

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 22ND DAY OF JUNE, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 8
SUIT NO: CV/1580/2019

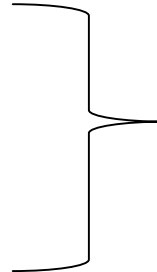
BETWEEN:

THE DEPUTY SHERIFF OF THE HIGH COURT
OF THE FCT

APPLICANT

AND

1. PUNKINOSIS CHEMICALS LTD
2. MRS. GEORGINA KALU IJOMAH
3. MRS. IJEOMA UDUMA
4. MR. NEVKAA FIDELIS



CLAIMANT

AND

SUPERIORA LTD

JUDGMENT CREDITOR

JUDGMENT

This is an originating summons/interpleader proceedings brought pursuant to the provisions of Section 34 of the Sheriff's and Civil Process Act, 2014. It is a Sheriff's Interpleader filed by one Kemi B. Ogedengbe (Mrs.) Head of Legal Unit of the High Court of FCT.

The Deputy Sheriff therein seeks the determination of the following question, and claim the reliefs set out hereunder as follows: The reliefs are:

“1. A determination of this Court as to whether or not the claimants herein are the lawful owners of the property which were attached under the purported mistaken belief that they belonged to Kalu Ijomah, the judgment debtor in suit No. CV/140/2016, in execution of the Court’s judgment by the execution officers from the Sheriff’s office.

a) One Volkswagen Bus with registration No. BWR 745XC claimed by the 1st claimant (Punkinosis Chemicals Ltd).

b) One LG TV 32 inch (Flat Screen) LF510A claimed by the 2nd claimant (Mrs. Georgina Kalu Ijomah)

c) One Royal Four Burner Table Gas Cooker (RG – C240BW) claimed by the 3rd claimant (Mrs. Ijeoma Uduma)

d) One LG washing machine (No. LGWM1400) claimed by the 4th claimant (Mr. Newkaa Fdelis).

2. An order of this Court directing the applicant herein to either:

(a) Release the listed property to the claimants herein respectively pursuant to their claim where the Court finds the claim to have been established in favour of the claimants.

Or

(b) Transfer the listed property 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. Omnibus prayer.

In support of the application is a 10 paragraphs affidavit deposed to by one Edna Shuaib. One annexure was also attached as Exhibit A which is the notice of Third Party Ownership written by one A.N.C. Ikoro Esq.

Solicitor to the claimants. In support of the originating summons is a written address duly adopted by Ifeanyi Paul Madukaife.

The claimant also filed a 9 paragraphs affidavit showing particulars of ownership on behalf of the claimant. Six annexures were attached marked as Exhibits PCL1, PCL1A, PCL2, GK1, IU1, IU2 and NF1. The written address filed was duly adopted by **A.N.C. Ikoro Esq.**

Though the judgment creditor was served with the summons, no counter affidavit was filed in opposition.

The case came up on the 2/2/2021. Though the judgment creditor was in Court, his counsel was absent and no explanation was given for his absence. Infact, the judgment creditor informed the Court:

“I am here because I was told that the case is coming up today. My lawyer knows.”

This Court having been satisfied then proceed with hearing of the matter and ruling reserved for the 23/2/2021.

On that day however, one U.C. Izuogu Esq appeared on behalf of the judgment creditor armed with a motion on notice seeking to arrest the ruling of the Court. The motion was taken and reluctantly granted by the Court.

Upon the grant of the application Mr. Izuogu proceeded to move motion No. M/9339/19 seeking for an order extending the time within which the judgment creditor/respondent may file his counter affidavit to the originating summons out of time. In support of the application is an affidavit of 4 paragraphs and a written address duly adopted.

Mr. Izuogu submitted that where a party advances a cogent and justifiable reason for the delay in doing any act, the Court can exercise its discretion in favour of such party.

There was no opposition from the applicant and the claimant. The application M/9339/19 was thus granted as prayed.

