

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/1052/2024
DELIVERED ON THE 29/04/2025**

BETWEEN:

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| <ul style="list-style-type: none">1. PRIMO WONDER LIMITED2. DEBORAH JOHNSON3. MR. AGELOLEI OHIMAI JOHNSON | } |APPLICANTS |
|---|---|-----------------|

AND

- | | | |
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| <ul style="list-style-type: none">1. THE DEPUTY SHERIFF OF HIGH COURT OF THE FEDERAL CAPITAL TERRITORY2. EVARIST NIGERIA LIMITED.....3. WONDER PRINTS LIMITED..... | } |RESPONDENTJUDGMENT CREDITOR/RESPONDENTJUDGMENT DEBTOR/RESPONDENT |
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RULING/JUDGMENT

The Applicant through an interpleader summons brought pursuant to **Order 48(1) and (2) of the Rules of this Court, 2018**(now Order 26 of the extant Rules of this court) approached this Hon. Court and formulated the following questions for determination to wit;

- 1. Whether by virtue of Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R attached hereto, the Applicants are the lawful and bonafide owners of the under-listed items? Namely:**
 - a. 10ft Wit – Color Large Format Machine belonging to the 1st Applicant;***
 - b. Konica Minolta Direct Imaging Machine belonging to the 1st Applicant;***

- c. 2,700 Insecticidal Treated Nets Campaign Aprons valued ₦4,320,000 (Four Million, Three Hundred and Twenty Thousand Naira) belonging to the 1st Applicant;*
 - d. Kirloska 30 KVA Generator belonging to the 2nd Applicant;*
 - e. Business files (History), Books, Assorted business and personal documents, Proposals valued at over ₦500,000,000.00 (Five Hundred Million Naira) etc belonging to the 3rd Applicant;*
 - f. Computers, tables, chairs, rug, Suit Hanger cum tie belonging to the 3rd Applicant;*
 - g. One black colour Heidelberg Kord machine valued at ₦6,600,000.00 belonging to the 3rd Applicant, and*
 - h. One grey colour Heidelberg Kord machine valued at ₦3,500,000.00 belonging to the 3rd Applicant.*
- 2. Whether the attachment of the above-mentioned items belonging to the Applicants during the execution of Court judgment levied on the said items above by the 1st Respondent on 24th November, 2023 at the instance of the 2nd Respondent is proper and/or valid in law?**
 - 3. Whether the 1st Respondent (Deputy Sheriff) is entitled in law to auction the aforementioned properties contained in the Inventory and Notice of Sale issued by the 1st Respondent?**

Upon the determination of the above raised questions, the applicants pray this Hon. Court for the following reliefs:

- 1. AN ORDER OF THIS HONOURABLE COURT** *declaring the bonafide ownership of the above properties in favour of the Applicants, vis -*
 - a. 10ft Wit – Color Large Format Machine belonging to the 1st Applicant;**

- b. Konica Minolta Direct Imaging Machine belonging to the 1st Applicant;**
- c. 2,700 Insecticidal Treated Nets Campaign Aprons valued ₦4,320,000 (Four Million, Three Hundred and Twenty Thousand Naira) belonging to the 1st Applicant;**
- d. Kirloska 30 KVA Generator belonging to the 2nd Applicant;**
- e. Business files (History), Books, Assorted business and personal documents, Proposals valued at over ₦500,000,000.00 (Five Hundred Million Naira) etc belonging to the 3rd Applicant;**
- f. Computers, tables, chairs, rug, Suit Hanger cum tie belonging to the 3rd Applicant;**
- g. One black colour Heidelberg Kord machine valued at ₦6,600,000.00 belonging to the 3rd Applicant, and**
- h. One grey colour Heidelberg Kord machine valued at ₦3,500,000.00 belonging to the 3rd Applicant.**

