

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: FCT/HC/CV/1954/2016

BETWEEN:

MRS. HAPPINESS EVANS.....JUDGMENT CREDITOR/APPLICANT

AND

PETROPRIDE SUBSEA LIMITED & OTHERS.....JUDGMENT DEBTOR/RESPONDENT

AND

1. FIRST BANK PLC
2. ECOBANK PLC
3. ZENITH BANK PLC
4. UNITED BANK FOR AFRICA PLC
5. DIAMOND BANK PLC
6. ACCESS BANK PLC
7. GUARANTY TRUST BANK PLC
8. FIRST CITY MONUMENT BANK PLC
9. UNION BANK PLC
10. FIDELITY BANK PC
11. GUARANTY TRUST BANK PLC
12. STANBIC IBTC BANK PLC
13. KEYSTONE BANK LTD

GARNISHEES/RESPONDENTS

JUDGMENT

On the 2nd day of October, 2019, this court granted an order nisi attaching the sum of (N5,000,000=) Five Million Naira belonging to the judgment debtor in the custody of garnishees for the satisfaction of the judgment delivered on the 8th day of November, 2017; and also an order directing the garnishees to appear before this court to show cause why they should not pay the sum of N5,000,000.00 (Five Million Naira) standing to the credit of the judgment debtor thereby not making the order nisi absolute. However, by the motion with no. M/499/19 which was filed by the judgment

debtor wherein the judgment debtor prayed the court (i) for an order setting aside the ruling of this court granting the judgment creditor a garnishee order nisi in this matter; and (ii) an order striking out the judgment creditors' application for a garnishee order absolute, and in its ruling dated the 23rd June, 2020 pronounced that in order not to foist a state of helplessness on the Court of Appeal, the court set aside order nisi granted on the 2nd October, 2019.

Now by the motion on notice with no. M/8148/24 the judgment creditor/applicant prayed the court for the following orders:

1. An order of this court varying its order of 23rd June, 2020 setting aside its order of garnishee nisi attaching the sum of N5,000,000.00 (Five Million Naira) only belonging to the judgment debtor in the custody and control of the garnishees for the satisfaction of the judgment delivered on the 7th February, 2018 by the Honourable court coram: Hon. Justice S. E. Aladetoyinbo.
2. An order of this Honourable court restoring (a) its garnishee order nisi made on 2nd October, 2019 attaching the sum of N5,000,000.00 (Five Million Naira) only belonging to the judgment debtor in the custody and control of the garnishees for the satisfaction of the judgment delivered on the 7th day of February, 2018 (b) directing the garnishees to appear before this Honourable court to show cause why they should not pay the sum of N5,000,000.00 (Five Million Naira) only standing to the credit of the judgment debtor thereby not making this order absolute.

3. And for such further or other orders the Honourable court may deem appropriate to make in the circumstances.

The grounds upon which this application is filed are as follows:

1. The order of court setting aside its garnishee order nisi was predicated on the pendency of an incompetent appeal against the judgment of the court.
2. That the said incompetent appeal is no longer pending as it has been struck out by the appellate court.
3. The persisting need to satisfy the judgment of the trial court delivered on the 7th February, 2018 in favour of the judgment creditor.

The motion is supported by fifteen paragraphed affidavit and attached to the affidavit are exhibit 'A' which is the enrolled order of this court made on the 2nd October, 2019, and the enrolled order of the Court of Appeal extending the time for the applicants to appeal against the judgment of this court in FCT/HC/CV/1954/2016 delivered on the 7th February, 2018 and that the notice of appeal should be filed at the lower court within 21 days and that the appeal no. CA/A/676/2018 is rendered incompetent and is accordingly struck out.

As borne out from the affidavit it is stated that the judgment was delivered on the 7th February, 2018 and pursuant to it, an application was made and this court on the 2nd October, 2019 granted a garnishee order nisi against the judgment debtor and garnishee banks, and the order nisi was served on the judgment debtor and the garnishee banks, and that none of the garnishees banks was able to show cause why the garnishee order nisi should not be

made absolute on the return date of 29th October, 2019, rather the judgment debtor filed an application urging the court to set aside its garnishee order nisi on the ground of concealment of material facts, and the court granted the prayers of the judgment debtor on the 23rd June, 2020 and set aside the said garnishee order nisi it made pending the determination of the appeal filed by the judgment debtor.

