

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI-ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN  
MOTION NO: M/2051/2022**

**BETWEEN:**

**PROF. SOTONYE F. AMAKIRI\_\_\_JUDGEMENT CREDITOR/APPLICANT  
(Applying through his lawful Attorney, Ugwueze I. Oduegbu Esq.)**

**AND**

- 1. CHIEF EMMANUEL OKEY EFOBI\_\_\_\_\_JUDGMENT DEBTOR/RESPONDENT**
- 2. FOBY ENGINEERING COMPANY LIMITED\_\_\_\_\_GARNISHEE/RESPONDENT**

**RULING**

The applicant herein filed this motion on notice dated the 17<sup>th</sup> February, 2022 and seeks for the following reliefs:

1. An order for the issuance of writ of execution for judgment order of ₦7,612,864.49k only, court order of ₦1,800,000.00 on the judgment debtors and or Garnishee landed property of No. 121, Road III, Police Housing Estate, Kurudu in the FCT, Abuja or any other of their immovable properties found in Abuja and or in any state of the Federal Republic of Nigeria including Anambra State. And for the sum of Four Million, Six hundred and seventy thousand naira (~~₦4,670,000.00~~) naira only for legal fees, compilation, filing of motion on notice and service, ₦580,000 transport (flight from Port Harcourt to Abuja and back and intra-city transport), N350,000, Hotel accommodation for two weeks at Thirty-Five thousand (~~₦35,000~~) per day equals to ₦490,000.00 and cost of appearance of counsel in the proceedings for issuance of writ of attachment, ₦250,000.00 application for police protection order, ₦350,000.00 transport and care of five policemen for execution, ₦250,000.00 transport and care of three of

the bailiffs of this Honourable Court to levy execution ~~₦~~350,000.00 only, totaling the sum of Seven Million, two hundred and ninety thousand (~~₦~~7,290,000.00) naira only; and for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The motion is supported by five paragraphed affidavit and a written address of counsel, and attached to the motion are:

- a. Enrolled Court Order of the Magistrate Court of River State with No. PMC/211/2011;
- b. Certificate of judgment of the Magistrate Court of River State which was certified on the 20<sup>th</sup> day of December, 2019;
- c. Another Court Order of the District Court of the Federal Capital Territory, Abuja Wuse Zone II, Abuja;
- d. Notice of claim to attached property issued by the High Court of the FCT;
- e. Complaint made to the Chief Registrar, High Court of Justice, Abuja made by Dr. Sarah E. Efobi;
- f. Proof of ownership certificate of motor with registration number CX 541 GGE;
- g. Proof of ownership Certificate of motor with registration number CX 544 APP.
- h. Photocopy of the vehicle Delivery Way Bill;
- i. Vehicle Release and Delivery Checklist with No. 0001589;
- j. A letter written to Professor Sotonye Amakiri by Ugwueze I. Oduegbu Esq undated.

The respondent filed a counter affidavit of thirty-one paragraphs in opposition to the application on the 28<sup>th</sup> June, 2022 with the following documents:

- a. Notice of appeal dated the 15<sup>th</sup> January, 2022 filed at High Court of Rivers State of Nigeria;
- b. Motion on Notice filed at the Chief District Court of the FCT Abuja;
- c. Proof of Ownership of Motor with Registration number CX 544 APP;
- d. Proof of Ownership of Motor with Registration Number, CX 541 GGE;
- e. Invoice with No. 02035;
- f. Vehicle Release and Delivery Checklist with No. 000589;
- g. Enrolled Court Order of the District court of the Federal Capital Territory, Abuja;
- h. Judgment Order of the Magistrate Court of Rivers State with number PMC/211/2011;
- i. Inventory and Notice of Sale;
- j. Notice of Execution of the Judgment Order;
- k. Motion on Notice filed at the Chief District Court of the FCT, Abuja in a case with No. CV/80/2020.

The motion is accompanied by a written address of counsel.

The applicant filed a further and better affidavit in support of the motion on notice and reply on points of law.

It is in the affidavit in support of the motion that the judgment creditor/applicant served judgment against the judgment debtor/respondent on the 27<sup>th</sup> March, 2018 at the Port Harcourt Magistrate Court who failed to pay and that the bank account of the judgment debtor in all Nigeria banks were garnished but no money was recovered.

