

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

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 13**  
**CASE NUMBER : SUIT NO: CV/231/2024**  
**DATE: : WEDNESDAY 6<sup>TH</sup> OCTOBER, 2024**

**BETWEEN:**

**NOBLE SHEIK & SHEHU GLOBAL NIG. LTD. JUDGMENT**  
**CREDITOR/** } **RESPONDENT**

**AND**

**1. TEXICOM INT'L GENERAL TRADING LTD. JUDGMENT DEBTOR/**  
 } **RESPONDENT**

**2. NIGERIA DEPOSIT INSURANCE CORPORATION GARNISHEE/**  
**(Official Liquidator of Heritage Bank Plc.)** } **APPLICANT**

## **RULING**

This Ruling is at the instance of Garnishee/Applicant who approached this Honourable Court vide a Motion on Notice dated 2<sup>nd</sup> of September, 2024 and filed on 18<sup>th</sup> September, 2024; praying this Court the following Orders:

1. An Order of this Honourable Court striking out this Suit for want of jurisdiction.
2. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance of this application.

The grounds upon which this application is brought are as follows:-

1. The Judgment Creditor instituted this action to enforce the Judgment sum against the Judgment Debtor. The Judgment Creditor obtained Garnishee Order Nisi against the Garnishee prior to the revocation of its license. The Garnishee is no under liquidation by Nigeria Deposit Insurance Corporation (NDIC).
2. By virtue of Section 69(3) of the Nigeria Deposit Insurance Corporation Act, 2023, a Garnishee Order Nisi or Absolute or

Attachment, Sequestration, Distress, or Execution shall not be made against the Applicant in respect of any Judgment Debt or other liabilities owed by such insured institution or any other Judgment Debtor; or against any bank account or assets or effects of the failed insured institution.

In support of the Application is a 14 paragraph affidavit deposed to Olufemi Alayande Oladokun, Assistant Manager in the Litigation Unit of the Legal Department of the Applicant. It is the deposition of the Applicant, that on the 3<sup>rd</sup> day of June, 2024, the Central Bank of Nigeria revoked the banking license of the Heritage Bank and pursuant to the provisions of the Banks and Other Financial Institution Act, 2020 appointed the Corporation as Liquidator of the Heritage Bank and liquidation of Heritage Bank has since commenced.

That the corporation has commenced the liquidation of Heritage Bank and is in the early stages of liquidating, gathering, and ascertaining the assets of Heritage Bank, and settling the liabilities of the depositors of Heritage Bank Plc.

That the suit is a garnishee proceeding seeking to enforce the judgment sum against the account of the Judgment Debtor with Heritage Bank (now in liquidation).

That by virtue of Section 69(3) of the Nigeria Deposit Insurance Corporation Act, 2023, a Garnishee Order Nisi or Absolute or attachment, sequestration, distress, or execution shall not be made against the Applicant in respect of any judgment debt or other liabilities owed by such insured institution or any other Judgment Debtor; or against any bank account or assets or effects of the failed insured institution.

That the corporation is committed to ensuring that the Judgment Creditor enjoys the fruit of its judgment. However, this must be done by due process of the law. The Judgment Creditor is therefore mandated to file its claims with the Corporation in line with Section 57 of the Nigeria Deposit Insurance Corporation (NDIC) Act. The corporation would then process the payment of the judgment debt in line with the priorities of claim stipulated by bank insolvency law in force in Nigeria, and that the Judgment sum in this suit is yet to be satisfied. That the grant of an Order Absolute by this Honourable Court in this matter would be in contravention of the law.

That grant of an Order Absolute by this Honourable Court in this matter would be in contravention of the law.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

***Whether or not having regard to Sections 57, 69, 72 and 73(3) of the Nigeria Deposit Insurance Corporation Act, 2023, this Honourable Court ought to grant the prayers of the Applicant in this application.***

It is the submission of learned counsel, that this Honourable Court ought to grant a Garnishee Order Nisi or Absolute in light of the provisions of Sections of the Nigeria Deposit Insurance Corporation (NDIC) Act. The provisions of Section 69(3) of the Nigeria Deposit Insurance Corporation (NDIC) Act poses a clear and unequivocal prohibition on the levying and enforcement of any execution in the form of Garnishee or howsoever on the account or assets of any financial institution in liquidation.