It is stated that the Court of Appeal, Abuja Division has heard the said judgment debtors' appeal and in its considered Ruling delivered on the 22nd February, 2024 struck out the appeal for being incompetent.

It is stated that it is now a fact that the order setting aside the garnishee order nisi of this court sought to be restored in this application, was obtained by the judgment debtor through deceit, the Court of Appeal having declared as incompetent. That the Court of Appeal declared the appeal incompetent because the judgment debtor failed to seek leave of the court to file the said appeal which was declared incompetent, and the judgment debtor new that leave was not sought before filing the appeal and yet came before this Honourable court to persuade it to set aside its garnishee order nisi.

It is stated that by virtue of the pronouncement of the Court of Appeal that the appeal is incompetent, it has become necessary for the parties to return to this court to continue with the pending garnishee proceedings instituted by the judgment creditor/applicant.

That it will be in the interest of justice that this court vacate its order of 23rd June, 2020 setting aside the garnishee order nisi made on 2nd October, 2019 against the judgment debtor and the garnishees and to restore same to make way for continuation and conclusion of the aforesaid garnishee proceedings.

It is stated that the judgment creditor/applicant be allowed to have unfettered enjoyment of the fruit of their judgment.

The counsel for the judgment creditor/applicant, in his address, formulated lone issue for determination, to wit:

Whether this Honourable court has the powers to grant this application?

The counsel submitted that it is the law that a court has the powers to re-open a matter in appropriate and exceptional circumstance such as when its decision (a) was obtained by fraud or deceit (b) was a nullity (c) given under the mistaken belief that the parties consented to it (d) was given in the absence of jurisdiction (e) the proceedings adopted was such as to deprive the decision of the character of a legitimate adjudication, or (f) was rendered with fundamental irregularity, and cited the cases of **Elisa & Anor V. Ecobank Nig. Plc (2016) LPELR – 40216 (CA); Ohonu V. Abolore (1993) 5 NWLR (pt 293) 225; and First Bank of Nigeria Plc V. T.S.A. Industries Ltd (2010) 4 – 7. SC (pt 1) 242.**

It is stated that the judgment creditor/applicant more particularly in paragraph 9 of this affidavit stated that the court predicated its decision to set aside the garnishee order nisi of the 2nd October, 2019 on the pendency of an appeal filed by the judgment debtor which was not disclosed to the court, and in paragraph 10 of the same affidavit it was deposed to the fact that the said appeal was declared incompetent by the Court of Appeal, and in paragraph 11 of the affidavit it is stated that the court declared the appeal incompetent because leave was not sought before filing the appeal, and it follows therefore the pending appeal which the judgment debtor brandished before this court, and upon which the garnishee order was set aside, was a deceit, as the judgment debtor knew leave

of the Court of Appeal was not sought before filing the appeal.

It is submitted that it is evident from the affidavit in support of judgment creditor's motion on notice that deceit which is one of the condition laid down for setting aside an order of court as embodied in the judicial authorities listed has been established by the judgment creditor, and the judgment creditor has met one of the condition required by the law to vacate or set aside its order, and urged the court to vacate its order of 23rd June, 2020. It is submitted that this application is not in any way prejudicial to the judgment debtor.

In his counter affidavit, the judgment debtor/respondent stated that the Court of Appeal sat on the 22nd February, 2024 and considering the motion on notice of the applicants ordered as follows:

- (1) Time is extended for the applicant to appeal against the judgment of the High Court of Federal Capital Territory, Abuja in suit No. FCT/HC/1954/2016 delivered on 7th February, 2018;
- (2) The notice of Appeal shall be filed at the lower court within 21 days hereof.
- (3) Appeal No. CA/A/676/2018 is accordingly struck out.

It is stated that the applicant comply within 21 days as ordered by the Court of Appeal, and that the appellants filed a motion on notice for the enlargement of time and duly served same on the judgment creditor/respondent, and upon securing the enrolled order on 16th April, 2024 the appellants immediately filed the Notice of Appeal at the lower court on that same day, and on 1st July, 2024 the

judgment debtor transmitted Records of Appeal to the Court of Appeal.

