

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

SUIT NO. FCT/HC/CV/1025/2018

M/11024/2022

DATE: 22/3/2024

B E T W E E N

MRS. CHRISTIANA EZINWANNE } **PLAINTIFF/JUDGMENT
CREDITOR**

AND

1. A.A. RANO NIG. LIMITED } **APPLICANT/JUDGMENT**
2. ALH. ABDULLAHI KABI AND } **JUDGMENT DEBTORS/**
SONS LTD. } **RESPONDENTS**
3. ALHAJI BALA USMAN }

1. UNITY BANK PLC } **GARNISHEES**
2. FIRST BANK OF NIGERIA PLC }
3. FIRST CITY MONUMENT BANK PLC (FCMB) }
4. UNITED BANK FOR AFRICA (UBA) }
5. GUARANTY TRUST BANK LTD. (GTBank) }
6. ZENITH BANK PLC }

R U L I N G

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Applicant in this case A. A. Rano Nigeria Limited ably represented by a Director with the name Mohammed Suleiman Ranovide a Motion on Notice with Motion No. M/11024/2022 pray this Court for the following orders;

1. An Order of this Honourable Court discharging the Order Nisi as it affects the Applicant and removing any lien placed on the Applicant's Zenith Bank Account Number 2003329421 or any other account maintained anywhere by the Applicant on ground of misrepresentation of fact.
2. An Order of this Honourable Court restraining garnishees more specifically the 6th Garnishee from transferring the sum of N3,500,000.00 (Three Million, Five Hundred Thousand Naira) only standing to the credit of the Applicant's Account no. 2003329421 domiciled with the 6th Garnishee.
3. An Order directing the Judgment Creditor to pay the sum of N500,000.00 (Five Hundred Thousand Naira) only as cost of filing, services and prosecuting this application due to the deliberate neglect of the Judgment Creditors' to specifically target the account of the

2nd and 3rd Defendants being the persons adjudged to be solely liable to pay the Judgment sum.

4. Such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is premised are as follows;

- (a) The Judgment Creditor institute Suit No. FCT/HC/CV/1025/2018 against the Applicant herein as the 1st Defendant and Alhaji Abdullahi Kabo & Sons Limited and Alhaji Bala Usman as the 2nd and 3rd Defendants respectively.
- (b) That the Applicant/1st Defendant appeared and defended the case and Judgment was delivered exonerating the Applicant/1st Defendant on the 31st March, 2021.
- (c) That Alhaji Abdullahi Kabi & Sons Limited and Alhaji Bala Usman sued as 2nd and 3rd Defendants were found to be liable for trespassing the Judgment Creditor's open space corner shop No. 1 at Plot No. PF 3.1 along Kuje – Gwagwalada Road by Ya'ashman Petroleum Nigeria Limited and were jointly ordered to pay N2,000,000.00 (Two Million Naira) only and N1,000,000.00 (One Million Naira) only as cost of purchase of the Judgment Creditor's shop and damages for the trespass they committed.
- (d) That following the foregoing development, the Judgment Creditor's Counsel A. Y. Abubakar approached one of the Applicant/1st Defendant's Directors Mohammed Suleiman Rano and requested for the payment of the Judgment sum.

- (e) That sometime in 2021 a conversation was held between the Judgment Creditor's Counsel and Barrister NasirSa'idu Counsel that represented the Applicant/1st Defendant at the lower Court wherein, the Judgment Creditor's Counsel was advised to face the 2nd and 3rd Defendant being the persons responsible for the payment of Judgment sum as ordered by the Court.
- (f) That despite the explicit order of the Court specifically directing only the 2nd and 3rd Defendants to pay the Judgment sum, the Judgment Creditor consciously failed and refused to narrow his garnishee application against the AlhajiAbdullahiKabi& Sons Limited and AlhajiBalaUsman as the 2nd and 3rd Defendants.
- (g) That the order nisi affecting the Applicant was based on the wrong facts presented before the Court which the Judgment Creditor is fully aware of.
- (h) That the Judgment wrongly labeled the Applicant as Judgment Debtor with clear mission to mislead the Court clearly against the spirit of the Judgment
- (i) That as a result of the wrong incomplete facts presented before the Court by the Judgment Creditor, the Court was misled to grant orders that directly affect the Applicant even when the Applicant was not adjudged a debtor by the Court.
- (j) That if the Court did not discharge the order as its affects the Applicant, the Applicant's funds domiciled in Zenith Bank Plc and other Garnishee will be attached to satisfy the Judgment which the Applicant is not liable.
- (k) That unless the Court restrain the 6th Garnishee and other garnishees, the money standing to the credit of the Applicant

domiciled with 6th Garnishee and other Garnishee will be transferred to satisfy the Judgment Debt.

