

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA**

MOTION No. FCT/HC/M/3137/2023

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN:

1. BAR SAM ADAMA_____JUDGMENT CREDITORS/RESPONDENTS

2. BAR OMALE OJONYE

AND

PEOPLES DEMOCRATIC PARTY (PDP)_____JUDGMENT DEBTOR/APPLICANT

AND

1. ACCESS BANK PLC

2. ECOBANK PLC

3. FIDELITY BANK PLC

4. FIRST BANK OF NIGERIA PLC

5. FIRST CITY MONUMENT BANK (FCMB) LTD

6. GUARANTY TRUST BANK PLC

7. HERITAGE BANK PLC

8. KEYSTONE BANK PLC

9. POLARIS BANK PLC

10. MINDBASE KONSULT LTD

11. STANBIC IBTC PLC

12. STERLING BANK PLC

13. UNION BANK OF NIGERIA (UBN) PLC

14. UNITED BANK FOR AFRICA (UBA) PLC

15. UNITY BANK PLC

16. ZENITH BANK PLC

17. JAIZ BANK

18. TITAN TRUST BANK LTD

19. PROVIDUS BANK

20. SUNTRUST BANK

21. TAJ BANK LTD

22. KUDA BANK

23. LOTUS BANK

24. STANDARD CHARTERED BANK NIGERIA PLC

25. GLOBUS BANK

(ALL OF ABUJA)

GARNISHEES

RULING

The judgment debtor/Applicant filed this Motion on notice on the 11th January, 2023 and seeks for the following reliefs:

1. An order of this Honourable Court setting aside the process for garnishee order nisi issued in Motion No. /FCT/HC/M/11484/2022 – Bar. Sam Adama & 1 Anor. V. PDP and Access Bank Plc and 24 Ors. on the 7th day of October, 2022.
2. An order of this Honourable Court setting aside the garnishee order nisi granted in motion no FCT/HC/M/11484/2022 Barr. Sam Adama & 1 Or V. PDP and Access Bank Plc & 24 Ors on the 8th day of December, 2022.

Alternatively:

- c. An order staying proceedings/execution of this judgment pending the hearing and determination of appeal lodged against the judgment.
- d. And for such further orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the application is filed are contained in pages 2 & 3 of the motion papers.

The application is supported by six paragraphed affidavit and attached to it are two exhibits. It is supported by a written address of counsel.

It is in the affidavit that judgment creditors filed the process leading to the judgment in the suit and the judgment creditor failed and/or refused to serve the processes on the judgment debtor and when the judgment creditors filed a notice of appeal, this also failed to serve the

judgment debtor and the judgment debtor was not aware of any of the proceedings leading to the judgment being enforced until the 13th of December, 2022 when the bailiff of this court brought order nisi to the judgment debtor and he became aware of this judgment.

It is deposed to the fact that the judgment debtor immediately applied to this court on the 14th December, 2022 to conduct a search on the case file and it was the search application that revealed that the judgment sought to be enforced is a judgment that emanated from proceedings of the High Court of Benue State, and the judgment debtor quickly applied for the certified true copy of the processes and it was after obtaining the processes that the judgment debtor got full particulars of the judgment being enforced and the judgment being enforced was obtained by fraud and suppression of crucial facts and that the fraud negatively impacted on the judgment.

It is stated that the judgment creditors misled the court that delivered the judgment into believing that the judgment debtor was aware of the pendency of the suit leading to the judgment. That the judgment debtor has taken steps to set aside the judgment being enforced on the ground that the judgment was obtained by fraud and has taken steps to report to the judgment creditors to the legal practitioners Disciplinary Committee for misconduct.

In his written address accompanying the motion, the counsel to the applicant raised lone issue for determination, thus:

Whether from the circumstances of this case, the applicant is not entitled to the reliefs sought?

