IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

IN THE OWERRI JUDICIAL DIVISION

HOLDEN AT OWERRI

BEFORE HIS LORDSHIP HONOURABLE JUSTICE I.S GALADIMA

DATE: Friday 27th May 2022. SUIT NO: NICN/OW/19M/2021.

BETWEEN:

PRINCE EZE MADUMERE JUDGMENT CREDITOR.

AND

ZENITH BANK PLC GARNISHEE BANK.

AND

1. THE GOVERNOR OF IMO STATE
2. ATTORNEY GENERAL OF IMO STATE JUDGMENT DEBTORS.
3. IMO STATE GOVERNMENT

Representation:

* K.C.O. NJEMANZE (SAN); L.A NJEMANZE FOR THE JUDGMENT CREDITOR.
* R.C. CHINAKA FOR THE GARNISHEE BANK.
* L.M. ALOZIE (SAN); R.U OKOLO FOR THE JUDGMENT DEBTORS.

**RULING ON THE GARNISHEE APPLICATION:**

1. This court made an order nisi pursuant to the judgment creditor’s/applicant’s motion for same, on the 15/10/2021 wherein the garnishee bank herein named, was ordered to show cause within 14 days of service on it, why it should not be made to pay the sum of N1,970,666,584.68 which it purportedly holds on behalf of the judgment debtors, in account numbers 1013118920, 1013197705, 1017415829, and 1017415788, to the judgment creditor. Perhaps it should be noted that the judgment debtors’ application to vacate the said order nisi, was considered and dismissed by this court in an earlier pronouncement delivered today, 27/5/2022.
2. In any case, in compliance with the said order nisi, the garnishee bank filed a 14 paragraphed affidavit of cause on 23/11/2021 and deposed in same that accounts numbers 1013118920 and 1017415829 do not exist in its data base but the other 2 accounts – 1013197705 and 1017415788 do. However, whereas the latter account (ending with ‘88’) contains a balance of N42,116.37k purportedly at the time this order nisi was served on it, the former one which also belongs to the judgment debtors (ending with ‘05’), allegedly contains a negative balance of N -18,035,728,347.07 DR. The garnishee bank’s deponent thus attached 2 statements of loan accounts as exhibits C and D to his affidavit – see paragraphs 7, 8 and 9 of deponent Ajibola Paul’s affidavit of 23/11/2021. Accordingly, the State government of Imo is heavily indebted to the garnishee and so it seeks to be discharged from further liabilities arising from these proceedings.
3. The garnishee’s affidavit of cause is accompanied by a total of 8 exhibits. Exhibit A is a statement of account for account number 1013197705 which on 3/11/2021, allegedly contained the sum of N182,470.37. Interestingly, the said statement of account is only for the period of 1 day i.e., 3/11/2021, and so clearly does not cover any periods beyond the date the garnishee bank was served (allegedly on that said 3/11/2021), to the time they formally filed their affidavit on 23/11/2021. The import of this, if any, shall be considered in this ruling presently.
4. Meanwhile, its exhibit B is another statement of account for account number 1017415788 which accordingly contained N42,116.37 on 3/11/2021 only. The garnishee again, did not deem it necessary to disclose what was in the account as at the time the order nisi was made, up to the date it filed the affidavit of cause on 23/11/2021.
5. Exhibit C and D already mentioned above, are loan statement accounts drawn up with respect to the Imo State Account (AG’s Office) and the Imo State Excess Crude Account – both of which clearly do not relate to any of the account numbers specifically stated above by the judgment creditor in this proceeding.
6. Exhibit E is an offer of credit facility document made on August 24, 2015 wherein a loan facility of N20 Billion Naira was offered to the State government of Imo duly endorsed and signed in September 2015 by the accountant general, commissioner for finance as well as the erstwhile state governor.
7. Exhibit F is another offer of a loan credit facility made in January 2016 for N10 Billion Naira to Imo State which was signed by the judgment debtors’ accountant general in January of 2016 and the Permanent Secretary (finance) on 1/3/2016. This document was not signed by the State governor and so it is difficult to know if his assent was obtained for the said facility.
8. Again, in September of 2015, another offer of credit facility was again made for N10 Billion Naira to the judgment debtors and same was duly signed too by the accountant general on 11/11/2015, the Permanent Secretary (finance) on 11/11/2015, and the erstwhile governor Rochas Okorocha on the same 11/11/2015. This is as evidenced in the document marked exhibit G by the garnishee.
9. Curiously, exhibit H is a review of offer of credit facilities – CBN bailout/intervention loans. This is dated April 14, 2021 and signed by the accountant general on 15/4/2021 and the commissioner for finance (undated). It was however, not endorsed and signed by the governor, Hope Uzodinma in the space provided for him to sign. It is equally doubtful if his assent was sought in order to give any legal effect to this document.