Learned counsel also submits, that the moment a bank's license is revoked, and it enters into liquidation, there are far reaching implications on any suit or action pending in respect of that bank. One of those implications relevant to the instant case is that of Judgment debts obtained against such a bank. Section 73(3) of the Nigeria Deposit Insurance Corporation (NDIC) Act.

Learned counsel contends, that it is not in doubt that Heritage Bank, an insured institution within the meaning of the Nigeria Deposit Insurance Corporation (NDIC) Act is in liquidation. It is also not in doubt that the Judgment debt was not satisfied prior to the commencement of the liquidation of Heritage Bank. It is therefore counsel submission, that by virtue of the provision above, the Garnishee Order Nisi ought to not be made Absolute against the Corporation as against the account of the Judgment Debtor which now forms part of the assets of Heritage Bank which are currently being traced and gathered in line with liquidation activities.

It is the contention of learned counsel, that while the Corporation does not deny the liability of Heritage Bank and the Judgment Debtor towards the Judgment Creditor, the said liability falls under that of a Creditor and therefore ranks below the deposit liabilities which must be completely settled before the liabilities of the Creditors are addressed. It therefore follows that an Order mandating the Corporation to pay any monies into the registry of the Court to satisfy the Judgment debt is in clear contradiction with Section 72 of the Nigeria Deposit Insurance Corporation (NDIC) Act and counsel urge this Honourable Court to so hold.

Learned counsel further contends, that the Nigeria Deposit Insurance Corporation (NDIC) Act clearly provides for situations such as the instant one before this Honourable Court. It provides in Section 73(3) that the assets of an institution in liquidation such as the instant garnishee that is liable to any Judgment Creditor for a Judgment sum that has not been satisfied prior to the commencement of liquidation is exempt from the enforcement of such Judgment debt.

Learned counsel also submits, that refusing this application would occasion a departure from the law and a disruption in the process of the orderly liquidation of the garnishee and the settlement of liabilities of the Garnishee in a manner to ensure stability and depositor confidence in the Nigeria Financial System. Counsel therefore urge this Honourable Court to resolve all issues formulated in favour of the Applicant and strike out this suit.

On their part, Judgment Creditor/Respondent filed reply on points of law to Judgment Creditor/Applicant's Motion on Notice dated 2<sup>nd</sup> September, 2024 but filed on 18<sup>th</sup> September, 2024, wherein they formulated a sole issue formulated for determination by the Applicant.

***"Whether or not having regard to Sections 57, 69, 72 & 73(3) of the Nigeria Deposit Insurance Corporation Act, 2023, this Honourable Court ought to grant the prayers of the Applicant in this Application."***

It is the submission of learned counsel, that having regards to the provisions of the Act referred to above, this application lacks merit and ought to be dismissed outright, and with substantial costs, for a number of reasons.

Learned counsel further submits, that the Applicant lacks the locus standi to make the application in the first place. It must first of all be stressed that this is not a Suit; it is rather a post-judgment application initiated to give effect to the Judgment of this Court which was delivered on 4<sup>th</sup> April, 2024. It needs also be stressed that not even the original Garnishee (Heritage Bank Plc.) or the Applicant herein was a party to the original suit, over which this Honourable Court is already functus officio the main issues in controversy. The best that can be said of the herein Applicant is that it came into the proceedings by operation of law, having stepped into the shoes of the Garnishee in line with the requirements of the Nigeria Deposit Insurance Corporation



(NDIC) Act, and its acts are therefore limited to those which the original Garnishee could have legitimately performed.

Learned counsel contends, that for instance, Section 69(3) of the Act is cited and relied upon by them. This subsection cannot be read in isolation of other subsections of the Section, or in isolation of the other provisions of the Act itself. When that is done, it is to be seen that the said Section 69 itself has seven (7) subsections in all and, in them, insured institution is mentioned fifteen (15) times, that is to say, the Act is referring to debts or judgment against the bank in liquidation (insured institution), not a depositor whose funds (or judgment debt) had already been attached by an Order of Court made long before the bank fell into liquidation.

