

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI COURT 10, FCT, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE**

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/BW/CV/83/22
DATE: 14/3/2024**

BETWEEN:

OJUKWU CHIKAOSOLU.....PLAINTIFF
(TRADING UNDER THE NAME AND STYLE OF
OJUKWU CHIKAOSOLU & CO.)

AND

ALL PROGRESSIVES CONGRESS..... DEFENDANT

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

The Claimant/Judgment Creditor had applied to this Court to make the Order Nisi absolute. In the circumstance of the pending appeal at the Court of Appeal, Abuja Division, this Court had ordered a stay of proceedings on **14/07/2022** pending the determination of the appeal in Appeal No: **CA/ABJ/713/2022**.

On **25/09/2023** while I was sitting at Election Petition Tribunal, the Claimant/Judgment creditor filed into the Registry of this Court a process termed “*Plaintiff Affidavit of facts notifying this Honourable Court of the pendency of appeal at the Supreme Court*”. Upon my return I directed all pending files be brought and they were all treated, hence hearing notices were issued against **18/01/2024** and served on all surviving parties.

On **18/01/2024**, Learned SAN for the Claimant informed the Court of the Affidavit of facts dated and filed on **25/09/2023**. He stated that it is principally to inform the Court that an appeal in the substantive matter has been entered in the Supreme Court Appeal No: **SC/CV/870/2023** together with a motion for stay and injunction pending in the Supreme Court as can be seen in the **Exhibits “C”** and **“D”** while the Notice of Appeal is **Exhibit “A”**. Learned SAN for the Claimant then applied as follows:

- (a) That the Court gives effect to the notice of discontinuance against all the Garnishees except 1st and 6th Garnishees as the notice was actually filed on the **05/06/2023** and served on all of them.
- (b) That this Court stays proceedings in this case pending the hearing and determination of the appeal in the Supreme Court.

At this point, learned Counsel for the Defendant/Judgment Debtor vehemently submitted that the application is incompetent, and the court lacks jurisdiction as same is an abuse of Court process. Counsel dwelt on stay of execution and submitted that by Order 45 rule 1 of the Rules of this court as well as Order 61 rule 1, the application for stay of proceedings and execution must be by way of motion on notice. He hung his point on fair hearing arguing that same should be refused. Counsel informed the court that he agrees with the facts contained in the Affidavit of facts that the appeal was allowed, and this suit was struck out for being incompetent. He further agreed that there is a pending motion for stay of proceedings and injunction pending appeal at the Supreme Court, as such the Supreme Court is seized of the proceedings. He placed reliance on the claimant's Affidavit of facts particularly paragraph 4 (b-c), he cited order 8 rule 11 of the Rules of the

Supreme Court and relied in **EZEOKAFOR VS. EZELO (1999) LPELR – 1209 SC 10; AKINYEMI VS. SOYANWO (2006) 13 NWLR (PT. 998); AGU VS. ANYALOGU (2002) 14 NWLR (PT. 787) 294-306; BRAITHWAITE VS. S.C.B. NIG. LTD (2012) 9 NWLR (PT. 1305) 304.**

He urged me to decline jurisdiction as this is not the competent forum for such application in view of paragraph 4 (d) of the claimant/judgment creditor's affidavit of facts and Exhibit D.

Learned SAN in his response submitted that the defendant/judgment debtor's arguments are misconceived as they got the hearing notice of this proceedings like the defendant without more. That on the authority of **INCORPORATED TRUSTEES OF NIGERIA GOVERNORS FORUM VS. AGI SAN & 2 ORS. 2023 60655 LPELR (CA)**, that Garnishee proceedings is a different suit from the judgment that gave rise to it. That the proceedings pending before this Court is to show cause why the order *Nisi* should not be made absolute. Counsel stated that his application was not for stay of execution of the judgment of the court of appeal but to stay proceedings of the Garnishee. He further submitted that the court can take cognizance of the affidavit of facts and take a decision and there is no breach of fair hearing.

The 6th Garnishee on his part has nothing to urge the court.

RESOLUTIONS

The task before this court is a simple one, whether it can proceed with the Garnishee in the light of the Affidavit of facts before it? In resolving this issue, it is imperative to state that the court is *functus officio* in respect of the substantive suit as the surviving application before it is the Garnishee proceedings to show cause and cause has been shown. On the return date, the duty of court is to either make the order *nisi* absolute or discharge the Garnishee.

In the instant proceedings, this court upon being satisfied of the pendency of appeal Number **CA/ABJ/713/2022**, without necessarily determining the motion for stay filed by the defendant/judgment debtor held that it would no longer exercise jurisdiction due to the pendency of the appeal. The Court is now satisfied on the admission of the parties and upon affidavit of facts that the appeal has been disposed off, as such its proceedings are restored.

The next question is should it proceed to enforce the judgment of the Court of Appeal by striking out the Garnishee proceedings or like it ordered earlier allow the Supreme Court seized with the appeal to determine the contents of **Exhibit 'D'** and appeal Number **SC/CV/870/2023**?

I have read Agu's case *supra* on the meaning of "to be seized of" (Court of Appeal). I have equally seen **BRAITHWAITE VS. S.C.B (Supra)** equally on the effect of the court being seized of appeal. While Akinyemi's case deals with execution of Judgment and cited with approval **EZEOKAFOR VS. EZEILE (1999) NWLR (PT. 619) 513**.

All the authorities cited by the Defendant/Judgment debtor support the contention that it is only the Supreme Court that can decide the issue of execution of the judgment of the Court of Appeal, I agree. The authorities equally agree that the Supreme Court is fully seized of the appeal and the applications pending therein, I equally agree.

That being the case, I cannot proceed to entertain the applications capable of changing the position of this Court as it stood on **14/07/2022**. It therefore follows that the Orders of this court made on **04/07/2022** and **14/07/2022** which are order *nisi* directing and

commanding the Garnishees to do all the acts on the face of the enrolled Order remains intact as well as order staying proceedings remains intact pending now the determination of appeal number **SC/CV/870/2023**. Anything short of it will lead to judicial anarchy. The garnishees must respect the orders of this court pending the outcome of the pending appeal at the Supreme Court else they become liable to whatever that court decides. There is nothing about fair hearing to be addressed in the instant as parties extensively addressed the Court on whether it can proceed or not, fair hearing per Niki Tobi JSC (now of the blessed memory) is not a magic wand. This court cannot close its eye to the processes of the Supreme Court. I say no more.

This is the Ruling of the Court on the oral arguments taken before me on **18/01/2024**.

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S. B. Belgore
Judge (14/3/24)

Appearance of Counsel:

Chikaosolu Ojukwu SAN with Ebere Nwanya (Mrs.) for the Judgment Creditor/Applicant.

Mustapha I. Abubakar for the Defendant.

O. Usman for the 6th Garnishee, UBA PLC.