

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

**IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA
SUIT NO: CV/1514/2019**

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

THE DEPUTY SHERIFF, HIGH COURT OF FCT- APPLICANT

AND

1. IBRAHIM YAKUBU-----CLAIMANT

2. MR. FRANCIS NJAGU-----JUDGMENT CREDITOR

Appearances:

Ifeanyi Paul Madinesaife Esq, holding the brief of Oyewale Folarin Esq for the applicant. Naomi Abang appeared for the claimant. Uche Onale Esq appeared for the Judgment Creditor.

JUDGMENT

By the originating summons dated and filed the 3rd day of April, 2019 pursuant to Order 48 of the Rules of this Court and section 34 of the Sheriffs and Civil Process Act and whereof the applicant seeks for the following:

- 1) A determination of this Hon. Court as to whether or not the Claimant herein is the lawful owner of the Toyota 2009 Camry, dark ash in colour with chassis number 4TIBE46K49U345303 which was attached in the execution of the court's judgment in suit No. CV/164/17 (Mr. Francis Njagu v. Mr. Tajudeen);
- 2) An order of this Honourable Court directing the applicant herein either:
 - a) Transfer the said property to 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 his claim if the claim is deemed by the Court to have been established.

c) For such further order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The summons is supported by ten paragraphed affidavit deposed to by one Edna Shuaibu, the Litigation Secretary in the office of the Deputy Sheriff of the High Court of the Federal Capital Territory, Abuja, and in which it relies upon all the averments as are contained therein.

Accompanying the summons is a written address proffered and filed by the applicant in support of the summons.

Attached to the summons are the following documents:

A) A letter from the counsel to the Claimant to the Senior District Court, Wuse, Zone 2, Abuja.

B) Goods Exit Note dated the 18th day of December, 2018 issued by the Nigeria Custom Service to a Defendant ARISIKI NIGERIA LIMITED of No.6, Ogoyinka Street, Lagos.

C) Nigeria Custom Service Payment Acknowledgement to the tune of N386,775.00 dated the 14th of December, 2018 in the name of Lawal Ibrahim and the Declarant Arisiki Nigeria Limited;

D) Federal Government of Nigeria Customs Authority Declaration Form in favour of the Declarant ARISIKI NIGERIA LIMITED in the name of Lawal Ibrahim of Tunji Motors Auto Supplier Company, 34, Shittu Adigun Street, Lagos and is dated the 13th day of December, 2018;

E) Risk Analysis results in relation to Toyota Camry CHNO461BE46K49V345303;

F) Vehicle Examination Report by Nigeria Customs Service in respect of vehicle with chasis no. 4TIB6E46K49U3454303 Toyota Camry;

G) Claim made by the Claimant to the applicant dated the 18th February, 2019 with the same attached documents.

H) Notice of claim to attached property made by the applicant to the judgment creditor.

I) A response to the Notice of Claim made by the counsel to the judgment creditor dated the 14th March, 2019.

The judgment creditor in response to the claimant's affidavit filed a Thirteen paragraphed affidavit to show cause deposed to by the Judgment Creditor himself, and in which he relies upon the paragraphs of same.

Accompanying the counter affidavit is a written address proffered and filed by the counsel to the Judgment Creditor.

Attached to the counter affidavit are the following documents:

a) A certified true copy of the judgment of the Senior District Court dated the 22nd day of November, 2017 delivered by His Worship Yusuf Ahmed Ubangari;

b) A copy of the certificate of judgment dated the 7th day of December, 2017.

The Defendant's filed an affidavit in response to the originating summons which is of fifteen paragraphs together with the written address in support of the claim.

Attached to the affidavit are the same documents earlier on attached by the applicant.

The Judgment Creditor also in response to the Claimant's affidavit filed a counter affidavit of thirteen paragraphs together with the written address, and further attached the same documents he earlier attached to the affidavit to show cause.

It is in the affidavit of the applicant that the execution officers of the applicant's office attached a Toyota 2009 Camry, dark-ash in colour with chasis number 4TIBE46K49U345303 believing that they belong to the Judgment Debtor, and in furtherance to that the claimant wrote a letter to the office of the Deputy Sheriff of the High Court of the FCT claiming ownership of the said

attached property, and in which the claimant intends to rely on all the documents attached.

