

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

**HOLDEN AT JABI ABUJA**

DATE: 23<sup>RD</sup> DAY OF FEBRUARY, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 9  
SUIT NO: CV/1580/2019

**BETWEEN:**

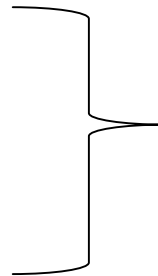
THE DEPUTY SHERIFF OF THE HIGH COURT  
OF THE FCT

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APPLICANT

**AND**

1. PUNKINOSIS CHEMICALS LTD
2. MRS. GEORGINA KALU IJOMAH
3. MRS. IJEOMA UDUMA
4. MR. NEVKAA FIDELIS



CLAIMANT

**AND**

SUPERIORA LTD

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JUDGMENT CREDITOR

**RULING**

This is an Interpleader proceedings commenced by way of Originating Summons, brought pursuant to the provisions of Section 34 of the Sheriff's and Civil Process Act, 2014. The application was heard on the 2/2/2021 and adjourned for ruling on the 23/2/2021.

On that day however, one **U.C. Izuogu Esq** appeared on behalf of the judgment creditor and filed motion on notice No. M/826/2021. The motion seeks for an order of Court setting aside the irregularities/steps so far taken by the parties in this suit for non compliance to the Rules of Court. In support of the application is an affidavit of 4 paragraphs and a written address duly adopted.

Learned counsel submitted that he was not served with any hearing notice. That he was on his way for the burial of his sister when he was called by learned counsel for the claimants who informed him about the case coming up for hearing. Counsel the prayed the Court to allow him to come properly before the Court as he has an application pending to put in the judgment creditor's response.

In opposition, **A.N.C. Ikoro Esq** for the claimants submitted that the judgment creditor was duly served with hearing notice and the judgment creditor was in

Court himself and did not say anything. He urged the Court to refuse the application.

From a perusal of the records of this Court there is no indication that hearing notice was served on the judgment creditor, eventhough the judgment creditor himself said he was informed of the date and that his counsel was also aware of same. The whole essence of service of hearing notice is to bring the ongoing hearing of the matter to the notice of the defendant. In First Bank vs. Management Education and Training Ltd (2019) LPELR – 47502 (CA) the Court held:

*“The service of hearing notice is fundamental since the object of the service of hearing notice is to let the party know the date on which the matter will come up.”*

One fundamental way to ensuring that fair hearing principles are seen to be adhered to is that processes which include hearing notices must be served on the

parties to a cause so as to enable them appear to prosecute and/or defend their cause. Due appearances by parties or their counsel is a fundamental condition precedent required before the Court can be said to have competence and jurisdiction to go into adjudication given that all other essential conditional ties are in place. See Sanusi & ors vs. Gidiya & ors (2006) LPELR – 9808 (CA).

Again in Onah vs. Okom (2011) LPELR – 9057 (CA)

The Court held thus:

*“Where however a party in a case has knowledge and is aware of an adjourned date or can be fixed with such knowledge, if such a party decides to absent himself, he does so at his own peril”*

See also NNPC vs. Nwafor (2017) LPELR – 42287.

Now though Mr. Izougu said he was not aware that the case was coming up, the judgment creditor himself was in Court, and said his counsel was aware. This Court

is of the view that he cannot now complain of having not been giving the right to fair hearing.

The application of the judgment creditor seeks to arrest the ruling of this Court. The law is since settled that any application aimed at effectively stalling and/or arresting the delivery of judgment of a Court after a matter has been duly heard is unknown and/or alien to our laws. See Ojonye vs. Onu & ors (2018) LPELR – 44212 (CA).

In Ukachukwu vs. PDP (2013) LPELR – 21894 (SC) the apex Court per Onnoghen, JSC (as he then was) had this to say:

*“It is therefore clear that the application under consideration is aimed at or intended to arrest the said judgment though couched as a stay of further proceedings. It follows therefore that the application being to arrest the judgment of the lower Court about to be delivered, it is an*

*application not recognized by the rules of Court and consequently misconceived and incompetent...an application to arrest a judgment about to be delivered by a competent Court/Tribunal is unknown to the jurisprudence of this Country and consequently incompetent and misconceived in law and in fact.”*

In effect such application is at all times incompetent. See Newswatch Communications Ltd vs. Attah (2006) 12 NWLR (part 993) 144 at 179.

However, this Court has considered the totality of the application and the fact that the claimants will not be prejudiced if this application is granted. This Court is therefore inclined to bend backward to accommodate learned counsel for the judgment creditor. And for that reason and in the overall interest of justice, the application M/826/2021 is accordingly granted as prayed.

Signed  
Honourable Judge

**Appearances:**

Patience Dabo (Mrs) – for the Deputy Sheriff/respondent

U.C. Izuogu Esq – for the judgment creditor/applicant

A.N.C. Ikoru Esq – for the claimants/respondent