Learned counsel further contends, that it must be stressed that from processes filed in this proceedings, the said Judgment debt had been attached since 29<sup>th</sup> April, 2024, when the Garnishee Order Nisi was served on the Garnishee. The Judgment debt had therefore been set aside for the present purpose in pursuance of that Order. It goes without saying that any dissipation of the Judgment sum by the Garnishee would therefore be in flagrant and utter contempt of that Court Order. It follows also from there

that the Nigeria Deposit Insurance Corporation (NDIC) would only also be acting in contempt of the same Court Order if it fails or refuses to remit the Judgment sum, which has already been set aside for that purpose, to the Judgment Creditor whenever required to do so. This is because equity regards as done that which ought to be done.

The other provision of the Act cited and relied upon by them are hereby reproduced in full;

**Section 57**

- 1. The Corporation shall cause notice to be given by advertisement in print and electronic media requiring all depositors of the insured institution facing liquidation to forward their claims to the Corporation.***
- 2. The Corporation acting as liquidator of a failed institution shall have power to –***
  - a. realize the assets of the failed insured institution; and***
  - b. enforce the individual liability of the shareholders and directors in accordance with Section 76 of this Act.***

**3. *The Corporation acting as liquidator –***

- a. shall pay to the Corporation such portion of the amount realized from such liquidation as it shall be entitled to receive on account of its subrogation to the claims of depositors and shall pay to depositors and other Creditors the net amount available for distribution to them;***
- b. may pay dividends on proved claims at any time after the expiration of the period of advertisement made under subsection(1) and no liability shall attach to the Corporation itself by reason of such payment or for failure to pay dividend to a Claimant whose claim is not proved.***

**4. Every Judgment debt against an insured institution under liquidation or the Corporation as liquidator of an insured institution which is not subject to an Appeal shall be filed with the liquidator as an unsecured Creditor claim which shall be admitted to proof in accordance with the rules and regulations**

**government administration of claims payment issued by the Corporation.**

- 5. Where a depositor of an insured institution is also a Judgment Creditor in respect of that deposit, such depositor shall elect to file his claim either as a depositor or as a Creditor but where he submits a certified true copy of the Judgment evidencing the judgment debt, he shall be deemed to have elected to file his claim as a Judgment debtor and not a depositor.**
- 6. The interest application on any Judgment debt against an insured institution under liquidation as stated in the Judgment which is filed as proof of claim with the Corporation as liquidator of such institution shall cease to be applicable from the date the Corporation commenced liquidation of such insured institution.**
- 72. Where an insured institution is unable to meet its obligations or suspends payment or where its management and control has been taken over by the Central Bank of Nigeria or where its licence has been**

***revoked, the assets of the insured institution shall be available to meet all its deposit liabilities and such deposit liabilities shall have priority over all other liabilities of the insured institution.***

***73. (1) Where the Corporation has commenced liquidation of an insured institution and applies to the Court to stay of any suit, application, proceedings, execution, attachment or action pending or instituted in any Court by or against such insured institution or the Corporation, the Court shall, whether or not leave had earlier been granted to commence or proceed with such action or matter under this Act or any other law, grant such stay as to all parties.***

***2. Where the Corporation has assumed control of an insured institution under the Act and applies to the Court for stay of any suit, application, proceedings, execution, attachment, or action pending or instituted in any Court by or against such insured institution or the Corporation, the Court shall, whether or not leave had earlier been granted to***

***commence or proceed with such action or matter under this Act or any other law, grant such stay as to all parties until the Corporation relinquishes control of the insured institution.***

- 3. Where an insured institution is in liquidation any Judgment sum obtained against the insured institution by a Judgment Creditor that has not been satisfied prior to commencement of liquidation or that is obtained after commencement of liquidation shall not be enforceable against the assets of the insured institution facing liquidation or the Corporation.**

At paragraph 4 of the written address counsel for the Garnishee reproduced the provision of Section 73(3) of the Act and argues that by that provision, the Order cannot be made Absolute against the assets of the liquidated bank.

