Indiscernible)/40286.

The Claimant also filed an affidavit in support of the summons of one paragraph deposed to by the claimant herself, and in which she relies on all the sub-paragraphs as are contained therein.

Attached to the affidavit are the same documents as are itemized above.

The Judgment Creditor did not file any affidavit in opposition to the claim.

It is in the affidavit of the applicant that there was a suit between one Adamu Abubakar and Richard Rotimi with No. FCT/HC/CV/420/2018 in which judgment was entered in favour of the Plaintiff, who is the Judgment Creditor in this application, and that in execution of the said judgment by the office of the applicant a Honda Accord with Registration No. AYB 215 AH was attached believing that it belongs to the Judgment debtor.

It is stated that after the execution the claimant through his counsel wrote a letter to the Sheriff claiming to be the owner of the said Honda Accord with Registration No. AYB 215 AH, and that this copy of the claim was served upon the Judgment Creditor as the notice of the claim in pursuance of the provision of Order V1 Rule 2 of the Judgement (Enforcement Procedure) Rules.

It is also stated that the Judgment Creditor is yet to response to the said notice, and that the Deputy Sheriff has no financial or pecuniary interest in the subject matter in dispute, and that the Deputy Sheriff has not colluded with the Claimant, the Judgment debtor or the Judgment Creditor in this case.

It is also stated that the Deputy Sheriff is willing to release the said property or transfer same to the court as the court may direct.

In the written address of the applicant, it is submitted that the provision of Order 48 Rules 1 and 2 of the Rules of this Court 2018, and section 34 of the Sheriffs and Civil Process Act have been clearly complied with, and that the parties have been duly identified on the document as the Plaintiff while the Judgment Creditor is the defendant relying on the cases of **Nigerian Arab Bank V. Alhaji Musa Adamu Abdullahi (2000) 6 NWLR (Pt. 668) 549 ratio 4, Alhaji Musa Kala V. Alhaji Baran Potiskum & Anor. (1998) 3 NWLR (Pt. 540) 1, West Africa Cotton Ltd V. Maiwada (2008) All FWLR (Pt. 405) 1784 at 1793.**

It is in the affidavit of the claimant in support of the summons that the claimant is the owner of the Honda Accord Saloon car with Registration No. AYB 215 AH upon which the attached the already enumerated documents.

It is stated that the Judgment debtor, who is the Pastor to the claimant, begged the later to be using the car until she comes back from her travel, and which she agreed and left the car with the Judgment debtor, and on the 20<sup>th</sup> day of December, 2018 the same vehicle was attached in execution of the judgment, and that all efforts were made by the claimant to explain by showing the original copies of the particulars of the vehicle proved abortive, and that all the particulars bear the name of the claimant, and that that prompted her to write a letter to the Chief Registrar, High Court, Maitama and attached the particulars of the said vehicle.

Thus, the Judgment Creditor did not deem it appropriate to respond by filing a counter or any affidavit in opposition to the claim, and to this, I have to deem that an averments in the affidavit in support of summons and the claim are deemed to have been admitted by the Judgment Creditor and to this I stand. See the case of **Ugwuegede V. Asadu (2018) ALL FWLR (Pt. 961) p 1418 at 1442 para. A.** where the Supreme Court held that averments without contradictory evidence or averments are deemed admitted.

In spite of the above position, this court has to examine the documents attached in support of the claim with a view to see whether they really support same. See the case of **Ozah V.**

**E.F.C.C. (2018) All FWLR (pt. 953) 230 at 256 paras. G-H.** All the documents attached in support of the application and the claim bear the name of the applicant and were dated the 18<sup>th</sup> day of June, 2018 thereby preceding the date of the attachment of the said vehicle. The most prominent of the documents is the proof of ownership which points at the claimant as the owner of the vehicle Honda Accord with Registration No. AYB 215 AH.

In the absence of any contrary and contradictory evidence, the claimant, who is the plaintiff, is deemed to have discharged the burden placed upon her that the vehicle with Registration No. AYB 215 AH belongs to her and to this, I therefore stand. See the case of **West Africa Cotton Ltd V. Maiwada (supra)**.

It is in the light of the foregoing that I have to make the following order:

- 1) That the claimant is the lawful owner of the Honda Accord with Registration No. AYB 215 AH which was attached in the execution of the court's judgment in suit No. FCT/HC/CV/420/2018 between Adamu Abubakar and Richard Rotimi;
- 2) The applicant is hereby directed to release the vehicle with Registration No. AYB 215 AH to the claimant pursuant to the claim having been established by the claimant.

Signed  
Hon. Judge  
3/12/2019