

## A GARNISHEE CASE REVIEW

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G.O. SODIPO AND CO.

NEWSLETTER

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- 1) **INTRODUCTION:** This is a garnishee case conducted at the High Court of Delta State Warri. The Judgment creditor got judgment for a certain amount in the Federal High Court Lagos. The Judgment debtor appealed to the Court of Appeal. At the Court of Appeal, the judgment creditor applied that the judgment sum be deposited into an interest yielding account in the name of the Chief Registrar of the Court of Appeal. This order was complied with by the judgment debtor. The Judgment Debtor lost the appeal at the Court of Appeal and subsequently lost the final appeal at the Supreme Court. This brought to an end the case between parties as the judgment sum was already paid into an interest yielding account at the instance of the Judgment Creditor.
- 2) Strangely, a third party commenced the garnishee proceeding at the Warri High Court to recover the Judgment Sum. The said third party claimed that it instituted the action based on a power of attorney donated to it by the Judgment Creditor. It obtained an order nisi garnishing an amount almost ten times the Judgment sum. The garnisheed bank upon service of the Order Nisi, instructed our firm to represent it in the matter. It is equally worthy to mention here that the funds garnisheed were already a subject of another judgment of the Federal High Court Abuja between the Garnishee Bank and the Judgment Debtors and another Third Party.
- 3) It is hereby note that the approach adopted by the garnisheed bank's lawyer is against the general principal of law that a garnisheed bank's obligation in a garnishee proceeding ends with the filing of the Affidavit to show cause. The Garnishee's lawyers are of the belief that a garnisheed bank has a duty of care over its customers' money in its custody. It has the duty to ensure that it exercises due diligent over its customer's funds in its custody. This view is contrary to decided cases in garnishee matters, which points to the direction that it is not the duty of a garnisheed bank to defend a case of garnishee.
- 4) In adopting this position, the garnishee lawyers relied on the provisions of sections 83 to 91 of the Sheriff and Civil Process Act.

Time will not permit us to analyse each of these provisions in this review. You may wish to read them up at your convenience.

## **FINDINGS**

The following facts emerged during the trial of this case

1. The totality of this Garnishee proceedings turned out to be fraudulent thus:
  - a) The purported judgment creditor did not serve both the judgment debtor and creditor with the garnishee order nisi and other court processes.
  - b) The Garnishee was the party that notified the judgment debtor which in turn notified the judgment creditor. Both parties filed papers to challenge the garnishee proceeding and Garnishee Order Nisi.
  - c) A faceless lawyer entered appearance for the judgment debtor with the intention of not challenging the garnishee.
  
2. **JUDGMENT:** At the end of trial, the trial court upheld the objection of both the Garnishee, the judgment debtor and creditor and cost was awarded to the three parties to be paid by the purported attorney of the judgment debtor. This attorney has appealed this judgment to the Court of Appeal and we shall review whatever decision the Court of Appeal will make in this matter.

**CONCLUSION:** From what transpired in this matter, it has become necessary for our courts to always allow the garnisheed bank to exercise whatever right/option available to it under sections 83 to 91 of the Sheriff and Civil Process Acts, rather than limiting the Garnisheed Bank's role to only filing the affidavit to show cause. The implication of the requirement of the affidavit to show cause does not end at whether there is fund in the account or not. To show cause means to show if there is any reason known to the bank why the funds should not be garnisheed. See sections 83(1) which is prove thus: "... it may be ordered that the garnishee appear before the court to show cause why he should not pay to the person who has obtained such judgment or order...."

Section 86 gives the garnishee the right to dispute the sum while section 87 gives the garnishee the right to subject itself to trial on the garnisheed sum, where necessary. While by sections 88, 89 and 90, the Act gives the garnishee right to protect third party lien over the garnishee sum. Like in this case under review, as mentioned earlier, the garnishee sum was already a subject of a previous judgment

between the garnishee and the judgment debtor and a third party at the Federal High Court. Armed with these provisions and the case of FBN v JACOB AGIDI (NIG) LTD (2018) LPELR-44997 (CA) where the Court of Appeal held thus:

*“... Just like where two equalities are equal, the first in time prevails, it follows also that where there are two subsisting orders made on the same subject matter of dispute by two different courts of co-ordinate jurisdiction, the first order of the court effecting the res ought to take precedent over the subsequent one, except where the first order has been set aside, ... could subject the Appellant to contempt proceedings....” Per OSEJI, JCA (Pg 27-13) para D-E.*

Finally, it will be observed that though the steps adopted by the Garnisheed banks in this matter seems to be against the known practice of just filing an affidavit to show cause, it is supported by the laws that govern garnishee proceedings. This also helped the garnisheed bank as a trustee of its customer, to protect the customers fund in its custody.

The funds in this matter would have been fraudulently withdrawn and this purported attorney would have vanished into thin air.

**Daniel Ozoma**

**PARTNER**

[d.ozoma@gosodipo.com](mailto:d.ozoma@gosodipo.com)

**G.O SODIPO AND CO.,**

27/29 King George V Road, Onikan, Lagos

Info@gosodipo.com

b.sodipo@gosodipo.com

+234 813 881 6290