

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON THURSDAY, THE 23<sup>RD</sup> DAY OF MARCH, 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**  
**SUIT NO.: FCT/HC/M/8293/2020**  
  
**MOTION NO.: FCT/HC/M/10710/2022**

**BETWEEN:**

- 1. MRS MARGARET EBUTE**  
(Trading under and in the name of  
Fountain Gate Ventures)
- 2. EARTH CONSCIENCE (NIG.) LTD** **JUDGMENT CREDITORS**

**AND**

- 1. ISMAILA USMAN**
- 2. GOODYEAR INVESTMENT LTD** **JUDGMENT DEBTORS**

**AND**

- 1. FIRST BANK OF NIGERIA PLC**
- 2. UNION BANK PLC**
- 3. ZENITH BANK PLC**
- 4. GUARANTY TRUST BANK PLC**
- 5. UNITY BANK PLC**
- 6. ECOBANK PLC**
- 7. SKYE BANK PLC**
- 8. POLARIS BANK PLC**
- 9. FIDELITY BANK PLC**
- 10. UNITED BANK FOR AFRICA (UBA) PLC**
- 11. ACCESS BANK PLC**
- 12. FIRST CITY MONUMENT BANK PLC**
- 13. STANBIC IBTC BANK PLC**
- 14. STERLING BANK PLC**

## **RULING**

This Ruling is on the Notice of Preliminary Objection which the Judgment Debtors brought against the Garnishee Order Nisi which this Honourable Court made on the 7<sup>th</sup> of June, 2022.

By a Notice of Preliminary Objection with Motion Number M/10710/2022 dated and filed on the 16<sup>th</sup> of September, 2022, the two Judgment Debtors herein brought this application seeking the following relief:-

- 1. An Order of this Honourable Court setting aside the Garnishee Order Nisi for want of jurisdiction and abuse of Court process and the refusal of the Garnishee Order Absolute been sought by the Judgment Creditors.*

The grounds for the objection, as enumerated on the Notice of Preliminary Objection are that an appeal with Appeal Number CA/ABJ/644<sup>A</sup>/2014 is pending before the Court of Appeal, that there is a Motion for Stay of Execution of the Judgment sought to be enforced, that this Court lacks the jurisdiction to entertain this suit because of the absence of proof of service of the Garnishee Order Nisi on the Judgment Creditors and that the application

which culminated in the Garnishee Order Nisi of 7<sup>th</sup> of June, 2022 was an abuse of Court process.

In support of the Notice Preliminary Objection is a twelve-paragraph affidavit deposed to by one Regina Ochai who described herself therein as the Litigation Secretary in the law firm representing the Judgment Debtors. Three exhibits were attached to the affidavit. These are the Notice of Appeal filed on the 13<sup>th</sup> of August, 2014, the Motion for Stay of Execution filed at the Court of Appeal and the Respondents' Brief of Argument filed at the Court of Appeal. These exhibits are marked as **Exhibits AP1, AP2 and AP3** respectively. A written address also accompanies the Notice of Preliminary Objection.

Responding, the Judgment Creditor filed a 4-paragraph Counter-Affidavit in opposition to the Preliminary Objection. They also filed a 4-paragraph Further-Affidavit in support of their Counter-Affidavit in answer to the Judgment Debtors' Further Affidavit which the Judgment Debtor in answer to the Judgment Creditor's Counter-Affidavit. All the parties filed Written Addresses in support of their processes.

On the 8<sup>th</sup> of February, 2023, the parties herein through their respective Counsel adopted and argued their respective processes. This Court, after taking the arguments, adjourned for Ruling.

In determining this Notice of Preliminary Objection, I shall be adopting and modifying the two issues which learned Counsel for the Judgment Debtors formulated in their written address. The issues, as formulated by this Court, are: **“(1) Whether there was no valid service of the Garnishee Order Nisi on the Judgment Debtors; and, (2) Whether this garnishee proceeding is not competent in view of the pendency of an appeal filed on the 13<sup>th</sup> of August, 2014 against the Judgment of this Court coram Affen, J.(as he then was, now, JCA) delivered on the 26<sup>th</sup> of June, 2014 and the Motion for Stay of Execution of the said Judgment filed on the 26<sup>th</sup> of November, 2014?”**