The counsel answered the question in the affirmative and submitted that the court has become fractus officio

upon delivery of its judgment, however there are exceptional circumstances under which a court can exercise its jurisdiction after delivery of judgment, one of such is to set aside the judgment delivered where it was obtained by fraud, and he cited the case of **Olabosa V. Olaojoyetan (2012) 1 NWLR (pt 1335) p. 289 paras. F-Q** to the effect that where judgment is obtained by fraud a party against whom it is obtained has the following options:

- (a) he may apply by motion to the court that gave the judgment to set it aside;
- (b) he may appeal against the judgment;
- (c) he may file a separate action for the judgment to be set aside.

The counsel cited the case of **Remhna V. N.A.C. B CFC Ltd (2007) 2 NWLR (pt 1017) 155 at 158 paras. E-H** and submitted that in the case at hand, the applicant has given sufficient account in the supporting affidavit of how fraud was designed and used to obtain the judgment in question. The counsel referred to paragraphs 3(a) (b) (c) and (i) of the supporting affidavit and submitted that this fraud impacted on the judgment and was the reason for this judgment in favour of the judgment creditors and therefore the judgment debtor/applicant is entitled to the remedy for setting aside the judgment.

On the remedy against judgment obtained by fraud, the counsel cited the case of **Oladoun V. Olaojoyetan supra** to the effect that where a party is able to establish that a judgment against him was obtained by fraud, the remedy is that the judgment would be declared a nullity and accordingly set aside.

On when a judge can set aside his previous judgment, the counsel cited the case of **Ayode V. Spring Bank Plc (2014) 4 NWLR (pt 1396) 93 at paras. C-G** to the effect that a

judge can set aside his judgment where it is established that the previous decision was reached:

- (a) without jurisdiction, or
- (b) per incuriam, or
- (c) under a situation of fraud or misrepresentation or mistake or incompetence to make the orders, and he cited the case of **Bessoy V. H.L. (Nig.) Ltd (2010) 4 NWLR (pt 1184) 300 at 304.**

The deponent deposed to the fact that the judgment debtor was at no time served with court processes leading to the judgment thereby denying her right to fair hearing and the judgment debtor as established the denial to fair hearing in the supporting affidavit and that there is nothing in the record of proceedings which suggest that the applicant was granted fair hearing and he cited the case of **F. H.A. V. Kalajaiye (2010) 19 NWLR (pt 1226) 143 at 154 paras. C-G.**

The counsel also cited the case of **Ezeigwe V. Nwawulu (2010) 9 NWLR (pt 1183) 159 at 178 paras. D-E.** He also cited the case of **Nwokocha V. A.G. Imo State (2016) 8 NWLR (pt 1573) 141 at 146, paras. A-B** to the effect that parties must be given the opportunity to present their case.

The counsel submitted that the attributes of fair hearing is for the court to hear both sides, give equal opportunity and treatment to all parties and conducting the hearing in public and he cited the case of **Alimi V. Kosebinu (2016) 17 NWLR (pt 1542) p. 337 at 346 – 347, paras. E-H.**

The counsel submitted that justice was not done in the case as the judgment debtor was not allowed the opportunity to be heard and that the judgment debtor only becomes aware of this matter when it was served with the order nisi ad he cited the case of **Ezechukwu V. Onwu (2006) 2 NWLR (pt 963) 151** in support of fair hearing.

The judgment creditors/respondent filed a counter affidavit of sixteen paragraphs and deposed to the fact that all the processes leading up to the judgment sought to be enforced in this garnishee proceedings were served on the judgment debtor and the judgment of the Benue State High Court was delivered in favour of the judgment debtor and the Notice of Appeal was filed against the judgment, the record of appeal, the appellant's brief of argument were all served on the judgment debtor. It is stated that upon service of the processes on the judgment debtor, C.T. Mue Esq, the legal adviser of the Benue State chapter of the judgment debtor was engaged and briefed to handle the matter for the judgment debtor, and that C.T. Mue Esq represented the judgment debtor in the Court of Appeal, filed and adopted the judgment debtor's brief of argument in the Court of Appeal. It is stated that when the judgment of the Court of Appeal was delivered in their favour on the 9th day of June, 2020 C.T. Mue Esq was in court and took the judgment on behalf of the judgment debtor.