- (l) That as a direct result of the Judgment Creditor's neglect to specifically garnish the accounts of AlhajiAbdullahiKabi& Sons Limited and AlhajiBalaUsman being the persons liable to upset the Judgment sum, the Applicant was constrained to again engaged the service of NasirSa'idu Esq. to prepare and file this application.
- (m) That sum of N200,000.00 (Two Hundred Thousand Naira) was paid as part payment of solicitor's fee with the understanding to balance N300,000.00 (three Hundred Thousand Naira) only upon completion of the case.

This Motion was brought pursuant to **Section 83(2) of the Sheriff and Civil Process Act and Order 8 Rule 8 of the Judgment Enforcement Rules.**

In support is a 5 paragraphs affidavit with three 3 (three) Exhibits attached Exhibits A, B and C.

Exhibit A is a copy of Judgment delivered by my brother Justice SalisuGarba on the 31st of March, 2021.

Exhibit B is a copy of the Certificate of Judgment and;

Exhibit C is a printout Receipt of payment to the Counsel to the Applicant.

Also, attached is a written address. While adumbrating in Court, Mr. Nasiru submitted that the Judgment sought to be enforced did not indict A. A. Rano nor concern A. A. Rano and did not know why A. A. Rano was joined in this Judgment enforcement as the A. A. Rano is not in any way indebted to the Judgment Creditor. He urged the Court to grant his application.

On the other hand, the Judgment Creditor's Counsel submitted that they have filed a counter affidavit of 13 paragraphs filed on 11th October, 2022. He relied on all the paragraphs. He adopted his written address as his argument and urged me to dismiss this application.

Adumbrating before the Court, he argued that there is no evidence before the Court that his account is under a lien as a result of the Nisi Order made by the Court as he urged the Court to allow him proceed with the garnishee procedure.

Both Learned Counsel in their written address submitted a lone issue for determination.

Accordingly to the Applicant's Counsel, the issue for determination is;

“Whether having regards to the Applicant's affidavit evidence and the annexed Exhibits, the Applicant is entitled to the reliefs reflected on the motion papers.”

On the other hands, the Respondents on his part, submitted that the issue to be resolved is;

“Whether the Applicant has by its affidavit in support of the application adduced sufficient facts to be entitled to the reliefs sought on the Motion papers”

With due respect to the Learned Counsel, they are saying the same thing though couched differently. I agree with both Learned Counsel that they are right and correct in their formation of the sole issue.

It is the submission of the Applicant’s Learned Counsel that he has placed sufficient and satisfactory facts to enable the Court exercise its discretion in the Applicant’s favour.

The law, as settled by a long list of authorities, is that a Garnishee proceedings is one by which a Judgment Creditor originates a third party proceedings against a person indebted to the Judgment Debtor to pay over directly to the Judgment Creditor such money as are due to the Judgment Debtor. A Garnishee proceedings is thus a procedure legally approved by law for enforcing a money Judgment by the seizure or attachment of the debt due and accruing to the Judgment Debtor which forms part of his money in the hands of a third party for attachment. Therefore in law, the onus placed on a garnishee would only be discharged where it successfully establishes that the account or accounts covered by the garnishee order nisi do not exist in its system or if it exists, it is in debt and not in credit or that it has a right of set off or lien which are due effective against the customer.

SeeUBN PLC v. BONEY MARCUS INDUSTRIES LTD. (2005) ALL F.W.L.R. (PART 278) 1037 at pages 1046 – 1047; FIDELITY BANK PLC v. OKWUOWULU (2012) L.P.E.L.R. 8497 (CA); CITIZENS INTERNATIONAL BANK v. SCOA (NIG.) LTD. (2006) 18 N.W.L.R. (PART 1011) 334.

In the instant case, the Applicant is not indebted to the Judgment Creditor as shown by Exhibits A and B to sustain the garnishee proceeding seeking to attach the Applicant's money in custody of the listed garnishees.

It is his humble submission that at the stage of the ex –parte application only two parties, i.e. the Judgment Creditor and the garnishee are involved in the proceedings. However, after the service of the order nisi on the Judgment Debtor, as in the instant case, the subsequent hearing envisage a tripartite proceedings in which the three parties are represented. He referred this Honourable Court to the following authorities.

- 1. UNION BANK OF NIGERIA PLC v. BONEY MARCUS INDUSTRIES LTD. & ORS. (2005) 13 N.W.L.R. (PART 943) 654;**
- 2. CHOICE INVESTMENTS LTD. v. JEROMNIMON (MIDLAND BANK LTD. GARNISHEE) (1981) 1 ALL ER 225 at 328;**
- 3. GUARANTY TRUST BANK PLC v. INNOSON NIG. LTD. (2017) L.P.E.L.R. – 42368 (SC).**

It is his further submission that by the annexed Exhibits A and B the Applicant is not adjudged as the debtor as confused by the Judgment Creditor, in the circumstance of this case, justice demands that the

Applicant who was erroneously and mischievously tagged as “Judgment Debtor” by the Judgment Creditor ought to be heard in such circumstance.

