

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**DATED THIS THURSDAY 4<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/GWD/CV/19/2023**

**BETWEEN:**

**BARR. CHUKWUEMEKA AMAGUIRO.....CLAIMMANT**

**AND**

- 1. BASSEY IKPA**
- 2. MR EMENIKE (O/C D6 SARS)**
- 3. COMMISSIONER OF POLICE, IMO STATE....JUDGEMENT**  
**DEBTORS/RESPONDENT**
- 4. INSPECTOR GENERAL OF POLICE**
- 5. NIGERIA POLICE FORCE**
- 6. POLICE SERVICE COMMISSION**

**RULING**

This ruling is on the application “Motion on notice” with motion No M/1143/2023 brought pursuant to section 283 of the Sheriffs and civil processes Act, Cap 407 laws of the Federation of Nigeria 2004, Order 43 Rule 1 (1) and Order 42 Rule 1 (1) and (2) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018, Section 4 of the Foreign Judgements (Reciprocal enforcement) Act Cap F35 LFN 2004, and under the inherent jurisdiction of this Honourable court.

The motion seeks for the following reliefs:

1. An order of court granting leave to the Applicant/Judgement Creditor to register the Imo State High Court Judgment and order delivered and made respectively on the 14<sup>th</sup> February, 2017 and 20<sup>th</sup> May, 2022 by His lordship, Honourable justice K.A. Orjiako in Suit No Hon/306/2016 between Barr. Chukwuemeka Amaghiro V Bassey Ikpa (IpoSars) & 5 ors in the FCT High Court Abuja.
2. An order of court enforcing the above mentioned judgment and order absolute mentioned in paragraph 1 above against the sole garnishee, whose headquarter is within the jurisdiction of this Honourable court.
3. An order of court directing the garnishee to pay the judgement debt, the sum of N20,100,000.00 (Twenty Million one hundred thousand Naira) only and the cost of Garnishee proceeding as assessed by the learned trial judge the sum of N300,000.00 (Three Hundred thousand Naira) only into the judgement creditor's/applicants counsel's law firm Bank account with the following details:  
Account no: 1014068255 and Bank name: Zenith Bank plc
4. And for such further order(s) as this Honourable court may deem fit to make in the circumstances of this case.

In support, of the motion is an affidavit of 14 paragraphs deposed to by one Ifeoma Okonkwo (a litigation secretary) and a written address in compliance with the Rules of this court of 4 pages.

In the written address, a sole issue was distilled for determination to wit:  
“whether or not the applicant is entitled to the reliefs sought in the said application”

The Garnishee, responding in receipt of the motion filed a counter affidavit to the application of the judgement creditor / applicant of 8 paragraphs, deposed to by one Chijindu Madu (a legal practitioner) in the firm of DB Legal consultants, attached to the said counter affidavit is an exhibit marked as CBN1 being a notice of motion filed at the court of Appeal of Nigeria, Owerri Judicial Division with Appeal no: CA/PH/331/22 and a written address where a sole issue was distilled for determination to wit:

“whether the judgement creditor / applicant has placed sufficient materials before the Hon Court as to be entitled to the reliefs sought in this application@

The Judgement creditor / applicant in responding to the counter affidavit filed by the garnishee, filed a further affidavit, dated 16/2/2024 of 8 paragraphs, deposed to by one IfeomaOkonkwo, a litigation secretary in the law firm of C.U O Ebubealorconsultingattached to the said further affidavit is a written address of 10 pages where a sole issue was distilled for determination to wit:

“Whether having regard to the depositions and exhibits attached therein in the affidavit; the judgement creditor applicant is entitled to the reliefs sought in the motion on Notice?”

Before I proceed to the merit of the application the court must first and foremost highlight the position of law on competence of the Affidavits in support of the application, garnishee’s counter affidavit and further affidavit of the judgement creditor/applicant.

Section 115 EA 2011 “provides that when such belief is derived from information received from another person, the name of his information shall be stated and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information”

The Respondent in his counter affidavit argued that the Affidavit in support of the Applicant is incompetent, that it offends section 115 of the EA 2011.

The paragraph 3 of the Affidavit in Support of the Application is hereunder produced as follows:

@That i was informed by Barr ChukwuemekaEbubealor in our office, the counsel to the judgement creditor about the facts of this matter.

On this, he submitted that when such belief is derived from information received from another person, the name, reasonable particulars, time, place

and circumstances of the information shall be stated. He referred the court to the case of OLA V OGEDENGBE (2014) 11 NWLR page 475-476 PTA A-D. Further submitted that since the affidavit does not pass the credibility test urged the court to strike out all the paragraphs and by implication the entire affidavit and documents in support of the application as the court cannot pick and choose. On this he referred the court to the case of BUHARI V INEC (2008) LPELR – 814 (SC) and also SANI v APC & ors (2019) lpelr – 480 45 (CA)

After listening to the arguments and submissions of both counsel and a careful perusal of the affidavit and further affidavit in support of the application deposed to by one IfeomaOkonkwo, a litigation secretary in the law firm of the judgment creditor/Applicant's counsel as well as the Garnishee's counter affidavit in opposition, deposed to by one CHINDU MADU, a legal practitioner in the firm of DB legal consultants, the law firm representing the Garnishee / Objector in this action.

The question it will pose is this; "Is an affidavit deposed to by a counsel he or his firm is representing or a secretary in a law firm handling the matter which is contentious one a competent affidavit before the court?@ the answer is certainly "No". Since the answer is in the affirmative, it means that the suit is not competent before the court on the authority of IBETO & OR V OGOH (2022) LPELR – 5683 (CA). SEE also the case of AKINLADE V INEC (2020) 17 NWLR (pt 1754) 439 at 557; OWNERS OF M. MARIGOLD V NNPC (2022) LPELR – 56858.

Furthermore, rule 20 (1), (4) and (6) prohibits a legal practitioner from being a witness for his client in a case in which he appears as counsel for such client. Particularly where contentious issues are involved.

It is a trite law that a case must be in accordance with due process to be competent before the court and the affidavit, further affidavit in support of the application as well as the Garnishee counter affidavit in opposition deposed to by a legal practitioner and a litigation secretary respectively

haven't complied with the law, i shall ~~strikeout~~ this suit as it is incompetent before the court.

Hence, this case is hereby struck out.

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**Hon. Justice A. Y. Shafa**

**Appearance:**

1. C. U. O. Ebubealur for the plaintiff/applicant
2. I. A. Ayugu for the Garnishee/objector