In his response to the originating summons and the affidavit filed by the claimants, the judgment creditor filed a counter affidavit of 4 paragraphs to the originating Interpleader Summons and a written address duly adopted by his counsel. Mr Izougu submitted that the claimants are wives of the judgment debtor and his brother, and Punkinosis Chemicals Ltd (1st claimant) is the company owned by the two brothers living and doing business in the premises. Counsel posited that the properties attached are owned by the wives of the two brothers during the pendency of their marriage. He added that parties in a marriage can conveniently own personal properties independent of the spouse but such ownership must be shown at the time of purchase and must be proved to exist else such claim must fail. He cited Orabolu vs. Onabolu (2005) 2 SMC 135, Amadi vs.

Nwosu (1992) 5 NWLR (part 241). Learned counsel concluded by submitting that the claimants did not state the sources of their income or the sources of money they used in buying the items attached. That the claimants did not show clear intent to be the sole owners of the attached items to enable the Court decide in their favour. Thus an averment not supported by evidence goes to no issue. He cited Bua vs. Dauda (2003) FWLR (part 172) 1892. In his oral submission Mr. Izuogu of counsel stated that there is no difference between the judgment debtor and the claimants. He urged the Court to dismiss the claim filed by the claimants.

In response, Mr. Ikoro made reference to the case of **Salomon vs. Salomon** (no citation) to submit that a company is different from its members and urged the Court to grant the application.

Interpleader summons procedure is applicable where the goods and/or chattels of a person not named in the writ of *fifae* is attached, and the person comes forward to

claim his property. In such a proceeding, as a general rule, the claimant is deemed to be the plaintiff and the judgment creditor, the defendant. Accordingly, the onus is generally on the claimant, as the plaintiff in the proceedings, to establish title to the property he claims. See Obumseli & anor vs. Uwakwe (2019) LPELR – 46937 (SC), Olatunde vs. Obafemi Awolowo University & Anor (1998) 5 NWLR (pt 549) 178, (SC), Kala vs. Potiskum & Anor (1998) 3 NWLR (pt 540) 1, (SC).

The burden of proof in interpleader proceedings is the same as in civil causes or matters. He who asserts must prove. See Sections 136 and 137 of the Evidence Act. The claimant must succeed on a preponderance of evidence. Accordingly the burden of proof, again as a general rule is on the claimant as plaintiff in the proceedings. The onus lies on him to establish his title to the property in dispute, or where his claim is not absolute title, he must prove the precise interest or title he

claimed. See West African Cotton Ltd & anor vs. Maiwada (2014) LPELR – 5097 (CA).

The plaintiff in interpleader proceedings succeeds on the strength of his case and not on the weakness of the Defendant's case. Howbeit, this will not apply when the case of the Defendant supports that of the Plaintiff. See Kala vs. Potiskum (1998) 3 NWLR (part 540) 1, Olatunde vs. OAU & Anor. (1998) LPELR – SC.44/1993; Maigoro vs. Bashir (2000) 11 NWLR (part 679) 453.

But the question is what legal ways can a Claimant or Plaintiff in interpleader proceeding establish his case in a Court of law. It is trite that a party seeking to have judgment in his favour no matter how the law has permitted him to initiate his action must prove his case by placing legal evidence before the Court. Facts which the Court must rely on as prove to enter judgment for a party must be established through oral, documentary or any other admissible evidence. Evidence is the fact which is admitted as both relevant to the case in determining

whether or not something is true or not; and is reliable in that it can be authenticated.

What a trial Court in interpleader proceedings should concern itself is not whether a Claimant has supported his claim with affidavit per se, but whether the Claimant has supported his claim with legal evidence which is cogent, concrete and convincing to satisfy it to enter judgment for him. See Wawu vs. Abdullahi (2018) LPELR – 45382 (CA)