It is deposed to the fact that thereafter, Foby Engineering Company Ltd was garnished and ordered to pay the judgment sum and the cost of garnishees, all totaling the sum of ₦7,972,865.49 only by the Magistrate Court via garnishee order absolute because the judgment debtor/1<sup>st</sup> respondent is the founder, owner and managing director of the garnishee/2<sup>nd</sup> respondent (which they failed to pay).

It is stated that the judgment certificate from Port Harcourt regarding the matter was later domesticated to be the FCT Magistrate Court judgment and award of One Million, eight hundred thousand Naira as cost via the orders of Chief District Judge, Elizabeth Jawu Wonni, sitting at Court 8 at the Chief District Court, Wuse Zone II, FCT, Abuja, and that the execution of the moveable properties of the respondents in this application was effected on the 1<sup>st</sup> December, 2021, by the bailiffs of this Honourable court to realize the content of sub-paragraph(d) above wherein the judgment debtor physically manhandled and assaulted Barr. Ugwueze I. Oduegbu and threatened to kill him as a pointer of the place of residence and properties of the respondents to the bailiffs of this Honourable Court and that three extremely old vehicles belonging to the respondents were attached by the bailiffs which total market value is less than two million naira.

It is stated that the respondents and their agents have filed court processes and also deposed affidavits that the said attached vehicles do not belong to the respondents and that some of the said processes filed "Notice of claim to attached property" are bound together as EXH. 'C'.

It is stated that all efforts to find and levy execution on any other moveable properties of the respondents proved futile within FCT Abuja and the entire Nigeria, and that the

last resort is the immoveable properties of the respondents wherever be found in Nigeria especially their property at No. 121, Road III, Police Housing Estate, Kurudu in the FCT, Abuja.

It is stated that the respondents are the owners of No. 121, Road III, Police Housing Estate, Kurudu in the FCT Abuja, Nigeria. That the judgment creditor/applicant now applies for writ of execution of the immoveable properties of the respondents and as a last hope of the applicant to recover the said total judgment sum (supra) and that by the provisions of Sheriffs and Civil Process Act, it is only the High Court can order the execution of the immoveable properties of the respondents and that the respondents have not only failed to pay for the sums ordered but have also frustrated and continue to frustrate all efforts of the judgment creditor to enforce same and enjoy the fruit of his judgment.

It is stated that the garnishee and the judgment debtor are urgently planning to sale the landed property of No. 121, Road III, Police Housing Estate, Kurudu in the FCT, Abuja Nigeria and travel abroad finally.

In his written address, the counsel raised this issue for determination is thus,

**Whether this Honourable Court can grant this application?**

The counsel quoted the provisions of section 44 of the Sheriffs and Civil Process Act which provides that where the judgment has been obtained in a Magistrate's Court execution shall not issue of Magistrate's Court against the immoveable property but shall issue out of the High Court upon the conditions and in the manner prescribed, and by virtue of the above law and situation on the ground, it is High Court can order the attachment of the immoveable

properties of the respondents so that the judgment creditor would realize and finalize the judgment execution of the Magistrate Court's judgment.

In their counter affidavit, the respondents denied what is contained in paragraphs 2(a), 2(b), 2(c), 2(e), 2(f), 2(g), 2(h), 2(i), 2(j), 2(k), 2(l), 2(m) 20, 3, 4 and 5 of the affidavit in support of the motion, and that the deponent is not in a position to either admit and deny the facts contained in paragraph I of the said affidavit.

It is stated that contrary to paragraph 2(a) of the affidavit the judgment sought be enforced has been appealed on the ground that same was a nullity and appeal is vigorously provided at the high Court of Rivers State and will soon be set down for hearing.

It is stated that upon being informed of the judgment that had been domesticated by the FCT Magistrate Court and the deponent requested for his lawyer to apply to set it aside as well as apply to study execution of the judgment, and the applications are still pending before the court that made the judgment and are yet to be determined.

The deponent stated that he is currently occupying the premises at Police Estate, Kurudu, Abuja, and that two other vehicles aside from the Toyota Hilux already attached and moved from his premises without any resistance whatsoever.

