

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 27TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/576/21

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

UNION BANK OF NIGERIA PLC.....CLAIMANT

AND

**1. PPPRA SAFER MULTI-PURPOSE CO-OPERATIVE
SOCIETY LTD**

2. UNION HOMES SAVINGS AND LOANS

}.....DEFENDANTS

JUDGMENT

On the 25th of February 2021, the Claimant filed an Originating Summons against the 1st and 2nd Defendants seeking for determination of the following questions:

- (i) Whether upon a proper reading of the provisions of Section 83 and 91 of the Sheriff and Civil Process Act Cap 56 Laws of the Federation and Order 8 Rules 5 of the Judgment (Enforcement) Rules and the circumstance of this case, the Claimant ought not to be discharged as a Judgment Debtor under the Garnishee Order absolute

made against the Claimant by the Court on the 16th of February 2016.

- (ii) Whether the payment of the sum of N50 Million by the Claimant to the 1st Defendant as Judgment Creditor in the Garnishee Proceedings upon the consent of the parties did effectively discharge the Claimant as Garnishee Bank of any liability arising from the Garnishee Order Absolute.

Whereof the Claimant prays for the following reliefs against the Defendants:

- (1) An Order declaring that the payment of the sum of N50 Million by the consent of the Judgment Debtor and the Judgment Creditor has effectively discharged the Claimant of any liability imposed by the Garnishee Order.
- (2) An Order discharging the Claimant of all form of liability arising from the Garnishee Order Absolute made by the Court on the 16th Day of February, 2016.

The Claimant relied upon the 18 paragraph Affidavit sworn to by Z. T. Akinde Esq. on the 25/02/21. She deposes that viz: That this Court on 19/10/2015 heard a Garnishee application between parties. The Court made an Order Nisi against the Claimant

attaching the sum of N105,929,296.00 in the account of the Judgment/Debtor domiciled in the Garnishee Bank. A copy of the Order is Exhibit A.

On the receipt of the Order, the Bank on 17th November 2015 filed an Affidavit to show cause which was served on the 1st and 2nd Defendants. It is Exhibit B. The Order was however made absolute. A copy of the Garnishee Order Absolute is Exhibit C. That Claimant appealed and filed a Notice of Stay of Execution. The Motion for Stay could not be heard as parties opted to settle the matter out of Court.

That in the course of negotiation, correspondences were exchanged between parties and their Counsel and parties agreed that the sum of N50 Million be paid by the Claimant to the 1st Defendant as full and final settlement to discharge the Claimant's liability by virtue of the Garnishee Order. The various correspondences are Exhibits F1 – F11.

That parties had rested the matter until sometimes in March 2020 when Claimant's Counsel was served with a Motion on Notice filed

on 21st February 2020 seeking leave for change of Counsel. The Court also struck out the Claimant's Motion for stay of execution of Judgment. The Claimant seeks for the interpretation of the relevant laws on Garnishee Proceedings viz-a-viz the post-judgment negotiations of the parties.

The 1st Defendant's Counsel relied on the 1st Defendant's Counter Affidavit deposed to by Morrison Onunu. The Deponent deposes that on 30th September and 9th December 2014, this Court delivered its judgment as well as judgment on interest. The 1st Defendant commenced a Garnishee Proceedings. The Court granted an Order, which was subsequently made absolute to show cause.

The Claimant lodged an appeal but failed to compile records till date. The Claimant also filed a Motion for stay of execution pending appeal. The Claimant did not report any perceived steps aimed at amicable settlement. The Motion for stay was struck out for lack of diligent prosecution. That Claimant has a period of 90 days to compile and transmit records of proceedings. It is over 5 years now. The Claimant does not have any seriousness or interest in prosecuting the appeal. There was no agreement reached to

compromise the judgment of this Court. That Claimant deposited the sum of N50 Million as a sign of commitment to liquidate the judgment sum.