2. AN ORDER OF THIS HONOURABLE COURT *setting aside and/or nullifying the Writ of Attachment as well as the purported Execution of Court Judgment which was levied by the 1st Respondent on the Applicants' properties as listed in Relief One (1) a – h above.*

3. AN ORDER OF THIS HONOURABLE COURT *directing the 1st Respondent (Deputy Sheriff) to release with immediate effect to the Applicants, all of the Applicants' properties listed in Relief One (1) a – h above which were wrongly attached by the 1st Respondent.*

4. AN ORDER OF THIS HONOURABLE COURT *awarding the sum of ₦4,320,000 (Four Million, Three Hundred and Twenty Thousand Naira) as special damages against the 1st and 2nd Respondent for the loss and destruction of the 1st Applicant's 2,700 Insecticidal Treated Nets Campaign Aprons which were*

lost and destroyed by the 1st and 2nd Respondents on 24th November, 2023 while levying execution.

5. AN ORDER OF THIS HONOURABLE COURT awarding the sum of **₦500,000,000.00** (Five Hundred Million Naira) as punitive and aggravated damages against the 1st and 2nd Respondent for the loss and destruction of the 3rd Applicant's Business files (History), Books, Assorted business and personal documents, Proposals lost and destroyed by the 1st and 2nd Respondents on 24th November, 2023 while levying execution.

6. Cost of this suit as may be assessed by this Honourable Court.

The grounds upon which the application is predicated are as follows:

- (a) That the 1st and 2nd Defendant had illegally and inappropriately attached properties belonging to the Applicants in the course of levying execution on the properties of the 3rd Respondent on 24/11/2023.**
- (b) That this Court is clothed with jurisdiction to set aside and/or nullify the wrongful execution and return the properties to their rightful owners.**
- (c) That it is in the interest of justice and fair hearing to grant this application which does not prejudice the Respondents in any way whatsoever.**

The application is supported by a 27-paragraph affidavit deposed to by the 3rd Applicant himself. A glance at the affidavit in support will reveal that the Applicants case has to do with Judgment in suit No. **CV/07/2021** filed by the 2nd and 3rd Respondent before His Worship, Hon. Chukwuemeka Umeade Nweke which Judgment was delivered on the 06/10/2022 against the 3rd Applicant.

It is the deposition of the Applicant that the 2nd Respondent herein is the landlord of all that property known and described as Suit D04, Lozumba (now Orago Commercial Complex Area 10 Abuja). And that the suit has to do with recovery of premises levied by the 1st Respondent on 24/11/2023.

The Applicants aver that despite the pendency of Appeal against the Judgment of His worship delivered on the 06/10/2022, the 1st and 2nd Respondents proceeded to execute the said Judgment on 23/11/2023 and removed the following properties.

- (a) Kirloska 30 KVA generator valued at N1,400,000.00**
- (b) Window blinds valued at N42,000.00**
- (c) Rug carpet valued at N17,100.00**
- (d) 1 HP National split unit AC valued at N28,000.00**
- (e) 1 and half HP Sharp window unit AC valued at N22,500.00**
- (f) 2 HP National window unit AC valued at N25,000.00**
- (g) 2 HP Samsung split unit AC valued at N35,000.00**
- (h) 2,700 pieces of branded Aprons at N1,600 each, all valued at N4,320,000.00**
- (i) 6 pieces of Banquet chairs valued at N30,000.00**
- (j) 8 pieces of black leather armed chairs valued at N80,000.00**
- (k) One glass dining table valued at N77,000.00**
- (l) Two double sitter iron chairs (settee) valued at N50,000.00**
- (m) One work station valued at N26,500.00**
- (n) One standing shelf valued at N102,000.00**
- (o) One HP Scanner valued at N12,000.00**
- (p) One HP Printer valued at N29,000.00**
- (q) 2 machine spare parts valued at N69,000.00**
- (r) Two Delta Heat Transfer printing machines valued at N300,000.00**