It is stated that the applicant has served a notice to the Judgment Creditor in Form 42 in compliance with Order vi Rule 2 of the Judgment (Enforcement Procedure) Rules.

It is further stated that the judgment creditor served his notice of dispute of the claimant's claim giving rise to the need for this summons.

That the applicant has no financial or pecuniary interest in the Toyota 2009 Camry, dark ash in colour with Chasis No. 4TIBE46K49U345303, and that the applicant has not in any way, manner or form colluded with any of the parties, and that it is willing to transfer the attached property to the court or to dispose of it as this court may direct.

The applicant in its written address cited and quoted the provisions of Order 48 Rule 1 (paragraph 2) of the High Court of the Federal Capital Territory Civil Procedure Rules 2018 to the effect that the provisions of section 34 of the Sheriff and Civil Process Act has been complied with, and that the same Order 48 Rules 2 of the rules of the court has also been duly complied with, and further submitted that the applicant has no financial or pecuniary interest in the Toyota 2009 Camry, dark ash in colour with Chasis No. 4TIBE46K49U345303 and that the applicant has not in any way, manner or form colluded with any of these parties, and that it is willing to transfer the attached property to the court or to dispose of it as this court may direct.

It is further submitted by the applicant that the duty is to present the parties before the court as the claimant is deemed the Plaintiff while the Judgment Creditor is deemed as the Defendant, and cited the cases of **Nigerian Arab Bank V. Alhaji Musa Adamu Abdullahi (2000) 6 Nwlr (Pt. 662) 549; Alhaji Musa Kala V. Alhaji Barau Potiskum & Anor (1998) 3 Nwlr (Pt. 540) And West Africa Cotton V. Maiwada (2008) All Fwlr (Pt. 405) 1784** to

the effect that the claimant is deemed to be the Plaintiff while the Judgment Creditor is deemed to be the Defendant. see the case of **West Africa Cotton Ltd V. Haruna (2008) All Fwlr 826 (Pt 416) P.1944 At 1955 Paras D-G**. In the instant case as the parties have been duly identified as the claimants being the Plaintiff while the Judgment Creditor being the Defendant, it is incumbent upon the claimant /Plaintiff to establish that the attached property Toyota Camry dark ash in colour with Chasis No. 4TIBE46K49U345303 belongs to him and not to the Judgment Debtor. See the case of **West Africa Cotton Ltd V. Maiwada (2008) All Fwlr (Pt. 405) P. 1786 At 1793 Paras F-G**. In the same case in pp. 1793-1794 paragraphs H-B and P. 1795 para B-C, the Court held that since the originating summons has to be determined an affidavit evidence, the trial court has a duty to examine the affidavit evidence before it to determine whether the claimant has discharged the burden of proof on him. In the instant case, it is the duty of the court to examine whether the claimant has discharged the burden of proof on him. In the instant case, it is the duty of this Court to examine the affidavit evidence of the claimant with a view to see whether he discharged the burden placed upon him.

It is in the affidavit of the claimant that he is into the business of selling and buying cars both new, fairly used i.e. locally and foreign used and that he put some of the cars in his possession of sale on display at Geda Motors Nigeria Ltd stand situate at along the Kubwa Express Road, Abuja, and on the 13th of February, 2019 he discovered that one of his cars he put on display was missing and upon enquiry he was informed that some officers of the court acting on a judgment of court came into the car stand and towed away the said car Toyota 2009, Camry dark, ash in colour, and on further enquiry he was informed that one Mr. Tajudden who equally used to come and display cars for sale at Geda Motor Nigeria

Limited was a Judgment Debtor and that officers of court came looking for him to enforce the judgment and wrongfully attached his vehicle in question.

It is further stated that Geda Motors Nig. Ltd is not the owner of all the cars on display at the car stand where one of his cars the Toyota Camry in question was attached, and that the Toyota Camry 2009, dark ash in colour he bought and registered with the name of Lawal Ibrahim and not with the name Tajudeen, and that Lawal Ibrahim is his brother which the car was bought in his name, and that the vehicle in question was in his custody as at the time the attachment took place.

The counsel to the claimant in his written address formulated one issue for this court for to determine. That is to say,

“Whether from the totality of evidence adduced by the claimant and the Judgment Creditor it can be said that the vehicle in question belongs to the Judgment Debtor?