The 2nd Defendant also relied on his six paragraph Counter Affidavit deposed to by Celestina Benjamin, Legal Practitioner of Block 105 FCDA Quarters, Akanbi Oniyangi Close, Off Emmanuel Adele Street, Jabi District, Abuja. She deposes thus: That it was mutually agreed that 1st Defendant would accept the sum of N50 Million as full and final payment of the entire Judgment debt. That it was based on the mutual agreement that the 1st Defendant wrote to 2nd Defendant vide a letter dated 12/04/16 wherein 1st Defendant furnished the account details, where the said fund should be paid see Exhibit C attached. The 1st Defendant was represented by the law firm of Ahmed Uwais & Co on behalf of 1st Defendant. That the said agreement is binding on the 1st Defendant.

The questions posed for determination in the Originating Summons are the issues posed for determination in the Claimant's Final Written Address. I have read and considered the said Addresses. The 1st Defendant's Final Written Address is dated 22/09/21 while the 2nd Defendant's Final Address is dated 30/09/21.

I have read and considered both Addresses. The Section 83 & 91 of the Sheriff and Civil Process Act Cap 56 Laws of the Federation and Order 8 Rule 5 of the Judgment Enforcement Rules are the provisions which Claimant Counsel seek to count to constrict in relations to the facts of this case.

Section 83(1) of the Sheriffs and Civil Process Act States:

“The Court may, upon the exparte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money either before or after any oral examination of the Debtor liable under such judgment and upon Affidavit by the Applicant or his Legal Practitioner that Judgment has been recovered and that it is still unsatisfied and to what amount and that any person is indebted to such Debtor and is within the state Order that such Debtor shall be attached to satisfy the judgment or order, together with the cost of the Garnishee Proceedings and by the same or any subsequent order it may be ordered that the Garnishee shall appear before the Court to show cause why he should not pay to the person who has obtained such judgment or order... etc”.

Section 91 states:

“Payment made by or execution levied upon a garnishee under any such proceedings shall be a valid discharge to him against the Debtor liable under a judgment or order to the amount paid or levied even although such proceeding may be set aside or the judgment or order reversed”.

The evidence before the Court is not disputed that the Court delivered Judgment against the 2nd Defendant in the sum of N105,929,296.00 and 14% interest on same from the 13th December 2013 until final liquidation. The Garnishee in that proceeding is the Claimant.

Upon a Garnishee proceedings, the Court granted an Order Nisi which was subsequently made absolute in a considered ruling. All parties agree that the sum of N50 Million was paid by the Garnishee. The Claimant which is the Garnishee in the other proceeding and the Judgment Debtors claim that the said payment was a full and final settlement of the debt as agreed by parties after Judgment was entered. The Judgment Creditor i.e. 1st Defendant in this proceedings denied that any such agreement or compromise was made. There is nothing before the Court to show that any out of Court settlement arrangement was brought before the

Court either during Judgment or when the motion for stay of execution was struck out. It was clearly an affair outside the Court room by parties.

Even after the said agreement, the attention of the Court was not drawn to it. Now the Court is being asked to hold that the said payment of N50 Million by the Garnishee is a full and final settlement of the Judgment Debt and that the Judgment Debtor is fully absolved of any liability. The law is that once a trial Court such as this delivers its Judgment in a suit, it becomes functus officio with respect to the suit. The Court can only make ancillary Orders such as an Order for stay of execution of the judgment or payment of the Judgment Debt by instalment. The Court has dutifully done all the above.

A party who fails to pursue an appeal against a Judgment is bound by it. A Judgment of Court and or Order is binding on all parties until it is set aside. Calling upon the Court to interpret what happened outside the Courtroom after Judgment has been given and garnishee Order Absolute granted is akin to dragging the Court to a ludicrous play game. There is no material before the

Court to suggest that the judgment sum has been fully liquidated.
The Court is a serious place of adjudication.

Any attempt by Counsel to drag the Court to the lowest ebb of society will be resisted. The summons is an abuse of Court process. All issues for determination are resolved against the Claimant.

The suit is frivolous, vexatious and an abuse of Court process. It is accordingly dismissed. N200,000 cost against the Claimant in favour of the judgment debtor i.e. the 1st Defendant.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
27/10/22