On Issue One, which is on whether there was no valid service of the Garnishee Order Nisi on the Judgment Debtors, it must be stated at the very beginning that service is fundamental to every adjudication. It is core to the fundamental right to fair hearing. I have stated repeatedly that service of Court processes on the adverse party in a suit is intrinsic to the jurisdiction of the Court seised of the suit. In the *locus classicus* of ***Madukolu v. Nkemdilim (1962) 1 All NLR 587; (1962) 2 SCNLR 341***, the Federal Supreme Court per VaheBairamian FJ, established the following conditions as the touchstones for jurisdiction: (i) the Court must be properly constituted as regards numbers

and qualifications of the judex; (ii) the subject matter of the case must be within the Court's jurisdiction; and (iii) the case must have come before the Court through due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction. Proper service of originating Court processes and other processes of the Court pertaining to the suit is one of the conditions precedent that must be fulfilled before the Court can assume jurisdiction.

The importance of service of any process of court in any judicial proceeding cannot, therefore, be overemphasized. In the case of ***Peterside v. Odili (2022) 17 NWLR (Pt. 1860) 549 S.C. at 584, paras. D-G***, the Supreme Court underscored the importance of service in the following words: ***“The object of service is to give notice to the defendant of the claim against him and where legally there is need to serve a process, the failure to serve such process as required by law is a fundamental breach and any person affected may ex debito justitiae apply to have any order made against him set aside. Service of court process is a precondition to vesting jurisdiction in the court. Where notice of proceedings is required, failure to notify any party is a fundamental omission which entitles the party not served and against whom any order is made in his absence to have***

***the order set aside on the ground that a condition precedent to the exercise of jurisdiction for the making of the order has not been fulfilled.”***

The Judgment Debtors had averred in paragraphs 11 and 12 of the affidavit in support of their Notice of Preliminary Objection and paragraphs 2(g) and (h) of their Further Affidavit that the Judgment Creditors did not serve them with the Garnishee Order Nisi. In fact, the deponent specifically states that the 2<sup>nd</sup> Judgment Debtor was not served with the Garnishee Order Nisi while the 1<sup>st</sup> Defendant, though living at No. 2 Saviri Street, Maitama, Abuja for over two years, was purportedly served at No 4 Bour Close, Wuse II, Abuja. Their Counsel drew the attention of the Court to the statutory provisions and judicial authorities which make the service of Garnishee Order Nisi on the Judgment Debtors mandatory. Counsel cited section 83(2) of the Sheriffs and Civil Process Act, 2004 and cases such as ***Wema Bank Plc v. Brastem-Sterr (Nig.) Ltd (2011) 6 NWLR (Pt. 1242) 58, Sunnet Systems Ltd v. Nigeria Electricity Regulatory Authority Commission (2014) LPELR-223967 (CA), Emporion West Africa Ltd v. Aflon Ltd & Anor (2014) LPELR-2297 (CA)*** and the improperly cited ***Cross River State Forestry Commission v. Anwan (2012) LPELR*** which this Court will not countenance, as it is not the

duty of the Court to embark on a voyage of discovery for litigants. Counsel had insisted, on the authority of the ***Emporion case***, that a company cannot be served by substituted means.

On the other hand, the Judgment Creditors swore in paragraph 3(g) of their Counter-Affidavit and paragraph 3(b) of their Further Affidavit that they served the Judgment Debtors with the Garnishee Order Nisi. They attached **Exhibit B**, which is, the affidavit of service of the processes on the Judgment Debtors, to the Further Affidavit as the proof of service of the Garnishee Order Nisi.

The provision of the law is clear. Section 83 (2) of the Sheriffs and Civil Process Act S6 Laws of the Federation of Nigeria, 2004 provides thus: “***At least fourteen days before the day of hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.***” Order 46 Rule 3 contains the following stipulations: “***Unless the court otherwise directs, an Order under Rule (1) to show cause shall be served: (a) on the garnishee personally, at least 15 days before the appointed day before the consideration of the matter; (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.***”

It is, therefore, abecedarian that a Garnishee Order Nisi must be served on the Judgment Debtor as a matter of requirement of law. See the case of ***F.B.N. Plc v. Nazia and Bros. (Nig.) Ltd. (2023) 1 NWLR (Pt. 1864) 201 S.C. at 224, paras. E-H*** where the Court held that ***“By section 83 of the Sheriffs and Civil Process Act, particularly by section 83(2), service of garnishee proceedings on the judgment debtor and garnishee(s) is mandatory. The hearing notice is a part of the proceedings. Failure to serve processes on parties, where required, is generally fatal to adjudication.”***

