IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP,

HON.JUSTICE P.A.AKHIHIERO,

ON FRIDAY THE
4TH DAY OF APRIL, 2025.

BETWEEN ***SUIT NO.:B/179M/2019***

JERRY O.GUOBADIA-------------- JUDGMENT CREDITOR/APPLICANT

AND

1. COMMISSIONER OF POLICE, EDO STATE
2. THE NIGERIA POLICE FORCE
3. POLICE SERVICE COMMISSION, ABUJA
4. THE INSPECTOR GENERAL OF POLICE
5. INSPECTOR FELIX NWONYE ***JUDGMENT DEBTORS***
6. CORPORAL ABUBAKAR JAMILU
7. CORPORAL ITAIFO EMMANUEL
8. CORPORAL OTTAH GODWIN

AND

CENTRAL BANK OF NIGERIA -------------------------------GARNISHEE

(Treasury Single Account (TSA)

for the Nigeria Police Force)

RULING

This Ruling is in respect of a garnishee proceeding which was commenced by the Judgment Creditor by a Motion Ex parte dated and filed on the 22nd of November, 2019. The Motion prayed this Honourable Court for an Order Nisi to attach the money in the Treasury Single Account (TSA) maintained and standing to the credit of the Judgment Debtors with the Garnishee (Central Bank of Nigeria) in order to satisfy the judgment debt of N10, 000,000.00 (Ten Million Naira) owed the Judgment Creditor by virtue of the judgment delivered on 26/03/19 by the Federal High Court in Suit No. FHC/B/CS/213/2015 in favour of the Judgment Creditor/Applicant.

The Order Nisi was granted on the 28th of May, 2020.

Upon the service of the Order Nisi on the Garnishee and the Judgment Debtors, the Garnishee filed an affidavit of 8 paragraphs to show cause.

In its affidavit, the Garnishee stated inter-alia that the Bank does not maintain any accounts in the names of the 1st, 2nd, 4th, 5th, 6th, 7th and 8th Judgment Debtors. However, they said that the 3rd Judgment Debtor (Police Service Commission) maintains some accounts with the Bank but the accounts were however not funded as at 15th of July, 2020. They attached the Certified True Copies of the accounts as Exhibits CBN 1 & 2. They said that in view of the foregoing, the Court should discharge the Bank from the garnishee proceedings.

However, in response to the Garnishee’s affidavit to show cause, the Judgment Creditor/Applicant filed a Further-Affidavit of 14 paragraphs wherein he seriously denied most of the paragraphs of the Garnishee’s affidavit to show cause. The Applicant stated that the Garnishee is a Bank for the Federal Government of Nigeria and in line with its core mandate to "act as a banker and provide economic and financial advice to the Federal Government" of Nigeria, the Garnishee sometime on the 7th of September 2015 directed all commercial banks in Nigeria to comply with the Federal Government policy of Treasury Single Account (TSA).

He maintained that the Garnishee maintains a Treasury Single Account for the Judgment Debtors particularly the 1st to the 4th Defendants/Judgment Debtors. He said that the Judgment Debtors are officers of the Nigeria Police Force which is duly recognized by the 1999 Constitution of the Federal Republic of Nigeria.

Furthermore, the learned counsel for the Judgment Creditor/Applicant ***U.L Osa-Uwagie Esq.*** filed a written address on points of law where he articulated his arguments to urge the Court to make the *order nisi* to become absolute.

In his written address, the learned counsel submitted that the Garnishee is a Bank duly created by the enactment of the National Assembly of the Federal

Republic of Nigeria and he referred the Court to the provisions of ***section 1(1); 2(e) and 4(2) of the Central Bank of Nigeria Act 2007*** and submitted that the Garnishee is a Bank for the Federal Government of Nigeria and maintains a Treasury Single Account for the Judgment Debtors particularly the 1st to the 4th Defendants/Judgment Debtors.

He referred the Court to their Exhibit "B" where the Garnishee directed all commercial banks in Nigeria to transfer all Federal Government funds into the Treasury Single Account (TSA) with the Garnishee from the 15th of September 2015.

He also referred to Exhibit "C" which is an article by a former Inspector-General of Police on the Treasury Single Account which is with the Garnishee and the court awarded judgments against the Nigeria Police Force of which the Judgment Debtors are members.

Counsel emphasised that from the contents of Exhibits "B" and "C", it is evident that the Garnishee maintains the Judgment Debtors' accounts.