- (s) One Wit-Color (Large Format) printing machine valued at ₦4,800,000.00**
- (t) One Mercury UPS valued at ₦77,000.00**
- (u) One Thermo-cool Stabilizer valued at ₦24,000.00**
- (v) One Mercury UPS valued at ₦6,000.00**
- (w) One Konica Minolta Bizhub (DI) Printing machine valued at ₦1,200,000.00**
- (x) Three Computer systems valued at ₦433,000.00**
- (y) Internal aluminum wall valued at ₦680,000.00**

The Applicants aver further that the value of all the things removed by the 2nd Respondent valued at about ₦23,985,100.00 (Twenty-three Million, Nine Hundred and Eighty-Five Thousand, One Hundred Naira apart from the 3rd Respondent official business documents and other items that he has not listed herein.

The Applicants stated that Kirloska 30KVA Generator attached belongs to Deborah Johnson, and not Wonder Prints Limited or Agelolei Ohimal Johnson. And that the Loft Wit-Color Large Format machine belongs to the 1st Applicant – Primo Wonder Limited and not Wonder Prints Limited and it is the subject matter of a case pending before Hon. Justice Garba of the FCT High Court in suit No. **CV/585/2018**.

That the Konica Minolta Bizhub D1 Printing machine belongs to the 1st Applicant – Primo Wonder Limited and not Wonder Prints Limited. The following documents were annexed with the interpleader summons to wit;

- (1) Machine Sale Agreement between Petra Worldwide Limited Vs. Primo Wonder Limited**
- (2) Sales Receipt in favour of Primo Wonder Ltd**
- (3) Official Receipt in favour of Deborah Johnson**
- (4) Invoice in favour of Agelolei Ohimal Johnson**

- (5) Invoice in favour of Agelolei O. Johnson**
- (6) Thermocool invoice**
- (7) Sales invoice in favour of Agelolei Ohimal Johnson**
- (8) Sales invoice in favour of Agelolei Ohimal Johnson**
- (9) Receipt in favour of Agelolei Ohimal Johnson**
- (10) 9 Receipt in favour of Agelolei Ohimal Johnson**

A written address was filed wherein, Counsel urged the Court to grant all the relief sought.

Reacting to the interpleader summon, the 1st Respondent filed a counter affidavit of 22 paragraph duly deposed to by Aliyu I. Ahmed an employee of the FCT High Court.

It is the deposition of the 1st Respondent that on the 08/06/2023, the High Court (Appellate Division) seating at Apo, Abuja gave Judgment in an Appeal with Appeal No. **CV/A/287/2022** in Motion No. **M/31/2023** dismissing the Appeal of the Applicant for lack of diligent prosecution and the certificate of Judgment was sent to the execution unit of FCT High Court for enforcement.

That the execution was carried out on the 24/11/2023 at suite 4, Lozumba Complex, Area 10 Garki Abuja and ten (10) moveable properties were attached and that was done in accordance with information provided by the Judgment Creditor.

The 1st Respondent annexed the following documents:

- (1) Record of proceeding of High Court, Appellate Division**
- (2) Application for enforcement by Nelson Uzuegbu & Co.**
- (3) Writ of Attachment**
- (4) Request letter for Police**
- (5) Inventory and Notice of Sale**

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

- (1) Whether the Deputy Sheriff (1st Respondent) Defendants can be held liable for actions done in their official capacity.**
- (2) Whether from the facts of the suit, the claims for damages can be granted against either the Deputy Sheriff.**
- (3) Whether the applicants are entitled to any form of damages as compensation.**

Learned Counsel argued the above issues succinctly in urging the Court to dismiss the reliefs sought against the 1st Respondent.

On the part of the 2nd Respondent, a 25-paragraph counter affidavit was filed duly deposed to by one Eze Amaka Juliet, a Secretary at Gordian Towers Ltd, the Company that represents and manages the subject matter.