In order to determine whether the Judgment Debtor was served with the Garnishee Order Nisi, I pored through my records. I found that this Court made an Order on the 13<sup>th</sup> of October, 2022 granting leave to the Judgment Creditor to serve the processes in the garnishee proceedings on the Judgment Debtors ***“by leaving/pasting same in a conspicuous place at the last known address of the 1<sup>st</sup> Judgment Debtor, to wit: at No. 4 Bour Close, Wuse II, Abuja, FCT and for same service on the 1<sup>st</sup> Judgment Debtor to be deemed as proper service on the 2<sup>nd</sup> Judgment Debtor since the 1<sup>st</sup> Judgment Debtor is a director of the 2<sup>nd</sup> Judgment Debtor.”***

In the file is also a certificate of service duly certified by the Bailiff of this Court stating that he served the Judgment Debtors by pasting the processes at No.

4 Bour Close, Wuse II, Abuja on the 18<sup>th</sup> of October, 2022 at 3pm. There is another Affidavit of Service sworn at the High Court Registry, Kano, by a Bailiff of the High Court of Kano State on the 19<sup>th</sup> of January, 2023 showing that Goodyear Investment Ltd, that is, the 2<sup>nd</sup> Judgment Debtor, was served with the enrolled Order for substituted service and the hearing notice for the 8<sup>th</sup> of February, 2023 hearing date. Attached to this affidavit are the enrolled Order for substituted service and the hearing notice.

The Judgment Debtors have in their Reply on Points of Law submitted that ***“...by the combined effect of the provision of Order 7 Rule 8 [of] of the Rules of this Honorable Court and the authority [of] Emperion West Africa Ltd v. Aflon Ltd & Anor (supra), it is our humble submission that the purported service of the garnishee order nisi on 2<sup>nd</sup> Judgment Debtor/Objector been a company by substituted means is not proper service and therefore robs this Honourable Court of the requisite jurisdiction to entertain the garnishee proceeding.”***

Order 7 Rule 2 of the Rules of this Court provides that ***“an officer of Court or process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified as provided by Order 6 Rule 2(3).”*** Rule 8 deals with service of Court processes on

corporations and companies. The Rule provides that “***subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process requiring personal service may be served on a registered company, corporation or body corporate, by delivering at the head office or any other place of business of the organization within the jurisdiction of the Court.***”

The statutory provision regulating service on a registered company, corporation or body corporate is the Companies and Allied Matters Act 2020. Section 104 which is the relevant section provides that “***a Court process shall be served on a company in the manner provided by the rules of court and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company.***” Since Order 7 Rule 8 makes its provisions subject to the provisions of the statute regulating service of documents on a company, it follows that section 104 of the Companies and Allied Matters Act 2020 shall apply in the event of a conflict between the Act and the Rules of Court. In other words, in so far as the question is the mode of service of Court processes on a company, the expression “subject to” used at the beginning of Order 7 Rule 8 limits the scope of the operation of that Rule and vests

preeminence in that regard in section 104 of the Companies and Allied Matters Act 2020. It is the mode of service provided under that section, and no other, that must apply. See ***Leadership Newspapers Group Ltd v. Mantu (2017) 2 NWLR (Pt. 1548) CA 15 at pages 49 – 51 paras G – D.*** see also ***Tukur v Governor of Gongola State (1989) 4 NWLR (Pt. 117) 517 per Nnaemeka-Agu, JSC; Idehen v. Idehen (1991) 7 SCNJ 196 per Nwokedi, JSC; LSDPC v. Foreign Finance Corp. (1987) 1 NWLR (Pt. 50) pages 413 – 461;*** and ***Clerk Ltd v. Inland Revenue Commissioners (1973) 2 All E.R. 513 at 520 per Megarry, J.***

On the other hand, section 104 of the Companies and Allied Matters Act could be interpreted thus: in so far as the documents to be served are Court processes, the Court processes must be served in the manner provided by the Rules of Court while other documents may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company. Order 7 Rule 8 of the Rules of this Court stipulates that subject to any statutory provision regulating service on a registered company, etc, every originating Court process requiring personal service may be served on a registered company, etc by delivering at the head office or any other place of business of the organization within the jurisdiction of the Court. The combined

effect of these provisions is that though section 104 of the Companies and Allied Matters Act 2020 ought to apply in respect of service on the 1<sup>st</sup> Defendant, it has, however, permitted the Rules of this Court to apply. And the provisions of the Rules in this regard are explicit and unambiguous. Service must be done by “**delivering at the head office or any other place of business of the organization within the jurisdiction of the Court.**” Section 728 of the Companies and Allied Matters Act 2020 demands that the registered or head office of a company is “**the office to which all communications and notices to the company may be addressed.**”

