

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON 5TH DAY OF MARCH, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/1039

BETWEEN:

SAVANNAH BANK PLC

.....

PLAINTIFF

AND

SHERIFF HIGH COURT OF THE FCT

DEFENDANT

JUDGMENT

By a notice of originating summons filed on 26th February 2018 the Plaintiff seeks against the Defendant the following reliefs:

- i) A declaration that the Defendant's failure to obey the orders of the High Court of the FCT No. 22, Apo Abuja, FCT, coram His Lordship Hon. Justice S.B. Belgore, contained in the Court's ruling dated 6th December 2017 and Enrollment Order of same ruling dated 25th January 2018, duly served on the Defendant is wrongful.
- ii) The sum of ~~₦~~64,584,000 (Sixty Four Million, Five Hundred and Eighty Four Thousand Naira) only being the value of the Plaintiff's properties wrongfully attached and sold by the Defendant in execution of judgment in **Suit No.**

FCT/HC/CV/80/2011: ADIN-MILES INTERNATIONAL LTD. VS. SENATOR JIM NWOBODO.

(particulars attached)

iii) The sum of ~~₦~~50,000,000 (Fifty Million Naira) only general damages against the Defendant for violation of the Plaintiff's right to property perpetuated by wrongful attachment and sale of the Plaintiff's properties during pendency of proceedings in **Suit No FCT/HC/CV/80/2011: ADIN-MILES INTERNATIONAL LTD. VS. SENATOR JIM NWOBODO.**

iv) Post judgment interest on judgment sum at the rate of 10% per annum from the date of judgment until judgment sum is fully liquidated.

The originating summons is supported by an 18 paragraph affidavit of Eric Mbibi, a Manager in the Plaintiff Bank; wherein he deposed inter alia:

That on 25th March 2015 His Lordship Hon. Justice S.B. Belgore entered judgment in **Suit No FCT/HC/CV/80/2011: ADIN-MILES INTERNATIONAL LTD. VS. SENATOR JIM NWOBODO**, against the Defendant Senator Jim Nwobodo not the Plaintiff.

See Exhibit 1. However sometime in July 2017, the Defendant carted away the following properties of the Plaintiff worth ~~₦~~64,584,000 in execution of the said judgment, viz:-

S/N	PROPERTY	VALUE (₦)
i	1 NO. HP LAPTOP	95,000.00
ii	1 NO. HP DESK TOP COMPUTER SYSTEM	70,000.00
iii	1 NO. HP LASER JET PRINTER 3055 MODELS	72,000.00
iv	2 SETS OF 7 X 7 KING SIZE BED FRAMES @	600,000.00

	N300,000.00 per	
v	2 SETS OF 7 X 6 BED FRAME @ N50,000.00 per frame	100,000.00
vi	4 NO. ITALIAN DRESSING MIRROR WITH SIDE CHAIRS @ N60,000.00 per set	240,000.00
vii	3 SETS OF EXECUTIVE CHAIRS AND TABLE @ N120,000.00 per set	360,000.00
viii	1 NO. RED UPHOLSTERY CHAIRS SET	140,000.00
ix	3 NO. SINGLE LEATHER CHAIRS @ N120,000.00 per	360,000.00
x	1 NO. SET OF ITALIAN SETTEES	1,500,000.00
xi	1 NO. SET OF GOLDEN FRAME OF UPHOLSTERY	850,000.00
xii	1 NO. 12 SEATING DINING SET CREAM COLOUR	1,000,000.00
xiii	2 NO. SETS OF CENTER TABLES AND SIDE TOOLS @ N300,000.00 per set	600,000.00
xiv	2 NO. SETS OF 4-SEATER GLASS TOP GARDEN SETTEES @ N150,000.00 per set	300,000.00
xv	1 NO. WESTPOINT DOUBLE DOOR REFRIDGERATOR	290,000.00
xvi	3 NO. LG 32" TELEVISION SET @ N40,000.00 per	120,000.00
xvii	2 NO. LG 21" TELEVISION SET @ N31,000.00 per	62,000.00
xviii	1 NO. SAMSUNG SOUND SYSTEMS (5000 WTS)	180,000.00

