

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON TUESDAY, THE 8TH DAY OF DECEMBER 2015
BEFORE THE HONOURABLE JUSTICE A.O. FAJI
JUDGE

SUIT NO: FHC/IL/CS/6/12

BETWEEN

SADIQ NUHU.....JUDGMENT CREDITOR/APPLICANT
DIRECTOR OF STATE
SECURITY SERVICE.....JUDGMENT DEBTOR

AND

IN RE:

1. ZENITH BANK PLC,
WAHAB FOLAWIYO ROAD (UNITY), ILORIN
2. UNITED BANK FOR AFRICA PLC
MURITALA MOHAMMED WAY, ILORIN
3. DIAMOND BANK PLC
IBRAHIM TAIWO ROAD, ILORIN
4. FIRST BANK PLC
WAHAB FOLAWIYO ROAD (UNITY), ILORIN
5. UNION BANK OF NIGERIA PLC
MURITALA MOHAMMED WAY, ILORIN

}.....GARNISHEES

RULING

The instant motion ex-parte seeks the following orders:

1. ORDER NISI against all the accounts of the Department of State Security (The Judgment Debtor), maintained by the Judgment Debtor with the Garnishees, that the accounts be attached to satisfy the Judgment sum of N320,000.00 (Three Hundred and twenty Thousand Naira only) and N25,000.00 (Twenty Five Thousand Naira Only) being cost awarded against the Judgment Debtor by the Lower Trial Court on the 25th day of January, 2013.

2. Fifty Thousand naira (N50,000.00) as cost of this proceedings.

3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance of this case.

The particulars are:

1. The Court of Appeal, Ilorin Judicial Division in its judgment on the 9/12/2013 substituted/reduced the N2,000,000.00 (Two Million Naira) damages granted to the Judgment Creditor/Applicant on the 25/1/2013 with the sum of N320,000.00 (Three Hundred and Twenty Thousand Naira Only).
2. The N25,000.00 (Twenty Five Thousand Naira Only) awarded as cost in favour of the Judgment Creditor/Applicant by this Court (Trial) was affirmed by the Court of Appeal, Ilorin, Judicial Division.
3. The Judgment of the Court of Appeal on 9/12/2013 remain extant and executor as the said judgment was not challenged by the Judgment Debtor in any form and the statutory duration to challenge same had since lapsed.

4. There is no step taken whatsoever to comply with the said Judgment by the Judgment Debtor since 9/12/2013 i.e when the Appeal Court handed down its Judgment till date, despite repeated demands.
5. The Judgment Debtor has refused to comply with the said extant judgment despite letter written to it dated 09/05/2014 and 05/09/2014 respectively.
6. The Judgment Debtor has turned deaf ears to the Learned Attorney General of Kwara State through a letter dated 11/11/2014 which was sequel to a letter written to him by the Judgment Creditor/Applicant (via his counsel) dated 15/10/2014, advising the Judgment Debtor to comply with the said extant Judgment.

7. The judgment debt and the cost can be defrayed upon attachment of the bank accounts of the Judgment debtor with the Garnishees.
8. Every successful litigant is entitled to reap the fruit of his successful litigation.
9. There is a legal obligation on the Judgment Debtor to comply with the extant Judgment having not taken any valid step that can justify its non compliance with the said judgment.
10. The Judgment Debtor's office is located at Ahmadu Bello Way, G.R.A, Ilorin, Kwara State i.e within the jurisdiction of this Honourable Court.
11. The office/place of business of the Garnishees is within Ilorin metropolis i.e within the jurisdiction of this Honourable Court.

The application is supported by an affidavit deposed to by Medinat Saliu Solicitor's Clerk to Applicant's Solicitor. A written address was also filed.

The motion was brought pursuant to **Section 83 of the Sheriff and Civil Processes Act and Order 37 Rules 1 & 2 of the Federal High Court Civil Procedure Rules 2009.**

Section 83 of the Sheriffs and Civil Processes Act provides.

- (1) The Court may, upon the ex parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the Applicant or his legal practitioner that

judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

(2) At least fourteen days before the day of hearing a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.

Order 37 rule 2 specifies how the application is to be made. It provides:

An application for an order under rule 1 of this order shall be made ex parte supported by an affidavit –

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of the judgment or order and the amount remaining under it as (at) the time of the application;

- (c) stating, that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief; and
- (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.

It is pertinent to state that the deponent has no personal knowledge of the facts but relied on information supplied to her by the Judgment Creditor.

Order 37 rule 2(c) provides that the deponent shall provide his or her source of information or the grounds for belief. Paragraph 3 (j) and (k) deposed to facts provided to the deponent by the Judgment Creditor and stated that judgment debtor has accounts with 5 named banks who are indebted to Judgment Debtor. There is no source of how he came about this information. It is mandatory for the source of information or grounds of belief to be stated by the deponent. If the Judgment Creditor has no information or no means of obtaining it he may apply for the appointment of a receiver instead

of taking out garnishee proceedings. See: **Halsbury's laws of England Fourth Edition**
Vol. 17 pages 332-333 paragraph 534 foot-
note 4.

Furthermore, an order nisi does not attach the balance of an account at a bank unless it correctly sets forth the name of the account as it stands in the books of the bank. See **Encyclopedia of the Practice and Procedure of the Federal High Court of Nigeria** 2nd Edition 2010 by Sir T.A Nwamara page 655 paragraph 2.

The affidavit therefore falls short of the Legal

requirements. The motion cannot therefore succeed. It is accordingly hereby dismissed.


A.O. Faji
Judge
8/12/15

Counsel:

A.S. Jimoh Esq for
Judgment Creditor