

**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. 15**

**CASE NUMBER : SUIT NO: CV/3016/2019**

**DATE: : WEDNESDAY 15<sup>TH</sup> SEPTEMBER, 2021**

**BETWEEN:**

**PETROLEUM AND NATURAL GAS  
SENIOR STAFF ASSOCIATION  
OF NIGERIA** } **JUDGMENT  
CREDITOR/  
RESPONDENT**

**AND**

**NIGERIA MARITIME AND SAFETY  
ADMINISTRATION (NIMASA) STAFF  
(APAPA) CORPORATIVE MULTIPURPOSE  
SOCIETY LTD.** } **JUDGMENT DEBTOR/  
RESPONDENT**

**AND**

**1. ACCESS BANK PLC.  
2. CITIBANK NIGERIA PLC.  
3. ECOBANK NIGERIA PLC.** }

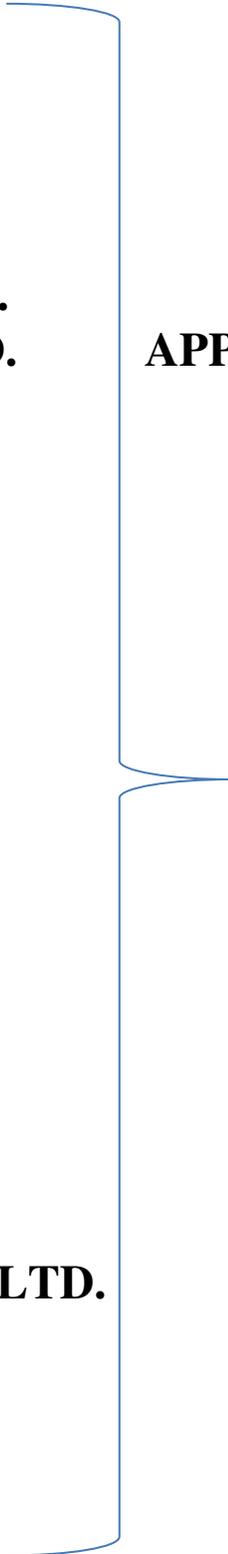
- 4. FIDELITY BANK PLC.**
- 5. FIRST BANK NIGERIA PLC.**
- 6. FIRST CITY MONUMENT BANK PLC.**
- 7. GLOBUS BANK PLC.**
- 8. GUARANTY TRUST BANK PLC.**
- 9. HERITAGE BANK COMPANY LTD.**
- 10. KEYSTONE BANK PLC.**
- 11. POLARIS BANK PLC.**
- 12. PROVIDUS BANK LTD.**
- 13. STANBIC IBTC BANK LTD.**
- 14. STANDARD CHARTERED BANK LTD.**
- 15. STERLING BANK PLC.**
- 16. SUNTRUST BANK NIGERIA LTD.**
- 17. TITAN TRUST BANK LTD.**
- 18. UNION BANK OF NIGERIA PLC.**
- 19. UNITED BANK FOR AFRICA PLC.**
- 20. UNITY BANK PLC.**
- 21. WEMA BANK PLC.**
- 22. ZENITH BANK PLC.**
- 23. JAIZ BANK PLC.**
- 24. ASO SAVINGS AND LOANS PLC.**
- 25. COOP SAVINGS AND LOANS LTD.**
- 26. NIGERIA MARITIME AND SAFETY  
ADMINISTRATION AGENCY**

**GARNISHEES**

**AND**

- 1. MACADEE INTEGRATED SERVICES LTD.**
- 2. IKE GOD ENTERPRISE**
- 3. BADAWA ENGINEERING LTD.**

- 4. DEE & DEE UNIQUE LTD.**
- 5. SOLACE DEMOL LTD.**
- 6. SALBOD NIGERIA LTD.**
- 7. IFNOCOM NIGERIA LTD.**
- 8. HYJEX INVESTMENT LTD.**
- 9. QUEEN FIDETIX NIGERIA LTD.**
- 10. KOFI ODWINES NIGERIA LTD.**
- 11. SAMUZ ELECT/GLOBAL**
- 12. IKE GOD ENTERPRISE**
- 13. ARCHITHRONE CONSULT**
- 14. DAVI – LONGI GLOBAL**
- 15. BOLTSOD NIGERIA LTD.**
- 16. IFY – JOE VENTURE**
- 17. UNCLE TADDY.**
- 18. SETH JAMES LTD.**
- 19. BATCH NETWORK**
- 20. CAS-MBA NIGERIA LTD.**
- 21. TOWER DE REAL, BROWN  
HENS NIGERIA LTD.**
- 22. DEWS CONSTRUCTION LTD.**
- 23. OSARA OGECHI VENTURE**
- 24. KAYZ CONSORTIUM**
- 25. JEN-DECAS ASSOCIATION**
- 26. WOODMOORE INVESTMENT LTD.**
- 27. SULFAT NIGERIA LTD.**
- 28. DE – BRONZE WORTH LTD.**
- 29. WORLD LINK MARINE**
- 30. D’LACS CONSULT LTD.**