xix	1 NO. HP LASER DESK JET 10006 Model	70,000.00
xx	1 NO. 3506 SHARP COPIER MACHINE	125,000.00
xxi	2 NO. SHINCO 2 TON AC WITH INSTALLATION KITS @ N195,000.00 per	390,000.00
xxii	9 NO. 1.5 HP NATIONAL AIR-CONDITION @ N96,000.00	810,000.00
xxiii	1 NO. WINDOW UNIT AIR CONDITION	250,000.00
xxiv	7 NO. 2HP SAMSUNG AIR CONDITION @ N120,000 per	840,000.00
xxv	1 NO. LG 2 TURNS AIR-CONDITIONERS	180,000.00
xxvi	3 NO. TOYOTA COASTER BUSES 2000 MODEL @ N10,000,000 per	30,000,000.00
xxvii	2 NO. HONDER LEGEND SALON CARS 1999 MODEL @ N6,000,000 per	12,000,000.00
xxviii	3 NO. FITNESS EQUIPMENTS PACE MASTER THREADMILL.....1 UNIT NAUTILUS NE3000 ELLIPTICAL.....1 UNIT HOIST ABDOMINAL MACHINE.....1 UNIT	1,880,000.00
xxix	1 NO. WHITE HONDER CIVIC CAR 2000 MODEL	1,100,000.00
xxx	1 NO. PICKUP VAN BLACK ISUZU 1998 MODEL	1,300,000.00
xxxi	1 NO. 45K VA GENERATOR SET	2,800,000.00
xxxii	1 NO. 65K VA PARKINS (MIKANO LABEL) GENERATOR SET	5,900,00.00
	TOTAL	64,584,000.00

See receipts attached marked Exhibits 2 to 16 respectively. That the said properties belong to the Plaintiff and not to the Judgment Debtor.

Consequently the Plaintiff initially filed a motion on notice on 2nd August 2017 praying for orders of the court restraining the Defendant from auctioning the Plaintiff's properties. The said motion was duly served on the Defendant. See Exhibit 17.

Subsequently the Plaintiff filed another motion on notice on 18th August 2017 praying the court to mandate the Defendant to release to the Plaintiff the wrongly attached properties and to restrain the Defendant from auctioning them. The said motion was served on the Defendant.

Further, the Plaintiff through its counsel wrote the Defendant a letter dated 18th August 2017 reminding him of the pending motion on notice and the need to maintain status quo pending the hearing and determination of the interpleader proceedings. See Exhibit 18 (Received by the Chief Registrar's office).

That on 1st November 2017 the learned counsel to the Plaintiff, J.C. Njikonye Esq. (now SAN) and I.A. Nnana Esq. visited the Director of Enforcement High Court of the FCT in his office at High Court complex Maitama, Abuja, FCT to confirm that the items, the subject matter of the interpleader summons were kept safe and the Director assured counsel that they were well preserved.

However on 30th October 2017, counsel got information that the Defendant had commenced auctioning of the properties on 25th October 2017, which information was confirmed by the Enforcement Unit on 1st November, 2017.

This was done despite the pending court processes and letter served on the Defendant to maintain the status quo.

Pursuant to this, counsel filed another motion before Hon. Justice Belgore praying the court for an order of mandatory injunction mandating the Defendant to put on hold further auctioning of the Plaintiff's properties and for an order mandating the Defendant to recall and restore such part of the properties already auctioned.

On 6th December 2017 the High Court delivered a ruling granting their reliefs. See Exhibit 19 and the Enrolled Order, Exhibit 20.

Both were served on the Defendant on 30th January 2018. See proof of service Exhibit 21.

That despite the clear orders of the court, the Defendant refused to recall the properties wrongly confiscated and auctioned by it.

In the written address in support of the originating summons, Mr J. C. Njikonye (now SAN) for the Plaintiff seeks the determination of the following questions:

“ i) Whether in view of the Defendant's failure to obey the orders of the High Court of the FCT No 22, Apo, Abuja, FCT Coram: His Lordship Hon. Justice S.B. Belgore, contained in the Court's ruling dated 6th December 2017 and Enrollment Order of same ruling dated 25th January 2018; the Plaintiff is not entitled to be paid the full value of its properties wrongfully attached and sold by the Defendant in execution of judgment in **Suit No FCT/HC/CV/80/2011: ADIN-MILES INTERNATIONAL LTD. VS. SENATOR JIM NWOBODO.**

ii) Whether the Plaintiff is entitled to be paid general damages of ~~₦~~50,000,000 (Fifty Million Naira) only by the Defendant for violation of the Plaintiff's right to property perpetuated by wrongful attachment and sale of the Plaintiff's properties during pendency of proceedings in **Suit No. FCT/HC/CV/80/2011: ADIN-MILES INTERNATIONAL LTD. VS. SENATOR JIM NWOBODO.**"

Arguing both issues together learned silk submitted that once a court is seized of a case, it is no longer open to any of the parties to take any step capable of overreaching his adversary or preempting the outcome of the case. Therefore auctioning the Plaintiff's properties during the pendency of the Plaintiff's interpleader proceedings before Hon. Justice Belgore was ab initio wrongful.