It is stated that the value of those vehicles is worth over N100m which satisfies the judgment of the court and even more and that the documents attached to the judgment creditor's affidavit were not prepared by the respondents and their agents, rather by the legal unit of the High Court of the FCT and that the deponent quoted paragraphs 8 & 9

of the affidavit in support of the motion to set aside the judgment domesticated in Abuja.

It is stated that he has no moveable property anywhere within FCT and the house he currently live at Police Estate Kurudu FCT – Abuja which the judgment creditor sought to levy the execution against does not belong to him rather belong to a friend, who out of charity, allowed him to stay pending when he is able to get a place for himself.

It is stated that the entire charges as well as the Bill of charges claimed by the judgment creditor are unknown to the judgment debtors and they are not in any way liable for the expenses made by the applicant who has been on a frolic of his own, and the court will not levy an execution on the property of the judgment debtor that does not belong to him simply because the property is being occupied by him.

The deponent stated that the judgment debtors are currently challenging the judgment of the Magistrate Court sitting in Rivers State as well as pursuing an application to set aside the judgment domesticating the said judgment which is still subsisting.

It is stated that the allegation that judgment debtors are trying to sell the house at Police Estate, Kurudu is unfounded and baseless and they cannot sell what does not belong to them.

The deponent stated that having filed an application to set aside the domestication of the judgment as well as further execution of the judgment of Rivers State Magistrate Court there would be conflict of decision arising from the various courts, and it would be in the interest of justice to allow the court at Rivers State as well as the District Court in Abuja to determine the applications before them before this applications can be heard and determined.

It is stated that the judgment creditor instituted this action in his personal name, however, proceeded to sue through his lawful attorney as can be seen in the faces of this applications, and all the processes were in order and the practice not of suing through a lawful attorney has been recognized or provided for under any rule of this Honourable Court or any other High Court of the Federation.

It is stated that the judgment creditor has mischievously changes his title from “suing through his lawful attorney Eze I.O.” “to applying his lawful attorney Ugwueze I. Oduogbu Esq” and it will be in the interest of justice to dismiss this application with substantial costs.

In his written address accompanying the counter affidavit, the judgment debtor asked the Court to determine the following issue before delving into the substance of this application, to wit:

**“Whether the instant application of the judgment creditor as well as the entire suit of the judgment creditor leading to the judgment delivered on 27<sup>th</sup> March, 2018 does not amount to a nullity, the judgment creditor not recognised by law”.**

The counsel submitted that there was no proper claimant or judgment creditor before this Honourable Court, and there was never a proper claimant before the court that delivered the judgment the judgment creditor seeks to rely upon. The same also goes for the judgment domesticated in the District Court of FCT as the judgment creditor has been riding on a faulty foundation throughout the entirety of his suit at the Rivers State Magistrate Court and even at the FCT District Court. The counsel submitted that the name Prof. Sotonye F. Amakiri (suing through his lawful attorney, Eze I. O.) or Prof. Sotonye F. Amakiri



(applying through his lawful Attorney, Ugwueze I. Oduogbu Esq), are acronyms unknown to the Nigerian judicial space. If there was no proper before the court, we submit everything before this Honourable Court in the instant application as well as the suit PMC/211/2011 from whose judgment the judgment creditor seeks to enforce as well Suit No. CV/80/2020 which domesticated the judgment of Rivers State here in Abuja are all a nullity and of no effect.

The counsel submitted that the practice of suing through lawful attorney has not been recognised or provided to lender any rule of this Honourable Court or any other High Court of the Federation. The claimant/judgment creditor/respondent has chosen to fabricate a nomenclature unknown to law. The counsel relied on the case of **Akintode V. Oyebamiji & Anor. (2014) LPELR – 24410 (CA)**.

The counsel submitted that upon a traverse of the entire rules of this Honourable Court, both subsisting and the old rules, there is no provision anywhere whatsoever for lawful attorney suing through on behalf of the judgment creditor and the nomenclature is strange and unknown to the rules.