What evidence has the claimant placed before the Court in laying claim to the properties attached? The claimant attached vehicle particulars including the proof of ownership of the Volkswagen Transporter Space Bus showing that it belonged to Punkunosis Chemical Co. Ltd (1st claimant). Also attached is the sales receipt for LG TV 32 inch LF510A in favour of Georgina Kalu Ijeoma (2nd claimant). Another sales receipt was attached in favour of Uduma Ijeoma (3rd claimant) for the purchase of Royal Cooker four gas burner (RG-C40BW), and finally sales

receipt for the purchase of LG Washing Machine LG WM1400 in favour of Nevkaa Fidelis A (4th claimant)

In civil cases, the burden of proving a particular fact is upon the party who asserts it and who will fail if no evidence is called upon the issue, regard being had to any presumption, which may arise from the pleadings of the parties. This onus is not static. It continually shifts from side to side in respect of a fact in issue until it finally rests on the party against whom judgment will be given if no further evidence is proffered. See A.G. Lagos State vs. Purification Tech. (Nig) Ltd (2003) 16 NWLR (part 845) page 1, F.A.T.B Ltd vs. Partnership Inv. Co. Ltd (2003) 19 NWLR (part 851) 35 at 67.

The documents attached and referred to by the claimants are to the effect proof that the attached properties belonged to the claimants and not the judgment debtor. In my view, the claimants had discharged the burden which now shifted to the judgment creditors. The judgment creditors in the

counter affidavit averred in paragraphs 3(f), (g), (h), (j) and (l) as follows:

“3(f) That the attached items in the custody of the Court are property found in the premises where the judgment/debtor and his brother Iduma Ijeoma use to run their business in the name of Punkinosis Chemicals Ltd.

(g) That the items in the Court’s custody are property of the Ijeoma family, the claimants.

(h) That it is not in doubt that the judgment/debtor and his brother Iduma Ideoma jointly own Punkinosis Chemicals Ltd. Both of them have equal shares in the company and both of them are the only directors and shareholders with equal shares.

(j) That the items attached by the Court staff undoubtedly so are to offset the debt of the judgment debtor and the claimants are part of the family of the judgment debtor. The items belong to

the family. Eventhough the receipt bear the names of their wives.

(l) That the judgment creditor/respondent could not have joined every member of the family including Uduma Ijeoma and all the claimants herein since they are members of the judgment debtors family who are living in the same premises with him, doing same family business in the same premises. The success or failure of the suit is expected to affect the entire Ijeoma family as it turned out to be.”

The above forms the basis for the action/execution carried out.

It is pertinent to state that the judgment debtor in suit No. CV/140/2016 is Kalu Ijeoma. None of the claimants before the Court was a party to the above suit. It follows therefore that it was wrong for the Deputy Sheriff to attach properties of the claimants just because they are wives and brother of the judgment debtor. As

rightly stated by learned counsel for the judgment creditor, parties in a marriage can conveniently own personal properties independent of the other spouse.

It is therefore preposterous for the judgment creditor to assume that because the claimants and the judgment debtor belong to the same family, the family members must share liabilities with the judgment debtor. It is also outrageous to state that there is no difference between the judgment debtor and the claimants.

In the circumstance, I hold that the claimants are entitled to the reliefs as claimed, and the question for determination is answered in the affirmative. In this regard, the reliefs as set out in the application are accordingly granted as prayed.

In effect, the Deputy Sheriff shall release forthwith the under listed properties belonging to the claimants as follows:

- *One Volkswagen Bus with registration No. BWR 745XC claimed by the 1st claimant (Punkinosis Chemicals Ltd).*
- *One LG TV 32 inch (Flat Screen) LF510A claimed by the 2nd claimant (Mrs. Georgina Kalu Ijomah)*
- *One Royal Four Burner Table Gas Cooker (RG - C240BW) claimed by the 3rd claimant (Mrs. Ijeoma Uduma)*
- *One LG washing machine (No. LGWM1400) claimed by the 4th claimant (Mr. Newkaa Fdelis).*

Hon. Justice M.A. Nasir

Appearances:

Patience Lebo (Mrs.) – for the Deputy Sheriff

U.C. Izuogu Esq – for the judgment creditor/Respondent

A.N.C. Ikoro Esq, with him AC. Nwosu – for the claimants