He submitted that the sole duty of the Garnishee is to satisfy the Court why the funds in its possession belonging to the Judgment Debtors should not be used to pay the judgment debt. He said that it is not the duty of the Garnishee to play the role of advocate for the Judgment Debtors or to protect the debtors' money in its possession. On this, he referred the Court to the case ***Oceanic Bank Plc v. Olusegun Oladepu & Anor (2012) LPELR 19670.***

He posited that the depositions of the Garnishee denying knowledge of the 1st to 4th Judgment Debtors and denying maintaining the Treasury Single Account of the Judgment Debtors is in bad faith, false, misleading and a misrepresentation of the facts.

Counsel submitted that judgments of Courts are not made in vain and they are to be enforced and obeyed by persons and authorities and he referred to ***Section 287 (1),(2) and (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).***

He maintained that the Garnishee's position in this proceeding is not only misleading, overreaching, false and a misrepresentation of the facts but also an attempt to frustrate and deprive the Judgment Creditor from reaping the precious fruit of his judgment.

He urged the Court to discountenance the Garnishee's affidavit to show cause and make the Order Nisi absolute with costs of N1, 000,000,00 (One Million Naira) as expenses incurred by the Judgment Creditor.

Upon receipt of the written address of the learned counsel for the Judgment Creditor/Applicant, the learned counsel for the Garnishee, ***Mrs. O.B. Smooth*** filed a Reply on Points of Law. In her Reply on Points of Law, the learned counsel formulated two issues for determination as follows:

(i) ***The legal nature of the Treasury Single Account (TSA);and***
(ii) ***Whether the Judgment Creditor has shown the requisite burden of proof in order to discountenance the credibility of the Affidavit to Show Cause of the Garnishee.***

Thereafter the learned counsel argued the two issues seriatim.

On the legal status of the Treasury Single Account (TSA), learned counsel posited that the TSA Circular simply provides for a better accounting process within the CBN. She said that it is a process or tool that unifies all government accounts under one unit and it refers to revenue accounts and seeks to reduce multiplicity of accounts for monitoring and transparency.

She said that the funds are housed within the specific accounts for the relevant MDAs within the CBN. She said that the accounts of the Police Service Commission marked Exhibit CBN 1 and 2 to the Garnishee's affidavit to show cause aptly discloses that the accounts were not funded.

She said that Exhibits "B" and "C" are not on all fours with this instant case and that Exhibit "D" should also be discountenanced by this Honourable Court because the Garnishee in question was Access Bank, a Commercial Bank which simply complied with the TSA Circular of the apex Bank to transmit public funds in its coffers to the CBN. She said that it has no bearing whatsoever with the present case.

On her second issue, learned counsel referred to ***Sections 131(2), 132 & 136 of the Evidence Act 2011*** on burden of proof and submitted that the credible, cogent and convincing evidence put forward by the Garnishee remains uncontroverted by the Judgment Creditor.

She said that there is no duty on the Garnishee to adduce evidence because the Claimant must succeed on the strength of his own case. She said that where the Judgment Creditor fails to prove the facts relevant to the reliefs claimed, his claim is bound to fail and she cited the cases of ***Alaribe v Okwowu (2016) NWLR pt 1472pg 41 at pgs 62-63, para G-E;*** and ***INUA v FBN Plc (2016) 2NWLR pt 1495 pg 89 pgs 110 para F-G.***

She posited that the Judgment Creditor has failed to adduce any direct evidence against the Garnishee's affidavit to show cause and in particular against the veracity of the two Exhibits CBN 1 and 2 which clearly shows the absence of a funded account against which the judgment debt may be satisfied.

She further submitted that the Garnishee has by its affidavit to show cause fully discharged its duty and the Judgment Creditor/Applicant cannot force, coerce or push it to give what it does not have.

She urged the Court to discharge the Garnishee from any liability.

It is significant to note that the Defendants/Judgment Debtors also filed a motion on notice seeking the leave of the Court to file their Counter-Affidavit and Written Address in opposition to the garnishee proceedings. However, their counsel did not come to court to move the application so the said counter-affidavit and written address is not properly before the Court.

I have carefully examined all the processes filed in this application together with the addresses of the learned counsel for the parties. I am of the view that the sole issue for determination is whether the Judgment Creditor/Applicant has discharged the burden of proof to enable the Court to make the order nisi to become absolute.

First it is pertinent to point out that Garnishee proceedings are sui generis and principally between the Judgment Creditor and the Garnishee. The principle of law is that the Judgment Debtor is insignificant in a garnishee proceeding and not expected or required to respond to the garnishee order nisi or absolute. The Judgment Debtor has more or less no role to play and is merely a nominal party whose money in custody of the garnishee is being recovered by the Judgment Creditor in satisfaction of the judgment debt owed the Judgment Creditor.

As a matter of fact, the Judgment Debtor is not the one requested to appear before the court to show cause why the order nisi should not be made absolute. It is only the Garnishee, who is expected to inform the court if there is any third party's interest in the said judgment debtor's money in its custody.