The counsel submitted that one of the cardinal principles of interpretation of statute is the accepted principle of “expressio unis est exclusio alterius and expression tacit cessare tacithim” meaning to express one thing is impliedly to exclude the other. This, the counsel cited the case of **Buhari and Anor. V. Yusuf & Anor (2003) LPELR – 812 (SC)** and the case of **Vulcan Gases Ltd V. Gesellschaft Fur Ind. Gasverwertung A.G. (2001) LPELR – 3465 (SC)** where the Supreme Court held that the donee of a Power of Attorney or an agent in the presentation of a court suit or

action pursuant to his powers must sue in the name of the donor or his principal and not otherwise.

The judgment creditor in this application as well as all the applications so far made in various court leading to the instant application, used the name of the owner of the property as claimant Prof. F. Amakiri but went further through its “Lawful Attorney Eze I. O. and in the instant application applying through Ugwueze I. Uduegbu Esq and to him, this is unknown to law and same has rendered the entire suit including this instant application a nullity.

The counsel referred to the case of **Mekwanye V. Lotus Capital Ltd & Ors (2018) LPELR – 45546 (CA)** on the court applying the principle of same deceits.

The counsel relied on the case of **UAC V. Macfoy (1962) AC 152 at 160** and urged the Court to dismiss the application.

The counsel submitted that in the likely event that this court decides to proceed to hear this suit on the merit, the judgment debtor's counsel has formulated a sole issue for determination:

**Whether this Honourable Court can proceed to hear and determine this application in view of the facts before the court?**

In his further affidavit, the judgment creditor averred that it is an elementary law in Nigeria to sue or bring originating process in a representative capacity and one of such representative capacity is through the Power of Attorney.

In his reply on points of law, the judgment creditor/applicant formulated one issue for determination:

**Whether the instant application of the judgment creditor as well as the entire suit of the judgment creditor leading to the judgment delivered on 27<sup>th</sup>**

**March, 2018 does not amount to a nullity, the judgment creditor not recognised by law?**

The counsel submitted that the counsel to the judgment debtors/respondent misconceived that meaning “suing as an attorney of another person” in the case of **Akinbode V. Oyebamiji (supra)** and he submitted that the meaning is that no one, be it a legal practitioner or not cannot file an action in person on his name for another person(a principal) on the weight of a Power of Attorney donated by the later, and he further submitted that what this further means is that, a principal can sue on his own name through a named agent. To him, in his application and indeed in the main suit, in the instant application the agent stated in bracket, making same nominal. It is an elementary law that where a disclosed principal acts through a disclosed agent, the action is totally the action of the principal and the latter bears the total liability.

The counsel submitted that the case of **Vulcan Gases Ltd V. Gesellschaft Fur Ind. Gasverwertung A.G (supra)** cited by the respondents’ counsel supported the position in paragraph (a) above, hook line-and-sinker.

The counsel submitted that in this application, a principal (Prof. Sotonye F. Amakiri) can bring this application on his own name via named agent (Ugwueze I. Oduegbu Esq) or an agent (Ugwueze I. Oduegbu Esq) can bring an action and or application in the name of his principal (Prof. Sotonye F. Amakiri). The counsel referred to the case of **Bamgboye V. University of Ilorin & Anor (1999) Co. NWLR (pt 662) 290 at 329** where Onu JSC says an agent means more or less the same thing as a delegate, and in the case of **Akinbode V. Oyebamiji & Anor. (supra)** is that a delegated agent cannot act on his own name but on the name of the

principal in the case of filing and constitution of action in court.

To him, it means, it will be discordance with the provision of the rules in courts in Nigeria for an agent to bring an action without a disclosed principal, and he cited the case of **Hi-Flow Farm Industries Nigeria Ltd V. University of Ibadan (1993) 4 NWLR (pt 290) p. 719.**

Thus, the applicant, who is the Judgment Creditor, instituted the action on his own name but to be represented by his attorney, and even though the applicant did not exhibit the Power of Attorney authorizing the attorney to file this application on behalf of the principal, that is the applicant, however by the filing of the application, there is an express authority given by the principal to the attorney to file this application, and in resolving the two arguments, I refer to the case of **Okafor V. A.G. Rivers State (2012) LPELR – 14243 (CA)** to agree with the submission of the counsel to the applicant that this application is competent and I so hold. See **Vulcan Gases Ltd V. Gesellschaft (supra).**

The objection of the respondent in this regard is discountenanced.

