

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA
SUIT NO: FCT/HC/CV/1513/19**

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

THE DEPUTY SHERIFF OF THE FCTAPPLICANT

AND

UMORU MALUMFASHI.....CLAIMANT

AND

**1. VALENTINE UZUH } JUDGMENT CREDITORS
2. PASCAL UZUH }**

Appearances:

Hadiza A. Umar Esq appeared for the Deputy Sheriff.

Ikechukwu Adanwu Esq appeared for the claimant. Atanetins Ugoh Esq appeared for the Judgement Creditor.

JUDGMENT

By the originating summons for interpleader proceedings with No. CV/1513/19 dated the 20th day of March, 2019 brought pursuant to section 34 of the Sheriffs and Civil Process Act whereof the applicant seeks for the following:

- 1) a determination of this Honourable Court as to whether or not Umoru Malumfashi (the claimant herein) is the lawful owner of the Toyota Hilux Pick-up small with Registration No. YAB 378 Ru which was attached in execution of the Court's Judgment in suit No.CV/695/2014;
- 2) an orders of this Honourable Court directing the applicant herein to either:

- a) release the Toyota Hilux Pick-up Truck with Registration No. YAB. 378 RU to the claimant pursuant to his claim if the claim is deemed by the Court to have been established; or
 - b) transfer the said vehicle to the Court for the satisfaction of the judgment creditor's judgment sum, where the claim is deemed by the Court to have failed;
3. and for such further order, as this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by ten paragraphed affidavit deposed to by one Edna Shuabu, the litigation secretary in the legal Unit of the High Court of the Federal Capital Territory (which is the office of the counsel to the office of the Deputy Sheriff/applicant) and they relied upon the paragraphs as are contained therein.

Attached to the application are documents marked as (1)EXH 'A' which is the claim made by the claimants dated the 21st day of February, 2019, as this is with accompanying documents to include:

- (a) Proof of Ownership Certificate;
- (b) General Motor percept;
- (c) Vehicle Impection pass;
- (d) Interim certificate of Road wrothiness;
- (e) Third party Motor Insurance fee;
- (f) Certificate of Insurance.

2) EXH 'B' which is the Sheriffs notification to Judgement creditor on claimants notice of claim;

3) EXH "C" which is a reply to the notification to Judgement creditor written by the counsel to the Judgement creditor.

In support of the application, the counsel representing the deputy sheriff proffered and filed a written address, which he adopted as his oral argument.

The claimant also filed a ten paragraphed affidavit deposed to by the applicant himself;

Accompanying the affidavit is a written address proffered and filed by the counsel to the claimant, and attached to it is a means of

identification of one Yahaya Umar Gambo Malumfashi. The Judgment Creditor filed his counter affidavit of Fourteen Paragraphs deposed to by one Athanesius Ugoh as one of the lawyers handling the post execution matter for the Judgment Creditor, and in which he relied upon all the paragraphs of the counter affidavit.

By way of adumbration, the counsel to the judgment creditor submitted that the application has been abandoned by the claimant, and therefore, urge the Court not to allow the sale of the vehicle attached.

Thus, I agree with the applicants that the provisions of Order 48 Rule 1 & 2 of the Rules of this Honourable Court 2018 and section 34 of the Sheriff's and Civil Process Act Cap. 56 laws of the Federation Nigeria 2004 to the effect that the claimant and the party at whose instance the process was issued, that is the Judgment Creditor have been directly identified; that a notification has been duly served upon the Judgment Creditor pursuant to the summons filed, and its accompanied by an affidavit in support of the summons in which it was deposed to the fact that the applicant claims no interest in the subject matter in dispute, that it does not collude with the claimant; and that it is willing to pay or transfer the subject matter into Court or to dispose of it as the Court may direct, and to these I so hold that all that are required as a condition to filing this application have been duly satisfied. See Order 48 Rules 1 & 2 of the High Court of the Federal Capital Territory, Abuja and section 34 of the Sheriff and Civil Process Act Cap. S6 LFN 2004. See also the case of SIMILOLA TRADING COMPANY V. CHEMICAL AND ALLED PRODUCES PLC & Anr. (2010) ALL FWLR (pt. 501) p. 992 at 996 paras G-H where the Court of Appeal, Lagos Division held that in interpleader proceeding, the claimant is as the plaintiff, while the judgment creditor is the defendant.

It is in the affidavit in support of the claim that the Toyota Hilux Pick – up Truck with Registration No. YAB-378 RU was in the premises of the judgment debtor on the day of the execution, and was attached and taken away by members of the enforcement unit of this Honourable Court in respect of the enforcement of the Judgement obtained by the Judgment Creditor in the above stated case, and all attempts were made by the claimant and the people

around to inform the enforcement unit of the illegality to attach the property belonging to a third party proved abortive.

It is also stated in the affidavit that the papers to show proof of ownership were shown but all to no avail, and that the claimant is not related by birth or any other way whatsoever with the judgment debtor.

It is in the counter affidavit of the judgment creditor that the proof of ownership bears the name Umoru Malumfashi while the means of identification filed by the claimant bears Yahaya Umar Gambo both were annexed as 'A' and 'B' respectively. To him, no document on proof of ownership that bears Yahaya Umar Gambo.

In interpleader proceedings it is the duty of the claimant to establish the ownership of the attached goods, that is to say, it is the duty of the claimant in this case to establish the ownership of the attached goods. See the case of DALE POWER SYSTEMS PLC V. WITT & BUSCH LTD (2002) ALL FWLR (pt 394) p. 358 at 365 paras. G – H. See the case of W.A.COTTON LTD V. MAIWADA (2008) ALL FWLR (pt 405) p. 1708 at pp 1793 – 1794.