It is stated that they have initially instituted a garnishee proceeding before the court sitting at Apo when an order absolute was made against First Bank Nig. Ltd. to pay the sum of N41,689,306.66 out of the judgment debt into the counsel's account with Access Bank Plc and the balance plus the accrued interest and cost to be paid by Polaris Bank Plc.

It is stated that while First Bank of Nigeria Ltd paid the amount made absolute against her, Polaris Bank Plc appealed against the order and was successful hence this further garnishee proceedings to recover the balance. That the deponent knows for a fact that all the processes on the initial garnishee proceedings and the processes on the appeal that was filed against same were served on the

judgment debtor, and that one Nneoma Udo Asobinuanwu Esq appeared in court on behalf of the judgment debtor on the 24th June, 2021 when the ruling making the order nisi granted in the initial garnishee proceeding absolute was delivered.

It is stated that the information on the judgment debtor's supporting affidavit was given to the deponent by O.J. Otokpa Esq, one of the counsel to the judgment debtor, who had himself applied for and obtained all the processes in this matter and aware of the true facts on this matter and the deponent relies on all the exhibits attached to the motion exparte. In his written address, the counsel to the judgment creditor raised this issue for determination, thus:

Whether the application is competent before this Honourable Court and worthy of being heard?

The counsel drew the attention of the court to the fact that it should be noted that the garnishee proceeding is initiated to enforce the judgment of the Court of Appeal delivered in favour of the judgment creditor against the judgment debtor and that the information regarding the facts upon which the application is predicated, alleging fraud and non-disclosure of material facts and the assertion that the judgment debtor was not aware of the suit that led to the judgment are information given by Ochai Jacob Otokpa Esq, one of the counsel handling this case for the judgment debtor and said Ochai Jacob Otokpa Esq indeed signed, filed and appeared in court on the 10th January, 2023 for the judgment debtor and the same counsel had the exhibit PDP 2, applied for the certified true copy of the motion exparte pursuant to which the order nisi sought to be set aside was granted along with all the documents annexed thereto as exhibits and all the exhibits and the

documents annexed thereto were availed the counsel and that he pursued them before filing the application is evident by the deposition in paragraph 3(h) of the supporting affidavit.

The counsel submitted that the judgment of the Court of Appeal was attached to the motion exparte and exhibit I and in the judgment C.T. Mue Esq represented the judgment debtor, filed a respondent's brief of argument on behalf of the judgment debtor, appeared in Court and adopted his brief and argued it and on the day of judgment was delivered, the judgment shows that C.T. Mue Esq, appeared in Court and took the judgment on behalf of the judgment debtor and therefore the judgment debtor is aware of the judgment sought to be enforced and Ochai Jacob Otokpa Esq must surely have been aware of the filing the application by reason of his applying and obtaining the certified true copy of the motion and all other documents annexed thereto as exhibits.

The counsel submitted that the same counsel gave the false information in paragraph 3(c) of the supporting affidavit that the same judgment debtor was not aware of any proceedings leading to the judgment sought to be enforced and he cited Rule I of the Rules of Professional Conduct for the Legal practitioners 2007.

The counsel submitted that the judgment sought to be enforced subsist and it is subsisting and the judgment debtor is under a duty to obey same, and he cited the case of **Ngere & Anor V. Okuruket & Ors (2014) LPELR – 22883 (SC)** and submitted that in the instant case there is not shown to any appeal against the judgment or motion for stay of execution of the judgment and it is on record that the judgment debtor has paid part of the judgment debt vide an earlier garnishee proceeding, and the alternate prayer

for stay of execution has no plank upon which to stay and is liable to be dismissed.