**APPLICANTS**

# **RULING**

This is a Consolidated Ruling at the instance of the Judgment Debtor/Applicant who approached this Honourable Court for the following:-

1. An Order restraining the Judgment Creditor from further proceedings on the application for Garnishee Order, mischievously instituted by the Respondent before this Honourable Court.
2. An Order for the dismissal of the application and the entire process before the court, having being an improper use of judicial process by the Respondent to subjugate justice and to the detriment of the Applicant, while same matter is validly before the Court of Appeal Lagos

Division, of which the hearing date of the Appeal is already fixed.

The grounds upon which the application was brought was equally filed an affidavit of 13 paragraphs duly deposed to by one Joy Bob – Echikwonye.

It is the deposition of the Applicant that the Garnishee Order of Lagos State High Court, the Respondent is seeking to enforce is already a subject of Appeal, in Court of Appeal Lagos Division with Appeal **No. CA/L/1487/17.**

That the Respondent has filed at the Court of Appeal Notice of contention to vary the Lagos High Court's Judgment vide Exhibit "HF1" and that the record of Appeal had been compiled vide Exhibit "HF2".

That it will be in the interest of Justice to grant this application.

In line with law and order a written address was filed wherein the issue whether or not the court can continue further proceedings and instituted after same had been validly entered in a Court of Appeal with a date fixed for hearing.

Arguing on the above, learned counsel submit that the action of the Respondent portrayed an improper use of legal process, invoking the judicial process in bad faith for the purpose of gaining advantages and subjugating justice to the detriment of the other parties. *ADENIYI VS FRN (2012) 1 NWLR (Pt. 1281) page 284 (CA).*

Court was urge to grant the application in the interest of justice.

Upon service, the Judgment Creditor/Respondent filed a counter affidavit of 5 paragraphs duly deposed to by one Smart Maisamari, a litigation secretary in the law firm of the Judgment Creditor/Respondent.

It is the deposition of the Respondent that the Judgment Creditor/Respondent obtained a garnishee Order absolute from the High Court of Lagos State and applied to the High Court of FCT for the Registration of the Judgment for the purpose of enforcement.

That the Respondent filed a Motion on Notice at the Court of Appeal for the payment of the sum of N3,480,613,558.42 (Three Billion, Four Hundred and Eight Million, Six Hundred and Thirteen Thousand, Five Hundred and Fifty Eight Naira, Forty Two Kobo) into an interestyielding account in

a licensed commercial bank vide Exhibit “iv”. And that the Judgment Creditor/Respondent has applied to Court of Appeal for the payment of the sum and same was granted vide Exhibit “vi”.

It is the averment of the Respondent that the Judgment Debtor/Applicant has not paid the sum of money into interest yielding account as ordered by the Court of Appeal and therefore it will be in the interest of justice to refuse this application.

A written address was filed wherein two issues were formulated for determination to wit;

- a. Whether the Honourable Court is vested with jurisdiction to entertain, consider and grant the Judgment Debtor/Applicant’s and the Judgment Creditor/Respondent’s case as presently submitted to the court.

b. Whether from the evidence of the Judgment Debtor/Applicant and the Judgment Creditor/Respondent, the Honourable Court has enough evidence to entitled it to the grant of the reliefs sought in this application.

On Issue One, Whether the Honourable Court is vested with jurisdiction to entertain, consider and grant the Judgment Debtor/Applicant's and the Judgment Creditor/Respondent's case as presently submitted to the court.

Learned counsel submit that the Judgment of a Court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be void or irregular. ***BABATUNDE & ORS VS OLATUNJI & ANOR (2000) LPELR 697 (SC).***

Counsel argued that the High Court of FCT is a Court of unlimited jurisdiction only subject to the provisions of section 251 of the constitution and that this court lacks the jurisdiction to entertain, consider and grant the relief sought by the Judgment Debtor/Applicant.

On Issue two, Whether from the evidence of the Judgment Debtor/Applicant and the Judgment Creditor/Respondent, the Honourable Court has enough evidence to entitled it to the grant of the reliefs sought in this application.

It is the submission of learned counsel that an appraisal of Exhibit “iv” and “v” filed by the Judgment Creditor/Respondent shows that the Judgment Debtor/Applicant had evidence which it is deliberately withheld from the Honourable Court.