Learned counsel submits, that this is a misinterpretation of that provision. The words used in that provision are plain and unambiguous, and must be given their plain and ordinary meaning. When a literary interpretation is given to that provision, it is to be seen that the provision is talking about a judgment

obtained against the bank in liquidation itself, and not a Judgment obtained before the bank fell into liquidation against a customer whose funds are in custody of the bank. This is because in the interpretation Section of the Act, ***"insured institution"*** as used under the Act, is defined as ***"all financial institutions licensed or authorized to accept deposits from the public in accordance with the provisions of the Banks and other Financial Institution Act No. 3, 2020."*** See also ***INTEGRATED FINANCE LTD. VS. NIGERIAN PORTS AUTHORITY & ANOR (2019) 17 NWLR (Pt. 1700) 131, at 163 – 164.*** This provision is therefore inapplicable to the present proceedings.

Learned counsel argued, that section is rather saying that where the bank finds itself in a situation such as this, its assets should be utilized to meet its obligations to depositors, and the case at hand is not an issue of a depositor demanding to be given his or her funds in custody of the bank. Indeed, that provision demands that the Nigeria Deposit Insurance Corporation (NDIC) has a duty to use the assets of the liquidated bank to pay the judgment sum to the Judgment Creditor. This provision does not, therefore, operate to preclude the Nigeria Deposit Insurance Corporation (NDIC) from discharging the Judgment debt from the funds of the

Judgment Debtor if the order is made Absolute; it rather mandates the Nigeria Deposit Insurance Corporation (NDIC) to do so if the Order is made Absolute.

Contrary to their argument at paragraph 7 and 8 of the written address, a distinction must be drawn between a Creditor's or depositor's claim against the bank and the situation at hand. The present situation is one where the Judgment Debtor's funds under the custody of the Bank had already been attached vide the Garnishee Order Nisi made on 25<sup>th</sup> April, 2024, that is almost two (2) months before the bank fell into liquidation. Stretched further, indeed the attachment of the Judgment sum by the Garnishee Order on that date must be seen as a claim that had already been satisfied before the bank fell into liquidation, and the delay in releasing the funds to the Judgment Creditor came about because the Order had not yet been made Absolute as required by law. This is because equity regards as done that which is to be done.

It is the contention of learned counsel, that it is necessary to state that the resistance put up by the Nigeria Deposit Insurance Corporation (NDIC) in this case is totally ultra vires their statutory responsibility as liquidator and garnishee. The only proper party



to put such resistance is the Judgment Debtor against whom the judgment is. But, unfortunately, this is not the case. The Judgment Debtor has not filed any appeal against the Judgment, neither has it raised any objection to making the Order Absolute. The Nigeria Deposit Insurance Corporation (NDIC) therefore lacks the locus standi to raise such issues and argument.

On their part, Applicant filed reply on points of law of Judgment Creditor's response. It is the submission of learned counsel, that for all intents and purposes, once the Garnishee Absolute is granted, the garnishee itself becomes a Judgment Debtor. Counsel therefore find it illogical for the Judgment Debtor to claim that the garnishee has no locus standi or legal right to protect in this suit on the basis that the garnishee was not a party to the Originating Suit and counsel urge this Honourable Court to so hold.

Learned counsel also submits, that Nigeria Deposit Insurance Corporation (NDIC) Act creates a special relationship between the Garnishee and the Judgment Debtor such that the Judgment Creditor's argument of lack of locus standi is rendered ineffective. One of the powers of the Applicant as liquidator of Heritage Bank is the succession of rights, title, powers and privileges of an

account holder of a bank in liquidation. Section 62(h) of the said Act provides that one of the powers of the Nigeria Deposit Insurance Corporation (NDIC) as liquidator is;

***"By operation of law succeed to all rights, title, powers and privileges of the insured institution, and of any shareholder, depositor, officer, account holder or director of such institution with respect to the institution and the assets of the institution but shall not be held personally liable for the debts or liabilities of such institution."***

Learned counsel further submits, that the arguments of the Judgment Creditor are not grounded in a firm understanding and application of the law. The Judgment Creditor went as far as implying that the Sections the Applicant relied upon are incongruous to the matter at hand.