The 2nd Respondent in its affidavit stated that the 1st and 3rd Applicants were actively involved in the tenancy transaction that gave rise to the Judgment which was enforced.

That there was no order by Hon. Justice A. H. Musa to halt the execution for the recovery of suite 04 which the 3rd Respondent and the Applicant continued to occupy despite a Court Order granting possession to the 2nd Respondent.

That the proceeding in suit No. **CV/3564/2020** further demonstrates the extent of collusion between the Applicant and the Judgment Debtor/3rd Respondent as the matter was initially filed in the name of the 1st Applicant, then changed to the 3rd Respondent.

That the 3rd Respondent consistently maintained that the properties attached at the recovered premises belong to it and the facts was

communicated in letter dated 16/10/2021. And that the items attached during the execution were listed in the inventory and that Exhibit A – R listed by the Applicant are merely fabrication.

The following documents were annexed by the 2nd Respondent to wit;

- (1) Witness Statement on Oath No. 1 of 3rd Applicant.**
- (2) Amended Joint Statement of Claim in Suit No. CV/3564/2020**
- (3) Judgment in suit No. CV/07/2021**
- (4) Record of Proceeding in High Court (Appellate Division)**
- (5) Ruling in Suit No. CV/07/2021**
- (6) Writ of Summons**
- (7) Notice of removal of machine**
- (8) Inventory and Notice of sale**
- (9) Search Report in CAC**

A written address was filed wherein, learned Counsel urged the Court to dismiss this application.

On the part of Court, I have gone through the affidavit evidence of the Applicants in support of the interpleader summons and the exhibits annexed therein with the written address of learned Counsel on the one hand, I have equally gone through the counter affidavits of both the 1st and 2nd Respondents and the annexures therein on the other hand. I have equally read the written addresses of Counsel to the 1st and 2nd Respondents in opposition to the interpleader summons. I shall address the issues at stake in this suit in the overall interest of Justice.

The law is trite that where a Judgment Creditor attaches the property of a Judgment debtor in satisfaction of a Judgment debt and a third-party claims ownership of the property attached, the third-party shall files an interpleader summons before the Court for a declaration in

his favour in respect of the property in dispute. See **WEST AFRICA COTTON LTD VS. MAIWADA (2007) LPELR 509 (CA)**.

The Court after a careful reading of the affidavits in support of the Applicants writ brought pursuant to Order 48(1) of this Court's Rules and the reaction of both the 1st and 2nd Respondents by way of counter affidavit, the Court hereby adopts the sole issue raised by the Applicants in their written address as sole issue for determination by this court, to wit; ***whether the Applicants are entitled to a grant of the reliefs sought in this case?***

It is instructive to state here that **Order 26(1) and (2)** of my Rules 2025 provides;

Order 26(1) "Relief by way of interpleader may be granted where the person seeking relief is "applicant" is under liability for any debt, money, goods or chattels, for or on which he is or expects to be sued by two or more parties "the Claimants" making adverse claims. But where the Applicant is a Sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of section 34 of the Sheriffs and Civil Process Act and the Rules made under it shall apply"

Order 26(2) "The applicant must satisfy the Judge by affidavit or otherwise that he;

- (a) Claim not interest in the subject matter in disputes other than for charges or costs.***
- (b) Does not collude with any of the Claimant and***
- (c) Is willing to pay or transfer the subject matter into Court or to dispose of it as the Judge may direct.***

The Courts have been consistent in showing that collusion between Applicants or Claimants in an interpleader summon are bound to fail.

It is trite that when the purpose of the Claimant in an interpleader proceeding is to defeat or act in fraud of the Judgment Creditor's interest, the Court will be justified in permitting the execution to proceed accordingly. **OKWOCHÉ VS. DIBIA (1994) 2 NWLR (Pt. 325) 195.**

The Applicants in paragraph 14 of the supporting affidavit stated that some of the properties removed from suite 004 and carted away by the 1st and 2nd Respondent does not belong to the 3rd Respondent which Company is the Judgment Debtor in the Judgment which was executed by the 1st Respondent in favour of the 2nd Respondent.