It is instructive to note that Order 7 Rule 11 makes provision for substituted service and stipulates how substituted service can be done. However, both the Companies and Allied Matters Act 2020 and the Rules of Court are silent on substituted service of court processes on companies. In a long list of judicial authorities, the Court of Appeal and the Supreme Court have consistently held that service on a corporate entity must be done in terms as prescribed by law for service of Court process on legal *persona* and that corporate entities cannot be served by substituted means. See ***Savannah Bank (Nig.) Plc v. Saba (2018) 14 NWLR (Pt. 1638) 56 CA at 84 – 85, paras F – B; Mark v. Eke (2004) 5 NWLR (Pt. 865) SC 54 per***

***DahiruMUSDapher, JSC (as he then was); and R.F.G. Ltd v. Skye Bank Plc (2012) LPELR-7880 (CA), (2013) 4 NWLR (Pt. 1344) 251.*** In ***Skye Bank (Nig.) Plc v. Okpara (2015) 17 NWLR (Pt. 1489) CA 613*** the Court of Appeal reiterated this established principle when it tersely held that “***a registered company cannot be served vide substituted means.***”

I have reflected on the case of ***Emperion West Africa Ltd v. Aflon Ltd & Anor (2014) LPELR-2297 (CA)*** from which learned Counsel quoted copiously. I have taken note of the decision of the Supreme Court in the case of ***Mark & Anor v. Eke (2004) 5 NWLR (Pt. 865) 54.*** This is a case which bears an uncanny resemblance with the present case before me. Both cases have a company and its alter-ego as parties. An Order of substituted service was made by the Court in both cases. As in ***Mark v. Eke, (2004) supra*** where the Bailiff stated that “*I pasted upon the Defendants’ door*”, the Bailiff of this Court in this case before me certified that the “*Court Order ... was served on the Defendants via pasting at No. 4 Bour Close, Wuse II, FCT, Abuja...*”

In my attempt to distinguish ***Mark v. Eke (2004), supra*** from the case before me, I studied the enrolled Order for substituted service. The main prayer is for “*an Order of substituted service to serve the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors the Order Nisi made by this Honourable Court on 7<sup>th</sup> June, 2022 and any other*

*Court process in this matter by leaving/pasting same in a conspicuous place at the last known address of the 1<sup>st</sup> Judgment Debtor, to wit; at No. 4 Bour Close, Wuse II, Abuja, FCT and for same service on the 1<sup>st</sup> Judgment Debtor to be deemed as proper service on the 2<sup>nd</sup> Judgment Debtor since the 1<sup>st</sup> Judgment Debtor is a director of the 2<sup>nd</sup> Judgment Debtor.”* This Court granted this relief as per the terms of the relief.

I am not oblivious of the fact that ***Mark v. Eke (2004), Supra*** was decided on the basis of Rules of Court that were similar to the 2004 Rules of this Court. Order 11 Rule 8 of the now abrogated Rules provides that ***“Where a suit is against a corporate body authorized to sue and be sued in its name or in the name of an officer or trustee, the document may be served, subject to the enactment establishing that corporation or company or under which it is registered, as the case may be, by giving the writ or document to any director, secretary, or other principal officer, or by leaving it at the corporate office.”*** The enactment establishing companies as at the time the case of ***Mark & Anor v. Eke (2004), supra*** was decided was the Companies and Allied Matters Act, 1990 and the applicable Rules of this Court was the 2004 Rules.

Though the Act and that Rules are no longer in existence, the deposition of the Bailiffs in Abuja and in Kano that they served the 2<sup>nd</sup> Defendant by pasting and not in the manner prescribed by the Rules of this Court for service on companies is conclusive proof that the service was invalid. It is impossible for me to hold otherwise. In the case of ***Adalma Tankers Bunkering Services v. C.B.N. (2022) 11 NWLR (Pt. 1842) 405 S.C. at 438 – 439, paras F – A***, the Court held that ***“Where personal service is ordered, a process must be served personally. Where substituted service, either by pasting at the last known abode of the person required to be served or by publication in a newspaper, is ordered, any other service which is not in accordance with the clear and unambiguous language of the court would be ineffectual. Bailiffs are officers of the court. Any dereliction of duty in the discharge of their duties will cause unnecessary delay in the administration of justice. A false return of service on the part of the bailiff may lead to an attempt to deceive the court. That in itself is an abuse of that order.”*** In the spirit of *stare decisis*, the judicial pronouncements which I have reproduced above as they touch on this subject are sacrosanct and unshakeable; and, that is, companies cannot be served by substituted means.