The counsel submitted that from the totality of the affidavit evidence of the claimant it is clearly stated that as at the time the vehicle in question was attached was in custody of Geda Motors Nig. Ltd car stand where he displayed same for sale, and to this he cited the case of **Alhaji Musakala V. Alhaji Barau Potiskum & Anor (Supra)** to the effect that it lies the burden upon the claimant to establish his title to the property in dispute or to prove his precise interest or title he claimed.

The counsel submitted that the Judgment Debtor's name is Mr. Tajudeen and the documents of the vehicle are bearing the name of Lawal Ibrahim and not Mr. Tajudeen, and the judgment is against Mr. Tajudeen and not against Lawal Ibrahim, and that by the affidavit evidence of the Judgment Creditor, he was not available at the car stand as at the time the court officials went for the enforcement of the judgment and that the Judgment Creditor has no document linking the Judgment Debtor with the said attached vehicle.

The counsel further submitted that the Judgment Creditor in his evidence showed that he acted upon hearsay and not on verification through documents, as there is nothing documentary in the hands of the Judgment creditor to support his action, and he cited the cases of **Magaji V. Odofin (1978) 4 Sc 91, State V. Aigbangbe (1988) 7 Sc (Pt.1)** to the effect that this court is trying to put the evidence of both parties in an imaginary scale with a view to see which one tilts, and he also cited the case of **Sakati V. Bako (2015) All Fwlr (Pt. 800) 1182 At 1207 Para G** and submitted that the proof of the claimants is the documentary evidence, that is to say, the particulars of the vehicle in question which at the time of the execution was in his custody but in a market place, unless the said vehicle does not belong to the Judgment Debtor Mr. Tajudeen, and he then urged the court to know that the claimant has successfully proved to the court that the vehicle in question belongs to him and for the court to release same to him.

The Judgment Creditor in his counter affidavit deposed to the fact that the vehicle in question Toyota Camry, dark ash in colour was attached from Geda Motors Nig. Ltd car stand as it was shown to him that it belongs to the Judgment Debtor, and that the documents attached to the originating summons do not bear the name of the claimant but rather the name of Lawal Ibrahim I or Lawal Ibrahim simpliciter.

The counsel to the Judgment Creditor in his written address formulated one issue for this court to determine, to wit:

“Whether the claimant through the documents attached to the applicant’s originating summons has proved satisfactorily that the said Toyota Camry belongs to the claimant?”

The counsel to the Judgment Creditor submitted that it is the duty of the claimant to establish that the vehicle in question belongs to him and he cited the case of **Ramada International & Pharm Ltd V. Ezeonu (2016) 14 Nwlr (Pt. 1533) 339.**

The counsel further submitted that looking at the documents attached to the originating summons showed that

there are two different names on those documents as one of them bears the name of Lawal Ibrahim while others bear Lawal Ibrahim I., and to him there is contradiction and conflict in the documents and that those documents do not bear the name of the claimant, and on conflicting evidence, the counsel cited the case of **Olaloye V. A.G. Osun State & Ors (2015) All Fwlr (Pt. 774) 37 at 65** to the effect that where the evidence led by the Plaintiff is contradictory then the trial court should dismiss the claim. The counsel further cited the case of **Sakati V. Bako (Supra)** to the effect that the court has to place the evidence of both sides on an imaginary scale with a view to see whether the claimant has successfully discharged the burden placed upon him, he urged the court to hold that the claimant failed to prove his case and ordered that the said vehicle be transferred to the court for the satisfaction of the Judgment Creditor judgment sum.

Now, having appraised and summarized the affidavit evidence of both parties, let me ascertain whether as at the time of the attachment, where was the vehicle in question was found? This is because where it is determined that the vehicle was found in possession of the claimants, then the burden will be placed on the Judgment Creditor to prove that the vehicle belongs to the Judgment debtor as against placing it on the claimant. See the case of **Semisola Trading Company V. Chemical And Allied Products Plc (2010) All Fwlr (Pt. 501)P. 992 At 997 Paras. A-C** where the Court of Appeal, Lagos Division held that in interpleader proceedings, the claimant is the Plaintiff, while the Judgment Creditor is the defendant. The Judgment Debtor is not a party and the onus is on the claimant as the Plaintiff to establish his title to the goods that were seized. The onus shifts according to the stage of attachment and in whose possession the attached property was at the time of attachment.