10. In response anyway, the judgment creditor filed a counter affidavit of 4 paragraphs on 20/5/2022. His counsel had in open court, applied orally for leave to file and to extend the time for filing the counter affidavit on 27/5/2022 which this court granted. Accompanying the counter affidavit, are 3 exhibits – exhibit A is a document titled “Transaction Summary” dated 19/11/2020 and marked “without prejudice” which is addressed to the accountant general of Imo State. Exhibit B is an affidavit of facts deposed to by one Victor Joshua. And Exhibit C is another affidavit of facts deposed to by one Ogbonnaya Onwuchekwa Uche.
11. In the counter affidavit, the judgment creditor denied all the depositions made by the garnishee’s deponent and stated inter alia, as follows:
    * 1. That account number 1017415829 is owned by the judgment debtors and named “Imo Prosperity Account” and same is in possession of the garnishee bank contrary to what the garnishee bank stated that it does not exist – paragraph 3 (a) and (b).
      2. That account number 1013197705 had a credit balance of N329,283,717.56 whereas account number 1017415788 had N4,602,042,116.37 as at the time of granting the order nisi – paragraph 3 (c).
      3. The deponent explained that the State had under the leadership of Emeka Ihedioha, set up an audit committee to examine the State accounts with the garnishee and when the current Hope Uzodinma government took over, the committee was empowered to continue with the audit – paragraph 3 (e).
      4. The committee accordingly found that the State (judgment debtor), is not indebted to the garnishee bank rather, the bank owed the State when it inappropriately charged and levied billions of Naira against the State accounts – paragraph 3 (g).
      5. A compromise was accordingly reached, and the garnishee refunded back the sum of N3 Billion to the judgment debtors – see exhibit A.
      6. That on 25/11/22, one Victor Joshua and Ogbonnaya Onwuchekwa Uche made separate deposits into account number 1017415829 and respectively made affidavits to verify this fact – attached here as exhibits B and C (paragraphs 3 (j) and (k)).
      7. Accordingly, account numbers 1013197705 and 1017415788, have sufficient funds to satisfy the judgment sum contrary to what the judgment debtors have stated.
      8. That the garnishee’s affidavit is a ploy to withhold vital information with a view to further frustrate the judgment creditor from enjoying the fruits of his judgment.
      9. The garnishee has thus colluded with the judgment debtors who made several withdrawals/transfers to other bank accounts, from those accounts while this application to consider making the order nisi, absolute, is pending – paragraph 3 (o).
12. The garnishee bank did not file a further and better affidavit at the time of considering the garnishee’s affidavit of cause. See the proceedings of today 27/5/2022.
13. The parties’ counsel eventually adopted these respective affidavits on 27/5/2022 whereupon this court considered and delivered a bench ruling immediately after.
14. It is pertinent to note once again, that the garnishee order nisi was made by this court on 15/10/21 but served on the garnishee on 3/11/2021. The garnishee however filed its affidavit of cause on 27/11/2021 outside the 14 days allowed by order of this court.
15. Upon a close examination of the affidavit of 27/11/2021, the garnishee’s deponent disputed the existence of account numbers 1017415829 and 1013118920. Whereas the judgment creditor did not dispute the latter account, it however challenged the existence of the former in the garnishee’s custody, that is account number 1017415829.
16. In disputing this claim, 2 deponents filed what they titled “affidavit of facts” separately as exhibits B and C to the judgment creditor’s counter affidavit. Exhibit B was deposed to by one Victor Joshua, a resident of Abuja, on 20/5/2022 wherein he stated that on 25/11/2021, he successfully deposited the sum of N2,000.00 from his Zenith Bank account into Zenith Bank account number 1017415829 which reflected “Imo Prosperity Account”. As proof of this transaction, he obtained a statement of account of his own account (2189531034 Zenith Bank) which he annexed to his affidavit as an exhibit.
17. The second disputant, one Ogbonnaya Onwuchekwa Uche a resident of Owerri, owns an Eco bank Account number 5090011131 and he accordingly successfully transferred the sum of N3,000.00 to the same Zenith Bank account number 1017415829 on 25/11/2021. Just like the 1st disputant, the name that came up as the holder of the account is “Imo Prosperity Account”. This disputant also attached his statement of account as evidence of the transaction undertaken on the said 25/11/2021.
18. This court immediately went through the said 2 statements of accounts produced as evidence by these disputants to discover that these facts are unassailable truths. There were entries made separately from their bank accounts as reflected in their certified statements of accounts on the said 25/11/2021. I easily find from a careful examination of both affidavits of facts as well as the accompanying exhibits thereto, that account number 1017415829 titled “Imo Prosperity Account”, is in the custody of the garnishee bank.
19. Meanwhile, in paragraph 4 of the garnishee’s affidavit of cause, this is what was specifically deposed:

That upon receiving the said garnishee order nisi, I, Ajibola Paul, searched the books of the garnishee via the computers of the garnishee and found that:

1. The judgment debtors maintain account numbers 1013197705 and 1017415788 with the garnishee.
2. Account numbers 1013118920 and **1017415829** stated on the order nisi, do not exist in the bank’s database (underlined for emphasis).
3. By making this assertion under oath, what the deponent wants this court to do is to act on same to arrive at an erroneous conclusion based on a complete falsehood, that the said account number in dispute, does not exist whatsoever within the garnishee’s database. It must be appreciated that the deponent never stated that the account belonged to another person, but that it does not exist whatsoever.

1. Considering the revelations made by the 2 disputants in the counter affidavit with respect to the account in contention, there is no reason to disbelieve the judgment creditor’s counter affidavit that the garnishee refuses to make the necessary disclosures with respect to that specific account number **1017415829**. Therefore, when placed on an imaginary scale, the judgment creditor’s sworn account outweighs the garnishee’s as such, this court is reasonably satisfied that the creditor met the minimal standard of proof required in a civil proceeding such as this. There is no better evidence to establish the existence of this said account than the evidence produced by these 2 disputants as contained in exhibits B and C of the counter affidavit of 20/5/2022.
2. Having thus found the contrary to be the case, this automatically negates the garnishee’s complete denial of the existence of the account. As such, the deponent Ajibola Paul, as well as the garnishee, Zenith Bank PLC, find themselves in peril of committal for perjury if found guilty in a separate trial. This is because an affidavit is akin to a declaration under penalty of perjury which is punishable under our penal laws.
3. Thus said, this court finds the deliberate falsehood made by this garnishee bank in denying the existence of one of the account numbers attached in these garnishee proceedings, as sufficient and cogent cause not to even believe the entire contents of their affidavit. The same shall be dismissed in favour of the judgment creditor’s application to make this court’s order nisi, final and absolute.