It is stated that the judgment creditor through her counsel filed yet another motion on notice with no. M/8148/24 and was served on the counsel for the judgment debtor in office, and that in the said motion, the judgment creditor/applicant misrepresented the true position of the order of the Court of Appeal made on 22/2/2024, and on the order of the Court of Appeal still gave the judgment debtor a chance to ventilate its grievances as the appeal was merely struck out on a certain condition as seen in Order no. 2 of the order, and the judgment debtor had taken steps to comply with order no. 2 of the Court of Appeal, and the Notice of Appeal has already been filed in this matter as directed by the Court of Appeal.

It is stated that the Record of Appeal has been transmitted to the Court of Appeal, and that by making the Nisi order absolute, this Honourable court will be defeating the motion for stay now pending at the Court of Appeal, and this court will be foisting on the Court of Appeal a state of helplessness in view of the application for stay of Execution of the said 5,000,000.00 (Five Million Naira) being the judgment sum in this garnishee proceedings.

The affidavit was accompanied by EXH. PPSC 1, PPSC 2 and PPSC 3.

In his written address accompanying the counter affidavit, the counsel raised this lone issue for determination, thus:

Whether this Honourable court can make a garnishee order absolute notwithstanding the notice of appeal and the motion for stay at the Court of Appeal?

The counsel answered the above issue on the negative that this court cannot make an order absolute when a motion for stay of execution in the same judgment debt is pending at the Court of Appeal.

The counsel submitted that from the facts on 7th February, 2018, the Federal Capital Territory, Abuja entered judgment in favour of the judgment creditor and on the 8th February, 2018 the judgment debtor filed an application for stay of execution at FCT High Court which application was struck out. That on the 6th November, 2018 the judgment debtor filed the same application at the Court of Appeal which application was heard on 22nd February, 2024 wherein the Court of Appeal via order no. 2 allowed the judgment debtor 21 days within which to file its Notice of Appeal as at the Registry of this court.

The counsel argued that on the 1st July, 2024, the judgment debtor transmitted Records of Appeal, and as such appeal has been entered at the Court of Appeal.

The counsel submitted that once an appeal has been entered as in the case above scenario, any further step or order or proceeding in relation to the matter on appeal can only be made at the Court of Appeal, and he referred to Order 4 Rule II (I) or the Court of Appeal Rules to the effect that:

“After an appeal has been entered and until it has been finally disposed off, the court shall be seised of the whole of the proceedings as before the parties thereto except as may be otherwise provided in these rules, every application therein shall be made to the Court of Appeal and not to the lower court.”

The counsel argued that the Court of Appeal must determine the application one way or the other, and it is for

this court to terminate the application for stay of execution now pending before the Court of Appeal by granting an order absolute against the judgment debtor, this court will be foisting a state of helplessness on the Court of Appeal, which is yet to reach a decision on the motion for stay on the same judgment sum, and he urged the court to resolve the lone issue in favour of the judgment debtor and not to grant the order absolute.

Let adopt the issue as formulated by the counsel to the judgment debtor, to wit:

Whether this Honourable court can make a garnishee order absolute notwithstanding the Notice of Appeal and the motion for stay at the Court of Appeal?

Firstly, let me deal with the issue of whether this court can set aside its order made on the 23rd day of June, 2020. The argument canvassed by the counsel to the judgment creditor is that the judgment debtor deceitfully argued then before this court that there was an appeal pending at the Court of Appeal against the judgment of the FCT High Court entered on the 7th day of February, 2018, and it turned out to be not true as the Court of Appeal decided on the 22nd February, 2024 that the appeal filed by the judgment debtor then was incompetent on the ground that no leave was obtained by the appellant/judgment debtor and the appeal was struck out. It is the argument of the counsel to the judgment creditor/applicant that since there was a deceit on the part of the judgment debtor, he obtained the ruling of this court setting aside the order nisi already given, and it is on this premise that the judgment creditor prayed to this court to restore the order nisi already struck out since it was given on deceit, and the counsel to the judgment debtor did not proffer any argument in his written address