The claimant in paragraph 12 of his affidavit deposed to the fact that the vehicle in dispute, the Toyota 2009, Camry, dark ash in colour is at the time of the said attachment was in his custody and care and that at the time of the attachment

the particulars of the said car is not in the name of Mr. Tajudeen, the Judgment Debtor in suit no. CV/164/2017. However, by the combined effects of paragraphs 3, 5 and 6 of the claimant's affidavit it is shown that both the claimant and the Judgment Creditor do display their vehicle for sale at Geda Motors Nig. Ltd car stand. To concur, the Judgment Creditor also deposed to paragraph 6 of his counter affidavit that the Judgment Debtor also do sell his cars at Geda Motors Nig. Ltd car stand.

It is in that respect that I have to draw an inference that both the claimant and the Judgment Debtor do display their vehicles for sale at Geda Motors Nig. Ltd car stand where the vehicle in question Toyota Camry, dark ash in colour with chasis no. 4TIBE46K49U345303 was attached. To be precise, the vehicle was also found in possession of the Judgment Debtor, and to this, I so hold. Therefore, placing the burden on the Judgment Creditor will not be appropriate in the present circumstances of this case. The burden rest squarely on the claimant that the vehicle in question belongs to him, and to this, I also ho hold. See the case of **West Africa Cotton Ltd V. Maiwada (Supra)**.

Now, coming back to the question formulated by both counsel for this court to determine, and to this I have to distil from the questions a particular issue for this court to determine, hence I formulate this issue:

“Whether, considering the surrounding circumstance of this case, the claimant has, through the evidence adduced, proved that the vehicle in question belongs to him?”

Thus, both the applicant and the claimant have attached in their affidavit some documents which the claimant relies upon them squarely in prove of ownership of the said vehicle.

I have painstakingly looked at the documents attached in support of this claim, and discerned that these documents bear

the name of Lawal Ibrahim who is the consignee, while the importer is ARISIKI NIG. LTD, and this, I have no doubt in my mind that the documents bear the name of Lawal Ibrahim. It is also obvious that the claimant's name is Ibrahim Yakubu.

Thus, it is the duty of this court to resolve the issue in controversy by considering the documents before it without more, and to apply the law correctly to the facts before it. See the case of **West Africa Cotton Ltd V. Maiwada (Supra)**

In the circumstances of this case, all the documents attached in support of the claim bear the name of Lawal Ibrahim, and not the name of the claimant, and to his I therefore, so hold.

The claimant made heavy weather in his affidavit paragraph 10 and deposed to the fact that Mr. Lawal Ibrahim is his brother and that he bought the said car in his name, however, there is no any document attached to the originating summons in proof of the claim. To my mind, the onus is not only to be discharged by mere assertion in an affidavit, there should be document showing that there was such transaction between the claimant and Lawal Ibrahim. The prove is strictly by documentary evidence to prove that the car belongs to the claimant, and this was not done by the claimant, and the object of this proceeding is to determine from the evidence presented, the ownership of the goods seized, and the law is that he who is in possession is deemed to be the owner of the goods upon which execution is levied until a better title is established. See the case of **Simisola Trading Co. V. Chemical And Allied Products Plc (Supra)**, and in the instant case, the vehicle was found in the possession of the Judgment Debtor as to the displayed cars as at the time of the attachment at Geda motors Nig. Ltd where the car in question was attached and is to be the person in whose possession the vehicle was found, and the claimant did not establish a better title to it.

In the circumstances, and based upon the foregoing consideration, I have come to the conclusion that the claimant has failed to establish by evidence that he has a better title to

the vehicle attached or that he has not proved by evidence that he has interest of title of what he has claimed. See the case of **West Africa Cotton Ltd V. Haruna (Supra)**, and to this the claimant is not the lawful owner of the Toyota Camry, dark ash in colour with chasis no. 4TIBE46K49U345303 which was attached in the execution of the Court's Judgment in suit No. CV/164/2017 (Mr. Francis Njagu v. Mr. Tajudeen).

An order is hereby given that the said property be transferred to the Court for the satisfaction of the Judgment Creditor's judgment sum.

Signed
Hon. Judge
05/11/2019