1. Assuming it is argued that this court arrived at a rather impulsive decision to completely disbelieve the garnishee, a close examination of the statement of accounts annexed as exhibits to the affidavit of cause, reveal that the garnishee transferred funds out of the said account number 1013197705 on the same date the bank was served with a copy of the order nisi on 3/11/2021. This is seen in exhibit A for instance, when N300,000,000.00 was removed from that account leaving a balance of N29,283,663.81 from which N29,101,193.44 was again removed to leave a paltry balance of N182,470.37 left which was then deposed as the alleged balance on that said 3/11/2021.
2. Besides, that statement of account was for only 1 day which means the garnishee hid the details of what transpired from when the court made this same order nisi on 15/10/2021, till the day it filed its affidavit of cause on 27/11/2021. A whole lot of other transactions may have occurred therefrom which would have swayed this court in reaching a right decision either way. Therefore, having flagrantly disobeyed this court’s order to have that account frozen, there is justifiable cause to refuse to discharge this garnishee from this liability.
3. The same fate befalls exhibit B (statement of account of 1017415788) which peremptorily reveals the withdrawal of several amounts of money on the said 3/11/2021 willfully without regard to this court’s order nisi. Again, the statement of account was only for 1 day leaving plenty of facts to the court’s imagination as to the true disposition of the judgment debtors’ account in the garnishee’s custody. In any case, this contradicts the deposition made in paragraphs 7 and 11 that the judgment debtors were indebted to the bank when in fact the garnishee colluded with them to transfer various funds to different accounts on the very day the order nisi was served on the bank and not for the purpose of repayment of any alleged loan owed the garnishee.
4. Exhibits C and D, at the risk of obvious repetition, are loan statement accounts drawn up with respect to the Imo State Account (AG’s Office) and on the Imo State Excess Crude Account both of which clearly do not relate to any of the account numbers specifically stated above by the judgment creditor in this proceeding. None of the exhibits attached as E, F, G or H indicate that the accounts of the judgment debtors shall all be attached by the garnishee for the purpose of repayment of any loans. Besides, in the face of the judgment creditor’s exhibit A which discloses that the judgment debtors are not indebted to the garnishee, I do not see how the garnishee’s statements in this regard, can be substantiated. The judgment creditor’s affidavit is after all, unchallenged and deemed to have been completely admitted by the garnishee.
5. There are other reasons to prefer the judgment creditor’s facts also. Firstly, the judgment debtors apparently own several accounts in the garnishee bank one of which it conveniently ‘forgot’ exists. There was, no frank disclosures whatsoever. Secondly, there is no legal basis for placing any lien on any of the accounts stated to belong to the judgment debtors – at least none from a competent court of law – by the garnishee. Thirdly and equally important but irrelevant, exhibit H which they rely upon to be a reviewal of the offer of credit facilities given to the judgment debtors, was not assented to by the governor of the state and same is unsigned and a dud document without legal effects. In fact, I contrarily find these exhibits as evidence of the judgment debtors’ credit worthiness to continue applying for and receiving loan facilities and or extensions from the garnishee bank without the latter worrying whether the loans will be repaid back successfully. This is if I even believe the judgment debtors are indebted to the garnishee such that it must be difficult for them to meet the commitments of other liabilities that must arise while running the State. In so far that those exhibits E, F, and G establish that loans were given to the judgment debtors from 2015 to 2020 almost annually, it establishes the judgment debtors’ capacity to pay the judgment sum in this suit which after all, are still valid and subsisting.
6. I therefore find that the garnishee flagrantly disobeyed the positive, valid and subsisting order made by this court on 15/10/2021 which was served on it on 3/11/2021. The garnishee deliberately withheld vital information, which might be unfavourable against the judgment debtors – section 167(d) Evidence Act 2011. I also find that the garnishee falsely refused to make full and frank disclosures of the current state of accounts belonging to these judgment debtors at the time the order nisi was served on them – See OCEANIC BANK PLC VS. OLADEPO & ANOR (2012) LPELR-19670 (CA); ACCESS BANK VS. OBIEFUNA (2020) LPELR-49855(CA).
7. In the face of insurmountable evidence before this court, it is obvious that the garnishee is shielding and colluding with the judgment debtors. This is deprecated by the courts and same when proven, is justifiable ground for making a final order in a garnishee proceeding – See Governor of Imo State & Anor vs. Ogoh & Ors. (2015) LPELR- 25949 (CA) where it was held on the role of a garnishee in a garnishee proceeding:

"A garnishee is under a duty to obey the order of court, called order nisi, once the account(s), showing the funds of the judgment debtor in its (Garnishee's) custody is attached, and the accounts shows evidence of funds to satisfy the judgement debt, either in full or in part. It is not open to the garnishee to devise a means or way to save or help the judgment debtor, or to act as defence counsel for the judgment debtor, by showing why the funds in its custody may not be applied to satisfy the judgment debt. In the said case of Oceanic Bank Plc. vs. Oladepo (Supra), this court held that: "... it is not the business of a garnishee to undertake to play the role of an advocate for a judgment debtor by trying to shield and protect the money of the judgement debtor. Of course, by playing games of hide and seek with the court, by failing or refusing to depose to affidavit to show cause, disclosing the true account status of the judgment debtor, the garnishee only exposes itself to trouble, daring the court to do its worst! It can therefore be made to pay the debt of the judgement debtor, if the court has cause to believe that the failure or refusal to show cause is a deliberate attempt to evade a legal duty under the law, to disclose the true state of account of the judgment debtor in its custody. In that situation, the court will have no other option than to order the garnishee to settle the judgment debt, believing that the failure or refusal of the garnishee to show cause is implied admission of the claim of the judgment

creditor/applicant, that the garnishee holds the judgement debtor's money sufficient to satisfy the judgement debt."

Per MBABA, JCA (Pp. 34-36, paras. F-B).

1. Consequently, I find justifiable cause to make the order nisi of 15/10/2021, final and absolute against the garnishee. This garnishee is hereby ordered to transfer the full judgment sum of N1,970,666,584.68 owed to the judgment creditor to him or into an account of his own choice in satisfaction of the judgment of this court, within 72 hours of this pronouncement.
2. Ruling is delivered accordingly.

DELIVERED IN OWERRI THIS 27TH DAY OF JULY 2022

MR. JUSTICE I. S. GALADIMA,

JUDGE.

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