

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ABAKALIKI JUDICIAL DIVISION  
HOLDEN AT ABAKALIKI  
ON THURSDAY THE 10<sup>TH</sup> DAY OF NOVEMBER, 2016  
BEFORE HIS LORDSHIP  
HON JUSTICE M. L. ABUBAKAR  
JUDGE**

**SUIT NO: FHC/AI/CS/01/2011**

**BETWEEN:**

**MR. GODWIN EGWU        :::    JUDGMENT/CREDITOR APPLICANT  
AND**

- 1. ISHIAGU MICRO FINANCE BANK**
- 2. THE ASST. INSPECTOR GENERAL OF POLICE**
- 3. THE COMMISSIONER OF POLICE EBONY I STATE**
- 4. THE D.P.O. ISHIAGU POLICE DIVISION**
- 5. MR. MIKELON IPO ZONE 6 NIGERIA  
POLICE CALABAR**
- 6. FIRST BANK OF NIGERIA PLC**

**JUDGMENT  
DEBTOR  
RESPONDENTS  
GARNISHEE**

**APPEARANCES**

Parties absent

Felix Agubeshiri        -        Judgment/Creditor/Applicant  
Umunna Ugwu            -        Judgment/Debtor/Applicant



**JUDGE  
FEDERAL HIGH COURT  
ABAKALIKI**

## RULING ON APPLICATION ON NOTICE

This ruling relates to an application filed on 29/1/2016 by the Garnishee/Applicant's Counsel pursuant to order 32 Rules 1-4, and order 26 rules 18 -21 of the Rules of this court seeking for the following orders:-

1. An order of stay of Execution of the Garnishee order absolute made by this court on the 1/12/2015 which is the final judgment of this court on the Garnishee proceedings as filed by the judgment creditor/Applicant/Respondent.
2. Any other order or further orders as in the circumstances.

In support is a 17 paragraphs Affidavit deposed to by one Umunna Ugwu Esq and annexed are Exhibits A – D respectively.

There is also a written address where a sole issue for determination is raised i.e whether this court has power to grant this application. The counsel submitted that an applicant who is dissatisfied with the Judgment, Ruling or Order of a trial court or tribunal can exercise his right of appeal. In doing so there is need to apply for a stay of execution of the judgment or order of the court or tribunal in order not to render the decision of the appellate court nugatory. If the decision is in favour of the appellant. In other words, application for stay is brought to preserve the res to ensure that the appeal is not otherwise rendered nugatory.

He referred to the case of **UNILORIN VS ADESINA (No 1) (2008) AII FWLR (pt 400) 709**

He added that the court has discretionary powers to grant or refuse this application but the discretion should be exercised judicially and judiciously putting into consideration the nature of the case, the grounds of appeal whether recondite, the balance of convenience as well as competing rights of the parties.

He referred to the case of **UNIVERSITY OF ABUJA V IBIETAN & 44 ORS (1998) 3 NWLR (PT 542) 387 at 388.**

He further submitted that there are substantial or exceptional circumstances in the appeal which warrant the granting of this application by the court.

He cited the case of **SHELL PETROLEUM COY V PESSU (2008) ALL FWLR (PT 404) 1550 at 1567-1568.**

In reply to the counter –Affidavit of the judgment creditor/Respondent, they filed a 6 paragraphs further Affidavit on 23/5/2016 and attached is Exhibit “A” together with a written address. The counsel urged the court to grant this application.

In reaction, the counsel to the judgment creditor/Respondent informed the court that they have filed a 10 paragraphs counter Affidavit on 18/2/2016 deposed to by the judgment creditor himself. The counsel equally filed an objection praying for an order dismissing the application for want of jurisdiction and competence on the following grounds.

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ABAKALIKI

- (1) The application is brought before a wrong court and this court cannot act as an appeal court over the judgment/orders of court of co ordinate jurisdiction.
- (2) That it is a professional misconduct for the counsel that deposed to the Affidavit in Support to file the Motion and he ought to disqualify himself or any lawyer from his chambers if he is truly a lawyer from further appearing in the matter.
- (3) That the said counsel has not shown that he is a lawyer called to the bar who is competent to file any process in any court of law in Nigeria or settle any legal document.

In his written address, the counsel cited Rule 10(1) (2) and (3) of the Rules of professional conduct for legal practitioners 2007 and submitted that none of the process filed and served by the Applicant in this application and the Notice of Appeal frontloaded bears or carries either the stamp or seal of the Nigerian Bar Association or evidence that has been paid awaiting delivery.

He also referred to the case of **GEN BELLO S/YAKI (Rtd) V SENATOR ABUBAKAR BAGUDU & ORS** (Unreported) delivered on 13/11/2015.

The counsel further cited Rule 20(1) of the Rules of professional conductor for legal practitioners and Submitted that it is has been breached by the Applicant counsel for allowing himself to depose to the Affidavit in Support of the

application. The said counsel should not be lawyer to the Applicant and be a witness at the same time.

The counsel further submit that Exhibit A-D filed by the Applicant counsel offends section 104 of the Evidence Act as they are public documents but have not been certified as required by the law. He urged the court to disregard them and also expunged paragraphs 5 and 7 where they were referred. Finally the counsel argued that if the court is minded to the grant the application, it should order that the applicant to pay the money into an interest yielding account in a reputable Bank preferably the union Bank of Nigeria. He urged the court to refused the application or in the alternative order Garnishee Bank to pay the money into an Interest yielding account.

Those are the submissions of counsels to both Applicant and the Respondent. The issue for determination is whether the application has merit or not.

I have carefully considered the application and all the other process filed and found as follows:-

- (1) That this application is properly before this court. It is elementary knowledge that it is only if a trial court refused such application that the applicant will proceed to the court of Appeal.
- (2) It is undesirable and voidable for a legal practitioner to depose to an Affidavit in a matter which he is appearing as a counsel since it means

that counsel is giving evidence. See the case of **EKPETO V WANOGHU (2005) 3 NWLR 72 SC at 87 per KALGO JSC.**

- (3) As regards none fixing of stamp and seal by the Applicant counsel on the processes filed. It is clear from Exhibit "A" attached to his Further Affidavit filed on 23/5/2016 and paragraph 5 thereof, the counsel has applied and paid for the NBA stamp and seal sometime in January 2016.
- (4) On the issue of non certification of Exhibits A, B, C and D attached to the Applicant's Application.

I agreed with the argument that they are public documents but Exhibit A which is a Notice of Appeal was filed before this court on 27/1/2016. Exhibit B and C are certified true copy of the record of proceeding of this court. As such Exhibit A, B and C are within the law.

However, Exhibit "D" which is a circular from the entry Bank of Nigeria to All Deposit money Banks dated 8<sup>th</sup> October, 2015 is not certified in accordance with the Evidence Act. It is hereby expunged from the court records.

Be that as it may, since the Applicant has filed Notice of Appeal and has substantially satisfied the conditions for grant of this type of application I will not hesitate to grant this application but on condition that the judgment sum be deposited into the account of this court which is under the control of the senior

Registrar of this court for that purpose. This court doesn't want a situation where the judgment creditor will be deprived of the fruits of his litigation. This is my decision.

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M. L. ABUBAKAR  
JUDGE  
10/11/2016

Umunna - We thank the Court for the erudite ruling.  
Felix - We are grateful for the Ruling.

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M. L. ABUBAKAR  
JUDGE  
10/11/2016