The applicant filed this application together with the claim made by the claimant which was accompanied by some documents.

Let me examine the documents exhibited by the claimant in proof of the claim:

a) Proof of Ownership Certificate with No. A4187955 in respect of Hillux Pick -Up Toyota with No. YAB 378 RU and the name of the owner indicated on the certificate is Umoru Malumfashi of Sahara Houses Estate, Abuja.

b) General Motor Receipt with respect to Toyota Hilux Pick Up and the owner's name indicated is Umoru Malumfashi of Sahara House Estate, Abuja issued by Directorate of Road Traffic Services;

c) FCT Computerized Vehicle Inspection Pass and payment receipt dated 26th June, 2018 in respect of payment of N3, 250= made by Umoru Malumfashi;

d) Interim Certificate of Road worthiness paid by Umoru Malumfashi in respect of Toyota Hilux Pick up in Ref. No. YAB 378 RU;

e) 3rd party Motor Insurance Fee of N5000= issued by Mutual Benefits Assurance plc to Umoru Malumfashi in respect of vehicle with Registration No. YAB 378 RU; and

f) Certificate of Insurance issued to Umoru Malumfashi in respect of Toyota Hilux with Registration No. YAB 378 RU.

Thus, all these documents bear the name of Umoru Malumfashi with respect to a vehicle Toyota Hilux Pick UP with Registration No. YAB 378 RU.

The judgment creditor/defendant relied on the International Passport exhibited by the claimant which bears Yahaya Umar Gambo Malumfashi as a means of identification of the claimant, and to him, there is a contradiction between the name on the proof ownership, and the name on the International Passport serving as a means of identification;

The Court in this circumstance is enjoined to make use of the documents for the purpose to which it was tendered. See the case of OSOKOYA V. ONIGEMO (2018) ALL FWLR (pt 942) p. 429 at pp. 465 – 466 para. G-A where the Court of Appeal, Lagos Division held that where a document tendered for one purpose, a trial Court cannot on its own embark upon an inquiry into the documents in the recess of its chambers to make findings of facts on which issues were not joined by the parties in their pleadings. In the instant case the issue before the Court is whether the vehicle which was attached in execution of a judgment belongs to the Judgment debtor or to the claimant. Therefore, the fact that the claimant attached his International Passport does not mean in proof of the claim rather as a means of identification of the claimant. This, to my mind does not fall within the issues this Court will dwell in to conduct an inquiry as to the difference between the proof of ownership and the International Passport which was attached as a means of identification. This court will only use the documents for the purposes to which they were tendered, and to this, I so hold.

If this Court is to go by the purpose for which these documents were tendered, then the documents exhibited along with the claim are meant to prove ownership of the Toyota Pick Up with Registration No. YAB 378 RU.

The judgment creditor in his counter affidavit did not show that the vehicle Toyota Pick - Up with Registration No. YAB 378 RU which was attached belongs to the judgment debtor.

In the circumstances I am of the strong and considered opinion that the claimant has successfully proved before the Court by affidavit evidence that he is the owner of the vehicle Toyota Pick Up with Registration No. YAB 378 RU based upon the documents exhibited as proof of ownership. The issue raised by the judgment Creditor that the International Passport carries a different name to that of proof of ownership goes to no issue as this Court will not delve in to inquiry in that regard.

Now the counsel to the judgment creditor made (heavy) whether as to the absence of the claimant in Court in the cause of the proceedings which he said the claimant has abandoned the proceedings. Let me appreciate the provisions of Order 48 Rule I of the Rule of this Court which provides:

“But where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of section 34 of the Sheriffs and Civil Process Act and rules made under it shall apply”

Let me also have recourse to section 34 (1) of the Sheriffs and Civil Process Act CAP. S6 LFN 2004 which provides;

“if a claim is made to or in respect of any property attached in execution under process of a Court, or in respect of the proceeds or value thereof, the registrar may upon the application of the Sheriff, as well before as after any action brought against him, issue summons calling before the Court the party at whose instance the process issued and the party making the claim.”

By the above quoted provisions, it could be inferred that the registrar may also invite the claimant. The word used is “may” which by ordinary interpretation of such word is discretionary, that is to say it is at the discretion of the Registrar to so invite the claimant, and in the instant case the Registrar has not done that, let alone for the claimant to have refused to appear before the Court. The only notification seen in the case file is that of the judgment creditor.

Therefore, the argument of the counsel to the judgment creditor goes to no issue.

Let me also have recourse to the provisions of Order 36 Rule I of the Rules of this Court which provides:

“Upon any motion, petition, summons or any other application, evidence may be given by affidavit, but the Court may su motu or on application, order the attendance for a cross examination of the deponents and where, the order has been made and the person in question does not attend, his affidavit shall not be used as evidence except by special leave.”

In the instant case, the applicant is the Deputy Sheriff which appeared and moved its application, and the deponent is a different person from the claimant. There was no order asking the claimant to so appear for any cross examination which could have been made pursuant to an application by either the applicant or the judgment creditor. Therefore, the argument of the judgment creditor to the effect that the claimant did not appear thereby abandoning his claim goes to no issue, and I therefore, so hold.

Based upon the above considerations, I have come to the conclusion that the claimant has proved the ownership of the vehicle Toyota Pick Up with Registration No. YAB 378 RU.

In the circumstances, and order is hereby given to the Deputy Sheriff of the High Court of the Federal Capital Territory, Abuja to release the Toyota Hilux Pick Up Truck with registration No. YAB 378 RU to the claimant pursuant to his claim which has been duly established.

Signed
Hon. Judge
17/10/2019