In view of this, therefore, I hereby resolve Issue One in favour of the 2<sup>nd</sup> Judgment Debtor. The Order of this Court made on the 13<sup>th</sup> of October, 2022 for substituted service of the Garnishee Order Nisi made on the 7<sup>th</sup> of June, 2022 on the 2<sup>nd</sup> Judgment Debtor is hereby set aside. The substituted service of the Garnishee Order Nisi on the 2<sup>nd</sup> Judgment Debtor made pursuant to the Order of substituted service is hereby set aside. The Bailiff of this Court is hereby ordered to serve the 2<sup>nd</sup> Judgment Debtor properly in line with the provisions of Order 7 Rule 8 of the Rules of this Court.

As for the 1<sup>st</sup> Judgment Debtor, the service on him is valid. This is notwithstanding the fact that he swore in paragraph 12 of the affidavit in support of the Notice of Preliminary Objection that he got to know of the pendency of the garnishee proceeding through the bank. Similarly, that the “...*Garnishee Order Nisi is alleged to have been pasted at No. 4 Bour Close, Wuse 2, Abuja,*” while he has been “*resident at No. 2 Saviri Street, Maitama, Abuja...*” cannot avail the 1<sup>st</sup> Judgment Debtor in his quest to invalidate the service of the Garnishee Order Nisi insofar as it affects him.

In ***Peterside v. Odili (2022) 17 NWLR (Pt. 1860) 549 S.C. at 572, para. H; 577, para. C; 578, paras. B-D***, the Court held that “***Service gives notice to a defendant of the claims against him, so he may be aware of them, and***

***take steps to resist, if he wants to. In the instant case, the appellant was served with the court processes at his house, and the misdescription of his address as No.1 First Street, rather than No. 1 First Close, in the said old GRA, off Forces Avenue, Port Harcourt was an unintentional blunder that did not lead to a miscarriage of justice, because he was served and was made aware of the case against him.”***

As long as the 1<sup>st</sup> Judgment Debtor is aware of the pendency of the garnishee proceeding *vide* the means adopted to serve him, the service on him stands. Accordingly, Issue One is hereby resolved against him.

On the second issue, that is, whether this garnishee proceeding is not competent in view of the pendency of an appeal filed on the 13<sup>th</sup> of August, 2014 against the Judgment of this Court *coram* Affen, J. (as he then was, now, JCA) delivered on the 26<sup>th</sup> of June, 2014 and the Motion for Stay of Execution of the said Judgment filed on the 26<sup>th</sup> of November, 2014, it is important to expound on the nature of garnishee proceedings. Garnishee is a form of enforcement of Judgment of the Court. It must be stated here that garnishee proceedings are *sui generis* proceedings governed by the relevant provisions of the Rules of the Courts as well as the Sheriff and Civil Process Act. See ***Portland Paints & Products Nigeria & Others v. Olaghere & Others (2012)***

**LPELR-7941 (CA) at p. 22, paras A - D; Ibrahim v. Ecobank (2019) LPELR-7969 (CA) a pp. 13 – 21, paras C – D.** Garnishee proceeding is provided for and regulated by Order 46 of the Rules of this Court and sections 83, 84, 85, 86, 87, 88, 89, 90, 91 and 92 of the Sheriffs and Civil Process Act. Though it is a proceeding that is principally between the Judgment Creditor and a third party known as the Garnishee, the rules of fair hearing enables the Court to hear the Judgment Debtor on the return date to make presentations on why the Order Nisi should not be made absolute. See **Sterling Bank Plc v. Kal Vegas Kapuchino Limited & Anor (2021) LPELR-56472(CA) at pp. 6-8, paras. E-A, per Tsammani, JCA; Zenith Bank v. National Trucks Manufacturing Ltd & Others (2020) LPELR-50941 (CA) at pp. 10 – 11, paras B – Aper Daniel-Kalio, JCA; Ahmadu Bello University Teaching Hospital & Another v. Star Global Marketing Limited & Another (2017) LPELR-43213 (CA).**