The Judgment Creditor seems to be under a misconception as to the nature of the deposits of the Judgment Debtor with Heritage Bank. It is trite in banking law that the relationship with a Banker and its customer is that of a debtor and a Creditor. This was the position in ***B.O.N LTD. VS. SALEH (1999)9 NWLR (Pt. 618) 331*** was cited.

Learned counsel contends, that once the customer deposits money with the bank, the funds become an asset of the bank and the bank becomes indebted to pay such deposits to the customer only on demand.

Learned counsel further submits, that it is crystal clear that what the Judgment Creditor perceives as assets of the Judgment Debtor is in fact an asset of Heritage Bank and therefore Sections 57, 69, 72 and 73 which offer protection to assets of a bank in liquidation, are very much relevant to this matter and counsel urge this Court to so hold.

### **COURT:-**

I have read the well marshalled-out arguments of the Applicant as contained in the written address in support of application seeking to have, in the words of the Applicant, **"dismiss the suit of the Claimant"**, on the one hand, and the legal argument by way of reply filed by the Judgment Creditor/Respondent and a further reply filed by the Applicant on the other hand.

The gamut of the contention of the Applicant is anchored on the provisions of Sections 73(3) and 69(3) of the NDIC Act which have been well discussed in the preceding part of this ruling.

Suffices to mention that this instant action before this Court is a Post Judgment step taken by Judgment Creditor to realize the fruits of his Judgment, which is monetary Judgment, pursuant to which an Order Nisi was made on the 25<sup>th</sup> April, 2024 attaching the Judgment sum in the account of the Judgment Debtor warehoused in Heritage Bank which has now been taken over by Nigeria Deposit Insurance Corporation (NDIC) in view of the fact that the operation license of the Bank had been withdrawn by Central Bank of Nigeria (CBN).

Before I make any further progress, I will like to dwell on what a Court shall do when faced with issue of Interpretation.

It is trite law that in the interpretation of statutes, a Court must not give an interpretation that would defeat the intention and purpose of the law makers, and it should adopt a holistic approach and interpret the provisions dealing with a subject matter together to get the true intention of the law makers.

Above was echoed in the cases of ***ABIA STATE UNIVERSITY, UTURU VS. OTOSI (2011) 1 NWLR;***

***FRIDAY & ORS VS. GOV. ONDO STATE & ANOR (2012) LPELR – 7886 (CA).***

The argument of learned counsel for the Applicant dovetails to the issue of Interpretation, whether or not by the Interpretation Act, what counsel for the Applicant seems to see as affecting the account of a Customer of a Bank is the same as the person of the Institution of the Bank.

Whereas I am in agreement with counsel to the Applicant to the extent that what counsel is thinking in his head and on his mind is true with relation to the bank, counsel must be able to understand that there is a world of difference when you are talking execution as it relates to a customer in this very situation.

What more, the very amount of money, i.e Judgment sum, has already been admitted by the Garnishee vide Exhibit "E" suggesting that the said Judgment sum has already been set aside in satisfaction of the Judgment debt. The said letter was written to the owner of the account i.e the Judgment Debtor upon receipt of Order Nisi by the Garnishee Bank (Heritage Bank) before the license was later withdrawn by Central Bank of Nigeria (CBN).

The said letter which Judgment Creditor/Garnishor exhibited to its ***"counter affidavit to the Garnishee's affidavit to show cause"*** which is hereunder re-produced, says it all, as follows:-

***"May 3<sup>rd</sup>, 2024.***

***Texicom International General Trading Ltd.  
House B1 Stallion Court,  
42 Blantyre Street,  
Wuse 2, Abuja – FCT.***

***Dear Sir,***

***NOTIFICATION OF RECEIPT OF GARNISHEE ORDER NISI  
GRANTED IN SUIT NO. CV/231/2024***

***Reference is made to the above captioned suit.***

***Please be informed that we are in receipt of the attached Garnishee Order Nisi dated 25<sup>th</sup> April, 2024 granted by the High Court of Federal Capital Territory. The said Order attaches funds standing to your credit in the Bank's custody to satisfy the judgment sum stated in the Order Nisi (copy enclosed).***

***As a garnishee institution, the Bank is under a legal obligation to make necessary disclosures to court confirming the balance(s) in your account(s) whilst also maintaining a 'post – no – debit'/lien 5100421426 on your account(s) pending the determination of the garnishee proceedings. By implication, your account(s) has/have been temporarily restricted pending the determination of the matter.***

***Be further informed that access to the balance in your account in excess of the judgment sum is not restricted.***

***We thank you for your understanding.***

***Yours faithfully,***

***For: Heritage Bank Plc.”***

It is the law that once an Order Nisi is served on a named Garnishee, what is then expected of such a Garnishee is to confirm whether money belonging to a named Judgment Debtor is in their custody or not, this, Garnishee shall do by filing affidavit to show cause within two (2) weeks upon receipt of service of Order Nisi.