accompanying the counter affidavit on this issue of deceit, and the implication of this is that the judgment debtor has admitted to those submissions. See the case of **F.R.C.N. V. Nwankwo (2012) All FWLR (pt 641) p. 1550 at 1565, para. D – E** where it was held that where a party, either by sheer inadvertence or intentionally neglects to respond to submissions of an adversary on the matter, he is taken as having admitted those submissions. In the instant case, the neglect on the part of the counsel to the judgment debtor to respond to the argument of the counsel to the judgment creditor on the issue whether the judgment debtor obtained the order of this court setting aside the order nisi already given by this court an account of deceit, is an admission that the argument of the counsel to the judgment creditor is true. See also the case of **C.A. & A.C. Ltd V. U.B.A. Plc (2014) All FWLR (pt 739) p. 1084 at 1094, para. G – H** where the court held that where a party fails or neglects to respond to arguments of his adversary in a brief or oral presentation before a court, the defaulting party is taken as having admitted all the points raised by the other party.

It is on the above premise, I have to grant the application to set aside the order made on the 23rd June, 2020, and the order nisi made on the 2nd day of October, 2019 is hereby restored accordingly.

On the issue formulated by the counsel to the judgment debtor and while was adopted by this court, I rely on the case of **U.B.A. Plc V. Ossia (2022) All FWLR (pt 1139) at page 72** where JAURO JSC says:

“The whole essence of an application for stay of execution is to preserve the res pending the outcome of an appellate exercise so that in the event that the judgment of the trial Court is set aside, the judgment of the appellate court setting

aside the judgment of the trial court would not be rendered nugatory. If a judgment creditor is then allowed to enforce his judgment through a garnishee proceedings despite the pendency of an appeal and an application for stay of execution, what then would be left for the Court of Appeal to consider the application for stay of execution when the judgment ought to be stayed has been executed and enforced via a garnishee order absolute? Looking at this issue from an another equitable point of view, if a garnishee proceedings is also made incompetent because of the pending application for stay of execution, it will be liable to abuse by an unscrupulous judgment debtor who would only file an application for stay and then refuse to diligently prosecute his appeal. And if such a situation arises, the judgment debtor fortified with the application for stay would be at liberty to deal with the judgment debt because there is no valid attachment order of the trial court on the judgment sum. Hence to balance the rights of both judgment creditor and judgment debtor, where a trial court is faced with an application for garnishee proceedings and pending stay of execution, justice demands that the garnishee proceedings is made competent only to the extent of granting an order nisi. Thereafter, the decision in the order absolute can hang on pending the outcome of the hearing of the motion for stay of execution. The consequence of this is that pending the hearing of the motion for stay of execution, the substance of the garnishee order nisi would prevent the

**judgment debtor from tempering with the judgment sum and in the event that the application for stay is refused, then the trial court can proceed to make the order absolute, if it deems fit. On the other hand, if the application for stay is granted, in most cases, the judgment debtor is usually ordered to pay the judgment sum into an interest yielding account, and where this is done, there would be no need to go further with the garnishee absolute as the res has been preserved pending the determination of the appeal.....
In the circumstance, since the order nisi would prevent the judgment debtor from accessing the judgment sum, the trial court ought to have reframed from granting the order absolute pending the outcome of hearing of the motion for stay of executions.”**

In the instant case, for the fact the application of the judgment debtor is granted thereby restraining the order nisi already granted on the 2nd day of October, 2019, the judgment debtor will have not access to the judgment sum, and I therefore so hold. Based on the above quoted saying of Jauro JSC, I hesitate to make the order absolute.

Hon. Judge
Signed
10/02/2025

Appearances:

Christopher E. Okonkwo Esq appeared for the judgment creditor/applicant.

JCC – CT: The judgment debtor/respondent appeared not to be represented in court, and I was taken a back when the matter was adjourned for judgment. Actually as

at last adjourned date we make an application for adjournment to enable us serve garnishee order nisi on some of the garnishee banks who did not file any process to show cause and the matter was adjourned to today. However, we still have difficulties in serving garnishee banks, and pray to the court to give other times to serve the banks.

Hon. Judge

Signed

10/02/2025