The Applicants further stated in paragraph 15 that the Applicants are all owners of properties which were unlawfully carted away by the 1st Respondent during the execution just levied on the 3rd Respondent.

I have seen Exhibit H annexed by the 2nd Respondent. In the said Exhibit titled "**RE: Notice of Removal of Machine by Owners**" addressed to the Managing Associate, Nelson Uzuegbu & Co, authored by the 3rd Applicant Agelolei Ohimai Johnson showing clearly that the 3rd Applicant is the Managing Director of the 3rd Respondent/Judgment Debtor. It is also on record through affidavit evidence and content of exhibits A and B that the 3rd Applicant is a Managing Director of the 1st Applicant. There is also evidence that the Address of the 3rd Applicant is same with the 1st Applicant and 3rd Respondent.

Similarly, by the Judgment of the Court, in **Exhibit C** annexed by the 2nd Respondent, the 3rd applicant was the principal witness for the 3rd Respondent/Judgment Debtor.

From the above facts, it easy to see why the 1st Respondent levied execution on the properties sought by this application to be set aside.

Indeed, the onus is on the Claimant/Applicant claiming wrongful attachment of his property in execution of Court's Judgment to prove that the properties do not belong to the Judgment Debtor and unless he discharges the burden before he can be granted any relief sought, in default, of his establishing such claims the goods will be sold and the proceeds paid over. **OKWUCHE VS. DIBIA (1994) 2 NWLR (Pt. 325) 195.**

The Applicants in establishing their case before the Court, annexed Exhibit **D, E, G, H, J, I, K, L, M, N, P, Q & R** i.e. receipts of the properties belonging to the interpleader/Applicants.

The 2nd Respondent in countering the above receipts annexed CAC Search Report to show that the receipts were issued by a company that does not exist.

Similarly, the 1st Respondent annexed Exhibit **M5** "Inventory and Notice of Sale" to show items taken away from the 3rd Respondent. The items taken during the enforcement are as follows:

- (1) One Biljson Generator Power Reb by Kirloskar**
- (2) One Bizhub a224c photocopy machine**
- (3) One 2 visitors seater**
- (4) One HP Printer small**
- (5) One Leng Printing Machine**
- (6) Seven Office Chair (Black)**
- (7) One HP Scanjet Scanner**
- (8) One HP Monitor & One Haier monitor**

The Applicant who alleged that the items as contained in the relief sought were taken away during the enforcement has failed to file a counter affidavit to debunk the above inventory list annexed by the 1st Respondent. The Court therefore must act on same.

From the History of the case that led to the enforcement which is now subject of the suit before me; the Judgment Creditor were given ample time by the owners of property from the demised premises at suite 004 of Lozumba Complex, Abuja to retrieve their properties. the Judgment of the trial Court was delivered on the 06/10/2022, the Ruling granting a conditional stay of execution was delivered on the 11/01/2023 and the ruling striking out the Judgment debtor's Appeal was delivered on the 08/06/2023 and the enforcement was done on the 24/11/2023.

The position of law is that delay is fatal to a claim for equitable relief. **ANGBAZO VS. SULE (1996) 7 NWLR (Pt. 461) 479.**

From the facts of this case as x-rayed in the Ruling, the Applicants have failed to establish their case on credible evidence. The Respondents' case is more superior. I believe same. I shall therefore do the needful by dismissing this case.

Consequently suit No. **CV/1052/2024** lacking in merit is hereby dismissed.

SIGNED:
HON. JUDGE
30/04/2025.

APPEARANCE:

Charles Abalaka, Esq, for the Applicants

Bilkisu Musa, Esq, for the 1st Respondent

Nnamdi Uzuegbu, Esq, with C. E. Enuke, Esq, for the 2nd and 3rd Respondents