

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA  
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS  
COURT NUMBER: HIGH COURT TWO  
CASE NUMBER: FCT/HC/CV/2032/2019  
DATE: 21<sup>ST</sup> JANUARY, 2020**

**BETWEEN:**

**THE DEPUTY SHERIFF HIGH COUR OF F.C.T. - APPLICANT**

**AND**

**1. OKAMA AMAKA IKELLE - CLAIMANT  
2. SOKOYE ABAYOMI - JUDGMENT CREDITOR**

Parties absent.

O.B. Anuku for the Applicant.

Paul Abbah for the Judgment Creditor.

Applicant's Counsel – The matter is slated today for judgment and we are ready to take same.

## **J U D G M E N T**

This is an originating summons of an Interpleader proceedings brought pursuant to Order 48 of the Rules of this court and Section 34 of the SCPA 2014 wherein 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 Peugeot 206 with Registration No. BS 838 RSH – Abuja which was attached in the execution of the court's judgment in Suit No. CV/2204/17 **SOKEYE ABAYOMI v MR. ONAYEMI ADEBOLA JOSHUA**).**

2. An Order of this Honourable Court directing the Applicant herein to either:

(a) Transfer the said property to court for the satisfaction of the Judgment Creditor's judgment sum; wherein 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.

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

In support of the originating summons is 10-paragraph affidavit deposed to by Edna Shuaib, a Litigation Secretary of the Legal Unit of this court. Attached thereto are documents marked Exhibit A, B and C respectively. Reliance is placed on all the said paragraphs of the affidavit. Learned counsel to the Applicant filed a written address dated 13/5/2019 wherein counsel urged the court to determine the Interpleader based on the evidence placed before the court and direct the Applicant accordingly.

Upon being served with the originating summons, the Claimant filed a 7-paragraph affidavit in response to originating summons. The affidavit is dated 8/10/19. Attached thereto are documents marked as Exhibits A and B respectively.

Also filed is Further Affidavit of 12-paragraph dated 11/10/19. Attached thereto is particulars of vehicle marked Exhibit B; both affidavit is deposed to by Mohammed Suleiman, a Legal practitioner. Claimant's counsel urged the court to rely on all the

paragraphs of the affidavits and exhibits and enter judgment for the Claimant.

The Judgment Creditor filed 7-paragraph counter affidavit dated 11/10/2019 deposed to by Paul Abah, a Legal practitioner in the law firm of Ebokpo Adedayo & Co. Reliance is placed on all the said paragraphs of the counter affidavit. Learned counsel to the Judgment Creditor filed a written address dated 11/10/19 wherein counsel formulated an issue for determination, thus:

***“Whether the Claimant has discharged the burden of proving ownership of the Peugeot 206 car with Registration No. BS 838 RSH Abuja) to the satisfaction of this Honourable Court”***

On this sole issue, it is the submission that Section 133 of the Evidence Act, 2011 provides that as far as civil cases are concerned, the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

It is further submitted that the Claimant having failed to establish her ownership of the car in question with either the proof of ownership or a General Motor Receipt, this Honourable Court cannot order that the said vehicle be released to her from the possession of the Applicant.

I have carefully considered the affidavit evidence adduced and the exhibit attached thereto, it is without doubt that Peugeot 206 with Registration No. BS 838 RSH – Abuja was attached in

satisfaction of judgment delivered in favour of the Judgment Creditor on 15/10/2018.

However, this court by the originating summons is called upon to determine as to whether or not the Claimant herein is the lawful owner of the Peugeot in question.

As stated earlier I have carefully considered the affidavit evidence filed by parties, particularly Claimant's further affidavit dated 11/10/19, where in the particulars of the vehicle in question was duly attached as Exhibit B.

The particular of the said vehicle shows clearly the name of the owner as Ikelle O. Amaka who is the Claimant in the instant suit. I find no substance in the counter affidavit of the Judgment Creditor disputing the facts as contain in the Claimant's further affidavit dated 11/10/19.

Accordingly, I have no difficulties in arriving to the just conclusion that the Peugeot 206 with Registration No. BS 838 RSH – Abuja was wrongly attached by the Applicant.

In the light of the above, I enter judgment for the Claimant and order as follows:

1. The Deputy Sheriff of this court is ordered to immediately release Peugeot 206 with Registration No. BS 838 RSH – Abuja which was wrongly attached to the Claimant; **OKAMA AMAKA IKELLE.**

(Sgd)  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**21/01/2020**

Applicant's Counsel – We are grateful.

Judgment Creditor's Counsel – We are most obliged.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**21/01/2020**