So in the instant case, the failure of the Judgment Debtors to file any Counter-Affidavit or Written Address of their counsel is of no moment. See the following cases: ***UBA V. OSSIA & ORS (2016) LPELR-45792(CA) (PP. 19-25 PARAS. E) FIDELITY BANK PLC VS OKWUOWULU (2013) 6 NWLR (PT. 1349) 197;*** and ***UBA PLC VS. HON IBORO EKANEM (2010) 6 NWLR (PT. 1190) 207.***

Coming back to the main issue of granting or refusing the Order absolute, I have carefully evaluated the averments contained in the affidavit to show cause dated and filed on the 20th of July, 2020 by the Garnishee, I have also analysed the further affidavit to show cause dated and filed on the 13th of December, 2024 including the statements of account attached therewith.

I have also critically analysed the Judgment Creditor's Further Affidavit in response to the Garnishee's Affidavit to show cause filed by the Judgment Creditor/Applicant dated and filed on the 26th of April, 2024.

By paragraph 6 of the affidavit to show cause dated 20/07/20 and the further affidavit of the garnishee dated 13/12/24, the Garnishee categorically stated that except the 3rd Judgment Debtor, all the other Judgment Debtors do not maintain any accounts with the Garnishee.

Furthermore, the Garnishee also stated that the 3rd Judgment Debtor (Police Service Commission) maintains an account with them but the account was not funded as at the 27th of November, 2024. They attached certified true copies of the statements of account as Exhibits CBN 3and 4.

It is noteworthy that the Judgment Creditor/Applicant has not controverted or produced any document to disprove the assertions of the Garnishee. What the learned counsel of the Applicant tried to do was to put up strong arguments to try to convince the Court that the Treasury Single Account for the 1st to 4th Judgment/Debtors actually exists and was acknowledged by the Garnishee in a similar garnishee proceeding, which involved the Garnishee in Suit No: B/519M/2012 which was keenly contested before His Lordship Hon. Justice E.A Edigin (as His Lordship then was, sitting in High Court 3 of the Edo State High Court). He exhibited a certified true copy of the Enrolment of Order in the said Suit No: B/519M/2012 and some salient documents.

I must commend the industry of the learned counsel for the Applicant in his spirited effort to convince the Court that the Judgment Debtors maintain viable accounts with the Garnishee under the Treasury Single Account arrangement.

However, the point must be made that in civil matters, the burden of proof is on he who alleges. Thus in a garnishee proceedings, the burden of proof is on the Judgment Creditor/Applicant who alleges that the fund sought to be attached belongs to the Judgment Debtor and that it is in the custody of the Garnishee. The Judgment Creditor/Garnishor can only discharge that burden by identifying a bank account, or the money held in the name of the Judgment Debtor.

Once the Judgment Creditor is able to do that, the burden will shift to the Garnishee to rebut that presumption by credible evidence. See the following decisions: ***Uwak v Sampson (2017) 10 NWLR (Pt. 1574) 49, Oguebie v F.B.N Plc. (2020) 6 NWLR (Pt1561) 224 and Zenith Bank v Igbokwe & Anor (2014) All FWLR (Pt. 756) 451***.

In the instant case, the Judgment Creditor/Applicant is unable to provide concrete evidence of the bank accounts of the Judgment Debtors which they want to attach, for example the account numbers of the Judgment/Debtors were not supplied. The strong submissions of the learned counsel for the Judgment Creditor/Applicant cannot take the place of the evidence of cold facts.

It is settled law that the submissions of counsel no matter how brilliant and alluring cannot dislodge the logic of solid facts as established in the evidence by the parties. It cannot also take the place of the evidence not led by his client or supply the evidence not led by his client. See the cases of: ***BELLO V. NATIONAL BANK OF NIGERIA LTD. (1992) 6 NWLR (PT. 246) 220;*** and ***AGBON-OJEME V. SELO-OJEME & ORS (2020) LPELR-49688(CA) (PP. 78-79 PARAS. E).***

On the whole, I am of the view that the Judgment Creditor/Applicant has not discharged the burden of proof to enable the Court to make the order nisi to become absolute. The sole issue for determination is therefore resolved against the Judgment Creditor/Applicant. The application is dismissed and the Garnishee is hereby discharged. I make no order as to costs.

P.A.AKHIHIERO
JUDGE
04/04/25

COUNSEL:

1. ***U.L. OSA-UWAGIE ESQ…….JUDGMENT CREDITOR/APPLICANT***
2. ***I.E. EKIBADE ESQ………JUDGMENT DEBTORS/RESPONDENTS***
3. ***MRS. O.B. SMOOTH……………………….…………….…GARNISHEE***