Garnishee proceedings as a form of enforcement of judgment of a Court must be distinguished from enforcement of judgments by means of writ of execution. The Court of Appeal in **United Bank for Africa Plc v. Ekanem (2010) 6 NWLR (Pt. 1190) 207 at 220, para A** was effulgent when it stated that “**Execution of a judgment entails the seizure and sale of chattels of**

***the judgment debtor under warrant of court. It is different from attachment of debt owed a judgment debtor by a third party who is not indebted to the judgment creditor.”***

The Supreme Court shed ample light on garnishee proceeding as a process of enforcement of the Judgment in the case of ***Emmanuel Oboh & 1 Other v. Nigeria Football League Ltd & 2 Others (2022) 5 NWLR (Pt. 1823) 283 S.C. at 313, paras. C-E*** when it explained that ***“Garnishee proceedings are a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor, which form part of his property available in execution. It is a specie of execution of adjudged debt for which ordinary methods of execution are inapplicable. By this process, the court has power to order a third party to pay direct to the judgment creditor, the debt due or accruing from him to the judgment debtor, as much of it as may be sufficient to satisfy the amount of judgment and the costs of the garnishee proceedings.”***

The Judgment Debtor has brought this application seeking for an Order of this Court setting aside the Garnishee Order Nisi made on the 7<sup>th</sup> of June, 2022 for want of jurisdiction and for being an abuse of Court process and the refusal of the garnishee Order Absolute been sought by the Judgment

Creditors. The basis of the application, as I have pointed out earlier, was that it was made when an appeal and an application for stay of execution were pending at the Court of Appeal against the Judgment of this Court. The Judgment Debtors attached three exhibits which I have identified earlier in the course of this Judgment.

I have reflected on the authorities Counsel have cited in their written addresses. There has never been doubt that the Courts have always insisted on protecting the *res* of a suit once an appeal has been lodged against same. The idea behind this judicial attitude is the need to ensure that the Judgment of the appellate Court is not rendered illusory and nugatory as a result of the dissipation of the *res* by virtue of the enforcement of the judgment.

Furthermore, I have studied the facts of this case as illuminated by the parties before me in their respective affidavits for and against this application and the exhibits attached thereto. It is instructive to note that the Judgment sought to be enforced was delivered on the 26<sup>th</sup> day of June, 2014 by this Honourable Court coram Affen, J. (as he then was, now JCA). The Judgment Debtors filed an appeal against the Judgment on the 13<sup>th</sup> of August, 2014 and a Motion on Notice for Stay of Execution on the 26<sup>th</sup> of November, 2014. Briefs were exchanged between the parties at the Court of Appeal. In the

proceedings of 6<sup>th</sup> of December, 2021, this Motion on Notice was withdrawn by Counsel for the Judgment Debtors and accordingly struck out by the Court of Appeal. The Court of Appeal thereafter adjourned the appeal to the 15<sup>th</sup> of March, 2022. The Judgment Debtors contended that the appeal is still alive at the Court of Appeal, having been adjourned to the 6<sup>th</sup> of February, 2023. There is, however, no documentary proof of this assertion in the form of hearing notice or record of the Court of Appeal. That is the factual finding of this Court.

In this case, however, this Court has already made the Order of Garnishee Order Nisi. The idea is to protect the *res* so that the Judgment Debtor cannot exhaust it before the return date. Though the Judgment Debtor may be an active party during the stage of the Garnishee proceeding to make Absolute a Garnishee Order Nisi, the extent of that participation, as I have stated earlier, is limited. See ***Amaran v. Virgin Atlantic Airways & Others (2018) LPELR-44786 (CA) at pp. 15 – 27, paras A – B and Barbedos Ventures Ltd v. Zamfara State Government & Anor (2017) LPELR-42499 (CA) at pp. 21 – 28, paras A – E.***

I do not think that the intendment of the provisions of the law which allows the Judgment Debtor to be heard is for the Judgment Debtor to bring an

application urging the Court to set aside a Garnishee Order Nisi it has made to preserve the property. It would have been a different kettle of fish if the application seeks for an Order of the Court staying the making of a Garnishee Order Absolute, or if it is challenging the liability of the Judgment Debtor to the payment of the sum stated on the Garnishee Order Nisi or if it is disputing the sum stated on the Garnishee Order Nisi. In fact, the Court was emphatic and unsparing when it held in **United Bank for Africa Plc v. Ekanem (2010) 6 NWLR (Pt. 1190) 207 at 227, paras. D-E** that ***“A motion by a judgment debtor to stay execution of a garnishee order is absurd. The appellant in the instant appeal being a judgment debtor was a mere busy body meddling in affairs that do not concern it.”***