That His Lordship Hon. Justice Belgore was on terra firma to make the mandatory orders and that it was mandatory for the Defendant to obey the order even if it considered it inappropriate until same is set aside by a superior court of competent jurisdiction.

That the consequences of the Defendant's disobedience to the court order of 6th December 2017 is that the Defendant be made to pay the value of the properties wrongfully attached and auctioned.

Reliance was placed on **NDIC & ANOR V. SAVANNAH BANK OF NIGERIA PLC (2003) 1 NWLR (PT 10) 806**; Section 287 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) **OSHIOMHOLE V. FGN (2005) 3 WRN 142 AT 167 LINES 15-25** amongst others.

Thus the court was urged to enter judgment in favour of the Plaintiff.

I must mention that throughout the hearing of this matter before this court on the following dates – 15th October 2019, 11th February 2020, 13th October 2020 and 7th December 2020 the Defendant never appeared before this court, neither did it file any processes. On 15th October 2019 neither party appeared. On 11th February 2020 the Defendant was not served.

On 13th October 2020 the Defendant was served hearing notice only the day before which the court considered not to be adequate notice and the court adjourned to 7th December 2020.

On 7th December 2020, the Defendant though served hearing notice, did not put up an appearance.

The affidavit in support of the originating summons of the Plaintiff is therefore uncontested and unchallenged.

It is trite law that where affidavit evidence is uncontradicted the onus of proof is discharged on minimal proof. See **PLATEAU HEALTH SERVICES MANAGEMENT BOARD & ANOR V. INSPECTOR FITOKA GOSHWE (2012) LPELR-9830 (SC) PG 17 PARA E-F** per Alagoa JSC. However minimal proof does not mean no proof as the failure of a Defendant to give evidence does not exonerate the Plaintiff from proving his case though minimally. See Niki Tobi JSC of blessed memory in **LARMIE V DATA PROCESSING MAINTENANCE AND SERVICES LTD (2015) LPELR-1756 (SC) AT PAGE 38-39 PARAS E-A.**

The court is therefore required to look at the evidence and be satisfied that it is cogent and proves the Plaintiff's case.

ON ISSUE 1

I have considered the affidavit in support of the originating summons attached.

There is nothing to challenge the fact that despite the service of Exhibit 17 and Exhibit 18 on the Defendant, the Defendant proceeded to auction the properties, notwithstanding the pending interpleader proceedings. There is equally nothing to challenge the fact that the Exhibit 19 and Exhibit 20 were served on the Defendant. See Exhibit 21 proof of service. Yet the Defendant refused to recall the Plaintiff's properties wrongfully attached and auctioned by it.

There is not much more needed to be said here.

I agree with the Plaintiff's counsel that in view of the Defendant's failure to obey the order of the High Court 22, contained in the court's ruling of 6th December 2017, and the Enrollment Order dated 25th January 2018, the Plaintiff is entitled to be paid the full value of its properties wrongfully attached in execution of judgment in Suit No FCT/HC/CV/80/2011. ADIN-MILES INTERNATIONAL LTD V SENATOR JIM NWOBODO.

I answer issue 1 in the Plaintiff's favour. I also grant relief 1 in its favour.

ON ISSUE 2

I also answer in the Plaintiff's favour that the Plaintiff is entitled to general damages for the violation of Plaintiff's right to property wrongfully attached and sold by the Defendant during pendency of proceedings in Suit No: FCT/HC/CV/80/2011 ADIN-MILES INTERNATIONAL LTD V SENATOR JIM NWOBODO.

But the question is; general damages of how much?

There is another matter of the value of the properties wrongfully attached claimed by the Plaintiff. The Plaintiff puts the value of the properties at ₦64,584,000, listing a total of 32 descriptions of items.

However in Exhibit 17 filed 2nd August 2017 the list shows only 25 descriptions of items and special damages totaling ₦9,604,000 for properties wrongfully attached and auctioned. It was deposed in paragraph 3 of the affidavit in support of the originating summons that the Defendant carted away the Plaintiff's properties in execution of the court judgment sometime in July 2017. Therefore as at 2nd August 2017 when Exhibit 17 was filed, all the items had been carted away.

Therefore I do not find the value of the items to have changed from ₦9,604,000 to ₦64,584,000 now claimed.

Accordingly, I enter judgment in favour of the Plaintiff for the value of properties worth ₦9,604,000. I award general damages in the sum of ₦5,000,000 against the Defendant for violation of the Plaintiff's right to property perpetuated by wrongful attachment and sale of the Plaintiff's properties.

I award post judgment interest at 10% per annum from today until the judgment sum is fully liquidated.

Hon. Judge