It is not cast on stone that a Judgment Debtor cannot be heard in garnishee proceedings. It is the Court that will determine whether he should be heard or not. The Supreme Court in the case of **GWEDE VS.DELTA STATE HOUSE OF ASSEMBLY & ANOR. (2019) L.P.E.L.R. – 47441 (SC)** held as follows;

“There appears to me that by a combination of Section 83(2) of the Sheriff 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. Why I say so is that at that stage, it is not an opportunity to reopen the case which Judgment has been entered. It is strictly for the enforcement of such Judgment. Thus, where the Judgment sought to be enforced is certain, in terms of the parties, the Judgment sum and the party adjudged the debtor, then the Judgment Debtor has nothing to say in the proceedings. However, where, as in this case, the Judgment sum is not certain and the party adjudged as the debtor is confused by the Judgment Creditor, I think that justice demands that the “Judgment Debtor” be heard in such circumstance. In other words, it is not cast on stone that a Judgment debtor cannot be heard in garnishee proceedings. It is the Court that will determine whether he should be heard or not. If the application of the Judgment Debtor before the Court is to reopen issues settled in the Judgment,

he cannot be heard. But if the application is to draw the attention of the Court to misleading facts put forward by the Judgment Creditor, there is nothing wrong with him being heard”

He persuaded the court by some Court of Appeal authorities in this matter including but not limited to **BARBEDOS VENTURES LTD. VS. ZAMFARA STATE (2017) L.P.E.L.R. – 42499, CA, NIGERIAN BREWERIES PLC VS. DUMUJE (supra)** Per Okoro JSC.

He then submitted that having regards to the fact that the Applicant is not adjudge debtor by the Court which fact was fortified by Exhibits A and B, this Honourable court has unfettered authority to make order setting aside the order nisi and discharging the lien placed on the accounts standing to the credit of the Applicant specifically domiciled with 6th Garnishee and other Garnishees. He recommended the ratio of the Court of Appeal in the case of **FBN VS. JACOB AGIDI (NIG.) LTD. (2018) L.P.E.L.R. – 44997 (CA)** where the Court held as follows;

“It is only the Court that can lift the lien placed on a debtor’s account. I am in fact inclined to reproduce the erudite reasoning of the learned trial Judge at page 126 to 127 of the record. It reads thus: “In other words, what is the legal effect of a lien placed on the Judgment Debtor’s money in the hands of the garnishee by the order nisi of court. It is the law that when a garnishee order is served on a garnishee it becomes obligatory on the part of the garnishee not to release the money attached by the order unless and until he is directed by the Court to do so. This obligation to obey the Court’s order supersedes the garnishee’s duty to repay the Judgment

Debtor the amount due to him. The garnishee now becomes the caretaker of the fund due to the Judgment Creditor on behalf of the bank. This view was endorsed by Lord Justice Bages and Lord Justice **ALKINES** in **JOACHIMSOMVS.SWISS BANK CORP. (1921) 2 kb 110.**

While the Judgment Debtors/Respondents' main argument and contention in their written address is, that the Applicant has not provided sufficient facts or credible evidence as to be entitled to the reliefs. They relied on **Section 131 of the evidence Act 2011** (as amended) the cases of **LADOJA VS. AJIMOB**I (2016) 11 N.W.L.R. (PART 1519) 88; **DANIEL VS. INEC** (2015) 9 N.W.L.R. (PART 1463) 113; **INTERDRILL (NIG.) LTD. VS.U.B.A. PLC** (2017) 13 N.W.L.R. (PART 1581) 52; **ADEFULU VS.OKULAJA** (1996) 9 N.W.L.R. (PART 473) 668 and **REAN VS.ASWANI TEXTILES LTD.** (1992) 3 N.W.L.R. (PART 227).

I have considered this simple application. I have also adverted to the 2 (two) Exhibits attached and the arguments of both Learned Counsel.

The most important question here is, why is the Applicant joined as a debtor in this garnishee proceeding? It is evident from the two Exhibits attached that is Exhibits A and B the Judgment of my brother Justice SalisuGarba and the Certificate of Judgment that the Judgment Debtors are 2nd and 3rd Defendants.

The same question continues to agitate my mind, what purpose is the Applicant going to serve in this garnishee proceeding? *Ab initio* is not

expected to be joined as a Judgment Debtor since he was not pronounced to be one by the Court.

This argument alone suffices and makes all the arguments of the Respondents worthless and unsustainable.

I agree in toto with the beautiful submission of the learned counsel to the applicant and without much ado, I find merit in this application and it is therefore granted.

For avoidance of doubt, prayers 1, 2 and 3 are hereby granted.

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S. B. Belgore
(Judge) 22/3/24