Having resolved the preliminary issue raised by the respondent/judgment debtor, it is now incumbent upon this court to proceed and resolve the other issue as to whether this Honourable Court can grant this application?

Thus, section 44 of the Sheriffs and Civil Process Act Cap 56 LFN 2004 provides:

**“if sufficient moveable property of the judgment debtor can be found in the Federal Capital Territory, Abuja or the state, as the case may be, to satisfy the judgment and cost of execution, execution shall not issue against his immovable property, if no immovable property of the**

**judgment debtor can with reasonable diligence be found or if such property is insufficient to satisfy the judgment and cost and the cost of execution, and the judgment debtor is the owner of any immoveable property, the judgment creditor may apply to the court for a writ of execution against the immoveable property of the judgment debtor, and execution may issue from the court against the immoveable property of the judgment debtor in accordance with the provision of this Act, and such rules made hereunder:**

**Provided that where the judgment has been obtained in a Magistrate's court execution shall not issue out of the Magistrate's court against the immoveable property but shall issue out of the High Court upon the conditions and in the manner prescribed."**

The area of concern in the above quoted section 44 of the Sheriffs and Civil Process Act is the expression "if no immoveable property of the judgment debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the judgment and cost of execution, and the judgment debtor is the owner of any immoveable property" and the court has to examine the affidavits of both parties with a view to ascertain whether the immoveable property with reasonable diligence be found, and such property belongs to the judgment debtor, the court has the power to grant the application.

It is in the supporting affidavit that, more particularly in paragraph 2(i) where it stated that the last resort is the immoveable properties of the respondents wherever it can be found in Nigeria especially the property at No. 121, Road III Police Housing Estate, Kurudu in the FCT, Abuja, and in

paragraph 2(k), it is stated that the respondents are the owners to No. 121, Road III, Police Housing Estate, Kurudu in the FCT, Abuja.

In paragraph 24 of the counter affidavit of the respondents, it is stated that by the respondents that they have no moveable property anywhere within Abuja FCT as alleged by the judgment creditor, and that they currently live at Police Estate, Kurudu FCT – Abuja which does not belong to them and it belongs to their friend.

Looking at the averments of the affidavits, the questions that agitate in the mind of the court are:

**In all the processes initiated by the judgment creditor, why has the friend of the judgment debtor remained adamant without coming out to claim the property with any documentary evidence before the court? Why has the judgment debtor not produced any documentary evidence to show that the house does not belong to him, which should have been attached to the counter affidavit? Certainly, the court would have gone through the documents to exercise reasonable diligence in ascertaining whether the property belongs to the judgment debtor or his friend, but in the instant application, no evidence was provided to show that the property does not belong to the judgment debtor but belongs to his friend. I therefore agree with the averments in the supporting affidavit of the applicant than that of the counter affidavit of the respondent, now I therefore so hold that the property No. 121, Police Housing Estate, Kurudu, FCT, Abuja belongs to the judgment debtor.**

Having ascertained that the judgment debtor has an immoveable property, I have no option than to grant this application, that execution be levied against such property of the judgment debtor in the sum of N9,412,865.49k (Nine Million, Four Hundred and Twelve Thousand, Eight Hundred and Sixty – Five Naira, Forty- Nine Kobo as contained in the enrolled order of the court.

Taking into consideration paragraphs 10 and 11 of the counter affidavit, to the effect that the judgment debtor has filed an appeal against the said judgment sought to be enforced and the appeal is pending before the High Court of Rivers State, and coupled with the fact that the judgment debtor has applied before the court to set aside the domestication order, I am inclined to, in addition to the above, order that where the execution is levied and any money realized or recovered there from, such money should be deposited into an interest yielding account to be specially opened for that purpose by the Chief Registrar of this court and to be kept pending the determination of the appeal pending in Rivers State High Court. See the case of **UBA Plc V. Osha (2022) All FWLR (pt 1193) per Jauro JSC pp. 88-92, paras. F-C.**

Hon. Judge  
Signed  
18/7/2024

Appearances:

M. Laro Esq appeared for the applicant.

Ahmed Abdulrahman Esq appeared with F.O. Emmanuel Esq and O. I. Umar Esq for the respondent.