The counsel submitted the judgment debtor can only be heard where there is irregularity on the proceedings with regards to the parties and the amount of judgment debt sought to be enforced and where there are no such irregularity observed by the judgment debtor, he is not to be allowed on the proceedings to frustrate the enforcement; and he cited the case of **Jenkins Duvie Giame Gupede V. Delta State House of Assembly & Anor. (2019) LPELR – 47441 (SC)** to the effect that by the combination of sections 83(2) of the Sheriffs and Civil Process Act and Order VIII Rule 8 of the Judgment Enforcement Rules, a judgment debtor after being served with order nisi can be heard by the court only if or where he observes irregularities in what is presented before the court by the judgment creditor and not to reopen issues settled in the judgment, he cannot be heard, and he cited **Archibong Beaches Ltd V. Attorney General Cross River State & Anor (2019) 48185 (CA)** in the instant case, the counsel submitted, it is not in respect to any irregularity with which is presented to the court in terms of parties and the judgment sum, and the judgment debtor not a party to the case at these stage of obtaining order nisi cannot apply to set aside, and he cited the case of **Mrs. Franscisca Fablo Amaran V. U.R.G.N Atlantic Airways & Ors (2018) LPELR-44786 (CA)**.

The counsel argued that these judgment debtor instead of to argued in respect of setting aside order nisi, went ahead to argue on the setting aside the judgment and thereby abandoned the prayers in the application and dwelled on urging the court to set aside the judgment, and he prayed to the court to dismiss the application and he cited the case of **Mr. Clement Chairman & ors. V. The**

Executive Governor of Plateau State & Ors (2016) LPELR – 47644 (CA).

The counsel submitted that the judgment sought to be enforced is a judgment of the Court of Appeal and this court has no jurisdiction to set aside the judgment of the Court of Appeal, and he urged the court to dismiss the application for being incompetent, and he cited the case of **Nigeria Deposit Insurance Corporation V. Quaketem Pharmacy Ltd. (2021) LPELR – 56165 (CA)** to the effect that this court cannot rescind the decision in a matter not decided by it and he urged the court to dismiss the application with substantial cost, and to make the order nisi absolute.

Thus, it is the contention of the judgment debtor/applicant that he was not aware of any of the proceedings leading to the judgment being enforced until the 13th day of December, 2022 when the bailiff of this court brought an order nisi of this court that he became aware, and it was after obtaining the processes that he got full particulars of the judgment being enforced and the judgment was obtained by fraud and suppression of crucial facts. That the judgment creditors mislead the court that delivered the judgment into believing that the judgment debtor was aware of the pendency of the suit leading to the judgment, while the judgment creditor contended that all the processes leading up to the judgment sought to be enforced in this garnishee proceedings were served on the judgment debtor and the judgment of the Benue State High Court was delivered in favour of the judgment debtor. That the Notice of Appeal filed against the judgment, have record of appeal, the appellant's brief of argument were all served on the judgment debtor, and upon the service of the above processes on the judgment debtor, C.T. Mue Esq, the

legal adviser of the Benue State chapter of the judgment debtor was engaged and briefed to handle the matter for the judgment debtor, and that C.T. Mue Esq represented the judgment debtor in the Court of Appeal, filed and adopted the judgment debtor's brief of argument in the Court of Appeal, and that when the judgment of the Court of Appeal sought to be enforced was delivered in the respondent's favour on the 9th June, 2020, C.T. Mue was in court and took judgment on behalf of the judgment debtor.

It is contended that the judgment creditors initially instituted a garnishee proceedings before this court sitting at Apo when an order absolute was made against the First Bank Nigeria Ltd to pay the sum of N41,689,306.66k out of the judgment debt into the respondent's counsel client account with Access Bank Plc and the balance plus the accrued interest and cost to be paid by Polaris Bank Plc, and that while First Bank Ltd paid the amount made absolute, Polaris Bank Plc appealed against the order and was successful hence this garnishee proceedings to recover the balance, and that all the proceedings and the processes in the appeal that was filed were served on the judgment debtor, and that one Nneoma Ndu Asobinuanwu Esq appeared in court on behalf of the judgment debtor on the 24th June, 2021 when the ruling making the order nisi absolute was delivered.