And that the present motion is a clear case of abuse of court processes and therefore same must be view in the light.

Learned counsel submits further that it is not the wishes or consent of the parties that confers jurisdiction on a court. It is the nature of the claim before the court, the constitution and other statutes that confers jurisdiction on a court. ***MRS. MALTIDA ADERONKE DAIRO VS UNION BANK OF NIG.PLC.& ANOR (2007) LPELR 913 (SC).***

Court was urge to dismiss the Judgment Debtor/Applicant's motion and award substantial and exemplary costs in favour of the Respondent. On motion M/385/2021 filed by Azubuike I. Ogbonna Esq. learned counsel pray for the following reliefs.

- i. An Order of Court staying proceeding in this suit pending the hearing and determination of the Applicant's appeal at the Court of Appeal, Abuja Division against the Ruling of this Honourable Court delivered on the 8<sup>th</sup> day of December, 2020.
- ii. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

In support of the application is 4 paragraph affidavits duly deposed to by one Lucy Eze, a litigation secretary in the law firm of the Applicant's counsel.

It is the deposition of the Applicant that they filed a motion for leave to be joined in this suit as the Applicants have sufficient interest in the subject matter of this suit which is the funds that the

Judgment Creditor sought to be attached in satisfaction of the award sum they got against Brookmoore International Ltd.

That an appeal was filed against the Ruling of this Court dismissing the Applicant's Motion vide Exhibit "A" and that Records of Appeal in respect of the said appeal was transmitted on the 18<sup>th</sup> day of January, 2021 vide Exhibit "B1" and "B2" respectively.

That the Court of Appeal is now seized of the matter and therefore it is in the interest of Justice to grant this application.

A written address was filed wherein the issue whether this application has merit and should be accordingly granted was formulated for determination.

Arguing on the issue aforesaid, learned counsel submit that an application for stay of proceedings should be granted in case where continuation of proceedings would foist a state of fait accompli on the eventual decision of the Court of Appeal. ***IBRAHIM VS OWONIYI (2008) WNR (VO. 4) 70 at 74 pages 78 – 79.***

Counsel submit that where an Appeal has been entered in the Court of Appeal as in the present case, the trial court has no power to make any order in respect of the said appeal which has been seized by the Court of Appeal. ***ALIMS NIG. LTD VS UBA PLC. (2007) ALL FWLR (Pt. 348) 971 at 982 paragraphs B - C (CA).***

Upon service, counter affidavit of 5 paragraphs was filed duly deposed to by one Smart Maisamari, a

litigation secretary in the law firm of the counsel to the Applicant.

It is the averment of the Respondent that the interest of Applicants has been heard and determined by the High Court of Lagos State vide Ruling of the High Court of Lagos State and that the legal claims of the Applicants to the funds attached in the Garnishee proceedings have already been determined.

That the Applicants have a pending suit for the same fund at the High Court of FCT, vide Exhibit “11”.

It is further the averment of the Respondent that the Judgment Creditor/Respondent lost money owing to actions of the Applicant amount to N3,704,077,392.00 (Three Billion, Seven Hundred and Four Million, Seventy Seven Thousand, Three Hundred and Ninety Two Naira).

That it is in the interest of justice to refuse the grant of the joinder application as sought.

A written address was filed wherein the issue whether the Applicants have provided enough evidence to enable the Honourable Court entertain and grant the prayer sought in their Motion on Notice.

Arguing on the above, learned counsel submit that the Judgment of a court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be void or irregular. ***BABATUNDE & ORS VS OLATUNJI & ANOR (2000) LPELR 697 (SC).***

Counsel submit that the motion for stay of proceeding in respect of their claims contained therein is an abuse of court process and raises issue

Estoppel. *SORONNADI & ANOR VS DURUGO & ANOR (2018) LPELR 46319 (SC)*.

It is further the submission of counsel that the ground of Appeal sought to be argued as contained in Exhibit “A” tendered in evidence by the Applicant shows that the proposed ground is one of mixed law and fact and therefore leave of court is required by Section 242 of Constitution of FRN 1999 as (amended).

A further affidavit was filed wherein it was stated that the Applicants have appealed the decision of the Lagos State High Court vide Exhibit “MAC1”. That it will be in the interest of Justice to grant the application.

**COURT:-**

I have gone through the motions filed by both counsel for the Judgment Creditor and Judgment Debtor respectively. I shall be brief but succinct in addressing the issues raised in the interest of justice and fair play.

I shall therefore, start with the issue of abuse of Court Process as it is jurisdictional in nature.

Abuse of court process, which has no precise definition, occurs, where there is an improper use of Judicial process by one of the parties to the detriment or chagrin of the other in order to circumvent the proper administration of Justice or to irritate or annoy his opponent taking in due advantage, which otherwise he would not be entitled to. Also constituting multiplicity of action on the same subject matter against the same opponent on

the same issues constitutes an abuse of court process.