Moreover, the Judgment Creditors have been deprived from enjoying the fruits of their litigation for the nine years that the appeal has lingered at the Court of Appeal. It would seem that the Judgment Creditors have kept the appeal against the Judgment of this Court delivered since the 26<sup>th</sup> day of June, 2014 hibernating in the docket of the Court of Appeal as a bar against attempts to enforce the Judgment of this Court.

Learned Counsel for the Judgment Debtors has cited the case of ***Union Bank v. Edamkue & Anor (2003) LPELR-6190 (CA)*** in support of his submission

that the Court ought not to have made the Garnishee Order Nisi in view of the pendency of the appeal against the Judgment sought to be enforced. I do not think this Judgment is applicable in this case, since Counsel has not shown that the said Judgment relates to the enforcement of judgment by way of a garnishee proceeding. In ***United Bank for Africa Plc v. Ekanem (2010) 6 NWLR (Pt. 1190) 207 at 224, paras C – D***, the Court held that ***“There is a distinction between the enforcement of a judgment by a writ of execution, and by garnishee proceedings. Consequently, the existence of an application for stay of execution of a judgment does not preclude a judgment creditor from seeking to use garnishee proceedings to enforce the judgment.”***

The same principle also applies where there is a pending appeal. In ***Sterling Bank Plc v. Kal Vegas Kapuchino Limited & Anor (2021) LPELR-56472(CA) at pp. 39 – 40, paras. F-F***, the Court of Appeal per Tsammani, JCA stated the position of the law thus:-

***“The issue of a pending appeal is a non sequitur because it is the law that an appeal against the judgment which is sought to be enforced by the garnishee proceeding, cannot operate as a stay of the garnishee proceeding. A garnishee proceeding is***

***targeted at the garnishee, therefore, the fact that the judgment debtor has appealed against the judgment cannot stop the garnishee proceedings. See U.B.A V Ekanem (2010) 2 NWLR (Pt.1177) 181, F.A.A.N. v Greenstone Ltd (2009) 10 NWLR (Pt.1150) 624 and Sheriff v P.D.P (2017) 14 NWLR (Pt. 1585) 212. Though it sounds attractive as contended in the case of Nigerian Breweries Plc v.Dumuje (2016) 8 NWLR (Pt.1515) 536 per Ogakwu, JCA, that where there is an appeal against the judgment sought to be enforced, accompanied by a motion for stay of execution, it should stay further hearing of a garnishee proceedings, the law as it stands today, to my knowledge, is that the judgment debtor will not be allowed to take up any process for the purpose of frustrating a garnishee proceeding. Invariably, a garnishee cannot plead that there is a pending appeal against the judgment sought to be enforced by way of garnishee proceedings.”***

Having been fortified by the most recent pronouncement of the Courts on this subject, I hereby resolve the second issue I have formulated herein against the Judgment Debtors.

In all, I hereby overrule this Notice of Preliminary Objection. It is liable to be dismissed and is accordingly dismissed. For the sake of clarity, this Court further iterates its earlier Order that the Bailiff of this Honourable Court should serve the 2<sup>nd</sup> Judgment Debtor properly as stipulated by the Rules of this Court in Order 7 Rule 8 as the method of service of Court process on a company or corporation, namely, by ***“delivery at the head office or any other place of business of the organisation within the jurisdiction of the Court.*** This garnishee proceeding shall be stayed until the 2<sup>nd</sup> Judgment Debtor has been served with the Garnishee Order Nisi which this Court made on the 7<sup>th</sup> of June, 2022 and this Court is satisfied that the service is proper. For the avoidance of doubt, the Garnishee Order Nisi made by this Court on the 7<sup>th</sup> of June, 2022 still subsists. This matter is hereby adjourned to the 18<sup>th</sup> day of May, 2023, for report of service of the Garnishee Order Nisi on the 2<sup>nd</sup> Judgment Debtor.

This is the Ruling of this Honorable Court delivered today, the 23<sup>rd</sup> of March, 2023.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**23/03/2023**