It is contended that the information in the judgment debtor's supporting affidavit was given to the deponent by O.J. Otokpa Esq, one of the counsel to the judgment debtor, who had himself applied for and obtained all the processes in this matter.

By the above assertions of the judgment creditors, it can be inferred that the judgment was aware of the judgment sought to be enforced as he initially succeeded

at the Benue State High Court was upturned on appeal by the Court of Appeal, Makurdi Division and C.T. Mue Esq appeared for the judgment debtor. The judgment creditors annexed the Certified True Copy of the record of proceeding of the Court of Appeal, Makurdi, and very glaring it can be seen the name of C.T. Mue Esq on the record appearing for the judgment debtor when the Court of Appeal was to deliver the judgment sought to be enforced, I looked at the record of proceedings of the Court of Appeal, and I have seen the name of C.T. Mue Esq appeared for the judgment debtor. See the case of **Nwankwo V. Abazie (2003) FWLR (pt 180) p. 1412 at pp. 1435-1436 paras. H-A and p. 1437, paras. B-C** where the Court of Appeal, Jos Division held that the record of proceedings of a court is presumed by law to be correct until the contrary is proved. It was also held by the Court of Appeal in the case of **Nwankwo V. Abazie (supra) at 1436** that where there is no evidence to the contrary, things are presumed to have been rightly and properly done. In the instant suit, it is uncalled for to the judgment debtor to claim that he was not aware of the judgment sought to be enforced by the judgment creditors, and I so hold.

Moreso, C.T. Mue Esq who appeared on behalf of the judgment debtor was served with the Notice of Appeal, Appellant's brief of argument and the record of Appeal, and the counsel appeared on behalf of the judgment debtor. See **Commissioner of Police V. Ayi (2005) All FWLR (pt 286) 682 at pp. 700 – 701, paras. H-B** where the Court of Appeal, Calabar Division held that it is sufficient appearance for a party who engages the services of a legal practitioner. The physical appearance of the appellant is not necessary. In the instant application, I hold

the view that the appearance of C.T. Mue Esq on behalf of the judgment debtor was sufficient.

It is in the counter affidavit that there was initial garnishee proceedings, and this is an information given by O.J. Otokpa Esq, one of the counsel to the judgment debtor and who obtained all the processes on this matter, and the deponent verily believed in the information, and O.J. Otokpa Esq was one of the counsel handling the matter for the judgment debtor and that O.J. Otokpa Esq informed the deponent that the judgment debtor was served with the Order Nisi from this court, and that was how he becomes aware of, and so, how could the judgment debtor said that he is not aware of the case as one of the counsel handling the matter on behalf of the judgment debtor.

Thus, from the above facts deposed in the affidavits, I so much agree with the averments of the judgment creditors that the judgment debtor was aware of the judgment sought to be enforced.

I also agree with the submission of the counsel to the judgment creditors that the applicant/judgment debtor should have put his application to set aside the order nisi where he observe an irregularities with regards to the parties and the amount of the judgment debtor and not that he was not being served with the processes of the judgment being sought to enforced. See the case of **Archibong Beaches Ltd. V. Attorney General, Cross-River State & Anor. (supra)**.

In the circumstances, the application to set aside the order nisi is refused and it is hereby made absolute against 16 garnishee, the Zenith Bank.

Hon. Judge
Signed
25/06/2024

Appearances:

S.O. Okpale Esq appeared for the judgment creditor. The 2nd applicant is in court.

O.J. Otokpa Esq appeared for the judgment debtor/applicant.
Joshua Ezezialu Esq for the garnishee.