The rationale of the law is that there must be an end to litigation, and a litigant should not be made to suffer the same rigour/jeopardy for the same purpose twice.

Above was laid down in the case of *N. I. C. VS F. C. I. CO. LTD (2007)2 NWLR (pt. 1019) 610 at 630 – 632 paragraphs F – H, B - E (C A)*.

*When then does abuse of court process arise?*

Supreme Court of Nigeria, *per Ogbuagu JSC* in the case of *ABUBAKAR VS BEBEJI OIL AND ALLIED PRODUCT LTD & ORS (2007) L.P.E.L.R SC. (110/2011) Page 6263 paragraph D - E* stated thus;

*“There is abuse of process of court where the process of the court has not been use bona-fide and properly,the circumstances in which abuse of process can arise has said to include the following;-*

*(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even when there exist a right to bring that action.*

*(b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*

- (c) Where two similar processes are used in respect of the same right, for example a cross –appeal and respondent’s notice.*
- (d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.*
- (e) Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the convenience and inequities involved in the aims and purposes of the action.*

To resolve this matter, the court has formulated only one issue for determination, viz;- *“whether suit no FCT/HC/CV/3016/19 filed before High Court amounts to an abuse of court process.”*

As I stated earlier, the rationale of the law in abuse of court process is that there must be an end to litigation, and a litigant must not be made to suffer the same rigour/Jeopardy for the same purpose twice.

I must also hasten to note that it is indeed the claim of the Plaintiff that determines the jurisdiction of a court, as stated in ***OGUNBADEJO VS ADEBOWALE (2008) All FWLR (pt. 405)1707 at 1717, paragraphs C-D (C-A),***

I however must state that, there are other determining factors that certainly must be considered. It therefore follows that where, for example, a case of abuse of process of court is established, the court even though seized of the jurisdiction to try a matter, must decline same.

Does this present case amount to abuse of Court process?

It is the deposition of the Applicant that the Garnishee Order of Lagos State High Court. Respondent is seeking to enforce is already a subject of Appeal at the Court of Appeal Lagos Division with Appeal No. **CA/L1487/17**, wherein appeal was filed, entered and that Respondent has filed Notice of Contention at the Court of Appeal to vary the Lagos High Court's Judgment vide Exhibit "HF1" and that the record of Appeal had been compiled vide Exhibit "HF2".

The law is well settled giving notice of Appeal is not sufficient to consider the appeal as having been entered. An Appeal is deemed to be properly entered when the records of appeal are compiled and

transmitted to the Court of Appeal and an Appeal number is given. See Order 4 Rule 10 of the Court of Appeal Rules 2011.

From Exhibit “B2” annexed, records have been transmitted to the Court of Appeal with Appeal No. **CA/ABJ/CV/32/2021** evidencing appeal has been entered.

The law is clear on when Appeal is entered.. Until such appeal has been disposed –of, the Court of Appeal shall be seized of the entire proceedings. See ***ABRAHAM ADELEKE & OR VS OYO STATE HOUSE OF ASSEMBLY & ORS (2006) LPELR 7655, DUKE VS DUKE (2014) LPELR 2309.***

From the aforementioned authorities which are tested and binding on this court, Judgment Creditor/Respondent should not have begun any

proceedings in attempt to enforce the said judgment which he knew was on appeal.

This is more so that the law with respect to Garnishee proceedings has since been made clear in the authority of *NIGERIAN BREWERIES PLC. VS DUMUJE & ORS (2015) LPELR – 25583 (CA)*, that a Judgment Creditor cannot proceed with Garnishee proceedings whilst there is a pending appeal.

From all that has played – out, Judgment Debtor/Respondent decided to come to FCT High Court to annoyingly file for Garnishee when he knew fully well of the position of the law as stated above. Judgment Debtor/Applicant made a resounding argument on abuse of court process which clearly and truly represents the position of the

law.. Same is upheld. See *UMEH VS IWU (2008) 8 NWLR (Pt. 1089) 225.*

Lacken in merit and character, the said Suit No. **FCT/HC/CV/3016/2019** is hereby and accordingly struck – out for being an abuse of judicial process.

Above is the ruling of this court.

*Justice Y. Halilu*  
*Hon. Judge*  
*15<sup>th</sup> September, 2021*

### **APPEARANCES**

**Justin Chuwang Esq.,**with **Victor Yaru Esq.** – for the Judgment Creditor/Respondent.

**Pius Ofulue Esq.,** holding the brief of **Benjamin O. Esq.** – for the Judgment Debtor/Applicant.