See ***UBN PLC. VS. BONEY MARCUS IND. LTD. NSCQR Vol. 23 (2005) Page 1 (4429).***

It is on record that Nigeria Deposit Insurance Corporation (NDIC) which took over the erstwhile Heritage Bank Plc., filed application seeking to dismiss the Suit of the Judgment Creditor/Garnishor, on the one hand, and an affidavit to show cause in line with the law regulating Garnishee proceedings on the other hand.

It is instructive to note that Nigeria Deposit Insurance Corporation (NDIC), in their affidavit to show cause, neither denied nor

admitted the fact that the said Judgment Debtor i.e Texicom International General Trading Limited had any money in its account with Heritage Bank Plc., but rather raised the fact that they are a Regulator, Insurer, Liquidator of Banks and other Financial Institutions and contended that an Order shall not be made against them.

It is important to note Section 69(3) heavily relied on by Nigeria Deposit Insurance Corporation (NDIC) cannot be read or interpreted in isolation.

It must be read ejusdem debts or Judgments against the Bank and not an individual customer whose funds arising from Judgment of Court had been attached, as in this case, long before the Bank's license was withdrawn.

It is similarly necessary to state at this juncture that the argument of learned counsel for Nigeria Deposit Insurance Corporation (NDIC) with respect to Section 72 of the NDIC Act is misconstrued, in that it is not the assets of the Bank that is required to be disposed-off to offset the Judgment debt here, No.

The said money by the contents of the letter afore-reproduced, has already been attached and money set aside before Nigeria Deposit Insurance Corporation (NDIC) took over the said Bank.



Therefore, the argument of the Applicant after applying to be joined in this matter and indeed being joined in this matter is one that is being unnecessarily legalistically unrealizable. You cannot now seek to approach the Court to want to turn the law on its head, drag it in such a way and manner that it would bleed to the point that a man that has already secured an Order of Court where monies have already been attached awaiting delivery will now be subjected to the whims and caprices of the Nigeria Deposit Insurance Corporation (NDIC). That is not the intendment of the drafters of that particular provision of the law.

Therefore, without much ado, the interpretation given by the Applicant's counsel to the said provisions of the Nigeria Deposit Insurance Corporation (NDIC) Act were improperly given having fallen short of reason and reasoning, this application is **hereby refused and dismissed.**

The next thing I shall do is to ensure that the said **Order Nisi** which was made and mentioned in the preceding part of the body of this Ruling is given efficacy by making same Absolute against the said Applicant/Garnishee.

Accordingly, the said **Order Nisi** is **hereby made Absolute** in the amount of **N945,000,000.00 (Nine Hundred and Forty-Five Million Naira)**.

A draft in the said amount shall be raised in the name of the Chief Registrar of this Court and forwarded to the Chief Registrar within five (5) working days.

I need mention at this point, that having attached the said Judgment sum in the account of the Judgment Debtor warehoused at Heritage Bank Plc., regardless of the fact that NDIC has taken over the said Bank, the attached Judgment sum of **N945,000,000.00 (Nine Hundred and Forty Five Million Naira)** remained attached, as anything done in utter disregard of the said Order Nisi remain contemptuous and NDIC should not be seen to be in frontal and flagrant violation of the Order so made.

***Justice Y. Halilu***  
***Hon. Judge***

***6<sup>th</sup> November, 2024***

**APPEARANCES**

B.T. Jija, Esq. – for Judgment Creditor/Applicant/Respondent.

Bassey E., Esq. – for Judgment Debtor/Respondent.

Abdullahi I.T., Esq. – for Applicant/Garnishee.